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REPORT ON PRELIMINARY RESULTS  
PILOT PROJECT

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Background

Effective October 1, 1969, four judges of the United States District Court for the Southern District of New York embarked on a two-year experimental program to test the effectiveness of the individual calendar system. (The court is authorized 24 judges; currently, there is one vacancy.) The judges involved are David N. Edelstein, Edmund L. Palmieri, Harold R. Tyler, Jr., and Milton Pollack. These judges were selected by lot from among a number of judges who volunteered to serve on the pilot program.

Since the Pilot Project was to operate alongside the court's master calendar system, it appeared appropriate for the Federal Judicial Center to monitor the Project in order to determine the relative strengths and weaknesses of the two systems. At the outset, the Center's evaluation effort concentrated on interviewing the judges (3 of the 4 judges were interviewed), the courtroom deputies, and the Pilot Project Coordinator. For the purpose of this preliminary report, some statistical data was gathered, but in large measure reliance was placed upon the Pilot Project Coordinator's records and his monthly reports of commencements and terminations.<sup>1/</sup>

Summary of Results

Six months' experience is, of course, too short a period upon which to base any definite conclusions. However, while not conclusive, the results thus far suggest that the individual calendar system has been successful.

There are a number of ways to evaluate the effectiveness of a particular system. Two of the most significant measures are: a) the time it takes to process a case from filing to disposition, and b) the effect of the system on the number of cases pending, i.e., is the backlog growing or being reduced.

Since the experiment has been underway for only six months, we have not attempted to compare the case processing time under the Pilot Project with the court's master calendar. Such a comparison would not be meaningful until at least the end of a 12-month period.

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<sup>1/</sup>The Rule 2 cases of the Pilot Judges assigned prior to the beginning of the Pilot Project were not included in these statistics. As a result, the analysis, which follows also excludes those cases.

With regard to the backlog, it appears that the Pilot Project has had a very positive effect, especially in reducing the number of civil cases pending (see Table 1). In the first six months of the experiment, terminations by the four Pilot Judges exceeded commencements by 312 cases. In contrast, under the master calendar, terminations fell 249 cases short of filings. In other words, under the master system the backlog continued to grow. However, because of the Pilot Project the overall civil backlog of the court was actually reduced by 63 cases, from 12,534 pending as of October 1, 1969, to 12,471 pending on March 31, 1970.

Similar results were realized on the criminal side, though they were not as pronounced. As indicated in Table 2, the court's backlog of criminal cases was reduced by nine cases, from 1,216, as of October 1, 1969, to 1,207 as of March 31, 1970. This reduction was due solely to the Pilot Project. The Pilot Judges terminated 12 more criminal cases than were commenced while the master calendar system terminated three less cases than were commenced.

#### Detailed Analysis

##### Civil Cases

In view of the volume of civil cases, we were not able to do any extensive detailed analysis in this area. However, on the basis of a limited detailed review, particularly of Judge Tyler's cases, it appears that the civil backlog contains a good deal of "deadwood." For example, between October 1, 1969 and February 28, 1970, Judge Tyler closed 86 civil cases. (This was in addition to a number of cases closed prior to October 1.) All but five of these cases were closed via discontinuance orders. There was only one trial judgment. Most significantly in terms of judge-time, 86 percent of the discontinued cases were closed without a conference or any direct contact with the judge. If this experience is borne out by the other judges and continues for a longer period of time, it would appear that a significant portion of the civil backlog could be disposed of without requiring too great an expenditure of judge-time.

The impact of the Pilot Project in eliminating old cases can be seen clearly in connection with the civil cases assigned to Judge Tyler. As indicated on Table 3, as of October 1, 1969, more than 56 percent of the cases assigned to Judge Tyler were one or more years old. By February 28, 1970, this percent had been reduced to under 52 percent. In contrast, for the court as a whole, as of June 30, 1969, 62 percent of cases pending were one year old or older.

### Criminal Cases

Because of the much smaller volume of criminal cases, we were able to do a more detailed analysis in this area. Table 4 analyzes the pending criminal cases by judge and by length of time pending. The experience under the Pilot Project is compared to the reported results of the court for fiscal year 1969. (The table is based on Table D3b of the Annual Report of the Director of the Administrative Office.) Table 4 indicates that the Pilot Judges have made substantial progress toward the elimination of old pending cases.<sup>2/</sup> Thus, while the court reported as of June 30, 1969 that 53 percent of the criminal cases pending (exclusive of fugitives) were one year old or older, under the Pilot Project, as of March 31, 1970, cases pending one year and over represented 45.8 percent of the total and one judge (Judge Pollack) practically disposed of all the old cases assigned to him.

The elimination of old criminal cases is graphically demonstrated in Table 5. While performance among the Pilot Judges varies, this table shows that under the Pilot Project a significant number of criminal cases filed prior to 1969 were terminated. It should be noted also that many of the old cases that remain open are open in name only. Some involve "John or Jane Doe" indictments. Others are multiple defendant cases in which some but not all of the charges against all the defendants have been disposed of. Thus, it seems fair to conclude the individual system has allowed the Pilot Judges to mount an attack upon the court's substantial backlog of old criminal cases. Under the master calendar system, with the prosecutor in control, such an attack would not be possible.

In the course of our review we also analyzed how the Pilot Judges disposed of the criminal cases assigned to them (Tables 6 and 7). The data contained in the tables is based on the records of the Pilot Project Coordinator and the courtroom clerks of the Pilot Judges. To be consistent with those records, only fully closed cases were included. Thus, if a defendant was awaiting sentence on March 31, 1970, the case was not considered a disposition. Similarly, in a multiple defendant case, if the charges against one defendant were still pending, that case was considered open even though one or more co-defendants were convicted and sentenced. As a result, Tables 6 and 7 may understate actual dispositions somewhat. For example, Judge

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<sup>2/</sup>The initial assignment of criminal cases did not include cases filed between April 1 and September 31, 1969. These cases were first allocated to the Pilot Judges in January, 1970. For that reason, the percentages shown for the Pilot Project on September 30, 1969 seem somewhat out-of-line compared to the court as a whole.

Tyler concluded a number of other trials and disposed of seven additional defendants in cases which are still technically open. On the other hand, defendants involved in superseding or related cases were counted more than once, thereby mitigating to an extent the understatement.

Tables 6 and 7 relate to all dispositions regardless of when the case was filed. Table 8 shows the dispositions in cases filed after the start of the Pilot Project on October 1, 1969. It is interesting to note that in the first six months of the Project, 86.5 percent of the criminal dispositions in cases filed after October 1, have been via a guilty plea. The court experience in fiscal year 1969 was 61.7 percent. While it is too early to reach any conclusion on whether the individual system will result in an increase in the guilty plea rate, the first results indicate that the trend should be watched closely.

With regard to trial time, an examination of Tables 6 and 8 indicates that the elimination of the older criminal cases may require a substantial amount of trial time. Judges Pollack and Tyler, who disposed of a number of old criminal cases, were involved in a number of court and jury trials. Taken together, the percentage of trial dispositions for these judges exceeded that of the court as reported for fiscal year 1969 (see Table 7). This trend seems to be significantly different than the experience of the Pilot Judges with the old civil cases. As noted earlier, thus far those cases tend to be disposed of with a minimum of direct judge involvement. Thus, at this point at least it would be reasonable to conclude that while the civil backlog contains a good deal of "deadwood," the criminal backlog is a lot more real. Its elimination may well require a substantial investment of judge-time in terms of trials.

#### Conclusions

On the basis of the results thus far, it appears that the individual calendar experiment has been a success. Solely as a result of the Pilot Project, the number of civil and criminal cases pending on the court's dockets has been reduced. Since this reduction was brought about by only four of the court's 23 judges, the initial success of the Project is truly outstanding.

However, while the program has made a successful start, there are a number of matters which are of concern. First of all, there is no standard approach among the Pilot Judges. Each judge seems to handle motions, calendaring and the overall processing of his assigned cases in a different way. While this may be good in an experimental program, it can have serious implications if the court as a whole decides to adopt the individual calendar approach. The bar and litigants should not be confronted with a balkanized



court; some standardization would appear to be necessary. In this connection, it would seem appropriate for the Pilot Judges to meet more regularly to discuss common problems and develop standard procedures for the processing of cases.

Secondly, the Pilot Project is entitled to and needs additional support from the Clerk's Office. It seems clear that some sections in the Clerk's Office (e.g., motions, calendaring, pretrial) have less work because of the Pilot Project. It would seem fair, therefore, to allocate at least one more person to the support of the Pilot Judges.

The question of staff support also has serious implications in connection with the possible shift of the entire court to the individual system. Under those circumstances, a complete restructuring of the Clerk's Office would seem to be necessary. Because of the size of the job, planning for such a change should begin very soon. In fact, even if a complete change-over does not take place until next year, planning the change should begin in the near future. Both the organization and the paperflow of the Clerk's Office would have to be studied very carefully so the new system could be inaugurated with a minimum of confusion.

When the New York Eastern and District of Columbia courts converted to the individual calendar system, a member of the support staff was put in charge of planning the new operation and its implementation. The planning process was supervised and coordinated by a special committee of judges. A similar procedure should be adopted by New York Southern.

It may be possible to arrange for the NARS group, now working in San Francisco, to visit New York Southern so that the court can benefit from the NARS study in planning and implementing a new calendar system. In any event, visits to and from the courts which have recently gone through the conversion process should be included as part of the overall planning effort.

The development of an experimental case management information system is an area where the Federal Judicial Center might be of some assistance. An adequate flow of information is a key ingredient in any effective calendar system. In order to obtain maximum results in an individual system, at a minimum, each judge should be advised of the status of his dockets on a fairly current basis. The Center's efforts in this area would, of course, depend on what the court decides to do. Continuation of the Pilot Project on the current basis or with the addition of a few other judges, would dictate one type of project, while a complete changeover to an individual system would indicate a different approach. The various possibilities can be discussed after a decision is reached on the future operation of the court.

TABLE 1.

	Civil Cases Commencements and Terminations						Net Dif.*	#Cases Pending End of Month for Total Court
	Master			Pilot				
Month	Comm.	Term.	Dif.*	Comm.	Term.	Dif.*		
Oct. 69	408	352	- 56	75	130	+ 55	- 1	12,535
Nov. 69	419	282	-137	70	148	+ 78	- 59	12,594
Dec. 69	403	388	- 15	76	142	+ 66	+ 51	12,543
Jan. 70	343	334	- 9	71	129	+ 58	+ 49	12,494
Feb. 70	343	351	+ 8	68	83	+ 15	+ 23	12,471
Mar. 70	395	355	- 40	78	118	+ 40	0	12,471
Totals	2311	2062	-249	438	750	+312	+ 63	

\*A plus sign (+) indicates more cases were terminated than commenced, thereby reducing the backlog.

TABLE 2.

Month	Criminal Cases Commencements and Terminations						Net Dif.*	#Cases Pending End of Month for Total Court
	Master			Pilot				
	Comm.	Term.	Dif.*	Comm.	Term.	Dif.*		
Oct. 69	59	54	- 5	16	15	- 1	- 6	1,222
Nov. 69	65	49	- 16	11	16	+ 5	- 11	1,233
Dec. 69	72	63	- 9	14	24	+ 10	+ 1	1,232
Jan. 70	58	70	+ 12	17	13	- 4	+ 8	1,224
Feb. 70	53	62	+ 9	12	11	- 1	+ 8	1,216
Mar. 70	70	76	+ 6	18	21	+ 3	+ 9	1,207
Totals	377	374	- 3	88	100	+ 12	+ 9	

\*A plus sign (+) indicates more cases were terminated than commenced, thereby reducing the backlog.

TABLE 3.

CIVIL CASES PENDING

	TOTAL	ONE YEAR AND UNDER	%	ONE-TWO YEARS	%	TWO YEARS AND OVER	%
Judge Tyler 2-28-70	440	212	48.2%	103	23.4%	125	28.4%
Judge Tyler 10-1-69	436	190	43.6%	109	25.0%	137	31.4%
New York Southern 6-30-69	11,805	4,485	38.0%	3,138	26.6%	4,182	35.4%



TABLE 4.

PILOT PROJECT  
Criminal Cases Pending  
By Length of Time Pending

	Total	Under 6 Months	%	6 to 12 Months	%	1 to 2 Years	%	2 Years and Over	%	Cases pending 1 yr & over with fugi- tives, etc.	% pending 1 yr & over excl. cases with fugi- tives, etc.	Cases pending 1 yr & over excl. cases with fugi- tives, etc.
N.Y. Southern 6-30-69	1334	329	24.7	181	13.6	241	18.1	583	43.7	249	53.0	575
Pilot Project 9-30-69												
Edelstein	45	0		10	22.2	12	26.7	23	51.1	10	71.4	25
Palmieri	41	0		8	19.5	10	24.4	23	56.1	13	71.4	20
Pollack	41	0		7	17.1	13	31.7	21	51.2	11	76.7	23
Tyler	42	0		11	26.8	9	21.4	22	52.4	10	65.6	21
Totals	169	0		36	21.3	44	26.0	89	52.7	44	71.2	89
Pilot Project 3-31-70												
Edelstein	61	10	16.4	10	16.4	14	23.0	27	44.3	10	60.8	31
Palmieri	47	8	17.0	10	21.3	8	17.0	21	44.7	15	43.8	14
Pollack	39	14	35.9	6	15.4	8	20.5	11	28.2	15	16.7	4
Tyler	45	12	26.7	7	15.6	9	20.0	17	37.8	10	45.7	16
Totals	192	44	22.9	33	17.2	39	20.3	76	39.6	50	45.8	65

TABLE 5.

PILOT PROJECT  
Criminal Cases Pending  
By Year of Filing  
(Exclusive of Cases with Fugitives)

Judge	1965 & Earlier		1966		1967		1968		1969*		1970		Totals	
	As of 10-1-69	As of 4-1-70	As of 10-1-69	As of 4-1-70	As of 10-1-69	As of 4-1-70	As of 10-1-69	As of 4-1-70	As of 10-1-69	As of 4-1-70	As of 10-1-69	As of 4-1-70	As of 10-1-69	As of 4-1-70
Edelstein	9	8	4	4	4	4	11	10	16	18	0	6	44	50
Palmieri	6	3	3	2	3	2	7	5	16	13	0	7	35	32
Pollack	7	1	3	0	4	0	10	3	8	10	0	9	32	23
Tyler	8	5	4	2	3	1	12	6	15	9	0	11	42	34
Totals	30	17	14	8	14	7	40	24	55	50	0	33	153	139

\*Cases filed between April 1 and September 30, 1969 were first allocated to the Pilot Judges in January, 1970.

TABLE 6.

PILOT PROJECT  
Disposition of Criminal Defendants  
October 1, 1969-March 31, 1970

Judge	Total Cases	Total Defendants	Trial				Guilty Pleas	Dis. or Nolle Pros.	No. of Trials		Total Days Spent on Tr.
			Convictions		Acquittals				J	NJ	
			J	NJ	J	NJ					
Edelstein	13*	14		1			10	3		1	2
Palmieri	22	27					17	10			
Pollack	34	55	9	1	2		25	18	4	1	15
Tyler	33*	43	7	7		2	15	12	4	9	31
Totals	102	139	16	9	2	2	67	43	8	11	48

This table includes all criminal cases disposed of by the Pilot Judges regardless of when the case was filed.

\*Statistics maintained by Pilot Project Coordinator indicate that Judges Edelstein and Tyler disposed of 12 and 32 cases respectively.

TABLE 7.

## METHOD OF DISPOSITION OF CRIMINAL DEFENDANTS

Pilot Project 10-1-69 to 3-31-70	Total	Dismissed		Plea of Guilty		Court Trial		Jury Trial	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
Edelstein	14	3	21.4	10	71.4	1	7.1	0	
Palmieri	27	10	37.0	17	63.0	0		0	
Pollack	55	18	32.7	25	45.5	1	1.8	11	20.0
Tyler	43	12	27.9	15	34.9	9	20.9	7	16.3
Totals	139	43	30.9	67	48.2	11	7.9	18	12.9
New York Southern Fiscal Year 1969	1207	207	17.1	745	61.7	65	5.4	190	15.7

TABLE 8.

PILOT PROJECT  
 Filings and Dispositions of Criminal Defendants in  
 Cases Filed After October 1, 1969  
 (October 1, 1969-March 31, 1970)

	Case Filings	Case Dispositions	Defendant Dispositions	Trial				Guilty Pleas	Dismissals or Nolle Pros.
				Convictions		Acquittals			
				J	NJ	J	NJ		
Edelstein	19	9	9		1			8	
Palmieri	18	9*	10					10	
Pollack	25	11	12		1	1		10	
Tyler	26	14	15		3			12	
Totals	88	43	46		5	1		40	

\*In addition, one case was transferred to another U.S. District Court.