

February 20, 1961

STATEMENT BY THE
ADVISORY COMMITTEE ON CIVIL RULES

1. Tentative Recommendation on January
1961 Preliminary Draft of Amendments

In order to allow time for consideration of our Preliminary Draft of Amendments by the Bench and Bar, a closing date of March 10, 1961 was set for the receipt of comments. As the full time has not yet run, our Committee is not now in a position to make a final recommendation with respect to these amendments. We submit herewith our present, tentative recommendation, to be followed by a final recommendation on or about March 10th.

Our present recommendation is that the draft amendments set out in the January 1961 pamphlet be approved. (See the Note below on minor language changes.)

For the information of the Standing Committee, we attach hereto as Exhibit "A" a memorandum prepared by our Reporter and sent to members of our Committee under date of February 13,

NOTE. Our Reporter intends to suggest to our Committee that a minor change be made in the Rule 54(b) amendment [change "less than" to "fewer than" in line 15 of Rule 54(b)], and that minor changes, consequential upon the Rule 54(b) amendment, be made in Rule 62(h) [change the caption of Rule 62(h) from "Stay of Judgment Upon Multiple Claims" to "Stay of Judgment Under Rule 54(b)," and strike the words "on some but not all of the claims presented in the action" from the text of Rule 62(h)]. These changes are believed to be noncontroversial. If our Committee approves, the changes will be incorporated in our final recommendation.

1961, analyzing the comments received by the Committee from the Bench and Bar. Some further comments have been received since that date. In general, the comments approve the amendments; a few raise questions which do not, in our opinion, require changes in the draft. Judge Henry J. Friendly has sent in a disapproving comment on the Rule 54(b) amendment. With respect, the Committee does not agree with Judge Friendly's view. (See pp. 2-5 of the attached memorandum.)

2. Other Matters

At its first meeting on December 5-7, 1960, the Committee, besides considering the amendments later embodied in the January 1961 Preliminary Draft, approved a program of future work, in part as follows:

(a) The Committee reached conclusions, subject to further consideration and research and drafting, on certain of the proposals made in 1955 by the former Advisory Committee. The necessary work is going forward.

(b) The Committee approved the proposal that a general study of the subject of Parties (Rules 17-25) be undertaken. This study has been initiated.

(c) The Committee approved the proposal that a general study of Discovery (Rules 26-37), with related study of the Pre-Trial Conference (Rule 16), be undertaken, and instructed the Chairman and Reporter to arrange the plan of study. A

plan has been outlined comprising both analytic work and field investigation. It is contemplated that the analytic work will start about July 1, 1961, and that the work of devising a pattern of field investigation will start about September 1, 1961.