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THE RUDIMENTS OF STATE LEVEL JUDICIAL MANAGEMENT

JAMES A. GAZELL, PH.D.*

The author contends that judicial management at the state level is a neglected sector of political science, even though the magnitude, the output, and the public policy impact of state trial courts have assumed growing significance. The study of judicial management entails an examination of at least seven principal facets: judicial organization (or consolidation), the abolition of fee offices, judicial leadership, court congestion, staff functions, judicial selection and tenure, and judicial discipline, removal, and retirement. In his conclusion the author argues that the study of judicial management may constitute a discipline in itself and that this sector faces an extensive research agenda.

I. INTRODUCTION

THE SCHOLARLY STUDY of judicial management is mainly the function of three professions: law, political science, and public administration. However, experts in these fields have tended to neglect this sector which is beginning to burgeon at the confluence of these disciplines. First, within the legal profession, specialists in constitutional law have usually devoted almost exclusive attention to the study of substantive and procedural case law and have generally ignored the managerial problems of judicial organizations at all levels. Lawyers

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and judges may often be too immersed in their daily work to explore this area meticulously. Second, within political science, constitutional law analysts also share the case law preoccupation of their counterparts in the legal profession.¹ Third, within public administration, researchers have usually centered their attention on four facets of this profession: administrative law, fiscal administration, organizational theory, and personnel administration.² In examining this neglected sector at the state level, one may focus on the following areas: its neglect by scholars in these three professions, its growing significance, its principal facets, and its prospects.

II. THE NEGLECT OF JUDICIAL MANAGEMENT BY POLITICAL SCIENTISTS

One may measure the neglect 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 Sciences and Humanities Index* (S.S.H.I.), between 1910 and December 1969, the author found only thirty-two articles directly germane to this sector. This output averages approximately one article every two years. Of these thirty-two articles, eighteen (62.1%) were published since 1950 and indicate that even the sparse interest in this area is recent.³ Furthermore, of these thirty-two articles, only seven were published in the major journals of political science.⁴

Second, in the *Public Affairs Information Service* (P.A.I.S.) during the same fifty-nine year period, the author uncovered 103 articles

¹ A check of the *International Index to Periodical Literature* and the *Social Sciences and Humanities Index* reveals that between 1907 and December of 1969, only seven articles focusing mainly on judicial management have been published in the major journals of political science: Walter F. Murphy, Chief Justice Taft and the Lower Court Bureaucracy: A Study in Judicial Administration, 34 J. Pol. 453-476 (Aug. 1962); Walter F. Murphy, Lower Court Checks on Supreme Court Power, 53 Am. Pol. Sci. R. 1017-1031 (Dec. 1959); William J. Jameson, Current Problems Affecting the Judicial Branch, 11 W. Pol. Q. 713-723 (Sept. 1958); Wendell G. Schaffer, Management in the Judiciary, 13 Pub. Ad. R. 89-96 (Spr. 1953); Edson R. Sunderland, The Judicial Council as an Aid to the Administration of Justice, 35 Am. Pol. Sci. R. 905-933 (Oct. 1941); Pressly S. Sikes, The Work of Judicial Councils, 29 Am. Pol. Sci. R. 456-472 (June 1935); Rasmus S. Saby, Simplified Procedure in Municipal Courts, 18 Am. Pol. Sci. R. 760-772.

² The only article in a public administration journal centering on judicial management is the following: Wendell G. Schaeffer, Management in the Judiciary, 13 Pub. Ad. R. 89-96 (Spr. 1953).

³ Derived from the 1-18 Int. In. Per. Lit. (1907-Mar. 1965); 19-22 Soc. Sci. & Hum. In. (Apr. 1965-Dec. 1969).

⁴ *Supra* n.l.

which focused directly on judicial management.⁵ 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 does I.I.P.L. or S.S.H.I.⁶ Furthermore, unlike the first two sources, P.A.I.S. cites an overwhelming number of articles (89.3%) from legal journals because it has indexed far more legal periodicals than have the other two sources.⁷

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%) 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 sharply only since 1950; for 62.2% of all articles on this subject listed in I.L.P. and I.L.P.L. have been published since that date. (See Fig. 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 Fig. 1.)

FIG. 1
AN OVERVIEW OF INDEXED ARTICLES ON JUDICIAL MANAGEMENT⁸

Years	Legal Journals	Political Science Journals	Miscellaneous Journals	Total
1960-1969	405 (29.5%)	3 (16.7%)	2 (20%)	413
1950-1959	462 (33.7%)	8 (45.5%)	3 (30%)	473
1940-1949	136 (9.9%)	2 (11.1%)	1 (10%)	140
1930-1939	224 (16.3%)	1 (5.5%)	3 (30%)	228
1920-1929	106 (7.7%)	1 (5.5%)	1 (10%)	109
1910-1919	39 (2.9%)	3 (16.7%)	0 (0%)	42
Totals	1,372 (100.0%) (98.0%)	18 (100.0%) (1.3%)	10 (100%) (0.7%)	1,400 (100%)

⁵ Derived from 1-54 Pub. Aff. Info. S. (1915-Dec. 1969).

⁶ *Supra* n.3 and n.5. In 1969, P.A.I.S. listed 971 journals; I.L.P. and I.L.P.L. and S.S.H.I., 210. Their respective *mean* listing between 1890 and 1969 were 850, 167, and 173.

⁷ 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.

⁸ Derived from 1-15 In. Leg. Per. (1926-Dec. 1969); 4-6 In. Leg. Per. Lit. (1908-1937); 1-18 Int. In. Per. Lit. (1907-Mar. 1965); 19-22 Soc. Sci. & Hum. In. (1965-1969); 1-34 Pub. Aff. Info. S. (1915-1969).

III. THE GROWING SIGNIFICANCE OF JUDICIAL MANAGEMENT

Until recently the study of judicial management has stood beyond the customary scope of law, political science, and public administration even though its subject matter cuts across these professions, and even though federal and state courts have been huge, costly institutions since the early 1900's.⁹ At least four possible reasons may largely account for the neglect of this sector by specialists in these three fields. One possible explanation is that they may have regarded this area as the exclusive province of the legal profession because it originated there.¹⁰ A second possible reason is that the preoccupation of these scholars with the familiar aspects of their discipline may have sapped their inclination to enlarge its purview. A third possible explanation is that they may have subconsciously tended to regard judicial organizations as more ethereal than other public organizations and to forget that courts face the same kinds of management problems—such as accountability, authority, budgeting, communications, decision making, leadership, personnel, small groups, and training. These researchers have been slow to treat courts as mundane bureaucracies rather than as celestial organizations run by high priests in black robes.¹¹ A fourth possible reason is supplied by one expert, Kenneth Dolbeare, who asserts

that through the years primary concentration [by scholars] was on the doctrinal results of court action and . . . this emphasis tends to lead toward a focus on the highest court in the land. The development of interest in other levels of judicial activity is a by-product of the behavioral revolution in public law in which the key questions become: What are men in government *doing*? Why? What difference does it make? The resulting thrust toward process and function leads toward a more inclusive interest which spans all levels of courts . . .¹²

During the last six years, at least five transitory factors have made the study of judicial management more topical for specialists. These factors were the large-scale prosecutions of San Francisco civil rights

⁹ See, e.g., Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 46 *J. Am. Jud. Soc.* 62-63 (Aug. 1962); Samuel B. Clarke, *What May Be Done to Enable the Courts to Allay the Present Discontent with the Administration of Justice*, 50 *Am. L. Rev.* 161-195 (Mar. 1916).

¹⁰ Pound, *supra* n.9 at 62.

¹¹ Jerome Frank, *Law and the Modern Mind*, 34 (1963); Jerome Frank, *Courts on Trial: The Myth and Reality in American Justice*, 254-261 (1967); Walter F. Murphy, *Elements of Judicial Strategy* 13 (1964); Glendon A. Schubert, *Constitutional Politics* 8-9 (1960).

¹² Kenneth M. Dolbeare, *Trial Courts in Urban Politics*, 8-9 (1967). For a similar explanation, see James R. Klonoski and Robert I. Mendelsohn, *Introduction, The Politics of Local Justice* xiv (J. Klonoski and R. Mendelsohn ed. 1970).

demonstrators in 1964¹³ and the mass indictments of Berkeley protesters in 1965,¹⁴ which publicized the grave shortcomings of judicial organizations, especially their dependence on guilty pleas in order to continue operations.¹⁵ The remaining three factors were the *Report of the National Advisory Commission on Civil Disorders* in 1967,¹⁶ the *Report of the President's Commission on Law Enforcement and the Administration of Justice* in 1968,¹⁷ and the *Skolnick Report to the President's Commission on the Causes and Prevention of Violence* in 1969,¹⁸ which castigated trial court operations on numerous grounds: the common use of bail as a preventive-detention device; delayed arraignments; a lack of numerous, skilled defense lawyers; the inconsistent sentencing of defendants convicted of the same offenses; cumbersome procedures; and a tendency to become adjuncts rather than overseers of local law enforcement agencies.

However, the increasing topicality of judicial management for researchers rests mainly on at least three enduring considerations. First, the state trial court structures, especially their management problems, deserve meticulous attention because of their sheer magnitude; for they easily dwarf the state appellate systems as well as the entire federal judiciary.¹⁹ Such trial courts employ thousands of judges and staff personnel, handle millions of criminal and civil cases each year,²⁰ and expend several hundred million dollars annually.²¹ Furthermore, the size of such systems derives from their position as the

¹³ Edward L. Barrett, Jr., *Criminal Justice: The Problem of Mass Production, The Courts, The Public, and the Law Explosion* 106-111 (Jones ed. 1965).

¹⁴ Wallace Turner, *Berkeley Groups Report on Fight*, *The New York Times*, Jan. 6, 1965, at 29; *Coast Students Waive Jury; Savio Given a 2-Day Term*, *The New York Times*, Mar. 3, 1965 at 13; Lawrence E. Davies, *Trial Starts for 155 in Berkeley Sit-In*. *The New York Times*, Apr. 2, 1965 at 71; Wallace Turner, *Many at Berkeley Sit-In Trial Spurn Probation Bid*, *The New York Times*, July 20, 1965 at 13; Lawrence E. Davies, *Berkeley Rally Denounces Judge*, *The New York Times*, July 30, 1965 at 54.

¹⁵ *Supra* n.13 at 110-111.

¹⁶ *National Advisory Commission on Civil Disorders, The Report of the National Advisory Commission on Civil Disorders* 340, 341-344 (1968).

¹⁷ *President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society* 379-380 (1968).

¹⁸ Jerome H. Skolnick, *The Politics of Protest* 313-316 (1969).

¹⁹ Dolbeare, *supra* n.12 at 2. *The Politics of Local Justice*, *supra* n.12 at 3; Herbert Jacob, *Justice in America* 17-25 (1965); Richard A. Watson and Rondal G. Downing, *The Politics of the Bench and the Bar* 2 (1969).

²⁰ *Institute of Judicial Administration, Calendar Status Study—1969. State Trial Courts of General Jurisdiction Personal Injury Cases, August 1, 1969* vi-ix (1969); Abraham S. Blumberg, *Criminal Justice* 55-58, 122-123 (1969); *supra* n.13 at 107-108, 111.

²¹ *Institute of Judicial Administration, State and Local Financing of the Courts (Tentative Report)* 8, 11 (1969).

starting and terminal points of most litigation.²² Because extensive time, money, and effort are necessary, very few decisions are appealed. Second, such systems, largely because of their size, generate serious interest in their efficiency and output.²³ In particular, scholars need to explore how numerous devices may promote greater court efficiency (as measured by the speedier termination of litigation).²⁴ Third, such courts are worthy of scholarly 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 civil and criminal cases, often make critical reallocations of power within that system. As Dolbeare states, "the local trial court is . . . one of several institutions affecting the who gets what, when, and how of local politics"²⁵ 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.²⁶ However, scholars 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."²⁷

IV. SEVEN PRINCIPAL FACETS OF JUDICIAL MANAGEMENT

A study of judicial management entails consideration of at least seven 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; and judicial discipline, removal, and retirement. Because there is no consensus about the parameters of this field, this typology is a synthesis of germane rubrics gleaned from some standard works²⁸

²² Watson and Downing, *supra* n.19 at 2; Dolbeare, *supra* n.12 at 2-3; J. Frank, Courts on Trial, *supra* n.11 at 254-261.

²³ Maurice Rosenberg, Court Congestion: Status, Causes, and Proposed Remedies, The Courts, The Public, and the Law Explosion, *supra* n.13 at 56-58.

²⁴ *Id.* at 57.

²⁵ Dolbeare, *supra* n.11 at 3.

²⁶ *Id.* at 2-3.

²⁷ Klonoski and Mendelsohn, The Allocation of Justice: A Political Approach, The Politics of Local Justice, *supra* n.12 at 7.

²⁸ American Bar Association, The Improvement of the Administration of Justice vii-xii (4th ed. 1961); Arthur T. Vanderbilt, Minimum Standards of Judicial Admini-

and some recent symposia in this area.²⁹ Let us now turn to the first main aspect: court organization.

1. *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 jurisdictions by a single court with comprehensive, exclusive, original jurisdiction.³⁰ (See Fig. 2.) Despite a consensus on its efficacy, such consolidation has proceeded along two complementary tributaries.

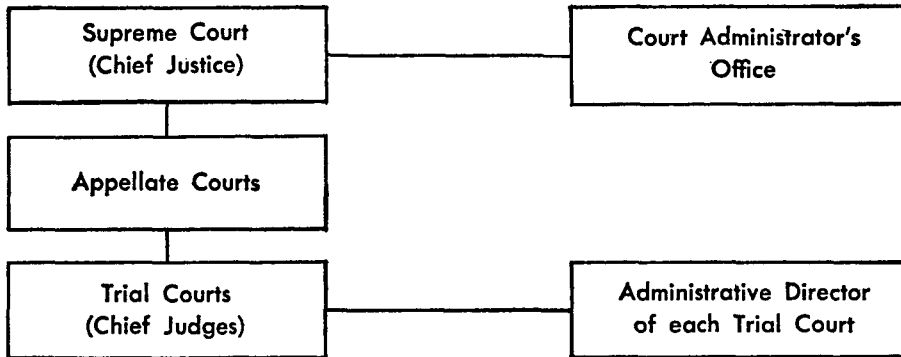


FIG. 2
A TYPICAL CONSOLIDATED STATE COURT SYSTEM³¹

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).³² Each consolidated trial court receives its direction solely or mainly from its chief judge. (See Fig. 3.) Second, fourteen states not only have consolidated their trial courts to date but also have subjected them to supervision by the state supreme

tration vii-xii (1949); Selected Readings on Administration of Justice and Its Improvement v-vi (G. Winters and S. Sunwald ed. 1966).

²⁹ A Symposium: Judicial Administration, 4 Will. L.J. 1-103 (Spr. 1966); A Symposium, 44 Tex. L. Rev. 1063-1178 (June 1966); A Symposium: Social Science Approaches to the Judicial Process, 79 Harv. L. Rev. 1551-1628 (June 1966); Special Issue—Court Administration, 50 Jud. 256-260 (Apr. 1967).

³⁰ Pound, *supra* n.8 at 62; Roscoe Pound, Organization of Courts, 11 J. Am. Jud. Soc'y 78 (October 1927).

³¹ Derived from Ill. Const. art. VIX, §§ 1, 2, 4, 6, 8.

³² Council on State Government, The Book of the States 1968-1969 118 (1968).

court (or its chief justice), which manages the entire state court system through its staff agency, the court administrator's office.³³ (See Fig. 2-3.)

Both kinds of consolidation have moved state judicial organizations in differing degrees toward the achievement of at least three significant objectives.³⁴ One aim has been to reduce trial court congestion,

FIG. 3
STEPS TOWARD JUDICIAL CONSOLIDATION IN THE STATES: 1969³⁵

Year	Step 1: States with Court Administrator's Offices	Step 2: Abolition of Justices of the Peace or Their Judicial Functions	Step 3: Consolidation of Trial Courts <i>per se</i>	Step 4: Inclusion of Con- solidated Trial Courts into State- wide 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	7
1965-1969	9	6	4	3
Total States:	35	28	20	15

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.³⁶ However, so far there is no empirical evidence correlating backlog reductions with consolidation.

2. *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

³³ *Id.* at 103-104, 118.

³⁴ Kenneth N. Vines, *Courts as Political and Governmental Agencies*, *Politics in the American States* 247 (H. Jacob and K. Vines ed. 1965).

³⁵ Derived from *supra* n.32 at 103-104, 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 Lee F. Anderson; Meredith W. Watts Jr.; and Allen R. Wilcox, *Legislative Roll-Call Analysis* 112 (1966).

³⁶ *Supra* n.17 at 322-323; *supra* n.16 at 337-338.

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; fewer 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.³⁷

So far twenty-eight states have abolished their fee offices or the judicial functions of them. (See Fig. 3.) Fifteen have eliminated this office entirely whereas the remaining thirteen have continued only the non-judicial functions of these offices.³⁸ However, the advantage of terminating such offices is undermined by engrafting some of their officers into newly consolidated trial court systems. 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.³⁹ 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.⁴⁰

3. *Judicial Leadership: 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.⁴¹ Only within the last few

³⁷ *Id.*; Herbert Jacob, *The Courts as Political Agencies—an Historical Analysis*, *Studies in Judicial Politics*. Tulane Studies in Political Science 45-46 (K. Vines and H. Jacob ed. 1962); Jacob, *Justice in America*, *supra* n.19 at 139.

³⁸ *Supra* n.32 at 103-104, 118.

³⁹ Ill. Const. art. VI, § 4(e) (1870); Ill. Pub. L. 1167-1168 (1963).

⁴⁰ *Id.*

⁴¹ *See, e.g.*, Leonard Sayles, *Managerial Behavior: Administration in Complex Organizations* 33-45 (1964); Peter F. Drucker, *The Effective Executive* 9-24 (1967); Richard E. Neustadt, *Presidential Power* 22 (1964); Philip Selznick, *Leadership in Administration* 22-26

years have researchers begun to delineate, albeit impressionistically, some of the functions that such executives carry out or should perform⁴² and to recommend programs to train such managers.⁴³ 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.⁴⁴ 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.⁴⁵ 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.⁴⁶

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.⁴⁷ 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

(1957); Chester I. Barnard, *The Functions of the Executive* 216-217 (1938); Robert T. Golembiewski, *Three Styles of Leadership and Their Uses*, 38 *Pers.* 34-45 (July-Aug. 1961).

⁴² Edward C. Gallas, *The Profession of Court Management*, 51 *Jud.* 334-336 (Apr. 1968).

⁴³ Edward C. Gallas, *Create University-Trained Court Managers*, 4 *Trial* 21-22 (Dec. 1967-Jan. 1968).

⁴⁴ *Supra* n.32 at 103.

⁴⁵ John Kenneth Galbraith, *The New Industrial State* 159-168, 176-188 (1967). *See also*, Pound, *Organization of Courts*, *supra* n.29 at 78; *supra* n.17 at 380; Arthur T. Vanderbilt, *The Essentials of a Sound Judicial System*, 48 *NW. U.L. Rev.* 13 (Mar., Apr. 1953).

⁴⁶ Jacob, *Justice in America*, *supra* n.19 at 81-82, 139; *supra* n.27 at 6; Dean Jares and Robert J. Mendelsohn, *The Judicial Role of Sentencing Behavior*, 11 *NW. J. Pol. Sci.* 486-487 (Nov. 1967).

⁴⁷ Barnard, *supra* n.41 at 216-217.

departments, divisions, or districts on the basis of purpose, process, place, or clientele; using their staff members advantageously; emphasizing the judicial budget as an instrument of coordination, 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 house-keeping operations as the recruitment, training, and supervision of clerks, secretaries, court reporters, and bailiffs.⁴⁸ 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.⁴⁹ 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.

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:

(1) In 1965 the Illinois General Assembly provided for the compulsory retirement of all justices and judges at age seventy.⁵⁰ 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.⁵¹ On August 11, 1967, Chief Justice Roy J. Sofisburg, Jr. (exercising managerial

⁴⁸ See, e.g., Institute of Public Administration, *Papers on the Science of Administration* 1-45 (L. Gulick and L. E. Urwick ed. 1937); Herbert A. Simon, *Administrative Behavior* 20-44 (2d ed. 1957); Frederick W. Taylor, *The Principles of Scientific Management* 10 (1942); Barnard, *supra* n.41 at 119, 122; Mary Parker Follett, *The New State* 5 (1918); William B. Givens, *Bottom-Up Management: People Working Together* 3-4, 10-12 (1949); Alexander R. Heren, *Why Men Work* 22, 61 (1948); American Bar Association, *supra* n.28 at 12-13. See also n.39 and n.40.

⁴⁹ *Supra* n.17 at 379-380.

⁵⁰ Ill. Pub. L. 1797 (1965).

⁵¹ Bar Three Magistrates, *Chicago Tribune*, Aug. 11, 1967, pt. 1, at 1-2; Magistrates Plan Return to Other Side of Bench, *Chicago's American*, Aug. 11, 1967 at 7.

authority over the entire state judiciary)⁵² 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.⁵³ (See Fig. 4.)

(2) 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.⁵⁴

4. *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.⁵⁵ However, Zeisel and his colleagues have castigated this formulation in the following words:

. . . the 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

⁵² Ill. Const. art. vi, § 2 (1870).

⁵³ *Supra* n.51.

⁵⁴ Ronald Koziol and John Oswald, Judge Ordered Off Bench, *Chicago Tribune*, May 12, 1967, § 1, at 1; Judge Kizas Quits in Bond Probe, *Chicago Tribune*, Sept. 15, 1967, § 1, at 1; Ronald Koziol and John Oswald, Take Murphy Off Bench in Probe of Bail, *Chicago Tribune*, May 26, 1967, § 1, at 9; Harry Golden, Jr., Charge Murphy Put Bonds Before Duty, *Chicago Sun-Times*, Nov. 21, 1967, at 8.

⁵⁵ Hans Zeisel; Harry Kalven, Jr.; and Bernard Buchholz, *Delay in the Courts*, 43, 45 (1959).

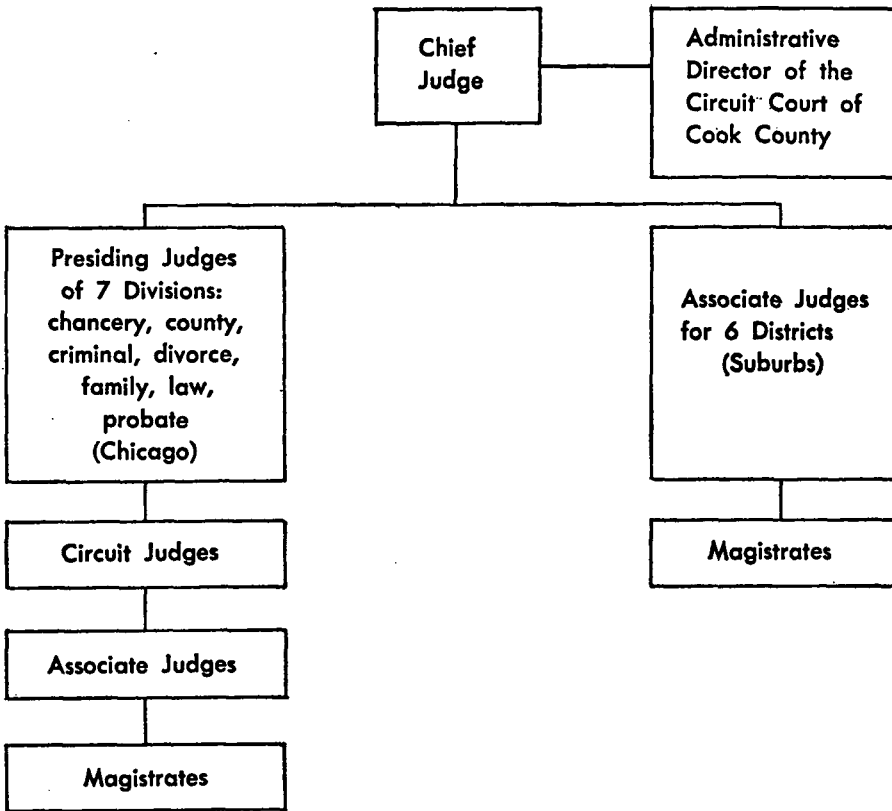


FIG. 4
THE CONSOLIDATED CIRCUIT COURT OF COOK COUNTY⁵⁶

backlog is a poor measure of delay even within the same court system. The backlog may decrease even while the delay increases.⁵⁷

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.⁵⁸ A third definition regards delay as the average interval between the filing of an action and the trial.⁵⁹ A fourth definition (a slight variant of the third) equates delay

⁵⁶ Derived from Circuit Court of Cook County, *Establish Justice: Annual Report of the Circuit Court of Cook County, Illinois 1964*, at 5-22 (1965).

⁵⁷ *Supra* n.55 at 44.

⁵⁸ *Id.* at 45.

⁵⁹ *Supra* n.23 at 32.

with the average time period between answer and trial.⁶⁰ 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.⁶¹ 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.⁶² A sixth definition is simply the average age of all cases reaching trial, regardless of whether the order is regular or preferred.⁶³ 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.⁶⁴ This definition embraces relatively few cases but does imply that delay measurement is a far broader concept than scholars have generally regarded it.

Because thirty-five states have court administrator's offices to gather statistics⁶⁵ and because such information has been funneled since 1953 into the Institute of Judicial Administration⁶⁶ 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 Fig. 5.) For counties with a population over 750,000, the Circuit Court of Cook County, Illinois, faces the worst congestion with

FIG. 5
TRIAL COURT DELAY: A NATIONAL VIEW (1969)⁶⁷

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

⁶⁰ Institute of Judicial Administration, *Calendar Status Study*, *supra* n.20 at ii-iii.

⁶¹ *Id.*; Milton D. Green, *The Situation in 1959*, 328 *Annals* 7 (Mar. 1960).

⁶² *Supra* n.60 at ii-iii, vi, 4.

⁶³ *Supra* n.55, at 43, 45.

⁶⁴ *Supra* n.23 at 32.

⁶⁵ *Supra* n.32 at 118.

⁶⁶ *Supra* n.60 at i.

⁶⁷ Based upon *supra* n.60 at vi.

an average delay of 59.6 months. The population of this county in 1960 was 5,129,725. 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. For counties with populations under 500,000, the worst average delay—30.6 months—belongs to the Superior Court of Hillsborough, County, New 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.⁶⁸ Finally, one must remember that trial court delay is a malady more generally affecting civil rather than criminal litigation because, in the latter, as Dean Barrett notes, “Constitutional guarantees of ‘speedy trial,’ and statutory time limits require relatively speedy handling.”⁶⁹

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.⁷⁰ 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.⁷¹ 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.”⁷²

Among the most widely advocated proposals for reducing trial

⁶⁸ *Id.* at vi-ix.

⁶⁹ *Supra* n.13 at 106.

⁷⁰ Maurice Rosenberg, Forward, in Walter E. Meyer Institute of Law, Dollars, Delay and the Automobile Victim iv (1968).

⁷¹ *Supra* n.23 at 58.

⁷² Abraham S. Blumberg, *Criminal Justice* 122-123 (1967).

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 waiver), the acceleration of jury trials (such as by a judge 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 answer 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 (referees to supplement judges), and automobile accident compensation plans (modeled after workman's compensation programs).⁷³ However, apart from the limited works of Hans Zeisel and Maurice Rosenberg,⁷⁴ there have been no *empirical* studies assessing the operational merits of these proposals.

⁷³ These proposed antidotes for trial court delay have been called from numerous sources: *supra* n.55 at 43-217; *supra* n.23 at 32-58; Hans Zeisel and Thomas Callahan, Split-Trials and Time Saving: a Statistical Analysis, 76 Harv. L. Rev. 1606-1625 (1963); Hans Zeisel, Splitting Liability and Damage Issue Saves 20% of Court's Time, 356 A.B.A. Rep. 322-324; Hans Zeisel, Delay by the Parties and Delay by the Courts, 15 J. L. Ed. 27-33 (1962); Hans Ziesel, Court Delay Caused by the Bar? 54 A.B.A.J. 886-888; Hans Zeisel and Harry Kalven, Jr., Delay in the Court: a Summary View, 15 N.Y.B.A. Rep. 104-118 (1960); Harry Kalven, Jr., The Bar, the Court, and the Delay, 328 Annals 37-45 (1960); Julius H. Miner, Court Congestion: a New Approach, 45 A.B.A.J. 1265-1268 (1959); Maurice Rosenberg, Comparative Negligence in Arkansas: a "Before and After" Survey, 13 Ark. L. Rev. 89-112 (1959); Maurice Rosenberg, The Pretrial Conference and Effective Justice 87 (1964); Maurice Rosenberg and Robert H. Chanin, Auditors in Massachusetts as Antidotes for Delayed Civil Courts, 110 U. Pa. L. Rev. 27-56; Maurice Rosenberg and Myra Schubert, Trial by Lawyer: Compulsory Arbitration of Small Claims in Pennsylvania, 74 Harv. L. Rev. 448-472 (1961); Maurice Rosenberg and Michael I. Sovern, Delay and the Dynamics of Personal Injury Litigation, 59 Colum. L. Rev. 1115-1170 (1959); Samuel H. Hofstadter, A Proposed Automobile Accident Compensation Plan, 328 Annals 53-60 (1960); Bernard Botein, Impartial Medical Testimony, 328 Annals 75-83 (1960); Jacob, Justice in America, *supra* n.19, at 82-83. For recent symposia exploring the delay facet, *supra* n.29.

⁷⁴ See especially *supra* n.55 at 43-217, and Rosenberg, Comparative Negligence in Arkansas: a Before and After Survey, *supra* n.73 at 89-112.

5. *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 the expertise that other large organizations, public and private, had found necessary because of their growth.⁷⁵

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.⁷⁶ 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.⁷⁷ Although Vanderbilt implies a high positive correlation

⁷⁵ *Supra* n.32 at 103; Galbraith, *supra* n.45 at 159-168, 176-188.

⁷⁶ American Judicature Society, *Court Administrators: Their Functions, Qualifications and Salaries*, AJS Information Sheet No. 34 (1966).

⁷⁷ Vanderbilt, *supra*, n.45 at 13-14.

between an increased quantity of judicial decisions and their quality,⁷⁸ 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 been founded since 1948.⁷⁹ (See Fig. 3.)

Although Vanderbilt viewed these staff officials as specialists who augmented the managerial effectiveness of judicial executives,⁸⁰ 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"⁸¹—a body of experts whose knowledge makes their titular superiors in the hierarchy dependent on them and hence subordinate to them in fact.⁸² 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.⁸³

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.⁸⁴ Such judicial executives may become increasingly like corporation presidents who find themselves simplifying decisions reached in the lower echelons by experts or striking compromises when the experts disagree among themselves.⁸⁵ Judicial executives may become relegated

⁷⁸ *Id.* at 8.

⁷⁹ *Supra* n.32 at 118.

⁸⁰ Vanderbilt, *supra* n.45 at 13-14.

⁸¹ Galbraith, *supra* n.45 at 71.

⁸² *Id.* at 71-82.

⁸³ *Id.* at 81-82.

⁸⁴ Victor A. Thompson, *Modern Organization* 4-6 (1961).

⁸⁵ Galbraith, *supra* n.45 at 100-103. For an example of a company president (Henry Ford) who refused to accept relegation to a titular role, see William B. Harris, *Ford's Fight for First*, 50 *Fortune* 123, 126 (1954); Richard E. Roberts, *Ford's Reorganization: The Management Story*, 19 *Adv. Mang.* 9-12; Editors of *Fortune*, *The Executive Life* 192 (1956); John Kenneth Galbraith, *The Liberal Hour* 141-144 (1960).

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.⁸⁶ However, so far, political scientists 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.

6. *Judicial Selection and Tenure: Quality in Management*

Because judicial management usually focuses on the operational efficiency of courts,⁸⁷ 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.”⁸⁸ 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 Fig. 2.) 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 delegation 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

⁸⁶ Galbraith, *The New Industrial State*, *supra* n.45 at 81-82. See also, C. Wright Mills, *The Power Elite* 3-4, 228-231 (1956); Arnold M. Rose, *The Power Structure: Political Process in American Society* 41-42 (1967).

⁸⁷ Vanderbilt, *supra* n.45 at 13; *supra* n.42 at 334-336.

⁸⁸ Vanderbilt, *supra* n.28 at 3.

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.⁸⁹

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).⁹⁰ 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.⁹¹ 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

FIG. 6
JUDICIAL SELECTION MODES IN THE STATES (1969)⁹²

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

⁸⁹ *Supra* n.56 at 3.

⁹⁰ Max Weber, *The Theory of Social and Economic Organization* 152 (A. Henderson and T. Parsons transl. 1947); *supra* n.84 at 4-6; John M. Pfiffner and Frank Sherwood, *Administrative Organization* 77 (1960).

⁹¹ Ill. Const. art VI, § 8 (1870); *supra* n.56 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.

⁹² Derived from 1-2 *The Constitutions of the United States: National and State. Cumulative Supplements.*

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.⁹³ (See Fig. 6.) Nine states have adopted a compromise between these two poles: the Kales plan.⁹⁴ (See Fig. 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 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.⁹⁵ This system tries to apply an important tenet of traditional public administration (the politics-administration dichotomy) to judicial organizations as much as possible.⁹⁶ 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.⁹⁷

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

⁹³ *Supra* n.32 at 110-111.

⁹⁴ Albert H. Kales, *Unpopular Government in the United States* 245-247 (1914). The Kales plan of judicial selection and tenure is also 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 *Ann. Rep. of ABA* 516-615; and Jack W. Peltason, *The Missouri Plan for the Selection of Judges*, 1945 *U. Mo. St.* 30.

⁹⁵ *See, e.g.* *Mo. Const.* art. 5, § 29(d) (1945).

⁹⁶ Woodrow Wilson, *The Study of Administration*, 16 *Pol. Sci. Q.* 494-495 (Dec. 1941); Norton E. Long, *Power and Administration*, 9 *Pub. Ad. Rev.* 257-264 (Aut. 1949); Herbert Simon, *supra* n.48 at 45-60.

⁹⁷ Stuart S. Nagel, *Political Party Affiliation and Judges' Decisions*, 55 *Am. Pol. Sci. Rev.* 850 (1961).

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.⁹⁸ (See Fig. 6.) Of these five modes of judicial selection, partisan elections and appointment are the oldest, whereas the Kales plan is the newest.⁹⁹

During the last decade political scientists have extensively researched the subject of judicial selection and tenure at the state¹⁰⁰—as well as the federal¹⁰¹—level. Furthermore, some academicians have expanded this behavioral research to encompass the role of bar associations in the selection of local trial judges.¹⁰² 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 pre-judicial occupations, their ages, their education, their urbanism, their regionalism, the turnover rate, their decisional output, and their decision making process.¹⁰³ Empirical research into

⁹⁸ *Supra* n.32 at 110-111.

⁹⁹ *Supra* n.92.

¹⁰⁰ See, e.g., Herbert Jacob, *Judicial Insulation—Elections, Direct Participation and Public Attention to the Courts in Wisconsin*, 1966 Wis. L. Rev. 801 (1966); Jacob, *Justice in America*, *supra* n.19 at 139, 203; Herbert Jacob, *The Effect of Institutional Differences in the Recruitment Process: the Case of State Judges*, 13 J. Pub. L. 104 (1964); Herbert Jacob, *The Courts as Political Agencies—a Historical Analysis*, *supra* n.37 at 44-46.

¹⁰¹ See, e.g. Joel B. Grossman, *Lawyers and Judges 2* (1965); Joel B. Grossman, *Social Backgrounds and Judicial Decisions: Notes for a Theory*, 29 J. Pol. Sci. 302-351 (1967); Joel B. Grossman, *Social Science Approaches to the Judicial Process*, 79 Harv. L. Rev. 1551-1594 (1966); Joel B. Grossman, *Federal Judicial Selection: the Work of the ABA Committee*; 8 MW. J. Pol. Sci. 221-254 (1964); Jack Ladinsky and Joel B. Grossman, *Organizational Consequences of Professional Consensus: Lawyers and Selection of Judges*, 11 Ad. Sci. Q. 79-106 (1966); Harold W. Chase, *Federal Judges: the Appointing Process*, 51 Minn. L. Rev. 185 (1966); Harold Chase, *The Johnson Administration Judicial Appointments—1963-1966*, 52 Minn. L. Rev. 965 (1968).

¹⁰² Richard A. Watson, Rondal G. Downing, and Frederick C. Spiegel, *Bar Politics, Judicial Selection, and the Representation of Social Interests*, 61 Am. Pol. Sci. Rev. 54-71 (1967); Richard A. Watson and Rondal G. Downing, *The Politics of the Bench and the Bar: Judicial Selection Under the Missouri Non-Partisan Court Plan 2-3* (1969); Richard A. Watson, *Bar Politics and Judicial Selection*, 24 J. Mo. B. 27-38, 69-79; Richard A. Watson, *Lawyers' Attitudes on Judicial Selection*, 72 Am. J. Soc. 373-387 (1967); Richard A. Watson, *Missouri Lawyers Evaluate the Merit Plan for Selection and Tenure of Judges*, 52 A.B.A.J. 539-542 (1966).

¹⁰³ *Supra* n.97 at 848-850; Stuart S. Nagel, *Ethnic Affiliations and Judicial Propensities*, 24 J. Pol. Sci. 109 (1962); Stuart S. Nagel, *Testing Relations between Judicial Characteristics and Judicial Decision-Making*, 15 W. Pol. Q. 435-437 (1962); Stuart S.

these hypothesized linkages constitutes a substantial segment of the research agenda for judicial management. In addition, political scientists 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 precise attributes of good judicial candidates. However, 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 and groups.¹⁰⁴

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.¹⁰⁵ Furthermore, in some consolidated trial courts, the chief judge may appoint a staff to facilitate his managerial duties.¹⁰⁶

7. *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.¹⁰⁷ However, whereas the literature on the sixth facet is extensive,¹⁰⁸ scholarly interest in this last aspect has grown only since 1960.¹⁰⁹ Only the American Judicature Society has given much consideration to the latter.¹¹⁰

Nagel, *Culture Patterns and the Judicial System*, 11 *Vand. L. Rev.* 147 (1962); Stuart S. Nagel, *Judicial Backgrounds and Criminal Cases*, 53 *J. Crim. L.* 335-338 (1962); Stuart S. Nagel, *Law and the Social Sciences: What Can Social Science 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.

¹⁰⁴ Grossman, *Lawyers and Judges*, *supra* n.101 at 197.

¹⁰⁵ *Supra* n.32 at 119.

¹⁰⁶ *Supra* n.76 at 2-4.

¹⁰⁷ Vanderbilt, *supra* n.28 at 3.

¹⁰⁸ *Supra* n. 100-103.

¹⁰⁹ American Judicature Society, *Judicial Discipline and Removal*, August 1969. Report No. 5. 1, 5, 22-23.

¹¹⁰ American Judicature Society, *Judicial Retirement and Disability Commission and Procedures* 1-2 (1969).

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.¹¹¹ 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.”¹¹² 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 of cases handled, judicial election returns, and bar association evaluations.¹¹³

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.¹¹⁴ 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 Fig. 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.¹¹⁵ (See Fig. 7.)

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

¹¹¹ Selected Readings on Administration of Justice and Its Improvements, *supra* n.28 at 28-29.

¹¹² Watson and Downing, *supra* n.19 at 273.

¹¹³ *Id.* at 274-277.

¹¹⁴ *Supra* n. 109-110.

¹¹⁵ *Id.*

FIG. 7
METHODS OF JUDICIAL REMOVAL IN
THE STATES¹¹⁶

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

punishment.¹¹⁷ Finally, 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.¹¹⁸

V. CONCLUSIONS: THE PROSPECTS FOR JUDICIAL MANAGEMENT AT THE STATE LEVEL

Judicial management at the state level has remained a neglected sector of law, political science, and public administration 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 dissatisfaction is exhibited by segments of the legal profession rather than by the general public.¹¹⁹ For judicial management at this level, there are at least seven facets: court organization (or consolidation); abolition of fee offices; judicial leadership; court congestion; judicial staff functions; judicial selection and tenure; and judicial discipline, removal, and retirement. In considering the prospects for judicial management, especially at the state level, let us center on three issues: its relation to the general goals of a judicial system, its cohesion as a sector of these three fields, and its research agenda.

¹¹⁶ Based on *supra* n.109.

¹¹⁷ *Supra* n.111.

¹¹⁸ *Id.* at 30.

¹¹⁹ Jacob, *Justice in America*, *supra* n.18 at 203.

(1) These seven facets of judicial management have often been examined as if they were simply technical devices and ends in themselves.¹²⁰ 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.¹²¹ There is a general consensus among academicians that a judicial system operates to achieve at least eight principal overlapping goals:¹²²

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

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.¹²³

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

¹²⁰ *Supra* n.27, n.28, n.68.

¹²¹ *Id.* (for some sources focusing on facets of judicial management.) For some sources focusing on the general goals of a judicial system, see Benjamin N. Cardozo, *The Nature of the Judicial Process* 67, 72 (1921); David Easton, *A Systems Analysis of Political Life* 264-265 (1965); Lon L. Fuller, *The Law in Quest of Itself* 135, 137 (1940); Lon 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); James 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, *Justice in America*, *supra* n.19 at 17-25; R.L. Meek, *The Distribution of Justice, Politics of Local Justice*, *supra* n.12 at 20-24; Edwin M. Schur, *Law and Society* 17, 152 (1968); *supra* n.18 at 313-326.

¹²² *Id.*

¹²³ Jacob, *Justice in America*, *supra* n.19 at 17, 23.

briefly about some possible nexus. 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, modes of judicial selection as well as procedures for judicial discipline, removal, and retirement—probably in widely differing degrees—promote all these goals.

(2) Scholars 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.¹²⁴ By this definition, judicial management may qualify as a discipline. Its state of mind regards judicial organizations as essentially like 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 seven principal facets. The other kind consists of associations unique to this area—such as the American Judicature Society,¹²⁵ and the Institute of Judicial Administration.¹²⁶ Finally, this field contains a gallery of notables—such as Roscoe Pound, the first prominent exponent of court consolidation;¹²⁷ Arthur T. Vanderbilt, the first chief justice to manage a statewide consolidated court system;¹²⁸ Albert M. Kales, an innovator

¹²⁴ Albert Somit and Joseph Tanenhaus, *American Political Science: A Profile of a Discipline* 2-6 (1964).

¹²⁵ The American Judicature Society, 1155 East 60th Str. Third Floor, Chicago, Illinois 60637.

¹²⁶ The Institute of Judicial Administration, New York University, 40 Washington Square So. New York, New York, 10012.

¹²⁷ Pound, *supra* n.9, at 62-63.

¹²⁸ Vanderbilt, *supra* n.45 at 13; N.J. Const. art. 6, § 1 (1948).

in judicial selection;¹²⁹ Glenn R. Winters, a thorough chronicler of this field for the American Judicature Society;¹³⁰ and a series of scholars who impressionistically or empirically illuminated the many ramifications of judicial decision making: Benjamin Cardozo,¹³¹ Jerome Frank,¹³² Rodney Mott,¹³³ Charles Herman Pritchett,¹³⁴ Glendon Schubert,¹³⁵ John Schmidhauser,¹³⁶ S. Sidney Ulmer,¹³⁷ Stuart S. Nagel,¹³⁸ and Walter F. Murphy.¹³⁹ Judicial management may have enough of each characteristic to be called a discipline. It certainly qualifies as a significant sector within law, political science, and public administration.

(3) The neglect of judicial management by specialists 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 seven main facets of this field.

In the area of court consolidation, the prime task of researchers 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 consolidation with the objective data on the caseloads. Survey and statistical research will be most helpful in this area.¹⁴⁰

In the area of fee offices, analysts face two main tasks: to measure the extent to which these offices contribute to trial court congestion and

¹²⁹ Kales, *supra* n.94 at 245-247.

¹³⁰ Selected Readings on Administration of Justice and Its Improvement, *supra* n.28 at 71-82.

¹³¹ Cardozo, *supra* n.121 at 19-25.

¹³² Frank, *Law and the Modern Mind*, *supra* n.11 at 108-126; Frank, *Courts on Trial: The Myth and Reality of American Justice*, *supra* n.11 at 316-325.

¹³³ Rodney L. Mott, *Judicial Influence*, 30 *Am. Pol. Sci. Rev.* 295-315 (1936).

¹³⁴ Charles Herman Pritchett, *The Roosevelt Court: A Study in Politics and Values, 1937-1947* 32-45, 89, 242-263. (1948).

¹³⁵ Glendon A. Schubert, *The Judicial Mind*, 273-288 (1965).

¹³⁶ John R. Schmidhauser, *The Supreme Court: Its Politics, Personalities, and Procedures* 30-59 (1960).

¹³⁷ S. Sidney Ulmer, *An Analysis of Behavior Patterns on the United States Supreme Court*, 22 *J. Pol.* 629-653 (1960).

¹³⁸ *Supra* n.97 and n.103.

¹³⁹ Murphy *supra* n.11 at 91-122.

¹⁴⁰ Heinz Eulau, *The Behavioral Persuasion in Politics* 33-34 (1963).

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 consolidation are also germane to this area.¹⁴¹

In the area of judicial leadership, specialists 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 stratagems, 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.¹⁴² The composite of methodologies germane to the other two areas are also useful in this area along with two other approaches: the participant observer technique and case studies.¹⁴³

In the areas of judicial congestion, scholars 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.¹⁴⁴ 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.¹⁴⁵

¹⁴¹ *Id.*

¹⁴² Joseph Tanenhaus, *Supreme Court Attitudes toward Federal Administrative Agencies, 1947-1956—An Application of Social Science Methods to the Study of the Judicial Process*, 14 *Vand. L. Rev.* 473-502 (1961); Charles E. Lindblom, *The Science of Muddling Through*, 19 *Publ. Ad. Rev.* 79-88 (1959).

¹⁴³ Jerome H. Skolnick, *Justice Without Trial: Law Enforcement in a Democratic Society* 30-41 (1967).

¹⁴⁴ Fred N. Kerlinger, *Foundations of Behavioral Research* 275-355 (1964); John Ross and Perry Smith, *Orthodox Experimental Designs Methodology in Social Research* 352-363 (H. Blalock and A. Blalock ed. 1968).

¹⁴⁵ *Supra* n.55 at 241.

Therefore, in lieu of such experimentation, researchers may have to rely on such surrogates as simulations, participant observer work, and survey research.¹⁴⁶

In the area of staff functions, the primary task of analysts 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.¹⁴⁷

In the area of judicial selection and tenure, the central problem for specialists 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 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, Guttman, correlations, and simulations.¹⁴⁸

In the area of judicial discipline, removal, and retirement, researchers 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.¹⁴⁹

Finally, among the areas for further research in judicial management are the following three: ecology, systems, and small groups. Ecology confronts analysts 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.¹⁵⁰ Systems entails the

¹⁴⁶ *Supra* nn. 136-138.

¹⁴⁷ Tanenhaus, *supra* n.142 at 473-475.

¹⁴⁸ *Supra* n.135-137.

¹⁴⁹ *Id.*

¹⁵⁰ *See, e.g.* Max Gluckman, *The Judicial Process Among the Barotse of Northern Rhodesia* 357-366 (1955); Paul Bohannon, *Justice and Judgment Among the TIV* 208-214

study of judicial organizations as circuits with inputs, outputs, and feedback and as inputs or outputs of a larger system. For these two overlapping problems, survey research, simulations, and participant observer techniques are among the relevant methodologies.¹⁵¹ 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.¹⁵²

(1957); Victor Ayoub, Review: the Judicial Process in Two African Tribes, *Community Political Systems* 237-250 (M. Janowitz ed. 1961).

¹⁵¹ Tanenhaus, *supra* n.142 at 473-475.

¹⁵² *Id.*; Stuart S. Nagel, Sociometric Relations among American Courts, 43 *SW. Soc. Sci. Q.* 136-142.