

FIRST MIDYEAR REPORT  
OF  
THE FEDERAL JUDICIAL CENTER  
TO  
THE JUDICIAL CONFERENCE OF THE UNITED STATES

March 13, 1969

The Federal Judicial Center was created by Act of December 20, 1967, 81 Stat. 664. The Board of Directors is composed of The Chief Justice, Chairman, and the Administrator of the United States Courts, both ex officio; and, elected by the Judicial Conference, Judges James Carter and Wade McCree of the Courts of Appeals and Judges Edward Devitt, William McRae and Harold Tyler of the District Court. Mr. Justice Clark is Director; Hugh Nugent, Director of Education and Training; William Eldridge, Director of Research; Maurice Geiger, Director of Innovation; Miss Alice O'Donnell, Professional Assistant, and their respective supporting personnel: Mrs. Marilyn Waller, Miss Caterina Capobianco, Miss Betty Baker, Mrs. Bonnie Sherman, and Mr. Jeffrey Walsh, Law Clerk. The Center occupies The Dolley Madison House, an historic site, located at 1520 H Street, N.W., Washington, D.C. 20005. Please address all mail to this address, using the zip number.

#### Budget

The Center received \$40,000 in appropriations for fiscal year 1968 which was received after the beginning of fiscal year 1969 and was, therefore, expended for equipment and supplies, with the balance of approximately \$34,000 being contracted to The Institute of

Judicial Administration for three programs, i. e. (1) a screening program for the Courts of Appeals; (2) preparation of cards for data processing the criminal docket of the Eastern District of New York; and (3) a Bench Book for United States District Judges. The first two of these projects have been completed and the third is in its final stage, under the supervision of District Judges Robert E. Maxwell, John V. Dooling and Hubert L. Will, with the Institute of Judicial Administration performing the staff work.

An appropriation of \$300,000 was received for the fiscal year 1969; \$875,000 has been requested for the fiscal year 1970.

#### Initial Operation

The Board, at its first meeting March 2, 1968, projected an overall plan of operation based upon questionnaires and inquiries to the judges and Judicial Conference Committees. It was implemented prior to receipt of its appropriation by Mr. Justice Clark, as Director, and his secretary, Miss O'Donnell, as Professional Assistant, both of whom were on the payroll of Retired Justices of the Supreme Court. Advisory Committees of the Center, heretofore reported to you, were appointed, held organizational meetings and assisted in the search for staff personnel and the planning of program profiles. The Center, at the request of Chief Judge Murrah of your Committee on Trial Practice

and Techniques, assisted with two of the three seminars for newly appointed United States District Judges previously authorized by you and conducted the third one itself at The Dolley Madison House, October 25, 1968. The Center also enlisted the support on its automation programs from IBM, Mitre and Auerbach. These activities were reported to you at your last meeting.

#### Present Operations

Upon receipt of its appropriation for fiscal year 1969, the Center began recruiting its staff and mobilizing its programs. The latter includes the planning and conducting of (1) continuing education institutes for judges, clerks, probation officers, referees and magistrates; (2) computerizing the dockets in the Southern and Eastern Districts of New York and the Eastern District of Pennsylvania and completely reorganizing the Clerk's Office in the Eastern District of Louisiana and programming a data processing experiment covering the offices of the Judges, Clerk, Probation Officers, Referees, Marshal, United States Attorney and Court of Appeals (Fifth Circuit); (3) developing crash programs in criminal cases (Eastern District of New York) and encouraging the use of omnibus hearing techniques in the districts along the Mexican border, the Eastern District of Louisiana and the 18 metropolitan districts handling the majority of the serious criminal cases; (4) assisting districts in the reorganization of their calendars (New York Eastern and Southern, Eastern of Pennsylvania,

Northern of California, District of Columbia); developing a screening process for the Courts of Appeals; (5) research study on the impact of automobile accident claims upon federal and state courts [for the Department of Transportation]; (6) developing post conviction remedy programs - both §2255 and §2263 - §2264 - and assisting in the creation of statewide data banks on habeas corpus-post conviction remedy litigation; (7) implementing the new Jury Act by use of automation; (8) researching and teaching the efficient selection and utilization of jurors' time; (9) developing an experiment in an automated probation report through the use of data processing; (10) research in the use of case-aids in parole and probation surveillance; (11) improving psychiatric and other facilities in the detention and rehabilitation of prisoners; and finally (12) organizing three types of publications to disseminate knowledge and techniques to the personnel of the judicial branch, viz: The Third Branch, The Federal Judicial Center Report and specialty books, manuals and manuscripts such as The Judges' Bench Book, The Manual on Complex and Multidistrict Litigation, etc.

A further detail of these operations is as follows:

AS TO THE DISTRICT COURTS:

1. Three seminars for newly appointed judges, of eight days each, were co-sponsored by the Center at Denver, Berkeley and Washington. The latter was conducted at The Dolley Madison House, the home of the Center,

in Washington, from October 25 through November 1. The courses offered included jurisdictional problems, the fundamentals of trial practice, techniques and effective disposition procedures, discovery, pre-trial, settlements, selection of juries and their instruction, criminal litigation, including arraignment, omnibus hearing, expedition, jury management, sentences, post conviction remedies, etc. The format followed the Arden House Socratic methodology. Eighty-four newly appointed District Judges were students and 18 judges of longer tenure acted as faculty. The tenure of the student judges ran from two weeks to two years; that of the faculty from five to 36 years. The Center has now assumed the full responsibility for these seminars as well as those for the more experienced judges, which are now being planned.

2. The first Metropolitan Court Conference of the Chief Judges and Executive Committees of eight Districts was held at the Center on January 10 and 11, 1969. There were 24 judges in attendance from the Districts, i. e., the Southern District of New York, the Eastern and Western of Pennsylvania, Northern of Illinois, the District of Columbia, Eastern of Louisiana, and the Northern and Central of California. Topics covered by the Conference included comparison of filings and dispositions, backlogs, state prisoner applications, counsel for indigents, central vs. individual calendaring, data processing, new jury Act, omnibus hearing

in criminal cases, Federal Magistrate Act, etc. The Friday night three hour session was devoted to a report by the Mitre Corporation on their computer analysis of filings, dispositions and backlogs in the eight Districts.

3. Delay in the criminal calendar of the Eastern District of New York was the longest in the country, over 20 months from indictment to trial. On March 31, 1968, 614 cases were pending. A preferred disposition program was inaugurated and this backlog was reduced to 232 cases by January 31, 1969, approximately 23 cases per sitting judge in the District. The delay by April 1, we anticipate, will be less than six months, the shortest of any metropolitan court. The civil docket is now being expedited and by summer will be current.

4. The Southern District of New York has the heaviest civil case load in the United States, i.e. 11,604 cases on December 31, 1968. The computer study that you authorized has been most helpful. Through it we have determined that 61.7 per cent of the calendar is personal injury litigation, largely maritime. Forty per cent of these cases are controlled by six law firms. Admiralty cases occupy 17.4 per cent of the court's business and six law firms control 49 per cent of these cases. Overall, about 55.3 per cent of the docket is maritime and ten law firms control about 75 per cent of these cases. The computer study also shows

that less than 20 per cent of the total case load is carried on the active calendar, the remainder being dormant. This has permitted inordinate time lags on the note of issue - as high as 21 months - which indicates lack of diligence by lawyers in answering and making discovery. This condition is the primary cause of the docket congestion. Our computer study shows that some 90 per cent of the total filings are settled without trial. If issue and discovery were had at an earlier date, settlement would be advanced and processing eliminated in all but 10 per cent of the cases. Under present procedures, processing is required in 90 per cent of the cases.

The Court is taking steps to correct this situation. Beginning on October 1, 1968, a new procedure has been used - a civil jury pool. All jury cases are sent to the pool before being assigned for trial. Pool judges screen them for settlements, etc. In the three months of October, November and December, 546 cases were disposed of against only 284 being terminated during the same period in 1967. This one technique doubles the disposition rate.

Indeed, the civil jury pool was showing up so well that it was decided to try the same technique on the admiralty calendar. On December 1, 1968, our computer print-out showed 431 admiralty cases listed as ready. Three judges were assigned part time to try the experiment. As of



February 20, 1969, the part time judges had disposed of 153 of these cases. This rate of disposition by part time judges was over twice the average by full time judges under the old methods.

The court also voted on February 19 to assign four of its 24 judges to an experimental individual calendar. From the central calendar on which this court operates, 500 cases will be assigned to each of the four judges, and 1/6 of all new cases will be assigned to them for division among themselves. This experiment will provide a thorough test of the comparative advantages of individual and central calendaring in a large multi-judge court. The experience that will be developed here should help other courts to move into the most productive system. We believe these techniques will provide a substantial resolution of the backlog problems in this district without the addition of new judges.

5. The Eastern District of Pennsylvania (Philadelphia) likewise suffers inordinate delay in the disposition of some 7,000 cases. A calendar control project was instituted there on November 18, 1968, to compare individual and central calendar effectiveness. All cases on the trial calendar of the court are over 30 months old. From these cases, 248 were selected at random and divided between two judges who were to use individual calendar methods. One of the judges was from the

Eastern District and one from another district where individual calendaring is standard procedure. Another 248 cases, similarly selected, were earmarked on the central calendar and its methods applied to them. As of February 14, 1969, a total of 177 of the 248 cases had been terminated (approximately 73 per cent). During the same period under the central group - with like judge power and time allocation - only 29 cases were terminated (11.7 per cent).

A comparison of this project disposition with the 1967 eight week crash program rate in the Philadelphia district shows this project 50 per cent ahead on dispositions and at more than double the rate for the district for fiscal 1968.

The constant judicial supervision by the same judge with deadlines fixed and adhered to plus the definitive pre-trial order employed in the program brought results far superior to the central system. The judges now have these results under consideration. The Center has recommended the extended use of individual calendaring.

6. The Eastern District of Louisiana (New Orleans) has been behind in its dispositions. Chief Judge West asked the Center to make a study of the clerk's office. The survey indicated that modern business management techniques were needed. These have now been installed.

In addition the study suggested the use of data processing. The Center had the Auerbach Corporation make a systems analysis of the administrative procedures and information requirements of the Judges, Clerk, U. S. Attorney and Marshal offices. It recommended that a combination of the information requirements and record keeping of these offices - and perhaps the Court of Appeals - would be less expensive and more effective than the present operation. Mr. Friesen, the Director of the Administrative Office, and Justice Clark went to New Orleans and went over the situation with all of the judges of the district. The judges unanimously requested us to use the district as a test of the proposed system and promised full cooperation. The Center has entered into a joint venture with the Department of Justice to secure the necessary computer programming and implementation of an operational system covering these offices. The project will begin on March 1, under the direction of our newly appointed Director of Innovation, Mr. Geiger. If it is successful - and all indications point that way - we plan on extending this system to other districts such as Los Angeles, Chicago, Philadelphia, New York and Brooklyn.

7. Los Angeles is an individual calendar district, but is in dire need of a reorganization of its clerk's office. Judge Stephens, acting

for the Chief Judge, conferred with the Center and the Administrative Office about it. A survey by a local university, a few years ago, will be of some help in establishing a new structure. The Administrative Office sent some of its experts out to study the clerk's operation, and the Center is cooperating with them and the judges in the reorganization, which should be effected within the next 60 days. The reorganization will be adaptable to data processing in the event the New Orleans project proves successful.

8. San Francisco is a central calendar operation. The judges there have now decided, in the light of the experience brought to their attention at the Center's seminars, to shift to a system of individual calendaring. The Administrative Office has already furnished the Chief Judge the breakdown of cases (done by computer) and the change should begin in the summer. This is a most significant event and will, we believe, bring about a more effective business operation.

9. A criminal case conference of District Courts having jurisdiction along the Mexican border will be held on March 21 and 22. The Eastern District of Louisiana, as the major port of entry in the area, has been included in the conference. Along with the judges we are having the United States Attorneys or their representative, the probation officers and the immigration service personnel. The meeting will be held in

Houston and will emphasize narcotic prosecutions, wetback and immigration problems, state prisoner applications and omnibus hearing techniques. Chief Judge Ben Connly will chair the conference and Mr. Justice Clark will attend.

10. Criminal cases also will be discussed on April 18 and 19, at a Dolley Madison House conference of judges from the District of Columbia, the Southern District of New York (Manhattan), the Eastern District of Michigan (Detroit), New Jersey, the Southern District of Florida (Miami) and the Northern District of Illinois (Chicago). These districts have the heaviest criminal case loads. In addition to the judges we are also having the United States Attorney or his representative and the Chief Probation Officer from each district. The expedition of criminal cases, use of the omnibus hearing, bail problems, parole and probation surveillances, narcotics control, etc. will be included in the agenda.

11. On April 11 and 12 the first District Court Clerks' Conference will be held at Dolley Madison House. The 18 districts having 61 per cent of the pending civil backlog and over half of the more serious criminal cases in the country will be represented. Included in the topics for discussion will be office organization and management, docket control, uniform application of rules, efficient selection and use

of jurors, automation, Criminal Justice Act, Magistrate Act and multidistrict litigation.

AS TO COURTS OF APPEALS:

1. On September 20, 1968, the Chief Judges of the Courts of Appeals met in official conference for the first time. Discussion was had as to the means for handling the increasing case load and expediting the writing of opinions on cases submitted. A proposed screening process was presented by the Center. After much discussion, no action was taken, but it was agreed that each Chief Judge would report his methodology on handling cases to the Director. These reports revealed that no circuit was operating on the same basis. Thereafter the Fifth Circuit adopted a limited screening process based upon that previously proposed by the Center. The screening began on December 15 and as of this date it appears that over 30 per cent of the case load may be disposed of with adequate consideration and complete fairness on the briefs. This finding will reduce the weeks of sittings from 56 to 46 for the Term. The program will continue until the summer, at which time it will be carefully appraised. We anticipate that the program, with some variations, will be permanently adopted in the Fifth Circuit and then recommended to the other circuits. We believe this will markedly reduce the present backlog of

cases and without more judges.

2. As to the delayed opinions in submitted cases, the number is increasing each quarter and something must be done. At present some of the cases have been under submission over two years. The Center's proposal is that the Judicial Conference adopt a resolution to the effect that when a case or cases has been assigned to a judge for the writing of an opinion and none has been filed after the expiration of three months, an emergency exists during which a judge is required to abstain from all other duties and give his full time to the preparation and filing of the opinion or opinions. In the event the opinion has been circulated but is being held up by the dissent, the same rule shall apply except that the time will be limited to 30 days.

3. On March 15, 1969, the second meeting of the Chief Judges of the Courts of Appeals will be held at Dolley Madison House. The agenda includes screening, delayed opinions, new rules, personnel shortages, circuit council administrators, etc.

4. The clerks of the Courts of Appeals met on February 28 and March 1 at Dolley Madison House. The clerks had not met since 1961 and there have been many significant changes since that time. High on the agenda was the appellate rules that went into effect last July. In addition, office organization and management, counsel relationship,

habeas corpus and pro se applications, administrative agency appeals, relations with other courts, including the Supreme Court. Experts in these fields were present, including The Honorable John Davis of the Supreme Court.

#### THE CUSTOMS COURT:

At the request of the Chief Judge of the Customs Court, The Honorable Paul Rao, the Assistant Attorney General of the Civil Division, The Honorable Edwin Weisl, Jr. and the Customs Court Bar, the Center has organized a committee that is studying the calendars and procedures of the Court with a view to recommending improvements thereto. The committee is also considering legislation to implement its proposals. Membership on the committee includes representatives of the Bar, the Department of Justice, the Treasury Department and the Customs Court. The committee is also seeking the answer to the adaptability of data processing to the Customs Court's docketing and calendaring procedures.

#### THE CENTER'S MINISTRY OF RESEARCH:

We envision the Center as the most knowledgeable and efficient legal research operation in the world. It will combine top talent in this field with library science in judicial administration. We hope to make our library the recognized and acknowledged leader in its field. The



Center staff will be small but its activity large through the use of expert contractual outside facilities. Our present national research programs are:

1. Automobile Accident Litigation: The Department of Transportation has commissioned the Center's research unit to conduct a study on the impact of automobile accident claims upon federal and state courts; develop estimates of the administrative costs entailed in the processing of claims and the costs of attorney fees; determine present day practices by which losses are compensated; time lapse between accident, filing and disposition and patterns of automobile disposition as compared with patterns in the disposition of other cases.

The Federal Judicial Center Act calls upon it to cooperate with other agencies. This research project enables us to do this and at the same time explore a variety of comparative studies vital to effective judicial administration.

2. Post Conviction Remedies: The great increase in civil case filings is largely attributable to habeas corpus applications in federal courts by state prisoners under Title 28, §2254. Almost a third of the civil docket consists of these cases. They also strain relations between state and federal agencies. The Center organized a State-Federal Relations Committee composed entirely of Chief Justices of the States or their

designees to work on this problem. We have found that one cause of the trouble is a lack of information concerning the number and bases of state post conviction cases filed by a prisoner. In New York we are now establishing, in cooperation with the state, a data bank on these filings. It also will contain all federal court filings by New York State prisoners. This will enable a judge to determine quickly what prior action the prisoner has sought. Another source of trouble is the narrow scope of state post conviction remedies. The Center is undertaking a study of the remedies of every state. Armed with this information the State-Federal Relations Committee hopes to promote the adoption of constructive reform of state procedures. In the meanwhile, the Center is undertaking to have these states already operating under efficient procedures to require the filing of findings in all post conviction cases.

3. Efficient Utilization of Jurors: The Center has a joint venture with the American Bar Foundation on the efficient utilization of jurors which calls for a time study of their activity after reporting for duty. By identifying unproductive time we can adopt procedures that will save costs that now run several million dollars in the federal budget. In addition, the study hopes to discover techniques that will permit the reduction of jury calls. More important we hope to make jury service more attractive and meaningful to the juror. Moreover, the employer will be

saved considerable money and inconvenience. The initial study of the Western District of Missouri (Kansas City) has been completed and the report should be ready in a few weeks. After an evaluation of these results, other districts will be selected, if necessary, for a complete picture.

4. Probation Studies: It is estimated that over 40 per cent of the probation officer's time is taken up with paperwork. We have been studying methods to reduce this and put this time on rehabilitation, investigation, counselling and other professional duties. With this in mind, a punch board has been devised in which the officer punches symbols designating answers to basic questions in probation and parole, viz: former convictions, previous parole violations, family conditions, employment, etc. The machine can be adapted to answer over four hundred such queries. After punching the appropriate holes, a card is removed which when placed in a computer will print out the answers, eliminating dictation and transcription. The card also will constitute a permanent record of information on defendants that is readily available for manual or computerized studies of trends, characteristics, successes, failures, and other matters of value to the judges and the probation officers. The Center is now experimenting with this device in the Central District of California.

As we mentioned above, a questionnaire was circulated among all probation officers. We have now analyzed the returns and it appears that the present training program is in need of current orientation as well as reorganization. This will be discussed with the probation officers at their meeting here on March 10-12, 1969, and a tentative educational program devised for fiscal 1970.

5. Psychiatric Facilities for Federal Prisoners: Psychiatric care in the penal setting is one of the real rock-and-hard-place problems confronting correctional agencies. Responsibility and concern for public safety require that security be maintained over sentenced offenders. At the same time, accepted measures of effective security may be working at expressly cross purposes to therapy for mental illness. Recently, the Chairman of the Center's Advisory Committee on Research assembled a team that visited the Medical Center for Federal Prisoners in Springfield, Missouri. The Medical Center is the institution that receives serious medical and surgical cases from other federal penal institutions as well as psychiatric cases. The main subject of discussion with the Springfield staff was limited to the psychiatric patients, the staff and the facilities.

The Center, building on the reports of the visitors, is attempting

to develop and explore a full range of possible alternatives responsive to the basic dilemma involved in treating mental illness in a penal setting. A special advisory committee of knowledgeable people is being assembled to advise the Justice Department, the Public Health Service and the federal judiciary on the best course to pursue and what may reasonably be expected of the various alternatives.

All of the research described in this section of this report is devoted to the operations of the federal system. It should be recognized, however, that most of the results will have direct bearing on the problem of state agencies sharing similar responsibilities. Every effort will be made to involve state agencies in the work of the Center, to coordinate efforts, and to communicate results to appropriate state agencies at all times.

#### OTHER PROGRAMS UNDER DEVELOPMENT:

1. Magistrates Act: The implementation of this Act is now under active study by the Administrative Office, the Judicial Conference Committee on the Magistrates Act and the Federal Judicial Center. Recommendations to the Judicial Conference meeting of March 13 are now being prepared. The Center is organizing seminars in each of the eleven circuits to be held at the respective annual circuit conferences,

beginning in May. These presentations will explore the most effective means to accomplish the purposes of the Act, the extent of the Magistrate's functions, number to be appointed, how selected, etc. The temporary Magistrates that we expect the Judicial Conference to authorize in March will participate in this program, as will attorneys practicing in the criminal field and experts from the Administrative Office and the Center. All facets of the problem will be explored and a consensus of recommendations adopted. Subsequently, when the permanent Magistrates are appointed, the Center will develop an intensive training program for them.

2. Referees in Bankruptcy: These officers were No. 11 on the judges' priority list, however, they will not be neglected. In view of their present education and training conferences, we had not placed them on a high priority. Beginning next year we will conduct intensive training of these officers. We are presently making a systems analysis of bankruptcy operation with a view to the use of data processing. If such a program can be efficiently and economically operated, we plan to extend data processing to all of the larger offices. It is now being used at Lexington, Kentucky.

THE PUBLICATIONS OF THE CENTER:

1. The Third Branch is the most popular publication of the Center. It is a six page bi-monthly bulletin devoted to informing the judicial system of current judicial activities. In addition to news items, it also makes note of meeting dates at the Center, suggestions for improvement of the judicial process and reports of committees, boards, etc. It reaches 7,000 employees of the courts, goes to every law school and a select list of librarians.

2. The Federal Judicial Center Report is a serial publication through which the Center releases findings on research projects, learned articles and discourses developed at its seminars and meetings, educational materials developed by its Advisory Committees and lecture as well as source materials developed from its programs. It will be in the format of a reporter system and will be an official government document. The series is now in its first volume and among other materials includes a discourse on post conviction remedies between federal Judge Stanley Weigel and Justice Louis Burke of the California Supreme Court. It was a part of the program for newly appointed judges held at the Center from October 25 to November 1, 1968.

3. Ad Hoc Publications. Products of the Center prepared primarily for judges but also useful to the Bar and others will be published

where the content meets the necessary standards and the subject matter is of national importance. At the present two volumes are in the preparatory stages: (1) The Manual on Complex and Multidistrict Litigation. A Board of Editors is now putting the final touches on this work under the chairmanship of Chief Judge Tom Clary of Philadelphia. It will be published next month. It is the official publication of the Judicial Conference's Panel of Judges on Multidistrict Litigation and will be the rule of decision on procedural matters in this type of litigation. (2) The Judges' Bench Book will be a compilation of forms used by District Judges in the trial of cases. Over a hundred judges have contributed their forms for inclusion in the Book. A committee of three District Judges is presently editing the contributions and organizing them for the most efficient use. The staff work is being done by the Institute of Judicial Administration under the direction of Professor Delmar Karlen. The publication should be ready in the near future.

#### THE CENTER LIBRARY:

The work outlined in this report cannot be performed without the necessary tools and the most important one is a good library on judicial administration. The Center is now ready for a librarian and is circulating the profession in an effort to locate a good one. We believe



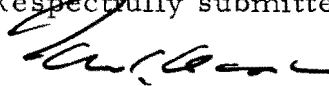
that with the aid of our distinguished Publication Committee we will be able quickly to assemble a library of the first rank beamed primarily at administrative rather than substantive matter. The library organizations, such as the American Law Institute, are furnishing the Center, without cost, their entire publication lists. These gifts will run into thousands of dollars in value.

The library will also attract the papers of distinguished legal scholars, judges and practitioners. We hope to receive the papers of Chief Justices and Associate Justices of the Supreme Court of the United States, Chief Justices of the States and other distinguished judges, lawyers and scholars.

CONCLUSION:

The Center appreciates the enthusiastic cooperation that it has received from the Judicial Conference, its Committees and all of the judges and their staffs. It has been most helpful and heartening and we are most grateful for this most effective support. Without it, the Center could not succeed. With it we can move on from the running start of its first year of accomplishment to a distinguished future in the improvement of justice.

Respectfully submitted,



TOM C. CLARK  
Director