

SECOND ANNUAL REPORT  
OF  
THE FEDERAL JUDICIAL CENTER  
TO  
THE JUDICIAL CONFERENCE OF THE UNITED STATES

October 1, 1969

In the future the Center intends to make its annual report in some detail while the semi-annual one will be in a shorter form. However, in light of the coverage of our three previous reports, we believe that a short report at this time will be quite sufficient. This report is limited to 18 pages. If further information is desired reference might first be made to our former reports. Direct inquiries are, of course, most welcome and will be given prompt attention.

The major activities of the Center since its last report to the Judicial Conference in March 1969, are:

I. The Budget:

In fiscal year 1969 the budget allowed was \$300,000; requested for F.Y. 1970 was \$875,000. The House allowed \$600,000; the bill is presently in the Senate with approval indicated within a few days.

II. District Courts:

(1) Five metropolitan district courts, Northern California, Minnesota at Minneapolis, Eastern Pennsylvania, Eastern New York, District of Columbia (criminal docket), have changed their calendars from Master to Individual ones; and the Southern District of New York has assigned four of its 24 judges to individual calendars for a two year experiment. The effective date for each District was October 1st in all but Eastern Pennsylvania, which is January 1st. These changes were sponsored in Seminars and other programs of the Center. Indications from the Southern District of New York led to a prediction that the individual calendars of each of the four judges will be below the approved normal backlog of 350

cases by January 1, 1970. Like results are expected in other districts when similar procedures are utilized.

(2) A complete manual for the trial of complex and multi-district litigation has been compiled and published by the Board of Editors of the Center. The Board, under the chairmanship of Senior Judge Thomas Clary, is also keeping the manual current. The members are: Judge George H. Boldt; Chief Judge Joe Ewing Estes; Judge Edwin A. Robson; Chief Judge William H. Becker; and Judge Hubert L. Will.

(3) The Judge's Bench Book prepared by the Institute of Judicial Administration under a board composed of Judges Hubert Will, John Dooling, and Robert Maxwell has been distributed to all of the District Judges. A preliminary trial by 35 judges indicates that the book will be of great service to the district courts.

(4) The Eastern District of Louisiana has completed the initial step in the computerization of its docket at New Orleans. The first order of business is a notice to all lawyers of record for status reports, etc. If our experience in New York repeats here a reduction of some 20% in the docket is expected. Thereafter the District Attorney, the Marshal and Referee in Bankruptcy will be brought into the operation. The system should give the judges a check on every case; permit the tracing of backlogs and the discovery of causes for delay; and expedite dispositions through mechanization.

(5) The Autonetics Survey of five district courts (Southern New York, Eastern Virginia, Eastern Louisiana, Northern Illinois and Northern

California) has been completed and circulated to all chief judges for their information and action. The survey is the most comprehensive and revealing in the history of the federal judiciary. The Center recommends its careful study by all judges and particularly to multi-judge courts.

(6) A central jury system has been installed in the Central District of California which is expected to save as much as \$100,000 a year in jury costs. Other districts are on the agenda.

(7) The Omnibus Hearing technique has been extended to several additional districts. This should increase the number of guilty pleas by ten to twenty percent and reduce Section 2255 cases to a minimum.

(8) The post conviction remedy program of the State-Federal Committee of the Center is making progress. The Supreme Court of California is studying its habeas corpus procedures and changes have already been made that should materially reduce the number of state prisoner applications in federal district courts. Like approach is being made to other states by the Committee. In this connection the Committee has circulated all of the state Chief Justices and with their complete cooperation is now setting up joint federal-state judge meetings at each annual state judicial conference or organizing regional meetings for those states that have no such conferences.

(9) The federal prison clinical office project is making progress. In addition to Atlanta and Leavenworth, clinics are being opened in the prisons at Danbury (Yale), Alderson (Washington & Lee), Terminal Island (UCLA), Lompoc (USC) and McNeil Island (University of Washington). By the end of the present fiscal year we should have

clinics in every federal prison. Similar operations are being organized in state prisons. New York, Pennsylvania, Connecticut, Georgia and California are experimenting.

(10) The weighted case load formula is being re-evaluated under contract with the Graduate School of the Department of Agriculture. The ninety day time study is now in progress and we should have a new index by early Spring.

(11) The probation officer case-aide program with the University of Chicago is in its second year and is establishing the validity of the use of part time non-professional case aides.

### III. The Courts of Appeals:

(1) The third meeting of the Chief Judges of the Courts of Appeals will be held on October 30th. Prior meetings have been helpful in developing screening programs, expediting opinion writing, establishing uniformity in rules and in statistics, improving calendaring and reducing the time lag in filing records.

(2) The Autonetics report on five Courts of Appeals (Second, Fourth, Fifth, Seventh and Ninth) has been circulated to all of the Chief Judges of the Courts of Appeals since its recommendations also concern the other circuits. Its implementation will be discussed at the Chief Judges meeting October 30th.

(3) The Work Measurement Study of the Clerk's Offices is in progress and should be concluded within 90 days. It will not only

appraise the present operation of the Clerk's Offices but also make recommendations as to mechanization, improved management techniques and job descriptions.

(4) The screening program of the Fifth Circuit has resulted in the reduction of 10 weeks in the number of formal court sessions during F.Y. 1969. During F.Y. 1970 the reduction will be even more dramatic from a projected 63-65 court weeks to 40 and with summary dispositions totalling approximately 500 cases. Indeed, the F.Y. 1970 sittings will not require the use of outside judges.

(5) The rule providing time limits on the filing of opinions and dissents has proven most successful. Most of the circuits are now within the limits set by the Judicial Conference and those previously in arrears have practically eliminated the problem.

(6) The time measurement study of the Clerk's Offices being made by Archives should come up with the answer to the clerk's shortage either by the improvement of operations or additional clerks where justification is present. The report should be of great assistance to the Administrative Office on its appropriation justification.

(7) A pilot project on the use of law clerks was initiated in the Fifth Circuit under the direction of Dean James Quarles. Statistically over half of all of the overdue opinions (over 90 days since the case was submitted) in all of the Circuits were in the Fifth. It was for this reason that it was picked as the pilot. Today the number is less

than 40 and half of them are held by visiting judges. One judge was 46 opinions in arrears; now he has only four. Only three judges are behind to any extent. This phenomenal accomplishment was brought about by the enforcement of the 90 day rule on opinions and 30 day on dissents; plus the full utilization of law clerks. Since the court had not yet set its cases for the new term, law clerks were available to assist on a full time basis in the preparation of draft opinions. When the cases are assigned it takes all of the time of some law clerks in preparing bench memos and later considerable time is devoted to the courtroom on argument days. Dean Quarles suggests that the bench memo and the courtroom appearance might be foregone and the law clerks devote more time to research and draft opinion work. He emphasizes that the word draft does not suggest final opinion. He also found that stenographic help was a dire need of the law clerk and that some libraries were inadequate. One clerk in answer to a query as to what service of his was most helpful to the judge replied "running errands and performing other menial tasks."

The Center is circulating the report and will prepare a manual on the use of law clerks.

#### IV. Research:

(1) An automobile accident study aimed at assessing the impact of automobile accident litigation on the courts is in its last phases. Undertaken at the instance of the Department of Transportation it will measure the impact of automobile accident litigation on the courts.

Twenty-one jurisdictions have been subjected to an empirical survey which is now being analyzed through a contract with the Mitre Corporation. The study will give the Center needed information on the docket congestion problem in federal courts.

(2) A study of the Bail Reform Act was initiated in five districts at the suggestion of some members of Congress. It seeks to ascertain the relationship between the use of personal recognizance release under the Act and the incidence of recidivism. The Center has as yet been unable to process its data through the Federal Bureau of Investigation rap sheet records which reveal subsequent criminal involvement of those on bail. This has delayed the completion of the program but we are hopeful that it will be completed soon.

(3) An evaluation of the conclusions of the San Francisco Probation Project is being conducted by the Division of Probation of the Administrative Office and the Center in the Central District of California, the District of South Carolina and other districts. It seeks to determine whether certain types of offenders perform as well or better on probation or parole with a low degree of supervision. This was the recommendation of the San Francisco Project. The survey will continue for a sufficient time to make a fair test; meanwhile the material will be continuously analyzed.

(4) The law schools are being utilized considerably in research, particularly the law reviews. The talent now being devoted to case notes and comments is being channeled into the solution of the problems facing

the federal and state courts. This should engender greater interest in judicial administration and trial work on the part of the students and be of great benefit on their admittance to the Bar. The Center presently has three such projects:

(a) A post conviction remedy program at William and Mary Law Review has collected and analyzed all the statutes and rules regulating such procedures. These in turn have been submitted to judges and lawyers in each of the states for comment upon their accuracy; and more important the significant difference between the statutes and rules involved and the actual practice in post conviction procedures. Comparison will then be made between individual state practice and federal constitutional requirements under Fay v. Noia, Townsend v. Sain and Sanders v. United States. Those states found deficient will be urged by the Center's State-Federal Committee to amend their statutes or rules to comply with federal requirements.

(b) The Georgetown Law Journal is studying the practice followed in some federal districts (particularly in the Southeast) of starting the investigation preliminary to pre-sentence reports at the time the information or indictment is filed rather than waiting for the entry of a guilty plea or conviction. The Report is now being finalized and will be circulated to the District Judges and Probation Officers.

(c) The federal prison clinical program utilizes students selected by the Dean or criminal law professor to work with volunteer lawyers in furnishing legal services to prisoners requesting counsel.

It has been maintained a few years in some of the larger prisons, such as Atlanta and Leavenworth, and is being organized in all of the federal prisons. It has been found helpful to the Wardens from a disciplinary standpoint and to the courts in that fewer Section 2255 applications or habeas corpus petitions are filed and those that are filed have more substance.

(5) As is indicated in III(1), supra, the Chief Judges meeting last March requested the Center to check into the causes of delay in the filing of records. The survey, conducted under the leadership of Judge Griffin Bell, found that one of the chief causes was the enlargement of time by District Judges (50 days) and additional ones by Courts of Appeals, both authorized under Rule 11(d), FRAP, despite the provision of Rule 11(a), FRAP, calling for their filing within 40 days after notice of appeal. Another is the fact that Rule 10(b), FRAP, requiring the order for the transcript to be placed within ten days after the notice of appeal is seldom followed. In forma pauperis case delays are often attributable to the failure of the clerk to notify the court reporter to prepare the record until the last minute. In order to cut all such delays to a minimum the Fifth Circuit has adopted a closing report form required of the U. S. Attorney indicating, inter alia, the enlargements of time and who granted the same. It has also adopted a new policy of denying all requests for extensions except in rare factual situations.

In addition the survey indicates that the present use of typists to transcribe from a tape made by the reporter from his stenotype notes is inefficient at best. The better system is where the typist takes the

original stenotype notes, reads them herself, and types up the record. This saves the Reporter the time necessary to make the tape which exceeds the take down time in court by at least 25%. Several districts are now using the note reader system, notably the Southern District of New York and Southern District of Georgia at Macon. At the latter the Reporter has trained three note readers herself. This takes about 30 days with a 30 day trial period to familiarize the note reader with judicial work and terminology.

The Report is being circulated to all District Judges and the Chief Judges of the Courts of Appeals.

(6) At the request of the Jury Committee, chaired by Circuit Judge Irving Kaufman, the Center re-edited and revised the Petit Jury Handbook prepared by the Committee. The original draft was circulated to a number of agencies, prosecutors, defense counsel, professors and judges for criticism and suggestions. The Committee will submit the final draft to the Judicial Conference for approval.

(7) At the suggestion of the Judicial Conference the Center instituted a study of federal jurisdiction in civil disorder emergencies, as extended by Public Law 90-284. The research is in progress and circulation of the report with recommendations will be made to all federal judges.

(8) At the instance of Chief Judge Walter Hoffman, Chairman of the Probation Committee, an experiment is being organized to test out the efficacy of deferred and pre-prosecution probation. Preliminary study indicates that such a program is entirely feasible on a selective basis.

It will be initially included within the case-aide program (see II(11), page 4, supra) and the evaluation of the San Francisco Probation project (see IV(3), page 7, supra). Other Districts will be added in order to give the coverage of the trial run a national aspect.

V. Education and Training:

The Center is very proud of its education and training programs. A continual stream of seminars ranging in duration from two to eight days have been held.

(1) Three eight-day seminars for newly appointed judges had a total attendance of 89 judges. The Seminars were held in Denver, Berkeley and at the Dolley Madison House.

(2) One three-day Metropolitan Courts Conference of the Chief Judges and Executive Committees of eight Districts, including the Southern District of New York, the Eastern and Western Districts of Pennsylvania, Northern Illinois, the District of Columbia, Eastern Louisiana, and Northern and Central California.

(3) A two-day Criminal Law Conference in Houston, Texas, made up of Mexican Border districts and the Eastern District of Louisiana. The Conference included judges, probation officers, and United States Attorneys. A second Criminal Law Conference was held in Washington, D. C. with like officials present. The Districts of Columbia, Florida (Southern), Illinois (Northern), Michigan (Eastern), New Jersey and New York (Southern) were selected because of the large number of criminal cases filed in their courts.

(4) The Center and the Administrative Office sponsored panel discussions at all Circuit Conferences held this spring and summer to better acquaint judges, lawyers and commissioners with the work of the magistrates under the Federal Magistrates Act. The panels emphasized the responsibilities of the district courts to define the jurisdiction to be exercised by the magistrates and to select capable men to fill the positions.

(5) The Center will conduct its fourth Seminar for newly appointed judges of the District Courts in December 1969 or January 1970. A follow-up questionnaire to those who attended last year's seminars is being used in preparation of the new program. The judges responding have listed a multitude of changes, both in the way they handle their cases themselves and in the way their courts do business, which they attribute to the seminars. Two Appellate Judge Seminars will be held in January and February. These will include Appellate Judges of five years service and less.

(6) The first Courts of Appeals Clerks meeting was held at Dolley Madison House. For two days they discussed not only a long agenda but many other problems that arose. Questionnaires sent to each participant a few months after the conference revealed some changes attributable to it, particularly with respect to the handling of records on petitions for certiorari. Much knowledge was gained for future conferences.

(7) Thirty-three clerks and deputy clerks from the nineteen

Metropolitan Districts met at Dolley Madison House in April. This was also a first and was quite lively and productive. Conferences for clerks in medium size cities will be held in early 1970. The Center is also developing management and supervision courses for the clerks and their staffs. Audio-visual techniques are being tested.

(8) The Federal Probation Training Center in Chicago is continuing to operate with Center participation in program formulation. A total of one orientation and six refresher courses will be held during F.Y. 1970.

(9) The Mid-Atlantic Inservice Training Institute was held in May at Nags Head, North Carolina. This was the first probation officers' inservice training institute completely funded by the Center.

The Center entered more fully into the training of federal probation conferences in one week at Custer, South Dakota in September, 1969. The Central States Area-Inservice Training Institute, co-sponsored by the Center and the Administrative Office, and the Indian Probation Conference, co-sponsored by the Center and the Bureau of Indian Affairs, were the first probation meetings in which the Center staff participated in organizing and planning. Two identical conferences will be held in Dallas and Phoenix in October and November. The Center is also negotiating for the development of special courses pertaining to minority group offenders and to intraoffice supervision.

(10) The Center has prepared but has not yet distributed a request for proposals from outside contractors for the development of

an Introductory Magistrates Program. Since so few full time magistrates (8) have been appointed, this program will probably not be conducted until the spring of 1970. The Center will probably also contract out the development of short orientation courses for part time magistrates on a local basis.

(11) Seven Regional Seminars for Referees were held in F. Y. 1969. The Sixth National Seminar was held at the Center in September. This was the first of the National Seminars to be designed for newly appointed referees.

Four Regional Seminars are to be held during F. Y. 1970 which are now being planned by the Center in conjunction with the Referees Seminar Committee.

(12) The Center has been underwriting costs of various courses and meetings for Probation Officers throughout the United States, including attendance at the National Institute on Crime and Delinquency. Other programs attended dealt with drugs, alcoholism, and various techniques of psychotherapy.

VI. Innovation:

(1) As reported in II(4), supra, a data processing program is being installed in the Eastern District of Louisiana. If it proves successful we will move on to other districts.

(2) The Eastern District of Pennsylvania computer project was completed and we now have sufficient data to determine the congestion

of attorneys, categories of cases, bottlenecks, etc. This will be of great benefit when the system goes to individual calendar on January 1st.

(3) The Southern District of New York now has all of its cases in the computer by attorney, category, status, etc. This has been helpful in the phenomenal showing of the four judges now working on individual calendars.

(4) The Center is working closely with computer concerns with a view of developing a system for the federal courts that will be both less sophisticated and inexpensive than the customary ones.

VII. The Professional Assistant:

This office is charged with the fiscal management of the Center, including the preparation of its budget, selection and supervision of secretarial and clerical employees, upkeep of facilities and equipment, etc., coordination of its programs, liaison with other agencies, both state and federal, and publication of its "Third Branch", "Federal Judicial Center Report" and other releases. The first volume of the "Report" is now being readied for printing and "The Third Branch" is in its fifth edition. The latter is a bulletin published bi-monthly while the former includes articles, discourses and releases on important subjects which the Center develops or in which the judiciary is vitally interested.

VIII. The Customs Court:

(1) The Center in cooperation with the Customs Court, the Treasury, the Justice Department and the Bar completed the drafting of an act of reorganization for the Customs Court. It was introduced in

both houses of the Congress and testimony upon it heard in the Senate. We hope for early enactment since opposition is minimal.

IX. Survey of Courts of Appeals and District Courts Libraries:

At the request of the Judicial Conference the Center has been studying the libraries of the various courts.

The type, size, number and location of the libraries varies. Some circuits have libraries at each statutory location for sittings with a more comprehensive one at its main office; others have small libraries in each judge's chambers with a large one at the main office of the circuit. In the trial courts no central library is maintained as a general rule. The metropolitan court, if situated at the seat of the Court of Appeals, uses its library.

Few of the courts have librarians as such. A court crier, a messenger, a law clerk and sometimes the judge himself acts in this capacity.

As to inventory, few courts have an up-to-date one. Some books are bought through the Administrative Office, others by local bars, sporadic assessments or annual dues. The enormity of a national inventory has lead the Administrative Office to computerize its records. This should be completed by January 1st. We will complete the study after this record is made. A more definitive report will be made as soon as possible.

X. The Center Library:

On account of a shortage of funds for the purpose and a dearth

of law librarians we have not been able to organize our library. We hope to do so this year. In the meanwhile we are accumulating a large number of books, periodicals, law reviews, etc. and we thank our many donors for their contributions.

XI. The Geographical Organization of the Courts:

This has long been a subject of controversy. The Advisory Committee on Research under the chairmanship of Circuit Judge Harry Blackmun has it under study. At the suggestion of the Judicial Conference the Center included it in a priority questionnaire that went out to each federal judge. The returns on the questionnaire gave it the lowest priority rating of the subjects covered by the circulation. At its meeting, May 26, 1969, the Research Committee concluded that this was "not a true reflection of the importance and interest in the subject." Dr. Graham and others thought that a thorough study might be made to determine the possible alternatives available and report these to the Board. The Board of Directors considered this question and decided that it was not a subject of immediate need for study. Pursuant to the recommendation of the Board and consonant with the sentiment of the Research Committee, this project is being carefully outlined before actual field work is commenced.

The Center is only so strong as the support that it receives from the judges. The most satisfying experience for me during my short tenure is the enthusiastic cooperation that each of the judges has extended to all of the Center's programs. With such continued togetherness the goal shall be attained. On behalf of the entire staff, please accept

our thanks and deep appreciation. This will be my final report. Let its last words be "God bless you for making our undertaking so pleasant, so satisfying and so rewarding."

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tom C. Clark", written over the printed name.

TOM C. CLARK  
Director