

THE THIRD BRANCH

1520 H STREET, N.W., WASHINGTON, D. C. 20005



A Bulletin of the Federal Courts

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CHIEF JUSTICE WARREN DEDICATES FEDERAL JUDICIAL CENTER

Historic Dolley Madison House on Lafayette Square was dedicated November 1st as the home of the Federal Judicial Center. The unveiling of the dedicatory plaque was made by The Chief Justice before a large crowd, assembled in the courtyard of the Center.

The Board of Directors of the Center, including Court of Appeals Judges Carter and McCree and District Court Judges McRae, Devitt, and Tyler, together with Chief Justice Warren, the Chairman of the Board, and Ernest C. Friesen, Director of the Administrative Office, participated in the ceremonies. Mr. Justice Clark, the Director of the Center, acted as Chairman and thanked those in attendance for their assistance and valuable help in giving the Center a hearty send off. Among those present in the audience were United States Senators, Congressmen, Cabinet Officers, and Judges of the various courts, including the Court of Claims and the Court of Customs and Patent Appeals. Chief Judge Alfred P. Murrah of the Tenth Circuit and the Chairman of the Trial Practice Committee of the Judicial Conference, was present, along with Lawson Knott, the Administrator of the General Services Administration. Mr. Knott was instrumental in the Center securing the Dolley Madison House as its home, and was roundly applauded by those present for his support of Center activities.

After short talks by Justice Clark and Chief Justice Warren an easel bearing the plaques of dedication was unveiled by the Chief Justice. Following the ceremonies those in attendance were received at a reception in the Center.

The property, now known as Dolley Madison House, was purchased by President Madison in 1828. Following the President's death at their Virginia home, "Montpelier," his widow moved back to Washington and in the fall of 1837 took up her residence in what is now called the Dolley Madison House. She died in this same house in 1849.

It was here, on Nov. 13, 1861, that President Lincoln, Secretary of State Seward and John Hay (one of Lincoln's secretaries) waited on General McClellan, Chief of the Union Armies. It is recorded that McClellan arrived home from a wedding but being weary retired without speaking to the President; a truly incredible fact but documented by historians.



Mr. Justice Clark, Director of the Center, The Chief Justice, and Lawson Knott, at dedication ceremonies.

UTILIZATION OF JURORS EXAMINED AT KANSAS CITY

The Federal Judicial Center, in cooperation with the American Bar Foundation, inaugurated a program in the Western District of Missouri at Kansas City which will probe into the utilization of jurors in that District. Mr. Fredric R. Merrill, who is in charge of the program, circulated questionnaires to the jurors at a special fall jury term. The questionnaires will be tabulated and utilization of juror time determined.

The Congress at its last session increased the pay of jurors to twenty dollars per day. The appropriation covering jurors is ten million dollars annually. Through this utilization project, the Center is hopeful that it might be able to streamline the use of jury panels, reduce the number of talesmen called, and permit both private and government savings as well as more comfort for the jurymen themselves.

The project was inaugurated by Judge Irving Kaufman of the Court of Appeals, Second Circuit, who is Chairman of the Jury Committee of the Judicial Conference of the United States.

CALENDAR OF EVENTS

Metropolitan Courts Conference Starts January 10, 1969.
Meeting of Board of Directors of the Center, January 24, 1969.
Judicial Conference of the United States, March 13-14, 1969.

NOTA BENE:

This is the first issue of *The Third Branch*, a publication of the judicial branch of the government of the United States, its judges and their staffs. While circulated through the Federal Judicial Center, *The Third Branch* will be an exchange of information among the judges and afford them opportunity to present their problems to one another for solution.

On the insert page is a statement of policy adopted by the Board of Governors of the Center, outlining in concise terms its obligation under its charter from the Congress. We call this to your attention especially. *The Third Branch* also presents in this initial issue short summaries of some of its current activities.

It is our hope that the Judges and their staffs will consider *The Third Branch* as their publication and make full use of its pages to bring to the attention of one another new ideas, techniques and procedures designed to improve the administration of justice. We are counting on our readers to submit material for publication in *The Third Branch* which they believe would be helpful in attaining this purpose. Your cooperation in this regard will be greatly appreciated.

On the reverse of the policy statement is a directory of the staff, Board of Directors, and Advisory Committees to the Center. This page can be easily removed and retained in your reference files. Address your contributions to anyone listed thereon, or to the Editor, *The Third Branch*, 1520 H Street, N.W., Washington, D.C. 20005.

Happy New Year to everybody. Ours is going to be a happy one because you have given us cause to be both gratified and grateful. You have given us your good advice, your complete cooperation and your ready assistance. We look forward to the new year with assurance of your continued participation in Federal Judicial Center activities. The success of the Federal Judicial Center is your success. It is you and you are it. Together we shall move forward.

May God bless you and bring you health, satisfaction and peace all through the year and may we hear from you often is our fervent wish.

FJC'S ADVISORY COMMITTEE ON RESEARCH VISITS FEDERAL PRISON MEDICAL CENTER, SPRINGFIELD, MISSOURI

The Medical Center for Federal Prisoners is a facility of the Federal Bureau of Prisons located in Springfield, Missouri. The role of the institution in the rehabilitative process has been seriously questioned in recent years. The program of the Center, particularly as it relates to the activities and responsibilities of courts, prompted an information gathering visit by a team assembled by Judge Harry A. Blackmun of the Eighth Circuit Court of Appeals. Judge Blackmun, chairman of the Advisory Committee on Research to the Federal Judicial Center, felt that judges, in sentencing and appraising evaluative reports, should have a clearer picture of the institution.

On November 14, the visiting team assembled in Springfield. In addition to Judge Blackmun, the team included

Judge Gerald W. Heaney, also of the Eighth Circuit; Dr. Stanley F. Yolles, Director of the National Institute of Mental Health and also a member of the Judicial Center research committee; Dr. John Adams and Mr. Raymond Millstein of the staff of NIMH; Dr. Ernest C. Siegfried, Medical Director, Federal Bureau of Prisons; Dr. Howard P. Rome, Psychiatric Staff, Mayo Clinic; Dr. Francis A. J. Tyce, Director, Minnesota State Hospital, Rochester, Minnesota; Ernest C. Friesen, Jr., Director, Administrative Office, United States Courts; and William B. Eldridge, Research Director, Federal Judicial Center. On the following day the visitors toured the facility and conferred with the staff for the entire day. The evening was spent in discussing the institution and its operation.

No formal report on the visit has been prepared, but several points of interest to federal judges can be made here:

(1) The Center is operated by the Federal Bureau of Prisons, but professional staff is assigned by the Surgeon General.

(2) The evaluation of accused persons on the question of competency to stand trial has declined by more than 50% in the recent past. An increasing number of judges are now obtaining the services locally.

(3) The institution has a rated capacity of 1,157, but total inmate population usually runs about 975 to 985. The staff says they could not operate at rated capacity. The inmate-patient population is approximately comprised as follows:

35 Tubercular patients
150 Medical patients
150 Surgical patients
450 Psychiatric patients
200 Camp inmates (work staff)

There are seven psychiatrists, only three of whom are career men, in charge of services for all the psychiatric patients.

(4) The institution is operated under rather heavy security requirements that, in the view of some doctors, renders effective psychiatric care almost impossible.

(5) The institution appears to render satisfactory medical and surgical care, but the psychiatric program appears to be almost exclusively palliative and custodial.

The Federal Judicial Center will be exploring with the Medical Center and others possible areas of research and cooperation aimed at developing alternatives and solutions to some of the problems that emerged during the visit.

"Justice is the great concern of man on earth. Wherever her temple stands and so long as it is duly honored there is a foundation for social security, general happiness and the improvement and progress of our race. And whoever labors on its edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures or contributes to raise its lofty dome still higher in the skies, connects himself in name and fame and character with that which is and must be enduring as the frame of human society"

..... Daniel Webster

GOAL OF THE FEDERAL JUDICIAL CENTER

To promote an effective federal judicature; with proficient administration, without delays; through competent judges, operating in a modern court system under simple and efficient rules of procedure;

By fostering research into the organization and operation of the federal judicial system, innovating improved techniques and procedures in its administration and adapting data processing and other modern business practices to its management;

By conducting programs of continuing education and training for its judges, magistrates, referees in bankruptcy, clerks, probation officers and all other court attaches;

By stimulating and encouraging research and study of the judicial process on the part of other public and private agencies and organizations and enlisting their support in the attainment of equal justice for all; and

By providing, consistent with its goal, the necessary staff, research and planning assistance to the Judicial Conference of the United States and its committees for the long-range and in-depth studies required by it.

Toward this goal, the Center pledges its full effort, at all times cognizant of and consonant with the duties of the Administrative Office of the United States Courts and the ultimate authority of the Judicial Conference of the United States.

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BEGIN COMPUTER PROJECTS IN THREE DISTRICTS

CHIEF JUDGE CLARY STARTS COMPUTERIZED CALENDAR CONTROL PROJECT IN PENNSYLVANIA

One of the most important projects in calendar control has been started in the Eastern District of Pennsylvania by Chief Judge Clary and his associates. All of the cases on the docket are being placed in a computer and each action taken in a case will be noted therein. The "Clary Project" will enable the court to readily obtain information as to disposition, backlogs, bottlenecks, etc. immediately. In addition, information such as concentration of cases in the hands of a few law offices, inefficiencies in operations, and other problems of calendar control will be subject to a much deeper examination and understanding. It has been discovered during the computerization that over 30% of the docket of the court is in the admiralty field and is controlled, on both the defendants' and plaintiffs' sides by a small number of law firms.

A program to expedite the trial of cases in the Eastern District of Pennsylvania was started on November 28 by assignment of a new calendar of 250 cases to Judges Hubert Will and John P. Fullam, who disposed of 25% of the cases during the first week. Other cases were put over for trial in January, while others were delayed for a shorter period in order to finish discovery proceedings and settlement conferences.

JURY SELECTION COMPUTERIZED IN BROOKLYN

The Administrative Office, in cooperation with the General Services Administration, has organized a computer pilot project in the Eastern District of New York under the new Jury Selection Service Act of 1968 which bids well to solve the problem of jury selection that has plagued the court for years. Some 16,000 names of prospective jurors were taken from the registrar's roles and placed in the computer. Questionnaires were then prepared, which were printed by the computer and mailed to each of the prospective jurors. The returns on these questionnaires were then placed in the computer. It has automatically discarded all names of those not qualified for service.

The project will be ready for operation on December 22, 1968, the effective date of the Act. The computer will select a venire or panel of prospective jurors at random in such number as the court requires. In addition to selecting the names, it will prepare and mail out the notice to the prospective juror.

The computer prepared and mailed out the questionnaires to the 16,000 prospective jurors in less than an hour and a half. In addition, it is anticipated that the project will develop a more economical use of jurors' time and, perhaps, enable the court to operate with smaller panels because of the increased efficiency in operation. The program is being extended to other metropolitan districts.

LOUISIANA DISTRICT COURT WILL BE FIRST TO BE FULLY COMPUTERIZED

For the first time in history the procedures of a District Court will be completely computerized. The Center is considering, along with the Administrative Office and the Department of Justice, placing the records of the United States District Clerk, the United States District Attorney, the United States Marshal, and the United States District Court Judges for the Eastern District at New Orleans as well as the Clerk's office for the United States Court of Appeals in a computer. This will enable the paper work of the five offices to be handled by the computer. Auerbach Corporation, which made the preliminary surveys, estimates that savings will run to thousands of dollars annually, and the efficiency of the operation will be greatly increased.

The project, which will be a model for other United States District Courts, started with a complete renovation of the manual operation of the Clerk's office. All of the judges of the Court, including Chief Judge E. Gordon West, met in New Orleans with Mr. Justice Clark to commemorate the occasion on December 2d.

SUGGESTION BOX

Each issue of *The Third Branch* will have a Suggestion Box. Please send in your suggestions now.

Three District Courts suggest that every multi-judge district have a Sentencing Council which will meet prior to sentence day and discuss the terms of sentences to be imposed. See "The Tasks of Penology, A Symposium," Univ. Neb. Press, 1968, Perlman and Allington; Federal Probation Sept. 1961, p. 27; 45 Neb. L. Rev. 499 (1966); 35 F.R.D. 423, 431-34 (1964); 41 F.R.D. 469 (1966).

The Council technique has proven helpful in reducing the wide disparity now existing in sentencing and results in improved prisoner relations as well as public understanding. For additional details write *The Third Branch* or Chief Judges Wm. Campbell, Chicago; Joseph Zavatt, Brooklyn; or Theo. Levin, Detroit.

CRASH PROGRAM BROOKLYN CUTS CRIME DOCKET

The crash program conducted by Chief Judge Joseph C. Zavatt has cut the backlog of criminal cases in Brooklyn by two-thirds. Some 614 cases were on the docket which were reduced to 232 in the six-month period which began in June. The Eastern District of New York is now beginning a program for the expedition of civil cases, which it is anticipated will reduce that docket by 50% within the next six months. This will make the Eastern District the most current metropolitan court in the United States.

THREE SEMINARS FOR NEWLY APPOINTED JUDGES HELD

The Center has participated with the Trial Practice Committee of the Judicial Conference of the United States in conducting three seminars for newly appointed judges. Each of the conferences was under the chairmanship of Chief Judge Alfred P. Murrah of the Tenth Circuit, who is the chairman of the Committee on Trial Practice and Techniques of the Judicial Conference of the United States. The staff of the conferences was headed by Joseph Spaniol, Chief of the Division of Procedural Studies and Statistics of the Administrative Office.

The first conference was held in Denver, Colorado from May 30 through June 6; the second at the University of California at Berkeley from July 19 through 26; and the third at Dolley Madison House, the home of the Federal Judicial Center in Washington, D.C., October 25 through November 1.

In September 1967 the Judicial Conference of the United States authorized the Committee on Trial Practice and Techniques to sponsor and organize a series of seminars for newly-appointed United States District Judges to acquaint them with the problems of judicial administration arising in the operation of the district courts. The Conference specified that the seminars cover such matters as fundamental court procedures, techniques of effective judicial administration, jurisdiction and substantive problems arising in suits brought under the federal statutes. The program was a renewal of five previous seminars which were conducted between 1962 and 1965 under the auspices of the same committee of the Judicial Conference. The seminars were conducted under "Arden House" practice, under which a discussion leader initiates the particular topic assigned to him after which those present participate in a question and answer period. Prior to the sessions materials and forms were distributed to the newly appointed judges participating which were drawn by the faculty of the seminars, composed of Federal judges of longer experience.

Eighty-four student judges attended. The youngest in service had been on the bench less than two weeks and the oldest in service less than two years.

METROPOLITAN COURT CONFERENCE TO OPEN NEW YEAR

District Court Judges from eight of the country's largest metropolitan areas will gather at the Federal Judicial Center in January to take a hard look at court congestion. An agenda which covers every phase of the many current problems plaguing the federal trial courts includes such things as procedural techniques, court management, data processing, the concentration of cases in a limited number of law firms, engaged counsel, deficiencies on the part of the bar, and the proliferation of cases, as well as their increasing complexity. An exchange of ideas and experiences should prove to be mutually beneficial in developing new practices that will help stem the tide of a growing backlog. Increased

filings, it is believed, is only a part of the picture. Often there are peripheral reasons that add to the burdens of the judge and it is these that the conference hopes to discuss.

Gathering at the Center headquarters in Washington starting on January 10th will be the Chief Judge and the Executive Committee of from two to three Judges from the Southern District of New York (Manhattan), the Eastern District of Pennsylvania (Philadelphia), the Western District of Pennsylvania (Pittsburgh), the Northern District of Illinois (Chicago), the Southern District of Louisiana (New Orleans), the Northern District of California (San Francisco), the Middle District of California (Los Angeles), and the District of Columbia. The meeting will bring together a total of 26 Judges, who handle approximately one-third of the total litigation in the United States District Courts, and covering a population of over thirty-seven million.

A full report on this meeting will be in the next issue of *The Third Branch*.

FIFTH CIRCUIT TESTS NEW CALENDAR REVIEW SYSTEM

Effective December 15th the Court of Appeals for the Fifth Circuit has inaugurated a six weeks pilot project on calendaring. All matters lodged in the Clerk's Office, including cases, motions, records and briefs, will be assigned in numerical order to permanent panels of the court, where required, or to single judges where appropriate. The matters will be reviewed by them and determination made as to whether argument is necessary. If argument is found necessary, the cases will be assigned to hearing panels, the time allowed for argument determined as well as the issues to be presented. In those cases where the entire panel determines argument is not required, summary disposition by order or per curiam will follow. Notice will be given counsel in each case which will afford opportunity for other disposition where it is in order.

The case load of the Fifth Circuit has rapidly increased to over 1,200 cases a year. The Congress recently increased its judge power to 15, the largest in the country. The Court sits in panels of three judges for 56 judge weeks a year of five days each.

The pilot project is the result of a study made by the Federal Judicial Center through the Institute of Judicial Administration. At a meeting of the Chief Judges of the Courts of Appeals during the September session of the Judicial Conference of the United States it was decided that each Circuit report its procedures to the Federal Judicial Center. This was done, and the Fifth Circuit project grew out of this exchange.

The plan was drawn up by a special committee of the Circuit, chaired by Judge Griffin Bell of Atlanta. Its goal is to improve the efficiency of the court by providing a more effectual utilization of judge time through a review system that will permit disposition of the business of the court more expeditiously and reliably. In the event the project achieves its purpose it will be recommended to other Circuits where the volume of business justifies.

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CENTER BOARD HOLDS QUARTERLY MEETING

The quarterly meeting of the Federal Judicial Center Board was held in Washington on January 24th, this time at the Supreme Court building because of a rigid time schedule of the Chief Justice. The Director of the Center and members of the Center staff were in attendance to make reports and to answer questions from Board members.

Thorough discussion was had on all phases of the Center's pending projects, as well as plans for the future. The Board approved the proposed seminars for the Chief Judges of the Courts of Appeals, the Clerks of the Courts of Appeals, the Clerks of the District Courts and the Probation Officers.

A detailed report of the Center Advisory Committee on Continuing Education, of which Judge Irving R. Kaufman is the chairman, was considered. This committee, after careful consideration, suggested that future seminars be held in hotels isolated from metropolitan centers, in order to avoid the attractions of city life. It also suggested that substantive matters as well as procedural be included in the agenda for the seminar and that scientific, psychiatric and social workers, when appropriate, should be included in the resource personnel. The committee's report was prepared by Judge Kaufman and Donald Shapiro, who is a member of the committee and the Director of the Practising Law Institute. The report recommended that seminars for the supporting personnel of the courts be expedited. After considerable discussion, the Board retired the committee's report to its Director of Education and Training, with instructions to circulate suggestions regarding the same.

The Board also canvassed the questionnaires sent to all federal judges, clerks and probation officers. The answers to these questionnaires will be systemized and made available in the planning of the various courses of training in the respective areas involved. The judges' questionnaires indicated that those of longer tenure also wish to have continuing education seminars. Moreover, all the questionnaires indicated that these seminars should include substantive as well as procedural courses. The substantive suggestions included such subjects as bankruptcy, patent law, antitrust, complex and multidistrict litigation. The Board directed the staff to prepare general outlines in these areas for submission to the Advisory Committee for its reaction.



Standing, left to right: Judge Wade McCree, Judge Harold Tyler, Ernest C. Friesen, Jr. Seated, left to right: Mr. Justice Clark, Director of the Center, The Chief Justice of the United States, Judge James Carter, Judge Edward Devitt. (Temporary illness prevented the other Board member, Judge William A. McRae, Jr., from attending.)

The Board members were particularly impressed with the progress being made with reference to the use of new techniques and procedures in the disposition of cases not only in the District, but also the Courts of Appeals. It noted that all the seminars thus far held revealed a particular interest on the part of the judges in the exchange of ideas and improvement of techniques that would bring about not only a more efficient administration of justice, but a maximum use of judge as well as court personnel time.

District Court Clerks To Have Conference

For the first time in the history of the federal judicial system all United States District Court Clerks will be called for an official conference. In January the Director of the Center sent a letter to all District Court Clerks inquiring about their problems and asking them to confer with their Chief Judge to determine whether they felt a conference for clerks would be desirable.

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The Center Fills Its Professional Staff Under 1969 Budget

The Center is now staffed top-side, except for Deputy Director, which office will not be filled until next Fall. The latest two additions are: Hugh Nugent, Director of Education. Mr. Nugent has had wide experience in both the planning and execution of education programs. He has degrees from Rockhurst College, University of Kansas City, Georgetown University and Harvard University. He comes to the Center from the Department of Justice where he was on the staff of the Deputy Attorney General. The Center is also fortunate to secure the services of Maurice Geiger who will guide its innovation and management activities. Mr. Geiger is a law graduate of Georgetown University. He also has a B.S. in Police Administration from Michigan State and was a programmer and systems analyst at the Defense Department. He is transferring to the Center from the Department of Justice and will be in immediate charge of the management program in the Eastern District of Louisiana (New Orleans) and other Districts.

DEAN GEORGE BAKER CENTER VISITOR

In this connection the Center was honored on January 25th by a visit from Dean George Baker of the Harvard Graduate school of Business Administration and a member of the Center's Advisory Committee on Operations and Appraisal. Dr. Baker, one of America's foremost management consultants, had lunch with Mr. Justice Clark, Director Ernest Friesen and Messrs. Hugh Nugent and William Eldridge. After touring the Dolley Madison House and discussing in detail the Center's programs, Dr. Baker expressed great interest in its activities. He especially directed his attention to the management survey that the Center is undertaking at the District Court level and offered his assistance in selecting a survey team to carry on the details of the work. The study will begin in the New Orleans District and extend to Los Angeles, Chicago, Philadelphia and New York. It will then be related to the remaining District Clerk's offices. Included in the study will be an appraisal of the feasibility of centralizing the clerical work of the offices of the Magistrate, Referee in Bankruptcy, Probation Officer, District Clerk, Judge, Marshal and U.S. Attorney through the utilization of systems analysis, data processing, etc. Dean Baker will bring to the project his many years of experience as management consultant, dean, public official and recognized authority in the business world. The Center appreciates his assistance and looks forward to working with him on this important project.

The timetable on the management program calls for Mr. Geiger to begin his work about March 1 in New Orleans. The Center hopes to start the national survey within 90 days, the exact target date depending on the development of the pilot study at New Orleans.

The Center's staff now includes the Director, Mr. Justice Clark; Hugh Nugent, Director of Education; William Eldridge,

Director of Research; Maurice Geiger, Director of Operations Research; Miss Alice O'Donnell, Legal Assistant; and Mrs. Marilyn Waller, Miss Betty Baker and Miss Trina Capobianco, Secretaries. A librarian will be selected by the next issue of *The Third Branch*.

FJC TO STUDY AUTOMOBILE ACCIDENT REPARATIONS FOR DEPARTMENT OF TRANSPORTATION

The Department of Transportation has asked the Federal Judicial Center to undertake a major project in connection with the Department's study of automobile accident reparations. The Center agreed to assume responsibility for developing information and analysis on the impact of automobile accident claims upon federal and state courts. In addition the study will attempt to develop estimates of the administrative costs for the courts in processing such claims and an estimate of costs of legal representation.

The objective of the work undertaken by the Center is to facilitate a more thorough understanding of the dimensions and the dynamics of the processes of automobile accident reparations in this country. Toward this objective the Center, and the research agencies with whom it will contract for the completion of the work, will focus attention on the actual practices by which losses are compensated and the time lapse between filing of claims and disposition, whether by verdict or settlement. Comparison will be made of urban and rural jurisdictions, contributory and comparative negligence forums, central and individual calendar courts, and numerous others. In addition to simple passage of time, patterns of disposition according to type of case will be studied and a comparison made of the patterns of automobile case disposition with the patterns of disposition in other kinds of cases.

The study has a double barreled value for the Center. It will enable it to cooperate with another government agency in a most important area of public interest and also to continue and extend a variety of comparative studies of vital importance to judicial administration in the federal system.

Emerson correctly said, "Every wall is a door."
Rather than looking for a way out we must seek
the error of our way.

COURT CLERKS CONFERENCE (Continued from p.1)

The responses are in and the Clerks have voiced their approval, as have their Chief Judges. The first group will meet in Washington April 11-12 and will be made up of the clerks of 18 metropolitan areas. It was felt desirable to have the clerks of these jurisdictions meet separately since they have problems unique to the big cities and unrelated to the smaller or rural areas.

To be discussed are subjects such as the use of computers, the Criminal Justice Act, the publication of a Clerk's Manual etc., all beamed at bringing about greater efficiency in the Office of the Clerk and possible savings of time and money.

METROPOLITAN COURTS MEET; SEEK SOLUTION TO CONGESTION

The first Metropolitan Court Conference of the Chief Judges and Executive Committees of eight Districts was held at the Center on January 10-11, 1969. There were 24 judges in attendance from the Districts, including 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 (see picture this page for those in attendance.). These Districts account for 43% of the existing backlog of the civil cases in the entire district court system and 34% of the annual filings.

The Conference discussed the most recurring problems facing the metropolitan district courts represented. Aside from personnel shortages, these included the causes and cures for civil and criminal backlogs and state prisoner habeas corpus applications, comparisons between master and individual calendaring, engaged counsel, appointment of counsel for indigents with a comparison between public defender offices and private counsel assignment, the handling of motions, jury selection and instruction, overall court management and the

use of statistics and systems analysis techniques, for improvement. Special attention was given to the acceleration of dockets and the adoption of modern techniques and practices used effectively in some districts, such as the Omnibus Hearing procedure in criminal cases. Consideration was also given to the new Federal Magistrates Act.

One of the highlights of the Conference was an evening presentation by the Mitre Corporation. It was a computer analysis of filings and dispositions in the eight districts. The computer found that the Eastern District of Louisiana led all of those represented in cases filed per judge as well as in terminations. The Northern District of Illinois was first in the lowest median time from filing to disposition, with Louisiana second. The analysis was projected on large display cards prepared by Mitre. This company, as reported in *The Third Branch*, is making a comparative study of the dockets of the Eastern District of Pennsylvania and the Northern District of Illinois, the former being a master calendar operation and the latter an individual calendar.

(Continued on p. 4)



First row, left to right (all Chief Judges): Thomas J. Clary, George B. Harris, William J. Campbell, Wallace S. Gourley, E. Gordon West, Sidney Sugarman, Thurmond Clarke.

Second row, left to right: Circuit Judge Edward A. Tamm; District Judges Alfonso J. Zirpoli, John J. Sirica, Albert Lee Stephens, Jr., A. Andrew Hauk, Bernard M. Decker, John L. Miller, Howard F. Corcoran, George L. Hart, Jr., Herbert P. Sorg, William B. Jones; and Ernest C. Friesen, Jr., Director, Administrative Office, U.S. Courts.

Third row, left to right: Mr. Justice Tom C. Clark; District Judges Hubert L. Will, Lloyd F. MacMahon, Robert F. Peckham, John P. Fullam, Harold R. Tyler, Jr., A. Leon Higginbotham, Jr., Alvin B. Rubin; Circuit Judge Robert A. Ainsworth, Jr.; District Judge Manuel L. Real; and Joseph F. Spaniol, Jr., Chief, Div. of Procedural Studies and Statistics, Administrative Office, U.S. Courts.

Criminal Law Committee Meets

The Criminal Law Committee of the Judicial Conference met in the Conference Room on January 27, 1969. Judge George Edwards of the Court of Appeals for the Sixth Circuit, the Chairman of the Committee, requested Mr. Justice Clark to appear before the group and discuss criminal law problems.

The Committee expressed particular interest in the national program of the Center to extend the use of the omnibus hearing in criminal cases. This discovery device was first suggested by the committee who worked on the American Bar Association Pretrial Report on the Minimum Standards for Criminal Justice. Judge James Carter, then Chief Judge of the District Court for the Southern District of California, agreed to try it out. The omnibus hearing is now used in other California Districts, the Western District of Missouri (Kansas City) and the Western District of Texas (San Antonio). In all of these districts it was found most helpful in the disposition of criminal cases. Chief Judge Adrian Spears of the W. Dist. of Texas, a member of the Committee, attested to his use of the omnibus hearing saying that it was the most effective method of speeding up dispositions with which he was acquainted.

The Omnibus Hearing is held either by the Commissioner at the time of the setting of bail and appointment of counsel or at arraignment by the Judge. The attorneys for the government and the defense are furnished a list of questions to which they must seek the answers and report back to the court at a given date. The U.S. Attorney reveals his case to the defense attorney and the latter stipulates uncontested facts, the nature of his defense, alibi, etc. The large number of pleas is attributed to the fact that defendants, being informed of the strong case against them in the U.S. Attorney's file, plead guilty in the hopes of getting a lighter sentence.

The Center is going to put on a demonstration of the Omnibus Hearing at the coming conferences of District Judges.

SUGGESTION BOX

Chief Judge Thos. J. Clary, Eastern Dist. Penna., gives us this highly successful technique he uses: To make pertinent information on cases readily available to counsel they have installed a telephone recording system. By dialing a publicized number, information on all cases listed for trial that day is immediately available. The recording gives the style of the case, its number, the name of the judge trying the case, counsel involved, the courtroom and its number, and the estimated time it will consume. The recording is revised twice each day so that the time estimate can be revised or definite timetable announced, the new cases scheduled, and other information. **BENEFITS:** Saves counsel a trip to the courthouse, saves time in the Clerk's office; saves money.

METROPOLITAN COURTS (Continued from p. 3)

The Conference was conducted on an Arden House basis with the first session being an assembly of all of the judges. Mr. Joe Spaniol, Chief of the Division of Procedural Studies and Statistics, gave a short resume of the statistical standing of a district, after which the Chief Judge of the district explained the method followed in processing cases. The second session followed in the afternoon with those attending being divided into two groups, one being chaired by Judge Edward Tamm of the Court of Appeals for the District of Columbia, and the other by Judge Robert Ainsworth of the Fifth Circuit. These groups took up the various problems facing each of the districts and through a Socratic method developed the various ways in which the districts represented handled them. Suggestions as to improved methods of handling were developed through the discussions. The third session was an evening one at which the Mitre Corporation presentation was made to the judges in assembly. The fourth session continued the two separate group discussions while the final session was another general assembly of all of the judges attending. At this last session Director Ernest Friesen, of the Administrative Office, who had acted as Reporter for Judge Tamm's group, and Mr. Joe Spaniol, who was Reporter for Judge Ainsworth's group, made a report or consensus on each of the group discussions. This was followed by general discussion of the judges, after which the Conference adjourned.

The success of the Conference has been acclaimed by all of the judges attending. Typical comments are: "I know that I personally benefited greatly from the interesting and informative discussions and I feel sure that everyone came away with some new ideas and a better understanding of the many problems confronting multijudge courts." * * * "I learned a great deal from listening to the problems of the other courts. Much of what I heard will be put to good use here in my District." * * * "The Conference was most informative and invaluable to me. Soon I will submit a report to my Judges and make recommendations for changes . . ."

Circuit Court Clerks To Meet At Center

The Director of the Federal Judicial Center has announced plans to meet with all the Clerks and Deputy Clerks of the United States Courts of Appeals. The Conference, scheduled for February 28 and March 1st will be held in the Dolley Madison House and was set up after contacts were made with all the Circuit Court Clerks and the Chief Judges of the Circuits about the value of such a gathering. The unanimous affirmative response resulted in setting the dates for a two-day conference.

Replying to the Director's inquiry as to what should be placed on the agenda, they have requested such things as: the new Federal Rules of Appellate Procedure, security in the handling of unannounced opinions, *pro se* litigation, office management, handling of personnel, etc.

PRELIMINARY REPORT ON JUDGES' QUESTIONNAIRE

In December the Federal Judicial Center distributed a questionnaire to all the judges of the federal courts regarding future programs of the Center. The judges were asked to express an opinion on the importance of each of the areas and to express the extent of their personal interest in the program. A five point scale was provided to indicate the degree of importance and interest. A preliminary summary of the responses received thus far (about 50% of those circulated) has been prepared. This summary is available to any reader of *The Third Branch* who desire it. The final report will be available as soon as the rate of response has been substantially increased.

The twelve categories listed in the questionnaire are as follows:

- I. Special Problems of the Metropolitan Courts
- II. Use of Computers in Judicial Administration
- III. Training of Court Clerks
- IV. Seminar for Newly Appointed Circuit or District Judges
- V. A Judges' Guide or Deskbook on Judicial Administration
- VI. Training of Magistrates
- VII. Research on Problems of Post Conviction Proceedings
- VIII. Geographical Organization of the Courts
- IX. Seminars for Experienced Judges
- X. Training of Referees in Bankruptcy
- XI. Training of Probation Workers
- XII. Research on Alternative Procedures for Automobile Accident Claims

By assigning a point value for the priority accorded the twelve items we can come up with the collective judgment of the judiciary on the urgency of these problems. Five points were assigned for each first priority vote, four for a second priority and so on. Based on cumulative points the twelve areas were assigned priorities of importance as follows:

Question	Points	Priority	Question	Points	Priority
I	773	3	VII	810	2
II	657	9	VIII	509	12
III	652	10	IX	671	8
IV	840	1	X	607	11
V	684	5	XI	689	4
VI	677	7	XII	683	6

On the interest scale, and using the same point value assignments for positions on the scale, the judges expressed a collective personal interest in the programs as follows:

Question	Points	Priority	Question	Points	Priority
I	637	5	VII	738	1
II	621	6	VIII	476	11
III	603	7	IX	662	3
IV	668	2	X	467	12
V	653	4	XI	557	10
VI	593	9	XII	597	8

Judges Bench Book Committee Meets

The Judges Bench Book Committee of the Center composed of Judge Hubert Will of the Northern District of Illinois, Judge Robert E. Maxwell of the Northern District of West Virginia and Judge John F. Dooling, Jr., of the Eastern District of New York met at the offices of the Institute of Judicial Administration in New York City on January 23, 1969. Mr. Justice Clark met with the Committee.

Professor Delmar Karlen, who is Executive Director of the Bench Book Project and Director of the Institute, had arranged a detailed program for the consideration of the Committee. After a full day of discussion, the Committee decided to limit the Bench Book to forms having to do with proceedings held in open court, such as instructions to grand juries, pre-trial selection of juries, sentencing, etc. The selection of this material from the voluminous forms forwarded to the Director by cooperating judges has now been completed and the Committee will at its next session appraise this material. It is hoped that the Bench Book will be published within 90 days. Present plans are to circulate it in loose leaf form with the Center maintaining it up-to-date.

At a later date the Committee will decide whether to publish other forms, such as pattern jury instructions, etc.

HABEAS CORPUS

Probably the most serious strain on the relations between state and federal judges results from the intervention of federal judges in state criminal procedures through *habeas corpus* and other extraordinary writs. The state judges are understandably sensitive to the intervention. Federal judges, on the other hand, have an inescapable duty to examine the constitutionality of procedures of criminal law.

Not the least of the problems for the federal courts is the immense amount of work for federal judges in some districts where state penal facilities are located. Ten districts account for more than four percent of all prisoner petitions filed.

This subject came in for considerable attention at the first meeting of the Federal Judicial Center's Advisory Committee on State-Federal Relations. The experience reflected in that discussion led to the formulation of a hypothesis that refusal by federal judges to intervene is in direct proportion to the adequacy of post conviction procedures in the several states. At the suggestion of the committee, the Center has undertaken to develop the information to test the hypothesis and to demonstrate the correlation. Students at the College of Law at William and Mary, under the direction of Professor William Swindler, will gather and analyze the post conviction procedures of all the states, both legislation and court rule. They will then construct a scale against which to measure the adequacy of the procedures.

It is hoped that this information will provide the Committee on State-Federal Relations and other groups with the necessary evidence and support to bring about improvements in state procedures, where needed, and to curb unwarranted intervention by federal judges wherever it might occur.

F.J.C. Calendar

Feb. 28–Mar. 1, 1969	Conference for Clerks and Deputy Clerks, United States Courts of Appeals Washington, D.C.
March 15, 1949	Conference of Chief Judges of United States Courts of Appeals Washington, D.C.
March 21–22, 1969	Conference on Criminal Calendars: Four U.S. District Courts having jurisdiction along the Mexican border: Arizona, Southern District of California, Southern District of Texas, Western District of Texas; and, the Eastern District of Louisiana. Houston, Texas.
April 11–12, 1969	Conference, United States District Court Clerks, 18 Metropolitan Areas Washington, D.C.
April 18–19, 1969	Conference on Criminal Calendars: Six U.S. District Courts: The District of Columbia, Southern District of New York, Eastern District of Michigan, New Jersey, Southern District of Florida, and the Northern District of Illinois. Washington, D.C.
Apr. 19, 1969	Meeting of Board of Directors of Federal Judicial Center Washington, D.C.

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“And by that destiny to perform an act
Whereof what’s past is prologue, what to come
In yours and my discharge.”
Shakespeare, *The Tempest*, Act II, Scene I, 11. 260-262.

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CRIMINAL CALENDAR CONFERENCE WASHINGTON

Over 50 conferees of Judges, U. S. Attorneys and their Assistants, Probation Officers, Department of Justice personnel, and the Chief of the Narcotic Addict Rehabilitation Branch of the National Institute of Mental Health, met with Federal Judicial Center and Administrative Office staff April 18-19 for one of the Center's most significant conferences to date. Six districts were included: The District of Columbia, Florida (Southern), Illinois (Northern), Michigan (Eastern), New Jersey and New York (Southern). These districts were selected because of the large number of criminal cases filed-in these courts.

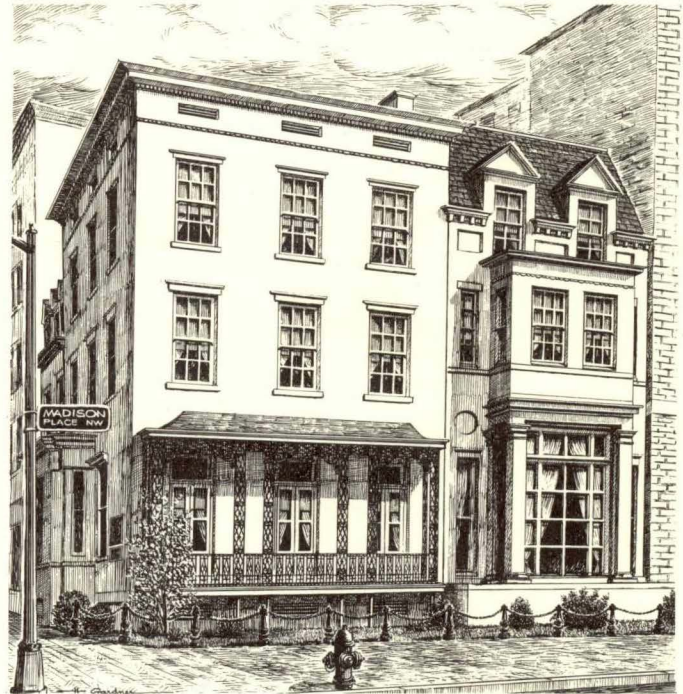
Consultations with the judges and other participants prior to the meeting dates revealed their mutual concern for a number of problems common to their criminal calendars, and that they were eager to seek some solutions.

Lead-off speaker was Assistant Attorney General Will Wilson who heads the Department of Justice's Criminal Division, followed by Harlington Wood of the Department's Executive Office for U. S. Attorneys. Both discussed "Prosecutive Policy - Formation and Implementation". District Judge Lloyd F. MacMahon (Southern District New York) spoke on delays in the criminal process, and the morning session ended with a talk on Plea Bargaining by Chief Judge Harold H. Greene of the Court of General Sessions in the District of Columbia.

The first day's afternoon session was devoted to several subjects. Judge James M. Carter of the Ninth Circuit spoke on the omnibus criminal hearing and how it can be effectively used to speed up the disposition of criminal cases. Joseph Spaniol of the Administrative Office explained the implementation of the Magistrates Act. Chief Judge Charles B. Fulton of the District Court, Miami, whose district has a large concentration of narcotics cases spoke on the subject of narcotics enforcement and introduced four speakers who talked on the Narcotic Addict Rehabilitation Act. From the Department of Justice were Gerald Farkas of the Bureau of Prisons, William E. Ryan and Philip Wilens, both of the Narcotic & Dangerous Drug Section, and Henry Redkey, Chief of the Narcotic Addict & Rehabilitation Branch of the National Institute of Mental Health.

Saturday morning's speakers were District Judge Harold Tyler of New York (Southern District), who talked on state prisoner applications, and Chief Judge Ralph M. Freeman (Eastern District Michigan), who spoke on sentencing problems. The conference concluded with a lively exchange of information and questions by all participants.

(Continued on p. 3)



The Dolley Madison House

One of Washington's most historic buildings, this house was built in 1818 and purchased by President Madison in 1828. Following the death of the President in 1836 Mrs. Madison moved from their Virginia home to return to this house and the Washington life she so much loved. She died here in 1849. From 1851-1881 this was the home of Rear Adm. Charles Wilkes, USN and his family. In more recent years it was occupied by the Cosmos Club, and in 1940 was purchased by the United States Government. Refurbishing was completed in the fall of 1968, and it was formally dedicated as the headquarters of the Federal Judicial Center November 1, 1968, by Chief Justice Earl Warren.

Sketch by H. Gardner, courtesy publishers of Fed. Home Loan Bank Board's *Journal*.

Bail Study

The Bail Reform Act of 1966 represented a major change in the implementation of the constitutional guarantee of bail. The act was the result of long study and preparation, but public and judicial response to it has been varied. Various amendments have been proposed and are under consideration by Congress at the present time. Evaluations of the act are extremely difficult to make, however, because there is so little information available at present. Judges George C. Edwards and Simon Sobeloff suggested that the Federal Judicial Center could make an important contribution in this area by developing some information on experience with the act thus far.

(Continued on p. 4)

CHIEF JUDGES COURTS OF APPEALS MEET

An unprecedented full-day meeting of all eleven Chief Judges of the Circuit Courts of Appeals took place at the Center headquarters March 15th. A much shorter meeting brought all of them together in September of 1968, and it was then agreed that mutual interests and concerns could well be taken up at regularly scheduled meetings. It was decided that the logical time for these discussions would be either immediately before or after the meeting of the Judicial Conference of the United States.

Subjects placed on the agenda at the request of the judges included such things as uniform docketing of cases, appointment of counsel for indigents, delayed transcripts and opinion writing.

At the suggestion of the Clerks of the Courts of Appeals (who met at the Center February 28 - March 1), the judges discussed the potential value of having a national survey of all the C. A. Clerks' offices. It was the decision of the Chief Judges that there was much merit to having such a survey made; that the increased number of filings, with attendant problems, required that the most modern and efficient administration of the business of these offices be effectuated.

A lengthy discussion on the Federal Rules of Civil Procedure resulted in a resolution on suggested changes being adopted which was transmitted to all members of Judge Albert B. Maris' Committee on Rules of Practice and Procedure.

Chief Judge Brown of the Fifth Circuit explained the screening procedures adopted in his Circuit, and answered questions regarding its implementation. At the request of the Chiefs a written report on Fifth Circuit screening was later summarized and distributed from the Center to all other circuits.

Pertinent considerations in getting opinions released was the concern of all the judges and a full discussion was had on content, length, and time of filing. Unanimous concern for expediting the filing of opinions was voiced, particularly where one may be held up for inordinate periods of time pending the filing of a dissent. A motion was adopted designed to expedite these filings, and its effectiveness has already been manifested.

Writing to the Director following the meeting, Chief Judge Martin D. Van Oosterhout said, "Our meeting was both profitable and enjoyable and in my view good possibilities for improving the administration of justice can well flow from meetings of this kind.

The Chief Judges will next meet at the Center in September of this year.

**NEW TELEPHONE NUMBER FOR
THE FEDERAL JUDICIAL CENTER
AFTER MAY 19, 1969:**

EXecutive 3-1640

DISTRICT COURT CLERKS, DEPUTIES CONFER AT CENTER



And now it's official. The first officially sponsored conference of Court Clerks of United States District Courts was held at the Federal Judicial Center on April 10th and 11th. Thirty-three clerks attended the conference, representing all of the nineteen metropolitan courts.

Justice Clark opened the conference and following his welcoming remarks called on Dallam O'Brien, the Clerk of the District Court, New Orleans, to lead off the discussion with a resume of his management problems. A candid and free exchange of information among the clerks generally disclosed many mutual concerns relating to the business of their office, including such matters as volume of work, docketing of cases, personnel matters, and use of modern equipment.

Hugh Nugent, the Center's Director of Education, chaired the other general sessions of the conference pursuing an agenda formulated from suggestions submitted by the clerks themselves prior to the conference.

Maurice D. Geiger, Director of Innovation and Systems Development, explained some fundamental concepts of data processing, then discussed how the Center is applying these principles in the New Orleans Project. As announced earlier, the Center is attempting to computerize data processing in the Eastern District of Louisiana to the fullest extent feasible. Lewis Orgel, Clerk for the Eastern District of New York, spoke on the successful computerization of jury selection in his district.

Ernest C. Friesen, Director of the Administrative Office of United States Courts, discussed problems of allocating personnel and money on a fair and objective basis throughout the whole court system. The clerks obviously relished the opportunity to exchange ideas and information with the Director. They were particularly pleased when Mr. Friesen announced that he would soon create a section in the Administrative Office to handle the Clerks' affairs.

(Continued on p. 5)

MEXICAN BORDER CONFERENCE

"Attending the Mexican Border Conference in Houston was a worthwhile experience. . . ." "I was impressed with the free flow of ideas. . . ." This was the tenor of comments in the many letters received by the Federal Judicial Center following the March 21-22 event in Houston, Texas.

The first topic on the agenda, "Handling of Immigration Cases" was presented by Chief Judge Fred Kunzel of the Southern District of California, who was introduced by Chief Judge Ben C. Connally of the host District. The ensuing discussion culminated in a resolution by the Conference asking the Federal Judicial Center to study the criminal sanctions attaching to immigration violations, particularly the possible reduction of second offenses from felonies to misdemeanors within the jurisdiction of United States Magistrates. As a follow up the Center has requested those at the Conference to submit specific comments on the resolution.

Chief Judge Adrian Spears of the Western District of Texas then made a presentation on Omnibus Criminal Hearings. He brought with him from San Antonio some very persuasive witnesses to the success of the omnibus procedure in his district, AUSA Reese Harrison and criminal defense counsel Fred A. Semaan, James R. Gillespie and Anthony Nicholas. U.S.A. Ed Miller and AUSA Harry McCue of San Diego also participated in Judge Spears' panel.

The afternoon session was devoted to narcotics problems, first to enforcement problems and then to the Narcotic Addict Rehabilitation Act. Judges Reynaldo Garza of Brownsville, Texas, and Edward J. Boyle, Sr. of New Orleans. They were joined by Philip Wilens, Deputy Chief, Narcotic and Dangerous Drug Section, Criminal Division, and NARA Coordinator Gerald Farkas, Bureau of Prisons, both of the Department of Justice.

On Saturday most of the morning session was devoted to a discussion of "Federal Habeas Corpus Petitions by State Convicts" by Chief Judge William H. Becker, Western District of Missouri. Following Judge Becker's presentation, Justice Clark presided over an open discussion period.

CRIMINAL CONFERENCE *(Continued from p. 1)*

The consensus of the group was that the meeting was very helpful, and undoubtedly future plans will bring about similar conferences. Said participant Ben S. Meeker, Chief U.S. Probation Officer, Chicago: "In the past there have been few formal opportunities for judges, prosecutors and probation officers to meet together to discuss and learn about problems which are of great concern to the entire operation of the courts. Such conferences improve our perspectives. This one made me realize that many of the legal procedures and policies about which probation officers can provide little technical assistance, do affect our roles and need to become part of our general knowledge."

BOARD HOLDS ANOTHER QUARTERLY MEETING



Board members and Mr. Justice Clark photographed at April 19 meeting at the Center. L. to R. (seated): Chief Justice Warren, Judge Wm. McRae, Judge James Carter, Ernest C. Friesen, L. to R. (standing): Judge Wade McCree, Mr. Justice Clark, Judge Harold Tyler, Judge Edward Devitt.

The seven-man Board of the Center met at the Dolley Madison House April 19th and a full agenda kept them in session for the entire day. The Director and Staff of the Center reported on all current programs, which included the automobile accident litigation study, the jury utility report, the habeas corpus project, probation programs in Chicago, Los Angeles and South Carolina, and current plans to conduct surveys of both District Court Clerks' offices and those of the Clerks of the Courts of Appeals.

Also meeting at the Center on April 19th were the Judges from six metropolitan District Courts, concentrating on criminal cases. Two Board members, Circuit Judge James Carter and District Judge Harold Tyler, were on the program covering omnibus hearings and habeas corpus problems. The Board attended the sessions during the morning. Chief Justice Warren addressed the gathering on the importance of a speedy trial in criminal cases. He expressed his personal appreciation for the renewed interest the judges were evidencing in the disposition of criminal cases and predicted the dockets would soon be current if the judges followed the procedures suggested at the conference.

Of special significance to this Board meeting was the fact that it marked the last to be attended by the Chief Justice. He has announced his plans to retire at the close of the current Term of Court. The Chief Justice stated that while he had received many invitations for appearances after retirement that his only commitment was to the Center. He intended, he said, to assist in any way possible in its work.

Mr. Justice Clark was host at the luncheon honoring the Chief Justice, held in the judges private dining room in the contiguous Tayloe House, and attended by Board members and the Center staff.

COMMITTEE ON COURT REPORTERS APPOINTED

Growing concern for delayed transcripts has brought about the appointment of a special committee to study the problem. Months, and in some instances years, of delay in getting typed transcripts, especially in criminal cases, has caused critical disposition problems in nearly all metropolitan federal courts. Both the bench and the bar have for years stressed the importance of resolving this matter, but no practical solution has come about.

Chief Judge David Bazelon, of the United States Court of Appeals for the District of Columbia, is Chairman of the six-judge committee and has announced his intention to look into all phases of the reporter system in the federal courts, following which a report and recommendations will be made. Other members of the Bazelon committee are: Chief Judge Latham Castle of the Seventh Circuit, Chief Judge Richard Chambers of the Ninth Circuit, District Judge Edward Gignoux of Maine, District Judge William J. Jameson of Montana and District Judge Elmo Hunter of the Western District of Missouri.

Mr. Justice Clark went to Atlanta on May 1st for a meeting with Chief Judge Sidney O. Smith, Jr., Chief Judge of the Northern District of Georgia, District Judges Edenfield and Henderson, and Circuit Judge Griffin Bell on the transcript problem. The Center is organizing a project in Atlanta to experiment with the immediate transcription of stenotype notes by expert typists. Another project utilizing recording machines is being installed in Judge Albert Lee Stephens' courtroom in Los Angeles.

SUGGESTION BOX

Speaking of the crime wave, the most effective deterrent is a quick trial. Chief Judge William H. Becker, Western Dist. Mo. suggests the use of the omnibus hearing beginning at the first appearance of the defendant before the Commissioner to help with backlog in criminal cases and to assure speedy trial.

* * *

Chief Judge Joe J. Fisher of the E. Dist. Texas recommends selection of multiple juries all at same time. Keep the first jury for case up that day; dismiss others but have them report in by telephone twice a day. Saves everyone time; saves money.

NATIONAL ASSOCIATION OF U.S. COMMISSIONERS HOLD ANNUAL MEETING

For the past seven years the members of the National Association of United States Commissioners have annually met in April. This year's gathering was at Miami Beach, Florida, April 24-27. The President of the Association, Commissioner Max Schiffman of Brooklyn, reported another very satisfactory meeting with highly profitable discussions each day. All officers currently serving were re-elected for another year, these being: Commr. Max Schiffman, Brooklyn, President; Commr. Fritz H. Windhorst, New Orleans, First Vice President; Commr. Edward P. Swan, Miami, Second Vice President; Commr. Bestor F. Witter, Rock Island, Illinois, Treasurer; Commr. Frank J. Baskin, San Antonio, Texas, Secretary; and Commr. Hugo C. Songer, Evansville, Indiana, Corresponding & Recording Secretary.

THE MAGISTRATE'S ACT

Minor but emergency surgery prevented Mr. Justice Clark from attending. The Association was fortunate, however, to have the last moment assignment of Alice O'Donnell, Professional Assistant at the Federal Judicial Center, in the Justice's place. She spoke on the role of the Center in the Federal Court System. Ernest Friesen, Director of the Administrative Office, explained the Magistrate's Act outlining the five districts selected by the Judicial Conference of the United States to be used as "pilot" districts in the effectuation of the Act. These districts include The District of Columbia, the Southern District of California, the Eastern District of Virginia, and the Districts of New Jersey and Kansas. Both speakers emphasized the significant changes the Act brings about and stressed the importance of the additional responsibilities the Magistrates will assume on taking office, including the handling of motions, omnibus hearings, pretrial, acting as Masters, etc.

(Continued on p. 5)

COUNCIL OF JUDGES

The Council of Judges, which functions within the National Council on Crime and Delinquency, held its Seventeenth Annual Meeting at the Center May 7-10. Chairman of the meeting was Chief Judge Alfred P. Murrah of the 10th Circuit.

Mr. Justice Brennan addressed the group at a dinner at the Supreme Court on May 8th.

COMMISSIONERS (Continued from p. 4)

Quoting a message from Mr. Justice Clark, Director of the Center, Miss O'Donnell said: "The Act gives the District Courts a great opportunity. A knowledgeable, full time Magistrate will relieve a busy Judge of many hours work. He will be an Assistant Judge in every sense of the word. The training programs for the Magistrates which the Center is required to provide, will begin next Fall, possibly in October. They will be designed to fully prepare the Magistrates to handle all phases of their responsibilities."

MAGISTRATE PANEL PROGRAMS

Also announced at the meeting were plans developed by the Center to have a Magistrate's Panel discussion at each of the Circuit Conferences. The M. C. of the panel will be Justice Clark while a newly appointed Magistrate, a District Judge of the Circuit, either Director Friesen or Mr. Spaniol of the Administrative Office, Hugh Nugent, the Center's Director of Education, and a lawyer from the Circuit will serve on the panel itself. The following is a list of dates and places where the programs are to be held. Anyone desiring to attend should contact the Chief Judge of his Circuit. Expenses are not reimbursable.

District of Columbia

June 3, 1969, U.S. Courthouse, District of Columbia, 3:00 p.m. Executive Session

First Circuit

Portsmouth, New Hampshire, May 14, 1969. 10 a.m. to 12:10 p.m.

Second Circuit

June 19, 1969, 3 p.m. Manchester, Vermont

Third Circuit

Sept. 3, 1969, executive session; Sept. 5, 1969, 10:30 a.m., (not executive session). Atlantic City, N.J.

Fourth Circuit

June 26, 1969 (executive session), The Homestead, Hot Springs, Virginia. Public sessions may be set later.

Fifth Circuit

May 21, 1969, 9:30 a.m., Biloxi, Miss.

Sixth Circuit

June 27, 1969, Akron, Ohio. 1:30 to 2:30 p.m. Open. Executive session June 28, 1969, 9 a.m. to 11 a.m.

Seventh Circuit

May 7, 1969. 9:30 a.m. to 10:30 a.m., Room 2787 U. S. Courthouse, 219 So. Dearborn St., Chicago, Ill.

Eighth Circuit

June 17, 1969. Rock Lane Lodge, Branson, Missouri.

Ninth Circuit

July 17, 1969, Seattle, Washington. Open session. July 18, executive session.

Tenth Circuit

June 30, 1969. Jackson Lake Lodge, Grand Teton National Park, Wyoming. Executive session.

The New Orleans Project

As a result of the splendid cooperation we have received from the Court, the Clerk, the U.S. Attorney, and the U. S. Marshal, we are making substantial progress in our New Orleans Project. The purpose of this project is to design and implement a computer based information system which uses the Clerk's office as the focal point, but will serve the information requirements of everyone connected with the Court. We expect to have some modest capabilities in the areas of indexing and calendaring in existence by this summer and have a data terminal system operating in approximately 18 months.

The basic plan is to accomplish the conversion to the computer in increments. The first significant phase will be to establish a magnetic tape file which will be operated on a small scale government owned computer in the New Orleans area. This approach will have two advantages to the Clerk's office.

1. It will result in some worthwhile products during the early period of the project.
2. It will allow the employer to become gradually familiarized with a computer oriented operating environment.

Furthermore, such a program will allow for a high degree of flexibility in the systems development and provide for a "learn as we go" ability which should result in a more practical system and one that responds to the needs of the operating user.

The Federal Judicial Center is enthusiastic about this project and agrees with Chief Judge West when he stated "we believe that the Eastern District of Louisiana can become the model district for the Nation."

DISTRICT COURT CLERKS (Continued from p. 2)

The afternoon discussion was largely on such matters as passports, prisoner correspondence, and bankruptcy. Joe Spaniol, of the Administrative Office, explained the implementation of the Magistrates Act.

The conference closed on Saturday afternoon, and the Clerks were invited to contact the staff at the Federal Judicial Center for any assistance they might appropriately render their office, and Mr. Nugent especially asked for recommendations on how the Center could best serve them.

"People crushed by law, have no hopes but from power. If laws are their enemies, they will be enemies to law; and those who have much to hope and nothing to lose, will always be dangerous, more or less." Edmund Burke

F.J.C. CALENDAR

- May 17 Meeting of State-Federal Relations Advisory Committee. Washington, D.C. At the Center.
- May 19-23 Probation Training Course, Chicago, Illinois.
- May 20 Meeting of Advisory Committee on Continuing Education. Washington, D.C. At the Center
- May 25-28 Regional Conference Probation, Mid-Atlantic States. Nags Head, North Carolina.
- May 26 Meeting of Advisory Committee on Research. Washington, D.C. At the Center.

BAIL STUDY (Continued from p. 1)

In collaboration with the Administrative Office, the Center has selected five districts—Eastern Michigan (Detroit), Central California (Los Angeles), Nebraska (Omaha), Southern Florida (Miami), and Maryland (Baltimore)—in which to develop the information needed for an appraisal of the act. In each district data will be collected on the bail decisions, the choice of bail alternatives, conditions imposed, and violations of bail. In addition data will be collected on the crimes committed and on the persons charged with the crimes. This will enable us to develop a full picture of the process showing what uses are being made of the bail act and with what results.

A similar investigation is being made in the District of Columbia by personnel of the Justice Department. Every effort is being made to collect information that is compatible in content and form so that the results of both projects can be combined into a single report for the consideration of Congress.

CENTER PERSONNEL

Latest appointees to Center: Neil S. Robinson, Asst. to the Director of Education; Miss Kathleen Connors, Secretary. Summer Law Clerks: Alan Jay Chaset, Wm. P. Getty, Robert Krause, Alfred Kleindienst, Edmund Polubinski, Jr., Susan Reid, Michael J. Ryan, Susan D. Tichenor.

Many think of growth and accomplishment in terms of quantity—getting bigger. But, in truth, it depends on quality; quality of people, quality of purpose and quality of the end product.

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The Third Branch

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A Bulletin of the Federal Courts



Vol. 1, No. 4, July 1969

HON. WARREN E. BURGER TAKES OATH AS CHIEF JUSTICE OF U.S.

On June 23, 1969, in solemn and historical ceremonies, Warren Earl Burger took the oath as the 15th Chief Justice of the United States. The last session of the October, 1968 Term of the Court was attended by a packed courtroom, including President and Mrs. Nixon, government officials, judges, lawyers and friends of both Chief Justice Warren, for whom it was the last session, and Chief Justice Burger who was participating in his first. Mrs. Nixon sat in the area designated as "family pews," as did Mrs. Warren, Mrs. Burger and other members of the families of the Justices. The President, who made an unprecedented address at the session, watched as the oath was administered to his first nominee to the highest court. The President has consistently stated publicly that he considers the appointment of the Chief Justice the most important one he will make while in office. Speaking from the advocate's lectern in the courtroom, flanked by Attorney General John N. Mitchell and Secretary of State William P. Rogers, the President said he came not as President, but as a member of the Bar of the Supreme Court. He lauded the 52 years of public service of Chief Justice Warren, and said he stood for "fairness, integrity, and dignity." He went on to say that he has "helped the country on the path of continuity and change, which is so essential for our progress." Chief Justice Warren responded with comment on the Court's role, and said though the Court had always venerated the past, the focus must be on the future. "We serve no majority," he said, "and we serve no minority. We serve only the public interest as we see it, guided only by that Constitution and our own conscience."

Burger Takes Oath From Warren

Another precedent was set when Chief Justice Warren administered the combined Constitutional and judicial oath to his successor. Court historians know of no instance when a previous Chief Justice has done this. The new Chief Justice was first seated at the desk of the Clerk of the Court, and took his oath in robes at the center of the bench. Following this he left the bench at the rear of the courtroom with other members of the Court. The formalities of the occasion took less than 40 minutes. Following this the President, Chief

(Continued on p. 4.)



Chief Justice Warren, President Nixon, Chief Justice Burger, in front of Supreme Court immediately after oath ceremony

Federal Judicial Center, Administrative Office Start Systems Analysis of Courts

The Center and the Administrative Office have started a joint three-month management and systems survey of the federal courts, based on findings in five representative jurisdictions. Five Circuits and as many District Courts have been visited by specialists with the North American Rockwell Corporation, the Center's contractor. The first phase of the operation has been completed. The jurisdictions are:

U.S. Court of Appeals, Second Circuit
U.S. District Court, Southern District of New York

U.S. Court of Appeals, Fourth Circuit
U.S. District Court, Eastern District of Virginia

U.S. Court of Appeals, Fifth Circuit
U.S. District Court, Eastern District of Louisiana

(Continued on p. 5.)

FJC Contracts on Study Weighted Case Load Index in District Courts

By contract with the Graduate School of the U.S. Department of Agriculture, the Center has commenced a five-phase project for the development of a weighted case load standard. The results will be used to evaluate the work load of the District Judges, determine the necessity for inter-District Assignments and adjust case loads.

Specialists in this field, under the direction of Dr. John S. Holden, Director of the Graduate School at the Department of Agriculture, have already begun to analyze current records available. A representative group of judges will be requested to cooperate on this project in various ways, such as recording the time required to try each category of cases as well as that devoted to research and administrative duties. The period to be covered is estimated at 9 months. Following this the records will be carefully analyzed and there will be devised a weighted case load index which will be applied to the docket in each District Court to determine its weighted case load. Many benefits will be derived from an accurate standard.

Dr. Holden has planned a five-phase program: Phase 1 is on Development of Methodology, that is a definition of variables needed, such as trial time devoted to each category of cases as well as chambers time devoted both to cases and other duties, etc. Phase 2 is on Data Collection. This covers the factual information to be recorded on time sheets furnished the Judges and will include daily reporting of official time usage. Phase 3 will be on Systems Design and Analysis. This phase will bring about the development and analysis of this data. They will test correlations, develop parameters and compare data by districts, circuits, and states. Phase 4 is for Model Testing. The models developed would be tested, using input data for designated periods. These results would be compared with other information, such as the present weighted case load, for reasonableness and usefulness in determining court burdens. Refinements in the models will then be made to improve measurements derived, increase the accuracy if possible, update, and include new variables, if required. Retesting would then follow these refinements to evaluate their effectiveness. Phase 5 will be Conclusions and Recommendations. They will include the findings based upon the techniques and studies followed; the recommendations as to the use of the index and its practical operation upon the case load in the courts.

Phase 1 is already completed and the data collection from the judges will be from September 1, 1969, to April, 1970. The entire project should be completed in nine months.

"Miserable is the condition of individuals, dangerous is the condition of the state, if there is no certain law, or, which is the same thing, no certain administration of law, to protect individuals or to guard the state."

Lord Mansfield – Rex v. Shipley (1784)

Archives to do Work Measurement Study on Both Circuit and District Court Staffs

At the suggestion of the Administrative Office, the Federal Judicial Center entered into a work measurement study of the Clerks offices with the National Archives specialists division. Archives has made similar studies for various federal agencies.

At the present time the federal judiciary does not have an objective basis for determining clerical manpower requirements particularly in the clerks' offices in the District and Circuit Courts. Both claim a perennial shortage of clerical staff. To make a more reasonable and practical allocation of personnel, there must be developed a system of standards for measuring and quantifying court personnel needs and for translating it specifically into manpower terms. To this end, the study will embrace a review of the number of employees attached to the courts, what they are doing, and what tasks they could assume which they are not presently doing. If the study shows a shortage of personnel in some instances, recommendations for additional clerical help will be made, and where they might be placed for the most effective results. Job descriptions which have not been required of all positions heretofore will be drafted as a follow-through for future guides on work measurements.

The study will be under the supervision of Bill Eldridge for the Center and Norbert Halloran for the Administrative Office. It will evaluate the work load of each employee, consolidate operations, grade accomplishment and, where necessary, reorganize work loads. Necessarily this will mean comparing the work load, types of cases handled and the appropriate assignment of clerks to handle them. An evaluation will be made of the work involved in handling all types of cases both civil and criminal with a view to developing a formula to identify case loads and established personnel factors. At least three basic determinations will evolve: Whether the work function is necessary; whether, if necessary, it can be done in a simpler or less costly way; and whether the procedural methods involved might be standardized to the benefit of all the federal courts.

WILLIAM ELDRIDGE, RESEARCH DIRECTOR, HOSPITALIZED

In early June Bill Eldridge, the Center's Director of Research, was hospitalized because of sudden illness. Brain surgery followed after extensive tests at Suburban Hospital. The doctors in attendance announce that no complications have developed and that the operation was a complete success.

The Center staff have been in daily contact with Mrs. Eldridge, who asked that we convey to their friends their gratitude for the many messages and expressions of concern. Mr. Eldridge is currently recuperating at his Maryland residence. In a recent telephone conversation with Mr. Justice Clark, Bill talked "very chipper" and is expected back at work in a few days.

FJC, TREASURY, JUSTICE CONSULT ON CUSTOMS COURT BILL

A bill jointly prepared by the Center, the Justice and Treasury Departments, aimed at improving judicial machinery in the Customs Court, has been introduced in the 91st Congress by Senators Hruska and Tydings, the language being identical to H.R. 12691 introduced in the House by Chairman Celler of the Judiciary Committee. The bill also includes procedures to update administrative processes in the Bureau of Customs.

The Customs Court has been no exception in the judiciary when it is related to backlog. In fiscal year 1963 the court received about 35,000 new cases; by fiscal year 1968 it was receiving over 108,000 cases. Despite the fact that the court has increased its rate of termination of cases from an annual average of 32,000 during the 1963-66 period to more than 43,000 in fiscal year 1968, the growing accumulation of pending cases is alarming. By December of 1968 the number of pending cases had risen to 431,348; by March of 1969 the number had mounted to 439,278. Believed to be a major contributor to this heavy caseload are existing laws which require the Customs Court and the Bureau of Customs to follow procedures long ago outmoded and wasteful. The inception of some of these procedures dates back as far as 1890.

In introducing the bill, Senator Hruska listed several defects in presently required statutory procedures, some of which are: When a single entry of merchandise presents both appraisal and classification questions, neither the Bureau of Customs nor the court can review both issues in a single proceeding. The Bureau of Customs lacks authority to correct administratively errors of appraisal. The Bureau of Customs must automatically refer appeals for reappraisal and denials of protests to the Customs Court for disposition without regard to whether or not the importer intends to litigate. "Protest cases", which constitute almost 60% of all customs, must be decided by a three-judge division of the court, whereas appraisal cases can be decided by a single judge. Single judges trying classification cases in ports outside of New York have no power to decide, but are required to return the hearing record to New York for decision by a three-judge division of the court, which division may not even include the judge who heard the case. These and many other administrative and procedural changes should permit the court and the bureau to more effectively cope with the heavy case load now existing.

The bill as finally presented is the result of consultations called by Mr. Justice Clark early in December, 1968, and continuing for several months. In addition to representatives of the Justice and Treasury Departments members of the Customs Court, the Court of Customs and Patent Appeals, the Federal Judicial Center, State and Commerce Departments, Tariff Commission, and importing organizations and trade associations also participated.

(Continued on p. 4.)

FJC GETS NEW CHAIRMAN OF BOARD

By virtue of his office as Chief Justice of the United States Warren Burger becomes the Center's second Chairman of the Board. The Board, in addition to the Chief Justice, consists of five federal judges (two Circuit and three District), and the Director of the Administrative Office of the United States Courts.

The new Chairman brings to the Board a wealth of experience in the profession both at the bar and on the bench. On his record are years of private practice, a stint in the Eisenhower administration as Assistant Attorney General in charge of the Civil Division of the Department of Justice, and 13 years on the U.S. Court of Appeals for the District of Columbia. Said Time Magazine, "he is neither dogmatic on the bench nor strongly oriented ideologically. He is in every way a professional jurist and a man of unquestioned probity . . . He is in many ways a judge's judge. . ."

In his first public appearance since his nomination to the Supreme Court bench, Chief Justice Burger made special reference to the Federal Judicial Center. It was at the Federal Bar Association's annual award luncheon at which the Federal Lawyer of the Year was announced. Chief Justice Burger is Chairman of the Committee which annually names the awardee. Lauding Mr. Justice Clark, in whose name this award is given, the Chief Justice said the Justice had himself been a truly outstanding federal lawyer and judge; an example and inspiration to others in Government service. "But," he went on to say, he felt "Justice Clark would himself agree that his greatest contribution, even beyond his service on the Supreme Court, was his service as Director of the Federal Judicial Center." Because of this, he said, "the work being done at the Center by the Director and his small staff has already had an enormous impact on the federal judiciary."

The Chief Justice stated further that he was looking forward to working closely with the Director and the Board toward improving judicial administration.

Speaking at the Tenth Circuit Judicial Conference in Jackson, Wyoming, this month, the Chief Justice made special reference to delay in the courts, particularly in criminal cases, and said: "Part of the answer is that the legal profession must condemn as unprofessional conduct every tactic, whether by the prosecution or the defense counsel, in which delay is used as a tactical weapon for selfish purposes. I must also add that when we find a judge who contributes to delay, he too must be called to account. Our system, our freedoms, our protection and concern for the accused and the oppressed are justly admired all over the world. We are looked to as an example, but we must set a better example than we have in some areas of the law. Justice is not a one-way street. It is a noble concept of civilized people, but justice means fair, honest and speedy determination of issues for both sides of the issue, whether it be a civil or a criminal case."

CENTER SPONSORS STUDY OF TASKS OF C.A. LAW CLERKS

The Center has contracted with James C. Quarles new Director of Florida's Legal Institute to undertake a research project which will involve a study of the use of law clerks in the United States Courts of Appeals. The study will be made principally in the Fifth Circuit, where Mr. Quarles will work with Judges of that circuit, as well as the law clerks.

The study was prompted by discussions had at the March, 1969, meeting of the Chief Judges of the Courts of Appeals, who questioned whether the clerks were being used as effectively as possible. The Dean will make a definitive appraisal of how the talents of the law clerks is presently applied to the work of the courts and whether changes might be warranted which would bring about a more efficient application of their time and efforts.

BURGER TAKES OATH *(Continued from p. 1)*

Justice Burger and Chief Justice Warren posed for the press outside the building. They retired shortly afterwards to the West Conference Room to attend a reception in honor of the occasion, also attended by the President and Mrs. Nixon.

Court Ends October Term, 1968

The occasion also marked the end of the Court Term. Prior to the oath ceremonies two of the Justices, Justice Thurgood Marshall and Justice Potter Stewart, announced opinions of the Court. The Court adjourned on this date and announced it would next meet on October 6, 1969 to open the October Term, 1969.

SUGGESTION BOX

In another step to save time and increase efficiency, Edward Wadsworth, CA-5 Clerk, and his Deputy, Gilbert Ganuchau, have installed a new automatic dialing system.

Frequently called numbers are recorded on magnetic tapes, and then recorded on a Dial-in-Unit, which stores them indefinitely or until corrected. Visible indexes are then ready for immediate use. A number can be instantly called by a one-button operation. Employees using them realize a saving of hours of time which would otherwise be involved in locating the numbers, faster service and greater accuracy.

It is estimated that the units will save at least two hours per day for each employee.

This system was discussed at the Conference for CA Clerks held at the Center last March. The Center sponsors an experimental period to ascertain the savings possible in clerical time and efficiency.

Judge McGowan Proposes Judicial Administration Changes

The American legal system, beset by problems of unprecedented weight and variety, faces an era of fundamental change and experimentation, predicts Judge Carl McGowan of the United States Court of Appeals for the District of Columbia. In a lecture sponsored by the Julius Rosenthal Foundation at Northwestern University Law School, Judge McGowan underlined the greater need for efficiency in the modern courtroom.

Judge McGowan pointed to the ever-increasing pressure on court dockets. The legal problems posed by the population's economic, educational, cultural, ethnic, social and geographic diversity are compounded by its increasing size and wealth. Not only are there more people, and thus more opportunities for litigation, but also a rising proportion of people can now afford what Judge McGowan calls "the expensive luxury of litigation." Furthermore, the Supreme Court has decreed that no indigent criminal defendants shall be without counsel; with rising crime rates and broader concepts of constitutional rights, the volume of criminal cases has increased steadily. The poor and ignorant are making increased use of legal opportunities in civil cases, also, largely as a result of the allocation of federal anti-poverty funds for legal aid organizations. Judge McGowan points to an increased tendency to use the power of the courts to cut through knotty social and political problems.

Given the problem, Judge McGowan sees the need for a rapid solution. The need for greater efficiency will impel courts to replace many traditional methods with new systems based on modern management techniques and computer science. Judge McGowan believes that computer and professional court administrators will increase the efficiency of the bench. More fundamental, social problems, historically viewed as legal questions, may, in the future, be removed from courts entirely. With regard to judicial appointments and tenure, Judge McGowan urges that vacancies be filled quickly to keep the bench at full strength and that retirement at a reasonable age should be compulsory.

Judge Carl McGowan, of the United States Court of Appeals for the District of Columbia is also a member of the JFC's Advisory Committee on Research.

CUSTOMS COURT BILL *(Continued from p. 3)*

The Judiciary Committee of the Senate is expected to hold hearings on the bill very soon, and in the House, Subcommittee No. 3 of the Judiciary Committee currently has it pending for consideration. Because this litigation is urgently needed it is hoped early action may be taken by both houses.

U.S. Court of Appeals, Seventh Circuit
U.S. District Court, Northern District of Illinois

U.S. Court of Appeals, Ninth Circuit
U.S. District Court, Northern District of California

These areas have been selected because of particular factors identified with each. The Second Circuit has one of the largest caseloads, and the Southern District of New York, with 24 Judges, is the largest court in the country. Sitting in a metropolitan area, this court handles a great disparity of cases, including all types of criminal cases as well as admiralty, antitrust, automobile accident cases, etc. on the civil side. The Fourth Circuit, on the other hand, has one of the smaller Circuit courts but within this circuit, in the Eastern District of Virginia, the District Court has the largest state prisoner caseload—one that is growing faster than any other district. The Fifth Circuit was selected because it is the largest and because of this it has problems peculiar to this circuit. The Seventh Circuit, also large, is generally current with its docket, both in the Circuit and the District Courts, and methods adopted by the judges in this jurisdiction will be closely scrutinized. The Ninth Circuit was selected both because of geographical considerations and size. In the Northern District of California, there exists a heavy caseload and, again, a disparity of cases which makes it representative of a metropolitan court.

The growing amount of litigation in the federal courts has been one of the main factors in bringing about this study. The objectives of this management survey are to identify and analyze areas where improvements or alternative methods will bring about significant improvements in the courts management and administration, and appropriate solutions for existing problems will be recommended. In other areas, in-depth research may be required for special problems. Consideration will also be given for providing plans to implement recommended improvements.

The results of this survey should bring manifold benefits to the federal judiciary. It will, for example, enable some courts to adopt, even if only experimentally, practices found sound in other courts. It will provide a framework for the implementation of standard practices which could possibly be helpful to the total system. Innovations tried out successfully could come in this category of standard practices. More and more the call for greater efficiency is answered by pointing to the adoption of automated techniques and technological aids. Additionally, the relationships and interfaces between the Circuit Court, the District Court, the Clerk's Office, the United States Marshal and the United States Attorney become more significant each day. The Bar and its membership cannot be excluded from this as part of an entire picture. The total represents a group which can and should be functioning as effectively as is possible with the vast resources now available to the judges. Making use of them can bring about an optimum of efficiency.

PROGRAM FOR PRISON LEGAL AID STARTED BY FJC

The Center, has made arrangements with Professors Freed and Winter of the Yale Law School, and Eugene N. Barkin of the Bureau of Prisons, which has resulted in the inauguration of a legal aid program at the Federal Correctional Institution at Danbury, Connecticut. The Center has entered into a contract with Yale Law School and will sponsor the program. The plan provides for Yale to set up a law office at the institution, staffed by practicing attorneys who will work with law students in providing legal services to prisoners who would not otherwise be able to afford counsel. Professor Winter, who will supervise the office and the law students, will establish regular hours at the prison, during which time any prisoner interested may come in for consultation and assistance. Following this, the case will be turned over to a lawyer who, with the aid of the law students, will proceed to determine whether the case has merit, and then to take whatever action appears appropriate at that time. The office will start functioning at the prison next October after the Fall Term starts at Yale. The present plan is to make this a two-year project, with the Center retaining the option to make changes believed necessary after a review of periodic reports it receives from Yale.

While attending the Ninth Circuit Conference in July, the Director consulted with members of the Washington State Bar, Charles Burdell and Dewitt Williams, Dean Rieke of Washington Law School and Warden Meier, to establish a legal aid program at McNeill Island Prison. The participants were most enthusiastic and the program will be underway in the Fall. The Prison Bureau requested the aid of the Center in establishing the project.

In the State of New York, Tom McCoy, the State Administrator for the Judicial Conference of the State of New York, has already started a move to inaugurate a legal aid program in his state, through cooperation with their prison officials and the deans of at least three law schools. A meeting for this purpose is scheduled for early fall to establish a pilot program at Cornell Law School.

The program is not unknown to the federal prison service. The Bureau of Prisons has cooperated with legal aid groups in the past and similar projects are currently functioning in Atlanta, Leavenworth and Terre Haute. There is every indication the programs will be expanded; the hope is that it will eventually be established in all federal penitentiaries.

The program brings about more than just legal aid to the prisoner indigents. Experienced trial lawyers donating their

(Continued on p. 6)

"The court is aptly resembled to a clock which hath within it many wheels and many motions; all as well the lesser as the greater must move; but after their proper manner, place and motion; if the motion of the lesser be hindered, it will hinder the motion of the greater."
Lord Coke

MAGISTRATE PANELS HELD AT CIRCUIT CONFERENCES

The Administrative Office and the Center 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 act creating these new positions. The Administrative Office will study the work of the Magistrates through five pilot jurisdictions where Magistrates have already been appointed. These are: The District of Columbia, the Southern District of California, the Eastern District of Virginia, and the Districts of New Jersey and Kansas. Under the Act the Center is directed to put on training sessions for the Magistrates.

All of the Circuits have thus far held these programs, except the First. It will be held in September.

A typical format called for participation by a practicing attorney, a United States Commissioner, a District Judge, Ernest Friesen and Joseph Spaniol from the Administrative Office, and Mr. Justice Clark and Hugh Nugent from the Center. District Judges Hoffman, Arthur Stanley, Mackenzie, Doyle and Zirpoli took part in several of the meetings.

Through discussion and open questions from the floor, disclosure was made on how the Magistrates would function, and how their new duties would affect the work of the bar. So that those in attendance could have the advantage of hearing first-hand from a Magistrate, one was brought in from his district to explain his work. The Magistrate, in each instance, told of how he could relieve the Judges of work heretofore handled strictly by the court, and how he could facilitate the problems of the lawyers. The numerous questions from both judges and lawyers indicated a real sense of the proportions of the new responsibilities of these federal officers, and an eagerness to cooperate. Too, the discussions have been helpful in that they have disclosed to the Administrative Office what questions the judges and the magistrates have as to how many procedures the Magistrates can assume. Many of the United States Commissioners attended to participate and observe, some travelling a great distance to do this, thus indicating a keen interest on their part. Magistrates Keller and Woolsey and Commissioners Gilbert Swink, Chas. K. Buck and Walter Reseberg spoke at several sessions.

FJC TEAM CONCENTRATES AUTO ACCIDENT STUDY

The summer months have brought a concentration of work on the automobile accident reparations project which the Center is working on as a part of the over-all Department of Transportation survey throughout the country.

Representative counties, rural and urban, in some eleven states have already been visited by special teams, demographic and court filing information assembled, and reports written. It is anticipated at least two more states will be included. Following this definitive study charts and reports will be drafted, statistics prepared, and all information carefully evaluated for its apparent significance. The ultimate report will point out recent trends of automobile accident litigation and its general impact on both federal and state courts. The Center's completion date is set for January of 1970.

Recognized as the number one problem of the courts, especially as it affects congestion, the study should prove

helpful in pointing out the areas special techniques must be applied if improvement in this type of litigation is to be realized.

LEGAL AID IN PRISONS *(Continued from p. 5)*

time to this work will be able to quickly determine which petitions are frivolous and which are not. In addition, it affords the law students an opportunity to observe first hand practicing attorneys working on real cases, and to assist them in this work. Where cases call for court appearances the students will be able to assist in following through with the litigation. In addition, the prisoners who have been the beneficiaries of this legal service have come to have a greater respect for law. The Warden and other prison officials say, also, that the very knowledge that this service is available to them, and the fact that they can consult with counsel, has a highly therapeutic effect.

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Vol. 1, No. 5, September 1969

Chief Justice Burger Proposes Reforms in Judicial Administration

Speaking at several functions during the annual meeting of the American Bar Association in Dallas, Chief Justice Burger gave both judges and lawyers much to think about, as he reminded them of their obligation to strive continually to improve their profession.

At the breakfast meeting of the Institute of Judicial Administration on August 12th the Chief Justice spoke of the problems faced by overworked judges whose plight could be bettered by furnishing the courts with a corps of trained administrators or managers. He compared the situation to that of the country's hospitals, which have long been run by executives trained specifically for this work. In the federal system there are no trained court administrators and in the state courts there are "but a handful." Stressing the importance and the gravity of this phase of judicial administration the Chief Justice said: "We must literally create a corps of court administrators or court managers and we must do so at once. . . . The need is now, not at some distant future date." The Chief Justice has proposed that ten or more well advised people, knowledgeable in various aspects of judicial administration, be asked to plan a program to train court managers or administrators. The planning group would not be confined to lawyers and judges but would be called from all disciplines, such as experts in public administration, business administration, and court managers of established standing. Currently there is legislation pending to create, in the federal system, positions of Court Administrators in District Courts of six or more judges, and Court Executives in the Circuits. Pointing further to the need for emphasis on this training, and calling for action in 60 days, the Chief Justice also said, "We should indeed pass the legislation, but we must also begin to take steps to supply the demand. If that legislation were passed at once we could not begin to fill the positions. We cannot legislate Court Administrators any more than we can legislate astronauts."

Additional proposals of Chief Justice Burger were to review and modernize the Vanderbilt Minimum Standards of Judicial Administration, include clinical work in law school curriculum and implement the minimum standards of criminal justice adopted by the ABA.

(Continued on p. 5)



Chief Justice Burger, speaking at the ABA meeting in Dallas last month.

Five Districts Using Individual Calendar

On Sept. 15th, the District Court for the District of Columbia, in an unprecedented session, announced that the criminal calendar would be entirely converted from the master to the individual calendar system. This makes the fifth District Court to make a like or similar change-over since the creation of the Federal Judicial Center. The other districts are: New York, Southern and Eastern; Pennsylvania, Eastern; and California, Northern. Four of these districts will be using the individual calendar on October 1st and the fifth by January 1, 1970. Chief Judge John W. Lord, Jr., of the Eastern District of Pennsylvania, reports that they are currently drafting their rules of procedure, using as guides those already drafted in other districts and sent him by the Director.

(Continued on p. 5)

Systems Analysis Report in

As reported in the last issue of *The Third Branch*, the Autonetics Division of North American Rockwell Corporation contracted with the Center and the Administrative Office to conduct a management and systems survey of the federal courts. Five representative jurisdictions were selected upon which to base their findings, covering both the Circuit and District Courts in each jurisdiction. These were: CA-2 and Southern District of New York; CA-4 and Eastern District of Virginia; CA-5 and Eastern District of Louisiana; CA-7 and Northern District of Illinois; and CA-9 and the Northern District of California.

The report has now been submitted by Mr. Joseph Ebersole who supervised the survey, and arrangements are being made with Mr. Ebersole to discuss all phases of the report with Directors Clark and Friesen. It is anticipated the survey will be of great assistance to the judges and their supporting personnel, all the offices connected with the courts, such as the Marshal and the U.S. Attorney, as well as members of the Bar, and that it will bring about a greater degree of efficiency in the handling of the business of the courts.

Magistrate Panels at Circuit Conferences Concluded

The Third Circuit Conference held at Atlantic City September 3-5, included a panel discussion on Magistrates, and marked the end of a series sponsored by the Center and the Administrative Office for each of the Circuit Conferences. The first was as early as May.

To date 8 full time and 21 part time Magistrates have been appointed on a pilot study basis. They are located in the Southern District of California, the District of Columbia, Kansas, New Jersey, and the Eastern District of Virginia. The judges, the lawyers and the commissioners have therefore been eager to learn just how they are functioning. For this purpose, Judges, representative Magistrates and personnel of both the Administrative Office and the Center have been present at all of the Circuits to participate and answer questions. The latest appraisal comes from Circuit Judge Collins J. Seitz: "I want to echo my oral thanks to you for your efforts in leading the team of panelists which discussed the Magistrates Act. Until that presentation, I doubt whether very many of us were fully aware of the full sweep of the Act." And from the Bar there is a letter from Donald A. Robinson of Newark, New Jersey, who says: "You have my sincere congratulations on a magnificent presentation to us at the Third Circuit Judicial Conference. I was tremendously impressed with the work that the Center is doing but even more delighted with your Honor's enthusiasm and guidance that is being contributed in these vital days."

Federal Judicial Center Sponsors Presentence Study

The Center is presently having an examination made of the practice followed in certain federal jurisdictions of commencing presentence investigations prior to a determination of guilt. Advanced as a possible means for expediting such reports and reducing the disposition time of criminal cases by 3 - 4 weeks, the potentialities of the practice are under intensive study.

While one-third of the federal districts have adopted the practice of conducting early presentence investigations, this procedure is principally followed in the Southeastern jurisdictions. As a representative sample of the courts that employ this system, the twelve federal districts in North Carolina, South Carolina, Georgia, Alabama and Kentucky were selected for analysis. After the completion of basic research during June, field work in the twelve districts was commenced in July. Visits to the chosen jurisdictions involved interviews with federal judges and probation officers concerning the mechanics of the system, the reasons for implementation and the value of the practice to that particular court. A study was also made of relevant statistics and reports in each district to better ascertain whether this system could be instrumental in developing quicker expedition as well as greater court efficiency. In order to fully appraise the other side of the coin a judicial district was surveyed that follows the conventional practice of conducting presentence investigation after a determination of guilt. Because of the lack of information as to when individual probation officers commence their investigation and to further aid in this study, a questionnaire was sent to the remaining federal probation districts with questions designed to elicit information describing their practice of conducting presentence investigations with special emphasis placed upon when they start the investigation and the length of time required to prepare such a report.

The data collected for the Center by Georgetown Law School students is presently being compiled, tabulated and analyzed. The final report on the study will be completed in October.

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There are no inherently
protracted cases, only cases
which are unnecessarily
protracted by inefficient
procedures and management.

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FJC's Prison Legal Assistance Programs Extended

The Director of the Center, after consultations with Dean Roy L. Steinheimer, Jr., at Washington & Lee School of Law, and with Eugene N. Barkin, General Counsel of the U.S. Bureau of Prisons, has agreed to sponsor a legal assistance program at the Federal Reformatory for Women at Alderson, West Virginia. Dean Steinheimer will be in charge of the program and will supervise the students' visits to the reformatory. The suggestion for this program came from General Charles L. Decker, Director of the National Defender Project of the National Legal Aid and Defender Association.

Experience at other institutions has shown that the benefits from such programs are many. The students are able to expand their basic knowledge in a practical way through the development of skills in interviewing a "live" subject themselves and in observing experienced lawyers at work. The program also affords clearer insight into social problems which face lawyers most every day. Through this early exposure to these experiences in the actual application of the law they are better prepared to enter the profession upon graduation. The legal clinics at Atlanta, Lewisburg, Springfield and Leavenworth have resulted in a decrease in the large number of *pro se* applications coming from those prisons. Moreover, the quality of those filed has materially been bettered, both of which are of considerable aid in the reduction of the already crowded dockets. The wardens at the prisons are most enthusiastic over the program, pointing out it has much therapeutic value for the prisoners. In addition, being conducted by the local bar in conjunction with the law school, the project brings the lawyers in close relation with the students and also keeps both advised as to prison conditions.

While in California at the annual meeting of the State Bar earlier this month, Mr. Justice Clark also conferred with Dean Dorothy W. Nelson, Dean of the School of Law at the University of Southern California, and the Dean is presently looking into the possibilities of starting a prison assistance program at USC.

These programs will function very much like those the Center is sponsoring at the Yale Law School and the University of Washington, which were reported in the July, 1969 issue of *The Third Branch*. Dean Steinheimer, Dean Nelson and Dean Rieke all report that the students are enthusiastic about this project and already at Washington & Lee they are looking to a continuance of this prison service during the summer months.

F.J.C. TELEPHONE NUMBER WHENEVER THE SUPREME COURT SWITCHBOARD IS CLOSED:

EXECUTIVE 3-1661

FJC Board to Meet November 3

The seven members of the Center's Board will hold another quarterly meeting in Washington on November 3d, following the Judicial Conference sessions. This will be the first Board meeting to be attended by Chief Justice Burger who, as Chairman of the Board, will preside.

Of major importance on the agenda is the selection of a Director for the Center. Mr. Justice Clark, who has served in this office as its first and only Director to date, was retired by statute on September 23, 1969, when he became 70 years of age.

Also listed for approval are final plans for seminars for Judges, Clerks of Court, Referees, Probation Officers and all supporting personnel.

New programs and studies to be conducted by the Center will be considered and the usual reports by the Director and staff members will be made on the current status of Center business.

First Draft of Bench Book Distributed

In early September the first draft of the District Judges' Bench Book was completed, and has now been distributed by the Center to 35 District Judges, 10 of whom are newly appointed. The Director, in transmitting the Book requested that the Judges examine it closely, use it on the bench, and after a 30-day test period give the Center suggestions for changes or additions. This should improve the quality of the Book. Following this, a final print will be distributed to all District Judges for their use on the bench.

The release of the Book culminates over a year's work by the District Judge Bench Book Committee composed of Judge Hubert Will of Chicago, Judge James F. Dooling, Jr. of Brooklyn, and Judge Robert E. Maxwell of Elkins, West Virginia. The compilation was implemented by the Institute of Judicial Administration under the direction of Professor Delmar Karlen and the overall supervision was under the personal attention of Mr. Justice Clark. It contains what the committee considered to be the most valuable information a Judge could have for ready reference on the bench. Most of the material included was gathered from suggestions sent to the Center by District Judges.



Mr. Justice Clark, Director of the Federal Judicial Center, photographed after testifying before the House of Representatives Select Committee on Crime, Sept. 18, 1969. During his testimony Justice Clark made several references to the Center and explained its current role in the field of judicial administration.

Director A.O. Surveys District for Magistrates Report

The Director of the Administrative Office, Ernest Friesen, and Joseph Spaniol, Chief of the Division of Procedural Studies and Statistics, have just concluded a series of visits to jurisdictions throughout the country to survey the implementation of the Magistrates Act. The Act provides that a report to the Judicial Conference of the United States be made within one year—October 17, 1969. The Act also calls for the Director to include recommendations in the report, such as the number of Magistrates to be appointed in each of the districts. To this end, Mr. Friesen and Mr. Spaniol have interviewed approximately 50 Chief Judges, the Magistrates already appointed, and many practicing attorneys in the districts to get their views on the number of magistrates which should ultimately be appointed.

To date 8 full time and 21 part time magistrates have been appointed. As for the prospective appointments, the Chief Judges have submitted to the Administrative Office only 25 names of persons who meet the requirements of the statute.

Mr. Friesen, in consultation with the Director of the Center, stated that another difficulty is the problem of analyzing the work load of the courts and relating it proportionately to the number of magistrates actually needed. The statute provides that the judges must first determine what functions they will assign to the magistrates in their jurisdiction and then decide, on the basis of this, what portion of the Magistrate's time will be taken up in performing each of these functions.

The tentative report by the Administrative Office will make recommendations to the Judicial Conference of the United States as to numbers, locations, and salaries of magistrates. Before the Conference takes any action on these recommendations, the district courts and the judicial councils of the circuits will have an opportunity to consider and to comment upon the recommendations of the survey. The Administrative Office staff is continuing its conferences with the individual district courts, where such consultations appear to be necessary.

NATIONAL CONFERENCE ON CORRECTIONAL PROBLEMS

At an ABA luncheon on August 11th, the Chief Justice called attention to problems connected with crime and criminal cases, and in the area of correction. He praised the Minimum Standards for Criminal Justice, in the formulation of which he was a leader, but said this is not enough and correction problems are with us in such magnitude that they are alarming and acute. He concluded with a proposal that the American Bar Association "take the leadership of a comprehensive and profound examination into our penal system, from beginning to end—parole, probation, the prisons and related institutions, their staffs, their programs, their educational and vocational training programs, the standards and procedures for release."

LEGAL EDUCATION

The lawyers and judges were not alone given a challenge and a mandate for reforms. On August 10th at the Prayer Breakfast the Chief Justice called on the law schools of this country to do more. He emphasized this with these words: "The modern law school is not fulfilling its basic duty to provide society with people-oriented and problem-oriented counselors and advocates to meet the broad social needs of our changing world." Weak points in most law schools, he declared, were in the determination that the case method of study was the best and only teaching technique. Praising the good lawyers the schools are turning out, the Chief Justice said this is not enough, however; that the graduates come into the profession with a vast store of knowledge on legal rules and opinions of the courts, but no training to deal with facts or people—"the stuff of which cases are made." He compared the situation to that of the doctors and said that should the medical students only do autopsies for five years and have one course on how to examine and diagnose a live patient they would be very poor doctors.

F.J.C. CALENDAR

Sept. 25	Meeting of the Board of Editors of the Multi-District Litigation Manual. At the Center, Washington, D.C.
Oct. 31-Nov. 1	Judicial Conference of the United States. At the Supreme Court, Washington, D.C.
Nov. 3	Meeting of the Federal Judicial Center Board. At the Center, Washington, D.C.
Oct. or Nov. -- (Date to be announced.)	Meeting of Circuit Chief Judges. At the Center, Washington, D.C.

Chief Judge Haynsworth Nominated for Supreme Court

Clement F. Haynsworth, Jr., Chief Judge of the Court of Appeals for the Fourth Circuit, was nominated by President Nixon on August 18, 1969, to fill the current vacancy on the Supreme Court of the United States.

A native of Greenville, South Carolina, and a 12-year veteran on the Court of Appeals, Judge Haynsworth has a vast background of experience in private practice and on the bench.

Judge Haynsworth is a fifth generation member of a distinguished Southern family. His great, great grandfather began the practice of law in South Carolina in 1813, and the University from which the Judge graduated in 1933—Furman—was named for his grandfather. He received his law degree from Harvard in 1936. Upon graduation he entered into private practice in Greenville. President Eisenhower nominated him for the Circuit Court bench in 1957.

Judge Haynsworth has been a frequent visitor to the Center both to confer with staff and to attend meetings.

CALENDAR (Continued from p. 1)

An unusual situation has been experienced in the Southern District of New York. Just four of the judges of this district are using the individual calendar, on a test basis. An equal number of cases were recently transferred to the judges—slightly less than 500 each—and they were also assigned one-sixth of all new filings. Docket calls were scheduled, following which contacts by the Clerk of the Court were made with counsel associated with the cases. On the criminal side, the number of cases assigned have been reduced to a quarter of what they were. It is anticipated that by October 1st the civil cases will be reduced in excess of 40% of what they were.

AUTOMATION OF JUROR NAME FILES

During June the Southern District of New York began using computerized services for jury name selection and recordkeeping. Twenty-five thousand questionnaires were addressed by the computer and then mechanically stuffed into window envelopes for mailing. This means that jury paperwork has now been substantially mechanized in three major metropolitan courts: Brooklyn, Manhattan, and D.C. By Fall the task of addressing summons and juror pay vouchers in these three courts will also be done on the computer, using a new form construction that joins these two documents.

A plan for extending jury clerical mechanization into several additional courts during F.Y. 1970, drawing upon the help of GSA's regional data processing services, has been approved by the Administrative Office. Northern California is now being automated and Illinois (Northern), New Jersey, two Districts in Texas and additional ones in California are among the courts on the drawing board.

SUGGESTION BOX

Several newspapers in the larger cities have adopted the practice of publishing all sentences imposed by the District Courts. Chief Judge Curran, in the District of Columbia, reports there is reason to believe it serves as a deterrent to possible offenders. It also keeps the public aware of another phase of their court's work.

* * *

In some Circuit Courts of Appeals, and possibly in the District Courts, Deputy Clerks are obliged to take files out to record current data. In one circuit alone, each Deputy spent one hour daily searching for files other deputies had removed. A simple, time-saving method used by another circuit to eliminate this problem: Use large colored "out slips," with the name of the employee holding the file on the slip with a different color for each employee. Result: A quick glance at the file drawer shows the file is out and who has it.

WEIGHTED CASE LOAD FORMULA TO BE REVISED

In 1960, Will Shafroth, former Deputy Director of the Administrative Office of the U.S. Courts, developed a weighted case load formula which has to this date been used by the Administrative Office. The formula has long been out of date and because of increased criticism the Administrative Office and the Center have concluded that a new formula, more closely related to present filings and present operations, must be devised.

In June the Center contracted with the Department of Agriculture's Graduate School to study the formula and to recommend a new one. After study and consultations with related officials, including the Judicial Conference Statistics Committee, a time utilization chart has been devised and distributed to all District Judges. After a 90 day test period the form reports will be analyzed and form the basis of the new weighted case load formula. The form includes time spent on and off the bench, the type of case worked on, time

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THE FEDERAL JUDICIAL CENTER
DOLLEY MADISON HOUSE
1520 H STREET NW.
WASHINGTON, D.C. 20005

OFFICIAL BUSINESS

STATE-FEDERAL RELATIONS ADVISORY COMMITTEE HOLDS ANOTHER MEETING

At the May meeting of the State-Federal Relations committee, held in Washington, the members decided to hold their September session in Dallas since the majority were to be in attendance at the annual gathering of the American Bar Association. All of the members save one were present.

Chief Justice Frank R. Kenison, Chairman of the group, later announced that it was one of the most productive yet. Chief Justice Kingsley Taft of Ohio proposed that federal judges be invited to attend sessions of state judicial conferences where matters of mutual interest to state and federal judges were considered. Chief Justice Oscar Knutson, of Minnesota, now Chairman of the Conference of Chief Justices, suggested that less populated states have regional programs for both state and federal judges. The Center staff is now circulating the state Chief Justices on the proposals, and if they approve, joint programs on subjects of mutual interest will be suggested. Some of the most pressing ones are those involving state prisoner - federal habeas corpus petitions and state post conviction remedies, engaged counsel, unified jury selection systems, release of prisoners for trial purposes, and joint use of computers and data banks.

devoted to motions, pretrial conferences and hearings, court administration, housekeeping matters, etc. Aware of the growing amount of time consumed in seminars, institutes, bar association programs, etc. the form provides a place where this activity may be included.

The Judicial Conference Statistics Committee in recommending that the Judges conduct the time study hailed the project as most important since it will formulate a weighted case load that will be fair to every judge and at the same time afford the Judicial Conference more accurate statistics on which to base appropriation requests and the need for increased judgeships.

CENTER PERSONNEL - New appointment: Philip X. Murray, Legal Assistant. Part time law clerks during current academic year: Alan Chaset, Robert Krause, Mike Ryan.

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A Bulletin of the Federal Courts



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Circuit Chief Judges Meet at Center

Following their plan to meet periodically, and preferably in conjunction with the meetings of the Judicial Conference, the Circuit Chief Judges gathered at the Federal Judicial Center on October 30th. A full day's discussion took up such subjects as: Implementation of the management and systems study based on five circuits surveyed; uniform docketing of cases; printing of records; delayed transcripts; libraries; use of law clerks; and the current work measurement study being conducted.

Proposed Changes in Fourth Circuit Rules

Of great interest to all the Chief Judges were the proposed changes in the local rules of the Fourth Circuit, designed to simplify and expedite the handling and disposition of cases. The proposals were submitted to the Center by Judge Albert V. Bryan at the request of the Fourth Circuit Judges, for study and recommendations.

Briefly, the rules proposed would provide that the District Judge file with the Clerk of CA-4 within seven days from the time he is notified that an appeal has been filed, specified papers which will be of material assistance to the Circuit. For the most part they consist of a concise narrative of pertinent facts at issue and a one-page list of citations and authorities relied upon by parties to the case. The appellant would be required to file, within the same period of time, a short statement of the issues presented—merely a one-page list of points made against the order from which the appeal was taken; no argument.

A further proposal deals with transcript and states that unless otherwise required or voluntarily supplied by the parties, no transcript need be submitted before the appeal may be docketed; and, that the court may hear the appeal argument without this transcript, but defer decision on the case pending receipt of transcript, if such has been requested.

Another rule expedites delivery of the record from the District Clerk to the C.A. Clerk, who in turn delivers it to a

Continued on page 2.

THE DIRECTOR AND STAFF

WISH YOU

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AND A

PROSPEROUS NEW YEAR

Chief Justice Burger Meets with Center Board

The Board of the Center held a quarterly meeting in Washington on November 3, 1969, and Chief Justice Burger presided for the first time in his capacity as Chairman of the Board. In his opening remarks to the Board, the Chief Justice said he had, since the inception of the Center, been aware of its importance to the federal judiciary, and that he was daily amazed at the impact this small organization has already made. He commended Mr. Justice Clark for the splendid contribution he had made as the first Director of the Center and said he felt everyone owed the Justice a debt of gratitude for the fine course he had set for its future.

The Chief Justice outlined the areas he felt should have top priorities for research and education and particularly urged that the Center concentrate on in-depth studies of probation, jury selection, the court reporting system, and a study of the structure of the Circuits. With the judiciary already overburdened with heavy case loads, the Chief Justice said he felt it was the Center's mission to discover and develop solutions for existing problems in the courts. He was particularly pleased, he said, to know of plans to provide educational programs not only for the federal judges but for their supporting personnel as well. Singled out for special emphasis was a project the Chief Justice has spoken on before; that is,

tions have been received from the Judges. Judge Eugene A.

and the staff of the Center reported on activities within their

Project Manager for Court Survey Joins FJC Staff

Mr. Joseph L. Ebersole has been appointed Director of Innovation and Systems Development at the Federal Judicial Center. In this capacity he will be responsible for planning and guiding the implementation of systems projects. Mr. Ebersole received his law degree from the University of Southern California Law Center and is a member of the State Bar of California. Prior to attending law school he spent four years in graduate studies in psychology. He has had 14 years experience in management, administration and systems design in private industry. Some of his responsibilities during these years include: management of multi-functional organizations; organizational studies and administrative auditing; and, development of computer applications for administrative systems, educational and technical information retrieval, and management information programs. Two of these applications involved development of national information networks. During the Winter and Spring of 1969, he was engaged in studies of design alternatives for computer "on-line" judicial management systems for court supporting operations. His most recent work prior to joining the Center was to serve as Project Manager for the NARISCO management and systems survey of five U.S. District Courts and five U.S. Courts of Appeals, performed for the Federal Judicial Center. His activities at the Center will include detailed planning and design of projects to follow through on those recommendations of the survey which relate to systems development and innovative practices

CIRCUIT CHIEF—Continued from page 1.

three-judge panel. This panel reviews it to ascertain, among other things, whether transcript is needed and advises the Chief Judge of the Circuit regarding this. This rule also prescribes the time for filing and includes a direction for the use of simultaneous briefs if deemed appropriate to the expedition of the case.

Briefs are the subject of an additional rule which does away with the requirement that briefs be printed, stating that unless otherwise ordered by the court, the typewritten (or comparable) copy is acceptable. Additionally, the fourth proposal declares that unless otherwise ordered the Appendices to the briefs may be filed without any part of the testimony.

The Center has not made a recommendation on the proposals, but if adopted the savings in cost and expense appears obvious. Transcripts and briefs cause the greatest delays in the courts and many feel their need is vastly exaggerated. Said the late Judge John J. Parker in 1950: "As every lawyer of experience knows, there is no sense in printing the entire record. Nobody reads it or ought to read it. After a case has been threshed out in the trial court, the facts are pretty well established; and the matters in which the appellate court is interested are either questions of law or questions of fact which have little to do with the weighing of one piece of evidence against another."

Use of Individual Calendar Shows Results

D.C. Court Reports Success

After the individual calendar system had been in existence little more than a month, District of Columbia Chief Judge Curran reports immediate results. In a recent letter to the Center, he stated, "The worth of the calendar call is best demonstrated by noting that a total of 281 cases [of 1482 called] were immediately disposed of, either by way of dismissal or by way of pleas of guilty." Chief Judge Curran went on to note that trial time is being shortened in many cases through new pretrial procedures held before the Judge responsible for the case. He expects the system will reduce not only the time element of a case but also the inconvenience to witnesses and attorneys. Although this is only a preliminary report Chief Judge Curran hopes that the new system's worth will be more evident as time goes on.

New York Report

Judge Milton Pollack of the Southern District of New York, one of five District Judges testing the individual calendar system reported recently to the Director that out of the 57 cases on his criminal docket only 14 appeared triable, and after calling each of these and with "a little intelligent disclosure from the government," nine pleas were secured. He also found similar success with the civil docket. In closing he said he was "very enthusiastic that this will illustrate the unreality of the supposed large backlog of cases in the Southern District." Judge Harold Tyler [Board member] who sits on the same court, reports similar success.

Interest in the individual calendar has been increasing and numerous inquiries have been received at the Center, not only from the federal judges but from state judges and judges in Canada.

Attorney Information Sought in DOT Study

As part of the overall study for the Department of Transportation of the effect of personal injury litigation on the courts, the Center has distributed a questionnaire to a random number of attorneys over an eleven-state area to seek more definite information as to the total time and expense this type case is costing. In the letter to the attorneys, Mr. Justice Clark requested their cooperation in order that an authentic and conclusive survey could be accomplished.

The questionnaire itself seeks information concerning the type insurance coverage the client had (whether plaintiff or defendant), how the particular attorney has been retained, how case was terminated, size of verdict, and size of fee. The information received is treated confidentially and the response by the attorneys has been good.

Seminar for District Judges to be Held at Center

The ninth seminar for newly appointed District Court Judges will be held at the Center headquarters January 23-31, 1970.

Following the last seminar, which was held at the Center in October of 1968, a questionnaire was mailed to all the participating judges which sought information as to their evaluation of the subjects selected, the time spent on each, and the general format of the program. The information which was received has been valuable in preparing for the 1970 seminar. Some of the subjects listed for discussion are: Calendar Control, Court Management, Proceedings Before Trial, Trials - Civil and Criminal (jury and nonjury); Bail and Commitment; Magistrates; Multidistrict Litigation; Post Conviction Remedies; Sentencing; Ethics and Community Relations. At least two new topics will be added which have not been discussed previously: District Court - Circuit Court Relationship, and the handling of difficult cases (contempt of court, etc.) Another change will be presentations on "electives" which only some of the judges have requested. These will probably include admiralty, patent-copyright and antitrust law.

As in the past federal judges of longer tenure on the bench will come in to serve as "faculty." This will include Chief Judge Alfred P. Murrah of the Tenth Circuit who has had charge of these seminars in the past.

Two Seminars for Circuit Judges to be Held in February

For the first time judges of United States Courts of Appeals will participate in a seminar designed especially for them. To permit all recently appointed Circuit judges to join the seminar discussions, two sessions with the same format will be held, one February 19-21 and the other February 26-28.

Prior to setting up a program all participants were contacted and given an opportunity to suggest topics which they felt would bring about the most meaningful discussion. The program will include such subjects as: Opinion Writing (including dissents), Use of Law Clerks; Functions of Clerk's Office; Appointment of Counsel; Supervising Appeals; Preparation for Hearing; Presiding (Handling of Argument, limitation, etc.); Selection of Panels; Screening; Motions; and Circuit Council.

As with the seminar for the District Judges, with one or two exceptions, federal Circuit judges of longer tenure on the bench will come in for presentations on given topics.

+ Bill Eldridge, Director of Research has again been taken seriously ill. He is presently at the Georgetown University Hospital where he underwent surgery. Mrs. Eldridge reports the doctors are pleased with his progress and that they expect him to be released to recuperate at his residence within a week.

State-Federal

As reported in the last issue of THE THIRD BRANCH, the Director of the Center contacted all the state Chief Justices to inquire whether they would be interested in meeting with the federal judges to discuss matters of mutual concern, and whether they thought it would be beneficial. Chief Justice Taft and Chief Justice Knutson (Chairman of the Conference of Chief Justices) had proposed at the last State-Federal Relations Advisory Committee meeting that federal judges be invited to meetings of the state judges or that regional meetings be planned where feasible which would be attended by both state and federal judges.

The response has been highly favorable and an overwhelming majority feel it would be mutually beneficial. High on the list of suggested topics for discussion to determine solutions is the concern over habeas corpus cases filed in both state and federal courts.

After consultations between Chief Justice Kenison (Chairman of the State-Federal Relations Committee) and the Director, plans are going forward to have a pilot regional meeting in the immediate future.

A recent development in the area of habeas corpus came about in California where Chief Justice Traynor of the Supreme Court of California has instituted a procedure which adds case citations to their orders. This procedure should prove very helpful to the state and federal courts as well as counsel. Mr. Justice Louis H. Burke, who sits on the same Court, is also a member of the Center's State-Federal Relations Committee.

The first draft of "State Post Conviction Remedies and a Uniform Rule of Federal Habeas Corpus", a study done for the Center by William & Mary Law Review under the direction of Prof. William F. Swindler of the Marshall-Wythe School of Law, has been completed. The draft is designed to provide to the Center a progress report on what has been collected to date in the way of data on the subject. This report will be reviewed at the Center and by the members of the State-Federal Relations Advisory Committee. Although much remains to be done before a final report is made, the first draft does provide a chronological examination of the problem, statistical references and case studies taken from selected states. There is every reason to believe that the draft represents a substantial step forward in an area where research was vitally needed.

Upon receipt of comment from the Center and the members of the State-Federal Relations Committee, Draft No. 2 will be written, probably by March of 1970. Included will be a proposed Uniform Rule of Federal Habeas Corpus.

"The law is the last result of human wisdom acting upon human experience for the benefit of the public." . . . Samuel Johnson



Hugh Nugent, Director of Education at the Center, shown here with participants of the Indian Probation Conference, which was the second Probation Conference at Custer, South Dakota. From left to right: Mr. Nugent; Governor Abel Sanchez, San Ildefonso Pueblo; Dr. Helen Marie Redbird, Oregon College of Education; and Mr. William F. Meredith, Bureau of Indian Affairs.

Center Enters Probation Training

The Federal Judicial Center has this fall entered more fully into the training of federal probation officers, co-sponsoring two probation conferences in one week at Sylvan Lake Lodge, Custer, South Dakota, and two more at Bridgeport, Texas, and Phoenix, Arizona. While the Center had funded an earlier probation meeting at Nags Head, North Carolina, in May, the Custer meetings were the first in which the Center staff participated in organizing and planning.

The first Custer meeting, held in September and co-sponsored by the Center and the Administrative Office, was the Central States Area In-Service Training Institute for officers from the seven states in the northern sector of this region. Attending the institute were 25 federal probation officers and 12 guests from the Bureau of Prisons.

The heart of the training program was a program in probation decision-making and management led by Alvin Cohn of the National Council on Crime and Delinquency. The program laid heavy stress on the importance of building trust and commitment in the probationer by dealing with him openly and candidly. On the basis of responses to questionnaires and cases distributed in advance of the meeting, Mr. Cohn was able to give the people in attendance feedback on the degree of their own openness, both as a group and as individuals.

A virtually identical program was run in late October in Bridgeport, Texas, for some 45 probation officers from the four southern states of the Central Region.

The second Custer conference dealt with problems involved in correcting Indian offenders. The Bureau of Indian Affairs co-sponsored the Conference with the Center. The program embraced Probation Officers, Bureau of Prisons and Board of Parole personnel, Law and Order Officers from the Bureau of Indian Affairs, and Indian judges and tribal council officials.

Co-chairman Hugh Nugent of the Center opened by explaining the purpose of the Indian Probation Conference—to increase understanding of the problems of the Indian offender and to increase interagency cooperation. Following this co-chairman William Meredith of the Bureau of Indian Affairs introduced a discussion of “The Problems of the Cultural Clash.” The evening program included Judge Betty Laverdure of the Turtle Mountain Agency leading a discussion on “Cultural Conflicts in the Administration of Criminal Justice.” The conference spent most of the second day in workshops devoted to problems of “Communication,” “Motivation,” and “Alcoholism.” The last morning of this special meeting had three excellent presentations on “Employment Opportunities for Indians.”

On November 5-7, a second conference on the Indian offender was held in Phoenix, Arizona, this one focusing on the Indians of the Southwest. The conference followed the same format as the Custer conference.

Weighted Case Load Project in Full Swing

Time utilization charts have now been distributed to all District Court Judges and the returns coming in are being studied at the Center and by the Graduate School of the Department of Agriculture. The Graduate School contracted with the Center to study the old formula which evolved in 1960, evaluate the returns made by the District Judges over a 90-day period, and devise a new and more realistic formula.

The information on the forms includes time spent in the trial of cases, time spent in chambers on opinion writing, orders and administrative matters, motions handled, the type of cases (antitrust, admiralty, personal injury, etc.) and other pertinent information necessary to the study. It also includes time spent on Judicial Conference committee work, bar association or other professionally-related activities.

The response by the District Judges has been gratifying and if 90% participation can be realized a very meaningful weighted case load index will result. It will undoubtedly prove very helpful to the Judicial Conference and to the Administrative Office generally since it will serve as the basis for requesting appropriations based on increased work loads and the attendant necessity for supporting personnel to handle the work, as well as increased judgeships.

Judge's Bench Book Distributed

A distribution of the Judge's Bench Book has now been made from the Center to all Circuit and District Judges. In September the first draft was tested by 35 District Judges, who submitted to the Center their recommendations for changes and additions. These were reviewed by the Bench Book Committee and in late October the reedited version was mailed from the Center. At the request of the Embassy of Australia a copy was sent to Sir Garfield Barwick, Chief Justice of the High Court of Australia. Sir Garfield had expressed an interest in the Book, as well as other Center projects, when he conferred with the Director in Washington last September.

Since this mailing many comments and valuable suggestions have been received from the Judges. Judge Eugene A. Gordon of the District Court at Winston-Salem wrote the Director: "It is my opinion that this book is an invaluable asset. If the book had been available when I went on the bench, I would have been spared many hours of work." District Judge Anthony T. Augelli of Newark acknowledged receipt of his copy and commented, "If ever something was worthwhile waiting for, the Judge's Bench Book is it. I am sure the Book will prove to be of great value to all trial judges." And from the District Court, San Francisco, Judge Stanley A. Weigel, writes, "The Bench Book strikes me as providing an outstandingly useful tool to all trial judges. Please accept my congratulations on the excellence of the concept and its execution."

Containing over 150 pages in loose leaf form, the Book is divided into six sections which cover all feasible material on civil and criminal cases. It is designed to make readily available, in condensed form, information most frequently used by the judges on the bench. It includes such material as oaths, perpetual calendar, criminal statutes and their penalties, etc.

The Book was compiled at the Institute of Judicial Administration under contract with the Center and under the supervision of its Director, Professor Delmar Karlen, Mr. Justice Clark, Director of the Center, and the Bench Book Committee composed of Judge Hubert Will of Chicago, Judge James F. Dooling, Jr., of Brooklyn, and Chief Judge Robert E. Maxwell of Elkins, West Virginia. Under supervision and recommendation of this Committee, the Federal Judicial Center will keep the Book current by periodic mailings of additional or updated material which can easily be inserted.

The Center and the Book Committee invite comment on the Book.

Resume on Management and Systems Analysis Report Out

The initial mailing of the management and systems analysis report was directed to all the Chief Judges of the District and Circuit Courts and to the Clerks of the jurisdictions surveyed. The requests have been numerous but the supply was very limited and the cost of reprinting the two volumes and charts is prohibitive. Where practicable the Chief Judges have circulated it to the other judges of their court.

Because of the interest in this report, however, the Center has prepared a resume of approximately 50 pages which will be mailed to all federal judges this month.

CHIEF JUSTICE BURGER—Continued from page 1.

the need for better trained court administrators. He reminded there are very few well qualified court administrators in the country; that those who are qualified mainly serve the state courts. He reported on the ABA committee now established to study and develop training programs for court administrators, something he felt was long overdue, especially if the currently pending Bill to create positions of Court Executives is passed.

Following the remarks of the Chief Justice the Director and the staff of the Center reported on activities within their respective offices. Special attention was given to the management and systems analysis report based on a survey of five District and five Circuit courts, and to the weighted case load study. At the conclusion of the morning session Mr. Neil Robinson of the Education Division demonstrated how special TV equipment could be used for seminars and training courses.

Mr. Justice Clark hosted a luncheon for the Board and staff in the adjoining Tayloe House, after which the Board continued its meeting.

The Board did not announce the appointment of a new Director to succeed Mr. Justice Clark, but indicated they would confer again soon for this purpose.

SUGGESTION BOX

Legal Aid in Federal Prisons

The FJCenter now has several legal assistance programs under way throughout the country whereby law students work with experienced counsel and under their direct supervision to render legal assistance at federal prisons. [See *The Third Branch*, Vol. 1, No. 5] Assistance is not limited to the case under which the prisoner is serving sentence. Helpful to prisoners; petitions better prepared; cuts down on filings; cuts down on backlog.

* * * * *

Where feasible judges and their supporting personnel could urge similar programs in their jurisdictions through consultations with law school deans, bar associations and local counsel.

FJC CALENDAR

1970

- Jan. 8 Meeting Board of Editors Multidistrict Litigation Panel, Dallas, Texas.
- Jan. 10 Meeting of Coordinating Committee for Effective Justice and Related Organizations, At the Supreme Court, Washington, D.C.
- Jan. 23-31 Ninth District Court Judge Seminar, Washington, D.C. At the Center.
- Jan. 23 Meeting Multidistrict Panel, Court of Claims, Main Courtroom, Washington, D.C.
- Feb. 19-21 Seminar for Circuit Court Judges, Washington, D.C. — At the Center.
- Feb. 26-28 Seminar for Circuit Court Judges, Washington, D.C. — At the Center.

New Orleans Project Update

The computer application in the Eastern District of Louisiana at New Orleans is nearing modest operational capabilities in a batch processing environment. The magnetic tape files now contain all civil cases pending, and reports by docket clerk, Judge, and Attorney are producible. The criminal cases are now being connected to the computer system. The system is still evolving and modifications and adjustments are being made daily.

On November 10th, 270 reports were sent out to law firms which then had cases pending in Eastern Louisiana. The reports showed cases pending, by attorney, and each firm was asked to report the status of their particular case. The idea behind these reports was to purge the system of those cases that had been closed or should have been. The results so far have been extremely encouraging. With about 40% of the firms having reported so far, the closings are running about 15%. Two Louisiana State University students have been employed on a part-time basis to act as Data Control and Research Assistants on the project. These students will keep the system current and operational in order to allow the Clerk's Office to run at full capacity.

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