PERCEPTIONS OF THE INDEPENDENT TRIAL JUDGE ROLE IN THE SEVENTH CIRCUIT

BEVERLY BLAIR COOK *University of Wisconsin-Milwaukee*

AUTHOR'S NOTE: *This article is a revision of one section of a paper entitled "Federal District Judges in the Seventh Circuit: Trial Judge Roles in the Courtroom and the Court System," delivered at the Sixty-sixth Annual Meeting of The American Political Science Association, Los Angeles, California, September 8, 1970. The research for this study was done under faculty grants from The Social Science Research Council and The University of Wisconsin-Milwaukee Graduate School.*

The federal trial judge works in a court system which is rapidly modernizing by developing central administrative structures and procedures to monitor and expedite his tasks.[1] The new structures are creating new expectations for the federal judicial role. For the incumbent judge the demand to change his role definition and his pattern of action breeds tension and resistance. The *Chandler* case (1970), involving the sanctioning of a trial judge by his circuit judicial council, which Justice Douglas characterized as "the most controversial contest involving a federal judge in modern United States history," epitomizes the stress upon a trial judge, nurtured in a period of mild bureaucracy, finding himself at the end of his career in an organization with new norms and stronger instruments of enforcement.

The need for strong administrative direction of federal judicial behavior was recognized early in the century and repeated sporadically to spur its growth in the face of a sullen judiciary. "Hundreds of judges holding court in as many or more districts scattered over a continent must be subjected to oversight and responsibility as parts of an articulated system of courts." (Frankfurter and Landis, 1927: 242-3) The "powerful new ferment" which Frankfurter and Landis saw in 1927 as a product of the operations of the Conference of Senior Circuit Judges (1922) spawned more institutions of court administration in the next 40 years and proposals for even more powerful engines of control in 1970.

At the national level the old Conference of Senior Circuit Judges became the Judicial Conference of the United States in 1939. Membership was expanded to include one district judge elected by each circuit Judicial Conference in 1957. The Admin-

istrative Office of the U.S. Courts (AO) grew from a skeleton staff upon its establishment in 1939 to 198 by 1970 and the scope of its activities in collecting statistics and managing the housekeeping for the courts expanded proportionately. The Federal Judicial Center was created in 1967 to run the educational programs for the trial judges and to do research on court operations.

Structural changes also occurred at the circuit level with the requirement of circuit Judicial Conferences in 1939 as instruments of education and socialization, with the strengthening of the position of circuit chief judge, and with the testing of the powers of the Judicial Council over trial judges. In 1971 each circuit Judicial Council was empowered to appoint a circuit executive from a list of certified persons. (28 U.S. Code 332[e])[2].

Even at the trial level the structure changed as the single-judge court disappeared and the multi-judge court became the rule. In 1902 all districts had one judge; by 1970 of the 90 districts only four were single-judge.[3] The 86 multi-judge districts have a chief judge, renamed from senior judge, and the larger courts developed executive committees by local rules and hired administrative assistants to the chief judge.

Additional structural changes have recently been proposed. In the first "State of the Judiciary" message delivered August 10, 1970, to the 93rd annual convention of the American Bar Association in St. Louis, Chief Justice Burger urged the creation of more federal court structures: a national Judicial Council of judges, members of Congress, and representatives of the executive branch; court administrators for metropolitan district courts; and federal-state habeas corpus councils in every state. (*New York Times*, 1970: 1). By 1972 over 40 judicial councils were operating in the states. (*The Third Branch,* 1972.)

Impact of Administrative Structures on Judicial Independence

In the face of this developing bureaucracy, the most prominent and outspoken defender of the independence of the trial judge was Chief Judge Stephen S. Chandler of the Western District of Oklahoma. He believed that the structural reforms were making second-class judges of trial judges and called for vigorous resistance to "present and proposed systems of supervision and control." His words in 1964 were prophetic (Chandler, 1964):

> In recent years, there has been noticeable a gradual assumption by a few appellate court judges of a patronizing attitude toward the trial judge, and a stretched-out hand to clutch supervisory power over him. There are evidences of immature treatment of trial judges, with occasional punitive gestures to keep them in line.

Judge Chandler was calling for a halt to the erosion of the independence of the trial judge by circuit supervision and for the restoration of the role expectations attached to the position before the administrative reforms.

His perception as position-incumbent varies from the observation of Richardson and Vines who describe "each district [as] a separate, largely self-contained political unit with little administrative relation to the other districts and little direction and coordination from above." (Richardson and Vines, 1970: 93.) These authors reject the hierarchical and bureaucratic theories of the federal court system because they are concentrating on the relations among the courts in the appeal of cases. Formal case disposition, however, engages only a portion of the work time of federal judges. Their tasks of judicial administration bring the judges into role relationships which may accurately be called bureaucratic, since increasingly uniform rules apply throughout the court system and the resolutions and orders formulated at the initiative of the higher agencies apply down the hierarchy. Although the Supreme Court may be "systematically reducing its appellate review and supervisory role over the court system" (Richardson and Vines, 1970: 149), the Chief Justice as Chairman of the U.S. Judicial Conference and head of the federal court system spends a great deal of time and effort in supervisory activities, as do the other justices in their assigned circuits.

If the case relationships and the administrative relationships among judges could be entirely separated, then an integrated administrative structure might be of little importance in respect to policy outputs of the courts through case decisions. However, the two paths impinge upon each other. Since "judges are not fungible," as Justice Douglas expresses it, administrative matters such as the division of cases, the type of calendar, and the location of judges can affect case outputs. Baar points out that "the administrative structure of the federal judiciary does legal work continuously, with growing frequency and increasing impact" (Baar, 1970: 3). A tightening up of the administrative hierarchy, then, centralizes decision making on many substantive policies as well as procedural matters. The choice

of representative to the U.S. Judicial Conference and the appointment of members to rules committees eventually makes a difference to the powers and procedures of all federal trial judges.

DIAGRAM 1: AGENCIES OF THE FEDERAL JUDICIAL SYSTEM

I Case Hierarchy	II Judicial Administration Hierarchy	III Non-Judicial Staff Support	IV Linking Organs
U.S. Supreme Court	Chief Justice as Chief Administrator, Chairman of Conference	Administrative Office of the U.S. Court (AO)	[Federal Judicial Council]
Court of Appeals **en banc**	U. S. Supreme Court as rule-maker	FJC Staff	Solicitor-General, JC Rules Committees (bar, academia)
	U.S. Judicial Conference (JC)	Circuit Executive	
		Judge's Personal Staff: Secretary, Law Clerks, Crier-Messenger	JC open meetings (Congressmen, Attorney-General)
Court of Appeals panel	Associate Justice as Senior Circuit Justice	Court Clerk and Staff	Congress Judiciary Committees
	Federal Judicial Center (FJC) — New Judge Seminars	Court Reporters	American Bar Association-Annual convention Special commissions Committee on Judiciary
3-Judge District Court	Circuit Chief Judge as Chairman of Council, Chairman of Conference	Library Staff	American Law Institute-Annual Convention, Special Committees
		[District Court Administrator]	
Trial Judge	Circuit Judicial Council	Probation Officers	
Magistrate	Circuit Judicial Conference (CJC) — executive session	Marshals (Dept. of Justice)	West Publishing Co.
			Graduate Schools for Court Administrators (Denver, L.A., D.C.)
Referee	District Chief Judge	District Administrative Assistant	U.S. Attorney
	District Executive Committee		CJC open meetings (bar, academia)
	Trial Judge as Statistics Collector, Advisor to JC		Federal-State Habeas Corpus Councils

Symbol: [ ] proposed

Note: Where a number of similiar offices exist on different levels for staffing, no repetition.

https://doi.org/10.2307/3052951 Published online by Cambridge University Press

A model of the judicial process which incorporated the administrative side of the federal system would be quite complex. Diagram 1 indicates the number of organizations inside the system besides the "courts" as triers of cases, listing the units of judical administration, the service staffs to the courts and to the administrative agencies, and some of the linking units among the judicial system, the executive branch, and the legal profession. One can imagine the path of a rule developed by a committee of the Judicial Conference (in the linking category) submitted to all district judges for their comments, recommended to the U.S. Judicial Conference, then sent for approval to the Supreme Court acting in an administrative capacity, to Congress for legitimatization, and finally to the trial judge as he interprets and uses the rule in a controversy and sends his opinion to West's *Federal Rules Decisions*. Since the Chandler case, the model would show for the first time an appeal from a Judicial Council action in the judicial administration section to the Supreme Court on the case side. The process of decision making goes on continuously in and among the case hierarchy, the judicial administration hierarchy, the staff agencies, and the linking organs. The consequences of their interaction upon structure are the integration of the court system and the supervision of the trial judge.

The Circuit Judicial Council and the Chandler Case

The Judicial Council, whose membership under present statutes is identical to the Court of Appeals *en banc*, has the power "to make all necessary orders for the effective and expeditious administration of the business of the courts within its circuit" (28 U. S. Code 332).[4] The same statute describes the corresponding duty of the district judge in his dyadic relation to the Council. "The district judges shall promptly carry into effect all orders of the judicial council." The act of 1939 created the Councils as regional, decentralized agencies of judicial administration, taking responsibility for the proper functioning of district courts inside their geographic borders and relieving the national level of that burden. Although the specific duties of the circuits have been increased piecemeal (28 U. S. Code 134(c), 140(a), 372(b) 631, 753 (g), and 1861), the general responsibility of insuring efficient performance on the district level was never fully shouldered by the Councils (Senate Committee on Appropriations, 1959). Even the sponsors of the 1939 act admitted that the Council had few teeth to enforce its orders if a district judge should fail to carry out its direction

(Fish, 1970: 209). In practice, despite the broad discretion of section 1651, "passivity, not activity, has typically characterized the work of circuit councils" (Fish, 1970: 223). In 1969 Chief Justice Warren named the one weakness of the court system "the failure of the Judicial Councils to do their jobs."[5] At the fall, 1969, meeting, the U.S. Judicial Conference approved a resolution reminding circiut judges of their obligation to meet as a Judicial Council to consider the quarterly reports of their districts and containing a broad hint to follow up with pressure upon lax districts, (Judicial Conference of the United States, 1969: 57).

In 1965 the Tenth Circuit Judicial Council used its power to supervise a district court by issuing an order removing all current and future cases from the chief judge. The authority of the Council was immediately challenged by the disciplined judge, but it was not until 1970 that the Supreme Court, by a 5-2 vote, validated the power of the circuit Judicial Councils to discipline district judges for carrying out their responsibilities inefficiently or in a fashion which would bring disrepute to the federal courts (*Chandler,* 1970). Chief Justice Burger, for himself and three other justices, wrote a short and evasive opinion of the court. Justice Harlan wrote a precise analysis, disagreeing on all points of law with the Burger opinion but concurring with the disposition. Justices Douglas and Black wrote separate dissents, joining with each other, on the unconstitutionality of the exercise of council power in the Chandler case.

The facts of the Chandler case involve two formal orders issued by the Tenth Circuit Judicial Council: the first Order of December 13, 1965, removed all pending cases and proceedings and forbade the assignment of any new cases to the Chief Judge of the Western District of Oklahoma, and the second Order of February 4, 1966, restored pending cases as of December 28, 1965. Between the two orders, Judge Chandler filed a motion with the Supreme Court. Upon the representation of Solicitor General (now Justice) Thurgood Marshall, that the Council order was only temporary pending further inquiry into the administration of judicial business in the district, the court refused *per curiam* to issue a stay of the order or to give permission to file a petition. However, the court hinted that further proceedings before the Judicial Council should be prompt and allow an opportunity for Chandler to appear with counsel (*Chandler,* 1966). Judge Chandler refused to appear at the hearings set for February 10 in Oklahoma City, denying the author-

ity of the Judicial Council to examine him about his judicial activities, and pursued his suit before the Supreme Court, claiming a violation of his "rights as a federal judge" (UCLA Law Review, 1966; Stanford Law Review, 1967; Rutgers Law Review, 1966). By 1969 the court system had the embarrassment of a fully paid judge, enjoying all the accoutrements of office, but without any judicial duties.

Three important questions faced the Supreme Court: 1) Is the Judicial Council, when making orders for the effective administration of district court business, acting as a judicial or an administrative tribunal? 2) If judicial, then does the Supreme Court have jurisdiction to entertain an interlocutory petition arising from a dispute between a district judge and his Judicial Council under the All Writs Act? 3) If jurisdiction exists, did the Judicial Council exceed its statutory powers or invade Judge Chandler's constitutional rights in making the second order?

The parties to the dispute disagreed on the nature of the Judicial Council action. The Council claimed that its order was purely administrative, a finding which would block review. However, Solicitor General Griswold (Justice Douglas agreeing) contended that the Council was simply the Court of Appeals sitting *en banc* and its order was judicial, a finding which might allow review. Chief Justice Burger answered the first question elliptically in footnote 7: "We find nothing in the legislative history to suggest that the Judicial Council was intended to be anything other than an administrative body functioning in a very limited area in a narrow sense as a 'board of directors' for the circuit." However, the body of the opinion left the question open: "If the challenged action was a judicial action then perhaps it could be reviewed . . ." (*Chandler,* 1970). The Court refused to come to grips with the conflict as presented by Judge Chandler between the independent trial judge and the powerful regional administrative body.

Although Justice Harlan admitted that "the issues presented by Judge Chandler's petition are troublesome ones that we might wish to avoid deciding," he denied the district judge his relief after dealing with each question in a straightforward manner. In answering the question on the nature of the Judicial Council duties, he found the border between judicial and administrative work more cloudy than did the respondent or the Solicitor General. He contrasts the work of the Council to a "purely" administrative agency in the judicial branch, the

AO, and concludes that the administrative component of a Judicial Council order on the division of business is subordinate to the essentially judicial nature of the entire process of bringing cases to disposition. He concludes from the legislative history that "the power to direct trial judges in the execution of their decision-making duties was regarded as a judicial power . . . " (*Chandler,* 1970), without ever suggesting that the Council is identical to the *en banc* court. Having answered the first question in a fashion which allows him to move to the second, he decided that the issuance of a writ in such a situation has no direct precedence but is consistent with the interpretations of the All Writs Act, particularly since the judge claims a direct and serious injury, "removal" from office, and lacks any other avenue for legal relief.

Reaching the third question, Justice Harlan determined that the Judicial Council acted entirely within its authority in the second Order of February 4. He pointed out that questions have never been raised in other circuits when the Council required a judge to complete his backlog of cases before taking new ones. Judge Chandler lacked grounds to win an interlocutory writ since the totality of circumstances in the case indicated that the Council had a *prima facie* basis for taking action to alleviate a threat to public confidence. Judge Chandler's only recourse under the Harlan opinion would be to face a hearing by the Council, whose power he denied, and take the case up not on its merits but for a limited purpose "to correct legal error or abuse of discretion where it occurs (*Chandler,* 1970). Justice Harlan was interested in protecting procedural rights.

The rights of concern to Justices Douglas and Black were substantive, involving the degree of independence of the trial judge inside the federal court system. Justice Black raised an equal protection argument by suggesting that Tenth Circuit appellate judges made Judge Chandler into a "second-class" judge by depriving him of the same right to carry out his duties of office as other federal judges. The federal trial judge is "sovereign" to Justice Douglas, and the Judicial Council has no power to discipline him. The only sanction of trial judges recognized by the two dissenters is through impeachment. According to Justice Douglas, ". . . there is no power under our Constitution for one group of federal judges to censor or discipline any federal judge and no power to declare him inefficient and strip him of his power to act as a judge" (*Chandler,* 1970).

The majority expressed their views of the power of the Judicial Council in dicta. Chief Justice Burger emphasized the "total and absolute independence of judges . . . in any phase of the decisional function," but denied the sovereignty of the trial judge over "his manner of conducting judicial business." The Chief Justice asked rhetorically: "Can each judge be an absolute monarch and yet have a complex judicial system function efficiently?" (*Chandler,* 1970.) Justice Harlan indicated that judicial independence is preserved, not destroyed, when judges correct the defects in their own branch, using a political not a legal argument to establish the rationality of his policy position.

The role definition of the federal trial judge as "sovereign" has lost in the highest court; the constitutional expectation now is that the trial judge will accept supervision in matters of judicial administration from the circuit level. The strength of this supervision will depend upon future test cases or simply upon the regular employment of the power by councils. The implications of both opinions in the majority supports the original intent of Chief Justice Hughes to concentrate responsibility for judicial supervision in the regional circuits.

District Judges' Attitudes Toward the Chandler Case

In the course of interviewing 25 of the 26 district judges sitting in the Seventh Circuit,[6] the author asked whether or not they agreed with the dissenting position in the Chandler case. Since the schedule was prepared before the announcement of the 1970 decision, the question was formulated from the 1966 case: "Do you agree with the dissent of Justice Black in the Chandler case that 'We should stop in its infancy, before it has any growth at all, this idea that United States district judges can be made accountable for their efficiency or lack of it to judges just over them in the federal system . . .?' " Ten of the judges agreed with Justice Black and are designated as pro-Chandler judges and fifteen disagreed and are designated as anti-Chandler judges in Table 1.

TABLE 1: ATTITUDES TOWARD THE CHANDLER CASE BY CHARACTERISTICS OF DISTRICT JUDGES — SEVENTH CIRCUIT 1970

Role Preferences	Pro-Chandler	Anti-Chandler
Greater Autonomy	4 (40%)	1 (7%)
Current Independence	6 (60%)	6 (40%)
Current Supervision	0	3 (20%)
Greater Supervision	0	5 (33%)
Years of Court Service		
1-4	1 (10%)	5 (33%)
5-14	6 (60%)	8 (54%)
15 over	3 (30%)	2 (13%)
Party Affiliation		
Democratic	5 (50%)	12 (80%)
Republican	5 (50%)	3 (20%)
District Court Efficiency		
High Productivity	5 (50%)	9 (60%)
Low Productivity	5 (50%)	6 (40%)
Participation in Court System		
High or Moderate Involvement	5 (50%)	9 (60%)
Interested, Not Active	5 (50%)	6 (40%)
Total	10 (100%)	15 (100%)

This question concerned the general principle of the independence of the trial judge from circuit administrative control rather than the details of the Chandler case itself.[7] The answers to the Chandler question were compared with answers to a question on the judge's preference for his role in the court system. All ten pro-Chandler judges preferred administrative independence and four wanted a change in the direction of more autonomy. Of the fifteen anti-Chandler judges, seven preferred independence and eight administrative supervision; only one wanted a change toward more independence and five wanted greater systemic control over administrative matters.

The answers to the Chandler question were also compared to the judges' attitudes toward the responsibilities of the circuit Judicial Council. Most of the pro-Chandler judges expressed mild approval of the role of the Judicial Council, but those who more strongly approved did so because of satisfaction with the *lack* of activity of the Seventh Circuit Council. Thirteen of the anti-Chandler judges were strongly favorable to the Judicial Council role, one was neutral, and one was unfavorably disposed because of the failure to exercise its authority.

Whether or not the federal court system continues to move in the direction of administrative integration may depend upon the attitudes of new judges. The response of the Seventh Circuit judges indicates that judges with terms of service of less than five years are more willing to accept circuit supervision, as indicated by their anti-Chandler position. This finding might

not allow prediction unless the same kind of judge were appointed in the future. There were no Nixon appointees among these 25 judges. The six judges with short terms were all Johnson appointees, and party affiliation does appear to be related to attitude. Table 1 shows that the pro-Chandler judges were evenly split, Democratic and Republican, but that the anti-Chandler judges were Democratic 4-1. Judges with the least political experience were more drawn to Chandler's independent stance. The five judges who had formerly been nominal party supporters or civic leaders supported Chandler, while former party candidates and campaign managers preferred circuit controls two to one.

Judicial attitudes, however, are not completely formed by experiences prior to appointment. The emphasis of the seminars for new judges is on the efficient management of the court docket, the same norm which the circuit Judicial Council has the authority to enforce (Cook, 1971). The congruence of standards for performance between the district and circuit judges might lessen the tension over questions of supervision. Only seven of the 25 judges had not attended a new-judge seminar, where the atmosphere imbues the new judge with the feeling of membership on a national team of judges, cooperating in a mutually rewarding and challenging enterprise. Of these seven, four were pro-Chandler and the three who were anti-Chandler were chief judges who shared some systemic authority. Judges with experience as trial court chiefs or on efficient benches might be expected to approve some circuit supervision related to court congestion and delay. The pro-Chandler judges were evenly divided between the districts with high demand and performance and those coping less effectively with their case loads. More of the anti-Chandler judges were in courts with up-to-date dockets. The five pro-Chandler judges who sat on these efficient benches were beyond their prime and had not been socialized at the seminars.

Greater contact with the national level of the court system might also lead to more sympathy with notions of hierarchical administrative control. The judges were asked whether they preceived themselves as 1) isolated, 2) interested but uninvolved, 3) modestly involved, or 4) fully participatory in the national court system. Fourteen of the judges saw themselves as modestly or fully involved in national affairs (3 + 4), and eleven as interested bystanders (2). None were truly isolated from circuit or national activities. The pro-Chandler judges

were evenly divided between those participating and not, while more of the anti-Chandler judges were engaged in national court business. The anti-Chandler judges who were not newcomers to the courts tended to be very active judges with seniority who belonged to committees of the court administration or of the linking agencies.

Conclusion

The traditional process for supervising the trial judge was to review his decisions upon appeal, correct the errors, and perhaps chastise in dicta. Only the judge's handling of the case in point was directly affected; his general performance was beyond the effective reach of the appellate judges. The new process for supervising the trial judge works through numerous administrative agencies and judicial officers over the full range of his daily tasks. The Circuit Executive is expected to be the primary instrument for the effective supervision of the district judge by the Circuit Judicial Council.[8]

The mood of the federal court system is toward integration of the national, circuit, and district levels. The new Chief Justice has taken a strong stand as chief administrator of the court system in favor of the efficient administration of justice through new structures rather than rhetoric. Within a few years there will be no judges in the system who have not been socialized at the judicial seminars. District judges moving into leadership positions inside the system will naturally lose their suspicion of authority. As the standards of court operation become widely internalized as a result of leadership and training, the question of independence in technical administrative matters could become historical and philosophical rather than practical. Less support might be predicted for a maverick judge when the norms of the bureaucratic system have been widely recognized and accepted by the new wave of judicial recruits.

The growing support of new judges for the programs of the senior leadership is related to the limited goals of the bureaucratization: to improve the quality of information about federal court activities, to multiply the channels of communication among the judges, to provide the learning and techniques for dealing competently with cases on the docket, and to discipline judges who clearly defy the mores of the brotherhood. If the administrative structures and tools turn toward goals of a more substantive nature, then the definition by a trial judge

of his preferred role in relation to the agencies of the federal judicial system will depend upon his commitment to those new goals. The alignments associated with administrative controls would vary according to basic policy preferences, rather than according to appointment date, socialization, position, and participation.

In any governmental system which partakes of federalism, debates over the location of power and the degree of authority at each level are endemic. If, as Justice Douglas foresees, the administrative side of the court system exercises its growing strength to engage more obviously in decision making which involves values other than efficiency, then the controversy will reappear in a new form. The need for judicial autonomy, a concept originally connected with external rather than internal intervention in case disposition, seems less convincing when applied to "pure" administrative relationships. But, since administrative and judicial functions of the Judicial Councils defy rational separation, as the Chandler case confirmed, and administrative arrangements are bound to provoke policy consequences, questions about the appropriate structure to protect the turf of the trial judge will be raised in terms of degrees of supervision and independence.

Few judges debate about matters such as court system centralization and trial judge "rights" in such finely etched abstractions as Justices Black and Douglas. The attitudes of politically experienced federal judges toward internal power relations are likely to remain flexible in response to emerging purposes. Once the administrative machinery is firmly established, the federal system will have reached a stage of modernization in which the issues are articulated around problems of representation and responsibility inside the judicial bureaucracy. The attitudes of the Seventh Circuit district judges revealed in this study indicate that the supporters of the Black-Douglas-Chandler posture toward trial court autonomy are retiring from the system and that the new, socialized judges are accepting their role inside the bureaucratic structure, with its limits as well as its discretion, as a matter of course. These judges will be working out new patterns of compromise and command inside the hierarchy, rather than engaging in futile battles to return to the primitive structure in which their link with other federal judges consisted only of a thin and tenuous chain of case appeals.

FOOTNOTES

[1] The chief aspects of modernization examined in this paper are the centralization and differentiation of administrative units of the federal court system. However, other characteristics of modernization of national states and international systems described by Eisenstadt appear to apply to the judicial subsystem. Urbanization and mass communications have eroded old commitments and prepared local trial judges for new patterns of socialization and behavior. The judicial role, through the contemporary revision of the code of ethics, is being separated more precisely from other economic, civic, and family roles of the incumbent. Inside the court organization, other division of labor proceeds with the creation of the office of magistrate and the differentiation of the tasks of the chief judge. A typical problem of modernization, the extension of suffrage, was handled by representation of trial judges in the national policy-making body and by proposals for representation on the regional body. If the judicial subsystem develops along the same lines as larger centralizing systems, then members will develop organization to articulate their interests. The trial judges on the Ninth Circuit have already organized and the trial judges on the Seventh, while contemplating the establishment of a nationwide organization of district judges, look forward to a special meeting of trial judges at the 1971 Circuit Judicial Conference. (Eisenstadt, 1966: 2-15)

[2] "Court Executives Act," Public Law 91-647, 91st Cong., HR 17901, January 5, 1971. For legislative history, see 1970 U.S. Code Cong. and Admin. News 5876.

[3] Wyoming, Maine, New Hampshire, and Wisconsin (Western District) had the only single-judge districts in 1971. Another four districts share their second judge, and three others enjoy the services of an additional two-thirds of a judge's time. Public Law 91-272, 84 Stat. 294, 91st Cong., 2d Sess., 1970.

[4] 28 U.S.C. 332. The U.S. Judicial Conference in 1961 approved by resolution pending legislation providing for two district judge members in circuits with five or more active circuit judges and one if less than five, but failed to reaffirm its approval of district judge membership on Judicial Ccuncils in 1963.

[5] Hon. Earl Warren, speech delivered at the 46th Annual Meeting of the American Law Institute, May 20, 1969, p. 9.

[6] The research for this article was done by interviewing the district judges in active service in the Seventh Circuit as of January 1, 1970. The states in the Seventh Circuit are Illinois, Indiana, and Wisconsin, and the districts in metropolitan areas are the Northern District of Illinois (Chicago) with eleven judges at the time of the study and thirteen positions at present; the Southern District of Indiana (Indianapolis) with four judges; the Eastern District cf Wisconsin (Milwaukee) with three judges. The districts in which the judges sit at separate locations are the Eastern District of Illinois with two judges, the Southern District of Illinois with two judges, the Northern District cf Indiana with three judges, and the Western District of Wisconsin with one judge. Only one senior judge was serving in 1970; he had retired in 1965 and left the bench permanently in 1970 due to ill health. The only judge not interviewed for this study is from Indianapolis.

A two-hour schedule of questions formulated to fit a rcle model for judges was utilized. The schedule was pretested on an interim appointee of President Kennedy to the Western District of Wisconsin who served nine months. The schedule was shcrtened after the first interview with a sitting judge. Much of the credit for the success of the interviewing enterprise goes to Chief Judge Tehan of the Eastern District of Wisconsin who introduced the author to judges from Indiana and Illinois at the May 1970 meeting of the Seventh Circuit Judicial Conference. Most of the interviews took place in June and July 1970 in the judges' chambers; the longest lasted seven hours, and the average was three hours. The answers to only a few of the questions are tabulated in this study, which is part of a larger enterprise expected to culminate in a bcok on the Seventh Circuit.

[7] Only two of the judges indicated any knowledge of the Chandler case beyond the facts available in the opinions and the law reviews. Perhaps this situation says something about the communications network in the federal court system between circuits (Carp, 1970).

[8] The selection of the first Circuit Executives proved to be a slow process. In March 1972 the Board of Certification of the Federal Judicial Center provided a list of forty eligible administrators, screened from 675 applicants. The Chief Justice expected the circuits to proceed with their choice of an Executive, although the law did not make the appointment mandatory. 4 The Third Branch 2, "A Message from the Chief Justice," (February 1972).

REFERENCES

BAAR, Carl (1970) "The Growth of Federal Judicial Administrative Structures: Implications for Judicial Behavior." Paper delivered to the 28th Annual Meeting of the Midwest Political Science Association, Chicago, Illinois.

CARP, Robert A. (1970) "The Scope and Function of Intra-Circuit Judicial Communication: A Case Study of the Eighth Circuit." Paper delivered to the 28th Annual Meeting of the Midwest Political Science Association, Chicago, Illinois.

CHANDLER, Stephen S. (1964) "The Role of the Trial Judge in the Anglo-American Legal System," 50 American Bar Association Journal 125.

COOK, Beverly Blair (1971) "The Socialization of New Federal Judges: Impact on District Court Business," 1971 Washington University Law Quarterly 253.

EISENSTADT, Shmuel N. (1966) Modernization: Protest and Change. Englewood Cliffs, New Jersey: Prentice-Hall, Inc.

FISH, Peter G. (1970) "The Circuit Councils: Rusty Hinges of Federal Judicial Administration," 37 University of Chicago Law Review 203.

FRANKFURTER, Felix, and James M. LANDIS (1927) The Business of the Supreme Court. New York: MacMillan Company.

JUDICIAL CONFERENCE OF THE UNITED STATES (1969) "Report of the Proceedings." Washington D.C.: U.S. Government Printing Office.

GRAHAM, Fred P. (1970) "Burger Warns New Issues May Overload U.S. Courts," (August 11) New York Times 1.

RICHARDSON, Richard J., and Kenneth N. VINES (1970) The Politics of Federal Courts. Boston: Little, Brown and Company.

Rutgers Law Review [Comment] (1966) "Judicial Responsibility," 21 Rutgers Law Review 153.

Senate Committee on Appropriations (1959) Field Study of the Operations of the U.S. Court [Cotter Report] Staff of the Senate Committee on Appropriation, 86th Congress, 2nd Session.

Stanford Law Review [Note] (1967) "The Chandler Incident and Problems of Judicial Removal," 19 Stanford Law Review 448.

The Third Branch, A Bulletin of the Federal Courts (January-February 1972) "State-Federal News" and "A Message from the Chief Justice," 4 The Third Branch 2.

University of California, Los Angeles, Law Review [Note] "Removal of Federal Judges — New Alternatives to an Old Problem," 13 UCLA Law Review 1385.

CASE LIST

Chandler v. *Judicial Council of the Tenth Circuit* 398 U.S. 74 (1970).

Chandler v. *Judicial Council of the Tenth Circuit* 382 U.S. 1003 (1966).