

# State Trial Courts: An Odyssey into Faltering Bureaucracies

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## I.

### INTRODUCTION

[T]oday, in the final third of this century, we are still trying to operate the courts with fundamentally the same basic methods, the same procedures and the same machinery that Roscoe Pound said were not good enough in 1906.

In the supermarket age we are with few exceptions operating the courts with cracker-barrel, corner-grocer methods and equipment, vintage 1900. . . .

More money and more judges alone is not the primary solution to the problems of the courts. Some of what is wrong is due to the failure to apply the techniques of modern business to the purely mechanical operation of the courts—of modern record keeping and systems planning for handling the movement of the cases.

Some is also due to antiquated and rigid procedures which not only permit delay but encourage it. . . .

With increasing urgency, my distinguished predecessors from Chief Justices Taft and Hughes to Chief Justice Earl Warren have pressed these matters vigorously.<sup>1</sup>

This passage comes from an address entitled "The State of the Federal Judiciary," which Warren E. Burger, Chief Justice of the United States Supreme Court, recently delivered in St. Louis at the annual meeting of the American Bar Association. In this speech Chief Justice Burger lamented the failure of many lawyers and judges to view the federal courts as judicial bureaucracies. Moreover, he deeply feared a possible consequence of this failure: the inability of these courts to function.<sup>2</sup> Although he confined his apprehension to the federal court system, he could readily have extended the purview of his alarm to the fifty state trial court systems where the possibility of breakdowns may be more imminent and more consequential; for most cases begin and terminate there.

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1. *What's Wrong with the Courts: The Chief Justice Speaks Out*, U.S. NEWS AND WORLD REP., Aug. 24, 1970, at 68 [hereinafter cited as U.S. NEWS].

2. *Id.* at 68, 71.

Nonetheless, his address may have two principal immediate effects. First, it tends to legitimize the need for legal scholars, court officials, and practitioners to view state trial courts as judicial bureaucracies rather than as autonomous islands in an archipelago filled with other isolated courts, police organizations, and correctional facilities. Second, his personal prestige with members of the legal profession may help actuate them to study and revamp the state and federal judiciaries, especially at the trial level.

This study exhaustively probes into the state trial court systems as faltering bureaucracies. It explores them from two main perspectives. First, it takes a macroview of them by exploring their increasing public visibility and their neglect by legal scholars. Second, it affords a microview of them by ferreting out their principal internal and external bureaucratic problems. Therefore, the writer decided to divide this study into four sections: introduction, macroview, microview, and prospects for this field of inquiry. Methodologically, the study rests on three main bases: a historical approach to the literature on judicial bureaucracies; survey work in Cook County, Illinois, and in San Diego County, California; and a legal approach by considering the laws and courts' rules on this subject. Furthermore, this article delves into the problems of such organizations primarily from a national perspective and secondarily from the vantage point of California, the most populated state in the nation. Having begun this odyssey, let us now turn to the second section of this study: a macroview of state trial courts as faltering bureaucracies.

## II.

### A MACROVIEW OF STATE TRIAL COURTS AS FALTERING BUREAUCRACIES

#### A. *The Increasing Visibility of Their Failures*

It is commonly assumed that . . . law enforcement (police, sheriffs, marshalls), the judicial process (judges, prosecutors, defense lawyers) and corrections (prison officials, probation and parole officers) . . . add up to a 'system' of criminal justice.

A system implies some unity of purpose and organized inter-relationship among component parts. In the typical American city and state and under federal jurisdiction as well, no such relationship exists.<sup>3</sup>

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3. NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE; TO ESTABLISH JUSTICE, TO INSURE DOMESTIC TRANQUILITY 128 (1970).

This statement from the final report of the National Commission on the Causes and Prevention of Violence views state trial courts as one segment of a criminal justice system. In this article the author limits his examination mainly to this one segment. More specifically, he explores some increasingly visible, significant failures of the many state trial courts.

The most visible recent symbol of widespread disaffection in judicial systems has centered on the United States Supreme Court. For the last sixteen years much public criticism has focused on its decisions in the areas of race, religion, reapportionment, and criminal justice.<sup>4</sup> Commentators have publicly charged the Court with numerous shortcomings such as a lack of judicial restraint, sweeping opinions, hastiness in reaching decisions, disregard of precedents, and no support for many of its assertions.<sup>5</sup> Most recently, the Court has attracted a swirl of popular attention regarding two justices (Abe Fortas<sup>6</sup> and William O. Douglas<sup>7</sup>) and two nominees (Clement Haynsworth<sup>8</sup> and G. Harold Carswell<sup>9</sup>).

Although less illuminated than the highest national court, some lower federal courts have also encountered recent, widespread publicity, much of which was adverse. The most notable recent instance was the federal district court in Chicago where Judge Julius Hoffman presided over what was commonly labeled "The Chicago 7 Conspiracy Trial". His alleged partiality toward the prosecution and stern contempt citations against the defendants resulted in severe criticism of him.<sup>10</sup>

Moreover, even state supreme courts have become symbols, albeit less visible ones, of judicial disillusionment. For instance, in 1969, two members of the Illinois Supreme Court resigned after a special court commission had found them guilty of positive acts of impropriety. Both justices had acquired stock in a Chicago bank while

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4. N.Y. Times, June 23, 1969, at 1, 24. See also A. BICKEL, *POLITICS AND THE WARREN COURT* at x-xi, 133, 139, 146 (1965) for more extensive commentary.

5. Kurland, *The Court Should Decide Less and Explain More*, N.Y. Times, June 6, 1968, § 6 (Magazine) at 34-35, 122, 124-25.

6. N.Y. Times, June 27, 1968, at 1; N.Y. Times, October 3, 1968, at 1; N.Y. Times, May 16, 1969, at 1.

7. N.Y. Times, May 24, 1969, at 1; N.Y. Times, April 14, 1960, at 1.

8. N.Y. Times, Nov. 22, 1969, at 1.

9. N.Y. Times, Apr. 9, 1970, at 1.

10. N.Y. Times, Feb. 19, 1970, at 1, 14; N.Y. Times, Mar. 29, 1970, § 6 (Magazine) at 10, 11, 33-35, 37, 41, 47, 52; Kelven, *Chicago Howler*, THE NEW REPUBLIC, Mar. 7, 1970, at 21-23.

the state supreme court was reviewing criminal indictments against an official of that bank.<sup>11</sup>

These episodes illustrate that the problems confronting the federal courts and the state appellate courts receive at most sporadic public attention. Generally their defects remain invisible to most citizens. The least public illumination is given to the shortcomings of the numerous state trial courts, even though it is at this level that the most pervasive and intractable problems of the criminal justice system lie. Ironically such courts are the most salient but least visible institutions. The public attention afforded them is sporadic, local, and ephemeral. Frequently it results from a court scandal,<sup>12</sup> a sensational murder trial,<sup>13</sup> the killing of a judge,<sup>14</sup> courtroom disruptions,<sup>15</sup> court bombings,<sup>16</sup> the public comments of a prestigious leader,<sup>17</sup> the public remarks of political candidates,<sup>18</sup> a feature article by a popular magazine,<sup>19</sup> the judicial handling of cases arising from civil disorders,<sup>20</sup> and disputes between judges and police.<sup>21</sup>

Therefore, most of the disaffection with the judicial system is misplaced; for there is probably an inverse relationship between the visibility of courts and their impact on the public. The overwhelming number of cases begin and end in state trial courts.<sup>22</sup> Because so few cases are appealed due to considerations of time, money, effort, and an improbability of a reversal, critics who continue to excoriate appellate courts, like the United States Supreme Court, are

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11. Los Angeles Times, Aug. 1, 1969, § 1, at 4; Los Angeles Times, Aug. 18, 1969, § 1, at 10. The justices were Roy J. Sofisburg and Ray I. Klingbiel.

12. Chicago Tribune, May 12, 1967, § 1 at 1; Chicago Tribune, Sept. 15, 1967, § 1, at 1.

13. Los Angeles Times, June 15, 1970, § 1, at 1.

14. Los Angeles Times, Aug. 9, 1970, § A, at 1.

15. N.Y. Times, Feb. 11, 1970, at 53; Oakland Tribune, Sept. 4, 1970, at 1; San Diego Union, Oct. 9, 1970, § B, at 5.

16. Los Angeles Times, Sept. 5, 1970, at 1.

17. N.Y. Times, Apr. 25, 1970, at 1.

18. Los Angeles Times, Sept. 17, 1970, § 1, at 3.

19. Wittner, *Logjam in our Courts*, LIFE, Aug. 7, 1970, at 18-25.

20. Los Angeles Times, June 13, 1970, § 1, at 1; Los Angeles Times, July 21, 1970, § 2, at 3.

21. Los Angeles Times, July 17, 1970, § 1, at 3; San Diego Evening Tribune, July 17, 1970, § A, at 1-2.

22. J. FRANK, COURTS ON TRIAL: THE MYTH AND REALITY OF AMERICAN JUSTICE 222-24 (1967) [hereinafter cited as FRANK].

indulging in what the eminent jurist Jerome Frank called the "upper court myth."<sup>23</sup> This belief assumes that most trial court injustices can be corrected on appeal and that most cases are appealed. Neither supposition is probably valid.

State trial courts have long been salient because of at least three enduring (albeit unpublicized) considerations. First, the state trial-court structures, especially their management problems, deserve more public attention because of their sheer magnitude; for they easily dwarf the state appellate systems as well as the entire federal judiciary.<sup>24</sup> Such trial courts employ thousands of judges and staff personnel, handle millions of criminal and civil cases each year,<sup>25</sup> and spend several hundred million dollars annually.<sup>26</sup> Furthermore, the size of such systems derives from their position as the starting and terminal points of most litigation.<sup>27</sup> Because extensive time, money, and effort are necessary, very few decisions are appealed. Second, such systems, largely because of their size, generate serious interest—academic as well as public—in their efficiency and output.<sup>28</sup> In particular, scholars and public officials need to explore how numerous devices may promote greater court efficiency (as measured by the speedier termination of criminal and civil litigation).<sup>29</sup> Third, such courts are worthy of thorough investigation because of their pervasive impact on public policy. Such courts usually constitute an integral segment of the local political system and, by their decisions in criminal and civil cases, often make critical reallocations of power within that system. As political scientist Kenneth M. Dolbeare states, "the local trial court is . . . one of several institutions affecting the who gets what, when,

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23. *Id.* at 222.

24. K. DOLBEARE, *TRIAL COURTS IN URBAN POLITICS* 2 (1967) [hereinafter cited as DOLBEARE]. See also, H. JACOB, *JUSTICE IN AMERICA* 17-25 (1965) [hereinafter cited as JACOB]; J. KLONESKI & R. MENDELSON, *THE POLITICS OF LOCAL JUSTICE* 3 (1970) [hereinafter cited as KLONESKI & MENDELSON]; R. WATSON & R. DOWNING, *THE POLITICS OF THE BENCH AND BAR* 2 (1969) [hereinafter cited as WATSON & DOWNING].

25. INST. OF JUDICIAL ADMIN., *CALENDAR STATUS STUDY—1969, STATE TRIAL COURTS OF GENERAL JURISDICTION PERSONAL INJURY CASES*, vi-ix (1969); A. BLUMBERG, *CRIMINAL JUSTICE* 55-58, 122-23 (1960); Barrett, *Criminal Justice: The Problem of Mass Production*, in *THE COURTS, THE PUBLIC AND THE LAW EXPLOSION* 107-08, 111 (H. Jones ed. 1965) [hereinafter cited as *THE COURTS*].

26. INST. OF JUDICIAL ADMIN. *STATE AND LOCAL FINANCING OF THE COURTS (TENTATIVE REPORT)* 8, 11 (1969).

27. DOLBEARE, *supra* note 24, at 2-3; FRANK, *supra* note 22, at 254-61; WATSON & DOWNING, *supra* note 24, at 2.

28. Rosenberg, *Court Congestion: Status, Causes and Proposed Remedies in THE COURTS*, *supra* note 25, at 56-58.

29. *Id.* at 57.

and how of local politics. . . ."<sup>30</sup> This impact runs deeper in urban areas because grave public policy issues more often come before the trial courts. Moreover, enhancing this impact is the discretion of their judges in construing and applying upper-court doctrines, in effecting their own procedures, and in regulating their own workloads.<sup>31</sup> However, two political scientists, James R. Klonoski and Robert I. Mendelsohn, note that typically "the student of judicial administration makes little attempt to study the relationship between the political, social, and economic environments and the operation of the legal system."<sup>32</sup>

During the last six years these courts have achieved increasing, but irregular, national visibility. For example, according to legal scholar Edward L. Barrett, Jr., the prosecution of four-hundred San Francisco civil-rights demonstrators in 1964 helped to publicize trial court backlogs and the excessive dependency of such courts on guilty pleas to reduce their caseloads. During these prosecutions, the defendants' attorneys made numerous motions to dismiss the misdemeanor cases, refused to enter guilty pleas, and demanded jury trials. Consequently, municipal court judges faced protracted litigation and could not handle other important criminal and civil cases on their calendars. Furthermore, Barrett argued that a small increase in the number of not-guilty pleas would paralyze the already overburdened courts.<sup>33</sup>

The mass prosecutions of university demonstrators has further exposed the same grave shortcomings of trial courts to public scrutiny. For example, in early 1965, 773 persons were tried for various misdemeanors (such as trespassing, failure to disperse, and resisting arrest) which they had been charged with committing in December 1964 during a sit-in demonstration by the Free Speech Movement in Sproul Hall, the administration building of the University of California at Berkeley. Like the prosecuted civil-rights demonstrators, 690 of the 773 defendants also refused to plead guilty and thereby slowed municipal court operations for almost seven months.<sup>34</sup>

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30. DOLBEARE, *supra* note 24, at 3.

31. *Id.* at 2-3.

32. KLONESKI & MENDELSON, *supra* note 24, at 7.

33. THE COURTS, *supra* note 25, at 110-11.

34. N.Y. Times, Jan. 6, 1965, at 29; N.Y. Times, Mar. 3, 1965, at 13; N.Y.

The extensive prosecutions of persons demonstrating against American participation in the Vietnam war revealed trial court shortcomings on a more national rather than local basis. For instance, during Stop-the-Draft week (October 16-20, 1967), hundreds of demonstrators were arrested in eight cities: Boston; Cincinnati; Ithaca, New York; New York City; Oakland; Philadelphia; and Portland, Oregon. In Oakland, for example, 218 demonstrators were prosecuted for several misdemeanors and felonies. Two months later 207 protesters were prosecuted for various misdemeanors. Like their civil rights and university counterparts, the anti-war demonstrators employed the same tactics, one principal effect of which was to aggravate the criminal and civil caseloads of numerous trial courts.<sup>35</sup>

Not only have these events afforded sporadic national attention to the problems of state trial courts, but also four commission reports have given additional illumination to the problems facing these tribunals. First, according to the National Advisory Commission on Civil Disorders, the riots in eight American cities during Summer 1967 not only immobilized the local trial courts with a spate of cases but also publicized three other notable failures in such courts: the many delayed arraignments; the lack of numerous, competent defense attorneys; and the inconsistent sentencing of defendants convicted of the same offenses.<sup>36</sup> Furthermore, the Commission furnished a bleak summary of trial court weaknesses aggravated by these disorders:

Normal screening procedures were overrun in the chaos of the major disorders. Rational decisions to prosecute, delay prosecution on good behavior, or dismiss, to release with or without bail pending trial, to accept a plea to a lesser charge or to press for conviction on the original charge, to impose a just sentence—all require access to a comprehensive file of information on the offender contributed by police, prosecution, defense counsel, bail interviewers and probation officers. Orderly screening requires time, personnel and deliberation. These elements were absent in the court processing of participants in the major riots.<sup>37</sup>

Second, the President's Commission on Law Enforcement and the Administration of Justice gave national publicity to another defect

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Times, Apr. 2, 1965, at 21; N.Y. Times, July 20, 1965, at 13; N.Y. Times, July 30, 1965, at 54.

35. J. SKOLNICK, *THE POLITICS OF PROTEST* 69 (1969) [hereinafter cited as SKOLNICK]; N.Y. Times, Oct. 17, 1967, at 3; N.Y. Times, Oct. 19, 1967, at 8; N.Y. Times, Oct. 20, 1967, at 4; N.Y. Times, Oct. 21, 1967, at 9; N.Y. Times, Dec. 19, 1967, at 6.

36. NAT'L ADVISORY COMM'N ON CIVIL DISORDERS, *THE REPORT OF THE NATIONAL ADVISORY COMMISSION OF CIVIL DISORDERS* 341-44 (1968) [hereinafter cited as NAT'L COMM'N].

37. *Id.* at 340.



in the state trial courts: their antiquated business procedures. This commission commented:

In an age when new management techniques and business machines have revolutionized many business and government operations, the courts' business procedures have remained in most places very much like those of a former age. The use of multiple longhand entries, cumbersome dockets, and filing and indexing systems with limited retrieval capacity persists in many courts because the volume of cases has not been so great as to cause the system to break down. Increasing urbanization has placed great new pressures upon the courts, however, and has highlighted the inadequacy and obsolescence of the business methods used.<sup>38</sup>

Third, the Skolnick Report to the National Commission on the Causes and Prevention of Violence has generated national interest in the qualitative as well as the quantitative flaws in the state trial courts. For instance, Skolnick's staff found that, in cities such as Baltimore, Chicago, Detroit, and Washington, D.C., trial judges arbitrarily set high bails during crises to achieve the preventive detention of arrestees rather than to help assure a defendant's appearance at his trial. Moreover, his staff discovered that not only arbitrarily high bails but also the denial of the right to counsel characterized routine as well as crisis situations. Furthermore, such courts have tended to become derelict in supervising other governmental agencies and insuring that such bodies operate lawfully some of the time, especially during disorders.<sup>39</sup>

Fourth, the National Commission on the Causes and Prevention of Violence cited additional widespread criticisms of state trial courts, especially in their disposition of criminal cases:

[C]riminal courts themselves are often poorly managed and severely criticized. They are seriously backlogged; in many of our major cities the average delay between arrest and trial is close to a year. All too many judges are perceived as being inconsiderate of waiting parties, police officers and citizen witnesses. Too often lower criminal courts tend to be operated more like turnstiles than tribunals.<sup>40</sup>

The four commission reports as well as the three events cited above contain at least six implications regarding the shortcomings

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38. PRESIDENT'S COMM'N ON LAW ENFORCEMENT AND THE ADMIN. OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 379-80 (1968) [hereinafter cited as PRESIDENT'S COMM'N]

39. SKOLNICK, *supra* note 35, at 313-16.

40. NAT'L COMM'N ON THE CAUSES AND PREVENTION OF VIOLENCE; TO ESTABLISH JUSTICE, *TO INSURE DOMESTIC TRANQUILITY* 130 (1970).

of state trial courts generally:

1. Their public impact is far greater than their visibility.
2. The public attention given to state trial courts has been intermittent, usually following serious outbreaks of domestic turmoil.
3. Their problems are ideological as well as technical.
4. Such courts will not necessarily function better if they accelerate their disposition of cases, for one must consider the quality as well as the quantity of decisions rendered.
5. Such courts function almost as badly during tranquil situations as they do during domestic crises.
6. Their problems are not peculiar to certain states or metropolitan areas but are endemic to the nation.

### B. *The Neglect of State Trial Court Bureaucracies by Scholars*

The study of judicial management by scholars probably falls within the ambit of three disciplines: law, political science, and public administration. However, academicians in these fields have neglected to examine this area and one of its most critical segments: state trial court bureaucracies. Law professors and political scientists have tended to devote almost exclusive attention to the study of substantive and procedural case law and have tended to ignore the managerial problems of judicial organizations at all levels.<sup>41</sup> Lawyers and judges are often too preoccupied with their daily work to explore this area meticulously.<sup>42</sup> Public administration scholars have usually centered their attention on managerial problems confronting the executive branches of government at the federal, state, and local levels.<sup>43</sup>

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41. For example, a check of the INTERNATIONAL INDEX TO PERIODICAL LITERATURE and the SOCIAL SCIENCES AND HUMANITIES INDEX reveals that, between 1907 and Dec. 1969, only seven articles focusing mainly on judicial management have been published in the major journals of political science: Jameson, *Current Problems Affecting the Judicial Branch*, 11 WESTERN POL. Q. 713-23 (1958); Murphy, *Chief Justice Taft and the Lower Court Bureaucracy: A Study in Judicial Administration*, 24 J. POL. 456-76 (1962); Murphy, *Lower Court Checks on Supreme Court Power*, 53 AM. POL. SCI. REV. 1017-31 (1959); Saby, *Simplified Procedure in Municipal Courts*, 18 AM. POL. SCI. REV. 760-72 (1924); Schaeffer, *Management in the Judiciary*, 13 PUB. AD. REV. 89-96 (1953); Sikes, *The Work of Judicial Councils*, 29 AM. POL. SCI. REV. 456-72 (1935); Sunderland, *The Judicial Council as an Aid to the Administration of Justice*, 35 AM. POL. SCI. REV. 905-53 (1941).

42. J. CARLIN, *LAWYERS ON THEIR OWN* 41 (1962); JACOB, *supra* note 24, at 80-85.

43. For example, the only article in a public administration journal centering on judicial management is Schaeffer's, note 41 *supra*.

One may measure the neglect of the study of judicial management by these scholars in at least three ways. First, in the INTERNATIONAL INDEX TO PERIODICAL LITERATURE (I.I.P.L.) and in the SOCIAL SCIENCE AND HUMANITIES INDEX (S.S.H.I.), between 1910 and December 1969, the author found only thirty-two articles directly germane to this field. This output averages approximately one article every two years. Of these thirty-two articles, eighteen (62.1 percent) were published since 1950 and indicate that even the sparse interest in this field is recent.<sup>44</sup> Furthermore, of these thirty-two articles, only seven were published in the major journals of policial science.<sup>45</sup>

Second, in the PUBLIC AFFAIRS INFORMATION SERVICE (P.A.I.S.) during the same fifty-nine year period, the author uncovered 103 articles which focused directly on judicial management.<sup>46</sup> This output averages about two articles a year. In this source the author found more than three times as many articles on judicial management than in the first two sources mainly because P.A.I.S. indexes an average of approximately five times as many periodicals as I.I.P.L. or S.S.H.I. does.<sup>47</sup> Furthermore, unlike the first two sources, P.A.I.S. cites an overwhelming number of articles (89.3 percent) from legal journals because it has indexed far more legal periodicals than the other two sources have.<sup>48</sup>

Third, the INDEX TO LEGAL PERIODICALS (I.L.P.) and the INDEX TO LEGAL PERIODICAL LITERATURE (I.L.P.L.) contain the bulk (98.0 percent) of the articles in judicial management published between 1910 and 1969 and signify that this sector has been an almost exclusive preoccupation of the legal profession. However, even in this profession, interest in judicial management has increased

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44. Derived from 1-18 INTERNATIONAL INDEX TO PERIODICAL LITERATURE (1907—Mar. 1965) [hereinafter cited as I.I.P.L.]; 19-22 SOCIAL SCIENCES AND HUMANITIES INDEX (Apr. 1965—Dec. 1969) [hereinafter cited as S.S.H.I.].

45. See note 41 *supra*.

46. Derived from 1-54 THE PUBLIC AFFAIRS INFORMATION SERVICE (1915—Dec. 1969) [hereinafter cited as P.A.I.S.].

47. See notes 44 & 46 *supra*. In 1969 P.A.I.S. listed 971 journals; THE INDEX TO LEGAL PERIODICALS [hereinafter cited as I.L.P.] and THE INDEX TO LEGAL PERIODICAL LITERATURE [hereinafter cited as I.L.P.L.], 313; I.I.P.L. and S.S.H.I., 210. Their respective *mean* listings between 1890 and 1969 were 850, 167, and 173.

48. Of the 32 journals in P.A.I.S. (1969) citing articles on judicial management, 27 (84.4%) are legal journals; 3 (9.4%), political science journals; and 2 (6.2%), miscellaneous journals.

sharply only since 1950; for 62.2 percent of all articles on this subject listed in I.L.P. and I.L.P.L. have been published since that date. (See Figure 1.) Finally, the author formed a composite picture of the output in this sector by eliminating the duplicated citations and by examining all the above-mentioned indices under the following titles: administration of justice, courts, judges, judicial councils, and justice. (See Figure 1.)

Figure 1  
An Overview of Indexed Articles on  
Judicial Management

Years	Legal Journals	Political Science Journals	Miscellaneous Journals	Total
1960-1969	405 (98.8%)	3 (0.7%)	2 (0.5%)	410
1950-1959	462 (97.7%)	8 (1.7%)	3 (0.6%)	473
1940-1949	136 (97.8%)	2 (1.5%)	1 (0.7%)	139
1930-1939	224 (98.3%)	1 (0.4%)	3 (1.3%)	228
1920-1929	106 (98.0%)	1 (1.0%)	1 (1.0%)	108
1910-1919	39 (92.9%)	3 (7.1%)	0 (0.0%)	42
Totals	1,372 (100.0%) ( 98.0%)	18 (100.0%) ( 1.3%)	10 (100.0%) ( .7%)	1,400 (100%)

Sources: Derived from the INDEX TO LEGAL PERIODICALS Vol. 1-15 (1926—December, 1969); AN INDEX TO LEGAL PERIODICAL LITERATURE Vol. 4-6 (1908-1937); INTERNATIONAL INDEX TO PERIODICAL LITERATURE Vol. 1-18 (1907—March, 1965); SOCIAL SCIENCES AND HUMANITIES INDEX Vol. 19-22 (April, 1965—December, 1969); PUBLIC AFFAIRS INFORMATION SERVICE Vol. 1-54 (1915—December, 1969).

### III.

#### A MICROVIEW OF STATE TRIAL COURTS AS FALTERING BUREAUCRACIES: THE PRINCIPAL FACETS OF JUDICIAL MANAGEMENT

A study of judicial management entails consideration of at least eight principal facets: court organization (or consolidation); the abolition of fee offices (mainly justices of the peace); judicial leadership; court congestion (or delay); staff functions; judicial selection and tenure; judicial discipline, removal, and retirement; and the operational co-ordination of courts and the other segments of the justice system. Because there is no consensus about the parameters of this field, this typology is a synthesis of germane rubrics gleaned from some standard works<sup>49</sup> and some recent symposia in

49. THE SECTION ON JUDICIAL ADMIN., A.B.A., THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE vii-xi (4th ed. 1961) [hereinafter cited as THE SECTION ON JUDICIAL ADMIN.]; A. VANDERBILT, MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION vii-xi (1949) [hereinafter cited as A. VANDER-

this area.<sup>50</sup> Let us now turn to the first main aspect: court organization.

*A. Judicial Organization (or Consolidation): The Framework for Management*

Judicial organization is considered first because it sets the framework for judicial management on a systemic rather than an individualistic basis. Such organization, synonymous with consolidation, entails the replacement of numerous, independent trial courts with overlapping jurisdiction.<sup>51</sup> (See Figure 2.) Despite a consensus on its efficacy, such consolidation has proceeded along two complementary tributaries. First, twenty states have so far consolidated their trial courts but have let such courts operate without extensive management by the state supreme court (or its chief justice).<sup>52</sup> Each consolidated trial court receives its direction solely or mainly from its chief judge. (See Figure 3.) Second, fourteen states not only have consolidated their trial courts to date but also have subjected them to supervision by the state supreme court (or its chief justice), which manages the entire state court system through its staff agency, the court administrator's office.<sup>53</sup> (See Figures 2-3.)

California has mainly followed the second tributary by partially consolidating its trial courts in 1950<sup>54</sup> by placing their management under the supervision of a Judicial Council<sup>55</sup> and in 1964 under presiding judges.<sup>56</sup> Although this state reduced the different kinds

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BILT]; SELECTED READINGS ON ADMINISTRATION OF JUSTICE AND ITS IMPROVEMENT (G. Winters & S. Sunwall eds. 1966) [hereinafter cited as SELECTED READINGS].

50. *A Symposium: Judicial Administration*, 4 WILL. L.J. 1-103 (1966); *A Symposium*, 41 TEXAS L. REV. 1063-1178 (1966); *A Symposium: Social Science Approaches to the Judicial Process*, 79 HARV. L. REV. 1551-1628 (1966); *Special Issue—Court Administration*, 50 JUDICATURE 256-60 (1967).

51. Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 46 J. AM. JUD. Soc'y 62 (1962); Pound, *Organization of Courts*, 11 J. AM. JUD. Soc'y 78 (1927) [hereinafter cited as Pound].

52. *The Judiciary*, THE BOOK OF THE STATES 1968-1969 at 118 (Council on State Government, 1968) [hereinafter cited as *The Judiciary*].

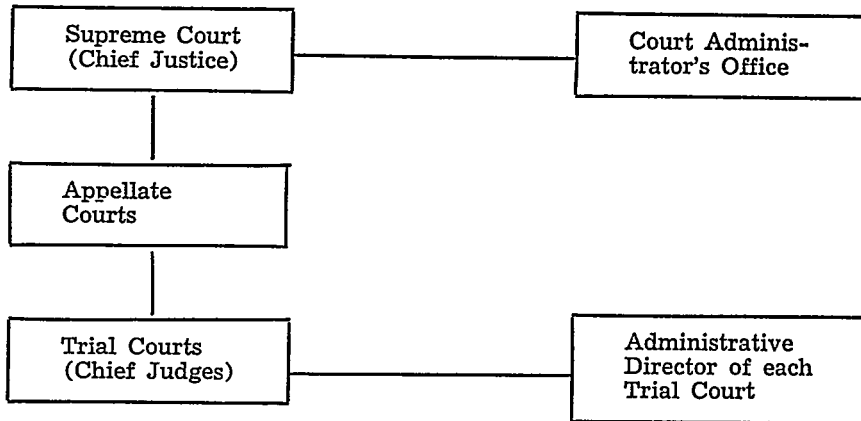
53. *Id.* at 103-04, 118.

54. JUDICIAL COUNCIL OF CALIFORNIA, FOURTEENTH BIENNIAL REPORT TO THE GOVERNOR AND THE LEGISLATURE 13-14 (1953) [hereinafter cited as JUDICIAL COUNCIL OF CALIFORNIA].

55. *Id.* at 13, 15-16.

56. CALIFORNIA RULES OF COURT §§ 1-2 (West 1969).

Figure 2  
A Typical Consolidated State Court System



Source: Derived from Ill. Const. art. VI, §§ 1, 2, 4, 6, 8 (1870).

Figure 3  
Steps toward Judicial Consolidation  
in the States: 1969

Year	Step 1: States with Court Admini- strator's Offices	Step 2: Abolition of Justices of the Peace or their Ju- dicial Func- tions	Step 3: Consoli- dation of Trial Courts <i>per se</i>	Step 4: Inclusion of Consoli- dated Trial Courts into Statewide Unified Court System
1925-1929	1	0	0	0
1930-1934	0	0	0	0
1935-1939	1	1	0	0
1940-1944	1	0	0	0
1945-1949	1	2	1	1
1950-1954	6	1	1	1
1955-1959	11	8	5	3
1960-1964	5	10	9	6
1965-1969	9	6	4	3
Total States	35	28	20	14

Sources: Derived from THE BOOK OF THE STATES (1970), at 117-118. This chart is not represented as a Guttman scale because of its fairly low coefficient of reproducibility (0.75), which is well below the currently accepted minimum of 0.90. See L. Anderson, M. Watts, and A. Wilcox, LEGISLATIVE ROLL-CALL ANALYSIS at 112 (1966).

of trial courts from eight to three (Superior, Municipal, and Jus-

tice),<sup>57</sup> no subsequent legislative (and constitutional) efforts have been made to achieve full unification of its trial courts.<sup>58</sup>

Both kinds of consolidation have moved state judicial organizations in differing degrees toward the achievement of at least three significant objectives.<sup>59</sup> One aim has been to reduce trial court congestion, which was worsening partly because plaintiffs often filed their cases in two or more trial courts simultaneously. Frequently, plaintiffs did not know which court could hear their cases first. A second objective was to reduce the number of cases where plaintiffs often failed to receive decisions on the merits of their claims solely because they had filed complaints in the wrong court. A third aim was to promote uniform procedures in all trial courts.<sup>60</sup>

Although a consensus about the value of both consolidational modes exists within the legal profession, such reorganizations are unlikely to be made in all the states within the next several years. If the first type of unification continues in accordance with the trend of the last fifteen years, all the states will have undergone this change by 1997.<sup>61</sup> If the latter mode of consolidation proceeds at its post-1955 rate, this change will take place by 2018.<sup>62</sup> In the author's view, at least four factors may accelerate or slow either trend. One factor is the efficacy of this change in other states, for successful court reorganization in some states generates an impetus for emulation by other states. A second is reductions in criminal and civil delays which might follow consolidation. Despite a lack of empirical evidence correlating delay reductions with consolidation, the former changes would generally be ascribed to the

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57. JUDICIAL COUNCIL OF CALIFORNIA, *supra* note 54, at 14-16.

58. CALIFORNIA LEGISLATURE—FINAL CALENDAR OF LEGISLATIVE BUSINESS—HISTORY AND INDEX OF ALL SENATE AND ASSEMBLY BILLS (1970). A check of this source between 1950 and 1970 under the titles "Consolidation," "Courts," "Merger," "Organization," and "Reorganization," disclosed no proposed constitutional amendments to achieve the full consolidation of the California judicial system had been introduced into either house of the state legislature.

59. Vines, *Courts as Political and Governmental Agencies*, in *POLITICS IN THE AMERICAN STATES* 247 (H. Jacob & K. Vines eds. 1965).

60. PRESIDENT'S COMM'N, *supra* note 38, at 322-23; NAT'L COMM'N, *supra* note 36, at 337-38.

61. This projection was calculated as follows: 15 years/18 states = X/32 remaining states. X = 27. 1970 plus 27 = 1997.

62. This projection was calculated as follows: 15 years/12 states = X/38 remaining states. X = 47.5. 1970 plus 48 = 2018.

latter. A third is the strength of the fee officers' lobbies in many states, for such officers view consolidation as a threat to their financial success and their operational autonomy.<sup>63</sup> A fourth consideration is the aggravation of judicial problems so quickly and pervasively as to outmode this proposed solution.

*B. The Abolition of Fee Offices: The Complement of Judicial Organization*

Although a political scientist might treat the abolition of fee offices (such as justices of the peace, police magistrates, and constables at the state level and United States Commissioners at the national level) as a segment of judicial organization, this area is large enough to be considered separately. A consensus about the role of fee officers in judicial organizations has existed among lawyers for many years. The consensus is that such offices (most of which are justices of the peace) should be abolished and that their duties should be absorbed by consolidated trial courts. At least three considerations underlie this position. First, such officers often keep few, if any, records; favor litigants bringing them business; and lack consistently fair procedures. Second, such officers are generally not licensed attorneys and thus lack even the most rudimentary qualification for holding their positions. Finally, these officers tend to aggravate the backlogs in the trial courts of record because retrials (trials de novo) are often necessary on appeal from decisions by such officers.<sup>64</sup>

So far twenty-eight states have abolished their fee offices or the judicial functions of them. (See Figure 3.) Fifteen have eliminated this office entirely whereas the remaining thirteen have continued only the nonjudicial functions of these offices.<sup>65</sup>

On the other hand, California, has retained this office (Justice Courts) and its judicial functions<sup>66</sup> but since 1966, has made two significant alterations: the substitution of salaries in lieu of fees<sup>67</sup> and the requirement that nominees for such offices pass a competence examination approved by the Judicial Council.<sup>68</sup> More-

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63. See, e.g., J. GAZELL & H. RIEGER, *JUDICIAL REFORM IN ILLINOIS* 121-25 (1969). Howe, *JP's under Fire*, *The Wall Street Journal*, Dec. 15, 1969, at 1.

64. Jacob, *The Courts as Political Agencies—an Historical Analysis*, in *STUDIES IN JUDICIAL POLITICS, TULANE STUDIES IN POLITICAL SCIENCE* 45-6 (K. Vines & H. Jacob eds. 1962); Jacob, *supra* note 24, at 139.

65. *The Judiciary*, *supra* note 52, at 103-04, 118.

66. CAL. CONST. art. VI, § 5 (1879).

67. *Id.* § 17.

68. *Id.* § 8; JUDICIAL COUNCIL OF CALIFORNIA, *1967 ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE* 171 (1967) [hereinafter cited as 1967 AN-



over, during the last four years, no legislative efforts have been made either to abolish these courts or to require such justices to be licensed California attorneys. However, because of the lobbying power wielded by such officers, this judicial position is likely to exist for at least a decade.<sup>69</sup> In fact, if the post-1955 national trend continues, the states will not terminate these offices or their judicial functions before 1985.<sup>70</sup>

Finally, in the writer's view, the advantage of terminating such offices is often undermined by engrafting some of their officers into newly consolidated trial court systems. However, because of their power as a pressure group, such a compromise may be an unavoidable price for eliminating such positions. For example, in 1964, Illinois fee officers were allowed to become magistrates in the consolidated circuit courts and to hear minor criminal and civil cases.<sup>71</sup> Nonetheless, the elimination of such former officers are now supervised by a chief judge in each circuit, who can replace them if he and the circuit judges want to do so.<sup>72</sup>

### C. *Judicial Leadership*

#### 1. Functions, Problems, and Powers

A third facet of judicial management is the exercise of leadership by two line authorities: the chief justice at the state level and the chief judges at the local level. Scholars have tended to focus most of their attention on executive leadership in the public and private sectors and have virtually ignored judicial leadership.<sup>73</sup> Only within the last few years have researchers begun to delineate, al-

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NUAL REPORT]; B. COOK, *THE JUDICIAL PROCESS IN CALIFORNIA* 58 (1967) [hereinafter cited as COOK].

69. COOK, *supra* note 68, at 68-69.

70. This projection was calculated as follows: 15 years/25 states = X/25 remaining states. X = 15 years. 1970 plus 15 = 1985.

71. ILL. CONST. art. VI § 4(e) (1870); LAWS OF THE STATE OF ILL. ENACTED BY THE 73RD GEN. ASSEMBLY AT THE REG. BIENNIAL SESS. pt. I, 1167-68 (1963).

72. ILL. CONST. art. VI § 4(3) (1870); LAWS OF THE STATE OF ILL. ENACTED BY THE 73RD GEN. ASSEMBLY AT THE REG. BIENNIAL SESS. pt. I, 1167-68 (1963).

73. See, e.g., C. BARNARD, *THE FUNCTIONS OF THE EXECUTIVE* 216-17 (1938) [hereinafter cited as BARNARD]; P. DRUCKER, *THE EFFECTIVE EXECUTIVE* 9-24 (1967); R. NEUSTADT, *PRESIDENTIAL POWER* 22 (1964); L. SAYLES, *MANAGERIAL BEHAVIOR: ADMINISTRATION IN COMPLEX ORGANIZATIONS* 33-45 (1964); Golembiewski, *Three Styles of Leadership and Their Uses*, 38 *PERSONNEL* 34-45 (1961).

beit impressionistically, some of the functions that such executives carry out or should perform<sup>74</sup> and to recommend programs to train such managers.<sup>75</sup> Perhaps the main reason for this neglect is that, until the states began to consolidate their judicial bureaucracies, the multiplicity of independent trial courts made the opportunities for such leadership rare. However, because of such consolidations, judicial executives have been created at the supreme court and trial court levels.<sup>76</sup> These executives are beginning to operate judicial organizations as if they were the same as other bureaucracies because the former are becoming increasingly analogous to the latter.<sup>77</sup> The state supreme court is assuming the role of top management with the chief justice as chairman of the board of justices and with the court administrator's office as the staff arm of the board. The appellate courts are beginning to resemble middle management. The chief judges of the trial courts are starting to constitute supervisory management over a labor force of judges, associate judges, magistrates, clerks, attorneys, and litigants.<sup>78</sup>

In this new ambience both kinds of judicial executives have started to confront the leadership functions, problems, and powers that their counterparts in other public—as well as private—organizations had exercised for many years. Like Barnard's industrial executives, judicial leaders are beginning to perform such functions as setting output goals, facilitating communications throughout the judicial bureaucracy, motivating other justices and judges, and serving as a power broker among competing factions.<sup>79</sup> Moreover, judicial executives face the broad range of managerial problems that confront other corporate leaders—such as specializing effectively; delegating authority wisely; maintaining unity of command; narrowing the span of control; avoiding excessive layering; deciding whether to establish and organize departments, divisions, or districts on the basis of purpose, process, place, or clientele; using their staff members advantageously; emphasizing the judicial

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74. Gallas, *The Profession of Court Management*, 51 JUDICATURE 334-36 (1968) [hereinafter cited as Gallas].

75. Gallas, *Create University-Trained Court Managers*, 4 TRIAL 21-22 (1968).

76. *The Judiciary*, *supra* note 65, at 103.

77. J. GALBRAITH, *THE NEW INDUSTRIAL STATE* 159-68 (1967) [hereinafter cited as GALBRAITH]. See also, Pound, *supra* note 56, at 78; PRESIDENT'S COMM'N, *supra* note 38, at 380; Vanderbilt, *The Essentials of a Sound Judicial System*, 48 NW. U.L. REV. 13 (1953) [hereinafter cited as Vanderbilt].

78. JACOB, *supra* note 24, at 81-82, 139; Jares & Mendelsohn, *The Judicial Role and Sentencing Behavior*, 11 MIDWEST J. OF POL. SCI. 486-87 (1967); KLONESKI & MENDELSON, *supra* note 24, at 6.

79. BARNARD, *supra* note 73, at 216-17.

budget as an instrument of co-ordination, control, and planning; measuring output; using computers for retrieving information, for case scheduling, and for maintaining records; striking a balance between the scientific management and the human relations approaches to the treatment of subordinates; and handling such housekeeping operations as the recruitment, training, and supervision of clerks, secretaries, court reporters, and bailiffs.<sup>80</sup> Finally, judicial executives have gained some of the powers wielded by their industrial counterparts—such as the power to transfer judicial personnel to divisions or districts where a backlog is forming or worsening and the power to discipline judges for handling cases too quickly, too slowly, or too incompetently by shifting them from one section of the judicial bureaucracy to another.<sup>81</sup> Even though such executives cannot dismiss their elected line subordinates, they can often force them to resign as a consequence of an adverse transfer, temporary suspension, or unfavorable publicity resulting from investigations by their staff agency, the state or local court administrator's office.

During the last few years, at least three events point toward the establishment of programs to train judicial leaders. First, Edward C. Gallas (former Executive Officer of the Superior Court of Los Angeles County) suggested that all prospective trial court judges and staff officials receive managerial training from one of three possible sources: graduate-school programs in public administration, courses at the same level in business administration, or special programs to be established by law schools. Such a curriculum would include courses in fiscal administration, accounting, personnel management, organizational theory, data processing, and public relations. Furthermore, such a program would apply to prospective lawyers and judges seeking to be court managers rather than to incumbent court officials or non-law aspiring to fill such managerial positions. His program implies an insularity of the law pro-

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80. See e.g., BARNARD, *supra* note 73, at 119, 122; M. FOLLET, *THE NEW STATE* 5 (1918); W. GIVEN, *BOTTOM-UP MANAGEMENT: PEOPLE WORKING TOGETHER* 3-4, 10-12 (1949); *PAPERS ON THE SCIENCE OF ADMINISTRATION* 1-45 (L. Gulik & L. Urwick eds. 1937); A. HERON, *WHY MEN WORK* 22, 61 (1948); SECTION ON JUDICIAL ADMIN., *supra* note 49, at 12-13; H. SIMON, *ADMINISTRATIVE BEHAVIOR* 20-44 (2d ed. 1957) [hereinafter cited as SIMON]; F. TAYLOR, *THE PRINCIPLES OF SCIENTIFIC MANAGEMENT* 10 (1942). See also notes 74 and 75 *supra*.

81. PRESIDENT'S COMM'N, *supra* note 38, at 379-80.

fession against outsiders, which may make the former objectives more feasible than the latter.<sup>82</sup>

Second, in Chief Justice Burger's recent address to the American Bar Association, he implicitly reinforced Gallas' proposal when he commented: "The management of busy courts calls for careful planning, definite systems organization, with supervision by trained administrative-managers."<sup>83</sup> Third, the Institute of Court Management at the University of Denver Law School was established shortly after Burger's speech to devise a special training program for judicial leaders.<sup>84</sup> To the author's knowledge, this program is unique. So far no California law schools, public universities, or colleges have considered following Gallas' or Burger's suggestions in order to furnish managerial training to prospective and incumbent presiding judges of the superior and municipal courts in this state. Two reasons may account for this failure: the recentness of these suggestions and reductions by the state legislature in the higher educational budgets stemming, in part, from popular resentment of campus disorders.<sup>85</sup>

### C. *Judicial Leadership*

#### 2. An Example of Judicial Leadership

One may cite at least two recent episodes to illustrate the overall—but uneven—growth of judicial leadership at the state supreme court and trial court levels:

In 1965 the Illinois General Assembly provided for the compulsory retirement of all justices and judges at age seventy.<sup>86</sup> However, it was unclear whether this law also included magistrates. In early August 1967, John S. Boyle (Chief Judge of the Circuit Court of Cook County, a consolidated trial court) appointed three magistrates, two of whom were seventy and one who was seventy-one.<sup>87</sup> On August 11, 1967, Chief Justice Roy J. Sofisburg, Jr. (exercising

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82. See notes 74 and 75 *supra*.

83. See U.S. News, *supra* note 1, at 70.

84. This information was initially given to the author by Mr. Lawrence Adams (Secretary of the Superior Court of San Diego County) on Sept. 10, 1970. See also Mr. Geoffrey Gallas, Educational Consultant, the Institute for Court Management, U. of Denver Law Center, Denver, Colo. 80204.

85. R. MYREN, EDUCATION IN CRIMINAL JUSTICE 22, 25-26 (1970). See also Greenwood, *Full Impact of Budget Jolts State Colleges*, Los Angeles Times, July 29, 1970, at 1.

86. LAWS OF THE STATE OF ILL. ENACTED BY THE 74TH GEN. ASSEMBLY AT THE REG. BIENNIAL SESS. 1965, pt. I, 1792 (1965).

87. Chicago Tribune, Aug. 11, 1967, § 1 at 1-2; Chicago's American, Aug. 11, 1967, at 7.

managerial authority over the entire state judiciary)<sup>88</sup> ordered Boyle to remove these men from their office and to replace them with persons who had not reached the mandatory retirement age. Sofisburg issued this order even though he publicly conceded that there was no direct prohibition in the law against Boyle's action.<sup>89</sup>

However, the unity of command in the Illinois judicial bureaucracy, although substantial, is not absolute; for not only all subordinates (except magistrates and staff officers) have the tenure of elective office,<sup>90</sup> but also all assignments of judges by the chief justice have to be approved by the chief judge of the circuit to which the assignments are made.<sup>91</sup> Both restrictions illustrate the delegation of judicial power which has been constitutionally built into this bureaucracy. (See Figures 2 & 4.)

Because general review of judicial leadership in state trial courts tends to remain abstract, one must complement such an analysis with the examination of such leadership in a particular trial court system. The one in Cook County, Illinois (which includes Chicago and its suburbs), is worthy of study for three principal reasons. First, this system is the nation's largest.<sup>92</sup> Second, its deficiencies are most acute and increasingly visible.<sup>93</sup> Third, its difficulties furnish a microcosmic view of some problems facing most other trial court jurisdictions, although on an aggravated scale.<sup>94</sup> However, before considering the Cook County system during peaceful and crisis situations, one must first briefly describe its organization.

Since 1964 Cook County has had one trial court (a circuit court) with exclusive, original jurisdiction. Before that time the County had endured a maze of trial courts with overlapping jurisdictions. Cases were often filed in several courts, depending on the backlogs in each court and the probability of a favorable outcome to the plaintiff. Since many courts were fee offices (justices of the peace, police magistrates, and masters in chancery) where no records

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88. ILL. CONST. art. VI, § 2 (1870).

89. See note 87 *supra*.

90. ILL. CONST. art. VI, §§ 2, 4, 6, 8, 10, 11 (1870).

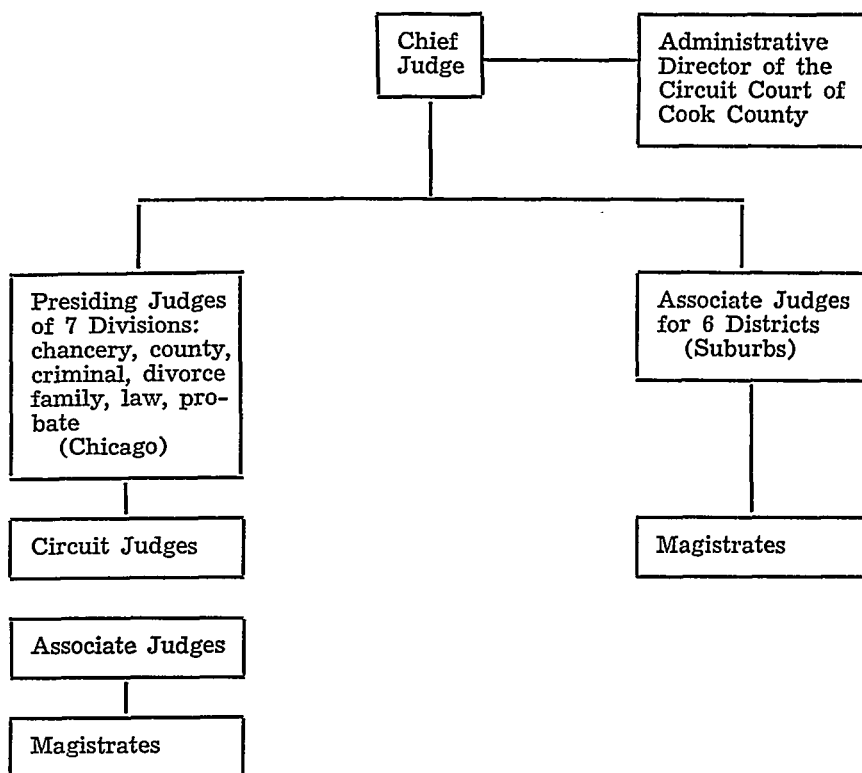
91. *Id.* § 2.

92. INSTITUTE OF JUDICIAL ADMINISTRATION, CALENDAR STATUS STUDY—1969 STATE TRIAL COURTS OF GENERAL JURISDICTION, PERSONAL INJURY CASES vi-ix [hereinafter cited as CALENDAR STUDY].

93. *Id.* at vi.

94. *Id.* at vi-ix.

Figure 4  
The Consolidated Circuit Court of  
Cook County



Source: Derived from *Establish Justice: Annual Report of the Circuit Court of Cook County*, at 5-22 (1965).

were usually kept, many cases handled by such offices were often retried in the county trial courts of record.<sup>95</sup> The labyrinth of trial courts, the fee offices, and a need for supervising the entire state court system were the main reasons for consolidating the state judiciary through a new judicial article in 1964.<sup>96</sup>

Under this article the state was divided into twenty circuits, each of which was to be presided over by a chief judge who was to be chosen by the circuit and associate judges<sup>97</sup> and who was em-

95. Jenner, Saltz & Tone, *Introduction*, 2 SMITH-HURD ILL. ANNO. STAT. CONST. ART. VI—END 3-9 (1964).

96. ILL. CONST. art. VI §§ 1, 2, 4, 6, 8 (1870).

97. *Id.* § 8. ESTABLISH JUSTICE: ANNUAL REPORT OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS 4 (1965) [hereinafter cited as ESTABLISH JUSTICE]. Associate judges possess all the authority of circuit judges with two ex-

powered to organize and manage that circuit. In Cook County, Chief Judge John S. Boyle divided this circuit into seven divisions and six districts. The divisions—chancery, county, criminal, divorce, family, law, and probate—embraced Chicago whereas the districts encompassed the rest of Cook County. Over each division he appointed a presiding judge. Such appointments were not necessary for the districts mainly because the litigation in the suburbs was substantially less than in the cities. For assistance in the management of this circuit, Boyle appointed an attorney, Benjamin S. Mackoff, as Administrative Director.<sup>98</sup>

Despite the new Illinois judicial article, the normal, peaceful situation in this circuit has been one of persistent congestion, especially in the law division, which handles personal-injury cases. This civil congestion leads to delay in the disposition of criminal cases because, as more judges are assigned to the law division, fewer judges remain to hear criminal cases. Since 1964 the delay in the handling of law-division cases has declined from 62.4 months to 61.3 months as of March, 1970 (the latest month for which this information is available).<sup>99</sup>

At this rate of decline the backlog of such cases will not be eliminated before the year 2304.<sup>100</sup> For litigants the situation is undoubtedly one of rising frustration, cynicism, and disrespect for this trial court system.

The responsibility for this situation is scattered. Boyle has tried to alleviate the congestion. Between 1964 and 1967 he lengthened the work year of judges, instituted a central case assignment system to reduce delay caused by the calendar system, which requires that cases be heard according to the order of filing, eliminated the professional bondsmen and their exorbitant fees, conducted extensive pre-trial programs, began summer jury trials, and com-

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ceptions: Associate judges cannot participate in the appointment of magistrates or in the formulation of circuit court rules.

98. *ESTABLISH JUSTICE*, *supra* note 97, at 4-22.

99. *ADMINISTRATIVE OFFICE OF THE ILLINOIS COURTS: 1964 ANNUAL REPORT TO THE SUPREME COURT OF ILLINOIS* 43, 45 (1965); *CALENDAR STUDY supra* note 92, at vi; *Chicago Daily News*, June 4, 1970, at 1.

100. This prediction was reached by the following calculations: 1.1 months decline during 6 year period was divided into 61.3 months. The resulting number 55.7 was multiplied by 6 years and yielded 334.2 years. 1970 plus 334.2 equals 2304.

puterized the record-keeping of the Court.<sup>101</sup>

Moreover, in late 1967 Boyle temporarily suspended two associate judges—one for setting a large number of unusually low bonds for persons charged with felonies, the other for setting an extraordinarily high number of bonds. The resulting adverse publicity induced both men to resign.<sup>102</sup>

Furthermore, in 1970, pressure from the Chicago Bar Association, the Administrative Office of Illinois Courts, and adverse newspaper publicity induced him to announce additional devices for alleviating this congestion: the empowering of Circuit Court magistrates to hear personal injury claims up to \$15,000, superseding the previous \$10,000 limit; the authority of magistrates to hear uncontested divorce claims; mandatory negotiations by attorneys to settle potential lawsuits; the establishment of a pre-trial section in the law division to narrow, accelerate, or eliminate cases; the placement of new judges in this division; the assignment of five judges to hear cases filed by attorneys who are handling fewer than ten cases at a time in this division; and the assignment of more Downstate judges to this circuit to maintain a minimum of thirty-eight judges in this division.<sup>103</sup>

However, he has tolerated many instances of judicial indolence. In 1967 a nationally respected journalist, Howard James, found evidence of such laxity and commented:

In Chicago, the city with the biggest backlog, this reporter has checked all 114 courtrooms in the new Civic Center several times. On a typical day he found judges on the bench in only 11 of the 114 courtrooms between 9:30 and 10 A.M.; 58 of the 114 benches filed between 10 A.M. and 10:30 A.M.; 45 judges sitting between 10:30 and 11 A.M.; and the same number between 11 and 11:30 A.M. Between 2:30 and 3 P.M. there were only 34 of the 114 benches with judges sitting.<sup>104</sup>

Between August 9 and 16, 1969, in the Chicago Civic Center, the author of this article also saw numerous courtrooms (from floors thirteen to twenty-six) that were vacant in the morning and in the afternoon. Boyle has allegedly failed to set a stringent policy on the granting of continuances. From the Administrative Office of Illinois

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101. Interview with Chief Judge John S. Boyle, Aug. 9, 1969 and Benjamin S. Mackoff, Administrative Director, Aug. 16, 1969, both in Chicago.

102. Chicago Tribune, May 12, 1967, § 1 at 1; Chicago Tribune, Sept. 15, 1967, § 1 at 1; Chicago Tribune, May 26, 1967, § 1, at 1; Chicago Sun Times, Nov. 21, 1967, at 8.

103. Green, *Court Changes on the Way*, Chicago Daily News, May 27, 1970, at 4 [hereinafter cited as Green]; Chicago Today, June 26, 1970, at 5; Suburban Economist (Chicago), July 1, 1970, at 8.

104. H. JAMES, *CRISIS IN THE COURTS* 25 (1967) [hereinafter cited as JAMES].



Courts, the author ascertained that some circuit judges, such as Albert E. Hallett, routinely grant at least three continuances without question, if requested. Boyle has not, as far as the author could discover, attempted to persuade his presiding judges into taking backlog-reducing steps, perhaps because they have been his life-long friends and had been independent trial judges for many years.<sup>105</sup>

However, since 1968 he has required the judges of this court to submit weekly reports of their case dispositions to his administrative director. These reports have been collated into quarterly and yearly reports but have not been made public.<sup>106</sup> Although such record-keeping may furnish Boyle with a basis for disciplining indolent judges, there is no public indication that he has tried such action. In fact, the Administrative Office of Illinois Courts recently found that three judges of the thirty in the law division (10 percent) have been hearing approximately one-fourth of all the cases—a highly uneven work-load distribution.<sup>107</sup>

Others share responsibility with Boyle. The Illinois General Assembly has not provided for enough judges. The state and city bar associations have not turned out a sufficient number of trial lawyers. Many litigants have filed frivolous suits and have demanded jury rather than bench trials. Numerous law firms have accepted far more cases than they can realistically handle. The backlog itself has perpetuated expectations of delay by all the parties to pending cases. Consequently, the congestion in this circuit, especially in its law division, has remained intractable.

Moreover, the mode of recruiting circuit judges has raised a serious question about the quality as well as the quantity of decisions. A nexus is widely believed to exist between judicial positions in this circuit and the Democratic Party; for most judges have allegedly gained their positions as a result of patronage, a reward for their party loyalty rather than for their putative legal abilities.<sup>108</sup> Furthermore, this mode of recruitment virtually assures an aging, provincial judiciary. The typical member of this circuit court is

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105. ESTABLISH JUSTICE, *supra* note 97, at 4-22.

106. Chicago Today, June 4, 1970, at 3.

107. Green, *supra* note 103, at 1, 12.

108. Karaganis, *Who's on the Bench?*, Chicago Sun-Times, Sept. 7, 1969, § 2 at 1.

sixty-four, was born in Chicago, attended a local law school (especially the DePaul College of Law), privately practiced for several years, worked for one of three public offices (state's attorney, U.S. attorney, or corporation counsel for the city), served as a Democratic party official, is Catholic, and is Irish, Italian, or Polish in most instances.<sup>109</sup> In addition, since many of these judges come from middle-class backgrounds, they may display certain ideological proclivities in their decisions: anti-civil libertarianism, hostility to minority groups, political conservatism, although they may be liberal in labor-union cases. However, there is no published study centering on the qualitative or ideological propensities of these judges.

Because this trial court functions poorly—qualitatively and quantitatively—during peaceful times, it is understandable that its performance, according to the Skolnick Report,<sup>110</sup> worsened during periods of turmoil. For example, during the rioting in Chicago after the death of Martin Luther King, the daily caseload in this circuit increased tenfold without any comparable increase in emergency personnel. Many arrestees were not permitted to telephone their families on the alleged ground that the security risk would be excessive. Bails were unusually set so high that they amounted to preventive detention. Legal representation was scarce, and due process became a casualty of the disorder. However, criticism from Chicago's Negro bar association helped to prompt this circuit court to conduct bail hearings.<sup>111</sup>

Boyle and his colleagues have not adopted the recommendation of the Kerner Commission that trial courts, including the Circuit Court of Cook County, plan alternatives to an unconditional release or a high bail. Such alternatives might include release to third parties outside the riot area, supervision by civic organizations, and release on one's own recognizance.<sup>112</sup> However, the last mode of release was limited to accused curfew violators; and the gravity of the allegation tended, in most cases, to determine how high the bail would be. The judges in this circuit allegedly paid little attention to the defendant's background, especially his arrest record, if any. Finally,

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109. Chicago Daily News, June 3, 1970, § 1 at 3. These conclusions were ultimately derived from biographical data on the judges found in the following four sources: ESTABLISH JUSTICE, *supra* note 97, at 5-22; 2 MARTINDALE HUBBEL LAW DIRECTORY 1969, LAWYERS: ILLINOIS-MISSOURI; WHO'S WHO IN AMERICA 1968-1969; and WHO'S WHO IN THE MIDWEST (10th ed. 1966).

110. SKOLNICK, *supra* note 35, at 313-16.

111. *Id.* at 314.

112. NAT'L COMM'N, *supra* note 36, at 341-44.

this circuit court tended to operate as an adjunct of the Mayor's office and city prosecutors rather than as an independent force to insure that they often operate lawfully, especially during turmoil.<sup>113</sup> However, since many judges in this circuit have been Mayor Richard J. Daley's political associates for a few decades, such institutional interlocking has resulted.

*D. Court Congestion (or Delay): A Central Leadership Problem*

A fourth facet of judicial management is court congestion, which, although technically a part of judicial leadership, is extensive enough to be considered separately. Even though judicial executives perform numerous significant functions, perhaps their central task is to regulate the caseload of a court. In most trial courts this regulation becomes a problem of reducing delay.

There are at least seven common definitions of trial court delay. One definition equates delay with backlog size.<sup>114</sup> However, Zeisel and his colleagues have castigated this formulation in the following words:

[T]he cardinal fact about the disposition of cases in our courts is that only a fraction of the suits reach the trial stage, and it is only at this stage that they become a serious burden on the court. This is why the size of the backlog is so frequently a paper figure of limited significance. The numerical size of the backlog tells us little unless we also know the size of the court, the proportion of cases settled before assignment, and the time it takes to dispose of assigned cases. A large backlog of pending suits may be disposed of quite speedily if the court is large, or if the average time required for disposition is small, or if a large proportion of cases is disposed of voluntarily without court action. And since any or all of these factors may change over time, the nominal backlog is a poor measure of delay even within the same court system. The backlog may decrease even while the delay increases.<sup>115</sup>

A second definition identifies delay with the age of the last case scheduled to be tried in regular order. However, this formulation is defective because the proportion of cases where trial courts grant preference or permit litigants to defer their cases varies greatly among and within jurisdictions over a long span of time.<sup>116</sup>

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113. SKOLNICK, *supra* note 35, at 313-16.

114. H. ZEISEL, H. KALVEN, JR., & B. BUCHHOLZ, *DELAY IN THE COURTS* 43, 45 (1959) [hereinafter cited as ZEISEL, KALVEN & BUCHHOLZ].

115. *Id.* at 44.

116. *Id.* at 45.

A third definition regards delay as the average interval between the filing of an action and the trial.<sup>117</sup> A fourth definition (a slight variant of the third) equates delay with the average time period between answer and trial.<sup>118</sup> Both formulations contain the same alleged flaw as the first definition. A fifth meaning of delay treats it as the average time lapse between the point when a case is at issue and the trial.<sup>119</sup> Under this formulation court delay, as measured in months, appears to be far less substantial than it does under previous definitions. Nonetheless, the fourth and fifth meanings are used by the Institute of Judicial Administration in gathering congestion statistics from the many trial courts across the nation.<sup>120</sup> A sixth definition is simply the average age of all cases reaching trial, regardless of whether the order is regular or preferred.<sup>121</sup> This formulation synthesizes the two previous definitions. A seventh meaning of delay is the average time between the original filing and the termination of appeal proceedings, if any.<sup>122</sup> This definition embraces relatively few cases but does imply that delay measurement is a far broader concept than scholars have generally regarded it.

Although these definitions of trial court delay apply to civil litigation, one might devise similar definitions for criminal cases—such as the average time between arrest and arraignment, arrest to trial (if any), arraignment to trial (if any), trial to sentencing, and arrest to final appeal. Delay in civil and criminal cases is inextricably linked to each other because the more judges that trial courts have committed to civil litigation, the fewer judges there are to handle criminal cases.<sup>123</sup> The converse of this statement is also valid. However, trial court delay is a malady more generally affecting civil rather than criminal litigation for at least two principal reasons. First, in the latter, as Dean Barrett notes, “Constitutional guarantees of ‘speedy trial,’ and statutory time limits require relatively speedy handling.”<sup>124</sup> In California, as in most other states, the trial-date period is sixty days.<sup>125</sup> Second, the overwhelming number of criminal cases end at arraignment with a plea of guilty

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117. Rosenberg, *Court Congestion: Status, Causes, and Proposed Remedies*, in *THE COURTS*, *supra* note 28, at 32.

118. *CALENDAR STUDY*, *supra* note 92, at ii-iii.

119. *Id.*; Green, *The Situation in 1959*, 328 *ANNALS* 7 (1960).

120. *CALENDAR STUDY*, *supra* note 92, at ii-iii, vi, 4.

121. ZEISEL, KALVEN, & BUCHHOLZ, *supra* note 114, at 43, 45.

122. Rosenberg, *supra* note 28, at 32.

123. JAMES, *supra* note 104, at 22.

124. *THE COURTS*, *supra* note 25, at 106.

125. CAL. PENAL CODE § 1382(2) (West 1970).

to a lesser charge.<sup>126</sup> Therefore, since civil delay has so far been more critical than the congestion in the criminal area, let us focus our attention on the civil half of the delay issue.

Because thirty-five states have court administrator's offices to gather statistics<sup>127</sup> and because such information has been funneled since 1953 into the Institute of Judicial Administration<sup>128</sup> for collation into a national picture of trial court delay, one may readily ascertain the current seriousness of this problem. Overall, court congestion varies directly with population. If one accepts the fourth definition of delay, which is the most common, one may easily perceive this direct variation. (See Figure 5.) For counties with a population over 750,000, the Circuit Court of Cook County faces the worst congestion with an average delay of 59.6 months. The official population of this county in 1960 was 5,129,725. Nationally, Los Angeles County, the most populated in California, ranked fourteenth in congestion with an average delay of 35.9 months.<sup>129</sup> Its official 1960 population was 16,038,771. By contrast, the Circuit Court of Dade County, Florida, ranked last with an average delay of 9.7 months. However, the population of this county in 1960 was only 935,047. For counties with populations between 500,000 and 750,000, the Supreme Court of Suffolk County, New York, has experienced the most congestion with an average delay of 47.3 months whereas the Court of Common Pleas for Delaware County, Pennsylvania, faces a nominal delay—an average of only 4.2 months. The population of both counties is nearly the same—666,784 and 553,154, respectively, as of 1960. Nationally, San Francisco County, (third in California population with 742,855 as of 1960) ranked seventeenth in congestion with an average delay of 30.7 months.<sup>130</sup> By contrast, San Diego County, (second in California population with 1,033,011 as of 1960) was unranked among the nationwide counties most beset with civil delay.<sup>131</sup> Finally, for counties with populations under 500,000, the worst average delay—30.6 months—belongs to the superior Court of Hillsborough County, New

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126. *THE COURTS*, *supra* note 25, at 110-11; *CRIME AND LEGAL PROCESS* 207-08 (W. Chambliss ed. 1969).

127. *The Judiciary*, *supra* note 52, at 118.

128. *CALENDAR STUDY*, *supra* note 92, at 1.

129. *Id.* at vii.

130. *Id.*

131. *Id.* at vi-ix.

Hampshire. The population of this county in 1960 was 178,161. By contrast, numerous counties in this category encountered only negligible congestion—an average of 2.4 months.<sup>132</sup>

Figure 5  
Trial Court Delay:  
A National View (1969)

County Population	Average Time in Months from Answer to Trial	Range in Months
Over 750,000	32.2	9.7—59.6
Between and 750,000	21.0	4.2—47.3
Under 500,000	13.0	2.4—30.6

Source: Basen on INSTITUTE OF JUDICIAL ADMINISTRATION, CALENDAR STATUS STUDY—1969. STATE TRIAL COURTS OF GENERAL JURISDICTION. PERSONAL INJURY CASES, AUGUST 1, 1969, at vi.

Because trial court congestion has been a serious problem for many years, proposed solutions—drastic and mild—have abounded. The numerous suggestions ultimately seek to make the operations of trial courts considerably more just.<sup>133</sup> More specifically, these proposals contain at least four implicitly normative premises. First, if implemented, the measures should not materially increase the probability of different outcomes in cases. Second, the proposals should be simple and inexpensive, compared with the time and money savings effected. Third, the measures should be straightforward. Finally, the changes should stress fairness and good faith to the litigants.<sup>134</sup> However, to achieve these goals, a judge, as one prominent law professor has commented, “must be politician, administrator, bureaucrat, and lawyer in order to cope with a crushing calendar of cases.”<sup>135</sup>

Among the most widely advocated proposals for reducing trial court delay are the following: the abolition of jury trials generally, the elimination of such trials in personal-injury cases, inducements to increase jury-trial waivers (such as by using a comparative rather than contributory negligence rule in exchange for this

132. *Id.* at vi-ix. For the method adopted by the Judicial Council of California to measure delay in its Superior Courts, see 1967 ANNUAL REPORT, *supra* note 68, at 184-87.

133. Rosenberg, *Foreward* in WALTER E. MEYER INSTITUTE OF LAW, DOLLARS, DELAY AND THE AUTOMOBILE VICTIM iv (1968).

134. Rosenberg, *Court Congestion: Status, Causes, and Proposed Remedies*, in THE COURTS, *supra* note 25, at 58.

135. A. BLUMBERG, CRIMINAL JUSTICE 122-23 (1967).

waiver), the acceleration of jury trials (such as by a judge's assuming more vigorous charge of it, participating in the questioning of witnesses, curtailing repetitive testimony, discouraging perfunctory objections), devices to increase settlements (such as pre-trial conferences, impartial medical experts, certificates of readiness for trial before docketing cases, and the payment of interest by losing defendants to encompass the time from accident to verdict), the reduction of trial-scheduling gaps (such as by changing the system of handling cases from a calendar to an assignment basis), stringent supervision by presiding judges, weekly public reports on individual judicial output, more court days, summer sessions, longer hours per court day, an enlarged trial bar, more judges, a leveled court calendar (whereby delay is more equitably distributed by refusing to accord preference to certain kinds of cases), split trials (the separation of liability and damage proceedings), compulsory arbitration of small claims, the use of auditors (references to supplement judges), and automobile-accident compensation plans (modeled after workman's compensation programs).<sup>136</sup> However, apart from the limited works of Hans Zeisel and Maurice Rosenberg,<sup>137</sup> there

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136. These proposed antidotes for trial court delay have been culled from numerous sources: JACOB, *supra* note 24, at 82-83; M. ROSENBERG, *THE PRETRIAL CONFERENCE AND EFFECTIVE JUSTICE* 87 (1964) [hereinafter cited as ROSENBERG]; ZEISEL, KALVEN & BUCHHOLZ, *supra* note 114, at 43-217; Botein, *Impartial Medical Testimony*, 328 ANNALS 75-83 (1960); Hofstadter, *A Proposed Automobile Accident Compensation Plan*, 328 ANNALS 53-60 (1960); Kalven, *The Bar, the Court, and the Delay*, 328 ANNALS 37-45 (1960); Miner, *Court Congestion: a New Approach*, 45 A.B.A.J. 1265-68 (1959); Rosenberg, *Comparative Negligence in Arkansas: a "Before and After" Survey*, 13 ARK. L. REV. 89-112 (1959), reprinted in 36 N.Y.S.B.J. 457-81 (1964); Rosenberg, *Court Congestion: Status, Causes and Proposed Remedies*, in *THE COURTS*, *supra* note 25, at 32-58; Rosenberg & Chanin, *Auditors in Massachusetts as Antidotes for Delayed Civil Courts*, 110 U. PA. L. REV. 27-56 (1961); Rosenberg & Schubin, *Trial by Lawyer: Compulsory Arbitration of Small Claims in Pennsylvania*, 74 HARV. L. REV. 448-72 (1961); Rosenberg & Schubin, *Delay and the Dynamics of Personal Injury Litigation*, 59 COLUM. L. REV. 1115-70 (1959); Zeisel, *Court Delay Caused by the Bar?*, 54 A.B.A.J. 886-88 (1968); Zeisel, *Delay by the Parties and Delay by the Courts*, 15 J. OF LEGAL EDUC. 27-33 (1962); Zeisel, *Splitting Liability and Damage Issue Saves 20% of Court's Time*, 351 A.B.A. SECTION ON INSURANCE, NEGLIGENCE, AND COMPENSATION LAW 322-24 (1963); Zeisel & Callahan, *Split-Trials and Time Saving: A Statistical Analysis*, 76 HARV. L. REV. 1606-25 (1963); Zeisel & Kalven, *Delay in the Court: A Summary View*, 15 RECORD OF N.Y.C.B.A. 104-18 (1960). For recent symposia exploring the delay facet, see note 28 *supra*.

137. See note 136 *supra*, especially ZEISEL, KALVEN & BUEHOLZ, *supra* note 114 at 43-217; and ROSENBERG, *supra* note 136 at 89-112.

have been no empirical studies assessing the operational merits of these proposals.

Although Rosenberg found the comparative negligence rule to be an effective delay-cutting method in the Arkansas trial courts,<sup>138</sup> only Zeisel, and his colleagues have systematically tested the utility of the above-mentioned devices in a large-city trial court system. Examining the records of the Supreme Court of New York County (Manhattan), the Zeisel staff discovered that these proposals varied substantially in congestion-reducing value. For instance, his staff ascertained the following average results in three categories of devices:

1) Proposals to reduce trial time: Split trials saved twenty percent of the Court's trial time. Jury trials run forty percent longer than bench trials. The abolition of jury trials in personal-injury cases saved thirty-two percent in Court time.

2) Proposals to increase settlements: Increasing jury waivers result in only a marginal time reduction. Judicial interventions to accelerate trials effected a chronological reduction between thirty-five and forty-one percent. Devices to increase the probability of settlements achieved a time reduction of only two percent. The use of impartial medical witnesses by the Court raised the pre-trial settlement of cases by six percent. The payment of interest by losing defendants from the day of the accident rather than the day of the award effected a slight increase in court delay. Pre-trial conferences are justified only if at least twenty-five percent of the cases handled in this manner would have otherwise reached the trial stage. Certificates of readiness had no apparent effect on the time needed to try personal-injury cases, but when applied to commercial cases did reduce the latter so that more of the former could be tried.

3) Proposals to increase judge time: Between 196 and 207 trial days are available to the Court each year. The trial days per judge for each year was 170. Summer Court sessions are ineffective because of the tradition that the bench and the bar vacation during this season. Judges worked 4.1 hours per day, but the Zeisel staff could not determine whether this figure derived from personal factors or scheduling difficulties. A comparison of the assignment and calendar systems was indeterminate. Denying continuances to lawyers would force them to take one of three possible actions: go to trial, relinquish cases to other lawyers, or add more trial attorneys to their firms. Leveling the Court calendar effected a twenty

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138. ROSENBERG, *supra* note 136, at 89-112.



percent time savings. Finally, if more judges were not added to the Court, three other remedies would be effective: the centralized management of the judicial system; shifts in judges from less-to-more congested tribunals; and the extensive use of surrogate judges—masters, referees, and auditors—who have helped to alleviate court delay in Oklahoma, Pennsylvania, and Massachusetts, respectively.<sup>139</sup>

In California, scholars have surveyed the applicability of such proposals only in one large county: San Diego County. In this county the author found that, according to most Superior and Municipal Court judges, the civil and criminal congestion in their organization was not yet sufficiently serious to warrant their adoption of most of the above suggestions. Their general attitude was that the various devices listed for accelerating jury trials, the several methods enumerated for increasing settlements, the assignment system, pre-trial conference, stringent supervision by presiding judges, and more judges would suffice to prevent both kinds of litigation from becoming unmanageable in their courts. However, some Municipal Court judges disclosed that the conversion of some felonies into misdemeanors was beginning to transfer an excessive number of cases from the Superior Court of this county to the Downtown Municipal Court. Finally, except for two Superior Court judges, no judges in either Court favored total consolidation of California's three kinds of trial courts into a single trial court with exclusive, comprehensive, original jurisdiction within each county. Nor, with these exceptions, did they favor the absorption of Municipal and Justice Court functions by Superior Courts.<sup>140</sup>

#### *E. Judicial Staffs: Competitors for Leadership?*

A fifth facet of judicial management is the role of staffs as facilitators of—and as competitors for—judicial leadership. Staffs (commonly called court administrator's offices) were created to facilitate such management. Such offices were established by constitutional provisions or by legislation to furnish the judicial bureaucracy with

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139. ZEISEL, KALVEN, & BUCHHOLZ, *supra* note 114, at 51-52, 85, 89, 98-99, 108, 119, 124, 128, 140, 151, 154, 166-67, 174, 180, 193, 198, 202, 209.

140. These preliminary findings rest on a random sample of Superior Court and Municipal Court judges that the author interviewed in May-June, 1970. The full analysis of this survey has not yet been completed.

the expertise that other large organizations, public and private, had found necessary because of their growth.<sup>141</sup>

Such staffs perform numerous functions that are prerequisites for efficient judicial leadership, whether exercised mainly by line or staff. The duties entrusted to such offices include evaluating the organization, practices, and procedures of the state courts; keeping records and compiling data on the cases handled by all state courts; preparing periodic reports on the disposition of cases by all such courts; making recommendations about the assignment of judges to backlog-ridden courts; preparing and submitting estimates of future judicial expenditures to the proper budgetary agency of the state government; publishing and distributing copies of rules and orders to judges and clerks; supervising clerical personnel and their work; and securing the facilities and equipment needed by the courts. The functions performed by such officers help to provide the information necessary for the unified direction of the entire state judicial bureaucracy by the state supreme court (or its chief justice) and for the improved supervision of the consolidated trial courts by each chief judge.<sup>142</sup> However, the operation of such staffs at the trial court level may furnish chief judges with the information needed to resist the overall direction of the state court system by the staff agency of the highest state court (or its chief justice).

According to the eminent jurist, Arthur T. Vanderbilt, the numerous staff duties have enabled judicial executives to compare the output of all judges; to determine whether a judge's work falls above or below the mean for his court, division, or district; to assign judges where they are most or least needed and where their specialized abilities can be most effectively used; and to accelerate the output of all trial courts.<sup>143</sup> Although Vanderbilt implies a high positive correlation between an increased quantity of judicial decisions and their quality,<sup>144</sup> one is skeptical; for speedy decisions are not necessarily wise or fair.

The states have witnessed a rapid increase in the number of court administrator's offices created at the supreme court and trial court levels. These offices have so far been established at one level or the other in thirty-five states. In all but three states these offices have

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141. *The Judiciary*, *supra* note 65, at 103; GALBRAITH, *supra* note 77, at 159-68, 176-88.

142. AMERICAN JUDICATURE SOCIETY, COURT ADMINISTRATORS: THEIR FUNCTIONS, QUALIFICATIONS AND SALARIES, AJS INFORMATION SHEET No. 34, July 1966, at 2-4 [hereinafter cited as COURT ADMINISTRATORS].

143. Vanderbilt, *supra* note 77, at 13-14.

144. *Id.* at 8.

been founded since 1948.<sup>145</sup> (See Figure 3.) One of these three states was California whose Judicial Council, in 1961, established such a staff agency to recommend and implement Council policies.<sup>146</sup> If the trend of the last fifteen years continues, all states will have such agencies by 1985.<sup>147</sup>

Although Vanderbilt viewed these staff officials as specialists who augmented the managerial effectiveness of judicial executives,<sup>148</sup> this assessment may no longer be valid. Such officials may have become staff competitors for judicial leadership nominally exercised by the two primary line officials: the chief justice and the chief judge. Such staff officials may be slowly forming what, according to economist John Kenneth Galbraith, is a "technostructure"<sup>149</sup>—a body of experts whose knowledge makes their titular superiors in the hierarchy dependent on them and hence subordinate to them in fact.<sup>150</sup> He stresses that technostructures arise in all large public and corporate organizations because the specialized knowledge needed to run them successfully varies directly with their size.<sup>151</sup>

Because court administrators are experts, they may be gaining de facto control of state judicial bureaucracies just as the technostructures dominate other organizations. Chief justices and chief judges may be experiencing what their counterparts in other bureaucracies have encountered: a widening gulf between their authority and their power.<sup>152</sup> Such judicial executives may become increasingly like corporation presidents who find themselves simply ratifying decisions reached in the lower echelons by experts or striking compromises when the experts disagree among themselves.<sup>153</sup>

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145. *The Judiciary*, *supra* note 65, at 118.

146. CAL. CONST. art. VI, § 6 (1879). See also *THE CALIFORNIA BLUE BOOK* 25 (1969).

147. This projection was calculated as follows: 15 years/25 states = X/25 remaining states. X = 15, 1970 plus 15 = 1985.

148. Vanderbilt, *supra* note 77, at 13-14.

149. GALBRAITH, *supra* note 77, at 71.

150. *Id.* at 71-82.

151. *Id.* at 81-82.

152. V. THOMPSON, *MODERN ORGANIZATION* 4-6 (1961) [hereinafter cited as THOMPSON].

153. GALBRAITH, *supra* note 77, at 100-03. For an example of a company president (Henry Ford) who refused to accept relegation to a titular role, see EDITORS OF *FORTUNE*, *THE EXECUTIVE LIFE* 192 (1956); J. GALBRAITH, *THE LIBERAL HOUR* 141-44 (1960); Harris, *Ford's Fight for First*, 50 *FORTUNE* 1-23,

Judicial executives may become relegated to this figurehead position because they need the specialized knowledge of their staff officials for intelligent policy-making and because these officials determine the range of decisional choices open to such executives. Thus court administrators may be acquiring more line functions, may be reversing the downward flow of authority, may be providing judicial leadership themselves instead of merely facilitating it for their titular superiors, may be assuming more significant decision-making, and may be turning into enclaves accountable in fact to no one but themselves. Such changes may be the inevitable concomitants of organizational growth rather than a conscious conspiracy by a power elite.<sup>154</sup> In the author's view such changes may bring corporate efficiency to judicial organizations, but the state trial courts may be removed even further from popular control. However, since these organizations have long operated with considerable insulation from public pressure, the price of further removal is small for increased efficiency. So far legal scholars have not adduced behavioral evidence to support the hypothesis that court administrators have begun to assume de facto leadership of judicial bureaucracies and to relegate the formal judicial executives to a nominal role.

#### F. *Judicial Selection and Tenure: Quality in Management*

Because judicial management usually focuses on the operational efficiency of courts,<sup>155</sup> one may doubt whether subjects—such as judicial selection and tenure as well as judicial discipline, removal, and retirement—fall within the ambit of this field. However, these topics are germane if one posits, as Vanderbilt does, “a fundamental relation between the quality of judges and the proper administration of justice.”<sup>156</sup> On this basis these subjects constitute facets of judicial management and warrant at least brief review.

As a sixth facet of judicial management, judicial selection and tenure entails consideration of three kinds of personnel for judicial organizations: chief judges, judges, and staffs. (See Figure 4.) A chief judge of a trial court wields broad managerial powers—such as establishing such departments, divisions, or districts that he deems desirable; the supervision of the entire trial court; the dele-

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126 (Sept. 1954); Roberts, *Ford's Reorganization: The Management Story*, 19 *Adv. Mgm't* 912 (1954).

154. GALBRAITH, *supra* note 77, at 81-82. See also C. MILLS, *THE POWER ELITE* 3-4, 228-31 (1956); A. ROSE, *THE POWER STRUCTURE: POLITICAL PROCESS IN AMERICAN SOCIETY* 41-42 (1967).

155. Vanderbilt, *supra* note 77, at 13; Gallas, *supra* note 74, at 334-36.

156. A. VANDERBILT, *supra* note 49, at 3.

gation of managerial authority to subordinates such as presiding judges for each division; preparation and execution of a budget; maintenance of adequate courtrooms, chambers, and office facilities; the initiation of studies pertaining to court business and management; the collection, compilation, and analysis of statistical data about the operations of the court; and liaison between the court and the various local governments, police officials, bar associations, and civic groups.<sup>157</sup>

Although this enumeration of managerial duties implies that a chief judge is a powerful administrator, the selection system may not necessarily assure this power and may create a divergence between his authority (his right to give orders to subordinates) and his power (his ability to do so).<sup>158</sup> For example, Illinois is a case in point. Under its new judicial article, the judges and associate judges of each circuit are authorized to select one of their members to serve at their pleasure as chief judge, who will exercise general managerial authority over the circuit court.<sup>159</sup> However, this selection system may render a chief judge virtually powerless because, as a consequence of his dependence on his colleagues for his position, he cannot carry out state supreme court rules or his own rules opposed by his colleagues without running the risk that they might replace him. This selection system undercuts not only his power but also the ability of the state supreme court to manage the entire judicial organization. Nevertheless, a chief judge may narrow the gap between his authority and his power by his interpersonal skills and by the indifference of his colleagues.

Because chief judges are also judges, one must turn to the modes of selecting the latter. The various selection systems have ranged along a continuum from a totally elective system at one end to a wholly appointive system at the other.<sup>160</sup> (See Figure 6.) Nine

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157. ESTABLISH JUSTICE, *supra* note 97, at 3.

158. M. WEBER, *THE THEORY OF SOCIAL AND ECONOMIC ORGANIZATION* 152 (A. Henderson & T. Parsons transl. 1947); THOMPSON, *supra* note 152, at 4-6; J. PFIFFNER & F. SHEERWOOD, *ADMINISTRATIVE ORGANIZATION* 77 (1960).

159. ILL. CONST. art. VI, § 8 (1870); ESTABLISH JUSTICE, *supra* note 157, at 3. Associate judges possess all the authority of circuit judges with two exceptions: First, associate judges cannot participate in the appointment of magistrates. Second, associate judges cannot participate in the formation of circuit court rules.

160. *The Judiciary*, *supra* note 52, at 110-11.

states have adopted a compromise between these two poles: the Kales plan.<sup>161</sup> (See Figure 6.) Under it a non-partisan commission of lawyers, judges, and laymen submits to the governor a list of names from which he is to fill court vacancies. Judges selected in this manner are periodically required to seek subsequent popular election to their positions. However, in such elections, incumbent judges may not run without opposition. The only issue for the voters to decide is whether an incumbent judge should be retained in office. If such a judge is not retained, the governor is required to appoint a replacement from the commission's list.<sup>162</sup>

This system tries to apply an important tenet of traditional public administration (the politics-administration dichotomy) to judicial organizations as much as possible.<sup>163</sup> However, this plan may simply replace partisan politics with commission politics. At most, only a partial separation of such organizations from partisan pressures is possible. In analyzing this prospect, Stuart S. Nagel wrote:

Regardless of judicial tenure and modes of selection, there will always be a residue of party-correlated judicial subjectivity so long as political parties are at least value-oriented and so long as court cases involve value-oriented controversies. Ultimately the problem becomes not how to remove this irreducible residue of judicial subjectivity, but rather what direction it [should] take.<sup>164</sup>

Most states employ different modes of judicial selection at different levels of the state court system. Consequently, in twenty states, there are two methods of judicial selection. Five states have relied on three modes of judicial selection. All together, the fifty states have employed, wholly or partly, different combinations of the following five systems: partisan elections in thirty states, appointment in twenty-nine states, non-partisan elections in nineteen states, the Kales plan in nine states, and legislative elections in five states.<sup>165</sup> (See Figure 6.) Of these five modes of judicial selec-

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161. A. KALES, *UNPOPULAR GOVERNMENT IN THE UNITED STATES* 245-47 (1914) [hereinafter cited as KALES]. The Kales plan of judicial selection and tenure is commonly known by at least three other names: The American Bar Association plan, the American Judicature Society plan, and the hybrid plan. See also, *Reports of the Section on Judicial Administration*, 63 ANNUAL REPT. OF THE A.B.A. 516-615 (1938); and Peltason, *The Missouri Plan for the Selection of Judges*, in 20 THE UNIVERSITY OF MISSOURI STUDIES (No. 2, 1945).

162. See, e.g., Mo. CONST. art. V, § 29(d) (1875) as amended (1940); Mo. CONST. art. V, § 29(d) (1945).

163. Long, *Power and Administration*, 9 PUB. ADMIN. REV. 257-64 (1949); SIMON, *supra* note 80, at 45-60; Woodrow Wilson, *The Study of Administration*, reprinted in 16 POL. SCI. Q. 494-95 (1941).

164. Nagel, *Political Party Affiliation and Judges' Decisions*, 55 AM. POL. SCI. REV. 850 (1961) [hereinafter cited as Nagel].

165. *The Judiciary*, *supra* note 52, at 110-11.

tion, partisan elections and appointment are the oldest whereas the Kales plan is the newest.<sup>166</sup> If the states continue to adopt the Kales plan at the slow pace of the last decade, this method will not operate in the remaining states before the year 2052.<sup>167</sup>

Figure 6  
Judicial Selection Modes in the States (1969)

Year	Partisan Elections	Non-Partisan Elections	Election by State Legislatures	Kales' Plan	Appointment
Before 1900	13	7	3	0	7
1900-1909	3	0	1	0	2
1910-1919	3	2	0	0	1
1920-1929	0	0	0	0	0
1930-1939	0	1	0	1	0
1940-1949	2	1	0	1	4
1950-1959	3	3	1	2	2
1960-1969	6	5	0	5	13
Total States	30	19	5	9	29

Source: Derived from THE CONSTITUTIONS OF THE UNITED STATES: NATIONAL AND STATE (Cum. Supp. 1967).

Since 1934 California has employed a variation of the Kales plan at the final and intermediate appellate court levels. The selection and tenure system in this state provides for gubernatorial appointments to fill such vacancies.<sup>168</sup> At both levels non-partisan elections operate.<sup>169</sup> However, the California system differs from the Kales plan in two respects: First, whereas the latter provides for a commission of judges, lawyers and laymen to nominate eligible judges, the former has a commission to confirm or veto gubernatorial choices: the Commission on Judicial Appointments, consist-

166. THE CONSTITUTIONS OF THE UNITED STATES: NATIONAL AND STATE, CUMULATIVE SUPPLEMENTS (1967).

167. This projection was calculated as follows: 5 states/10 years = 41 remaining states/X. X = 82. 1970 plus 82 = 2052. (Four states adopted the Kales Plan prior to 1960).

168. CAL. CONST. art. VI, § 16 (c-d) (1879). The original citation was art. VI, § 2, adopted on Nov. 6, 1934. See also JUDICIAL COUNCIL OF CALIFORNIA, 1968 ANNUAL REPORT TO THE GOVERNOR AND THE LEGISLATURE 15 [hereinafter cited as 1968 ANNUAL REPORT].

169. CAL. CONST. art. VI, § 16(d) (1879).

ing of state government officials: the chief justice, the attorney general, and a justice presiding over a court-of-appeals district.<sup>170</sup> Second, although Kales intended his selection system to operate at the trial court level, California allows each county to adopt this plan by majority vote for its Superior Court.<sup>171</sup> Partisan elections control the selection of judges for the other two trial courts (municipal and justice courts).<sup>172</sup>

During the last three years the California State Bar Association, the Judicial Council, and Governor Ronald Reagan have sought a constitutional revision which would eliminate both of the above deviations and would apply the Kales program to the entire state judicial system.<sup>173</sup> Under what is commonly called the merit plan for judicial selection, the Commission on Judicial Qualifications would be supplanted by one state-wide commission to nominate candidates eligible for the state appellate courts and by five local commissions to make nominations for the trial courts. Each commission would consist of judges, lawyers, and laymen appointed by the governor.<sup>174</sup> However, since 1967 this proposal has been introduced into the state legislature, which has failed to pass it.<sup>175</sup> The main reason for this failure may be the high national esteem in which the California court system is already held.<sup>176</sup>

During the last decade legal scholars have extensively researched the subject of judicial selection and tenure at the state<sup>177</sup>—as well as the federal<sup>178</sup>—level. Furthermore, some academicians have ex-

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170. *Id.* at § 7. See also 1967 ANNUAL REPORT, *supra* note 132, at 79-85.

171. CAL. CONST. art. VI, § 16(d) (1879).

172. *Id.*

173. 1968 ANNUAL REPORT, *supra* note 168, at 13-18; *The Merit Plan*, CAL. ST. B.J. 155-71 (1968). The latter source contains statements endorsing this plan by Governor Ronald Reagan, then Chief Justice Roger J. Traynor, State Senator Donald L. Grunsky (Chairman of the Cal. Senate Jud. Comm.), and State Assemblyman William T. Bagley (Chairman of the Assembly Jud. Comm.). See also LEAGUE OF WOMEN VOTERS OF CAL. ADMINISTRATION OF JUSTICE 33-34 (1969) [hereinafter cited as LEAGUE].

174. LEAGUE, *supra* note 173, at 33; P. WESTON & K. WELLS, *THE ADMINISTRATION OF JUSTICE* 132-33 (1967).

175. See notes 6 and 7 *supra*.

176. JUDICIAL COUNCIL, *supra* note 168, at 18.

177. See, e.g., JACOB, *supra* note 24, at 139, 203; Jacob, *Judicial Insulation—Elections, Direct Participation, and Public Attention to the Courts in Wisconsin*, 1966 WIS. L. REV. 801; Jacob, *The Effect of Institutional Differences in the Recruitment Process: the Case of State Judges*, 13 J. PUB. L. 104 (1964); Jacob, *The Courts as Political Agencies—an Historic Analysis*, in *STUDIES IN POLITICAL SCIENCE* 44-46 (K. Vines & H. Jacob eds. 1962).

178. See, e.g., J. GROSSMAN, *LAWYERS AND JUDGES* 2 (1965) [hereinafter cited as GROSSMAN]; Chase, *Federal Judges: the Appointing Process*, 51 MINN. L. REV. 185 (1966); Chase, *The Johnson Administration Judicial Appointments—1963-1966*, 52 MINN. L. REV. 965 (1968); Grossman, *Social Back-*



panded this behavioral research to encompass the role of bar associations in the selection of local trial judges.<sup>179</sup> However, very little is empirically known about the causal connections, if any, between the various methods of judicial selection and at least fifteen other salient variables: the formal qualifications of judges, their informal (interpersonal) qualifications, their social backgrounds, their ideological outlooks, their ethnicity, their party identification, their pressure-group affiliations, their prejudicial occupations, their ages, their education, their urbanism, their regionalism, the turnover rate, their decisional output, and their decision-making process.<sup>180</sup> Empirical research into these hypothesized linkages constitutes a substantial segment of the research agenda for judicial management. In addition, legal researchers have failed to examine normative issues posed by judicial selection-and-tenure systems—such as enumerating the specific traits of a good judge and the pre-case attributes of good judicial candidates. However, one commentator, Joel B. Grossman, points out:

Political scientists are not alone in their failure to specify the most desirable attributes of a good judge, or the most necessary qualifications for a prospective judge. . . . Though unable to specify desirable judicial characteristics, political science is able to describe the attitudes toward such characteristics held by individuals

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*grounds and Judicial Decisions: Notes for a Theory*, 29 J. POL. 302-51 (1967); Grossman, *Social Science Approaches to the "Judicial Process"*, 71 HARV. L. REV. 1551-94 (1966); Grossman, *Federal Judicial Selection: the Work of the ABA Committee*, 8 NW. J. POL. SCI. 8, 221-54 (1964); Ladinsky & Grossman, *Organizational Consequences of Professional Consensus: Lawyers and Selection of Judges*, ADMIN. SCI. Q. 79-106 (1966).

179. R. WATSON & R. DOWNING, *THE POLITICS OF THE BENCH AND BAR: JUDICIAL SELECTION UNDER THE MISSOURI NONPARTISAN COURT PLAN 203* (1969); Watson, Downing & Spiegel, *Bar Politics, Judicial Selection, and the Representation of Social Interests*, 61 AM. POL. SCI. REV. 54-71 (1967); Watson, *Bar Politics and Judicial Selection*, 24 J. MO. B. 27-38, 69-79 (1968); Watson, *Lawyers' Attitudes on Judicial Selection*, 72 AM. J. SOC. 373-87 (1967); Watson, *Missouri Lawyers Evaluate the Merit Plan for Selection and Tenure of Judges*, 52 A.B.A.J. 539-42 (1966).

180. Nagel, *supra* note 164, at 848-50; Nagel, *Ethnic Affiliations and Judicial Propensities*, 24 J. POL. 109 (1962); Nagel, *Testing Relations between Judicial Characteristics and Judicial Decision-Making*, 15 WEST. POL. Q. 435-37 (1962); Nagel, *Culture Patterns and the Judicial Systems*, 16 VAND. L. REV. 16, 147 (1962); Nagel, *Judicial Backgrounds and Criminal Cases*, J. CRIM. L. 335-38 (1962); Nagel, *Law and the Social Sciences: What Can Social Sciences Contribute?*, 51 A.B.A.J. 357 (1965). Nagel's works have suggested the fifteen variables to which different modes of judicial selection and tenure may be correlated.

and groups.<sup>181</sup>

Finally, the selection of staff members is principally a task of choosing members for the court administrator's offices, the staff agency through which the state supreme court (or its chief justice) manages the entire state judicial bureaucracy. Such offices are run by a director and assistant directors, all of whom are appointed by the state supreme court (or its chief justice) to serve at its (or his) pleasure.<sup>182</sup> Furthermore, in some consolidated trial courts, the chief judge may appoint a staff to facilitate his managerial duties.<sup>183</sup>

G. *Judicial Discipline, Removal, and Retirement: The Complements of Judicial Selection and Tenure*

A seventh facet of judicial management consists of judicial discipline, removal, and retirement. One may explore these three deeply entwined subjects for the same reason that one treated the various modes of judicial selection and tenure: the presumed linkage between the quality of judges and the quality of court management.<sup>184</sup> However, whereas the literature on the sixth facet is extensive,<sup>185</sup> scholarly interest in this last aspect has grown only since 1960.<sup>186</sup> Only the American Judicature Society has given much consideration to the latter.<sup>187</sup>

The subject of judicial discipline and removal consists of three main issues. One is the determination of precise criteria for evaluating judicial conduct. A corollary to this issue centers on which agency should set these standards—the state supreme court, judicial councils, judicial conferences, judicial qualifications commissions, the legislature, or bar associations.<sup>188</sup> Moreover, according to Richard A. Watson and Rondal G. Downing, “A search of the literature indicates that very few attempts have been made to develop methods of measuring judicial performance.”<sup>189</sup> Only within the last few years have some empirical criteria for such measurement been suggested—such as the percentage of lower-court decisions affirmed or reversed wholly or partly on appeal, the volume

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181. GROSSMAN, *supra* note 178, at 197.

182. *The Judiciary*, *supra* note 52, at 119.

183. COURT ADMINISTRATORS, *supra* note 142, at 2-4.

184. A. VANDERBILT, *supra* note 49, at 3.

185. See notes 177-80 *supra*.

186. AM. JUDICATURE SOCIETY, JUDICIAL DISCIPLINE AND REMOVAL, Rep. No. 1, 5, 22-23 (1969).

187. AM. JUDICATURE SOCIETY, JUDICIAL RETIREMENT AND DISABILITY COMMISSIONS 1-2 (1969).

188. SELECTED READINGS, *supra* note 49, at 28-29.

189. R. WATSON & R. DOWNING, *supra* note 179, at 273.

of cases handled, judicial election returns, and bar-association evaluations.<sup>190</sup>

A second issue focuses on increasing the methods of removing judges apart from the traditional, cumbersome devices of impeachment, address, and recall. In many instances a judge may be incompetent rather than criminally culpable. Since 1947, the salient trend in the states has been to add one of the following two devices: courts on the judiciary or judicial qualifications commissions.<sup>191</sup> Under the former, appellate and trial court judges probe into charges of misconduct on the bench. So far twelve states have adopted this measure. (See Figure 7.) Under the latter, commissions of judges, lawyers, and laymen perform the same function. Eighteen states have set up such commissions with such measures under legislative consideration in fourteen other states.<sup>192</sup> (See Figure 7.) If the former trend continues at the rate of the last twenty-three years, all the states will achieve this remedy by 2043.<sup>193</sup> However, if the latter trend prevails, each state will have established a judicial qualifications commission by 2011.<sup>194</sup>

A third issue gravitates around methods of disciplining judges short of removal. Proposed causes for such discipline include indolence, refusal to carry out standard rules of procedure, inefficient use of court time, failure to submit accurate output reports, arrogant conduct, and failure to render a decision shortly after a trial. Some suggested sanctions have involved reassignment, private reprimand, public reprimand, and temporary suspension without pay. Moreover, there is no consensus on who should apply these proposed forms of judicial punishment.<sup>195</sup> Furthermore, judicial retirement when separated from discipline and removal, has encompassed three main problems: a mandatory retirement age for judges, possible uses of retired judges, and the adequacy of pension plans.<sup>196</sup>

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190. *Id.* at 274-77.

191. *See* notes 186-87 *supra*.

192. *Id.*

193. This projection was calculated as follows: 12 states/23 years equals 38 remaining states/X. X equals 73. 1970 plus 73 = 2043.

194. This projection was calculated as follows: 18 states/23 years equals 32 remaining states/X. X equals 41. 1970 plus 41 = 2011.

195. *See* note 188 *supra*.

196. *Id.* at 30.

Figure 7

## Methods of Judicial Removal in the States

Methods	Number of States
(1) Impeachment	47
(2) Address	28
(3) Recall	6
(4) Courts on the Judiciary	12
(5) Judicial Qualifications Commissions	18
(6) Special Commission for Involuntary Retirement	5

SOURCE: Based on AMERICAN JUDICATURE SOCIETY, REPORT No. 5, JUDICIAL DISCIPLINE AND REMOVAL, at 22-23 (1969).

To close this section, one may note that California has given attention to this facet of judicial management mainly by establishing a Commission on Judicial Qualifications in 1960.<sup>197</sup> The state constitution empowers this Commission to ask the state supreme court to suspend, retire, censure, or remove a judge if he pleads or is found guilty of a federal or state felony; reveals a serious disability in the performance of his duties; exhibits deliberate official misconduct, persistent nonfeasance, continued intemperance or conduct reflecting adversely on his office.<sup>198</sup> The last stipulation was added to the California Constitution in 1966.<sup>199</sup> The Commission has a non-partisan public appearance because it consists of five judges, which the state supreme court has appointed from three lower courts (courts of appeal, superior courts, and municipal courts); two attorneys appointed by the Board of Governors of the California Bar Association; and two laymen selected by the governor with state senate approval.<sup>200</sup> Since 1961, when the Commission began operations, it has made only one recommendation for the removal of a judge—Charles F. Stevens, then a municipal court judge in San Diego.<sup>201</sup> Without explanation the highest state court in 1964 reversed this recommendation in a per curiam opinion.<sup>202</sup> In 1968 (the latest year for which public information is available), the Commission received 132 complaints and considered forty-eight of them worthy of investigation. That year the Commission found

197. AM. JUDICATURE SOCIETY, JUDICIAL RETIREMENT AND DISABILITY COMMISSIONS AND PROCEDURES 187, Cal. sec. at 1; JUDICIAL COUNCIL, *supra* note 168, at 86-88.

198. CAL. CONST. art. VI, §§ 8, 18 (1879).

199. *Id.* at § 18.

200. See U.S. NEWS, *supra* note 1, at 11.

201. COOK, *supra* note 68, at 56.

202. Stevens v. Commission, 61 Cal. 2d 886, 39 Cal. Rptr. 397, 393 P.2d 709 (1964).

no basis to recommend censuring, retiring, or removing any of the 1,030 judges under its jurisdiction.<sup>203</sup> These statistics imply that either the judges in this state are overwhelmingly competent and honest or that the Commission functions mainly to deflect and defuse complaints against judges. Because of the uncontested high public esteem in which the state judiciary is held,<sup>204</sup> the former explanation is more plausible to the author.

#### *H. Judicial Organizations: An External View*

The first seven facets of judicial management have centered on the internal components of this field. Examination of these aspects implies that they are about hermetically sealed from the outside environment of two other organizations: the police and the correctional agencies. Judicial organizations constitute one segment of a tripartite justice system. Because these three kinds of organizations interact pervasively, one must view state trial courts not only internally but also externally in order to understand better why they are faltering bureaucracies. Therefore, under an eighth facet of judicial management, one must consider whether state trial court bureaucracies can co-ordinate their work with the rest of the justice system.

During the last two years there have been at least four notable public appeals for such co-ordination. The first came, in 1968, from the President's Commission on Law Enforcement and the Administration of Justice, which commented:

The criminal justice system has three separately organized parts—the police, the courts, and corrections—and each has distinct tasks. However, these parts are by no means independent of each other. What each one does and how it does it has a direct effect on the work of the others. The court must deal, and can only deal, with those whom the police arrest; the business of corrections is with those delivered to it by the courts. How successfully corrections reforms convicts determines whether they will once again become police business and influences the sentences the judges pass; police activities are subject to court scrutiny and are often determined by court decisions. And so reforming or reorganizing any part or procedure of the system changes other parts or procedures. . . . A study of the system must begin by examining it as a whole.<sup>205</sup>

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203. See U.S. NEWS, *supra* note 1, at 13.

204. COOK, *supra* note 68, at 54.

205. PRESIDENT'S COMM'N, *supra* note 38, at 71. See also G. SCHUBERT, JUDICIAL POLICY-MAKING 105-07 (1965).

The second public call emanated from the National Commission on the Causes and Prevention of Violence, which, as previously noted, condemned the inefficiency of the systemic disarray by remarking:

It is commonly assumed that . . . three components—law enforcement (police, sheriffs, marshalls), the judicial process (judges, prosecutors, defense lawyers) and corrections (prison officials, probation, and parole officers)—add up to a system of criminal justice.

A system implies some unity of purpose and organized interrelationship among component parts. In the typical American city and state, and under federal jurisdiction as well, no such relationship exists. There is, instead, a reasonably well-defined criminal process, a continuum through which each accused offender may pass: from the hands of the police, to the jurisdiction of the courts, behind the walls of a prison, then back on to the street. The inefficiency, fall-out and failure of purpose during this process is notorious.<sup>206</sup>

The third was Chief Justice Burger's recent speech to the American Bar Association, where he furnished an example of poor systemic co-ordination:

[T]he system of justice must be viewed as a process embracing every phase from crime prevention at the beginning through arrest, trial and the correctional system. We can no longer limit our responsibility to providing defense services for the judicial process alone and yet continue to be miserly with the needs of correctional-institution probation and parole system.<sup>207</sup>

The fourth appeal emanated most recently from criminologist Robert Carter, who pinpointed some critical systemic deficiencies:

[T]here is no single system of criminal justice in the United States . . . .<sup>208</sup>

[O]ur systems of criminal justice are fragmented non-systems . . . tied together by the processing of an increasing number of criminal offenders. . . . In any event, overall, the non-systems are marked by an unequal quality of justice, inadequate fiscal and manpower resources, shortages in equipment and facilities, lack of relevant research and evaluation to provide some measure of effectiveness and, until recently, a general indifference . . . on the part of the public which the systems were designed to serve.<sup>209</sup>

Although Carter was explicitly discussing only the criminal justice system, his analysis readily extends to the civil litigation and en-

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206. FINAL REPORT OF THE PRESIDENT'S COMM'N ON THE CAUSES AND PREVENTION OF VIOLENCE 128 (1968) [hereinafter cited as FINAL REPORT].

207. See U.S. NEWS, *supra* note 1, at 71.

208. Carter, A System for the Non-system of Criminal Justice, (unpublished monograph) at 1 [hereinafter cited as Carter]. A copy of this monograph was given to the author by Dr. G. Thomas Gitchoff, Assistant Professor of Public Administration and Urban Studies at San Diego State College.

209. *Id.* at 2.

forcement; for criminal and civil matters are inextricably linked.<sup>210</sup>

So far only one tentative proposal for achieving such co-ordination has publicly emerged from these appeals. The President's Commission on the Causes and Prevention of Violence recently suggested the establishment of a criminal justice office at the state and federal levels. It offers the following rationale for this recommendation:

The pervasive fragmentation of police, court and correction agencies suggest that some catalyst is needed to bring them together. An assumption that parallel and overlapping public agencies will co-operate efficiently can no longer suffice as a substitute for deliberate action to make it happen in real life. . . .

Whatever its form, the basic purposes of the criminal justice office would be to do continuing planning, to assure effective processing of cases, and to develop better functioning relationships among the criminal justice sub-systems and with public and private agencies outside the criminal justice system.<sup>211</sup>

More specifically, such an office would perform several functions—such as devising methods of reducing police time spent in state trial courts, garnering information for determining the advisability of pre-trial releases for defendants, and inducing prosecutors and defense attorneys to expedite trials.<sup>212</sup> In addition, such an office might help to effectuate uniform sentencing procedures for the same offenses<sup>213</sup> and might administer victim compensation programs.<sup>214</sup>

Such an office, at the local level, could occupy one of two possible bureaucratic positions. First, it could operate as a mayoral staff agency. However, in this position such an agency would probably be ineffective unless mayors were granted substantial co-ordinating powers which they could exercise through this agency. Second, it could function as a line agency under the supervision of a highly placed local official (such as a director of public safety) or under the aegis of a committee, which would consist of police, court, cor-

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210. JAMES, *supra* note 123, at 244.

211. See FINAL REPORT, *supra* note 206, at 137-38.

212. *Id.* at 138.

213. Mapes, *Unequal Justice: A Growing Disparity in Criminal Sentences Troubles Legal Experts*, *The Wall Street Journal*, Sept. 9, 1970, at 1, 13 [hereinafter cited as Mapes].

214. W. Pinkerton, Jr., *Hiding the Innocent: More States Award Cash Compensation to Victims of Crime*, *The Wall Street Journal*, Aug. 26, 1970, at 1, 16.

rectional, political, and private interests. Such a committee might delegate much of its power to a chairman in order to work more efficiently.<sup>215</sup>

The need for such co-ordination is becoming more exigent. For instance, a research group at the University of Southern California has predicted that the justice system in Los Angeles County will cease to function by 1985. The trial court system of this county has been plagued with growing congestion for the last five years.<sup>216</sup> This prediction rested on three assumptions. First, the trend in the 1960-1968 crime rates for the county remains unchanged. Second, the population growth of this county continues at the same rate for this eight-year period. Third, the intake of offenders by the system remains the same. The computer analysis of this data yielded this prediction for Los Angeles County.<sup>217</sup> Moreover, an adjacent county, Orange, may be approaching the same predicament partly because of its judicial congestion.<sup>218</sup>

Carter, who is also a member of this group, implies that an office of justice or another co-ordinating agency in this area can function more efficiently if it takes at least four steps. First, it constructs a meticulous flow chart of the justice system.<sup>219</sup> Second, it identifies the input rates of people into the system and the transfer of people from one segment (or decision-point) of the system to another.<sup>220</sup> Third, it must uncover the variables which operate on both rates—such as police arrest policies, bail procedures, sentencing orientations,<sup>221</sup> and probation department rules. Fourth, an agency must be empowered to change these rates, if necessary, after they have been discovered.<sup>222</sup>

So far no state or locality has attempted to superintend the interlocking elements of the criminal justice system, although such co-ordinative efforts in two California Counties (Los Angeles and Orange) are beginning.<sup>223</sup> In California, one may speculate about

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215. See FINAL REPORT, *supra* note 206, at 137.

216. See e.g., Lawson, *Court Efficiency*, 40 CAL. ST. B.J. 22-29 (1965); Nix, *Civil Court Congestion in the Superior Court of California for the County of Los Angeles*, 55 GEO. L.J. 1018-29 (1967); Nye, *New Approach to an Old Problem: Congestion in Our Courts*, 45 LOS ANGELES B. BULL. 325 (1970).

217. Los Angeles Times, Sept. 13, 1970, § B at 1, 4. The members of this research group are Alex McEachern, Robert M. Carter, Harvey Adelman, and J. Robert Newman.

218. Los Angeles Times, Sept. 11, 1970, pt. 2, at 1.

219. Carter, *supra* note 208, at 2-3.

220. *Id.* at 4.

221. Mapes, *supra* note 213, at 1, 13.

222. Carter, *supra* note 208, at 6.

223. R. MYREN, *EDUCATION IN CRIMINAL JUSTICE* 25-26 (1969); Kramer,



several possible routes to this objective. First, county boards of supervisors might be authorized to co-ordinate the work of the criminal justice system by control over the finances and personnel of these segments. Second, the powers of the Judicial Council might be extended from the courts to the police and correctional agencies of the state and might also include overseeing the criminal justice operations of the county boards of supervisors. However, both proposals may not be politically feasible at this time because the city police departments, the county sheriff departments, the Probation Department and the Youth Authority would almost certainly oppose and lobby against their loss of power through these reorganization plans. Third, what may be politically attainable is a criminal justice council with the highest statewide authority (subject to the legislature and the governor) and with ex officio representation from the various state and county agencies in the existing criminal justice system. To reduce the likelihood of unwieldiness, such a council could appoint a director and an assistant to him with wide latitude and with tenure of two or three years. This proposal may be more feasible because the existing criminal justice agencies will have a significant stake in it through their representatives. Moreover, such a council may help to mold and implement consensus in this area. This layering near the apex of this system may be an answer to the need for more co-ordination. However, extensive constitutional revision will be *sine qua non* for such a council.

#### IV.

##### THE PROSPECTS FOR JUDICIAL MANAGEMENT AT THE STATE TRIAL COURT LEVEL

Judicial management at the state level has remained a neglected sector of the legal profession despite its growing significance. At least three enduring factors may reduce this neglect: the sheer size of the state trial courts, the magnitude of their output, and their pervasive impact on public policy. Each factor has helped to publicize serious shortcomings in the operations of judicial organizations, especially at the state level. However, it is unlikely that most of these failures will be remedied because most of the dissatis-

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*Criminal Justice R & D: New Agency Stresses Police Over Corrections*, 166 SCIENCE 589 (1969); Los Angeles Times, Oct. 2, 1970, pt. 2, at 8.

faction is exhibited by segments of the legal profession rather than by the general public.<sup>224</sup> For judicial management at this level, there are at least eight facets: court organization (or consolidation); abolition of fee offices; judicial leadership; court congestion; judicial staff functions; judicial selection and tenure; judicial discipline, removal, and retirement; and judicial co-ordination. In considering the prospects for judicial management, especially at the state level, let us center on four issues: its relation to the salient goals of a judicial system, its cohesion as a discipline, its research agenda, and recommendations for interim actions.

#### A. *Salient Goals of a Judicial System*

These eight facets of judicial management have often been examined as if they were simply technical devices and ends in themselves.<sup>225</sup> Moreover, scholars have neglected to explore possible relationships between these facets and the general goals of a judicial system, although they have written about each area separately.<sup>226</sup> There is a general consensus among academicians that a judicial system operates to achieve at least eight principal overlapping goals:<sup>227</sup>

1. The formulation and enforcement of common morality
2. Impartiality in such enforcement
3. Efficiency (or competence) in such enforcement
4. Preservation of substantial individual liberty
5. Limiting the scope of lawful governmental conduct
6. Peaceful resolution of differences among competing interests in society
7. Order (or stability)
8. Promotion of the social welfare

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224. JACOB, *supra* note 24, at 203.

225. See notes 49, 50, 216 *supra*.

226. *Id.* For some sources focusing on the general goals of a judicial system, see B. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 67, 72 (1921) [hereinafter cited as B. CARDOZO]; D. EASTON, *A SYSTEMS ANALYSIS OF POLITICAL LIFE* 264-65 (1965); L. FULLER, *THE LAW IN QUEST OF ITSELF*, 135, 137 (1940); L. FULLER, *THE MORALITY OF LAW* 41-94 (1964); H.L.A. HART, *LAW, LIBERTY AND MORALITY* 1-6 (1963); H.L.A. HART, *PUNISHMENT AND RESPONSIBILITY: ESSAYS IN THE PHILOSOPHY OF LAW* 2 (1968); Herndon, *The Role of the Judiciary in State Political Systems*, *JUDICIAL BEHAVIOR: A READER IN THEORY AND RESEARCH* 156, 158 (G. Schubert ed. 1964); JACOB, *supra* note 24, at 17-25; Meek, *The Distribution of Justice*, KLONESKI & MENDELSON, *supra* note 24, at 20-24; E. SCHUR, *LAW AND SOCIETY* 17, 152 (1968); SKOLNICK, *supra* note 35, at 313-26.

227. See note 226 *supra*.

The first five goals were enumerated in a descending order of abstraction—from general to specific. The last three goals are probably by-products of accomplishing the first five. Recently Herbert Jacob succinctly interrelated most of these goals; for he commented:

The administration of justice is essential to an ordered society. What is generally meant by administration of justice is that norms are enforced in an even-handed way so that the same standards are applied to all citizens. Every society has norms of behavior that it enforces. . . . Ordinary citizens must be protected in their peaceable pursuits, yet they must be prevented from harming others. . . . The manner in which judges apply legal norms gives them an influential voice in molding the norms.<sup>228</sup>

A salient task facing scholars is to measure the extent to which the facets of judicial management help to realize the general goals of a judicial system. Despite a lack of empirical data specifying connections between these aspects and objectives, one may still speculate briefly about some possible nexes. For instance, court organization (or consolidation) is most likely to promote efficiency. The abolition of fee offices helps to achieve not only the same goal but also the peaceful resolution of differences. Judicial leadership contributes to the accomplishment of impartiality as well as efficiency. Devices for reducing trial court delay offer the same advantages as judicial leadership because the former constitutes a central function of the latter. Similarly, staffs (court administrator's offices) probably increase efficiency. Finally, the modes of judicial selection; the procedures for judicial discipline, removal, and retirement; as well as policies for co-ordinating the efforts of the courts, the police, and correctional agencies promote all these goals—probably in widely differing degrees.

#### *B. Judicial Management as a Discipline*

Two noted academicians Albert Somit and Joseph Tanenhaus, contend that a discipline has three main characteristics: a certain state of mind, a formal organization, and a gallery of notables.<sup>229</sup> By this definition, judicial management may qualify as a discipline. Its state of mind regards judicial organizations as essentially like

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<sup>228</sup> JACOB, *supra* note 4, at 17, 23.

<sup>229</sup> A. SOMIT & J. TANENHAUS, *AMERICAN POLITICAL SCIENCE: A PROFILE OF A DISCIPLINE* 2-6 (1964).

all other forms of bureaucracy and as merely another species of the same genus. Therefore, judicial organizations encounter the same kinds of interrelated problems facing other public as well as corporate organizations—such as specialization; delegation; unity of command; span of control; layering; different bases for organization (purpose, process, place, and clientele); staff functions; budgeting; work measurement; data processing; personnel selection; leadership; and human relations. Judicial management also possesses two kinds of formal organizations. One kind consists of a body of knowledge with regard to its eight principal facets. The other kind consists of associations unique to this area—such as the American Judicature Society<sup>230</sup> and the Institute of Judicial Administration.<sup>231</sup> Finally, this field contains a gallery of notables—such as Roscoe Pound, the first prominent exponent of court consolidation;<sup>232</sup> Arthur T. Vanderbilt, the first chief justice to manage a statewide consolidated court system;<sup>233</sup> Albert M. Kales, an innovator in judicial selection;<sup>234</sup> Glenn R. Winters, a thorough chronicler of this field for the American Judicature Society;<sup>235</sup> and a series of scholars who impressionistically or empirically illuminated the many ramifications of judicial decision-making: Benjamin Cardozo,<sup>236</sup> Jerome Frank,<sup>237</sup> Rodney Mott,<sup>238</sup> Charles Herman Pritchett,<sup>239</sup> Glendon Schubert,<sup>240</sup> John Schmidhauser,<sup>241</sup> S. Sidney Ulmer,<sup>242</sup> Stuart S. Nagel,<sup>243</sup> Walter F. Murphy,<sup>244</sup> Joseph Tanenhaus,<sup>245</sup> Hans Zeisel,<sup>246</sup> and Maurice Rosenberg.<sup>247</sup> Judicial management may have enough of each characteristic to be called a discipline. It certainly qualifies as a significant sector of the legal profession.

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230. The American Judicature Society, 1155 E. 60th St., Third Floor, Chicago, Ill., 60637.

231. The Institute of Judicial Administration, New York University, 40 Washington Square South, New York, N.Y. 10012.

232. Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 46 J. AM. JUD. Soc'y 62-63 (1962).

233. VANDERBILT, *supra* note 77, at 13; N.J. CONST. art. VI, § 1 (1948).

234. KALES, *supra* note 161, at 245-47.

235. SELECTED READINGS, *supra* note 49, at 71-82.

236. B. CARDOZO, *supra* note 226, at 19-25.

237. J. FRANK, *LAW AND THE MODERN MIND* 108-26 (1963); FRANK, *supra* note 22, at 316-25.

238. Mott, *Judicial Influence*, 30 AM. POL. SCI. REV. 295-315 (1936).

239. C. PRITCHETT, *THE ROOSEVELT COURT: A STUDY IN POLITICS AND VALUE 1937-1947* at 32-45, 89, 242-63 (1948).

240. G. SCHUBERT, *THE JUDICIAL MIND* 273-88 (1965).

241. J. SCHMIDHAUSER, *THE SUPREME COURT: ITS POLITICS, PERSONALITIES, AND PROCEDURES* 30-59 (1960).

242. Ulmer, *An Analysis of Behavior Patterns on the United States Supreme Court*, 22 J. POL. 629-53 (1960).

243. See notes 164, 180 *supra*.

### C. *A Research Agenda*

The neglect of judicial management by legal scholars implies that the research agenda for this sector is substantial, even the widespread establishment of court administrator's offices facilitates such research. Let us briefly review the research agenda for the eight main facets of this speciality.

In the area of court consolidation, the prime task of legal scholars is to measure its impact, if any, on trial court congestion. Researchers will encounter difficulty in isolating such consolidation from other variables—such as improved leadership, better staffs, more personnel, and more facilities. Scholars may want to compare the perceptions of judges, lawyers, and law professors about the efficacy of such consolidations with the objective data on the caseloads. Survey and statistical research will be most helpful in this area.<sup>248</sup>

In the area of fee offices, researchers face two main tasks: to measure the extent to which these offices contribute to trial court congestion and to compare the costs of a fee-office system with those of a consolidated court structure in order to determine the relative worth of each one. The research techniques applicable to the area of court consolidations are also germane to this area.<sup>249</sup>

In the area of judicial leadership, scholars confront the largest number of major tasks with the widest number of research instruments. At least six main research problems loom: to delineate empirically the functions of the judicial executive, to compare his functions with those of other executives, to determine leadership styles, to analyze the efficacy of various managerial strategems, to explore further the nature of judicial decision-making in the handling of cases and managerial problems, and to compare the decision-making processes of judges with those of other executives.<sup>250</sup> The composite of methodologies germane to the other two

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244. W. MURPHY, *THE ELEMENTS OF JUDICIAL STRATEGY* 122 (1964).

245. Tanenhaus, *The Cumulative Scaling of Judicial Decisions*, 79 HARV. L. REV. 1583-94 (1966).

246. See note 136 *supra*.

247. See notes 113, 134, 136 *supra*.

248. H. EULAU, *THE BEHAVIORAL PERSUASION IN POLITICS* 33-34 (1963).

249. *Id.*

250. Tanenhaus, *Supreme Court Attitudes toward Federal Administrative*

areas are also useful in this area along with two other approaches: the participant-observer technique and case studies.<sup>251</sup>

In the areas of judicial congestion, investigators face two difficult problems: first, to formulate a universal, operational definition of delay in order to make possible the comparison of backlog data from the numerous trial court jurisdictions and, second, to test the numerous proposed solutions or palliatives for such delay under rigorous, laboratory conditions in order to measure the effectiveness of each proposal. Theoretically, most experimental designs would make such testing possible.<sup>252</sup> However, Zeisel and his colleagues perceive what is probably an insurmountable barrier to this approach; for they comment:

The most precise way of measuring the differential effects of alternative solutions for an administrative problem is the controlled experiment. Since it involves the inclusion of randomly selected cases in the experiment, and the exclusion of others, the official legal experiment poses a problem of equal treatment under the law.<sup>253</sup>

Therefore, in lieu of such experimentation, researchers may have to rely on such surrogates as simulations, participant-observer work, and survey research.<sup>254</sup>

In the area of staff functions, the primary task of scholars is to examine the interactions of the formal judicial leadership and court administrators in order to ascertain whether the latter is assuming de facto leadership because of expertise and indispensability. If a judicial technostructure exists, a second task will result: to compare it with other technostructures. In this area the most helpful techniques may be simulations and case studies.<sup>255</sup>

In the area of judicial selection and tenure, the central problem for researchers is to measure the inputs and outputs of each selection and tenure system. More specifically, scholars will have to correlate each mode of selection and tenure with at least fifteen other salient variables: the formal qualifications of judges, their

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*Agencies, 1947-56—an Application of Social Science Methods to the Study of the Judicial Process*, 14 VAND. L. REV. 473-502 (1961) [hereinafter cited as Tanenhaus]; Lindblom, *The Science of Muddling Through*, 19 PUB. ADMIN. REV. 79-88 (1959) [hereinafter cited as Lindblom].

251. J. SKOLNICK, *JUSTICE WITHOUT TRIAL: LAW ENFORCEMENT IN A DEMOCRATIC SOCIETY* 30-41 (1967).

252. F. KERLINGER, *FOUNDATIONS OF BEHAVIORAL RESEARCH* 275-355 (1964); ROSS & SMITH, *Orthodox Experimental Designs*, *METHODOLOGY IN SOCIAL RESEARCH* 352-63 (H. Blalock & A. Blalock eds. 1968).

253. ZEISEL, KALVEN, & BUCHHOLZ, *supra* note 114, at 241.

254. *See* notes 251-53 *supra*.

255. Tanenhaus, *supra* note 250, at 473-75.

informal qualifications, their social backgrounds, their ideological proclivities, their ethnicity, their party identification, their pressure-group connections, their pre-judicial employment, their outputs, their ages, their education, their urbanism, their regionalism, turnover rates, and their decision-making modes. Among the methodologies applicable to this area are factor analysis, Gutman, correlations, and simulations.<sup>256</sup>

In the area of judicial discipline, removal, and retirement, scholars confront three prime issues: formulating empirical criteria for measuring judicial conduct, gauging the effectiveness of the various devices for removing judges from office, and determining the efficacy of the numerous disciplinary options short of removal. The methodologies applicable to the previous area also fit this one.<sup>257</sup>

In the area of judicial co-ordination, researchers probably face the most serious difficulties because they must examine not merely one kind of organization (courts) but also two other types (police and corrections). At least four principal issues loom: the flow of cases through the criminal justice system, input rates for and transfer rates within the system, the ascertainment of rate determinants, and the enumeration of managerial strategies for efficient interventions in this system.<sup>258</sup> Among the methodologies applicable to this area are survey and statistical research, the participant-observer technique, correlations, factor analysis, and simulations.<sup>259</sup>

Finally, among the areas for further research in judicial management are the following three: ecology, systems, and small groups. Ecology confronts investigators with at least two main problems: to measure the impact of intra- and extra-cultural forces on judicial organizations and to compare such entities cross-culturally.<sup>260</sup> Systems entails the study of judicial organizations as circuits with inputs, outputs, and feedback and as inputs or out-

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256. See notes 250-52 *supra*.

257. *Id.*

258. Carter, *supra* note 208, at 1-10.

259. See notes 135-38 *supra*.

260. See, e.g., M. GLUCKMAN, *THE JUDICIAL PROCESS AMONG THE BAROTSE OF NORTHERN RHODESIA* 357-66 (1955); P. BOHANNON, *JUSTICE AND JUDGMENT AMONG THE TIV* 208-14 (1957); Ayoub, *Review: The Judicial Process in Two African Tribes*, *COMMUNITY POLITICAL SYSTEMS* 237-50 (M. Janowitz ed. 1961).

puts of a larger system. For these two overlapping areas, survey research, simulations, and participant-observer techniques are among the relevant methodologies.<sup>261</sup> Small group research focuses on the informal norms and sanctions governing the behavior of judges. Even though small group research entails study at a microlevel rather than at the macrolevel of the other two areas, the methodologies overlap.<sup>262</sup>

#### D. *The Efficacy of Some Interim Recommendations*

For at least two significant reasons one may question the desirability of making interim recommendations regarding the eight principal facets of judicial management, especially at the state trial court level. First, the research agenda for this field is so extensive that it is unlikely to be finished within the next decade. Moreover, this slowness will probably continue despite the vastly increased expenditures for this field by such recently created agencies as the Law Enforcement Assistance Administration and the Urban Observatory at the national level and the California Council on Criminal Justice at the state level. Even if much money is available, two questions arise: Can judicial organizations have the necessary research done for them? Are there scholars who are willing and able to conduct such investigations? Because this field is not yet well known, the answer to both questions for the next few years may be negative. Second, recommendations in this area may become readily outmoded. For instance, the author made a series of projections based on the continuation of current trends: consolidation without central management in all the states by 1997, consolidation with such management by 2018, the abolition of all fee offices by 1985, the establishment of court administrator's offices in all states by 1985, the adoption of the Kales plan in all states by 2052, the creation of courts on the judiciary in each by 2043, and the establishment of judicial qualifications commissions in such states by 2011. However, despite these trends, the criminal justice system in Los Angeles County may grind to a halt by 1985 if the current trend holds. These projections raise questions whether the judicial management problems may outstrip the solutions that have so far been proposed and whether these suggestions are far too narrow and technical to alter this system much. Furthermore, since these projections focus on the efficacy of long-term remedies, which may be dubious, will not the enumeration of interim recommendations be even more tangential?

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261. Tanenhaus, *supra* note 250, at 473-75.

262. *Id.*; Nagel, *Sociometric Relations among American Courts*, 43 Sw. Soc. Scr. Q. 136-42 (Sept. 1962).



The author believes that the answer to the last question is negative for at least three reasons. First, as the sections of this article indicate, much is already known about the facets of this discipline even though that knowledge may constitute only a pittance of what scholars should have ascertained. Second, even though the research agenda may remain unfinished for the near future, judicial executives and their staffs—along with police and correctional officials—must still make continual salient decisions, often with little or no data available to them. Even no decision would be a decision to perpetuate the fragmented judicial status quo.<sup>263</sup> Judicial decision-making is inescapable even in an informational vacuum. Third, the trends of the fifteen years for the adoption of the above programs by the states may accelerate considerably as the urgency of judicial management problems begins to seep through the wall of public neglect. Therefore, let us conclude this article by listing some interim recommendations for buttressing this field:

1. In the writer's view the states must consolidate their court systems with central management as soon as possible. Those states like California which have achieved only partial consolidation must soon consummate it by supplanting the Superior, Municipal, and Justice Courts with a single trial court (such as a circuit court) with exclusive, comprehensive, original jurisdiction within each county. This mode of consolidation may be more feasible than the alternative method of having one court (such as the Superior Courts) absorb the functions and personnel of the remaining courts.

2. An integral concomitant of such consolidation is the abolition of fee offices and the absorption of their personnel into a unified system. In California justice court officials might be kept as magistrates in consolidated trial courts. Such a proposal might mitigate their opposition to the elimination of their tribunals.

3. All consolidated trial courts need presiding or chief judges to serve as court managers. A fully consolidated system in California would require the continuation of such executives.

4. Such a unified court system would need to experiment with the numerous delay-reducing proposals which Zeisel empirically studied in the Supreme Court of New York County (Manhattan)

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<sup>263</sup>. See Lindblom, *supra* note 250, at 79-88; SIMON, *supra* note 80, at 97-99; KAYLES, *supra* note 161, at 210-11, 217-18.

during the late 1950's. His study needs replication in most large-city trial court jurisdictions in order to ascertain the feasibility of these suggestions in differing locales. In California, such studies would have to be conducted in its largest cities: Los Angeles, San Diego, and San Francisco.

5. The remaining fifteen states should adopt a court administrator's office as a source of judicial expertise and as an incipient step in the formation of judicial technostructures, especially at the trial court level. In California the Judicial Council and its Administrative Office satisfy this requirement.

6. The states should enact the Kales plan of judicial selection and tenure in order to insulate them further from partisan politics. In California the integrated bar and Governor Ronald Reagan, with their merit plan, have pressed for this change.

7. The remaining states should establish judicial qualifications commissions in order to retire, remove, or discipline senile, corrupt, and incompetent judges, especially at the trial court level. California has followed this suggestion.

8. The states must seek to integrate their entire criminal justice systems by placing the courts, police departments, and correctional agencies under central direction. Judicial consolidation is a prerequisite for criminal justice consolidation. The police and correctional agencies may need statewide unification before the larger reorganization becomes possible. Such criminal justice unification may be most politically feasible if it operates as a council with *ex officio* members from the various state and county organizations in this field and with a director and assistant director. So far no state, including California, has publicly considered such coordinating steps. Finally, to achieve such a program within the next decade, intensive public sponsorship by governors, both parties, the state and local bar associations, and the press will be a requisite for assembling the will, the money, and the expertise that are also critical concomitants. If such a political and legal consensus does not emerge within the next decade, Chief Justice Burger's fear of an impending breakdown in the federal criminal justice system<sup>264</sup> may occur first at the state level. At that juncture an odyssey into the state trial courts will be too late for these bureaucracies will have faltered completely.

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264. See U.S. NEWS, *supra* note 1, at 68.