Education and Training Series

The Judicial Conference and Its Committee on Court Administration

Federal Judicial Center

THE JUDICIAL CONFERENCE AND ITS COMMITTEE ON COURT ADMINISTRATION

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THE WAY IT WAS (A capsule view)

The First 132 Years

For the first 132 years of our nation's existence the overall administrative structure of the federal courts was a matter of little real concern to the Congress, or to judges who were serving a specific court. Each court administered its own affairs and its minimal business in its own fashion. This to some degree was because the Founding Fathers in establishing the Judicial Branch used rather broad concepts in the Constitution. With the Judiciary Act of 1789 elements of detail slowly began to appear. The nation was divided into "districts" and "circuits" with a court in each. Each of these courts was a separate trial court of original jurisdiction. No provision was made either for intermediate courts or for centralized administrative support. Business was sparse and there was no perceived need beyond that described. The courts administered themselves and their meager business.

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* This paper served as the outline for a speech given by Judge Elmo B. Hunter at the October, 1985, meeting of the Conference of Metropolitan District Chief Judges. The titles and membership of Judicial Conference committees and subcommittees referenced herein have been updated so that they are correct as of February, 1986.

The Birth of the Intermediate Appellate Court System

In 1891, for the first time, Congress recognized and responded to the need for the development of an intermediate appellate court system by enacting the Circuit Court of Appeals Act (March 3, 1891, 16 Stat. 826). No action was taken to fashion instruments for centralized administration. Twenty years later, in the Judicial Code of 1911, the "circuit" trial courts established in 1789 were abolished, and district courts were established as the basic trial units in the federal system. The three-tiered structure that exists today was born. Business increased. Administrative problems abounded. The simple life of the courts was over forever. It is accurate to say that since World War I changes in the administration of the federal courts have been dynamic and directly related to the rapid growth of the federal judicial system and its work load.

The Birth of the Judicial Conference of the United States

The birth of the Judicial Conference was imminent. Roscoe Pound in 1906 had signaled a need for administrative changes in the management of the federal courts. The American Bar Association and the American Judicature Society were deeply involved in studies to improve court administration. So, too, were the judges. Ex-President Taft, by then Chief Justice Taft, placed his prestige squarely behind proposals to provide the federal judiciary with a centralized policy-making administrative and management entity. The result, in 1922, was congressional creation of what was labeled the "Conference of Senior Circuit

Judges"--the foundation on which the Judicial Conference of the United States as we know it was to be built. The 1922 bill called for the Chief Justice to preside annually over a conference of the most senior judges of the circuits. This panel was "to serve as the principal policy making body concerned with the administration of the United States Courts, prepare plans for the transfer and reassignment of judges to areas of greatest need," and "submit such suggestions to the various courts as may seem in the interest of uniformity and expedition of business." The senior district judge of each district was to submit, to his circuit's delegate to the Conference, a report setting forth the conditions in the district and recommendations for additional judicial assistance. Thus the courts, through the creation of the Conference, acquired a policy-making body with fact-finding capacity and the authority to recommend to the Congress legislative proposals for change--a corporate board of directors for the judiciary, so to speak.

Conference sessions, with a total of 10 members (nine circuit judges and the Chief Justice), lasted from two to five days and the meetings were in Washington, D.C. The membership expanded as the Tenth Circuit was created in 1929 (to 11 members) and expanded again by the addition of the Chief Judge of the District of Columbia Circuit Court of Appeals in 1937, the Chief Judge of the Court of Claims in 1956, one district court judge for each circuit in 1957, the Chief Judge of the Court of Customs and Patent Appeals in 1961, and the Chief Judge and one district

judge of the newly created Eleventh Circuit in 1983--to the end that the Judicial Conference today has 26 members (the Court of Claims and the Court of Customs and Patent Appeals having merged into the Court of Appeals for the Federal Circuit). It is possible that its membership will increase to 27 members by the addition of Chief Judge Edward D. Re of the United States Court of International Trade, an Article III court.

The Birth of the Administrative Office of the United States Courts

In its early days the Conference was small enough to allow around-the-table, intimate discussions of the matters of interest. Even so, Chief Justice Taft appointed five committees to report the following year. Under the then statute, the power of the Conference was only to make "suggestions" to the courts with reference to their administration. Under Chief Justices Taft and Hughes, both strong and persuasive leaders, the Conference was encouraged through advice to its members to correct as far as it could inefficient practices and neglect of duty as well as to improve the necessary "tools"--i.e, court quarters, libraries, and personnel--needed by the judges.

Unfortunately, and in spite of the apparent conflict of interest involved, the business needs of the courts had to be filtered through the Department of Justice to the Congress. This conflict of interest was recognized by the various attorney generals as well as the courts. In 1937 the then Attorney General publicly stated and wrote to the Congress that

> there is something inherently illogical in the present system of having budget and expenditures of the courts and the individual judges under the jurisdiction of the Department of Justice. The courts should be an independent, coordinate branch of the government in every proper sense of the term. Accordingly, I recommend legislation that would provide for the creation and maintenance of such an administrative system under the control and direction of the Supreme Court.

Two years later, in August of 1939, legislation creating the Administrative Office of the United States Courts was enacted (now 28 U.S.C. § 631 et seq. (1976)).

The House committee which developed the bill (the Administrative Office Act) summarized what the bill's intent was:

> The primary object of the Bill is to promote the administration of justice in the U.S. Courts. Its accomplishment is sought principally by the establishment of an Administrative Office, with a director in charge, having a duty of examining the dockets of the various inferior federal courts and preparing statistical data and reports of the business transacted by those courts, acting as a clearing house through which information gathered with reference to improving the efficiency of the courts and expediting the disposition of cases may be disseminated, preparing and submitting budget estimates of appropriations necessary for the maintenance and operation of [said] courts and the Administrative Office, disbursing as now provided by law, moneys so appropriated for the maintenance and operation of the courts, purchasing and distributing equipment and supplies, examining and auditing vouchers and accounts of the officials and employees of the courts, and performing such other functions as may be assigned by the Supreme Court and the Conference of Senior Judges, under whose supervision the Director and his assistants are to work.
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> The Director is required to prepare and submit quarterly, to the Senior Circuit Judge of each circuit, statistical data and reports of the business transacted by the district court therein, and a semi-annual council of the circuit judges in each circuit is provided for the purpose of studying such reports and expediting the work of the district courts, as well as the Circuit Courts of Appeals. The district judges are required to carry out the directions of the council as to the administration of the business of their respective courts.

The Birth of the Circuit Judicial Conferences

> In addition to the council, the bill provides for an annual conference of the circuit and district judges in each judicial circuit, with participation by members of the bar for the purpose of considering the state of the business of the Court and advising ways and means of improving the administration of justice within each circuit.
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> The bill places the responsibility for judicial administration where it belongs--with the judiciary.

The Administrative Office Act provided a comprehensive administrative capability within the judiciary. Thus, by 1939, just 17 years after creating a conference of senior circuit judges, the administrative apparatus we now have--a Judicial Conference, circuit councils, and the Administrative Office--had emerged and the basic relationships among its components had been outlined. When Title 28 was recodified in 1948, Congress changed the name of the "Conference of Senior Circuit Judges" to the "Judicial Conference of the United States."

The Committees of the Judicial Conference

From the beginning of the Conference of Senior Circuit Judges, at the prompting of Chief Justice Taft, who appointed the original five committees, it was accepted that the work of the Conference was such as to necessitate a committee system. The early customary practice was for the Chief Justice, as chairman of the Conference, to appoint committees on particular subjects, rather than standing committees. These committees generally reported in writing at the next meeting of the Conference, putting in precise and appropriate form for adoption by the

Conference the consensus of opinion on matters which had come before it. The incremental increase in the size of the Conference over the years, combined with a proliferation of business requiring Conference attention and action, quickly transformed the "single issue" committee arrangement instituted by Chief Justice Taft to a formal "standing committee" structure not unlike that used by both the House and Senate, which is supplemented by ad hoc committees for particular projects. As required by the needs of the Conference, that committee structure has grown and specialized. In spite of the inevitably increasing complexity of the business before the Conference and an undeniable resultant pressure toward so-called bureaucratic procedures associated with Conference committee activities in management, every reasonable effort has been made to permit a maximum permissible degree of collegiality--and agenda flexibility--in the Conference and its committees. Almost all of the paperwork associated with the preparation and distribution of the committees' reports is performed by the Administrative Office with the assistance of the particular committee's chairman. There is a necessary correlation between Conference committee jurisdiction and line divisions in the Administrative Office. For example, Administrative Office personnel from its Magistrates Division staff the Conference's Committee on the Administration of the Magistrates System, Bankruptcy Division personnel staff the Committee on the Administration of the Bankruptcy System, and so on.

Today, there are eight standing or general committees of the

Judicial Conference, plus fifteen ad hoc or somewhat temporary committees. The following committees are the eight standing committees:

(1) Committee on Court Administration, chaired by Judge Elmo B. Hunter of the Western District of Missouri;

(2) Committee on the Administration of the Criminal Law, chaired by Judge John D. Butzner, Jr., of the Fourth Circuit;

(3) Committee on the Operation of the Jury System, chaired by Judge T. Emmett Clarie of the District of Connecticut;

(4) Committee on the Administration of the Bankruptcy System, chaired by Judge Robert E. DeMascio of the Eastern District of Michigan;

(5) Committee on the Administration of the Probation System, chaired by Judge Gerald B. Tjoflat of the Eleventh Circuit;

(6) Committee on the Budget, chaired by Chief Judge Charles Clark of the Fifth Circuit;

(7) Committee on Intercircuit Assignments, chaired by Judge Thomas A. Flannery of the District of the District of Columbia; and

(8) Committee on the Administration of the Magistrates System, chaired by Judge Otto R. Skopil, Jr., of the Ninth Circuit.

And, of course, there is the six-member Executive Committee of the Judicial Conference that acts in between sessions of the Conference, as needed. The members of the Executive Committee are James R. Browning, Levin H. Campbell, Charles Clark, Howard T. Markey, Aubrey E. Robinson, Jr., and Robert J. McNichols. The Executive Committee is chaired by the Chief Justice.

The special or ad hoc committees presently existing are as follows:

(1) The Advisory Committee on Codes of Conduct, chaired by Chief Judge Howard T. Markey of the Federal Circuit.

(2) The Committee to Implement the Criminal Justice Act, chaired by Judge Thomas J. MacBride of the Eastern District of California.

(3) The Committee on the Judicial Branch, chaired by Judge Frank M. Coffin of the First Circuit (our salaries and widow pensions, etc.).

(4) The Committee on Judicial Ethics, chaired so ably for many years by the late Edward A. Tamm. It is a statutory committee handling our statutorily required property transactions and income disclosures. The new chairman is Judge John H. Pratt of the District of the District of Columbia.

(5) The Committee on Pacific Territories, chaired by Judge Anthony M. Kennedy of the Ninth Circuit.

(6) The Committee to Review Circuit Council Conduct and Disability Orders, chaired by Judge Clement F. Haynsworth, Jr., of the Fourth Circuit.

(7) The Committee on Rules of Practice and Procedure, chaired by Judge Edward T. Gignoux of the District of Maine.

(8) The Advisory Committee on Appellate Rules, chaired by Chief Judge Pierce Lively of the Sixth Circuit.

(9) The Advisory Committee on Bankruptcy Rules, chaired by Judge Morey L. Sear of the Eastern District of Louisiana.

(10) The Bicentennial Committee, chaired by Chief Judge Howard T. Markey of the Federal Circuit.

(11) The Advisory Committee on Civil Rules, chaired by Judge Frank M. Johnson, Jr., of the Eleventh Circuit.

(12) The Advisory Committee on Criminal Rules, chaired by Judge Leland C. Nielsen of the Southern District of California.

(13) The Ad Hoc Committee on American Inns of Court, chaired by Judge Aldon J. Anderson of the District of Utah.

(14) The Ad Hoc Committee to Monitor Regulations on Electronic Sound Recording, chaired by Judge Collins J. Seitz of the Third Circuit.

(15) The Ad Hoc Advisory Committee on the Administrative Office, chaired by Judge Edward J. Devitt of the District of Minnesota.

Over 100 judges serve on the regular committees, an additional 100 or so judges serve on the special committees, and an additional 36-plus serve on the subcommittees. Thus, a grand total of well over 236 judges are involved in the committee process--a real cross section of the federal judiciary.

The Committee on Court Administration

The Court Administration Committee consists of 18 members, selected by the Chief Justice and, generally speaking, having six-year terms. This "parent committee" has five subcommittees, namely,

(1) a seven-member Subcommittee on Federal Jurisdiction, chaired by Chief Judge Charles E. Simons, Jr., of the District of South Carolina;

(2) a nine-member Subcommittee on Federal-State Relations, chaired by Judge S. Hugh Dillin of the Southern District of Indiana;

(3) a seven-member Subcommittee on Judicial Improvements, chaired by Judge William S. Sessions of the Western District of Texas;

(4) a five-member Subcommittee on Judicial Statistics, chaired by Chief Judge Charles A. Moye, Jr., of the Northern District of Georgia; and

(5) a seven-member Subcommittee on Supporting Personnel, chaired by Chief Judge Walter T. McGovern of the Western District of Washington.

From time to time in recent years some very temporary subcommittees or ad hoc committees of the subcommittee or the parent committee have been appointed, served, and terminated.

How does a judge get appointed to the parent committee or to a subcommittee? The same way as appointments are made to all committees of the Judicial Conference--by the Chief Justice. I

tip my hat to him. It is my observation that he has done an incredibly good job of it, in spite of his other time-consuming and vital work. It is very apparent that he has wisely distributed the membership, with the intent to give representation to all sections of the country. He has selected tried-and-true performers who, without complaint, give many hours of work each month to their particular committee, to improve the administration of justice. The Chief Justice has required and has obtained quality and dedicated objective performance from all his appointees. We judges and the nation as a whole owe much to this Chief Justice who forthrightly recognizes the administrative problems of the federal judiciary and works hard and long to solve them in the fairest and most efficient manner reasonably possible.

How do the parent committee and its subcommittees get their assignments? Keep in mind that the parent committee and the subcommittees are all creatures of the Judicial Conference, appointed basically for the purpose of providing research, recommendations, and possibly other assistance to the Judicial Conference. The majority of our assignments thus come from the Judicial Conference itself. It used to be we would take suggested studies from many other sources, but we have developed the problem of being "overly popular." Our judges have learned from the history of the committee system that if you can get an item on a committee or subcommittee docket, you are assured of a careful and meaningful study which, if favorable, is likely to be implemented into action by the Judicial Conference. Our federal

judges and others having an interest in federal policies and federal pay practically immersed us with suggestions and requests. So we have had to limit the class considered to have the necessary standing to get a matter on our docket, at least for a serious study or other consideration. I assure you the following have that standing: the Chief Justice, the Judicial Conference or any member thereof and, generally speaking, any other committee or subcommittee of the Conference, the Administrative Office, the Federal Judicial Center, any congressional committee or its chairman, any judicial council, any circuit council and any circuit conference, and any member of the parent or of the subcommittee. We also honor any request from any judge if the subject to be considered is within our jurisdiction, is timely on the face of it, and warrants a study. The chairmen of the parent committee and subcommittees have a good deal of discretion in this area of who gets on our docket so as to be sure that we do not shut out anyone or any idea or request that merits committee consideration. Keep in mind that it is the Judicial Conference that decides federal court policy and generally our work is simply advisory to the Conference or the carrying out of a Conference policy.

What are some of the more interesting matters before the parent committee or its subcommittees at present? While perhaps not glamorous, computerization of the federal courts is taking more of our time at present than any other subject. The parent committee has excellent help on this subject from its Subcommittee

on Judicial Improvements, which has been bolstered by the addition of three judges with expertise in the subject. They are Chief Judge William S. Sessions of the Western District of Texas, Judge Joseph F. Weis, Jr., of the Third Circuit, and Chief Bankruptcy Judge Beryl E. McGuire of the Western District of New York. Also, both the Federal Judicial Center in particular and the Administrative Office are giving us valuable assistance. We are continually monitoring our progress and making progress reports to the Judicial Conference.

Another subject--always important and always with us--is the question of how many additional judges the Judicial Conference needs to request of Congress to keep us afloat. The Subcommittee on Judicial Statistics under Judge Moye is presently contacting all circuits and addressing that need in accordance with a long-established procedure to obtain the requisite facts and needs.

The court reporter problem has been with us through most of the history of the Judicial Conference. It is constantly under study at the direction of the Judicial Conference. The question of whether the use of sound-recording machines operated by skilled personnel is practical, economical, and accurate is also under study, at the direction of both the Congress and the Judicial Conference. The question of the necessary number and proper grade classification of as well as the pay rates for court personnel, including secretaries and law clerks, is under constant review. It is well to remember that if the item under consideration

costs money, the appropriations committees of the House and Senate are going to carefully consider that cost in deciding whether or not its funding by the Congress is justified.

These are just a few representative difficult problems the committee is called on to study and to report on to the Conference. They all arise as a result of the growth in the number of federal judges, our ever more complex society, and its resulting intricate and voluminous litigation and the need to constantly seek better and less expensive ways to do things in our technological world.

Now for a couple more questions. How often and where do the parent committee and subcommittees meet? This is controlled by the two specific dates (usually in March and in September) the Judicial Conference meets. The Chief Justice determines those two meeting dates. The parent committee must meet in time for the written report of its meeting to be distributed to the Conference members at least two to three weeks before the Conference meeting. The subcommittees must meet early enough to get their written reports to the parent committee at least two to three weeks before the parent committee meets. All this usually results in the parent committee meeting in July or early August and again in early January of each year. Our committee meetings, as is also true of the Conference meetings, usually last one and one-half to two days. The parent committee and subcommittee chairmen determine the precise time and place of each meeting.

Who attends and who does the preparatory work? Ordinarily only the committee members and the assigned Administrative Office

staff attend. However, if the subject under study justifies it, one or more especially knowledgeable people--including judges, professors, and laymen--attend. Attendance is by invitation and upon occasion a very interested judge will ask to attend and does so. The expertise of the Federal Judicial Center is also available. Occasionally questionnaires and polls of judges occur. Much of the preparatory work is performed by the Administrative Office, with some oversight by the committee chairman or by a committee member specifically assigned to that task. Members of the committees on their own also make their own independent preparation. The result is a careful, in-depth study that assists the subcommittee and the parent committee in formulating a written report and recommendations to the Judicial Conference for its consideration. Much of the supporting material of a factual nature on which the report and recommendation are based is forwarded to the Conference to aid it in its consideration.

My allotted time has been used; I have endeavored to cover too much in a very short time. Even so, I hope I have given you some historical perspective on our federal courts' system of self-government. I have mentioned only a few of the current problems and studies within that system. I appreciate your willingness to learn more about that system and to contribute to it. It is important that the courts administer themselves and do so as efficiently, as fairly, and as inexpensively as possible, or others who are not judges may be tempted to get into the

act--to the detriment of what is now the best system of justice in the world.

Thank you for granting me this opportunity to share these mutual problems and history with you.

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