The original documents are located in Box 7, folder "9/19/74 S3052 Commission on Revision of the Federal Court Appellate System" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

ACTION

THE WHITE HOUSE

WASHINGTON

Last Day - September 28

September 19, 1974

MEMORANDUM FOR: THE PRESIDENT

FROM: KEN COLE

SUBJECT: Enrolled Bill S. 3052

Attached is the Senate bill, S. 3052, Commission on Revision of the Federal Court Appellate System, which extends in effect the date for filing the final report of this Commission from September 21, 1974 to June 21, 1975, and increases the authorization for appropriation for the Commission from $270,000 to $606,000.

The Counsel's office, Bill Timmons, Justice, and OMB concur.

RECOMMENDATION

That you sign the attached bill.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

SEP 17 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3052 - Commission on Revision of the Federal Court Appellate System
Sponsors - Sen. Hruska (R) Nebraska and three others

Last Day for Action

September 28, 1974 -- Because the final date for filing its final report is September 21, 1974, the Commission has requested that this bill be acted upon as soon as possible.

Purpose

Extends in effect the date for filing the final report of this Commission from September 21, 1974 to June 21, 1975, and increases the authorization for appropriation for the Commission from $270,000 to $606,000.

Agency Recommendations

Office of Management and Budget	Approval
Department of Justice	Approval (informally)
Administrative Office of the United States Courts	Approval (informally)

Discussion

The Commission on Revision of the Federal Court Appellate System was established by Public Law 92-489 and was composed of 4 Senators, 4 Representatives, 4 members appointed by the President, and 4 members appointed by the Chief Justice. It was assigned two major objectives:

(1) to study the geographical boundaries of the several judicial circuits and make recommendations for change within 180 days.

(2) to study the structure and internal procedures of the Federal Courts of Appeals system and prepare recommendations for change. Under the terms of the Act establishing the Commission, this report was to be filed no later than September 21, 1974.

The first report on circuit realignment was filed in timely fashion on December 18, 1973.

The Commission, however, voted to request a nine-month extension from September 21, 1974 to June 21, 1975 of the date for filing of the second report. In this connection, the House Committee on the Judiciary in its report on the bill, commented:

> "As a result of testimony received by the Commission during its study in phase I and the initial inquiry in phase II, the members of the Commission determined that the problems of the Federal Court Appellate System were so great that additional time and money were necessary to make a meaningful study prior to submitting recommendations. Specifically, the Commissioners felt, after their experiences in phase I of the study, that it would be preferable to have additional time to circulate a preliminary report to elicit throughtful responses from members of the bench and bar about possible changes in the structure and internal procedures of the Federal Court Appellate System. In addition, phase I revealed the importance of public hearings as a means of obtaining information and suggested solutions. In order for the Commission to hold such hearings it will require additional time so that witnesses may thoughtfully and adequately prepare their testimony so as to focus clearly on the problems of the Federal Appellate Court System."

When the Commission was first established, OMB and the Administrative Office of the United States Courts agreed that the Commission had essentially judiciary-related responsibilities and should be considered a Commission in the Judiciary branch. Therefore, OMB does not review the budgetary requirements of the Commission.

Wilfred H. Rommel

Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE
WASHINGTON

Date 9-18-74

TO: WARREN HENDRIKS

FROM: WILLIAM TIMMONS

FOR YOUR INFORMATION _____

FOR YOUR COMMENTS _____

FOR APPROPRIATE HANDLING _____

OTHER

I am most anxious for S. 3052 to be signed.

URGENT

September 16, 1974

MEMORANDUM FOR: JERRY JONES

FROM: WILLIAM E. TIMMONS

SUBJECT: S. 3052

Subject legislation extends the life of the Commission to study and revise Circuit Courts of Appeals and authorizes appropriations in amount of $606,000. I gather the bill has cleared the Hill and is on the way to the White House.

It is very important that this measure be quickly staffed and signed into law so that money can be included in the Supplemental Appropriations bill now being considered in committee. Can you help?

cc: Stan Ebner

THE WHITE HOUSE

WASHINGTON

RUSH

ACTION MEMORANDUM LOG NO.: 586

Date: September 18, 1974 Time: 9:45 a.m.

FOR ACTION: Geoff Shepard
Phil Buchen
✓Bill Timmons

cc (for information): Warren K. Hendriks
Jerry Jones
Paul Theis

FROM THE STAFF SECRETARY

DUE: Date: Thursday, September 19, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill S. 3052 - Commission on Revision of the Federal Court Appellate System

ACTION REQUESTED:

____ For Necessary Action

XX For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

____ For Your Comments

____ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE

RUSH

ACTION MEMORANDUM WASHINGTON LOG NO.: 586

Date: September 18, 1974 Time: 9:45 a.m.

FOR ACTION: Geoff Shepard
✓Phil Buchen
Bill Timmons

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ACTION REQUESTED:

____ For Necessary Action
XX For Your Recommendations
____ Prepare Agenda and Brief
____ Draft Reply
____ For Your Comments
____ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

No objection
U.C.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

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Warren K. Hendriks
For the President

RUSH

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 586

Date: September 18, 1974 Time: 9:45 a.m.

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Phil Buchen
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____ Prepare Agenda and Brief

____ Draft Reply

____ For Your Comments

____ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

Approve

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 586

Date: September 18, 1974 Time: 9:45 a.m.

FOR ACTION: ✓Geoff Shepard
✓Phil Buchen
✓Bill Timmons

cc (for information): Warren K. Hendriks
Jerry Jones
Paul Theis

FROM THE STAFF SECRETARY

DUE: Date: Thursday, September 19, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill S. 3052 - Commission on Revision of the Federal Court Appellate System

ACTION REQUESTED:

____ For Necessary Action

XX For Your Recommendations

____ Prepare Agenda and Brief

____ Draft Reply

____ For Your Comments

____ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

WASHINGTON

9/17/74

TO: WARREN HENDRIKS

RDL

Robert D. Linder

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 9-24-74

TO: Bob Linder

FROM: Wilf Rommel

Attached are the Justice and Administrative Office of the U.S. Courts views letters on S. 3052. Please have them included in the enrolled bill file. Thanks.

OMB FORM 38
REV AUG 73

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

SEP 19 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the Enrolled Bill S. 3052, "To amend the Act of October 13, 1972."

S. 3052 would extend the life of the Commission on Revision of the Federal Court Appellate System nine months, to June 1975, and would increase the maximum authorization for the Commission from $270,000 to $606,000.

The work of the Commission is being done in two stages. The first stage resulted in Commission recommendations last December to redraw the boundaries of two of the judicial circuits. The second stage involves a study and recommendations for additional changes in structure and internal procedure "for the expeditious and effective disposition of the caseload of the Federal courts of appeal, consistent with fundamental concepts of fairness and due process."

In order to accomplish the purposes of the second stage, the Commission is studying several complex areas of procedure and will need additional time and staff in order to conduct this study thoroughly.

Because of the importance of the study being conducted by the Commission to the administration of justice, the Department of Justice recommends Executive approval of this bill.

Sincerely,

W. Vincent Rakestraw
Assistant Attorney General

ADMINISTRATIVE OFFICE OF THE
UNITED STATES COURTS
SUPREME COURT BUILDING
WASHINGTON, D.C. 20544

ROWLAND F. KIRKS
DIRECTOR

WILLIAM E. FOLEY
DEPUTY DIRECTOR

September 17, 1974

Mr. W. H. Rommel
Assistant Director
for Legislative Reference
Office of Management and Budget
Washington, D. C.

Dear Mr. Rommel:

Reference is made to your enrolled bill request concerning S. 3052 which would amend the act of October 13, 1972.

Although the Judicial Conference of the United States did not specifically pass on the provisions of S. 3052, the Conference did propose to the Congress the concept of a commission on revision of the federal courts appellate system. Accordingly Executive approval of S. 3052 is recommended.

Sincerely,

William E. Foley
Deputy Director

Calendar No. 716

93D CONGRESS 2d Session } SENATE { REPORT No. 93-742

COMMISSION ON REVISION OF THE FEDERAL APPELLATE SYSTEM

MARCH 22, 1974.—Ordered to be printed

Mr. HRUSKA, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 3052]

The Committee on the Judiciary, to which was referred the bill, S. 3052, providing for an extension of the term of the Commission on Revision of the Federal Court Appellate System, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill pass.

PURPOSE

The purpose of the bill is to extend the final date for the report of the Commission on Revision of the Federal Court Appellate System by nine months and to increase its appropriation authorization from $270,000 to $1,000,000.

BACKGROUND

The Commission on Revision of the Federal Court Appellate System, was established by Public Law 92-489 and assigned two major objectives, each with its own timetable.

In Phase I, the Commission was to study the geographical boundaries of the several judicial circuits and make recommendations for change. This phase of the work was to be completed within 180 days. The report on circuit realignment was filed in timely fashion on December 18, 1973.

In Phase II, the Commission is to study "... the structure and internal procedures of the Federal courts of appeal system ..." and prepare recommendations for change in those broad areas as well. Under the terms of the governing statute this second assignment is to be completed and a report filed no later than September 21, 1974. The proposed legislation, S. 3052, would extend this final filing date to June 21, 1975.

The Commission is composed of four members from the Senate, Senators Roman L. Hruska (Chairman), Quentin N. Burdick, Edward J. Gurney, and John L. McClellan; four members from the House of Representatives, Congressman Jack Brooks, Walter Flowers, (vice William L. Hungate), Edward Hutchinson, and Charles E. Wiggins; four members appointed by the President, Honorable Emanuel Celler, Roger C. Cramton, Francis R. Kirkham, and Judge Alfred T. Sulmonetti; and four members appointed by the Chief Justice, Judge J. Edward Lumbard, Judge Roger Robb, Bernard G. Segal and Professor Herbert Wechsler (Vice Professor Charles Alan Wright).

The rationale for the extension of time and increase in the level of expenditure sought by the proposed legislation is best understood in light of the problems currently besetting the Courts of Appeals and the experience gained by the Commission during its first phase of activity.

Problems Faced by the Courts of Appeals

Congress established the Commission in response to a long-felt need. Numerous judges and court observers have addressed themselves in the past decade to the crisis which has been confronting the Courts of Appeals. Many commentators have voiced the concern that an ever-increasing load of cases, if unabated, will lead to a "breakdown" of these courts as we now know them.

The statistics of the workload of the Courts of Appeals indicate that during the period beginning at the turn of the last decade, these courts have experienced an increase in caseloads unprecedented in magnitude. In fiscal year 1960, a total of 3,899 appeals were filed in all eleven circuits; with 69 authorized judgeships, the average was 57 per judgeship. In 1973 the filings had soared to 15,629; with 97 authorized judgeships, the average per judgeship was 161, almost 161, almost three times the figure for 1960. The filings themselves increased 301 percent during the same period, compared with an increase of only 58 percent in district court cases.

The floodtide of appellate filings has given rise to changes in internal procedures. The privilege to argue orally has been drastically curtailed. In one circuit, oral argument is denied in a majority of the cases which come before it. Traditional patterns of opinion writing have also changed radically, with the briefest notation of the action of the court made to suffice in large numbers of cases. Many of these changes may be desirable, worthy of emulation in their present form. Some may contain the germ of good ideas which need refinement if they are to be retained. Others may be no more than responses of the moment, designed to avoid intolerable backlogs, but generating concern in their implementation. Without passing judgment on any of them, suffice it to say that they present questions which merit careful study. They have commanded the attention of the legal community which has focused its interest on the Commission and its assignment.

The Experience of the Commission

In the course of its first phase of existence, the Commission has devoted substantial time to the problems with which it must come to grips in its second phase. This was inevitable, for the two assignments are in fact parts of a larger whole: a thorough review of the

operations of the intermediate federal appellate courts. This interrelationship was apparent from the opening of the first hearings held by the Commission. Changes in a structure were urged as an alternative to the creation of new circuits; changes in internal procedures already effected by courts unundated with appellate filings, were sharply attacked and vigorously defended, all in the context of circuit realignment.

The net effect of the process has been to make the Commission keenly aware of the complexities of the issues with which it will be obliged to grapple in phase two; of the diversity of points of view among judges, scholars and practicing lawyers; and of the multiplicity of alternatives already developed and remaining to be developed in order to assure the continued vitality of the intermediate appellate courts. In short, the very substantial commitment of time and thought to problems of structure and procedure during the first six months served to demonstrate the need for adequate time to probe deeply, to explore carefully and thereafter to develop fully any recommendations which the Commission may choose to make before it can consider its task completed and its obligations discharged.

The experience of the first six months also yielded two important lessons concerning procedures.

First, the Commission circulated a preliminary report on realignment, inviting comment, criticism and suggestions from the bench, the bar and other interested citizens. Hundreds of responses were received and these figured in the deliberations of the Commission as it prepared the recommendations which were later submitted to the President, the Congress and the Chief Justice. The number of responses and the reasoned quality of the comments were gratifying. Understandably, the Commission would like to follow the same procedure with respect to its report on the second phase of its assignment, but with one important difference. In circulating its preliminary report on realignment, the Commission allowed very little time for response, a procedure necessitated by the Congressionally-imposed deadline on the filing of the Commission's report. Such stringency with respect to the second report could not help but be counterproductive. Compared to the subtleties and complexities invovled in structure and internal procedures, realignment appears relatively simple.

New proposals with respect to specialized courts, devices for resolving inter-circuit conflicts, national panels mechanisms for assuring the finality of criminal convictions, both state and federal—all of these require thoughtful consideration.

Moreover, there is a particular need to consider carefully the potential effects of any proposal for change. This is difficult enough with respect to effects which are foreseen; only the widest possible exposure of new ideas to the scrutiny of a concerned and knowledgeable public can minimize the risks of the unforeseen. A preliminary circulation of proposals being considered by the Commission can do much to clarify the intent of the proponents, to refine and amend the suggested solutions, to allow the unfamiliar to become familiar—in short, to allow the recommendations to be tested, however preliminarily, in the crucible of public debate.

The second of the procedural lessons learned during the Commission's first six months arose from its experience with public hearings. The wisdom of on-site public hearings was clearly demonstrated.

The Commission held hearings on realignment in 10 cities from the far northwest to the deep south. Literally scores of witnesses appeared. The transcripts of their testimony are proving valuable for a better understanding of the courts and the judicial process. Additional hearings appear highly desirable, if not essential, but these must be scheduled with ample time for witnesses to prepare adequately and to focus sharply on the particular concerns of the Commission. In one sense, the hearings during the first phase served to focus on the problems facing the courts of appeals, the coming hearings must focus on solutions, on their relative merits and drawbacks. Once again, adequate time is essential for optimal results.

The Agenda For Phase II

In Phase II, the Commission will address the existing and proposed procedures relating to the structure and procedures of the Court of Appeals. In drawing up its agenda for this final phase, the Commission has identified a number of specific problem areas which should be studied and for which solutions must be found. Briefly, included are such subjects as: a more efficient mechanism for avoiding conflicting decisions between circuits; assuring the finality of criminal convictions; widespread denial of oral argument (in one circuit oral argument is denied in almost 60 percent of the cases); widespread decision of cases without opinions; substituting "leave to appeal" for the right to appeal; jurisdiction of patent appeals, and optimum size of Courts of Appeals.

There has been increasing concern about the need to create some new instrumentality which would maintain the national law in the face of conflicting holdings by different courts of appeals. It is a familiar phenomenon of present practice that differences in interpretation of the revenue laws can continued unresolved for years, with the United States Supreme Court too busy with more urgent matters to turn its attention to these inter-circuit conflicts.

A distinguished former Solicitor General, among others, has suggested the creation of a National Panel of the Courts of Appeals which would have final authority, subject only to Supreme Court review, in areas such as interpretation of tax statutes. The American Bar Association, at its past midwinter meeting, adopted a resolution recommending creation of "a national division of the United States Court of Appeals" for the purpose of alleviating a number of these problems and authorized its President to present testimony to the Commission on Revision of the Federal Court Appellate System in support of this position.

Conflicts between circuits are not limited to tax cases and creation of a National Panel is certainly not the sole proffered solution. The persevering question to which the Commission must address itself is: What should be done so that the law of the United States may be the

same for citizens in Maryland and Michigan, in North Carolina and North Dakota.

Few areas are in greater ferment that the administration of the criminal law. There is widespread concern with assuring the finality of criminal convictions and reducing the number of collateral attacks which add substantially to the burdens of the federal courts. Writing in the December 1973 issue of the *Harvard Law Review*, Professor David L. Shapiro reviews the relevant data—560 habeas corpus petitions by state prisoners in 1950, more than 9,000 in 1970 and a fairly steady 8,000 a year since then—and observes that the increase has been variously described as a "flood," a "tidal wave," and an "avalanche."

Chief Judge Clement F. Haynsworth, Jr., of the Fourth Circuit has written several seminal papers, sharply criticizing the present situation as inadequate from the perspective of the prisoners and approaching the intolerable from the prospective of the courts. The implications of important proposals in this field are far-reaching for they would involve direct review of state adjudications by a court other than the Supreme Court.

Prisoner petitions which do not seek to attack a judgment of conviction, but relate rather to the conditions of imprisonment, have also increased in volume in recent years. These have become a significant portion of federal judicial business, commanding the concern of the Chief Justice among others. Suggestions for a specialized court dealing with all aspects of the criminal law, including conditions of detention, emerge and raise broad policy questions. The appeal of specialized courts in other areas, such as patents and taxation, is equally understandable, but cogent arguments in opposition have not been lacking. These are among the problems which the Commission must consider in phase two.

Proposals for reducing the number of cases reaching the federal appellate courts have an attractive quality, but they, too, require the most careful study so as to assure that the function of the courts, assuring justice to litigants, is neither aborted nor impaired. Increasing the rate of settlements at the appellate level is one suggestion. Denying the right to appeal and substituting appeal by leave of court, at least in some classes of cases, has been suggested by the Chief Justice as worthy of study. Siphoning off a large volume of appeals from the orders of administrative agencies by creating new, quasi-judicial bodies—for example in labor cases—is yet another possibility. These are matters which the Commission cannot ignore and yet remain faithful to its obligation to the Congress and to the judicial system.

Rules governing the internal procedures of an appellate court are thought to be dull and prosaic; one would hardly expect proposals for change to evoke the intense, almost impassioned opposition which has in fact followed some recent departures from the familiar. But the world of internal procedures is not limited to the technical details of moving a trial record from one court to another, to the fixing of responsibility for the timely preparation of the transcript below, important as these may be. Internal procedures encompass such departures from tradition as a court's decision to refuse to hear oral argument, not in a

few isolated instances, but in most of the cases which come before it. They encompass the practice, in a substantial proportion of the cases decided, of giving no reason for a decision, of affirming summarily without any indication even of the issues considered and determined. As suggested earlier, such changes are not necessarily to be deplored, but neither should we assume that all innovation inevitably represents progress. If it is important in a democratic society not only that justice be done, but that it appears to be done, such departures from the familiar must be studied carefully. The views of attorneys must be sought and evaluated; the savings and efficiencies gained must be measured carefully and weighed against the losses, if any.

The use of central staff by appellate courts, similar to procedures which have proved successful in England, has been urged for the federal system. At first blush, the argument may be persuasive, but the proposal has evoked concern among those who see the risk of delegation of judicial responsibilities to non-judicial personnel. The fears may be ill-founded, but again there is the need to assess and evaluate.

The internal procedures appropriate for a court of three active judges, the size of the First Circuit, can hardly be expected to serve the Fifth which, with 15 active judgeships, is the largest in the country. Judges themselves have been among the first to recognize that there is a limit to the number of judgeships which a court can accommodate and still function effectively and efficiently. In 1971 the Judicial Conference of the United States endorsed the conclusion of its Committee on Court Administration that a court of more than 15 would be "unworkable". At the same time, the Conference took note of and quoted from a resolution of the judges of the Fifth Circuit that to increase the number of judges on that court "would diminish the quality of justice" and the effectiveness of the court as an institution.

This is not to suggest that a court of 15 is satisfactory. The Commission has heard testimony to the effect that 9 is the maximum number of judges who can work effectively and efficiently together as a single court. These are matters which must command the attention of the Commission, for if the business of the appellate courts continues to increase apace, the solution cannot be found in dividing and subdividing circuits without limit. A proliferation of circuits to twenty-five or thirty would create problems of its own, forcing burdens on the United States Supreme Court which that court would be ill-equipped to handle.

The need for careful study and evaluation is a recurrent theme in the Commission's consideration of an agenda for the second phase of its work. Each problem which is identified and each proposal for change is accompanied by the call for research to aid in assessing the situation as it exists and as it might exist. Certainly such research is of the essence of the Commission's task; the Congress was explicit in asking for study as a preliminary to recommendations. Nor could the procedure have been otherwise, whatever the statutory language. It is appropriate, however, to note that much of the research must, by the very nature of the problems facing the courts of appeals, be

carefully designed and painstakingly executed. Some of the work can be done, and is being done, by the staff of the Commission. Other assignments call for the aid of outside consultants, experts in their respective fields who have indicated their willingness to be of service to the Commission.

The Federal Judicial Center has been most cooperative in providing research support for the Commission, particularly in the planning of what needs to be done. The Commission has drawn freely on the expertise of the Center, but that expertise has served in large measure to underscore the need for adequate time in which to develop research proposals, to implement them, and to allow for thoughtful analysis and evaluation of the data produced. All of this is preliminary to the consideration of the results by the Commission, for in the final analysis research can do little more than refine the policy choices which must, in the first instance, be made by the Commission and thereafter by those to whom the Commission's recommendations must be submitted, primarily the Congress.

It would be wrong, however, for the Commission to be obliged to act in haste, without the benefit of whatever study is in fact appropriate and feasible. Relatively little additional time—less than a year—can do much to assure the development of valuable material which can aid in meeting the problems of the federal judicial system.

Budget Proposal

Increasing the sum authorized to be appropriated for the work of the Commission is, of course, but a preliminary step which in itself provides the Commission with no funds. To be effective, it must be followed by an appropriation. A detailed statement of the precise amounts requested, by category of expenditure, would be provided in the usual manner in connection with a specific proposal for a supplemental appropriation. A preliminary proposed two-year budget has been prepared by the Commission and will be submitted at the appropriate time subject, of course, to possible modification. (See Appendix, *infra.*)

It might be appropriate at this point to give some indication of the broad categories for which additional funds would be utilized.

There is need to supplement the present staff of the Commission, which in addition to the Executive Director and his Deputy, includes only one junior staff attorney full time.

Mention has already been made of the hearings of the Commission during the first phase. Significant interest has been shown in the publication of the transcripts of these hearings because of the valuable material which they contain. Future hearings will require substantial expenditures. The enabling legislation provides for services both by the Administrative Office in the United States Courts and the Federal Judicial Center on a reimbursable basis. Substantial additional funds are needed for this purpose.

Finally, the opportunity for major and significant research relevant to the present operation of the Courts of Appeals, and necessary for the evaluation of proposals for change, should not be lost for lack of

funding. A high proportion of any supplemental appropriation is likely to be allocated to this area.

The total requested, $1,000,000, would cover the full two-year life of the Commission and is entirely consistent with the level of authorization for similar undertakings.

Conclusion

For the foregoing reasons, the Committee on the Judiciary recommends prompt enactment of the subject bill.

Changes in Existing Law

In compliance with Rule XXIX of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

Public Law 489, 92d Congress

2d Session

(Act of October 13, 1972

86 Stat. 807)

AN ACT To create a Commission on Revision of the Federal Court Appellate System of the United States

* * * * * * *

Sec. 6. The Commission shall transmit to the President, the Congress, and the Chief Justice—

(1) its report under section 1(a) of this Act within one hundred and eighty days of the date on which its ninth member is appointed; and

(2) its report under section 1(b) of this Act within [fifteen months] *twenty-four months* of the date on which its ninth member is appointed.

The Commission shall cease to exist ninety days after the date of the submission of its second report.

Sec. 7. There are hereby authorized to be appropriated to the Commission such sums, but [not more than $270,000] *not more than $1,000,000*, as may be necessary to carry out the purposes of this Act. Authority is hereby granted for appropriated money to remain available until expended.

* * * * * * *

Appendix

Proposed budget—2 years, 1973–75

Personnel Compensation:	
Commissioners:	
Through December 1973	$5,400
Hearings (15x4)	6,000
Meetings (15x8)	12,000
Additional time	4,000
Total	27,400
Staff:	
Through December 1973	43,400
Executive Director ($36,000), Deputy Executive Director ($24,000), 2 staff attorneys ($42,000)	153,000
Administrative secretary ($11,700), 2 secretaries ($16,100), Additional part-time staff ($3,300)	46,500
(Vacancies plus cost-of-living increases viewed as cancelling out)	24,000
Total	266,900
Experts and Consultants:	
Through December 1973	6,300
General assistants (including Sheehan)	15,000
Projects—high priority	130,000
Additional projects	45,000
Total	196,300
Personnel Benefits: (Government's contributions for retirement, life insurance, health insurance, and FICA taxes)	24,100
Travel:	
Through December 1973	11,100
Meetings (15x1,600)	24,000
Hearings (15x1,600)	24,000
Staff (conferences with consultants)	4,000
Committee meetings	6,000
Total	69,100
Rent and Communications:	
Telephone, through December 1973	4,900
Postage, through December 1973	6,100
Copying equipment, through December 1973	6,700
Total	17,700

APPENDIX—Continued

Proposed budget—2 years, 1973–75

Printing and Reproduction:	
Through December 1973 (transcripts)	4,800
Transcripts	6,600
Printing transcripts	105,000
Printing reports	4,000
Printing of studies	22,000
Total	142,400
Other Services:	
AO & FJC Reimburseable Services:	
Through December 1973	5,900
AO	18,000
FJC	45,000
Additional support services	41,000
Total	109,900
Supplies and Materials:	
Through December 1973	500
Stationery, et cetera	3,000
Total	3,500
Equipment:	
Through December 1973	4,500
Total	861,800
Less appropriation	−235,000
Grand total	626,800

○

93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 93-1344

COMMISSION ON REVISION OF THE FEDERAL COURT APPELLATE SYSTEM

AUGUST 23, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. KASTENMEIER, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany S. 3052]

The Committee on the Judiciary, to whom was referred the bill (S. 3052) to extend the term and increase the appropriation authorization of the Commission on Revision of the Federal Court Appellate System, having considered the same, report favorably thereon with amendment and recommend that the bill as amended do pass.

The amendment is as follows:

In line 10, strike out "$1,000,000" and insert in lieu thereof "$606,000".

PURPOSE OF THE AMENDMENT

The amendment changes the appropriation authorization from $1,000,000 to $606,000.

PURPOSE OF THE AMENDED BILL

The purpose of the bill as amended is to extend the final date for the report of the Commission on Revision of the Federal Court Appellate System by 9 months and to increase its appropriation authorization from $270,000 to $606,000.

STATEMENT

The Commission on Revision of the Federal Court Appellate System was established by Public Law 92-489 and was assigned two major tasks with directions to submit a separate report on each task.

In phase I, the Commission was to study the geographical boundaries of the judicial circuits and make recommendations for change. This phase of the work was to be completed within 180 days of the appoint-

ment of its ninth member, which occurred on June 21, 1973. The report was completed on time and was submitted to the President, Congress, and the Chief Justice on December 18, 1973.

In phase II, the Commission was to study "* * * the structure and internal procedures of the Federal courts of appeal system * * *" and to recommend appropriate changes. This report was to be submitted by September 21, 1974. The bill (S. 3052) would extend this reporting date to June 21, 1975.

As a result of testimony received by the Commission during its study in phase I and the initial inquiry in phase II, the members of the Commission determined that the problems of the Federal Court Appellate System were so great that additional time and money were necessary to make a meaningful study prior to submitting recommendations. Specifically, the Commissioners felt, after their experiences in phase I of the study, that it would be preferable to have additional time to circulate a preliminary report to elicit throughtful responses from members of the bench and bar about possible changes in the structure and internal procedures of the Federal Court Appellate System. In addition, phase I revealed the importance of public hearings as a means of obtaining information and suggested solutions. In order for the Commission to hold such hearings it will require additional time so that witnesses may thoughtfully and adequately prepare their testimony so as to focus clearly on the problems of the Federal Appellate Court System.

The Commission's Proposed Budget

In hearings before the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, the Commission submitted a proposed budget of $924,000 and requested approval of an appropriation authorization of $1 million. In view of the current need to scrutinize any proposed Government expenditures, the committee has recommended an appropriation authorization substantially below that requested by the Commission. However, in the opinion of the committee, this reduced authorization should not significantly reduce the Commission's ability to complete successfully its task.

Specifically, the committee finds that the Commission's proposed budget could be reduced in the following areas. A total $137,000 could be eliminated from the Commission's research budget. This includes a total of $75,000 for projects which were either of low priority or could be funded from sources other than the Commission's appropriation. In addition, $42,000 for a study of intercircuit conflicts is found by the committee to be unnecessary on the ground that this is a subject relating primarily to the workload of the Supreme Court which has the responsibility for resolving intercircuit conflicts rather than the courts of appeals. Another $20,000 budgeted for a statistical study of the weighted caseloads of two circuits is recommended for deletion on the ground that such a study already exists for one circuit.

A total of $94,000 could be deleted from the amount the Commission's budget has allocated for staff by eliminating two staff attorney positions, one secretary position and $50,000 for part-time staff. It is felt that, if the number of research projects is reduced, the Commission's headquarters staff can be reduced accordingly.

The committee finds that a total of $42,000 could be taken from the Commission's proposed travel budget. While the committee recognizes the wisdom of public hearings and meetings it concurs with the recommendation of the Office of Management and Budget that the proposed total of 21 Commission meetings and 20 hearings is excessive, particularly over a 9-month period. Therefore, a two-thirds reduction in funding for travel to meetings and hearings is recommended, allowing the Commission approximately seven meetings and six hearings during its remaining life.

Finally, the committee concludes that a proposed expenditure of $121,000 for printing extra copies of the transcripts of Commission hearings and studies for distribution to the public is unnecessary. In any event a final report will be published and widely circulated.

In sum, the committee found items totaling $394,000 which it concluded could be cut from the Commission's budget. Consequently, an amendment reducing the appropriation authorization from $1 million to $606,000 was adopted. This reduced appropriation authorization will allow the Commission $336,000 in addition to the $270,000 originally authorized in Public Law 92–489.

Estimate of Cost

Pursuant to the requirements of clause 7 of Rule XIII of the Rules of the House of Representatives, the committee estimates that this legislation will result in a Federal cost of $336,000 for the remaining life of the Commission, expiring on December 21, 1974. This estimate is based on the Commission's proposed budget as modified by the committee.

Votes

No record votes were taken in the committee's consideration of S. 3052.

Committee Recommendation

After careful consideration the committee is of the opinion that the bill should be enacted and accordingly recommends that S. 3052, as amended, do pass.

Changes in Existing Law

In compliance with paragraph 2 of clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill are shown as follows (new matter is printed in italic, existing law in which no change is proposed is printed in roman).

PUBLIC LAW 489, 92D CONGRESS

2D SESSION

(ACT OF OCTOBER 13, 1972

86 STAT. 807)

AN ACT To create a Commission on Revision of the Federal Court Appellate System of the United States

* * * * * * *

SEC. 6. The Commission shall transmit to the President, the Congress, and the Chief Justice—

(1) its report under section 1(a) of this Act within one hundred and eighty days of the date on which its ninth member is appointed; and

(2) its report under section 1(b) of this Act within [fifteen months] *twenty-four months* of the date on which its ninth member is appointed.

The Commission shall cease to exist ninety days after the date of the submission of its second report.

SEC. 7. There are hereby authorized to be appropriated to the Commission such sums, but [not more than $270,000] *not more than $606,000*, as may be necessary to carry out the purposes of this Act. Authority is hereby granted for appropriated money to remain available until expended.

* * * * * * *

○

S. 3052

Ninety-third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-first day of January, one thousand nine hundred and seventy-four

An Act

To amend the Act of October 13, 1972.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Act of October 13, 1972 (86 Stat. 807) is amended as follows:

(a) Section (2) of section 6 of such Act is amended by striking out "fifteen months" and inserting in lieu thereof "twenty-four months".

(b) Section 7 of such Act is amended by striking out "not more than $270,000" and inserting in lieu thereof "not more than $606,000".

Speaker of the House of Representatives.

Vice President of the United States and President of the Senate.

September 17, 1974

Dear Mr. Director:

The following bill was received at the White House on September 17th:

S. 3052

Please let the President have reports and recommendations as to the approval of this bill as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.