

July 18, 1963

To the Chairman and Members of the Standing Committee on Rules
of Practice and Procedure of the Judicial Conference of the United States:

STATEMENT ON BEHALF OF THE ADVISORY COMMITTEE
ON CIVIL RULES

Since July 18, 1962, the date of the last report to the standing Committee, the following has been accomplished or projected.

1. Amendments of the Civil Rules effective July 1, 1963.

In its report of July 18, 1962, the Civil Committee recommended adoption of a set of amendments as revised and supplemented following public circulation of a "Preliminary Draft" in October 1961. At a meeting in San Francisco on August 13-14, 1962, the standing Committee approved the amendments subject to certain changes. Having been recommended by the standing Committee to the Judicial Conference, and by the Conference to the Court, the amendments were adopted by the Court by Order of January 21, 1963, and transmitted to Congress on that day. They became effective on July 1, 1963, affecting twenty-three Rules and various Official Forms.

2. Projected amendments of the Civil Rules bearing on joinder of parties and claims and on other matters. As previously reported, the Civil Committee undertook consideration of joinder of parties (and related joinder of claims) at its meeting on May 28-29, 1962. Revised and amplified drafts were thereafter prepared, considered in intra-Committee correspondence, and discussed at a Committee meeting on February 21-23, 1963. The amendments have now undergone further revision and will be resubmitted to the Committee at its next meeting scheduled for October 31-November 2, 1963. The Committee will also consider a number of draft amendments on miscellaneous topics developed during the same period.

3. Discovery. After preparatory work which occupied most of the past year, various phases of the field investigation of discovery are now under way or in advanced planning stages. The inquiry will include: (i) Questionnaire interview with lawyers on both sides of about 500 cases. A draft questionnaire was presented to the Civil Committee at its February meeting and in revised form it constitutes the basis for the

interviews. (ii) Mail questionnaire to a larger number of attorneys. (iii) "Unstructured" interviews with specially selected members of the bench and bar to obtain their informal impressions about discovery. (iv) Special study comparing State with Federal cases in a State that has very little discovery (Massachusetts).

The Columbia Project for Effective Justice which, in consultation with the Reporter and Associate Reporter, is conducting the field investigation, plans to present preliminary data and observations at the forthcoming October meeting, and to make a final report in Spring 1964 in time to be considered by the Committee before the end of the 1964 fiscal year.

Proceeding concurrently with the field work is a traditional analysis by the Associate Reporter of the Civil Rules, local rules, State statutes and rules, court decisions, and secondary writings on discovery. It is proposed that the initial presentation at the October meeting relate to possible Rules changes that can be wholly or largely appraised without regard to the field investigation. A second presentation will be necessary at a Spring 1964 meeting to take account of the work of the Columbia Project.

4. Unification of Admiralty and Civil Rules. The Reporters for the Admiralty and Civil Committees have worked cooperatively on the changes in the Civil Rules which will be needed to effect unification. Part of the February meeting of the Civil Committee was given over to a consideration of the views of the Admiralty Committee as presented by its Reporter. It is hoped that the remaining problems will be settled to mutual satisfaction at the next meetings of the respective Committees.

5. American Law Institute's Study of Jurisdiction. Recognizing that the Study of the Division of Jurisdiction between State and Federal Courts, undertaken by the ALI at the suggestion of the Chief Justice, is related at various points to the work of the Civil Committee and the Judicial Conference, the Reporters for the Study and the Committee recently met with Judge Maris and had a useful preliminary discussion of methods of procedure.

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Reporter