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# Place of the Administrative Office in the Federal Court System

Henry P. Chandler

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**FEDERAL JUDICIARY ADMINISTRATION**  
**THE PLACE OF THE ADMINISTRATIVE OFFICE IN**  
**THE FEDERAL COURT SYSTEM**

HENRY P. CHANDLER .

Experience has fully borne out early optimistic estimates<sup>1</sup> of the value of periodic consideration of the work of the federal courts by the Judicial Conference of Senior Circuit Judges, discussed above by Professor Morse.<sup>2</sup> Nevertheless there are obvious limits to what the Judicial Conference can do. Made up of judges fully occupied with their judicial duties, meeting only once or at most twice a year, it can deal only with general policies. It can hardly examine into local conditions that may affect the operation of the courts in a particular district or circuit, or give the continuous attention that is sometimes necessary for improvement. Moreover, until 1939 it lacked an agent or executive secretary to procure information, make studies and prepare matters for its consideration, and carry out its decisions in the intervals between its meetings. The creation of such an agency, provided for by the Act of August 7, 1939, which took effect November 6 of that year,<sup>3</sup> was the next step in the evolution of the federal judicial administration.

The germ of the idea of an administrative officer of the courts was contained in the provision for a proctor, which was one of the elements in the controversial proposal for the reorganization of the federal judiciary submitted to the Congress by the President in 1937. Section 3 of the bill on the subject,<sup>4</sup> authorized the Supreme Court to appoint a proctor whose duty it should be to obtain and, if deemed desirable by the court, to publish information concerning the state of the business in the district courts and circuit courts of appeals, to investigate the need of assigning district and circuit judges to other courts, to make recommendations on the subject to the Chief Justice, and with the approval of the Chief Justice to recommend to any court of the United States methods of expediting cases pending on its dockets.

In the conflict which arose concerning the proposal in relation to the Su-

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<sup>1</sup>"More effective coordination of the existing personnel was one of the chief hopes underlying the passage of the Act of 1922. That hope has been fulfilled. Instead of the wholly unsatisfactory method of long distance correspondence, entreaties and accommodations in securing relief for congested districts through the release of unoccupied judges elsewhere, the Conference supplies a systematic examination of business and personnel, and an adjustment of personnel to business throughout the country." FRANKFURTER AND LANDIS, *THE BUSINESS OF THE SUPREME COURT*, (1928) 245.

<sup>2</sup>Morse, *Federal Judicial Conferences and Councils: Their Creation and Reports*, this volume, *supra* at p.

<sup>3</sup>53 STAT. 1223 (1939), 28 U. S. C. § 444 *et seq.* (Supp. 1941).

<sup>4</sup>S. 1392, 75th Cong., 1st Sess. (1937).

preme Court, the provision for a proctor received little consideration. The idea of an administrative officer for the courts was, however, incorporated in a bill which was introduced in a later session of the Congress. This bill<sup>5</sup> differed in a number of respects from the earlier proposal for a proctor. It placed in the administrative officer the management of the business affairs of the courts as well as duties with reference to the state of the dockets. Also, it made the administrative officer of the courts responsible to the Chief Justice of the United States and the Conference of Senior Circuit Judges, rather than to the Chief Justice and the Supreme Court. Bills of generally similar nature but containing further differences in detail were introduced in the first session of the 76th Congress,<sup>6</sup> and in due course issued in the present law.

There were two principal aims in the creation of the Administrative Office of the United States Courts. First, there was a purpose to put the business management of the courts in an officer of their own choosing instead of in the Department of Justice where it had been. It was thought to be inappropriate that the federal courts should have to look to the Attorney General, representing the Government of the United States which is the principal litigant before them, for the material means essential to their existence. There had been no complaint that in practice the Department of Justice had taken advantage of this position, but the arrangement was recognized to be wrong in principle. No one had stated this more clearly or had been more earnest in urging a change than former Attorney General Homer S. Cummings, who was in office during the period in which the plan for an administrative office for the courts was being developed.

The second purpose in the creation of the Administrative Office was to furnish the courts, as already indicated, with a source of information and statistics concerning the state of their business. In this field also the Department of Justice had been serving the courts in a way which had been expanding in later years. But it was desired to establish an agency under the control of the courts which could give more attention to the matter than was possible for the Department of Justice with its multifarious duties.

The detailed provisions of the statute spring from these objectives. The Act creates an establishment to be known as the Administrative Office of the United States Courts, and provides for a Director and Assistant Director who shall be appointed by the Supreme Court and hold office during the pleasure of the court. The Director is empowered with the approval of the Supreme Court and subject to the civil service laws, to appoint such employees

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<sup>5</sup>S. 3212, 75th Cong., 3d Sess. (1938).

<sup>6</sup>S. 188, H. R. 2973, H. R. 5999 (1939).

as may be deemed necessary and to fix their compensation according to the classification system generally applicable in the government service.

The Act prescribes the following functions for the Director: Generally he shall be in charge of all administrative matters relating to the offices of the clerks and other clerical and administrative personnel of the courts. He shall direct the disbursement of the funds appropriated for the courts. He shall provide accommodations and furnish necessary supplies to the courts. He shall audit the accounts of all the administrative officers and employees. It shall be his duty to present and justify from year to year before the Congress the estimates for appropriations for the courts. The estimates of certain special courts, the United States Court of Customs and Patent Appeals, the Court of Claims, and the United States Customs Court, are subject to the approval of those courts, and all other estimates are subject to the approval of the Judicial Conference of Senior Circuit Judges.

In addition to the business services enumerated, the Director shall examine the state of the dockets of the various courts and their needs for assistance. He shall prepare statistical data and reports concerning the business pending and the business transacted by the courts. This information he shall transmit quarterly for each circuit to the senior circuit judge of the circuit and annually to the Judicial Conference of Senior Circuit Judges. Finally he shall undertake "such other matters as may be assigned to him by the Supreme Court and the Conference of the Senior Circuit Judges."

The administrative powers and duties enumerated are by the Act expressly transferred from the Department of Justice to the new office. The Act specifies that all the courts of the United States are included within the plan of administration prescribed, except the Supreme Court. The Director has no power or duty in reference to the administration of the Supreme Court. Although the Director is appointed by the Supreme Court, he presents his estimates and reports not to the Supreme Court but to the Judicial Conference of Senior Circuit Judges. His direct responsibility is to the latter body.

#### *The Operation of the Administrative Office of the United States Courts*

The previous enumeration of the provisions of the statute indicates the nature of the work which devolves upon the Administrative Office of the United States Courts. The office is organized at present under four divisions: the Division of Business Administration, the Division of Procedural Studies and Statistics, the Division of Probation, and the Division of Bankruptcy.

It is the object of the Division of Business Administration to furnish the courts with all the facilities possible in the way of material and assisting personnel for the efficient handling of their work. The office is concerned with

the quarters for the courts. These it has to secure through arrangements with the government agencies which are charged at present with the construction and operation of the buildings in which the courts are held, *i.e.*, the Post Office Department and the Public Buildings Administration of the Federal Works Agency. The Administrative Office procures the law books for the courts. The task here is to secure an adequate appropriation for the purpose and then to allocate it as equitably as possible among the various courts according to their needs.

The Administrative Office regulates the salaries of the administrative personnel of the courts—the clerks of court and their deputies, the probation officers, and the secretaries and law clerks of judges—subject to the appropriations and to any statutory limitations. It is the duty of the Administrative Office to urge upon the Congress in its annual estimates for appropriations the need of a reasonable salary scale for the employees of the courts and, when the appropriation is made, to fix the salaries under it as nearly as possible according to a uniform plan based upon the nature of the service without discrimination of persons. In its supervision of the administrative offices of the courts, it is for the Administrative Office not only by vigilant audit to insure integrity but also to promote efficiency in business practices.

The Division of Procedural Studies and Statistics is the part of the office which is directly concerned with gathering information concerning the work of the courts and making recommendations looking toward increased efficiency and expedition in the disposition of the cases. This division compiles and reports statistics and supplements them by visits to the courts and observation of their methods on the ground. In the period that the Administrative Office has been operating it has added to the types of statistics previously gathered by the Attorney General.<sup>7</sup>

The office inquires into the reasons for delay in the disposition of cases which are pending longer than given periods of time: six months from the time of the indictment in criminal cases, and six months from the time of joinder of issue in civil cases. Such inquiries have disclosed that inability of the courts to hear the cases on account of congested calendars is far from the most common cause of delay, accounting for not more than one-eighth of the civil cases undisposed of for longer periods and not more than one-twelfth of the criminal cases so delayed in disposition.<sup>8</sup> Continuances by agreement of the parties through their counsel account for a much larger proportion. The Administrative Office now reports quarterly concerning cases held more than sixty days after submission under advisement by the district judges

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<sup>7</sup>See Morse *supra* at p. 347.

<sup>8</sup>Rep. Director Adm. Office U. S. Courts (1941) 25.

in the various circuits, and cases pending on reference to masters more than ninety days, with such pertinent facts as are known. The effect of this information has been to reduce sharply the number of such cases. The number of cases held by district judges under advisement after submission more than sixty days dropped from 298 in March, 1940, to 169 in August, 1941.<sup>9</sup>

Within the last few months a differentiation has been made between the total number of cases disposed of in the district courts and the number tried, for the purpose of determining the period normally required for the disposition of a contested case. Of the mass of cases there are many which are later dismissed without hearing or in which there is judgment by default, so that the average time for disposition is less than the time in the cases that are contested. For the fiscal year 1941, extending from July 1, 1940, to June 30, 1941, statistics were compiled concerning the median time elapsing between the filing and disposition of 4,524 civil cases which were tried in the district courts of the eighty-four districts of the United States having exclusively federal jurisdiction. This time for the country was 10.2 months, ranging from a low of 5.6 months in one circuit to a high of 18 months in another.<sup>10</sup> Beginning with July 1, 1941, statistics will be compiled regarding cases in the circuit courts of appeals corresponding with those heretofore collected for the district courts, which will show the time required for disposition of cases in the reviewing courts.

It has been pointed out many times by judges and others that statistics alone do not give an adequate idea of the state of business of a court. There is much that figures cannot tell. Thus, Chief Justice Taft, in speaking to the Committee on the Judiciary of the Senate in 1922, said:

"You gentlemen are all familiar with the fact that dockets are quite misleading in the number of cases that they seem to show. There is a lot of stuffing in the docket. Many of the cases ought to be dismissed.

"On the other hand the judge knows, and the clerk ought to know, and the district attorney ought to know, the cases that are real cases and those that are not; and therefore the getting at the evidence is a matter rather of personal investigation than it is statistical."<sup>11</sup>

The personal investigation to which Chief Justice Taft referred is made for the federal courts by attorneys on the staff of the Administrative Office. They supplement the statistics through information secured by conferring with the judges, the clerks, informed members of the bar of the community, and others. What they find is reported by the Administrative Office to the senior

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<sup>9</sup>Report of Director, *supra* note 8, at 24.

<sup>10</sup>Report of Director, *supra* note 8, at 26.

<sup>11</sup>*Hearings before Committee on the Judiciary on S. 2432, 2433, 2523, 67th Cong., 1st Sess. (1921) 11-12.*

circuit judge of the circuit, who shares it with the other circuit judges forming with him the judicial council.<sup>12</sup> The council is thus placed in full possession of the pertinent facts and enabled to advise the individual courts intelligently in regard to the planning and conduct of their work. Obviously attorneys engaged in visiting the courts must possess not only understanding but friendliness and tact. Given those qualities they can contribute to the better arrangement and dispatch of the judicial business.

The action to be taken upon the information supplied by the Administrative Office depends not upon the Administrative Office but upon the courts themselves. It is for the Director to report from time to time the conditions that he finds. It is for the courts through their representative bodies to determine what should be done—the Judicial Conference where matters of policy affecting the whole country are involved, and the judicial council of each circuit in reference to matters concerning particularly that circuit. Herein the plan of the Administrative Office is almost unique. The British Royal Commission on the Despatch of Business at Common Law recommended that a ministry of justice be established to perform many of the duties vested here in the Administrative Office besides others, and the proposal is supported in a recent book entitled "The Machinery of Justice in England," by R. M. Jackson, a solicitor and lecturer in law at the University of Cambridge.<sup>13</sup> The minister of justice thus proposed in England would, however, be a member of the cabinet, deriving his authority from the ministry. The corresponding officer in this country is an arm of the courts, for the purpose of assisting them as far as may be possible in correcting defects and increasing the efficiency of the judicial organization.

The Division of Procedural Studies and Statistics is called upon from time to time to make studies of different phases of judicial administration for the courts. Matters which have received such study are the system of jury selection in the southern district of New York, including Manhattan Island; the use of pre-trial procedure in the federal courts based upon answers from 178 district judges to a detailed questionnaire, supplemented by information gained from the visits to the courts; and the provisions for reporting court proceedings in the various states of the United States based upon inquiries to the chief justices of the highest courts of the states. The last information was furnished to a committee of the Judicial Conference for use in a study and report, issuing in a recommendation adopted by the Judicial Conference for the appointment of official court reporters in all the district courts of the

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<sup>12</sup>See Morse, *supra* at p. 357.

<sup>13</sup>Pp. 312-321.

United States.<sup>14</sup> The indications are that the calls upon the Administrative Office by the Judicial Conference and the judicial councils of the circuits for research will increase.

General supervision of the fiscal matters of probation officers, including the regulation of their salaries within the appropriations and other applicable statutes, falls upon the Administrative Office in consequence of the provision of the statute that it shall have charge of administrative matters relating to "the offices of the clerks and other clerical and administrative personnel of the courts."<sup>15</sup> The probation officers are appointed by the judges of the courts which they serve and their primary responsibility is to the judges. Aside, however, from the purely business aspects of the probation service, the Administrative Office endeavors to impart to the probation officers through a magazine entitled "Federal Probation," which is issued quarterly, and through regional conferences for the discussion of probation problems and methods, which are held from time to time in different parts of the country, knowledge of the best methods of treating delinquency and to help the probation officers improve their techniques. Furthermore, the Administrative Office is often consulted by judges with reference to persons whom they are considering for appointment as probation officers, and the office endeavors in all appropriate ways to suggest the importance for the success of the service of appointing only persons who are specially qualified. The Judicial Conference at Senior Circuit Judges has taken this position strongly, declaring in 1940,<sup>16</sup> and renewing the declaration in 1941,<sup>17</sup> "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."

In connection with the auditing of accounts of officers of the courts and the visits to the courts, the Administrative Office is concerned with the bankruptcy administration. From time to time reports upon the offices of referees in bankruptcy made by examiners for the Department of Justice are submitted to the Administrative Office, and it becomes the duty of the office to bring to the attention of the courts any irregularities or excessive costs or delays disclosed in order that they may be corrected. The importance of the bankruptcy proceedings in the work of the federal courts, affecting as they

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<sup>14</sup>Rep. Jud. Conf., Sept. Sess. 1941, pp. 10-11; Report of Director, *supra* note 8, at 7-8.  
<sup>15</sup>53 STAT. 1223 (1939), JUD. CODE, § 304; 28 U. S. C. § 446 (1941).

<sup>16</sup>Rep. Jud. Conf., Oct. Sess. 1940, pp. 13-14; Rep. Director Adm. Off. U. S. Courts (1940) 9-10.

<sup>17</sup>Rep. Jud. Conf., Sept. Sess. 1941, p. 13; Rep. Director Adm. Off. U. S. Courts (1941) 9.



do the welfare of large numbers of investors and the public generally, warrants the establishment of a bankruptcy division in the Administrative Office. An appropriation has been made for the nucleus of a staff for such a division, and a chief has very recently been appointed and begun work.

*The Relation of the Administrative Office to the Judicial Conference  
of Senior Circuit Judges*

The meeting of the Judicial Conference of Senior Circuit Judges held in September, 1941, illustrates the enlargement of the scope of the conference in consequence of the creation of the Administrative Office and the formulation of matters by the office for the decision of the conference. The Director of the Administrative Office now presents to the conference in his annual report the information and statistics concerning the state of the judicial business which were formerly supplied by the Attorney General, although the Attorney General by invitation of the conference still attends at the opening of the session and presents such matters as he may desire. The last conference, like the first, took up as its primary concern the state of the dockets in the different circuits and districts, the needs for assistance of additional judges, permanent in two instances and temporary by assignment in others, and recommended a procedure to be followed in reference to assignments of judges between circuits which it was hoped might result in an extension of this method of equalizing the judicial burdens. The conference authorized the Director "to procure and report statistics of the time consumed in the disposition of cases in the circuit courts of appeals and in the various stages of litigation in those courts," corresponding with statistics of cases in the district courts.<sup>18</sup>

The conference gave consideration to many matters of legislation and, in this connection, invited to meet with it the chairmen of the Committees on the Judiciary of the Senate and House of Representatives and such of their associates as they might select. The committee of the Senate was unable to be represented, but the chairman and two other members of the committee of the House attended and discussed informally with members of the conference a number of bills,<sup>19</sup> some of which the conference opposed and some of which it favored. The conference expressed its opposition to a bill which would limit the power of circuit judges to sit in district courts and the power of district judges and retired judges to sit in circuit courts of appeals,<sup>20</sup> con-

<sup>18</sup>Rep. Jud. Conf., Sept. Sess. 1941, p. 5; Report of Director, *supra* note 17, at 4.

<sup>19</sup>Rep. Jud. Conf., Sept. Sess. 1941, pp. 1-2; Report of Director, *supra* note 17, at 1.

<sup>20</sup>H. R. 138, 77th Congn., 1st Sess. (1941).

sidering that this measure would lessen the mobility of the judicial personnel and interfere with the effective use of the judge-power through the agency of the judicial councils.<sup>21</sup>

The conference recommended among others a bill to abolish statutory divisions of federal districts so that the jurisdiction of a district court would be uniform throughout the district,<sup>22</sup> a bill to provide for official court reporters in the federal courts and thus make facilities for obtaining a record of the proceedings a part of the court service like the service of the clerk,<sup>23</sup> and bills to relieve judges from burdensome administrative detail in certifying to the accounts for compensation and expenses of various officers of the courts, such as jurors and witnesses, and place this duty in other officers to whom it more appropriately belongs.<sup>24</sup>

The conference, which had previously approved an indeterminate sentence plan, took note of objections registered by some of the circuit conferences, and provided that a further study should be made of the principles of the indeterminate sentence and the general subject of punishment for crime, including the treatment of youthful offenders; that to that end the Chief Justice should appoint a committee of circuit and district judges to make a study and report; that the report should be considered in the coming circuit conferences and that their views together with the report should be considered by the Judicial Conference of Senior Circuit Judges at its next annual meeting.<sup>25</sup>

Thus far the proceedings of the last annual conference were not different in nature from those that occurred at earlier conferences. In addition, the last conference considered numerous matters which were brought to its attention by the Administrative Office and called upon the office for further study of a number of subjects either alone or in conjunction with committees of the conference. Pursuant to the statute the estimates for the appropriations for the United States courts, except the Supreme Court, for the fiscal year 1943 were submitted by the Administrative Office and were approved by the Judicial Conference with certain changes. Action on the estimates involved decision on administrative policies, such as a recommendation that the number of law clerks for district judges in each circuit to be appointed on the certificate of necessity of the senior circuit judge be increased from three to four.<sup>26</sup> On the fiscal side, there was a recommendation of an increase in the scale of

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<sup>21</sup>Rep. Jud. Conf., Sept. Sess. 1941, pp. 8-10; Report of Director, *supra* note 17, at 6-7.

<sup>22</sup>Rep. Jud. Conf., Sept. Sess. 1941, p. 14.

<sup>23</sup>*Id.* at 10-11.

<sup>24</sup>*Id.* at 14-15.

<sup>25</sup>*Id.* at 12.

<sup>26</sup>*Id.* at 6.

salaries of secretaries and law clerks to circuit judges.<sup>27</sup> Consideration was given to the question of a promotional policy for the judicial employees, and the conference directed the course to be followed in this matter.<sup>28</sup> Prior to the creation of the Administrative Office and the vesting in the Judicial Conference of the duty of approval of the financial estimates for the courts, the Judicial Conference in only rare instances had dealt with fiscal matters; it had taken no comprehensive view of the annual budget of the courts.

The conference appointed committees to study in conjunction with the Director of the Administrative Office and report to the conference hereafter on three important matters:

1. "Whether it will be advisable for the Conference to supplement its general statement of principle [in regard to the necessity of suitable qualifications for probation officers] by recommending to the district courts definite qualifications to be required of persons considered for appointment as probation officers and, if so, what those qualifications should be."<sup>29</sup>

2. "The question of bringing the personnel of clerks' offices, except the clerks, under a merit system."<sup>30</sup>

3. The need for improvement in the methods of jury selection in the United States courts. Concurrently the Administrative Office was authorized "to make a study of the jury system in the federal courts with special reference to the selection of jurors and economy of operation."<sup>31</sup> The conference requested the Administrative Office alone to make a study of the system of United States commissioners and report to the next annual meeting of the conference.<sup>32</sup>

In order that the Judicial Conference might be informed as fully as possible concerning the views of the district judges and the circuit judges upon subjects of common interest, it "instructed the Director, on approval of the Chief Justice, to communicate as early as possible to all district and circuit judges data with respect to matters likely to come before this Conference, in which they may be particularly interested."<sup>33</sup> The action of the Judicial Conference in moving toward closer understanding and co-operation between the district and circuit judges and the conference is significant. Unity in the federal judicial system is growing. But it is unity arrived at by the judicial methods of hearing and consideration, and the light that comes therefrom.

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<sup>27</sup>*Ibid.*

<sup>28</sup>*Id.* at 7-8.

<sup>29</sup>*Id.* at 13.

<sup>30</sup>*Ibid.*

<sup>31</sup>*Id.* at 16.

<sup>32</sup>*Ibid.*

<sup>33</sup>*Id.* at 5-6.