THE SCOPE AND FUNCTION OF INTRA-CIRCUIT JUDICIAL COMMUNICATION: A CASE STUDY OF THE EIGHTH CIRCUIT

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During the past two decades students of public law have amassed a considerable amount of evidence which indicates that the administration of federal justice is not uniform throughout the United States. First, there are significant differences in judicial administration among the federal district courts. Kenneth Vines and others have demonstrated how important these differences can be with regard to race relations cases (Vines, 1963; Vines, 1964; Peltason, 1961; Steamer, 1962). In his study of the federal trial courts and urban affairs, Kenneth Dolbeare concluded that "many of Vine's findings with respect to race relations policy making have parallels in the area of urban public policy generally." (Dolbeare, 1969: 376). Also, there is some evidence that sentencing behavior in criminal cases varies significantly from one federal trial judge to another.[1]

Not only does the administration of federal justice differ from district to district, but some studies suggest that each appellate court tends to be somewhat unique in its interpretation of the law and in its general decisional tendencies (Downing, 1959; Peltason, 1961; Vines, 1963; Loeb, 1964; Goldman, 1965; Goldman, 1966; Richardson and Vines, 1967; Lehnen, 1969), and that as a partial consequence the general administration of justice in each of the federal circuits tends to be somewhat unique (Salisbury, 1955; Dozeman, 1960; Loeb, 1965: 146 ff.; Schick, 1965). Although some of these studies found characteristics common to all of the U.S. circuits, they still discovered that each circuit tends to have traits and idiosyncrasies unique to that particular circuit. For example, in his study of voting behavior on the United States Courts of Appeals, Sheldon Goldman found evidence of "organized liberal-conservative voting patterns" by the judges and discovered that party affiliation was associated with voting behavior on economic liberalism issues. Nevertheless, despite these common patterns, Goldman was forced to conclude that "the eleven United States courts of appeals . . . differ in their rates of dissention and intracircuit conflict as well as

the sources of conflict" and that "the institutional diversity of the appeals courts . . . imposed limitations on data collection and analysis." (Goldman, 1966: 382.)

In addition to these studies, there is also evidence that federal judges believe that the administration of justice varies noticeably from one circuit to another. All four of the Eighth Circuit judges interviewed for this study provided numerous examples of how judicial administration by their fellow trial judges in the Eighth Circuit differs from that in other federal circuits. Differences were said to exist on such important subjects as disposition toward the pleas of labor unions and of civil liberties advocates, the criteria for appointment of special masters in antitrust suits, the definition of what constitutes automobile theft, the severity of sentences in criminal cases, and the interpretation of patent law. Each of these Eighth Circuit judges strongly asserted that the existence of differences in judicial administration from circuit to circuit is common knowledge among federal judges.[2]

How are these differences in judicial administration to be accounted for? What explains the fact that the administration of federal justice differs from district to district and varies also on a circuit-by-circuit basis? Some public law scholars contend that the judges at each level of the federal judicial hierarchy are responsive to different sets of needs and conditions, or in the words of the systems theorists, each level of the federal judiciary reponds to a different set of "demands" and "support." Vines cites evidence that the "district courts . . . take their cues frequently from local political values in the district or region." (Vines, 1963: 314.) Dolbeare found data for his model which "envisions [federal] trial court judges as mediators between the judicial subsystem and the standards and practices of local politics — but principally identified with, and responsive to the latter" (Dolbeare, 1969: 391).[3] As for the federal appellate courts, Vines concludes that "the circuit judge is much less tied to a particular locality than is the district judge who has strong ties with his district. The constituency of the circuit judge, the interests represented before his court, the variety of litigants appearing and the nature of policies litigated will normally be much wider in the circuit court than for the district judges in district courts" (Vines, 1963: 311). Goldman says essentially the same thing in explaining the differences in judicial administration among the eleven appellate courts, differences which he attributed to "personality and 'con-

stituency' variables" (Goldman, 1966: 382). Finally, there is the peak of the judicial hierarchy, the U.S. Supreme Court, which has no parochial base but rather responds to needs and conditions which are national in scope.

Thus we know that the administration of federal justice varies from district to district and from circuit to circuit, and that this is partially caused by differences in the "input" factors, that is, in the "demands" and "supports" which are fed into the various tiers of the federal judicial system. This article seeks to carry the analysis one step further by outlining an answer to the following question: Given the fact that in many important instances the federal district judges in one circuit tend to administer justice differently from federal district judges in other circuits, what causes this phenomenon to persist over time? In other words, why do federal district judges in one circuit continue to behave differently from those in other U.S. circuits?

One obvious and partially correct answer is that the factors which cause these differences continue to persist over time because the parochial "demands" and "supports" unique to a circuit are slow to release their grip on the behavior of the circuit's district judges. Surely there is truth in this statement, but there is an additional and a theoretically more compelling explanation for the behavior in question: It is the central hypothesis of this article that differences in the judicial behavior of U.S. trial judges from circuit to circuit persist because for these judges the circuit is a semi-closed system, a nearly self-contained organizational unit within which there is considerable interaction among its members and almost no interaction between the members of one unit (circuit) and another.

For this hypothesis to be plausible one must demonstrate the existence of three conditions: First, that federal trial judges have ample communications channels for interaction with their fellow district judges; second, that these channels are used almost exclusively for intra-circuit rather than inter-circuit interaction; and, third, that U.S. trial judges use these communications channels to socialize, to discipline, and to provide mutual support for each other — that is, to maintain the circuit as a viable system.[4] Evidence will be marshalled to indicate that each of these conditions exists for the U.S. Eighth Circuit.[5] It is suggested that such conditions may well prevail in other federal judicial circuits as well.

Before discussing the data used to illustrate the model sketched above, several additional points should be made about the type of semi-closed system hypothesized. First, the model recognizes that federal district judges are by no means totally isolated from their brethren in other circuits or from important nationalizing influences. Such nationalizing factors include Supreme Court rules and precedents, the U.S. Judicial Code, and Congressional statutes dealing with the federal judiciary, all of which prescribe much of the scope and nature of judicial behavior on the trial court level. There are, further, the influence of the Administrative Office of U.S. Courts, which for the past two decades has actively sought to bring about more standardization in the behavior of U.S. trial judges,[6] and the nationalizing effect of the periodic interactions between the federal district judges and their circuit court of appeals.[7] Second, the model also allows for the persistence of *individual* differences in judicial behavior among the various trial judges within the circuit. It is fully recognized that each federal district judge behaves idiosyncratically on many important issues which come before him. Thus the model is concerned with explaining the persistence of only those aspects of judicial behavior which are common to all (or nearly all) of the trial judges in any given U.S. circuit.

Data derive principally from two sources. The first and the richest of these is the public and private papers of Judge William F. Riley, who was the U.S. Judge for the Southern District of Iowa between 1950 and 1956. These approximately 7,000 papers consist of letters and judicial memoranda written by Riley and his political, professional, and judicial associates between 1932 and 1956. Almost half of these papers relate directly to the six-year period of his judicial tenure.[8] Second, valuable information was secured by conducting in-depth interviews with three Eighth Circuit federal district judges and with the chief judge of the Eighth Circuit U.S. Court of Appeals. In addition, there is data from interviews with professional and judicial associates of Judge Riley, such as former members of the district court staff and lawyers with many years of experience in practicing before the federal bench. Interviws with such persons were essential in filling in the gaps of knowledge which resulted from relying merely on the Riley papers for information about the internal dynamics and relationships of the Eighth Circuit.[9]

THE CHANNELS OF FREQUENCY OF INTRA-CIRCUIT COMMUNICATION

Part One of this study seeks to identify the communications channels through which district judges interact and to determine whether these channels are used primarily for intra- rather than inter-circuit communication by federal trial judges. The available evidence suggests that there are eight forms of communication and contact between federal district judges within the same circuit: the Circuit Judicial Conferene, three-judge panels, state bar association meetings, informal soci contact, daily personal contact (e.g., among judges who hol court in the same city), the professional journals, correspond ence, and telephoning. These will now be discussed briefly and whenever possible, their significance for strengthening intra-circuit ties will be indicated.

The Circuit Judicial Conference

It is almost impossible to overemphasize the significance of the Circuit Judicial Conference in establishing and maintaining intra-circuit ties. This annual (and often semi-annual) event is the only gathering at which all the district and appellate court judges can come together for the purpose of exchanging advice and coordinating their judicial activities. The program consists of a series of seminars at which problems common to all the judges are discussed, and there are guest speakers who provide information on topics of interest to the judges. Also, there is ample time allotted for the judges to discuss informally mutual psychological, administrative, and judicial problems.

An indication of some of the formal presentations made at the Judicial Conference is provided in these remarks from Minnesota Judge Gunnar Nordbye who wrote to Riley during the time of Riley's fatal illness:

> We all missed you at the Conference and were sorry to hear that your illness prevented your attendance. . . .
> James Bennett, Director of the Bureau of Prisons, was one of the speakers and gave a very interesting talk on the programs carried on in the various prisons for the rehabilitation of the inmates, and it gave us a good insight into the splendid work that the Government is doing in our Federal institutions.
> We had a dinner at the Mayfair Hotel at which all the judges were present, and Chancellor Shepley of Washington University at St. Louis was the speaker. I think everybody enjoyed the occasion very much.[10]

These formal presentations and interactions between trial and appellate court judges may well have a certain nationalizing effect upon the behavior of the federal district judges. For instance, sentencing behavior is frequently a topic of formal discussion at the conference, and often attempts are made by the chief judge and other appellate judges to encourage the establishment of basic standards and criteria which would ideally govern sentencing practices within the circuit. The extent to which these and other similar attempts are successful in bringing about uniformity is impossible to determine in this investigation. However, the mere fact that such attempts are made is significant because of its potential for bringing about more uniformity of judicial administration within the circuit.

The Conference provides a splendid opportunity for the judges to discuss problems which do not lend themselves to solution through simple correspondence. For instance, in September, 1952, Riley noted to Chief Judge Gardner that:

> I want to tell you how happily I enjoyed the Conference and the program which you had arranged. Not the least of the value I derived from the meeting was found in the informal visits which I had with different judges about the problems with which I must become acquainted by experience. The benefit of their experience is always helpful.[11]

And Judge Graven of the Northern District of Iowa once observed to Riley that, "I like to get into St. Louis so I may have the evening before the conference to visit and go over matters with the judges. . . ."[12]

Riley never hesitated to acknowledge his dependence on what the Circuit Judicial Conference had to provide, and this was clearly seen in his remarks whenever a Conference had to be cancelled. Thus when it looked as if the second Judicial Conference of 1953 would have to be cancelled, Riley wrote to Judge Matthew Joyce of Minnesota, saying:

> I think you more experienced judges might well write to Judge Gardner, who says he pretermitted the Circuit Judicial Conference, and ask him yet to have it. To me there is a great value in the meeting of those scattered persons like Judge Miller, Vogel and myself, who do not have the frequent contact that you do with your associates, and the opportunity to exchange views.[13]

And once when a Judicial Conference was indeed cancelled, Riley bemoaned to his chief judge that:

> My regret possibly exceeds your own that the Judicial Conference for May 4th and 5th at St. Louis has to be postponed for reasons of economy. From everything that I can observe no one needs the benefits of the association and the opportunity to rub elbows more than I do.[14]

Up to this point it would appear that the effect of the Circuit Judicial Conference is contrary to the central hypothesis of this article in that the Conference appears to serve only as a nationalizing agent for federal trial judges. However, this is by no means the case because both the Riley papers and the interview data suggest that nearly all of the district judge's *informal* interactions at the conference are with other district judges — not with members of the appellate court. As one contemporary federal trial judge expressed it in an interview:

> Of course, I like to get a chance to meet the appellate judges at the [Circuit Judicial] Conference, but I do most of my talking with the other district judges. The appeals judges don't have the same problems and concerns as we [trial judges] do, and I don't feel it would be appropriate for me to discuss too many of my problems with them [the appellate judges]. With another district judge it's different because he's on your same level and you all tend to have the same problems and outlook on things.

These informal get-togethers at the Circuit Judicial Conference have a secondary function as well in that they provide a basis for future interaction among trial judges with the circuit. The Conference provides the various district judges with an opportunity to meet personally other trial judges with whom they were not previously acquainted. Even if there is no immediate exchange of advice or information among these "new friends," the meeting still provides a basis for future communication. A judge is generally more likely to discuss a problem or make a request of a judge whom he knows personally than of a judge whom he knows only by reputation. By permitting all of the district judges to meet and establish personal relations with one another, the Judicial Conference provides a basis for future interaction among these judges.

Three-Judge Panels

The importance of the special three-judge courts for bringing together judges of the same circuit is considerable, and these special courts should be studied in future research on intra-circuit judicial communication. The federal district judges interviewed in this study indicated that they often use these three-judge panels as an occasion for informal discussion of mutual problems and for sharing experiences with their fellow district judges. One member of these three-judge panels is, of course, an appeals court judge, but as with the Circuit Judicial Conference, most interpersonal discussion of judicial problems appears to be between the district judges — not between

the trial judge and the appellate judge.[15] One interviewee suggested that many of a judge's problems can be discussed only in face-to-face meetings with other judges; they do not lend themselves to discussion by correspondence. The three-judge courts obviously provide the judges with occasions to make use of these direct personal contacts to exchange advice and information. This may be seen in this excerpt from a Riley letter to Chief Judge Gardner:

> Since I am writing you on the matter of answers concerning juries, I think it might be appropriate to inform you that after the conclusion of my matters at Council Bluffs I met on Thursday at Omaha with Judges Johnsen and Donohoe to discuss the situation as to the three-judge court which you had named.
>
> We have not yet received formal notice but indirectly learned that the Interstate Commerce Commission has reopened for reconsideration the order involved in the application filed in our court. We informally agreed therefore that we will stand by until the matter is formally brought to our attention. . . .
>
> It was a real pleasure for me again to see Judges Johnsen and Donohoe.[16]

State Bar Association Meetings

It appears from the evidence at hand that not only Judge Riley but nearly all Eighth Circuit judges often attend the various bar association meetings of the states within their own circuit. These affairs not only provide each state's federal district judges with an opportunity to get together, but they also serve as occasions for the various district judges to confer with one another.[17] This is not to imply the absence of the circuit's appellate judges from the state bar meetings, but in the Eighth Circuit at least the state bar meetings are used primarily as sources of interaction among the circuit's trial judges. That Riley used these bar association meetings for purposes of making contact with other judges in the circuit is beyond doubt. For example, in June, 1952, Judge Riley wrote to one of his Eighth Circuit colleagues with this invitation:

> The Iowa State Bar Assocation meeting will be held in Des Moines on the 11th, 12th, and 13th. . . . If you are inclined to come, I know that many members of the Association would be happy to see you. You have many friends among them. Do not be discouraged about lack of accomodations, because I will gladly provide them for you.[18]

And in May of that same year Riley wrote to his colleague in the Northern District of Iowa, saying, "I am still counting on our conference on the [local court] rules at the time of

the Bar meeting. At Iowa City, I did not even touch the margin of the edges of the things that I would like to discuss. Hope we will have time at the Bar Meeting."[19]

Informal Social Contact

As has been emphasized previously, federal district judges greatly value all possible opportunities for personal contact with their fellow trial judges in the circuit. One manifestation of this feeling is that these judges appear to go out of their way to arrange their personal and professional traveling schedules to allow them to come in contact with as many of their circuit brethren as possible. For example, when Judge Riley learned that Arkansas Federal District Judge John Miller was vacationing in the Dakotas, he hurriedly dispatched this invitation to his Eighth Circuit colleague:

> I have a twofold reason for this letter. The first, to tell you what pleasure it was for me to meet you and Mrs. Miller, and the second, to again renew my invitation to you as you return to Arkansas to come via Des Moines. We would be very happy indeed if circumstances should make it convenient for you to return this way to be our overnight guests in Des Moines. . . .[20]

In June, 1952, when Riley was about to go on vacation in Minnesota, he responded to one of Judge Graven's invitations with these words: "Your suggestion that I stop at Greene [Judge Graven's home town] *returning* from the North seems most practical. Accordingly, you may expect me some time during the afternoon of the 7th. . . ."[21]

Judge Graven's awareness of Riley's constant desire to experience personal contact with his Eighth Circuit colleagues is clearly seen in the following note from Graven to Riley about a fellow judge:

> I enclose a letter I just received from [the] Judge . . . in regard to his coming to Fort Dodge. You will note that he plans on arriving in Des Moines overnight. I thought maybe you might want to contact him that evening and have a visit with him. If so, you might write him direct.[22]

Judge Riley experienced such direct, informal contact with his fellow district judges about once every five or six weeks during his judicial tenure. Evidence from the interviews suggests that such informal social contact among district judges is a current and ever-increasing phenomenon among judges within the same circuit.

Daily Personal Contact

Because Judge Riley presided over his own separate judicial district he very rarely enjoyed daily personal contact with other federal district judges. Nevertheless, this *was* a privilege experienced by a number of district judges within the Eighth Circuit who resided in states where the judges sat at large and where they often had joint offices with other judges in the same city. Such was the case, for example, in the state of Minnesota, where several district judges held court jointly in Minneapolis, and in the state of Missouri, where several such judges operated out of St. Louis. Therefore, about a third of the Eighth Circuit trial judges were able to see one another on almost a day-to-day basis and were thus able to exchange information and advice with considerable ease. Riley's envy of those Eighth Circuit judges who could enjoy daily contact with one another is manifested in the following remark made by him to Minnesota Judge Matthew Joyce. After urging Joyce to prevail upon Chief Judge Gardner to have a Circuit Judicial Conference which looked as if it would be cancelled, Riley added these words:

> To me there is great value in the meeting of those scattered persons like Judges Miller [of Arkansas], Vogel of [North Dakota] and myself, who do not have the frequent contact that you do with your associates, and the opportunity to exchange views.[23]

Neverthless even Judge Riley was occasionally afforded the opportunity to experience some daily contact with his fellow district judges. This was the case whenever he held court in Council Bluffs, Iowa, a city just across the river from Omaha, Nebraska, the site of another federal court. During Riley's initial socialization process, he used his court term at Council Bluffs as an occasion to familiarize himself and his staff with their judicial duties by consulting with the Nebraska federal judges and court staff at Omaha. For instance, in March, 1952, Riley told Nebraska Judge James Donohoe:

> I will have my secretary, Mrs. Ruth Johnson, come over while we are holding court next week at Council Bluffs. We commence Monday, and she may come at any time that may be most convenient to your secretary, to have the benefit of making some study as to your records through your long experience.[24]

Also, in the spring of 1955 Riley was to have driven to Omaha from Council Bluffs to consult with the Nebraska judges about an antitrust matter. He missed the first planned meeting because he could not get to Council Bluffs on time,

but attempted to arrange his travel schedule to meet with them at Omaha during a second trip to Council Bluffs. In July, 1955, Riley wrote to Judge Albert Ridge, saying:

> You may recall that I was to have joined you and Judge Collet at Omaha, as a spectator, for your pre-trial conference in the anti-trust cases, and I believe you held one pre-trial conference that I could not attend. If you have not yet had the other, what is the prospect of having it in the near future?[25]

The Professional Journals

The professional journals, *e.g.*, state law reviews, provide a sixth source of communication among federal judges — and particularly among those district judges in the same circuit. Almost any type of legal question may be discussed in these professional journals, but often the subject matter is of a more theoretical or abstract nature than is the subject of letters, telephone calls, or personal conversations among judges. Said one federal judge in an interview, "When we judges get together, we talk about hard, practical matters. We save discussions of judicial philosophy and of abstract legal topics for the law review articles."[26] Judge Riley had access to and read, whenever time permitted, all of the bar association journals of the states comprising the Eighth Circuit, and he also read most of the national journals which were published by the various legal or judicial societies. When reading such national publications he was always particularly attentive to articles written by or about his Eighth Circuit colleagues.

That the professional journals were a means of communication among judges within the Eighth Circuit can be illustrated by two examples. The first is a letter from Riley to the Commissioner of the Missouri Supreme Court.

> Some time ago I saw reprinted in the Missouri State Bar Journal an address delivered by Judge Ruby M. Hulen of the United States District Court at St. Louis, before the Bar Association there, having to do with the duties of a trial judge. I would appreciate it very much if you could obtain and forward to me a copy of the issue in which it appeared.[27]

The second example is provided in the following exchange of notes between Judges Graven and Riley. The first excerpt is from a Graven letter to Riley.

> My law clerk, Emery Davis, has written an article for the *Iowa Law Review*. The work and conclusions are entirely his own. There will probably be a number of editorial revisions in it before it appears in final form. I thought you might find it of interest. This is an extra copy and need not be returned.[28]

Riley's reply six days later indicates that the law review article was of some use for him.

> It was thoughtful of you indeed to send the copy of (what I should call) the Treatise on Indemnity between Negligent Tort-feasors contributed by your law clerk Henry (*sic*) E. Davis to the *Iowa Law Review*. Incidentally, it comes at a suitable time because we have the question presently before us in a case at Davenport next month.[29]

Correspondence

For Judge Riley, who was an avid letter writer, correspondence was a major link between him and his Eighth Circuit judicial brethren. His papers provide approximately 1,000 pieces of written communication between him and other district judges with whom he was in almost daily contact. Of these one thousand pieces of communication, only 30 were written to district judges outside of the Eighth Circuit. Thus, 97% of Riley's correspondence was conducted within his own circuit.

Regarding the above facts, one may be tempted to argue that it is perfectly natural to assume that a judge would write to other judges whose districts were in the same geographic vicinity as the judge in question and that this could well occur regardless of the existence of judicial circuits. However, the evidence in the Riley papers tends to belie that argument. There was considerable correspondence between Judge Riley and federal judges within the states of Arkansas and North Dakota which do not border on Iowa but which nevertheless comprise part of the Eighth Circuit. In addition, there is not a single piece of correspondence between Riley and any judge within the state of Illinois or Wisconsin, both of which border extensively on Iowa but neither of which is part of the Eighth Circuit. Therefore, it seems fair to conclude that circuit boundaries influenced the scope of Judge Riley's correspondence.

It should also be noted that in 20 of the 30 pieces of correspondence between Riley and non-Eighth Circuit judges, the topic of communication was entirely non-judicial in nature. Many resembled the letter written to Arizona Federal District Judge David Ling:

> Mrs. Riley and I are planning to arrive in Tucson on the evening of February 2nd, to remain through February 13th or 14th and then go on to Phoenix the end of that week to remain for two weeks.
>
> I am taking the liberty of addressing you because of my belief that you might have some appreciation of the limitations economically upon a judge and may recommend some place that would be comfortable, permit some informality in dress and

> yet be within reasonable access of bus or street car. If you know of such a place that you are willing to recommend and would make a tentative reservation for the 13th, 14th or 15th and inform me, I will appreciate it very much.[30]

The second largest bulk of non-judicial correspondence between Riley and judges outside the Eighth Circuit dealt with American Bar Association matters. (Riley remained quite active in the A.B.A. after assuming his judicial duties.)

When Riley did occasionally write to a judge outside his own circuit regarding a judicial matter, it was usually done because there was no other feasible choice. To illustrate, when Riley was required to submit his space requirements for the building of a new federal courthouse, he wrote to California Federal Judge Weinberger, who had recently moved into a new courthouse. Riley wanted Weinberger's advice in determining what space requirements to request, and there simply were no Eighth Circuit district judges presiding in newly-built courthouses. Therefore, in March of 1952, Riley penned this note to the California federal judge:

> The information that I was interested in relates to the construction of your new quarters. We are confronted in the Council Bluffs Division of this District with the construction of a new courthouse, and I have been asked to indicate the amount of the space that the court will require for all its purposes. I had hoped that I might see a sketch showing the arrangements and the amount of space in your new quarters. If that may be available and could be mailed to me, I would be very glad to examine it and return it to you. . . .[31]

The above exception, however, merely tends to prove the rule. Riley wrote to judges outside his circuit only when the Eighth Circuit judges could not provide the desired information — and this was not often the case.

Thus correspondence between Judge Riley and his circuit brethren was a major tie between him and these trial judges. Interviews with contemporary federal judges indicate that the vast majority of their letter writing is likewise confined to district judges within the Eighth Circuit. In addition, none of the three federal district judges interviewed for this study could recall ever having corresponded with an appellate court judge (from his own circuit or from any other) about a judicial problem for which he needed advice and help. It therefore seems fair to conclude that correspondence among the circuit's trial judges is an important factor strengthening intra-circuit ties.

Telephoning

Telephone conversations appear to be an important link among a circuit's trial judges. There are numerous references to telephone calls in the Riley papers, although there is very little indication of their frequency or content. It can be said that in the approximately 40 references to phone calls in the Riley papers, there is no record of any call between Riley and a non-Eighth Circuit judge. But the point cannot be taken further because his papers are not a good source of data in this regard.

Interviews with contemporary federal judges reveal that the telephone call is an ever increasing source of communication among district judges — much more so than it was during the Riley era. This is so for two reasons: first, the allowance of funds for phone calls is significantly greater now than it was during the 1950s and, second, phone service is now much better and less expensive than it was ten or fifteen years ago. However, much more needs to be said about the importance of phone communication among judges than the data permit one to say here, and this appears to be a fruitful topic for future research.

THE USE OF INTRA-CIRCUIT COMMUNICATION FOR SYSTEM MAINTENANCE

The first part of this study attempted to identify the major communications channels used by a circuit's trial judges and also to determine the direction and content of these communications sources. Part two seeks to determine the degree to which these communications channels serve to maintain the circuit as a semi-closed system. It is hypothesized that if the judicial circuit is to be regarded as a semi-closed system for its trial judges, then one must demonstrate that intra-circuit communications serve to socialize, to discipline, and to provide mutual support for its member judges. One need not conclude that this is the only requisite for system maintenance, but surely these functions are at least partially necessary for the circuit to be maintained as a viable system.

The Socialization of New and Inexpericnced Judges

The Eighth Circuit (and presumably others as well) is almost solely responsible for the socialization of its newly-appointed district judges. This is significant because it means that the various circuit traditions, idiosyncrasies, and philoso-

phies which are unique to that circuit may be passed on from one generation of district judges to another. It means that from the very outset of a district judge's career he is taught to look inward to the trial judges within his circuit for advice and information about judicial problems. He learns immediately that one goes outside the circuit for such help only when it is impossible to obtain the desired help from a fellow district judge.

It is therefore not a coincidence that soon after taking his judicial oath, Judge Riley turned to the older, more experienced Eighth Circuit trial judges for guidance in mastering the rules and procedures related to his judicial role. To his experienced colleague in the Northern District of Iowa, Riley made the following request less than a month after donning the black robe:

> This morning I held my first court session . . . .
> It has occurred to me that you may be willing to make some very helpful suggestions drawn on your own experience that might help me along this trail that I am trying to follow. I refer even to techniques that you will have adopted in the impanelling of your grand and petit jury and in the selection of your jurors in civil and criminal cases or to a system of notes which you have found effective. Other helpful techniques may have grown out of your varied experience. I shall appreciate whatever you may suggest.[32]

To Minnesota Judges Joyce and Nordbye he made a similar request in early February, 1951:

> The purpose of this letter is to find out from two men whose judgment I respect very greatly what suggestions they have to a very new judge. This letter also serves the purpose of thanking you for your recent letter and informing you that following your suggestion I have obtained my new robe which I wore for the first time this morning.[33]

On December 28, 1950, Judge Riley wrote to his immediate predecessor, Judge Dewey, saying that he wished to "sit at your feet for an hour or two each day for awhile to have the benefit of your knowledge and experience about this machinery so new to me."[34]

Judge Dewey responded with these words:

> The Judicial Conference has made arrangements to provide a room, secretary, etc., for retired judges, so that after March 1st I expect to continue the use of a room in the building. This, I hope will enable me to see you often; and if talking matters out loud will be any benefit to you (as it generally is) I promise to be a good listener. You may be sure that I will be glad to give you the benefit of my knowledge that I have in the Federal Procedure.[35]

It should be noted here that Riley made no such requests for help in the socialization process of any judges outside the Eighth Judicial Circuit, and, aside from an occasional exchange between him and his chief judge, Riley requested no help from any members of his Appellate Court. It is little wonder, then, that for newly-appointed judges the circuit may soon become their only meaningful source of reference for the exchange of judicial information and advice. It should also be noted that Riley's dependence upon his fellow Eighth Circuit district judges for such advice and information continued well beyond the initial period of socialization; it was a phenomenon which lasted throughout his judicial career.

Mutual Support and Discipline within the Circuit

The Eighth Circuit district judges appear to be their own "attentive public"; they constantly keep track of each other's activities, provide psychological support to each other when that is called for, and offer gentle criticism when that seems to be in order. The result is that — unofficially and informally — these Eighth Circuit trial judges are able to generate the psychological support and discipline necessary to maintain the circuit as a viable system.[36]

How the district judges serve as their own "attentive public" is clearly illustrated in the Riley papers. Judge Riley saved and mounted a whole series of newspaper and journal articles which in any way discussed the activities of one of his fellow district judges. In November of 1951, Riley wrote to Missouri Federal District Judge George Moore, noting that:

> I cannot forbear enclosing this separate note to tell you of my enjoyment of an article concerning you in a recent issue of the *St. Louis Post-Dispatch*. It was made available by Miss Wahlgren, our deputy clerk at Keokuk where we held a term last week. . . . I sent the article to our mutual friends, Judge Joyce and Judge Nordbye [of Minnesota], with the request that they forward it to Judge Delehant [of Nebraska].[37]

And on May 12, 1952, Judge Joyce wrote to Riley, saying,

> Your letter of May 7th received. I got the one with the article about [former Iowa Southern District Federal Judge] Charley Dewey which Gunnar and myself enjoyed very much. Apparently, he's showing the southern boys something of how the law is administered in the upper Mississippi valley. . . .[38]

Not only do Eighth Circuit judges follow each other's activities with great care, but they provide each other with much-needed psychological support. The evidence suggests that federal district judges appear to be rather lonely figures, feeling somewhat

distant from their immediate associates, and that these federal judges often experience sensations of great personal inadequacy in meeting the high standards of their judicial calling. These mutual problems create a very real feeling of brotherhood among the district judges and, consequently, these judges take advantage of every opportunity to minister to each other's psychological problems and needs.

When a district judge is affirmed by the Circuit Court of Appeals in a particular case, he is likely to receive several congratulatory letters from his fellow trial judges. Two received by Judge Riley are typical:

> I read your opinion in the Supplement and have noted that the Circuit Court of Appeals has treated you very decently, as they should.[39]

> First, I want to congratulate you on being affirmed in the *Donald Jackson DeMoss* case, the fellow who was defended by Covington in which Caskie Collet wrote the opinion. I always figure when I get affirmed in one of those cases it's just pure luck. It seems to me that you did just the right thing, however, I don't know that I would have been smart enough to have done as you did.[40]

If a district judge has to be absent from a Circuit Judicial Conference, his fellow judges make sure that his absence does not go unnoticed. During Riley's terminal illness in 1956 he received this note of support from Arkansas Federal Judge John Miller:

> I have just returned from the Judicial Conference and, while I am sure some of your other friends will write you, I want you to know that all of us missed you very much. I think every Judge in the Conference is your personal friend, and it would have done you much good if you could have heard the kind expressions of the various judges.[41]

There is also some evidence that judges within the same circuit tend to discipline each other's activities to a certain degree. The data provide at least two examples where this is the case. First, it is a very common practice for district judges to circulate among their fellow district judges memorandum opinions which they are preparing to deliver. Judges ask each other for their comments on, and possible criticisms of, these memoranda. The Riley papers suggest that district judges feel no hesitation about criticizing a fellow judge's proposed opinion, or about suggesting an alternative opinion which they think might have more beneficial results. Second, because the Administrative Office of U.S. Courts periodically publishes the case loads and the rates of processing cases for the various

federal judges, each judge realizes that he will appear lazy if he does not maintain a judicial "output" approximately equal to that of his fellow judges. Maintaining the image of a prodigious worker appears to be quite important to Eighth Circuit judges and the possibility of appearing lazy to their circuit brethren seems to be an important factor inducing the district judges to work as hard as they do. Said one Iowa federal judge:

> When you fall behind in your case load, you always feel like you're letting your fellow [district] judges down. When you get behind, the chief judge has to take another district judge [in the circuit] away from his own duties to help you out, and you hate to see that happen unless it's really necessary.[42]

Thus, judges within the Eighth Circuit not only appear to be their own "attentive public," but they also generate the mutual psychological support and discipline necessary to keep the circuit operating at a greater rate of efficiency and effectiveness.

CONCLUSIONS AND SUGGESTIONS FOR FUTURE RESEARCH

The underlying assumption of this article has been that the administration of federal justice is not uniform throughout the United States and, more specifically, that in many important instances the federal district judges in one circuit tend to administer justice differently from U.S. trial judges in other circuits. Given this assumption, I have sought to develop an explanatory hypothesis for the persistence of these circuit-by-circuit differences over time. This hypothesis is that variances in the judicial behavior of U.S. trial judges from circuit to circuit can be largely accounted for because for these federal district judges the circuit is a semi-closed system, a system within which there is considerable interaction among its members and almost no interaction between the members of one system (circuit) and another. To support this hypothesis evidence consistent with three propositions has been marshalled: that federal district judges have ample sources of communication to significantly interact with one another; that these judges use the communications channels almost exclusively for intra-circuit rather than inter-circuit interaction; and that intra-circuit communiation functions adequately to socialize, to discipline, and to provide mutual support for the members of the circuit, thereby partially maintaining the circuit as a viable system.

It now seems appropriate to assume an additional burden borne by any good researcher and that is to outline specifically what must be done in terms of future research on this subject. First, it appears that before one can progress to the point of validating completely the three above-mentioned propositions, a further piece of research on this subject must be performed. First, it appears future investigation must identify precisely those aspects of judicial behavior which are common to all (or nearly all) of the district judges in any given circuit. Existing evidence suggests that some of a U.S. trial judge's behavior is identical with that of almost all federal district judges, that some behavior is unique to that individual judge, and that some of a district judge's behavior is similar to only his fellow trial judges in the circuit. Exactly what each of these three aspects of behavior is for various U.S. district judges is by no means clear, and clarity in this realm is necessary before one can proceed to implement this article's central hypothesis. Interviews with a large cross-section of federal district and appellate judges coupled with a thorough and systematic content analysis of judicial "output" on the lower court level are both necessary if one would lay bare precisely which aspects of U.S. trial judge behavior is common to all trial judges, which is unique to each judge, and which is common to only those district judges in the circuit.

Once the above-mentioned task is complete, one may proceed to validate the three propositions underlying the basic hpyothesis of this article. In-depth interviews with a cross-section of federal district judges in the several circuits could provide much useful data on such questions as: which are the most frequently-used sources of communication among U.S. trial judges? how often does the average district judge have contact with judges outside his own circuit? and what is the subject of most exchanges of information among federal district judges? It has been this researcher's experience that in-depth interviews with federal trial judges are relatively easy to obtain and that the interviewees were surprisingly cooperative in providing the information requested of them.

The use of trained observers in the offices of a random sample of federal district judges is a second potentially fruitful source of data. The observer would monitor the letters, phone calls, law review articles, and informal visits exchanged between his assigned judge and other federal judges both in and outside the judge's circuit. As with the use of in-depth inter-

views, the eventual goal of the researcher would be to develop reliable indices of the degree of intra-circuit communication and to establish the use of this communication for maintenance of the circuit as a viable system.

If the above techniques and methods are used systematically and extensively, we may be well on our way to answering Vines's call for the development of a "useful model for the study of the federal court system," a model "which includes the decision-making patterns enacted in the lower courts as well as the occasional involvement of the Supreme Court in the judicial process." (Vines, 1963: 319). By the use of such a model to guide our thinking and research, we could come to a more accurate understanding of both the federal judicial process and the American political system.

FOOTNOTES

[1] For an excellent discussion of the latest findings on this subject, see Nagel (1969: 81-113).

[2] Interview with U.S. Federal District Judge Henry N. Graven in Greene, Iowa, on November 1, 1968. Interview with U.S. Federal District Judge Edward J. McManus in Cedar Rapids, Iowa, on November 14, 1968. Interview with U.S. Federal District Judge Roy L. Stephenson in Davenport, Iowa, on November 18, 1968. Interview with U.S. Eighth Circuit Chief Judge Martin D. Van Oosterhout in Sioux City, Iowa, on December 6, 1968.

[3] For an additional case study along these same lines, see Carp (1969: Chapters 9 & 10).

[4] For a discussion of the theoretical implications of communication for system maintenance, see Deutsch (1966), Easton (1965), and Parsons (1951).

[5] The U.S. Eighth Circuit is composed of the states of Arkansas, Iowa, Nebraska, North Dakota, Minnesota, Missouri, and South Dakota.

[6] For example, the Administrative Office has sponsored a series of seminars for federal district judges on such important topics as standardizing criminal sentencing behavior and the uniform use of pretrial hearings. However, the mere fact that the Administrative Office sees fit to encourage standardization of federal trial judge behavior would seem to indicate that differences in such behavior are a very real phenomenon.

[7] Vines provides concrete evidence of this phenomenon in his study of race relations cases (Vines, 1963).

[8] The Riley papers are located in the Special Collections Room at the University of Iowa Main Library, Iowa City, Iowa.

[9] Interviews for this study were conducted with the following persons: (1) Mr. Thomas J. Daily in Burlington, Iowa, on October 26, 1968; (2) U.S. Federal District Judge Henry N. Graven in Greene, Iowa, on November 1, 1968; (3) U.S. Federal District Judge Edward J. McManus in Cedar Rapids, Iowa, on November 14, 1968; (4) Mr. Joseph Phelan in Iowa City, Iowa, on August 12, 1968; (5) Mr. John C. Pryor in Burlington, Iowa, on October 27, 1968; (6) Mr. Carl C. Riepe in Burlington, Iowa, on October 25, 1968; (7) U.S. Federal District Judge Roy L. Stephenson in Davenport, Iowa, on November 18, 1968; (8) U.S. Eighth Circuit Chief Judge Martin D. Van Oosterhout in Sioux City, Iowa, on December 6, 1968.

Note that on several occasions data from the interviews are presented without accompanying footnotes. This is done because the information was of a semi-confidential nature, and the interviewees insisted on remaining anonymous.

[10] Letter from Judge Gunnar H. Nordbye to Judge Riley, March 10, 1956.
[11] Letter from Judge Riley to Chief Judge Archibald Gardner, September 8, 1952.
[12] Letter from Judge Henry Graven to Judge Riley, February 16, 1955.
[13] Letter from Judge Riley to Judge Matthew Joyce, August 10, 1953.
[14] Letter from Judge Riley to Chief Judge Archibald Gardner, April 14, 1953.
[15] This is not to suggest, however, that the interactions among trial and appellate judges occasioned by three-judge courts may not have some nationalizing effect upon the subsequent behavior of the federal district judges, but this still remains problematic.
[16] Letter from Judge Riley to Chief Judge Archibald Gardner, July 20, 1951.
[17] For a discussion of additional functions of the bar associations vis-à-vis the judicial process, see Grossman (1965), Blaustein and Porter (1954), and Martin (1936).
[18] Letter from Judge Riley to Chief Judge Archibald Gardner, June 9, 1952.
[19] Letter from Judge Riley to Judge Henry Graven, May 13, 1952.
[20] Letter from Judge Riley to Judge John Miller, September 13, 1951.
[21] Letter from Judge Riley to Judge Henry Graven, June 30, 1952.
[22] Letter from Judge Henry Graven to Judge Riley, August 8, 1953.
[23] Letter from Judge Riley to Judge Matthew Joyce, August 10, 1953.
[24] Letter from Judge Riley to Judge James Donohoe, March 20, 1952.
[25] Letter from Judge Riley to Judge Albert Ridge, July 12, 1955.
[26] Interview with U.S. Federal District Judge Henry N. Graven in Greene, Iowa, on November 1, 1968.
[27] Letter from Judge Riley to Missouri Supreme Court Commissioner Lue Lozier, March 27, 1952.
[28] Letter from Judge Henry Graven to Judge Riley, December 21, 1951.
[29] Letter from Judge Riley to Judge Henry Graven, December 26, 1951
[30] Letter from Judge Riley to Arizona Federal District Judge David Ling, December 17, 1951.
[31] Letter from Judge Riley to California Federal District Judge Jacob Weinberger, March 12, 1952.
[32] Letter from Judge Riley to Judge Henry Graven, January 5, 1951.
[33] Letter from Judge Riley to Judges Matthew Joyce and Gunnar H. Nordbye, February 1, 1951.
[34] Letter from Judge Riley to Retired Judge Charles Dewey, December 28, 1950.
[35] Letter from Retired Judge Charles Dewey to Judge Riley, January 2, 1951.
[36] For a discussion of how these same forces operate in legislative systems, see Matthews (1960) and Jewell and Patterson (1966).
[37] Letter from Judge Riley to Judge George Moore, November 6, 1951.
[38] Letter from Judge Matthew Joyce to Judge Riley, May 12, 1952.
[39] **Ibid.**
[40] Letter from Judge Matthew Joyce to Judge Riley, January 28, 1955.
[41] Letter from Judge John Miller to Judge Riley, March 7, 1956.
[42] Interview with U.S. Federal District Judge Roy L. Stephenson in Davenport, Iowa, on November 18, 1968.

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