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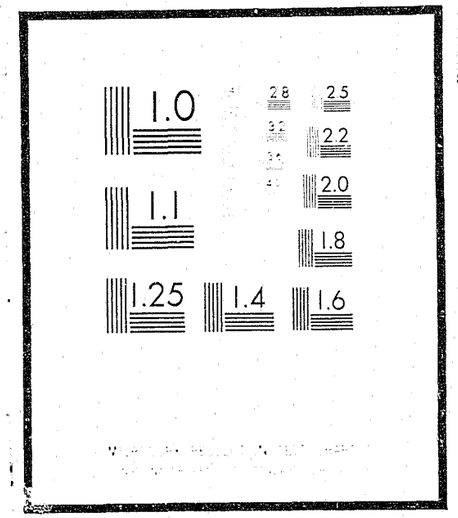

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Report

of

First National Chief Judges

and

Court Administrators Conference

Williamsburg, Virginia

February, 1971

National College of State Trial Judges

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DEDICATION

The National College of State Trial Judges dedicates this report to the late Robert E. LeCorgne, Jr., Louisiana's State Judicial Administrator. Mr. LeCorgne passed away shortly after attending the Williamsburg Conference. His wit and intelligence will be missed by all who were fortunate enough to know him.

FOREWORD

This is a report of the First National Conference of Chief Judges and Court Administrators. The conference was concerned with the problems of the metropolitan trial courts. It was designed in the belief that the information needed to discover solutions for the problems facing these extremely important courts could best be obtained by bringing together the people who know the problems and have dedicated years in dealing with them; the chief judges and court administrators.

It has been clear to those who work in and with the courts that there are some very talented and concerned people who serve as chief judges and court administrators. The National College wished to tap that talent in a systematic way. To brainstorm, if you will, all of the possible solutions to the problems under discussion, with the help of the collectively critical eye of this highly experienced, well informed group.

We did not believe that we would achieve much by bringing this wealth of experience together to listen at the feet of and learn from selected outside experts. On the contrary, we needed and hoped for a high level of involvement and participation, which we received. The distinguished participants worked hard and effectively for the entire week. What they gained from the repeated exchange with their fellow professionals is for each to assess, and that gain was the primary goal of the conference.

To assist in the above assessment process, the College has prepared this report. We believe it will be valuable as a beginning reference point for subsequent conferences, and worthwhile reading for all who are concerned with court management.

The recommendations of the participants will contribute to improving the design of future conferences. We will be announcing the dates and details of the next session soon.

The conference was held under a three year grant of $585,000 from the W. K. Kellogg Foundation of Battle Creek, Michigan, and under a $357,000 grant from the Law Enforcement Assistance Administration, United States Department of Justice. It was cosponsored by the Institute for Court Management of Denver, Colorado.

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PREFACE

On February 14, 1971, a milestone in court conferences was achieved when this, the First National Conference of Chief Judges and Court Administrators, convened at the Motor House in Williamsburg, Virginia. Sponsored by the National College of State Trial Judges and the Institute for Court Management, this meeting represented perhaps the greatest cross-section of judges and court administrators ever to gather in one place to specifically work on the problems facing trial courts throughout the nation. The thirty-three judges and thirty-one court administrators attending came from twenty different states from Hawaii to Massachusetts.

The theory supporting this conference was that the combined participants would represent the greatest concentration of expertise available on the problems confronting the state courts. Therefore, it was believed that by presenting those in attendance with a series of problem solving endeavors and involving them to the maximum extent possible in the development of potential solutions, a series of rational and feasible alternatives would be forthcoming.

The format decided upon was based on a survey of over 2,000 judges in the United States. Survey data indicated that the best possible method for any workshop or training session would be one which stressed small group interaction, the use of brief lectures, and the presence of some type of visual aids to present group products. Based upon this information, planning for the Conference proceeded.

The participants were divided into eight work groups. Each group was evenly divided between judges and court administrators. An effort was made to see that each member was from a different state or city to insure that the participants would be exposed to as wide a range of experiences and backgrounds as possible.

The First National Conference of Chief Judges and Court Administrators formally commenced with introductory remarks by the conductor of the Conference and a group development session. The groups were presented with five statements regarding group policy for the coming week. The questions ranged from how conflicts within the group would be dealt with to how each team would assure that surface issues would be penetrated during the discussions. The session lasted for about one hour. It included the assignment of each member to serve as a group reporter and group moderator at least once during the week. Overall, this initial meeting served to let everyone get acquainted and establish group cohesion.

The eight teams then streamlined their group development statements, posted them on flip charts, and presented them to the Conference en banc. Then one of the most crucial segments of the program took place with the problem definition session. Individual group members were asked to list all the problems they could identify facing the courts in court administration. These totalled over 375. The groups followed this by a session to refine all the problem statements and reduced this total listing to the four most important problems in priority order. These were posted on the flip charts in each group work area. The reason this portion of the program was crucial is that modern management techniques require clear problem definitions before any changes can be contemplated. Given the wide range of expertise and experience present at the Conference, there could be no group more knowledgeable to successfully tackle the task of problem definition in court administration.

The series of lectures and group work sessions began with a short talk on "The Role of the Trial Judge in Court Administration". This format was carried throughout the conference. The design was that after the lecture of approximately one-half hour, a sheet of four questions was passed out to the groups and each team was assigned two of the questions. The groups discussed the questions for about two hours and the reporters presented their group products to the general assembly. The questions or group tasks were designed to extract creative and inspirational thoughts and ideas from the group member and the outstanding results, along with the lectures, are presented in Section One of this report.

Other activities occurred during the week for the enlightenment of those attending the Conference. A learning lab was conducted by R.T. and Marianne Williams of the Institute for Court Management. The judges and administrators were given the opportunity to express the strengths and weaknesses of their respective occupational groups. On the last evening, a formal dinner was followed by a report on the progress of the internship and Court Study Program the ICM has undertaken. This speech is included in Section One. In addition, there was a series of questionnaires, discussed in Section Two, which gave the Conference participants an opportunity to rate their reactions to the Conference as well as assessing the knowledge and commitment they gained.

The final session involed several activities. Each group was asked to re-evaluate the four problem statements decided upon on the first day based on the ideas generated during the week. Each member then participated in a problem solving session whereby he recorded his proposed solution of each of the four problems generated by his group along with the steps for implementation. The teams then decided upon a team solution to these same problems. This was followed by a brief talk on the need for all court personnel to have the skills to effectively evaluate and understand the information given them in order to maximize problem solving and creatively manage change.

A large part of the success of the Conference was the result of the assistance given the National College and the Institute by a number of individuals. These included Professor William Swindler of the College of William and Mary, Miss Gloria Jaramillo, Executive Secretary, and Mr. Michael Bell, video tape technician for the National College, Miss Becky Jankovich, statistician for the College, the law students of the College of William and Mary, and the staff of the Motor House in Williamsburg. Special mention is to be given Mr. William Mahoney, and Mr. George Westerman of the American Bar Association for their outstanding monitoring efforts during the week. To all the above people and especially to the distinguished participants in the Conference, a warm note of thanks is extended by the staff of the National College of State Trial Judges and the Institute for Court Management.

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THE ROLE OF THE TRIAL JUDGE IN COURT ADMINISTRATION

by

Laurance M. Hyde, Jr.

THE ROLE OF THE TRIAL JUDGE IN COURT ADMINISTRATION

by Laurance M. Hyde, Jr.

Laurance M. Hyde, Jr., was selected under the Missouri Merit Judicial Selection Plan, April 24, 1962, as judge of the Circuit Court of the City of St. Louis. He resigned on September 1, 1965, to become Dean of the National College of State Trial Judges. Judge Hyde is a member of the Missouri Bar and the State Bar of Nevada.

To determine the role of the trial judge in court administration let us look at the requisites of a metropolitan trial court to operate at its peak. I suggest the requisites are:

1. Effective Procedure
2. Efficient Plant and Equipment
3. Public Support
4. Capable Personnel

If you have all four of these in adequate supply, you really can't miss. But to determine the relative importance of each, I ask: "Which ones could you manage to get along without?" You could get along without any of them so long as you had the fourth one, capable personnel.

Now of the personnel in a court system, by far the most important are the judges; therefore the role of the trial judge in court administration is so central as to overshadow everything else. Saying this does not downgrade the role of the administrator, whose job is to make the judges more effective. The judges are the production line. They will determine whether the very best court administrator in the world is effective. They will be the major factor in determining the quality and the attitudes of all the personnel. They will be the major factor in obtaining an adequate plant and equipment. They will be the major factor in instituting needed procedural changes and further, most of the procedural changes wouldn't work unless the judges support them and want them to work. The trial judges will determine the percentage of cases tried and the percentage settled and we all know how important a minor shift in those percentages would be.

They will determine whether the average automobile intersection case will be tried in one day or in four days. They will determine whether the lay participants in a trial feel when it is over that they have been an important part of democracy in action and look forward to their next jury service, or whether they feel their time was needlessly wasted in an inefficient and inconsiderately run system that is not to be trusted.

The judges will determine whether the news media is generally supportive, and giving fair and objective coverage, or is seeking to muckrake at every opportunity.

They will determine whether the court has reasonable public support and reasonable cooperation from the bar and from the state and county legislative bodies.

When judges talk about the needs of the system for change...I often hear something like this: "The job can't be done by judges. The legislature is hostile, and further we must try our cases one at a time. We must not be placed in the position of having compromised our neutrality so as to disqualify us in cases which may come before us." They may say that judges must not speak publicly on controversial, social, political, or moral issues because any of these issues may become cases at any time. And, they may say judges must avoid defending their actions. If the newspapers criticize a judge for his order is a case, no matter how unfairly, he should rely upon the Bar to do any explaining or defending that is done. This viewpoint is reinforced by the judicial canons of ethics which admonish us not to seek publicity or personal aggrandizement.

However, the justice system of the United States is under heavy fire from all directions. Many feel that only radical reform can save it from collapse. It suffers from dissension within, its various components--police, prosecution, courts and corrections--each point the finger of blame at the other. Perhaps the courts have fared worse than the others. They usually receive only a percentage point or two of the state's governmental budget. For lack of money and lack of public interest, the courts, in the period of the law explosion, have received inadequate manpower, inadequate research, and inadequate facilities. This cannot be blamed upon the courts.

Nonetheless the courts themselves have failed to do what has been within their power to do. They have been slow to change and to innovate, slow to assess their resources and fully use them. Courts have only recently begun to awaken to the importance of change and to candidly look at their shortcomings and admit to their imperfections.

Time after time over the recent years when a new procedure is proposed for the purpose of improving either the efficiency of the quality of justice, the automatic response is something like this, "Now, that sounds very good. It might work in your state, but it won't work in my state because..." and then there are several reasons that may follow, for example, "because the Supreme Court has already passed on the question", or "because we have a statute on that", or "because our lawyers would never accept this change", or "our judges would never accept it", or "the clerks or the bailiffs or the court reporters or the newspapers or the voters or somebody would never accept the proposed change."

This kind of a cautious approach is ingrained in us. It is part of our training in the law and our experience in government. It is part of our commitment to an orderly society, of going through proper channels, of stare decisis, of working within the system. It is part of the strength of the system; but carried too far, it can and is resulting in a rigidity that can destroy the system. When a problem needs solving and we can't solve it with the framework, then we must be willing to look outside of the framework for solutions. I don't mean by that to call for seizing of public buildings, or Molotov cocktails or even sit-down strikes or protest marches. But if change is needed, then it isn't sufficient to say, "we can't change it." We must say instead, "how can we get it changed"--by new test case to the appellate courts, by having a bill introduced in the legislature, by getting the Constitution changed. I know that isn't easy but I also know it is not impossible.

Short of those methods of change, there are usually ways around the appellate or legislative obstacle. The job is to think in terms of how to get results. We will be gaulted far more in the long run for inaction than we will be for side-stepping outmoded rules. I am not advocating any doctrine that puts the courts above the law or permits us

to violate laws that we don't agree with. However, looking for legal justification to do what we want to do has always been proper lawyer's work.

Last month, Chief Judge Edward Devitt of the Federal District Court for the District of Minnesota ordered six-man juries in federal civil trials in the courts in his district. This experiment has no legislative or appellate sanction. It does, however, have strong indirect appellate support in that the Chief Justice himself has spoken in favor of the idea, but only in a speech given off the bench. Also, the Supreme Court has approved six-man juries in state trials. But only because Florida tried six-man juries and somebody appealed it and the Supreme Court approved it. Perhaps the only way six-man juries or whatever the change that's proposed to be, will be tried...will be through some courageous trial judge like Ed Devitt who is willing to make the experiment and let it go up on appeal.

The Institute of Judicial Administration's current issue of the Criminal Justice Newsletter reports that management experts have made a survey of the New York City criminal courts' huge problem,[1] and if you have read the papers about the New York jail strike, you know about their backlog problem and the numbers they are working with. They have been studied by a team of management consultants who report that this huge backlog of cases can be cleared up without adding new judges. The Task Force put together some seventeen recommendations. They recommend, for example, shoring up the administrative powers of the court by granting the criminal administrative judge additional power and by clarifying the powers of the court administrator. This was one of the things you talked about this morning; the need to clarify the relationship between the court administrator and the judge, and the duties of each.

In order to achieve change, in this instance the method used was to bring in an outside consulting group, but not committing them in advance to any particular course or seeking support for a preconceived view of the members of the court. Already, the recommendations which could be adopted by the court on its own motion within its own powers have been adopted. Those requiring legislation or other outside action will take longer. This is an example of looking to industry for their experience and guidance.

As we look to industrial management for their help in solving the problems that face the courts, we will find many areas where their experience can help us. We are dealing with very large numbers and industrial methods of dealing with them must be applied. But there is one area where we must not yield to the temptation to accept an industrial, mass-production solution. Our ultimate product is justice for people who pass through the courts. This is a tailor-made product of high quality and it cannot be mass-produced. We are the inheritors of the finest system of justice that the world has ever developed. It works and we know that it works. The litigants, the witnesses and the jurors must believe that the system produces justice or we lose the war no matter how efficient the system. In other words, we can't accept a highly efficient system of non-justice. However, we may have one forced upon us if we don't live up to King James' promise of 750 years ago to the Barons at Runnymede--"we will not sell, deny or delay justice or right to anyone."

Now, I want to pass on to the most important part of what I have to say. I'm referring to the questions which will be distributed to you to work on in your groups. I say that is the most important part

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because we have in this room collectively the people who know more about the problem of court administration, by far, than any one person. This kind of group has met together before, but not to systematically gather the sum of the information which you have brought here. The information that is needed to solve some of the problems of court administration is in this room and we hope to find ways to cause it to emerge from the work of your groups.

I have three questions for the group to work on during the next period and all of you will not be working on the same question. One of my questions is in two parts and as you will see it assumes that you are advisors to a court system in a brand-new state. This was done to block the lament--"That won't work in my state because of the legislature or the Supreme Court" or whatever. That can be a cop-out and a means of avoiding the issue. On the other hand one of the questions assumes that each of you here is a Chief Judge with broad powers and secure tenure. One of the purposes of making that assumption is to show that the effect of public opinion, the need for support from the bench and the bar or perhaps the legislature sources are important, valid, vital, and practical considerations.

GROUP REPORTS ON THE ROLE OF THE TRIAL JUDGE IN COURT ADMINISTRATION

by Laurance M. Hyde, Jr.

Discussion on Question 1:

I. A new state is being admitted to the Union. It will have, in its largest city, a new superior court with twenty judges. You are called upon as an expert consultant to advise the court's planners:

A. In what ways will the method of selection of the court administrator help or hinder in obtaining maximum acceptance and cooperation from the judges and other personnel, including the bar, the news media and the public? In other words, what are the pluses and minuses of appointment by the chief judge to serve at his pleasure, as compared to appointment by the entire court, and with other methods the new state might consider?

B. In what ways will the method of selection of the chief judge and the term for which he will or may serve, help or hinder his effective administration of the court? Develop the pros and cons of the various methods the new state might consider.

Group 1: (1-A)

We listed a group of pros and cons:

1. In the area of appointment by the chief judge only, the pros we came up with was: the direct, personal responsibility to expedite the appointment. The contrary of this was that the appointment might be arbitrary and that there would be disagreements with other members of the court;

2. Regarding the matter of the appointment by the entire court: In the pros there would be general acceptance and an administrator who has complete cooperation for his work with the court. In the cons, there could be splits that would develop based on issues that might arise;

3. The other methods to be considered would be to have the administrators appointed by the State Court Administrators in areas where you have centralized state court systems.

Overall, we felt the chief judge should make the appointment of the court administrator.

(1-B)

The chief judge might be selected in any of the following ways:

1. An en banc session of the supreme court of the state. They would agree on each judge of each district. This way the judge would be assured of the support of the Supreme Court. The con of this is that it is contrary to the concept of the unified court systems and its not apt to be accomplished on a realistic basis;

2. The other one was that the chief judge would be appointed by the chief justice only. He does have to work with the chief justice in this area. We came up with the cons that the chief justice could play favorites and he might not get the cooperation from the judges on the local level.

Our basic feeling was that the selection of the chief judge should be accomplished through a vote by the judges in the district, possibly on a rotating basis for whatever term he would serve.

Group 2: (1-A)

The court administrator's appointment should be made by the chief judge with the consent of the court and serve at the pleasure of the court.

The question of acceptance by outside agencies we felt should be considered, but the selection is exclusively for the court only to decide. This would result in frank cooperation from the judges, but possibly questionable acceptance by other people.

But, regardless of how appointed, the process must have the cooperation of all the judges. If not, there may be problems that come up if appointment is by the chief judge only which could result in ineffective administration. This method of selection of the administrator would also be materially effected by his duties and responsibilities.

(1-B)

The chief judge should be elected by majority of the court by secret vote. If selected by the Chief Justice, again the problem of cooperation of the court is a possibility.

A definite term was not discussed although we did discuss two or three year terms. A long term might lead to a possible dictatorship or a stagnation of progress. On the other hand, the term should be long enough to provide continuity of administration in order to adopt constructive long term programs and changes.

Group 3:

(1-A)

Regarding the court administrator, it is the consensus of our group that he should be selected through an objective examination process. The final examining board should be composed of members of the court and the presiding judge would have the opportunity to select, with a group of the majority of judges, the successful candidates for the examination. Our understanding would be that examination would be conducted in the areas of knowledge and experience outlining the job description of the administrator's duties.

The executive officer would serve or work for the majority of the judges under the direct supervision of the presiding judge. We believe the chief judge should be elected by his fellow judges perhaps on the basis of a secret ballot is necessary and that he could serve for a period of two years.

(1-B) The group felt that the presiding judge should be elected on the basis of his qualifications as an administrator and that to develop the administrative skills of judges, the job should be rotated.

Group 4:

(1-A) Going down possible methods of selection for the court administrator:

1. At the pleasure of the chief judge for a term; appointment by majority of the board of judges; appointment by the Appellate Court;

2. Appointment by a Supreme Court Administrator;

3. Appointment by a chief judge from a list of qualified persons with the consent of the majority of the board of judges.

After discussion, weighing the pros and cons, it was our consensus that the last named would be the best method. That is, to have your chief judge set up certain basic standards and select one person he would like to have from a group of qualified individuals to serve as his court administrator, and have that action approved by a majority of the board of judges. We think that brings all the judges into play and it gives them a feeling of being a member of the team in the selection of a court administrator. It avoids the problem of having the chief judge appoint alone and have it regarded as perhaps a political appointment by some the possible lack of cooperation by members of the board of judges.

The difficulty with appointment by the majority of the board is that you may get involved with each judge having a candidate of his own. Again, there is possibility of nonacceptance of the particular one selected.

(1-B)

Considering methods of selection, we came up with our own description of the best method of selection of a chief judge: that would be by a majority of the board of judges for a term somewhere between less than five (5) years and more than one month, subject to removal for a cause through action of the board of judges.

The removal item that caused some conflict in our group--there are some dissents thinking that the board of judges should not have that removal power once they have appointed a chief judge for a term, but it should go perhaps to some board of judicial inquiry and review board for removal.

Of course, the other methods you could consider with the selection of a chief judge were waived:

1. Appointment by the governor;

2. By a chief justice of a Supreme Court;

3. By appointment by seniority; or

4. Involving the board of judges by a majority vote selecting your chief judge. We feel that would give a sense of bringing everybody into this operation.

When you get him selected for a term, it gives the chief judge the advantage of knowing that he has the continuity of tenure through which he can accomplish any of the goals he might have. It gives him time for innovation.

Discussion on Question 2:

II. How can the powers and duties of a court administrator and chief judge be divided to maximize information flow and cooperation between them and make each as effective as possible in his function?

Group 5:

We more or less agree upon one thing: that in order to eliminate the areas of conflict we would have to specifically set forth just what the areas of responsibilities and the duties the court administrator would have. This would be done by the court adopting such a job description. We were specifically interested that these descriptions and duties would be as nonjudicial functions. We did list a few of these.

As to personnel management, and recruiting, this would be in the area of the court administrator, hiring and firing in that particular area and training. Reports and statistical information would also be one ob the duties of the court administrator. He was to also act as a liaison officer in the areas of the public press and other governmental agencies.

As to maintaining a proper flow of information, we also felt that this would require a sort of a personal contact with the presiding judge. They have to communicate many times and we felt that even informal discussion would be very important. Also the administrator should be able to keep up on top of what is going on and to sit in with the presiding judge in the preparation of the agenda for judges' meeting and have access to these meeting and be able to discuss with the presiding judge as a result of these judges meetings.

Group 6:

We started out by trying to define the various functions of the court and then try to determine who was responsible for the performance of those particular functions. As a general summation, we concluded, that the judge is like a captain of a ship and the administrative office is his executive officer. In most of these areas we felt there was a joint responsibility but that one or the other would have the primary responsibility. We listed eighteen (18) different functions and then decided who was responsible for those functions.

One function is the assigning of cases. Where you use a master calendar system, the judge is responsible for the assigning of cases. If you use the system of assigning on filing and its' virtually an administrative function. In that situation the administrator would be responsible.

Now, the matter of assigning judges to different departments, that is exclusively a judicial function.

On the matter of providing facilities for the court, that is an administrative function acting under the direction and the supervision of the judge outlining what is required by the court. The matter of budgeting and the materials and supplies is purely an administrative function.

The matter of personnel is purely an administrative function except in those rare instances where you are dealing with the employment of quasi-judicial officers, such as commissioners, special masters and so forth.

The assignment of space within your facilities, other than the space that is assigned the judges, is primarily of function of the administrator acting on the consultation and direction with the judge.

Public relations work or dealing with the general public and foreign organizations is a joint responsibility of the judge dealing with the main basic problems, and the administrator assisting him in liason work and handling the specific details. Liason with the legislative bodies is a joint function depending upon the nature of the function if you are dealing with the legislative changes in procedural substantive matters.

Probation and correction work is primarily a judicial function but when it comes down to the actual personnel and day-to-day operations of the probation department, that would be an administrative function.

Liaison with the sheriff on the processing and the control function we felt was an administrative function which the administrator could handle. In security problems, the ultimate responsibility lay with the judge but the administrator should carry out his instructions on specific requests.

Files and record keeping within the court was an administrative function.

The selection of jury panels as distinguish from the voir dire examination of jurors in the courtroom, was the administrators' function.

The expedition of judicial business is purely a judicial function.

The maintenance of statistics and management analysis is purely an administrative function. The operation of the court in case of emergency, such as a riot, requires joint effort by both.

Group 7:

First of all, our main presumption is that the power is all in the administrative judges and the presiding judges and it wasn't divided, it was delegated. Essentially, he had this power and therefore, he could delegate it as he wished.

We felt that the court administrator would be in charge of the day-to-day operation of the court and of the court's personnel. And these would only be your courts with non-judicial functions. The administrative judge would set all policy decisions for the administrator to carry out.

We felt our main problem in most courts today is that most judges on the bench, if they had a problem, would go right to the individual of the office where they had the problem or to the administrator himself and this caused a chain of command problem. We felt that all judges, if they had a problem, should go to the chief judge or to the presiding judge and he should relay the problems to the court administrator who would handle all problems with the personnel and anybody else; that he can only take orders from the administrative judge, not all judges on the bench. It would be very beneficial for the court administrator to have daily access to the administrative judge, if not a planned meeting every day, at least a time during the day that if he had something to bring up, he could bring it to the administrative judge.

In line with this we also felt periodic administrative conferences should be held with all members of the bench and the court administrators in attendance.

We had no great conflicts except for what relationships with other elected officials such as the clerk of the court, the state's attorney, as to whether the administrator should honestly deal with these people on a one to one basis as the administrator does today. Even though the administrator deals with these people, we must recognize the primary responsibility and policy and other decisions that should be through the administrative judge who heads these offices.

Group 8:

The chief judge should preside over en banc meetings, assign judges and cases in the master calendar plan, and those cases requiring special assignment in the individual docket plan. He should handle the functions not assigned to the court administrator. The court administrator should control the courts, the clerk of court functions, the bailiff, and the reporter and allied functions, relating to the trial process. The chief judge should handle the assignment of judges and cases. The administrative duties should be handled by the court administrator, including the carrying out of the instructions of the chief justice, handling the docketing of cases, budget preparation, serving as personnel director and other public and private agencies. He should also serve as systems manager, handle statistics and payroll, and all records, maintenance, and storage and fiscal responsibilities and the handling of a court reporter pool.

Discussion on Question 3:

III. You are chief judge, appointed by the state supreme court, with secure tenure and with broad policy making powers. You believe it is essential to make several important procedural changes, for example, a completely new calendaring and case assignment system, a new method of voir dire, and new records to be kept on each case from filing to final disposition. How will you institute these changes so as to create the best possible climate for them to succeed?

Group 5:

We almost had to come up with just one simple word "salesmanship." It was felt that if a judge in the position that this particular judge would have had the power that he has and he wants to institute any changes as to create the best possible climate for them to succeed, he is going to have to be a real good salesman. He is going to have to be sure that a possible preliminary consultation with parties who were involved and parties that could be affected. This opens up quite a "pandora's box", because you are going to have the judges themselves involved, the bar, maybe service organizations, the legislative, executive branches; so it and the many persons could be consulted and those who are involved and affected would be the ones we feel should be contacted by the judge.

Group 6:

In order to institute changes, so as to create the best possible climate for them to succeed, the judge charged with the ultimate responsibility should develop these policies only as a result of consultation with other judges and as a result of the consensus with the other judges and with the bar organizations that have a voice in the functioning of the court. Changes regarding procedures, calendaring, assignments, new methods of voir dire, should be instituted by a rule of court adopted by a majority vote of all the judges. We felt that a chief judge regardless of his power of authority, had to enlist the cooperation and support of all the other judges in the court.

Group 8:

In initiating the necessary rules to accomplish the contemplated changes, this shall be preceded by education and sales programs involving all interested parties and groups as to the necessity, need, and desirability of the change.

ROLE OF THE LAWYER IN COURT ADMINISTRATION

by

Lester C. Goodchild

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Lester C. Goodchild is presently the Administrator of the Criminal Court of the City of New York. He holds a J.D. at the University of Buffalo Law School, a B.S. in Business Administration at the University of Buffalo, and is a recent fellow of the Institute for Court Management, Denver, Colorado. He has been admitted to practice law in the New York and Federal Courts.

What I'd like to do rather than give a speech is work with you in developing the theme of my topic, which is the role of the lawyer in administration of the courts. I'd like to change that just a little bit and instead let's talk about the role of the lawyer in controlling the affairs of the court. I really think that's what administration is all about. So, I thought I might list the various areas where we find lawyers affecting the affairs of the court.

We ought to start out with the top position in the court system, the lawyer-judge. Now there's some rivalry; who suggested the lawyer-administrator should be number one? Are there other ideas as to where one might see lawyers, court clerks, law assistants playing a role in the affairs of the court?

If I may I'll group all those in one area: the law clerk. We have just thought of lawyer-judge, lawyer-administrator -- you have a long way to go. Any other areas? How about the lawyer as a law office manager, managing his own office? Does whether he is good or bad at managing his own office mean anything as to his affairs in court, or aid or assist the work of the courts? If you've got a lawyer who is a bad law office manager, doesn't that really affect how to operate the courts?

Well, if there is no objection, I'll add the lawyer office manager to our list.

I think I heard some mention of the lawyer citizen. Any others? I don't want to do all the work myself. How about the lawyer as an executive officer? How many of you have mayors, county executives, maybe even governors who are lawyers? The City of New York has a Mayor who's a lawyer. Any others?

OTHER VOICE: New Orleans has a Mayor who has a card.

OTHER VOICE: How can they affect the courts? As a Mayor?

GOODCHILD: Well, who finances your court?

OTHER: The County Board.

GOODCHILD: Are there lawyers on the County Board?

OTHER: Our county judge is the head of it.

GOODCHILD: We just brought up a lawyer-legislator, right? Be it the county board or the city council or the state legislature, I don't think I have to tell you how the lawyer-legislator affects your courts, do I? Does anyone want to help give us some suggestions here?

OTHER: The Prosecutor.

GOODCHILD: Right. In addition to lawyers prosecuting the cases, they're also defenders; sometimes they're litigants themselves, aren't they?

OTHER: Former defendants.

GOODCHILD: That's right. If I may take the liberty, I'd like to call them the "consumers" of the system; the lawyer as the prosecutor, the defender, the litigant. He might even be part of the system itself as the plaintiff or defendant. "Consumer" or "user" I guess we could call him. How about the lawyer who's frequently seen as the consultant to the court" He may be on a rule-making committee or in some other advisor capacity. He's usually a representative of an association -- where else do you find him?

OTHER: Bar association.

GOODCHILD: Of course, and where did we lawyers all come from? Where did we get started in the law? Law schools, so we have a law professor. I wonder if this indicates anything to you as to the importance of the lawyer in this whole thing we call the courts. It appears that no matter where you turn, we are bumping into a lawyer, a lawyer-type or a lawyer playing a role. I wonder if this suggests anything to you? Do you feel that this is significant or that this is just a nice list to go on the board? Mr. Blake?

MR. BLAKE: Well I guess that, as you say, the lawyer is the key to the entire court system.

GOODCHILD: And what do you think we've been doing about this fact? Do you think we've been recognizing it enough, or do you think there ought to be more done in recognition of this fact?

OTHER: They're like death and taxes, they're inevitable.

GOODCHILD: You don't think we can do anything about them?

OTHER: One of the big problems that I see, if you're talking about lawyers in courts, is their conduct -- the court time that they consume, the time they consume in chambers with the judge, their lack of preparation or their failure to prepare their cases, the delays and continuances that they seek in strategic moves for their clients and so on. To me, that's one of the big problems.

OTHER: So do I, but to me, that should be thrashed out by the Bar groups.

GOODCHILD: You don't think that court administrators, that the people involved with the administration of the courts, should have anything to do with that?

OTHER: I don't think so.

OTHER: I don't think the Bar pays any attention to the court administrators, unless they're judges.

OTHER: Well, they're greedy. Lawyers are very greedy.

GOODCHILD: Do you mean that if we showed them how to make more money practicing in our courts, we might win them over that way? Do you think that's a legitimate role?

OTHER: They have their own organizations for that, for trial lawyers.

GOODCHILD: But in order to bring about change, and I assume you've talked about change in the court system at this conference so that I don't have to spend time justifying the need for change in the courts; that you have to know how to start this whole ball rolling. And what I'm trying to suggest to you is that we court administrators underutilize the Bar in bringing about these changes. We should make clear to them the tremendous responsibility they have in running this system. No matter where you turn, you bump into a lawyer-type.

OTHER: One of the biggest problems nowadays is the availability of legal talent to represent indigent defendants.

GOODCHILD: What do you think we as court administrators might do?

OTHER: Pay them.

GOODCHILD: How might you give them a little nudge to hire more trial lawyers? Any suggestions? It's been done in the country.

OTHER: The federal system. You have the two systems that are being advocated now. First is the public defender system, which is setting up another bureaucratic agency just like the district attorney's or prosecutor's office.

GOODCHILD: That's taking it away from the Bar, so to speak, and setting it up as an arm of the government.

OTHER: The Federal system, where the judge appoints the lawyer, and he's paid on a daily schedule for his time and effort.

GOODCHILD: How about restrictive rules on continuances, so that a lawyer can adjourn a case only once or twice because he is engaged and then he goes to the bottom of the calendar?

One jurisdiction is my state has by rule that a lawyer can only have "X" number of cases on the calendar. After that, if he can't try his other cases on the calendar, that's too bad; he goes to the bottom of the list and starts all over again.

OTHER: Get a lawyer in a criminal case, where he wants to wait until a witness leaves the jurisdiction; they love that.

OTHER: That's what you have to find out; whom are you punishing, the lawyer or the litigant?

GOODCHILD: Well, there are two sides to that, of course. The litigant has the right to choose his own lawyer.

OTHER: You have a problem with lawyers who specialize both on the civil and criminal sides; they accumulate so many cases that they might have three cases on one day for trial if there is no coordination of their availability to try a case. You have instances now where judges and administrators are trying to plan. They've even gone so far as to tell firms that they have to hire more trial lawyers for their firm if they want to continue to try cases in their courts, because you don't have the people available to try the cases that you have.

GOODCHILD: In some areas of the country, there's a development of law office para-professionals that's coming about. In other words, in a law office, instead of having a lawyer to conduct examinations,

sit down with and interview all the clients and do the menial paperwork, lawyers are hiring para-professionals. These are well-educated individuals who are trained to work with people, and what they do is assume these tasks for the lawyer. This approach cuts down on poor law office management. If a lawyer has a poorly managed law office, he will probably end up trying to get the courts to do much of his work for him including his paper work. There's some feeling throughout the country that we shouldn't be the place where lawyers file all their papers. They ought to assume responsibility for keeping all that paper out of the court system and perhaps not file their papers until they are ready to move their case in court. And as you know, a high percentage of cases are disposed of without any legal action whatsoever, except the filing of the paper that commenced the action. If 60-70% of all the cases commenced are settled without any court action involved, and you file paper on every case, it means you have 60% or 70% of your case papers that are just going to clutter up your files. Nothing is ever going to happen on those papers as far as the court is concerned. The court will never have to get really involved with those case papers, yet we have them in our files.

I wonder if on the lawyer-legislator level, you have thought about the possibility, even the need for us administrators to remind the legislators (especially if they're lawyers) that this is their system. They share a great deal of responsibility for it, and they ought to quit giving all their problems to the court. Every time they get a social evil or social problem, the first thing they want to do is make it a crime, and that, of course, makes another category of case for us to process. And if your court is anything like the courts in New York, at least a third of the cases that come into court are of this nature; you know, prostitution, drunks, drugs, that kind of problem. We've got a tremendous job of selling to do to the lawyer-legislator to point out his responsibility to not dump all of society's problems on the courts and to stop making us the garbage pail of the social system. Anything he doesn't know what to do with, he dumps on the court.

Of course there is also the lawyer-executive officer. I don't know if you have had to plead with your mayor or county executive to get money for your court, but we certainly have to.

Maybe we're remiss in not pointing out to him that in addition to being the chief executive officer of the municipality, he is also a lawyer and as such has a special responsibility to see that the justice system operates effectively. And getting back to the legislator again, as you know, our whole court structure is set up by the legislature. In my municipality, the legislature tells us how much we can pay our judges, how long they serve, etc. The whole judicial system is a creature of the legislature. If any reform in the courts is needed, we always go back to the legislature for that reform.

I think there are two sides to this matter of the lawyer popping up so many times and affecting so many aspects of the judicial system. It really kind of smacks of, well, not really incest, but nepotism, or inbreeding, that kind of thing. If you talk to the public, a lot of people indicate that this system is sort of hidebound. They see lawyers running it and say "it's their own area," "it belongs to the lawyers." From the judge on down, it's a lawyer-dominated system. Where do the people stand?

In winding this up, I'd like you to think about this problem not only throughout these sessions but also when you go back to your respective communities. I wonder if we don't have to talk more to the Bar Associations. Perhaps we might also put a lot of emphasis on the role of the law schools, trying to indicate to the law schools that they ought to start teaching the student-lawyers who will be coming into

this system not merely how to make a lot of money, not how to go to work for the Wall Street law firms, not how to become judges, but perhaps the need to assume a greater responsibility for the judicial system as a totality. They really do have their multiple roles; no matter where you turn we find lawyer involvement. And they ought to start cleaning it up. I'm not aware of many law schools that have attempted to do this kind of thing, to see a systemwide responsibility and prepare law students for that responsibility. In Denver, they have attempted to put on their faculty, individuals who have backgrounds other than the law in an effort to help the student-lawyer understand that he has a social role to play. The behavioral sciences are being represented in law schools. At the University of Buffalo, they now have, for the first time, a Dean who is not a lawyer. I think that this may be good or bad, but I think we have to be doing something, take some strides in bringing some new thinking to the law.

We should start a reform movement with the law schools and then carry it on in the Bar Associations. I think the Bar Association is where most of us spend a lot more time. We need to direct a lot more of our effort in getting our problems to the Bar Associations because this is where all these lawyer-types come together. Now there is some evidence that Bar groups are beginning to assume their responsibilities and to open their eyes to this whole problem. We do see the American Bar, for example, sponsoring very active programs towards improving the court system.

Then, if we're going to bring in new blood to the system, we ought to start thinking about the lawyer as administrator. The lawyer's got enough to say about the running of the court; no matter where you go he is there. We should perhaps talk about bringing new types into this job. Maybe the manager type needs to be brought into the system. He is an individual with knowledge of managing personnel problems and modern records management systems. If we could look at this management type objectively it would be a chance to compliment the system. Managers are something we really lack. There's no question lawyers can do this. Lawyers can become knowledgeable in personnel practices and modern records managements systems but do they really care about and have time to attend such mundane things as trade shows, to find out modern ways that businesses are operating? The management problems of courts are very similar, as I was shocked to find out, to those of an insurance company, in more ways than you might realize. They have paper problems, filing problems and they have important papers they must move and keep track of. I think if we could bring some new blood into the system, it might be helpful. I think we could learn to use and accept advice from management people just as we've learned to use and accept experts in trials and other areas. We ought to think about introducing more experts in the managment area of the courts. I don't think we should start at the management level with new ideas and talents. We might then have some new and more ready acceptance of some of the changes that have been so long overdue in our court system.

GROUP REPORTS ON THE ROLE OF THE LAWYER IN COURT ADMINISTRATION

by Lester Goodchild

Discussion on Question 1:

I. There are two individuals being considered for a position as court executive. One person is a leading local attorney with many years of practice both in small and large firms, but he has no managerial experience. The other man has graduated from a newly created management institute and has a good background as a management expert but he has no legal background. Given no one else is available for the job, what would be the advantages and disadvantages of hiring either of these men?

Group 5:

It would depend in large amount as to the functions, responsibilities and duties of these men and whether they are at state level or at a local level of court management. If they are a mixed bag, that is legal and managerial, then our consensus was that he should be a lawyer, otherwise then a manager must learn legal principles. But if he is just going to be a record and budget keeper then he should be a manager.

We came out with these advantages for hiring a lawyer:

1. He already knows legal procedure;

2. He has empathy for judicial needs;

3. Liaison with the bar and the legislature;

4. More able to analyze legislative proposal effecting the court;

5. Understanding of case load;

6. Better able to balance judicial work load; and

7. Better able to pick up managerial skills and to correlate them with legal skills.

Now the disadvantages of having this lawyer:

1. He may be unduly subject to pressures from the bar association;

2. May lack knowledge of modern and up-dated procedures in budgeting;

3. Personnel management and data processing;

4. He may lack motivation for change, he may be wedded to old procedures after many years of practice;

5. And indeed we had some suspicion as to his reason for seeking the job, perhaps he was looking for something soft in the way of a semi-retirement situation.

Now the advantages of a non-lawyer:

1. He may be more objective;

2. Not frozen to tradition, more susceptible to change and have a fresh outlook;

3. More acceptable to non-lawyer legislators; and

4. He may implement up-dated procedures in court operations with better knowledge of modern techniques.

We saw the disadvantages of having a non-lawyer but there is no point in repeating them because it is all of the drawbacks and reasons that we thought we should have a lawyer.

Group 6:

Before we enumerated the advantages and disadvantages, we made two statements of principle. You can't manage a system that you don't understand or know and this question indicated that the job requires two major strengths and each candidate has but one. Therefore, we have to determine which one can best develop the missing strength.

As to the lawyer we listed the disadvantages as follows:

1. That as he would be an insider to the system, there may be a tendency by the court to misuse the lawyer-court administrator and he would be Bar oriented to a certain degree;

2. That he had no management training; and

3. He would have a lack of understanding of the job.

The advantages to the lawyer would be that he would know the terms of the law and the law itself, he would know the statutes and he would probably be more careful in making changes.

The non-lawyer disadvantages were that he would have to be trained to the system of the terms. There may be a problem of acceptance by the bench and the Bar, there would be a lack of understanding of the statutes and courtroom procedures.

The advantages were:

1. That he understands fully management and business techniques;

2. He would be bringing a fresh approach;

3. He would owe no allegiance to the bar;

4. The salary probably would be more attractive;

5. He would most likely become a career man in that position; and

6. There would be a strong possibility that he would not use the job as a stepping stone to other positions.

Group 7:

The majority of people preferred the lawyer as a candidate and because he does know the law and he does have a headstart in what his legal experience gives him. In addition, it would be relatively simple to learn the skills which perhaps a manager might know. The group recommended that he attend an institute in court administration.

The majority opinion by your reporter held that a person be a candidate with a masters in public administration, particularly in smaller districts, could provide all of the skills that a good judicial administrator should have. And, that working under a chief judge, he could have the benefit of legal aspects that he may not be familiar with, and in addition the chief justice probably would be doing some of the things that a judicial administrator might do in the big districts.

Group 8:

We favor a lawyer candidate for administrator, since one of our group uses his court administrator to fulfill a quasi-judicial role, handling pre-trials, so that's one of the additional advantages of having a lawyer administrator. And the disadvantages of having a lawyer of course as outlined yesterday, most of his duties are administrative nature rather than legal so the lack of managerial skills would be more evident than legal skills.

Further, the question came up that some of the duties on the administrative level would be routine duties and might be boring to a lawyer administrator. The question has been raised about salary level and with the lawyer in there it might be a revolving door system because he would not think of it in terms of the career as much as a trained court administrator.

Now in respect to the question of favoring a man with a managerial background and not possessing a legal background as stated already. Of course, most of the system objectively would not be with the law and he would tend to be more critical and objective as already stated. His duties and responsibilities are primarily nonlegal and therefore he would be better equipped for the responsibility. On the other hand, of course, he has got to learn the legal system and that would take a great deal of training time and that would be in piecemeal fashion.

Discussion on Question 2:

II. The legislature has a bill before it to provide funding of all the courts. A judge and an administrator from your court have been invited along with a representative of the local Bar Association to present their positions on the matter. The court, as a whole, favors the measure but the Bar is unalterably opposed because its leaders are older judges indebted to the local politicos, who currently control the court's budget. How will you advise your representatives to most forcefully present their position without alienating the Bar while maintaining an aura of judicial independence?

Group 5:

In the first instance we thought that we would try to persuade other more progressive members of the bar who have not taken an interest--or have not taken a position--to advocate a change in favor of the state budget and work through citizen support in order to persuade the legislature. So we decided that what they should do is sell the advantages of state funding. That it will bring about an integrated court system statewide without limitation of local boundaries, will enable streamlining and modernization of the entire state court structure to uniform procedures and will lead to overall economy in the operation of the state court system.

Group 6:

We found it somewhat repugnant that the leaders of the bar were older judges because most of us came from a jurisdiction where this could not be farther from the truth. Our answer in keeping with Chief Justice Berger's new pronouncement that the decision should be brief and to the point, we said that we would have the judges, indirectly, enlist the aid of all community leaders, who in turn should be able to influence the legislators and be the leaders in having the legislation passed.

Group 7:

There isn't any way to keep from alienating your opponents in this case. You have to speak up for what you believe is best.

Group 8:

It appears there is no delicate way in avoiding the issue and that the court and the administrators should go down there and lobby for court uniformity by having statewide funding. They would therefore have to ignore the admonition of the Bar there and just present the case for statewide funding and strike a blow for the independence of the judiciary. We could not avoid offending the local group and the thing to do would be just to present the case objectively and ignore any resulting attacks.

Discussion on Question 3:

III. An association of lawyers has decided to hold a series of seminars on law office management. You are to speak for your court on the effects of law office management upon the administration of the courts and suggest some ways in which such management can be improved to the benefit of the judicial system generally. What will you say?

Group 1:

Point out the need to conduct a series of seminars. In these seminars we would emphasize to the groups the operating costs of one court in one day. This point we would emphasize very strongly.

In this regard the following issues were discussed:

1. Coordination of lawyer's and court's calendars relative to the court appearances for motions and the trial;

2. Have the lawyers advise the court regarding professional and out-of-state witnesses to insure proper calendaring of cases;

3. Identify the counsels actions in trying a case;

4. Early communication regarding settlement of cases;

5. Notification regarding continuances due to sickness or death.

We also felt that these seminars should instruct the legal secretaries as to the importance of legal procedure, forms, etc.

Group 2:

Points we would make would be as follows:

1. Management success of the courts is more important to the Bar than to judiciary members;

2. Congestion of dockets due to bad management cannot be tolerated. Some examples of bad management are:

A. Failure to complete discovery;

B. Failure to file fees on time;

C. Not settling more arbitration cases at an early time; and

D. General management problems that firms must cope with including lawyers and staff to handle their business or reduce their business intake to their working capacity.

The problems above are affected by proper or improper law office management. If lawyers do not take the steps to create proper law office management, and help resolve this problem, or if they knowingly incur unnecessary time or expense as to their clients, the cost to the profession in terms of public confidence in the legal system is far too great because public confidence in the system will be destroyed.

Group 3:

Our talk, addressed to the Bar Association, would in general be a talk recognizing the fact that we were responsive to a capitalistic community and we were speaking to lawyers who operate a dual role, not only as professionals but as profit-motivated professionals. Our pitch would be that efficiency and private endeavor are usually mutually compatible with very few limitations.

We would urge the speedy disposition of suits is financially desirable both to courts and to the Bar. Being more specific, that plaintiffs paint a graphic example of increased efficiency and speed in the disposition of cases resulting in higher new profits, particularly in those areas where they might be dealing with fee cases. Also defense counsels should have a profit motivation to increase the efficiency of the courts to speed up the processes, because, in their particular

area, congestion or delay of court processes almost invariably speaks of a case that requires far more attention by the staff of his office (who can operate more efficiently if they are dealing with the nonlawyer type of problems that come up).

Group 4:

There is no doubt that the poor management within the law offices will adversely affect the operation and management of the courts. The first thing to be done is to convey to the lawyer, especially those involved in the operation of the law firms, an idea of the operation of the courts. They should be encouraged to maintain within the courts proper work distribution, as to number of cases per lawyer. Second, they should maintain sufficient manpower so they would not be taking on more cases than the number of lawyers they had to handle them. This in turn would require within the law firms proper supervision and menas they would have to have a law office manager who was knowledgeable in court operation not just internal operations.

In some cases it will be necessary for a law firm to develop a particular expertise in handling certain types of cases. Law firms should be encouraged to attend Bar Association or court systems' committees.

Finally, at the mechanical personnel level law offices should be required to maintain a sufficient secretarial and clerical staff and to utilize business equipment and machinery.

Discussion on Question 4:

IV. The court system which you serve has come up with a plan for the complete reorganization of the judicial system, including the establishment of advisory committees from the local Bar. The Bar, also, wants a large role in implementing the changes but does not want any responsibilites it would be obligated to assume. What is the responsibility of the Bar for improving and maintaining the machinery of the judicial system and how should the reorganization plan be made to reflect this?

Group 2:

The Bar does have responsibility to have an advisory committee working on rules to work with a corresponding committee of the judiciary on local levels. They also have responsibility to help implement rules, regardless of how the individual lawyer is affected by those rules. Cooperation of the Bar is essential and is to their advantage more than it is to ours. Experience shows that cooperation of the Bar is very useful. Legislation regarding proposed reorganization of the judiciary is primarily the responsibility of the Bar, hopefully with the advice of the bench.

Group 3:

One basic question is what is the responsibility to the Bar for improving and maintaining machinery of the judicial system?

Our answer to that is their responsibility is one of the primary responsibilities. They should be part of a regular assessment or valuation team.

Group 4:

Since the lawyers depend upon the courts for their livelihood and are considered officers of the court, they should have a voice in restructuring the judicial system. For that reason and wherever appropriate and possible, they should be treated as equals to the courts, not just as advisors or representatives of the courts. This would put more responsibility on the lawyer so that wherever possible he can be utilized in integrated committees, parallel committees, particularly in such areas as facilities, public relation and other more purely judicial areas, such as formulation of court rules, etc.

It was considered that there should be active presence of participating lawyers on committees for judicial selection and also judicial discipline, and they should be included in whatever form of judicial councils and conferences that the jurisdiction had, and that periodic attendance at other councils would be helpful. It was also mentioned that there could be a need for a liaison committee which represents the members of the Bar, judiciary, and possibly the governor and the legislature, the press and also civil groups, business groups, and lay organizations. These would have a broadly based committee which could establish or evaluate policy and general policy.

THE ROLE OF THE PUBLIC IN COURT ADMINISTRATION

by

Jon D. Pevna

THE ROLE OF THE PUBLIC IN COURT ADMINISTRATION

by Jon D. Pevna

Prior to joining the National College of State Trial Judges, Jon Pevna was a member of the first class of the Institute for Court Management. In 1969, he headed a study for Ralph Nader's Raiders of citizen access to the Civil Aeronautics Board. A graduate of Northwestern University and the University of Southern California Law Center, Mr. Pevna has served as a legislative assistant in the Illinois State Senate and has assisted Dean Dorothy Nelson of USC in the writing of a book on Judicial Administration to be published this fall.

I believe this to be a most challenging topic on which to speak because it deals with a subject the courts have avoided thinking about for years and which they will have to face eventually. It seems that, as judges and administrators, we have somehow discounted the importance of the role of the public in court administration.

Most of us would give two (2) reasons, which we feel are obvious, as the basis for such skepticism:

1. The public is not really very interested in the courts unless they have a case pending and once that is finished, they forget. To support this theory we cite low voter participation in judicial elections and the lack of grass-roots support for most judicial reforms.

2. The second reason for skepticism is that the public, in reality, is not capable of understanding the intricacies of what happens in a court and therefore they cannot be of much help. Supporting this premise is the feeling that trained attorneys have such a rough time in the courts that we can never educate the public. There is also the feeling that the governing of the courts should be left only to those who are qualified to govern.

I submit that such attitudes are only one-hundred (100)% wrong, they are inherently dangerous because they are:

1. Contrary to the basic philosophy upon which our government was founded; and,

2. They pose a threat to the survival of the courts at a time when such threats could prove fatal.

Any one of us in this room could now ask two (2) questions: First why is there danger in such feelings towards the public?; and secondly, why should we spend valuable time thinking about such things as the role of the public in court administration? Because, if we would stop, look, and listen, there are an increasing number of incidents which clearly show that the public is just beginning to let the courts know how very interested they are in the judicial process and that they want to be informed of and considered in the decisions made regarding the administration of justice.

Some examples of such incidents are:

1. In San Rafael, California, one group abducted a judge and killed him as an expression of their dissatisfaction with the courts.

2. Another group has taken to bombing court houses from Oregon to New York, in order to get heard.

3. Still others have set their goal as the disruption of trials and court systems such as the Movement Liberation Front in San Francisco, known as the MLF, whose Radical Defense Handbook[1] has been distributed to you.

4. And most ominously of all, in one metropolitan court in California, it was discovered that militant groups had enlisted janitors working in the court to remove records of cases filed against their members and peruse the files of the local prosecutor to find out what actions were contemplated by him well in advance of the filing date. Thus there is the danger that the courts, in insulating themselves from the public, are inviting disillusion and distrust which is well within their power to prevent.

I would grant you that the above incidents I have referred to represent actions by radical groups that one could consider the "fringe of society." But these organizations have not grown up overnight. The fact of the matter is that for years we in the courts have been neglecting the public's information needs by perpetuating a self-fulfilling prophecy or vicious circle, it goes as follows: The public, not having any information about the courts, cannot intelligently inquire about the workings of the judicial process, and the courts in turn have not provided such information on the basis that no one ever asks for it.

History has shown us that it is the normal reaction of humanity for the radicals to speak out first. But it will not take long for more responsible groups to take up the banner and put the courts under a greater pressure than they have ever known before.

It is important that we stop here and realize that this is just the beginning, and not the end, of this problem. Rather than panicking or resigning ourselves to destruction, we should concentrate on the ways to counteract this growing trend in a calm and rational manner. The question we must turn to is how shall the courts logically tackle the problem of the public's role in court administration?

The first step is to recognize that a problem exists and not discount its' importance.

Secondly, we must look at the specifics of the problem as it relates to the public in court administration and analyze in depth the reasons why specific problem areas exist.

The third step is to look at some of the possible alternatives available to the courts to cure the problem from within, before external forces start imposing solutions of their own.

Fourth, there must be a definite commitment, especially amongst judges and court administrators that the public has a right to a role in court administration if our country is to have a truly healthy and viable judicial system.

In keeping with this step by step analysis, let us now consider the specific factors that support the existence of problems the public faces with the courts.

First of all, there seems to be general agreement that the public does not understand exactly what the actors in the judicial process

1. Movement Liberation Front, A Radical Defense Handbook, 4164 17th Street, San Francisco, California 94114.

do, and in turn there is widespread lack of familiarity with who the people are that man the courts. Or, let's put this in question form: Why is it that the causes of popular dissatisfaction with courts identified by Pound over sixty (60) years ago still exist, such as the assumption that the administration of justice is an easy task?[2]

To begin with, most judicial personnel, attorneys, and the press, seem to be content that the public be mystified by latin phrases, legalisms, and wood-paneled courtrooms to the point that they were afraid to ask: "What does it all mean?"

It is disturbing to ponder the thought of how many people in the general public know exactly how a judge makes a decision or how a case is processed through the courts. Likewise, data about voter participation and retention of names in judicial elections indicates a knowledge of judicial personnel bordering on complete ignorance.

The reasons for these problems are clear and we should all consider the implications:

1. There has never been a large scale effort to communicate to the public at any level the exact workings of our court systems;

2. When judges or other court personnel take the time for speaking engagements, by and large they only address bar groups, other judges, or big business....the groups most likely to already have some understanding of the workings and staff of the courts;

3. When there is a judicial campaign, the emphasis is on the lack of public exposure and innocuousness rather than maximum public contacts within the available time. Although most judges decry being forced to run on the basis of one decision out of hundreds, one seldom sees members of the bench making it a normal practice to inform the public during an election of how judicial decisions are made, how a judge assures his objectivity, or other relevant topics.

Related to these above difficulties, there is the problem of why the public seems unresponsive to the needs of the courts in terms of reorganization, funds, or additional staff. First, based on the low visibility of judges and other court personnel, criticisms that courts are soft on crime or inefficient are met with shrugs and dismay, but no one ever takes up the challenge to let the people know what the real causes of the situation are. How many times have you heard judges campaigning on the basis of the need to improve the administration of the court or the need to let the public know of such needs? Is it asking too much of the judges that they follow Chief Justice Burger's example of going to the public?

Perhaps a more serious indication of the neglect of the public's role in court administration is the inability of the public to find their way around the courtroom. Many court personnel I have met complain that laymen just don't know what to do to process a case efficiently and that too much time is wasted trying to show them what to do. Similarly, we have all heard complaints, especially at the administrative level, of the time consumed telling visitors to the courthouse, including attorneys, where to go to file certain papers or get various kinds of information.

Yet, the real problem actually goes much deeper. Few courts, if any, have ever made an effort to simplify their rules so that a layman might easily follow them. This of course is done in the spirit of

2. Roscoe Pound, "The Popular Causes of Dissatisfaction with Justice, in Roscoe Pound and Criminal Justice, Sheldon Glueck, ed.

keeping the bar healthy by forcing an individual to go to an attorney for the simplest of cases. In addition, most court systems seem to ignore that they themselves, as upholders of the law, are bound to uphold the right of a person to represent himself where statutes provide for it. Of course some people say it is lowering the image of the judicial process to let "just anybody" represent themselves in court. But can this mean that the basic right to representation in any form is a myth? Further, if representing oneself is made as difficult as possible, is this not obstructing justice? We can thus see a role which has been historically provided for the public which the courts have deliberately ignored or tried to undercut.

What we must now ask is: What alternatives are there to increase the public's role in the courts? Surprisingly, most of the avenues open to court systems are simple and easy to traverse.

Take the realm of community education and public relations programs. One idea is establishing a permanent program where the courts work with local schools, universities, and public service organizations. The goal would be for these groups to include in their curriculum a concise and realistic explanation of how the community court system operates. The MLF has already acknowledged the value of such a program as you will see when you read their handbook. The courts must also realize that citizens have a right to learn what their courts do and why. A second means is putting pressure on the media to give more accurate descriptions of court procedures and the needs of the judiciary. This tactic has seemed to work for the Vice-President and a less heated approach might work for the courts. A third alternative is the courts taking the initiative in having key personnel speak to groups which have the least knowledge about the difficulties and intricacies of running a court system such as minority and union organizations. All segments of society can feel that the courts care about them. A recent step which the National College of State Trial Judges has taken in its' study of the Portland, Oregon, court system is involving the public in court reform studies. We must recognize that the public too has ideas as to how the courts should function that deserve honest and open consideration. An alternative short of an actual study would be to periodically question jurors for their impressions of the judicial system. The MLF is already doing this!

The next potential area for change is in the preparation of public information booklets describing the location of various courthouse facilities and offices and guides to processing cases and filing papers. Many federal agencies have guides for citizens as to the utilization of facilities and who to call for particular informations. Given the bureaucratic entanglements of most federal agencies, doing the same things for courts should not be too difficult. And since most judicial personnel know what are the most commonly asked questions by members of the public, why not put the answers into a ready made pamphlet available at the courthouse door? The result of these actions would be a reduction of wasted time spent leading the public through the court just as a seeing eye dog leads the blind through the streets.

There is still the largely untapped area of volunteer programs which hospitals and many welfare agencies have utilized for years. The book Volunteers in Court Settings[3] gives an indication of the potentialities in this area beyond the realm of probation programs. Programs of this type have three (3) benefits: Saving money, increasing available manpower, and providing messengers to deliver the public the true story of the courts.

3. Ivan Scheier and Leroy P. Goter, Using Volunteers in Court Settings.

Without these steps, could the public not ask: Are the courts in such poor shape that they are afraid to let us know what is going on? After all it has been said that secrecy is a cloak for failure. The time has come when the courts can no longer afford to exclude the public from what is happening.

Let us remember: What individuals don't understand, they fear. When a person has fear, he tends to accept simplistic solutions to alleviate the problems. Upon reading the Radical Defense Handbook, you will see one clear example of fear causing simplistic solution.

We should all be mature enough to admit that insulation from the public is a disease which has afflicted all branches of the government including the courts. This has led to large segments of the public feeling alienated and unrepresented. This is particularly disturbing since in a democracy, no branch of the governnment is supposed to be a mystery to the people.

Are we in the judicial system willing to support our democratic principles or further justify the arguments of those who would destroy our form of government? After all, the public pays our salaries, builds our buildings, and provides us with our jobs. It seems that we can at least assure that these public needs are met. Some people actually believe it is unwise for the public to know the imperfections in the judicial process. Is it democratic to treat the public as children who cannot accept the shortcomings of manmade institutions? Gentlemen, the public should no longer be rejected or ignored.

GROUP REPORTS ON THE ROLE OF THE PUBLIC IN COURT ADMINISTRATION

by Jon D. Pevna

Discussion on Question 1:

I. An association of militant minority and student groups in your area is holding a conference on relations with the legal system, one judge and one administrator from your court are committed to participate in a debate the group is staging on the judicial system. What points should be raised by your representatives to convince these people to be more positive in their attitudes towards the courts?

Group 1:

Our group decided that it would perhaps disturb the even tenor of our ways here today and take a more militant position. We generally doubted that judges should participate in debate with a group described as this group is described. That is to say unless the entire court were to order it, we were unable to tell from the question whether the judge and the administrator committed themselves to this on their own. But, in any event, we were convinced that the whole court ought to be consulted, but generally we doubted that debate under these circumstances is appropriate or desirable.

We thought, for example, the nature of the group is an essential element in deciding any such question and once you've said, "Militant, we think that you're not talking about a process based on reason at all. We think you're talking about the forest. We think, as one of our members said, that there very likely are two games being played here, and there isn't any need for the judiciary to be part of those conditions."

Now, this obviously would not apply to a meeting for a constructive purposes if a public group desires information, explanations or a desire to assist and participate. We noted that the kind of questions to be debated is nowhere hinted at and that there are some issues raised which go to the fundamental nature of the system in which we participated which we have no desire to undertake to discuss or debate, assuming basic assumptions that are contrary to the premises upon which we operate. We obviously recognize that there are questions that should be discussed and maybe under some circumstances debated and the big issues of judicial selection, say, or any number of others in terms of our operations and structure we think should be talked about. We recognize the existence of valid complaints and we think that they must be dealt with publicly and constructively and that the judiciary should participate under appropriate conditions that we simply did not believe that they are so described in this question.

Group 2:

We felt that there would be a distinction between the two--namely, the students and minority militant groups.

The facts to be handled would be:

1. Negative attitudes which might be directed towards the court, such matters as the hypocritical and paternalistic attitudes of judges in court; that is, their unexplained dignity.

2. The lack of explanation of the judicial process.

3. The identification of courts with the prosecution and the police.

4. The prejudicial attitudes of certain judges towards minorities.

5. The lack of communication by the court as to exactly what are the duties of the court.

6. Why justice for a price?

7. Why delayed justice?

Now, recognizing that we should readily see that there are problems and imperfections, we felt that any of these problems and any of these tasks really would require detailed explanation and information. We felt that we could put them into three categories:

1. Matters which are fully unjustified and unexplained.

2. Those that are possible justified but we are working on; and

3. Those complaints which are fully justified and nothing whatsoever is being done about it at all.

We felt that explanations should be reached; that we should explain what is the purpose of the court process and in all of this area we felt that there is a need in most communities for an explanation as to what the court's role is. We would recognize that there are bad lawyers and judges; that we are taking steps to deal with such problems.

Group 3:

We deemed the following as being more significant. At the outset, it was our view that perhaps the reason for much criticism of the courts by such groups stems from a lack of understanding of the judicial process--what it seeks to accomplish and how to go about performing it and, therefore, at the outset we would suggest that the judge and the administrator in candid, simple and open language, endeavor to explain what the judicial process is about, what it seeks to accomplish, how it performs and its function in society.

Some of these types of persons believe that the court and judges are responsible for the enactment of the law. If a law is unpopular, the finger of criticism is pointed to the court and judge who administers the law, saying: "It's a terrible, lousy law. Why don't you do something about it? It shouldn't be on the books." So we feel that it would be desirable for perhaps this kind of group who are positive in their thinking to explain the legislative process. Certainly this kind of group is basically most concerned with the problem we all face: that is, the criticism that the courts feel bias towards them in the various stratas of society. This is, of course, a serious problem. We feel that that problem should be approached by admitting that the courts are an old system of law and that no system of courts is a perfect one. We would not assume to argue that it is a perfect one. However, there has been an increasing awareness of the need for change.

And the movement, though slow, has been made in the courts to continue to improve the law.

We think it also desirable here to state that all judges are not supermen, they are human beings who are charged with the performance of a very difficult job. And then, frankly, we feel that it is helpful to take an attack approach rather than a defensive approach towards this group. If they are unhappy with the court system in this country, what alternatives could they propose?

Group 4:

Our group felt that one of the first jobs, if you participated in such a meeting, would be to ask the group with which you are meeting to define the role which they thought the judiciary played in our governmental system and then to see to what extent it coincided with our own view of what the role of the judiciary was. Perhaps in that way, it would set the stage for the further discussion.

Next, it was felt that instead of talking generalities, there ought to be an attempt to get the group to be specific as to just the nature of the complaints that they had of the court system and then to deal with those problems specially rather than indulging in just discussions.

Finally, we thought it would be helpful to suggest to them that many, if not most of the solutions to the problems which they had with the courts lay in the political arena rather than through, say, in discussions with those in the judiciary itself.

Discussion on Question 2:

II. Assuming that most court systems would benefit from the utilization of some kind of volunteer program(s), in what areas would such plans be most useful? Consider the kinds of people who should be recruited as volunteers and how the program could best be publicized.

Group 1:

We note that there are many valuable programs growing and in terms of the recruitment and training of such volunteers, obviously we would first write the job description and figure out what job you're trying to recruit volunteers for. Having done that, we listed such things as probation, interpreters, bail relief interviewer, bar association volunteers to assist in evaluation and settlement of cases and, with respect to law students, we look forward to the use of law students as interns, including court partipation in aid to prosecutors, defenders and as legal assistance for judges. One member of our panel concluded that he would like to even try volunteer jurors as an experiment at least, since so many of our jurors nowadays are fairly fed up with the kind of treatment that they're receiving in the judicial process.

Group 2:

There was unanimous thought that volunteer programs are beneficial. Chiefly, these programs would fit the area of probation.

It was pointed out that there is the VIP Program in California on this. We have also seen success with participation in college students, probation and counsel programs, and it was also suggested that volunteers can be very useful with prisoners in planning for their rehabilitation while they're still in prison. Further use of volunteers could be in the area of family planning and advising on budgets to a household. The most fertile field for volunteer programs seems to be in the juvenile area. But here great care must be taken for the proper implementation of this.

Group 3:

We would suggest that there be programs community-wide that relate to certain activities at the court. In California, for example, there is the Juvenile Justice Division. Certainly, where there is a need for planning and improvement in court facilities or for implementing the process of the court. It's extremely helpful involving all types of persons in advising and giving credibility to such programs.

While this is not a volunteer program, as such, we would suggest that in many areas of school programs that educators become involved by having school children tour court facilities, sit in and watch the judicial process, and perhaps the need to take some time to discuss with these youngsters what the process is about.

There are other types of volunteer groups--those where people perhaps help out in such areas as manning information centers in courthouses. All areas of society and the community should be involved. Certainly it is desirable for the courts to have responsive and responsible press coverage. A viable suggestion is that participating people be responsive to volunteer groups, hopefully as constructive reporters and forecasters.

Group 4:

The areas for the use of volunteers were:

1. The social service area which would include probation, diagnostic services, and so forth;

2. Legal services of a wide variety for judges, indigents, prosecutors and prisoners;

3. In the area of court reform and improvement through rule amendments and through the use of volunteers from businesses in the management area;

4. Educational programs where you could get a variety of assistance from people; and,

5. The handling of civil litigation in arbitration of settlement programs.

The areas from which these volunteers would be drawn would be from law schools and undergraduate schools, and from the Bar. Mention was specially made of retired people who often had skills and time to be of considerable help, the clergy, and also ghetto residents who, in particularly the criminal area, would be able to be effective volunteer workers with those who are also residents of their areas.

The publication of these volunteer programs, of course, could come about through speakers bureaus, talks in the schools for civic and professional groups and the like, person-to-person contact through those who are already volunteers through the Bar Association and through minority group agencies.

Discussion on Question 3:

III. A lay organization, which is made up of people who have had absolutely no contact with the courts, wants some information on the role of a trial judge and court administrator in a court system and how they work with each other. Prepare an outline for a speech which would present an in-depth analysis of these relationships.

Group 5:

The first thing would be the introduction: how a judge is selected, and how a case gets to court. The second point would be how to process a case. The first thing you'd want to do is see the lawyer, get with him, and decide if you want to file the case in court. He would take the case up there and file it. This would come under the court administrator. The case would be filed, given a number for identification and at the same time, be indexed. In our particular area the case is also assigned to a judge or a court at that time.

The next step under this outline would be the procedure to get the trial. An answer has to bring it to issue of default as to the time as prescribed by law. Then would come preliminary motions, ancillary matters might be filed and heard, which may or may not dispose of the case at that time. The purpose of these motions are to expedite the matter and protect the litigants. From then on the lawyer will set this case for trial. After the case is scheduled, it's put on the docket, and then it is called for trial. When it is called for trial, the judge usually seeks to see if they can get the parties together and make some kind of settlement before actually going to trial. Also in our outline, under number five, the judge would then call for a jury panel from the court administrator. Next would be the trial of the case itself. Under that, you have seven or eight. First is voir dire. Then the jury will be selected and sworn. The judge gives the nature of the case and instructs the jury. Then the evidence would be presented on both sides. After this, would be arguments by counsel and jury instructions from the judge. The jury will then be taken by bailiff to the jury room for deliberation in private. Seven could be the jury decision. Then the jury is excused from this case. The court administrator takes over again from the judge and pays the jurors. There may be other duties for the court administrator and judges; but, this starts out from the time the case is filed until the end. The court administrator would have budgeting, hiring and firing of court personnel, personnel management and reports.

Group 6:

We wanted to explain the question of decision-making to decide the cases, the quality of decisions on administrative matters and why court administrators are being found valuable within the court system today. This could be done best by pointing to the increased docket which required more judicial time for these functions which were outlined above. The court administrator's functions would be to bring to the

court and to the administration of justice techniques from the business world, certainly all housekeeping problems and all personnel problems.

Group 7:

We considered first, "How does the case come into the court?" and we started off the introduction with a discussion of the rights between individuals. The second category, then, would start off with the right between an individual and society. We would conclude our introduction with a discussion of the remedies, breaking that down into two parts; non-judicial and judicial.

Then we considered in somewhat more detail the functions of the court administrator and the trial judge because the position is comparatively new in the court. There is no established job description for a court administrator and his functions and responsibilities will vary according to the jurisdiction where he is employed. But we would start by explaining the reasons for establishement of such a position; namely, that the work load has increased so much that the administrative functions performed by judges could no longer be performed by them, and hence, the necessity for the court administrator who is sort of an executive assistant to the presiding judge.

Among the general functions of the court administrator, we pointed out his responsibility of adequate facilities and the budget in relieving the presiding judge in non-judicial administrative matters, liaison functions with allied court agencies, such as the clerk's office, the sheriff, jail and so forth. We continued his functions, such as docketing of cases, information as to the location of the case and of all the cases of the process, the assignment of judges, personnel hiring and training, public relations, gathering of statistics and analysis, and also modernization of court activities, such as, automation of the activities.

We went to the functions of the trial judge and stated that he, with the other judges of the court, has the ultimate responsibility for the whole court system, but that as an individual judge in his own courtroom, he has the ultimate responsibility to see that justice under existing law is done. We pointed out that the mixed responsibilities of judges in decision-making are that he have the need or necessity for explaining as appropriate the reasons for his ruling so that both parties would understand.

Group 8:

There should be an explanation of the role of the trial judge and the role of the court administrator. Explain the jurisdiction of judges today, the court system, that is, the matters of jury selection and the role of the juror. Outline the adversary system. Explanation of the federal and state constitutions. An explanation of civil and criminal jurisdiction and the various sub-heading underneath them.

Discussion on Question 4:

IV. The court for which you work has decided to create a Public Information Booklet. What general categories of information should be included and what purpose should each section serve? Is the booklet to be suitable for use by both lawyers and the general public or should each group have a separate publication?

Group 5:

We decided we'd have two. They would include all the information as in question #3, but also it would include names and descriptions in divisions of the courts, types of cases, jurisdictions, personnel's duties, duties of the judge, duties of the clerk, reporter's duties, bailiff's duties, jury commissioner's duties. Then you would also want the duties of the D.A., public defenders', jurors' duties, and the grand jury. One might also include a physical description of the courtroom--what the jury box is, where it is, why it's there, why is the witness box in such a place, why is the jury room in such a place and locked up, and the number of days that you hear court trials.

Group 6:

We felt that one general booklet would suffice...that it contain all the information. We felt that lawyers had their rules of civil procedure and should know what it's about.

Our booklet would have these headings beginning, number one, with a general information section which would include in it where everything in the courthouse is located, like the information center and where you go and who you see. We would make it very clear in that general section that judges do not make the law; the judges interpret the law. We would explain very clearly the adversary system of justice and we would include a statement such as this: that the law is a living, thinking body; it's responsive to social and economic needs of a changing society and that these changes are brought about through the legislatures of the states or the Congress of the United States and through appellate court decisions and that was not a filing court's function.

Section number two would be on juries.

Number three would be on the various divisions of the court, giving the jurisdictional limitations of each division.

Next would be the court, where to file, how you go about getting into this judicial process.

Five, the prosecuting officer's functions. Next, the public defender's function.

Next, the legal aid, OEO group. Who are they? Where are they? What are their functions?

Next, the function of the Bar.

Nine, we just put down group of the mechanics of trial without delineating what we are.

Next was the law enforcement section.

Section on the mechanics of non-jury trials, the core of the court system. The appeal processes within our judicial system. The cooperation proccesses. Probation and parole. And the time that is required for cases by statute by rules of court--the time--minimal time, for instance, for probate.

The next section would be on the public responsibility to the court and to the administration of justice. And flip it back on them a little bit in that section.

And a very thorough explanation of the grand jury system within the judicial process to respect the rights of the innocent, as well as the rights of the guilty.

Group 7:

There is only the necessity for a booklet for the general public. We felt that there was no necessity for a booklet for the lawyer; that the lawyers have access to the rules of court and, for their purposes, that is all they need to know.

So, we started off in the category of preliminary information prior to the process of the case and broke this down as an explanation of legal rights and responsibilities.

The next category was basic legal problems, showing the pitfalls to members of the general public as to how cases get into the court, explaining also in this the limited role of the court and that they have to follow the law as it is. Then we discussed the the role of collateral agencies, such as the Better Business Bureau, the Chamber of Commerce, Legal Aid Society, Public Defender, welfare agencies (public and private), community colleges, and teachers' bureaus, the local Bar, Police department and other agencies, who would go out into the community and explain the rights and obligations of the public.

And we concluded by our statement of an explanation of procedures in the processing of a case from filing to final disposition.

SYMPTOMS AND PROBLEMS IN COURT ADMINISTRATION

by

Ernest C. Friesen, Jr.

SYMPTOMS AND PROBLEMS IN COURT ADMINISTRATION

by Ernest C. Friesen, Jr.

Ernest C. Friesen, Jr., has had a long period of experience with the Symptoms and Problems of Court Administration. Beginning in private law practice in 1955, Mr. Friesen has seen service with the Justice Department as a Trial Attorney and as an Assistant Deputy Attorney General for Administration. He has taught law at the University of Cincinnati and was the first Dean of the National College of State Trial Judges. He also served as Director of the Administrative Office of the United States Courts. Mr. Friesen is currently serving as Director of the Institute for Court Management.

I don't know quite where to start with a group such as this. The people here know more about the symptoms, problems and solutions than I do. Perhaps I can suggest some cuts across the analysis of the courts' problems that are not traditional; or possibly suggest some changes in our methods of analysis to cut across the traditional lines. The speech Ed McConnell made to his Judicial Conference attacked, or at least questioned, some of the conventional wisdom about the solutions to our problems and it was the kind of speech that is pioneering the next generation of court administration, the era we are coming into today. I hope you all get a chance to read Ed's speech because it asks a lot of the right questions. Hopefully, my asserting today what I think is proper analysis of court problems will stimulate you to look critically at levels of analysis. The Institute for Court Management needs, and the National College needs, that kind of critical look at the way we look at courts.

My favorite illustration of the way we analyze our problems is the classic analysis of why our calendars break down. In many metropolitan courts, the presiding judge has been through the process of deciding that the calendars break down because judges are too soft on continuances. Consequently they get tough on continuances. I'd like you to think about that a minute. Has this analysis gotten to the basic problem or does it deal only with a symptom of the problem. Let's move on to what might be the next level of analysis. Someone always says, "our real problem is that we have a shortage of trial lawyers, and all these continuances are a result of not having enough trial lawyers." You compile some data and find out how often a lawyer gets a continuance because he's engaged in another court. On that basis, you might conclude that now you've uncovered the problem. We often hear well reasoned speeches concluding that the only answer is more trial lawyers. Once in a while someone says, "well, maybe it has something to do with the way we litigate. Maybe we don't have enough trial lawyers because we don't grant enough continuances and because we treat the trial lawyers we have so harshly." And so, the circle is complete. But maybe there is a level of analysis beyond this one which deals with the relationship between continuance, policies, attorneys' preparation and attorneys' schedule conflicts. These are the kinds of things that need to be carefully studied and analyzed. So, we keep reducing the size of the trial bar by our solution to a problem we analyze at a high level of abstraction, saying there were too many continuances.

Another common solution to breakdowns in the calendar, of course, has been to have high calendar calls. I always call that the judicial shakedown. It's much like the longshoremen program at New York Harbor before the unions got so strong. They called together all the people

who wanted a job, and as each job came up they sent some longshoremen out to the job which is, of course, the shakedown. By noon all the longshoremen were employed. Of course they all stood around all morning - not unloading ships. In what I call a judicial shakedown, the lawyers stand around all morning at a calendar call not trying cases. If the problem is a shortage of lawyers and if the problems of economic litigation drives good lawyers out of litigation and further reduces the supply, then this king of symptom-oriented solution aggravates the problem without developing a permanent cure.

I'm not suggesting that I, or anyone, has yet found the answer or answers. I am saying that if we find the right level of analysis, we'll find the right solution. We've often analyzed the problems at the wrong level. We have to branch out and take the time to study all the avenues. Maybe the economics of litigation is the thing that causes delay. I suggest that in the modern court the plaintiff's lawyers, usually the ones with all the business, have such large backlogs that they can't afford to dispose of a substantial number of their cases in a year, or their income tax goes too high. They also want to have some open files available for a rainy day. Despite what everyone says, most plaintiff lawyers are not in a big hurry to get their cases disposed of. The defense bar still traditionally charges by the thickness of the file and therefore have no pressure to move the cases. It takes time to build that thickness so they can charge for it. I'm not saying that they're overpaid, but that the method of computing the fee helps build up a backlog in the courts. The insurance companies, of course, in personal injury cases, are not interested in closing cases - not for a lot of the reasons often stated - but because they make their money not on underwriting, but on their reserves. And if they're a mutual company and if they're required to hold reserves, they make more money because they don't have to pay it out in some kind of a dividend. This is, of course, even more true for a stock company. If they don't have to pay it out in dividends and can hold it in reserves, they're making more money and have a better statement.

If the problem of continuances is caused by the economics of litigation -- by the way plaintiffs, defenders, and insurance companies work, then we're not going to solve the problem by having a tough continuance policy. We're not going to solve the problem by having a shakedown. The solution to the problem is much deeper than usually conceded. Court administrators and presiding judges can't find the solution if they don't look at the real problem. The level of analysis which finds the real problem, doesn't suggest any solutions except to say - if the truth is as I see it, the only solution is to expose the truth and hope the people will try to change the economics of litigation.

There's another way of looking at courts, and this is a different way of analyzing to get at the real problems rather than at the symptoms. If you go into a court today, they'll always tell you how many more judges they need to dispose of their work; they have it all figured out. If you go into a prosecutor's office, they'll tell you how many more prosecutors they need or it it's a clerk's office, how many more clerks they need to get the work done. And the analysis is usually done on a kind of, ad hoc, "what part am I interested in" basis. I suggest the second type of analysis that is needed is a true "system analysis." We're not talking about computers, of course. We're not talking about writing programs for electronic devices. We're just talking about looking at the whole system and saying, based on what the whole system is "What are the needs of the system?" Chief Justice Burger has a marvelous illustration when he talks about how you dispose of criminal cases. He says it's like a three-legged stool. You have the judge, you have a prosecutor and you have a defense lawyer; and if one of them isn't there, the court, like the three-legged

stool, won't stand up. You have to look at all three parts to talk about whether you can move a case. Of course, in a court system, you don't just look at those three. In the criminal justice system, if you don't have a good probation system, one that's working and functional and adequately staffed, you don't really have a criminal justice system. You may have a trial system, but the whole thing breaks down because it's inadequate. If you don't have the clerks to see that the process goes to the court properly, it breaks down. We have one court in the federal system that couldn't get a file for two weeks after they needed it because of the way they ran the clerk's office. It's amazing in this day and age to think we can't do our paper work better, but they really were not organized and not adequately staffed to get the paperwork to the judges in anything less than two weeks after it was called for. That's part of the system and if you analyze the system and say we're broken down because we don't have enough judges or we don't have enough courtrooms, again, you've taken a part and you won't solve any problems by adding judges, or by adding courtrooms, or by adding prosecutors, or by adding clerks. You have to look at all the pieces and see if they can't be made to work together. That great old poem about the One Horse Shay in which every part was equal to every other part: and, of course, what happened at the end. Every part broke down then together because they were all equal and all worked together, and the One Horse Shay fell apart. A lot of people think that maybe some of courts have reached that point; that all the parts have broken down at one time and they have disintegrated. And, I would have to suggest that in some places, a large number of parts has broken down. And in our enthusiasm to get more judges because we need them in growing urban centers, or to get more courtrooms which we know takes at least five years to get after we decide we need them, or to get more clerks, we often say, "this is the solution."

That brings up my favorite subject, which is the creation of expectations you're not able to fulfill. You sell a solution so vigourously because you're sure that's one you need, that you create an expectation that it will solve your problems and it won't; and it won't because you're dealing with only a part of the problem; you're dealing with symptoms, I see problems pasted around the board here; take the symptom "lack of resources." You don't go after all the resources that you need. You say, "well, I'm a politician, I understand politics (and I sue that word at its best sense, that politics is the doctrine of the possible) so I go after what can get." Every court administrator and presiding judge has to take that attitude. But if you do adopt that attitude, you must analyze your problems to make sure your priorities are right, or you're going to create the wrong expectations. Instead of decreasing backlog and delay, you may very well get more judges and see your backlog increasing because you didn't also demand supporting personnel, and court facilities; you didn't have everything that was necessary.

If you can think about some more problems that we've dealt with superficially, I think you'll help us all because we can then begin to get another layer deeper.

Another analysis that I think is important that we really haven't done enough of is closely related to analysis of the system. To me it comes under the word organization or structure, and I see that people have written around here that one of their biggest problems is organization. Here I'd like to suggest a differt analysis. Instead of looking at your organization chart at where the Chief Judge is or where the Court Administrator is in the hierarchy of status and importance, why don't you look at the real structure. By real structure, I mean where are the decisions made, who makes them, and on what information; that's structure to me. Let me illustrate that. I went into a Federal Court in Philadelphia about three years ago and asked the judges about

their continuance policies (they were having real breakdowns in their scheduling of cases) and they said they just didn't grant any continuances; they have the toughest continuance policy in the country. I went into the clerk's office and watched the way they made up the calendar. A phone would ring and he'd say "alright" and scratch a lawyer's name off the list. Another phone would ring and he'd scratch another name off the list. Of course they didn't have any continuances! Their clerks were granting them all. Who makes the decisions in your court? On the basis of what informatio are they made? That's the structure; that's what the organization is. You let me find the facts and you can find the law all you want. Who's finding the facts in your system? If your clerks are finding the facts, if your court administrators are finding the facts, chances are that they are making the decision. I'm not saying that's bad; it may be very good. But admit it, recognize it, and place the responsibility there. Don't pretend like somebody else is making the decisions. That's what I think of as organizational analysis - who makes the decisions on what information? Is the information a phone call? Is the information a print out?

Do they use print outs in your court? Do you have a computer print out? Well, in some places they do, and in a lot of places they go on the shelf. The oldest court computer system in the United States, I submit, is yet to be really used by the court. Some of the newer ones are being used. So, think about it. What's the structure of your court? What is the flow of information among people who are making decisions. Drawing organizational charts, doesn't define structure. Structure is defined by what people do in their relationships to each other; and you need to know what that is if you're going to manage a court. In my brief experience, no man ever knows that fully. Start with the admission that you're never going to totally understand where all the decisions are made and by whom. You ought to try and get on top of it and find out where a lot of them are made. That means putting some people into the system other than yourself who can find out -- study what the organization is. A statute or an organization chart that indicates "this man is in charge or that man is in charge:" doesn't tell the story.

My last subject, of course, is analysis of your management and I treat that as part of organization, but still something more.

Management has been defined as the process within an organization or institution through which people are made to work toward organizational goals. And I have to keep twisting between institution or organization because we're dealing with an institution, not an organization. Organizations are defined as groups of people with common goals and one of the characteristics of the courts or a court system is that a lot of the people do not have the same goals.

Consider that proposition for a moment. It suggests that if the court is an organization, it has identifiable goals. Is the goal of the court the same as the goal of the prosecutor's office? If you go back to Mr. District Attorney, the radio program when I was growing up, he said his job was to do justice, it sounded a lot like the courts. The question is, "is that the way prosecutors' offices act? You don't define goals by what they say they are. We don't define court goals by saying, "what are the judges' goals?" We define goals of an organization by the way people act. If they decide it's more important to get a victory in the newspaper, then their goal is convictions, or newspaper convictions. Is that consistent with the court? I like to think it is not. What is your goal? If you are a court administrator, is it your goal to see that the resources are available to keep the judges happy? Is it your goal to see that the Chief Judge doesn't get mad at you today? Is that the way you really decide your policy for the day? Or is it your goal to see that the

court has the resources to do justice and that those resources are coordinated? How do you act? Do you act to see that those goals are met and define them? Or do you act to maintain yourself within the organization -- within the institution?

In an adversary process we have many goals. I think defense lawyers have the goal of getting their men back on the street in a criminal system. The prosecutor probably has the principle goal of some higher political office. There are a lot of exceptions to that but that appears to be at least one common goal toward which he acts.

How does that bring us back to management. Management is the process by which an organization or an institution coordinates its resources toward the organizational or institutional goals. In the courts we have some built in conflicts that we have to recognize and work with. My subject is analysis - a logical examination of the problems. We honestly have to say we do not have common goals. The parts of the justice system do not have common goals. This institution of the courts which includes prosecutors and lawyers and clerks and probation officers does not have common goals. So we have conflict built into the system. That means we have to figure out how to accomodate those conflicts, get them out in the open and resolve them. And more often than not, instead of resolving conflict, we build up barriers and boundaries. There are two meanings to the word bureaucracy. I usually use it to mean something bad; that is, a whole mess of red tape and barriers to efficient operations. (Some people mean by bureaucracy, the complex interrelationships of large organizations). Obviously, this institution of the courts is a very, very complex organization with a lot of interrelationships. We need to analyze the management of all of those relationships and figure out what needs to be done. The best way to illustrate this is to mention the rule for administration survival developed by Dick McGee of California. He did so very much with tongue in cheek, I might add. These are the ways an administrator can stay alive in an elaborate and complex bureaucracy: The first rule is to "stay in with the outs." Does that sound familiar in a political democracy? The second is, "don't disturb the parameters", or "don't disturb the boundaries." The third, "exploit the inevitable." And the fourth is: "don't get between the dog and the lamp post." I think if you take those four you can analyze what's wrong with most bureaucracies. "Staying in with the outs" often involves the capacity of not doing anything, of being able to play everything both ways. And if a manager (Presiding Judge, we'll call him) isn't willing to take some risks to take these conflicts on, the bureaucracies can go right on grinding the way it was. I read on one of those - signs that the big problem is the tendency not to change, the incapacity to change - "staying in with the outs," not taking risks, is one of the fundamental ways to make sure you don't change anything. "Exploiting the inevitable" has that same sort of a ring, doesn't it? You find out where everybody wants to go and then you just go there as hard as you can. The fact that everybody was wrong, that they're going down the old path, that they're maintaining the status quo, should concern you. Somebody said to me the other day that 38 out of 40 judges wanted "X" appointed court administrator; and I'm just as sure as I'm standing here all 38 of them are wrong and the only people right were the two. But if you exploit the inevitable, you go along, and appoint that fellow who, of course, wasn't going to threaten anybody, who wasn't going to raise up any facts that might tend to make people change their minds. The one that appeals to me most is, "don't disturb the parameters." The problem in the courts are our boundaries and they are maintained rather religiously. When I was in the courts, I maintained them - "this is my territory; if you'll leave my territory along, I'll leave your territory alone; if you'll stay out of the Presiding Judge's business, I'll stay out of the court administration's business," as though they were different. Don't disturb the paramters. You'll survive a long

time, and you can predict a bureaucracy that will go right on. The boundaries are our problem. The boundary between the prosecutor's office and the court is the biggest problem in criminal justice.

The last one is self-explanatory. "CDon't get between the dog and the lamp post" means you really stay out of trouble, you dodge trouble, you don't take on any problems you think are going to get you in trouble. And, if that's the attitude, then you can't manage. You can do a lot of things; you can survive administratively but there won't be any change.

You see, my basic thesis is, that if we analyze the problems carefully, if we look at these different cross cuts, we get the real causes. We try to look at the whole system; we try to look at the structure, not in terms of organization charts, but in terms of people talking to people and making decisions. And if we look at management as the whole process of reaching organizational or institutional goals, and not at personnel, budgets and finance, then you begin to be a change agent in a world that probably needs changing.

I would close on one note, though. There's an awful lot of good in our justice system, there's a protection for individuals, a recognition of individual liberties, there's a value that's basic to our Constitution that a lot of people would throw out in an attempt to find easy solutions. Judicial independence is still the most important protection we have against tyranny and the minute you start dabbling with that to accomodate a set of managerial values, we're in trouble. We must always evaluate what you're proposing against the objective of the court system. Our basic values are sound? Even the adversary process with all its faults is better than anything else. We have to keep looking back at our demonstrated strengths and say not "let's be efficient", but "let's be effective." Effective because we found the problem and solved it in a way that is consistent with ordered liberty.

GROUP REPORTS ON THE SYMPTOMS AND PROBLEMS IN COURT ADMINISTRATION

by Ernest Friesen

Discussion on Question 1:

I. There has been much discussion about the various practices of attorneys which make court administration more difficult. Such practices are said to be a problem, but in reality they may be only a symptom of a deeper problem rooted in the economics of being a successful attorney. Identify some of these practices and suggest possible ways of overcoming the economic pressures to the benefit of both court administration and attorneys.

Group 5:

We had ten items under this first question.

1. The zone of availability, counsel busy other than for reasons of illness. All your courts have that problem: lawyers have too many cases that aren't ready, they can't come to court because they're just too busy;

2. Lack of preparation - especially among the younger or the busy attorneys.

3. In the filing of suits, many unrealistic claims for damages.

4. Grounds claimed for useless cases.

5. Deliberate stalling tactics, especially motions.

6. Unreliable parties, as for accidents with injuries.

7. Punctuality of counsel.

8. Last minute settlements with no notification of court.

9. Lack of communications as to settlements, dismissals.

10. Last minute withdrawal of counsel.

What are some of the ways of overcoming the economic crushes? First, require employment of more counsel, especially in defense cases, since sometimes three lawyers will handle the whole trial load of a firm. The court could make a rule in such cases to pressure the lawyers or firms to deploy their trial load more evenly. This is not just the attorneys, but also the defendant who's got to know he's delaying the court. Another problem we felt caused delay was that many of the attorneys needed a more efficient office management system. Possibly this could be helped through some bar association educational program. As to unrealistic demands, this could be handled by court rules to bring about an early settlement, like pre-trial conferences.

Group 8:

Practices identified:

1. Multiplicity of cases in one firm and limited number of trial lawyers;

2. Unreasonable delay in settlement and compromise;

3. Unethical practices of small groups of lawyers in obtaining delays in criminal trials;

4. Delay in notifying calendar control agency of late settlements resulting in loss of time of clerks, administrative personnel, and judges;

5. Abuse of voir dire process;

6. Some of the problem is rooted in economics but not the whole spectrum;

7. Institute studies to develop a system designed to obtain some if not all of the benefits of the solicitor-barrister concept.

Discussion on Question 2:

II. Identify some areas of court administration where symptoms are currently being treated rather than real problems. What standards can be used to assure that the real cause(s) of court administration problems/difficulties can be better identified?

Group 1:

There were several areas of problems which we outlined as follows:

1. Too few judges;
2. Inadequate staffing of the courts;
3. Control over non-court employees;
4. Too many cases being followed;
5. Inadequate funding;
6. Multiple sources of fundings;
7. Inadequate staffing in prosecution and defense departments;
8. Backlog and delay to trial;
9. Politics in selection of judges, staff, addition of courts;
10. Poor image of the court;
11. Dissatisfied public in this period of time, inadequate salaries for both judge and staff;

12. Too many jury trials;

13. Too many plea bargainings.

These are situations, some are problems, some are symptoms. Too often the court will come out and get excited over a situation they claim is their problem. So our recommendation is to develop an objective analysis of your situation on your own basis, to fulfill your own needs, in which you would follow logical steps to backtrack on each situation and identify the source, so you could identify your problem and then work on that solution.

Group 4:

We had some difficulty with some of the terminology as to symptoms, problems and standards. The thought was that there were major problems and subordinate problems and that many of the problems were themselves causes of other problems and that there were no standards as the question had it, but that there were procedures and techniques that could by used to identify problems, to identify the causes of these problems and to arrive at possible solution.

Discussion on Question 3:

III. Given that there is a great deal of dissatisfaction with the way many probation systems function, identify what the true philosophy behind probation is. Then determine whether the current problem is that probation departments are not doing their job or that the theory of probation has not been fully implemented in terms of staffing, etc.

Group 1:

Probation encompasses accounting, records, and pre-sentencing investigation of all criminal defendants. The philosophy is to determine the people who are candidates for probation and who could maintain responsibility under the supervision of a probation officer and to promote their good behavior and promote that individual's productivity in society.

The pre-sentence functions, prior to probation, have been performed much better really, than the supervision function of probation. Supervision has been inadequate because of the lack of trained staff, lack of salaries to get the adequate staff, lack of resources, such as sociological resources, insufficient trained personnel and, in many cases, insufficient devices to maintain control over probationers regarding their use of narcotics.

Group 4:

The philosophy of probation is the same as for every sentence but the emphasis is on rehabilitation rather than on punishment or the protection of the public.

Probation departments are understaffed to such an extent that it is difficult to assess the effectiveness of present theory, but there certainly is a need to re-examine them, to experiment with new theories,

new techniques and methods of probation in order to seek the most effective ones, both in terms of the ultimate objective of rehabilitation and also in terms of cost.

Discussion on Question 4:

IV. In Question 1, the task was to propose ways of overcoming certain difficulties in court administration rooted in the legal practice. Now identify some of the strategies courts have used in coping with lawyers and identify what true solutions would be for the same situation. In other words, what are specific examples of what would be a strategy in this context versus a solution?

Group 5:

For the attorney with a heavy caseload, set all of his cases in one court under one judge, so that when the judge finishes with one case he goes onto the next and so on down the line. Next, it was suggested no continuances be granted. I think you're going to have a hard time with that, but that could be one way if you can get by with it.

Now grant penalties for failure to appear, require counsel to join local attorneys if the case is from out of the county. Next, require a joint pre-trial statement. This should be by both attorneys, and in our county they must present this to the judge five days prior to the pre-trial conference held by the court. This pre-trial statement requires counsel to set forth the issues in the case; what are contested facts; uncontested issues; what exhibits are to be offered by whom; have they been exchanged; if so, what objections, and why; what specialists are they going to call, etc.

Group 8:

1. We subscribe to the concept that while every litigant has a right to select his own lawyer, yet the lawyer owes the court and the profession the duty of not accepting more litigation than he can reasonably process and when the two come into conflict, the interest of the court must prevail;

2. Greater use of depositions from expert witnesses;

3. Greater progress in the use of certificates of readiness;

4. Sanctions for late settlements too near or during trial such as the imposition of jury costs;

5. More emphasis on settlement conferences;

6. Better training and higher standards of lawyers for the trial practice.

A RADICAL USE OF COMPUTERS IN THE COURTS

by

P.W. Greenwood

A RADICAL USE OF COMPUTERS IN THE COURTS

by P.W. Greenwood*

A graduate of the U.S. Naval Academy and holder of a masters degree and a doctorate from Stanford University, Peter Greenwood has had extensive experience applying computer techniques in various fields. When he first joined the Rand Corporation in 1967, Mr. Greenwood developed a scheduling technique for the Air Force regional air transportation system. And recently Rand sent Peter to New York to apply the techniques of systems analysis to the problems encountered by law enforcement officials in that city. At the present time, Mr. Greenwood holds the positions of Associate Head of the Department of Management Science and Coordinator for Criminal Justice Research for the Rand Corporation.

The computer is often touted as the potential savior of organizations finding themselves inundated in paperwork and experiencing increasing delays in responding to outside events. Many court systems find themselves in this undesirable condition along with hospitals, welfare agencies, probation, parole and prison agencies and other governmental agencies faced with processing a rapidly increasing caseload.

Most of these organizations recognize that they need help. The problem comes in deciding what kind. Since the intricacies of many agency practices are unknown to computer system personnel, the specifications for many new public agency systems are being identified by asking the potential users what they want. The answer is almost inevitably speeding up the flow of existing data systems, simplifying inputs, and making more reports available to the user. Often only minor processing efficiencies are achieved and sometimes the user drowns in printouts.

The purpose of this paper is to expand your views of the potential offered by computer based systems by relating several different classes of system to courtroom needs and to discuss some of the problems you will face in acquiring a computer system.

There are many different ways in which computer based management information systems can be classified: by size, by speed, by their accessibility to a user (online or off), or according to how programs are processed. For the purposes of this paper I will look at management information systems according to the distribution of tasks between man and machine, an issue that is often overlooked. The classification scheme for different types of interaction I owe to several of my colleagues at Rand, primarily I. Cohen, R. Kaplan, W. Edwards, and L. Miller, and their extensive work on management information system design.

Manual Processing

Without the computer, information is only available in the form in which it was recorded. When data are to be processed they must first be located, then retrieved. The man can then look at them, manipulate them and record new information somewhere else. Processing is slow

* This speech has been put into article form and entitled: "Potential Uses of The Computer in Criminal Courts."

Searching is time-consuming and arduous. Enter the computer.

Unburdening

The most obvious use of a computer in an administrative process is to unburden the man of his clerical tasks. Computer systems are especially good at filing and data retrieval; compiling and printing statistics; and monitoring ongoing operations. Most of the proposed systems for court calendaring or criminal record processing are systems of this type.

Few organizations have progressed beyond this unburdening stage. To do so requires an investment in understanding the decision processes involved which make use of the data.

Hints

The next level of sophistication in which the computer is given a more active role in making a decision has been called Hints for reasons that I hope will become obvious. In a hints system specific kinds of decisions are defined and recognized by the computer. Partially processed data are presented to the decisionmaker in a prescribed sequence. The data may include decision alternatives ranked in some particular way so as to suggest the preferred alternative.

Let us illustrate the distinction between Hints and Unburdening with two examples. A court calendaring system could be designed so that it only unburdens the judge or administrator who schedules appearances. It might keep track of courtroom availabilities as well as the schedules of some participants. It might send out notices of upcoming events to the parties concerned. It would most likely keep track of individual cases.

A Hints system might do much more. The decision SCHEDULE ARRAIGNMENT could be precisely defined so that the judge need only indicate that a specific case be scheduled and the computer comes back with several suggested dates and times. To perform this function it would be necessary to define and program a number of rules for establishing priorities among cases, minimum and maximum spacing between appearances, and the average duration of different types of appearances. The system might have the capability of rearranging the calendar to make room for cases with higher priority.

Hints systems are found quite widely in scheduling applications where the computer usually makes a tentative assignment based on some simple criteria which the man can then override if there are other considerations. A police dispatching system which presents the dispatcher with the nearest available car, the shortest route to the call, and the closest hospital would be another good example of such a system.

MEAD

The acronym MEAD stands for Men Evaluate-Algorithms Decide. Some decision problems are so computationally difficult that the computer can consistently outperform a man if it is given the proper inputs. A classic example of this class of problem involves the allocation of attack aircraft to available targets. In its simplest form, the problem is defined as follows: Given an array of targets and requests for sorties which exceed the capabilities of the available aircraft, which sorties should be flown? The task of comparing all requests to determine which to answer as well as deciding how many aircraft to hold in reserve for more urgent calls is quite difficult for man. A system was designed at Rand to solve this problem by using the man to

make judgments and the machine to carry out the necessary computations to arrive at a final answer. The judgments for each request involved determining the value of the proposed target by comparing it against a known standard. The computer then assigned targets so as to maximize the value of targets destroyed.*

The courts may be faced with a similar problem some day when they are no longer able to deal with their entire caseload within statutory limitations. If cases must be dropped, the selection of which ones to retain will involve estimating; the value of society of winning each case, the probability that it can be won as well as the time required. It will then be possible to select cases so as to maximize the ultimate value to society.

Man Unburdening the Machine

One of the previous types of systems described involved the computer unburdening the man. There are types of systems which are almost fully automatic but to which the man can offer a tremendous increase in efficiency with a little effort. A good example would be systems designed to search large organized lists to find records with specific characteristics. Fingerprints, criminal records or legal statutes would be examples of such lists. Given all the required characteristics the computer will eventually find the required records if they exist but it may require a time-consuming search of the entire data base. If the man can help by identifying parts of the data base which do not have to be searched the effort required by the computer can be reduced significantly.

Completely Automated

It is hard to imagine that we will ever see any completely automated systems within the courts. Such systems are usually appealing only when we have situations where we recognize the need to make complex decisions extremely fast and we cannot trust the reliability or responsiveness of man. These situations primarily arise in process control tasks such as controlling a power grid, a nuclear reactor, or a chemical reaction. Where there is room for judgment, I hope that man will always be in the loop.

Computers Make Possible Entirely New Procedures

At the present time, most busy courts are calendared so as to save the time of the judge. Juries, defendants, attorneys, and witnesses are all expected to be on standby so that they will be ready for their turn in court. Given the state of the art, this may be the best solution since court time is a scarce commodity. Nevertheless, the cost to society in wasted time and antagonism generated toward the justice system is significant.

Improving the scheduling of cases so as to better utilize court facilities and to make more predictable the time at which particular cases will be called is no simple task. In a large court the computer can help considerably. It makes possible the consideration of more relevant variables which must enter final calendaring decisions. With a computer it is possible to maintain a current schedule on all of the case participants, especially the defense attorneys, as well as an updated status report on each case. Tentative schedules can then be established using the most current information on all relevant variables.

Finally, before I close I would like to describe one other appli-

*Edwards, W., R.J. Kaplan and L.W. Miller, JUDGE: A Laboratory Evaluation, The Rand Corporation, RM-5547-PR, March 1968.

cation of modern technology to courtroom proceedings which I believe may have some merit. In this application, the computer will play only a minor supporting role. The concept I will describe was developed by another of my colleagues at Rand, Dr. Norman Shapiro, a mathematician and information scientist after serving on several juries. A fair consideration of this proposal will require an analysis of the contribution made by almost every courtroom practice to the ultimate objectives of justice.

The proposal is basically this. In some jury trials, especially those expected to be lengthy or where a retrial appears likely, the testimony would not take place before a jury. Instead, the entire trial proceeding would be placed on video tape under lighting and filming conditions specified by law and under the observation of specified witnesses.

The taping would be supervised by a presiding officer. The attendees would include the accused as well as both attorneys. The presiding officer would allow to be recorded all material for which there is a substantial possibility that it is admissible.

After the recording of all prospective testimony the litigants would argue questions of law as to admissibility. After these arguments the judge, possibly with the assistance of a court aid, would edit the tape, removing all inadmissible material and possibly rearranging the order of material if appropriate. He will do this by means of a remotely-operated computer-directed editing system which will bring to his view with an average wait time of 15 seconds any portion of 40 hours' worth of testimony and a computationally powerful system which will allow him to access, easily and readily, portions of the testimony by means of a variety of keys with abbreviations of witnesses' names and of portions of their testimony and to eliminate and rearrange material by means of simple and natural operations.

Review courts would have available recordings of the original evidence as well as of the effects of the editing process.

The summations of counsel and the judges' instructions would also be video-recorded.

Real (i.e., nontestimonial) proof such as views, demonstrations, experiments and physical evidence could be either presented directly to the factfinder and/or recorded. Their recording presents some problems (who and by what rules will control the lighting, and camera directions and focusing) which I haven't thought through.

After this (in a jury trial) a jury would be selected, by presently-used procedures, and shown the edited testimonial evidence, any other evidence, attorneys' summations and the judge's instructions. Deliberation would be in accordance with presently-used procedures.

The proceedings following the factfinder's verdict would be identical to those now in use. Written records could be prepared from the video recordings (by persons less well trained than court reporters).

If review courts found reversible errors in the judge's admission or nonadmission of evidence (that is, the judge's editing), the original court simply re-edit the tape and proceed as above, without the necessity of taking any additional testimony. In those instances where new evidence arose or the presiding officer erroneously refused to allow material to be recorded, new evidence could be recorded, without rerecording the other evidence. Similarly, if the jury were unable to reach a verdict rerecording would be unnecessary.

Although there is every reason to believe that the procedures outlined above would be useful in all types of litigation their usefulness is clearer in some situations rather than in others, such as civil rather than criminal; where the stipulation of all parties can be obtained, or perhaps where a judge finds that this procedure is indicated; and particularly in cases which present extremely complex issues both of law and of fact.

The use of video taping in jury trials offers several advantages.

1. The time required of jurors would be reduced dramatically, perhaps by a factor of five. In addition, jury viewing would not necessarily be restricted to only working hours, making it possible for a much wider selection of jury candidates who are now excluded by their job requirements.

2. The costs of retrials would be reduced fantastically.

3. Many cases which are not now retried due to the death, disappearance, or forgetfulness of key witnesses could be preserved.

4. Review courts would have a better basis for making decisions.

5. And finally, there would be fewer mistrials.

Living with Computer Systems

No matter what type of computer system you eventually decide to adopt, you will still have to deal with problems that appear to be an unavoidable part of any computer project.

Many design groups become inbued with the "not invented here" syndrome which leads them to ignore perfectly good systems which have already been built by others and strike out on their own in the name of innovation. This ailment reaches its most serious state when the design group ignores the failures of others more competent or less optimistic and plunges on with system concepts that are technologically beyond their reach. A design effort can be 80 or 90 percent "complete" before it becomes apparent that it will never work.

The reverse case is almost as serious. Many customers have purchased systems supplied with off-the-shelf software without a careful appraisal of their special requirments. The system may provide many exotic but frivolous features while failing to solve basic problems. An inconvenience in entering data which appears minor in a demonstration may be sufficiently aggravating to the routine user that it undermines the usefulness of the entire system.

Many of these problems arise from a failure to specify operational system goals and to seek competent outside advice. For many systems purchased today, the cost of the software (analysis, design and programming) will exceed those of the hardware components. For new applications, only 20 percent of the software costs will be consumed by programming. The rest are used in system design and implementation. Buyers who attempt to shortchange the design process usually end up with an inferior product which may be more costly to operate over the long run.

No matter how conscientious you are, the unexpected will occur. Costs will grow and schedules will slip. You should be prepared to deal with the eventuality that the system won't work when it is supposed to. Expect the unexpected.

GROUP DISCUSSION ON A RADICAL USE OF COMPUTERS IN THE COURTS

by Peter Greenwood

For these group discussions, a different approach was used. A general discussion was held using the eight group reporters as the "output" that their respective groups "computed" from the following four questions:

Discussion on Question 1:

I. How can the computer be used to expedite or improve the selection of juries?

Group 4 Reporter: We are practically in complete consensus that we could not live without the computer as far as jury selection. We found that the difference from the old wheel method, besides the eliminating of the high waste of effort, and a reduction cost savings factor right off the bat, is that we practically eliminated the human error in the selection of a jury list.

Also, we were able to create and produce practically at the same time all the records needed to train that juror during his term; that is to create all records necessary and minimize follow-up accounting, payroll, etc.

Finally, it is proven beyond a doubt that under the computer setup system of selecting your jury there resulted a better cross-section than we have ever had before.

Other: How do you know?

Group 4 Reporter: It has been tested and several of our people have had people test it back and then test all kinds of ways, I mean namewise, sex, race, etc.

Group 7 Reporter: Mr. Greenwood, in his discussion today, did not indicate how you overcome with a computer the problem of patronage selection of sheriffs and, by automating your jury lists, you eliminate some unnecessary personnel. The information that we discussed was prepared mostly from the experience of those who already have a data bank. We agreed that the computer does insure random selection, prepares and sends out questionnaires, it processes the replies, excluding those jurors or potential jurors who are ineligible, and then prints out the summonses. It was indicated that the period of time during which the qualified jurors would serve was by either interview or by an indication on their part as to the time which is most desirable for them. So this would not be a process by computer.

Group 3 Reporter: We were surprised to find that the question had contemplated the possible use of computers in the impaneling of the trial jurry -- the individual jury. And we were unanimously of the opinion that this is not feasible. We do not believe that the individual trial jury could be improved or expedited by the use of a computer system. And we feel it would not be feasible to attempt to program such a proceeding. It would be too expensive and it would, of course, do away with the personal element, the opportunity of counsel to form their

conclusions as to jurors that they might wish to excuse by preemptory challenges.

Group 2 Reporter: We feel that computers can be used to expedite or improve the selection of jurors, juries, in four or five areas:

A. By random selection of jurors, which is a duplication;

B. Furnishing voir dire information, thus saving time in court for lawyers and judges;

C. By saving clerical time and expense in the compilation of the jury lists, things of that kind. Our experience in Houston was that one item alone of clerical expense was about $28,000, just in filling the old jury wheel;

D. In providing statistical data; and

E. In minimizing human error and duplication.

Other: Let us ask, is everybody in the room unanimously agreed that the computer has no capability to offer in impaneling the jury?

Other: I think not, as far as the jury or a computer selection of the jury, it is not feasible or possible. It can aid it, as we indicated in our discussion, by a printout of information that would normally be acquired in the voir dire process that is unnecessary to acquire that way. But I don't think you could have the computer actually select the jury. It is only to get the panel I think.

Other: Well, our questionnaires go out with the computer notice to the juror, with the subpoena; it's a package. There's a questionnaire, which he fills out and furnishes to court, that's furnished to counsel so much time in voir diring the jury is saved.

Other: We do the same thing, but what I'm saying is that if you have that information on the computer you can get a printout and not have to make a copy for every attorney and every case where that thing is used.

Other: Judge, have you considered how much waste of time you have putting that on the machine? There's so many things that they can do, but why do it when it's so much easier to get it from the juror by pencil in his own handwriting?

Other: Well, that might be true, but ask the juror whether or not it's easier.

Other: He only does it once. We've invented Xerox.

Other: Yeah, but from what the experts tell me, this is cheaper and easier to handle than those by Xerox.

Other: I'd like to take issue with the fact that you can select your daily jury panels with the computer. If you know the requirements of your people, and you have an on-line system and a slave printer, you can select 128 people, divide the 128 people into panels of 24, 26, or 28, and print lists for each division and send them to the division and save all that typing; and, this can be done within a matter of fifteen minutes every morning.

Other: Yeah, but we're not talking about picking the 25. We're talking about from the 25 on, the impaneling of the trial jury.

Other: No, I thought we were talking about questionnaires, it started with questionnaires. It's the process we lead up to here is first the questionnaire, then qualify the jurors, then get the qualified jurors to serve, then get the qualified jurors into the courtroom, then comes the voir dire.

Other: How do you handle the problems on that? You send out 25 and they come in tomorrow morning and 3 people in the first panel come in and say, "I can't, my kid's sick," or "I've got to go to the hospital," -- how do you handle that?

Other: You have to oversubscribe, by the fact that you have an experience factor there.

Discussion on Question 2:

II. Suppose that an information system was being developed which could provide the answers to three standard questions, for each case, after processing all of the data now collected. What should those questions be?

Group 5 Reporter: We broke it down into three basic questions which would have subparts. First, we would want to know pertinent data regarding time, the entry date, the date the case first came into the system, the pleadings, the date and kind, and the disposition, the time and the manner. The information regarding persons we would want to know is about the attorneys, the name and address, caseload, and insurance company represented.

Other: Why would you want to know the insurance company?

Group 5 Reporter: Well, it was suggested by one of our learned group members that the insurance company is in many cases, in most cases, paying the attorneys for the particular defense work or work involved, and they like to know the caseloads and how their people are doing -- whether they're moving their cases. This has worked, I guess, in Connecticut to some extent.

Other: You mean the court rides herd on the insurance company, so to speak?

Group 5 Reporter: As far as the parties, we'd want to know the names, address, age, if it's a criminal matter, whether they're in custody, bail, or O.R., the criminal history -- the rap sheet type of information. For judges, we'd want to know caseload, nature of the case, submitted and undecided cases.

And the third question, we'd want to have information regarding the nature of certain things; and the first, we'd want to know the nature of the case that was filed, the status of the case, where it was along its life in the court, and whether it would be a jury or non-jury matter.

Group 6 Reporter: We took a different approach, a more general approach in concepts, whether it be putting your docket system, jury selection, or your statistical reporting on the computer.

The first question we asked was, what is the backlog and the status of the backlog? Here we're trying to use the computer to make the judge aware. What is his role in justice? In the judicial system?

Secondly, what are the measures of effectiveness you want to build

in your system? Whether it be how long does it take a case from beginning to end. What type of statistical results do you want? Or are you using the computer usefully, instead of accumulation of paper?

Thirdly, using the computer to forecast your needs, whether it be dealing with geographical subjects, the workload in your courts, or getting the computer to help you in future assignments. And I might add just one thing if you, as part of the judicial system, ever get the feeling that the computer is taking over or questioning your authority, you can do one thing. And that is unplug it, and you're in good shape.

Other: Okay. I'm not sure how that answers my question, though. Here I've got a robbery case, and I can ask three questions about that case, what are they. Go ahead.

Group 8 Reporter: The first question we would put to the computer would be the focal points of delay and the time interval between these delays. Number two, what is the status of the case; in other words, where is it in the complete process? And number three, when can the case be set for trial? In other words, when would all parties in the case be available? Witnesses, etc.

Other: Nobody asked whether the guy was guilty or innocent, I guess you can't get that out of it.

Other: You don't need a computer to tell you whether someone's guilty or not guilty.

Other: It's interesting, nobody ... , nobody asked ... , nobody asked any questions about the defendant. There's not a single question in there about the defendant.

Other: We did. We asked about the party. We asked if he's in custody, whether he has his rap sheet, we asked that information. We would also get the information in our time period to whether there has been a guilty plea.

Other: I think you have to say what kind of a case it is.

Other: I would take issue with you that we have that information.

Other: Okay, let's take question number three.

Discussion on Question 3:

III. How would the use of the proposed video taping system change jury verdicts? Does the proposal have merit?

Group 8 Reporter: We agreed that, to answer the question, one, we would change the word "would" to "might". Instead of "How would you use this form of video taping systems change the jury verdicts?", "How might this affect it?" It would present the case to the jury in a prophylactic climate and result in verdicts and judgments without influence and/or tainted by inadmissible evidence in remarks and answers. It could be used in this situation, we felt that the proposal would have merit.

Other: Let me ask about which way. Would it help the defense or the prosecution?

Other: It could go either way.

Group 6 Reporter: Well, the group spent only a couple of minutes on this question, and it didn't feel that this type of video taping would be used for jury verdicts but perhaps for filing, for appeals, depositions.

Group 5 Reporter: In answer to part one "How would the use of video taping system change jury verdicts?", we came up to the conclusion that it reminded us of a debate on how many angels can fit on the head of a pin. We didn't feel that we would have any way of knowing now what influences jury verdicts to any degree. It would be an exercise in futility.

Does the proposal have merit? We felt that this proposal has merit, in limited areas. We felt that the effect of this would be, in actuality, an abolishing of jury trials and, as an alternative, that's what we recommended -- the complete abolishment of the jury trial, rather than this route.

In favor of this system, it does save jury time, and is less expensive. It would be useful for expert witnesses and to preserve testimony, and we said it might eliminate histrionics.

On the adverse side, we said that there would be no saving of judge time. We didn't feel there would be since he would still have to edit the tape. It would be a lengthy process. The judge would be unable to ask questions. It would be more difficult to judge the credibility of witnesses and, we didn't feel there would be any assistance for an appellate review, since I don't know of any appellate courts that would want to sit and view the whole trial. They want to limit the record that's coming up to them as it is now.

Other: Let me ask you a question. Who would oppose my walking into a court and saying, "This is the way we're going to conduct this trial."? Who would be opposed to it?

Other: Yes, I would.

Other: Why?

Group 5 Reporter: Something new. If you're going to walk in cold ...

Other: Here we go! That's the problem!

Other: Okay, how about question number four?

Discussion on Question 4:

IV. If an information system specialist were made available to a court system, with no existing computer capabilities, what should he be asked to do? What output should you expect from him in a year's time?

Group Reporter: One suggestion that our group made was to draft an application to the Law Enforcement Assistance Administration for funds to conduct a management and justice information system survey to get this court started. Another one was to ask the individual to recommend what type of a system to use, assuming that we had no capability. Also, to ask him to begin to establish file structures so that a data base may be established as soon as possible so it may be expanded with time for future program and production development. And, at the end of the year, we would probably expect a batch processing system

which would be completed at least for indexing and furnishing statistics on cases that have been filed.

Other: Suppose this guy's no damn good? How are you going to find out?

Reporter: We'd replace him.

Other: Why do you want batch processing?

Reporter: Well, we're building the file.

Other: Why not build it live?

Reporter: Well, every day that a court waits in building a data base means that you have to go back. If you want to have a large, decent-size data base, every day you wait you're losing cases. It is not realistic to go back and start putting cases into a system. So you must start someplace. If you can pick up your basic elements, your plaintiff, your defendant, your attorneys, the nature of the case, the prayer, other elements you might be looking for. When you start your system, your indexing is logically first. Some other statistical requirements are the first. You're building your data base as you're building your system. And you're doing both at the same time. A batch process, with very little effort, can be converted into discs and put into an on-line system. The cost of having equipment sitting waiting while you're building your data base and everything else is more expensive than it is using somebody else's system. We had no system here. You can use somebody's tape drives and CPU real easy. And at the time you need to have your capabilities, it could be a year off that we're trying to convert.

Group 2 Reporter: Our consensus is that we'd ask him to provide a survey of a system presently existing in cooperation with the most knowledgeable person in the court system at that time, with a recommendation from him of what would best suit the needs of our court. We'd also ask him to establish a docket index, case control, jury selection system, rest information, storage and retrieval. And to also provide required statistical data and additional useful data, hopefully, within a year.

Group 3 Reporter: We assumed that there was no equipment available; that with no existing computer capability we, I think, assumed that he had no machinery with which to work. And so we determined that what we would expect a specialist to do in a situation of that kind would be to conduct an analysis to develop the information necessary to plan the type of system needed and the style of equipment needed to carry it out. And we felt that in a year's time that he should be able to provide a documented analysis of the system needed. In other words, that during this period of time that he should be the architect to study the problem and to plan the type of equipment needed to perform the services that we want it to perform.

Other: How many man-years of your own people's time are you going to contribute to this man?

Group 1 Reporter: We decided that this information systems specialist must first make a study and analysis of our current system, preparing flow charts and so forth, then design an ideal system for the particular courts and its capabilities. The chief judge would then determine the priority for the completion of particular programs recommended by the specialist and it was suggested as to a couple of priorities by some of the people at the table that one would be an outstanding list of all bench warrants and a case history of prior con-

victions for the particular state. At the same time, since we didn't have a computer during this same one year's period of time, we would rent computer time for trial runs of the programs that he had prepared according to the priority scheduling for debugging modification and so forth of these programs. We would likewise require a preparation of periodic briefings for the judges on the court as to the progress of the project and although it's last, we felt that it was not the least important and probably one of the most important -- that there be continuous supervision and coordination with the information systems specialist by the court administrator.

Other: I like your idea of running time. That sounds terrific advice to anybody who thinks that they're going to have a big system built for them, to build a little, teeny one first.

Group 4 Reporter: We did not expect too much from this information systems specialist as these previous speakers have requested. All that we wanted of this systems specialist, since we had no computer available was to walk in the front door, go to every person in the building and follow that paper all the way through from start to finish -- when they can file it with the accountant when he pays the tax. What does each individual do with it? Why does he do it? How long does it take? How long did he hang on to it before it goes to the next guy, and etcetera? In other words, we were hoping for a complete documentation of each person's job, activities, and also each action that became generated in its subsequent passing on of the trial to the final termination of the trial. If he could do that for us and then just come back within a year, then we have a whole chart.

COURT CALENDARS AND JUDICIAL ADMINISTRATION

by

Ralph N. Kleps

COURT CALENDARS AND JUDICIAL ADMINISTRATION

by Ralph N. Kleps

Mr. Ralph Kleps, a graduate of Cornell University and Cornell's Law School, has served since 1961 as the Director of the Administrative Office of the State of California Courts. He has helped draft and present the California Administration Procedure Act, served as Director of California's Office of Administrative Procedure, and served as Legislative Counsel for the State also. In addition to his present employment, Mr. Kleps' expertise has led to membership on the Executive Committee of the National Conference of Court Administrative Officers, the American Bar Association's Section on Judicial Administration, and on the Drafting Committee of the California Constitutional Revision Committee.

Judicial Administration of Court Calendars: The Triple "S" Program

I must start by describing my qualifications to discuss this subject with you, given the fact that I may well be the only judicial officer here who has not had direct responsibility for administering a trial court calendar. My primary qualifications are: 10 years in the field of administrative law, including the drafting of the California Administrative Procedure Act and the organization of California's unique corps of independent state hearing officers, and more than 11 years as the California Legislature's chief legal officer, having the responsibility for administering a large, complicated and highly managed public law office. In the past eight years, however, I have added to that experience my service as California's first Administrative Director of the Courts. This assignment gives me a very sensitive vantage point that makes me an analyst, observer and sometime confidant of the men who do run the trial court calendars in California's very involved, 1,085-judge, 374-court system. The Administrative Office of the California Courts, for example, is responsible for organizing six to eight judicial institutes a year, several of which involve the presiding judges of our large municipal and superior courts as well as the presiding judges of our 13 Courts of Appeal. It is with this background, then, that I enter a field where no one treads with certainty.

Management

I am delighted with the topic assigned me except that I would like to rewrite it somewhat. "Judicial Administration" is a term that we no longer use in my office; it is far too fancy a term for what we are talking about. A few years ago one of our western Chief Justices commented that problems in court management are "disguised, usually quite well, under the somewhat uninteresting and intrinsically meaningless caption of 'judicial administration.'" The problem is that the words "judicial administration" usually comprehend such overwhelming problems as revising the State Constitution, restructuring the court system, improving judicial selection, and maintaining cooperative relations between the bench and bar at the highest levels.

What we're going to talk about here can be put in a much more realistic vein. We are talking about calendar management and in this context it is fair to say that, if a court's calendar can be managed, it will be because the court as a whole is a managed court. Putting it another way, calendar management is court management; it is court management at the most critical point, the production line.

I don't plan to use the time allotted me to describe what is going on in California, and I don't plan to argue that there are simple solutions for the kinds of complicated issues we are facing. This is no field for pat solutions and that truism is strikingly illustrated by Professor Hans Zeisel's elaborate thesis that postponing cases at the point of trial should present no real problem to a court since there must be many other cases around that could be dropped into the breach.[1] Or consider Professor Maurice Rosenberg's theme that compulsory pretrial, at least as he tested it, serves no useful purpose in increasing the disposition of cases.[2] And what are we to think of the current trend toward moving from master calendars back to individual calendars, which was where we started some 50 years ago?

No, I would say that so long as the fundamentals of our problem are in dispute, we must devote our attention to those fundamentals. Thus, it is to concepts, rather than to techniques, that I would like now to direct your attention.

Going to fundamentals, let's ask ourselves a question of utmost importance to chief judges and to court administrators. Where does the motive power come from that produces so much concern in today's world about court operations? It comes, of course, from public opinion. Anyone who reads the paper must be aware of the fact that the ability of our courts to meet society's problems has never been challenged more severely than it is being challenged right now. People who have never concerned themselves about the operation of our judicial system are publicly asking embarrassing questions today, questions for which neither we nor anyone else has acceptable answers.

I recently spoke to an earnest group of League of Women Voters members who are studying our California judicial system. I tried to explain why it is that management in the court setting may present a more difficult task than exists anywhere else in our society. I noted that in most situations management takes place under circumstances in which most of those connected with the enterprise have a common goal. For example, the five-hour flying time between San Francisco and New York, which is achieved regularly by modern airlines managment, results from the fact that everyone connected with the flight wants to get the flight to its destination as smoothly, safely and expeditiously as possible. Even then the goal of management is not always met. All of us, for example, have experienced congestion and delay in airline operations. They face, as we do, such familiar problems as overloading, improper scheduling, and both human and equipment failure.

But consider the problem of managing a trial court in which at least 50 percent of those connected with any litigation, including the litigants, have a strong incentive to prevent the case from ever being tried. Whether one is the defendant out on bail in a criminal case or the defendant in a civil case, it seems clear that is is to his interest to hire the best lawyer available to defeat any effort toward

1. Zeisel, Kalven and Buchholz, Delay in the Courts (1959), pp. 53, 193; and see Aldisert, infra, p. 207.

2. Rosenberg, The Pretrial Conference and Effective Justice (Columbia Univ. Press, 1964), pp. 28-29, 45-58.

efficiency that the court might try to apply to his case. I had no difficulty, incidentally, in persuading my League of Women Voters friends of the validity of that analysis, but I was brought up short during the question period. A very bright, very attractive young woman stood up, looked me straight in the eye and said, "I can accept everything you've said but my question to you is, what are you going to do about it?"

Sessions like this one are going on with frequency all over the United States nowadays, and in large part their purpose is to answer this question: What are we going to do about our unanswerable problems?

Whether you are discussing an appellate court or a trial court, in my shop we think that calendar management is court management at its most crucial point; it is court management at the heart of the system. As I have suggested, if you can manage a court's calendar, you will have achieved management of the court as a whole. So let us look for a moment at some of the issues that always arise in connection with this most difficult aspect of court management.

Since 1965 the Chief Justice of California has met annually with the presiding judges of our largest trial courts. In those meetings the personnel has varied greatly since California still rotates its presiding judges annually, a practice incidentally that constitutes a management problem of some considerable difficulty. Some of the results of those meetings are reflected in California's "Standards of Judicial Administration."[1] We find that the agendas are very much the same even though the personnel changes, and I want to list some of our continuing topics just by way of setting the stage.

Our primary topics always include: the role of the presiding judge, court departmental organization, calendaring procedures, standarization of courtroom procedures and policies, branch court problems, tests of trial readiness, pretrial and settlement procedures, intercourt trial date conflicts, and the use of staff to assist judges. Putting today's issue another way, I think we know all that we need to know about the nature of the management problem in the judicial setting. With Judge Irving Kaufman, whose recent article discusses the "para-judge," I believe that it is time to stop talking about modern management techniques and to start applying them.[2]

Perhaps the most interesting recent development in this field is the growing use of outside professional consultants who bring a very different point of view to our problems. I must say that I do not think they can solve those problems from the outside, but there is no doubt in my mind that professional management consultants can make a vast contribution under court supervision and direction toward bridging the gap between the ancient traditions of the law and the demands of a complex modern society. One of the most interesting results of this process that I have seen arose recently out of the travail of the New York City Criminal Court about which much has been reported during the last year or so. A task force of the Economic Development Council of New York City, fully supported by the court structure of the city and the state, recently published its recommendations. Just to give you some flavor or the drastic nature of the changes that they think are necessary, I want to give you their major recommendation as summarized in the report:

1. Cal. Rules of Court, Standards of Judicial Administration, §§ 1-4.

2. Kaufman, "The Judicial Crisis, Court Delay and the Para-Judge" (1970) 54 Judicature 145, at 147.

"(a) That the Appellate Divisions grant to the Administrative Judge (with a pledge of full support and a directive that it be exercised) the substantive authority required to manage the criminal courts;

"(b) That they secure from the city and the state assurance of the additional funds required to support the changes in the court's organization required for these purposes;

"(c) That they assure the support of the Mayor in giving full weight to the recommendations of the Administrative judge in the appointment and reappointment of judges;

"(d) That the Administrative Judge exercise this grant of authority to standardize court hours, adjournment, sentencing, dismissals, bail, etc. policies, to assign and reassign judges, to recommend for or against their reappointment or renomination, to transfer them and to bring to bear the full use of his power towards the elimination of those practices on the part of court personnel, city agencies, attorneys, prosecutors, etc., that impede the swift application of fair justice or reduce the effectiveness, efficiency and economy of court operations;

"(e) That an Executive Administrator be appointed as second in command to direct all line and staff administrative functions of the court in all counties and that there be delegated to this position full line authority over all administrative functions, procedure and personnel (except the judges)."[1]

To most lawyers and judges, those recommendations will sound drastic and perhaps revolutionary. But few of us would doubt that they indicate the direction in which we must go if management is to solve the problems we face in the judicial branch of government.

Selection

Now let's turn to some of the more specific concepts that govern trial court calendaring. The key word in a successful approach to the problems of calendaring is "selection." In our present posture of continuing and overwhelming judicial overloads, the key to survival of the judicial system in a very real sense will be the process of selection. Our techniques for screening and selecting are therefore crucial. We must make sure that the expensive, complicated processes of the law designed for major litigation are not wasted on the trivial matters that are dumped upon us casually. In the civil area I suppose no meaningful control other than cost can be imposed upon the right to file court actions. That doesn't mean, however, that every filing must be treated with equal concern by the judicial system. Our general trial court experience in California suggests that something over 10 percent of the cases filed will never be pursued by those who filed them, and each year the dismissals for lack of prosecution in the California courts reach substantial numbers. Civil filings have tended to outrun dispositions in those courts by about 18 percent in recent years.[2] If every one of our filings was intended to be prosecuted to completion that gap would cause us serious concern, of course, but in fact we cannot afford to take seriously cases that are not intended seriously. The problem is how to make the selection, and the first cut must obviously be made by a system of "self-selection." We have simply got

1. "Organization Study of the New York City Criminal Court," Economic Development Council Task Force (1970) pp. 11-12.

2. 1971 Report, Judicial Council of California, p. 100

to put the responsibility on the litigants to make the first choice of those cases that are to be taken seriously.

In the criminal law area, the situation differs somewhat in detail but not in theory. A well-staffed prosecutor's office can protect the trial court's calendar if it will accept the responsibility for screening out the cases that should not be filed or, if filed, should not be pursued. Unfortunately, not all prosecutors' offices see this assignment as their responsibility and in such situations high-paid judicial skill is being wasted at a late stage in the proceeding in order to screen out cases that an efficient prosecutor's office would never have permitted to be filed. This kind of screening should be done by lawyers on behalf of the courts, of course, but whether it is done that way or whether it is done within the court staff itself, the simple demands of survival require that we devise procedures for selecting out the cases in which no substantial judicial energy should be invested. In today's world we will continue to have a difficult enough time dealing with those civil and criminal cases that are seriously intended.

A major debate always arises concerning a court system's responsibility for its cases commencing at the point of their filing. Judge Ruggero Aldisert has made the point that, so far as the public is concerned, the total elapsed time is the measure by which the efficiency of the judicial system will be measured.[1] He is right, of course, and courts must maintain accurate records as to that time period. Particularly in the civil area, however, I also believe that our procedures must be designed to reflect delay from the point at which some litigant indicates that the case has been selected for serious prosecution. We are struggling with this problem in California and I must confess that the trial bar has not distinguished itself as a reliable indicator in selecting those cases that are seriously intended to be tried. Nevertheless, we maintain statistics of civil delay measured from the point at which a civil litigant indicates that the case is at issue and that he desires a trial date. Depending upon the efficiency of the calendaring system, this gives us a crude method for distinguishing between lawyer delay and court delay. Needless to say, this classification is not designed as a means for assessing blame; it constitutes an essential piece of information for any attack that may be mounted to solve the delay problem.

Different factors are at work, of course, in criminal prosecutions, including the obvious pressures that custody produces in criminal cases and including, in some states, a specific statutory time period guaranteeing a speedy trial. Assuming, however, that the defendant has been released from custody and has waived any mandatory time periods, the same factors of delay arise. As in civil cases, the court is dependent upon the efforts of the lawyers to do the screening and to select the cases to which the court will devote its attention. Thus, the same principles apply.

We come now to what may be called "screening for settlement." For a long time we have known that the judicial system survives only because so few cases, both civil and criminal, actually go to court or jury trial. Many procedures have been devised for screening out the cases that are ultimately going to settle "on the courthouse steps," and it is to this area of calendar management that primary attention must be given once it is clear that the case is seriously intended. In California we have attempted voluntary early settlement conferences as well as mandatory pretrial and settlement conferences closer to the date of trial. I find a great irony in California, incidentally, in

1. Aldisert, "A Metropolitan Court Conquers Its Backlog" (1968) 51 Judicature 202-207; see also pp. 247-252 and 298-301.

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that the mandatory pretrial settlement of criminal cases has come to be the only way in recent days in which our courts can assure themselves of trial readiness on the part of both the prosecutor and the defender. This is ironic because we have given up the mandatory pretrial of civil cases under pressure from the bar. Given a sufficient criminal calendar overload, however, and a requirement for the early disposition of criminal cases, there seems to be no alternative to requiring such a conference to screen out the cases that would otherwise drop out on the day of trial. This is our experience in misdemeanor courts as well, and in both instances our courts are attempting to organize those conferences in the last week before the actual trial date.

This kind of mandatory screening process puts pressure on the lawyers, of course, because it uses up time that they would often prefer to put to other use. But much of the time of a busy doctor must be carefully scheduled and protected against wastage by the use of advance screening we must begin to protect the time of the judges who constitute the specialists of our profession.

With respect to the trial calendar itself, the key issue is the degree of certainty and predictability applicable to the trial date that results from the screening processes I have described. Needless to say, that kind of predictability and certainty requires a policy of "no continuances in the absence of demonstrated grounds" and a consistent administration of that policy. California has a statute that suggests that lawyers have the right to stipulate to a continuance of their civil cases, but to preserve any control over our calendars at all that statute had to be construed to be directory rather than mandatory.[1] No such control can be given to the litigants at that point, for unless there is an overwhelming probability that trials will be conducted on the dates set, there is no way of generating the pressure that is required to dispose of the volume of both civil and criminal litigation that we are confronting.

There are many other points at which this theme of "selection for survival" is pertinent, but there is only one other that I want to mention here. The final screening I want to mention involves both judges and cases; and it comes at the point of getting the cases to particular judges. Let's look first at the problem of the available judicial manpower. I can't spend time now pointing up the obvious, that is, that all incidental judicial chores should be scheduled at times other than the regularly scheduled trial time. I take it that we would all agree that preliminary matters, small claims, uncontested divorces, minor probate matters, and other incidentals should be scheduled early or late so that each judge can be in a trial department at 10:00 o'clock. Rather, I want to talk about which judges are available for which assignments.

Assuming that the chief judge has the authority to distribute the cases and that he knows enough about them to make an informed judgment, how is he to be sure that the court has the right judge on the right assignment? I think there are only three ways in which particular judges are assigned to particular departments: one is an automatic selection process so that, for example, the junior judge always gets the juvenile court and the senior judge is always chief judge; another is selection by higher authority so that the chief judge or an executive committee can pick the best man for the job; and the third way, which I think may be nearly universal, is personal selection by each judge giving priority to seniority. I want to talk about the last

1. Cal. Code Civ. Proc. §§ 595, 595.2; Lorraine v. McComb (1934) 220 Cal. 753; see also Thurmond v. Superior Court (1967) 66 Cal.2d 836.

concept, particularly because I heard an interesting variation on it the other day. In a well-run court I know the assignments to department are handled on the basis of raw seniority just once, the first time. The next time annual assignments are shifted they follow the biblical doctrine that the first shall be last, so that the senior man is the junior selector for the next round. This selection system modifies seniority by a continually shifting opportunity for each man to have the assignment he wants most.

I won't argue that this system is better than having some intelligent judgment made by higher authority, but it prevents the senior judges on the court from forever selecting themselves for the wrong assignment. By devices such as this, or others that involve a more authoritarian distribution of assignments, we must find ways of getting the right judge on settlement calendars, the right judge on preliminary motions and orders, the right judge in the appellate department of the court, and so on. Selection for survival is as important, in other words, with respect to the use of judicial manpower as it is with respect to the processing of the cases and their selection for trial.

Staffing

Finally, I cannot close without mentioning the area of court management that I believe to be the most significant. I refer to the use of aides and assistants for judges who are capable of backing them up both from the management point of view and from the legal research point of view. Elsewhere in government and in industry we have long since realized that good staff support is the key for solving problems of overload. The concept of using a staff executive, a trial court administrator if you will, has been given real impetus in recent years, particularly by Chief Justice Burger's support and the work of the Institute for Court Management. Courts are also beginning to secure help in upgrading their organization, staffing and equipment. Information concerning the cases that are moving is being compiled, stored and retrieved more effectively than ever before. Knowledgeable staff members are continuously working on pending cases to process them as fully as possible before judicial effort is expended on them. And records, including statistical records, are being compiled that will enable intelligent management decisions to be made about a court's caseload. As many judges are now coming to realize, their survival in the expert role for which they have been chosen requires that they begin to use what Judge Kaufman has called "para-judges" to perform functions that the 1966 revision of the California Constitution calls "subordinate judicial duties."[1] In my opinion there is no other way to free judges for the important courtroom functions that produce the dispositions without which we cannot possibly handle the mass of civil and criminal cases being filed in our courts.

So, I urge upon you a "Triple S" program: Staffing plus Selection equals Survival."

1. Cal. Const., Art. VI, § 22.

GROUP DISCUSSIONS ON COURT CALENDARS AND
JUDICIAL ADMINISTRATION

by Ralph Kleps

Discussion on Question 1:

I. Calendar Management -- Pretrial Disposition of Civil Cases

A. Screening Process in pretrial dispositions:

1) Role of plaintiff and his attorney in moving the case, e.g., request for trial date, representations as to readiness, exchange of information with defendant.

2) Role of defendant and his attorney in achieving trial readiness.

3) Role of court and its staff in selecting cases for a future trial date: notices, follow-up check, sanctions, etc.

4) Role of court and its staff in promoting early voluntary settlements.

5) Role of judges in compulsory pretrial settlement conferences: timing, participants, etc.

6) Staff screening for trial readiness in advance of assigning actual trial dates.

B. Factors influencing early settlements:

1) Extent of court pressure on parties to have cases fully ready.

2) Case overloading on trial attorneys which prevents their early attention to their cases.

3) Court's maintenance of a firm, no-continuance policy on pretrial calendars so that lawyers know it is the day of decision; e.g., no stipulated continuances.

4) Optimum time intervals between readiness/settlement conferences and trial date.

Group 4: Regarding the factors influencing early settlements, one was the extent of court pressures and we felt the court pressures should be extreme.

#B2 - attorney case overloading.

1. We felt that the remedies used could be personal interviews with the attorneys involved; and

2. The use of a special calendar where a group of cases are sent to the same judge until they are all disposed of;

3. A firm continuance policy centered on the same judge until the trial date;

4. The optimum time intervals between readiness and trial date,

and we felt there should be not more than 30 days.

Group 1: Question #1 - Our group took up the question of the pretrial disposition of civil cases and responsibility for movement of the cases along by considering the roles of the various persons interested as to the plaintiff's responsibility. Most of us felt that most, if not all, responsibility for moving a case along ought to rest with the plaintiff. The plaintiff has come to court seeking the help of the court and asking for relief and so it was felt that he ought to assume the burden of pushing the case along.

In one jurisdiction, however, after the complaint is filed, the court assumes responsibility for carrying the matter along and keeping it moving. It was suggested that any delays the plaintiff seeks after once filing the complaint ought to be expressly concurred in by the client and not simply sought by the plaintiff's counsel. That might be useful in discouraging some of the delay tactics sought by counsel on the assumption that clients frequently are not aware of what is going on while the case is awaiting trial.

As to the burden of the defendant, none of us could see that the defendant had any affirmative duty to move the case along, but we did agree that after the defense has made an appearance there should be no continuances or extensions of time permitted without the express consent of the defense.

As to the court's involvement in keeping the case moving before trial, there were very few sanctions considered except that it was generally agreed that after a period of one year or such other statutory time, the court would do well to send out a notice advising that the case would be dismissed unless it was moved along within some fixed limited period of time.

As to the use of settings, we couldn't see any way in which the court by selective setting of cases could either cause them to be moved along better or could encourage settlements. Except it was felt that short causes, of course, ought to be given some priority and set specially.

As to giving notices, we all agreed that the welfare state has also come to the law and that whereas it used to be the case that the plaintiff gave most notices in virtually all jurisdictions now the court or clerk's office assumes responsibility for giving notices of settlement conference, setting conference of trial, and other such notices and we felt that it was all to the good for the court not to assume and continue bearing that responsibility.

As to determination of whether a case is fully at issue and ready to be tried or placed on the settlement conference, if staff time is available, we agree it would be desirable to screen cases for readiness. Otherwise, the parties should assume responsibility for having their cases ready and they should be deemed to have waived anything by way of discovery or amendment to pleading that had not been undertaken before the case is called up.

As to the role of the court in settlement, we agreed from experience that there is no, or very little, use in introducing any particular policy or system for court involvement in promoting settlement because the personality of the available judge would determine very largely the success or failure of any settlement efforts. Within each court it ought to be determined how far and in what way court should involve itself and that should depend on the availability of the judge to run the settlement calendar.

Early settlement efforts in any event, are unrealistic to try because the attorneys would not be willing to prepare their cases twice and would not be adequately advised to be able to make any realistic settlement offers on either side. They would be too anxious and could justifiably plead they were unable that early to properly evaluate the case. We felt there was one caveat, that is that any involvement in settlement efforts on the part of the judge might disqualify that judge from subsequently presiding at the trial of the case in the event settlement efforts were unsuccessful. So in courts having very few judges that is something we felt had to be kept in mind.

As to compulsory pretrial settlement conferences, we were unable to think of any good inducements or sanctions that might be available that would make it any use to call a settlement conference compulsory or to call it at all if the authorities were not willing to participate. But if compulsory conferences were called, we were agreed that not only the attorneys but their parties ought all to be required to be present along with the judge. As to the timing, we felt that time must be shortly before the trial so that the attorneys won't plead ignorance of their case. But it ought to be long enough before trial that if the settlement effort is successful you can work that to the benefit of your trial calendar.

As to whether there are any optimum intervals between the readiness date and the trial date or the pretrial settlement conference date, we were unable to say.

Discussion on Question 2:

II. Calendar Management -- Trial Disposition of Civil Cases

A. Day of trial settlement procedures:

1. Role of calendar control judge and trial judges, e.g., master calendar, insuring trial readiness, sanctions.

2. Handling of settlements before jury selection or trial's start.

3. Court's maintenance of a firm, no-continuance policy for trial calendar; no stipulated continuances.

B. Trial dispositions:

1. Maximizing the number of open trial departments and the hours of availability, e.g., preliminary matters before 10:00 a.m.

2. Management problems with respect to jurors and witnesses.

3. Oversetting policy to insure full calendars, trailing cases.

4. Staff policing of trial readiness, lawyer conflicts in scheduling, and law firm overloading of trial attorneys.

5. Standby calendar of short cause, nonjury cases as fillers.

6. Obtaining jury waivers by guaranteeing court trial before a judge from a blue ribbon, specially selected panel of experienced judges.

7. Information to presiding judge when trial department concludes a case.

8. Disqualifications of judges by litigants.

Group 3: We agree that day of trial settlements is not the product of administrative failure and that it is a natural phenomenon of the adversary litigation process that cannot be completely eliminated.

Now we also agreed that the master calendar control judge is different from the trial judge and that cases should not be sent to the trial judge until the judge exercising control of the master calendar has assured himself that settlement attempts have been exhausted.

In the matter of continuances we did agree that a firm inflexible no-continuance policy is an unrealistic problem-solving technique. A firm policy against continuances presents the proper approach.

On Part B trial disposition, we did agree that matters unrelated to trial work should be so scheduled as to not impede the maximum utilization of the judicial time during the day and that unrelated matters should be so scheduled in the morning or during the lunch recess as to not interfere with the trial itself.

We felt that management problems with respect to jurors should be delegated as much as possible to the administrative staff of the court and that they should be handled by the trial judge only insofar as necessary in the course of the trial. The so-called practice of over-setting was understood to be the practice of setting more cases than can possibly be reached. We all agree that that is a desirable practice that encourages and accelerates disposition problems. Some of us had problems with the so-called slow judge. A slow judge produces perhaps an excessive number of cases and we all agree that there can be no set solution to this problem.

The question of policing trial readiness, etc., had agreement that there should be communication between the court and the lawyers in advance of the trial date and this contact was a matter of necessity and non-judicial staff should be utilized to monitor trial readiness and receive the information necessary to eliminate cases already settled. At times this information is best elicited through a telephone call on the trial date.

On the conflict in scheduling, we felt that the only firm approach to it is the California unwritten rule or the Oklahoma written rule which encourages early settlement by giving statutory or official priority to the case in the court in which it was first set for trial calendared for trial.

On the question of overloading of trial attorneys, we felt that automatic data processing is necessary in order to detect the problem and that data has to be in the possession of the judge to cope with it as the matter is best handles now by persuasion or conferences with the head of the firm.

On Subdivision B6, we understood the question to deal with the device of discouraging of dissuading lawyers from insisting on jury trials by offering them a palatable judge to handle the case. We agreed that it is a gift carrot and should be offered.

Now on question B7, information must be given to the presiding judge by the trial judge when a case is complete.

Subdivision B8 presented some problems. Our answer was there should be a rule requiring that the request for peremptory disqualification be made before the master calendar judge in advance of the assignment of the case to the judge.

Group 4: We all agree wholeheartedly with the report that has just been made. I would like to point out however, of course, that it does make quite a difference whether you operate under a central assignment or the individual assignment system. The presiding judge in the central assignment system would handle those matters that are related to the case other than the actual trial of the case. In an individual assignment system the individual judge handled the case all the way through.

We did have some conflict on the authority, the prerogative or the right of the trial judge, after the case had been assigned to him or after the case was called up for trial, what was his obligation, his duty or his prerogative in handling and proposing and, in some cases even coercing settlements of the case. One judge took the position that the judge should be completely disinterested and should not participate in any settlement negotiations whatsoever and should not try to exercise any influence in the settlement of the case. Others took the position to the contrary, that the judge had an obligation to assist in the moving of the calendar, if he could suggest settlement where it appeared that considering all the circumstances of the case that it should be settled.

Of course, how far should a judge go in trying to attempt settlement? That would depend upon the type of case and would depend upon the judge. I think we have all had situations where we know of individual judges that are pretty rough in using pressures to get the individuals to settle their cases. On the other hand, we have judges who don't participate at all. There is a middle ground.

Dropping down to B8, disqualification of judges by litigants, we did not approve of the peremptory challenge of a judge. The judge should be disqualified by litigants for cause only. Of course, we also recognize that sometimes when a judge is asked to be excused from a case, say a political case where there is a public or political issue involved, it is best for all that no judge in that particular district or section to handle it. We all agreed that in that type of case irrespective of whether or not a lawyer might be able to file an affidavit showing cause for challenge insofar as the judge was concerned, we felt that it was the proper thing to do to have a procedure for the calling of a judge from outside to handle that particular type of litigation.

Discussion on Question 3:

III. Calendar Management -- Pretrial Disposition of Criminal Cases

A. Screening process in the pretrial disposition of felony cases:

1) Role of the prosecutor in weeding out cases or reducing the charge after police arrest.

2) Role of grand jury in weeding out cases.

3) Role of the defender in seeking early disposition by settlement of the preliminary hearing stage.

4) Role of magistrate's court in the decision to proceed with the case as a felony in the general trial court (preliminary hearing).

5) Role of the magistrate's court's staff in the disposition of cases at the preliminary hearing stage, e.g., investigation and reports.

B. Factors influencing the decision-making process in the pretrial disposition of felony cases:

1) Political consequences of such decisions for judges, prosecutors and defenders.

2) Influence of workload pressures on such decisions.

3) Effect of dispositional alternatives on such decisions, e.g., available facilities.

4) Early assignment of cases to prosecutors and defenders.

Group 5: As to A1, the group felt that the prosecutor's office can screen cases effectively in this area but felt that the office should be properly staffed to evaluate cases, screen cases to make determinations whether or not to press charges.

As to the second question before the grand jury, the group felt there is very little the grand jury can do to screen cases and in its jurisdiction the grand jury has no choice but to go along with the prosecutor's office. The grand jury procedure should be eliminated.

On Question #3 regarding the role of the defender in seeking earliest disposition by settlement as the preliminary hearing states, the group felt that very little can be done in this stage inasmuch as the defense counsel does not have sufficient knowledge about the case to properly prepare for plea bargaining.

Group 6: 3A. - The prosecutor should be more aware of his duties to screen cases. Usually he doesn't delegate enough authority or responsibility to his junior staff and he definitely should not have control of the calendar.

In A2, grand jurors cannot be depended upon to consistently weed out the weaker cases or the indictments unless given full support by the D.A. It is argued that defense attorneys should give full knowledge of procedures and evidence to the grand jury. A strong grand jury can stand up to a defense attorney and state the case is not sufficient for indictment. This may be enhanced by proper instruction to the grand jury jurors of their duties and responsibilities.

An adequate public defender's staff and private trial counsel are essential.

A4 - The magistrate should be put on a circuit to guarantee greater judicial independence where they are of local nature. Where a magistrate is on local judicial level he tends to dump difficult or closed cases into the Superior Court. We find there are plea bargaining implications here also. We recommend preliminary hearing be abandoned, but you must have rules for criminal discovery.

B2 - There is a tendency to give away the court house in order to reduce the case load. You get what you pay for. Don't seek statistics at the expense of substantial justice.

B4 - The prosecutor is usually very overworked. It would be a great help to have the same prosecutor staff man assigned to one court. The prosecutor's staff and the judge become a team for a short period of time and they can work together faster.

Discussion on Question 4:

IV. Calendar Management -- Trial Disposition of Criminal Cases

A. Disposition of felony filings in trial court prior to jury selection:

1) Role of the prosecutor in settlement/negotiated plea proceedings.

2) Role of the defender in such proceedings.

3) Role of trial court staff (calendar control, probation reports) in such proceedings.

4) Role of judges in such proceedings (calendar control judge, trial department judge).

B. Trial Dispositions:

1) Means for advance screening of cases to insure a solid calendar of trial ready cases; court versus prosecutor control of calendar.

2) Means for maximizing the use of open trial departments, e.g., master criminal calendar, oversetting policies, firm continuance policy, etc.

3) Means for insuring prosecutor and defender trial readiness.

4) Management problems with respect to jurors and witnesses.

5) Disqualifications of judges by litigants.

Group 7: Question A1 - We feel the prosecutor should make an evaluation as to the strength of case and then should enter into realistic negotiations.

A2 - Evaluate the strength of the defense case; estimate the strength of the state's case; and if there is a strong defense case, then don't bargain. If the defense case is weak, attempt to obtain defense negotiated deal for the defendant.

A3 - providing for backup cases to save judge's time in the courtrooms while waiting for cases; insist on timely return of probation reports. Then reveal the court has the total responsibility for expediting the work of the court and all collateral agencies associated with it.

A4 - We feel that the judge should insure that all pretrial motions are filed prior to the case going out. See that all reasonable pretrial examinations and the area of plea bargaining are exhausted. See that cases are screened so that cases sent out are tryable.

4B - See that all pretrial motions are filed; competency should be first determined if it is an issue; ascertain that all reasonable pre-

trial examinations are exhausted; and then the responsibility for the control of the calendar is with the judge.

B2 - Second portion of the question: we feel a controlled oversetting policy working in conjunction with a firm continuous policy is desirable.

B3 - The third sub-part of the question: Precall cases the afternoon before trial, and if at that time one or the other party is not ready, then set a new trial setting with a firm continuance policy on the same item.

B4 - The fourth sub-part: We see no management problems with the jurors as far as our discussion, and the matter of the management of the witnesses we feel is the responsibility of counsel for either side. We also feel that opposing counsel should not be permitted to question the jurors as to the basis of their vote except in cases of apparent fraud. Our reason for this is that after this particular case is over these jurors will be going back to the jury room to be selected and there is possibility of influence in future actions on cases based upon the appearance of the or the expressions of the counsel in response to questions.

We also feel there should be no disqualification of the judge except for valid reasons.

Discussion on Question 5:

5. Court Management in Calendaring

A. Role of calendar control judges: selection, term, authority, relation to presiding judge.

B. Staff support for calendar control judges: court administrator, clerk, secretaries, etc.

C. Management information for calendar control; collection, custody, retrieval, monthly updating, status by department.

D. Establishment of court policies concerning hours, vacations, departmental assignments, continuances, etc.

E. Use of paraprofessionals (commissioners, referees, masters, etc.) to perform delegable duties otherwise requiring judges.

F. Use of outside judges, by stipulation or by assignment, for temporary overloads or emergencies.

G. Use of systems analysis and management consultants in upgrading the management of calendars.

H. Role of centralized state administration in improving trial court calendar management.

Group 8: Question #5 - We felt that the calendar control judge, where there are a few judges, should be the same as the presiding judge in the large court where the calender control judge should be under the presiding judge. We felt the term of office should be two years or possibly three since one year is too short and five years is too long. We felt he should have complete authority over the calendar and assignment of cases, etc. His relation with the presiding judge would be no problem if they are one and the same.

Item B: We felt this obviously depends on the size of the court and we think he should have as needed a court administrator, an assistant court administrator, a jury commissioner, a calendar clerk, a courtroom clerk, and whatever secretarial help is needed.

And Item C: We felt that question was unanswered yesterday when we talked about what a computer could do for us. We'd like to know the status of all the cases and when they can be set for trial.

Item D: We felt the hours of court should be set by court rule. The length of vacations and the number of judges who can be gone at one time and so forth should be set also by court rules. The department assignments should be again by rule of court to be done by the presiding judge. The granting or denying of continuances should be done by the presiding judge or calendar control judge where there are two of them. And, where once a motion for continuance has been made in a department of a presiding judge and denied it cannot be renewed in a trial department.

As to the use of paraprofessionals to perform delegated duties, we think there should be increased use of paraprofessionals and in general we favored that.

MODERN RECORD MANAGEMENT

by

Robert C. Harrall

MODERN RECORD MANAGEMENT

by Robert C. Harrall

Mr. Robert Harrall is presently Management Systems Supervisor in the Office of the Court Administrator, Providence County Courthouse, Providence, Rhode Island. As such, he is in charge of all Judicial activities in the area of management methods and procedures. He attended Drew University, Madison, New Jersey, with a major in Political Science, the University of Rhode Island with a degree in Public Administration, and is a graduate of the first class of the Institute for Court Management.

It is safe to say that a discussion of records management, be it in the courts or anywhere else, is not one which drives the listeners screaming into the streets at its conclusion shouting for reform. This is particularly true when it follows a luncheon of the quality and quantity of the one we have just enjoyed. Presentations on records management too often deteriorate into discussions of various techniques (shelves vs. drawers, color codes vs. numbers, microfilm vs. bulk storage) and the like, which, although important, are basically lifeless, and, more significantly, do not get to the heart of the problems of records management.

What I would rather do is review some of the basic areas of concern within court records management, point out why I feel we are where we are today, and indicate where I think we have to go if we are not to be buried in our own paper. In short, although I still do not expect to drive you from here screaming for reform <u>at the end</u> of my presentation, I have made every effort to see that I don't drive you from here <u>before the end</u> of my presentation.

Basic Areas of Concern

Records management may well be the most common area of difficulty in the typical court system, particularly in the trial court situation. It may also well be the one which has received the least attention from people concerned with improved court management. Studies of court structure are legion. Calendar systems, the pros and cons of pretrial, problems of sentencing, probation and parole, jury utilization, etc., are studied and debated more and more in today's literature of court administration. Records are touched upon only in very general terms, and then almost always in the context of some other study.

The reasons for this neglect are several:

1. Records management lacks administrative and political sex appeal.

If a presentation on records management can be a deadly experience to a group like this, which if affected by the problem every day, imagine the lack of interest it holds for the public and for legislators and administrators who must fund studies and personnel and equipment to bring about change.

2. Many court systems have only developed records problems to a significant degree in recent years or have only just been forced to recognize problems which have existed for some time.

The growth in court paper in the past ten years has been monumental. Particulary in the area of criminal process, litigation now generates huge amounts of paper when compared to ten and even five years ago. Not only has the number of cases increased, but paper generated per individual case has skyrocketed. This growth combines with the profusion of paper being generated by copy machines and EDP equipment, which are only lately being introduced in many courts, to overwhelm existing records management systems. A second factor in the seemingly sudden emergence of the problem is one of sheer space. With the addition of new functions and responsibilities in courts, and the accompanying demand for office space, many courts have simply run out of vaults, closets, and basements to squirrel paper away. In short, the "out of sight, out of mind" system no longer works.

3. Most court systems have not had, and many still don't have, available to them the resources, either human or material, to cope with their records problem even if they recognized it.

It is no secret to any of us that court operations across the country are underfunded. Justice Burger's observation that the entire Federal Judicial System must operate on an annual appropriation less than it took to develop the C5A airplane is an example with equal applicability to most of our systems. Faced with this situation, it is no wonder that judges and administrators have been unable to allocate resources to this area. An effective records management program takes skilled personnel and at least adequate equipment. It is obvious that in most court systems these have not been priority items.

4. The nature of the records in question.

The most pervasive reason, and the one which makes records management in court systems uniquely difficult among records management systems in general, is what I call the "mystique" associated with legal paper. We must admit that, possibly more than any other professional group, judges and attorneys feel that they create nothing but timeless documents. The thought that these are to be condensed, abstracted, microfilmed, or otherwise altered, creates discomfort. Talk of destruction brings on apoplexy.

Now I do not mean to make light of the importance of proper preservation and maintenance of documents necessary to assure what I call, in lay terms, the "legal integrity" of the litigation. I am well aware of the many circumstances which pose a continuing need to be able to retrace the travel and disposition of a particular case many years later, as well as the reality that functions of a type which might in business be performed informally (e.g., summonsing witnesses) must be formalized in a judicial setting. What I am saying is that there is no need in most cases to preserve forever every piece of paper associated with the case, and/or duplicates of that paper, in the same state, and at the same place with the same degree of accessability as when it was first filed. If practices like that strike you as absurd, then I assume you are from a system which has given this area some attention, and I congratulate you. In all too many systems, the circumstances I describe are the norm.

With this as background, I think we should spend just a moment defining what we mean by the term "records management." First of all, I am sure that my feeling as to what is a "record" may vary significantly from what is traditionally thought of as a record. It seems to me that a record is anything which relates to a particular case and

helps to account for it, monitor it, or reconstruct it. Thus, we are not speaking here of simply the papers filed with a case. We are talking of a broad range of items ranging from case folders or jackets, to exhibits, to docket books, to juror records, and pre-sentence reports. All of these items, and many more, have a direct relationship to a case and must be tested against established standards when one speaks of "records management".

Management is also, in my lexicon, an extremely inclusive term when applied to court records. I feel it is imperative that we view management as a total process which controls that broad category of items I mentioned a moment ago from the time they enter the system to the time they exit to storage, owner, or destruction once they have served their purpose. Thus we are dealing here with more than clerical employees and filing cabinets. We are dealing with a continuous flow of items, originating internally and externally, to the court, which must be accounted for and disposed in an orderly manner.

WHERE ARE WE TODAY?

I would like to turn now and touch briefly on the health of records management in most of our court systems. I shall lead with the statement that I feel it is an area which is very sick indeed. By and large, records programs in our courts are underfunded, and I have never seen a court which had what could be truly described as a comprehensive plan which was clearly delineated and/or fully operative. As such a low priority area, records management in most of our courts is being operated in much the same way it was 100 years ago.

For instance, two obvious integral parts of any management program are forms design and file formats. If your input media is poorly designed, or if your initial file set-up is awkward, you will have problems in every step of your management program. I have brought with me today forms from a case in the files of the Newport County Superior Court in my own state. I would like to review this case in light only of the more significant forms filed with the Clerk of Court.

This is a paternity suit filed by a Miss Slocum against a Mr. Cornell:

1. The first document I present is the Complaint, filed by Miss Slocum before Justice Stanford. It basically designates her as subscriber to the complaint and delineates the facts surrounding the begetting of the child, including the fact that Mr. Cornell had from time to time proposed marriage to her. It was submitted in duplicate, and filed in the courts document fold file system.

2. The second document is an amended complaint filed a month later certifying that Miss Slocum has borne the child and again naming Mr. Cornell as the father.

It was submitted in duplicate and added to the file.

3. The third document is a warrant issued by the court to the town constables for the arrest of Mr. Cornell. It states the charge and instructs the constables to have him before the Court. It is properly executed with the seal of the Court. On the reverse, the constable has made his proper Proof of Service. The return also contains the names of the individuals who have posted bond for Mr. Cornell.

It was submitted in three copies. One retained by the defendant, and the other two returned to the court.

4. The fourth document is a copy of the expenses incurred by Miss Slocum due to the birth of the child.

It was submitted to the Court in triplicate.

5. The fifth document is a deposition taken from a Mrs. Jackson, a midwife, attesting that she delivered the child and that Miss Slocum had told her the father was Mr. Cornell.

It was also submitted in triplicate.

6. The sixth document is a copy of the decision of the Court in which it finds Mr. Cornell guilty and orders him to pay all expenses involved in the birth and further to make regular support payments as specified by the court.

It was submitted in duplicate and filed.

7. The seventh document is a notice of appeal filed by both parties in the case.

It was submitted in duplicate and filed.

8. The eighth document is a receipt from the court certifying that Mr. Cornell has paid the fee necessary to prosecute his appeal.

So what, you may ask, is the significance of this case. It appears to be composed of the usual papers for a case of this type. They appear to have been filed properly and in a typical multi-copy system. It appears that this case represents the generation and initial handling of records in many of the records management systems represented here today.

The significance, I submit, lies in the very fact that this case and its forms are so typical of today's systems....for these papers are dated between August and November, 1732, and bear the seal of George II, by the grace of God, King of England.

Aside from its appropriateness as we stand here in historic Williamsburg, I think this example tells us something.

It first of all illustrates that legal process really hasn't changed very much in some 240 years. This is something we all know, and something with which I do not intend to take issue today.

The second thing it shows us is more relevant to one of the central points I wish to make today....that the generation and initial handling of court records has also changed almost not at all in too many courts throughout the country. There are courts existing today where the use of carbon paper is frowned upon, let alone such radical ideas as snap-out multi-part forms, "turn around" forms, microfiche, and flat filing. In many of our courts it would take the Clerk of the Kings Court in Newport a matter of hours to feel quite at home with the records management system.

WHERE DO WE HAVE TO GO?

If this then is the state of many of our records management systems, what must we do to bring about change and how do we go about

it? In the closing minutes of this presentation, I would like to address myself to these two questions.

To bring about change in this area is not simple. We are fighting deep tradition in many areas and budget limitations in most. However, there are four things about court records management which we can use to move towards change.

1. Records are familiar to everyone.

Virtually every employee of a court system uses records of one type or other on a daily basis. When you begin to overhaul your records management system, you are working in an area which your own people may be able to help you....if only because they know in great detail the problems they have with the system.

2. Records are largely internal.

Most records systems are internal to the particular court. Thus, you are not changing a system which is generally going to expose you to criticism from attorneys, the public, etc. Change in other court areas is too often plagued by such outside influences.

3. Records management is largely a question of technological application.

Records management anywhere, including courts, is primarily a mechanical process. Any number of techniques exist which may be adapted to court needs. It also lends itself well to the development of techniques which may be transferred from one court system to another. This is less true to systems work in other court areas.

4. There is a favorable cost-benefit ratio in records management.

An attack on records management problems within a court can show quicker tangible results at a more favorable cost-benefit ratio than a similar attack in any other area. It is surprising how many seemingly unrelated annoying problems can be eliminated by the revamping of a records system. Often, although not always, changes can be made at little or no cost.

With these four factors in mind, how does one go about evaluating a records management program in the typical court setting? What questions should we as administrators ask ourselves about our system before we design a plan for change? Without going into great detail, I would like to conclude with a summary of the more important factors we should consider in such an evaluation.

1. Inclusiveness

Does the evaluation cover all items which figure in the records flow and does it cover them from the time they enter the system until they exit? Is it applied equally throughout the court?

2. Information System

Does the program relate to the information system? Does it facilitate paper flow to the people who should see certain paper? Does it tie in with your reporting and statistical analysis functions?

3. Indexing and Control

Is there proper indexing of records so they may be referenced by people related to the system from the point of view of their own needs?

Does your indexing extend to such items as exhibits, depositions, etc.?

4. Equipment

Is your equipment designed for the job you are requiring of it or are you "making do" with obsolete equipment? (e.g.: placing flat foldings in file drawers converted from document fold filing). Has the nature of your records changed to the point where you should revise your equipment? Including the initial cost of the equipment, the space it occupies, and the supplies to maintain it, equipment accounts for only 15% of your records management dollar. Any changes you can make in your equipment which will increase the efficiency of your records management personnel are well worth it.

5. Paper Proliferation

Are you making an effort to control the volume of the paper input to your system? Is forms management a continuing part of your program? Do you weed out obsolete forms and revise current ones? Do you control copy machine use and EDP printout material? Do you attempt to keep people from establishing personal files which duplicate data available in official office files?

6. Records Manual - Retention Schedule

Is there a records manual which outlines the system and establishes clear guidelines for all personnel?

Is there a retention--destruction schedule clearly delineated covering all record material and is it enforced? Is it based on statutory authority? (But not, I hope, spelled out in great detail in the statute).

7. Costs

Do you know what your records management program really costs you? One of the surest roads to effective change is an ability to promise tangible dollar savings. I think you would all be amazed at what it costs your court in a year to manage its records load.

8. People

Finally, the undoubtedly most singly significant factor in any records management program is the people. Seventy per cent of your records management costs are people costs. I would put them in two groups. The first "group" may be composed of one individual. This is the person charged with overall supervision of your management program. I cannot stress his importance too strongly. A resourceful individual given the proper responsibility and authority can produce a meaningful management program. The best conceived and designed program will perish without proper leadership. I cannot count the number of times I have seen a records system designed by an outside consultant with much fanfare and gnashing of teeth turned over to a clerical employee who lacks both expertise and authority who presides over its gradual demise.

The second group of records people are those who actually handle your records on a day to day basis. The key here is training. The day is gone, if it ever existed, when records maintenance can be considered unskilled, bottom-of-the-totem-pole work. You are spending $.70 out of every dollar you spend on records management on these people. Their efficiency is the key to success or failure in your management program. Put some resources into both their salaries and their training. You will retain them longer in an area which traditionally suffers from a high turnover rate. You will also get a higher rate of return on your investment in terms of productivity.

WHO WILL DO IT?

Let us assume now that you leave here today with a commitment to review and revise the records management system in your court. How do you do it? I think there are three routes you can travel.

a. You can do it "in-house"

This may be a feasible alternative if you have someone available to you with some expertise in this area. It is certainly the most economical route, at least in the short run. The pitfalls are obvious. If someone like this has been available all along, you should look carefully at the reason nothing has happened before. Also, a completely "in-house" job may have a difficult time seeing your records problems from a fresh viewpoint and/or making his influence felt.

b. You can hire a consultant

If you wish to hire an outside look to do the entire job I would caution you in two areas. Be sure the consultant you select is charged with system installation as well as recommendation. Be sure you assign one of your own people who is in a significant position of responsibility, and who will have some continuing responsibility in records management, to work with the consultant. Consultants have the obvious drawback of expense.

c. You can work with an equipment company

If you have a person who is knowledgeable in your records problem, you might work out a very satisfactory arrangment with one of the larger filing equipment manufacturers. Several of these firms have sales representatives who are virtually systems analysts in the area of records management. They will be glad to work with you on a survey of your records problems and make recommendations (which naturally includes the use of their equipment).

This approach has the advantage of bringing in a skilled outside look tempered by the presence of your own people without the direct cost of paying a consultant. It is limited in the sense that such firms will be most interested in those areas of your system where their equipment is applicable.

CONCLUSION

I am well aware of the fact that you have been deluged all week with calls to attack innumberable problems in court administration. I am hesitant to add another to the list for fear that some of us may return to our courts so overwhelmed with problems that we fear tomorrow more than today and consequently move nowhere. However, I must ask that you put records problems high on your priority list. I think you will be surprised at the impact their solution will have upon the general administrative health of your court.

GROUP DISCUSSION ON MODERN RECORD MANAGEMENT

by Robert C. Harrall

Discussion on Question 1:

I. The Chief Judge and Administrator of a new court system is setting up the record system for that court. They consult you as to the information they should be able to obtain from the records when they want to see how well the new court is functioning at the end of its first year of operation.

How would you advise them?

Will the Chief Judge have information needs which differ from those of the Court Administrator or vice versa?

Group 2: The question is what records show how the court is functioning. The record should show:

1. Total types of cases and the totals of various classifications;

2. A comparative inventory as to status in gross numbers of disposition and methods;

3. The above information broken down by judge; and

4. The cost of operations and various functions.

Fundamentally, there is no different information needs between the judge vs. court administrator, although some of the information would be more important than other information to each of these persons.

Group 4: The clerk's office would create a system which would give a number, that is, a unique number, which follows each case until the end of the world. That number is fed into dual systems: one system is a record system which keeps the file, that's the history; the other is an information system designed to tell what's going on in the record system. This is destroyed the instant its utility is no longer apparent. All of this is kept on permanent file on fiche microfilm, i.e., the copy of the original, if anyone ever wanted to go back to see it.

At the same time the case is filed, the underlying accounting records are created and sent to the auditor's office. Automatically a summons is produced, a uniform summons which is transmitted by electronic impulse to the sheriff where it is reproduced on a piece of paper where it is assigned to a deputy who serves it, makes his mark, and again transmits it on a piece of paper to the information file while the original comes back to the court history indicating it has been filed.

When an answer is filed, this same machine assigns a code to the lawyer, a secret code to the insurance carrier for the judge's own use, and it also assigns the fact that this has occurred. Here is your permanent record, here is the fact that this transaction has occurred. You instantly retrieve this fact at any time and use it anywhere you want it.

If a deposition request is made it goes into the information file showing the status of the case. After the deposition is taken, the piece of paper itself goes into the regular file.

The case is assigned by an operating docket management system to a court for trial. After trial assignment all these papers go to the trial court.

After trial the judgment is entered. The microfilm shows that, entered on this date, there was a judgment for the plaintiff for $3,750 that goes to the state for the permanent record of what you did in that court that week or that year.

The rest of the information is destroyed when the judgment is entered. This permanent document goes on film where it will forever remain for recovery but the last transaction is to get the costs filled out and that closes that part of the case. Now we only have these original pieces of paper and they are the same ones they filed in King George's day, with the same language on it, but we are not manipulating those same pieces of paper. We are manipulating electronic impulses on the basis of one million transactions per second and that is fast enough to get the information to the sytem's operator to know what the hell he's got in the shop and what he's going to do with it.

Discussion on Question 2:

II. Is records management truly an identifiable sub-system within our courts or is it merely a by-product of the more substantive sub-system (calendar, juries, sentencing, etc.), which must be dealt with in the context of those sub-systems?

Group 5: The question really means should a single office or officer be in charge of all records and have the authority to control the records. We determined that this would be a very desirable thing to have. However, a majority at our table have a situation where the clerks are elected officials and operate in cooperation with court but they maintain their own system. Therefore, we have a dual system of the clerk's records and therefore the by-products of what they call the substantive sub-system the various court offices keep in their own records.

Group 6: We interpreted this question as asking what was the role of documents in the judicial system. We had an extensive discussion on the role of documents and we decided there were basically two types of documents in the judicial system. They were at least primarily at the trial level. There are the working documents that we use from day to day such as summoning jury panels, subpoenas, etc., which do not have a whole lot of significance long after the trial. And then there are documents which basically embody the substantive law, such as judgments and land decisions.

It was the general consensus of our group that in trying to respond to this question that documents are primarily a by-product of a higher level system. That law rarely deals with rights and duties of parties and not with documents. However, there are some documents that are essential to record these rights and duties between parties such as historical purposes and to determine present rights in future determinations.

Keeping that distinction in mind, we felt that insofar as records may effect later legal rights, legal rights in the future, that they should be retained although in as practical a method as is consistent with the current technology.

Discussion on Question 3:

III. What type of access should people outside the system, (public, media, other government agencies), have to court records?

Should the system be geared to accommodate their needs?

Group 2: The question: what type of access should people have outside the system: public, media, government agencies have to court records essentially deals with the media. The answer is most of the time, although there are some exceptions. There should be complete access to court records with certain specific exceptions, generally by statute, i.e., in adoption and except for individual orders as entered by the judge.

Should the system be geared to accommodate their needs? We say yes, because of the practical consideration. If they have a right to look at the records, it is cheaper to make it easy for them to do it, rather than to have them interferring with the day by day efforts of the people in the system.

Group 1: Outsiders should have the same access as those within the system, except if the latter is made confidential by law. With respect to gearing the system to accommodate their needs, our answer was no, unless the court system charges for it.

Group 3: The public has the right to full access to all public records under conditions that are controlled by the court or by statute. In regard to gearing our system to the needs of the public or the media or other governmental agencies, we do not believe the system should be designed for that purpose. However, we thought that a good record system may, as a by-product, meet the needs of the public and these other agencies.

Discussion on Question 4:

IV. The question of retention-destruction is probably the most controversial aspect of records management in courts. Why is this so and where can we move to avoid "paperside?"

Group 7: The question of retention or destruction of records is very controversial. Why? This is because of objection to change, archaic statutes and could be changed by microfilming and automation.

Group 6: This is a controversial question because records do have a dual nature. There are certain records which will affect rights and duties in the future and embody legal rights. These types of documents should never be destroyed. As to the documents that have only immediate importance and lose significance long after a trial, there should be certain rules of court or statutory rules as to when these can be destroyed.

Our conversation next turned to ways to keep these important and essential documents, more substantive documents. We basically felt that the concept of dead storage was essential in respect to existing documents and old documents.

We also tried to think of some recommendation that could be made as to reducing the size of future documents that will have to be kept in dead storage. We thought that perhaps we would not have to store all of the boiler plate although this raises many other difficult

problems. Perhaps the boiler plate could be made a matter of public record and incorporated into certain documents. We also thought that forms should be revised and made as distinct as possible. However, it was the consensus of the group that there would have to be some form of permanent storage, indefinite storage, that could be used as reference for the later determination of rights in essential substantive documents.

Group 8: The controversy about the retention or destruction of records is due primarily to two things:

1. A lot of hidebound tradition and an overabundance of statutes; and

2. The statutes referring to the necessity for permanent records of the original copies or some kind of a document.

In regards to the second part of the question, however, there are ways in which we can move to avoid this paper size business.

The destruction of records is impossible since so many of the records and transactions must be available for scrutiny without regard to time lapse. Therefore, to avoid paper size we must either computerize microfilm warehouses or develop records not dependent on paper at all.

REPORT ON INSTITUTE FOR COURT MANAGEMENT'S INTERNSHIP AND STUDY

by

Maureen McPeak Solomon

REPORT ON INSTITUTE FOR COURT MANAGEMENT'S INTERNSHIP AND STUDY

by Maureen McPeak Solomon

Maureen McPeak Solomon is a graduate of the Institute for Court Management's first class and currently its Director of Civil Calendar Studies. She has served as a systems analyst for both the MacDonald Corporation and the Los Angeles Superior Court, and was part of the District of Columbia Court Study team.

I'd like to spend a few minutes telling you something about the Institute's court study program. I should begin with the internship phase of the Institute's training program, which the Fellows of the Institute completed in December, and indicate how the work done by the Fellows during that time led to the intensive study program now underway at the Institute. The thirteen-week internship followed nine weeks of seminars and workshop during the summer. The purpose of having an internship in the training program was to give the participants, many of whom were entirely new to courts, a really intensive immersion into the judicial environment. You can sit around and tell people about courts and they can hear speeches from experts; but it only begins to be real when they get into a court and see how it operates and have the opportunity to interact with the judges and personnel.

The Internships were primarily a learning experience for the participants. While you could technically say they were "studying", the Interns were not doing the kind of in-depth studies necessary to uncover serious problems and make recommendations to the personnel of the court. The purpose was to learn how courts operate--what the system is and why it operates the way it does. It would be naive and premature to jump to firm conclusions based on the data gathered by the interns. On the other hand their work has provided significant groundwork for much-needed studies of major court problems.

To get the broadest exposure to the judicial process the interns studied what we call "functional sub-systems", which cut across departmental lines within and outside of the court. They studied calendar management, the sentencing sub-system, criminal intake, jury selection and management, and records management. This approach provided exposure to not just the court, but Public Defenders' offices, District Attorneys, private counsel, clerks--a very broad range of personnel.

Each intern followed the same "workbook" to guide his study. Thus the result was a wealth of comparative information from approximately 20 courts. The staff of the Institute is currently analyzing it, trying to make meaningful comparisons and develop some sound general principles of what constitutes effective management and operation. The results of the culling out of the preliminary data gathered during the Internships will be completed and published in monographs within a few months. I expect you will all receive copies. In the study program now being conducted by the Institute staff, we're attempting to go much deeper than the superficial king of problem analysis you see so often.

The problem area most frequently identified by the interns and also by the judges in the courts they visited was calendar management and court control of the progress of litigation. Both felt in many cases that the bar and the District Attorneys Office were controlling the business of the court and that efficient and effective case sched-

uling was all but impossible in their courts. With this in mind, the Institute's study program is devoting about 60% of its resources to studies of calendar management. They are doing the same civil calendar management study in Boston, Detroit and Minneapolis and the same criminal study in Houston, Denver, and Cleveland.

Everybody here today knows his court has problems, at least he is aware of the symptoms that plague them. But, it seems to us at the Institute that so far, nobody has had the opportunity to do the kind of in-depth, comparative studies that allow you to start to get down to the basic causes of the problems that everybody knows exist. The Institute's study program emphasizes studying the same things at the same time in different courts to compare similarities and differences in operation and effectiveness and start to isolate the basic elements of sound calendar management. We also want to develop conclusions as to what techniques are best in various kinds of courts and under various conditions.

In the past there have been a few isolated calendar management studies in specific courts to solve specific problems. And, these studies resulted in recommendations which probably can alleviate specific symptoms apparent in that court. But, it seems to us that it is not possible to generalize from the studies that have been done in the past. You can't say, "Well, the study in Boston revealed x, y, and z about calendar management. Therefore, that's the answer also for Philadelphia and Los Angeles and New York City." And, we think that's because to some extent the people who have done the studies have been constrained to quickly put out some immediate fires. They've been under time constraints and some political constraints, and this sort of thing. So, in our analysis we're trying to look for elements that can be used to generalize from court to court so that there can begin to be developed a body of knowledge about the basic causes of calendar management failure on which court administrators and judges can draw when they want to make changes.

Within the present state of the art, even the most progressive court desiring to institute major improvements and reforms must rely to a great extent on tradition, trial and error, and intuition in determining what policies/procedures/rules to adopt. There is no body of established principles of sound or efficient caseflow management on which a court administrator or Chief Judge can draw when attempting reforms. When one studies popular remedies, such as the Certificate of Readiness, for example for every court where improvement was realized, one finds a court where it accomplished nothing. Even the permanence of the improvement varies from court to court.

The "individual" calendar has become popular as an effective combatant of trial delay, and there are many instances of "individual-calendar" courts which have low "backlogs" and a minimal delay to trial. On the other, many courts have accomplished equally impressive reductions in delay while operating under a "master" calendar. Even among courts nominally using the "individual" calendar, there are substantial differences in the actual calendaring and case assignment systems employed.

We feel it is necessary to go to a deeper level of analysis, to by-pass the arguments of "individual" versus "master" and start looking at what are the really important elements in the calendar management system so we can find out what caused a master calendar to work in one place and individual to work in another and a "hybrid" to work elsewhere. And there's probably a number of even better calender management techniques that nobody has put a name on yet. We think that the technique should be tailored to the situation in the particular court. And, if we can identify the circumstances under which one solution or a

group of solutions fits, we can begin to generalize to many courts.

In short, the goal of these studies is to identify the most basic essential elements of a successful calendar and caseflow management system in order to assist courts throughout the country in solving their problems.

The staff of the Institute do not hold themselves out as experts who know all the answers, because we don't. There aren't very many experts around, because there is as yet not enough knowledge about many different types of courts and what makes them tick. We take the attitude that we're still learning and trying to gather as much information, as much knowledge as we can so that we can start saying things that make sense and make sense not just for one court but for many courts. We hope, in the future to be able to get around to as many courts as possible and help them solve problems. We think an essential ingredient of this, of course, if knowing how to help courts bring about change when they feel it's time to change and when they know what changes they want to make. So, that's another avenue where the Institute is building capability. After we've helped you recognize the changes that you need we want to be able to help you implement those changes.

The Institute has a staff of about 12 people who are experienced in the field of court management and court studies and who are really committed to this field just as you here today are.

We want to help you, we think we <u>can</u> help, and we hope that you'll all on us in the future.

LECTURE PRESENTED

by

Geoffry Gallas

LECTURE PRESENTED BY

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EXCERPTED FROM:

"DEVELOPING COURT MANAGERS TO HARNESS THE FUTURE"

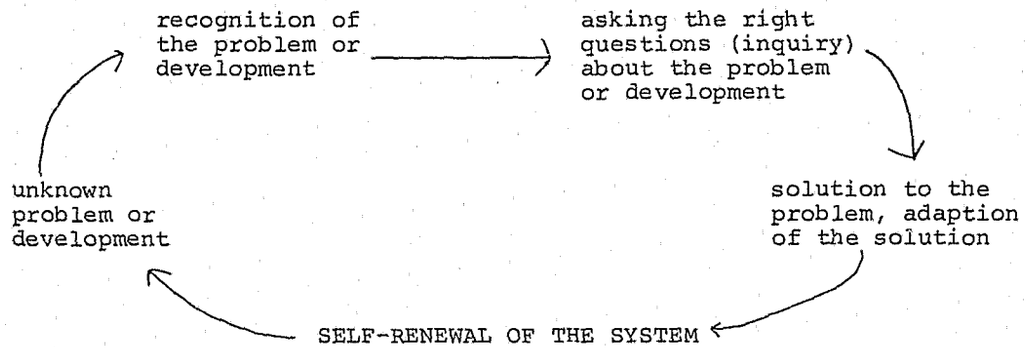
Basic Assumptions

In an address at the commencement of Harvard Business School in 1931, Alfred North Whitehead noted that for the first time, the life span of an individual is considerably longer than the life span of knowledge, and thus longer than cultural institutions, tools, technology, beliefs, and practices as well.[1] The implications of this reality for education, especially the education of Adults is overwhelming.[2] The purpose of education is no longer the mere transmission of knowledge or acculturation of the young into the established and fixed folkways of the society. As a result of the explosion of knowledge, technological innovation, and continuing social and cultural upheavals, education must have the teaching tools for learning, that is, the ability to engage in the process of inquiry efficiently and effectively as its primary goal. The role of the teacher in the past was to pass on "reliable" information and practices. The teacher today, having little reliable and constant information, must be a facilitator of the process of inquiry. The time frame for learning in an agrarian or early industrial age could be limited to youth while the turbulent and ever-changing technological age demands an education process that continues throughout life. The chart below summarizes these ideas.[3]

	OLD	NEW
Purpose of Education	Transmit knowledge acculturation to a fixed society	Process of inquiry acculturation in a changing society
Role of the Teacher	Transmitter of facts	Facilitator
Time frame of Educational Process	Youth	Lifelong

The role of education today must be instruction in problems and developments that are not yet known. Therefore, the educator must create the ability to recognize these developments and problems, teach the skills for inquiry into them, and promote the wisdom necessary to deal with these new areas effectively. The process is, by necessity, cyclical, since the need for change is renewed with each new develop-

ment. This self-renewal of the system satisfies human needs for change and challenge and yet creates the stability necessary for adaptation and ultimate survival. Increasingly, problems can only be solved by specialists (products of the knowledge explosion) working in collaboration with one another.



As the reader will note, the process represented above parallels what many observers feel are the essential elements of the role of the modern manager. The manager is viewed as a problem recognizer, resource finder and coordinator, and finally an implementor of problem solutions. The Court Executive is the epitome of the modern manager, who must balance out demands for change with those of stability when dealing with a complex and changing environment. Clearly, society has reached that stage of technological development in which continuing change is an absolute necessity. Such a situation demands the development of democratic, flexible social structures and personalities.[4]

In order to recognize, investigate and solve problems, then implement these solutions using men and technology, considerable personal resources are required of the modern manager. These include flexibility, confidence, stability, creativity, restlessness, objectivity and stamina. These personal resources are especially important to the Court Manager, who operates in an arena which not only values stability, but finds its truth and direction in the past.

The modern manager must be change-prone and have the personal drive and skills to be a life-long learner. The modern manager must have response-ability to and for his environment and the role he has assumed in it. The demands of modern living increasingly require men to be capable of sharing the responsibility and tension of working together and taking the risks necessary for new learning. Thus, more and more training programs must recognize the implications of collaborative and temporary systems to solve ambiguous and inter-disciplinary problems.

A good training effort must be conceptually based on the above, certain other realities about the learning process in general, and the adult learning process in particular. Education for changed and more effective behavior can be viewed as involving three stages:

First, the unfreezing of the individual to expose him to the possibilities and contingencies of change. This aspect of the learning process if often ignored or taken for granted. The unfreezing of an individual from preconceived ideas is absolutely essential for new learning. The Adult must be given sufficient time and a proper environment that will permit him to examine his assumptions and test their validity.

Second, the experience of thinking, feeling, and acting in new ways. This stage of the learning process is what is normally termed the actual learning or the educational phase. It involves the intake of new ideas and the discovery of new relationships based on the validity of individual findings research and/or professional instruction.

Third, the refreezing of new knowledge, behaviors, feelings, and attitudes. The newly implanted ideas and experience are now systematically reinforced in the environment of the work-a-day world. These ideas are the basis for all further examination and the measure of validity until a new set of ideas replaces them.[5]

Adults have less time, more outside commitments, and greater experience than youth to bring to a learning situation.[6] They have a greater need to have education relate to learning needs they can identify. Consequently, learning is most meaningful to adults when they aggressively take responsibility for their learning by making choices about what is important or useful to learn and what is not. In this way, adults become much more assertive and effective learners, for they are participating in a process that have internalized as important and relevant. It logically follows, as well, that because of their positions in society, adults find more relevance when education is problem, rather than subject centered. Education is meaningful to adults if it has a clear application to life and life's dilemmas as they experience them. Consequently, the adult educators, who are likely to be the most effective in the long run, are people who are primarily person, rather than subject centered.

Implications for the Conduct of Training Programs

Implicit in the above is that any good training effort will focus attention on individual development since individual change and development is idiosyncratic. In addition, there is need to recognize that learning, to be meaningful, must involve thoughts, feelings, and action. Typically, advanced learning concentrates on cognitive skills to the exclusion of feelings and action. Furthermore, if the broad goal of training is not the transmission of knowledge, but rather the preparation for future learning, then the lecture (which can be an effective way to transmit information) clearly becomes a teaching technique to be used sparingly.

A training program should be structured with a recognition of the necessity of allowing learners to actively participate in and to manipulate their learning experiences. Effective programs will encourage learners to identify learning needs and to make choices about curriculum. This process (diagnosis of learning needs, decisions concerning the use of time, location of resources, involvement and commitment to the learning process) is modeled directly on learning as it occurs in the world. By modeling this process, the trainer facilitates learners learning to learn. The last stage of any learning cycle should be a rediagnosis of learning needs.[7]

Finally, a good training effort is designed with an appreciation of group process and a concern for increasing the ability and skills of the learner in working with, for, and through others. Interpersonal skills are especially important for court managers.

Training designs (especially in relation to residential education, i.e., the nine week period of Classroom "Instruction") should effectively with the expected sequence of issues in the group. Intragroup trust is the foundation of all future group accomplishments.[8] Commonly,

groups need to go through several stages and resolve the following issues: Initially, group members will attempt to place responsibility for the entire experience on the "experts." As this need is resisted, there will follow a period of great conflict in which membership concerns are primary. These concerns include: "Am I in or out? Where does everyone fit? Can I get my agenda met in here?" The conflict results as group members are required to give up everyday status and roles. After a subsequent phase, during which group members practice being warm, close, and open; it is then possible for them to be truly interdependent and to effectively attack training problems.[9]

Summary

The extrapolation of what constitutes a model training effort must follow from:

- an awareness and appreciation of the nature of the world we live in;
- the problems we face;
- the role and challenges facing the modern manager;
- group process;
- the necessary conditions for learning which will be meaningful (involve the whole person) and likely to have long term effects.

This analysis generates a model for the training of managers that emphasizes:

1. learning rather than instruction;
2. all learning as a preparation for future learning;
3. the integration of thoughts, feelings, and action in the learning process;
4. the individual and his responsibilities and opportunities in the development process;
5. a design that attempts to unfreeze the individual, then allows for learning and change, and finally recognizes the need for learning to be reinforced in the larger environment;
6. attention to the increasing need of specialists to work intensively with one another in order to solve newly emerging problems. This involves the ability to work effectively in temporary but intensive collaborative efforts;
7. group process and development as important determinants of the rate and nature of learning.

Notes

1. Whitehead's statement is preserved as an introduction ("on Foresight") to Wallace B. Donham, Business Adrift (McGraw-Hill, 1931), pp. xiii-xix.

2. The most complete statement about both the theory and practice of education which responds to the reality; Life Span of each individual Life Span of culture is Malcolm Knowles, The Modern Practice of Adult Education: The Theory of Andragogy, (Association Press, 1970). Many of the propositions which I present in this paper are elaborated in this invaluable book.

3. The chart and the ideas it expresses were introduced to me by R.T. Williams, an Adult Educator, formerly a trainer at the Federal Executive Institute in Charlottesville, Virginia, and now the Associate Executive Director of the Institute for Court Management.

4. In their book The Temporary Society (Harper and Row, 1968), Warren Bennis and Phillip Slater argue that democratic forms of organization--decentralization, egalitarian, flexible with a scientific attitude are absolutely necessary for adaptation to rapid change. Social and personality structures which are autocratic and rigid are unsuited to challenges of today's world. For a summary of research in this area see W.G. Bennis, "Effecting Organizational Change; A New Role for the Behavioral Scientist," Administrative Science Quarterly, September 1963; W.G. Bennis, "Towards a 'Truly' Scientific Management: The Concept of Organizational Health," General Systems Yearbook, 1962; and Jay Hall and Martha Williams, "Group Dynamics Training and Improved Decision Making," Journal of Applied Behavioral Science, 1970, vol. 6, pp. 39-69.

5. The following three references give a complete development of the Lewinian approach to learning: Kurt Lewin, Field Theory in Social Science: Selected and Theoretical Papers, edited by Dorwin Cartwright, (Harper and Ross, 1951), p. 240; Gordon Lippitt, Organizational Renewal (Appleton-Century-Crofts, 1969); Frank P. Sherwood, "An Interpretative Summary of a Study of Three Executive Development Programs," (unpublished paper).

6. See Knowles, op. cit., pp. 48-49. Additional references which are very helpful include Raymond G. Kurlen, ed., Psychological Backgrounds of Adult Education (Boston: Center for the Study of Liberal Education for Adults, 1963); Edward Brunner, et al, An Overview of Adult Education Research, (Washington, D.C., Adult Education Association, 1959), chapers 2, 3, 8; and Harry L. Miller, Teaching and Learning in Adult Education (MacMillan, 1964).

7. See Knowles, op. cit., pp. 43-44, 219-244, 273-298.

8. Frank Friedlander, "The Primacy of Trust as a Facilitator of Further Group Accomplishment," Journal of Applied Behaviorial Science, 1970, vol. 6, pp. 387-400; J. R. Gibb, "Climate for Trust Formation," in L.P. Bradford, J.R. Gibb, and K.D. Benne, eds., T-Group Theory and Laboratory Method: Innovation in Re-Education (Wiley, 1964), pp. 279-209.

9. The need to structure group learning situations to cope with the issues of group development is in my opinion, the most overlooked area in all residential education. There are a number of theorists which have a good deal to offer to educational planners. Particularly useful references include: Robert F. Bales, Interaction Process Analysis (Addison-Wesley Press, 1950); W.O. Bennis, and H.A. Shepard, "A Theory of Group Development," Human Relations, 1956, vol. 9, pp. 415-437; L.P. Bradford, J.R. Gibb, and K.D. Benne, eds., T-Group Theory and Laboratory Method: Innovation in Re-Education (Wiley, 1964); A.P. Hare, ed., Handbook of Small Group Research (Free Press, 1962); B.W. Tuckman, "Development Sequences in Small Groups," Psychological Bulletin, 1965, vol. 63, pp. 384-399.

SECTION II

ANALYSIS

ANALYSIS OF PARTICIPANT INPUT

by

James Mikawa

ANALYSIS OF PARTICIPANT INPUT

It was recognized that participants could provide valuable input to the Conference proceedings based on their experience, knowledge, and role requirements. Consequently, the Conference was structured to allow exchange of information and knowledge among the participants. Small group discussions were an integral and important part of the proceedings.

In addition, systematic efforts were initiated to gather data from participants during the Conference which would reflect their knowledge and insight into the problems of court administration. The intention was to categorize, analyze, and present this data for easy perusal by participants and others. It was believed that both participants and others would benefit from knowing about the problems identified in court management, ideas regarding possible solutions, and some of the anticipated actions to change existing patterns.

In this section, data obtained from participants will be presented and discussed. The data presented will include important issues facing the court; problems, solutions, and implementing steps associated with court management; and anticipated changes in existing patterns.

Most Important Issues of Courts, Today

At the beginning of the Conference, each participant was asked to state what he would consider as being the most important issues facing the courts, today. Sixty of the sixty-one total number of participants responded. The majority of the participants (55%) indicated concern about the lack of speedy and efficient justice as reflected in problems such as backlog of cases, general congestion, and delay. These problem areas, according to the participants, are related to expedition of the calendar, equalizing dockets, modernization of procedures, better facilities, and reducing the administrative roles of judges.

The second most frequently mentioned issue, indicated by 23% of the participants, was the public image and understanding of the courts. An awareness was indicated that public confidence in our present judicial system is much less than ideal. Concern was expressed regarding adverse public opinion; communication with the public; education of the bar; and maintaining the confidence of the people in the justice, fairness, and efficiency of our judicial system.

Modernization of laws and judicial systems in order to better serve the needs of society was stated to be the most important problem by 15% of the participants. Specific concerns included criminal procedures reform; elimination of outmoded and archaic statutes, and modernization of management procedures. Interest was also expressed regarding the failure of the present judicial system in meeting the needs of society, the courts' role in society, and the influence of the United States Supreme Court.

Finances were seen as the most important question by 3% of the participants. Greatly increased financial support was seen as necessary in order to meet present and future caseloads.

The remaining 7% of the participants indicated several issues. These included concern about mass demonstrations, merit selection of judges, and criminal justice.

Table I indicates the percentage of responses associated with each area identified as a major issue of the courts, today.

Table I

PERCENTAGE OF RESPONSES FOR MAJOR ISSUES OF THE COURT

Major Issues	Percentage of Responses
Speedy and Efficient Justice	55%
Public Image and Understanding of Courts	23%
Modernization of Laws and Judicial System	15%
Finances	3%
Miscellaneous	7%

Summary of Major Issues

The majority of the participants were concerned about speedy and efficient justice as the major issue of the courts. A variety of problems are involved in this issue. Public image and understanding of the courts also was a significant concern of the participants. The results emphasize the increasing recognition that the courts cannot ignore public understanding and influence. Modernization of laws and the judicial system also was an area of concern as the needs and requirements continue to change at an alarming rate. Finances, of course, is a concern.

Problem Identification, Solutions, and Implementing Steps

During the early stages of the Conference, the participants were requested to identify and list all problems facing the courts in court administration. They were encouraged to abandon their usual frames of references in thinking about problems and to look critically at the entire judicial system. Both individual and group products were obtained. Each group selected four problems which they considered as being the most critical ones and rank ordered them with respect to priority of importance.

On the last day of the Conference, participants were asked to develop solutions and implementing steps for the four priority problems identified by their group. Group products were again obtained.

Group Problems Identification, Solutions, and Implementing Steps

Participants were assigned to eight groups. Each group maintained the same membership throughout the Conference. These groups were the working units and developed group products for problems identification, solutions, and implementing steps.

Group 1

Group 1 identified four problems which they considered as being of priority importance in court administration. The need to establish lines of authority and responsibility within he court system was identified as the most important one. The second most important issue identified by the group was calendar congestion. Public relations and communication was the third most important area. Funding support was seen as the fourth priority problem.

The solution and implementing steps suggested for establishing lines of authority and responsibility within the courts involved the preparation of a manual which would define responsibilities, roles, organizational structures, and relationships within the system. The system would include adjunct functions of the court, such as probation, as well as central functions. Involvement of people throughout the system in the development of the manual was seen as necessary.

The problem of calendar congestion was said to be capable of resolution through the establishment of realistic calendars based on availability of counsel, completion of discovery, establishment of remaining issues, and the provision of alternate methods of settlement. Implementation would require counsel to certify that all the issues to be raised are clarified and that both sides are ready to stipulate to the remaining issues, exhibits. This could be done by a do-it-yourself pre-trial statement. A committee should govern these procedures and monitor the functioning of the calendar.

For the area of public relations and communication, the solution suggested was to establish methods to enable communications and interchange between courts, judges within courts, governmental agencies, legislatures and the public. This would be implemented by educational interchanges between judges at conferences, committee meetings with the legislature, development of grade school or high school manuals which would describe court structure and annual reports of court activities which would be available to the public.

It was suggested that courts must strengthen their ability to deal with their financial problems. The proposed implementation steps required that adequate budget preparation and control be demonstrated to funding agencies, public support mobilized through adequate justification, and efficient collection of revenue such as jury fees and filing fees.

Group 2

Group 2 also identified four priority problems. The problems identified were identical to those indicated by Group 1, except in a different priority order. Defining court administration and setting up lines of authority was seen as the primary problem. Funding was viewed as the second problem and calendar and record control was seen as the third problem. The fourth problem indicated was public relations.

The solution for court administration and setting up lines of

authority was to proceed to define these phrases. In order to implement this solution, it was suggested that the source of authority be defined and a proposal be drafted and presented for approval.

The proposed answer for the funding problem was to increase the possibility of financial support by emphasizing efficiency, adopting reasonable budgets, submitting justifications to funding authorities, and gaining support from the public.

The alternatives for calendar and record control was to develop flexible, efficient control with maximum dispositions while preserving the requirements for justice. Implementation would include analysis of the problems, development of solutions, establishment of firm policy, and enforcement of the policy.

The solution indicated for better public relations was education and communication. Implementation would include speaking engagements on request, employment of public relations counsel, and delegation of public relations functions to one employee.

Group 3

The priority problems indicated for Group 3 were:

1. areas of administrative authority and responsibility;
2. application of technology;
3. education and information; and
4. organization and funding.

The answer for areas of administrative authority and responsibility was that they should be defined for both the presiding judge and the court administrator. The implementing steps included defining the problem areas, gathering information, analyzing the information, developing tentative solutions, reviewing these solutions with the entire court in order to obtain their support, and developing written court policies. In order to gain support from the judges, the need for change should be demonstrated and benefits indicated.

It was proposed that the solution for applying technology was to recognize the necess cy to employ the skills which can utilize the benefits of modern technology. Implementation would require hiring individuals with these capabilities and a willingness to pay the salaries which would attract them.

The solution indicated for the problem of education and information was to develop improved communications, both internally within the court and externally to it. Implementing steps would include reviewing the court's relationship with internal and external groups to determine the lines of communication which should be established; then, defining a program based on the review.

The problem solving steps for organization and funding was seen to be similar to that suggested for the first problem. The need must be demonstrated and benefits defined in order to gain support.

Group 4

The priority problems indicated by Group 4 were: First, the lack of understanding among judges, attorneys and the public regarding the judicial system. Second, the lack of funds for facilities, personnel, and equipment. Third, the lack of qualified people such as judges and

administrators. Fourth, the lack of effective authority at the national, state, and local levels.

The alternative indicated for the lack of understanding about the judicial system was to educate and inform all people involved with the operation of the job to be accomplished by the courts. Implementing steps included development of materials, distribution of written material, conferences, and on-the-job training.

The solution suggested for the lack of funds was to convince funding authorities that the need is acute and courts are operating as efficiently as possible. Implementation included lobbying in the legislature.

In order to obtain qualified people, it was suggested to obtain sufficient funds, do an adequate search, define the scope of the job, train them, and then, support what they do. Implementation would require passing appropriate legislation.

Constitutional and legislative revision, followed by the creation of strong leadership is seen as the answer to the problem of effective authority. Implementing steps included the creation of conditions for effective leadership by appropriate constitutional and statutory changes. Once that step is taken, background, training, and other preparation should be considered in the selection of strong leaders.

Group 5

The priority problems indicated by Group 5 were:

1. streamlining of judicial procedures;
2. management of court personnel and records;
3. public relations; and
4. budgets.

In order to streamline judicial procedures, it was suggested that existing procedures be reviewed in order to develop new solutions. Suggestions for implementation included adopting six-man juries, eliminating pre-emptory challenges, eliminating jury trials in most civil cases, using compulsory arbitration, simplifying and standardizing pleadings, eliminating grand juries, and eliminating absolute right of removal.

The solution suggested for the problem of court personnel and records was the employment of an administrator trained in personnel management. Authority would be vested in the administrator. Implementation would include changes in statutes, rules of courts, and judicial attitudes and approaches.

Doing a good job and informing the public was the proposed response to the problem of public relations. Implementation would include presentations by judges and other court officials to public groups, distribution of annual reports regarding what the courts are doing, and use of mass media.

Greater authority vested in the courts to control their own budgets was given as the solution to budgetary problems. Implementing steps would include a campaign to inform the public and gain their support.

Group 6

The priority problems indicated by Group 6 were: First, how to increase the work productivity of judges. Second, how to increase the knowledge of legislative bodies regarding the problems of courts, and obtaining their support and assistance. Third, how to define the role and authority of the court administrator. Fourth, how to determine who is responsible for moving case loads and what methods should be used.

The solution for increasing judicial productivity was increased usage of court administrators. Implementation included defining the responsibilities of court administrators, providing facilities and authority to discharge these responsibilities, having periodic monitoring of administrative work, and enabling the administrator to provide the judge with everything necessary to reach a decision in the shortest and simplest form.

Increasing the knowledge of judges who, in turn, should inform the legislature about problems of courts was the response for increasing the latter's knowledge of courts. Implementing steps would be defining the problem, outlining the solution, presenting to the legislature, obtaining public support and assistance, and improving the image of courts to maximize all areas of support.

The role and authority of the court administrator should be determined by majority opinion of judges, according to Group 6. Implementation would include the rule that all judges must support the majority opinion regardless of personal bias and should support the administrator with funds, facilities, and personnel.

The answer to the problem of who should move case loads was the recognition that judges have the responsibility of removing cases; and one judge, with the assistance of the administrator, should be selected to have the major responsibility of developing and implementing methods to move the case load. Implementing steps would be to select a presiding or chief judge, who would be committed to these ideas, supply him with information, allow him to define the objectives of the courts, request that he insure cooperation of all fellow judges, and monitor the work of the court administrator in order to obtain maximum results.

Group 7

The priority problems indicated by Group 7 were:

1. definition and scope of administration;
2. adequate budget;
3. public relations; and
4. personnel.

Definition of administration and organization to fill the particular needs of the jurisdiction was suggested as the answer for the first problem. Implementing steps would include legislation, court rules, and formal or informal arrangements with the present judge.

The answer suggested for the problem of adequate budget was to prove that requests are reasonable and necessary. An implementing step would be to negotiate with relevant individuals.

Preparation of adequate job descriptions, assignment of responsibility, determination of adequate salary and number of staff needed, recruitment, and training were seen as essential in dealing with the dilemma of personnel. An implementing step would be to employ personnel who would develop the suggested recommendations.

Improvement of the public image was suggested as the alternative for the problem of public relations. Implementation would require eliminating the congestion in the courts, allowing parties to have adequate time to try their cases, and recognizing the rights of someone other than the defendant in criminal dispositions. In addition, a public information officer would be employed to publicize what is happening in the courts.

Group 8

The priority problems indicated by Group 8 were: First, control of the calendar; second, definition of the roles of the presiding judge and court administrator; third, funding problems; and fourth, relations with the public and other agencies.

Usage of modern management expertise to use judicial talents to a maximum degree, and obtaining an adequate number of judges, staff, and facilities to handle growing calendars was seen as the solution for calendar control problems. An implementing step would be to convince the public, legislature, and funding bodies regarding the needs of the courts.

Definition of the lines of authority and responsibility for court administrators and judges was seen as the solution to the dilemma of authority and responsibility. Implementation would require following the rules described by the judicial counsel of California.

In order to solve the funding problems, it was suggested that priorities for programs and personnel needs be established to efficiently operate the court according to a well documented budget. To implement this, the public, legislature, and funding bodies should be convinced of the needs of the courts.

The answer to the problem of public relations was to establish adequate communication with the public and other agencies.

Table II indicates the four problems identified in priority order by each of the eight groups.

Table II

PRIORITY PROBLEMS FOR EACH GROUP

Groups	Priority Problems			
	Problem #1	Problem #2	Problem #3	Problem #4
Group 1	Establish lines of authority and responsibility in the court system	Calendar Congestion	Public relations and communication	Funding Support
Group 2	Define court administration set up lines of authority	Funding	Calendar/ record control	Public relations
Group 3	Administrative authority and responsibility	Application of Technology	Education and information	Organization and funding
Group 4	Lack of understanding of the judicial system	Lack of funds	Lack of qualified people	Lack of effective authority
Group 5	Streamlining judicial procedures	Management of court personnel	Public relations	Budgets
Group 6	Increase the work productivity of judges	Increase legislatures knowledge of court problems	Define the role and authority of the court administrator	Determine who should move case loads and how to do so
Group 7	Definition and steps of administration	Adequate budget	Public relations	Personnel
Group 8	Calendar control	Define roles of presiding judge and court administrator	Funding	Public and legislative relations

Summary of Group Problems Identification, Solutions, and Implementing Steps

The eight groups were quite similar in their specification of priority problems. The four problem areas most frequently mentioned were public relations, calendar, funding, and areas of administrative authority and responsibility. To a lesser extent, personnel and application of technology were mentioned as areas of concern.

INDIVIDUAL PROBLEM IDENTIFICATION

In addition to group data, information was gathered from each individual regarding the identifiable problems in court management. A variety of problems were indicated and in more detail than those presented as group products. A total of 378 problem statements were offered. Of this total 50.5% were given by administrative personnel and 49.5% were given by judges. Judge and non-judge responses were compared in each area.

Court Administration

Problems in this area referred to definitions of line of authority and responsibility, functions in court administration, court administrators, the role of judges, methodology, and structural organization. Specific issues which related to lines of authority and responsibility included the lack of central authority; the possibility of the creation of an administrative bureaucracy; the lack of established lines of authority from judge to administrator to clerks of courts; the question of how much authority to delegate to the court administrator; the need of more authority for the presiding judge and/or the court administrator; the lack of authority to implement new and better techniques; the willingness of all judges to accept court administration; the willingness of judges to relinquish administrative matters, the problem of judges being unwilling to release individual autonomy over administrative approaches; the tendency for too many people getting involved in administration; each person in the judicial structure acts as if he is law unto himself since many are elected; and insufficient leadership from higher courts.

Specific difficulties which related to functions of court administration included the lack of definitions of functions; the lack of definition of court administration; hazy distinctions between judicial, quasi-judicial, judicial support, and administrative functions; the lack of concepts or theory of court administration; and the definition of the scope of court administration.

Trouble areas which referred to court administrators ranged from the question of judicial or lay administrators; needs for an administrator with precise knowledge of all functions performed in the administrators office; inadequately trained administrative personnel; question of whether administrators should be legally trained; to the problems of funds when it is recognized that a court administrator is needed.

Problems related to the role of the judge in administration included cooperation of judges in relinquishing more of their discretion to the court administrator; lack of judicial time for adequate evaluation of calendar's problems; lack of authority in the presiding judge;

statistics on case loads; keeping the case load current; increase in overall caseloads; and developing a method of accurately determining the status of cases.

The number of responses given in this area was 44. Of this total, judges gave 54.5% and non-judges gave 45.5% of the responses.

Court Procedures

The difficulties mentioned in this area include uniformity of procedures, procedures to speed up the judicial process, and enforcement of procedures. Specific problems which related to uniformity of procedures involved unsystematic procedures resulting from piecemeal attempts at reform; need for written procedures and programs, need for rules of courts; need for uniform system throughout the state; and uniform local rules and reports.

The problems which referred to procedures to speed up the judicial process spoke to the need for more efficient operating procedures such as microfilming obsolete court procedures; and procedures to show the best way to handle matters such as pre-trial hearings.

Enforcement of procedures dilemmas included the unwillingness to enforce reasonable rules of conduct and procedure; the need to insure that fixed procedures are used in bail-setting, bail changing, and habeas corpus proceedings to minimize "judge shopping"; and the difficulty in enacting rules of court.

Twenty-four responses were given by the participants. Judges gave 54.2% and non-judges gave 46.8% of the responses.

Computerization and Records

Problems here involved the use of computers and record-keeping. Relating to the use of computers, there was the increasing need for computer assistance; lack of technical skills; and lack of computer assistance in assigning cases.

Problems of record-keeping included the failure to use modern records management techniques; statutory restruction on record-keeping; the need for accurate and meaningful statistics; storage space for records; personnel needs for record-keeping; delay in preparing transcripts; and reporters' daily copy on trials.

Twenty-five responses were given in this area. Judges gave 56% and non-judges gave 44% of the total responses.

Juries

Specific difficulties related to juries dealt with the desire to eliminate jury trials in some types of cases; the problem of drawing of representative jury lists; adequate methods of jury selection and preparing summaries of persons qualified for jury service; empanelling of the jury; and the dilemma of small underpopulated counties which cannot afford to hold jury trials as often as necessary to assure the accused of a speedy trial.

Eight responses were given in this area. Judges gave 62% and non-judges gave 38% of the responses.

Consolidation and Jurisdiction of Courts

Specific problems dealing with consolidation and jurisdiction of courts included the lack of uniformity between jurisdictions; the need to eliminate smaller cases from the judicial system; courts being overloaded with "crimes" that are not crimes; and redefining the court's role in administration of criminal and traffic laws.

Seven responses were given in this area. Judges gave 71% and non-judges gave 29% of the responses.

Finances and Budgets

Specific problems in this area included the need for annual budget requests to the legislature; the need for adequate financial support from a single source; the need for persons preparing budgets to be disassociated from any interest in results; loose budgetary and fiscal control; lack of funds at the state and county levels; there is no uniformity in the units of government which fund the judiciary; lack of unity among judges regarding LEAA funds; preparation of the budget; and the need for adequate funds for staff and facilities.

Twenty-six responses were given in this area. Non-judges gave 53.8% and judges gave 46.2% of the responses.

Judges

The problems identified here related to judicial manpower, judicial conflicts and resistances, and assignment of judges. Specific areas relating to judicial manpower involved the shortage of judicial manpower to cover absences; the lack of judicial manpower to handle new areas of litigation; judicial salaries are too low; poor work habits; the need to improve training and education; the dilemma of how to keep judges in attendance during normal court hours; lack of proper geographical distribution of judges; selection of judges; inefficiency of general trial court judges; the need for more judges; how to increase per judge disposition rate; availability of extra judges when case loads are high and the burdens incident to work load.

Difficulties in the realm of judicial conflicts and resistances dealt with the unwillingness of judiciary to delegate responsibility; lack of judicial awareness and interest among judges, other than the chief judge, of administrative problems; judicial resistance to change; judicial personality conflicts; personality conflicts resulting from the electoral process; how to obtain full cooperation of judges in order to maximize their judicial role; how to get judges to run their own courtroom and not allow attorneys to do so; relations among judges and presiding judge; restrictive concept of judges as rulers of their individual kingdoms; and absenteeism of judges at conferences.

Problems of the assignment of judges related to coordinating the assignment of judges within the district and state; how to keep a maximum number of trial judges as opposed to assignment or additional judges to special calendars to reduce backlog; and orientation of new judges.

Thirty-one responses were given in this area. Non-judges gave 51.6% and judges gave 48.4% of the responses.

Staff

Problems identified in this area encompassed selection of personnel, training, and personnel administration. Specific dilemmas included the scarcity of people who know legal systems; obtaining qualified employees to perform routine duties; the need for competent clerks and deputies; the quality of personnel in court related agencies; how to obtain and retain personnel; limited career opportunities; the lack of training and need for in-service training; educating court personnel regarding their roles in court administration; efficient management of personnel; job classification; merit appointments; salaries; security of court personnel and too much work.

Thirty-six responses were given in this area. Non-judges gave 58.3% and judges gave 41.7% of the responses.

Bar and Counsel

Difficulties here included issues with individual attorneys as well as with the organized Bar. Specifically, there were the areas of communication between administrators and attorneys; shortage of competent trial lawyers; the need to define the term indigent; lawyers not trained in the art of advocacy; lawyer demarcation of court processes; lack of cooperation between judiciary, administrators, and lawyers; cooperation with the trial Bar; lawyer involvement in court administration; and requiring the trial bar to broaden the base of their trial teams through increasing the number of individual firms in order to avoid constant delays and continuances.

Nineteen responses were given in this area. Judges gave 58.4% and non-judges gave 41.6% of the responses.

Legislature and Politics

Particular problems related to this included recognition by executive and legislative branches that the judicial branch is co-equal; political interference and domination of courts; lack of political influence of courts; disparity between federal and state legislative support; legislative indifference; need to confine the legislature to the needs of courts such as manpower; maintenance of liaison with legislative and executive branches of the government; closed-shop for court employees regarding political process; obsolete substantive laws that absorb time with purpose; legislation to speed up criminal and civil trial procedures; and the observation that social problems are sought to be solved in the legislature through penal sanctions.

Sixteen responses were given in this area. Non-judges gave 68.7% and judges gave 31.3% of the responses

Facilities

Specific problems in this area included comments about modernization of facilities, lack of facilities and equipment, lack of space, lack of courtrooms and hearing rooms, and design limits on efficiency.

Fourteen responses were given in this area. Non-judges gave 71.4% and judges gave 28.6% of the responses.

Miscellaneous

Included in this category were thirty-one responses about resistance to change, involvement in social change and satellite agencies and persons.

Problems related to resistance to change included how to overcome resistance to change; resistance to change in establishing uniformity of standards; the powers of tradition; not enough cross-fertilization of thinking from other fields; and how to develop methods to overcome resistance to change.

Specific comments about social problems indicated need for cooperation with county board; the need for coordination of functions of various departments such as juvenile offices; coordination with elected officials such as sheriff; relations with surrounding area courts of state jurisdiction; lack of control over federal agencies; relations with federal judiciary; relations with unions on bargaining groups; and relations with other professional groups.

Table III indicates the percentage of responses given by judges and non-judges on each of thirteen areas of court management.

TABLE III

PERCENTAGE OF RESPONSES GIVEN BY JUDGES AND NON-JUDGES ON EACH OF THIRTEEN AREAS OF COURT MANAGEMENT

Areas	Total Number of Responses	Percentage of Responses by Bar	Percentage of Responses by Non-Judges
Court Administration	62	51.5%	48.4%
Education and Public Relations	35	48.6%	51.4%
Calendar	44	54.5%	45.4%
Court Procedure	24	54.2%	46.8%
Computerization and Records	25	56%	44%
Juries	8	62%	38%
Consolidation and Jurisdiction of Courts	7	71%	29%
Finances and Budgets	26	46.2%	53.8%
Judges	31	48.4%	51.6%
Staff	36	41.7%	58.3%
Bar and Counsel	19	58.4%	41.6%
Legislature and Politics	16	31.3%	68.7%
Facilities	14	28.6%	71.4%

Summary of Individual Problem Identification

Some problem areas were mentioned more frequently than others. The number of categories with 20 or more responses are indicated as follows: court administration (62 responses), calendar (44 responses), staff (36 responses), education and public relations (35 responses), judges (31 responses), finances and budget (26 responses), computerization and records (25 responses), and court procedures (24 responses). The individual definitions of problem areas which were seen as significant were highly similar to those developed as group products.

Commitment Toward Change

Change statements were obtained from participants at the beginning of the conference and again at the end. At the beginning of the conference, participants were asked to list the three most important changes which they believed should be implemented in their own court system. At the end of the conference, participants were asked to list three changes which they were committing themselves to implement when they returned to their respective courts. The preliminary request resulted in 150 change statments, while 118 statements were given at the end of the conference. In analyzing the data, these statements were categorized into areas such as court administration, calendar, education and public relations, and staff.

Change Areas

Court Administration

A significant area of change in court administration was the usage of court administrators, the definition of authority and responsibility of administrators, and the role of judges with respect to administrative duties. According to participants, efforts will be directed toward obtaining court administrators where none exist at the present time. Court administrators were suggested for circuit courts, district courts, and urban areas. Concern also was expressed about obtaining a qualified court administrator.

Defining the court administrator's authority and responsiblity appeared to be an important area of change. Efforts will be directed toward delegating non-judicial functions, personnel administration of a circuit court, managerial functions, calendar, clerk of court duties, and, in general, more responsibility to the administrative office.

Other participants will work to more explicitly define the responsibilities and authority of the administrator, before recommending such an office.

The role of the judges in administrative matters was also a matter for change. Changes include separating the judges from being involved in administrative procedures; giving more authority to the chief judge in order to enable him to force compliance by other judges with respect to rules, policies, and procedures established by the court; and increasing the awareness of judges regarding the usage of the administrator in managerial functions.

Calendar

Changes suggested in the calendar were expressed in seeking better overall control of the calendar, specific changes in procedure, and the handling of cases. Proposed change efforts included modifying procedures for case assignment; tighter control over the docket; eliminating delay in case disposition; reducing time engaged in trial and other dispositions; advancing starting time for court trials; minimizing or eliminating continuance; maximizing the number of trial judges; initiating pre-trial conferences on criminal cases; seeking to settle more cases in advance of trial; reducing the number of civil and criminal cases on the calendar; and improving coordination of civil and criminal dockets.

Computerization and Records

This area involved changes related to the use of computers and the management of records. Efforts will be directed toward increased use of computers in calendar control; records storage and retrieval; and specification of problem areas through computerization of administrative procedures. Changes hoped for in records management include increased mechanization; uniform systems of accounting; forms and reporting of statistical information; consolidation of jury records; and development of storage and retrieval systems.

Court Procedures

Court procedure modifications focused on streamlining, standardizing, and publishing procedures. Specific endeavors will be directed toward streamlining judicial trials and general procedures; standardizing procedures, policies, and forms; enforcing local and state rules of procedure; developing and publishing procedural manuals for staff and judges; and simplifying criminal rules of procedure to allow faster flow through the judicial process.

Consolidation and Jurisdiction of Courts

Here, efforts were directed toward consolidation of the court and redefinition of jurisdictions. The enterprises will be directed toward consolidating and unification of all courts at the state level; central administration at the state level; removal of certain matters from the jurisdiction of courts; redefinition of jurisdiction in courts of original jurisdiction; conformity within circuits and jurisdictions; establishment of an intermediate appellate court; creation of an inferior court with jurisdiction to $5,000 and criminal misdemeanor; and revue laid in a district rather than county.

Juries

New developments will involve reducing the size of juries, limiting jury trial, and modifying jury selection procedures. Specific changes suggested were use of six-man juries; use of six-man juries in misdemeanor cases; improvement of procedures in impanelling the jury; selection of juries with the aid of computers; improvement of jury-court relationship; discipline of attorneys who settle cases on the day of the jury trial; elimination of jury trials in civil cases; and

elimination of jury trials in some instances.

Judges

New ideas suggested in this area were related to selection of judges; salary and benefits; need for additional judges; cooperation of judges; and qualification of judges. Specific change efforts will be directed toward elimination of the election of judges and greater use of merit selection; increase in the number of judges; increase in the number of superior judges; educational programs for judges in substantive law procedures; overall selection of presiding judge; use of boards of judges to inspire and indoctrinate; requirement that all judges should have the same jurisdiction and pay; equalization of salary, tenure, pension, law clerks, and administrative assistance; increase in judicial salaries; increase in work productivity of judges; use of California 170.6 for disqualification of judges; assignment of judges; close work relationships among all judges; unified bench administered under a single head; and increased contact with judges.

Staff

Changes suggested in this are focused on qualifications of staff, training programs, and adequate manpower. Specific efforts will be directed toward increases in manpower; programs and financial support for career-type employee structure; merit selection of employees; pool of well trained personnel available to the court; selection of creative and innovative people; development of non-judicial positions; development of a better organization of supportive personnel; meetings to improve work relations among staff; and increase in staff meetings.

Facilities

Innovation here will be directed toward increase in facilities, increase in the number of courts, and expansion of existing facilities.

Finances and Budgets

Ideas for change in this area were related to increases in funds, improvement in court budgets, and efficient usage of available funds. Specific changes will be directed toward insisting on reasonable and adequate budgets that will not be reduced by local city administration; obtaining adequate funds; streamlining court supportive systems; reducing the cost of operation of the court without impairing the administration of justice; obtaining funds for necessary additional personnel and salaries; and analyzing the budget and eliminating unneeded positions.

Education and Public Relations

The proposals dealt with the public image of the courts; communication with education of public, bar, legislature, and agencies. Improvements will be directed toward improvement of the court image, improvement of public relations and communication; increase in press releases and speeches; increase in the public understanding of problems of court administration; development of court information systems;

development of public information offices; increase in communication and cooperation with legislature, Bar, governmental agencies and the public; use of volunteers; education of the legislature regarding the value of court administration and necessity for change; cooperation of all members of the bar in court matters; and education of judges regarding the need for change.

Involvement of Peripheral Persons and Agencies

The need for change focused on involvement of peripheral agencies related to the judicial system, involvement of the Bar, and use of consultants. Specific change efforts will be directed toward involvement of more agencies in the judicial process; increase in efforts to obtain a study of the court system; involvement of the organized Bar, use of consultants to analyze the need for change; use of systems approach; establishment of a liaison commission on court problems.

Comparison of Pre- and Post-Change Areas

Participant change statements were compared on a pre- and post-conference basis to determine the relative emphasis given each area with respect to change before and after the conference. For example, the relative emphasis on the calendar as a significant area for change decreased markedly during the course of the conference as indicated by pre- and post-measurements. In Table IV the percentage of responses are indicated for each area on pre- and post-measurements.

TABLE IV

PERCENTAGE OF RESPONSES FOR CHANGE AREAS
PRE-CONFERENCE AND POST-CONFERENCE

CHANGE AREAS	PRE-CONFERENCE	POST-CONFERENCE
Education and Public Relations	4.2%	20.3%
Court Administration	12.0%	18.7%
Calendar	16.0%	13.6%
Computerization and Records	19.3%	10.2%
Judges	10.0%	8.6%
Involvement of Peripheral Persons and Agencies	0%	5.9%
Staff	5.3%	5.9%
Court Procedures	4.6%	4.2%
Juries	5.3%	3.4%
Consolidation and Jurisdiction of Courts	12.0%	2.6%
Finances and Budget	3.3%	2.5%
Facilities	3.3%	0%
Miscellaneous	4.2%	4.1%

It is worthwhile to note the change in percentage of responses from pre-conference to post-conference measurements. The six areas in which more than three percentage points differences were found were education and public relations; court administration; computerization and records; consolidation and jurisdiction of courts; facilities; and involvement of peripheral persons and agencies. Of these areas, the major changes occurred in education and public relations; consolidation and jurisdiction of courts; and computerization and records. The percentage of responses in the area of education and public relations increased 15.6 percentage points, indicating increased interest and concern in this area. The percentage of responses in the areas of computerization and records. The percentage of responses in the area of education and public relations increased 15.6 percentage points, indicating increased interest and concern in this area. The percentage of responses in the areas of computerization and records, and consolidation and jurisdiction of courts decreased 9.1 and 9.4 points, respectively; indicating a decreased emphasis on these sectors of change.

Discussion

The data gathered from the participants indicates that certain areas in court managment were of overwhelming importance and concern.

These areas were mentioned several times in the context of major issues, problems and anticipated changes. Both individually and in groups, the participants concurred on these topics. The four areas most frequently referred to were the definition of the responsibilities and authority in court administration, personnel, particularly judges; the problems associated with the calendar; and the need for education and public relations efforts. In each of these subjects, the issues and problems raised have far-reaching implications for the court.

The central issues in the definition of responsibilities and authority in court administration appear to be the amount of authority and responsbility the judges are willing to relinquish to a court administrator, the willingness of rank and file judges to accept a separate office of court administration, and the power of the chief judge to enforce administrative regulations throughout the judicial system. Each of these statements involve the threat to individual judges who view the advent of court administrators as posing a loss of control for them even though the need for increased time for judicial functions is recognized. On the other hand, court administrators are fearful that enough authority will not be given to them. In addition, the apathy and isolationism of rank and file judges seem to compound the problems. The basic structure of most court systems where people are elected to office, or are not administratively responsible to a single head has resulted in islands of power and control, isolated from any unifying influence. Consequently, the problems of enforcement of administrative regulations by the presiding or chief judge are compounded.

The problems regarding personnel seem somewhat similar to those discussed in the previous area. The primary areas focused upon were the coordinative functions of judges and staff in court management; the qualifications and training of judges and staff; and the inadequate number of court personnel.

The tendency toward isolationism and independence among both judges and staff leads to difficulties in coordination and communication. Efforts directed toward unification of functions must consider the structural basis of appointment or election to office, areas of responsibility, lines of allegiance and authority, and vested interests. In addition, participants were concerned about qualifications of both judges and staff as well as the need for adequate training. Disqualification of judges is particularly difficult, if this move is advisable. Concern was also expressed about the inadequate number of court personnel in face of increasing case loads. It seems, however, that increased number of personnel, alone, is not sufficient. The complexity of the problems, particularly those dealing with people working together in the system, are enormous.

The problems associated with the calendar are difficult to evaluate and evidently, exceedingly frustrating for those who attempt to formulate solutions. Participants indicated a variety of difficulties which could lead to multiple problems for the system. A large share of these difficulties appear to be related to the necessary involvement of attorneys and their clients in the judicial process. Court systems need some way of controlling continuances and pre-trial settlements which reflect the multitude of daily influences, changes and independent directions that can affect the efficient functioning of the courts. When attorneys and clients are largely independent of administrative regulation, calendar problems are multiplied. Participants pointed out the necessity for cooperation and involvement of both the individual attorney and the organized Bar in successful court management.

The emphasis on education and public relations as a significant area of concern increased greatly during the course of the conference.

On the commitment for change taken at the beginning and the end of the conference, the percentage of responses in the area of education and public relation increased over 330%. This clearly illustrates that the participants found education and public relations to be a highly important area for change efforts. Critical concerns were the improvement of the public image of the courts, communication with organizations and persons, and education of the public about court functions. Without public support and understanding the task of administrating speedy, efficient, and fair justice will be a difficult one.

People are the primary concern in the area of education and public relations. The lay person, organized groups, state legislatures, county governments, satellite agencies, clients, the Bar, staff, and judges are all included as target areas for education and public relations efforts. The scope of these efforts are broad and the implications are widespread. It points out the need for effective education and public relations programs.

For each of the topics discussed, people and how they relate to, others have been the critical factors. Court management would be relatively simple if one did not have to contend with individual needs, concerns, and values; interpersonal conflicts; power relationships; communication problems; human understanding; organizational needs and values; traditional and habitual patterns of functioning and ignorance. The best procedures and techniques are relatively worthless in a system which ignores the important influence of people in its operation. The judicial system involves people and is for the people. We must contend with that fact.

PARTICIPANT ASSESSMENT OF CONFERENCE

The participants' reactions to the conference proceedings were measured in a number of ways. Rating scale measurements of satisfaction-dissatisfaction with the conference, specific topics covered, and general format and structure were obtained. In addition, self-evaluations of the amount of participation during group interactions and commitment toward group products were obtained with rating scales. Comments were sought with respect to the value of the Conference to the individual participant. Suggestions for improvement of future conferences also were elicited.

Satisfaction, Participation, and Commitment

Satisfaction, participation, and commitment were measured with seven-point self-rating scales; 1 was extremely low, 2 was very low, 3 was moderately low, 4 equalled moderate satisfaction, 5 was moderately high, 6 was very high, and 7 was extremely high. On each statement such as the level of satisfaction with the overall conference proceedings, each participant rated himself along with a dimension ranging from the extremely low level (score 1) to the extremely high level (score 7). All the responses of the participants were averaged to obtain mean ratings on each dimension.

The mean rating of all the participants on their general level of satisfaction with respect to the Conference was 4.4 as measured on a seven-point scale. Thus, it appears the participants expressed moderate to moderatley high satisfaction with the conference.

The mean rating of all the participants on their level of satisfaction with respect to specific topics covered during the conference was 5.0 as measured on a seven-point scale. Moderately high satisfaction was indicated.

Their level of satisfaction with respect to the general structure and format of the conference was a mean of 4.4 as measured on the seven-point scale. The expression was thus moderate to moderately high satisfaction.

Each participant rated himself with respect to the amount he participated during group interactions and discussions. The mean rating of all the participants was 5.5 of a possible seven-point scale. The participants viewed themselves as participating to a moderately high to very high extent.

The participants rated themselves also with respect to the amount of commitment he felt toward group products of discussions and interactions. The mean rating of all the participants was 5.2 on a seven-point scale or an amount of commitment that was moderately high to very high.

Value of Conference

Participants were asked to comment on the Conference with respect to its value to them. As expected, the comments varied considerably from participant to participant. Comments about the Conference ranged from viewing it as being a valuable experience for the individual to seeing it as a relatively worthless expenditure of time. Fifty-five responses were given by the participants. Approximately 60% of the respondents evaluated the experience as being valuable or good, while 40% assessed it as being fair or of little value.

For some, the main value of the conference was the personal awareness of the strong commitment toward change in court administration and a need to examine their own commitment and operations. The recognition that others were dealing with the same problems was helpful and provided support for efforts to convince colleagues at home about the need for change.

Others welcomed the opportunity to view the problems of court administration is a larger perspective and gain understanding of some of the relationships within the system. Respect was expressed regarding the difficult and multifaceted task of court management and toward those who have this task as their principal jobs.

Others found that the variety of ideas, approaches to problems, information, practices, and knowledge expressed and described during the conference were the most valuable to them. The opportunity for interaction and discussion with other participants was viewed as worthwhile.

For those who felt the Conference was of little value to them, the comments often were combined with suggestions for improvement of the proceedings.

For some, the only value of the conference was the opportunity to meet other judges and administrators, and exchange ideas. Recognition that problems were similar, however, was not seen as being particularly useful without additional information.

According to some respondents, increased emphasis on specific,

practical solutions would have resulted in a more valuable experience. Frustration was expressed regarding the limited amount of solutions offered.

Negative reactions were expressed regarding the unacceptability of radical departures, insufficient time for exchange of ideas, a few behavioral science techniques, and the expertise of the speakers.

Suggestions for Future Conferences

Eighty-four suggestions were given by participants in response to requests for comments which could lead to improvement in future conferences. The criticisms were categorized into general areas in order to facilitate analysis.

Of the total number of suggestions, 12% were related to structure and planning of the conference. Conference objectives, structure, and advance information were included as areas for suggestions. A need to more clearly understand the objectives of the conference was indicated. Some viewed the structure of the conference as too rigid and oriented toward busy work rather than creative discussion. More information sent out in advance of the conference would have been helpful.

Of the total number of comments, 14% were related to work group sessions and discussions. Comments included suggestions for smaller working groups, grouping people according to similar size of jurisdiction, and having more specific general sessions to set the tone for group discussions. It also was suggested that the occupational representation of the participants be expanded to include news media, bar, and other court related personnel.

Of the total number of responses, 6% were related to discussion questions. According to the suggestions, the discussion questions should be less structured, less specific, less confusing, and more legalistic.

Problem solving and delivery of practical information were the focus of 14% of the total number of responses. More problem solving activity related to specific problems rather than attempting to deal with more global problems was suggested as being a more fruitful approach. Participants also expressed a need for more practical, how-to-do-it type of input information. For example, specific descriptions of successful programs or techniques would have been helpful.

Seven percent of the total number of suggestions were related to the behavioral science approach. It was suggested that less time be spent on learning theory as well as less emphasis on the general behavioral science approach. A need to deal with substantive issues were expressed.

Experts were the primary focus of 20% of the total number of responses. Questions were raised about the experience and knowledge of the speakers. More in-depth presentations of specific problem areas would have been more satisfactory than what was presented. More discussion and interaction with experts in various problem areas was suggested. Resentment also was expressed toward academic games which were difficult to relate to the reality of the court.

The length of the conference was the subject of 7% of the total number of comments. In general, the suggestions indicated sentiment toward shorter, more concentrated daily sessions. Some of the participants requested a shorter conference with respect to number of days,

even to the extent of including more night sessions.

Social interactions and activities were the focus of 13% of the total number of comments. The suggestions indicated a need for more social interactions among the participants, including rap sessions. More free time also was suggested in order to engage in individual activities such as sightseeing. It was felt that the needs of wives and families were neglected, and programs for them would be beneficial.

Other suggestions included having a xerox available for instant cross-feeding of notes, more use of participants as speakers, less duplication of ideas, and less time spent on general session presentations after the small group work sessions.

Discussion

It appears the general tone of participant reaction to the conference proceedings ranged from moderate to very high level of participation, commitment, and satisfaction. The reaction was positive overall although both extremes of positiveness and negativeness were expressed. Both the rating measurements and comments regarding the value of the conference support this conclusion. It might be advantageous to explore the possible reasons for the variance.

It appeared that the participants differed considerably with respect to their understanding of the problems, feeling toward the necessity of change, commitment for change, and experience in dealing with the problems of court administration. As a result, the needs and expectations of the participants regarding the conference varied accordingly. Some of the participants viewed the identification of the problems as being useful to them, while others were dissatisfied because of the relative lack of emphasis on specific, practical solutions for problems they could readily identify. In general, it appears the conference was seen as valuable for those who wished to more clearly define the problems, become personally aware of the necessity of change, develop their own commitment and exchange ideas regarding possible solutions. It was seen as less valuable for those who wished more in-depth analysis of specific problems with concrete, practical recommendations from a team of experts regarding the solutions.

Several questions can be raised regarding this latter approach. One, is it advisable to focus what seems to be the problem without initially clarifying the total system, defining the interrelationships, and viewing the problems in a more general perspective? Two, is it dangerous to grasp ready-made solutions too quickly without examining the idiosyncratic characteristics of the system in detail? Three, is a detailed and careful study of the total judicial system a more appropriate way of developing concrete solutions for that particular system than that available at any conference? Four, is it conceivable that one of the best sources of expertise available to the participants is the distinguished participants themselves? In order to identify and develop personally relevant problems and solutions, personal involvement and participation is necessary. Five, wasn't the primary focus of the conference an effort to gain national perspective on the problems, and note the similarities and difference between localities?

In defense of those seeking concrete, practical solutions, however, it would be beneficial to learn about specific programs and solutions developed in other court systems which appear useful. It seems such presentations would be welcomed in future conferences. It also seems appropriate to suggest that more time should be spent in developing ideas related to solutions since that is an urgent need. It must be recognized, however, that few tested solutions are available in this

complex area of court administration. This painful recognition has provided impetus toward the current series of court studies undertaken by the National College of State Trial Judges and the Institute for Court Management in order to develop tested solutions for problems which plague most court systems. It is hoped that these studies will provide valuable information for future conferences on court mànagment.

SECTION III

SUMMARY

SUMMARY

by

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and

Jon D. Pevna

This document clearly indicates that the First National Conference of Chief Judges and Court Administrators sponsored by the National College of State Trial Judges and the Institute for Court Management was of great significance for a number of reasons. The Conference marked the first time that a meeting was held with the stated purpose of drawing together judges and court administrators in a mutual dialogue. It was also the premier effort by an organization involved in the field of judicial administration to mix behavioral science and small group-lecture techniques in one endeavor. The vast amount of quality information generated in this booklet together with the positive evaluations by the participants definitely establishes the utility of this approach.

The Conference differed from its predecessors in many ways. One aspect was the fact that it did not let the participants sit back and relax while being fed supposed answers to all their problems without any critical evaluation. Instead, the staffs of the National College and the Institute presented those in attendance with a series of challenging exercises based on the belief that ultimately, it will be the tolerance and great intellectual abilities of the people manning the courts that will bring about constructive changes in the judicial system. In turn, this report indicates the outstanding results of putting such excessive information and work demands upon the already dedicated and overworked members of the justice system in a conference environment.

The planning and implementation of the First National Conference from the beginning idea to the final publication of this book in many ways represents a building process similar to the efforts aimed at counteracting the problems created by the automobile in America. Instead of cars, the vehicle which brought all the participants together was the broad range of problems facing the courts in judicial administration. The mutual problems discussed in the work groups which had to be tentatively resolved represented the fuel on which the courts must run. And the group processes developed for the Conference were the gears which hopefully helped convert the fuel into a smoothly running machine. Finally, this report may represent one way to pave a new road for the courts to travel which will be smooth, long lasting, and efficient.

There are two specific results of the week in Williamsburg which should be noted here. First, there is a definite need in the field of court administration for concentrated conferences which present in-depth analyses of one or more relevant subject areas. One of the primary goals of the National College is to continue to fill this need now and in the future. Secondly, perhaps the greatest challenge facing the courts in the 1970's will be the "Crisis of Confidence" relating to public education and public relations by the courts. In keeping with this call, the College is developing a model program which will be applicable to courts throughout the United States. Its purpose will be to provide a rational and effective method for coping with the problem of making the total society more aware of and interested in the courts while maintaining a fully independent judiciary.

As a followup to the First National Conference of Chief Judges and Court Administrators, the National College of State Trial Judges, in cooperation with the Institute for Court Management, is setting up a continuous feedback loop between the various participants and the two sponsoring organizations. The first step will be a series of questionnaires inquiring as to examples of changes the participants have made in their courts since attending the Conference. Included will be

information regarding how the needed changes were made and what ends are hoped to be accomplished. In addition, the College is eliciting comments from the participants as to their evaluations of how the proposed solutions to various problems presented in this booklet may be translated into action. Such information will in turn be disseminated to all those who attended the Williamsburg Conference.

Possibly the greatest accomplishment of this Conference was the fact that all the distinguished participants showed determined dedication to face up to the need for change in the judicial system in the United States. Likewise, the high attendance throughout the week's meetings indicated a sincere interest in discussing possible criticisms and concomitant changes in the many systems represented. The National College recognizes the above attitudes, and it too pledges itself to constantly search for ways to improve and change its various activities. Thus, while further conferences are planned, steps will be taken to assure that each one is better than the one before so that an example can be set for the people responsible for implementing changes in the courts. The impetus to bravely face the needs of court systems throughout the country must begin somewhere, and it is the deep hope of the National College of State Trial Judges and the Institute for Court Management that we can in some way contribute to this momentum.

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END