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A TAXONOMY OF STATE COURT PERSONNEL MANAGEMENT†

JAMES A. GAZELL*

EMERGING PROBLEMS, PROTOTYPES AND PROPHECIES

Decentralization of [the] courts [in the states] was carried so far in the last century that the clerks were made independent functionaries, not merely beyond effective judicial control, but independent of any administrative supervision and guided only by legislative provisions and limitations. No one was charged with supervision of this part of the work of the courts. It was no one's business to look at it as a whole, seek to find how to make it more effective and to obviate waste and expense, and promote improvement. There is much unnecessary duplication, copying and recopying, and general prolixity of records in the great majority of our courts. In the clerical no less than on the judicial side most of our courts are like Artemus Ward's proposed military company in which every man was to be an officer and the superior of every other. The judiciary is the only great agency of government which is habitually given no control of its clerical force. Even the pettiest agency has much more control than the average state court.¹

This comment, made long ago by the eminent legal scholar Roscoe Pound, is significant in at least three respects. First, his statement concerned not only judicial and clerical personnel but also all court-related or supportive employees. Second, it described the condition of judicial personnel management in most states, a situation that did not begin to change until recently. Third, it foresaw the growing importance that such management has assumed. This area has become highly significant because it is a part of a much larger movement that Pound advocated: the unification of trial courts under the direction of the highest state tribunal, its chief justice, or a judicial council. This trend consists of at least four segments: the right of the highest state court to make rules for the entire judicial system, the authority of this body to assign judges and court-related employees temporarily from one bench to another,

† Much of the research material which went into the preparation of this article is the product of personal correspondence between the author and the several offices of state court administration throughout the United States. Complete copies of these documents are on file at the School of Public Administration and Urban Studies, San Diego State University, San Diego, Cal. 92182.

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¹ Pound, *Principles and Outline of a Modern Unified Court Organization*, 23 J. AM. Jud. Soc'y 225, 230 (1940).

the power to formulate a single budget for the entire judiciary, and the right to establish and maintain a court personnel system.²

Although each of these facets is large enough to warrant separate consideration, this article primarily concerns itself with a taxonomy of court personnel systems at the state level. This particular aspect of judicial administration is considered from the following perspectives: (1) a review of some salient *judicial* personnel problems; (2) an exploration of some important matters affecting *court-related* employees; (3) an examination of centralized court personnel prototypes recently suggested for adoption in three populous states (California, New York, and Michigan); and (4) some tentative concluding prophecies on this subject. While directed principally at judges and court executives, this paper should equally be of interest to lawyers in general. The material presented is based on data gathered between 1965 and 1974 from a variety of sources, including Ernst and Ernst, the Institute of Judicial Administration, the American Judicature Society, and the court administrators' offices in thirty-seven of the fifty states.

SALIENT PROBLEMS: JUDICIAL PERSONNEL

A canvass of the published research into judicial personnel administration at the state level discloses a scarcity of information³—a remarkable situation when compared with the flood of data available on such related subjects as state court unification and financing. This paucity will probably terminate as numerous states undertake investigations that may result in the establishment of judicial personnel systems.⁴ Nevertheless, sufficient public information exists to analyze this subject.

Such a study entails a consideration of judicial and nonjudicial employees at the appellate and trial court levels. Experts in court administration have reached general agreement on a variety of important issues.

1. With regard to the scope of this emerging area, the consensus is that judicial employees fall under these rubrics: chief (or presiding) judges, judges, and subordinate officials, such as commissioners, magis-

² ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE-LOCAL RELATIONS IN THE CRIMINAL JUSTICE SYSTEM 34, 207 (1971).

³ See generally NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, COURTS 178-79, 186 (1973) [hereinafter cited as COURTS].

⁴ See From the State Capitals, Feb. 26, 1973-Oct. 28, 1974 (newsletter, Bethune Jones, publ.) [hereinafter cited as State Capitals]; NATIONAL CENTER FOR STATE COURTS, COURT IMPROVEMENT PROGRAMS: A GUIDEBOOK FOR PLANNERS 233-59 (1972); France, *Judicial Administration: The Williamsburg Consensus—Some Errors and Omissions*, 14 WM. & MARY L. REV. 1-2 (1972).

trates, and referees who handle minor cases entrusted to them by chief judges.

2. Agreement extends to the functions that such personnel should perform. A chief judge ought to undertake adjudicative and administrative duties. The former embraces the disposition of cases, the latter, principally the assignment of cases to judges and the monitoring of court-related personnel. In heavily populated jurisdictions, it is generally thought that a chief judge should be a full-time administrator. The foremost examples of this practice are the Presiding Judge of the Superior Court of Los Angeles County, California, who has been a full-time administrator since 1958,⁵ and the Chief Judge of the Circuit Court of Cook County, Illinois, who has done parallel work since 1964.⁶

3. It is generally believed that judges ought to decide cases on a full-time basis and to make necessary preparations for this task. They should have no administrative functions.

4. Subordinate judicial personnel ought to handle only minor civil and criminal cases.

5. The mode of selecting such officials also reflects considerable agreement. It is generally believed that the chief justice of the state's highest court, with the approval of his colleagues, should appoint the chief judge for each trial court district.⁷ The preference for central direction is a concomitant of a unified state judicial system. However, some specialists (including some analysts for the Institute of Judicial Administration, the American Judicature Society, and the Institute for Court Management in Denver) have recently argued for the selection of this executive by his peers because, in their view, more effective judicial operations at this level require considerable decentralization and because trial judges are closer to local court problems and more competent to choose an effective leader.⁸

6. By contrast, there is considerably less dispute regarding the manner of selecting judges, for almost all experts favor the application of what is generally called the "merit plan" to each tier within a state judicial system. This approach contains three features: the state bar association's compilation of a list with qualified judicial candidates, the governor's filling of court vacancies with listed personnel for a term, and the requirement that appointees may serve another term

⁵ Gallas, *The Profession of Court Management*, 51 J. AM. JUD. SOC'Y 334 (1968).

⁶ 1965 CIRCUIT COURT OF COOK COUNTY, ESTABLISH JUSTICE: ANNUAL REPORT 4-5.

⁷ E.C. FRIESEN, M.D. GEIGER, G.C. KERSHAW, & P.S. LOPEZ, 1972 REPORT ON THE MANAGEMENT OF THE VENTURA COUNTY COURTS pt. 1, at 5 [hereinafter cited as VENTURA COUNTY COURTS]; Hall, *President's Page*, 56 JUDICATURE 356 (1973).

⁸ VENTURA COUNTY COURTS, *supra* note 7, at 5-6.

only if they are elected. In seeking continued tenure, they may run without opposition but must garner a majority of the voters to retain their position.⁹ This method of selection may soon be adopted in numerous states, for it has received governmental or voter consideration within the last two years alone in Alabama,¹⁰ Arizona,¹¹ Illinois,¹² Kansas,¹³ Kentucky,¹⁴ North Carolina,¹⁵ New Hampshire,¹⁶ New York,¹⁷ Pennsylvania,¹⁸ and Texas.¹⁹ So far fourteen states have adopted this plan while ten other jurisdictions use it on a voluntary basis.²⁰

⁹ 56 JUDICATURE 427 (1973).

¹⁰ Martin, *Alabama Approves Judicial Article, Pay Raise, in Eleventh Hour Vote*, 57 JUDICATURE 173 (1973).

¹¹ State Capitals, *supra* note 4, July 1, 1974, at 1-2.

¹² *Id.* Apr. 2, 1973, at 1-2; *id.* May 28, 1973, at 1-2.

¹³ *Id.* Apr. 1, 1974, at 1; *id.* Apr. 15, 1974, at 1.

¹⁴ 57 JUDICATURE 268 (1973); State Capitals, *supra* note 4, Apr. 8, 1974, at 1, 3-4.

¹⁵ State Capitals, *supra* note 4, Mar. 25, 1974, at 1.

¹⁶ *Id.* July 22, 1974, at 1-2.

¹⁷ *Id.* Jan. 7, 1974, at 2; *id.* Apr. 22, 1974, at 4.

¹⁸ *Id.* May 28, 1973, at 2-3; 57 JUDICATURE 171 (1973).

¹⁹ TEXAS HOUSE OF REPRESENTATIVES COMM. OF THE JUDICIARY, STREAMLINING THE TEXAS JUDICIARY: CONTINUITY WITH CHANGE 80 (1972).

²⁰ A detailed breakdown of those states which have adopted some form of the merit plan in judicial selection appears in the following chart derived and updated from 56 JUDICATURE 427, 428-29 (1973).

ADOPTION OF THE "MERIT" PLAN OF JUDICIAL SELECTION IN THE STATES

| Adopted | Voluntary | Not Adopted |
|---------------|------------------|--------------------|
| 1. Alabama | 1. California | 1. Arizona |
| 2. Alaska | 2. Georgia | 2. Arkansas |
| 3. Colorado | 3. Maryland | 3. Connecticut |
| 4. Florida | 4. Massachusetts | 4. Delaware |
| 5. Idaho | 5. New Hampshire | 5. Hawaii |
| 6. Indiana | 6. New Jersey | 6. Illinois |
| 7. Iowa | 7. New Mexico | 7. Kentucky |
| 8. Kansas | 8. New York | 8. Louisiana |
| 9. Missouri | 9. Ohio | 9. Maine |
| 10. Nebraska | 10. Wyoming | 10. Michigan |
| 11. Oklahoma | | 11. Minnesota |
| 12. Tennessee | | 12. Mississippi |
| 13. Utah | | 13. Montana |
| 14. Vermont | | 14. Nevada |
| | | 15. North Carolina |
| | | 16. North Dakota |
| | | 17. Oregon |
| | | 18. Pennsylvania |
| | | 19. Rhode Island |
| | | 20. South Carolina |
| | | 21. South Dakota |
| | | 22. Texas |
| | | 23. Virginia |
| | | 24. Washington |
| | | 25. West Virginia |
| | | 26. Wisconsin |

7. The consensus is that subordinate judicial officials should be appointed by the chief judge to serve at his pleasure.²¹

SALIENT PROBLEMS: COURT-RELATED PERSONNEL

Court-related personnel are all employees in the state judicial system other than judges. This category may be divided into two classes: supervisors and supportive employees.

Supervisory Personnel

A discussion of judicial supervisory personnel begins with the office of state court administrator, almost universally considered a prerequisite for a unified state judicial system. So far at least forty-one states have established this position as a staff agency to the state supreme court.²² This office, headed by an administrative director, is expected to perform four kinds of tasks: personnel management, financial administration, informational management, and secretarial functions. The first type of duty embraces the establishment of position classifications, recruitment, evaluation, promotion in-service training, and disciplinary procedures for all nonjudicial employees. The second function covers the preparation of the state judicial budget, its implementation, accounting, and auditing. The third facet entails the statewide promulgation and administration of uniform requirements for record keeping, information systems, and statistical compilations. The final task is secretarial work for the state judicial council (or conferences), especially the arrangement of meetings and the dissemination of periodic reports on judicial matters. The director is appointed by the chief justice of the state's highest court to serve at his or her colleagues' pleasure. To assist this official is a deputy, chosen in the same manner.²³

The next layer of supervisory offices is the trial court administrator and his deputy, chosen by the chief judge to serve at his pleasure. In addition to serving the state judicial administrator, their duties include five kinds of work: the management of the court calendar; the administration of staff services (the clerk of the court, courtroom clerks, bailiffs, court reporters, law clerks, secretaries, probation officers, court-affiliated caseworkers, and professionals such as doctors and psychologists); personnel, financial, and records administration; secretarial tasks

²¹ SELECT COMM. ON TRIAL COURT DELAY, 1972 REPORT 4, UNIFIED TRIAL COURT SYSTEM, CALENDAR MANAGEMENT 20-21 (California); BOOZ, ALLEN & HAMILTON, INC., CALIFORNIA UNIFIED TRIAL COURT FEASIBILITY STUDY 81-82 (1971).

²² 56 JUDICATURE 427, 428-29 (1973).

²³ ABA COMM'N ON STANDARDS OF JUDICIAL ADMINISTRATION, STANDARDS RELATING TO COURT ORGANIZATION § 1.41, at 75-77 (1973 Tentative Draft) [hereinafter cited as COURT ORGANIZATION].

for trial court judges; as well as liaison with the bar, the press, and local governmental agencies.²⁴

Furthermore, the presiding judges of intermediate appellate courts may, in like manner, choose an administrator and a deputy. However, personnel at this level are of secondary importance for the moment because only twenty-three of the states²⁵ have such a layer of courts. However, if most states eventually create such tribunals, one result will be a state judicial administrative structure modeled after what is sometimes called the "hospital plan," which has been advocated during the last few years most notably by the Chief Justice of the Supreme Court, Warren E. Burger.²⁶ Under this plan, court administrators and their deputies at the highest, middle, and trial court levels would provide and maintain the above services and facilities essential for judges to work effectively. Like doctors, judges would be free to devote their time to the work of their profession: adjudication and preparation for it. This proposal contrasts sharply with the present system of direct line supervision of judges by a chief judge.²⁷

However, within the "hospital plan" there is much room for varying degrees of centralization depending on who appoints the chief judges and court-related personnel at the appellate and trial court levels. Although thousands of judicial structural patterns are mathematically possible because of the variety of court-related positions at different levels in many localities, four models, shown in *Figure 1*²⁸ (overleaf), are discernible in the states along a centralization continuum.

1. The most common model is one of fragmentation, which contains several notable characteristics. At the appellate levels the chief judges, the administrator, and his deputies are appointed and directed by the members of the particular court. At the trial court level, the same pattern exists. Moreover, in the courts of original jurisdiction, the dispersion is much greater because some court-related positions (such as clerks) are elective; other jobs (including bailiffs and probation officers) are filled by other local governmental units; and the remaining

²⁴ *Id.* at 76.

²⁵ Memoranda from Richard F. Buckley, Research Assistant for the American Judicature Society, Oct. 17, 1973.

²⁶ U.S. NEWS & WORLD REPORT, Dec. 14, 1970, at 32, 33; *id.*, Aug. 24, 1970, at 68, 70.

²⁷ ERNST & ERNST, 1973 PROPOSAL TO PROVIDE MANAGEMENT CONSULTING SERVICES TO THE MICHIGAN SUPREME COURT SYSTEMS DEPARTMENT 9 [hereinafter cited as MANAGEMENT PROPOSAL].

²⁸ See Klein & Witzum, *Judicial Administration 1972-73*, 1972/73 ANNUAL SURVEY OF AMERICAN LAW 726; E.B. McConnell, *Court Administration*, in THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE 13-14 (ABA, Section on Judicial Administration, 1971) [hereinafter cited as *Court Administration*].

FIGURE I
A JUDICIAL CENTRALIZATION CONTINUUM

| Judicial Levels | Degree of Judicial Administrative Centralization (Appointment from Highest Court) | Fragmentation 1 | Decentralization 2 | Partial Centralization 3 | Centralization 4 |
|---|--|--------------------|----------------------------|-----------------------------|------------------------|
| 1) State Court Administrator | | Yes | Yes | Yes | Yes |
| 2) Deputy State Court Administrator | | Yes | Yes | Yes | Yes |
| 3) Other State Supreme Court Support Personnel | | Yes | Yes | Yes | Yes |
| 4) Intermediate Appellate Court Chief Judges | | No | No, but . . . ^e | No, but . . . | Yes |
| 5) Intermediate Appellate Court Administrators | | No | No, but . . . | Yes | Yes |
| 6) Deputy Intermediate Appellate Court Administrators | | No | No, but . . . | Yes | Yes |
| 7) Other Intermediate Appellate Court Support Personnel | | No | No, but . . . | No, but . . . | No; No, but; or Yes |
| 8) Chief Court Judges | | No | No, but . . . | No | Yes |
| 9) Trial Court Administrators | | No | No, but . . . | Yes | Yes |
| 10) Deputy Trial Court Administrators | | No | No, but . . . | Yes | Yes |
| 11) Other Trial Court Support Personnel | | No | No, but . . . | No, but . . . | No; No, but; or Yes |

^e No, but = selection by peers subject to the rules of the highest state court.

positions (such as law clerks, secretaries, librarians, reporters, accountants, and physicians) are chosen and regulated by the particular court as it sees fit. The selection, promotion, evaluation, and compensation of such personnel varies from one jurisdiction to another, many of which lack a chief (or presiding) judge. A typical illustration of this dispersion is Nebraska, one of whose state court executives recently commented:

The personnel hired in the courts of Nebraska are done entirely by the local [trial] courts. There is no state merit examination administered for the judicial branch. All benefits and salary schedules conform to the State Personnel Code, although there is no requirement to do so.²⁹

Other instances are Indiana³⁰ and Iowa.³¹

2. The next model is a decentralization (or collegial) pattern in which the chief judges at the appellate and trial levels as well as supporting personnel are chosen and governed by the other members of the particular bench in accordance with uniform, statewide rules promulgated by the highest state court, its chief justice, the state judicial administrator, or the judicial council. California,³² New York,³³ and Illinois³⁴ are among the foremost examples. Two other states, Kentucky³⁵ and Louisiana,³⁶ are considering legislation to adopt this schema. Three more states, Arizona,³⁷ Kansas³⁸ and Washington,³⁹ are studying this possibility.

3. Another structural possibility is a partial centralization pattern, in which the chief judges at every level are chosen and directed by their

²⁹ Letter from Donald Cullen, Assistant Court Administrator of the Supreme Court of Nebraska, Nov. 19, 1973.

³⁰ Letter from Stephen C. Daniel, Research Analyst of the Indiana Judicial Study Commission, Dec. 10, 1973.

³¹ Letter from Clarence A. Kading, Iowa Judicial Department Statistician, Nov. 20, 1973.

³² VENTURA COUNTY COURTS, *supra* note 7, at 5-6.

³³ TEMPORARY COMMISSION ON THE NEW YORK STATE COURT SYSTEM, . . . AND JUSTICE FOR ALL, pt. 1, at 18-19, 27, 29 (1973) [hereinafter cited as AND JUSTICE FOR ALL].

³⁴ ILL. CONST. art. 6, §§ 7(a), 16.

³⁵ Memorandum from Nancy S. Lancaster, Executive Assistant to President of Kentucky Citizens for Judicial Improvement, Inc., Dec. 5, 1973.

³⁶ Memorandum from Eugene J. Murrett, Judicial Administrator of the Supreme Court of Louisiana, Nov. 26, 1973.

³⁷ Letter from George Stragalas III, Judicial Administrator of the Supreme Court of Arizona, Nov. 21, 1973.

³⁸ KANSAS SENATE COMM. ON THE JUDICIARY, JOINT RESOLUTION No. 2 § 1, at 1 (1973); INST. JUD. AD. REP., Oct. 1973, at 3; KANSAS JUDICIAL STUDY ADVISORY COMM., RECOMMENDATIONS FOR IMPROVING THE KANSAS JUDICIAL SYSTEM, *reprinted in* 13 WASHBURN L.J. 271 (1974).

³⁹ Memorandum from Galen N. Willis, Deputy Administrator of the Supreme Court of Washington, Nov. 26, 1973.

colleagues according to state rules but in which the court administrators and the supporting personnel at each level are selected and regulated by the highest state tribunal or one of its agents. This pattern is intermediate because the methods of selection and regulation are horizontal in the first instance but vertical in the second. The leading exponent of this model is Pennsylvania, which adopted it in 1968.⁴⁰

4. The last schema is centralization in varying degrees. Under this pattern the selection of all chief judges, court administrators, and other judicially related personnel are appointed and directed by the highest state tribunal. These employees may select their assistants from lists of candidates approved by the state judicial administrator or cleared by him if there is no central list. Although it is theoretically possible to make all appointments and policies from the top, even the proponents of this pattern recognize that the very size of the state judicial system militates against extending this model to its limit.⁴¹ Furthermore, within such a model this power may be located in a judicial council (composed of the chief justice, judges from all levels, members of the executive branch *ex officio*, legislators, lawyers selected by the state bar association governing board, as well as the public), the entire state supreme court, or its chief justice as the head of the state judicial department.

The sequence of locations represents increasing steps in judicial administrative centralization. This pattern is probably a harbinger of the future state judicial systems. It originated with New Jersey in 1947⁴² and was refined by Colorado in 1966.⁴³ It rests upon the cardinal assumption that, since responsibility for the functioning of the state court system belongs to its highest tribunal, appointive and regulatory authority over the entire state judiciary should be located in this body. This model was endorsed by the American Judicature Society in 1963,⁴⁴ the National Conference on the Judiciary in 1971,⁴⁵ the American Bar Association Commission on Standards of Judicial

⁴⁰ PA. CONST. art. 5, § 10; PA. R. JUD. AD. 503; Letter from A. Evans Kephart, Pennsylvania Court Administrator, Jan. 8, 1974.

⁴¹ COURTS, *supra* note 3, at 180-82.

⁴² N.J. CONST. art. 6, § 7; 1972 ADMINISTRATIVE OFFICE OF THE COURTS, NEW JERSEY COURTS, SUMMARY OF DEVELOPMENTS 3 (1973); E.B. McConnell, *Court Administration*, in THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE 13-14 (ABA Section of Judicial Administration, 1971); Letter from Robert J. Hueston, Chief of Court Planning of the Administrative Office of the New Jersey Courts, Dec. 26, 1973.

⁴³ COLO. CONST. art. 6, § 5(2)-(4); 1973 ADMINISTRATIVE OFFICE OF THE COURTS, THE STATE OF THE COLORADO JUDICIARY 1.

⁴⁴ Holt, *The Model State Judicial Article in Perspective*, 47 J. AM. JUD. SOC'Y 8, 11-12 (1963).

⁴⁵ NATIONAL CONFERENCE ON THE JUDICIARY, JUSTICE IN THE STATES 265-66 (1971).

Administration in 1973,⁴⁶ and the National Advisory Commission on Criminal Justice Standards and Goals in 1973,⁴⁷ although in 1972 the Institute for Court Management⁴⁸ and the Institute of Judicial Administration⁴⁹ questioned whether this model might engender resistance at the lower judicial levels and consequent ineffectiveness for lack of wholehearted cooperation. Nevertheless, at least nine states have adopted or are considering this approach, including Florida,⁵⁰ Maryland,⁵¹ Michigan,⁵² Rhode Island,⁵³ South Carolina,⁵⁴ Vermont,⁵⁵ Wisconsin,⁵⁶ as well as California⁵⁷ and New York,⁵⁸ which deserve further consideration because they rank first and second in population.

Supportive Personnel

No consensus exists as to what constitutes the scope of supportive judicial personnel. Although lists of such employees are common, a surprising fact is the lack of criteria underlying the inclusion of these positions, which are merely cited as if the reasons for mentioning them were self-evident. It is a matter of speculation whether the rationale is principally functional, philosophical, political, or financial.

The supervisory employees discussed above are primarily responsible for appointing the four categories of supportive personnel: confi-

⁴⁶ COURT ORGANIZATION, *supra* note 23, § 1.41, at 76.

⁴⁷ COURTS, *supra* note 3, at 164-65, 180-81.

⁴⁸ VENTURA COUNTY COURTS, *supra* note 7, at 5-6.

⁴⁹ INSTITUTE OF JUDICIAL ADMINISTRATION, A STUDY OF THE LOUISIANA COURT SYSTEM 42-43 (1972).

⁵⁰ Letter from James B. Ueberhorst, State Court Administrator of Florida, Dec. 4, 1973.

⁵¹ Letter from William H. Adkins II, Director of the Administrative Office of the Maryland Courts, Nov. 26, 1973.

⁵² MANAGEMENT PROPOSAL *supra* note 27, at 9-12.

⁵³ State Capitals, *supra* note 4, Apr. 30, 1973, at 3; *id.* July 2, 1973, at 2; Memorandum from Thomas M. Joyce, Senior Management Analyst of the Office of the Court Administrator of Rhode Island, Dec. 14, 1973.

⁵⁴ Letter from William A. Dallis, Director of South Carolina Court Administration, Dec. 21, 1973.

⁵⁵ Letter from Lawrence J. Turgeon, Court Administrator of Vermont, Dec. 28, 1973.

⁵⁶ Letter from William G. Lunney, Assistant Administrative Director of Wisconsin Courts, Dec. 6, 1973; Wis. A. 899 § 250.01-.05 (Apr. 26, 1973); 1973 WISCONSIN CITIZENS STUDY COMM. ON JUDICIAL ORGANIZATION REPORT 88-99.

⁵⁷ SELECT COMM. ON TRIAL COURT DELAY, 1972 REPORT 4, UNIFIED TRIAL COURT SYSTEM, CALENDAR MANAGEMENT 22 (Cal.); BOOZ, ALLEN & HAMILTON, INC., CALIFORNIA UNIFIED TRIAL COURT FEASIBILITY STUDY 102 (1971).

⁵⁸ AND JUSTICE FOR ALL, *supra* note 33; N.Y.S. 4300 and N.Y.A. 6480, at 1-8, 10-12 (Mar. 1, 1973). The bill, if passed, would amend the Judiciary Law by repealing art. 7A and adding art. 7A, §§ 211 (Chief Administrative Judge), 212 (Deputy Chief Administrator), 214 (Administrative Judge), 215 (Non-Judicial Personnel), thereby establishing a more unified court system. *See also* N.Y.S. 4293 and N.Y.A. 6468 (Mar. 1, 1973), at 2-3 (to amend Judiciary Law and Finance Law with respect to the unified court system); N.Y.S. 6235 (Apr. 25, 1973), at 2-3, 9-10 (budget for court system and auxiliary services); INST. JUD. AD. REP., Apr. 1973, at 5-6.

dential employees (such as law clerks and secretaries); professional personnel (such as accountants, appraisers, caseworkers, mental health information officials, physicians, probation officers, and psychologists); technical employees (such as bailiffs, the clerk of the court and his deputies, courtroom clerks, court librarians, and court reporters); as well as miscellaneous personnel (such as a board of law examiners, a commission on judicial conduct, a committee on admissions, a committee on judicial character and fitness, a committee on uniform state laws, grand juries, jury commissioners, a law reporting bureau, pretrial services, and public administrators).

This list is a variation of the latest recommendations of the American Bar Association and the Temporary Commission on the New York State Court System.⁵⁹ The justification underlying this method of classification probably stems from a widespread desire within the judicial branch of state government to increase its autonomy from the legislative and executive branches as well as from units of local government by absorbing as many court-related services as possible. Illustrative of this attitude are the views of Ralph N. Kleps, the nationally respected Director of the Administrative Office of the California Courts:

[O]ur history and the history of nearly every state is that supporting staff for the Superior Courts [one of three main trial courts] is derivative. It comes from the County Clerk; it comes from the sheriff; it comes from wherever, and I have never understood how you can get an organized decently-administered system with such fragmented responsibility over the personnel.⁶⁰

Despite the inclination to place as many support functions as possible under judicial control, there is some reluctance in the area of probation services because of the nonjudicial aspects of post-sentencing supervision. However, even this area is finally resolved in favor of inclusion. For instance, the Report of the Temporary Commission on the New York State Court System commented:

Of the probation functions described . . . post-sentence supervision is least related to the courts, and the suggestion to sever this function and place it alone within the executive [branch of state government] has strong initial appeal. However, this would fragment the probation agencies, thereby weakening them, and would limit the flexibility inherent in having one staff perform both functions.⁶¹

⁵⁹ COURT ORGANIZATION, *supra* note 23, at 79-80; AND JUSTICE FOR ALL, *supra* note 33, pt. 3, § 236-a(3), at 29.

⁶⁰ *Hearings on a Plan for Court Reorganization in California Before the California Assembly Interim Comm. in [sic] Judiciary on the Single Trial Court* 30 (Sept. 1970).

⁶¹ AND JUSTICE FOR ALL, *supra* note 33, pt. 1, at 45.

ADVOCATED PROTOTYPES

Recommendations for the adoption of highly centralized judicial personnel prototypes have recently been made in three populous states: California, New York, and Michigan.

California

In late 1971, a nationally known consulting firm published a study of the California judicial system and recommended the organizational structure depicted in *Figure 2*⁶² (overleaf).

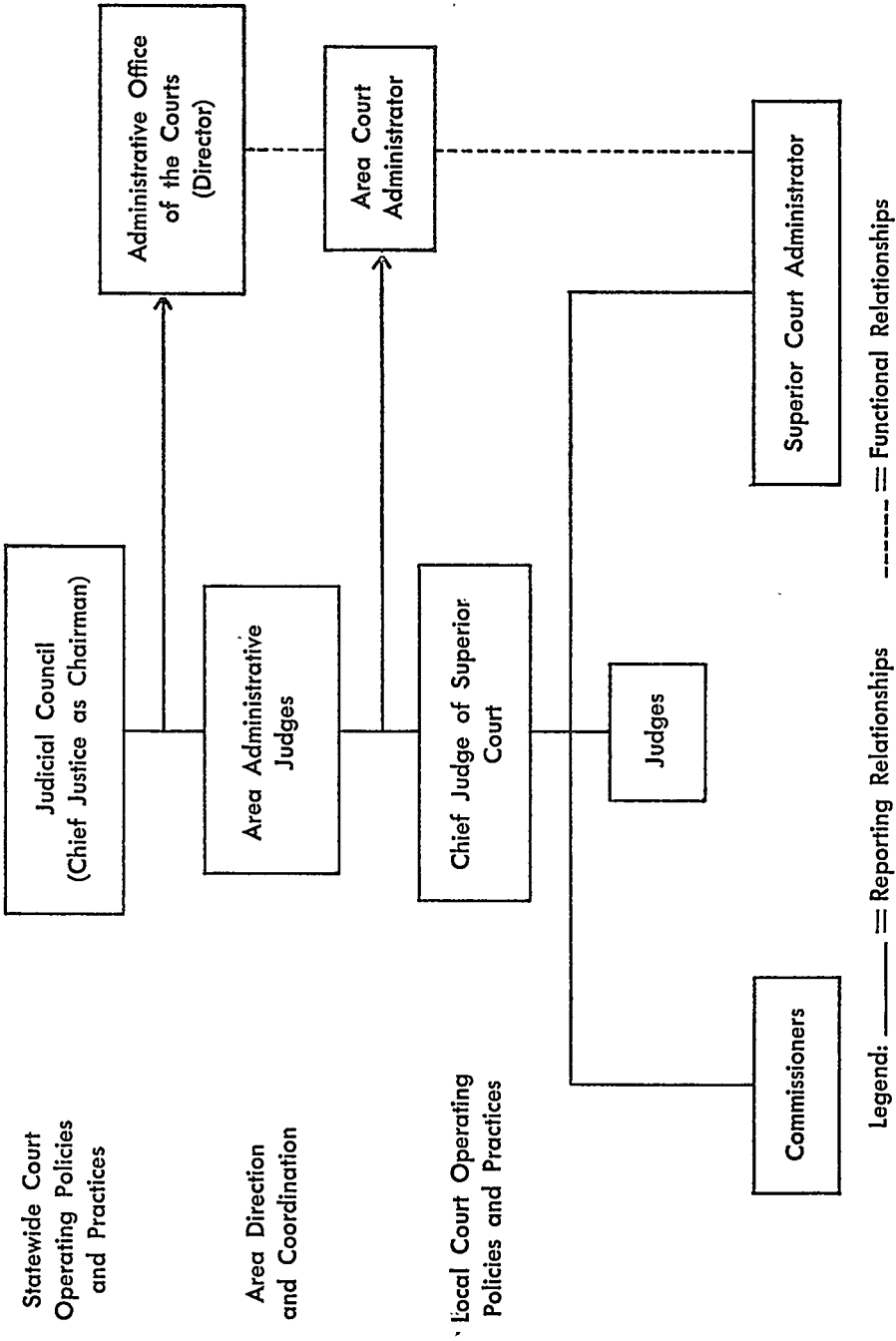
The proposal contains several noteworthy aspects. First, the Judicial Council would remain the chief policymaker for the courts of California if they were fully unified. This agency would still be composed of representatives from all judicial levels as well as the legislature.

Second, it would continue to appoint the personnel for its staff arm, the Administrative Office of the Courts, which would conduct the research necessary for effective policy determination and implementation.

Third, the state judicial system would consist of five administrative areas (North, Central, South, Los Angeles and the San Francisco Bay Area), each of which would contain an administrative judge and an area court administrator. The rationale behind these regional subdivisions was a geographical consideration, especially a desire to assure the reasonable proximity of courts to people, and the establishment of judicial areas with approximately equal caseloads. The span of managerial control — the number of chief superior court judges reporting directly to the area administrative judges — is probably realistic, although it varies greatly from thirty-two in the sparsely populated North region to one in the Los Angeles sector. This disparity is explained by noting that the time used in the brief conversations with these chief judges will approximate the extensive time consumed in discussions with the chief judge of the Los Angeles County Superior Court alone. The administrative judge would be authorized by the legislature, would primarily be used to assist the chief justice of the state supreme court, would be appointed by that official for a renewable one-year term, and would receive a salary equivalent to that of an intermediate appellate court judge. The area court administrator would be similarly authorized, would be expected mainly to aid his area administrative judge, and would be charged secondarily with helping the superior court (trial court) administrators in his area. It should be noted that the duties of the administrative judges might be entrusted to an area court admin-

⁶² See generally BOOZ, ALLEN & HAMILTON, INC., CALIFORNIA UNIFIED TRIAL COURT FEASIBILITY STUDY 98 (1971).

FIGURE 2
PROPOSED CALIFORNIA JUDICIAL ADMINISTRATIVE STRUCTURE



istrator, but the former is often preferable in order to make the new system more acceptable to judges who may fear that authority over court operations would gradually be taken out of their hands.

Fourth, the chief judge of each trial court would be appointed by the chief justice of the supreme court and would be entrusted with overseeing the performance of six tasks: balancing caseloads among superior court judges, associate superior court judges (formerly municipal court judges), and commissioners; developing local court plans consistent with statewide policies; directing staff support activities; identifying and correcting judicial problems; planning and controlling day-to-day trial court management; and selecting and training commissioners.

Fifth, the superior court administrators would be appointed by the chief judge to serve at his pleasure but would be expected to work closely with the Administrative Office of the Courts and his area court administrator.⁶³

Finally, the superior court commissioners (the subordinate judicial officers considered earlier) would be created by the legislature to relieve trial court judges of six routine duties: family relations matters, law and motion proceedings, minor misdemeanors, probate cases, small claims actions, and most traffic offenses. These officials would be appointed by the chief judge, acting with the consent of the trial court judges, to serve at his pleasure.⁶⁴ To date, no constitutional amendments or other bills have been approved to effect parts of this system in California.⁶⁵

New York

Unlike the California proposal, the schema recommended for New York follows a proposed reorganization of the state court system and rests more on a type-of-court foundation rather than on a regional basis.⁶⁶ Stated differently, instead of all court administration duties being performed within each area, such functions are divided among state judicial agencies, each of which controls a different layer of tribunals. However, the proposals for both states emphasize a highly centralized form of judicial administration. That is, the power to appoint administrators at the intermediate appellate and trial court levels

⁶³ *Id.* at 78-82.

⁶⁴ *Id.* at 82-88.

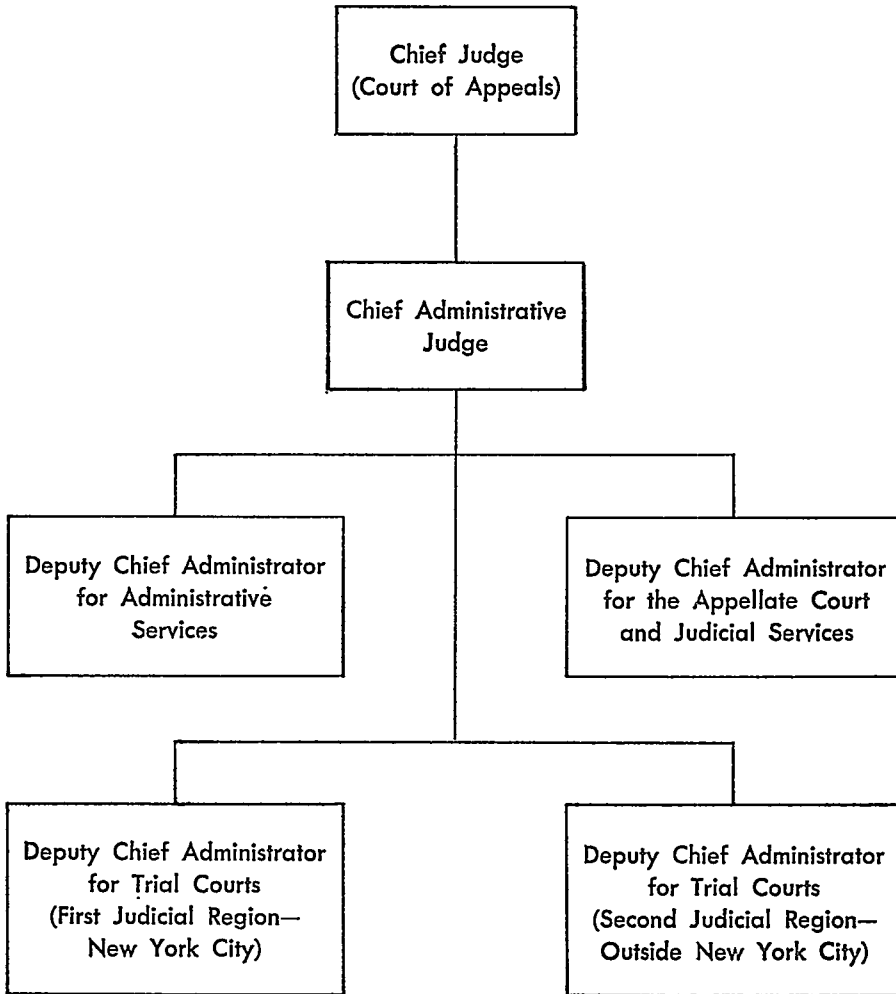
⁶⁵ However, recent legislation on this subject has been proposed: Calif. A. 1900, at 5-6 (Apr. 30, 1973); Calif. A. 2072, at 18-19 (May 2, 1973). See also Memorandum from Senator James R. Mills, President Pro Tempore of the California Legislature, Aug. 20 and 26, 1974.

⁶⁶ See generally AND JUSTICE FOR ALL, *supra* note 33.

is lodged at the top, not with the judges of the court to which the appointment is to be made.

The diagram for New York (*Figure 3*)⁶⁷ depicts a recommended judicial management structure paralleling the proposed court system with administrative organs responsible for different kinds of courts. This chart requires elaboration in several respects. First, the Chief Judge of the Court of Appeals is the equivalent of the chief justice in other states. He would appoint the Chief Administrative Judge, who during his four-year term would be responsible for the management of

FIGURE 3
PROPOSED NEW YORK JUDICIAL ADMINISTRATIVE STRUCTURE



⁶⁷ *Id.* pt. 1, at 21.

the entire statewide court system. This appointee need not be a judge or a resident (at the time of his selection). He would be empowered to choose four Deputy Chief Administrators — one for administrative services, one for appellate court and judicial services, one for the trial courts of the first judicial region (New York City), and one for the trial courts of the second judicial region (the area outside this metropolis). However, with regard to the latter two officials, he must make his selections from trial court or intermediate appellate judges. All these managers would serve at his pleasure.

Second, these executives would be expected to perform highly diverse functions. The Deputy Chief Administrator for administrative services would undertake two kinds of tasks: the coordination of eleven uniform statewide efforts (accounting and budgeting, data processing, facilities management, legal services, management information services, personnel matters, planning, the settling of court procedures, public relations work, purchasing, and research); as well as the coordination of seven other statewide activities (criminal justice programs, family law programs, indigent legal services, lower court plans, mental health information services, pretrial assistance, and probation). His span of managerial control — the number of agency heads reporting directly to him — is realistic since it numbers only eleven. The Deputy Chief Administrator for the appellate court and judicial services would be the administrative judge for the intermediate appellate court and would be entrusted with the performance of the following duties: the direction of the annual state judicial conferences; the establishment of judicial training programs (including sentencing institutes); secretary of the committees on alternatives to the judicial disposition of cases; supervision of the law reporting bureau; and technical assistance to judges. The Deputy Chief Administrator for the first region has no specified responsibilities except the appointment of three administrative judges to serve at his pleasure — one for the proposed Superior Court (a trial court with general jurisdiction) of New York City, and one each for the Civil and Criminal Court within the city. These appointees would have diurnal responsibilities for court operations. Moreover, the Chief Deputy Administrator for the second region would be expected to carry out similar duties. Finally, multiple regions would be established on several bases: the size and diversity of this state, the concentration of people in New York City, a desire to equalize case-loads, and a need to shorten lines of communications.⁶⁸

It is noteworthy that the first two Deputy Chief Administrators,

⁶⁸ *Id.* pt. 1, at 7-9; *id.* §§ 211-14, at 23-26.

along with the Chief Administrative Judge, represent functional divisions of administrative duties whereas the latter two deputies symbolize a geographical distribution of responsibilities. The appointive powers of the latter two executives represent the only gesture toward decentralization in this proposed system, which, like the one recommended for California, is highly centralized. Proposed constitutional amendments to implement portions of this system have been pending before the New York Legislature.⁶⁹ However, the offices of state court administration and state administrative judge⁷⁰ were created in early 1974. At approximately the same time, Governor Malcolm Wilson promised to suggest other legislation on the subject of court reorganization in this state but did not do so, although his successor, Hugh L. Carey, may.⁷¹

Michigan

The latest model for court personnel management at the state level has been suggested for Michigan (*Figure 4*).⁷² Although the first two prototypes became public in late 1971 and early 1973, respectively, the Michigan schema was proposed at the end of 1973 but has yet to be implemented. From comparative and internal perspectives, this plan warrants attention.

From the first standpoint, although this most recent idea embodies aspects of both previous models, it more closely resembles the California schema. Except for titular variations, several proposed offices in both states are functionally analogous. For instance, the "Area Court Administrators" in California correspond to "Regional Court Administrators" in Michigan; "Superior Court Administrators," to "Local [Circuit, District, and Probate] Court Administrators"; "Area Administrative Judges," to "Regional Superintending Judges"; and "Chief Judges of the Superior Court," to "Local Court Presiding Judges." Furthermore, the judicial councils and state court administrators in both jurisdictions would carry on almost parallel duties. Nonetheless, there is at least one important similarity between the New York and Michigan proposals: The "Deputy Chief Administrator for Adminis-

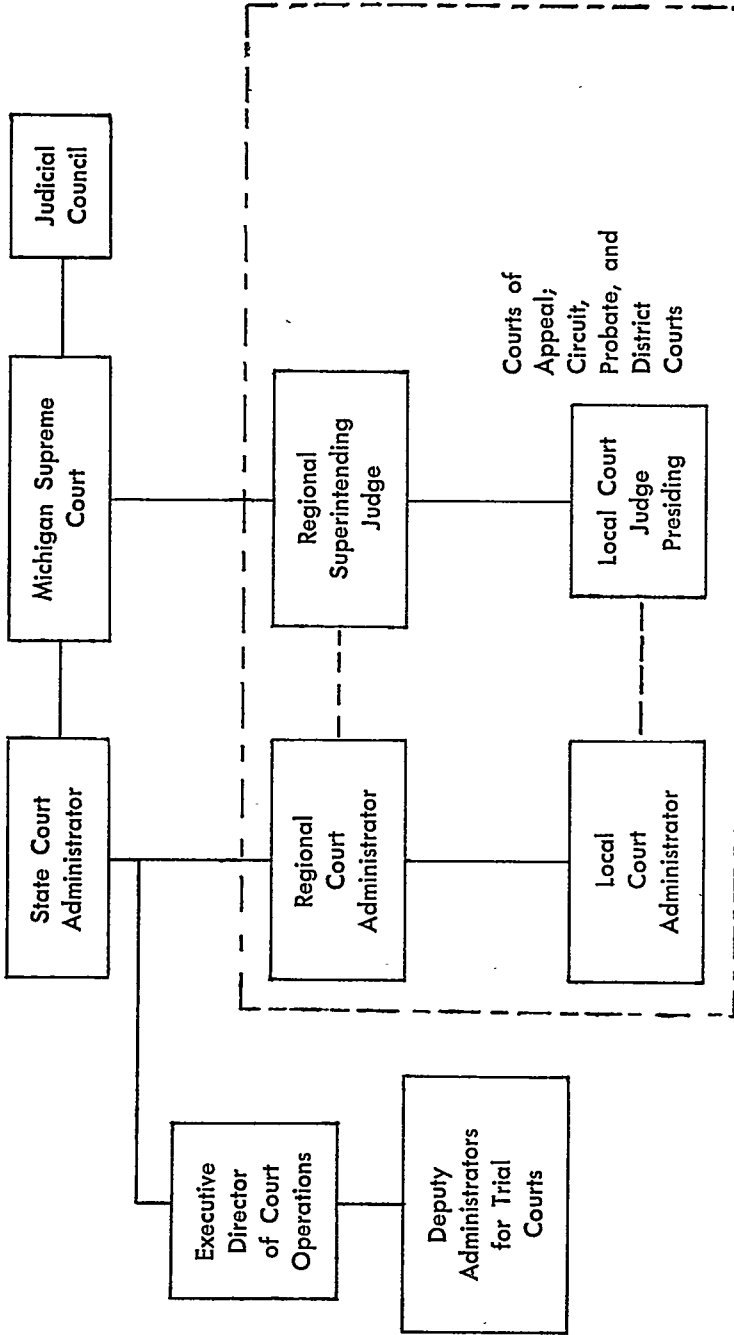
⁶⁹ Memorandum from Michael F. McEnaney, Deputy Counsel of the Office of Court Administration of New York, Aug. 19, 1974. See N.Y.A. 7926 (May 3, 1973), at 4-5 (passed once by both houses but must be approved again before submission to voters); N.Y.A. 31,020 (Apr. 29, 1974), at 5. Both proposals would amend the constitution with respect to the administration and financing of the unified court system.

⁷⁰ N.Y. SESS. LAWS [1974], ch. 4, §§ 1-2 and ch. 615, §§ 1-5 (McKinney).

⁷¹ *Id.* ch. 4, §§ 1-2; Goldstein, *State Issues: Crime a Perennial Priority*, N.Y. Times, Oct. 17, 1974, at 34, col. 7-8.

⁷² ERNST & ERNST, ORGANIZATIONAL CONCEPTS FOR A UNIFIED COURT SYSTEM IN THE STATE OF MICHIGAN 53, 62, 72-74 (1973) [hereinafter cited as UNIFIED COURT SYSTEM].

FIGURE 4
PROPOSED JUDICIAL STRUCTURE FOR MICHIGAN: A SIMPLIFIED VERSION



Legend: ——— Reporting Relationships
 Functional Relationships
 - - - - Intermediate Appellate and Trial Courts

trative Services" in the former becomes the "Executive Director of Court Operations" in the latter.

From an internal viewpoint the Michigan plan requires comment. Under it the state supreme court would be entrusted with creating a regional administrative structure for overseeing the functions of the other courts. This paradigm would encompass regional superintending judges, regional court administrators, and assistants to the latter if the caseloads warrant. Parallel channels of authority would predominate as judicial matters rise from trial court presiding judges through regional superintending judges to the chief justice and as administrative problems run from local court administrators through the regional court administrator to the state court administrator.⁷³ These reporting patterns follow what is sometimes designated as the "hospital" approach, borrowed from organizational relationships between doctors and administrators.⁷⁴

Furthermore, this structure emulates the centralized judicial schemas established in such states as New Jersey⁷⁵ and Colorado⁷⁶ because the power to appoint such officials rests with the chief justice and the state supreme court, not with the region where they will serve. However, each region will constitute a personnel bank from which officers for that jurisdiction will be chosen. Consequently, the ability of the highest tribunal to carry out uniform, statewide policies is maintained. The regional proposal is likely to succeed in Michigan not only because it follows the practices of other states but also because it establishes a fairly small span of managerial control: 15 to 18 regional judges and administrators reporting directly to their superiors.⁷⁷

The chief justice would be entrusted with appointing regional superintending judges with the advice of the state court administrator, also chosen by him, and the consent of the other justices. Their terms would coincide with that of the chief justice. The regional judges would be selected from members of the various trial courts in each region. Such judges would perform administrative as well as judicial duties. The managerial responsibilities would embrace the recommendation of regional policies to the chief justice and their implementation if approved.⁷⁸

Such proposed functions raise at least two questions. One centers on whether judicial and administrative duties are separable in practice

⁷³ *Id.* at 15-22, 72-74.

⁷⁴ See note 26 *supra*.

⁷⁵ *Court Administration*, *supra* note 28, at 14.

⁷⁶ *Id.*

⁷⁷ See UNIFIED COURT SYSTEM, *supra* note 72, at 22, 74.

⁷⁸ *Id.* at 28-29, 98.

and, as a corollary, whether persistently sharp clashes between regional superintending judges and the regional court administrators are inevitable. The Institute of Judicial Administration⁷⁹ and the Temporary Commission on the New York State Court System⁸⁰ anticipated such disputes. The other query delves into whether the concentration of both functions in a single position may prove too much for such judges to handle effectively. On this score the New York Commission is skeptical.⁸¹ In Michigan, as in other states, operational experience will furnish the best way of answering these questions.

The regional administrators would be chosen by the state court administrator after consultation with the regional superintending judge and after securing the chief justice's approval. The tenure would be indefinite since it rests on merit. This official would be selected from a list of applicants certified by the state court administrator as qualified. Such officials would help the regional superintending judges in carrying out managerial responsibilities. Furthermore, the regional administrators would implement the rules and orders of the superintending judges if regional in purview, supervise staff members, keep judicial statistics and records, and oversee the work of local court administrative personnel.⁸²

Completing this prototype is a recommendation for the establishment of a judicial council in an advisory capacity. Among its members would be the chief justice as chairman, regional superintending judges, one judge from each type of court, the President of the Michigan Bar Association, the Chairman of the Michigan House and Senate Judiciary Committees, the state attorney general, the chief official of the state department of corrections, a defense attorney or public defender, and laymen selected by the governor. Finally, it should be noted that a model closely analogous to the Michigan one is also receiving serious judicial and legislative consideration in Kansas.⁸³

CONCLUSION

Some concluding comments on the subject of court-related employees are proper. Implicit in the state prototypes considered above are the following personnel guidelines:⁸⁴

⁷⁹ Klein & Witztum, *Judicial Administration 1972-73, 1972/73 ANNUAL SURVEY OF AMERICAN LAW* 717, 726.

⁸⁰ AND JUSTICE FOR ALL, *supra* note 33, pt. 1, at 18-20.

⁸¹ *Id.*

⁸² See UNIFIED COURT SYSTEM, *supra* note 72, at 17, 72.

⁸³ *Id.* at 59-60, 104-05. For a discussion of the prototype recommended for Kansas, see KANSAS JUDICIAL STUDY ADVISORY COMM., RECOMMENDATIONS FOR IMPROVING THE KANSAS JUDICIAL SYSTEM, reprinted in 13 WASHBURN L.J. 271 (1974).

⁸⁴ See NATIONAL CIVIL SERVICE LEAGUE, A MODEL PUBLIC PERSONNEL ADMINISTRATIVE LAW 1-16 (1970).

1. Court employees at all levels should belong to one state judicial department.

2. The management of such personnel within a unified state court system should center on the establishment of procedures for a title structure, job definition, classification system, qualifications, appointments, promotions, transfers, leaves of absence, resignations and reinstatements, performance ratings, sick leave, vacations, time allowances, and removal.

3. Such management should emulate the practices followed by the executive and legislative civil services. On this point much discussion centers on whether judicial administrative employees (especially at the trial court levels) should be incorporated into a state civil service or personnel system, as in Maryland,⁸⁵ or whether a separate judicial civil service (or merit) system should be established, as in New Jersey,⁸⁶ Colorado,⁸⁷ and Iowa,⁸⁸ or proposed, as in Michigan,⁸⁹ Florida,⁹⁰ Pennsylvania,⁹¹ and Minnesota.⁹² The trend is clearly toward the latter, which would be financed by the state along with the salaries and fringe benefits accorded to such workers. The Institute of Judicial Administration recently put the case for this development as follows:

A separate judicial personnel system is desirable, . . . because it insures that employees of the judicial branch will not be under the control of or subject to the rules and regulations of another coordinate [*sic*] branch of government, thus helping to maintain judicial independence.⁹³

⁸⁵ Letter from William H. Adkins II, Director of the Administrative Office of the Courts of Maryland, Nov. 26, 1973.

⁸⁶ 1972 ADMINISTRATIVE OFFICE OF THE COURTS, NEW JERSEY COURTS, SUMMARY OF DEVELOPMENTS 3; Letter from Robert J. Hueston, Chief of Court Planning of the Administrative Office of the New Jersey Courts, Dec. 26, 1973.

⁸⁷ COLO. REV. STAT. ANN. § 37-11-4 (1963); *id.* § 37-11-7 (Supp. 1969); 1973 COLORADO STATE JUDICIAL DEPARTMENT, REPORT ON THE POSITION CLASSIFICATION AND PAY PLAN § 2, at 7-11; 1973 ADMINISTRATIVE OFFICE OF THE COLORADO COURTS, THE STATE OF THE COLORADO JUDICIARY I.

⁸⁸ Letter from Clarence A. Kading, Iowa Court Administrator, Nov. 20, 1973; Klein, Bukowski, D'Ambrosio, Gallas, & Maderer, *Judicial Administration 1971-72, 1971/72 ANNUAL SURVEY OF AMERICAN LAW* 715, 736.

⁸⁹ ERNST & ERNST, DISTRICT COURT PERSONNEL TO BE TRANSFERRED TO STATE PAYROLLS 2-4 (1973); ERNST & ERNST, CIVIL SERVICE COMMISSION SYSTEM V. PERSONNEL DEPARTMENT SYSTEM FOR THE JUDICIAL BRANCH OF THE STATE OF MICHIGAN 7-9 (1973); ERNST & ERNST, REPORT OF EMPLOYEE FRINGE BENEFITS FOR DISTRICT COURTS IN THE STATE OF MICHIGAN 9-16 (1973); UNIFIED COURT SYSTEM, *supra* note 72, at 72-74; State Capitals, *supra* note 4, June 17, 1974, at 1-3. See Mich. H.R. 4589, § 8271 (Apr. 12, 1973).

⁹⁰ 19 JUD. COUNCIL OF FLA. ANN. REP. 18 (1974).

⁹¹ 1972 PHILADELPHIA JUSTICE CONSORTIUM REPORT, PHILADELPHIA'S CRIMINAL JUSTICE SYSTEM 18-20.

⁹² NATIONAL CENTER FOR STATE COURTS, MINNESOTA COUNTY COURT SURVEY 8-9, 59-61 (1974).

⁹³ INSTITUTE OF JUDICIAL ADMINISTRATION, A STUDY OF THE LOUISIANA COURT SYSTEM 69 (1972).

However, even if such proposals are enacted, they will probably begin to mirror the state civil services in many respects, especially with regard to the degree of job security and benefits offered to court employees.

4. For such employees a uniform system of position classification and levels of compensation should be established. The norm ought to approximate equal pay for equal work. However, workload variations may lead to remunerative differences. For instance, in Texas a legislative committee recently suggested the payment of salaries twenty percent higher for urban trial court judges than for their rural counterparts.⁹⁴

5. These uniformities ought to embrace fringe benefits as well as salaries. A "cafeteria approach," would allow court employees a range of choices in benefits up to a percentage of their base salary. This idea has been suggested for adoption in Michigan. Such a program facilitates the goal of achieving compensational uniformity since the employees themselves would make the selection of benefits instead of having them imposed.⁹⁵

6. A state judicial department should install a system of open and competitive application, examination, and appointment of new employees reflecting the special requirements of each kind of job with respect to education, professional certification, and experience.

7. Judicial employment should be free of discrimination based on race, age, sex, religion, or political affiliation.

8. Uniform procedures for making regular job performance evaluations should be formulated.

9. Discipline or discharge of these employees should prevail only for specified causes in accordance with due process of law.

10. The transfer of individuals from one area within a state to another should be permitted without loss of compensation, seniority, or fringe benefits.⁹⁶

11. As a state shifts to a unified court system, no employee should suffer a diminution of benefits. In fact, Pennsylvania made deeper judicial immersion in these subjects likely when its supreme court overruled a lower court in July 1974 and held that trial court judges in this state as well as county commissioners were employers of county personnel assigned to such tribunals.⁹⁷

⁹⁴ TEXAS HOUSE OF REPRESENTATIVES COMM. OF THE JUDICIARY, STREAMLINING THE TEXAS JUDICIARY: CONTINUITY WITH CHANGE 85 (1972).

⁹⁵ MANAGEMENT PROPOSAL, *supra* note 27, at 9-12.

⁹⁶ COURT ORGANIZATION, *supra* note 23, § 1.42, at 79; SELECT COMM. ON TRIAL COURT DELAY, 1972 REP. 4, UNIFIED TRIAL COURT Sys., CALENDAR MANAGEMENT 21 (Cal.); BOOZ, ALLEN & HAMILTON, INC., CALIFORNIA UNIFIED TRIAL COURT FEASIBILITY STUDY 102-03 (1971).

⁹⁷ Sweet v. Pennsylvania Labor Relations Bd., — Pa. —, 322 A.2d 362, 365-66, *rev'g* 12 Pa. Commw. 358, 316 A.2d 665 (1974); State Capitals, *supra* note 4, Aug. 12, 1974, at 3-4.

Finally, one expert in judicial administration, Ernest Friesen, Jr., recently predicted that most states would adopt such a public personnel system.⁹⁸ However, he and other specialists in this field have been pessimistic about its efficacy, for they viewed court-related personnel as caught in a dilemma. If their jobs stem from patronage, such employees tend to be subservient to their sponsors. They often display mediocrity because they were hired as a reward for political services rather than for their competence. However, if their jobs are placed within a civil service system, there is the likelihood of rigidity because often a premium is placed on excessive adherence to rules as well as the avoidance of trouble. No lateral entry would be permitted. Nor would organizational growth be encouraged. Both alternatives frustrate attempts to improve the effectiveness of judicial administration.⁹⁹ Nevertheless, as states contemplate the establishment of a judicial personnel system and seek to avoid this apparent dilemma, they may start with the advice offered by Pound in 1940:

Organization of the non-judicial administrative business of the courts calls for complete and efficient supervision, under rules of court, which is best to be obtained by unification of the judiciary as a whole, with responsible headship, charged with supervision of the subordinate supervising . . . officers.¹⁰⁰

⁹⁸ Address by Ernest C. Friesen, Jr., National Conference on Public Administration, Apr. 13, 1973.

⁹⁹ E. FRIESEN, E. GALLAS, & N. GALLAS, *MANAGING THE COURTS* 16 (1971).

¹⁰⁰ Pound, *supra* note 1, at 230.