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DEVELOPMENTS IN JUDICIAL ADMINISTRATION

A Five-Year Summary

Prepared by

THE FEDERAL JUDICIAL CENTER

August 1974

16291

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The past five years have witnessed ferment in modernizing both State and Federal judiciaries. This report compiles highlights among these developments on the occasions of the impending retirement of Director Alfred P. Murrah, as well as the fifth anniversary of the appointment of Chief Justice Warren E. Burger, who is, by statute, Chairman of the Board of the Federal Judicial Center. This report reflects the Center's responsibility to promote and encourage judicial improvement and to keep in close contact with judicial problems at all levels.

I. INSTITUTIONS

The Conference of Senior Circuit Judges was established by Congress in 1922 at the urging of Chief Justice William Howard Taft, to function as the Federal judiciary's chief administrative policymaker. Its successor institution, the Judicial Conference of the United States is chaired by the Chief Justice and is composed of 24 Federal judges, 11 of whom serve by virtue of being chief judges of circuits and 11 by election by their colleagues. The Conference is assisted by 19 standing committees, 4 subcommittees and several ad hoc committees comprising over 220 judges, lawyers, and law teachers appointed by the Chief Justice. In addition to adopting policies for the administration of Federal judicial business, the Judicial Conference, through its Committee on Rules of Practice and Procedure, drafts key Federal court procedural rules. These take effect after they are adopted by the Supreme Court unless Congress rejects them within 90 days of their submission. It also provides Congress, through the Chief Justice, a required annual report, which includes its responses to congressional requests for legislative recommendations concerning judicial administration.

Within the last five years, the Conference has studied the following areas for the purpose of drafting or revising various rules, many of which have subsequently been promulgated by the Court: depositions and discovery, class actions, and pretrial in civil procedure; speedy trials and habeas corpus proceedings in criminal procedure; expediting the appellate process; uniform rules of evidence; the operation of the Federal Rules of Civil Procedure and supplemental admiralty rules in maritime cases; new rules and official forms for bankruptcy proceedings; and rules for Federal magistrates. The Conference has also sponsored pilot projects,

established periodic reporting systems, and studied various techniques of judicial administration, including uniform jury instructions, bifurcated trials, omnibus hearings, and post-conviction conferences. Improved methods of juror selection and utilization have been tested and monitored, and the Conference has distributed a handbook for grand jurors similar to its edition for petit jurors.

Recently, the Conference adopted the American Bar Association's Code of Judicial Conduct as it applies to Federal judges, full-time referees in bankruptcy, and full-time magistrates. The Conference also considered unethical practices by members of the bars of Federal courts and drafted legislation to deal with such problems uniformly throughout the Federal system.*/

The Administrative Office of the United States Courts was created by Congress in 1939 at the initiative of Chief Justice Charles Evans Hughes and is responsible for the Federal courts' data gathering, budgetary, reporting, personnel, and other "housekeeping" needs. Its Director is appointed by the Supreme Court and works closely with the Chief Justice, who as Chairman of the Judicial Conference, oversees the operations of the Office. The Director carries on the Conference's liaison with Congress and presents the Conference's views on various legislative matters, frequently testifying before Committees of Congress or request. Mr. Rowland F. Kirks was appointed Director of the Administrative Office in 1970.

In recent years, the Administrative Office has expanded its publication services to include operations manuals for several judicial officers and has revised the presentations of judicial statistics; some are now given in great detail, and others stress simplicity and graphics for those unfamiliar with the field. Its publications on juror utilization reflect various juror management programs, which have already produced estimated annual savings of over \$500,000. The Administrative Office has also improved docketing information systems for greater efficiency in the work of court clerks.

The Federal Judicial Center was created by Congress in 1967 upon the proposal of Chief Justice Earl Warren to serve the Federal judiciary's research and educational needs. Its first Director, Justice Tom C. Clark, served from 1968 to 1970, when he was succeeded by Judge Alfred P. Murrah.

*/ The ABA Special Committee on the Evaluation of Disciplinary Enforcement reported on its study of these problems in 1970.

The Center's budget has grown from \$700,000 in 1971 to over \$2,000,000 in fiscal 1974. The Center's governing board is composed of the Chief Justice, who serves as Chairman, the Director of the Administrative Office of the U. S. Courts, and five Federal judges appointed by the Judicial Conference.

The Center has undertaken research at the request of the Judicial Conference and of specific Federal courts on such projects as methods of evaluating automated legal research techniques and surveys of Courts of Appeals law libraries. It has undertaken broad studies of such topics as use of time by judges, screening practices in the Courts of Appeals, courts' internal operating procedures, and individual calendar control.

The Manual for Complex Litigation, which suggests procedural guidelines for cases assigned by the Judicial Panel on Multidistrict Litigation, is produced under the Center's auspices.

The Center has expanded the programs of seminars for newly appointed district judges, which the Judicial Conference began in 1960. Since the Center's creation, more than 180 new Federal judges have been offered an intensive two-week orientation session in eight separate seminars. The Center also conducts seminars dealing with new problems confronting experienced judges and all types of supporting personnel, including magistrates, bankruptcy judges, probation officers, and clerks of court.

In 1969, the Center and the Administrative Office placed publication of The Third Branch on a monthly basis as a "newsletter" for the Federal judicial system. The Center also maintains close contact with numerous other organizations dealing with judicial administration, most notably its state counterpart, the National Center for State Courts, but also including the Institute for Judicial Administration, the Institute for Court Management, and the American Judicature Society.

The Conference of Metropolitan Chief Judges grew out of a series of meetings conducted by the Federal Judicial Center and was organized in 1972, under the chairmanship of the former Chief Judge of the United States District Court for the Northern District of Illinois, Senior Judge William J. Campbell. It provides for semiannual meetings of the chief judges of the 22 Federal district courts in metropolitan centers, whose judges handle over 60 percent of all Federal trial litigation. The forum provided by the Conference has allowed these judges to exchange their experience on such problems as calendaring, dealing with protracted cases, methods to ensure speedy trials and improved juror utilization.

State-Federal Judicial Councils were proposed by Chief Justice Burger in 1969 and are now operational in 43 states, helping judges to lessen friction between the dual systems.

An illustration of the kind of gains from State-Federal cooperation is provided by considering the litigation ensuing from the July 19, 1967 collision of a commercial jet with a private aircraft. Eighty-two persons were killed. Twenty-six lawyers in nine cities and five states instituted 102 cases in Federal court and 26 cases in State courts, all resulting from this single incident. A \$7,400,000 settlement was concluded in a relatively brief time, chiefly because the State and Federal judges agreed to sit together to hear all the preliminary stages of the litigation.

The National Center for State Courts was created in 1971 at the suggestion of the Chief Justice and with the endorsement of the judges and judicial administrators attending the first National Conference on the Judiciary, held in Williamsburg, Virginia, in March of that year. It provides a coordinating research and training service for the State courts, as the Judicial Center does for the Federal system.

The National Center has six permanent regional offices and will soon leave its temporary headquarters in Denver for permanent headquarters on the Williamsburg campus of the College of William and Mary. The Center has conducted research in such topics as court reporting, screening of appeals, and appellate opinion writing. It takes surveys of individual state court systems on request. It is developing a capacity to allow state courts a forum in which to deal with their common problems and to ready them for presentation to appropriate legislative bodies. The Center thus takes its place alongside the American Judicature Society, founded in 1913, and the Institute of Judicial Administration, founded in 1953 as an institution dedicated to the productive exchange of ideas in judicial administration.

II. SPECIAL RESEARCH AND INVESTIGATION

In addition to the research of the Judicial Center and National Center for State Courts, the American Bar Association created in 1969 a task force leading to the Commission on Standards of Judicial Administration, as proposed by ABA President Bernard G. Segal with the active

encouragement of Chief Justice Burger. This Commission reviewed and updated the well-known "Vanderbilt-Parker Standards" of the 1930's. A tentative draft of the Commission's report was filed in 1973.

The Federal Judicial Center's Study Group on the Caseload of the Supreme Court, chaired by Professor Paul A. Freund of Harvard Law School, presented its recommendations for changes to reduce the swiftly mounting caseload of the Supreme Court */ in December 1972. The Freund Study Group's report stimulated, as intended, widespread discussion and further study. For example, in February 1974, the House of Delegates of the American Bar Association endorsed in principle the report of the ABA's Special Committee on Coordination of Judicial Improvements, chaired by C. Frank Reifsnyder. The Special Committee's recommendation for a National Court of Appeals paralleled that of the Freund Study Group, though differing in some significant elements.

Studies of the entire Federal court appellate system are underway by two commissions. The Commission on Revision of the Federal Court Appellate System was established by Congress in 1973, pursuant to a resolution of the Board of the Federal Judicial Center, after the Chief Justice had initially suggested the need for such a Commission to the ABA. The Commission is composed of 16 members variously appointed by both houses of Congress, the President, and the Chief Justice, and is chaired by Senator Roman L. Hruska of Nebraska, with University of Pennsylvania Professor A. Leo Levin as staff director. The Commission was charged with the responsibility of recommending appropriate geographic structure and internal procedures for the Courts of Appeals, to meet the demands of the last quarter of the twentieth century. Upon completion of Phase I of its statutory assignment last December, the Commission recommended dividing the Fifth and Ninth Circuits, to relieve those appellate courts of their heavy caseload. The Commission is engaged in the second phase of its work. The complex problems it must analyze and the multiplicity of informed opinion it must consider have led it to request a nine-month extension of the filing date of its second report.

*/ Cases filed in the Supreme Court have shown the following increase by Term.

1949--1277	1969--3435
1959--1897	1973--4187

The 33-member Advisory Council for Appellate Justice, chaired by Columbia University Professor Maurice Rosenberg, is studying problems of appellate courts at State and Federal levels. In the course of that study, the Council has recommended a national panel of the United States Courts of Appeals to relieve the Supreme Court of some of its caseload. The Council, along with the National Center for State Courts, is convening a national conference of 250 people in January 1975 to focus legislative, judicial, bar, and public attention on the problems of appellate courts and to develop mechanisms for improvement.

III. NEW PERSONNEL

In 1971, Congress authorized each of the eleven United States Courts of Appeals to appoint a certified circuit executive to assist the circuit council and the chief judge of each circuit with their many administrative responsibilities. This was a partial response to the Chief Justice's call in 1969 for administrators in the Courts of Appeals as well as in busy, multijudge district courts.

In 1972, Congress created the position of Administrative Assistant to the Chief Justice, to provide the nation's highest judicial officer with long-needed staff assistance in the execution of his many official and unofficial administrative responsibilities at the Supreme Court and throughout the entire judicial system.

Most occupants of these new positions are graduates of the Institute for Court Management. The Institute and other training programs for court executives are also providing graduates for the growing number of administrative positions in the state judiciaries. The Institute is a non-governmental school proposed by the Chief Justice in 1969 and established soon thereafter in 1970 with grants from the Ford Foundation, and the support and cooperation of the American Bar Association, the Institute for Judicial Administration, and the American Judicature Society. Headquartered in Denver, it is the world's first school devoted solely to training court administrators. More than 280 court administrators have been trained so far.

United States Magistrates are now assisting Federal district judges. The magistrates system replaced the old system of U. S. commissioners in 1968. Unlike commissioners, full-time magistrates

must be lawyers. Moreover, magistrates have an expanded jurisdiction that allows them to handle over 250,000 matters a year, many of which would otherwise have been handled either by district judges or simply left undone because of the press of more urgent business. As part of the 1973 Anglo-American Exchange on Civil Procedure, a team composed of the Director of the Administrative Office, two district judges, and three U. S. magistrates spent five days in London this spring observing the work of the Masters of the High Court who are a substantial counterpart to our magistrates. The English courts have used masters to assist trial judges for more than 100 years.

Other changes in the type of assistance available to Federal judges parallel corresponding changes in staffing at the major State courts. At the United States Supreme Court, for example, traditional legal assistance from annually replaced law clerks will soon be complemented by the services of two career attorneys, who, as Legal Officers, will be available to any of the Court's Justices in dealing with the large volume of special motions frequently presented to the whole Court and to circuit Justices.

The Judicial Fellows program, instituted in 1973 and funded through private foundation grants, provides firsthand exposure to the problems of Federal judicial administration for young professionals with interdisciplinary backgrounds in aspects of law and policy.

Four social scientists, all with judicial process research interests (and two of whom have law degrees in addition to their doctorates), have been selected for one-year fellowships. The program has also helped recruit other interdisciplinary talent into the Federal judicial system, including a computer scientist-lawyer who is working on the Supreme Court's computerization program; the Deputy Executive Director of the Commission on Revision of the Federal Court Appellate System; and a political scientist with extensive knowledge of Federal jurisdictional change and other aspects of the Federal judicial process, as a Research Associate at the Federal Judicial Center.

IV. PROCEDURES

Most of the multijudge district courts now use the individual calendar system, which focuses responsibility by randomly assigning each new case to one judge who takes full responsibility for it from

filing to disposition. While difficult to measure, individual judicial productivity appears to have increased significantly in large metropolitan courts through use of the individual calendar. One study showed a significant gap in 1968 between the productivity of Federal metropolitan district courts using the master and those using the individual calendar. The study further showed that the seven courts that shifted from the master to the individual calendar between 1968 and 1972 narrowed the gap in terminations between themselves and the courts that had been using the individual calendar in 1968. Moreover, the shifting courts achieved parity with the 1968 individual calendar courts in the proportion of criminal cases pending more than one year.

By now fairly well adopted throughout the Federal system, the omnibus or single pretrial hearing requires lawyers to make all their pretrial motions at one time in criminal cases, rather than seriatim over a period of time as a result of either dilatory tactics or poor preparation.

Also, the Judicial Panel on Multidistrict Litigation was created by statute in 1968 to promote voluntary transfer of complex multidistrict cases to a single district for pretrial hearings. Where utilized, the Panel saves the courts and the litigants time and money by resolving issues at the pretrial stage, thus often obviating multiple and protracted litigation in the federal courts.

As noted above, research on juror utilization and field work by Judicial Center and Administrative Office personnel, coupled with the personnel in the courts, have produced estimated annual savings to the courts of over \$500,000 each year in juror expenses. Federal courts are using a number of special management systems to reduce the size of jury pools. The swift move toward six-member juries in civil cases has produced both savings and efficiency in administration. The Federal-State Judicial Councils are working to coordinate demands for jurors.

The Courts of Appeals, in the face of massively rising caseloads, are adopting expedited procedures such as reduction in the number or length of written opinions, and, in some circuits, elimination of oral argument for selected cases: a necessary, albeit drastic, measure to allow the courts to stay abreast of their workloads.

Rule 50(b) of the Federal Rules of Criminal Procedure -- "the speedy trial rule" -- has been enacted to provide, among other things, that each district court promulgate plans for the trial of criminal defendants within stated time periods.

Federal courts are vigorously investigating ways to make increased use of automatic data processing in the analysis of court operations, in assisting judges with all aspects of caseload management, and in the improvement and modernization of court record keeping systems. Sophisticated computer software packages such as COURTRAN, developed by the Federal Judicial Center, are now in pilot operation in several district courts and are proving especially helpful to judges in the effective management of their heavy caseloads.

The National Center for State Courts, with support from the Judicial Center, has tested and evaluated various new court reporting systems, including voice-writing and computer transcriptions. The Center has also undertaken various pilot projects involving videotape prerecording of testimony to determine its effect on court administration, as well as to gain experience necessary to develop answers to the many policy questions that videotaping entails.

The ABA, at the suggestion of Chief Justice Burger, created an interdisciplinary Commission on Correctional Facilities and Services which began staff operations in 1971 and has instituted various programs to facilitate release of offenders and to improve conditions within penal institutions. Also, new methods for institutional review of complaints by prisoners are being initiated. Prisoners' complaints about their treatment are filed in tremendous numbers in various forms with Federal district judges. Advocates of improved prison conditions have complained that time constraints mean that these prisoner petitions receive only the passing attention of a judge or other court personnel. The Freund study group recommended that some type of non-judicial board review prisoner complaints, both to save judicial time and to ensure that prisoner complaints receive the attention they deserve. While that proposal has not been fully implemented, the Federal Bureau of Prisons has recently instituted an internal grievance procedure. After an experimental pilot program was successful in three correctional institutions, it was put into effect in all Federal prisons. The pilot program resolved 35 percent of all complaints in the inmates' favor, and also caused a reduction in prisoner petitions to the Federal courts.

V. RESULTS

Measuring the results of such a diverse series of new activities and ideas is difficult. It would be imprecise merely to present data on case disposition rates within the last five years as the sole indicators of improved judicial administration, if for no other reason than the fact that new judgeships have not kept pace with the sweeping increase in litigation and litigable issues. Those data, however, are indeed encouraging. In the Federal district courts, although case filings have doubled over the past 20 years, creating by 1972 a backlog of 126,000 cases yearly, dispositions per judgeship were up 22% over the five years from fiscal 1968 to 1973 (the last year for which there are complete data). This allowed the district courts to take the first steps toward reducing their backlog by disposing of more cases than were filed in 1973. The Courts of Appeals were disposing of 156 cases per judgeship in 1973, compared with only 85 as recently as 1968. Taking the district and appeals courts together, 30 percent more cases per judgeship were disposed of in 1973 than in 1968. The new institutions and procedures of recent years are responsible for much of this progress, although the tremendously diligent work of Federal judges is the critical but often unrecognized factor.

The workload of the Supreme Court continues its inexorable rise, reaching 4187 cases docketed during the Term commencing October 1973. The Court has not yet allowed a backlog to develop, though increasing hard work has been the main response to its increasing caseload. There is doubt about how much longer the Court can stave off a backlog without some alterations in its case processing method.

The developments discussed here, as favorable as they are, tell only part of the story. The increased interest in judicial modernization on the part of judges, lawyers, and laymen, and the new spirit in the Federal judiciary are also indicators of the accomplishments of recent years.

END

7/10/1944