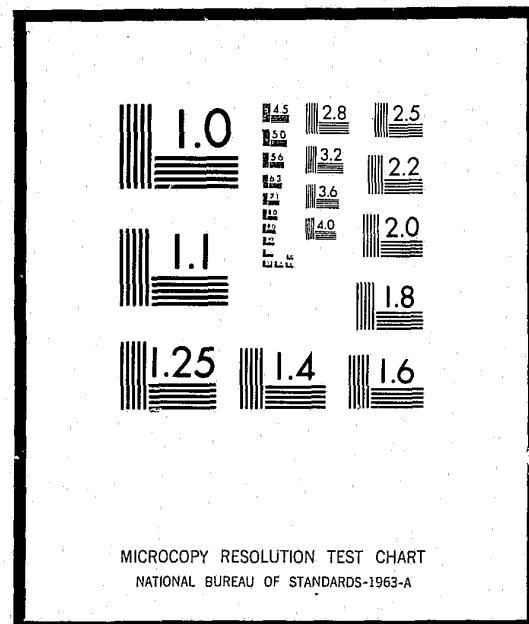


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THE FEDERAL JUDICIAL CENTER

Its Roles and Relationships

by

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Federal Judicial Center

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INITIAL DRAFT

THE FEDERAL JUDICIAL CENTER:

ITS ROLES AND RELATIONSHIPS

Preface

The Board of The Federal Judicial Center has directed the staff to further analyze and refine the role and functions of the Center and its relationships with the Administrative Office and the Judicial Conference. This staff paper has been prepared in partial fulfillment of this task. The purpose of this initial draft is to create a basis for a dialogue between the members of the Center staff, the Center Board and the judiciary in general. Because of its very nature and the need for a dynamic, flexible, changing response to the needs of the judiciary, this document will be periodically revised. A final draft of this initial paper will be prepared after comments are received from the Board and interested members of the judiciary.

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INITIAL DRAFT

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The Center is one of five institutions within the Judicial Branch whose mission is to work toward improved judicial administration in the Federal Courts. The other four are the Supreme Court of the United States, the Judicial Conference of the United States, the Circuit Councils and Conferences, and the Administrative Office of the United States Courts. Although each has distinct responsibilities, the exact way in which the Center fits into the structure and the way in which it complements the four institutions which were in existence before its creation, needs additional clarification and definition.

The Supreme Court, in addition to its general supervisory power, has the power to prescribe and amend general rules of practice and procedure. (§§2071-2075). These rules, along with statutory prescriptions of jurisdiction and venue, provide the structural framework within which the Federal Courts operate. The Judicial Conference, however, bears the broadest responsibility for the study and improvement of Federal Court operations. It shares the Supreme Court's rule-making responsibilities and has both investigative and advisory duties with regard to the business and dockets of the United States Courts. Furthermore, each member is bound to "advise as to the need of his circuit or court and as to any matters in respect of which the administration of justice in the courts of the United States may be improved." (§331). The Conference is also responsible for supervision and direction of the Administrative Office of the United States Courts. (§§604-605). The Administrative Office is generally charged with supervising all administrative

matters relating to supporting personnel of the courts, examining the state of the dockets of the courts, determining the courts' need of assistance, preparing budget estimates, and performing other administrative functions required by any large organization.

The general mission of the Center is in a broad sense identical to that of the other four institutions in that its purpose is to "further the development and adoption of improved judicial administration in the courts of the United States." (§620(a)). However, this does not help in defining the role of the Center or distinguishing its role from that of the other four institutions. This is the same as saying that the purpose of every division or department of a corporation is to help the corporation make a profit. The distinction is between the functions and the type of approach which the different institutions bring to the attack on problems of judicial administration.

Perhaps the statement that best distinguishes the general nature of the Center was made in the S.915 and H.R.6111 hearings where it was stated that "the Center will be a break with the past -- not just more of the same." (Hearings on S.915 and H.R. 6111 Before the Subc. on Improvements in Judicial Machinery, Senate Comm. on the Judiciary, 90th Cong., 1st Sess. (1967), p.379 [hereinafter cited as Hearings]). In its report on the Federal Judicial Center Bill, the Senate Judiciary Committee states its approval of the legislation is based on the awareness of the need for "a new and professional approach." (U.S. Code Cong. and Adm. News, p.2407). The question the Center must solve is: What is the nature of this new approach?

In a very basic sense, the difference between the approach of the Center and the other four institutions is one of perspective. It is the only institution which is not directly involved in the operations of the courts. As such, its role is not defined in terms of "what has to be done today." Cases are filed in the courts and the Judges and supporting personnel have to respond to this work presented to them. The Administrative Office has its priorities set by the operations for which it is responsible. In another sense, the operations of the other institutions are based primarily on precedent and proven procedure. But there are no precedents for the Center role since it is a new type of organization in the judiciary. In contrast, the Center has to develop and define the exact nature of the work which it will do. The Center will reach its maximum possible effectiveness only when a set of precise, definite, problem-oriented programs is established and priorities assigned. Unless this is done, there will be a diffusion of work effort and a milling about which will result in very few concrete achievements.

The major advantage of an organization like the Center is that it creates the ability to put a consecutive strain on the line. It provides an opportunity for continuous sustained effort. This is in contrast to efforts in the past, which have usually been on a piecemeal ad hoc basis. The Center must work toward goal-oriented deep well drilling. A small number of deep wells is better than many surface gouges. As Chief Justice Burger stated at St. Louis, "These tasks are not for the short winded."

We should put the nature of our tasks in a realistic context. For

example, we do have answers to some problems and we know the types of solutions which should be applied to a number of areas. In fact, the training mission of the Center has as its purpose bringing "the best (currently known) methods of judicial administration into actual practice in the federal courts." (Hearings, p.38). We also know that judicial task forces are an effective remedy for emergency conditions. But by and large we do not know the answers to most of the problems of the courts. This is a simple but important fact to emphasize. It has implications as to the approach the Center should adopt. It should cause us to ponder seriously the ramifications of Justice Frankfurter's statement that "It makes a great deal of difference whether you start with an answer or with a problem."

There is no single remedy or approach for the problems of the courts. We have to find many new approaches and engage in many types of projects. The need for this is illustrated by the following quotation by Professor Maurice Rosenberg regarding remedies for court congestion and delay: "Today it can be fairly said that there is no acceptable evidence that any remedy so far devised has been efficacious to any substantial extent. Only a few of the new measures have worked even to a modest extent, and some of them have been positively counter-productive on the efficiency scale. More important, many of them have had unsuspected side effects in changing the outcome of appreciable numbers of lawsuits.

"A major lesson of this chronicle is that progress in coping with the old problem of court delay will have to come from marshaling relief

measures in groups, not from a one-injection miracle cure. There is no such panacea." (Jones, Harry W.; Ed., The Courts, The Public, and The Law Explosion, p.55). A later statement in the same article by Professor Rosenberg gives further insight into the role of the Center: "The problem of delay may be old, but it is by no means obsolescent; it is complex, but not insoluble; it is stubborn, but not hopeless. In the past we have acted as if we could wage a blitzkrieg against it, but now we see that we must tool up for a long campaign of attrition. The tools we need are persistence, resolution, and a willingness to apply scientific methods of research." (Supra, p.59).

Center Functions

The Center statute, the hearings, and the committee reports all repeated again and again the same types of functions: They speak of research, in-depth analysis, testing, data collection, planning, systems analysis, development, training, automatic data processing, electronic retrieval, etc. . . . Unless we go beyond the surface meaning of these words, they will become mere ritualistic incantations which will bear no relationship to, and give no light to, the work that needs to be done.

The first need is to realize the implications of some of these words. Let us start with planning. The type of planning required for the Center and for the judiciary goes far beyond the simple planning of a day's activities. In the executive agencies and in major corporations there are thousands of professionals who do nothing but plan. An example of the

amount of time required for planning was given by Dr. Kilpatrick in a recent meeting with the Center. He mentioned that in his University a large number of people have been assigned the task of preparing two, five, and ten year plans for the University. Each of those professors or administrators will be spending 20 hours each week for a full year on this effort. It is not necessary to go into a discourse of planning methodology. It is necessary to realize that planning is not an occasional exercise, a perfunctory activity or a pro forma brief ad hoc project. Furthermore, planning does not result in immediate work products and may, in fact, delay the realization of concrete results. Nevertheless, over the long haul, adequate planning pays off. There are, of course, two aspects to planning: planning for the Center's programs and Center programs which involve planning for future needs of the courts.

The words research, studies, in-depth analyses, data collection, etc. have significant implications. This was recognized in the hearings by one witness who stated there should be an agency which is "willing to work three years without necessarily turning up a tremendous new discovery, but just adding one more brick to the edifice of knowledge. Unless we get somebody willing to do that slow, hard, painful work, we aren't really going to make the progress that we could make." (Hearings, p.280). Mayor Lindsay stated somewhat the same thing in his address to the ABA in St. Louis in August 1970, where he emphasized improvements in court administration would only come through "systematic, tedious, nuts and bolts efforts."

One major problem is that we have very little objective scientific

data on court administration. We don't know - on a scientific basis - either the exact dimensions of the problems or their causes. This was implicitly acknowledged in the Senate Committee Report where they stated the Center would "collect data, conduct research, (so as to) depict the contours of every problem." (Emphasis added). (U.S. Code Cong. and Adm. News, p.2411). Judge Gesell, in his testimony, noted the need for research and in-depth analysis when he emphasized that we "can't say with precision what the causes of delay are." (Hearings, p.257). The importance of obtaining in-depth objective data was further clarified by Mr. Miller who stated there was an appalling lack of statistics on court processes, and that "once you ascertain the facts, the steps that should be taken shine forth with great clarity." (Hearings, p.253).

The memorandum prepared by the staff of the Subcommittee on Improvements in Judicial Machinery gave an example of the principles to use in establishing Center priorities by saying that "without an accurate description of the present operation of the court(s), there is no foundation upon which to proceed." (Hearings, p.263). Chief Judge David L. Bazelon, in his testimony, presented the same principle when he stated that "the time has come when lawyers and judges must stop tinkering with judicial administration without the light from information based on research and study by experts." (Hearings, p.244). President Paul H. Gantt of the Federal Bar Association, reiterated the same point in his testimony when he noted that although there is a need to use more efficient methods, these "must be first preceded by probing research and analysis." (Hearings, p.381).

Thus, there seems to be a pervasive understanding of the need for new approaches by the leaders of the Judiciary and the Bar. But, since the Center has to translate these needs into specific goals and specific projects, there is also a need for understanding the limitations of studies and analyses. We must address ourselves not only to the solution of the crisis level problems now existing, but must also be aware we are starting on the foundation of a new field of science -- the science of judicial administration. Thus, we should briefly summarize some of the characteristics of scientific studies: (1) They often take a long period of time. A small project could be completed within six months. Projects with any significant degree of depth usually require a year or sometimes more to reach fruition in terms of useful results. (2) The contours of most projects cannot be fully defined until they are actually underway. As a problem is studied and more is learned about it, the nature of the problem and our understanding of the problem changes dramatically. We don't always go where we think we are going in a project. (3) Somewhat related to this is the fact that the exact result of each project cannot be predicted (if it could be, the project wouldn't be necessary). Furthermore, the results are often surprising in terms of revealing unsuspected causes or relationships. Thus, there is always a certain amount of risk-taking in starting a scientific project. (4) Any court project -- whether it be research or systems development -- reveals new problems and new vistas which define additional studies and additional goals. An example of this is the time study now being conducted by the Center. A variety of new vistas have opened up

through the results of the study. One or more full time persons should be working on this for the next several years in order for the project to realize its full potential. Another example is the D.C. District Court Computer Project. Many uses of the current products of the system are being found and the need for many changes and additions to the current products have become clear with the initial implementation of the system.

If we review the Center's Statute (28 USC 620-629), and integrate the responsibilities therein posed with the discussion above, we can designate several clusters of Center functions as follows:

1. Research and study which has as its purpose the analysis of problems and development of solutions.
2. Research and study which has as its purpose anticipating and planning for the future needs of the judiciary.
3. Training for all personnel of the Judicial Branch.
4. The study and development of modern administrative techniques and of modern equipment and systems applications to the administrative operations of the courts.
5. Proposing and studying basic changes to the judicial system. (This would include changes in jurisdiction, changes in rules of procedure, and changes in the basic structure of the courts.)

Although these functional categories are useful for defining the role of the Center, they are not oriented toward specific goals. For example, some projects may have as their objective reducing the time for disposition of cases. Others might have as their objective improving the

efficiency of either judicial activity or supporting activity. However, it cannot be said with any degree of certainty that any given project will achieve demonstrable, measurable results in terms of such goals. For this reason, every Center project must have an evaluation component in order to determine whether the expected results actually occur.

Several other aspects of the Center role as defined in the Center Statute need to be emphasized. Section 620(b)(1), for example, requires the Center ". . . to stimulate and coordinate such research and study on the part of other public and private persons and agencies." In pursuance of this responsibility, the Center has been coordinating all plans and activities with the LEAA Institute for Law Enforcement and Criminal Justice. It has not, however, stimulated any specific research or study on the part of other persons and agencies except through contractual support for specific projects.

Many Center studies should result in recommendations for improvement. Section 620(b)(2) requires the Center "to develop and present for consideration by the Judicial Conference of the United States recommendations for improvement of the administration and management of the courts of the United States." Every proposed Center program should be analyzed in terms of the types of recommendations which can be expected to be developed. The Center's activities have been weak in this respect up to this point in time. Because of the complexity of court problems and the characteristics of scientific studies, the ability to make solid and certain recommendations will continue to be one of the primary problems of the Center during the next two years.

As the base of scientific knowledge grows, this ability will begin to grow at an exponential rate, i.e., it will start very slowly, but after another year or two it will increase at a very fast rate. The exponential growth curve is, by the way, a characteristic of almost all new fields of knowledge.

The Power of the Center

Since the Center is not an operational agency, its primary power to get things done will come via persuasion and training. Success in implementing changes based on research or systems studies will come from the persuasiveness of facts and results. Other improvements can be expected to come about through the training provided by the Center. The objective of training is not only to teach new or better skills, but to change the attitude of Judges and supporting personnel.

The recognition of the ways in which the Center can be most effective is important for determining the focus of Center activity and the priorities to be given for various programs. An axiom from the field of clinical psychology goes to the effect that the strongest person is one who is aware of his weaknesses and limitations. With this awareness he can concentrate on the things he can do best. A similar principle applies to organizations and institutions.

The Senate Committee took a somewhat limited view of the power of the Center by stating that "[The Center] will have no power to effect changes apart from the force of its own recommendations." (U.S. Code Cong. and Adm. News, 1967, p.2409). However, this represents the minimum power of the

Center and should not constrain our goals or the methods we use to achieve changes in the system.

Another Dimension for Focusing Center Activity: Urbanization and Complexity

In fiscal year 1970, 54% of all civil case filings were in 1/5 (19) of the districts. 51% of the 401 authorized judgeships are in these 19 districts. This concentration of cases will increase with increasing urbanization. For example, in 1900 about 42% of our population lived in urban areas. In 1970 about 67% lived in urban areas. If past trends continue, the Bureau of Census predicts that 75% of the population will be living in urban areas by 1985. Thus, we may expect to see an increasingly higher percentage of the total U.S. Courts' caseload in the urban courts.

The implications of this concentration go beyond mere numbers. The urban courts tend to have a greater percentage of more complex cases and the complexity of litigation tends to increase as urban areas grow, as the size and number of business organizations increases, and as the complexity of business relationships increases. If we accept the thesis that the real difficulty is in the management, and the administrative functioning of the courts (see U.S. News and World Report, December 14, 1970, p.40), then increasing urbanization has a major impact in more complex management problems. It is axiomatic that the type of management, the organization, the policies, the procedures, etc. in a large organization are very different from those needed to run a small organization. The chief or manager of any organization must have a limited number of people reporting directly

to him. In organizational parlance this is referred to as the "span of control." The Chief Judge in a small court has a reasonable span of control. That is, he may have only two or three Judges who he works with in his capacity as Chief Judge. In the New York Southern Court the Chief Judge has a span of control of 26. This is an almost impossible situation in which to exercise any effective leadership. The answer to this problem is not clear at this time. A Court Executive for large District Courts will undoubtedly help. It may also be necessary to create an additional position called the Administrative Judge in the very largest courts. The point is we have not recognized this basic principle in our organizational policies. For example, we have a Chief Judge and a Clerk for a two or three-Judge court and we also have a Chief Judge and a Clerk for a 27-Judge court. Yet the management problems are entirely different and require a different organizational structure, different types of people and different types of expertise. This is especially true of the Clerk's Office. But it also strongly infers that the seniority method for selecting Chief Judges is potentially much more detrimental to the operation of an urban court than to the operation of a small District Court.

We have also failed to recognize differences in administrative complexity between small courts and large courts. If we consider the Judges in a court as a team, we can illustrate this difference by comparing the number of relationships between members of organizations. For example, in a 3-Judge court there are three sets of relationships between Judges, whereas in a 27-Judge court there are 354 sets of relationships. Thus, although a

27-Judge court would appear to be nine times as complex as a 3-Judge court, it is in actuality 118 times as complex if we consider all the relationships between Judges. This is not an absolute measure of complexity, but does illustrate that we have completely different dimensions in the management problems of large urban courts. Although we provide for quantitative differences in personnel and budget, we have not given sufficient attention to the qualitative differences. The Swiss historian, Jacob Burckhardt, foresaw that ours would be the age of "the great simplifiers." We may be unconsciously indulging in oversimplification when we fail to distinguish the complexity inherent in the urban courts.

Both concentration (i.e., 54% of the filings in 1/5 of the courts) and complexity must be considered in establishing priorities for Center programs. Most of the Center's efforts should be concentrated on the urban courts and although the results of most projects will be applicable to all courts, greater emphasis must be given to the nature and degree of the problems of urban courts.

Definition by Comparison and by Activity

Every person or organization is defined to some extent by its relationships with others. Therefore, the next two sections contain a discussion of the relationships between the Center and the Administrative Office and those between the Center and the Judicial Conference Committees.

Another dimension of definition has to do with what a person or organization "does." This is somewhat related to the existential question as to whether essence precedes existence or vice versa. Or to put it

differently, whether a person or organization is defined by the decisions it makes and the activities it undertakes. Regardless of our concepts of the Center, the ultimate definition will be in terms of Center programs, projects and activities. Therefore, the final section of this draft contains a number of proposed program areas and projects presented in summary form. These program areas will be discussed at meetings of the Center Board and decisions made as to priorities will result in further definition and focusing of the Center's image and its role in improving the courts.

THE FEDERAL JUDICIAL CENTER AND THE ADMINISTRATIVE OFFICE

It is important both to distinguish the role and mission of the Center from that of the Administrative Office and to describe their relationships. The Act creating the Center does not specifically address either subject except to provide for the Administrative Office to "provide accounting, disbursing, auditing, and other fiscal services," but the problem was recognized and discussed many times during the hearings.

Why Should the Center be Distinct from the Administrative Office?

The original House Bill (H.R. 6111) placed the Center in the Administrative Office. The reasons for the separation were summarized by the Senate Committee as follows: "The reasons that counsel against integration of the Center and the Administrative Office are practical as well as theoretical. In their research into the administrative practices and procedures of the courts, personnel management techniques, etc., members of the Center staff ought to be insulated from intraorganization loyalties or pressures, or both. Such insulation can best be provided by vesting the Federal Judicial Center with an identity of its own and an organizational independence of the Administrative Office, much of whose past and present effort the Center staff may have to review and evaluate. The Center's ultimate responsibility, your committee believes, should be to the Judicial Conference of the United States. The interposition of intermediate responsibilities can only serve to frustrate the Center's achievement of a work-product that is continually objective and independent. Such interposition is avoided in the amended version of the Bill." (1967 U.S. Code Cong. and Adm. News, p.2410).

In answering the question as to whether it would be feasible to merely augment the budget of the Administrative Office for training and research, the Reed Committee Report stated that "the Administrative Office is neither designed nor staffed for programs of continuing education and training or for undertaking scientific research in judicial administration." (Hearings, p.36).

Another reason for separation was presented in the hearings in the following dialogue:

"Mr. Finley: What you are saying . . . is that the Administrative Office must always operate with the confidence of the judges that it serves, and that realizing this, it cannot hope in some circumstances to give a thoroughly objective appraisal of what needs to be done, because such an objective analysis may meet with considerable criticism from members of the judiciary.

"Judge Hastings: That is right. I think it is self-evident, almost.

"Mr. Finley: Therefore, to get the objectivity that is needed, you really have to insulate the people doing the in-depth research into problems of judicial administration from those performing the housekeeping functions of the Administrative Office." (Hearings, p.20).

In his testimony, Warren Olney, III, then Director of the Administrative Office, stated that "The need for having autonomy in the Center is quite apparent for a lot of reasons. One of them is to make sure that the resources including personnel that are supposed to go into research and into training programs are not absorbed into the regular administrative

tasks of the Administrative Office as there would be a tendency to do." (Hearings, p.364).

Judge Harvey M. Johnson thought the Center should be separate from the Administrative Office because "the matter of engaging in policy studies and recommendations, etc., is not reconcilable with what the Administrative Office was intended to be. The Judicial Center should be coordinated with the Administrative Office, but not run by it, but by the Conference." (Hearings, p.54).

How Do Their Functions Differ?

The Senate Committee succinctly stated the basic differences. The Administrative Office is the "operations and housekeeping agency of the courts" and the Center is to be "their research and development unit." (1967 U.S. Code Cong. and Adm. News, p.2400). These basic functions have to be fleshed out by a long list of specific functions and projects. The line of demarcation may be distinct in some functional areas and a bit fuzzy in others. But each project or program must be evaluated and a determination made as to where it stands. At various times the Center may for a period be conducting work which lies in the gray area. In this context, the training function is quite clear and distinct. But we meet the need for more clearly delineated functional distinctions when we approach functions such as research, systems development, in-depth studies, etc.

Long before the Center was created, the Administrative Office staff was involved to some extent in these types of functions. The impossibility

of being able to meet their primary responsibilities and also perform the extensive in-depth analyses required to improve the courts was recognized by both Judges and the Administrative Office itself.

The distinction between the Center and the Administrative Office is often not seen or, as a minimum, misunderstood by people because they are looking at the wrong dimension or category. Thus, there is very little distinction in subject areas. Both are concerned with judicial statistics, probation, Clerk's Offices, etc. The difference, as pointed out above, is one of function or approach. In addition to distinguishing "operations" from research and development, the Senate Committee Report notes that the two organizations will pursue parallel courses and states that although the roles are "undeniably" related, they are "not essentially congruent." (1967 U.S. Code Cong. and Adm. News, p.2410).

The same situation exists in private corporations which usually have research and development divisions and operations or production divisions. The production division may be building mousetraps while the research and development division is studying the characteristics of mousetraps and designing better ones. The new design is then used by the production division.

One difference which is often very difficult for outsiders to see is the distinction between the type of data each organization collects, and/or the use to which data is put. Mr. Olney, in his testimony, stated that "[Administrative Office] statistics will be of vital importance to the Center, particularly for anything that relates to research . . ." (Hearings, p.364). He further noted that "the personnel that is in the Administrative Office to

handle those statistics is based on what our present needs are and the Center is going to have much greater need, I would surely hope, for making use of our statistics than we are making of them at the present time." (Hearings, p.365).

Although many additional uses can be made of the Administrative Office statistics, there is a great difference in depth in the type of statistics which are required for showing general caseload and the type of data required to analyze a problem and show causal relationships. Dr. Navarro, in his testimony, (Hearings, p.427) pointed out that the Administrative Office data is much too gross. He elaborated on this later in the testimony as follows: ". . . in looking at the problems of the courts throughout the Nation, it has become very apparent that a data-collection requirement does exist. [The current data is] very, very meager." "The first thing one would want to do is establish a data base which would allow the Center to aid the courts in the problems that they are having. I do not think you can significantly help the courts without this kind of data base." (Hearings, pp.435, 436).

It should be strongly emphasized that the above does not imply any criticism of the Administrative Office judicial statistics system. It is probably the best system that now exists in the nation. But it is insufficient in terms of the types of data the Center needs if it is to fulfill its role.

It is helpful to look at several current or proposed Center projects to clarify the roles of the two organizations. For example, the Time Study

may be used as the basis for a new weighted caseload. If it is so used, this will be an example of a tool or technique which has been developed by the Center which is then used for operational purposes by the Administrative Office. Likewise, the Center project on forecasting will develop a forecasting model which can then be used by the Administrative Office for developing specific forecasts. Neither of these studies, however, is performed in a vacuum. Continual coordination must be and has been maintained with Administrative Office people in planning, conducting and interpreting the results of these projects. In the computer area the purpose of Center projects is to develop new computer applications for courts and determine exactly how computers can best be used in judicial administration. The results of the Center's projects in this area can later be used by the Administrative Office either as an assistance in planning the Administrative Office system of the future, or through the use of some of the computer programs being developed by the Center. Any of these projects could be performed by the Administrative Office if they had additional personnel. But the reasons for this separation, although given above, do not dictate absence of communications or coordination between the two organizations.

Center Assistance to the Administrative Office.

As can be seen from some of the above examples, the Administrative Office is one of the clients of the Center, just as the courts are clients. In fact, the Administrative Office, with their extensive experience in operation, will often be "problem definers" for the Center. Mr. Olney, in his

testimony, pointed out another way in which the Center can be of support to the Administrative Office. "... the Center itself and its report should be of very great assistance to the Administrative Office in getting the additional help that it will need. [Federal Judicial Center reports to the Judicial Conference] ought to highlight very clearly what is required in the Administrative Office to enable it to give adequate support." (Hearings, p.365).

The Role of the Director of the Administrative Office as a Member of the Center Board.

Even though the functions of the two organizations can be distinguished, there will always be some problems of potential duplication or competition between them. Mr. Olney focused on this problem also in his testimony. "... the Reed Committee and the Judicial Conference, while desiring to give the Board and its Chief a high degree of autonomy in conducting the activities of the Center, also desired to avoid so great a separation from the Administrative Office as to place the two organizations in a position of potential rivalry or competition. It is to avoid this possibility and to insure proper coordination and cooperation between the activities of the Center and the activities of the Administrative Office that the Director of the Administrative Office is to be made ex officio a member of the Board of the Federal Judicial Center." (Hearings, p.370).

Risk Taking Distinction.

Because the Administrative Office works under the supervision and direction of the Conference and because it has very heavy operational

responsibilities, it cannot afford to stick its neck out if such an action involved a risk of detrimentally affecting ongoing operations. The Center's position is quite different. It was designed to be an organization which would be able to stick its neck out occasionally without incurring the risk of harming operational effectiveness. The challenge to the Center in this respect was boldly put forth by Chief Judge Bazelon in his testimony where he emphasized that "The Center cannot behave in the timid manner which has marked the past." (Hearings, p.245).

The distinction between the general mission of the Judicial Conference the the Center is covered elsewhere in this paper. We are concerned here with the nature of the relationship between the Center and the Judicial Conference committees, the constraints the committees might place upon Center operations, and the potential duplication between Center activities and Judicial Conference committee activities.

Testimony Before Congress by the Center. Does Congressional Testimony by the Center Have to be Cleared by the Judicial Conference?

Although not specifically covered in the statute, it would seem the Center's policy should be one of not taking a position on any proposed legislation. Congressional testimony by the Center should consist only of a report of the findings of study or research conducted by the Center which may be relevant to proposed legislation. The Center should not be an advocate, but should function as an expert witness. Since the Center is often asked to comment on proposed legislation, close coordination should be maintained with the concerned Judicial Conference committee so it will be aware of the Center's comments or of the planned testimony of the Center when it is asked to testify. This means the Center must continually monitor the activities of Judicial Conference committees and maintain the coordination necessary to know the position committees are taking on any proposed legislation. This also means the Center should circulate its program plans and priorities to all Judicial Conference committees so they are completely informed of areas

the Center is investigating. Over a period of time, more formal mechanisms for coordination will develop on a case-by-case basis. Furthermore, as suggested below, some programs undertaken by the Center may result in reducing the scope of activity of some Judicial Conference committees or may eliminate the need for one or more committees or subcommittees.

There is no requirement in the statute for the Center to clear such testimony with the Judicial Conference. Section 620(b)(2) requires the Center "to develop and present for consideration by the Judicial Conference of the United States recommendations for improvement of the administration of management of the courts of the United States." Section 623(b) directs the Board to "transmit to Congress and to the Attorney General of the United States copies of all reports and recommendations submitted to the Judicial Conference of the United States. The Board shall also keep the Committee on the Judiciary of the United States Senate and House of Representatives fully and currently informed with respect to the activities of the Center." This Congressional directive indicates that Congress did not intend for Center recommendations to be cleared or approved by the Judicial Conference. Close coordination with the Judicial Conference is dictated by principles of good administration, but the Center's activities and its communications to Congress are not expressly constrained by any requirement for Judicial Conference clearance or approval.

How Should the Center Respond to Judicial Conference Requests?

Requests for staff support or for conducting a specific study come

through the Conference from one of its committees. Therefore, when we are talking about relationships with the Conference, we are in reality talking about relationships with committees. Paragraph (4) of §620(b) requires the Center, consistent with the performance of its research, development, and education functions, to provide staff, research, and planning assistance to the Judicial Conference and its committees. Senate Committee Report No. 781 states that "Paragraph (4) makes clear that the work for which the Center is established, the programs its Board prescribes pursuant to its research, development, and education functions, take precedence over requests for staff by the Conference." Although this seems to answer the question about requests for staff support, it does not necessarily answer the problem of requests for studies or research projects. Since there is a great deal of mutual agreement about the most serious problems facing the United States Courts, it can be expected that research or development programs prescribed by the Center Board will often be the same programs which have been requested by a Judicial Conference committee. However, even though a list of requested projects prepared by a Judicial Conference committee might be identical with a list of projects prescribed by the Center Board, the Board has the authority to establish priorities for performance of the projects. Any problems which may now occur between priority requests by Judicial Conference committees and the priorities prescribed by the Board will probably diminish as the Center becomes more effective. The Senate Committee recognized this in its statement that "As the Center undertakes to study and report on certain aspects of court administration, the need for staff, research, and planning assistance

by particular Judicial Conference committees ought to diminish."

Duplication, Preemption and Distinctions Between the Center Role and Judicial Conference Committees' Roles.

One of the purposes of the Center was the elimination of the duplication which existed among Judicial Conference committees. The Reed Committee Report noted that "the difficulties of conducting so many interrelated activities through so many overlapping but separate committees with proper efficiency and effectiveness were obvious." (Hearings, p.451). Since the Center's role is separate from that of the committees, the possibility of duplication between committee activity and Center projects exists. Precluding the occurrence of duplication is primarily a matter of close coordination and tighter communication with Judicial Conference committees. The very nature of the problems which need to be studied in fact militates against their being committee projects. The Reed Committee recognized that "the problems of the federal courts will continue to grow in size, number and difficulty, while the attempt to meet these problems by committee study and improvised programs will prove to be less and less adequate." (Hearings, p.372).

One of the most basic questions is whether the existence of the Center will eliminate the need for some Judicial Conference committees. In other words, will a group of Center projects preempt a given committee's functions? This problem was broached several times during the hearings. When Mr. Olney was testifying on the Center legislation, Mr. Finley (Chief Counsel of the Subcommittee on Improvements in Judicial Machinery) wondered whether "in some instances the functions of the Center might not completely replace those that

are performed by the Conference committees." The colloquy after that question went as follows: (Hearings, p.366).

"Mr. Olney: I do not think it would replace the supporting personnel committee. What it would do would be to make, I would imagine, an inquiry and a study which might go to the very fundamentals of the whole organization of our system of supporting personnel.

"That committee on supporting personnel in the past has not felt that it was charged with or had the facilities for making any such study. They have accepted clerks, for example, traditional office and traditional officer, without question, and they are concerned with duties and pay and whatnot in the clerk's office, but when you get to the question as has been suggested in some areas that that kind of organization may be outdated and that perhaps what is needed is somebody with a different title and somewhat different authority to perform those functions, who would be in the nature of a general manager for the local court, having in charge and being responsible for all the personnel and for all the mechanics and also for the mechanical part of processing the papers that make up cases.

"Mr. Finley: So, you envision the Center as involving itself in more fundamental questions, and the continuation of the Judicial Conference committees more or less keeping tabs, on a month-to-month and year-to-year basis, of the administration of a particular area of the law.

"Mr. Olney: Well, this is quite right. A committee, like the supporting personnel committee, could not possibly undertake a study of this kind. They are a group of judges doing their regular court work. They meet twice

a year and they could not themselves undertake this kind of a thing. The Center could."

Mr. Olney, in his written statement, emphasized that "The creation of the Federal Judicial Center will not eliminate or supplant the committees of the Judicial Conference. . . [In fact it] will need its standing committees even more than in the past." (Hearings, p.378).

Another example of the difference between Center and committee activities was illustrated in another part of Mr. Olney's testimony in the following exchange: (Hearings, p.365).

"Mr. Finley: There is one point I would like to explore with you a little further. I am still unclear what the relationship will be between the Conference committees and the staff of the Center. For example, if one thinks in terms of the Committee on the Operation of the Jury System's activities in recent months, one wonders whether, if such a Federal Judicial Center had been in existence, the Jury Committee would have operated in the same way it did operate or whether its services would not have been performed substantially by the staff and the Board of the Center?

"Mr. Olney: Well, in connection with that particular committee, I think that the committee would have functioned just the way it did even though we had had a Center. The problem there was really not one for the Center. The problem there was for the judges as judges to give consideration to principles in the judicial system. Should we use the keyman principle? Should we abandon that and use the principle of random selection from a fair cross section of the community? I do not think the Center or its staff could have

helped the committee at all on this."

Thus, although there is a possibility that the scope of certain committees will be reduced and that the need for some committees may be eliminated, this occurrence was definitely not seen as a foregone conclusion by the architects of the Center. The several types of functions which Judicial Conference committees perform should be recognized. For example, several committees are carrying out the mandate of §331 which requires a continuous study of the operation and effect of the general rules of practice and procedure and to recommend changes in and additions to the rules. Other committees are the vehicle through which supervision and direction of the Administrative Office by the Judicial Conference are exercised. (See §§604-605). The role of the Center neither impinges on nor can replace the functions of committees that fall into either of the two above categories. (Note that an analysis of the functions and operations of the Judicial Conference and its committees will be covered in a separate report. This report is concerned only with the relationship between the Center and the current Judicial Conference committee structure.)

Probably the most vital and important type of relationship between the Center and Judicial Conference committees lies in another area, viz: the ways in which the Center can suggest its work products and achieve implementation of recommendations via close coordination with committees. The basic problem with change in any system or with any organization of human beings is the resistance to change which is inherent in all societies, all cultures, all institutions and especially the courts. The precursor to any

change is the creation of a climate of acceptance within the group that is to be changed. Although change can be recommended from outside or from above, it will only come about if the individuals in the organization want to change. From a psychological viewpoint, this involves changes in attitudes. It requires emotional involvement, mental participation and the development of a commitment for change by the indigenous members of the community. This, of course, is one of the functions of the Center Board. But they alone cannot spread themselves wide enough to have the required degree of impact. Judicial Conference committees should, therefore, also be viewed as a vehicle through which additional missionaries and advocates can be recruited to help persuade all members of the community of Judges to change and to help create a climate of acceptance and commitment to change.

Studies of the Center may also result in recommendations for change in the Administrative Office. Since the Judicial Conference committees are the vehicles through which the Conference supervises and directs the Administrative Office, they should prove in the future to be a valuable medium through which to institute recommended changes in Administrative Office structure or operations.

PROPOSED PROGRAM AREAS

The law develops through cases and controversies. The contours of the role of the Center will develop through its programs. At the October 19th, 1970 Board Meeting, the Board of the Center prescribed four priorities. Number four was:

"The development of a plan which will assure a continuing program to improve techniques to handle the ongoing, daily business of the courts. This should be done through the educational programs and seminars of the Center and by testing and experimental projects in selected districts."

The initial work in this area has consisted of developing a number of proposed program areas. No priorities (except for the first three established by the Board at the October 19, 1970 meeting) or structures have been assigned to these program areas at the present time. The purpose of the list is to propose a series of activities for which the Board will assign priorities and will structure various areas into an overall Center plan. The staff has categorized these program areas into several structural schemes. For example, they can be divided into those which are directed toward improving efficiency, those directed toward increasing resources and those directed toward reducing or modifying input into the courts. It is also possible to structure the program areas in terms of goals. A possible set of categories of this type could be: (a) those relating to reducing case delay and/or improving Judge productivity; (b) those aimed at anticipating and planning for the future; (c) those aimed at improving supporting operations and

general administration of the courts; (d) those aimed at improving the exercise of judicial responsibility in the corrections area; (e) those aimed at reducing input to the Federal Courts; and (f) those related to training and continuing education. The latter category is the most clear-cut function and although there are problems as to the specific types of educational techniques which should be used, the training function itself is less of a problem in terms of determining priority. Furthermore, the training function overlaps all other program areas since the results of many of the projects would then become part of the material for training courses and seminars.

The program list is given in the paper entitled "Summaries of Proposed Programs and Projects for the Federal Judicial Center" dated January 23, 1971. A short summary is provided for each program area. However, in most instances the summary itself is not an adequate description. Therefore, the staff has prepared memoranda which go into further detail as necessary for these areas.

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