# CIRCUIT COURT EXECUTIVES



## HEARING

BEFORE

## SUBCOMMITTEE NO. 5

OF THE

## COMMITTEE ON THE JUDICIARY
## HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

SECOND SESSION

ON

## H.R. 17901 and H.R. 17906

PROPOSALS TO IMPROVE JUDICIAL MACHINERY BY PROVIDING FOR THE APPOINTMENT OF A CIRCUIT EXECUTIVE FOR EACH JUDICIAL CIRCUIT

JULY 8, 1970

## Serial No. 24

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE
49-014 WASHINGTON : 1970

## COMMITTEE ON THE JUDICIARY

EMANUEL CELLER, New York, *Chairman*

MICHAEL A. FEIGHAN, Ohio
PETER W. RODINO, JR., New Jersey
BYRON G. ROGERS, Colorado
HAROLD D. DONOHUE, Massachusetts
JACK B. BROOKS, Texas
JOHN DOWDY, Texas
ROBERT W. KASTENMEIER, Wisconsin
DON EDWARDS, California
WILLIAM L. HUNGATE, Missouri
JOHN CONYERS, JR., Michigan
ANDREW JACOBS, JR., Indiana
JOSHUA EILBERG, Pennsylvania
WILLIAM F. RYAN, New York
JEROME R. WALDIE, California
EDWIN W. EDWARDS, Louisiana
WALTER FLOWERS, Alabama
JAMES R. MANN, South Carolina
ABNER J. MIKVA, Illinois

WILLIAM M. McCULLOCH, Ohio
RICHARD H. POFF, Virginia
CLARK MacGREGOR, Minnesota
EDWARD HUTCHINSON, Michigan
ROBERT McCLORY, Illinois
HENRY P. SMITH III, New York
THOMAS J. MESKILL, Connecticut
CHARLES W. SANDMAN, JR., New Jersey
TOM RAILSBACK, Illinois
EDWARD G. BIESTER, JR., Pennsylvania
CHARLES E. WIGGINS, California
DAVID W. DENNIS, Indiana
HAMILTON FISH, JR., New York
R. LAWRENCE COUGHLIN, Pennsylvania
WILEY MAYNE, Iowa

---

BESS E. DICK, *Staff Director*
BENJAMIN L. ZELENKO, *General Counsel*
KENNETH R. HARKINS, *Chief Counsel, Antitrust Subcommittee*
GARNER J. CLINE, *Counsel*
HERBERT FUCHS, *Counsel*
WILLIAM P. SHATTUCK, *Counsel*
JEROME ZEIFMAN, *Counsel*
JOSEPH FISCHER, *Law Revision Counsel*
DONALD G. BENN, *Associate Counsel*
FRANKLIN G. POLK, *Associate Counsel*

---

### SUBCOMMITTEE NO. 5

EMANUEL CELLER, New York, *Chairman*

PETER W. RODINO, JR., New Jersey
BYRON G. ROGERS, Colorado
HAROLD D. DONOHUE, Massachusetts
JACK B. BROOKS, Texas
ROBERT W. KASTENMEIER, Wisconsin
DON EDWARDS, California

WILLIAM M. McCULLOCH, Ohio
CLARK MacGREGOR, Minnesota
ROBERT McCLORY, Illinois
TOM RAILSBACK, Illinois
RICHARD H. POFF, Virginia
EDWARD HUTCHINSON, Michigan

BENJAMIN L. ZELENKO, *General Counsel*
THOMAS E. MOONEY, *Associate Counsel*

# CONTENTS

# CIRCUIT COURT EXECUTIVES

WEDNESDAY, JULY 8, 1970

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE NO. 5 OF THE COMMITTEE ON JUDICIARY,
*Washington, D.C.*

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 2141, Rayburn House Office Building, Hon. Emanuel Celler, chairman of the subcommittee, presiding.

Present: Representatives Celler, Edwards (California), McCulloch, McClory, Poff, and Hutchinson.

Also present: Benjamin L. Zelenko, general counsel; and Thomas E. Mooney, associate counsel.

The CHAIRMAN. The committee will come to order.

This morning, the subcommittee considers H.R. 17901 and H.R. 17906, bills to provide for the appointment of a circuit court executive for each judicial circuit.

Members will recall that in the course of the committee's consideration of the omnibus judgeship bill (S. 952), provisions added by the other body that would have established court administrators in the 11 circuits and in each of approximately 18 multijudge district courts were deleted.

Those provisions were deleted from S. 952 because the committee believed that the omnibus judgeship bill should not be made a vehicle for matters extraneous to its general purpose. However, the committee members were not unsympathetic or insensitive to the proposition that the Federal judiciary might need or profit from improved management techniques for dealing with growing caseloads and administrative complexities. The legislation before the subcommittee today is intended to help to modernize circuit court operations and contribute to the expedition of business in the Federal appellate courts.

H.R. 17901 and H.R. 17906, the subject of these hearings, will be placed in the record at this point.

(The bills follow:)

[H.R. 17901, 91st Cong., second sess.]

A BILL To improve judicial machinery by providing for the appointment of a circuit executive for each judicial circuit

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 332 of title 28, United States Code, is amended (a) by designating each of the existing paragraphs thereof as subsections (a), (b), (c), and (d), respectively; and (b) by inserting new subsections (e) and (f) to read:

"(e) The judicial council of each circuit may appoint a circuit executive from among persons certified by the Board of Certification. The circuit executive shall exercise such administrative powers and perform such duties as may be delegated to him by the circuit council. The duties delegated to the circuit executive of each circuit may include but need not be limited to:

"(1) Exercising administrative control of all nonjudicial activities of the court of appeals of the circuit in which he is appointed.

"(2) Formulating and administering a system of personnel administration subject to guidelines established by the circuit council and subject to limitations established by the Judicial Conference of the United States.

"(3) Preparing and administering the budget of the circuit, including coordinating the circuit budget with guidelines and controls laid down by the Administrative Office of the United States Courts.

"(4) Maintaining a modern accounting system.

"(5) Establishing and maintaining property control records and undertaking a space management program.

"(6) Conducting studies relating to the business and administration of the courts within the circuit and preparing appropriate recommendations and reports to the chief judge, the circuit council, and the Judicial Conference.

"(7) Collecting, compiling, and analyzing statistical data with a view to the preparation and presentation of reports based on such data as may be directed by the chief judge, the circuit council, and the Administrative Office of the United States Courts.

"(8) Representing the circuit as its liaison to the courts of the various States in which the circuit is located, the marshal's office, State and local bar associations, civic groups, news media, and other private and public groups having a reasonable interest in the administration of the circuit.

"(9) Arranging and attending meetings of the judges of the circuit and of the circuit council, including preparing the agenda and serving as secretary in all such meetings.

"(10) Preparing an annual report to the circuit and to the Administrative Office of the United States Courts for the preceding calendar year, including recommendations for more expeditious disposition of the business of the circuit.

"All duties delegated to the circuit executive shall be subject to the general supervision of the chief judge of the circuit.

"(f) The standards for certification as qualified to be a circuit executive shall be set by a Board of Certification. These standards shall take into account experience in administrative and executive positions, familiarity with court procedures, and special training. The Board of Certification shall consist of five members, three of whom shall be elected by the Judicial Conference of the United States, and at least one of these three shall be selected from among persons experienced in executive recruitment and selection. The additional two members shall be the Director of the Administrative Office of the United States Courts and the Director of the Federal Judicial Center. The members of the Board elected by the Judicial Conference shall each serve for three years except that upon appointment of the first members, one member shall serve for one year, one for two years, and one for three years. The Board shall consider all applicants who apply for certification, shall maintain a roster of all persons certified, and shall publish the standards for certification. A person's name shall be removed from the roster after three years unless he is recertified. Three members of the Board shall constitute a quorum for purposes of fixing standards and for certifying applicants, but no action of the Board shall be taken unless three of the members are in agreement. The Director of the Administrative Office of the United States Courts shall provide staff assistance in support of the operation of the Board. Expenses of the Board of Certification shall be borne by the travel and miscellaneous expense funds appropriated to the Federal judiciary. Any member of the Board who is an officer or employee of the United States shall serve without compensation. Other members shall receive the daily equivalent of the rate provided for GS–18 of the General Schedule contained in section 5332 of title 5, United States Code, when actually engaged in service for the Board.

"Each circuit executive shall be paid at a salary to be established by the Judicial Conference of the United States not to exceed the annual rate of level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

"The circuit executive shall serve at the pleasure of the judicial council of the circuit.

"The circuit executive may appoint, with the approval of the council, necessary employees in such number as may be approved by the Director of the Administrative Office of the United States Courts.

"The circuit executive and his staff shall be deemed to be officers and employees of the judicial branch of the United States Government within the meaning of subchapter III of chapter 83 (relating to civil service retirement), chapter 87

(relating to Feleral employees life insurance program), and chapter 89 (relating to Federal employees' health benefits program) of title 5, United States Code."

---

[H.R. 17906, 91st Cong., second sess.]

A BILL To improve judicial machinery by providing for the appointment of a circuit executive for each judicial circuit

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That section 332 of title 28, United States Code, is amended (a) by designating each of the existing paragraphs thereof as subsections (a), (b), (c), and (d), respectively; and (b) by inserting new subsections (e) and (f) to read:

"(e) The judicial council of each circuit may appoint a circuit executive from among persons certified by the Board of Certification. The circuit executive shall exercise such administrative powers and perform such duties as may be delegated to him by the circuit council. The duties delegated to the circuit executive of each circuit may include but need not be limited to—

"(1) Exercising administrative control of all nonjudicial activities of the court of appeals of the circuit in which he is appointed.

"(2) Formulating and administering a system of personnel administration subject to guidelines established by the circuit council and subject to limitations established by the Judicial Conference of the United States.

"(3) Preparing and administering the budget of the circuit, including coordinating the circuit budget with guidelines and controls laid down by the Administrative Office of the United States Courts.

"(4) Maintaining a modern accounting system.

"(5) Establishing and maintaining property control records and undertaking a space management program.

"(6) Conducting studies relating to the business and administration of the courts within the circuit and preparing appropriate recommendations and reports to the chief judge, the circuit council, and the Judicial Conference.

"(7) Collecting, compiling, and analyzing statistical data with a view to the preparation and presentation of reports based on such data as may be directed by the chief judge, the circuit council, and the Administrative Office of the United States Courts.

"(8) Representing the circuit as its liaison to the courts of the various States in which the circuit is located, the marshal's office, State and local bar associations, civic groups, news media, and other private and public groups having a reasonable interest in the administration of the circuit.

"(9) Arranging and attending meetings of the judges of the circuit and of the circuit council, including preparing the agenda and serving as secretary in all such meetings.

"(10) Preparing an annual report to the circuit and to the Administrative Office of the United States Courts for the preceding calendar year, including recommendations for more expeditious disposition of the business of the circuit.

"All duties delegated to the circuit executive shall be subject to the general supervision of the chief judge of the circuit.

"(f) The standards for certification as qualified to be a circuit executive shall be set by a Board of Certification. These standards shall take into account experience in administrative and executive positions, familiarity with court procedures, and special training. The Board of Certification shall consist of five members, three of whom shall be elected by the Judicial Conference of the United States, and at least one of these three shall be selected from among persons experienced in executive recruitment and selection. The additional two members shall be the Director of the Administrative Office of the United States Courts and the Director of the Federal Judicial Center. The members of the Board elected by the Judicial Conference shall each serve for three years except that upon appointment of the first members, one member shall serve for one year, one for two years, and one for three years. The Board shall consider all applicants who apply for certification, shall maintain a roster of all persons certified, and shall publish the standards for certification. A person's name shall be removed from the roster after three years unless he is recertified. Three members of the Board shall constitute a quorum for purposes of fixing standards and for certifying applicants, but no action of the Board shall be taken unless three of the

members are in agreement. The Director of the Administrative Office of the United States Courts shall provide staff assistance in support of the operation of the Board. Expenses of the Board of Certification shall be borne by the travel and miscellaneous expense funds appropriated to the Federal judiciary. Any member of the Board who is an officer or employee of the United States shall serve without compensation. Other members shall receive the daily equivalent of the rate provided for GS–18 of the General Schedule contained in section 5332 of title 5, United States Code, when actually engaged in service for the Board.

"Each circuit executive shall be paid at a salary to be established by the Judicial Conference of the United States not to exceed the annual rate of level V of the Executive Schedule Pay Rates (5 U.S.C. 5316).

"The circuit executive shall serve at the pleasure of the judicial council of the circuit.

"The circuit executive may appoint, with the approval of the council, necessary employees in such number as may be approved by the Director of the Administrative Office of the United States Courts.

"The circuit executive and his staff shall be deemed to be officers and employees of the judicial branch of the United States Government within the meaning of subchapter III of chapter 83 (relating to civil service retirement), chapter 87 (relating to Federal employees' life insurance program), and chapter 89 (relating to Federal employees' health benefits program) of title 5, United States Code.

The CHAIRMAN. Mr. McCulloch.

Mr. MCCULLOCH. Mr. Chairman, I am glad that the witnesses are here and ready to testify for this much-needed legislation. I am for this type of legislation, Mr. Chairman, and in the interest of time I will submit, with the chairman's permission, a brief statement at this point in the record.

The CHAIRMAN. It will be accepted.

(The statement follows:)

STATEMENT OF HON. WILLIAM M. MCCULLOCH, A U.S. REPRESENTATIVE IN CONGRESS FROM THE STATE OF OHIO

Mr. Chairman, today we begin public hearings on legislation introduced and co-sponsored by many members of this committee. My bill, H.R. 17906, would permit but not require the circuit council of each of the eleven federal judicial circuits to appoint a circuit court executive. The purpose of this bill is to infuse modern managerial knowledge and experience into our federal circuit courts.

In August of last year, Chief Justice Burger, in an address delivered before the Institute of Judicial Administration in Dallas, said:

"The courts of this country need management which busy and overworked judges, with vastly increased caseloads, cannot give. We need a corps of trained administrators or managers, just as hospitals found they needed them many years ago, to manage and direct the machinery so that judges can concentrate on their primary professional duty of judging."

Management tasks and responsibilities often times lie buried and sometimes unrecognized in the total job of a judge. Judges are chosen because of their judicial ability and not for their skills in management.

In May of this year, the House passed the Omnibus District Judgeship Bill which is now Public Law 91–272. This law establishes sixty-one new federal district judgeships which I believe are needed if our federal courts are to cope with their ever increasing workload.

However, increased "judge-power" alone will not solve the problems of congestion and delay. Since 1959, we have increased the number of federal district judgeships by forty percent and this has resulted in only a nine percent increase in the number of civil and criminal dispositions.

I wish I could say that I had the solution to all of this—but I can not. I do believe that the establishment of court executives is a step in the right direction. I do know that the process of litigation has frustrated many people and I submit that the patience of the American people is wearing thin.

Court management and the administration of justice are inseparable. We have all heard or said the truism that "justice delayed is justice denied," but delay and congestion in our federal courts continues to grow. These conditions help to

create disrespect for our laws and our legal institutions which in turn can increase the chances for disruption in our society. We must never forget that our courts are a crucial part of the peace keeping operations of the Government. An efficient and effective court administration, with a feeling for all people who use or are connected with our courts, as well as a feeling for professional and constitutional values, will do much to better justice in America.

The CHAIRMAN. Our first witness this morning is the Honorable Rowland F. Kirks, Director, Administrative Office of the United States Courts.

Mr. Kirks.

## STATEMENT OF HON. ROWLAND F. KIRKS, DIRECTOR, ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS; ACCOMPANIED BY WILLIAM E. FOLEY, ESQ., DEPUTY DIRECTOR

Mr. KIRKS. Mr. Chairman, I am Rowland F. Kirks, Director of the Administrative Office of the United States Courts. I appear before your committee today in response to your invitation to testify concerning H.R. 17901 and H.R. 17906, both bills to improve judicial machinery by providing for the appointment of a circuit executive for each Federal judicial circuit.

As you know, I have been in office only 8 days, but I have been in Government and in private and corporate law practice for over 30 years. While I was considering the position I now occupy, I reviewed, as well as time permitted, the problems with which our Federal courts are faced. I quickly became aware of the program initiated by the Chief Justice this past year which was culminated in the creation of the institute for court management at the University of Denver. As a matter of fact the creation of that institute is what indirectly brought me to my present position because the Chief Justice and Mr. Bernard Segal, president of the American Bar Association, along with the governing board of the institute, prevailed upon Mr. Ernest C. Friesen, Jr., my predecessor, to become head of that new institute. This, I think, indicates the importance the legal profession, through the ABA, and the judiciary, through the Chief Justice, places on this matter of court management.

Mr. Chairman, neither H.R. 17901 nor H.R. 17906 has yet been considered by the Judicial Conference of the United States. The concept of a court executive, however, has been considered by the Judicial Conference and the concept has been approved in principle by the Conference.

The CHAIRMAN. May I interrupt there? Did the approval by the Conference embrace appointment of court executives at both the circuit level and the district level?

Mr. KIRKS. Yes, sir.

The Conference first considered a legislative proposal to establish a court executive at its meeting in March 1969, the bill then before the Congress, providing in considerable detail the types of duties which the court executive would perform, including administrative control of all nonjudicial activities of the court personnel, budget administration, space management, property control and the initiation of studies relating to the business and administration of the courts.

The Conference at that time voted to approve this legislation in principle but was opposed to the specificity as to duties and responsi-

bilities in the drafts submitted for its consideration. It voted to recommend that the court executives exercise such duties as are delegated to them by the judicial council of the circuit.

The Conference next considered legislation relating to court executives at its meeting in October 1969, at which time it expressed its preference for the provisions contained in S. 952 as it passed the Senate on June 23, 1969, with the exception, however, that it disapproved the method of selection of court executives from a panel of names proposed by the director of the Administrative Office of the U.S. Courts.

While I cannot foretell the views of the Judicial Conference as to specific provisions of either of the two bills before your subcommittee, I believe the record makes it clear that the Conference has definitely committed itself to the concept of the court executive in our Federal courts.

As I envision the proposed court executive, I believe that he will be primarily responsible for relieving the chief judges of the circuits of the onerous burdens of administration which have fallen upon them and increased each year.

As you know, Mr. Chairman, the number of new cases docketed in our courts of appeals has increased every year since 1960. If we may consider the past 3 years, for example, in fiscal year 1968, 8,224 new cases were docketed. This represented an increase of more than 16 percent in new appeals filed over the prior fiscal year. In fiscal year 1969, 9,334 new cases were commenced in the courts of appeals. During the first 9 months of the current fiscal year there have already been 8,590 cases commenced in the courts of appeals and if the figures for the final 3 months show that this trend has continued throughout the year, we will have an increase of new cases during fiscal 1970 of approximately 15 percent.

More dramatically stated, Mr. Chairman, in the last 8 years the number of appeals docketed and the number pending have more than doubled.

The tasks of administering these evergrowing circuits with their evergrowing caseloads has required that the chief judges devote less and less time to the business of adjudicating and disposing of cases and more and more time on the tasks of administration. Our judges are appointed because they are fine lawyers, not because they are good administrators. Few lawyers have administrative experience of the kind needed. We have been fortunate in having a happy combination of these talents in some circuits but with the evergrowing caseloads, both at the circuit and district levels, the chief judges simply have to be relieved of these heavy tasks of administration so they can do their primary job.

I may point out, Mr. Chairman, that our courts of appeals are not heavily staffed. Each circuit judge has a personal staff allowance of two law clerks and a secretary. The other personnel, with rare exceptions, consist only of the personnel of the clerk's office who are busy on the day-to-day tasks of keeping the cases moving and keeping the records of the proceedings. These clerks' offices vary in size with the number of judges—our smallest circuit, our first circuit, which has three judges has six persons in the clerk's office; our largest circuit, the fifth with 15 judges has 28 persons in the clerk's office.

A medium size circuit such as the seventh with eight judges has 11 persons in the clerk's office. These clerks' offices are already heavily burdened with their own tasks; they are not in a position to take many of the burdens of administration off the shoulders of the chief judges.

I suggest to you that those circuits where there is a need for a court executive should have the authority to appoint them.

If I may at this point suggest that in H.R. 17901 on page 1, line 8, that consideration be given to amending that language by inserting after the second word, "executive" the following language, "and such executive shall be appointed," and then continuing, "from among persons certified by the board of certification," which I think would clarify a possible ambiguity in the language that appears in the text of the present bill.

The judicial council must authorize it, of course. Accordingly, without discussing the details of either of these bills, it is the recommendation of the Administrative Office that your subcommittee endorse the principle of the court executive for Federal circuits.

This concludes my statement and I wish to thank you for the privilege of appearing before you and testifying on these bills.

The CHAIRMAN. We are very grateful to you for your contribution. We are happy that you appear here in the initial stages of your tenure of office. We hope to have you with us on many, many other occasions.

Mr. KIRKS. Thank you, sir.

The CHAIRMAN. I am sure the other occasions will be as cordial and mutually helpful as the one today. I would like to ask just one or two questions. Apparently the Judicial Conference has objected to the proposal that there be established a reservoir of names of prospective appointees to the court executive position.

There was objection to a proposal that the executives could only be appointed out of those who come out of that reservoir. Am I correct or not?

Mr. KIRKS. May I confer with Mr. Foley?

The CHAIRMAN. This comment is on page 3 of your statement: "The Conference disapproved the method of selection of court executives from a panel of names proposed by the Director of the Administrative Office."

Mr. KIRKS. I am advised by my deputy, Mr. Chairman, that the objection that was raised at that time does not exist in this present language. It was predicated upon the fact that the roster was going to be composed by the Administrative Office.

Mr. FOLEY. That is correct.

Mr. KIRKS. By the Director of the Administrative Office. Of course, the provisions that are set forth in this pending legislation rectify that situation by the establishment of the board which is composed of the three judges and the other two representatives.

The CHAIRMAN. Now, vis-a-vis the clerk of the court, is the circuit court executive to be superior to the clerk, or vice versa?

Mr. KIRKS. That is a difficult question, Mr. Chairman, and quite obviously if this new system goes into effect there must be a period of adjustment between the functions that would be assigned to each.

Unquestionably, in view of the fact that the chief judges of the circuits have assigned to their present clerks matters that we think should have appropriately been handled by the court executive, there would be

a drawing away of these matters, which we do not feel are appropriate for the clerk to be burdened with, and which the court executive would assume. Certainly there should be no basis or concern on the part of the clerks of court that the establishment of the court executive would impinge upon their classical role as clerks of court, or in any way deprive them of the full responsibility of truly clerkship responsibilities.

The CHAIRMAN. If you will turn to page 2 of H.R. 17901, lines 3 and 9, wherein some of the executives' duties are spelled out, it states: (1) "Exercising administrative control of all nonjudicial activities of the court of appeals of the circuit of which he is appointed," "(2) Formulating and administering a system of personnel administration subject to guidelines established by the circuit council and subject to limitations established by the Judicial Conference of the United States."

I take it that would mean control of the personnel of the court. If you refer to title 28, United States Code, section 711(b) entitled "Clerks and Employees," we find the following:

> The clerk, with the approval of the court, may appoint necessary deputies, clerical assistants and employees in such manner as may be approved by the Director of the Administrative Office of the United States Courts. Such deputies and clerical assistants and employees shall be subject to removal by the clerk, with the approval of the court.

There is somewhat of an inconsistency there. This section I have read appears to give the clerk the right to hire and fire, and yet the portions of the bill I have read seem to give the executive the authority to administer a system of personnel.

Mr. KIRKS. Mr. Chairman, in responding, may I preface my answer by saying that we are sharing with you our personal views from the Office without the guidance of the Judicial Conference, and I would like to make that quite clear, because we have no authority to prejudge what their views would be on this matter. It is our judgment, Mr. Chairman, that with respect to the second paragraph, beginning on line 6 that language might appropriately be deleted and substituted in lieu of it the following language, "administering the personnel system within the circuit."

The reason we would propose this change is that as you know the judiciary operates under a uniform congressionally approved personnel system that follows as closely as possible the civil service program. It is known as the judicial salary plan and is administered by the Director of the Administrative Office. The wording of the bill seems to give each circuit the authority if the duties are assigned to the executive to set up a separate system, and we would suggest that is not desirable. We must not lose sight of the word "may" in line 1 on page 2. It becomes entirely discretionary with the chief judge as to what duties he assigns. We would hope that the duties that would be assigned would be in keeping with the present laws governing personnel.

The CHAIRMAN. You can see, though, the present language might create a very decided conflict.

Mr. KIRKS. Yes, sir.

The CHAIRMAN. That has to be resolved.

Mr. KIRKS. I would suggest that it does, sir.

The CHAIRMAN. We would welcome any aid you might give us in that regard.

Mr. KIRKS. We will be happy to respond, sir.

The CHAIRMAN. Mr. McCulloch.

Mr. MCCULLOCH. I have no questions.

The CHAIRMAN. Mr. Edwards.

Mr. EDWARDS. I have no questions.

The CHAIRMAN. Mr. McClory.

Mr. MCCLORY. Mr. Chairman, I have no questions, but I am happy we are having this hearing and we are having this testimony this morning. It fortifies the position I indicated earlier of the need for a court executive and I am sure this testimony will enable us to plan positively on this recommendation.

Mr. KIRKS. Thank you, sir.

The CHAIRMAN. Mr. Poff.

Mr. POFF. Thank you, Mr. Chairman.

I would like to pursue, if I might, for a moment the line opened by the witness in his response to the chairman's last question.

I direct your attention to subparagraph 3 on line 10 of page 2 which reads as follows:

> Preparing and administering the budget of the circuit including coordinating the circuit budget in accordance with guidelines laid down by the Administrative Office of the U.S. Courts.

Does the Administrative Office find this particular provision agreeable?

Mr. KIRKS. Mr. Congressman, we would suggest that subparagraph (3), starting on line 10 and running through line 13 should be deleted because it has, we think, a critical objection in it, and would suggest for your consideration the following substitute language:

> Coordinating the budget of the courts within the circuit.

As you know, the presentation format for all branches of the Government is set by the Bureau of the Budget. This is because the Bureau prepares the national budget for presentation to the Congress by the President and requires uniform treatment of submissions. I doubt that the bill proposes a great submission of each circuit budget directly to the Bureau because that would repeal 28 U.S.C. 605 which requires the Director of the Administrative Office to submit a consolidated budget for the Judiciary.

Further, so much of the Judiciary's budget is purely formal and incontrollable that the executive's function might merely be an exercise of mathematics. So we do not support the language as it appears in the bill.

Mr. POFF. As I read the language of the bill, the Board of Certification established therein would have two functions or essentially two functions: One, it would draft the standards for qualification, and secondly, to review applications submitted for the court executive position. I note, too, that the nongovernmental members of that Board would be entitled to a per diem of $100. I would think that the most time-consuming aspect might be the work of the Board in drafting the standards for qualification.

My question is rhetorical. Would it not be better to leave that function with the Judicial Conference and allow the Board of Certification to review the applications for the position of court executive?

Mr. KIRKS. We would think that would be very feasible, if that is the desire of the Congress, to handle it the way you have described it.

Mr. POFF. I am sure that you would agree that the members of the Judicial Conference would have a primary concern in structuring the qualification criteria. I think they would be peculiarly suited to that task. That being so, I see no reason why the Board of Certification should be burdened with that specific responsibility, entailing as it necessarily would an additional but avoidable expense.

Mr. KIRKS. I do not think we would have any objection to that change, Mr. Poff.

Mr. POFF. I apologize for being a little late in your testimony. The question I am about to ask may be altogether irrelevant. If that is the case, please say so. Did you address yourself to the question of the desirability of a court executive at the district level as well as the circuit level? I recall that in the original legislation considered by this committee the proposal was for a court executive at both levels.

Mr. KIRKS. Yes, sir.

No, I did not address my remarks to it, sir, but I am happy to respond. Our view is that just as in the case of the pending bills where it is discretionary, if there is a need, that this same privilege should be accorded for the district courts. There are certain instances where large district courts certainly have a need for court executives. If it could be put on a permissive basis, we would support that position, sir.

Mr. POFF. You accent the discretionary feature of the present legislation. I also seem to recall that the legislation initially used mandatory language with respect to the establishment of circuit court executives. I think that the Judicial Conference probably favored that approach.

Can you speak to that point and explain why there has been a change in that position, that is, if there has been a change?

Mr. KIRKS. May I speak to Mr. Foley relative to this, sir? It is our impression, sir, that the previous bill was mandatory at the circuit level and discretionary at the district level.

Mr. POFF. I believe the witness is correct.

Mr. KIRKS. We favor that it be discretionary at both levels because we are under the impression that there are circuits where a court executive would not be justified at the present time, and certainly they should not have one imposed upon them by statute. There unquestionably are certain district courts also that could not justify having an executive. There are those that definitely can.

Mr. POFF. I have one final question, and I thank you for your patience.

Do you believe it might be well to enlarge in any way the catalog of specific duties outlined in the legislation itself, or would it be better to leave the list as it is and trust that function to the judicial council of the circuit?

Mr. KIRKS. As you will recall, the Judicial Conference objected to these details being spelled out. We are guided by their determination of that matter. In view of the fact that this is a new concept, if you will, there is virtue in leaving it flexible so that the chief judges may exercise their discretion and let this matter grow in an intelligent fashion rather than probably dictating a whole series of things that automatically ought to be assigned.

Mr. POFF. I am sure you would agree that the language of the bill now is such that there is no effort to require the judicial council to select all of those that are itemized.

Mr. KIRKS. Certainly.

Mr. POFF. On the contrary, the word "may" clearly gives the judicial council the broadest possible discretion.

Mr. KIRKS. Certainly.

Mr. POFF. I thank the witness.

Mr. KIRKS. Thank you, sir.

The CHAIRMAN. Mr. Hutchinson.

Mr. HUTCHINSON. Thank you, Mr. Chairman.

Mr. Kirks, why could not the clerk of the court take on the duties of a court executive? Why shouldn't the functions of the court executive be within the office of the clerk?

Mr. KIRKS. I think that is primarily the condition that exists today, sir, in the absence of a court executive. The functions that are being performed that we envisage the court executive should be undertaking are performed either by the court clerk, the law clerks, or the secretary.

The volume of work, the complexity of it, and the ever-increasing quantity of it makes it impractical, we believe, for the clerk to fulfill his basic responsibilities of office and to take on these other matters which the court executive should relieve him of. In turn, too, much of the burden that the chief judge is currently bearing, which he cannot refer to his clerk because the clerk does not have the time and staff capability of relieving him of it, several of the responsibilities are statutory that the chief judge has to perform, would be borne by the executive, thereby relieving the clerk of these extracurricular activities, and certainly relieve the chief judge himself of the burden of some of these administrative determinations.

Mr. HUTCHINSON. At the present time, as I understand it, the functions such as they are being performed are being performed by the clerk, or by a law clerk, or in some cases by the chief judge, without benefit of any statutory language. What I am wondering is whether or not the statute should direct, for instance, the clerk to do these things. It would seem to me that would bring a little more order out of chaos, if there is chaos there now. Secondly, I might state that it is my understanding that the clerks generally do not like this idea of having somebody moved in on top of them.

Mr. KIRKS. I think that is understandable, Mr. Congressman, because it is a new concept. I think it is just human nature when it appears that something new is going to take place, and it may encroach upon the prerogatives of your office or your past pattern of performance, there is concern and apprehension. We have reflected on the matter at length, and we are convinced that there is ample for both the clerk and the court executive to do, and that it would not in any way challenge or threaten the office of the court clerk.

We would hope that their further reflection upon this proposal would indicate that to them.

Mr. HUTCHINSON. I thank you, Mr. Kirks.

I would like to ask a question of Mr. Foley, if I might. Is there any estimate as to the cost of this office at the circuit level? What would be the salary of the administrator or the executive, and what would be the estimate as to the budget so far as this function is concerned?

Mr. FOLEY. Insofar as the court executive is concerned, his salary is set by the statute at title V, which is $36,000 per year. Presumably he would need a secretary at probably a grade 9, which is about $9,000. This would mean that the cost per circuit, using the court executive,

would be on an annual basis $45,000. The board of certification, we have made no estimate, but we feel the cost would be negligible. It will not require any addition to staff in the Administrative Office. So the only cost would be the per diem cost of the non-Government members of the board.

Mr. HUTCHINSON. Is there presently physical office space, and so on, in the several circuit courts to accommodate the court executive?

Mr. FOLEY. For the most part there might be some requirement of readjusting space slightly. We do not really envisage any serious space problem.

Mr. HUTCHINSON. Thank you.

The CHAIRMAN. What does the clerk get? The executive would get $36,000 plus the secretary at $9,000. What does the chief clerk of the circuit court of appeals get now?

Mr. FOLEY. I believe he gets $28,000.

The CHAIRMAN. Of course, you can readily see there may be a conflict between those two gentlemen. It may be difficult to reconcile those two positions.

May I ask you this? On page 5, lines 4 and 5, of the bill it provides that the circuit executive shall serve at the pleasure of the judicial council of the circuit. That means forever or a day; doesn't it?

Mr. KIRKS. Yes, sir.

The CHAIRMAN. Have you considered whether there should be a more definite term of office?

Mr. KIRKS. There may be some virtue in leaving it this way, that is a discretionary basis until the program has been tried and proven. In the event an initial unfortunate judgment has been made, it would be unfortunate to have to perpetuate that.

Mr. MCCLORY. Mr. Chairman, if I may ask a question.

Mr. Kirks, or Mr. Foley, with respect to a district court executive, do you feel that it would be important to specify in this statute a minimum number of district judges for the district in order to be qualified for a court executive? I think we had a proposal here that the district court should have six or more. This is the amendment I offered when we had S. 952. Would that seem to be a valid minimum standard?

Mr. KIRKS. Yes, sir.

I think the Judicial Conference felt the same, sir.

The CHAIRMAN. Mr. Zelenko.

Mr. ZELENKO. Mr. Kirks, one of the proposed amendments you mentioned concerned paragraph 2 on page 2 of the bill, having to do with the system of personnel administration.

Your language, I think, was to the effect that the court executive be authorized to administer a personnel system within a circuit.

Mr. KIRKS. That is correct.

Mr. ZELENKO. I would like to ask whether that language envisions administering a system of the circuit court as well as the district courts within the circuit.

Mr. KIRKS. I believe the present bill is restricted to the circuit court, and so this was designed to refer to that.

Mr. ZELENKO. Your language was designed to refer only to the circuit court of appeals?

Mr. KIRKS. Yes, sir.

Mr. ZELENKO. How do you envision the court executive's duties of administering a system of personnel will mesh with the statutory authority of the clerk to hire and fire with the approval of the circuit court?

Who would be the superior officer, the circuit court executive or the clerk of the court insofar as hiring and firing is concerned? The statute is quite explicit today. Section 711 gives that authority to the clerk of the court.

Mr. KIRKS. That is correct. May we confer?

Mr. ZELENKO. You may wish to submit a statement for the record.

Mr. KIRKS. It is not an easy question. If we may be indulged to submit a response to that in writing we would appreciate it.

(Subsequently the following statement was supplied:)

STATEMENT OF ROWLAND F. KIRKS, DIRECTOR, ADMINISTRATIVE OFFICE OF THE U.S. COURTS

Section 711, Title 28, United States Code, provides in subsection (b) that the clerk, with the approval of the court, may appoint necessary deputies, clerical assistants and employees in such number as may be approved by the Director of the Administrative Office of the United States Courts. The subsection further provides that such deputies, clerical assistants and employees shall be subject to removal by the clerk, with the approval of the court.

I do not regard the pending legislation to interfere in any way with the authority given to the clerk by Section 711. You will note that the authority there given to the clerk is subject to the approval of the court. I would assume that the chief judge might well delegate to the court executive the function of screening for him the recommendations of the clerk to employ or remove personnel, thus relieving the chief judge of some of the burden of examining the recommendations of the clerk but in no manner taking from the court the ultimate decision vested in it by statute.

Secondly, if the proposed legislation is amended, as I suggest, to give to the court executive the responsibility for administering the personnel system within the circuit, the court executive could serve in an advisory capacity, both to the clerk and to the Director of the Administrative Office in connection with the Director's responsibility of determining the number of deputies, clerical assistants and other employees who may be necessary for the functioning of the clerk's office.

Mr. ZELENKO. Mr. Chairman, I wish to place in the record at this point, tables B–4 and B–5 of the 1969 Annual Report of the Director of the Administrative Office of U.S. Courts, for the U.S. Courts of Appeal. These tables show the median time interval from docketing and filing a complete record to final disposition in the courts of appeals. Mr. Kirks, does the greatest delay in the courts of appeals occur between the time of the filing of notice of appeal in the district court and filing the record in the circuit court? If not, where is the greatest delay at the appellate process today?

(The tables follow:)

TABLE B 4.—U.S. COURTS OF APPEALS. MEDIAN TIME INTERVAL IN CASES TERMINATED AFTER HEARING OR SUBMISSION DURING THE FISCAL YEAR ENDED JUNE 30, 1969, BY CIRCUIT

| Circuit | From filing of complete record to final disposition | | From filing of complete record to filing last brief | | From filing last brief to hearing or submission | | From hearing or submission to final disposition | |
|---|---|---|---|---|---|---|---|---|
| | Cases | Interval (months) | Cases | Interval (months) | Cases | Interval (months) | Cases | Interval (months) |
| Total | 5,121 | 8.3 | 4,960 | 3.5 | 4,960 | 1.7 | 5,121 | 1.7 |
| District of Columbia | 459 | 8.8 | 455 | 3.5 | 455 | 1.7 | 459 | 2.3 |
| 1st | 135 | 5.5 | 129 | 3.1 | 129 | .6 | 135 | 1.5 |
| 2d | 495 | 5.6 | 483 | 3.5 | 483 | .3 | 495 | 1.0 |
| 3d | 329 | 7.5 | 323 | 2.8 | 323 | 1.4 | 329 | 1.8 |
| 4th | 306 | 6.4 | 298 | 2.6 | 298 | 1.1 | 306 | 1.7 |
| 5th | 1,157 | 7.5 | 1,128 | 2.8 | 1,128 | 2.2 | 1,157 | 1.7 |
| 6th | 593 | 10.9 | 564 | 5.0 | 564 | 3.5 | 593 | 1.6 |
| 7th | 334 | 8.9 | 333 | 5.1 | 333 | 1.2 | 334 | 2.1 |
| 8th | 254 | 8.4 | 251 | 2.2 | 251 | 2.2 | 254 | 2.8 |
| 9th | 664 | 13.1 | 662 | 5.7 | 662 | 3.4 | 664 | 1.6 |
| 10th | 395 | 6.5 | 334 | 2.3 | 334 | 1.2 | 395 | 2.1 |

TABLE B 5.—U.S. COURTS OF APPEALS. MEDIAN TIME INTERVAL IN CIVIL AND CRIMINAL CASES TERMINATED AFTER HEARING OR SUBMISSION DURING THE FISCAL YEAR ENDED JUNE 30, 1969, BY CIRCUIT

| Circuit | From filing notice of appeal in lower court to filing of complete record in appellate court | | | | From docketing in lower court to final disposition in appellate court | | | |
|---|---|---|---|---|---|---|---|---|
| | Civil | | Criminal | | Civil | | Criminal | |
| | Cases | Interval (months) | Cases | Interval (months) | Cases | Interval (months) | Cases | Interval (months) |
| Total | 2,971 | 1.8 | 1,375 | 2.9 | 2,971 | 24.6 | 1,375 | 20.8 |
| District of Columbia | 164 | 1.3 | 216 | 4.2 | 164 | 32.2 | 216 | 23.8 |
| 1st | 86 | 1.3 | 25 | 1.4 | 86 | 21.0 | 25 | 16.9 |
| 2d | 274 | 1.2 | 131 | 2.0 | 274 | 22.4 | 131 | 24.6 |
| 3d | 246 | 2.1 | 42 | 7.8 | 246 | 26.1 | 42 | 27.3 |
| 4th | 173 | 1.3 | 97 | 1.6 | 173 | 25.4 | 97 | 14.0 |
| 5th | 735 | 3.0 | 265 | 3.0 | 735 | 25.4 | 265 | 20.3 |
| 6th | 336 | 1.3 | 135 | 2.9 | 336 | 24.4 | 135 | 21.6 |
| 7th | 214 | 1.3 | 72 | 2.2 | 214 | 23.1 | 72 | 24.8 |
| 8th | 149 | 3.7 | 71 | 2.9 | 149 | 23.5 | 71 | 17.7 |
| 9th | 326 | 1.9 | 231 | 2.5 | 326 | 27.9 | 231 | 20.6 |
| 10th | 268 | 2.3 | 90 | 2.9 | 268 | 17.8 | 90 | 13.6 |

MEDIAN TIME INTERVALS—U.S. CIRCUIT COURTS OF APPEALS—BY CIRCUIT, TYPE CASE FOR CASES TERMINATED AFTER HEARING OR SUBMISSION, FOR THE FISCAL YEAR 1969

| Circuit and type of case | Number of cases | Median (months) | | | | | |
|---|---|---|---|---|---|---|---|
| | | From filing of complete record to final disposition | From filing of complete record to filing last brief | From filing last brief to hearing or submission | From hearing or submission to final disposition | From filing notice of appeal in lower court to filing of complete record in appellate court | From docketing in lower court to final disposition in appellate court |
| Total | 5,121 | 8.3 | 3.5 | 1.7 | 1.7 | (1) | (1) |
| District of Columbia: | | | | | | | |
| Administrative | 70 | 10.2 | 4.3 | 1.4 | 3.7 | ---- | ---- |
| Civil | 164 | 9.5 | 3.5 | 2.5 | 2.4 | 1.3 | 32.2 |
| Criminal | 216 | 7.2 | 3.4 | 1.5 | 1.3 | 4.2 | 23.8 |
| 1st: | | | | | | | |
| Administrative | 20 | 5.8 | 4.0 | .5 | 1.4 | ---- | ---- |
| Civil | 86 | 4.7 | 2.7 | .6 | 1.4 | 1.2 | 20.7 |
| Criminal | 25 | 6.9 | 4.3 | .4 | 1.8 | 1.4 | 16.9 |
| 2d: | | | | | | | |
| Administrative | 20 | 5.8 | 3.6 | .6 | 1.3 | ---- | ---- |
| Civil | 274 | 5.4 | 3.3 | .2 | 1.1 | 1.2 | 22.4 |
| Criminal | 131 | 6.1 | 3.8 | .1 | .7 | 1.9 | 24.6 |
| 3d: | | | | | | | |
| Administrative | 24 | 8.4 | 4.6 | 1.0 | 2.3 | ---- | ---- |
| Civil | 246 | 7.7 | 2.7 | 1.5 | 1.8 | 2.1 | 26.1 |
| Criminal | 42 | 5.3 | 1.1 | 1.0 | 2.2 | 7.8 | 27.3 |
| 4th: | | | | | | | |
| Administrative | 34 | 8.2 | 3.5 | 1.0 | 3.8 | ---- | ---- |
| Civil | 173 | 6.4 | 2.4 | 1.2 | 1.9 | 1.3 | 25.4 |
| Criminal | 97 | 5.1 | 2.9 | 1.0 | .9 | 1.6 | 14.0 |
| 5th: | | | | | | | |
| Administrative | 116 | 7.4 | 2.7 | 2.2 | 2.1 | ---- | ---- |
| Civil | 735 | 7.4 | 2.7 | 1.9 | 1.7 | 3.0 | 25.4 |
| Criminal | 265 | 8.0 | 3.2 | 2.1 | 1.5 | 3.0 | 20.3 |
| 6th: | | | | | | | |
| Administrative | 106 | 12.6 | 5.7 | 4.4 | 1.5 | ---- | ---- |
| Civil | 336 | 10.7 | 4.4 | 3.7 | 1.7 | 1.2 | 24.4 |
| Criminal | 135 | 9.8 | 5.3 | 2.3 | 1.4 | 2.9 | 21.6 |
| 7th: | | | | | | | |
| Administrative | 40 | 9.6 | 4.9 | 1.2 | 3.0 | ---- | ---- |
| Civil | 214 | 8.5 | 4.8 | 1.2 | 1.9 | 1.3 | 23.1 |
| Criminal | 72 | 11.6 | 7.2 | .9 | 2.6 | 2.2 | 24.8 |
| 8th: | | | | | | | |
| Administrative | 28 | 8.8 | 2.0 | 1.6 | 3.9 | ---- | ---- |
| Civil | 149 | 8.2 | 1.9 | 2.5 | 2.8 | 3.7 | 23.5 |
| Criminal | 71 | 8.6 | 3.4 | 1.7 | 2.4 | 2.9 | 17.7 |
| 9th: | | | | | | | |
| Administrative | 81 | 13.6 | 6.3 | 4.6 | 1.4 | ---- | ---- |
| Civil | 326 | 14.3 | 5.6 | 5.7 | 1.9 | 1.9 | 27.9 |
| Criminal | 231 | 10.5 | 5.4 | 2.0 | 1.0 | 2.4 | 20.8 |
| 10th: | | | | | | | |
| Administrative | 30 | 6.9 | 1.2 | 2.2 | 2.9 | ---- | ---- |
| Civil | 268 | 6.4 | 1.4 | 1.6 | 2.0 | 2.3 | 17.8 |
| Criminal | 90 | 6.7 | 2.8 | .6 | 2.2 | 2.9 | 13.8 |

[1] Not available.

Source: Administrative Office of the U.S. Courts and Survey of the U.S. Court of Appeals for the District of Columbia, 1969.

Mr. FOLEY. I think it is at the level at the time after the filing of the notice of appeal and the time of completing the case for argument. I would like your permission to check this out and correct the record if we are wrong.

Mr. ZELENKO. It is important to identify for the record those courts of appeals which are overburdened today.

Mr. Chairman, in that connection, I wish to place in the record at this point a number of tables which show number of appeals filed, terminated, and pending 1950–1969 for the U.S. Courts of Appeals.

TABLE S-1.—U.S. COURTS OF APPEALS

APPEALS FILED, TERMINATED, AND PENDING, FISCAL YEARS 1950 THROUGH 1969 AND 1ST 9 MONTHS OF FISCAL YEAR 1970

| Fiscal year | Number of judgeships | Filed | Terminated | Pending | Terminated after hearing or submission |
|---|---|---|---|---|---|
| 1950 | 65 | 2,830 | 3,064 | 1,675 | 2,355 |
| 1951 | 65 | 2,982 | 2,829 | 1,828 | 2,136 |
| 1952 | 65 | 3,079 | 3,048 | 1,859 | 2,308 |
| 1953 | 65 | 3,226 | 3,043 | [1] 1,845 | 2,436 |
| 1954 | 65 | 3,481 | 3,192 | 2,134 | 2,427 |
| 1955 | 68 | 3,695 | 3,654 | 2,175 | 2,809 |
| 1956 | 68 | 3,588 | 3,734 | 2,029 | 2,973 |
| 1957 | 68 | 3,701 | 3,687 | 2,043 | 2,709 |
| 1958 | 68 | 3,694 | 3,704 | 2,033 | 2,831 |
| 1959 | 68 | 3,754 | 3,753 | 2,034 | 2,705 |
| 1960 | 68 | 3,899 | 3,713 | 2,220 | 2,681 |
| 1961 | 68 | 4,204 | 4,049 | 2,375 | 2,806 |
| 1962 [2] | 78 | 4,587 | 3,931 | 3,031 | 2,895 |
| 1963 | 78 | 5,039 | 4,613 | 3,457 | 3,172 |
| 1964 | 78 | 5,412 | 5,089 | 3,780 | 3,552 |
| 1965 | 78 | 6,221 | 5,226 | 4,775 | 3,546 |
| 1966 | 88 | 6,548 | 5,936 | 5,387 | 4,087 |
| 1967 | 88 | 7,069 | 6,693 | 5,763 | 4,461 |
| 1968 | 88 | 8,224 | 7,372 | 6,615 | 4,668 |
| 1969 | 97 | 9,334 | 8,100 | 7,849 | 5,128 |
| 1970 (9 months) | 97 | 8,590 | 7,369 | 9,070 | ([3]) |
| DISTRICT OF COLUMBIA CIRCUIT | | | | | |
| 1950 | 9 | 434 | 432 | 371 | 240 |
| 1951 | 9 | 394 | 421 | 344 | 243 |
| 1952 | 9 | 434 | 473 | 305 | 303 |
| 1953 | 9 | 421 | 396 | 292 | 272 |
| 1954 | 9 | 472 | 457 | 307 | 307 |
| 1955 | 9 | 437 | 476 | 268 | 314 |
| 1956 | 9 | 537 | 483 | 322 | 338 |
| 1957 | 9 | 498 | 507 | 313 | 340 |
| 1958 | 9 | 476 | 540 | 249 | 399 |
| 1959 | 9 | 540 | 507 | 282 | 352 |
| 1960 | 9 | 505 | 534 | 253 | 354 |
| 1961 | 9 | 527 | 518 | 262 | 338 |
| 1962 [2] | 9 | 601 | 519 | 344 | 326 |
| 1963 | 9 | 718 | 593 | 469 | 363 |
| 1964 | 9 | 624 | 602 | 491 | 398 |
| 1965 | 9 | 568 | 626 | 433 | 426 |
| 1966 | 9 | 702 | 674 | 461 | 448 |
| 1967 | 9 | 689 | 524 | 510 | 415 |
| 1968 | 9 | 839 | 638 | 711 | 392 |
| 1969 | 9 | 954 | 756 | 909 | 459 |
| 1970 (9 months) | 9 | 816 | 679 | 1,046 | ([3]) |

## 1ST CIRCUIT

| | | | | | |
|---|---|---|---|---|---|
| 1950 | 3 | 67 | 86 | 22 | 69 |
| 1951 | 3 | 80 | 77 | 25 | 53 |
| 1952 | 3 | 81 | 74 | 32 | 60 |
| 1953 | 3 | 83 | 79 | 35 | 67 |
| 1954 | 3 | 106 | 111 | 30 | 79 |
| 1955 | 3 | 153 | 124 | 59 | 90 |
| 1956 | 3 | 127 | 141 | 45 | 98 |
| 1957 | 3 | 114 | 118 | 41 | 87 |
| 1958 | 3 | 111 | 118 | 34 | 78 |
| 1959 | 3 | 142 | 119 | 57 | 69 |
| 1960 | 3 | 154 | 134 | 77 | 89 |
| 1961 | 3 | 146 | 172 | 51 | 108 |
| 1962 [2] | 3 | 154 | 148 | 57 | 114 |
| 1963 | 3 | 133 | 134 | 56 | 91 |
| 1964 | 3 | 179 | 156 | 79 | 97 |
| 1965 | 3 | 193 | 180 | 92 | 115 |
| 1966 | 3 | 170 | 199 | 63 | 158 |
| 1967 | 3 | 181 | 126 | 77 | 114 |
| 1968 | 3 | 204 | 198 | 83 | 133 |
| 1969 | 3 | 204 | 190 | 97 | 135 |
| 1970 (9 months) | 3 | 213 | 199 | 111 | [3] |

## 2D CIRCUIT

| | | | | | |
|---|---|---|---|---|---|
| 1950 | 6 | 318 | 355 | 87 | 292 |
| 1951 | 6 | 361 | 319 | 129 | 268 |
| 1952 | 6 | 350 | 349 | 130 | 286 |
| 1953 | 6 | 352 | 359 | 113 | 296 |
| 1954 | 6 | 366 | 325 | 154 | 264 |
| 1955 | 6 | 518 | 453 | 282 | 349 |
| 1956 | 6 | 462 | 480 | 264 | 369 |
| 1957 | 6 | 533 | 459 | 338 | 351 |
| 1958 | 6 | 506 | 506 | 338 | 349 |
| 1959 | 6 | 520 | 511 | 347 | 330 |
| 1960 | 6 | 582 | 554 | 375 | 362 |
| 1961 | 6 | 674 | 663 | 386 | 393 |
| 1962 [2] | 9 | 555 | 526 | 415 | 364 |
| 1963 | 9 | 667 | 669 | 413 | 440 |
| 1964 | 9 | 680 | 623 | 470 | 417 |
| 1965 | 9 | 778 | 716 | 532 | 427 |
| 1966 | 9 | 793 | 708 | 617 | 428 |
| 1967 | 9 | 828 | 808 | 637 | 475 |
| 1968 | 9 | 858 | 887 | 608 | 448 |
| 1969 | 9 | 1,112 | 781 | 939 | 495 |
| 1970 (9 months) | 9 | 992 | 795 | 1,136 | [3] |

## 3D CIRCUIT

| | | | | | |
|---|---|---|---|---|---|
| 1950 | 7 | 236 | 304 | 135 | 237 |
| 1951 | 7 | 271 | 264 | 142 | 211 |
| 1952 | 7 | 282 | 279 | 145 | 228 |
| 1953 | 7 | 293 | 296 | 121 | 249 |
| 1954 | 7 | 255 | 273 | 103 | 231 |
| 1955 | 7 | 309 | 265 | 147 | 219 |
| 1956 | 7 | 272 | 278 | 141 | 221 |
| 1957 | 7 | 272 | 284 | 129 | 201 |
| 1958 | 7 | 330 | 315 | 144 | 254 |
| 1959 | 7 | 293 | 295 | 142 | 231 |
| 1960 | 7 | 296 | 294 | 144 | 200 |
| 1961 | 7 | 334 | 309 | 169 | 207 |
| 1962 [2] | 8 | 408 | 323 | 254 | 225 |
| 1963 | 8 | 354 | 328 | 280 | 212 |
| 1964 | 8 | 368 | 384 | 264 | 275 |
| 1965 | 8 | 444 | 357 | 351 | 243 |
| 1966 | 8 | 482 | 461 | 372 | 321 |
| 1967 | 8 | 609 | 494 | 487 | 339 |
| 1968 | 8 | 561 | 608 | 440 | 347 |
| 1969 | 9 | 612 | 537 | 515 | 329 |
| 1970 (9 months) | 9 | 776 | 414 | 877 | [3] |

## 4TH CIRCUIT

| | | | | | |
|---|---|---|---|---|---|
| 1950 | 3 | 196 | 209 | 63 | 171 |
| 1951 | 3 | 173 | 177 | 59 | 146 |
| 1952 | 3 | 173 | 163 | 69 | 131 |
| 1953 | 3 | 167 | 173 | 59 | 152 |
| 1954 | 3 | 210 | 206 | 63 | 169 |
| 1955 | 3 | 200 | 200 | 63 | 175 |
| 1956 | 3 | 211 | 206 | 68 | 186 |
| 1957 | 3 | 218 | 208 | 78 | 179 |
| 1958 | 3 | 226 | 235 | 69 | 184 |
| 1959 | 3 | 223 | 210 | 82 | 176 |
| 1960 | 3 | 224 | 214 | 92 | 177 |
| 1961 | 5 | 250 | 242 | 100 | 174 |
| 1962 [2] | 5 | 292 | 251 | 141 | 202 |
| 1963 | 5 | 352 | 359 | 134 | 247 |
| 1964 | 5 | 450 | 384 | 200 | 250 |
| 1965 | 5 | 568 | 467 | 301 | 266 |
| 1966 | 5 | 569 | 465 | 405 | 277 |
| 1967 | 7 | 727 | 652 | 480 | 348 |
| 1968 | 7 | 946 | 815 | 611 | 342 |
| 1969 | 7 | 1,036 | 1,030 | 617 | 306 |
| 1970 (9 months) | 7 | 839 | 784 | 672 | [3] |

## 5TH CIRCUIT

| | | | | | |
|---|---|---|---|---|---|
| 1950 | 6 | 408 | 418 | 249 | 340 |
| 1951 | 6 | 421 | 358 | 312 | 280 |
| 1952 | 6 | 452 | 443 | 321 | 369 |
| 1953 | 6 | 481 | 461 | 264 | 431 |
| 1954 | 6 | 510 | 489 | 285 | 403 |
| 1955 | 7 | 527 | 554 | 258 | 467 |
| 1956 | 7 | 511 | 544 | 225 | 472 |
| 1957 | 7 | 595 | 553 | 267 | 414 |
| 1958 | 7 | 530 | 554 | 243 | 467 |
| 1959 | 7 | 555 | 546 | 252 | 449 |
| 1960 | 7 | 577 | 550 | 279 | 438 |
| 1961 | 7 | 630 | 509 | 400 | 405 |
| 1962 [2] | 9 | 703 | 575 | 528 | 466 |
| 1963 | 9 | 852 | 750 | 630 | 562 |
| 1964 | 9 | 1,010 | 902 | 738 | 702 |
| 1965 | 9 | 1,037 | 842 | 933 | 621 |
| 1966 | 9 | 1,041 | 970 | 1,004 | 703 |
| 1967 | 13 | 1,132 | 1,112 | 1,024 | 844 |
| 1968 | 13 | 1,348 | 1,245 | 1,127 | 942 |
| 1969 | 15 | 1,648 | 1,491 | 1,284 | 1,157 |
| 1970 (9 months) | 15 | 1,468 | 1,257 | 1,495 | [3] |

## 6TH CIRCUIT

| | | | | | |
|---|---|---|---|---|---|
| 1950 | 6 | 238 | 252 | 125 | 191 |
| 1951 | 6 | 226 | 201 | 150 | 164 |
| 1952 | 6 | 228 | 213 | 165 | 152 |
| 1953 | 6 | 304 | 278 | 187 | 199 |
| 1954 | 6 | 306 | 280 | 213 | 224 |
| 1955 | 6 | 318 | 305 | 226 | 238 |
| 1956 | 6 | 311 | 360 | 177 | 295 |
| 1957 | 6 | 368 | 334 | 211 | 235 |
| 1958 | 6 | 318 | 310 | 219 | 226 |
| 1959 | 6 | 268 | 311 | 176 | 224 |
| 1960 | 6 | 306 | 283 | 199 | 203 |
| 1961 | 6 | 340 | 324 | 215 | 252 |
| 1962 [2] | 6 | 394 | 329 | 280 | 218 |
| 1963 | 6 | 374 | 341 | 313 | 241 |
| 1964 | 6 | 513 | 404 | 422 | 268 |
| 1965 | 6 | 638 | 497 | 563 | 300 |
| 1966 | 6 | 603 | 510 | 656 | 325 |
| 1967 | 8 | 657 | 627 | 686 | 429 |
| 1968 | 8 | 715 | 740 | 661 | 512 |
| 1969 | 9 | 772 | 851 | 582 | 593 |
| 1970 (9 months) | 9 | 664 | 661 | 585 | [3] |

## 7TH CIRCUIT

| | | | | | |
|---|---|---|---|---|---|
| 1950 | 6 | 274 | 291 | 182 | 225 |
| 1951 | 6 | 233 | 279 | 136 | 220 |
| 1952 | 6 | 206 | 219 | 123 | 173 |
| 1953 | 6 | 256 | 230 | 142 | 201 |
| 1954 | 6 | 299 | 276 | 165 | 199 |
| 1955 | 6 | 286 | 282 | 169 | 215 |
| 1956 | 6 | 292 | 291 | 170 | 240 |
| 1957 | 6 | 262 | 319 | 113 | 221 |
| 1958 | 6 | 289 | 286 | 116 | 221 |
| 1959 | 6 | 302 | 309 | 109 | 227 |
| 1960 | 6 | 329 | 298 | 140 | 235 |
| 1961 | 6 | 328 | 320 | 148 | 227 |
| 1962 [2] | 7 | 374 | 313 | 209 | 249 |
| 1963 | 7 | 381 | 366 | 224 | 260 |
| 1964 | 7 | 396 | 378 | 242 | 275 |
| 1965 | 7 | 469 | 374 | 337 | 283 |
| 1966 | 7 | 475 | 453 | 359 | 329 |
| 1967 | 8 | 483 | 463 | 379 | 314 |
| 1968 | 8 | 634 | 517 | 496 | 312 |
| 1969 | 8 | 655 | 534 | 617 | 334 |
| 1970 (9 months) | 8 | 673 | 609 | 681 | [3] |

## 8TH CIRCUIT

| | | | | | |
|---|---|---|---|---|---|
| 1950 | 7 | 184 | 208 | 114 | 153 |
| 1951 | 7 | 221 | 218 | 117 | 149 |
| 1952 | 7 | 237 | 212 | 142 | 153 |
| 1953 | 7 | 228 | 228 | 129 | 168 |
| 1954 | 7 | 232 | 245 | 116 | 167 |
| 1955 | 7 | 259 | 242 | 133 | 170 |
| 1956 | 7 | 238 | 237 | 134 | 161 |
| 1957 | 7 | 204 | 208 | 130 | 151 |
| 1958 | 7 | 200 | 217 | 113 | 154 |
| 1959 | 7 | 228 | 225 | 116 | 134 |
| 1960 | 7 | 237 | 226 | 127 | 156 |
| 1961 | 7 | 246 | 243 | 130 | 142 |
| 1962 [2] | 7 | 282 | 247 | 165 | 181 |
| 1963 | 7 | 254 | 233 | 186 | 157 |
| 1964 | 7 | 305 | 299 | 192 | 201 |
| 1965 | 7 | 302 | 278 | 216 | 198 |
| 1966 | 7 | 374 | 347 | 243 | 243 |
| 1967 | 8 | 393 | 331 | 305 | 220 |
| 1968 | 8 | 401 | 372 | 335 | 235 |
| 1969 | 8 | 394 | 360 | 369 | 254 |
| 1970 (9 months) | 8 | 430 | 387 | 412 | [3] |

## 9TH CIRCUIT

| | | | | | |
|---|---|---|---|---|---|
| 1950 | 7 | 317 | 307 | 251 | 257 |
| 1951 | 7 | 409 | 337 | 323 | 248 |
| 1952 | 7 | 444 | 419 | 348 | 332 |
| 1953 | 7 | 450 | 352 | 430 | 252 |
| 1954 | 7 | 517 | 363 | 584 | 241 |
| 1955 | 9 | 385 | 523 | 446 | 387 |
| 1956 | 9 | 386 | 484 | 348 | 397 |
| 1957 | 9 | 419 | 458 | 309 | 357 |
| 1958 | 9 | 459 | 401 | 367 | 318 |
| 1959 | 9 | 454 | 473 | 348 | 346 |
| 1960 | 9 | 455 | 404 | 399 | 288 |
| 1961 | 9 | 443 | 470 | 372 | 347 |
| 1962 [2] | 9 | 560 | 449 | 483 | 348 |
| 1963 | 9 | 687 | 555 | 615 | 386 |
| 1964 | 9 | 507 | 670 | 452 | 437 |
| 1965 | 9 | 809 | 532 | 729 | 398 |
| 1966 | 9 | 796 | 718 | 807 | 496 |
| 1967 | 9 | 881 | 864 | 824 | 577 |
| 1968 | 9 | 1,077 | 814 | 1,087 | 535 |
| 1969 | 13 | 1,396 | 1,012 | 1,471 | 664 |
| 1970 (9 months) | 13 | 1,153 | 1,093 | 1,531 | [3] |

10TH CIRCUIT

| | | | | | |
|---|---|---|---|---|---|
| 1950 | 5 | 158 | 202 | 76 | 179 |
| 1951 | 5 | 193 | 178 | 91 | 149 |
| 1952 | 5 | 192 | 204 | 79 | 179 |
| 1953 | 5 | 191 | 191 | 73 | 154 |
| 1954 | 5 | 208 | 167 | 114 | 143 |
| 1955 | 5 | 240 | 230 | 124 | 185 |
| 1956 | 5 | 241 | 230 | 135 | 196 |
| 1957 | 5 | 218 | 239 | 114 | 173 |
| 1958 | 5 | 249 | 222 | 141 | 181 |
| 1959 | 5 | 229 | 247 | 123 | 167 |
| 1960 | 5 | 234 | 222 | 135 | 179 |
| 1961 | 5 | 286 | 279 | 142 | 213 |
| 1962[2] | 6 | 264 | 251 | 155 | 202 |
| 1963 | 6 | 267 | 285 | 137 | 213 |
| 1964 | 6 | 380 | 287 | 230 | 232 |
| 1965 | 6 | 415 | 357 | 288 | 269 |
| 1966 | 6 | 543 | 431 | 400 | 359 |
| 1967 | 6 | 489 | 535 | 354 | 393 |
| 1968 | 6 | 641 | 539 | 456 | 470 |
| 1969 | 7 | 551 | 558 | 449 | 395 |
| 1970 (9 months) | 7 | 566 | 491 | 524 | (3) |

[1] Adjusted figure.
[2] Beginning in 1962, number of cases filed and terminated are reduced by cases disposed of by consolidation.
[3] Not available.

Note: Additional judgeships are first counted in the fiscal year following the year of passage of the judgeship bill.

Mr. McCULLOCH. Mr. Chairman, in view of this line of questioning, could either of you gentlemen tell us how many vacancies there are today in the U.S. Court of Appeals? How many judgships are unfilled?

Mr. FOLEY. There are very few, sir.

May we submit that for the record?

Mr. McCULLOCH. You may submit it for the record.

(The information follows:)

JUDGE VACANCIES U.S. COURTS OF APPEALS, JULY 8, 1970

1. 3rd Circuit, vice William F. Smith, died February 26, 1968.
2. 3rd Circuit, vice David Stahl, died February 21, 1970.
3. 5th Circuit, vice George H. Carswell, resigned April 20, 1970.
4. 6th Circuit, vice Bert T. Combs, resigned June 5, 1970.
5. 7th Circuit, vice Elmer J. Schnackenberg, died September 15, 1968.
6. 7th Circuit, vice Latham Castle, assumed senior status February 28, 1970.
7. 8th Circuit, vice Harry A. Blackmun, elevated to Supreme Court, June 8, 1970.
8. 10th Circuit, vice Alfred P. Murrah, assumed senior status May 1, 1970.

Mr. McCULLOCH. I should like to ask this question in view of the questions that Mr. Zelenko has asked. This is a leading question and therefore you can object to it, if you wish. Have you come to the conclusion which I have that some of this delay, maybe much of it, is the fault of the lawyer who waits until the last minute to furnish the documents that are required by rule? If you do not want to answer the question, you do not have to.

Mr. KIRKS. I do not mean to transgress propriety, Mr. Congressman, but the representative of the practicing bar I understand is going to appear before you today. He might have a very definite opinion about that, sir.

Mr. McCULLOCH. If you see him on the way out alert him to this question.

Mr. KIRKS. I will alert him to this question. [Laughter.]

(Discussion off the record.)

The CHAIRMAN. Thank you very much.

Mr. KIRKS. Thank you for the privilege of appearing.

The CHAIRMAN. Our next witness this morning is the distinguished president of the American Bar Association, who has always been very helpful to the committee and we are very happy to have him here this morning, Mr. Bernard G. Segal, president of the American Bar Association.

Mr. Segal, I am sure you have observed the very sharp questions this morning, and it probably indicates to you that we were right in being very cautious and not swallowing line and sinker what the other body did with reference to the court executives in the form that it was submitted to us as a sort of appendix to the omnibus judgeship bill.

## STATEMENT OF BERNARD G. SEGAL, ESQ., PRESIDENT OF THE AMERICAN BAR ASSOCIATION, ACCOMPANIED BY DONALD E. CHANNELL, ESQ., DIRECTOR, WASHINGTON OFFICE OF THE AMERICAN BAR ASSOCIATION

Mr. SEGAL. I think that is true. But also true is the fact that one must live not merely with the age or the year but the month. Many of these things to which amendments are now being suggested came to the committee from the prior Administrator of the U.S. courts who you may recall got up this list of duties with great care and with the aid of some State administrators.

I would endorse the changes suggested by Mr. Kirks, but only because Mr. Kirks is the incumbent Administrator, since he will have to live with them. I suppose he is entitled to his choice. In deference to the committee, I think it should be made clear that the list of duties came primarily from the Administrative Office. That is a published document which is in the committee files, as Mr. Zelenko knows.

Mr. Chairman and members of the subcommittee: In behalf of the American Bar Association and of myself personally, I thank the subcommittee for this opportunity to appear on behalf of the association in support of the important bills which are the subject of this hearing.

I should like to reiterate to you, Mr. Chairman, to the other members of the House Judiciary Committee, and to Mr. Zelenko and other members of the committee staff, our sincere appreciation for the consideration and the cooperation which have always been extended to us on the many occasions in which we have been accorded the privilege of working with you and them on legislation to improve the administration of justice and the operation of our judicial system.

We recognize where the ultimate authority must lie but we appreciate the opportunity afforded to us as the spokesmen for the legal profession.

We were particularly pleased to cooperate in the preparation of the bills now before you, H.R. 17901 and 17906, and now to appear in their support, because of the promise they hold for providing relief in connection with one of the most critical problems confronting the U.S. courts of appeals.

I need not emphasize to this subcommittee, as knowledgeable as any, that one of the gravest problems facing our Nation is the inability of our courts, particularly in the metropolitan areas of the country, to meet the demands which our skyrocketing economy, our mounting crime wave, and the ever-increasing new types of litigation and litigants have cast upon them.

Parenthetically I may say that just take one new element of litigant. In the past 5 years the representation of the indigent in the United States has gone from 2 percent of the need to 20 percent of the need. No one has thought to analyze what that has done to congestion in the courts of the United States, Federal and State; what it means to have 10 times as much representation of the 20 million poor of the land who now for the first time have lawyers.

Each time Congress passes a bill providing, or the Supreme Court approves, a new type of jurisdiction, no one stops to analyze what that does to congestion in the courts of the United States. Some years ago such a study was started by the Federal Bar Foundation, and the present Chief Justice and I had the privilege of serving as advisers to that. The thought was to go into what are the underlying causes. Everyone worries today, with what shall we do with congestion? How can we relieve delay in litigation? But no one is concerned with what are the causes and what can we do to remedy the causes or to alleviate them in the years ahead.

I mention this, Mr. Chairman, because in this busy year I have had, it is one of the things I have been unable to get around to having the American Bar Association do. I hope it will do so very soon in the future. As you know for many years, medicine concerned itself with the cure, and then it concerned itself with the cause. It is only very recently that it has really addressed itself to what you do to prevent the proliferation and the increase in disease for the future.

I think this is the great call which a committee like this one, with full deference, might think of in the future, whether the time has not come to look into why it is that appeals are proliferating in the courts far out of proportion to the number of cases being filed.

I might point out that the things that worry us who are on the firing line, who meet the clients, and who are called upon by the media, are the adverse effects that these conditions, including the inordinate court congestion and delays of litigation, have on citizens' respect for law, for our judicial system and for the judges who preside in our courts.

As I have traveled across the country in the past 2 years—I will have covered a quarter of a million miles before my term is over—I find distressingly increasing doubts raised as to whether our present legal institutions can cope with the pressures which modern society imposes upon them. I present to you, sirs, one simple truth, and that is that in an era marked by vast advances in science, in technology, in management techniques, our judicial system has simply not kept pace. I suggest to you that the bill you have before you today is one of the ways in which we can introduce into our judicial system a principle which business discovered in the past quarter of a century is prerequisite to efficient operation. We like to say that a law can be no better than a judge who administers it. I suggest that a court can be no better than the manager who manages it.

Let me give this committee one bit of history as to where this idea first originated.

The chairman, I think, will remember this. The chairman mentioned the possible realinement of the circuits. You may recall that in the 1960's—1962 and 1963—when I was chairman of the ABA Standing Committee on Judicial Selection, Tenure and Compensation, and the delegate of the section of judicial administration, you and I talked about this problem several times. Alarmed by the increasing number of new appeals being commenced each year at that time, and the inexorable fact that despite the addition of more and more court of appeals judges conditions were worsening in the courts, and finally with the prospect that then existed that the fifth and ninth circuits, and perhaps the second, as we then feared, would have to go above the then number of nine judges, we recommended to the board of governors that a special study be instituted as to the causes for these conditions in the courts of appeals and what could be done about the realinement. In February, 1963, the Council of the Section of the Judicial Administration of the ABA approved such a study at a meeting in New Orleans. In May 1964, the board of governors, after a presentation which I made to it, approved the study. The American Bar Foundation agreed to undertake and fund it. Prof. Paul Carrington of the University of Michigan became project director. I mention certain facts to the members of the committee so that they may be able to appraise the Foundation group's conclusion, which is directly pertinent to the inquiry here today.

The members were Dean Lindsey Cowen of the University of Georgia Law School, former Chief Judge Charles S. Desmond, of the Court of Appeals of the State of New York, Nathan B. Goodnow, Esq., of the Detroit Bar, Leon Jaworski, Esq., of the Houston Bar and currently president-elect nominee of the American Bar Association, Prof. David W. Louisell, of the Law School of the University of California at Berkeley, Judge Carl McGowan of the U.S. Court of Appeals for the District of Columbia, Supreme Court Justice Thurgood Marshall, Prof. Paul J. Mishkin of the University of Pennsylvania Law School, and I served as chairman. Our study took 3 years. Almost from the first day, it became apparent that one of the great needs was the strengthening of the administrative facilities of the courts of the United States and our problem was the courts of appeals. We concluded that this could not be achieved without in some way introducing management principles into the operation of the courts. We spent a good deal of time as to what the clerks of the courts were doing. We interviewed every chief judge and every clerk of the 11 circuits. We concluded that what was needed was a new kind of official for the U.S. courts of appeals. That new kind of official was what we called an administrative officer, the kind of officer contemplated by the bills before this committee.

We said that each court should have an administrative officer responsible to the circuit council—I may say parenthetically in the discussion this morning there was a good deal of conversation about the determination of the functions of this new executive by the chief judge. I suggest that was an inadvertence. The chief judge has no power under this bill and I think properly has no power to determine that.

That is for the circuit council. He administers, but the functions are determined by the circuit council. I would endorse the wisdom of

the framers of the bill in so providing. I believe that each circuit should have an administrative officer responsible to the circuit council and having authority and responsibilty for the admnistration of the court's business.

Mr. POFF. Mr. Chairman, I wonder if the distinguished witness would permit an interruption at that point.

Mr. SEGAL. I welcome it, sir.

Mr. POFF. It was not altogether an inadvertence. I am one who was apparently confused, too.

Mr. SEGAL. I was not referring to you, as a matter of fact.

Mr. POFF. I am sure you were not. I confess the error, if there is one. My attention was called, before I began to inquire, to the language on page 3, beginning at line 14, which says that all duties delegated to the circuit executive shall be subject to the general supervision of the chief judge of the circuit.

It is true, as the witness has indicated, that the duties are indeed delegated by the council which consists of all judges of the circuit. I would like to correct myself for the record.

Mr. SEGAL. The emphasis I desired was that I think that is a very wise decision. I may say that this was not my idea when I started on this 20 years ago. It was not my idea when we drafted the model judicial article for the State courts. But it did become my idea by the time I drafted the new constitutional provision for the Pennsylvania constitution which, with changes, has recently been adopted.

I believe these larger functions are for all the judges, just as I believe that the appointment and dismissal are for all of the judges. It is the administering, the primary responsibility which should rest in an individual. This is directly analogous to the functions of a board of directors of a corporation and the function of the president. The president administers all those under him but the basic charge is determined by the board of the corporation.

Mr. POFF. I suppose the same language would apply to page 5, line 4, which reads that "the circuit executive shall serve at the pleasure of the judicial council."

Mr. SEGAL. Precisely.

Mr. POFF. Thank you.

The CHAIRMAN. In that connection, we find on page 1 of the bill the following lines, "The circuit executive shall exercise such administrative powers and perform such duties as may be delegated to him by the circuit council."

Then on page 3 we have the following line 14: "All duties delegated to the circuit executive shall be subject to the general supervision of the chief judge of the circuit."

Is there somewhat of an inconsistency there?

Mr. SEGAL. I think not, with full deference, Mr. Chairman. We find it in the charter of State governments administratively and we find that in most corporations. The determination of the duties, the defining of the obligations, and the rights, is for the supervening group, in this case the circuit council. The administration is for the chief officer, in this case the chief judge. I would suggest to you, Mr. Chairman, that I think the language as presently drafted is artistic and serves the purpose very well.

Mr. POFF. Mr. Chairman, in order that the record might pursue those personnel matters at this point, would it be appropriate for me to ask the witness one other question?

The CHAIRMAN. Very well.

Mr. POFF. I suggested in my interrogation of the previous witness that it might be wise as a practical functional proposition to vest in the Judicial Conference of the United States rather than the Board of Certification the powers to fix standards for qualifications of the court executive. Would you object to that change in the structure?

Mr. SEGAL. The difficulty I find with that, Congressman Poff, is that as the Judicial Conference operates, as you know, it meets infrequently. It necessarily operates through committees. The judges are quite concerned—individual judges who have differing opinions, as I shall mention as to this new kind of officer—with just how it shall be administered and by whom. You will recall when the Judicial Conference passed on the prior provision in the bill from which reference to the circuit executives was deleted, it objected to the fact that the Administrative Office was to get up the panel. As I see it, what the Congress here is doing is permitting a majority determination in the Judicial Conference, but determining what committee shall have this rather than leaving that determination to the Judicial Conference.

I think each individual judge would derive more confidence from knowing in advance rather than for the Congress to leave open this question. Perhaps it is presumptuous of me to say—I think the individual chief judges with whom I have spoken, or some of them, would prefer to know in advance who was going to make that determination rather than leave that for a majority vote later on.

Further, the Judicial Conference consists now about half of district judges, who are selected by vote of the judges of the circuit, and half of the chief judges. So that approximately one-half of those who would make that determination are judges who have no direct concern with the circuit. It would seem to me, therefore, more logical in this case to do it in the way the bill does it.

I would have no basic objection to doing it the way you mention. I think it is not a fundamental difference. I would have a preference for the other because I believe this would arouse less concern on the part of some of the judges who are somewhat concerned than it would be to leave it open.

Mr. POFF. Under the system structured in the bill, would it be possible for the three members who are to be elected by the Judicial Conference to be themselves members of the Conference?

Mr. SEGAL. No; it would not. That is one reason that I prefer the bill. We found, if I may anticipate, in setting up the institute that we got a great deal of help by calling on the important public administrators of the United States. The Institute for Public Administration and the Academy of Public Administrators were of immense help to us.

As I understand, the reason the specific provision was put in this bill, that of the three men selected by the Judicial Conference at least one shall be among persons experienced in executive recruitment and selection, was so that the Judicial Conference might have the advantage of what we did in setting up our institute.

I asked, for example, "Who is the man in the United States who has had the greatest experience in determining how to train a new kind of

animal?" That was our astronaut. I concluded that was Mr. Webb, who is head of NASA. I said, "Mr. Webb, will you come on our board?"; he replied "Yes."

I then inquired who has been the best recruiter in the public area over most years. The answer—John Macy, who headed our U.S. Civil Service Commission so many years. I said to him—would you come on our board? He responded yes. Then we got the head of the U.S. Employment Service and he is on our board. This provision would enable the Judicial Conference to go outside the Conference and get one of those experts.

Mr. POFF. It would be possible, as I read the language, to create a board in this fashion: First of all, two members would be the Director of Administrative Office of the U.S. Courts, the Director of the Federal Judicial Center, both of whom I think would be governmental employees and who would not be eligible for per diem; for two of the three within the reach of the Judicial Conference to be themselves members of the Judicial Conference, and for the third to be selected by the Judicial Conference to be such an expert as you have described. In such a case, the only person who would be eligible for the $100 per diem would be that fifth member.

Mr. SEGAL. I believe that is exactly the contemplation that all of us have. I know that that is the view of the Chief Justice of the United States, I know it is the view of several of the Circuit Chief judges with whom I have discussed this.

I believe it was the view of the staffs of the Judiciary Committees of the Senate and the House.

Mr. POFF. Then my fears expressed earlier about unnecessary cost are not as well-founded as I first thought.

Mr. SEGAL. I thought you would come upon that yourself, Congressman, and I therefore did not mention it.

Mr. POFF. I did. But it was a rather painful process of dialog. I thank the witness.

Mr. SEGAL. Thank you, that is very helpful indeed.

The CHAIRMAN. I would like to make one remark with reference to this colloquy. It is not in derogation of the Judicial Conference that I make this observation: The members of the Judicial Conference are human, just like you and me and it is a case, of "you slap my back and I will slap yours."

One member of the Judicial Conference in one circuit might say to another member of the Judicial Conference in another circuit, you appoint my man and I will agree to appoint yours.

Now, secondly, with reference to salary, it is conceivable that only one member of the board of certification might be appointed outside of Government. That is reading page 3, line 22 to the bottom, where the bill states "and at least one of these three shall be selected from among persons experienced in executive recruitment and selection."

I take it that would mean from the Civil Service Commission or some similar management organization. This would be the only member who would receive a stipend. Am I correct?

Mr. SEGAL. That is correct.

I believe that the prevailing thought is that it would be wise, out of the five, to have two judges so there would only be one outside expert.

The CHAIRMAN. All right.

Mr. SEGAL. I might say, so the record is clear, that the recommendation of our committee, of which I was chairman, which originally evolved this concept was contained in a unanimous report published by the American Bar Foundation in 1968 entitled "Accommodating the Workload of the United States Court of Appeals."

Now, Mr. Chairman, apropos of your question to Mr. Kirks, after a great deal of study and discussion with the chief judges, analysis of the workload of the circuits as of the end of 1967, which of course is now 2½ years away, and after the discussions which I had with you, we did recommend a specific realinement of circuits. You went off the record and if I may for a moment——

(Discussion off the record.)

The CHAIRMAN. Proceed.

Mr. SEGAL. Mr. Chairman, I take it that my entire statement will be published so that I can just summarize, speaking with you; is that correct?

The CHAIRMAN. Yes, we will accept your statement.

Mr. SEGAL. I will just summarize it.

After our committee recommendation, of course the Senate bill to which reference has been made was introduced. Then during the annual meeting of the American Bar Association in Dallas, last August, Chief Justice Warren B. Burger delivered a memorable address which he entitled "Court Administrators—Where Would We Find Them?"

I would like to quote just part of a sentence of that, in view of the time of this committee. He poignantly inquired why justice takes so long. Then he gave what he regarded as the dominant reason when he said, "the lack of up-to-date effective procedures and standards for administration or management and the lack of trained managers." There I end the quote.

He urged that we simply can never attain effective management in any multijudge court. Now, Congressman, you asked about six judges. The Chief Justice said he did not know whether it was four, six or eight. You have hit the median among those three figures. I think six is a good minimum. I am not quite sure that every court of six requires it, but certainly one below that does not.

He deplored, as all of us do, the use of "judge time" as he entitled it to accomplish tasks requiring other training than lawyers normally have, and other training and other aptitudes than many chief judges show.

Now we do get some who fortunately have these aptitudes but, by the same token, obviously there is nothing about becoming a chief judge or indeed a judge which would insure that one has these qualities.

Mr. MCCLORY. I judge from your testimony that in addition to urging enactment of the bill that is before us, which relates to court executives for the circuit court of appeals that you likewise favor authority for the appointment of court executives for district courts with six or more judges?

Mr. SEGAL. I certainly do, Congressman McClory.

I believe that Congress, and I say this with full deference, will not be fulfilling an important function until its gives every court of the United States which has enough judges to require it—and I am willing to accept this six-judge minimum—a court executive, any more than if

this Congress were a board of directors it would be meeting the interest of its stockholders if it did not have a good manager for the business enterprise, or if it said, if it were a computer company, that just so it has a great inventor of the computer as president that this takes care of the management problems of a corporation.

A judge simply does not become a judge because of his administrative skills. Even if he happens to have them, he has not the time to exercise them without sacrificing his judicial duties.

Mr. McCLORY. Then considering the subject of court workloads, particularly if you get into a district like the northern district of Illinois, which is my district in Illinois, where you have 13 district judges, or the southern district of New York where you have 27 judges to handle this complex business of the backlogs and the workloads. These two districts are prime examples, are they not, of areas where the court executive can be utilized most effectively?

Mr. SEGAL. Congressman, I have personal experience with both those districts. Both of them are sorely in need of this type of executive.

The CHAIRMAN. Let me ask this question: Would the Institute for Court Management make recommendations for the appointment of executives in State courts?

Mr. SEGAL. Let me straighten that out, if I may, Mr. Chairman. The Institute for Court Management will not make any recommendations either to the Federal or the State courts other than to answer inquiries as does any educational institution.

If I call the dean of a law school and I say to him, "Tom Jones has applied to my office for a position, will you tell me what you think of Tom Jones?" he responds to the inquiry by telling me of the man's record. That is the sole function the dean of the institute or the director of the institute will perform. The institute is a place to give academic and clinical training to midcareer people, perhaps court clerks who say, "We want to get this additional experience," or to graduates with law degrees or with public administration or business administration degrees.

It will graduate them and they will then be available to the courts.

The CHAIRMAN. You had a subvention of $750,000 of the foundation to set up this Institute for Court Management. Where will you get other funds for its continuation?

Mr. SEGAL. Our conviction, Mr. Chairman, is that this will carry the school for 2 years and will produce 60 trained court executives.

My own feeling is that thereafter this is probably a matter for Government subvention for continuation, but that decision has not been reached. We have secured the financing of the school on the theory that after 2 years it ought so to have established itself so that Federal and State Governments will be very much interested in its continuation.

On the other hand, I give you this analogy, Mr. Chairman: When we started the college for trial judges in Nevada, we there contemplated that we would finance it until it had established itself and then government would be interested in financing it, but thus far it has so taken hold that the foundations are continuing to finance it.

The CHAIRMAN. What States have asked for information concerning administrators of courts?

Mr. SEGAL. I have received letters, Mr. Chairman, personally—and I am now giving you a very educated guess because I have not specifically counted—but from at least 2 dozen States.

There are now about 15 States contemplating constitutional changes to provide for statewide administrators.

The CHAIRMAN. How many States have the so-called court executives?

Mr. SEGAL. The counts vary because of the difference in the office. If I were again to take an educated guess as to those—there are, by the way, 26 that provide for administrators but in some the administrators have so few duties that I would not regard them as being even administrators as you and I know them.

I can supply for the record the precise figure. I would guess there are 15 States that have administrators with the kind of power that you and I would contemplate.

The CHAIRMAN. Would you care to identify those States? If you do not have it now, will you supply it for the record?

Mr. SEGAL. I will supply you with all the States that have administrators and then I will asterisk those that have administrators with the power of administration, the power of transfer of judges temporarily from one court to the other.

(The information follows:)

I. Administrative assistance to the Judicial Branch exists in one form or another in the following 36 states. However, titles vary from Executive Secretary to Administrative Director, and powers vary from broad to very limited.

1. Alaska, Const, Art. IV Sec. 16, Administrative Director.
2. Arizona, Const. Art. VI Sec. 5, Administrative Director.
3. Arkansas, Stat. Sec. 22–142 to 143, Executive Secretary.
4. California, Sec. 68500–68545, Administrative Director.
5. Colorado, Stat. 37–11–1, Judicial Administrator.
6. Connecticut, Stat. 51–8, Executive Secretary of the Judicial Department.
7. Hawaii, Title 26, Sec. 213–1.6, Administrative Director.
8. Idaho, Code Sec. 1–611, Administrative Assistant.
9. Illinois, Const. Art. VI, Sec. 2, Administrative Director.
10. Indiana, Stat. Sec. 4–7501 to 7506, Executive Secretary of the Judicial Study Commission.
11. Iowa, Sec. 685.6, Judicial Department Statistician.
12. Kansas, Stat. 20–318, Judicial Administrator.
13. Kentucky, Stat. 22.110 and 22.120, Director of Administrative Office.
14. Louisiana, Supreme Court Rule 20 Sec. 7, Judicial Administrator.
15. Maine, Title 4, Ch. 1, Sub. Chapt. I–A, Administrative Assistant to the Chief Justice.
16. Maryland, Art. 26 Secs. 6 and 10, Director of the Administrative Office of the Courts.
17. Massachusetts, Secs. 3A, Chapt. 211, to 3F, Executive Secretary.
18. Michigan, Const. Art. VI Sec. 3, Administrator of the Court.
19. Minnesota, Sec. 480.13, Administrative Assistant.
20. Missouri, Sec. 476.320 and 476.390, Executive Secretary, Judicial Council.
21. New Jersey, Stat. 2A :12–1 to 12–6, Administrative Director.
22. New Mexico, Stat. Sec. 16–6–1, Director of Administrative Office.
23. New York, Sec. 210, State Administrator.
24. North Carolina, Art. 4 Sec. 13, Administrative Director.
25. North Dakota, Code 27–15–03, Executive Secretary, Judicial Council.
26. Ohio, Tit. 25, 2503. 281, Administrative Assistant.
27. Oklahoma, Chpt. 20 Sec. 16.1–16.2, Administrative Director.
28. Oregon, Stat. 8.060, Administrative Assistant.
29. Pennsylvania, Art. 5 Sec. 10, State Court Administrator.
30. Puerto Rico, Tit. 4 Sec. 331 to 334, Administrative Director.
31. Rhode Island, Sec. 8–2–11, Administrative Clerk.
32. Tennessee, Sec. 16–325, Executive Secretary, to the Supreme Court.
33. Virginia, Sec. 17–111.1, Executive Secretary.
34. Vermont, Tit. 4 Sec. 20, Court Administrator.
35. Washington, Code 2.56.010, Administrator for the Courts.

36. Wisconsin, Sec. 256.54, Administrative Director.

II. State judicial systems which have some form of administrative support, and in which the Chief Justice has the power to transfer judges temporarily, often with the consent of the judge.

1. Alaska, Const. Art. IV, Sec. 16.
2. Arizona, Const. Art. VI, Sec. 3.
3. Arkansas, Stat. Sec. 22–142.
4. California, 68200–la. (7).
5. Colorado, Stat. 37–11–2 (2).
6. Connecticut, Stat. 51–2.
7. Idaho, Chpt. 6, Sec. 1–613.
8. Illinois, Const. Art. VI, Sec. 2.
9. Iowa, Sec. 685.8 (6).
10. Kansas, Stat. 20–318.
11. Kentucky, Stat. 22. 120 (5).
12. Louisiana, Art. 7, Sec. 12.
13. Maryland, Art. 26, Sec. 8 (b).
14. Minnesota, Sec. 480, 15 (4).
15. New Jersey, Art. 6, Sec. 7 (2).
16. New York, Sec. 212 (4).
17. N. Carolina, Art. 29, Sec. 7A–343 (9).
18. Ohio, Title 25, Sec. 2503.281 (B).
19. Oklahoma, Chpt. 20, Sec. 23 (5).
20. Pennsylvania, Art. 5, Sec. 10.
21. Puerto Rico, Title 4, Sec. 333.
22. Washington, Sec. 2.56.030 (3).
23. Wisconsin, Sec. 251.182.

III. Jurisdictions with Trial Court Administrators who are members of the National Association of Trial Court Administrators. (There is no other record of how many Trial Court Administrators there are in Trial Courts of General Jurisdiction.) These people vary from simple Clerks of the Court or Chiefs or Records to highly sophisticated Managers of non-judicial functions of the court.

1. Arizona, Pima County Superior Court Administrator, Maricopa County Superior Court Administrator, Courts of The Navajo Tribe.
2. California. Los Angeles County Superior Court, Santa Clara County Superior Court, Contra Costa County Superior Court, San Diego County Superior Court, Orange County Superior Court, San Mateo County Superior Court, San Bernardino County Superior Court, Alameda County Superior Court, San Francisco County Superior Court.
3. Colorado, Denver City County Court, El Paso County Court, Weld County Court, Arapahoe County District Court, Adams County District Court, Denver Superior Court.
4. Delaware, Supervisor of the Justice of the Peace.
5. Illinois, Circuit Court of Cook County.
6. Louisiana, Orleans Parish Juvenile Court.
7. Maryland, Circuit Court of Baltimore County, 8th Judicial Circuit of Maryland, 7th Judicial Circuit of Maryland.
8. Michigan, Oakland County Circuit Court, 3rd Judicial Circuit.
9. Minnesota, Hennepin County District Courts, District Courts of Minnesota, Municipal Court of Minneapolis.
10. Missouri, Jackson County Circuit Court, St. Louis County Circuit Court.
11. New Jersey, Union County Court, Hudson County Court, Passaic County Court, Essex County Court, Camden County Court, Bergen County Court.
12. New York, 1st Appellate Department, 2nd Appellate Department, 3rd Appellate Department, 4th Appellate Department.
13. Nevada, Clark County District Court.
14. Ohio Trumbull County Court of Common Pleas, Cuyahoga County Court of Common Pleas, Stark County Court of Common Pleas, Summit County Court of Common Pleas.
15. Oklahoma, Director, Juvenile Courts.
16. Oregon, Multnomah County Circuit Court.
17. Pennsylvania, Allegheny County Court of Common Pleas, Montgomery County Court of Common Pleas, Delaware County Court of Common Pleas.
18. Rhode Island, Court Administrator of the Superior Court of Providence.
19. Utah, Chief Administrative Officer, Juvenile Courts, Administrator for the District Courts.
20. Washington, Superior Court of King County.
21. Massachusetts, Boston, Superior Court.

The CHAIRMAN. And also indicate the type of court in which they function?

Mr. SEGAL. I will do that. I will give you the States and then the major municipalities, major local courts.

The CHAIRMAN. Another question.

How do you envisage that the court administrator will relate to the clerk of the court? Will they be on equal footing? Will one be subservient to the other?

Mr. SEGAL. First, Mr. Chairman, I would say that if this court executive, circuit executive, is not the top man in the management functions of the court, the system will have failed. It has always been our contemplation, all the writings on the subject say, and the report to which I referred of the committee of which I was chairman expressly states, that the clerk shall be subordinate to the circuit executive.

Mr. MCCLORY. Mr. Segal, if the Congress should decide to authorize the court executive for the 11 circuits and for the 18 districts which have six or more judges each, and make the law effective January 1, 1971, would there be sufficient court executive talent to assume these positions?

Mr. SEGAL. There are three sources of the talent. One source will be 20 graduates of the Institute for Court Management, who will be graduated in December.

A second source will be such clerks of court as may qualify, that is, of the courts of appeals.

It is obvious that the agency set up by the bill will not exclude incumbent clerks. I think it is equally obvious that they dare not regard a clerk as being, ipso facto, qualified.

The third source will be trained State administrators who, as in all functions today, will look for the better position. There is not any doubt that their circuit executive will get higher pay than some of our very best State court administrators.

I suspect that what will happen is that some of our best State court adminisrators will apply for these positions and that the institute will fill the vacancies left by them, because I would have to say in all frankness that there are some administrators in the State courts who may well be better than any of the graduates at a given moment from the school. I would like to see a circuit like the fifth circuit get one of those men and have the graduate of the institute replace the man who goes there.

The CHAIRMAN. Mr. Segal, I want to get a bit more clarification with reference to your answer that the clerk will be subordinate to the executive. How do you reconcile that with title 28, U.S. Code, section 711, which gives the right to the clerks, with approval of the court, to appoint and remove subordinates and employees of the court?

Mr. SEGAL. I had intended to address myself to that and I am very glad to answer your question.

I would hope that this committee would clarify that. But if it were not clarified and if this bill were passed as it is, I would personally have no concern with the fact that the later legislation, being as specific as this is in the power it delegates to the circuit council, would supersede the provision of the judicial code.

There are numerous decisions which in administrative matters have provided, particularly where the same agency is in control, that the later legislation supersedes the earlier legislation. I believe this would be a classic example for the application of that principle.

Mr. McCulloch. I would like to ask this one elementary question. Who has the authority to fix the salary of the clerk of courts at all levels or at each level in the Federal system?

Mr. Segal. I do not know that I am qualified to answer that, Congressman McCulloch. It has always been my understanding that that salary is part of the classified scale and is fixed by statute, but I am not sure I am correct on that.

Mr. McCulloch. Thank you. I should have known the answer, too, but I did not.

Mr. Segal. I did know it. I could readily find it, but I am not sure of my answer though I think I am correct.

Mr. Zelenko. Mr. Segal, I would like to direct your attention to page 3 of the bill, lines 17 through 21, in which the proposed statute spells out the criteria that the Board of Certification should consider in establishing standards of certification. According to the bill on lines 19 through 21, the Board is to consider experience in administrative and executive positions, familiarity with court procedures, and special training.

Now we want to get some understanding here of what you would consider those three elements to encompass. Would any one or all of those three criteria preclude a court of appeals clerk from meeting the qualification for the position of court executive?

Mr. Segal. It would be my view that a particular clerk whom I have in mind now of a particular circuit would, if I were a member of the Board of Certification, be eminently qualified on all three of those scores.

Mr. Zelenko. Let me go a bit further with that question.

A clerk of a court of appeals now apparently would satisfy item No. 2, that is, he certainly would be familiar with court procedures. He probably will have had experience in administrative and executive positions because he has served as an administrator of sorts. What is your understanding of the term "special training"? What do you consider the Board of Certification would interpret "special training" to cover—would that mean a degree from an institute such as the Institute for Court Management? Would the clerks of the court of appeals, in order to qualify, be expected to obtain additional educational degrees, or educational background?

Mr. Segal. No. I would think that would be a matter of weighing these three factors. If you had two clerks of the court who were in, let me assume nine-judge circuits, both of them with equal experience and equal ability in the other standards, and one of them had a master of public administration, I would think he would be preferred to the one who did not.

If, on the other hand, you had a man who had a degree of a bachelor of public administration who had been in the court system somewhere for 6 months as opposed to one who had shown great administrative and executive skill who had become familiar over a period of 10 years with a major system like California, Pennsylvania, or New York, he would be preferred over the man with the degree. It would be that kind of weighing that would be done, in my contemplation.

The Chairman. What would the clerk's function be except to be more or less errand boy of the executive?

Mr. Segal. Let me give you one immediately.

There is a great need for an assistant to the chief judge in the administering of the court lists, in direct connection with the litigation itself. It would be my contemplation that the chief clerk would be given, for example, that major responsibility, that the manager would have very little to do with that except to see that the chief clerk performed his function.

The CHAIRMAN. You said the chief clerk would be subordinate to the executive.

Mr. SEGAL. Yes; but if we have an administrative vice president of a corporation, he has charge of all of the officials, but if his experience was grounded in finance, for example, and he had an assistant in manufacturing, the manufacturing assistant would be subject to him but he would have direct charge of the manufacturing function. So I envisage the clerk would have direct charge of the administration of the litigation side of the court.

The CHAIRMAN. Would the executive have the power to assign certain duties to the chief clerk, or to change those duties?

Mr. SEGAL. That would be subject to the circuit council, but the only charge would be that, just as the chief judge has the ultimate direction of the circuit executive, so the circuit executive, subject to the chief judge, has the ultimate determination of the clerk. In the event of conflict, that would be for the circuit council.

I would not contemplate, Mr. Chairman, any more conflict than we find in the multitudinous positions of the average business.

Now, in view of the time of the committee, I will leave to my report most of what I was going to say. I wish to emphasize to the subcommittee that it was the fact that Congress had in contemplation the establishment of the position of court executive which triggered part of my thinking in giving priority to the setting up of the institute. I therefore want to express particular appreciation to this committee, to Congressman Celler, Congressman McCulloch, and to the other sponsors of the bills, for the promptness with which this matter is coming up.

In answer to a question, I said that I would contemplate, for example, that it might well be that in a large circuit the best source would not be a graduate of the institute, but would be a State court administrator. But it would be unfair if we did not have a source for him to be replaced and the source might well be the institute. So that I believe the priority given to this legislation by this subcommittee now is greatly in the public interest.

The CHAIRMAN. I have already been importuned from a number of district judges who asked, "Why court executives at the circuit level and not on the district level?"

Are you contemplating further study as far as these executives are concerned to be assigned to the district court level?

Mr. SEGAL. Mr. Chairman, as soon as this bill is passed, I fear you must contemplate that we will be on your doorstep for the district judges. We believe that enough studies have now been made to demonstrate that, for example, the two districts that have been mentioned, the Northern District of Illinois and the Southern District of New York are clearly in need of such management help. We are hopeful that the

example which will be established very quickly in the circuit will get not just a few letters to you, but a multitude of letters urging the same kind of thing for the districts.

The only reason our committee did not recommend the executives for the district was that our charge was only the Courts of Appeals. But the house of delegates of the American Bar Association has endorsed the idea in principle for both the circuit courts and for those larger district courts which require managers.

We believe it is clearly necessary, Mr. Chairman.

On the other hand, I do not argue with giving the priority to the larger unit of the federal system. I think that may be a very wise thing to do. I think we are delving into new ground. I do not think it is against the public interest to get this started in the circuits and then to move on with the districts.

I think that, if I may say so with deference, is a wise procedure.

I do want to emphasize the fact, because it has been said that judges are against these bills, that, as has already been pointed out, the Judicial Conference of the United States voted to approve in principle the provisions of the Senate bill. There are several of the chief judges of the circuits who have told me, some who have publicly stated—the chief judge of the fifth and sixth and third Circuits, for example, large circuits, have said they believe the courts need this help.

At first I rather bridled at the use of the word "may" rather than the word "shall." If I had an absolute preference it would be for the word shall. Here again, I do not feel strongly, however, because I know how forcefully the Chief Justice of the United States believes these courts need it. I know his interest in court administration.

I know he is very much an activist where judicial reform is concerned. I know, too, that some of the important circuit chief judges plan to utilize this immediately. I believe their example will be quickly followed.

I think it is probably true that the first circuit does not need a circuit executive, and therefore I am somewhat reconciled to the word may because that circuit would not have one. Frankly, I had felt if it got one, it could use it in districts which need it like the district of Massachusetts. So it would not have been a wasted office if the prior bill had been passed.

On the other hand, I think this subcommittee may be wise in the use of the word may.

I do not think there is any other particular point, Mr. Chairman, I would need to emphasize from my prepared statement. The origin of the school, the purpose of the school, function of the school are all there.

I have emphasized what I regard as the critical need of getting ahead with this project. I regard the hour as being very late for this change. I think we must regard our courts as big business. I think we must regard them as being big business not well administered.

I was asked some questions about our judges. I think most of our judges, the overwhelming majority, almost all of our judges, are overworked today. I believe that the amount of time they are giving to administrative duties is time lost from what ought to be devoted to judging duties.

I consider the situation as grave. I believe we do not dare risk any more delay. Therefore, I would solemnly urge on this subcommittee, on the committee, and on the Congress, prompt enactment of this bill.

The CHAIRMAN. Mr. Segal, I am sure I voice the sentiment of my colleagues in saying that we are in your debt, personally, and in debt to your colleagues in the American Bar Association for suggesting the idea of the executive and for seeking to implement it by legislation. Thank you very much.

Thank you, Mr. Channell also.

Mr. SEGAL. Thank you, Mr. Chairman and the subcommittee.

(Mr. Segal's prepared statement follows:)

STATEMENT OF BERNARD G. SEGAL, PRESIDENT OF THE AMERICAN BAR ASSOCIATION

Mr. Chairman and Members of the Subcommittee, in behalf of the American Bar Association and of myself personally, I thank the Subcommittee for this opportunity to appear on behalf of the Association in support of the important bills which are the subject of this hearing.

I should like to reiterate to you, Mr. Chairman, to the other members of the House Judiciary Committee, and to Mr. Zelenko and other members of the Committee staff, our sincere appreciation for the consideration and the cooperation which have always been extended to us on the many occasions in which we have been accorded the privilege of working with you and them on legislation to improve the administration of justice and the operation of our judicial system. We were particularly pleased to cooperate in the preparation of the bills now before you, H.R. 17901 and 17906, and now to appear in their support, because of the promise they hold for providing relief in connection with one of the most critical problems confronting the United States Courts of Appeals.

I need not emphasize to this Subcommittee, as knowledgeable as any, that one of the gravest problems facing our Nation is the inability of our courts, particularly in the metropolitan areas of the Country, to meet the demands which our skyrocketing economy, our mounting crime wave, and the ever-increasing new types of litigation and litigants have cast upon them. The adverse effects that the resulting conditions, including the inordinate court congestion and delays in litigation, have had on citizens' respect for law, for our judicial system, and for the judges who preside in our courts are of grave concern. Indeed, as I travel across the Country, I find distressingly increasing doubts raised as to whether our present legal institutions can cope with the pressures which modern society imposes upon them. The simple truth is that in an era marked by vast advances in science, in technology, in management techniques, our judicial system has simply not kept pace.

Turning specifically to the United States Court of Appeals, I remind the Subcommittee that in 1964, alarmed by the increasing number of new appeals being commenced each year in these Courts, and the inexorable fact that despite the addition of a large number of Circuit Judgeships conditions were worsening and the situation becoming more acute, the Council of the ABA Section of Judicial Administration became deeply concerned with the problem. It was apparent that nevertheless more judges would be needed and the very regional nature of some of the Courts of Appeals seemed to be threatened. As a result, at a meeting in New Orleans in February, 1965, the Council passed a Resolution calling for a nationwide study of the problems facing the United States Courts of Appeals, such study to include an investigation of the underlying causes of the conditions and of possible remedial measures. You may recall, Mr. Chairman, that I discussed this Resolution with you in its early stages.

On May 24, 1964, I presented the Resolution to the ABA Board of Governors, which unanimously adopted it, and subsequently the American Bar Foundation agreed to sponsor and fund the project. Professor Paul D. Carrington, of the University of Michigan, was retained as Project Director and a Committee consisting of Dean Lindsey Cowen, of the University of Georgia Law School, former Chief Judge Charles S. Desmond, of the Court of Appeals of the State of New York, Nathan B. Goodnow, Esquire, of the Detroit Bar, Leon Jaworski, Esquire, of the Houston Bar and currently President-elect Nominee of the American Bar

Association, Professor David W. Louisell, of the Law School of the University of California at Berkeley, Judge Carl McGogan, of the United States Court of Appeals of the District of Columbia, Supreme Court Justice Thurgood Marshall, Professor Paul J. Mishkin of the University of Pennsylvania Law School, and myself as Chairman undertook this study which consumed almost three years.

From the beginning the Project Director and the Advisory Committee were unanimously of the view that conditions in the United States Courts of Appeals could never be significantly and substantially improved without greatly strengthening their administrative facilities; and we concluded that this could not be achieved without giving the Court the benefit of expert managerial aid. Accordingly, one of our specific and important recommendations was, in part, that:

"Each court should have an Administrative Officer, responsible to the Circuit Council and having authority and responsibility for the administration of the Court's business. He should assume, so far as possible, all the nonjudicial duties of the Circuit Judges. . . ."

This recommendation was contained in our unanimous Report published by the American Bar Foundation in 1968, entitled "Accommodating the Workload of the United States Courts of Appeals".

This recommendation was embodied in the Omnibus District Court Judgeship Bill (S. 952), passed by the Senate last year, which was endorsed in principle by the Board of Governors and by the House of Delegates of the American Bar Association. This provided, however, not only for the mandatory creation of the position of Court Executive for each of the 11 Circuits, but also one for each District having six or more judges.

In the meanwhile, during the Annual Meeting of the American Bar Association in Dallas last August, Chief Justice Warren E. Burger, speaking at a breakfast meeting of The Institute of Judicial Administration, delivered a memorable address on the subject of "Court Administrators—Where Would We Find Them?" Poignantly inquiring why justice takes so long, he adduced as a dominant reason "the lack of up-to-date effective procedures and standards for administration or management, and the lack of trained managers." He urged that effective management could not be attained in multi-judge courts until they secured skilled managers to run the administrative functions so that judges could get on with what they are presumed to be qualified to do, i.e., trying and disposing of cases. He deplored the use of "judge time" to accomplish tasks that others with different training could do. Pointing out that there was no institution for training court executives, and that there never had been one, he expressed the hope that the American Bar Association would assume the leadership in finding some way to establish one.

When the Advisory Committee of the American Bar Foundation had urged the creation of this new administrative office for each of the Federal Circuits, we recognized the unavailability of a corps of individuals specifically trained for this important and complicated assignment in Federal and state judicial systems. Last October, with the inspiration and support of the Chief Justice, we decided to do something about this. Initially, I appointed a Task Force which included sixteen of the Nation's leading public administrators, court administrators, Federal and State judges, practicing attorneys, and educators to devise a viable plan to produce a corps of skilled court managers without delay.

It was not difficult to impress upon interested Foundations the seriousness of the problem and the urgency of the need. In short order, we secured two grants, one from the Johnson Foundation sufficient to cover the cost of the planning and launching stages of the project, and the other from The Ford Foundation in the amount of $750,000 to finance a two-year program which will produce sixty qualified court executives. To marshal the total resources and backing of the leading professional groups in the field, the ABA Board of Governors granted me authority to invite the American Judicature Society and The Institute of Judicial Administration to serve as co-sponsors for a new instrumentality, the Institute for Court Management, to carry out the project. Together, we assembled a quite remarkable Board of Trustees consisting of eminent public administrators, State court administrators, Federal and State appellate and trial judges, and practicing lawyers.

I have attached as Exhibit A to this Statement a list of the Board of Trustees of the Institute for Court Management and each member's principal activities. The Chairman is Herbert Brownell, former Attorney General of the United States, whose interest and zeal for effective court administration was demonstrated in the important National Conferences on Court Congestion and Delay

in Litigation which he convened during the period of his Attorney Generalship and in his energetic and productive activities during his three terms as President of the American Judicature Society. I shall merely mention the members with public administration experience to demonstrate further the caliber of the members of the Board. One is James E. Webb, former Administrator of NASA, who is credited with having evolved and carried through the remarkably innovative and major undertaking of training a new kind of expert, the astronaut; John W. Macy, long-time Chairman and before that Executive Director of the United States Civil Service Commission, and John J. Corson, former Director of the United States Employment Service, both of whom had demonstrated great talent in establishing standards and in recruiting under them. All of them now occupy important positions in the private segment. Ernest Friesen, former Assistant Attorney General for Administration and first Dean of the National College of State Trial Judges, resigned his important post as Administrator of the United States Courts to become Director of the Institute.

I believe, Mr. Chairman, that as lawyers, sometimes charged with not moving with expedition, we may take pride in the fact that within four months after determining to undertake the project, the Institute for Court Administration was a going organization, fully financed and ready to recruit both mid-career candidates and recent graduates with degrees in law or in business or public administration, and by December of this year, the first class of 20 academically and clinically trained, skilled court executives will be graduated. In pronouncing this gratifying result, I should emphasize the debt all of us owe to Chief Justice Burger for the part he played in bringing about this result, not only by adding the prestige of his office to the project, but also by his invaluable guidance and help.

You may recall, Mr. Chairman, that before the Chief Justice and I met with representatives of the media in the Supreme Court Building to announce this project to the Nation, I called you in your capacity as Chairman of the House Judiciary Committee and described the proposed project to you in detail. We were most appreciative for the enthusiasm and gratification at the launching of the undertaking which you then expressed and for your authorizing me to say in the press briefing at the Supreme Court that the project had your support. This was extremely helpful to us.

By this time, the hearings before this Subcommittee on the Omnibus District Judgeship Bill had been completed. Soon thereafter the provision for Court Executives was deleted, but we were reassured by the following statement in the Committee Report (House Report No. 91–887 on Federal Courts and Judges, p. 10) which you had thoughtfully advised us would be included:

"Deletion of these provisions is not to be taken to indicate that the committee members are unsympathetic or insensitive to the proposition that the Federal courts need or could profit from improved management techniques for dealing with growing caseloads and administrative complexities. Rather, the Committee was persuaded that the omnibus judgeship bill, providing a substantial increase in judicial manpower, should not be permitted to become a vehicle for matters extraneous to its general purpose. In addition, questions were raised as to whether or not legislation establishing Federal court administrative officers should define the functions to be performed by these officials. The committee is aware that a training progrm for court administrative officers has been launched under the auspices of the American Bar Association and it believes that the matter of creating such an office in the Federal courts deserves a sympathetic study."

We are most gratified that this "sympathetic study" has been so quickly made, that it has resulted in these bills introduced by you, Mr. Chairman, and by the ranking minority member of the House Judiciary Committee, Mr. McCulloch, and by twelve other members of the Committee, and that today's hearing has been so promptly scheduled. The circumstance that a bill identical in all respects to these has been introduced in the Senate, co-sponsored by the Chairman of the Subcommittee on Improvements in Judicial Machinery of the Senate Committee on Judiciary, and by the ranking minority member of that Committee augers well for prompt consideration and passage of the bill in the Senate.

I believe that the provisions which have been added to these bills for a Board of Certification which would establish standards for certification and maintain a panel of qualified candidates for the position of Circuit Executive from which each Judicial Council would be required to make its appointments, and for gen-

eral supervision of the Circuit Executive by the Chief Judge of the Circuit, are excellent, as is the non-exclusive list of duties which may be delegated to the Circuit Executive.

I do not want to indicate that I consider the adoption of this proposed legislation as a cure-all for the ills which beset our courts. Quite the contrary. Unfortunately, we have all moved too slowly in meeting the crisis which confronts our judicial system. Ominous danger signals are insistently flashing in courts throughout the land. In no period in our history has there been so great a strain on the integrities of our legal processes, such disillusionment as to the efficacy of law either in preserving order or in assuring equal justice. These are the reasons that the American Bar Association has so large a number of commitments in this area of judicial reform. Within recent weeks, I have named a fifteen-member Task Force of leading judges, lawyers, law professors, and court administrators to define the objectives, determine the priorities, and recommend the machinery most appropriate to the promptest possible completion of perhaps the most mammoth project the ABA has yet undertaken, the formulation of modern, comprehensive Standards of Judicial Administration for all the Courts of the Country, with a concurrent overall study and evaluation of the business and operation of the courts. The justly renowned Minimum Standards of Judicial Administration formulated by the American Bar Association a generation ago under the illustrious leadership of former ABA President, the late Arthur Vanderbilt, and the late Chief Judge John J. Parker, are outmoded and wholly inadequate for the inordinate and very different kinds of demands with which our Federal and State courts are confronted today. And so we have launched this huge undertaking to equip our courts with the machinery and the manpower to enable them to operate promptly and efficiently in meeting the call of our own time upon the judicial system.

But by the same token, I do not think that we can overemphasize the critical urgency of the immediate passage of one of the bills we are discussing today.* The experience of every business establishment demonstrates that no matter how fine the facilities, how excellent the product, how superior the promotion, without good management the business cannot succeed. And I suggest, Mr. Chairman, that courts today are big business, too. Even if Chief Judges were selected for their executive or administrative skills or interests, and, of course, we know that this is not so, and even if judges were nominated for these reasons and anyone who has had anything to do with judicial selection realizes that these factors are rarely if ever considered, the simple fact is, as the Judicial Conference has pointed out, that Chief Judges are of necessity being required to spend more and more time on problems of administration and less and less time on the function of adjudicating disputes. And all the while citizens' respect for our courts is continuing to diminish to a frightening degree.

Mr. Chairman, the hour is late. The situation is grave. I do not believe we dare risk further delay. I solemnly urge that this Subcommittee promptly approve one of these bills and that the Congress promptly enact it, so that the means may become available at the earliest possible moment to remedy at least one of the grave shortcomings in the Federal judicial system today.

---



*I am refraining from citing any statistics pertaining to the workload of the Courts of Appeals since I understand that a representative of the Administrative Office will do so for this Record.

JUSTICE JOHN P. COTTER

Justice of the Connecticut Supreme Court, who functions under Connecticut law as the Administrator of the state courts. The Court designates the Administrator from among its members.

JUDGE HORACE W. GILMORE

Judge of the Circuit Court of Michigan in Detroit; former Public Administrator of Wayne County; former Deputy Attorney General of Michigan; now part time faculty member at Wayne State University and the University of Michigan law school; active in the National Conference of State Trial Judges, and on the faculty of the College of State Trial Judges in Reno.

JACK N. HAYS *

Tulsa attorney, former president of the Oklahoma State Bar, and the Tulsa County Bar Association. Member American College of Trial Lawyers; Vice president of the American Judicature Society since 1966; partner in one of the leading Tulsa firms, who formerly taught business law at the University of Tulsa.

JUDGE SHIRLEY M. HUFSTEDLER

Member of the U.S. Court of Appeals, Ninth Circuit, Los Angeles. Previously was a Judge of the Los Angeles County Superior Court, and the California Court of Appeals, before elevation to the U.S. Court of Appeals. Wife of President Seth Hufstedler of the Los Angeles County Bar Association.

JOHN W. MACY, JR.

President of the Corporation for Public Broadcasting; former Chairman, U.S. Civil Service Commission; Extensive experience in public personnel administration since 1939, with the Social Security Board, War Department, Atomic Energy Commission, and Department of the Army, Executive Vice President, Wesleyan University, 1958–61.

EDWARD B. MCCONNELL

Court Administrator for the New Jersey State court system and one of the best known and respected court executives in the Country.

U.S. JUDGE FRANK J. MURRAY

Judge of the District Court of Boston, Chairman of the Section of Judicial Administration of ABA. Former Judge of the Massachusetts Superior Court; former Chairman of the National Conference of State Trial Judges; member of the Board of Trustees of Georgetown University; former interim dean of the National College of State Trial Judges.

CHESTERFIELD SMITH

Member of the ABA Board of Governors of Lakeland, Fla.; Chairman, Florida Constitutional Revision Commission, 1965–67; former President and Member of the Board of Governors of The Florida Bar; Fellow of the American College of Trial Lawyers; former Chairman of the National Conference of Bar Presidents; member of International Academy of Trial Lawyers.

JAMES E. WEBB

Treasurer of the National Academy of Public Administration; former Administrator of the National Aeronautics and Space Administration; former Director, U.S. Bureau of the Budget; Under Secretary of State 1949–52. Industrial management experience included posts as President and General Manager, Republic Supply Co., 1953–58, and Chairman of the Board 1958–60. Mr. Webb is a lawyer.

---

*Deceased. Gerald C. Snyder of Waukegan, Illinois, has been appointed to fill the vacancy. Mr. Snyder is President of the American Judicature Society and a Fellow of the American College of Trial Lawyers.

ROBERT B. YEGGE

Dean of the University of Denver Law School, which last year inaugurated the first training course leading to a Master's degree in court administration. Formerly in private law practice in Denver. Holds M.A. degree in sociology in addition to LL.B. Teaching subjects include Methods in Legal and Social Research, Law and Behavioral Science. Chairman of the Advisory Council to the Department of Sociology and Anthropology, Princeton University since 1960. Secretary and general counsel, Law and Society Association.

The CHAIRMAN. Our next witness is one of our committee colleagues, Congressman Wiley Mayne.

We would be very glad to have your statement.

## STATEMENT OF HON. WILEY MAYNE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA

Mr. MAYNE. Thank you, Mr. Chairman.

Congressman McCulloch and other distinguished members of the subcommittee, I sincerely appreciate having this opportunity to voice my support for H.R. 17906, of which I am honored to be one of the cosponsors.

This bill is identical to H.R. 17901, also before the subcommittee, and these bills provide for the creation of the position of court executive for each of the 11 judicial circuits.

The concept of the court executive has the support of the administration, the Judicial Conference of the United States, and the American Bar Association. I have discussed this proposed legislation in considerable detail with my long-time friend, the Honorable Martin D. van Oosterhout, chief judge of the U.S. Court of Appeals for the eighth Circuit, which includes the State of Iowa. I have known this distinguished jurist for many years, having had the privilege of trying cases before him when he was an Iowa district judge in the 21st Judicial District of Iowa, up until 1952. Thereafter, when he went on the eighth circuit bench, I argued a number of appeals before panels of which he was a member, until I came to the Congress in 1967. Although Judge van Oosterhout would have been required to step down as chief judge upon his 70th birthday this October, it is typical of this respected and effective jurist that he has decided to retire from the top position effective July 1, in order to allow one of his colleagues, the Honorable M. C. Matthes, St. Louis, to take over as chief judge at the beginning of the court year. We are indeed fortunate that Judge van Oosterhout will continue to serve the court as one of the seven circuit judges for the eighth circuit.

Looking back over his 16 years with the eighth circuit, including 2½ years as chief judge, Judge van Oosterhout told me that he strongly urges enactment of this proposed legislation. He points out that the chief judge carries a number of administrative duties in addition to the regular judicial duties, though the volume of judicial work is twice as much now as it was when he was first appointed to the court in 1954, principally because it seems life gets more complicated every day and there are many more laws and regulations for the court to interpret.

Judge van Oosterhout attributed the increase in the number of criminal cases in part to the Federal Criminal Justice Act of 1964 under which anyone not being able to pay for an attorney was allowed to have

one appointed at public expense, and to recent Supreme Court rulings which had given more persons incentive to appeal their cases. Judge van Oosterhout had found the administrative work of the chief judge quite burdensome and believed the present bill would go far to relieve the chief judge of a circuit of those administrative tasks and enable him to devote more time to important judicial duties, perhaps enabling more expeditious action on appeals.

I am in complete accord with this position expressed by Judge van Oosterhout and urge early action by the subcommittee to report H.R. 17906 favorably. At the same time, I believe the word "may" is infinitely preferable to the word "shall," and I would express the importance of the subcommittee retaining the language which preserves the optional features in this bill. The circuit court judicial council should have the option, in its discretion, to appoint or not to appoint a circuit court executive and to determine in its discretion what duties other than judicial it should assign to that officer of the court.

Furthermore, I would not support any attempt at this time to extend the court executive concept to the Federal district court level. If, following enactment of this bill, experience reveals that the court executive concept might be profitably extended to the district court, and that there is a sufficient supply of qualified persons for appointment as district court executives, authorization legislation might then be considered. However, I believe such legislation would be vastly premature at this time.

In supporting H.R. 17906, I realize this proposed legislation does not provide a complete panacea for the problems confronting our judicial system at the circuit court level. However, when effectively and fully utilized by each circuit court council in its discretion, I believe this legislation would enable substantial reduction of the delay and congestion which plagues too many of our courts and would speed up justice.

Mr. McCULLOCH. Are there any vacancies in the Eighth Circuit Court of Appeals judgeship?

Mr. MAYNE. Yes; that vacancy left by the new Associate Justice of the Supreme Court, the Honorable Harry Blackmun.

Mr. McCULLOCH. Was there another vacancy before that, since you have been in Congress?

Mr. MAYNE. Oh, yes.

There has been one other vacancy filled since then. But there is only the Blackmun vacancy at present.

Mr. McCULLOCH. How long was the other vacancy existent?

Mr. MAYNE. I believe a relatively short time. We have not had a great deal of logjam in that respect in our circuit, I am happy to say, up until now.

Mr. McCULLOCH. Thank you.

The CHAIRMAN. Thank you very much, Mr. Mayne.

Mr. MAYNE. Thank you, Mr. Chairman.

The CHAIRMAN. The next and final witness is John W. Dean, Associate Deputy Attorney General.

We are glad to have you here. These surroundings, I am sure, are not unfamiliar to you.

## STATEMENT OF JOHN W. DEAN III, ASSOCIATE DEPUTY ATTORNEY GENERAL, ACCOMPANIED BY KAREN SKRIVSETH

Mr. DEAN. Indeed they are not, Mr. Chairman. It is a pleasure to appear before you today. I am accompanied by Miss Karen Skrivseth, who is also in the office of the Deputy Attorney General.

Mr. Chairman and members of the subcommittee, thank you for this opportunity to comment on H.R. 17901 and H.R. 17906, which would permit the judicial council of each circuit to appoint a circuit executive who would perform administrative duties delegated to him by the judicial council.

The Department of Justice is, of course, very interested in the improvement of the administration of our Federal court system. This system is becoming overburdened as a result of heavier caseloads and the increasing complexity of cases. The number of cases filed in the courts of appeals has continued to rise over the last 10 years, and the number of appeals filed in fiscal 1969 was 12.4 percent greater than the number filed in 1968.

The problem, however, cannot be viewed strictly in terms of numbers. The more cases there are, the more complicated the operation of the court becomes. The more complex the law becomes, the greater is the burden placed on the court. Chief Justice Warren Burger has said:

> Only by the adoption of sound administrative practices will the courts be able to meet the increased and increasing burdens placed on them. The time has passed when the court system will carry its load "if each judge does his job." There must also be organization and system so as to leave the judge to his job of judging.

Each Federal court is now administered by the chief judge of the court. It is his responsibility to see that personnel are hired, supplies furnished, space requirements determined, and necessary statistics on the operation of the court gathered. Yet he must also perform his judicial functions, such as deciding cases and assigning cases.

Will Shafroth, a former Deputy Director of the Administrative Office of the U.S. Courts, found in a recent study for that office that the chief judges of courts of appeals spend from one-third to one-half their time on administrative duties.

The designation and responsibilities of chief judge are given to the judge with longest service on the court of appeals, without consideration of the judge's administrative training or experience. Because of this fact, suggestions have been made in the past that changes be made to replace the seniority system in the courts with a system where the judges would elect the chief judge or the Judicial Conference of the United States would elect the chief judges of the courts of appeals.

Although neither of these suggestions obtained widespread support, the problem to which they were addressed remains a serious one—to try to find a system which would result in improved administration of the courts without having to rely on the chance of seniority to provide good administration.

Many have concluded that the real solution to the administrative problems of the courts is not to change the seniority system, but to provide a court administrator who has the appropriate training and experience to deal with the problems of our courts. At least 30 of the States have court administrator offices with varying degrees of power.

The CHAIRMAN. How many States did you say have court administrators?

Mr. DEAN. Our count is 30, Mr. Chairman.

The CHAIRMAN. Will you put in the record the names of those States?

Mr. DEAN. Yes, we will be happy to supply that for the record.

The CHAIRMAN. And in what courts in those States they function?

Mr. DEAN. We shall do that.

(The information requested is found at pp. 44–45.)

Mr. DEAN. Their functions range from collecting statistics to supervising personnel to budgeting and accounting. The American Bar Association approved in 1962 a model State judicial article for State constitutions which contains a provision making the chief justice of the State the executive head of the judicial system and providing for appointment by him of an administrator for the courts of the State. Under this model article, the administrator would prepare the budget for the court system and perform other administrative duties assigned by the chief justice.

The National Conference of Commissioners on Uniform State Laws had recommended a model act to provide for a State court administrator with powers similar to those of the court administrator who would be appointed under the bills under consideration. Four States have adopted the model act and several others have used it as a guide in writing their own legislation.

The Congress has recognized the need for improved court administration several times in the past. S. 952, the omnibus judgeship bill recently signed by the President—Public Law 91–272—as passed by the Senate, contained a provision requiring each judicial council to appoint a court executive and permitting each district court with six or more permanent judgeships to appoint a district court executive. This provision was supported in principle by the Judicial Conference of the United States. As you know, that provision was removed by this committee so that it could be studied separately.

In addition, the administration's court reorganization bill for the District of Columbia contains a provision for an executive officer for the reorganized court system in the District of Columbia. The two Houses of Congress have approved different versions of this provision, and the measure is now in conference.

The bills under consideration today, H.R. 17901 and H.R. 17906, would permit each judicial council to appoint a circuit executive from among persons who were determined to be qualified by experience and training to administer a court system. The executive would be subject to removal by the judicial council at any time. The duties of the circuit executive would be determined by the judicial council of the circuit, and would be performed under the general supervision of the chief judge of the circuit.

A circuit executive could free the chief judge of the court of appeals from the day-to-day chores of managing the court's business by performing such duties as setting up and maintaining adequate accounting and budgeting systems, formulating and administering personnel policies, and maintaining property control. The executive could bring modern management techniques to these functions as well as apply them to studies of the court of appeals and the courts in the circuit to

determine ways in which their operation could be improved. Improved management of the courts should have a substantial effect on the ability of the judges to concentrate on performing their function of deciding cases without having to spend a great deal of time on court administration.

Accordingly, the Department of Justice supports the principle of allowing the appointment of a trained and experienced administrator as a circuit executive for each circuit. We defer to the expertise of the Judicial Conference of the United States on the merits of the particular provisions of H.R. 17901 and H.R. 17906.

The CHAIRMAN. I notice on page 3 of your statement you say that the Conference on Uniform State Laws has recommended a model act growing out of the National Conference of Commissioners on Uniform State Laws. You say four States have adopted the model act.

Would you give us more information on that for the record, the names of those States and the form of the model act?

Mr. DEAN. We would be happy to do that.

(The information is found at pp. 45–46.)

The CHAIRMAN. Any questions?

Mr. MCCLORY. The gentleman has made a very good statement. I am happy to have the Attorney General's expression of support of this legislation. I am curious to know whether or not in the State courts the court executive or court administrator is also authorized to act at the trial court level? Since this legislation relates to the subject of the courts of appeal, which I think is very good and is permissive legislation, I am wondering if you would ascertain what the position of the Attorney General is with regard to the original version that this committee had, which was to include the court executive for district courts of six judges or more, as well as for courts of appeal. Would that not be a desirable addition to this legislation? Would you be able to ascertain that and communicate to the committee?

Mr. DEAN. Yes. As the Congressman knows, when the Department of Justice reported to this committee on H.R. 10067, the omnibus judgeship bill, it recommended that the bill be amended to conform to S. 952 as it passed the Senate, which included a provision permitting appointment of a court executive for larger Federal district courts.

(Subsequently, the following communication from the Department of Justice was received.)

OFFICE OF THE DEPUTY ATTORNEY GENERAL,
*Washington, D.C., July 22, 1970.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives, Washington, D.C.*

DEAR MR. CHAIRMAN: During my appearance before Subcommittee No. 5 of the Committee on the Judiciary on July 8 concerning court administrators, I was asked to supply additional information concerning court administrators in the State court systems.

Thirty-two States plus Puerto Rico have statewide court administrative offices whose functions vary from conducting statistical studies of the State's court system to administering the entire system. Enclosed is a copy of the American Judicature Society's Report No. 17, entitled "Court Administrators Their Functions, Qualifications and Salaries." On page 2 of the Supplement found at the back

of the Report, the States which have statewide court administrative offices are listed. The Report also contains the State laws establishing these offices. On page 46 is the Model Act to Provide for An Administrator for the State Courts, which you also requested. According to the National Conference of Commissioners on Uniform State Laws, Illinois, Michigan, and Washington adopted the 1948 version and Oklahoma adopted the 1960 version of the Model Act. The enclosed booklet clearly shows that many other States have followed the concept of the Model Act.

I was also asked whether the Department of Justice would support the appointment of court executives for district courts with six judges or more, as was provided in S. 952 as it passed the Senate. In reporting on August 5, 1969, to this Committee on H.R. 10067, the so-called Omnibus Judgeship bill, Deputy Attorney General Kleindienst recommended enactment of that bill amended to provide for court executive officers for circuits or districts authorized six or more permanent judges. We continue to consider this desirable.

I hope this information will be of assistance to you in your consideration of H.R. 17901 and H.R. 17906. Please let me know if we can be of further assistance.

Sincerely,

JOHN W. DEAN, III,
*Associate Deputy Attorney General.*

Enclosure.

EXCERPT FROM AMERICAN JUDICATURE SOCIETY REPORT NO. 17

*Salaries of court administrative officers*

Scope of assignment: Statewide.

Titles: Administrative director, judicial administrator, judicial statistician, executive secretary of [Judicial Conference] [Judicial Council], administrative assistant, chief legal executive assistant.

| | | | |
|---|---|---|---|
| Alaska | $23,000 | Missouri | 6,800 |
| Arizona | 12,500 | New Jersey | 27,000 |
| Arkansas | 18,000 | New Mexico | 11,000 |
| California | 30,000 | New York | 36,950 |
| Colorado | 20,000 | North Carolina | 22,500 |
| Connecticut | 14,740 to 18,100 | Ohio | 17,710 |
| Hawaii | 15,800 | Oklahoma | 17,500 |
| Idaho | 13,500 | Oregon | 13,800 |
| Illinois | 25,000 | Puerto Rico | 16,000 |
| Indiana | 12,000 | Rhode Island | 12,090 to 13,910 |
| Iowa | 15,500 | Tennessee | 20,000 |
| Kansas | 14,000 | Vermont | 16,000 |
| Kentucky | 17,000 | Virginia | 18,000 |
| Louisiana | 20,000 | Washington | 15,000 |
| Maryland | 23,750 | Wisconsin up to | 20,000 |
| Massachusetts | 22,275 | United States | 27,000 |
| Michigan | 25,776 | Average salary | 18,904 |
| Minnesota | 21,500 | Median salary | 21,875 |

MODEL ACT TO PROVIDE FOR AN ADMINISTRATOR FOR THE STATE COURTS AS AMENDED*

(AN ACT Providing for the Creation and Operation of the Office of Administrator of Courts)

*COMMENT: In the proposed amendments to follow no provision is included comparable to Section 5, Judicial Conference, of the Model Act. It is felt that provision for a judicial council or judicial conference is properly the subject of a separate law or rule of court.* (Enacting Clause)

SECTION 1. In this Act, unless the context otherwise requires, "Court" means any tribunal recognized as a part of the judicial branch of government including any tribunal having jurisdiction in traffic cases. [. . . . insert name of any court to be excluded.]

*COMMENT: This section establishes the scope of the act at the outset and shifts the burden of restriction to individual states that adopt it. In some states consideration should be given to the necessity of specifically mentioning justices of the peace, magistrates and other officers and tribunals which may not be a "court" or a part of the judicial branch. Approval of this section removes the necessity for Section 6 of the Model Act.*

SECTION 2. The Office of Administrator of Courts is created with an administrative director who shall be the head thereof.

SECTION 3. The administrative director is appointed by and serves at the pleasure of the [the court of last resort]. He shall devote full time to his official duties to the exclusion of engagement in any other business or profession for profit. [His salary shall be fixed by [the court of last resort] in an amount not to exceed the minimum salary of any judge of court with primary state appellate jurisdiction.]

*COMMENT: In some states compensation may be required to be fixed in some other manner and appropriate changes made in this section.*

SECTION 4. The administrative director, with the approval of [the court of last resort], shall appoint and fix the compensation of such assistants as are necessary to enable him to perform his duties.

*COMMENT: See comments to Section 3.*

SECTION 5. The administrative director shall, under the supervision and direction of [the court of last resort] :

(a) Formulate and submit to the [court of last resort] recommendations for the improvement of the judicial system, including traffic case procedure.

*COMMENT: The traffic case procedure should include one statewide form of complaint or information and summons, issuances of which are subject to quarterly audit by the administrative director. An annual report of the director to the court of last resort and to the legislature should include a statistical resume of these audits as well as a list of all courts and tribunals with jurisdiction to hear and determine traffic violation cases.*

(b) Examine the administrative and business methods and systems employed in the offices of the clerks of court and other offices related to and serving the courts and make recommendations for necessary improvement.

(c) Collect and compile statistical data and other information on the judicial work of the courts and on the work of other offices related to and serving the courts and publish periodic reports with respect thereto.

(d) Examine the state of the dockets and practices and procedures of the courts and make recommednations for the expedition of litigation.

(e) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial branch.

(f) File requests for permission to spend funds appropriated for the judicial branch and approve all vouchers for the expenditure of such funds.

(g) Secure and maintain accommodations and purchase, exchange and distribute equipment and supplies for the judges, clerks, and other offices, officers, and employees of the courts supported by state appropriations.

(h) Collect and compile statistical data and other information on the expenditures and receipts of the courts and related offices and publish periodic reports.

(i) Consult with and assist the clerks of court, and other officers and employees of the courts and of the offices related to and serving the courts.

(j) Investigate complaints with respect to the operation of the courts and make such recommendations as may be appropriate.

[(k) Act as secretary of the judicial [council, conference] and for the committees thereof.]

(l) Perform such additional duties as may be assigned by rule of the [court of last resort].

(m) Prepare and publish an annual report on the work of the courts and on the activities of the administrative office of the courts.

*COMMENT: Section 5 is a complete restatement of Section 3 of the Model Act defining the powers and duties of the administrative director of the courts. The sphere of his duties is broadened. Subsection (l) leaves the door open for the performance of services in addition to those specifically enumerated.*

SECTION 6. All judges, clerks of court, and other officers or employees of the courts and of offices related to and serving the courts shall comply with all requests made by the administrative director for information and statistical data relative to the work of the courts and of such offices and relative to the expenditure of public moneys for their maintenance and operation.

The [court of last resort] may provide by rule for the enforcement of this section.

SECTION 7. The administrative director shall use a seal approved by the [court of last resort]. Judicial notice shall be taken of the seal.

SECTION 8. The authority of the courts to appoint administrative or clerical personnel is not limited by any provision of this Act.

SECTION 9. This Act may be cited as the Model Court Administrator Act.

[SECTION 10. The following acts and parts of acts are hereby repealed:

(a)

(b)

(c) (Enumeration) ].

*COMMENT: The repeal section contemplates possible repeal and reenactment rather than amendment and to this effect and for purposes of original enactment the amendment may be considered as an independent act.*

*Care should be exercised to exclude any "Judicial Conference" law from repeal unless it is so intended.*

SECTION 11. This [amendatory] Act shall take effect on _____.

Mr. McCLORY. Thank you.

The CHAIRMAN. Any further questions?

Thank you very much. This will close the oral hearings. The record will be kept open for any additional statements by those who would care to make them.

I have been particularly informed that a number of District judges, the Association of District Judges are very anxious to express their views. Those will be inserted in the record when received.

We will now adjourn.

(Whereupon, at 12:10 p.m., the committee adjourned.)

(Subsequently the following was received by the Committee.)

OFFICE OF THE CLERK,
U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT,
*San Francisco, Calif., July 23, 1970.*

Mr. BENJAMIN L. ZELENKO,
*General Counsel, Committee on the Judiciary,*
*House of Representatives, Washington, D.C.*

DEAR MR. ZELENKO: Enclosed is a copy of a resolution of the 1970 Judicial Conference of the Ninth Circuit. In it the conference expresses its disapproval of S3916.

Very truly yours,

WILLIAM B. LUCK, *Clerk.*

---

RESOLUTION OF THE JUDICIAL CONFERENCE OF THE NINTH CIRCUIT RE COURT EXECUTIVE

Whereas S3916 now pending before the Senate and legislation in the House of Representatives provide for the selection and appointment of a circuit executive from candidates approved by a board of certification who shall exercise administrative control over all non-judicial activities of the court of appeals and possibly the district courts:

Be it resolved that the district judges and in this instance the Ninth Circuit Conference disapprove of S3916 and like legislation in the House of Representatives, and be it further resolved that the Ninth Circuit Judicial Conference propose to the Judicial Conference of the United States that it seek authority from the Congress of the United States for the chief judge of each circuit and the chief judge of each district having six or more judges to employ an administrative assistant to serve at the pleasure of the chief judge with appropriate supporting personnel to assist the chief judge in the performance of his administrative duties pending further study and recommendation by the Judicial Conference of the United States.

---

*This is a 1960 revision of the Model Act promulgated by the National Conference of Commissioners on Uniform State Laws in 1948.

U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA,
*Washington, D.C., August 10, 1970.*

Hon. EMANUEL CELLER,
*Chairman, Judiciary Committee, House of Representatives, House Office Building, Washington, D.C.*

MY DEAR CONGRESSMAN CELLER: As a member of the Judicial Conference of the United States, I urge your favorable consideration of Bills H.R. 17905 and H.R. 17906 which provide for the appointment of a Circuit Executive for each judicial circuit.

The Judicial Conference, as you know, has gone on record as favoring the concept of court executives. I, as an individual, after serving as a chief judge of a United States District Court for four years, am very well aware of the need of executive or administrative assistance to the judiciary. In this era of tremendous backlogs in the entire judicial system, I can find no solution to free judges from the administrative burdens imposed upon them except by the creation of the position of a court executive. If judges are to sit in court, they must be unfettered of the voluminous duties of administration, and I personally think a judge's time is more aptly applied to judicial proceedings than to administrative control.

The judiciary is faced today with more pressures than ever before in the history of our country, and the problem has to be solved both in the circuit courts and the district courts. We are in dire need of help.

With warm personal regards,
Sincerely yours,

ED CURRAN.

---

U.S. COURT OF APPEALS, FOR THE THIRD CIRCUIT,
*August 10, 1970.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary, House of Representatives, Rayburn House Office Building, Washington, D.C.*

DEAR MR. CELLER: It has come to my attention that some question has arisen concerning the views of several United States Chief Circuit Judges concerning the proposed legislation, now pending before your Committee on the Judiciary, authorizing the appointment of a Circuit Executive for each federal judicial circuit.

Your bill represents a constructive refinement of the original proposal seeking the same objective. I believe the office contemplated in this bill could be very valuable. As in any other situation, the effectiveness of each Circuit Executive will depend upon a discriminating selection of an appointee and the wise use of his service by his chief judge and the circuit council to whom he will be responsible.

We in the judiciary appreciate your continuing interest in improving the federal judicial machinery in this respect as in many others.

Sincerely yours,

WILLIAM H. HASTIE.

---

GREENVILLE, S.C., *August 7, 1970.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*U.S. House of Representatives,*
*Washington, D.C.:*

I heartily endorse the proposal embodied in H.R. 17901 providing court executives for the Federal judicial circuits. We are in urgent need of such an executive in the fourth circuit, and I hope the Congress will act favorably upon the proposal soon.

Respectfully,

CLEMENT F. HAYNSWORTH, Jr.,
*Chief Judge, Fourth Judicial Circuit.*

---

ST. LOUIS, MO., *August 7, 1970.*

Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*U.S. House of Representatives,*
*Washington, D.C.:*

Am aware that H.R. 17901 is pending in your committee the judges of our court favor this bill in principle trust that it will receive favorable consideration.

M. C. MATTHES,
*Chief Judge, U.S. Court of Appeals Eighth Circuit.*

U.S. COURT OF APPEALS,
*Washington, D.C., August 7, 1970.*

Hon. EMANUEL CELLER,
*Chairman, House Committee on the Judiciary,*
*Rayburn House Office Building, Washington, D.C.*

DEAR MR. CHAIRMAN: I understand that H.R. 17901 which would provide circuit executives for those judicial circuits which request them. is now before your committee for consideration. The purpose of this letter is to advise you that the Judicial Council of this circuit strongly favors the passage of H.R. 17901.

The administrative work in most of the circuits has become so onerous that judicial duties must be sacrified if the Court is to operate efficiently. The circuit executive would relieve the judges of the circuit of administrative chores for which they are not particularly equipped, and free them to do their work as judges.

The Judicial Conference of the United States has approved in principle legislation which would provide for circuit executives, and all of our judges strongly favor this legislation. Under the circumstances, as Chief Judge of the United States Court of Appeals for the District of Columbia Circuit, I respectfully urge that H.R. 17901 be reported favorably by the Judiciary Committee of the House of Representatives.

Warm regards.

DAVID L. BAZELON.

---

U.S. COURT OF APPEALS, TENTH CIRCUIT,
*Salt Lake City, Utah, August 7, 1970.*

Hon. EMANUEL E. CELLER,
*Chairman, Subcommittee No. 5, Committee on the Judiciary, U.S. House of Representatives, Washington, D.C.*

DEAR MR. CELLER: I have read with interest the testimony of Rowland F. Kirks, Director of the Administrative Office of the United States Courts, given before the House Subcommittee in regard to H.R. 17901. I wish to add my own unqualified approval to the Bill.

Although I have served as Chief Judge of the Tenth Circuit for only a few months I am already keenly aware of the administrative burden that goes with the position. Perhaps my recent experiences have not been typical for at present we have only four working judges on this Court of Appeals, there being two unfilled vacancies and one judge seriously ill. As a consequence it has been difficult to delegate any of the administrative duties and I have had to devote my time to administrative matters that could well be handled by a court executive.

I have no doubt that a court executive would do much to improve the judicial machinery and would allow the judges to better perform their intended function, the decisional process. I hope H.R. 17901 will be enacted into law.

Sincerely yours,

DAVID T. LEWIS.

---

U.S. COURT OF APPEALS, FIFTH CIRCUIT,
*Houston, Tex., August 7, 1970.*

Re Court Executive
Hon. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,*
*House of Representatives,*
*Washington, D.C.*

MY DEAR CONGRESSMAN CELLER: I am enclosing a confirmation copy of my message sent to you today. In this I referred to my statement made before your Committee on October 30, 1969. I am now enclosing for your convenience that portion of this statement which pertains to the position of Court Executives.

I am also enclosing excerpts from an opinion now being published which dramatizes the continued explosive growth of business in the Courts of Appeals, not only the Fifth Circuit, but elsewhere. As soon as this opinion is published and released, I will send you copies.

Please call on me if I can be of any further assistance to you.

I send to you my highest regards.

Sincerely yours,

JOHN R. BROWN.

[Teletype]

AUGUST 7, 1970.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary, House of Representatives, Rayburn House Building, Washington, D.C.*

DEAR MR. CHAIRMAN: For all of the reasons set forth in my formal statement and oral testimony this past year (October 30, 1969) on the Omnibus District Judgeship Bill then containing provision for Court Executives, I renew my full enthusiastic support and urge enactment at this session of HR 17901. The need for Court Executives-Administrators grows daily. I stand ready to supply further data, statements or oral testimony, and in the meantime send to you my highest personal regards.

JOHN R. BROWN,
*Chief Judge, Fifth Circuit,*
*U.S. Court of Appeals,*
*Houston, Tex.*

---

STATEMENT OF JOHN R. BROWN, CHIEF JUDGE, U.S. COURT OF APPEALS, FIFTH CIRCUIT, HOUSTON, TEX., OCTOBER 30, 1969

I am John R. Brown. I am, and have been since July 1967, Chief Judge of the Court of Appeals for the Fifth Circuit. Although this might indicate I am a relative newcomer to this role, my exposure to court administration problems long antedates July 1967. For Chief Judges Tuttle, Rives and Hutcheson, my role since 1957 was to assign Judges to times and places to hear argument. By 1960–1962 this developed into a growing need to seek out more and more judge power from visiting Judges within and without the Fifth Circuit both for the Court of Appeals and for the District Courts. To get judge power meant planning long in advance, which meant close collaboration with the Clerks of these Courts on docket conditions, growth of judicial business and the like. I was perforce exposed to every problem which in the past 27 months has become my direct official responsibility.

This is the first time I've had the great privilege of appearing before this Committee. We know of and praise the aggressive interest the Chairman has shown in the problems of the Judiciary. All of the Judges of the Fifth Circuit share these views.

COURT EXECUTIVE

I support with enthusiasm the position of Court Executive for busy Courts of Appeals. The need is so great it requires no supporting data. But needed badly in the Courts of Appeals the necessity is as great in multiple judge, multiple District Courts. I urged this in my appearance before the Senate Committee, and I am gratified that the Senate Bill makes such a provision for a Court Executive for District Courts with six or more Judges.

I cannot think of anyone more in need of a continuous, competent, well compensated, permanent Administrator than the Chief Judges of our busy metropolitan multi-Judge Districts. If the Chief District Judge is not overwhelmed by his duties now, it is almost proof positive that he lacks much in organization, drive, or interest so vitally needed in the person of the Chief Judge.

But I hope that when the Court Executive comes—either to the Courts of Appeals—these District Courts—or both he will have an adequate staff to do what an Executive should do.

I for one am not troubled about the possibility such Executive or Administrator—the name seems unimportant—might invade the province of Judges or of other Court functionaries having, and requiring, substantial independence such as Clerks of the Courts of Appeals, Clerks of the District Courts, etc. The Judicial Council, always in charge ultimately, and the Chief Judge of the Circuit functioning as the immediate director, should have no difficulty in assuring that a non-judicial official will perform his functions for the Council and Chief Judge with a proper regard to the rightful independence, role, and position of the Judges and the supporting personnel of the entire Court establishment and Circuit.

While I support fully the legislation which calls upon the Judicial Conference to set very high standards of professional competence and qualifications for this new office and I would be the first to recognize that the Administrative Office should be of great help in formulating the policies and standards, I do not think

the present provision (Sec. 9, paragraph (e), page 14 Senate Bill) is wise in requiring the Judicial Council to select the Circuit Court Executive from a list of not less than three names submitted by the Administrative Office. I think this puts the Administrative Office in a role which conflicts with its principal function as an effective servant to the Judiciary. A Court Executive, a new office with which there will inevitably be experimentation, must have the complete support of the Chief Judge and the Judges comprising the Council. For the Council to be required to select from a restricted list starts the relationship off in the wrong way as I see it. I think the key, as I stated above, is to get real administrative help while maintaining the complete independence of the Judges.

---

EXCERPT FROM FIFTH CIRCUIT OPINION NOW BEING PUBLISHED

As was this Court's system for judicial screening of cases[3]—now rounding out a year and three quarters' experience which continues to demonstrate its fairness and workability—Rule 21 is another response of this Court to the ever-growing, explosive increase in the amount of its judicial business.[4]

What is worse, the future both for the Fifth Circuit and for the Federal Courts of Appeals nationwide is portentous, as witness the surveys of the United States Courts of Appeals made by Will Shafroth, formerly Deputy Director of the Administrative Office of the United States Courts. These reflect that actual experience in the short space of four years proves that all projections err on the low side.[4-a] The increases are spectacular for the Fifth Circuit[5] and for that matter foreboding for the Courts of Appeals as a whole.[6]

[3] See Murphy v. Houma Well Service, 5 Cir., 1969, 409 F. 2d 804, Part I; Huth v. Southern Pacific Co., 5 Cir., 1969, 417 F. 2d 526, Part I, and especially the data discussed in each of these opinions, Part I particularly in notes 5 of Murphy and 4 through 10 of Huth.

See also Groendyke Transport, Inc., v. Davis 5 Cir., 1969, 406 F. 2d 1158, 1161, n. 6.

[4] The almost exponential expansion is revealed by the increase year by year in the number of cases filed, disposed of and carried over to the succeeding year during the last decade in the Fifth Circuit:

| Year | Number cases filed | Number cases disposed of | Carried forward to succeeding year |
|---|---|---|---|
| 1960 | 584 | 554 | 278 |
| 1961 | 639 | 514 | 403 |
| 1962 | 717 | 598 | 522 |
| 1963 | 876 | 765 | 633 |
| 1964 | 1,033 | 931 | 735 |
| 1965 | 1,073 | 878 | 930 |
| 1966 | 1,099 | 1,028 | 1,001 |
| 1967 | 1,189 | 1,171 | 1,019 |
| 1968 | 1,347 | 1,290 | 1,076 |
| 1969 | 1,489 | 1,496 | 1,069 |
| 1970 | 1,794 | 1,682 | 1,181 |

[4-a] The first survey was in 1967, Survey of U.S. Courts of Appeals, 1967, 42 FRD 243, et. seq. Within a year the projections through 1975 had to be revised and within just two more years, the 1970 Survey again revises them substantially upward.

[5] Projections of case filings, 5th circuit, 1968–75:

| | 1967 survey [1] | 1970 resurvey [2] |
|---|---|---|
| 1968 | 1,285 | 1,348 |
| 1969 | 1,374 | 1,648 |
| 1970 | 1,464 | 1,700 |
| 1971 | 1,554 | 1,852 |
| 1972 | 1,643 | 2,006 |
| 1973 | 1,733 | 2,159 |
| 1974 | 1,823 | 2,311 |
| 1975 | 1,913 | 2,464 |

[1] 42 FRD at 263.

[2] Projections were based on the most recent 5-year period (1965–69), a basis our experience justifies.

[6] The 1970 Shafroth survey projection nationwide by circuits is:

| Fiscal year | Total | District of Columbia | 1st | 2d | 3d | 4th | 5th | 6th | 7th | 8th | 9th | 10th |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Caseload of appeals commenced 1960 to 1969 [1]: | | | | | | | | | | | | |
| 1960 | 3,899 | 505 | 154 | 582 | 296 | 224 | 577 | 306 | 329 | 237 | 455 | 234 |
| 1961 | 4,204 | 527 | 146 | 674 | 334 | 250 | 630 | 340 | 328 | 246 | 443 | 286 |
| 1962 | 4,587 | 601 | 154 | 555 | 408 | 292 | 703 | 394 | 374 | 282 | 560 | 264 |
| 1963 | 5,039 | 718 | 133 | 667 | 354 | 352 | 852 | 374 | 381 | 254 | 687 | 267 |
| 1964 | 5,412 | 624 | 179 | 680 | 368 | 450 | 1,010 | 513 | 396 | 305 | 507 | 380 |
| U.S. COURTS OF APPEALS —TOTAL CASELOAD PROJECTIONS FOR 1970–75 BASED ON ACTUAL CASELOAD OF FILINGS FOR FISCAL YEARS 1965–69, BY CIRCUIT | | | | | | | | | | | | |
| 1965 | 6,221 | 568 | 193 | 778 | 444 | 568 | 1,037 | 638 | 469 | 302 | 809 | 415 |
| 1966 | 6,548 | 702 | 170 | 793 | 482 | 569 | 1,041 | 603 | 475 | 374 | 796 | 543 |
| 1967 | 7,069 | 689 | 181 | 828 | 609 | 727 | 1,132 | 657 | 483 | 393 | 881 | 489 |
| 1968 | 8,224 | 839 | 204 | 858 | 561 | 946 | 1,348 | 715 | 634 | 401 | 1,077 | 641 |
| 1969 | 9,334 | 954 | 204 | 1,112 | 612 | 1,039 | 1,648 | 772 | 655 | 394 | 1,396 | 551 |
| Projections of caseloads, 1970 to 1975 [2] | | | | | | | | | | | | |
| 1970 | 9,850 | 1,023 | 207 | 954 | 666 | 1,163 | 1,700 | 791 | 702 | 436 | 1,428 | 639 |
| 1971 | 10,640 | 1,114 | 213 | 919 | 706 | 1,294 | 1,850 | 829 | 756 | 457 | 1,574 | 676 |
| 1972 | 11,430 | 1,025 | 218 | 983 | 749 | 1,426 | 2,006 | 867 | 809 | 478 | 1,719 | 713 |
| 1973 | 12,220 | 1,296 | 224 | 1,048 | 791 | 1,557 | 2,159 | 905 | 862 | 499 | 1,865 | 750 |
| 1974 | 13,011 | 1,387 | 230 | 1,112 | 832 | 1,688 | 2,311 | 943 | 915 | 520 | 2,010 | 787 |
| 1975 | 13,801 | 1,478 | 235 | 1,177 | 874 | 1,820 | 2,464 | 981 | 968 | 542 | 2,166 | 824 |

[1] From 1962 to 1969 the number of cases commenced has been reduced by cases disposed of by consolidation.

[2] The projected 1970–75 filings represent a mathematical straight line trend based on the "method of least squares" using the data base of filings for fiscal years 1965–69. Because of rounding of separate circuits, totals for all circuits may be slightly different.

But even more foreboding, for the Fifth Circuit, we have had to continually revise these nationwide projections upward because of our own demonstrated experience.[7]

Within but a year—tomorrow—we will have 2,000 cases and a couple of years more—day after tomorrow—we will have 2,500 cases.

We need not here canvas the causes for this local and nationwide increase. A core cause undoubtedly is the like increase in the nation's population from 150 million to 205 million in the short space of 20 years—a growth which this area more than shares. More directly related to Court operations, quite obviously it is due to the increase in Federal Court business generally. But of unusual significance is the fact that the percentage of appeals taken in both civil and criminal cases markedly exceeds the percentage of increase in trials in the District Courts.[8] For the Fifth Circuit, total District Court trials have increased 78% against an increase of 168% for appeals in the period 1961–1969, and, whereas criminal trials have increased 48%, criminal appeals have increased 210%.[9]

With this staggering prospect now upon us, we can see that it is our duty to exercise imaginative, inventive resourcefulness in fashioning new methods, adapting or modifying older ones, to enable us to at least stay abreast of this flood tide. This means that with safeguards which will assure the proper handling of cases, the Court and its members, up to the maximum physical and mental capacity of each of the Judges, must increase output.[10]

---

[7] Against the 1970 survey forecast of 1700 filings for F.Y. 1970 (see note 5 supra), we actually had 1794 (See Note 4 supra).

Using Fifth Circuit actual experience the 1970 survey projections require further upward revision:

| Fiscal year | 1970 survey | Upward revision 5th circuit |
|---|---|---|
| 1971 | 1,852 | 1,961 |
| 1972 | 2,006 | 2,124 |
| 1973 | 2,159 | 2,286 |
| 1974 | 2,311 | 2,447 |
| 1975 | 2,464 | 2,609 |

[8] See consolidated Tables S–6 with respect to each of the Courts of Appeals in the 1970 Shafroth Report. (See note 4–a, supra).

[9] For the 5th circuit it is as follows:

TABLE S–6.—U.S. COURT OF APPEALS 5TH CIRCUIT

TRIALS IN THE DISTRICT COURTS AND CIVIL AND CRIMINAL APPEALS TO THE COURT OF APPEALS, FISCAL YEARS 1961 THROUGH 1969

| Fiscal year | Number of judgeships | | Total trials | Total civil and criminal appeals filed | Civil trials | Civil appeals | Criminal trials | Criminal appeals |
|---|---|---|---|---|---|---|---|---|
| | Circuit | District | | | | | | |
| 1961 | 7 | 33 | 1,770 | 512 | 1,159 | 408 | 611 | 104 |
| 1962 | 9 | 45 | 1,975 | 529 | 1,328 | 422 | 647 | 107 |
| 1963 | 9 | 45 | 2,227 | 679 | 1,463 | 528 | 764 | 151 |
| 1964 | 9 | 45 | 2,154 | 818 | 1,418 | 687 | 736 | 131 |
| 1965 | 9 | 45 | 2,292 | 879 | 1,596 | 702 | 696 | 177 |
| 1966 | 9 | 45 | 2,478 | 873 | 1,669 | 664 | 809 | 209 |
| 1967 | 13 | 58 | 2,703 | 949 | 1,869 | 703 | 834 | 246 |
| 1968 | 13 | 58 | 2,960 | 1,159 | 2,034 | 820 | 926 | 339 |
| 1969 | 15 | 58 | 3,162 | 1,372 | 2,257 | 1,049 | 905 | 323 |
| Percent change 1969 over 1961 | 114.3 | 75.8 | 78.6 | 168.0 | 94.7 | 157.1 | 48.1 | 210.6 |

Note: Beginning with 1962 the number of appeals in each year under each category have been reduced by the number disposed of by consolidation.

[10] We deal always in the Fifth Circuit in large figures, both in input (see note 4, supra) and output.

*Total number of printed opinions*

| | |
|---|---|
| 1965 | 626 |
| 1966 | 672 |
| 1967 | 820 |
| 1968 | 953 |
| 1969 | 1,128 |
| 1970 | 1,281 |