

# JUDICIARY REFORM: RECENT IMPROVEMENTS IN FEDERAL JUDICIAL ADMINISTRATION

HARLINGTON WOOD, JR.\*

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\* Circuit Judge, United States Court of Appeals for the Seventh Circuit.

## INTRODUCTION

The federal judiciary, a coequal and independent branch of government under Article III of the U.S. Constitution,<sup>1</sup> must have a strong administrative support structure in order to fulfill its important constitutional functions properly. An administrative support system is more often called a "bureaucracy," a term that frequently carries a disagreeable connotation implying inefficiency and delay. At times, this connotation has seemed well deserved. More than 400 magistrate judges, 326 bankruptcy judges, 649 district judges, and 167 appellate judges and their staffs, however, cannot handle the expanding judicial work without efficient administrative help and support.

For some time during World War II, I was part of an active uniformed bureaucracy at the staff level in the U.S. Army with more than 30,000 people involved in the command. Later, as Associate Deputy Attorney General for U.S. Attorneys within the Department of Justice, and as the head of a major litigating division, I was part of a bureaucracy that usually worked well from my perspective. Furthermore, I have had a fairly broad view of the judiciary's administrative structure, not only from living within it as a judge for over twenty years, but also as a member of a number of Judicial Conference Committees and, in particular, as the first Chairman of the Committee on the Administrative Office from 1988 to 1991.

Unless you have been part of a bureaucracy, and not just an outsider, it is often difficult to understand fully and appreciate how difficult it is for administrators of large and complex organizations, with limited resources, to satisfy not only their own constituents, but also Congress and the taxpayers. When I participated in these bureaucracies, I occasionally thought that the word "bureaucracy" deserved its disagreeable connotation. Even so, I attempted to do the best I could in a small way to change it.

There are, no doubt, some judges, as well as other individuals who occasionally disagree with the efforts of the Administrative Office of the United States Courts (Administrative Office). By and large, however, the Administrative Office has shown great leadership in federal judicial administration and made "bureaucracy" a respectable word. One reason for the successful leadership of the Administrative Office is the existence of a permanent, dedicated cadre of talented executives in the federal judiciary who have the experience and

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1. U.S. CONST. art. III.

commitment necessary to carry out innovations consistent with the decentralized, nonbureaucratic structure of the judiciary.

Moreover, the Administrative Office has a very competent staff which is striving constantly to better serve the courts and public. At times, serving the courts and the public means saying "no" to a judge whose desired action conflicts with Judicial Conference policy, and then taking the heat. The Administrative Office, however, is committed to doing what is necessary for the overall good of the federal judiciary. Another healthy sign in federal judicial administration is not only the willingness to be innovative, but also to be innovative even when it means cutting back on its own "turf," something that is usually strongly resisted by large bureaucracies. A current illustration of the reduction of control of the Administrative Office is its ongoing initiative to decentralize administrative authorities, including budget and personnel functions, to the courts. This decentralization means that the courts can now pursue projects that previously only the Administrative Office could undertake. Out here in the field, for example, we no longer need to get authority from Washington, D.C. to buy a pencil.

Many conscientious reforms and innovations in federal judicial administration have occurred under the leadership of L. Ralph Mechem, the Director of the Administrative Office of the United States Courts for the past decade. In fact, many of the key themes in Vice President Gore's report, *Creating a Government that Works Better and Costs Less: Report of the National Performance Review*,<sup>2</sup> relate to areas that the judiciary has already addressed. That report recommends cutting red tape and regulations, streamlining the budget process, decentralizing decisionmaking authority, giving customers a voice, and eliminating inefficient and unnecessary activities.<sup>3</sup>

The judiciary has already achieved much in these areas by substantially delegating authority to court managers, creating a new personnel system, implementing long range planning efforts, making technological innovations, and pursuing a more open communication process.<sup>4</sup> These reforms also serve the public interest. More efficient and effective administration permits the courts to better fulfill their critical mission: providing justice to the American people.

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2. AL GORE, *CREATING A GOVERNMENT THAT WORKS BETTER AND COSTS LESS: REPORT OF THE NATIONAL PERFORMANCE REVIEW* (1993).

3. *Id.* at 6-7.

4. See ADMINISTRATIVE OFFICE OF THE U.S. COURTS, *JUDICIARY REFORM: A STEP AHEAD 1* (1993) [hereinafter JUDICIARY REFORM].

In this Article, I would like to update and summarize what has been accomplished in the last ten years in federal judicial administration, as set against a historical background.

## I. HISTORICAL BACKGROUND

The defining features of the federal judiciary's administrative system have always been independence, decentralization, and individualism.<sup>5</sup> Article III of the U.S. Constitution<sup>6</sup> firmly establishes the judicial branch as independent from the executive and legislative branches. Article III's irrevocable guarantees of lifetime tenure during good behavior and undiminishable compensation further insures the independence of federal judges.<sup>7</sup>

Decentralization and individualism evolved because of the structure that the federal court system took in the early years. The Constitution itself is somewhat ambiguous about the structure of the federal court system. While Article III vested the judicial power of the United States in the federal judiciary, not state courts, the only court it specifically created was the Supreme Court.<sup>8</sup> The Judiciary Act of 1789<sup>9</sup> created two additional levels of federal courts: circuit courts, which were primarily trial courts with concurrent appellate jurisdiction over the district courts; and district courts, which were also trial courts, but with more limited jurisdiction.<sup>10</sup> The Judiciary Act of 1789 also created the office of clerk in each district court.<sup>11</sup>

Although the Chief Justice of the United States was the head of the federal court system and exercised administrative control over the Supreme Court, during the early years most of the Chief Justices only intervened in federal court administration on an ad hoc basis. Occasionally, due to problems of judicial patronage and other ethical matters or administrative mismanagement, a Chief Justice would intervene at the district court level, but that was the exception, not the rule.<sup>12</sup>

Court administration, therefore, was largely decentralized to the district courts. Once established, the district courts were completely autonomous from one another and each district judge was free to set up his own administrative structure. District judges enjoyed almost

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5. See PETER G. FISH, *THE POLITICS OF FEDERAL JUDICIAL ADMINISTRATION* 3 (1973).

6. U.S. CONST. art. III.

7. *Id.* § 1.

8. *Id.*

9. 1 Stat. 73.

10. Judiciary Act of 1789, 1 Stat. 73.

11. *Id.* at 76.

12. See FISH, *supra* note 5, at 9-11.

complete independence in the conduct of a court's business and in the appointment and removal of the clerk and other staff members.<sup>13</sup>

## II. THE INTEGRATION OF FEDERAL JUDICIARY ADMINISTRATION IN CONCERT WITH JUDICIAL INDEPENDENCE

At the beginning of the twentieth century, administration in the federal courts remained virtually unchanged. A movement towards an integrated administrative system began, however, in the early 1900s. Judicial reformers, such as Roscoe Pound and William Howard Taft, began highlighting the need to improve cumbersome court procedures and inefficient judicial administration.<sup>14</sup> Former President Taft, later the Chief Justice, openly advocated the integration of judicial administration through either the Chief Justice or a council of judges.<sup>15</sup> Despite some concerns over encroachment on federal judges' independence, in 1922, Congress created the Conference of Senior Judges.<sup>16</sup> Comprised of the Chief Justice, as the presiding officer, and the chief circuit judges, the Conference was in 1948 renamed the Judicial Conference of the United States (Judicial Conference).<sup>17</sup>

The Judicial Conference was responsible for comprehensively surveying business conditions in the federal courts and preparing plans for the coordination of judicial assignments among the circuit and district courts. Moreover, the Judicial Conference would submit suggestions to the various courts in the interest of uniformity and expedition of business.<sup>18</sup> Although it was not set up as a controlling entity with managerial power, the Judicial Conference proved to be an important first step toward an integrated administrative system. It fostered communications among the courts, as well as the sharing of efficient and effective management procedures. Under the powerful leadership of Chief Justice Taft and later Chief Justice Charles Evans Hughes, the Judicial Conference became the principal policymaking body for the federal courts.<sup>19</sup>

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13. See FISH, *supra* note 5, at 12.

14. Henry P. Chandler, *Some Major Advances in the Federal Judiciary System 1922-1947*, 31 F.R.D. 307, 320-25 (1963).

15. *Id.* at 321-25.

16. Pub. L. No. 67-297, 42 Stat. 837, 838 (1922) (codified as amended at 28 U.S.C. § 331 (1988 & Supp. V 1993)).

17. Judicial Code of 1948, Pub. L. No. 80-772, 62 Stat. 683 (codified as amended at 28 U.S.C. § 331 (1988 & Supp. V 1993)).

18. See 28 U.S.C. § 331.

19. See generally FISH, *supra* note 5, at 40-90 (discussing early development of Conference's role).

Another important step toward an integrated system that fully recognized the independence of the federal judiciary occurred in 1939. Recognizing that an independent judiciary requires a substantial degree of administrative independence, Congress passed the Administrative Office Act of 1939,<sup>20</sup> creating the Administrative Office of the United States Courts to provide for the administration of the federal courts. The Administrative Office assumed the administrative duties (e.g., procurement, personnel and payroll, budget and accounting, statistics collection and reporting) that the Department of Justice, an executive branch agency, had previously been performing for the judiciary. In addition, the Administrative Office became responsible for monitoring and overseeing the U.S. Probation System.<sup>21</sup>

The statute also authorized the Supreme Court to appoint and remove the Director and Deputy Director of the Administrative Office.<sup>22</sup> The Director, as the administrative officer of the federal courts, was to perform the statutory duties of the Administrative Office under the supervision and direction of the Judicial Conference.<sup>23</sup> This arrangement reflected Chief Justice Hughes' view that ultimate responsibility for managing the courts should reside in the Judicial Conference, not the Chief Justice.<sup>24</sup>

The Administrative Office Act of 1939 contained another critical element of judicial administration. It authorized circuit judicial councils, which had already been operating informally in most circuits.<sup>25</sup> Under the current statute, the circuit judicial councils are empowered to "make all necessary and appropriate orders for the effective and expeditious administration of justice within [the] circuit" and "all judicial officers and employees of the circuit shall promptly carry into effect all orders of the judicial council."<sup>26</sup> The judicial councils, therefore, have the power to actively promote administrative standards. As a result, the Chief Judges of the appellate and district courts are no longer solely responsible for their courts' administration.

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20. Pub. L. No. 76-299, 53 Stat. 1223 (codified as amended at 28 U.S.C. §§ 601-610 (1988 & Supp. V 1993)).

21. See Chandler, *supra* note 14, at 407-11.

22. See 28 U.S.C. § 601.

23. See *id.* §§ 601-612.

24. See Chandler, *supra* note 14, at 383-84.

25. See RUSSELL R. WHEELER, ORIGINS OF THE ELEMENTS OF FEDERAL COURT GOVERNANCE 17 (1992).

26. 28 U.S.C. § 332.

Even with the creation of the Administrative Office and the judicial circuit councils, the federal judiciary still had no hierarchical lines of authority in the usual sense.<sup>27</sup> The Chief Judges of the appellate and district courts still retained a substantial amount of authority. The creation of the Administrative Office, however, increased the Judicial Conference's administrative power. Although many court administrative functions are vested in the Director of the Administrative Office, the Judicial Conference has the primary administrative role because it supervises and directs the Administrative Office.<sup>28</sup> The Judicial Conference decided early on that it would adopt governing policies and procedures, applicable to all federal courts.<sup>29</sup> The Administrative Office, therefore, serves the Judicial Conference by implementing and executing these policies.

The creation of the Judicial Conference, the Administrative Office, and the Circuit Judicial Councils had a revolutionary impact on federal judicial administration, moving the courts away from complete autonomy and toward more consistent practices. Since 1939, however, the changes have been evolutionary, not revolutionary. The Judicial Conference adopted a standing committee structure to conduct much of the business that ultimately comes before the full Conference.<sup>30</sup> The duties and oversight responsibilities delegated by Congress and the Judicial Conference to the circuit judicial councils have expanded greatly over the years. Further, Congress established three additional federal judiciary agencies to address specific needs: the Federal Judicial Center (1967),<sup>31</sup> the Judicial Panel on Multi-District Litigation (1968),<sup>32</sup> and the U.S. Sentencing Commission (1984).<sup>33</sup> In addition, the Office of Circuit Executive was created in

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27. See *id.* § 331 (establishing role of Conference as "submit[ting] suggestions and recommendations to the various courts to promote uniformity of management procedures and the expeditious conduct of judicial business" (emphasis added)).

28. See WHEELER, *supra* note 25, at 15.

29. See Chandler, *supra* note 14, at 412.

30. See JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 57-60 (1987) [hereinafter 1987 JUDICIAL CONFERENCE REPORTS] (describing standing committee structure as revised in 1987).

31. 28 U.S.C. §§ 620-629. The Center's "purpose shall be to further the development and adoption of improved judicial administration in the courts of the United States." *Id.* § 620. This is to be accomplished through researching and studying the courts, and making recommendations for improvements. *Id.* For a history of the establishment of the Federal Judicial Center, see Russell R. Wheeler, *Empirical Research and the Politics of Judicial Administration: The Creation of the Federal Judicial Center*, 51 LAW & CONTEMP. PROBS. 31, 31 (1988).

32. 28 U.S.C. § 1407. The Judicial Panel of Multidistrict Litigation has the power to transfer civil actions pending in more than one district and involving common issues of fact to "any district for coordinated or consolidated pretrial proceedings." *Id.*

33. *Id.* §§ 991-998. Among the purposes of the Sentencing Commission are to establish federal sentencing policies and guidelines that promote "certainty and fairness," avoid "discrepancies" in sentences between similar cases, and "reflect . . . advancement in the

1971<sup>34</sup> to assist the circuit judicial councils and to relieve the Chief Judges of the Courts of Appeals from many of their routine administrative burdens. The basic structure that existed in 1939, however, still remains today.

### III. THE ADMINISTRATIVE OFFICE'S ROLE

Unlike "headquarters" offices in the executive branch, which are hierarchal and bureaucratic in structure, the Administrative Office does not have direct management authority over the individual courts.<sup>35</sup> In choosing its methods, the agency, therefore, relies on guidance, not direction, and coordination, not command.<sup>36</sup>

Nevertheless, during the early years of the Administrative Office, there was a trend toward administrative centralization in the federal court system. For example, although the Director of the Administrative Office had little or no influence over personnel appointments, he did have the authority to determine job classifications and to authorize compensation levels.<sup>37</sup> Many judges and clerks of court, however, objected to this authority, viewing it as a means of exercising control over judges and the courts.<sup>38</sup>

Between 1939 and 1985, the Administrative Office provided the courts with classic administrative services, including procurement, payroll, accounting, budget, statistics collection, and personnel services. In response to legislative actions and changing judicial demands, the Administrative Office also began evolving into an organization that provided complex legal, program, management, and automation services to a greatly expanded judicial family.<sup>39</sup>

### IV. A DECADE OF REFORM: 1985-1994

By 1985, the pendulum in federal judicial administration had swung so far in the direction of centralization that the structure simply did not conform to modern management principles and technologies.

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knowledge of human behavior." *Id.* § 991.

34. *Id.* § 332(e).

35. The powers and duties of the Director of the Administrative Office, as set forth in 28 U.S.C. §§ 601-610, do not convey any direct authority over individual courts. For example, while the Director does have the power under § 604(5) to fix compensation of law clerks and other court employees, he or she does not have the power to appoint them. The power to appoint their own administrative staff and clerical personnel is specifically reserved to the courts. *See id.* § 609.

36. *See FISH, supra* note 5, at 194.

37. *See* 28 U.S.C. § 601 (1988 & Supp. V 1993).

38. *See FISH, supra* note 5, at 192-93.

39. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 51 (1990).



Moreover, the system was contrary to the historical independence and autonomy of the federal courts in our constitutional system of government. Recognizing this, Chief Justice William Rehnquist and Director Mecham began implementing reforms that greatly improved the overall administration of the federal court system.

*A. Reorganizing the Judicial Conference of the United States*

In December 1986, Chief Justice Rehnquist appointed a nine-member committee to study the operation of the Judicial Conference of the United States.<sup>40</sup> After canvassing the views of judges throughout the country, the committee concluded that even though the Judicial Conference and its committees were fundamentally sound, certain structural and procedural revisions were necessary to enable the Conference: (1) to operate more expeditiously; (2) to allow the Chief Justice to delegate some of his Conference duties; (3) to enable the committee structure to deal with budget and resource allocation matters more effectively; (4) to improve communication; and (5) to allow greater participation.<sup>41</sup>

As a result, in 1987 under the Chief Justice's leadership, the Judicial Conference revised its committee structure. One of the key changes was to strengthen the role of the Executive Committee,<sup>42</sup> enabling it to act on behalf of the Conference on matters requiring emergency action between sessions and to review the reports and recommendations of the committees and to develop a consent and discussion calendar.<sup>43</sup> Furthermore, in recognition of the fact that the Judicial Conference is the primary policymaking body for the federal judiciary, Director Mecham changed the practice of having the Administrative Office develop the judiciary's spending plan once appropriations legislation had been enacted by Congress. Beginning in fiscal year 1988, the Executive Committee became responsible for developing the judiciary's spending plan, which determines the federal judiciary's spending priorities.<sup>44</sup>

To further the goal of opening up the committee process, procedures were published governing how to bring matters before the

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40. 1987 JUDICIAL CONFERENCE REPORTS, *supra* note 30, at 57.

41. 1987 JUDICIAL CONFERENCE REPORTS, *supra* note 30, at 57.

42. *See id.* (describing Executive Council as "Senior Executive Arm of the Conference" and authorizing it to act on Conference's behalf between full meetings of Conference).

43. *See* JUDICIARY REFORM, *supra* note 4, at 1.

44. *See* 1987 JUDICIAL CONFERENCE REPORTS, *supra* note 30, at 57-58 (establishing powers of Executive Committee); JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 7 (1988) [hereinafter 1988 JUDICIAL CONFERENCE REPORTS] (noting Executive Committee approval of spending plan).

Conference and its committees and allowing circuit executives to attend Conference sessions. In addition, the structure and jurisdiction of Conference committees, as well as membership terms, were revised to achieve a more active and effective committee system.<sup>45</sup>

As a result of this restructuring, Director Mecham, in his capacity as Secretary to the Judicial Conference, established the Office of Judicial Conference Secretariat, which coordinates the Administrative Office's support to the Judicial Conference and its committees.<sup>46</sup> In fact, many Administrative Office employees are actively involved in the work of Conference committees. They routinely plan meetings, prepare agendas, provide substantive research and analysis of issues, seek advice and opinions from advisory groups of court officials, and make recommendations for consideration by committees and the Judicial Conference.

### *B. The Decentralization (3-D) Campaign*

When Mr. Mecham became Director of the Administrative Office in 1985, many administrative functions were centralized in the Administrative Office. Recognizing that the federal courts have historically operated under principles of judicial independence and local autonomy, one of Director Mecham's first actions was to initiate the "3-D" campaign to "decentralize, delegate, and divest" those functions and activities that could be reassigned or eliminated.<sup>47</sup> The most important result of the "3-D" campaign was the decentralization and delegation to the courts of many specific administrative decisionmaking responsibilities that Congress had vested in the Director of the Administrative Office.<sup>48</sup> Director Mecham shifted from centralized to decentralized control because he believed that judges and administrators in the individual courts were better situated to make decisions about how to use resources most efficiently and effectively than a centralized staff in Washington, D.C. serving hundreds of courts. Empowering the courts to make day-to-day spending and management decisions, within established guidelines, was clearly in the best interests of both the judiciary and the taxpayers.

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45. See 1987 JUDICIAL CONFERENCE REPORTS, *supra* note 30, at 57-58.

46. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 68 (1988).

47. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 67 (1987).

48. See 28 U.S.C. §§ 601-610 (1988 & Supp. V 1993) (describing powers and duties of Director of Administrative Office of U.S. Courts).

Another important result of the decentralization program was that it allowed the Administrative Office to maintain efficient service to the courts during a period when the Administrative Office's funding and staff could not keep pace with the overall growth in the judiciary. For example, funding for the Administrative Office in fiscal year 1994 was virtually the same as it was in fiscal years 1992 and 1993. In contrast, over this same two-year period, funding for the entire judiciary rose more than fifteen percent.<sup>49</sup> Through decentralization, the Administrative Office has been able to reassign staff and other resources, from centralized administrative services to other priority needs of the judiciary.

Overall, the decentralization of administrative responsibilities to court managers has been well-received and very successful. Decentralization commits every manager in the Administrative Office, as well as the courts, to finding ways to save money, improve operations, and increase efficiency. The decentralization campaign also benefits the public by making the federal judiciary more efficient. The public expects and deserves the highest level of service, which the judiciary is dedicated to providing. As a result of Director Mecham's initiative, the judiciary is well ahead of the executive branch in decentralizing decisionmaking to local managers,<sup>50</sup> which is one of the key themes in Vice President Gore's report on making government work better at less cost.<sup>51</sup>

Presently, the Administrative Office has delegated authority in fifty-eight specific administrative areas, the most significant being the full implementation of budget execution authority and the delegation of major procurement authorities. Additional decentralization projects are currently underway or planned in other areas, including major personnel functions. Once again, decentralization of administrative decisionmaking authorities is a defining feature of federal judiciary administration.

### *C. Benefits of Decentralization*

In keeping with his "3-D" campaign, one of Director Mecham's first goals was the decentralization of operating functions where appropriate. Decentralization of administrative decisionmaking has been remarkably effective because judges and court administrators are in

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49. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 16-17 (1993) [hereinafter 1993 ANNUAL REPORT].

50. See JUDICIARY REFORM, *supra* note 4, at 1.

51. See GORE, *supra* note 2, at 69-72.

a much better position than the Administrative Office to understand their courts' unique needs and priorities. Decentralization has demonstrably improved service levels throughout the judiciary. For example, an evaluation of decentralized payment processing of vouchers for court-appointed counsel under the Criminal Justice Act<sup>52</sup> showed a substantial improvement in service.<sup>53</sup> Before this function was decentralized, all vouchers were sent to the Administrative Office for pre-audit and processing, taking an average of four weeks for payment. Due to decentralization, vouchers are now routinely processed in the courts within six days of a judge's approval.<sup>54</sup>

Another example of improved efficiency is the delegation to the clerks of court of procurement authority for most purchases under \$25,000.<sup>55</sup> Decentralization of this function has eliminated a vast amount of the paperwork that previously passed between the Administrative Office and the courts, as well as the delays inherent in such an arrangement.

#### *D. Administrative Office Planning and Management Objectives System*

Director Mecham implemented another management innovation, the Administrative Office planning and management objectives system, to help focus the agency's limited resources on its most important tasks.<sup>56</sup> Each year, the Director establishes or reiterates the Administrative Office's basic goals and provides a general vision for the agency's critical areas of interest and major initiatives. The planning and management objectives system was established in 1989 to support the fulfillment of these goals.

The system focuses on strategic thinking in reaching tangible, measurable results that are crucial to the Administrative Office and the courts. On an annual basis, each office within the Administrative Office examines its program developments, issues, court interests, and changing requirements. Each office identifies and prioritizes its program objectives and establishes plans for allocating resources to accomplish them. As a result, most of the Administrative Office's objectives are self-generated by agency staff. Progress toward meeting objectives is monitored quarterly. The individual plans together

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52. 18 U.S.C. § 3006A (1988).

53. See JUDICIARY REFORM, *supra* note 4, at 3.

54. See JUDICIARY REFORM, *supra* note 4, at 3.

55. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 59-60 (1989).

56. *Id.* at 59.

represent an ambitious road map for the Administrative Office and the courts.<sup>57</sup>

*E. Delegation of Budget Execution Authority to the Courts*

The most important and successful initiative of the past few years in the judiciary probably was the decentralization of budget responsibility to the individual courts. Due to the concerted efforts of Director Meham and others from the Administrative Office and the courts, the Judicial Conference approved a three-year, five-court pilot budget decentralization program in September 1987.<sup>58</sup> The final evaluation report of the program concluded that "budget decentralization has been highly successful in the pilot courts" and noted that "pilot court judges and officials were unanimous in the view that the decentralized system was superior to the former system for managing financial activities."<sup>59</sup> In March 1991, the Judicial Conference approved the expansion of budget decentralization to all courts on a voluntary basis.<sup>60</sup>

Now fully implemented in all federal appellate and district courts, budget decentralization has given judges and court administrators control over court funds, an extremely beneficial outcome. The program provides the courts with more administrative responsibility, flexibility, and autonomy, and further results in greater cost efficiency as courts operate within available funding. Because court administrators manage funds throughout the year, they are able to plan more effectively and realize savings earlier.<sup>61</sup>

Through the decentralization of budget authority, the judiciary has addressed at least two key themes in Vice President Gore's report on the executive branch of the federal government.<sup>62</sup> Streamlining the budget process has cut red tape and empowered court managers to use their creative judgment in making funding decisions.

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57. See 1993 ANNUAL REPORT, *supra* note 49, at 9.

58. 1987 JUDICIAL CONFERENCE REPORTS, *supra* note 30, at 77. The pilot program was later extended to allow for a complete evaluation of the project. See JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 54 (1989).

59. NATIONAL ACADEMY OF PUB. ADMIN., BUDGET DECENTRALIZATION IN THE FEDERAL COURTS: FINAL EVALUATION REPORT vii (1991).

60. JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 13 (1991) (allowing expansion over three-year-period beginning October 1991).

61. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ACTIVITIES OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS: REPORT OF THE DIRECTOR 22-23 (1994) [hereinafter 1994 REPORT].

62. GORE, *supra* note 2, at 6-7.

### *F. Designing a New Court Personnel System*

The next major area to be decentralized to the individual courts is personnel management. As a result, the judiciary is implementing another recommendation in the Vice President's report, which is "to dramatically simplify the current classification system and to give agencies flexibility in how they classify and pay employees."<sup>63</sup>

After a four-year study of the judiciary's thirty-three-year-old personnel system, the Judicial Conference approved a new Court Personnel System. This system will advance modern personnel management approaches to job design and compensation and decentralize key decisions within the courts so court administrators may structure their work force according to their needs.<sup>64</sup> Under the Court Personnel System, judges and court managers will have more flexibility to classify positions, determine applicant qualifications, and set salaries and pay raises.<sup>65</sup> In September 1994, the Judicial Conference approved a Cost Control Monitoring System.<sup>66</sup> Under the Cost Control Monitoring System, controls for the Court Personnel System are cost-driven rather than rule-driven.

On October 1, 1994, the Court Personnel System was implemented in seventeen lead courts.<sup>67</sup> Over the next several years, the Administrative Office will delegate compensation and classification authority to all courts.<sup>68</sup> As a result of decentralization, court managers already had the flexibility to shift their financial and human resources. The Court Personnel System gives the courts more autonomy and flexibility in determining the composition of their work force.

## V. IMPLEMENTING RECOMMENDATIONS OF THE FEDERAL COURTS STUDY COMMITTEE

In 1988, "responding to mounting public and professional concern

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63. GORE, *supra* note 2, at 24.

64. JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 49-50 (1993) [hereinafter 1993 JUDICIAL CONFERENCE REPORTS].

65. See 1993 ANNUAL REPORT, *supra* note 49, at 7-8.

66. JUDICIAL CONFERENCE OF THE U.S., REPORTS OF THE PROCEEDINGS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES 45 (1994).

67. See 1994 REPORT, *supra* note 61, at 22. The lead courts implementing this system are the District and Bankruptcy Courts of Maine, Pennsylvania-Eastern, Oregon, New York-Eastern, Virginia-Eastern, Ohio-Southern, Wisconsin-Western, Missouri-Western, California-Northern, Colorado and Georgia-Northern; the Bankruptcy Court of Louisiana-Eastern; and the Fourth, Sixth, Ninth, and Tenth Circuit Courts of Appeals. 1994 REPORT, *supra* note 61, at 22.

68. 1994 REPORT, *supra* note 61, at 21-22.

with congestion in the courts, delay, expense, and expansion,"<sup>69</sup> and acting on a judicial branch recommendation, Congress created the Federal Courts Study Committee to "make a complete study of the courts of the United States and the several states and to transmit a report to the President, Congress, the Judicial Conference of the United States, the Conference of Chief Judges, and the State Justice Institute."<sup>70</sup> Chief Justice Rehnquist appointed five judges, two members of the Senate, two members of the House of Representatives, and six other distinguished individuals to serve on this committee.

After a fifteen-month review of the problems of the federal courts, the committee issued its final report in April 1990. The report contained well over one hundred specific recommendations to Congress, the federal judiciary, the executive branch, state courts, and others.<sup>71</sup> Congress and the federal judiciary have already taken action on most of the committee's recommendations. These include the development of judicial impact statements for proposed legislation, the enhancement of long range planning capability within the federal judiciary, a study of the administration of the Criminal Justice Act, and an analysis of permissible magistrate judge duties.<sup>72</sup>

## VI. ENHANCING LONG RANGE PLANNING

Over the past several years, the judiciary has implemented a number of successful long-range planning programs. In 1988, under the direction of the Judicial Conference, the Administrative Office initiated the long range facilities planning process to bring needed discipline to the determination of the judiciary's facility requirements.<sup>73</sup> In doing so, the judiciary became the first federal organization to initiate a long range planning process. The process applies a standard methodology to determine space needs,<sup>74</sup> and was intended to assist the General Services Administration (GSA) and Congress by looking beyond the near term to provide a context within which future decisions about facilities can be made. It was also instituted to reduce costs and to make the process more rational.<sup>75</sup>

The federal judiciary also instituted a long range plan for automa-

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69. FEDERAL COURTS STUDY COMMITTEE, REPORT OF THE FEDERAL COURTS STUDY COMMITTEE 3 (1990).

70. *See id.* at 31 (quoting congressional instructions).

71. *Id.* at 172-85.

72. *See* JUDICIARY REFORM, *supra* note 4, at 1-2.

73. 1988 JUDICIAL CONFERENCE REPORTS, *supra* note 44, at 39.

74. *See* JUDICIARY REFORM, *supra* note 4, at 2.

75. JUDICIARY REFORM, *supra* note 4, at 2.

tion to form the framework for determining automation objectives. This plan allowed Congress to better understand the long range requirements for technology in the federal courts and more effectively channeled resources to meet the judiciary's most pressing needs. The plan contains updates for each project, product, and service supported by the Administrative Office.

One of the Federal Court Study Committee's most significant recommendations was that the judiciary should enhance its long range planning capability.<sup>76</sup> The Judicial Conference agreed and, in 1990, the Chief Justice created a new committee to focus exclusively on long range planning.<sup>77</sup> In coordination with other Conference committees, the Committee on Long Range Planning carefully examined every aspect of the judiciary, including its structure, jurisdiction, and operating methods. For example, proposals regarding a limitation on the number of Article III judgeships and changes in the federal court governance structure have proven provocative and stimulated much debate within the judiciary concerning what type of organizational structure would most effectively deal with the increasing jurisdiction of the federal courts.<sup>78</sup>

In the fall of 1994, a draft of the long range plan was circulated within the judiciary and to interested parties of the bar and public. In addition, three public hearings were held in Phoenix, Arizona, Washington, D.C., and Chicago, Illinois. The final version of the long range plan, intended to help guide the federal court system into the twenty-first century, was presented at the March 1995 session of the Judicial Conference. Upon the specific request of a Conference member, the Conference agreed to refer any long range plan recommendation to the appropriate Conference committee for further study. All recommendations of the plan not identified by a Conference member for further study were deemed approved effective April 12, 1995.<sup>79</sup> A number of recommendations were referred, with final actions to be presented to the Conference by its March 1996 session.

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76. See FEDERAL COURTS STUDY COMMITTEE, *supra* note 69, at 146-48.

77. See COMMITTEE ON LONG RANGE PLANNING, JUDICIAL CONFERENCE OF THE U.S., PROPOSED LONG RANGE PLAN FOR THE FEDERAL COURTS 2 (2d prtg. 1995).

78. See JUDICIARY REFORM, *supra* note 4, at 2.

79. JUDICIAL CONFERENCE OF THE U.S. COURTS, PRELIMINARY REPORT OF THE JUDICIAL CONFERENCE 6-7 (1995).



## VII. COST-CONTAINMENT INITIATIVES

Due to the judiciary's budget constraints and the anticipation that funds will continue to be limited in future years, the entire federal judiciary has undertaken many cost-containment initiatives. Everyone has been called upon to hold down costs and scale back operations wherever possible.<sup>80</sup> In short, the judiciary has already implemented another primary principle of the Vice President's report: cutting back to basics to produce better government for less cost.<sup>81</sup>

In early 1993, Director Mecham initiated a coordinated cost-containment effort, both in the courts and at the Administrative Office, to identify opportunities for using limited resources more effectively on both a short- and long-term basis. Literally hundreds of cost-containment ideas have been received from judges and court staff nationwide. Moreover, Judicial Conference committees and advisory groups of court managers and judges are continuously examining practices to identify more economical changes.<sup>82</sup> Promising ideas have been shared through newsletters, correspondence, and reports. With necessity as the mother of invention, many judges and court administrators have implemented more efficient ways of doing business to accommodate staffing and funding cuts.<sup>83</sup>

One key area of interest is cost-containment in courthouse construction and renovation projects. The judiciary is working with the GSA and Congress to find ways to save tax dollars wherever possible. For example, in 1993 the judiciary and GSA established the Independent Courts Building Program Panel specifically to address courtroom costs.<sup>84</sup> The Panel's report, issued in December 1993, made a number of recommendations that have already been implemented.<sup>85</sup>

## VIII. INCREASED FISCAL RESPONSIBILITY: THE ECONOMY SUBCOMMITTEE OF THE COMMITTEE ON THE BUDGET

In September 1993, the Judicial Conference approved a proposal to establish the Subcommittee on Economy of the Conference's Budget Committee.<sup>86</sup> This committee coordinates the judiciary's

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80. See 1993 ANNUAL REPORT, *supra* note 49, at 11.

81. See GORE, *supra* note 2, at 93-120.

82. See 1993 ANNUAL REPORT, *supra* note 49, at 11.

83. See JUDICIARY REFORM, *supra* note 4, at 5.

84. 1994 REPORT, *supra* note 61, at 46.

85. 1994 REPORT, *supra* note 61, at 46.

86. 1993 JUDICIAL CONFERENCE REPORTS, *supra* note 64, at 42.

efforts to achieve fiscal responsibility, accountability, and efficiency in its operations, thereby serving a role for the judiciary similar to that played by the Office of Management of Budget for the executive branch. During its first year of operation, the Subcommittee worked with other Conference committees to identify opportunities to reduce costs. It also provided guidance on a number of analyses and studies that the committees have undertaken, primarily at the request of the Economy Subcommittee, to examine programs and identify more cost effective ways of doing business.<sup>87</sup>

The Economy Subcommittee's initial efforts have been well-received. In fact, the House Appropriations Committee's report on the judiciary's 1995 appropriations bill<sup>88</sup> stated:

The Committee is pleased with the initial effort and programs that have begun during the first year since the Conference established the Economy Subcommittee within the Budget Committee of the Conference. The Committee notes that progress is being made in the development of judicial branch budget request and commends the judiciary in this effort.<sup>89</sup>

#### IX. TECHNOLOGICAL SOLUTIONS

The Vice President's report promises to reengineer the work of government agencies by expanding the use of new technologies.<sup>90</sup> In fact, the introduction and expansion of technology has been a crucial factor in the federal courts' ability to improve judicial administration. Automated data processing has become an integral part of the day-to-day work of the federal courts.<sup>91</sup> A family of case-management systems, which is available to the appellate, district, and bankruptcy courts, has improved the courts' efficiency by automatically enhancing statistical reporting, indexing cases, and generating the case docket, forms, and reports. More than half of the district courts are using the Chambers Access to Selected Electronic Records (CHASER), a software application that allows judges and their staffs to retrieve case-management information from the case-management systems.<sup>92</sup> Computer Assisted Legal Research capabilities are available in all chambers.<sup>93</sup> Public Access to Court Electronic Records (PACER) or similar public-access systems are operating in

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87. 1994 REPORT, *supra* note 61, at 14-15.

88. H.R. 4603, 103d Cong., 2d Sess. (1994).

89. H.R. REP. NO. 552, 103d Cong., 2d Sess. 79 (1994).

90. See GORE, *supra* note 2, at 112-16.

91. See JUDICIARY REFORM, *supra* note 4, at 4-5.

92. JUDICIARY REFORM, *supra* note 4, at 4.

93. JUDICIARY REFORM, *supra* note 4, at 4.

most courts, providing the public with easy access to court records.<sup>94</sup>

The result of these practical applications has been improved service to the courts, bar, and public. There are a number of other applications currently being developed and tested. One example is the Bankruptcy Noticing Center, which is currently providing notice production and distribution services to sixteen bankruptcy courts.<sup>95</sup> The goals of the project are: (1) to increase efficiency through centralization of the noticing function with a private contractor; (2) to improve the quality of notices produced through state-of-the-art printing production and mailing technologies; and (3) to achieve savings in staff, postage supplies, and equipment costs.<sup>96</sup> During 1995, the Bankruptcy Noticing Center will be offered to the other bankruptcy courts. Preliminary estimates indicate that the Bankruptcy Noticing Center has the potential to save the judiciary about seven million dollars in costs for postage supplies and equipment over four years.<sup>97</sup>

A commitment to a user-driven approach has enhanced the development of useful and effective systems applications for the courts. After extensive court input, in late 1992, the Administrative Office developed a new structure and process for extensive user input in defining automation requirements and monitoring the development and implementation of system applications. An Automation Planning Council, user groups, and "umbrella" groups covering major program areas were established to make recommendations concerning the judiciary's automation needs and the priority of these needs within budget restraints.<sup>98</sup>

Consistent with the idea articulated in the Vice President's report that "good government" results from "putting customers first,"<sup>99</sup> the judiciary's extraordinary process of user involvement gives the customer (users in the courts) both a voice and a choice. Indeed, the courts and the Administrative Office are partners in bringing technological solutions to federal court operations.

## X. REACHING OUT FOR COURT ADVICE

In 1992, Director Mecham wanted to improve communication and cooperation between the Administrative Office and the courts. As a

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94. 1994 REPORT, *supra* note 61, at 36-37.

95. 1994 REPORT, *supra* note 61, at 37.

96. 1994 REPORT, *supra* note 61, at 37.

97. 1994 REPORT, *supra* note 61, at 37.

98. See JUDICIARY REFORM, *supra* note 4, at 5.

99. See GORE, *supra* note 2, at 43-64.

result, he instituted a review of the network of advisory groups, which are composed of court officials, that give the Administrative Office advice pertaining to the courts. After receiving suggestions from the judiciary, new guidelines were developed and a new structure of advisory groups was put in place. The new structure has: (1) enhanced the representativeness of the advisory groups; (2) increased input from a broader segment of the courts; (3) clarified the roles and responsibilities of the groups providing advice to the Administrative Office; (4) improved the coordination of issues; (5) ensured that items of importance are addressed; and (6) facilitated consultation on policy matters under consideration by Judicial Conference committees.<sup>100</sup> As a result of the new process and structure, a broader segment of court employees participates in the advisory process on matters of importance for judicial administration.

### XI. THREE-BRANCH COORDINATION

Over the past several years, significant advances have also been made in communication between the judicial branch and the legislative and executive branches. In 1993, the Judicial Conference's Executive Committee instituted a series of quarterly meetings with the Attorney General. Moreover, working groups composed of judicial officers and officials from both the Department of Justice and the judiciary were established to address matters of mutual concern in five specific areas: criminal justice, security and facilities, prisoner issues, budget, and civil matters. These working groups are not only focusing on long-standing concerns, but are also providing a ready forum for addressing newly emerging issues affecting the judiciary and the Department of Justice.<sup>101</sup>

In a historic meeting in the spring of 1994, representatives from the three branches of the federal government, state and local government officials and judicial officers, and representatives from academia came together to discuss, among other things, the jurisdiction and mission of the federal judiciary. Hosted by the Attorney General at the Executive Committee's suggestion, this conference, entitled The Attorney General's Round Table on State and Federal Jurisdiction, was a great success.<sup>102</sup> It is anticipated that this conference will

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100. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, ANNUAL REPORT OF THE DIRECTOR OF THE ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS 4 (1992).

101. 1994 REPORT, *supra* note 61, at 15-16.

102. 1994 REPORT, *supra* note 61, at 15.

become an annual forum to discuss cross-cutting issues facing the three branches of government.

### CONCLUSION

The federal judiciary is committed to providing justice to citizens through an efficient and effective federal court system. To help achieve this goal, a number of important judicial reforms have been implemented over the past decade. Enacted with a deep sense of stewardship for the American taxpayers, these changes have conformed to the historical concepts of judicial independence and the autonomy of the individual courts.

As a result of the many reforms undertaken during Director Mecham's ten-year tenure as Director of the Administrative Office, the federal judiciary has already implemented a number of the major principles of the Clinton administration's initiative to "reinvent" government. Perhaps Chief Judge John F. Gerry, then-Chairman of the Judicial Conference's Executive Committee, stated it best when he told the Judicial Conference at its September 1994 session that "[t]he past nine years have been the golden age of judicial administration at the national level under Director Ralph Mecham and Chief Justice Rehnquist."<sup>103</sup> Director Mecham is "a giant in the field of judicial administration."<sup>104</sup>

This view of how federal court administration has improved greatly over the past ten years by no means suggests that the judiciary can now just relax and coast. Circumstances change constantly and the Administrative Office, with the help of the Judicial Conference, its committees, and others, is always striving to look as far as possible into the future to anticipate and overcome potential problems. Administrative improvements must be continuous in order to ensure that the federal courts are accessible, efficient, affordable, reliable, and respected in their efforts to administer fairly the laws of the United States in conformity with the Constitution and statutes enacted by Congress.

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103. Clarence A. Lee, Jr. & William Burchill, Jr., *Letter to the Editor*, LEGAL TIMES, Dec. 12, 1994, at 25.

104. *Id.*

