

Buffer Court Sought to Aid

Justices

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The U.S. Supreme Court is saturated with work and needs the help of a new National Court of Appeals to weed out frivolous cases, a committee of prominent legal scholars said yesterday.

The committee said the justices somehow must be relieved of work pressures if the court is to perform effectively as the final authority on law and the Constitution.

Earlier reports of the committee's recommendations had stirred protests that fundamental and perhaps unnecessary changes in the U.S. judicial system were being pushed by Chief Justice Warren E. Burger, who authorized the one-year study of case loads.

Yesterday's release of the 48-page report confirmed most of the news accounts and formally kicked off a debate, expected to reach Congress in 1973, over the high court's role in American life.

Justice William O. Douglas and other jurists and scholars already have challenged the committee's basic conclusion that the court is overworked. Former Chief Justice Earl Warren has indicated privately that he is wary of any such far-reaching changes.

The committee, headed by Harvard law professor Paul A. Freund, made these proposals:

- The new national court should be the last stop for most litigants dissatisfied with the decisions of lower courts.

- The new court would transmit to the Supreme Court only about 500 of the 4,500 petitions filed in a year and the high court would select about one-third of these for decision.

- Seven judges, selected for three-year staggered terms from the ranks of the 11 federal circuit courts of appeals, would sit on the new court.

- The new tribunal would be the final authority for resolving most conflicts in decisions by the lower circuit

See COURT, A6, Col. 1

COURT, From A1

courts, a task now performed only selectively by the Supreme Court.

- Even if the "mini-courts" or "midi-court" is not created, the Supreme Court should be given total discretion to hear or deny all appeals and petitions from lower courts.

- A new ombudsman-type office should be established to

mediate more than 3,000 inmate complaints of prison conditions now lodged with the federal courts as civil rights suits.

These proposals were outlined and defended by Freund and Bernard G. Segal, former American Bar Association president and a panel member, at a news conference at the Federal Judicial Center, official sponsor of the commit-

tee study. Burger is chairman of the board of the center, a research arm of the judiciary.

Freund declined to take issue directly with Douglas and said he certainly did not want to argue with Warren. He said the proposal, far from cutting down on the court's productivity, might free it to produce more opinions like Warren's 1954 declaration against separate-but-equal schooling.

As for Douglas, Freund said the veteran jurist was "an exceptional member of the court" possessed of great "facility and quickness" whose firm views developed over 33 years on the court made decision-making relatively easy.

Asked what would become of the image of the Supreme

Court as an ever-present last resort for the disadvantaged, Freund said it was questionable whether a projected 7,000-case burden for the next decade should give comfort to any one that he has a right to be heard in the highest court.

He said the right always was something of an illusion, and permitting the present system to continue might lead to "grand disillusionment and cynicism."

Freund noted that the caseload has tripled in the past 30 years, while the number of cases fully heard and decided by written opinion had remained relatively stable.

"Obviously the chaff on the docket is less time-consuming"

than the marginal cases which are seriously considered for full review, the report said, "but when the chaff is counted in the thousands, the burden is bound to be considerable."

The report discusses briefly the little-known fact that the court does not debate all the petitions filed but only those which at least one justice wants to talk about. Nevertheless, Freund said, each justice must prepare to vote on each case as an individual.

Freund, once a law clerk to Justice Louis D. Brandeis, said he shared the goal of his mentor that the justices should always "do their own work."

Freund said the committee

was not wedded to each detail of the report but that the plan had fewer defects than other ideas long in circulation, such as creation of new courts to issue final tax judgments or criminal law decisions. He said he did not know Burger's views on the plan although the chief justice has often spoken of a crushing caseload.

Besides Freund and Segal, the committee members are law professors Alexander M. Bickel of Yale, Charles Alan Wright of the University of Texas and Russell K. Niles of New York University, and attorneys Robert L. Stern of Chicago and Peter Ehrenhaft of Washington.