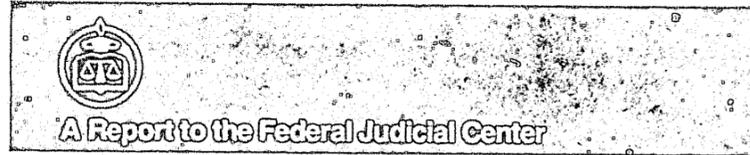


2137



The First Decade of the Circuit Court Executive: An Evaluation



98501
10586

98501

THE FIRST DECADE OF THE CIRCUIT COURT EXECUTIVE: AN EVALUATION

By John W. Macy, Jr.

98501

U.S. Department of Justice
National Institute of Justice

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this ~~copyrighted~~ material has been granted by
Federal Judicial Center

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the ~~copyright~~ owner.

1985

This publication is a product of a study undertaken in furtherance of the Federal Judicial Center's statutory mission to conduct and stimulate research and development on matters of judicial administration. The analyses, conclusions, and points of view are those of the author. This work has been reviewed by Center staff, and publication signifies that it is regarded as responsible and valuable. It should be emphasized, however, that on matters of policy the Center speaks only through its Board.

THE FEDERAL JUDICIAL CENTER

Board

Chief Justice of the United States
Chairman

Judge Daniel M. Friedman
*United States Court of Appeals
for the Federal Circuit*

Chief Judge Howard C. Bratton
*United States District Court
District of New Mexico*

Judge Arlin M. Adams
*United States Court of Appeals
for the Third Circuit*

Judge A. David Mazzone
*United States District Court
District of Massachusetts*

Chief Judge Warren K. Urbom
*United States District Court
District of Nebraska*

Judge Martin V. B. Bostetter, Jr.
*United States Bankruptcy Court
Eastern District of Virginia*

Director of the Administrative
Office of the United States Courts

Director
A. Leo Levin

Deputy Director
Charles W. Nihan

Division Directors

Kenneth C. Crawford
*Continuing Education
and Training*

William B. Eldridge
Research

Gordon Bermant
*Innovations
and Systems Development*

Alice L. O'Donnell
*Inter-Judicial Affairs
and Information Services*

1520 H Street, N.W.
Washington, D.C. 20005
Telephone 202/633-6011



Cite as J. W. Macy, Jr., The First Decade of the Circuit Court Executive: An Evaluation (Federal Judicial Center 1985).

FJC-R-85-4

TABLE OF CONTENTS

FOREWORD vii

I. PURPOSE OF THE EVALUATION..... 1

II. STEPS TOWARD CREATION OF THE POSITION..... 3

Centralization Versus Decentralization..... 3

Primary Power of Circuit Judges..... 4

Definition Through Legislative Process..... 5

Alleged Threat and Conflicts of the New Position 6

The New Chief Justice as Advocate for Change 7

The House Halts the Legislative March..... 8

Compromises Produce Ultimate Enactment..... 8

Enter the Board of Certification 9

High Rank for Circuit Executive 10

III. IMPLEMENTING THE LEGISLATIVE INTENT..... 13

Activation of the Board of Certification 13

Standards of Eligibility 15

Process of Evaluation 16

Where Are the Recruits? 16

Preparing the Way for the Circuit Executive 17

IV. PERFORMANCE OBJECTIVES AND DISCUSSIONS..... 21

General Manager in Charge of Nonjudicial Functions..... 21

Administrative Assistant or Aide-de-Camp? 22

Secretariat to the Circuit Judicial Council 23

Management Analyst and Consultant 24

Agent of the Administrative Office 25

External Communicator for the Circuit 26

Administrative Adviser to the District Courts 26

High and Diverse Expectations..... 27

V. EVOLUTION OF THE POSITION OVER THE DECADE 29

Eight Circuit Executives Selected in 1972..... 30

Appointments Since the Initial Selections..... 31

Stability Versus Turnover..... 32

Pilot Test in the District Courts..... 33

Evaluation of Circuit Executives in 1978 37

Current Evaluation of Circuit Executives..... 40

1. Secretariat to the Judicial Council 42

2. Circuit Judicial Conference 42

3. Relieving the Circuit Chief Judge of Administrative Matters 42

Contents

4. Budgeting	45
5. Personnel and Training Responsibilities	46
6. Space, Equipment, and Furnishings	48
7. Court Security	48
8. Collection and Dissemination of Data	49
9. Liaison with the Administrative Office and the Federal Judicial Center	49
Variations on the Main Theme	50
1. Personnel-Related Activities	51
2. Management Consulting	51
3. Public Information	52
4. Administrative Supervision	52
5. Assistance to the District Courts	53
Summary of Current Effectiveness of Circuit Executives	53
VI. ROLE OF THE BOARD OF CERTIFICATION	55
Eleven Members of the Board in Ten Years	55
Absence of Selection Authority	57
Similarity to the Civil Service Commission	57
Time-Consuming Three-Step Process	58
Recertification After Three Years	60
Certified Names Receive Mixed Reactions	61
The Quest for Quality	62
Whither the Board Now?	62
VII. RECOMMENDATIONS FOR FUTURE DEVELOPMENT	65
1. The Chief Judge	66
2. Priority of Functions	66
3. Peer Relationship and Partnership with Judges	67
4. Creative and Influential Aspects of the Position	67
5. Optimum Degree of Decentralization	68
6. More Positive Recruiting	68
7. Adequacy of Support Personnel	69
8. Relationship Between the Circuit Executive and the Circuit Clerk	70
9. Effort to Have Chief Judge and Circuit Executive Reside in Same Location	70
10. Future Mission of the Board of Certification	71
11. Study All Areas of Court Activity	72
12. More Active Relation to Districts	73
13. Overcome Professional and Geographical Isolation	73
APPENDIX: Tables 1 to 13	75

LIST OF TABLES

1. Applicants Certified by Board of Certification, 1972-1983	77
2. Number of Candidates Certified and Recertified, 1972-1983	79
3. Number of Appointments Made, 1972-1983	79
4. Number of Appointments per Circuit and District, 1972- 1983	79
5. Circuit and District Executives Appointed, 1972-1983	80
6. Number of Lawyers and Nonlawyers Appointed, 1972-1983	81
7. Sources for Lawyers and Nonlawyers, 1972-1983	81
8. Number of Appointments Made from Within Circuits or Districts, 1972-1983	82
9. Reasons for Departure of Appointed Executives, 1972-1983	82
10. Years of Appointment and Certification of Current Incum- bents	82
11. Members of the Board of Certification, 1972-1983	83
12. Location of Chief Judges and Circuit Executives, December 1983	84
13. Comparison of Courts Participating in District Executive Program	84

FOREWORD

In August 1969, shortly after assuming office, Chief Justice Warren E. Burger warned that "we must take some emergency steps to meet what may be called problems of deferred maintenance and modernization of our courts' machinery. . . . the primary available option is to secure skilled managers to run the administrative machinery so that judges can get on with what they are presumed to be qualified to do—namely, trying and disposing of cases." The Chief Justice's remarks prompted creation of the Institute for Court Management to provide a resource for the training of such skilled managers. His address also resulted in an act of Congress establishing the position of circuit executive in the federal judicial system. The act also created a national Board of Certification and specified that only individuals certified by this board would be eligible for appointment as circuit executives.

The signing of the circuit executive bill into law was an important step; it made possible the development of an institution that has become important in the administration of the federal courts. It is worth emphasizing, however, that the legislation was not mandatory; each of the courts of appeals had the option to accept or reject this new position. More significantly, it remained for the circuit executives and the judges whom they served to develop this new position, which today has evolved into an institution of major importance in the federal judicial system. By now every one of the twelve regional circuits has chosen to appoint a circuit executive, and a pilot program is under way in a limited number of district courts to explore the utility of district court executives.

While it has been a relatively short time since this legislation was passed, enough experience has been accumulated in the various circuits to make it useful to review the functions performed by circuit executives as well as the selection process that identifies those who are eligible for appointment. The Center has been especially fortunate in persuading John W. Macy, Jr., to undertake this task. Mr. Macy has been a member of the Board of Certification since its inception in 1971, having been elected, pursuant to statute, as one "experienced in executive recruitment and selection." He came to the board with a particularly rich background, having served, for example, as executive director of the Civil Service Com-

Foreword

mission from 1953 to 1958 and as chairman from 1961 to 1969. He also served as president of the Corporation for Public Broadcasting from 1969 to 1972 and as director of the Federal Emergency Management Agency from 1979 to 1981.

The "skilled managers" envisioned by the Chief Justice in 1969 have already contributed much to the federal judicial system. It is our hope that this report will provide a better understanding of those contributions and of the potential inherent in the role of the circuit executive.

A. Leo Levin

I. PURPOSE OF THE EVALUATION

In response to a rising tide of advocacy for improvement in judicial management, a circuit executive position was authorized by the Congress in an act signed by President Nixon on January 5, 1971. The direct appeal of the newly appointed Chief Justice, Warren E. Burger, for improvements in court administration had provided the final thrust in obtaining this enactment.

Fourteen months later, in March 1972, a roster of fifty-two eligible candidates for circuit executive positions was released by the statutory Board of Certification. Within ninety days, eight of the positions were filled by individuals from that roster. Other appointees followed at later dates up until the decision by the First Circuit to appoint an executive in 1982. More than a decade has passed with circuit executives in place and performing the functions prescribed in the statute, as interpreted by chief judges and circuit councils.

With more than ten years of experience now recorded, it is appropriate and prudent to evaluate the impact of this additional capability upon the administrative behavior of the courts. Have the high expectations of the advocates for such a position been realized? Has the realistic application of the prescribed functions contributed to higher court productivity and to more efficient delivery of justice at the appellate level? What functions have received priority attention—administrative assistance to the chief judge, analysis of court workload and procedures, day-to-day administration of court functions? Has the circuit executive been effectively incorporated into the leadership of the circuit, in terms of relationships with the judges, the chief clerk, and other court personnel? Have the circuit executives selected during this time been able to bring to the circuits the new management elements that were originally desired? Has the circuit executive become a redundant force in court administration? Has the burden of ministerial details, such as the arranging of circuit conferences, consumed an unduly large portion of the circuit executive's time? How effective has the Board of Certification been in attracting, evaluating, and certifying candidates for these positions?

These and other questions have prompted the preparation of the present review of the circuit executive position and its functions at

Chapter I

this point in the evolution of court administration. The observations and evaluations offered are drawn largely from the experience and observations of the author as a member of the Board of Certification since its inception in 1971. Other conclusions are based on conversations with officials who have been most familiar with the development of the executive position and on status reports provided by circuit executives. The report is intended to be a constructive treatment of this landmark undertaking, with the objective of providing recommendations for future action in achieving the desired and significant results.

In the development of the report, valuable information came from the following reports published or prepared by the Federal Judicial Center:

1. *Implementing the Circuit Executive Act* (October 1971), by J. L. Ebersole, a paper covering proposed responsibilities of circuit executives.
2. *Circuit Executive Guide* (January 1972).
3. *The Impact of the Circuit Executive Act* (April 1979), by John T. McDermott and Steven Flanders.
4. *Operation of the Federal Judicial Councils* (December 1978), by Steven Flanders and John T. McDermott.
5. *Administrative Structures in Large District Courts* (December 1981), by Philip L. Dubois, a report to the Conference of Metropolitan District Chief Judges.
6. *Administering the Federal Judicial Circuits: A Survey of Chief Judges' Approaches and Procedures* (August 1982), by Russell R. Wheeler and Charles W. Nihan.

This evaluation is viewed as a timely step in anticipation of congressional review of the implementation of the 1971 Circuit Executive Act and in consideration of the extension of the court executive concept to additional district courts.

II. STEPS TOWARD CREATION OF THE POSITION

The circuit executive position was the product of evolution, not revolution. It was created out of three generations of rhetoric, studies, and growing discontent with the status quo in court administration. It was shaped by the process of political compromise among the three branches of government, the legal profession, and the advocates of judicial reform. Preceded by other developments aimed at improved court management, it represented a limited move to inject modern organizational and analytical capabilities into one level of the federal judicial system.

A brief review of the steps toward the position's creation can help set the stage for the arrival of the circuit executive in 1971.

That basic act of 1789 which constructed the judicial system established the individual district judges as the sole administrators in the court structure. Nearly a century passed before some degree of central management appeared. This limited function was performed in the executive branch by the Office of the Attorney General. In contemporary management terms, those operations would scarcely meet the minimum standards. They included centralized bookkeeping and reporting functions and the use of "management auditors" to observe the efficiency of the courts.

Centralization Versus Decentralization

It was not until the time of Chief Justice William Howard Taft that specific actions were taken to have the judiciary assume direct responsibility for its own management. The first step was assembling the senior judges (chief judges) of each circuit for regular meetings. This modest beginning was sanctified by the enactment of the Judicial Conference of the United States statute in 1922. At that time the Conference was officially recognized and assigned its centralizing responsibilities.

The inadequacy of this collegial mode of administration became increasingly evident in the following years, particularly with the increased court activity during the period of the New Deal. Peri-

odic meetings did not meet the requirements of then-existing conditions. As a consequence, at the initiation of the judiciary, in 1939 the Congress created the Administrative Office of the United States Courts. But this enactment occurred only after significant debate over the proper extent of centralization to be vested in the new administrative entity. Historic records reveal that some viewed the director of the Administrative Office as the agent of a strong Chief Justice, with involvement in all aspects of court management. The advocates of this view proposed that members of the director's staff reside in the circuits to provide direct management assistance to the courts. Perhaps this was the first precursor of the circuit executive concept.

Certain members of Congress and portions of the judiciary opposed such a high degree of centralization as a possible threat to the independence of individual courts. In the process of compromise, therefore, the Administrative Office was limited to performing coordinating and housekeeping responsibilities. The primary task of management was assigned to individual circuit judicial councils. Those newly formed institutions were to exercise broad power to "make all necessary orders for the effective and expeditious administration of the business of the courts within the circuit." The Administrative Office would supply reports on the state of the courts' business to the councils, which would take whatever corrective action was deemed appropriate.

Primary Power of Circuit Judges

This combination of organizations was to become the backbone of decision making and supervision for the administration of the federal courts. "The statute vest[ed] primary power, and therefore full responsibility, in the circuit judges for the management of the federal judicial system." This broad grant of power to the courts was rarely used to the extent possible. Even if there had been a desire to reach the outer limits of the mandate, the means for execution were not available to the circuits themselves. The resulting inaction attracted increasing attention throughout the 1950s and 1960s. In a 1959 report, the Senate Appropriations Committee blamed the councils for "a grave lack of administrative direction" in the operation of the business of the U.S. courts.

Criticism such as this, and increasing clamor for the elimination of these shortcomings, led to renewed discussions about possible improvements in the system. The attention attracted to the disappointing performance of the circuit councils revealed a need for the

provision of assistance to the councils in the form of professional management expertise. This conclusion was accompanied by a Darwinian belief that there was a "missing link" between the courts and the Administrative Office that could be closed if the councils possessed administrative advisory capacity. One judicial witness characterized such administrative assistance as "indispensable to the proper functioning of our larger circuits." Through rhetorical escalation, this assistance emerged as the court executive—and in all circuits, not just the larger ones, when the specific proposal was advanced. But the justification was primarily based on improving the effectiveness of the judicial councils. The Circuit Executive Act was to be described as "a vitalization of" 28 U.S.C. § 332. In other words, the judicial councils would continue to supervise management of the courts, and the executives would give them an enlarged capability to act effectively.

Definition Through Legislative Process

The circuit executive position received sharper definition in its legislative evolution. It initially appeared on the congressional stage on February 29, 1968—almost three years prior to its enactment—as bill S. 3062, with this concise description:

Each circuit's judicial council shall appoint an administrator of the courts of that circuit, who shall perform such administrative duties as the Chief Judge of the Circuit shall from time to time require.

Each administrator of the courts shall be paid at a salary to be established by the Judicial Conference of the United States and shall serve at the pleasure of the circuit council.

Later in 1968, then-Chief Justice Earl Warren presented his supporting brief in these terms:

The burden of management is placed upon judges whose workload as judges requires their full attention and time, with the consequence that either the decisional process, on the one hand, or administrative efficiency, on the other, must suffer. . . . With the circuit administrator in charge the problems now left to ad hoc solutions by judges fully occupied with other duties could be dealt with through the best modern management techniques.

In keeping with traditional legislative drafting practices, the authors of S. 3062 intentionally offered their authorizing language in broad, general terms in the hope that the more detailed specification could be left to judicial discretion. They thereby avoided the

controversy-generating definition of functions, organizational structure, and internal and external relationships. Likewise, the thorny issues of method of selection, criteria for certification, power, salary, and tenure were deferred for later resolution.

The formal hearings on the bill were held on July 25, 1968. Chief Judge J. Edward Lumbard of the Second Circuit led the roster of advocates with this vision of the potential benefits to be gained from the creation of the position:

Suffice it to say there is now just too much administrative work for the chief judge of many of our circuits to handle adequately without more help. The result is that many things which should be done cannot be done at present. Our federal system has made the circuit councils and the circuits the vital centers for court administration: if they are to function as such and to discharge their duties of supervising the administration of justice in the circuits, they must be provided with the means for doing the job.

In an accompanying statement, Ernest C. Friesen, then director of the Administrative Office, attempted to define the responsibilities of the circuit executive through this statement of functions: "His job would be to see that the business management of the courts, including accounting, personnel, purchasing, payroll, and space allocation, would be carried on in an efficient way."

Alleged Threat and Conflicts of the New Position

But these pleas for general authority were countered by those who feared that the new position would pose a threat to judicial powers and would come in conflict with the role of the clerk. Such objections led to the formulation of ever more precise assignment of duties in the legislation itself. Soon a congressional job description was concocted and inserted in the bill that was reported out of the Subcommittee on Judicial Machinery. The prevailing view was that this specificity would enhance uniformity, promote greater implementation, and eliminate the feared conflicts of interest.

The following year found these provisions incorporated in the proposed Judicial Reform Act (S. 1506) as title V. In this version, fourteen specific duties were assigned to the recommended position, along with an assurance that the executive would clearly serve under the supervision of the chief judge. Importantly, the establishment of qualification standards for the position was left to the Judicial Conference, without guidance of any kind. The provision requiring all circuits to create the position was continued in this new legislation.

A diversionary interest of greater magnitude to judge and legislator alike came in the omnibus judgeship bill (S. 952) that would add seventy new judges to the federal roster. By diverting attention from the subject of administration, this action underscored the necessity for effective management in an enlarged judicial system. In fact, it prompted arguments in favor of executives for the larger district courts as well as for the circuits. As a consequence, S. 1506 was rewritten and inserted in S. 952, providing authority for executives in eighteen multijudge districts but eliminating the detailed list of duties in apparent response to the urging of the Administrative Office and the Judicial Conference.

Objections to this legislation were not overcome. As might have been predicted, the Clerks' Association asserted that the clerk already *was* the circuit executive. The legislation, they claimed, would sanction a duplication of functions. This opposition was a signal of future tension in the relationship of the two positions after enactment. The problem was temporarily dealt with through the reinsertion of the specific list of duties previously devised.

An intermural contest between the Judicial Conference and the Administrative Office developed over which body would submit a list of qualified candidates to the circuits. This denouement foreshadowed the injection of another entity, the Board of Certification.

The New Chief Justice as Advocate for Change

Concurrent with the legislative play came a strong argument from the new Chief Justice, Warren E. Burger. In one of the most historic of his messages, delivered at the traditional breakfast sponsored by the Institute of Judicial Administration during the American Bar Association meeting in Dallas on August 12, 1969, he expressed his deep concern over the slow pace of judicial proceedings. He forcefully asserted that judicial delays were at least partially attributable to "the lack of trained managers." He asked his listeners, "Is it not a paradox that, except in details a civil or criminal trial today, for example, is essentially the same as in Daniel Webster's times?" In a highly contemporary reference he expressed his consternation over the fact that the United States had trained more astronauts than court executives. He concluded with this challenge:

We must take some emergency steps to meet what may be called problems of deferred maintenance and modernization of our court's machinery. . . . the primary available option is to secure

Chapter II

skilled managers so that the judges can get on with what they are presumed to be qualified to do—namely trying and disposing of cases.

The House Halts the Legislative March

New judges were more attractive than new administrators. So the House halted the legislative march toward the circuit executive. The provisions relating to executives were deleted from the omnibus judgeship bill with this rationale:

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

It was June 1970 before a House version of a circuit executive bill entered the arena, as H.R. 17901 and H.R. 17906. It included major changes: a new, detailed job description, removal of the Administrative Office from the selection process, discretionary rather than mandatory application of the position, and limitation to the circuits. Further effort was made at hearings to clarify and define the relationship between the executive and the clerk. The paramount role of the circuit council was emphasized.

Compromises Produce Ultimate Enactment

The reconstructed bill passed the House. With certain modifications, it also cleared the Senate. In conference, further language changes reflected the compromises necessary to gain acceptance. It became an amendment to title 26, section 332, of the U.S. Code, thereby placing the new position more firmly in the orbit of the judicial councils. After specifying that the circuit executive "shall exercise duties delegated to him by the circuit council," the statutory

Creation of the Position

language indicates that the duties delegated may include, but not be limited to, these actions:

- (1) Exercising administrative control of all nonjudicial activities of the court of appeals of the circuit in which he is appointed.
- (2) Administering the personnel system of the court of appeals of the circuit.
- (3) Administering the budget of the court of appeals of the circuit.
- (4) Maintaining a modern accounting system.
- (5) Establishing and maintaining property control records and undertaking a space management program.
- (6) Conducting studies relating to the business and administration of the courts within the circuit and preparing appropriate recommendations and reports to the chief judge, the circuit council, and the Judicial Conference.
- (7) Collecting, compiling, and analyzing statistical data with a view to the preparation and presentation of reports based on such data as may be directed by the chief judge, the circuit council, and the Administrative Office of the United States Courts.
- (8) Representing the circuit as its liaison to the courts of the various States in which the circuit is located, the marshal's office, State and local bar associations, civic groups, news media, and other private and public groups having a reasonable interest in the administration of the circuit.
- (9) Arranging and attending meetings of the judges of the circuit and of the circuit council, including preparing the agenda and serving as secretary in all such meetings.
- (10) Preparing an annual report to the circuit and to the Administrative Office of the United States Courts for the preceding calendar year, including recommendations for more expeditious disposition of the business of the circuit.

To erase any doubt about the location of the new positions, the statute declared that the performance of these duties "shall be subject to the general supervision of the chief judge of the circuit."

Enter the Board of Certification

An additional institutional device in the selection process of the circuit executive was inserted in subsection F—the Board of Certification. The nature of this new unit was described in some detail:

1. It was to set "standards for certification" of the applicants for these new positions.

2. Those standards would "take into account experience in administrative and executive positions, familiarity with court procedures, and special training."
3. Its membership would consist of five persons, three of whom would be elected by the Judicial Conference—with the stipulation that at least one would "be selected from among persons experienced in executive recruitment and selection"—and two of whom would be the incumbent directors of the Administrative Office and the Federal Judicial Center. The members selected by the Judicial Conference were to serve for three-year terms. Members who served as officers of the United States would serve without compensation; others would receive the equivalent to the daily rate of GS-18 when actually engaged in board service.
4. It would consider all persons who applied for certification, certify qualified applicants, maintain a roster of all persons certified, and publish the standards for certification.
5. In even more precise dictation, it was required to remove a person's name from the roster after three years unless recertified. A quorum of three members was prescribed for fixing standards and certifying applicants, but the three members had to be in agreement on such decisions.
6. The director of the Administrative Office would provide staff assistance; expenses would be borne by travel and miscellaneous funds of the federal judiciary.

High Rank for Circuit Executive

The circuit executive would be paid a salary established by the Judicial Conference, not to exceed the annual rate of level V of the Executive Schedule. That ceiling was soon to become the salary for all appointees: \$36,000 in 1971; \$47,500 in 1977; and \$63,800 in 1983. This salary level evidenced the legislative intent to place the position on a comparable plane with directors of major executive agencies or bureaus and above the supergrade positions representing the pinnacle of the career civil service. The circuit executive's position was roughly equivalent to the rank of a three-star general.

No tenure was granted. The circuit executive would serve at the pleasure of the circuit judicial council.

The compromises in the final bill were designed to accommodate conflicting views. The Board of Certification represented a check on

possible judicial patronage in filling the posts and on possible automatic promotion of clerks to this new level. But the board membership ensured involvement of both the Administrative Office and Federal Judicial Center and appointed judges in setting standards of eligibility and certifying candidates. The Judicial Conference would appoint three members, with only one required to have direct experience in the recruitment functions prescribed for the board. The concerns of the clerks were presumably met in the statement of circuit executive duties. The assignment of supervision to the chief judge and the ultimate appointment of candidates by the circuit council provided a degree of decentralization, while future authorizations for the executive staff were subjected to central approval by the Administrative Office. The duties were spelled out in such detail that there was little threat of incursions into new areas of activity, and if any were attempted they would require support of the chief judge and the circuit council. With this mixed mandate from Congress and the approval of the president on January 5, 1971, the judiciary was challenged to implement the statute in such a fashion that the declared expectations could be fulfilled as promptly as possible.

Chapter II

2. Those standards would "take into account experience in administrative and executive positions, familiarity with court procedures, and special training."
3. Its membership would consist of five persons, three of whom would be elected by the Judicial Conference—with the stipulation that at least one would "be selected from among persons experienced in executive recruitment and selection"—and two of whom would be the incumbent directors of the Administrative Office and the Federal Judicial Center. The members selected by the Judicial Conference were to serve for three-year terms. Members who served as officers of the United States would serve without compensation; others would receive the equivalent to the daily rate of GS-18 when actually engaged in board service.
4. It would consider all persons who applied for certification, certify qualified applicants, maintain a roster of all persons certified, and publish the standards for certification.
5. In even more precise dictation, it was required to remove a person's name from the roster after three years unless recertified. A quorum of three members was prescribed for fixing standards and certifying applicants, but the three members had to be in agreement on such decisions.
6. The director of the Administrative Office would provide staff assistance; expenses would be borne by travel and miscellaneous funds of the federal judiciary.

High Rank for Circuit Executive

The circuit executive would be paid a salary established by the Judicial Conference, not to exceed the annual rate of level V of the Executive Schedule. That ceiling was soon to become the salary for all appointees: \$36,000 in 1971; \$47,500 in 1977; and \$63,800 in 1983. This salary level evidenced the legislative intent to place the position on a comparable plane with directors of major executive agencies or bureaus and above the supergrade positions representing the pinnacle of the career civil service. The circuit executive's position was roughly equivalent to the rank of a three-star general.

No tenure was granted. The circuit executive would serve at the pleasure of the circuit judicial council.

The compromises in the final bill were designed to accommodate conflicting views. The Board of Certification represented a check on

Creation of the Position

possible judicial patronage in filling the posts and on possible automatic promotion of clerks to this new level. But the board membership ensured involvement of both the Administrative Office and Federal Judicial Center and appointed judges in setting standards of eligibility and certifying candidates. The Judicial Conference would appoint three members, with only one required to have direct experience in the recruitment functions prescribed for the board. The concerns of the clerks were presumably met in the statement of circuit executive duties. The assignment of supervision to the chief judge and the ultimate appointment of candidates by the circuit council provided a degree of decentralization, while future authorizations for the executive staff were subjected to central approval by the Administrative Office. The duties were spelled out in such detail that there was little threat of incursions into new areas of activity, and if any were attempted they would require support of the chief judge and the circuit council. With this mixed mandate from Congress and the approval of the president on January 5, 1971, the judiciary was challenged to implement the statute in such a fashion that the declared expectations could be fulfilled as promptly as possible.

III. IMPLEMENTING THE LEGISLATIVE INTENT

The climate was favorable for accelerated action at the time of the passage of the Circuit Executive Act. The forceful leadership of the Chief Justice was manifest in the burst of activity at both the Administrative Office and the Federal Judicial Center to implement the statute's provisions as promptly as possible. Parallel moves had resulted in the formation of the Institute of Court Management to provide training for court executives destined to serve at all levels of government, the expansion of the National Center for State Courts to contribute professional assistance to court administrators in state government, the extension of the range of support from the Federal Judicial Center to modernize court practices, and the inclusion of court administration in the agenda of the Law Enforcement Assistance Agency. The pressure for administrative improvement in the nation's court systems had given fresh incentive to use all available instruments to bring about desired change, among them the newly authorized circuit executives.

Activation of the Board of Certification

Concurrent actions leading to implementation of the act were evident throughout 1971. The Judicial Conference, under the guidance of the Chief Justice, promptly exercised its mandate in selecting the three members of the Board of Certification to join the directors of the Administrative Office and the Federal Judicial Center.

The Chief Justice notified those selected on January 22, 1971, just seventeen days after the president signed the bill into law. A district judge from Montgomery, Alabama, Frank M. Johnson, Jr., represented the trial court level. A judge from the District of Columbia Circuit, Roger Robb, represented the appellate court level. The outsider, with executive recruiting and selection experience, was John W. Macy, Jr., then president of the Corporation for Public Broadcasting, but previously chairman of the Civil Service Commission (1961-69) and "talent scout" for presidential ap-

pointees in the Johnson administration. These appointments were effective July 1, but the first stage of board decision making was well under way by that date under the chairmanship of Judge Alfred P. Murrah, director of the Federal Judicial Center. The director of the Administrative Office, Rowland F. Kirks, served as secretary and, in conformance with the statute's provisions, provided the board with the necessary staff support.

The standards for certification and the process for determination of eligibility for certification dominated the board's agenda at its early meetings. In drafting qualification specifications the board endeavored to follow the intent of Congress to emphasize experience in modern management positions. While court experience per se was to receive due consideration, absence of such background was in no way to be disqualifying. In a similar vein, it was agreed that executives without law degrees, as well as those in the legal profession, should be granted access to the process. In an informal attempt at qualification definition, the board considered the following range of experience:

1. Experience in a supervisory administrative position, where executive-level responsibility was exercised in the areas of—
 - a. Budgeting and accounting
 - b. Personnel administration
 - c. Systems and procedures
 - d. Data collection, evaluation, and reporting.
2. Familiarity, occasioned by training or experience, with modern management techniques, including—
 - a. Information systems
 - b. Modern social science research techniques
 - c. Modern automation devices
 - d. Use of specialists
 - e. Management for organizational goals
 - f. Public relations (press).
3. Experience or training in the judicial process, resulting in an understanding of—
 - a. The role of the court in the community
 - b. The rationale behind court procedures
 - c. The routine operations of a court.

On March 31, 1971, the board had completed its deliberation on the standards issue and promulgated a statement for publication in accordance with subsection (i) of Public Law 91-647. These standards were adopted unanimously by the board. In the construction

of these qualification goals, assistance was received from a number of sources, including the preliminary work provided by both the Administrative Office and the Federal Judicial Center.

Standards of Eligibility

Because of the importance of these standards in the subsequent development of the circuit executive position, the full statement of them follows:

An applicant must:

1. Possess executive ability, demonstrated by substantial experience in progressively more responsible management positions in government or the private sector;
2. Have experience in modern business and management techniques, including use of automatic data processing;
3. Have demonstrated ability to plan and conduct studies designed to improve the management of the business of the circuit court and of the district courts within the circuit, to prepare recommendations and reports to appropriate higher authorities, and to implement such recommendations when approved;
4. Possess a very high degree of judgment, understanding and tact; exceptional ability to meet with and maintain proper relationships with other courts and officials of the state and federal governments, and with members of the bar and the public;
5. Possess ability to conduct conferences and meetings and express himself clearly in writing and orally before the council, the judges of the courts and representatives of government agencies, industry and the public;
6. Detailed familiarity with court procedures is not indispensable. Formal training in court management and managerial experience is particularly relevant.
7. Possess creative leadership, planning and organizing ability, initiative, decisiveness, dedication and independence to make significant contributions toward productive change in methods of operating;
8. Have acquired an undergraduate degree; a graduate degree in business or public administration or a degree in law is desirable.

Process of Evaluation

From the outset the Board of Certification indicated its collective desire to participate in the process of candidate evaluation. Members were prepared to devote time to personal review of applications submitted for evaluation, oral interviews with candidates judged to be within the zone of consideration for eligibility, and review of the full Federal Bureau of Investigation field reports on those recommended for certification as a result of an interview. This three-stage procedure was judged to be necessary to meet the statutory expectation that candidates would receive broad and penetrating evaluation prior to a decision to certify them.

The board reminded itself again and again that it did not have the power of selection, but only the authority to determine eligibility for certification. The circuit judicial council would take the appointing action under the leadership of the circuit chief judge. The preliminary indications from the circuits were that all of them were prepared to establish the position—with the sole exception of the First Circuit, where the magnitude of the administrative requirements was judged to be so limited that such a position would be unnecessary. As a consequence, the process was inaugurated with the prospect that ten positions would be filled as a result of the board's evaluations.

In many ways the process was modeled after the traditional determination of eligibility for civil service managerial positions. Initial eligibility was determined by a review of the written application. Such judgment was supplemented by a personal session with the candidate. Because of the sensitivity of the positions and the necessity to acquire as much background information as possible, the board decided to use the full investigative capability of the FBI in those cases in which certification was judged to be warranted. In contrast to the civil service system, no effort was made to rank the certified candidates. A person was merely assigned the appropriate position on an alphabetical roster of those certified. That roster was then made available to the circuit chief judge when a decision was made by the circuit council to exercise discretionary authority to establish and fill a circuit executive position.

Where Are the Recruits?

Standards and processes had little meaning without a flow of candidates who had at least an approximation of the desired qualifications. This posed a critical question of where the recruits would

be sought. It was recognized that many from within the system would respond to this opportunity for a more elevated position. Word would probably pass among those in executive agencies of the federal government who believed they possessed the requisite qualities. But outreach to new sources of talent beyond the government presented a serious problem. To gain access to these sources, articles in major newspapers and professional publications announced the opportunities for executive careers in these new positions. In quantitative terms the applicant response was indeed encouraging. It was so large that it posed a workload burden on the board members and the supporting staff. Over a fourteen-month period, approximately 1,500 inquiries were received. Of that total, 700 persons filed formal applications. The application-review stage in turn produced 129 invitations for personal interviews. The first roster of certified candidates totaled 52 when it was released for circuit court consideration on March 13, 1972.

Preparing the Way for the Circuit Executive

Of equal or greater importance was the extensive effort to prepare the way for the arrival of the circuit executive in terms of a description of the duties and relationships for this new position. Even before the statute was passed the Federal Judicial Center had prepared a staff paper on the implementation of the Circuit Executive Act that covered the proposed responsibilities of the circuit executive.¹ It constituted a series of guidelines for those in the system who would utilize the circuit executive as a new and constructive resource. The text of this paper is particularly valuable in gaining appreciation of the expectations existing at the time of the first selections. A few quotations shed light on those expectations.

The position will add a missing link which will facilitate closer coordination between the Administrative Office and the circuit councils.

The addition of administrative support to the councils will strengthen them as the management linchpins of a decentralized judiciary.

Since the job is new, and since both professional and executive positions always involve gradual role development, precise delineations of authority and responsibility are neither feasible or advisable.

1. J. L. Ebersole, *Implementing the Circuit Executive Act* (Federal Judicial Center 1971).

Chapter III

The Act's intent is that the circuit executive shall act as an arm of the circuit council.

There is a danger that executives will be used as high paid staff law clerks unless councils proceed with dispatch to re-evaluate their potential to become administrative cornerstones.

This is an interesting combination of images—a missing link with a management linchpin and a potential administrative cornerstone. But they reflect the tightrope walked by those who prepared the report. They had to balance between centralized and decentralized administration, between stability and change, between restriction and discretion.

Reflecting the legislative debate, the paper endeavored to draw a clear line of distinction between the functions of the circuit executive and those of the circuit clerk:

The executive can be considered the operations officer, planner and coordinator of circuit management.

[H]is duties are to establish general systems for court administration, develop and implement more effective procedures, and assure the effective performance of supporting personnel.

In contrast, the clerk was to be considered a line officer, who could implement the administrative procedures that were outlined under the direction of the circuit executive and operate in a structure involving dual subordination, with responsibility to the judges of the court as well as to the executive for his or her performance.

The guidance on staffing the office of the circuit executive was ambivalent. The staff might include four to seven persons, with particular emphasis on a budget specialist, a statistician, and a personnel and training specialist. Even this modest staff was not to materialize in most of the circuits. The paper was prescient in describing the circuit executive in the role of "project manager." Finally, the paper recommended that the circuit executive be appointed to Judicial Conference committees and subcommittees as a major responsibility.

By early 1972 this staff paper had been converted into a voluminous guidebook that would be the road map for those who were certified and subsequently selected.² It provided a background chapter describing the historical development of the circuit executive position, the administrative structure of the federal judiciary, the general roles and relationships of the circuit executive, and the statutes relating to the circuit councils. It also described the pri-

2. Circuit Executive Guide (Federal Judicial Center 1972).

Implementing the Legislative Intent

mary areas of activity for the circuit executive and spelled out the requirements of each in terms of both substance and relationships. It is interesting to note that the primary areas specified in the guide (and listed below) tend to conform to the functions specified in the statute:

1. Budgeting
2. Work measurement
3. Information systems
4. Appellate court operating procedures
5. Personnel and training
6. Facilities, furnishings, and supplies
7. Research and special studies
8. Public relations.

A third chapter described other administrative functions including bankruptcy, probation services, court reporting, jury utilization, and calendar management.

The volume could serve as the bible for a newly selected executive. That it has not undergone serious changes during the decade since it was written is an indication either of the lasting power of the text or of a lack of reference to the bible in actual operations.

IV. PERFORMANCE OBJECTIVES AND EXPECTATIONS

From the expressions of legislative intent and descriptions of implementation emanating from Washington in early 1971, the conceptual base for the circuit executive position was gradually being defined and shaped. Concurrently, those who would create the reality of the position's functions, relationships, and place in the federal judicial system were contemplating their expectations. The chief judges, with the advice of their circuit councils, would specify the actual organizational setting for the executive selected from the roster of eligibles offered by the Board of Certification. They would have to ascertain where this new actor would be placed in the traditional cast of characters already performing in the circuit. Their own commitment to change would be tested in the roles they planned for this unformed entity.

Previous advocacy and opposition articulated in the process of authorization had revealed differing objectives and conflicting expectations. What would be the actual profile, designed by the chief judge, for the circuit executive when he or she walked into the courthouse equipped with his or her personal career experience, certification, preparation and guidance, and high stature and salary? That profile would of necessity vary from circuit to circuit depending on the geography covered, the number of judges, the magnitude and character of the caseload, the attitude of the judicial and nonjudicial personnel with whom the executive would work, and a number of other factors. But most important of all would be the outlook and interest of the chief judge.

General Manager in Charge of Nonjudicial Functions

A major justification for the position had been the desire to relieve chief judges of administrative activities in order to permit them to devote full time to their jurist responsibilities. They would be able to delegate to the circuit executive the time-consuming details of budget, personnel, physical plant, security, reporting, and external relations. The executive could respond to the Administra-

tive Office's requirements, master the mysteries of the centralized administrative system, and do battle with other federal agencies exercising control over the circuit's operations. This area of performance was usually described as that of a general manager in charge of nonjudicial functions. But the question soon rose over how complete this delegation should be. How much of the circuit's welfare could really be given to this new entity for decision making? Did the chief judge truly desire to be outside of control over administrative actions? Did the decision-making mandate of the circuit council necessitate limitations on delegation? And to what extent would this broad grant of authority conflict with certain tasks now performed by the circuit clerks and their staffs? After all, the Clerks' Association had opposed the adoption of the new position with the claim that administrative requirements were already fulfilled by the clerks.

A major portion of the anticipated benefits from the circuit executive was envisioned in this administrative area. Details relating to the extent of delegation, the discretionary actions, and the precise organizational pattern would have to await the trials of actual experience. Indeed, much would depend on the demonstrated capabilities, skills, personality, diplomacy, and adaptability of the person selected for the position. In all probability, there was some advance belief that the selection would be someone already familiar with the pattern of life in the judicial world.

There was clearly the expectation on the part of the chief judges that they would gain greater proficiency in performing administrative tasks from an expert. The measurement of that improvement could be taken in day-to-day operations. It would be evident in reduced delay, in better provision of support to all judges, and, it was hoped, in persuasive benefits for the court as a whole.

Administrative Assistant or Aide-de-Camp?

Closely related to, but decidedly diminished from, the general manager function was the executive's role as administrative assistant to the chief judge. Early agitation from the circuits had been in exactly those terms: an urgent need for another staff member in the immediate office of the chief judge to supplement the secretary and the law clerk. Such a person would, in military parlance, act as an aide-de-camp, following the direct orders of the chief judge in a myriad of support or advisory capacities, ranging from special transportation or parking arrangements to preliminary preparation of council agendas. The executive would be able to bridge the

gaps and plug the holes in the administrative structure as the chief judge desired.

To an appreciable degree the legislative history disregarded this intent when the position's specific functions were assigned and its salary was placed at such a high level. But the need remained, and unless it was met by other staff members, it was likely to fall within the scope of the new job. It would be a natural tendency on the part of a circuit executive, particularly the first one, to satisfy to the greatest extent possible the chief judge's requirements.

Secretariat to the Circuit Judicial Council

One of the stated purposes in advancing the cause of the circuit executive was the basic desire to improve the effectiveness of the circuit judicial council as the administrative decision body within the circuit. That desire was reflected in the statutory listing of the circuit executive's functions: Item 9 specified that the person would arrange and attend meetings of the judges of the circuit and of the circuit council, as well as prepare the agenda and serve as the secretary in all such meetings. There is no doubt, then, that one of the circuits' expectations was the availability of the new executive to perform these secretariat functions. This task, too, had substantial dimensions. Some councils had numerous committees and subcommittees, which met with varying frequency. Although the circuit executive would not preside over the meetings, it was clearly expected that he or she would assemble the necessary items for consideration, prepare the informative background papers, fabricate the agenda, and record the decisions of the assembled groups. The anticipated lack of support staff for the executive meant that much of the clerical work involved in these processes would fall upon the circuit executive.

On the other hand, the executive's involvement in these decision-making sessions would allow a familiarity with all aspects of judicial administration. The executive could interview judges and administrative staff members to determine what issues required attention. After decisions were reached, he or she not only would have the responsibility for communicating those decisions but presumably would be expected to exercise the necessary follow-up to ensure their implementation. The executive's presence in these meetings would confer a preferred status, not exactly that of peer to the judges, but as an essential colleague in their deliberations.

An important annual event is the circuit's judicial conference. The planning and logistics for these conferences are a major under-

taking. It was anticipated that the circuit executive would assume responsibility for that planning, making all the arrangements to accommodate not only the judges in the circuit but, in some instances, a substantial number of outsiders as well. Although the circuit executive would undoubtedly be able to call upon other members of the staff to assist in these efforts, he or she would be responsible for their execution, and in all likelihood would perform most of the tasks without much help from others.

The circuit executive's performance of these secretariat functions would be evaluated in terms of the effectiveness and dispatch of circuit council business, the expeditious manner in which decisions were carried out, and the level of approval expressed by those attending the annual conference.

Management Analyst and Consultant

The new position was intended to provide an additional resource, fill a recognized need, in the improvement of the performance of the circuit in its administration of justice. That provision would come in the capacity of this new officer to probe, collect data, analyze, and formulate and gain acceptance of change. The executive's mandate would encompass all phases of judicial operations—jury selection and utilization, case scheduling, assignment of judges, determination of judicial and staff requirements, improvement in record keeping and processing, expansion of computer use, redesign of administrative processes, and other problem-solving tasks. The executive would assume the role of innovator, of agent of change, in accordance with the Chief Justice's objectives and congressional expectation.

Yet this was an area of activity in which circuit expectations were less well-defined. There was natural apprehension about such a challenge to the status quo. Although these functions might be performed by the circuit executive in strictly a staff capacity, in the manner of a management consultant—with final acceptance and approval dependent on action by the chief judge and the circuit council and, in some cases, by the Administrative Office—the threat of change was not greeted with unalloyed enthusiasm by those already at work in the circuit. Such probing analysis and recommendations for change might reveal disparities in workload and in case handling among judges, wasteful practices in case review, and inefficient use of resources. New machines and processes might alter familiar patterns of operation.

Nevertheless, this function appeared on the list of circuit executive activities, and there was a general expectation that the incumbent's "management skills and techniques" would be applied in support of demanded changes. The performance goals were not specific; they were left to be worked out with the new circuit executive after appointment and initial performance of other functions.

Agent of the Administrative Office

The centralized control over certain administrative actions was not relaxed with the assignment of circuit executives. No broader delegation of decision making accompanied them when they took office. It would still be necessary to submit personnel recommendations, major purchases, building changes, budget estimates, and other administrative essentials to the Administrative Office for approval. The growing demand from circuit—and, in some cases, district—courts for increased discretion was not met through the addition of this key staff member. Instead, in the eyes of many, the circuit executive was viewed as an agent of the Administrative Office. On circuit turf the executives would facilitate compliance with centralized policy and would compile the data required by centralized authority.

On the affirmative side, the executives were expected to be skilled in preparing requests in language and substance that would gain ready acceptance in Washington. Their administrative talents would be tested by their success in securing approval of circuit requests, particularly with regard to increases in judgeships and supporting staff. In fact, expectations placed on this activity were high, especially in those circuits in which past requests had not been sufficiently compelling. Close and constructive relations with the Administrative Office were to be sought by the circuit executive. They not only would collect, compile, and submit statistical data to Washington. They would be the source of interpretations of reporting requirements and the professional adviser who would analyze the data in ways beneficial to the circuit. The circuit executive was expected to become an efficient two-way conduit to enhance the effectiveness of existing and prospective administrative systems.

External Communicator for the Circuit

As a president has a press secretary, the circuit chief judge would—when the circuit executive reached full bloom—have an external communicator. In the language of the statute, the executive would be the court's "liaison to the courts of the various States in which the circuit is located, the marshal's office, State and local bar associations, civic groups, news media, and other private and public groups having a reasonable interest in the administration of the circuit."

What institutions in American society would not have "a reasonable interest in the administration of the circuit"? The assignment assumed a breadth of knowledge, a high degree of communication skill, and an oversupply of sound judgment.

There is little evidence that performance expectations for this function were specified in advance. For the most part, there was no serious desire to publicize judicial proceedings beyond the minimum necessary. Certainly, an anticipatory public relations program was based on the concept that more extensive public access to the courts was not among the objectives for the circuit executive. The isolation of the court from the outside world was not to be overcome. The exception was limited to occasional reactive moves to meet media demands for information on controversial cases or personalities.

Lines of communication might be thrown out to other groups with kindred interests. But most of those connections were already established; judges or other staff had formed working relationships with courts and other jurisdictions, bar associations, and universities with law schools. Depending on the social skills and inclinations of the circuit executive, these connections could be made more congenial and productive in the interest of better public understanding of the circuits' appellate functions.

Administrative Adviser to the District Courts

The involvement of the circuit executive in the administrative functions of the district courts was not specified in the statutory language even though most of the plans for implementing the act assumed a constructive role for the executive, not in the circuit court alone, but "in business and administration of the courts within the circuit." The *Circuit Executive Guide* was cautious in its treatment of this relationship, stating,

[T]he circuit executive, as the arm of the circuit council, should have familiarity with various district court functions. There are of course other functions of equal importance at the district court level. The topics covered have been selected in order to give a circuit executive an example of the scope of the administrative problems faced by the chief judge of a district court. It is expected that the circuit executive will become intimately familiar with the clerk's office functions as the result of his coordination with district court clerk's offices and the close relationship he will establish with court clerks.

The executive's functions with regard to trial courts were listed as follows, without mention of any specific expectations: bankruptcy, probation services, court reporting, jury utilization, and calendar management.

The district courts, particularly the larger ones with several judges, were advocating district executives to assist in solving their administrative problems, which they believed were quite different from those faced by the circuit court itself. This new expert from outside their jurisdiction was seen as a potential threat to the traditional independence of these courts. After all, the circuit executives were intended to serve the circuit council, and their activities within the districts should be directed by the council. There were, however, desires for the circuit executive's assistance in dealing with such chronic problems as the utilization of jurors and the handling of court-reporting difficulties. In addition, the executive's skills might be employed to plead more persuasively for increased resources for individual courts.

The dimensions of this function were also left for the play of early experience. The interest and background of the future incumbents would significantly influence their acceptability as advisers to the district courts. It was generally believed that the circuit executive would establish close ties with key district personnel, particularly with the clerks, and would make frequent visits to courts throughout the district. Likewise, it was assumed that the executives would convince skeptical district judges of their value in advancing the cause of improved operations.

High and Diverse Expectations

The seven areas of circuit executive activity described above are not all-inclusive. The position was considered by many circuit officials according to their particular needs. The wait for assistance had been so long and the position had been justified with so many diverse assignments that expectations were understandably high.

Chapter IV

They were unrealistically so in light of the limited resources directly available to support the circuit executives in these many roles. In the theater there are actors who demonstrate great skill as "quick-change artists." Circuit executives would need similar skills if they were to fulfill the high and diverse expectations preceding their arrival. The beneficiaries of their services were more inclined to wait and evaluate the human occupant of the position before accepting each and every function and before specifying the manner and level of performance, as well as the true nature of the relationships to be developed.

V. EVOLUTION OF THE POSITION OVER THE DECADE

The circuits had to wait more than fourteen months after passage of the Circuit Executive Act before they could consider candidates from the roster released by the Board of Certification. They were not idle during that time. They urged circuit and district clerks and other presumed eligibles known to them to join the throng of seven hundred applicants entering the board's three-step process. Favorites were certainly identified well before their eligibility was sanctioned. Likewise, priorities were informally set for the first activities to receive the circuit executive's attention. In the First Circuit, however, the chief judge concluded that there was no need to accept the option for appointment; the dimensions of the circuit did not warrant the anticipated expenditure, and there was satisfaction in that circuit with the status quo.

The fifty-two names on the roster were made available to each circuit by personal letter from the chairman of the board, Alfred P. Murrah, on March 7, 1972. With the roster was a biographical sketch and photograph of each candidate. In addition, each circuit received a copy of the statutory language and the first draft of the *Circuit Executive Guide*, referred to earlier. There was a reminder that the Federal Judicial Center would conduct training courses for appointed circuit executives. All candidates had "agreed to serve wherever selected," which meant that the circuits could consider all those certified without reference to location.

Judge Murrah's letter pointed out that of the fifty-two candidates certified, twenty-four were lawyers and twenty-eight were not. This distribution prompted the explanation that "the executives have been certified on the basis of their demonstrated executive ability, not their legal training or familiarity with routine court procedures." This emphasis was further guidance to the circuits on the legislative intent to give weight to executive experience.

The board chairman also mentioned in his letter the time consumed in the certification process, which he described as painstakingly selective. He concluded with this appeal to each circuit council for full consideration of all fifty-two persons certified:

[I]n justice to the effort we have made to assemble the finest talent available for this important office, we venture to hope that your council will carefully review the entire roster before making your selection regardless of your prior impression of any particular person who has been certified.

Concurrently, all persons certified received letters advising of their eligibility for selection and explaining that the judicial council of each circuit was now free to pursue in its own way the appointment of a circuit executive from the certified list. Candidates were also informed that they were at liberty to express their interest to any or all circuit councils. The full roster of those certified, along with a copy of the *Circuit Executive Guide*, was provided to each person. The letters further explained that the roster of those certified would be maintained by the board for a period of three years and that prior to the expiration of that period the board would act to recertify or remove the names from the list.

Eight Circuit Executives Selected in 1972

The final selection step was undertaken with dispatch in eight of the circuits. Within a period of six months, reports had been received from those circuits identifying the candidate appointed to the position.

On May 1, Samuel W. Phillips, the clerk in the Fourth Circuit, became the first appointee. Immediately thereafter, another circuit clerk, William B. Luck in the Ninth Circuit, assumed circuit executive responsibilities in San Francisco. Robert D. Lipscher was selected in the Second Circuit; he had served as assistant director of the Institute for Judicial Administration and was known to many of the judges in that circuit.

In the District of Columbia Circuit the choice came from the executive branch: Charles E. Nelson had been chief of Management Systems in the Office of Management and Budget. A different background was reflected in the selection of Thomas H. Reese in the Fifth Circuit on July 24; he had served in the military in the Judge Advocate's Corps.

Two additional appointments were effective on August 1, when Emory G. Hatcher, the clerk in the Tenth Circuit, was chosen in that circuit, and William A. Doyle, director of the Management Division in the Office of the Chief of the Naval Materiel Command, became the appointee of the Third Circuit.

This initial slate was completed with the appointment of Robert J. Martineau, a law professor from the University of Iowa and a

visiting professor at the Institute for Judicial Administration, to the Eighth Circuit on August 26.

These first eight selections revealed an interesting pattern. Three of those selected (Phillips, Luck, and Hatcher) were elevated from clerkships in the same circuits. Three others came from a variety of assignments in the executive branch (Nelson, Doyle, and Reese), but all with a decided military orientation in their federal service. The last two, Martineau and Lipscher, had antecedents in legal administration through their association with the Institute for Judicial Administration. No one was selected from among the candidates who possessed business backgrounds. Although nonlegal candidates were in the majority on the roster, only two (Nelson and Doyle) from among those appointed were without legal training.

Appointments Since the Initial Selections

Although the initial appointments represent the largest block of selections for any particular year, the number certified and appointed has increased over the intervening years. Every year with the exception of 1978 and 1979, the board certified additional applicants. Over the total period of the program, 113 applicants were certified, an increase of 61 beyond the original roster. Forty-two were certified in 1981 through 1983, when the demand for candidates was heightened by the inclusion of five pilot district executives in the program.

Two additional opportunities came with the decision of the First Circuit in 1983 to accept the option to create the position and with the legislation creating a new Eleventh Circuit out of the large area previously covered by the Fifth Circuit in the southeastern states. The clerk in the First Circuit, Dana H. Gallup, was certified in 1981, and when the time came to fill the newly established position in 1983 he was promptly selected. When the Eleventh Circuit was established in Atlanta in 1981, Thomas Reese moved from the Fifth Circuit in New Orleans to this new location. The resulting vacancy in the Fifth was filled temporarily by the chief judge's administrative assistant, Lydia G. Comberrel, while the certification process proceeded. Nearly two years after the vacancy was created, Comberrel was appointed as circuit executive.

The initial pattern of selecting candidates from within rather than outside the circuit continued with the original choices made in the Sixth and Seventh Circuits. James A. Higgins, who had served as legal assistant and clerk in the circuit, was appointed in

the Sixth in 1973, following his certification to the roster earlier that year. Collins T. Fitzpatrick, administrative assistant to the chief judge in the Seventh Circuit, was chosen three years later, after gaining certification a few weeks prior to the decision to appoint him. With Gallup, Higgins, and Fitzpatrick added to the first round of choices, in-court advancement had become the route to original appointment in half of the twelve circuits. A legitimate question could be raised as to whether this path provided the addition of executive experience and management skills or infusion of new administrative blood in the circuit that was intended. The selections could be challenged as failing to fulfill the expectations of expertise held by the board, the Chief Justice, and the Congress. The true test would of course have to come from evaluation of the actual performance of those chosen.

Stability Versus Turnover

Seven other appointments occurred as the result of departure of some of the original executives. Stability was observed in the continuing service of six of the initial group (Nelson, D.C.; Gallup, First; Phillips, Fourth; Higgins, Sixth; Fitzpatrick, Seventh; and Hatcher, Tenth). Interestingly, five of these executives were among those elevated from other positions in the court. Departures created vacancies in the Second, Fifth, Ninth, Eleventh, and Eighth Circuits, the latter experiencing two losses during the decade.

The replacements in these cases were selected from the expanded roster. In several instances, the intended appointee was referred to the board by a chief judge, with the expectation that eligibility would be forthcoming as promptly as the extended certification process would permit.

No particular pattern is apparent in the departures; in no instance is failure to perform adequately or forced resignation evident. However, expressions of dissatisfaction with an executive's performance may have led to voluntary but encouraged termination of service in at least one instance. Two departing executives (Lipscher and Martineau) accepted court executive positions at the state level. Doyle, in the Third Circuit, died in office. Martineau's successor in the Eighth, R. Hanson Lawton, a staff member of the National Center for State Courts, served for nearly five years and then returned to private practice. Luck, in the Ninth, retired in 1980. Reese, as explained earlier, first transferred from the Fifth to the Eleventh and then retired two years later in 1983.

Although not every candidate referred for certification from a circuit passed muster, most of them did, affirming the circuits' own recruiting and selecting procedures.

Lipscher's successor came from the Federal Judicial Center. Steven Flanders, a research associate at the Center and coauthor of a 1978 evaluation of the circuit executives,³ was approved by the board and appointed by the circuit in 1980.

Doyle was followed by Paul Nejelski, a staff director with the American Bar Association, who was certified and selected in 1981.

Lydia G. Comberrel, the replacement for Reese in the Fifth Circuit, and the first woman selected, had been administrative assistant to the chief judge before she was promoted to executive. As indicated above, she served in an acting capacity for nearly two years until she was certified and given a regular appointment in September 1983.

When Lawton left the Eighth Circuit in 1980, the chief judge turned to the original 1972 board roster and picked Lester C. Goodchild, senior attorney with the State Commission on Judicial Conduct. He came from outside the circuit, as his commission assignment had been in New York State.

More than a year passed from the time of Luck's retirement in the Ninth until a successor, William E. Davis, administrative assistant to the chief judge with prior outside (noncourt) executive experience, was chosen from among a large number of candidates. An acting executive who failed to be certified occupied the post during the interim.

The successor to Reese in 1983 in the new Eleventh Circuit, Norman E. Zoller, had been certified while serving in a different court, in a different region of the country. First appointed clerk of the new circuit, he was elevated to circuit executive when Reese departed.

Pilot Test in the District Courts

A new dimension was given to the court executive movement when authority was granted by the Congress in 1981 to create executive positions in five of the large district courts on an experimental basis. The earlier plea for administrative assistants to chief judges in large districts with several judges and rising caseloads was thus answered in this limited, short-term fashion. Chief Justice

3. J. T. McDermott & S. Flanders, *The Impact of the Circuit Executive Act* (Federal Judicial Center 1979).

Burger had made a recommendation to the Conference of Metropolitan District Chief Judges in 1979 that such an initial step be undertaken. The pilot program he proposed was designed to relieve the chief judge of the heavy administrative burdens imposed on him in recent years, many of which he had had to delegate to the clerk of court, resulting in an overburdening of the chief judge's offices in the larger courts. Congress appropriated funds for five executive and five secretarial positions for the pilot program.

Five district courts expressed interest in participating in the program, and the chief judges in those courts—Southern New York (New York City); Central California (Los Angeles); Eastern Michigan (Detroit); Southern Florida (Miami); and Northern Illinois (Chicago)—were advised of their selection on March 5, 1981. Subsequently, the court in the Northern District of Illinois withdrew and the Eastern District of New York was authorized to participate. A sixth district was permitted by Congress in 1983, and the Northern District of Georgia (Atlanta) was selected.

As in the case of the circuit executive, the duties and functions of the district position were not precisely defined. They were expected to be developed in each district in the course of the pilot program. In his letter, the Chief Justice did offer this guidance to the selected districts:

[I]t can be assumed that this executive will exercise administrative control of the nonjudicial activities of the court, as for example, the formulation of budget requests, the administration of the personnel system within the district court and supporting staff, liaison with the Administrative Office on furniture purchases and property controls, coordination of the court security programs, supervision of the court reporter and court interpreter programs, as well as the court's equal opportunity program, the monitoring and revision of local rules of court, and liaison with the bar and civic groups.

A draft statement of the functions for the district executive was also included:

The district court executive shall be the chief administrative officer of the court operating under the supervision and direction of the chief judge and shall be responsible for the management of all nonjudicial functions and activities of the court and all of its component offices including the magistrates, the probation office, the pretrial services agency, where applicable, and the respective clerks' offices in the district court and in the adjunct bankruptcy court. His duties and responsibilities shall include, but not necessarily be limited to, the following:

1. Arrange and attend meetings, prepare agendas, serve as secretary to ad hoc or standing committees of the judges established

- for the administration of specific programs or to resolve procedural and policy issues. Implement and ensure compliance with any rules, regulations or orders of the court.
2. Review and recommend changes in the local rules, the Jury Selection and Service Act plan, the speedy trial plan, the plan for representation of persons under the Criminal Justice Act, and other internal operating plans of the court.
3. Serve as public relations officer and represent the court as its liaison to the courts of the state, bar associations, civic groups, the news media, and other public and private groups having an interest in the administration of the court.
4. Administer the court's personnel system in accordance with the judiciary salary plan and rules and regulations promulgated by the Judicial Conference of the United States.
5. Serve as the court's equal opportunity administrator and be responsible for supervising the processing of any discrimination complaints and/or grievances by court personnel.
6. Develop and implement training programs for court personnel in conjunction with seminars and other educational programs conducted under the auspices of the Federal Judicial Center.
7. Supervise court reporters and court interpreters and arrange for contractual services as necessary subject to the approval of the judicial council and under such terms and conditions prescribed by the Director of the Administrative Office.
8. Formulate the annual budget of the court for submission to the Administrative Office and the appropriate committees of the Judicial Conference. Review and evaluate requests for additional personnel from each of the organizational units of the court to ensure compliance with standards adopted by the Judicial Conference.
9. Establish and maintain a space management program to ensure maximum utilization of courtrooms and other facilities, serve as liaison officer with the General Services Administration and the Administrative Office with respect to the acquisition of additional space and processing of work authorizations for tenant alterations and other reimbursable services by the General Services Administration.
10. Coordinate the court's security program to ensure adequacy of protection services provided by the General Services Administration and the United States Marshals Service.
11. Serve as the court's furniture liaison officer and be responsible for the apportionment and allocation of funds made available for that purpose.
12. Establish and maintain property control records and process requests for general office equipment, law books, and other accountable property.

13. Administer the program for the admission of attorneys to the bar and any disciplinary proceedings that may be adopted by the court. Maintain a roster and arrange for the dissemination of the local rules, opinions, and other material of interest to the bar.
14. Conduct studies relating to the business and administration of the court and prepare appropriate recommendations and reports for the chief judge.
15. Perform such other duties as may be assigned by the court and the chief judge.

This was a broad functional charter, with more detail and less ambiguity than were provided for new circuit executives nine years earlier. Responsibility for the management of nonjudicial activities of the court and their component offices was clearly stated, and the intention for line supervision was not left in doubt.

Parity in pay with the court clerk was established when the executive's salary was set at GS-16, the level already specified for clerks in the larger districts.

The Chief Justice reminded the district chief judges in his letter that the Congress had been assured that the district executives would be selected through the same certification process as the circuit executives. The current roster of certified candidates from the Board of Certification was enclosed to facilitate selections. Chosen candidates would be appointed in the normal manner by the Administrative Office upon notification from the districts.

Nowhere in the extensive job description is there any reference to a relationship with the circuit executive. At one point in the evolution of the pilot program, consideration was given to the establishment of assistant circuit executives to perform these functions in the districts. That step was opposed by district judges on the grounds that such an arrangement might compromise the independence of the trial courts. Nor does the job description call for any reporting line through the circuit to the Administrative Office or the Federal Judicial Center.

The availability of a roster containing the names of more than fifty eligibles failed to expedite the selection process for district court executives. All but eighteen of the names were from the original listing of 1972, and some of the candidates were no longer interested in a court administrative position. Others were unwilling to serve in the specific district locations, while still others were deterred by the temporary nature of the appointment. Besides, there was a general desire on the part of district chief judges to appoint individuals from within the court who had not yet been evaluated by the Board of Certification. The five finally selected

came from a variety of backgrounds. (The sixth appointee, for Atlanta, had not been selected by the time this report was completed in the final days of 1983.)

In the first appointment, John T. Mayer, the existing clerk in the U.S. district court in Detroit, transferred to the executive position on July 1, 1981. In the Eastern District of New York in Brooklyn, Richard H. Weare, who had also served as clerk of court, was appointed on August 1, 1983. In both cases the candidate selected had passed through the certification process following the announcement of the district executive program.

One of those certified in 1982 was Dyana Ortiz-Castro, a judge in the circuit court in Puerto Rico. Later that year she was selected by the district court in Southern Florida as its district executive. Robert W. Page, a senior staff associate at the National Center for State Courts, was certified in 1981 and the following year was selected by the district court in Southern New York as its district executive. In December 1983, the chief judge in the district court in Los Angeles selected Lionel M. Jacobs IV, a state court executive in Michigan. Jacobs had been certified in 1981.

There was general dissatisfaction with the selection process in the filling of these five new positions. The existing roster of certified candidates proved less useful than had been anticipated because of the nonavailability of certain persons, a reluctance to accept nonlawyers or those without specific court experience, and the uncertainty of the tenure of the pilot positions. The Board of Certification extended its activities during the three years of the search. Forty-two additional persons were certified, including all of those who were ultimately selected. The leadership of the districts reached out for additional candidates in their immediate vicinity and received large numbers of applications, but relatively few of those who applied could meet the established standards. If the position of district executive were to be extended to other large courts, the capacity of the certification process to deliver qualified candidates who met the desires of the district chief judges would be seriously questioned. The natural tendency of the resident judges to select a known quantity, usually the district clerk, is understandable, but once again raises the issue of the failure to inject new talent into the system.

Evaluation of Circuit Executives in 1978

[T]he circuit executives [are] so burdened with routine responsibilities that they [have] little or no time for others.

The circuit executive should be in a position to assume all administrative tasks that do not specifically require the chief judge for symbolic, protocol, policy or statutory reasons.

The circuit executive can serve the court of appeals best in a strong staff capacity without line responsibilities.

[I]mproving the judicial process was the circuit executive's biggest responsibility and [has been] his biggest failure.

One of the principal functions of every circuit executive has been to serve as administrative assistant to the chief judge. . . . as much as 75 percent [of the time].

[T]he biggest contribution made by the circuit executive was the collection and dissemination of data on the work and "production" of the court of appeals.

[T]he circuit executive's job is to design procedural innovations, but not to carry permanent operational responsibilities.

[M]ost circuits clearly could use their circuit executives to better advantage. . . . most circuit executives have not taken full advantage of available opportunities to help improve the judicial process.

These are some of the cogent conclusions reached by John T. McDermott and Steven Flanders during their evaluation of the performance of the circuit executive in 1978, after approximately six years of experience.⁴ The report emphasized the diversity of performance by the circuit executives up to that time. It identified three rough categories of circuit executives' activities:

1. As administrative director
2. As coequal with the clerk
3. As a staff assistant to the chief judge without line responsibilities.

The level of their performance was viewed as below expectation. There had been a failure to "treat the circuit executive as a professional equal to all judges." The concept of managing partner among professionals in the circuit's judicial leadership had not been demonstrably accepted.

The question of the relationship between the circuit executive and the circuit clerk was deemed to be unanswered at that time: "The failure to adequately define and delineate the roles and responsibilities of these two administrative officers has been and remains a major impediment to effective implementation of the Circuit Executive Act."

4. McDermott & Flanders, *supra* note 3.

It is interesting to read in the report that the circuit judges' major concern was that the executives' lack of legal training might preclude them from being more significantly involved in the management of the circuit court. This would indicate a misreading of the qualifications of the selected circuit executives. Prior to 1978, only two out of eleven appointees were nonlawyers. Five of those eleven were actually former clerks or administrative assistants in the circuits in which they were appointed after certification. This observation would thus indicate less than total enthusiasm on the part of the interviewed judges for high-level or professional management involvement by the circuit executives. This condition raises a fundamental question: Does (a) formal qualification as a lawyer, that is, admission to the bar; (b) experience as a clerk of court; or (c) experience as an administrative assistant really provide the level of understanding of legal processes that can help a circuit executive fashion improvements in the processing of cases or in the court system as a whole?

In the early descriptions the circuit executives were characterized as agents of change, an assumption that their performance should involve more than increased efficiency for the status quo. To achieve that goal, McDermott and Flanders claimed, "[T]here must be a fortunate match of an aggressive and knowledgeable executive with a receptive court." Their implication was that neither the circuit executive nor the court had reached the desired conditions for that match. The circuit executive was lacking in aggressiveness and knowledge; the court was lacking in a receptive attitude toward the objectives and priorities of the new office.

The consulting relationship with the district courts also had not materialized. Although some assistance to those courts was identified, it was "sporadic at best." In more than half the circuits, McDermott and Flanders reported, the circuit executives had been of little or no assistance. District courts had very little contact with circuit executives. The circuit executive tended to be cast primarily in the role on which much of the legislative justification was based—as staff to the judicial council. In the circuit courts there appeared to be only limited interest in "an increased council role in a more decentralized judiciary." The secretariat function became a major activity that tended to impose "too much routine business" on the circuit executive.

When pressed for examples of assistance to the districts, the judges cited involvement in training, space improvements, court reporter studies, and provision of justifications for additional judges and support staff.

The impression gained from the evaluation was that neither the chief judge nor the circuit executive had been provided with the necessary guidance on which to define functions and relationships. There was little or no reference to the preliminary materials, including the *Circuit Executive Guide*, in connection with the actual evolution of the new position. McDermott and Flanders observed that no stable or uniform role for the circuit executive was defined by Washington or the circuits. This condition fostered broad diversity in the concept and practice of the executive's role and a state of constant change. "[D]emands and requirements have been both excessive and conflicting." The authors concluded, "[C]ircuit executives have not yet created the pivotal position they could."

This selective citing of the report's findings and conclusions must be balanced to some degree by the more successful accomplishments reported by some of the circuits in the same study. The circuit executive was indeed judged to be a useful addition to the circuit's management. Circuit conferences were better planned; meetings of the Judicial Conference were more focused and systematic; the chief judge was in fact relieved of some administrative obligations; data collection and analysis were more meaningful and applicable; relations with the Administrative Office and the Federal Judicial Center were improved; justifications in support of increased resources were more effectively articulated; relations with external bodies were enhanced. But the patterns of achievement were irregular. They were largely shaped by the capacity of the circuit executive and the extent of the chief judge's interest in administrative change. Expectations for the executive's performance had been approached to varying degrees, but not yet fulfilled.

Current Evaluation of Circuit Executives

In the intervening five years the situation has changed from that depicted in the 1978 assessment. Not only has experience been gained, but the newness of the concept has worn off. Personalities in the chief judges' chairs have changed, along with shifts of circuit executives in some of the circuits. Workloads have expanded exponentially. New judgeships have been created in significant numbers. The profession of court administration has been recognized, elevated, and strengthened. No longer is the function of administration a stranger in state and local courts. New legislation has enlarged the jurisdiction of federal courts. New routes to dispute settlement are being sought through mediation, negotiation, and arbitration. Increased awareness of federal deficit burdens has

forced a more penetrating review of all federal expenditures, and the judicial system has not been granted immunity from such review.

Mounting concern about the judicial process has directed fresh attention to modernization of the court system and has heightened the interest of the Congress, the administrative community, the media, and academia in the courts. The initial call from Chief Justice Burger in 1969 for improved court management has been reiterated with vigor in his annual reports on the courts and in his messages to interested groups all over the country.

This changed environment has added new legitimacy to the circuit executives and their functions. More attention has been given to the selection of successor executives. Circuits have actively recruited eligible candidates themselves to supplement the list from the Board of Certification, which has been adjudged to lack the range of availability and qualifications to satisfy the evolving demands of the office. Circuits have also sought help from evaluators outside their immediate jurisdiction. The demand for successors can now be met more readily from experienced court administrators available at the state and local levels of government as well as within the federal system.

The recent extension of the executive position to the districts has created additional opportunities for top-level service. The possible authorization of other positions in large districts will increase the demand for qualified administrators.

In response to a request from the author in 1982, circuit executives provided information concerning their current duties and responsibilities. The circuit executives were told that the information they provided would be the substance of an evaluative paper on the first decade of the program for the use of the Chief Justice, the Judicial Conference, and the Board of Certification. They were urged to avoid the "generalizations and cliches which mark so many statements of this kind." Narrative or editorial comments were solicited to the extent that they might contribute to a further understanding of the circuit executive's role in the improvement of judicial administration.

Nine circuits responded to this request; the Second and Fifth Circuits, for reasons of their own, did not submit descriptions. Although there are some common threads in the tapestry of the descriptions, circuit-to-circuit variations produced different designs and colors at each location. The functions that follow constitute the common ground:

1. **As the secretariat to the judicial council and its subordinate committees,** the circuit executive schedules, plans, prepares agenda, presents certain topics, publishes minutes, and takes follow-up action for the council. Much of this work is ministerial and routine, while issue selection, presentation, and implementation may call for broad understanding of substance in administration, articulation of a sophisticated and persuasive nature, and skills implementation. With limited staff, the routine burdens fall upon the circuit executive alone. These burdens are significant because some circuits have created as many as eleven different committees.

It should be possible to turn over the more routine of the clerical tasks, no matter how sensitive they may be, to lower level personnel such as a secretary or a clerk, thereby permitting the circuit executive to devote more time to the truly professional aspects of this function.

2. **Preparation and guidance for the circuit judicial conference,** which has assumed enlarged proportions and scope in recent years, are a major activity of the circuit executive. To some extent this is a reflection of promotion of the conference by the circuit executive and a general desire for more effective communication among elements of the legal community. The magnitude of these ventures is illustrated by the Eighth Circuit's conference in 1982, which called for invitations to 1,500 with acceptances from 500. The acceptance rate is undoubtedly elevated by the locus of these sessions, usually an attractive watering place within, or sometimes even outside of, the circuit territory. As in the case of council meetings, staging these events is a major logistical task, with a myriad of details to be carried out by the circuit executives and their two helpers.

This function cannot help but detract from more significant assignments relating to improved judicial performance. In many non-profit organizations, such conferences are handled by a contractor who specializes in hotel arrangements, transportation, program printing, group meals, recording and reporting, press services, and other necessary tasks. If this alternative is not acceptable to the circuit, these tasks might be delegated to staff persons, borrowed from other units in the circuit for a limited period of time, or delegated to temporary employees for the period of the conference, who would perform within the policies and program plans set by the circuit executive.

3. **Decided progress can be identified in relieving the circuit chief judge of administrative matters.** In some circuits, the administrative tasks previously performed by the chief judge that were

to be delegated to the circuit executive were specifically defined in writing. In others, the process was less formalized and more on an ad hoc basis. One assignment, as reported above, is assistance to the judicial council. Beyond that, review of claims for payment above the statutory maximum under the Criminal Justice Act for presentation to the chief judge has generally been delegated. Further, response to inquiries from other bodies, such as the Judicial Conference, the Administrative Office, the Federal Judicial Center, congressional committees, and other elements of the legal community has become a regular feature in the circuit executive's domain. Likewise, the chief judge has looked to the circuit executive for preparatory action on necessary changes in policies and procedures. No precise measurement of the relief provided can be obtained from the available information, but the presence of the circuit executive has certainly given the chief judge more time for jurist responsibilities.

This relief, however, should not be overstated. A study conducted as recently as 1981 discovered that chief judges spent, according to their own estimates, anywhere from 20 percent to 80 percent of their overall working time on administrative responsibilities.⁵ The study found that "[c]hief judges are generally reluctant to acknowledge the importance of their administrative responsibilities," yet they are concerned about the time these growing administrative involvements preempt from exercise of the law-declaring functions for which they were appointed to the court of appeals. The performance of administrative leadership has traditionally been tied to the collegial nature of relations among judicial peers in decision making. As this study concludes, the future "goal in the circuit courts is not to maximize strong executive leadership as far as collegiality will allow. Rather, it is to use executive leadership to maximize efficient administration that is at the same time collegial." With the circuit executive as an ever more effective management partner, this goal should be closer to fulfillment.

As the creators of the circuit executive position anticipated, the attitude and outlook of the chief judge concerning court administration and the need for greater effectiveness have constituted the major influence in determining the actual level of delegation to the circuit executive. The relationship between the chief judge and the circuit executive is a crucial determinant of the extent of the executive's role in administration. Because the chemistry between the two varies considerably from circuit to circuit and over time,

5. R. R. Wheeler & C. W. Nihan, *Administering the Federal Judicial Circuits: A Survey of Chief Judges' Approaches and Procedures* (Federal Judicial Center 1982).

however, it is difficult to offer any general assessment. But the delegation of powers could certainly be more extensive.

The broadest possible grant of responsibility should be made—in keeping with the circuit executive's salary, the urgency given to modernization of court management, and the desire to free the chief judge of administrative burdens. (In certain federal agencies in the executive branch, the pattern of delegation has been reversed. The authority delegated to the executive is all-inclusive in scope, with those powers to be retained by the superior specified as exceptions. This practice has placed the burden of justification for limitation of powers upon the higher authority.)

Although the situation has moderated to some extent in recent years, there is still a tendency to view the circuit executive as a personal aide-de-camp of the chief judge and to assign to the position many housekeeping details that could be performed by others of less rank and professional skill. These include special arrangements for parking or emergency transportation, routine liaison with outside bodies or individuals, and the processing of minor administrative requests. To some extent, the situation is as much a reflection of circuit executives' eagerness to please their superiors in this new and untested position as it is a reflection of the imposition of the chief judge's requests. It can be corrected through joint action of the two officers in determining where the support functions might more appropriately fall. A redefinition of the tasks of the chief judge's secretary, the law clerk, and other staff members might lead to more equitable and efficient use of the circuit executive's time. If those duties cannot be performed by such staff members, creation of a position such as aide-de-camp may be indicated.

One troublesome development may weaken the capacity of the chief judge/circuit executive partnership to function as intended. That is the different locations of the chief judge and the circuit executive—the judge usually preferring to occupy the courthouse nearest his or her residence, while the executive continues to work at circuit headquarters. Such a situation now exists in a majority of the circuits (seven out of twelve)—in the Third, Fourth, Fifth, Sixth, Eighth, Tenth, and Twelfth. (See table 12 in the Appendix for the location of each chief judge and circuit executive.) Even with the wonders of modern communication there is no substitute for direct and close association at the same location, particularly in as sensitive and evolving a relationship as this one. The separations inevitably lead to delay and misunderstandings. In fact, it is doubtful that a chief judge can meet all the demands of the position when residing outside of the circuit's central location. Judges whose seniority will elevate them to chief judge should be passed

over if they are unable or unwilling to operate at the center. This would be a completely justified requirement for office in light of the powers exercised in that post, even if the circuit executive did not exist. The transfer of the circuit executive to the location of the chief judge might also solve the problem. But, in all likelihood, it would only increase inefficiency. To be a managing partner or agent of change the circuit executive must collaborate closely with the chief judge as one professional joining forces with another to improve the administration of justice.

4. A primary activity reported by all circuit executives is **budgeting**. No challenge or dispute has arisen over this function—it is clearly within the sphere of the circuit executive. In fact, one executive described this activity as limited to "prepar[ing] or develop[ing] budget requirements for submission to the Administrative Office." There is little evidence of the circuit executive's use of the budget as a management tool or a program planner, probably because of the limited discretion available to the circuits in the budget process, which is largely centralized in the Administrative Office. The circuit executive collects information on the dollar requirements of the various units, consolidates the information, prepares justifications for budget increases, and forwards the material to the Administrative Office by the stated deadline.

When appropriated funds are allocated following congressional action, a circuit is provided a limited opportunity to adjust its share for changed conditions. Although circuits maintain basic accounts, actual financial management is not extensive. With the growth of the judiciary, a more extensive delegation of budget decision making to the circuits—with the circuit executive equipped to exercise professional budgeting skills—is needed to reduce time delays and to recognize more fully the significant differences in requirements among circuits.

The budget process for the circuits includes a number of levels of review and approval. The efficacy of each review should be evaluated in terms of its contribution to the ultimate decisions that collectively constitute the expenditure requests for the third branch. The relationship with the congressional committees should be controlled centrally, with occasional involvement by a witness from the circuits to deal with special problems. Increased budget activity by the circuits, however, would not suggest separate advocacy before the Congress by circuit representatives.

Within the present constraints some circuit executives have initiated proposals for change in budgetary practice. For example, the Seventh Circuit reports the development of a new pay proposal

that would establish a funding pool for allocation of additional compensation to deputy clerks with records of increased productivity. Innovations of this type should be encouraged in all circuits.

One exception to budgetary item control has been granted for the procurement of furniture and furnishings within the circuit. This step is in the right direction. Other expenditure needs might be met in a similar fashion. With a high-salaried executive on duty in the circuit, more expeditious and locally acceptable judgments can be made at the regional level. Such discretion would not automatically lead to higher expenditures, but would result in improved use of available funds, based on more independent and searching evaluation of requirements.

5. **Personnel and training responsibilities** have been generally assumed by the circuit executives. This activity is closely akin to the budgetary function in that salary costs constitute a significant portion of the circuit's financial requirements. Likewise, personnel policies, position management, and salary and fringe benefit conditions are largely dictated by authorities outside of the circuit. It is the compliance with these authorized practices that is expected of circuit management. Beyond that are the significant supervisory decisions—which must be made within the prescribed framework of policy and procedure—in order to select, motivate, train, and compensate those men and women necessary to the effective administration of justice. So there is room for creative personnel management on the part of the circuit executives, with support from the judicial councils. Recent reports give evidence of progress in this area.

Training programs have been a standard addition since the appointment of the circuit executives. Almost every circuit reports educational workshops; orientation of law clerks, new judges, and other personnel; luncheon seminars for staff attorneys and law clerks; and conferences to explain new directives received from Washington. Although specific training requirements have not been determined to meet circuit performance standards, these training ventures appear to be responsive to generally stated needs within each circuit. Most of the descriptions provided by circuit executives concerning these sessions are too limited to afford evaluation of their content and methodology. Nor is there evidence of any systematic evaluation by the circuits of training results. In anticipation of new administrative techniques, as well as to upgrade personnel in the performance of their current duties, more comprehensive training projects might be undertaken with the Federal Judicial Center. While coordination of training activities is a major role of the Center, certain courses with wide participation could be

conducted at the circuit level with guidance and evaluation from the Center.

To the extent that they can exercise discretion over personnel policy, circuit executives have been instrumental in studying need for change and in preparing and obtaining approval at the appropriate level for the alterations indicated. Although individual personnel problems are a major part of circuit executives' business, they have also devoted time to systematic review of existing practices and to more equitable administration of those policies for all nonjudicial personnel. They have been viewed as the professional advocates of the circuits' desire for greater flexibility in the application of national policy.

As mentioned earlier, circuit executives' abilities in personnel management have been measured by circuit colleagues in terms of their success in justifying increased staffing to meet rising case-loads and increased funds for salary improvements for current employees. Although this particular measure of accomplishment is understandably important to judges and clerks, it should not constitute the sole criterion by which progress is ascertained. However, such concern by judges and clerks has stimulated—and should probably stimulate to a greater extent—the use of workload measurement, systems analysis, and productivity studies. Such techniques can be applied not only to justify increases in personnel but also to achieve greater efficiency and higher productivity with existing resources.

Another area of personnel management that deserves attention from the circuit executive is employee morale. The most important factor in the process of improving morale is the performance and behavior of those who supervise the employees' work—which implies doing more with regard to training of supervisors and evaluation of supervisors' capabilities in interpersonal relations. In addition, steps can be taken to convey to those even in the lowest positions the importance of the work they perform in relation to the fundamental mission of more effective and equitable administration of justice.

In support of these objectives, circuit executives have been particularly responsive in the development of more frequent written communications to the entire circuit staff. Newsletters, bulletins, and press releases have given employees a better understanding of what occurs within the court as well as of the significance of their work in the larger setting of the nation. Time and funds devoted to this purpose are minuscule compared with the losses that could occur as the result of inadequate communication.

The people side of management deserves the highest priority, not just in terms of compliance with regulations, but in terms of recognition of the signal importance of human effort in achieving the purpose of justice. The circuit executives should embody an evangelical advocacy of this philosophy in the performance of their responsibilities.

6. The acquisition of and planning for necessary **space, equipment, and furnishings** have been and were clearly intended to be a major feature of the circuit executive's responsibilities. With the assignment of new judges and visiting judges, and with the increased involvement of the public in the courts, these so-called housekeeping functions have assumed an added significance. It was in this area that much of the chief judge's administrative time was expended. These matters require a certain sensitivity to the established order of judicial personnel and to the function of the courts in our society.

This function is an area in which tremendous blocks of time may be devoted to relatively minor matters of individual desire or complaint. All too often, for instance, the problem of space for parking has generated time-consuming debate. One would expect most procurement processes to have become routine enough by this time that they could be effectively employed by lower level personnel. Relationships with the General Services Administration (GSA), initiated and nurtured by the executive, should by now be such that prolonged negotiations in the solution of individual problems are not necessary. Unfortunately, federal regulations in this area are loaded with procedural steps, which may resemble an obstacle course for the uninitiated. The circuits and the Administrative Office should therefore examine whether certain of these required clearances might be eliminated through placement of accountability with the circuit court in the person of the executive.

The details involved in new construction or major renovation assume major importance in both the planning and the executing stages. Here, too, the circuit executive should be the principal representative of the circuit, supported by knowledgeable judges and support staff familiar with the specific needs of the court. The line of communication between the circuit and the architect/engineer, construction contractor, and GSA should flow from the circuit executive.

7. The provision of **court security** has been acknowledged as a key aspect of the circuit executive's responsibilities. Although this function may have at one time been viewed as routine, it has special meaning in this day of increased popular and

media interest in judicial proceedings and increased instances of violence in the nation's courthouses. Where new courthouses have been designed, it has been necessary to plan for physical security as an inherent part of the building's exterior and interior structure. Existing courthouses have required modification for security purposes. New processes have been developed to control the admission to courtroom areas. These responsibilities have necessitated consultation with a variety of law enforcement agencies and an ability to plan for the necessary protection without obstructing the fundamental purposes of the court.

Provision of security is a logical activity for the circuit executive, one that has not been challenged by other officials. The executive's role in this area, with assistance from the appropriate authorities in Washington, should continue.

8. In their 1978 evaluation McDermott and Flanders observed that "[t]he biggest contribution made by the circuit executive was the **collection and dissemination of data** on the work and 'production' of the court of appeals." This function continues to be an important aspect of the circuit executive's job, but describing it as "the biggest contribution" fails to do justice to the executive's growing capabilities in other functions already discussed. Nevertheless, this activity has continued to mature: More extensive data have been collected—beyond those required by the Administrative Office—and circuit executives have discovered increasingly effective ways in which to present the data. In a number of circuits, elaborate annual reports have been prepared.

Of principal concern in this area is whether the accumulated data are being subjected to sufficient analysis not just to reflect workload trends but to identify areas in which administrative improvements can be initiated. Any data collected must be vigorously interpreted to justify the time and expense of accumulation. Such data can be used to measure the comparative productivity of the circuit judges, to determine necessary judicial and support staffing, to reduce time delays in case processing, and to improve numerous other areas of circuit operation.

9. **Liaison with the Administrative Office and the Federal Judicial Center** is a basic responsibility of the circuit executive. From all available evidence, these lines of communication have been effectively established. Although there are the usual tensions that arise between organizations at the national and regional levels, there is general agreement that the presence of the circuit executive has improved communication and contrib-

uted to better understanding of the circuits' needs as well as of the requirements of the national system.

The existence of the circuit executive has spotlighted the extent of centralized administrative control by the Administrative Office. The directions emanating from Washington on personnel, budget, and procurement are continuing reminders to the circuits' leadership that administrative decision making has not been delegated to the degree warranted by the presence of a senior executive in each circuit. With the circuit executive has come a management capability that did not exist in the circuits in earlier times. This capability, combined with the exponential growth of the circuits' business, would seem to justify a broader grant of authority to the chief judges and the circuit judicial councils. The circuit executive could serve as the active agent in the implementation of decisions reached under that delegation of authority.

The Federal Judicial Center has maintained an active interest in the maturation of the concept of the circuit executive and in the administrative performance of the circuits generally. As noted earlier, it was the Center that prepared the original paper covering the proposed responsibilities of the circuit executives in 1971 and the following year drafted the manual that provided initial guidance to the first incumbents. The two evaluative Center studies discussed earlier have contributed significantly to understanding of the administrative challenges in the circuits and of the contribution of various circuit officers in the improvement of court administration. Such evaluations should continue with increasing involvement from circuit executives and other individuals with administrative responsibility.

The Federal Judicial Center can continue to offer professional resources in the conduct of training. With the prominent place of training on the agenda of the circuit executives, they should be valuable associates in identifying needs for the systemwide training ventures undertaken by the Center.

Variations on the Main Theme

Beyond these nine areas of common involvement are many others that could be described as variations on the same theme. Although these activities could be listed in great detail, for the present purposes it is more appropriate to summarize those activities that occur with the greatest frequency.

1. The **personnel-related activities** of the circuit executive extend in a number of different directions in certain of the circuits.

A significant contemporary concern in the personnel area is for a more representative work force. Concern for equality in employment opportunity should permeate all personnel policies and practices. To ensure such equality circuits have established the position of equal employment opportunity coordinator. Although the circuit executive is the logical appointee to such a position, responsibility for equality rests with all who make supervisory judgments or request personnel actions.

Merit screening for the selection and reappointment of bankruptcy judges is a new responsibility assigned to the circuits. The circuit executives, in several instances, have appropriately been included in that process. They can be a valuable participant not only in reaching the screening judgments but in designing the process by which merit selections are to be made.

In addition, several circuit executives have become involved, primarily in a consultative capacity, in the processing and investigation of complaints concerning judicial conduct. Their professional experience and objectivity should be a useful contribution to the judgments formulated by judges reviewing such complaints.

2. **Management consulting**, which carried a high priority in the original conception of the circuit executive's role, has been pursued with varying degrees of intensity. The pressure of day-to-day assignments has tended to decrease the time available to invest in this staff function. Yet there is evidence of increased attention to this area in the years since the 1978 study, which pointed to the inadequacy of administrative innovation. Judges have been more receptive to the need for improved systems of case management, and circuit executives have gained a better understanding of what conditions can be improved in the interest of higher efficiency and greater productivity.

In spite of these advances, the potential usefulness of the circuit executive has still not been fully realized in this critically important area. More penetrating examination should be directed toward appellate operating procedures. More use could be made of the computer applications developed by the Federal Judicial Center and of local adaptations recognizing the special needs of each circuit's operation. The intended emphasis on work measurement, cited in the original proposals for the circuit executive position, could be reinforced through detailed review of existing processes. A plan of research and special studies could be set forth in the annual work program and accepted by all judicial and support staff

in a concentrated effort to improve performance. Such a plan would need the full backing of the chief judge and the council. Their awareness of this commitment would help to overcome the typical management phenomenon in which routine operations constantly preempt the time available to devote to research and planning.

3. One circuit executive described his role in **public information** as that of "a conduit of information" for both internal and external dissemination. As mentioned earlier, circuit executives have become an influential force in improving communication within the circuit through the development of newsletters and other internal publications.

Yet there is only sporadic evidence of a specific program for the delivery of information to the public, an activity that, as originally intended, has been situated with the circuit executive. For the most part, dissemination of information has been largely reactive rather than anticipatory and has dealt with episodic issues relating to changes in court practices, districts, and buildings. This function could be strengthened by a conscious review of the individual "publics" that would benefit from information about the judiciary and the tailoring of informative material to those specific audiences. As in the case of management consulting, an annual plan stating the objectives and resources available for this activity would give it more import. Here, too, the interested support of the chief judge and other judges is essential to further development. An affirmative attitude toward better public understanding must emanate from those who make the crucial decisions from the bench.

4. In certain circuits the executives have assumed responsibility for all **administrative supervision**. This means that they have direct accountability for the performance of the clerk's office, the library, and other support units. Although the executive's role in this area has in some instances been viewed as essential, it is questionable how much significant influence the circuit executive can exert over functions previously established as judicial. To an appreciable extent the executive's line accountability for these activities complicates service as a management consultant and innovator. Likewise, the burden of the day-to-day operating decisions, an inherent part of such supervision, readily consumes time that could be devoted to more useful pursuits aimed directly at administrative improvement.

The circuits in which the executives have made the most significant contributions to that purpose are those in which their rela-

tionship with the administrative units has been in a staff rather than a line capacity. Other administrative officials should look upon the circuit executive not as a boss, but as a knowledgeable and expert partner in the continuing effort to improve their operations.

5. The study conducted in 1978 concluded that a productive relationship between the circuit executives and the district courts had not been successfully achieved. In more than half the circuits, the executives had been of little or no **assistance to the district courts**. This condition has not significantly changed since that evaluation. Circuit executives seem to have little time or inclination to visit the district offices, even those in the same city as the circuit court, and although they have occasionally been called in for advice on certain problems, such requests have not come naturally from the district courts.

With the advent of executives in six of the districts, an expanded emphasis on administration will be available firsthand to the district judges. They will be in a position to study and recommend major changes in trial court practice to improve the administration of justice. And one result will be a tendency to use circuit executives to an even lesser degree in the large districts. Whatever contribution circuit executives make will be largely through their demonstrated capacity to help the district courts in resolution of their problems without in any way appearing to impose the will of the circuit court or to diminish the independence of the districts.

Even with this development, circuit executives should address more attention to the districts. A schedule of visits should be a part of the annual program planning in each circuit. Opportunity should be sought through normal communication between the circuit and the districts for collaborative efforts to improve the system in general.

Summary of Current Effectiveness of Circuit Executives

The above recital of developments in the circuit executives' performance over the past decade, in both common and varying activities, is in no sense comprehensive, but it does cover the significant features that have emerged from this period of experience. In summary, it can be concluded that—

Chapter V

1. Circuit executives have contributed to the conduct of circuit court administration, but have failed to realize the full potential of the role up to this time.
2. The range of assignments has been too broad and ambitious for the resources provided to the circuit executives and their limited staff of two (or a few more in some circuits).
3. Top-priority functions have not received the degree of attention that was intended because of the competing demands of other, more immediate activities.
4. Circuit executives have generally been accepted by chief judges, the judicial councils, and their colleagues in the circuit courts, but further definition of responsibilities and relationships needs to be formulated to provide optimum utilization of the position.
5. Circuit executives have not attained the partnership relationship with the chief judges that is necessary for constructive change.
6. The high rank and compensation of the circuit executives has not been justified by their relationships with their judicial colleagues and in the professional level of the work they perform.
7. The absence of broader delegation of authority from Washington for administrative decision making has significantly limited the circuit executives' ability to fulfill many of the expectations for them.
8. The selection process for circuit executives has been moderately successful, though too time-consuming and too dependent on unsolicited applications.
9. The full potential of the circuit executive position lies ahead; it should be attainable through improved definition of functions and responsibilities, closer collaboration with chief judges, broader communication among the circuits, and modest increases in the staff of that office.

These conclusions are converted into specific recommendations in chapter 7.

VI. ROLE OF THE BOARD OF CERTIFICATION

What has been the role of this legislatively established gateway through which qualified executives must pass on their way to consideration for selection by the circuit chief judge and the judicial council?

Has the Board of Certification served its intended purpose?

Has it been a facilitator or an obstruction?

Has it significantly contributed to the definition of the circuit executive position through the standards it established and the candidates it judged to be qualified?

Has the board maintained an independent stance, or has it primarily been the instrument of the Administrative Office, the Federal Judicial Center, or the circuit chief judges?

Has its composition, with four of its five members directly or indirectly attached to the judiciary branch, let it become a servant to the choices of the circuit chief judges?

In guarding the gate, has the board shown favor to lawyers as opposed to nonlawyers, to those who apply from within as against those who attempt to enter the judicial circle from outside, to federal experience rather than background in the private sector?

Has it cultivated a new professional career field in court administration through the standards it has applied?

Has it consciously or unconsciously become an advocate for the concept of the circuit executive?

Has it been too aggressive or too passive in promoting the cause of improved judicial administration?

Eleven Members of the Board in Ten Years

These, and many other, questions must be asked in an evaluation of this particular organization. In the Board of Certification's ten-year history (see table 11 in the Appendix), eleven members have served, for varying periods of time. Only one member, John Macy, the appointee from outside the judiciary, has served continuously

since the creation of the board. When his term expires in 1986, he will have served on the body for fifteen years.

Three have served as chairmen of the board in their capacity as directors of the Federal Judicial Center: Judge Alfred P. Murrah, Judge Walter E. Hoffman, and Professor A. Leo Levin. Much of the initial planning and action of the board took place under Judge Murrah's leadership. During the three years he served, the original qualifications standards were established, the certification procedures were defined, and fifty-eight applicants were certified out of seven hundred candidates who submitted applications. During Judge Hoffman's three-year tenure, the board was relatively inactive, producing only six certifications. This inactivity was prompted by the long list of names released in 1972, from which it was judged most of the initial selections could be made. During Professor Levin's tenure since 1977, the board has become increasingly active as a consequence of new vacancies in the circuits and the experimental institution of the district court executives starting in 1981. In the course of the latest six-year period, the board extended the roster of eligibles by forty-nine new names.

Two directors of the Administrative Office, Rowland F. Kirks from 1971 to 1977 and William E. Foley from 1977 to the present, have been board members. In each case the director has served as the secretary of the board and has supervised the ministerial activities necessary to support the board's operations. The volume of applications and the multiplicity of steps in the selection process have added a heavy burden to the secretariat duties. Most of this work has been carried by one associate working part-time with occasional clerical assistance.

Five judges have occupied the two judicial positions on the board (the years given refer to the judges' respective terms on the board):

1. Frank M. Johnson, Jr., Judge, U.S. Court of Appeals for the Eleventh Circuit, 1971-1972
2. Roger Robb, Judge, U.S. Court of Appeals for the District of Columbia Circuit, 1971-1973
3. George E. MacKinnon, Judge, U.S. Court of Appeals for the District of Columbia Circuit, 1972-1983
4. Howard T. Markey, Chief Judge, U.S. Court of Appeals for the Federal Circuit, 1973 to the present
5. John H. Pratt, Judge, U.S. District Court for the District of Columbia, 1983 to the present.

The burden of service on the board has been particularly heavy for these judicial members because their review and evaluations, their attendance at interview sessions—in Washington and elsewhere—and their assessment of FBI reports have been in addition to substantial court workloads.

Absence of Selection Authority

From the beginning the board emphasized that its role was solely that of evaluating candidates who submitted applications. In no way was the board to preempt the power of selecting candidates, which rested with the circuit chief judge and the judicial council. Each candidate was reminded at the beginning of the oral interview that the prospect of appointment could not be forecast by the board; any invitation for consideration would come from the circuit chief judge. Nor did the board view itself as the appropriate instrument for the actual shaping of the position. That responsibility rested in the individual circuits, with guidance provided by the Administrative Office and training and research provided by the Federal Judicial Center.

Similarity to the Civil Service Commission

In many ways, the board has served as a counterpart to the original Civil Service Commission for this one important position. The board was created to evaluate candidates against published standards and to make available to appointing officers a roster of those judged to be qualified. The process varies from the traditional civil service procedure in that none of the candidates are ranked; they are merely declared eligible for consideration. Any name, regardless of its position on the roster, which is alphabetical, is eligible for circuit consideration and selection.

In no sense does the board endeavor to dictate program or performance through its evaluative duties. This abstinence has occasionally been difficult to sustain. Some members have been tempted to become involved in the promotion of the circuit executive position and in the formulation of its duties and responsibilities. However, even though some chief judges may have believed the board unwilling to grant sufficient weight to circuit court experience gained by clerks or administrative or legal assistants, the record clearly demonstrates that there have been no moves along those lines.

Time-Consuming Three-Step Process

The board has proved conscientious almost to a fault. For most of its existence each of the five members has reviewed each of the applications to determine whether an applicant is within or outside the zone of consideration.

The seven hundred applications submitted over the first three years of the board's existence necessitated a heavy time commitment on the part of board members. But there was reluctance to permit review by a limited number of members or by the secretarial staff. With the passage of time the burden of this first step was lightened by permitting an initial review by only three members, with consideration by all five if there was serious disagreement. This limited review was based on the theory that as long as three members of the board voted either to accept or to reject a candidate, whatever action was taken would always be by a majority vote. Over time there appeared to be fewer and fewer applicants who met the standards for consideration, and this reduction in the number of reviewers was adopted as a general practice.

A significant number of applicants in the first three years were judged to be within the zone of consideration and were next subjected to an oral interview conducted by the entire board, the second step in the certification process. The record shows that all board members, with few exceptions, were on hand for these interviews, which lasted a minimum of thirty minutes and in some cases extended to sixty. It was difficult for some candidates to meet the dates set by the board for these sessions. It was even more difficult for several who resided at some distance from Washington to meet the expense of the round-trip for this brief evaluation. The latter problem was partially resolved by a decision of the board, after Professor Levin became chairman, to conduct interviews outside of Washington at locations such as New York, Chicago, and San Francisco. There is no evidence, however, that promising candidates were deterred from the opportunity for consideration by the time or place of the interviews.

The interview process was fairly standard from candidate to candidate. The chairman introduced the candidate to the board members and explained the total process leading to certification. After some experience, this opening statement was modified to include an invitation to the candidate to identify any past episode or condition that might be revealed in the FBI field investigation and produce a potentially embarrassing or confusing situation.

A predesignated board member then began the questioning, after urging the candidate to be comfortable and relaxed and to view the

experience in the most favorable light possible. The first queries were based upon that member's review of the application and tended to set the atmosphere for a more detailed discussion of the candidate's qualifications. Usually, these questions concerned the candidate's understanding of the circuit executive position and the candidate's own view of his or her ability to perform in such a role. Particular emphasis was given in this opening discussion to the high level of the position, which was frequently referred to as equivalent to that of a three-star rank in the military. The candidates were challenged to describe why they felt prepared to assume a position on the uppermost rung of a court management career.

The other four members of the board continued the questioning, probing any particular qualification in which they had further interest.

Upon the departure of the candidate, with best wishes and hand-clasps from all of the board members, an immediate evaluative discussion took place among the five board members. A decision was reached as to whether the candidate should be recommended for certification, subject to a favorable FBI investigation. Only a minority of interviewed applicants were chosen. In some cases, those who were chosen failed to receive a unanimous vote. But, interestingly, there was no fixed pattern among board members of approval or disapproval of candidates, regardless of their background.

The third step, the full field investigation by the FBI, though involving a relatively small number of the applicants, proved to be the most time-consuming of all. The extensive FBI questionnaire, which had to be forwarded to the candidate for completion, requested such information as all residential addresses back to 1937. Although some candidates responded with alacrity, others found the collection of information and completion of the form to take longer than anticipated. Once returned, the forms were transmitted to the FBI. The FBI's investigations varied significantly in length, but in almost every instance consumed a period of at least three months. The FBI returned its reports to the Administrative Office, and they were then rotated among the five board members for review and evaluation.

In the bulk of the cases, the investigations revealed no derogatory information that would alter an earlier decision to certify. In a few difficult cases, the reports contained information the candidate had failed to reveal at the interview or supplementary information of a negative nature from those acquainted with the individual's past professional or personal experience.

The usefulness of the FBI report was never questioned. It was beneficial not only in ensuring that loyalty and security standards

had been met but in providing additional information from sources that could not be contacted directly by the board.

Because of the heavy time commitment required by this stage, moves were made in later years to reduce the number of board members reviewing each report. Only for those cases in which there had been disagreement in the early review did full circulation take place.

Those candidates whose reports were positive were notified of their certification and added to the existing roster. Most of the certified applicants remained on the list for an extended period of time. They were occasionally called by circuits for consideration in connection with a vacancy, and some would at that time indicate an unwillingness to consider appointment in the particular location even though they had stated explicitly, during the interviews, that they were prepared to serve wherever a vacancy might arise. Changed professional or personal conditions occasionally necessitated withdrawal from consideration. Some candidates expressed puzzlement over remaining on the list for extended periods without receiving any calls for consideration. This could only be explained as proof that the authority for selection resided fully in the circuits.

Recertification After Three Years

Another responsibility of the board, assigned by statute, is the re-evaluation of those who have remained on the roster for three years without being selected. At the end of the first three-year period, in 1975, it was decided that virtually all of the candidates should be recertified if the individual so desired. Although certain individuals had accepted new assignments subsequent to their original certification and would in all likelihood not be available if they were called, the majority indicated a desire to be recertified, reflecting the cachet that attached to certification in the eyes of knowing parties in the judiciary. Certification constituted a valuable credential that could be cited in applications for other positions.

After additional three-year reviews in 1978 and 1981, the board concluded that its passive role in recertification needed to be reexamined. Members felt that the passage of time between reviews was so great that an individual's continued interest in and enhanced qualifications for the job should be reconsidered on a current basis. Thus, the board called for a formal reapplication including information about subsequent experience. It also required prep-

aration of a five-hundred-word essay on the candidate's qualifications for the position. The essay had become an added requirement for all new applicants after the first round of certification. On the basis of these new statements, the board then decided whether to recertify, to conduct a further interview, or to deny recertification. Additional interviews, when conducted, proved to be very helpful. In some cases, a certified candidate had failed to achieve professional advancement in the intervening years or had lost interest in the possibility of service as a circuit executive. In other instances candidates had advanced significantly and had considerably better qualifications than those they presented initially. This process produced a more accurate and up-to-date roster, which presumably was more beneficial to the selecting officers in the circuits.

Certified Names Receive Mixed Reactions

The first roster of names received mixed reactions in the circuits. Those chief judges who supported candidates who had survived the process were gratified and proceeded to consummate early appointments. Those who had candidates in mind who failed to attain certification were disappointed and reluctantly turned to other names. Those without any specific choices combed the list thoroughly, were surprised at the seemingly irrelevant background of certain candidates, and selected the person with the experience most relevant to the needs and wishes of the circuit. Negative observations were made about the number of certified candidates with extensive military background, about the number of nonlawyers on the list, and about the delays in the entire process. There was continued encouragement from the circuits for certification of those from within their ranks judged to have potential for the position. The role of the board as a gatekeeper for admission to circuit executive posts was understood and moderately appreciated, but there was a clear desire for its greater responsiveness to what were perceived to be the needs of the circuits. The board's chairman and the director of the Administrative Office communicated frequently with the chief judges to explain the congressional intent in the establishment of the board and to describe the reasons for the various processes pursued. Over time constructive relationships ensued, and with some exceptions, the selections were satisfying to both parties.

The Quest for Quality

There has been general discontent among board members over the absence of more aggressive recruiting of qualified candidates. The process is quite passive. It favors those with knowledge of and experience in court-related activities. Potential applicants with relevant records in business, nonprofit organizations, academia, or other "outside" groups have not been attracted into the competition. Those who do file applications often appear to be disaffected or unwanted in their present positions.

A recruiting program has been viewed as being beyond the charter of the board. In at least one instance, however, the board made formal announcement—well in advance—of an out-of-town interviewing session and as a result attracted quite a few applications.

In some instances, circuit and district chief judges have secured such outreach in seeking to expand the applicant base for a specific vacancy beyond that represented by the certified list. A more pinpointed approach of this type, directed toward filling a specific position, is bound to result in improvement of the pool of candidates. Future staffing needs will be limited to replacements unless the district positions are multiplied, and local recruiting may therefore prove to be the best route to finding high-quality candidates.

Whither the Board Now?

The board has generally achieved balance between control and facilitation in examining candidates for these new positions. It has guarded against entry of the clearly unqualified. But the members of the board would have to admit that some of those certified initially were not equipped to perform the broad and penetrating assignment originally intended by the statute. Such a paragon probably does not exist—or exists only in limited numbers. It was necessary to certify and select those who would grow with the assignment and, with the chief judge, shape the position to gain optimum results. During the past decade the court administration profession has expanded substantially. State and local governments have created positions of this type and sought qualified candidates to fill those positions. The Institute for Court Management, formed at the same time the circuit executive position was adopted (and now part of the National Center for State Courts), offered extensive training in court management, enhancing the supply of managers available for selection to circuit executive and like positions at lower levels.

With established qualification standards, an increased supply of qualified candidates, and the benefits of local recruitment, the need for the Board of Certification in the future can certainly be questioned. The original concept of a gatekeeper has far less validity today than it did in 1971. To the degree that some control is required, the function could become a responsibility of the Administrative Office, or of that office in conjunction with the Federal Judicial Center, or of the two organizations in collaboration with representatives from the selecting circuit. In addition, search committees could be formed on an ad hoc basis at the time of a vacancy to draw upon the existing list of certified candidates and to recruit locally available candidates.

A further argument in support of these changes exists in the growing diversity in the nature of the positions for which the board determines eligibility. District courts have been added to those courts seeking candidates, and in that larger judicial area are significant variations in administrative requirements. Further, this expanded coverage complicates the long-standing problem of the geographic availability of candidates pursuing certification. When a qualified candidate limits availability, certification is denied even if the experience and other qualifications presented would meet the standards for selection in a location preferred by the candidate. A more tightly focused recruiting and selection process for a particular vacancy would overcome that problem.

"Sunset" provisions are applied to many new federal institutions these days and might be applicable to the Board of Certification at some point in the future. If such a decision is reached, the board should not fade away precipitously. It might continue to function for a specified period and then gradually phase out its operations, assisting in designing a new system for the next stage in the development of the circuit executive.

VII. RECOMMENDATIONS FOR FUTURE DEVELOPMENT

The creation and implementation of this key position of circuit executive have filled a decided need in the circuit courts. Today the withdrawal of such a position would have a serious negative effect on the administration of justice. The multiple functions performed by the circuit executive have undeniably contributed to the efficiency of the courts. In light of the broad spectrum of responsibilities assumed by the first circuit executives, it is indeed remarkable that so much has been achieved in such a short time. This is particularly true in view of the sensitivity and confusion concerning the relationship of the new position to existing positions in the circuits. The necessity of making this new official a force for administrative change called for new patterns of administrative behavior on the part of the chief judge, the judges of the circuit, the districts, the circuit clerks, and other support personnel. The varying patterns of performance of the circuit executives are a reflection of the custom-designed nature of the relationships that have emerged in the evolution of the position. Justifiably, each circuit has been allowed to develop its own administrative personality based on the strengths and weaknesses of the circuit executive and the particular circumstances of the court.

But the indispensability of this position does not constitute a fulfillment of the original expectations for it. Some of the steps that might accelerate that progress obviously cannot be focused on the circuit executive alone. There are other actors in the drama of administrative improvement, not only in the circuits but in Washington as well. This examination has surveyed the entire scene, and from the observations have emerged a number of recommendations. Like the responsibilities of the circuit executive, these recommendations range from the relatively simple and mundane to the disturbing and revolutionary. They are offered in the interest of achieving the intended goal for the position and with the realization that they will be subjected to critical appraisal by those who have the awesome responsibility of administering the judicial system of the United States.

1. In view of the critical importance and extensive involvement of **the chief judge** in court administration, judges selected for this responsibility should be those who desire the assignment, possess the skills to perform it, and are willing to remain in the office for its entire tenure to ensure continuity and expertise.

To this end, it is recommended that the traditional selection by seniority be abandoned in favor of a process that would give consideration to the desire and capability of each judge for this assignment. The criteria for selection in 28 U.S.C. § 45 constitute a move away from strict seniority, but do not specifically call for ascertainment of interest in and qualifications for the administrative role to be played. Actual selection might be made by the Judicial Conference of the United States, or a special selection committee designated by that body.

The chief judges are the essential decision makers in the successful utilization of the circuit executives. Even though there have been efforts to reduce the magnitude of the chief judge's involvement in administrative matters, among them the creation of the circuit executive position, time commitment to those matters continues to be relatively high. These conditions would indicate that administrative interest and skill are important qualifications for consideration in the selection of the chief judge. In more and more American institutions, the selection of leadership by seniority has been discarded in favor of more qualification-related standards. There is no reason why the judicial system should adhere to an outmoded pattern. Use of the seniority method has resulted in limited tenure in many instances, and such turnover has fostered discontinuity of leadership. It is evident that some chief judges view administrative responsibilities as an intrusion upon their basic responsibilities as jurists.

The degree of judgment brought to bear in evaluating candidates for the chief judge position should be at least as thorough and intensive as that by which circuit executives are certified.

2. The circuit executives should be given assistance in determining the **priority of functions** they perform, in order to emphasize the role of management analyst and consultant and to minimize activities of a minor or more routine nature.

The chief judge and the judicial council should expect the circuit executive to devote a significant portion of time to those functions that are directed toward improved management of the circuit. Likewise, the capacity to perform these functions should be given added weight in the evaluation of candidates for the position.

There has been a tendency to view the executive's position as predominantly one of managing the nonjudicial functions in the circuit courts. This outlook has projected the appointee into a number of activities that do not demand the level of qualification expected of the candidates. Activities as assistant to the chief judge and as secretary to the judicial council are time-consuming and involve detailed administrative work. In some circuits the executives have assumed the role of line manager over nonjudicial activities to such an extent that they have become bogged down in day-to-day operations, with little time remaining for more important assignments.

The circuit executive position calls for a combination of innovator, systems analyzer, and problem solver. The incumbents of these positions should become the leaders in the identification of new technological and management methods of potential help to the courts. They should share these ideas with the clerk and the judges, involving them in the design and installation of approved systems. To achieve this objective, the circuit executive must be encouraged to devote time to these activities through a gradual delegation of other responsibilities to subordinates in the executive's office or in other organizational elements in the circuit.

3. The circuit executives should enjoy more of a **peer relationship and partnership with judges**, a circumstance warranted by their stature in the court administration field and by the salary level and rank conferred upon the position by statute. In the administrative profession, circuit executives are at a level comparable to that of judges in their profession.

This recommendation is a sequel to the previous one. A successful peer relationship must be earned by the circuit executive through performance of truly professional tasks. By expanding the activities related to management improvement and diminishing those concerned with "administrivia," the executives will come to be viewed as an important force in enhancing the administration of justice.

4. To attract strong candidates, the **creative and influential aspects** of the circuit executive position need to be given greater prominence. Demonstration of these capabilities should be sought in the recruitment and selection process.

The original intent in creating the position was to attract highly qualified individuals from the field of management who could establish themselves as effective partners with their judicial col-

leagues in the campaign to overcome administrative deficiencies in the judicial system.

5. All administrative functions presently controlled or performed by the Administrative Office should be reevaluated with the objective of securing the **optimum degree of decentralization** in personnel, space, procurement, budget, and financial management. The chief judge could delegate supervision of those functions to the circuit executive.

The growth of the judicial system has reduced the benefits of centralization. The continued centralized control of decision making in certain areas has inhibited the development of effective administration in the circuits. The circuit executive provides a capability within the circuit for a higher level of responsible judgment on such matters. The Administrative Office could ensure consistency in the application of its policies through promulgation of standards and guidelines and occasional review or evaluation of the performance of the circuits in relation to such standards.

In light of the significance of appellate decision making, it is difficult to justify claims that a circuit is not capable of determining its own staffing schedule, budgetary level, or procurement requirements and processes. Though central control might be justified on the ground of economy, the inherent delay in gaining approval from Washington adds to the cost of these functions.

The Administrative Office could retain control over certain decisions. For example, all personnel actions and candidate selections up to a specified level might be delegated to the circuits, with the Administrative Office retaining authority for the top positions in the system. Even with the rapidity of modern communications, the referral of actions for higher level approval consumes time and creates institutional tensions.

6. **More positive recruiting** efforts for circuit executive candidates should be instituted by the Board of Certification and the circuits in response to actual or prospective vacancies. Although advancement of those within the court administration profession will undoubtedly become a more common route in filling these positions, there is an obligation for outreach beyond the system. Recruitment should be directed to professional associations in law and management, regional and national media, professional publications, universities, corporate associations, federal and state agencies, state court executives, the National Center for State Courts, and other relevant institutions.

Aside from the initial circulation of information concerning the circuit executive position, there have been few attempts to attract outsiders into the competition for certification. In several instances, however, circuits with vacancies have publicized them in their own general community and have generated a significant number of candidates. Such targeted recruiting should be encouraged by the Board of Certification and the Administrative Office. But general recruiting without the prospect of vacancies is likely to be futile and fail to increase the pool of potential candidates. With the expansion of the corps of executives in the court system across the country and the increased availability of persons who have received special training in court administration, there should be a larger number of candidates with directly relevant experience. This broadening source should be cultivated, in part through encouraging a view of the circuit executive position as the pinnacle of a court management career.

7. Although the variations across circuits in the staffing of the circuit executive's office are justifiable, it would be beneficial to review that staffing in each of the circuits to determine the **adequacy of support personnel** as well as the availability of employees engaged in other court functions to assist the executive.

In interviewing the first candidates for circuit executive positions, the Board of Certification advised them that they would need to perform most functions in a solo capacity, with only a secretary and an administrative assistant as helpers. By and large, that prediction became the reality. But while limited staffing prevailed, some circuit executives were able to obtain additional assistance from staff in other units of the court, and in at least two circuits, the Second and the Ninth, additional staff have been made available, with the approval of the Administrative Office, to support the executive at both the managerial and the clerical level.

The staffing needs of the circuit executive's office are variable across circuits and over time, and there must be flexibility to adjust to changing situations and to the particular management styles of the chief judge and the circuit executive. The original Spartan formula has become unrealistic, unduly curbing the executive's performance. At a minimum, his or her staff should include an executive assistant (not an assistant or deputy circuit executive), a management systems specialist, a secretary, and an administrative assistant. The grade levels for these positions should compare with like duties performed elsewhere in the judiciary.

Chapter VII

Additional staffing would permit the executive to delegate certain routine responsibilities to the administrative assistant and more professional activities to the executive assistant. The management analyst would be the executive's right arm in examining problem areas in the circuit, conducting the necessary research and measurements, and preparing the preliminary recommendations for change. The analyst could also be the compiler and evaluator of the data collected by the circuit and the Administrative Office. The additional capability thus provided would help to fulfill the expectations for the circuit executive in this high-priority area.

Before adoption of such a staffing scheme, the Administrative Office would have to prepare a supporting document and circulate it to the circuits for their criticism. Variations on the adopted pattern would, of course, be permissible at the discretion of the chief judge and the circuit executive.

8. Although the relationship between the circuit executive and the circuit clerk has improved over the last ten years, the distinction between the two positions is still unclear. Each circuit, therefore, with assistance from the Administrative Office, should review and redefine the relationship with greater precision.

With the elevation of more and more clerks to the circuit executive position, the relationship may become smoother in one sense but more complicated in another. An elevated clerk's knowledge of internal circuit conditions may permit him or her to draw a clear line between the two offices. On the other hand, there may be a tendency on the part of such clerks to carry with them certain of the functions previously performed by the clerk's office.

This need not be a static definition, but one that is periodically reviewed to ascertain the reality of the relationship and to ensure the most effective utilization of both positions. In articulating their roles—the clerk as the administrator of the circuit's day-to-day business and the line supervisor of those associated with that business, and the circuit executive as the management consultant to the chief judge and agent of change—the points of separation and collaboration will be more clearly understood.

9. To facilitate and enhance the partnership between them, every effort should be made to have the chief judge and circuit executive reside in the same geographical location within the circuit; preferably, they would be located in the circuit's headquarters city.

Recommendations

A rigid requirement that this common residence be in the circuit's headquarters would cause a hardship for many chief judges. If the chief judge must be located outside of the circuit center, arrangements should be made for the circuit executive to spend a major portion of time at the location in which the chief judge resides.

This situation in the circuit courts is an anomaly. In most large organizations, a fragmentation of the headquarters staff would be viewed as the height of inefficiency. Even in the case of widespread decentralization, the executive leadership of an institution is most often exercised by a small staff located at a common site. The continuing tolerance of this arrangement is a major impediment to the development of effective court management. Although this recommendation has been modified to recognize the reality of the current situation, the ultimate outcome should be the common location, not only of the chief judge and the circuit executive, but of their support staff as well.

10. The future mission of the Board of Certification should be examined to determine its continuing usefulness.

In examining the board's future, a plan such as the following might be considered:

The board would continue to perform its statutory functions through calendar year 1986, when it would be abolished in favor of ad hoc panels in each circuit to qualify candidates in accordance with existing standards promulgated by the board, or with modified standards issued by the Judicial Conference. These panels might include the circuit's chief judge and two other active judges, plus appointees from the Administrative Office and the Federal Judicial Center. The panel would recommend no fewer than three qualified candidates to the circuit council for final selection.

With circuit executives in place in all the circuits and district executives for the six experimental positions now on board, the function of the board has changed substantially. It may currently represent an outdated piece of machinery that merely complicates the selection process and imposes a substantial delay in the appointment of candidates. Further, the growth of the court executive profession has produced a large supply of qualified candidates from throughout the federal, state, and local judicial systems, which might eventually overtake in-house candidates as the normal source from which to fill these top positions in the profession.

If the board were phased out, the existing roster of certified candidates might continue to be used for a two-year period and there-

after to the extent desired by the circuits and districts. The ad hoc panels could be authorized to conduct extensive recruiting efforts to seek a broad range of candidates, including placement of advertisements in appropriate publications. Vacancies would have to be anticipated as much as possible to avoid long periods without incumbents and the tendency to turn to those who are immediately available. The procedures followed by the board in its evaluation of applications might be continued by the panels, which would have secretarial support and assistance from the Administrative Office. To monitor this revised process, a group composed of individuals similar to those who have served on the board might be designated to review and evaluate the performance of the selection panels every five or ten years.

Central control over such a plan could be exercised by the Administrative Office. Those interested in circuit or district executive positions, without any specific preferences as to location, would be encouraged to file their applications with the Administrative Office, which would maintain a list of applicants for use by the circuit selection panels in making initial or transfer appointments. Those entering this professional field would thus be assured that their career prospects extend beyond the jurisdiction of a particular circuit or district.

11. The circuit executive should be empowered to study, evaluate, and propose improvements in all areas of court activity.

Although, in the past, there may have been resistance to such extensive coverage by the circuit executive, the chief judge should negotiate removal of that resistance to ensure the executive's ready access to every phase of the circuit's operation. The circuit executive should have no hesitation about interviewing judges, clerks, or other members of the court staff.

This recommendation is in keeping with the high priority assigned to the circuit executive's management analysis and consultation functions. There is evidence of reluctance to admit this recent outsider to certain judicial processes, particularly those that tend to be dominated by judges. That reluctance needs to be overcome through the affirmative leadership of the chief judge in the circuit's support of the executive program. Ideally, there should be a growing demand for the type of professional skills the circuit executive can bring to the resolution of problems. The ultimate benefits to be derived from these functions are dependant on the capacity of the circuit executive, the leadership of the chief judge, and

the access to the information necessary to design appropriate changes.

12. The circuit executive should be expected to pursue a far more active role in relation to the districts within the circuit.

The executive's role as an advisor to the districts should in no way be viewed as an intrusion on the independence of the trial courts. The executive's expertise should be drawn upon by the district chief judge and, where they exist, by district executives. The circuit executive's on-the-spot presence in the districts should be increased. At the least, there should be a visit to each of the districts once a year.

There are a variety of reasons for the absence of this intended relationship with the district courts. Circuit executives have been fully occupied by assignments within the circuits, lacking time to undertake supplementary responsibilities with respect to the districts. In addition, districts have been wary of administrative intervention from the circuit level as a possible threat to their independence. The possibility that district executives might be designated has lessened the attraction of a professional visitor from the circuit. The growing capacity and better organization of the circuit executive, however, should overcome some of the districts' hesitation, permitting the circuit executive to become a more vigorous and creative contributor to the improved administration of the trial courts.

A corollary recommendation is the extension of the district executive position to other large districts. Although it is too early in the pilot districts' experience to claim success, the initial usefulness of the district executive is readily apparent, more so than in the early days of the circuit executive. Administrative functions are even more pressing in the trial courts, and high-level performance can achieve demonstrably favorable results. Expanded advisory assistance from the circuit executives should enhance the developments under the district executive program.

13. There is a need to overcome the professional and geographical isolation of the circuit executives.

The Administrative Office and the Federal Judicial Center have recently provided more opportunities for collective consultation among circuit executives in Washington or elsewhere. Circuit executives meet together twice a year at the time of Judicial Conference sessions and are present at the meeting of circuit chief judges

Chapter VII

following those sessions. Such participation by circuit executives in appropriate gatherings of circuit chief judges permits them to hear and present ideas for management improvement. Interchange of information and ideas should also be stimulated through publications aimed directly at court administration and the circuit executive's role in improving that administration.

Although the insulation of individual circuit executives may be lessening with the passage of time and with the broader acceptance of incumbent executives by their judicial peers within the system, even more conscious communication with and among them is required to advance the purposes the positions were created for at an accelerated rate. Although the formation of a collective body of circuit executives separate from the existing national institutions and judges is not recommended, a more collegial environment could be fostered through problem-solving workshops, joint presentation of recent findings and innovations, and briefings on judicial and administrative developments that might affect the circuits. The partnership of the circuit executive with the chief judge will be manifest in their joint presence at meetings where administrative developments are formulated or evaluated.

* * * * *

These thirteen recommendations are submitted with some temerity. They are intended to stimulate thinking and reaction on the part of those who have policy-making responsibility. The concept of the circuit executive as a potentially significant contributor to progress in court administration is basically sound, but the implementation of the concept has not lived up to the full potential in every instance. It is hoped that the changes proposed herein will increase the level of the circuit executives' contribution in the future. Their adoption, in the form proposed or with modification, would expand rather than contract the discretion of the courts, would raise the professionalism of the position to the level intended by the salary and stature designated by the Congress, would clarify areas calling for more precise definition of duties and responsibilities, and would nurture a more productive partnership between the circuit executive, the chief judge, and the judicial council.

APPENDIX
Tables 1 to 13

TABLE 1
Applicants Certified by Board of Certification, 1972-1983

	1972 (52)	
John L. Bauer		John E. Kahelin
Ralph Lewis Bell		Anna Kaplan
Donald Russell Berry		Joseph J. Keefe
John M. Bodley		Clifford P. Kirsch
Mark W. Cannon		Murray R. Klees
Robert C. Cassidy		Everett W. Langworthy
Henry A. Clay		Robert D. Lipscher
Charles E. Collett		William B. Luck
William J. Conner		Robert J. Martineau
George H. Daskal		James C. McBride
Joseph E. DeSio		Charles McGuinness
William A. Doyle		Richard M. Mischke
Frederic V. Edmonds		John E. Munnely
Joseph F. Fanner		Charles E. Nelson
Roger J. Fecher		Joseph C. O'Connell
Wilson Freeman		Samuel W. Phillips
Leslie A. Gilson		Larry P. Polansky
Lester C. Goodchild		Austin M. Porter
Stanley R. Groh		Thomas H. Reese
Henry R. Hanssen		Robert F. Regan
Emory G. Hatcher		Edward J. Sabol
Frank M. Hepler		Gorman C. Smith
Paul R. Holmes		James B. Ueberhorst
Walter C. Howe		Irving A. Wallach
Arthur M. Hughes		Paul Williams
John R. Hungerford		James S. Winston
	1973 (2)	
James A. Higgins		Richard L. Kuersteiner
	1974 (4)	
Bruce D. Beaudin		Robert L. Kelsey
Paul H. Hildebrand		Arthur H. Snowden
	1975 (2)	
R. Hanson Lawton		Vernon H. Newman
	1976 (2)	
Robert A. Bonner		Collins T. Fitzpatrick
	1977 (2)	
Carl F. Bianchi		Edward V. Garabedian
	1978 (0)	
	1979 (0)	
	1980 (7)	
Jerome S. Berg		Robert C. Harrall
Steven Flanders		Karen M. Knab
Frances X. Gindhart		Donald P. Ubell
Laurence C. Harmon		

(Continued)

TABLE 1 (Continued)

	1981 (17)	
James F. Davey		Eugene J. Murret
Peter M. Deuel		Paul Nejelski
Douglas C. Dodge		Robert W. Page
Dana H. Gallup		Nick G. Pappadakis
Lionel M. Jacobs IV		James D. Thomas
Charles R. Judice		Michael J. Tonsing
Edward M. Kritzman		Richard H. Weare
James R. Larsen		Norman E. Zoller
John P. Mayer		
	1982 (18)	
Paul E. Chism		Dyana Ortiz-Castro
William E. Davis		Victor D. Pettaccio
James H. Ellis		Gerald J. Ryan
William B. Herndon		William K. Slate
John J. Kennedy		Robert E. Taverni
James E. Lanter		John R. Thornock
Stephen M. Leon		Charles W. Vagner
Fred M. Mester		David N. Weinman
William D. Minnix		Michael B. Zuzik
	1983 (7)	
Teri Pat Campbell		Stanley R. Kalin
Lydia G. Comberrel		Michael K. Krell
Elaine B. Goldsmith		Michael M. Sheppard
Beatrice G. Hoffman		

NOTE: Figures in parentheses refer to the number of candidates certified in the relevant year.

TABLE 2
Number of Candidates Certified
and Recertified, 1972-1983

Year	No. Certified	No. Recertified
1972	52	—
1973	2	—
1974	4	—
1975	2	39
1976	2	2
1977	2	4
1978	0	1
1979	0	33
1980	7	7
1981	17	0
1982	18	14
1983	7	7
Total	113	107

TABLE 3
Number of Appointments
Made, 1972-1983

Year	No. Appointed
1972	8
1973	1
1974	0
1975	1
1976	1
1977	0
1978	0
1979	0
1980	2
1981	4 ^a
1982	3 ^b
1983	5 ^c
Total	25

^aIncludes one district executive.
^bIncludes two district executives.
^cIncludes two district executives.

TABLE 4
Number of Appointments
per Circuit and District,
1972-1983

Circuit/District	No. Appointed
D.C.	1
1st	1
2nd	2
3rd	2
4th	1
5th	2
6th	1
7th	1
8th	3
9th	3
10th	1
11th	2
S.D. Fla.	1
S.D.N.Y.	1
E.D.N.Y.	1
E.D. Mich.	1
C.D. Cal.	1
Total	25

TABLE 5
Circuit and District Executives Appointed, 1972-1983

Name	Circuit or District	Term of Office	Prior Position
Charles E. Nelson	D.C.	6/1/72 to present	Chief of Mgmt. Systems & sr. analyst, Exec. Ofc. of Pres., OMB
Dana H. Gallup	1st	4/1/83 to present	Circuit court clerk
Steven Flanders	2nd	5/5/80 to present	Research associate, project director, FJC
Robert D. Lipscher	2nd	5/29/72 to 12/31/79	Asst. director, IJA
Paul Nejelski	3rd	11/2/81 to present	Staff director, ABA
William A. Doyle	3rd	8/1/72 to 5/27/80	Director of Mgmt. Div. in Ofc. of Chief, Naval Materiel Command
Samuel W. Phillips	4th	5/1/72 to present	Circuit court clerk
Lydia G. Comberrel	5th	10/19/81 to 9/18/83 (acting) 9/19/83 to present	Admin. asst. to chief judge
Thomas H. Reese	5th	7/24/72 to 9/30/81	Army staff, Judge Advocate's Corps
James A. Higgins	6th	12/6/73 to present	Circuit court clerk
Collins T. Fitzpatrick	7th	9/27/76 to present	Admin. asst. to chief judge
Lester C. Goodchild	8th	3/24/80 to present	Sr. attorney, State Comm'n on Judicial Conduct
R. Hanson Lawton	8th	3/15/75 to 3/1/80	Acting director, N. Cent. Reg. Ofc., NCSC
Robert J. Martineau	8th	8/26/72 to 8/16/74	U. Iowa prof.; visiting prof. of law, IJA
William E. Davis	9th	1/11/82 to present	Admin. asst. to chief judge; personnel officer, Baha'i World Centre
Richard Wieking (acting, not certified)	9th	5/18/81 to 1/10/82	Circuit staff member
William B. Luck	9th	5/1/72 to 11/28/80	Circuit court clerk
Emory G. Hatcher	10th	8/1/72 to present	Circuit court clerk
Norman E. Zoller	11th	8/1/83 to present	Circuit court clerk
Thomas H. Reese	11th	10/1/81 to 8/1/83	Circuit executive
Dyana L. Ortiz-Castro	S.D. Fla.	8/2/82 to present	Judge, Superior Court
Robert W. Page	S.D.N.Y.	2/22/82 to present	Sr. staff associate, NCSC
Richard H. Weare	E.D.N.Y.	8/1/83 to present	District court clerk
John P. Mayer	E.D. Mich.	7/1/81 to present	District court clerk
Lionel M. Jacobs IV	C.D. Cal.	12/13/83 to present	State trial court adm'r

NOTE: GMB = Office of Management and Budget; FJC = Federal Judicial Center; IJA = Institute for Judicial Administration; ABA = American Bar Association; NCSC = National Center for State Courts.

TABLE 6
Number of Lawyers and Nonlawyers Appointed, 1972-1983

Year	Lawyer	Nonlawyer
1972	6	2
1973	1	0
1974	0	0
1975	1	0
1976	1	0
1977	0	0
1978	0	0
1979	0	0
1980	1	1
1981	2	0
1982	2	1
1983	2	2
Total	16	6

NOTE: The two columns do not add to 25—the total number of candidates appointed—because of missing information.

TABLE 7
Sources for Lawyers and Nonlawyers, 1972-1983

Source	Lawyer	Nonlawyer
Executive branch	—	2
Federal Judicial Center	—	1
Federal circuit courts	10	2
National Center for State Courts	1	1
Business	0	0
Institute for Judicial Administration	1	—
American Bar Association	1	—
Military	1	—
State judiciary	1	—
Academia	1	—
Judge	1	—
Total	17	6

NOTE: The two columns do not add to 25—the total number of candidates appointed—because of missing information.

CONTINUED

1 OF 2

TABLE 8
Number of Appointments Made from
Within Circuits or Districts, 1972-1983

Circuit/District	No. Appointed
1st	1
4th	1
5th	1
6th	1
7th	1
9th	2
10th	1
11th	2
E.D.N.Y.	1
E.D. Mich.	1
Total	12

TABLE 9
Reasons for Departure of Appointed Executives,
1972-1983

Reason	No. (Circuit)
State court administration	2 (2nd, 8th)
Death	1 (3rd)
Intercircuit transfer	1 (5th)
Private practice	1 (8th)
Unknown	1 (9th)
Retirement	1 (5th)
Total	7

TABLE 10
Years of Appointment and Certification of Current Incumbents

Year	No. Appointed	No. Certified
1972	3 (D.C., 4th, 10th)	4 (D.C., 2nd, 8th, 10th)
1973	1 (6th)	1 (6th)
1974	0	0
1975	0	0
1976	1 (7th)	1 (7th)
1977	0	0
1978	0	0
1979	0	0
1980	2 (2nd, 8th)	1 (2nd)
1981	2 (3rd, E.D. Mich.)	4 (3rd, E.D. Mich., S.D. N.Y., C.D. Cal.)
1982	3 (9th, S.D. Fla., S.D.N.Y.)	2 (9th, S.D. Fla.)
1983	5 (1st, 5th, 11th, E.D.N.Y., C.D. Cal.)	4 (1st, 5th, 11th, E.D.N.Y.)
	17	17

NOTE: The relevant circuit and district courts are given in parentheses.

TABLE 11
Members of the Board of Certification, 1972-1983

Name	Position When Appointed	Length of Term	Term Commenced	Term Expired
John W. Macy, Jr.	President, Corporation for Public Broadcasting	3 years	7/01/71	7/01/74
		3 years	7/01/74	7/01/77
		3 years	7/01/77	7/01/80
		3 years	7/01/80	7/01/83
		3 years	7/01/83	7/01/86
Frank M. Johnson, Jr.	Chief judge, M.D. Ala.	1 year	7/01/71	7/01/72
Roger Robb	Judge, D.C. Cir.	2 years	7/01/71	7/01/73 ^a
George E. MacKinnon	Judge, D.C. Cir.	3 years	7/01/72	7/01/75
		3 years	7/01/75	7/01/78
		3 years	7/01/78	7/01/81
		3 years	7/01/81	7/01/84 ^b
Howard T. Markey	Chief judge, U.S. Court of Customs & Patent Appeals	122 days ^c	3/12/73	7/01/73
		3 years	7/01/73	7/01/76
		3 years	7/01/76	7/01/79
		3 years	7/01/79	7/01/82
		3 years	7/01/82	7/01/85
John H. Pratt	Judge, D.D.C.	3 years	7/01/83	7/01/86
Rowland F. Kirks	Director, AO	Statutory	7/01/71	11/02/77 ^d
William E. Foley	Director, AO	Statutory	11/02/77	present
Alfred P. Murrah	Director, FJC	Statutory	7/01/71	10/27/74
Walter E. Hoffman	Director, FJC	Statutory	10/27/74	7/18/77
A. Leo Levin	Director, FJC	Statutory	7/18/77	present

^aResigned 3/12/73.

^bResigned 3/31/83.

^cFilled Judge Robb's unexpired term.

^dDied before term expired.

TABLE 12
Location of Chief Judges and Circuit Executives,
December 1983

Circuit	Chief Judge	Circuit Executive
D.C.	Washington, D.C.	Washington, D.C.
1st	Boston, Mass.	Boston, Mass.
2nd	New York, N.Y.	New York, N.Y.
3rd	Wilmington, Del.	Philadelphia, Pa.
4th	Baltimore, Md.	Richmond, Va.
5th	Jackson, Miss.	New Orleans, La.
6th	Danville, Ky.	Cincinnati, Ohio
7th	Chicago, Ill.	Chicago, Ill.
8th	St. Paul, Minn.	St. Louis, Mo.
9th	San Francisco, Cal.	San Francisco, Cal.
10th	Santa Fe, N.M.	Denver, Colo.
11th	Montgomery, Ala.	Atlanta, Ga.

TABLE 13
Comparison of Courts Participating in District Executive Program

Court	Authorized Judgeships	Senior Judges ¹	Filings ²		Authorized Supporting Personnel ¹	FY 1983 Expenditures ³
			Civil	Criminal		
E.D.N.Y.	10	4	5,276	563	244	\$11,914,674
S.D.N.Y.	27	10	9,754	827	397	\$19,857,796
E.D. Mich.	13	2	6,828	525	240	\$13,143,639
C.D. Cal.	17	9	7,933	1,082	395	\$23,126,342
S.D. Fla.	12	2	4,492	1,231	223	\$11,898,383
N.D. Ga.	11	1	3,852	458	166	\$ 8,883,650

¹As of September 30, 1983.

²For 12-month period ended June 30, 1983.

³As of September 30, 1983. Does not include standard level user charges (SLUC) and Federal Telecommunications System (FTS) charges assessed by the General Services Administration, lawbook continuation costs, or Criminal Justice Act panel attorney and expert services costs.

THE FEDERAL JUDICIAL CENTER

The Federal Judicial Center is the research, development, and training arm of the federal judicial system. It was established by Congress in 1967 (28 U.S.C. §§ 620-629), on the recommendation of the Judicial Conference of the United States.

By statute, the Chief Justice of the United States is chairman of the Center's Board, which also includes the Director of the Administrative Office of the United States Courts and six judges elected by the Judicial Conference.

The Center's **Continuing Education and Training Division** provides educational programs and services for all third branch personnel. These include orientation seminars, programs on recent developments in law and law-related areas, on-site management training for support personnel, publications and audiovisual resources, and tuition support.

The **Research Division** undertakes empirical and exploratory research on federal judicial processes, court management, and sentencing and its consequences, usually at the request of the Judicial Conference and its committees, the courts themselves, or other groups in the federal court system.

The **Innovations and Systems Development Division** designs and tests new technologies, especially computer systems, that are useful for case management and court administration. The division also contributes to the training required for the successful implementation of technology in the courts.

The **Inter-Judicial Affairs and Information Services Division** prepares several periodic reports and bulletins for the courts and maintains liaison with state and foreign judges and related judicial administration organizations. The Center's library, which specializes in judicial administration materials, is located within this division.

The Center's main facility is the historic Dolley Madison House, located on Lafayette Square in Washington, D.C.

Copies of Center publications can be obtained from the Center's Information Services Office, 1520 H Street, N.W., Washington, D.C. 20005.