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The National Center for State Courts

By JUDGE LOUIS H. BURKE*

On March 11-14, 1971, in historic Williamsburg, the first National Conference on the Judiciary was assembled to improve the process of justice in the United States. Led by the President of the United States, the Chief Justice, the Attorney General, the Governor of Virginia and some forty Chief Justices of the states and many states' Attorneys General, the Conference conscientiously devoted itself to the task assigned. There were in attendance representatives of every national organization working in the field of judicial administration.

In the opening address the President of the United States outlined many of the overwhelming problems confronting the courts of the nation and endorsed in advance the suggestion that Chief Justice Warren E. Burger was to make to the Conference in his address on the following day, namely the establishment of a National Center for State Courts which would make it possible "to conduct research into problems of procedure, administration and training for state and local judges and their administrative personnel; and service as a clearing house for the exchange of information about state court problems and reforms." The President continued:

A Federal Judicial Center along these lines already exists for the Federal court system and has proven its worth; the time is overdue for State courts to have such a facility available. I will look to the conferees here in Williamsburg to assist in making recommendations as to how best to create such a center, and what will be needed for its initial funding.

The executive branch will continue to help in every way, but the primary impetus for reforming and improving the judicial process should come from within the system itself. Your presence here is evidence of your deep concern; my

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presence here bears witness to the concern of all the American people regardless of party, occupation, race or economic condition, for the overhaul of a system of justice that has been neglected too long.¹

On the following day Chief Justice Burger in his address stated:

For a long time we have talked of the need for a closer exchange and closer cooperation among the states and between the states and the federal courts on judicial problems. No state is without grave problems in the administration of justice. The problems vary chiefly in degree from those states with grave troubles to those on the threshold of disaster in their courts. The valuable work of the National College of Trial Judges is just one example of the value of cooperative enterprise.

We now have in this country a great ferment for court improvement which has been gaining momentum slowly over a long period of time. More recently, this has taken on a new thrust and force under the leadership of the American Bar Association. The time has come, and I submit that it is here and now at this Conference, to make the initial decision and bring into being some kind of national clearinghouse or center to serve all the states and to cooperate with all the agencies seeking to improve justice at every level. The need is great, and the time is now, and I hope this Conference will consider creating a working committee to this end before you adjourn. I know that you will do many important things while you are here to the benefit of our common problems, but if you do no more than launch this much-needed service agency for the state courts, your time and attendance here would be justified.²

The Chief Justice suggested that the conferees turn to the American Bar Association, the American Judicature Society, the Institute of Judicial Administration, the Appellate Judges Conference, the Council of State Governments and the Conference of Chief Justices for assistance in bringing into being the proposed

¹ *Justice In The States*, Addresses and Papers of the National Conference on the Judiciary, edited by Professor William F. Swindler of the College of William and Mary, Co-ordinator, National Conference on the Judiciary. Printed as a public service by the West Publishing Company.

² *Deferred Maintenance*, by Warren E. Burger, Chief Justice. *Id.* at 10.

National Center for State Courts. He also pledged the full cooperation of his own office and the facilities of the Federal Judicial Center and the Administrative Office of the United States Courts. He concluded by saying: "Bearing in mind my own concepts of federalism I will participate only when you ask me to do so."

At the conclusion of Conference a resolution was proposed by Mr. Justice Paul C. Reardon of the Supreme Judicial Court of Massachusetts calling for the creation of such a center which I was privileged to second in behalf of eighteen of the leading organizations active in the field nationally of improving the administration of justice. The resolution was unanimously adopted and the request was made of the Executive Council of the Conference of Chief Justices to carry the resolution into effect within a period not to exceed 90 days. Chief Justice Calvert of Texas, Chairman of the Conference of Chief Justices, called a meeting of the Executive Council of the Conference immediately. At the suggestion of Mr. Justice Tom C. Clark, who was the Chairman of the Williamsburg Conference, Chief Justice Calvert appointed a small committee of the officers of the Conference of Chief Justices, assisted by Orison S. Marden of New York, Chairman of the Executive Committee of the Institute of Judicial Administration, Earl F. Morris of Ohio, past President of the American Bar Association, and Gerald S. Snyder of Illinois, immediate past President of the American Judicature Society, as an organizing committee. This committee, consisting of Chief Justice James S. Holden of Vermont as Chairman; Chief Justice William S. Richardson of Hawaii; Judge Morell E. Sharp, then on the Attorney General's staff and now a judge of the federal district court in Seattle, Washington; Justice Paul C. Reardon; William L. Frederick, Esquire, Secretary of the Conference of Chief Justices. The attorneys named above and I subsequently met in a series of meetings, often attended by Chief Justice Burger and Justice Clark, to work out the details of organizing articles of incorporation for filing in the District of Columbia. I was asked to prepare a statement of the broad purposes of the organization of such a center and submitted the following:

1. To improve the administration of justice in the state courts of the nation;

2. To assist the states to formulate and implement standards for judicial administration;
3. To assist, supplement and coordinate, but not to supplant, the activities of organizations presently functioning in the field of judicial administration;
4. To serve the state courts as a clearinghouse for judicial information;
5. To initiate and support research and studies of problems of court administration and to assist the states to consider and implement recommended solutions;
6. To join with the Federal Judicial Center in studies and research in the solving of problems of common concern and interest to both federal and state courts and to implement the solutions found, thereby conserving costs, time and energy for both judicial systems;
7. To gather together at central and regional locations national leaders in judicial administration and representatives of law and professional organizations from various disciplines to confer, study, appraise, survey, innovate, and recommend procedures to improve the administration of justice at all levels of the state courts;
8. To reduce the costs of litigation and in other ways assure that the judicial process is available to all irrespective of economic status;
9. To accelerate the entire operation of the judicial process in order to make justice more prompt, more certain, and more responsive to the needs of all appearing in the courts;
10. To investigate and study, with the aid of all disciplines involved or affected, the proper function of courts in dealing with social problems such as marriage, reconciliation, divorce, adoptions, alcoholism, narcotic addiction, and the commitment and treatment of the mentally ill;
11. To study and implement ways and means of improving and maintaining proper courtroom decorum and security;
12. To sponsor orientation training for newly-appointed judges, and continuing education for other judges, utilizing the services of Appellate Judges Seminar of the Institute of Judicial Administration and New York University, the facilities of the National College of State Trial Judges at the University of Nevada, and those of the American Academy of Judicial Education and of other organizations and institutions;

13. To sponsor similar training for other court personnel, utilizing the Institute for Court Management and other facilities;
14. To establish and recommend modern personnel systems for the selection, training, advancement, discipline and removal of supporting court personnel, on the basis of merit;
15. Recognizing that an effective presiding judge is essential to an efficient court, to advocate proposals that the presiding judge be chosen on the basis of his administrative qualifications and interest rather than solely by rotation or seniority;
16. Recognizing that judicial manpower is a limited resource which should be devoted as much as possible to judicial as distinguished from management functions, to recommend that the latter duties be conducted by a qualified executive officer trained in personnel, property, fiscal and other management functions, such officer to be appointed by the judges of the court and to serve under the supervision of the presiding judge;
17. To study ways and means of calendar management and control, particularly in metropolitan areas where there are both state and federal courts, through the utilization of modern devices;
18. To assist in developing means of accelerating the preparation of transcripts and records, by electronic or other means, in order to reduce the element of delay in the processing of appeals;
19. To expedite the production of medical and other expert testimony and records with a minimum of inconvenience to the professionals involved and in a manner consistent with standards of fair trial;
20. To assist in the preparation and promulgation of modern court rules to meet the needs for improving court procedures;
21. To assist in developing uniform standards for the preparation, keeping and reporting of court statistics, whereby courts may better evaluate and improve both the quality and the quantity of the matters handled in their courts;
22. As innovations and changes are made, seeking to improve the administration of justice in the various states, to maintain a continuing study and appraisal of the results derived

and to report thereon periodically to the remaining states for their own evaluation; and lastly,

23. To reaffirm the faith of the nation, that despite admitted inadequacies in some state court operations which the Center seeks to correct, the state courts administer justice fairly and impartially and have earned and continue to enjoy the confidence and respect of the public, so necessary to our form of government.

For the purposes of inclusion in the Articles of Incorporation this statement was condensed by the Steering Committee to read as follows:

ARTICLE III. PURPOSE. The purpose of the corporation shall be to improve the administration of justice in the state courts of the nation, to promote and support research, studies, education, training and activities for such courts, and to assist, supplement and coordinate, but not supplant, the activities or organizations functioning in the field of judicial administration.

One of the most difficult decisions of the Steering Committee concerned the makeup of the Board of Directors. There were a number who felt that it should include leaders of the principal lawyers' organizations in the field. On the other hand, there was a very strong feeling that the governing body of the Center should be made up exclusively of active state court judges and after long and serious debate the decision was as reflected in Article V of the Articles of Incorporation: "The affairs of this corporation shall be managed by a Board of Directors of twelve (12) members . . . composed of active judges from state trial courts of general and special jurisdiction." Means were provided in the Articles whereby each of ten national organizations would participate in the nomination of judges for election to the first twelve-member Board of Directors with the intent that the Board ultimately selected would be representative "of the leadership of the state appellate and trial courts of the nation as a whole." The difficult decision to elect a board comprised solely of active state court judges was made in order to assure those within the state judicial systems that the proposed Center would be controlled exclusively by judges representative of such systems. It was not intended to discount or overlook the substantial service

rendered by the attorney representatives of the various national organizations in bringing about the formation of the Center and whose continued cooperation and support would be essential for its success. The desire for close cooperation with such entities was evidenced by the inclusion within the Articles of a provision for the establishment of an Advisory Council consisting of representatives of the cooperating organizations which brought the Center into existence and subsequently such an Advisory Council was formed and is headed by one of the distinguished lawyers whose efforts were so valuable in the creating of the Center, Orison S. Marden, Esquire, of New York.

The initial directors who constituted the official incorporators were the state court judges who were members of the Steering Committee: Chief Justice Robert W. Calvert of Texas, Chief Justice James S. Holden of Vermont, Chief Justice William S. Richardson of Hawaii, Justice Paul C. Reardon of the Supreme Judicial Court of Massachusetts, Justice Morell E. Sharp of the Washington State Supreme Court³ and Justice Louis H. Burke of the California Supreme Court.

The incorporators were hosted by the Chief Justice of the United States at lunch in his chambers upon the occasion of the filing of the Articles of Incorporation. On the date of incorporation the President of the United States took note of the occasion by having hand-delivered to the incorporators the following message:

It gives me pleasure at this time to reemphasize my strong support for the establishment of a National Center for the State Courts, and to express again my confidence in the initiative that Chief Justice Burger and the Williamsburg conferees have so wisely taken.

As I have indicated before, it is a concept to which I have pledged my full cooperation. And with those who are guiding it to fruition, I look forward to the day when it will become a reality. The important contribution this center stands to make in facilitating research by the state courts into problems of procedure, administration and training, as well as the service it will surely render as a clearing house for the ex-

³ Judge Sharp left the Department of Justice upon his appointment to the Supreme Court of the State of Washington, which post he subsequently resigned upon his appointment to the federal bench

change of information about state court problems and reforms, make it one of the most exciting projects in the recent history of the American judicial system.

I congratulate the Chief Justice and the state court justices for moving so quickly to set up this useful national body, and I express appreciation to all who are working with them toward this end.

The Center is indebted to the firm of Covington and Burling, and to Newman T. Halverson, Jr. of that firm, Washington, D.C., for their generous contribution of advice and assistance in all matters relating to the organizing of the corporation under the laws of the District of Columbia.

The directors immediately placed in motion the procedures for securing the nominations from the cooperating organizations and, from those received, duly elected the following as directors of the corporation: Justice Paul C. Reardon, Supreme Judicial Court of Massachusetts; Justice Louis H. Burke, Supreme Court of California; Judge David Brofman, the Denver Probate Court, Colorado; Chief Justice James A. Finch, Jr., of Missouri; Judge M. Michael Gordon, the Municipal Court of Houston, Texas; Chief Justice Frank R. Kenison of the New Hampshire Supreme Court; Justice Bernard S. Meyer, Supreme Court, State of New York; Chief Justice William S. Richardson of the Hawaii Supreme Court; Justice Morell E. Sharp, Supreme Court, State of Washington; Presiding Justice Harold A. Stevens of the Appellate Division, Supreme Court, New York; Presiding Judge Joseph A. Sullivan, the Wayne County Circuit Court, Michigan; and Judge Curtis V. Tillman, the Juvenile Court, DeKalb County, Georgia.

Shortly after the formal incorporation the new Board of Directors met and prepared a draft of bylaws, copies of which were widely distributed, for comment and approval, to each of the cooperating organizations. A number of suggestions were received and final action on the draft was postponed for several months pending further discussions and efforts on the part of the officers to incorporate as many of the suggestions as possible. Several letters were received from officers of cooperating organizations urging reconsideration of the limitation that directors be active state court judges. However, at the meeting of the Board on March 18, 1972, it was noted that this qualification is contained

in the Articles, with which the bylaws must conform, and had been adopted only after lengthy deliberation. A number of the suggestions received were included in a new draft which was formally adopted at the meeting of March 18.

The bylaws provide for the establishment of a Council of State Court Representatives on which each state shall have one vote (including also the judicial systems of the District of Columbia, Puerto Rico, American Samoa, Guam and the Virgin Islands). Such representatives on the Council are to be chosen in such manner as each state may prescribe. However, pending formal action by a state through a statute or otherwise, it shall be represented in the Council by a representative selected by the judicial entity having the power to make procedural rules for the courts of the state; in any state having no such judicial entity a representative shall be chosen by the highest court of the state. In the event a state fails to timely designate its representative, a representative *pro tempore* for that state shall be chosen by the Board of Directors of the Center to serve until the state has made its designation.

The function of this Council is to maintain close liaison between the respective state judicial system and the Board of Directors and officers of the Center and its Advisory Council. In addition, the Council of State Court Representatives shall participate in the election procedure to fill vacancies on the Board of Directors.

In order to accomplish the objective of the Articles of Incorporation to provide for a Board of Directors representative of the leadership of the state appellate and trial courts of the nation as a whole, the bylaws, as adopted, provide for four categories of directors:

1. Appellate courts;
2. Trial courts of general jurisdiction;
3. Special courts (courts of limited or special jurisdiction);
4. Directors selected at large (who may be from any of the three categories of courts).

Not less than three of the directors shall be from each of the first three categories of the courts mentioned above.

The procedure for election each year will be initiated by the

appointment by the President of the Center of a nominating committee of two directors and the Chairman of the Advisory Council. This committee will present nominations to fill the vacancies on the Board which will occur annually through the expiration of terms.

Not less than sixty days before the annual meeting in March the nominating committee shall inform each member of the Council of State Court Representatives and each cooperating organization through its representative on the Advisory Council, of the proposed nominees, and give a brief biographical sketch of each. The nominating committee at that time will invite the submission of additional names. These names, together with a biographical sketch, must be submitted in writing to the nominating committee at least forty-five days before the annual meeting. The biographical sketch shall present the experience and qualifications of the nominee to assist the Center in attaining its objectives of improving the administration of justice in the state courts of the nation. The nominating committee will prepare a ballot listing the names of all nominees, which ballot, along with the biographical sketches, shall be submitted at least fifteen days before the date of the annual meeting to each member of the Council of State Court Representatives. The election will then be conducted by secret ballot. The officers of the Center are to be elected by the Board of Directors. The following officers were initially selected: Paul C. Reardon, President; Louis H. Burke, Vice-President; Miss Alice O'Donnell, Secretary-Treasurer; Winslow Christian, Director.

One of the most difficult problems facing the Center lies in selecting a site or sites from which to conduct its operations. Temporarily, through the generosity of the Federal Judicial Center, space has been made available in offices adjoining the Federal Judicial Center at 725 Madison Place, N.W., Washington, D.C. 20005. At one of the meetings of the Board the consensus was that "an office for the Center, not necessarily the principal office, should be established and maintained in or near the area of Washington, D.C." A large number of proposals and invitations have been received, and are being reviewed, from the governors of various states, some tendering land and even building facilities for use by the Center either as its principal or as a regional office.

Interest has been expressed by some of the cooperating organizations in establishing either their principal or regional offices in conjunction with the offices of the Center. Such a possibility was foreseen when the Articles of Incorporation were formulated; they provided that any judicial or judicially related organization may, with the approval of the Board of Directors, locate offices in the facilities of the Center from which to conduct programs and operations from there.

The first Director of the Center is Justice Winslow Christian who is on leave from his Court of Appeals position in the State of California. Justice Christian brings to his new post a rich background of experience in trial courts of both limited and general jurisdiction. He also has a strong background as the head of a large state agency and extensive experience in public relations and administration which he acquired during his service as a gubernatorial office executive secretary. Selection of staff for the Center is well under way and several major projects and studies have been launched, including a joint research project with the Federal Judicial Center staff dealing with appellate procedures.

An area of concern to some of the cooperating organizations has been the extent to which the Center might take over operations which such organizations have pioneered and traditionally carried on. Wisely, however, the incorporators determined early in their organizational efforts that it is the function and purpose of the Center to assist, supplement and coordinate, but not to supplant, the activities of organizations functioning in the field of judicial administration. This concept is unlike that of the Joint Committee for the Effective Administration of Justice, headed by Mr. Justice Tom C. Clark, which was established by the American Bar Association in 1961 and which was a forerunner in the field. The function of that Committee was to enlist, in a crash program, all of the major organizations working nationally in the field of judicial administration, to assess the work of each and to attempt to focus attention upon the major areas which required improvement. The Joint Committee was not intended to be an action group in the sense that it was to carry on projects of its own, independent of the cooperating organizations. Its programs were conducted through one or another, or jointly through several, of the cooperating organizations.

Some have viewed the Center as filling the void created when the Joint Committee completed its program and was disbanded. However, the function of the new Center, as its organizers conceived it to be, is to carry on work directly through its own staff and employees, as well as to coordinate and assist, but not to supplant, the activities of the cooperating organizations.

It is expected that if the Center lives up to its expectations of active and continuing assistance to state courts, long term financing will come from the states in much the same manner as they support such cooperative and beneficial activities as the Council of State Governments and the Commission on Uniform State Laws. Initial funding for the operations of the Center has been provided by grants from private foundations and by the Law Enforcement Assistance Administration. The Chief Justice and organizations of judges in each state should take an active part in the work of the state's planning agency which has been established to plan for the use within the state of block grant funds received from the Law Enforcement Assistance Administration. A portion of such grants should be used to finance participation by the judges and courts of the state in the work of the National Center.