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Administrative Office of the U.S. Courts: History, Operations, and Current Issues

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Summary

The Administrative Office of the United States Courts (AO) is the principal administrative agency of the judicial branch. Originally created by Congress to improve the supervision of the federal courts and to give the federal judicial branch greater managerial independence from the executive branch, the AO is charged with a number of important tasks. Since the September 11, 2001, terrorist attacks, a principal area of concern for the AO has been courthouse security and emergency preparedness. In addition, the AO is currently decentralizing its budget process and improving the judicial branch's technology capabilities.

This report examines the organization and duties of the AO. It also looks at the agency's origins and three current significant issues concerning the agency. This report will be updated as developments warrant.

Organization and Duties

The Administrative Office of the United States Courts (AO) was created by Congress in 1939 to provide administrative support to the federal courts. Its director and deputy director, who are charged with supervising the agency, are appointed and may be removed by the Chief Justice of the United States in consultation with the Judicial Conference.¹ The current director is Leonidas Ralph Mecham, who has served in this capacity since 1985; but there has been no deputy director since 1993.²

¹ 28 U.S.C. § 601.

² The last deputy director of the AO was James E. Macklin, Jr., who served from 1985 to 1993.

By statute, the director is responsible for carrying out the administrative functions of the AO,³ but he has delegated many of these responsibilities to the AO staff.⁴ The current organizational structure of the AO includes the director, two associate directors, and 11 offices that report to the director.⁵ Each office generally performs the delegated duties of the director: all actions performed by AO employees “shall have the same force and effect as though performed by” the director.⁶

The director “serves as the chief administrative officer of the federal courts” under the supervision of the Judicial Conference.⁷ The director is charged with supervising all administrative matters of the federal courts, which include examining the federal court’s dockets; auditing the accounts of the courts; regulating the judicial retirement fund, pay and annuities to widows and surviving dependent children, and the travel of judicial personnel; supervising the probation offices; recommending official duty stations of bankruptcy judges; establishing pretrial services and court interpreters; providing accommodations for the courts; and, generally, supporting the Supreme Court and the Judicial Conference.⁸ The director also serves as an ex-officio member of the Judicial Conference’s executive committee and the Federal Judicial Center board.

Origins of the Administrative Office

The first formal plan for an administrative office for the Judicial Branch was drafted by President Franklin D. Roosevelt’s Attorney General, Homer Cummings, and submitted to the Conference of Senior Judges in early 1937.⁹ At the conference’s next meeting, the plan was passed over. Many “judges thought that the courts were functioning very well.” However, during the conference’s September meeting, the plan was given a favorable review.¹⁰

³ 28 U.S.C. § 604.

⁴ “The Director may delegate any of the Director’s functions, powers, duties, and authority (except the authority to promulgate rules and regulations) to such officers and employees of the judicial branch of Government as the Director may designate....” See 28 U.S.C. § 602(d).

⁵ For an organizational chart of the AO, see *The United States Government Manual, 2002-2003* (Washington: GPO, 2002), p. 79, and the Government Printing Office website, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2003_government_manual&docid=193760tx_xxx-13.pdf], visited May 3, 2004.

⁶ 28 U.S.C. § 602(d).

⁷ Cathy A. McCarthy and Tara Treacy, eds., *The History of the Administrative Office of the United States Courts: Sixty Years of Service to the Federal Judiciary* (Washington: Administrative Office, 2000), p. vii.

⁸ 28 U.S.C. § 604.

⁹ Originally created in 1922, the conference, whose name was changed to the Judicial Conference of the United States in 1948, is entrusted to make policy with regard to the federal courts.

¹⁰ See U.S. Congress, Senate Committee on the Judiciary, *Administration of the United States Courts*, hearings on S. 188, 76th Cong., 1st sess., Apr. 4 and 5, 1939 (Washington: GPO, 1939), p. 9.

In his annual report for that year, Attorney General Cummings also “recommend[ed] legislation that would provide for the creation and maintenance of ... an administrative system.”¹¹ “An efficacious administrative machinery,” Cummings noted, “is as necessary in the courts as it is in other branches of Government and in private enterprise.” Cummings continued:

I believe, too, that there is something inherently illogical in the present system of having the budget and expenditures of the courts and individual judges under the jurisdiction of the Department of Justice. The courts should be an independent, coordinate branch of the Government in every proper sense of the term.¹²

Unlike President Roosevelt’s controversial court-packing plan, the proposal for an administrative office was not a means to control the judiciary.¹³ It was thought of as a way to create an efficient court system and to make the judicial branch a truly independent branch of government.

During the second session of the 75th Congress, Senate Judiciary Committee Chairman Henry F. Ashurst introduced S. 3212, a bill “to establish the Administrative Office of the United States Courts,” on January 11, 1938.¹⁴ The bill would have vested an AO director with authority to carry out all administrative and personnel functions of the federal courts under the supervision of the Chief Justice and Conference of Senior Judges. Although hearings were held by the Senate Judiciary Committee, the bill received no further action.

At the end of the 75th Congress, Attorney General Cummings “took up the discussion of the matter with the Judicial Conference.”¹⁵ The conference decided that, in Cummings’ words, “it was incumbent upon the courts themselves, the judges of the courts, to clean their own house, rather than be subject to the embarrassment and destruction of our theory of government by having it done by someone else.”¹⁶ As a result, the conference decided to appoint a committee to work alongside the Attorney General to study and refine S. 3212.¹⁷ The committee was authorized to work with the Attorney General to design a bill that Congress would adopt.

¹¹ Attorney General Homer Cummings, *Annual Report of the Attorney General of the United States*, Jan. 3, 1938 (Washington: GPO, 1937), p. 6.

¹² *Ibid.*, pp. 5-6.

¹³ The court-packing plan was an attempt by President Roosevelt to select judges who would uphold his New Deal programs. The plan would have allowed the President to nominate a Justice to the Supreme Court whenever an incumbent turned 70 and did not resign or retire. His proposal applied to the Supreme Court and lower federal courts. For more information, see Marian C. McKenna, *Franklin Roosevelt and the Great Constitutional War: The Court-Packing Crisis of 1937* (New York: Fordham University Press, 2002).

¹⁴ See *Congressional Record*, vol. 83, Jan. 11, 1938, p. 304.

¹⁵ See U.S. Congress, Senate Committee on the Judiciary, *Administration of the United States Courts*, hearings on S. 188, p. 3.

¹⁶ *Ibid.*, p. 9.

¹⁷ The Conference Committee members included appeals court judges Duncan Groner, Martin Thomas Manton, John Parker, Evan Evans, and Kimbrough Stone.

The revised bill, S. 188, was introduced in the 76th Congress by Chairman Ashurst. A similar bill, H.R. 2973, was introduced in the House of Representatives; it was subsequently amended and reintroduced as H.R. 5999. The bills had the endorsement of the Chief Justice of the United States, the Attorney General, senior circuit judges, the American Bar Association, the Association of Deans of Law Schools, and the American Judicature Society.¹⁸ Two hearings were held by the Senate Judiciary Committee on S. 188 and by the House Judiciary Committee on H.R. 5999.¹⁹ At the Senate hearings, Attorney General Cummings defended the bill as a way to separate the judicial branch from the executive:

Of course, the judiciary is one of the great coordinate branches of our Government, and as such, as I think all will agree, it should be independent. That it should have its budget and its administrative functions, the expenditures of the judges, the salaries of clerks, and the innumerable details connected with its administration, handled by the Attorney General through the machinery of the Department of Justice, remembering all the time that the Department of Justice represents most of the litigation in the courts themselves, is an anomaly [...] I have never been able to reconcile myself to that situation. I have felt that it meant the exercise of authority by the Attorney General or the Department of Justice that should be placed elsewhere. It should, of course, be placed with the branch of the Government that is directly concerned.²⁰

S. 188 was approved by the Senate Judiciary Committee and passed by the Senate. The House of Representatives earlier passed H.R. 5999. The two versions were reconciled in conference, and each chamber approved the final bill. On August 7, 1939, the President signed the bill into law.²¹

Current Issues

Security. Since the September 11, 2001, terrorist attacks, an area of principal concern for the AO has been courthouse security and emergency preparedness.²² The AO has traditionally coordinated security matters with the General Services Administration (GSA) and the U.S. Marshals Service, but has also undertaken a number of emergency planning initiatives. The Judiciary Emergency Preparedness Office was established by

¹⁸ U.S. Congress, Senate Committee on the Judiciary, *Administration of the United States Courts*, hearings on S. 188, p. 13.

¹⁹ U.S. Congress, Senate Committee on the Judiciary, *Administration of the United States Courts*, hearings on S. 188; and U.S. Congress, House Committee on the Judiciary, *Administration of the United States Courts*, hearings on H.R. 5999, 76th Cong., 1st sess., Mar. 2 and Apr. 15, 1939 (Washington: GPO, 1939).

²⁰ U.S. Congress, Senate Committee on the Judiciary, *Administration of the United States Courts*, hearings on S. 188, p. 44.

²¹ See *Congressional Record*, vol. 84, Aug. 7, 1939, p. 11170, and P.L. 299, Act of Congress, Aug. 7, 1939.

²² See statement by Director Leonidas Ralph Mecham; in U.S. Congress, Senate Committee on Appropriations, Subcommittee on Commerce, State, Justice, and the Judiciary, *Departments of Commerce, Justice, and State, and Related Agencies Appropriations for Fiscal Year 2004*, hearings on H.R. 2799/S. 1585, 108th Cong., 1st sess., Mar. 6 and 20, April 1, 8, and 10, 2003 (Washington: GPO, 2003), p. 251.

the AO “to give guidance and other assistance to courts for emergency preparedness, crisis response, and continuity of operations plans.” The office has given briefings on emergency preparedness to nearly 2,000 people in the judicial branch. In addition, the office authorized a contractor “to develop a template for a continuity of operations plan (COOP) for courts to use as they develop individual plans.”²³ The focus was primarily on courts in New York City. Final versions of the plan were reviewed and approved by representatives from circuit executives’ offices and other courts. The plan was given to the courts in November 2002 to help in emergency preparedness planning.²⁴ Chief Justice William Rehnquist has noted that “most federal courts have developed or are in the process of developing continuity-of-operations plans.”²⁵

Also of concern for the courts is the issue of mail handling. After the October 2001 incident involving anthrax contamination of U.S. government mail, a study was done to research “several existing courthouse mail facilities and handling practices and to help develop procedures and infrastructure for safe mail handling in federal courthouses.” The study’s recommendations were approved by the Judicial Conference in 2002. Initially, \$12 million from an emergency security supplemental appropriation was used to construct centralized mail rooms in courthouses.²⁶

In 2004, Congress approved over \$277 million to enhance mail security, as well as overall courthouse security.²⁷

Financial and Management Control. Before the early 1990s, district court funds were controlled solely by the AO. Request for money was only given for specific expenses and even then only by written requests. Since that time the AO has been working to decentralize its “financial and management” control system.²⁸ “Currently about \$2 billion each year are managed by the courts...”²⁹ The program gives district courts the flexibility to respond to unforeseen situations. For example, in May 2003, “a tornado caused extensive structural damage to the courthouse in Jackson, Tennessee.” The court clerk used local funds “to immediately lease space and relocate court files, equipment and staff.”³⁰

²³ Administrative Office of the U.S. Courts, *2002 Annual Report*, p. 15, Administrative Office website, [<http://www.uscourts.gov/library/dirprt02/index.html>], visited Apr. 21, 2004 (hereafter *2002 Annual Report*). For further reading on emergency planning and continuity of operations, see CRS Report RL31978, *Emergency Preparedness and Continuity of Operations (COOP) Planning in the Federal Judiciary*, by R. Eric Peterson.

²⁴ U.S. Congress, hearings on H.R. 2799/S. 1585, Mar. 6, 2003, p. 252.

²⁵ William Rehnquist, *2003 Year-End Report of the Federal Judiciary*, Jan. 2004, at [<http://www.supremecourtus.gov/publicinfo/year-end/2003year-endreport.html>], visited May 3, 2004.

²⁶ *2002 Annual Report*, p. 4.

²⁷ Consolidated Appropriations Act for FY2004, P.L. 108-199, approved Jan. 23, 2004.

²⁸ *2002 Annual Report*, p. 15.

²⁹ “‘Mother May I’ No Longer in Courts’ Vocabulary,” *The Third Branch*, vol. 36, Feb. 2004, p. 10.

³⁰ *Ibid.*, p. 9.

In November 2002, the AO contracted with KPMG LLP “to conduct a comprehensive, independent assessment of the decentralization program.” KPMG was charged with determining if the objects of decentralization had been achieved and making recommendations for future improvements. In its findings, KPMG reported that the AO has saved \$1.3 billion from 1994 to 2002 in the salaries and expenses appropriation. The report stated that decentralization was “an overwhelming success.”³¹

Information Technology. The AO has also been trying to improve the judicial branch’s information technology capabilities. In recent years, Congress authorized a Judiciary Information Technology Fund, which can be used “for the expansion, management, and use of information technology throughout” the judicial branch. During the 2004 fiscal year, Congress appropriated \$321 million for the fund.³² The AO has requested \$72 million for the 2005 fiscal year.

Within the judicial branch, several new databases have been created by the AO to help with the automation of the federal courts. A new Case Management/Electronic Case Files (CM/ECF) system has been established.³³ As of January 2004, the system was active in two-thirds of the bankruptcy and district courts nationwide. An appellate court system is being developed.³⁴ The system holds more than 10 million cases, with nearly 50,000 attorneys filing documents electronically using this system.³⁵ In addition, the judiciary has created a Jury Management System that streamlines jury operations.³⁶ Also, a new information system called the Probation and Pretrial Services Case Management System/Electronic Case Management (PACTS) “makes case information more accessible to officers and their supervisors.”³⁷ The system collects and organizes all “case-related” information and allows officers to access the case files from their computers.³⁸ PACTS had been installed in more than 60 districts as of January 2004.³⁹

³¹ Administrative Office of the U.S. Courts, *2003 Annual Report*, Administrative Office website, [<http://www.uscourts.gov/library/dirrpt03/dirrpt03full.pdf>], p. 17, visited May 3, 2004 (hereafter *2003 Annual Report*).

³² *U.S. Budget Appendix, 2004*, p. 50.

³³ For information about the application of CM/ECF, see “CM/ECF Troubleshooters: Support Branch Staff Ready to Help Courts,” *The Third Branch*, vol. 35, Nov. 2003, pp. 4-5.

³⁴ Rehnquist, “The Administrative Office of the United States Courts,” *The Third Branch*, vol. 36, Jan. 2004, pp. 5-6.

³⁵ *2003 Annual Report*, p. 20.

³⁶ *2002 Annual Report*, p. 24.

³⁷ *Ibid.*, p. 27.

³⁸ *2003 Annual Report*, p. 2.

³⁹ Rehnquist, “The Administrative Office of the United States Courts.”

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