

THE ADMINISTRATION OF THE FEDERAL COURTS

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THE TREND TOWARD ADMINISTRATIVE COORDINATION

The lower federal courts have always enjoyed a relatively high degree of autonomy in matters of administration.¹ This independence rests upon (1) the power of each court to appoint and remove, and thus to control the conduct of, its administrative officers;² (2) a tradition of individuality and continuity in administration;³ and (3) a recognition of the value in an administrative scheme of flexibility sufficient to permit its adaptation to differing local conditions and preferences.⁴

The diversity of administrative practices among federal courts is in many respects necessary and desirable. The United States is a large country. People in different sections do business in different ways and at different speeds. Particularly are there

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¹ Compare the unifying control exercised by the Supreme Court over the performance of the judicial function. Even where adherence to local law has been the rule for procedure (REV. STAT. §914 (1875)), or substance (*Eric R. R. v. Tompkins*, 304 U. S. 64 (1938)), the Supreme Court has interpreted the principle of conformity and controlled its application.

² Under present statutes, clerks and court reporters for the district courts are appointed by the senior district judge of the court served if there is more than one judge (28 U. S. C. §6 and §9a(a) (Supp. 1946)). The bill now pending (H. R. No. 3214, 80th Cong., 1st Sess. (1947)) to revise Title 28 of the Code would place the power to appoint these officers in the court (§§751 and 753) with a provision that when a majority of the judges of any district court cannot agree, the chief judge (corresponding to the present senior district judge) shall make the appointment (§756).

³ Since there is no sharp differentiation between matters of administration and matters of procedure, the years of operation under the principle of conformity with state practice contributed to the development of individuality in administration among the district courts. Even now, local rules not inconsistent with the Federal Rules of Civil Procedure are expressly permitted (Rule 83). Thus the circuit courts of appeals differ in their requirements as to the printing of the record; the district courts differ in their arrangement of the calendars and in the provisions made for assignment of cases to individual judges. Differences are also found from court to court in the provision of juries, in the practice in instructing juries, in the holding of pretrial conferences, in expediting the disposition of cases on the docket, and in the degree to which the work of such administrative personnel as clerks and probation officers is supervised.

⁴ In 1942 the Judicial Conference of Senior Circuit Judges rejected, as an unwise interference with the judges in the administration of their courts, a committee proposal that the personnel of the clerks' offices (except the clerks themselves and their chief deputies) be brought within the classified civil service. REPORT OF THE JUDICIAL CONFERENCE OF SENIOR CIRCUIT JUDGES 10 (1942). Since the purpose of the recommendation was to provide increased security of tenure for the rank and file of the employees, it should be pointed out that instances in which administrative personnel are disturbed in consequence of changes in the court are comparatively few. A study made in 1943 showed that of 104 federal court clerks, 71 had served more than five years; of these, 25 had served from six to ten years, 18 from eleven to fifteen years, 13 from sixteen to twenty years, and the remaining 15 for longer periods. The sentiment appears to be increasing among the federal judiciary that clerks and other administrative officers should be retained in their positions as long as they perform their duties satisfactorily, notwithstanding changes in the judgeships.

differences between urban communities and rural areas, where the pace of life is more leisurely. The federal courts need the power which they have of adapting their methods to these differences in local conditions.

On the other hand this diversity has some disadvantages. One of the most marked is the disparity between different districts in the burden of judicial business. There is at least one federal judicial district for every state. As a result there are some single districts in states of small population in which the work is light. This is true also of some additional districts which were created within a state for reasons persuasive to Congress at the time, but which would hardly be warranted today if the judicial districts were being laid out *de novo*. There are other districts in which population and commerce are on the rise and the courts are burdened by more business than they can well handle. The independence of the courts in their administration permits laxity in the conduct of administrative offices like those of the clerks, if the courts concerned are not interested. The course of justice may become sluggish and litigants be injured by delay if the courts are complacent about the flow of their business and are disposed to give the lawyers a free hand in the matter. Where each court may largely shape its administrative procedure along its own lines without regard to that in other courts, practices in different parts of the country may differ so widely that the variance causes substantial inconvenience to litigants and counsel, and increases the expense of litigation. Without some impulse from the center transmitted to the parts, improvements in methods may be blocked and progress retarded. The dissemination throughout the system of new ideas in administration that may be developed in one court is difficult if there is not a central agency to serve as a clearing-house.

Considerations such as these have brought about in the last twenty-five years a trend toward greater coordination of the federal courts. This has been reflected principally in three ways: (1) in the establishment of the Judicial Conference of Senior Circuit Judges in 1922, and of the judicial conferences and councils in the circuits in 1939; (2) in the grant to the Supreme Court of the rule-making power and the adoption of the Rules of Civil Procedure in 1938, and of the Rules of Criminal Procedure in 1946; (3) in the establishment of the Administrative Office of the United States Courts in 1939. The purpose of this paper is to discuss the work of the judicial conferences and councils and the Administrative Office.

The major reliance for improving the judicial administration through these agencies is placed upon the voluntary cooperation of the courts rather than upon any powers of compulsion. There are some matters of administration in which decisions binding upon the judges may be made by the agencies mentioned; but many of their important functions are advisory, and in large part they pursue their aims by endeavoring to persuade the judges to take the requisite action. The effort is essentially to develop a strengthened *esprit de corps*, to gain greater effectiveness in the judicial system as a whole without impairing the vitality of the parts.

THE JUDICIAL CONFERENCES AND COUNCILS

The principal author of the Judicial Conference of Senior Circuit Judges was the late Chief Justice William Howard Taft, and the principal reason for creating it was to give flexibility to the force of federal judges. As has been observed, there is a wide difference in the volume of business of the federal courts in different districts, and consequently a wide disparity in the burden per judge. Formerly there were only limited means for bringing aid to courts that were in arrears from judges in other districts or circuits who had some surplus time. The act creating the Judicial Conference was designed to supply such a mechanism.

The statute did two things: first, it provided that once a year, upon the call of the Chief Justice and under him as chairman, there should be held a conference of the senior circuit judges of the several circuits (the presiding judges of the circuit courts of appeals). This conference was to make a comprehensive survey of the condition of business in the federal courts and determine what courts might be in need of help, and what courts might be in position to spare some of their judges temporarily in order to give it. Second, the act prescribed a procedure for the temporary assignment of judges from one district or circuit to another. Within circuits it provided that such assignments might be made by the senior circuit judge. From one circuit to another it empowered the Chief Justice to make them, upon a certificate of need from the senior circuit judge of the circuit seeking help, and the consent of the senior circuit judge of the circuit willing to give it.⁵ Chief Justice Taft described this primary purpose of the Judicial Conference of Senior Circuit Judges as follows:

The provisions allow team work. They throw upon the council of judges, which is to meet annually, the responsibility of making the judicial force in the courts of first instance as effective as may be. They make possible the executive application of an available force to do a work which is distributed unevenly throughout the entire country. It ends the absurd condition, which has heretofore prevailed, under which each district judge has had to paddle his own canoe and has done as much business as he thought proper.⁶

Having created the Judicial Conference of Senior Circuit Judges, the statute went beyond the immediate occasion and gave to that body general power to "submit such suggestions to the various courts as may seem in the interest of uniformity and expedition of business." As time has gone on, this provision has become more and more important. Under it the Conference has made recommendations to the courts in regard to procedures, such as pretrial conferences; matters of administration, such as the qualifications of probation officers; and matters of legislation affecting the courts. In later years the Conference has been given administrative powers, such as the power to approve the annual budget for the circuit courts of appeals and the district courts and the power to fix the number and prescribe the salaries of referees in bankruptcy and court reporters for the district courts.

Following the creation of the Judicial Conference of Senior Circuit Judges, that

⁵ 42 STAT. 838 (1922), as amended, 28 U. S. C. §218 (1940).

⁶ 6 J. AM. JUD. SOC'Y 37 (1922).

body was supplemented by coordinating bodies in the circuits which were better qualified, by their familiarity with local conditions, to deal with problems within the respective regions. Such a mechanism was a logical way of avoiding over-centralization and promoting responsible participation in the judicial system in the various areas. The Administrative Office Act in 1939 undertook to do this by providing for judicial conferences in the several circuits once a year and also for judicial councils in the circuits.⁷

Each judicial conference consists of all the circuit and district judges of the circuit, and of representatives of the bar selected in a manner determined by the circuit court of appeals. In all the circuits the judges hold at least one executive session at which matters pertaining to the internal affairs of the courts are discussed, usually with a representative of the Administrative Office of the United States Courts in attendance. The conferences of almost all of the circuits hold some open sessions for consideration of developments in relation to the federal courts, such as the Civil or Criminal Rules, sentencing procedures, and many others. In some circuits pains are taken to procure not only the presence but the active participation of representative members of the bar. The statute plainly contemplates this, and it is desirable not only because the lawyers can make a valuable contribution to the discussions, but because their interest will broaden the base of public understanding and support of the courts. Under a policy adopted by the Judicial Conference of Senior Circuit Judges, the circuit conferences have become a forum for the consideration of legislation recommended by that body or its committees, and a means of ascertaining the sentiment of the judges in the different circuits in regard to such matters.

The main purpose of the judicial councils in the circuits, as prescribed in the Administrative Office Act, is to consider the state of the judicial business within the circuits as shown in the periodic reports of the Administrative Office, and to take such action "as may be necessary" to correct any deficiencies which appear in the handling of the work. This may involve advice to the senior circuit judge in reference to the temporary assignment of judges from other districts within the circuit to courts in arrears, or a request to the Chief Justice of the United States for the temporary assignment of judges from other circuits. In some instances in which district judges have held cases under advisement for excessively long periods after submission, the judicial councils have directed them to devote themselves exclusively to the decision of such cases until they were disposed of, and have arranged for the assignment of other judges to take their current calendars in the meantime. The act makes it the duty of the district judges of the circuit "promptly to carry out the directions of the council as to the administration of the business of their respective courts." This gives the judicial councils a broad power to supervise and direct the administration of the federal courts in the respective circuits, to the end that the business may be effectively and expeditiously transacted.

⁷ 53 STAT. 1223 (1939), 28 U. S. C. §§448-449 (1940).

THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

There were two principal reasons for the establishment of the Administrative Office of the United States Courts: first, to place the business management of the courts in an agency under their control rather than in the Department of Justice in the executive branch of the government, where it had been before; second, to provide for a service of information and statistics, also by an agency of the courts.

In the beginning the federal judicial organization was small and the management of its business was a simple task. It is not strange that as a matter of convenience this function was assigned to other agencies. For a long time it had been handled by the Department of Justice. However, as the business of the courts increased, particularly with the expansion of federal functions, and as their fiscal management became a larger operation,⁸ it became increasingly inappropriate for their administration to be controlled by an agency of the Executive, which was itself by far the largest single litigant. Also it was natural for the courts to wish to develop under their own direction a system for gathering and analyzing statistics concerning their work. The Attorney General from 1933 to 1939, Homer S. Cummings, was disinterested enough to recognize that the administration of the courts should be separate from the Department of Justice, and with his strong support the Administrative Office was created.⁹

The act provides for a Director and an Assistant Director who are appointed by the Supreme Court to serve during the pleasure of the Court and who are subject to removal by it. The other officers and employees are appointed by the Director, subject to the civil service laws and the approval of the Supreme Court. The Director has the general functions previously indicated: first, administering the business affairs of the federal courts (except the Supreme Court), which includes securing the necessary appropriations for their personnel and facilities, and directing the expenditure of the funds appropriated; and second, compiling and reporting statistics and information concerning the work of the courts. In connection with the administration of the courts the Director exercises a general supervision over their administrative officers: that is, the clerks of the courts, United States commissioners, reporters, referees in bankruptcy, and probation officers, subject to their primary accountability to the courts by which they are respectively appointed and which they serve. He also attends to the needs of the courts for quarters. Added to these functions, which are most directly related to the origin of the office, is another, stated in general language in the act, which has become of great importance, viz., to have charge of "such other matters as may be assigned to him by the Supreme Court and the conference of senior circuit judges." Under this provision the Director and his staff have become a kind of executive secretary or agent of the Judicial Con-

⁸ The appropriations for the federal courts for the fiscal year from July 1, 1947 to June 30, 1948, although less than 1/19 of 1 per cent of the federal budget for the year, aggregate \$19,493,165.

⁹ 53 STAT. 1223 (1939), 28 U. S. C. §§444-450 (1940). The act was approved August 7, 1939, and took effect November 6, 1939.

ference of Senior Circuit Judges and its committees, and other bodies like the judicial conferences and councils of the circuits. The Director prepares matters for the consideration of the Judicial Conference of Senior Circuit Judges at its meetings, and between the meetings he endeavors to carry out actions taken by the Conference concerning both the administration of the courts and legislation affecting them. In the latter aspect he cooperates with judges familiar with the particular subjects in representing the Conference before committees of the Congress.

The Administrative Office consists of four divisions under the direction of the Director aided by the Assistant Director: the Division of Business Administration, the Division of Procedural Studies and Statistics, the Probation Division, and the Bankruptcy Division. The Division of Business Administration in turn consists of three sections: the Audit Section, the Service Section, and the Budget and Accounting Section. The divisions have generally the functions indicated by their titles, and each is in charge of a chief (except the Division of Business Administration, which is in charge of the Assistant Director). The Audit Section of that division, under a Chief Auditor, audits the reports of the expenditures and the financial reports of various officers of the federal courts. This audit is subject to the final audit of the General Accounting Office under the Comptroller General. The Service Section, under a Service Officer, attends to the purchase of equipment and supplies for the courts, including law books, typewriters, stationery, court forms, and printing, and arranges for telephone and telegraph service and for quarters. In obtaining quarters, the Director must work through the agencies charged with the construction and operation of federal buildings, because he is not provided with funds to erect or maintain buildings for the courts directly. The Budget and Accounting Section, under a Budget and Accounting Officer, prepares estimates for appropriations and attends to the allocation of the funds appropriated for the various purposes and among the various courts. The Division of Procedural Studies and Statistics is in charge of collecting from the clerks the statistics concerning the work of the courts, and also of procuring by personal visits information necessary to supplement the statistics and permit a rounded judgment upon the operation of the courts. It studies procedural problems referred to it by the committees of the Judicial Conference of Senior Circuit Judges (such as the selection of jurors and the treatment of juvenile offenders), and also procedural problems which may be referred by other agencies concerned with procedure, such as the advisory committees of the Supreme Court, the judicial councils of the circuits, and individual courts. The Divisions of Probation and Bankruptcy supervise the business practices of the probation officers and the referees in bankruptcy. Moreover, the influence of the Administrative Office goes beyond the business routine and is exerted toward sound standards of performance on the part of these officers.

As of the end of the last fiscal year, June 30, 1947, the staff of the Administrative Office numbered 106 persons, divided among the different parts of the office as follows: three (including the Director) in the Office of the Director; seventy-two

in the Division of Business Administration, including the three sections described above; twenty-two in the Division of Procedural Studies and Statistics; four in the Division of Probation; and five in the Division of Bankruptcy. The budget of the Administrative Office for salaries and expenses for the current fiscal year (from July 1, 1947, to June 30, 1948) is \$400,000.

In all of his duties the Director acts, in the language of the statute, "under the supervision and direction of the Conference of Senior Circuit Judges." His functions are wholly administrative. He has no authority in matters of legislation or policy except such as may have been approved by the Judicial Conference of Senior Circuit Judges. Although he is appointed and is removable by the Supreme Court, he reports not to the Court but to the Conference. The Chief Justice, as chairman of the Judicial Conference, acts as a connecting link between the Conference and the Court.

SOME PRACTICAL ASPECTS OF THE FEDERAL JUDICIAL ADMINISTRATION

Thus the agencies of the federal judicial administration are: first, and most important, the courts themselves; second, the Judicial Conference of Senior Circuit Judges; third, the judicial conferences and councils of the circuits; and fourth, the Administrative Office of the United States Courts, which performs services for all the others. In most matters two or more of these agencies work together, so that the administration of the federal courts can be treated more intelligently by purposes or functions than by agencies. Four principal functions which will be considered in the remainder of this article are (1) providing personnel and facilities for the courts, (2) promoting promptness in the dispatch of judicial business, (3) promoting efficient procedures, and (4) promoting legislation for the courts.

A. Providing Personnel and Facilities for the Courts

Plainly, suitable administrative personnel is an important factor in the efficiency of the courts. In the federal system the administrative offices, such as that of the clerk of court, are established by statute. But in as much as the appropriations for the salaries of these officers—clerks, probation officers, and others—are made by the Congress in an aggregate sum for the entire country, some method of allocating the appropriations among the courts and among the personnel within the courts is necessary.

Prior to the creation of the Administrative Office the Department of Justice passed upon the number of deputy clerks in each clerk's office and fixed the salaries of the clerks and their deputies within statutory limitations.¹⁰ It likewise fixed the number and salaries of the officers and clerks in the probation offices of the district courts.¹¹ These functions are now performed by the Administrative Office.

¹⁰ 26 STAT. 826 (1891), as amended, 28 U. S. C. §544 (1940); 40 STAT. 1182 (1919), as amended, 28 U. S. C. §558 (1940); 42 STAT. 500 (1922), 28 U. S. C. §559 (1940); 40 STAT. 1182 (1919), as amended, 28 U. S. C. §562 (1940).

¹¹ 43 STAT. 1260 (1925), as amended, 18 U. S. C. §726 (1940).

In recent acts providing for court reporters of the district courts,¹² and changing the compensation of referees in bankruptcy from a fee to a salary basis,¹³ the Congress has placed the power to fix the number and salaries of these officers in the Judicial Conference of Senior Circuit Judges. By the appropriation acts for the fiscal years 1945, 1946, and 1947, the power to fix the salaries of secretaries and law clerks of judges has been given to the Director of the Administrative Office, to be exercised, however, on the basis of a classification of these employees by the judges served according to proficiency.¹⁴ The Director is authorized to call for a review of any such classification by the judicial council of the circuit as he sees fit.

Judges sometimes chafe at the restrictions upon the number and salaries of the administrative personnel of their courts. They not unnaturally consider that they know better than anybody else what is needed and that they ought to be permitted to provide for what they think best. Some central control is, however, indispensable, in as much as there is a single appropriation for each class of service for the entire country, and it must not be exceeded. Furthermore, it is important that the funds available be allocated as equitably as possible on the basis of need. Although each court has a keen appreciation of its own need, it cannot know the requirements of other courts or how they compare with its own. There is necessity for an over-all allocation of salary appropriations in the interest of all the courts and of the judicial system as a whole. The same is true of appropriations for equipment, such as law books. The Administrative Office, in which this function is placed in reference to most of the appropriations for the courts, regards itself as a trustee bound by one principle: that of fairness and equal treatment according to the conditions in each case. The same is true of the Judicial Conference of Senior Circuit Judges in fixing the salaries of court reporters and referees in bankruptcy.¹⁵

¹² 58 STAT. 5 (1944), 28 U. S. C. §9a (Supp. 1946).

¹³ Bankruptcy Act, §§37, 40, as amended, 60 STAT. 323, 325-326, 11 U. S. C. A. §§65, 68 (Supp. 1946).

¹⁴ The provision of the appropriation acts referred to is as follows:

“Provided, That the compensation of secretaries and law clerks of circuit and district judges (exclusive of any additional compensation under the Federal Employees Pay Act of 1945 and any other Acts of similar purport subsequently enacted) shall be fixed by the Director of the Administrative Office without regard to the Classification Act of 1923, as amended, except that the salary of a secretary shall conform with that of the main (CAF-4), senior (CAF-5), or principal (CAF-6) clerical grade, or assistant (CAF-7), or associate (CAF-8) administrative grade, as the appointing judge shall determine, and the salary of a law clerk shall conform with that of the junior (P-1), assistant (P-2), associate (P-3), full (P-4), or senior (P-5) professional grade, as the appointing judge shall determine, subject to review by the judicial council of the circuit if requested by the Director, such determination by the judge otherwise to be final: *Provided further*, That (exclusive of any additional compensation under the Federal Employees Pay Act of 1945 and any other Acts of similar purport subsequently enacted) the aggregate salaries paid to secretaries and law clerks appointed by one judge shall not exceed \$6,500 per annum, except in the case of the senior circuit judge of each circuit and senior district judge of each district having five or more district judges, in which case the aggregate salaries shall not exceed \$7,500.” (Pub. L. No. 166, 80th Cong., 1st Sess. (July 9, 1947).)

¹⁵ The fixing of salaries for the more than 350 individual referees and court reporters, who work under varying conditions, is obviously a somewhat difficult administrative task for a body of twelve persons with limited time. The Judicial Conference of Senior Circuit Judges is aided in the performance of this function by a detailed study and recommendations in advance of its meeting by committees on court reporting and bankruptcy.

To the rule that the administrative officers of the courts are appointed by the courts there is a partial exception, largely upon practical grounds, in the officers who maintain order in the courts. The function of protecting the courts during their sessions devolves in part upon the marshals of the districts,¹⁶ who are appointed by the President and are under the control of the Department of Justice. In addition, the law provides that each district judge may appoint a crier who shall also perform the duties of bailiff and messenger. It also provides for the employment by the marshals, upon a small per diem compensation, of bailiffs who may be needed to supplement the criers in attending upon the court and juries.¹⁷ Other statutes make the power to appoint a crier applicable to each circuit court of appeals.¹⁸

In the present year the appropriation for salaries of criers is sufficient to provide these officers for only about two-thirds of the district judges. Even so, the Congress has eliminated all but a small part of the appropriation for bailiffs upon the theory that the services of protection of the courts should be rendered as far as possible by the criers. Logically the appropriation for criers should be increased to provide at least one for every part of a district court presided over by a district judge. Even so, there will be a residuum of protection to the courts, which in large trials may be considerable, to be furnished by the marshals. For reasons of economy and other practical considerations, the control of personnel for this purpose will probably have to continue divided between the courts and the marshals.

In general, reliance is placed upon the judges to see that the officers whom they appoint are properly qualified, and this is reasonable enough. If poorly equipped persons are chosen, their incompetence cannot fail to reflect upon the courts and the judges in charge of them. Nevertheless, for two classes of officers, court reporters and probation officers, the Judicial Conference of Senior Circuit Judges has prescribed standards of qualifications. The statute expressly requires that persons appointed as reporters shall meet such standards.¹⁹ The standards were defined by the Judicial Conference in 1944 as follows:

Persons appointed as court reporters of the United States district courts shall be capable of reporting accurately verbatim by shorthand or mechanical means, proceedings before the court at a rate of 200 words a minute, and furnishing a correct typewritten transcription of their notes with such promptitude as may be requisite. They shall demonstrate familiarity with the terminology used in the courts, and shall be persons of unquestionable probity.

The Conference recommended "that the method of determining these qualifications in each particular case be left to the appointing court which will have a vital interest in securing for the reporting of its proceedings only persons who are competent and upright."²⁰

¹⁶ 36 STAT. 1132 (1911), as amended, 28 U. S. C. §220 (1940); REV. STAT. §787 (1875), as amended, 28 U. S. C. §503 (1940).

¹⁷ 58 STAT. 796 (1944), 28 U. S. C. §9 (Supp. 1946).

¹⁸ Judicial Code §127 (1911), 28 U. S. C. §224 (1940); Judicial Code §291 (1911), 28 U. S. C. §547 (1940).

¹⁹ 58 STAT. 5 (1944), 28 U. S. C. §9a(a) (Supp. 1946).

²⁰ REPORT OF THE JUDICIAL CONFERENCE OF SENIOR CIRCUIT JUDGES 13 (Sept. 1944).

The Judicial Conference in 1940 laid down the general principle that "in view of the responsibility and volume of their work, probation officers should be appointed solely on the basis of merit without regard to political considerations; and that training, experience and traits of character appropriate to the specialized work of a probation officer should in every instance be deemed essential qualifications."²¹ It was realized at the time that it would be desirable to give to this a sharper cutting edge by defining the qualifications more specifically after the precise standards to be adopted could be further considered. A committee was appointed to study the matter, and upon its recommendation the Judicial Conference in 1942 reaffirmed its previous declaration, supplementing it with a number of elements of qualification, including a college education or the equivalent, and "experience in personnel work for the welfare of others of not less than two years, or two years of specific training for welfare work (a) in a school of social service of recognized standing, or (b) in a professional course of a college or university of recognized standing."²²

The Judicial Conference, without undertaking to prescribe definite qualifications for United States commissioners (who are the committing magistrates of the federal courts), advised in 1943 that

The appointment of commissioners should be confined to persons of sound and independent character, of good intelligence and common sense, and of good repute, and that when feasible only those should be appointed who are free from present activity in partisan politics, and that when judges in making an appointment are confronted with a choice between lawyer and layman, each having in combination the foregoing qualifications to substantially the same degree, preference should normally be given to the candidate having the additional advantage of education and experience in law.²³

Standards like those adopted by the Judicial Conference for the classes of officers mentioned are for application by the courts. In consequence of the discretion given to the courts not all appointees meet the standards. For instance, of twenty-one probation officers appointed in the last fiscal year, thirteen, or 61.9 per cent, fulfilled the qualifications of education and experience. This is not a satisfactory proportion, and efforts are in progress by another committee on probation of the Judicial Conference to increase it. But in general the federal probation officers are a highly intelligent and capable body of men, as will be apparent to anyone who sees them assembled in their regional conferences. Professor Sheldon Glueck, the eminent criminologist of Harvard, wrote of the officers in the northeastern states whom he met at such a conference in Cambridge in 1942:

One could not help being greatly encouraged in observing the federal probation officers at the Conference. They gave an impression of dignified, mature, clear-headed, and socially minded men.

Opinion in the federal court system is strongly in favor of leaving in the courts

²¹ REPORT OF THE JUDICIAL CONFERENCE OF SENIOR CIRCUIT JUDGES 13-14 (Oct. 1940).

²² REPORT OF THE JUDICIAL CONFERENCE OF SENIOR CIRCUIT JUDGES 9 (1942).

²³ REPORT OF THE JUDICIAL CONFERENCE OF SENIOR CIRCUIT JUDGES 12-13 (1943).

the freedom in the choice of their administrative officers which they now possess. Standards for the guidance of the courts may be set up in some instances, and persuasion toward the appointment of qualified persons may be used. But the decision is for the judges. It is believed that the disadvantage of an occasional inferior appointment is more than offset in the long run by keeping the power where the responsibility resides. Experience seems to show that the persons selected are, by and large, excellently qualified, and more and more emphasis is being placed on merit in appointments. There can be no doubt that this is the collective sentiment of the federal judges.

Procuring suitable quarters for the courts is a task of no little difficulty. The Director has to perform this duty indirectly by making the requisite arrangements with the agencies which are in charge of construction and operation of buildings—the Public Buildings Administration and, in post office buildings, the Post Office Department. This calls for reasonableness on both sides. Courts sometimes are not satisfied with their quarters and are displeased that changes which they want cannot be made, or cannot be made more quickly. There are instances in which courts are having to work under conditions plainly unsuitable, such as crowding and lack of privacy for judges, jurors, and witnesses. Occasionally the conditions are even detrimental to health, as when the lighting systems are inadequate. On the other hand, it is obviously impracticable to permit each government agency, even the courts, to proceed independently in the matter of quarters and build for itself. It is necessary to place the control of buildings in some central agency or agencies, and provide for a coordinated building program. It is only fair to say that the Public Buildings Administration and the Post Office Department, in which the power is now lodged, are on the whole considerate of the courts, and do all that they reasonably can to make the court quarters convenient and attractive. When they fall short the cause is usually a shortage of funds or materials, or priorities for other types of construction.

This suggests the great importance of adequate appropriations for the efficiency of the judicial administration. In the federal system the Director of the Administrative Office develops the budgets for all federal courts except the Supreme Court. The budgets for the three special courts, the Court of Customs and Patent Appeals, the Customs Court, and the Court of Claims, are approved by those courts. The budgets for the circuit courts of appeals and the district courts are approved by the Judicial Conference of Senior Circuit Judges.²⁴ It is then for the Director of the Administrative Office, with the cooperation of members of the Judicial Conference and other judges especially conversant with the individual services, to explain the estimates to the subcommittees of the appropriations committees of the two houses of the Congress and do his best to justify them. These estimates are subjected to the same sharp scrutiny in the hearings which is given to the estimates for other branches of the government.

²⁴ 53 STAT. 1223 (1939), 28 U. S. C. §447 (1940).

It has been the policy of the Administrative Office, ever since it was created, to fix the appropriations requested at the amounts sincerely believed to be necessary, and to refuse to add something on the theory that reduction is inevitable, and that if there is a margin in the amounts asked there will be a better chance that what is left will be enough. I believe that this is not merely the only honest course, but that by winning the confidence of the legislative body it will work best in the long run. The appropriations committees are handicapped by having only a comparatively little time to review long and complicated estimates involving hundreds of items of expenditure. Sometimes at the hearings members may utter opinions which seem uninformed or harsh, and an administrator may have difficulty in making his position clear. But the members of the committees are trying to arrive at the essential facts. They have a responsibility for seeing that the funds which come from the people are judiciously used and are necessary, and this is true of the appropriations for the courts. Usually in the end the committees come to conclusions which are fair. The Congress, with here and there a disappointment, has reasonably provided for the financial needs of the federal courts during the period of eight years of which I have knowledge through the conduct of the Administrative Office.

In the last year or two members of the appropriations committee of the House at hearings on the appropriations have informally urged the courts to see whether there were not ways in which economies could be effected without detriment to the service. In this direction a searching study has been inaugurated by a committee of district judges in the Eighth Circuit,²⁵ which has scrutinized a number of common practices of the district courts, such as the calling of jurors and travel of the court personnel to hold sessions at different places, and commended to the judges means of minimizing the expense involved. Also the Judicial Conference of Senior Circuit Judges at its last annual meeting, in September, 1947, provided for a committee to study economy on a national scale. This study will include consideration of the possibility of making savings through eliminating places of holding terms of court and maintaining branch offices of the clerks of court where the volume of business is slight, and of other means of economy. The federal courts are resolved to cooperate with the Congress in all reasonable efforts to this end.

B. Promoting Promptness in the Dispatch of the Judicial Business

It has been stated that one of the reasons for creating the Administrative Office was to establish for the courts a thorough and comprehensive system of statistics. The Administrative Office endeavors to provide this through statistics based upon individual reports by the clerks on cases filed and terminated, and through information gained on visits to the courts and observations made in the field by attorneys on the staff of the office. This service is in charge of the Division of Procedural Studies and Statistics. The system of statistics is explained by Mr. Will Shafroth, Chief of the Division, in another article in this symposium.

²⁵ The Eighth Circuit comprises the states of Arkansas, Missouri, Iowa, Minnesota, North Dakota, South Dakota, and Nebraska.

The necessity for supplemental information gained by personal observation of attorneys in the field can readily be appreciated. Statistics tell something, but by no means all. They need to be interpreted. The causes of conditions reflected by the figures can usually be ascertained only by personal inquiry, from informed sources within and without the courts. Consequently it is the policy of the Administrative Office always to check conclusions from statistics in this way. The results are reported annually to the Judicial Conference of Senior Circuit Judges and copies are filed with the Congress as required by law. The trends of judicial business are also reported quarterly to the judicial councils of the circuits.

It should be emphasized that in this function the Administrative Office is only a fact-finding agency. The responsibility for determining what steps shall be taken to remedy any congestion or slowness which may appear is that of the bodies for whom the reports are primarily intended—the judicial councils of the circuits and the Judicial Conference of Senior Circuit Judges. It can be said that these bodies are not slow to act upon the information supplied. Among the means open to them are those explained above: to procure the temporary assignment of outside judges to courts in difficulty, and to enable judges who are in arrears in deciding cases under advisement to dispose of them, by bringing in other judges to handle their current work temporarily.

In September, 1946, the Judicial Conference of Senior Circuit Judges, following a study by a committee, adopted a procedure which the Administrative Office was directed to follow for making larger use of the provision for assignment of judges between circuits.²⁶ This helps to meet temporary emergencies. Where congestion is persistent it ordinarily means only one thing: that there is need for more permanent judges in the district or circuit. The Judicial Conference of Senior Circuit Judges then recommends legislation for an increase in the number of judges, and the responsibility for providing the necessary judicial force passes to the Congress.

C. Promoting Efficient Procedures

As has been shown, the Judicial Conference of Senior Circuit Judges has some legal powers in the administration of the courts, such as the power to approve the annual estimates for appropriations and the power to fix the number and compensation of court reporters and referees in bankruptcy. But the influence of the Judicial Conference, through its advice and recommendations, may well be greater and more far-reaching than its legal powers. I give two examples. In 1946 the Conference recommended a manual embodying principles of design for court quarters, prepared by the Public Buildings Administration and approved after modifications by a committee of the Conference. This is intended to embody in court quarters, when construction is resumed by the federal government after the stoppage due to the war, features which have been shown by experience to be most effective and to avoid the waste of unnecessary and ill-advised variations in the design of particular buildings.

²⁶ REPORT OF THE JUDICIAL CONFERENCE OF SENIOR CIRCUIT JUDGES 23 (1946).

At the same time, the Conference was careful to make a reservation that the general principles of design were to be subject to any changes that might be necessary to meet local conditions.²⁷

A practice which has proved conducive to the expeditious determination of cases in both federal and state courts is the pretrial conference. This is, in essence, a survey of the issues in the case by the judge in advance of the trial, in the presence of counsel and sometimes of the parties, for the purpose of reducing to a minimum the matters in controversy and shortening the time consumed in trial by litigants, witnesses, jurors, and counsel. Incidentally, it conduces to settlement in a substantial proportion of cases, although this is not the primary objective. The Judicial Conference of Senior Circuit Judges recommended this procedure to the district courts in 1938²⁸ and 1944,²⁹ and has created a standing committee of judges to further the use of it. This strong endorsement is unquestionably one of the major reasons for the widespread use of pretrial procedure in the federal courts.

The Administrative Office naturally has nothing like the prestige of the judges, individually or collectively, to support its advice. In its supervision, however, of the work of the administrative officers of the courts—the clerks, the probation officers, the referees in bankruptcy, and others—it has opportunities to suggest improvements in practice, and these in general are accepted in a friendly spirit and frequently followed. An effort is made by the Office to adopt in these matters an attitude which is not censorious, but understanding and sympathetic. In that spirit much can be accomplished without power. A court administrator must speak softly and carry virtually no stick at all. Also, he must make it plain that any advice that he offers which is not based upon clear legal mandate is for the consideration and subject to the approval of the judge or judges of the court concerned. Perhaps it is as well that he can rely for the adoption of any suggestions which he may make only upon their merit. If the judges, through their contacts with him over a period of time, gain confidence in the administrative officer and come to believe that his purpose is to help and not to hinder, they will give him their cooperation, and, far beyond his legal authority, he can be helpful in improving the administrative practices of the courts.

D. Promoting Legislation for the Courts

Many improvements in the judicial administration require changes in the statutes, and it is natural that the Judicial Conference of Senior Circuit Judges should become

²⁷ *Id.* at 24-25.

²⁸ The Judicial Conference of Senior Circuit Judges at its annual meeting in 1938 referred to Rule 16 of the Federal Rules of Civil Procedure providing for pretrial conferences, and made the following comment on it:

"Although this rule has been in effect for a very short time it has already been applied in at least one district with apparent success. If the District Judges avail themselves of this opportunity, and proceed in the manner contemplated, there is every reason to believe that the speedy and appropriate disposition of cases will be greatly facilitated. The real points at issue may be ascertained at an early stage of the litigation and arrangements be made to avoid all delays for unsubstantial reasons." REPORT OF THE JUDICIAL CONFERENCE OF SENIOR CIRCUIT JUDGES 4 (1938).

²⁹ REPORT OF THE JUDICIAL CONFERENCE OF SENIOR CIRCUIT JUDGES 20-21 (Sept. 1944).

a medium for expression of the collective opinion of the federal judiciary in regard to legislation affecting the federal courts. It is the general policy of the Conference to refrain from passing judgment on measures pertaining to substantive law or involving issues of policy, which are primarily matters for the Congress, and to confine itself to measures relating to procedure, for which it has a definite responsibility. In such matters, and particularly those relating to the district courts, it has evolved a procedure for giving the circuit and district judges an opportunity to express their views. Before any measure affecting the district courts is recommended it is considered by a committee of the Judicial Conference appointed by the Chief Justice, of which at least half the members are district judges. The report of the committee is circulated among all the circuit and district judges and is submitted for consideration at the judicial conferences in the circuits. It is contemplated that each circuit will have the advice of a legislative committee of the circuit on the proposal. Any actions taken at the circuit conferences are reported through the senior circuit judges to the Judicial Conference of Senior Circuit Judges.³⁰ Only at the end of this process does the latter body make recommendations to the Congress in reference to the measures under consideration.

In recent years a number of major improvements in the organization of the federal courts have been accomplished by legislation. In 1944 a law was passed providing for official court reporters in the district courts, and giving to the federal courts a reporting system on a par with the best systems in the states.³¹ In 1946 the laws relating to United States commissioners were revised so as to simplify and make more adequate their basis of compensation by fees, and to facilitate prompt payment,³² as well as to furnish them with their official forms at government expense³³—something that should have been done long before. In the same year there was enacted one of the most notable reforms in the federal courts in recent times: the law changing the compensation of referees in bankruptcy from a fee to a salary basis.³⁴

The course of the measure concerning referees illustrates the long effort and the cooperation of many interests that are usually necessary to bring about major changes in the law. A number of times in the past the fee basis of compensating referees had been criticized and salaries had been proposed instead. But the movement for the recent enactment began in 1940 with an intensive study of the referee system by a committee on bankruptcy administration appointed by the Attorney General.³⁵ Its

³⁰ REPORT OF THE JUDICIAL CONFERENCE OF SENIOR CIRCUIT JUDGES 9-10 (1945).

³¹ 58 STAT. 5 (1944), 28 U. S. C. §9a (Supp. 1946).

³² 60 STAT. 752-753, 526, 28 U. S. C. A. §§597-597c, 599 (Supp. 1946).

³³ 60 STAT. 525, 28 U. S. C. A. §528a (Supp. 1946).

³⁴ 60 STAT. 323-332, 11 U. S. C. A. §§1, 62, 63, 65, 67, 68, 71, 79, 80, 81, 102, 104, 112, 517, 1024, 1033, 1059 (Supp. 1946).

³⁵ The committee at the time of issuance of the report consisted of Assistant Attorney General Francis M. Shea, chairman, Jesse H. Jones, then Secretary of Commerce and Federal Loan Administrator, Jérôme N. Frank, then chairman of the Securities and Exchange Commission and now United States Circuit Judge for the Second Circuit, William J. Campbell, United States District Judge for the Northern District of Illinois, Robert P. Patterson, then United States Circuit Judge for the Second Circuit and later

report, a notable public document issued early in 1941, recommended reducing the number of referees, making them as far as possible full-time officers, and paying them by salary.³⁶ The Judicial Conference of Senior Circuit Judges at a special meeting in the winter of 1941 approved the plan with modifications.³⁷ Thereafter the Judicial Conference and the Department of Justice under successive attorneys general worked together year by year to further the legislation. Public-spirited support was given by many organizations outside the Government which were concerned with bankruptcy, including the National Bankruptcy Conference, the American and other bar associations, credit and commercial associations, and others. Amendments had to be accepted to overcome objections, and were made up to the last stages of consideration in the Congress. At last the measure was passed, and on June 28, 1946, it was approved.

Even then, before the new statute could be put into operation it was necessary under its terms for the Judicial Conference of Senior Circuit Judges to adopt a detailed plan. Also it was necessary for the Congress to make appropriations to start it, although the law provided that in the long run the cost of the bankruptcy administration should be met as before by the charges paid by the parties to bankruptcy proceedings. In the months following the enactment of the statute, the Administrative Office through its Bankruptcy Division developed a plan for the number, salaries, and headquarters of referees, full-time and part-time, in each judicial district. This was submitted to all the circuit and district judges in March, 1947, was considered by the judicial councils of the circuits (which made some suggestions for change), was further considered by the Bankruptcy Committee of the Judicial Conference of Senior Circuit Judges, and finally was approved by the Judicial Conference itself, with modifications which were relatively inconsiderable, at a special meeting in April, 1947.³⁸ For a while it was doubtful whether the Appropriations Committee of the House of Representatives would recommend the necessary appropriations. But it did; the appropriations were made for the fiscal year beginning July 1, 1947, and the law went into operation on that date.

THE INFLUENCE ON THE STATES OF TENDENCIES IN THE FEDERAL JUDICIAL ADMINISTRATION

There is no close analogy as yet in state court systems to the judicial conferences and councils and the Administrative Office in the federal system. But some of the elements are present in embryo.

Secretary of War, Edward H. Foley of the Treasury Department, Thomas F. McAllister, then Associate Justice of the Supreme Court of Michigan and now United States Circuit Judge for the Sixth Circuit, and Lloyd K. Garrison, then Dean of the University of Wisconsin Law School and later a member of the National War Labor Board.

³⁶ ADMINISTRATION OF THE BANKRUPTCY ACT, REPORT OF THE ATTORNEY GENERAL'S COMMITTEE ON BANKRUPTCY ADMINISTRATION xi-xvi (1940).

³⁷ REPORT OF THE JUDICIAL CONFERENCE OF SENIOR CIRCUIT JUDGES 1-7 (Jan. 1941).

³⁸ REPORT OF THE JUDICIAL CONFERENCE OF SENIOR CIRCUIT JUDGES 2-43 (April 1947).

Many states have judicial councils, the purpose of which, like that of the federal conferences and councils, is to improve the administration of the courts within their respective jurisdictions.³⁹ Like the judicial conferences of the circuits in the federal system and unlike the Judicial Conference of Senior Circuit Judges and the judicial councils of the circuits in that system, the judicial councils in the states are usually composed of representatives of the bar as well as of judges, and the judges are chosen to some extent upon an individual basis and not exclusively *ex officio*. In the states there is a current tendency, which is favored on good grounds, to include interested laymen in the judicial councils. Also, the functions of the judicial councils in the states are as a rule only consultative and advisory; such councils have no administrative powers such as those of the Judicial Conference of Senior Circuit Judges and the judicial councils in the circuits in the federal system. In some instances the judicial councils in the states compile and report statistics of the courts. They are helpful in maintaining a continuing scrutiny of the work of the courts in their states and in promoting improvements in methods. But generally they are handicapped by the lack of staff assistance, and, partly in consequence, they tend to be intermittent and uneven in their operation.

In only a few states are there officers bearing any resemblance to the Administrative Office of the United States Courts, and in them the parallel does not go far. Connecticut has an executive secretary of the judicial department who audits the expenses of the courts under the direction of the judges, prepares the court budgets, acts as purchasing agent, and prepares the payrolls.⁴⁰ Missouri provides that the reporter of the Supreme Court shall serve as executive secretary of the Executive Council, which in turn is the governing body of its Judicial Conference.⁴¹ In this capacity he obtains and reports information concerning the state of the business of the courts. In 1945 West Virginia enacted legislation providing for an administrative office of the Supreme Court of Appeals with a director as its head. The functions of this office are substantially similar to those of its federal counterpart, and the enabling act provides that the director is also to act as executive secretary of the Judicial Council. An appointee has been named under this act and has assumed his duties for the Judicial Council, but the administrative office has not yet been established.⁴²

The new constitution of New Jersey which will take effect September 15, next, goes the whole distance to provide for a unified administration of the courts of that state, by placing power and responsibility in the Chief Justice, assisted by an Administrative Director. The first paragraph of Section VII of Article VI (the Judicial Article) provides that:

³⁹ There is no recent directory of judicial councils in the states. Such bodies existed in something like twenty-eight states in 1942, according to information contained in the *HANDBOOK OF THE NATIONAL CONFERENCE OF JUDICIAL COUNCILS* for that year.

⁴⁰ Connecticut Public Acts of 1937, c. 183, as amended, *CONN. GEN. STATS.* §788f. (Supp. 1941).

⁴¹ Missouri Laws 516-517 (1943).

⁴² House Bill 308 of the Legislature of West Virginia, enacted March 10, 1945, 4th report, Judicial Council of West Virginia 23-24 and App. 1, 31-55 (May 1, 1946).

The Chief Justice of the Supreme Court shall be the administrative head of all the courts in the State. He shall appoint an Administrative Director to serve at his pleasure.

The second paragraph provides for assignment of judges of the Superior Court by the Chief Justice among the various parts and for assignments to the Appellate Division according to rules of the Supreme Court. All who know the first Chief Justice under the new constitution, the Honorable Arthur T. Vanderbilt, will be confident that he will develop an effective administrative system.

The judicial councils in states which are not willing or not yet ready to go as far as New Jersey would plainly be strengthened by having an officer in the nature of an executive secretary who could serve them continuously, somewhat as the Director of the Administrative Office of the United States Courts serves the Judicial Conference of Senior Circuit Judges. This may be the natural approach toward an administrative office in state court systems. It seems probable that there would be little resistance to providing a state judicial council with a secretary at a reasonable salary and furnishing him with an office and moderate clerical service. Then if sentiment grew for assigning to him administrative and business duties, such a development might gradually come. Many of the services performed by the Director of the Administrative Office of the United States Courts would be equally helpful in other states if they were accepted. But the development of such an office cannot be forced; if it comes, it will have to come from an effective public opinion within the states.