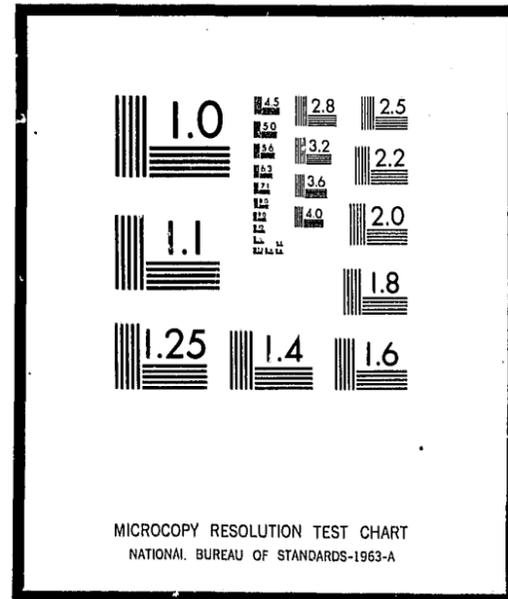


NCJRS

This microfiche was produced from documents received for inclusion in the NCJRS data base. Since NCJRS cannot exercise control over the physical condition of the documents submitted, the individual frame quality will vary. The resolution chart on this frame may be used to evaluate the document quality.



Microfilming procedures used to create this fiche comply with the standards set forth in 41CFR 101-11.504

Points of view or opinions stated in this document are those of the author(s) and do not represent the official position or policies of the U.S. Department of Justice.

U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION
NATIONAL CRIMINAL JUSTICE REFERENCE SERVICE
WASHINGTON, D.C. 20531

Date filmed 4/30/75

#00996.00.000460
 ACCESSION NUMBER: 00996.00.000460
 TITLE: MODERN COURT MANAGEMENT - TRENDS IN THE ROLE OF THE COURT EXECUTIVE
 PUBLICATION DATE: 7007
 AUTHOR(S): SAARI, D. J.
 NUMBER OF PAGES: 33
 ISSUING AGENCY: NILECJ
 GRANT/CONTRACT: NI 001
 SALES/SOURCE: GPO
 SUBJECT/CONTENT: COURT MANAGEMENT AND OPERATION
 COURT EXECUTIVE
 COURTS
 PERSONNEL

ANNOTATION:

THE INCREASING COMPLEXITY OF AMERICAN URBAN LIFE CREATES AN ADMINISTRATIVE BURDEN ON COURT SYSTEMS WHICH CANNOT BE HANDLED BY JUDGES AND ROUTINE COURT STAFF ALONE.

ABSTRACT:

A PROFESSIONAL COURT EXECUTIVE IS NEEDED TO ORGANIZE AND ADMINISTER NON-ADJUDICATIVE WORK IN THE COURTS UNDER THE GENERAL GUIDANCE OF JUDGES JUST AS CITY MANAGERS, SCHOOL SUPERINTENDENTS AND HOSPITAL ADMINISTRATORS ADMINISTER THE ORGANIZATIONAL AND MANAGEMENT BURDEN IN OTHER ASPECTS OF OUR LIVES. THE FULLY EFFECTIVE COURT EXECUTIVE WOULD MANAGE A COURT EFFICIENTLY AND ECONOMICALLY, AND BY SUCH ACTIVITY WOULD RELIEVE JUDGES OF MOST ADMINISTRATIVE FUNCTIONS WHICH PREVENT THEM FROM FULLY PERFORMING THEIR ADJUDICATIVE ROLE. BY ESTABLISHING AND IMPROVING MANAGERIAL EXPERTISE IN JUDICIAL SYSTEMS, THERE IS A GREATER LIKELIHOOD OF HAVING A WELL-RUN COURT WHICH WOULD CONTRIBUTE TO THE WELL-BEING OF THE COMMUNITY. SINCE 1950 COURT EXECUTIVE POSITIONS HAVE DEVELOPED RAPIDLY THROUGH CONSTITUTIONAL, LEGISLATIVE AND JUDICIAL ACTIONS. IN SOME CASES, NEW POSITIONS WERE CREATED, IN OTHER CASES, OLD POSITIONS WERE EXPANDED. IN BOTH CASES, INCREASING PROFESSIONALIZATION OF THE COURT EXECUTIVE POSITION HAS RESULTED. THIS GROWTH HAS BEEN UNCOORDINATED AND IS NOT BASED ON ANY UNDERLYING BODY OF THEORY. FUTURE DIRECTIONS IN THE COURT EXECUTIVE POSITION SHOULD FOCUS ON THE DEVELOPMENT OF A COHERENT PHILOSOPHY OF JUDICIAL MANAGEMENT AS WELL AS THE IMPROVED MANAGEMENT CAPABILITY OF THE COURT EXECUTIVE. EXCHANGE OF MANAGEMENT IDEAS, ALLOCATION OF ADDITIONAL RESOURCES TO MANAGEMENT, AND INCREASED EMPHASIS ON MODERN MANAGERIAL TECHNIQUES SHOULD BE MORE FULLY INCORPORATED INTO THE DESIGN OF THE COURT EXECUTIVE POSITION. (AUTHOR ABSTRACT)

74
**Modern Court Management:
Trends in the Role of
the Court Executive**

**Modern Court Management:
Trends in the Role of
the Court Executive**

ICR 70-3

JULY 1970



By:

DAVID J. SAARI
Director, Court Management Study

The fact that the National Institute of Law Enforcement and Criminal Justice furnished financial support to the activity described in this publication does not necessarily indicate the concurrence of the Institute in the statements or conclusions contained herein.

U.S. DEPARTMENT OF JUSTICE
LAW ENFORCEMENT ASSISTANCE ADMINISTRATION



NC 5000046

FOREWORD

By
JUSTICE TOM C. CLARK
*Director,
Federal Judicial Center*

History teaches us that if the judicial process falls short in giving effect to the law the very existence of a free society is at an end. In short, the injustices of justice must be minimal for man to be free and obedience to the command of the law must be paramount for a society to be an ordered one. But I must not let myself dramatize in an *avant coureur*!

In his report, *Modern Court Management: Trends in the Role of the Court Executive*, Mr. Saari deals with intricate things of which a researcher can find much in experience but little in literature. As to the former, we have had court executives on the scene since 1927 when North Dakota created such an office although never made provision for separate funding. There the state law librarian doubles as secretary to a Judicial Council. Thirty-five states now have court executives and, in addition, at least forty-six metropolitan districts provide for such posts. In addition, the Administrative Office of the United States was created in 1939 and Puerto Rico has had such an office since 1952. Still, court administration is not a profession, although two universities this past year have begun to set up graduate degrees in that science. In addition, there is a paucity of literature on the administrative functions of our judicial systems. Indeed, I have found no textbooks on the subject, no treatises or articles in any depth and only a few special periodicals, mostly of a superficial character. As a consequence, all that we know about court management is what we have lived.

The Saari report is organized into two sections. The first deals with the role and functions of a court administrator and the necessity for his professionalization; the second discusses particular problems of administration by posing questions and furnishing answers. The review is not a critique of existing court administration. The emphasis, on the contrary, is positive and constructive, being placed on anticipated developments in practical court management cen-

tered around a trained court executive. This new addition to the judges' staff would be university trained, career oriented and well paid.

The proposal, as Mr. Saari underscores, is not a new one. However, he does express it in new terms. For example, he would grant the court executive broad and decisive powers in the performance of his duties, but he would be selected by the judges and would execute their policies. However, the entire administrative staff would be selected by and be under the supervision of the court executive.

There can be no question that every metropolitan trial court needs an expert manager. Litigation is big business, involving millions of dollars and thousands of people. It entails increased budgeting, complex personnel systems and business training. However, the key to the problem is the judge himself. We must face up to the fact that the modernization of the judiciary depends on him. Despite Mr. Dooley¹ I say that most judges are not only hard working but are sincere, capable and dedicated officials. Their trouble is that we have saddled them with huge administrative loads for which they are not trained in management skills nor furnished modern tools with which to work.

My experience with the Federal Judicial Center proves the point. We suggested to some of the metropolitan federal districts that the individual docket system be given a trial as a cure to docket congestion. Six districts responded and after a three month trial, the dispositions have increased from 25 to 52 per cent. The notorious District of Columbia criminal docket promises to be current by July 1st. In another study, we asked the judges to send us time sheets for a ninety-day working period in order to modernize our weighted caseload index. Seventy-seven per cent complied. Our recent study of sixteen districts revealed that there was no uniform system of organization, procedures and practices in the Clerks' Offices. A model system is now being formulated by the National Archives Records Section with the cooperation of the judges, clerks, Administrative Office and the Center. This should be completed in a few months. In addition, at the specific invitation of the judges, data processing is being introduced into court administration.

The Saari report suggests that court functions should be classified into two groups: (1) judicial and (2) administrative or non-judicial. The former must be performed by the judge; the latter assigned to the court executive. The judge can then perform the duties for

¹ "If I had me a job to pick out, I'd be a judge. I've looked over all th' others an' that's th' on'y wan that suits. I have the judicial timperment. I hate wurruk." Mr. Dooley, Finley Peter Dunne.

which he was trained and selected rather than be bogged down with administrative details. This is the *sine qua non* of effective court administration.

But where can expert court executives be found? It is true that they are hard to come by. The ones I know can be counted on the fingers of one hand. Training in court administration must be specialized and elevated to professional rank. Suitable people must be recruited. Only recently, thanks to the Chief Justice, a breakthrough has occurred in this regard. The American Bar Association, the Institute of Judicial Administration and the American Judicature Society have organized a special institute for this purpose. It will have a capacity of at least sixty graduates a year and, in due time, should be most helpful in preparing top court executives for the state and federal systems. In addition, the National College of State Trial Judges is organizing a continuing training course for present employees of administrative offices.

The report on *Modern Court Management* heralds the beginning of a new day in court administration. It will be an important helpmate to the courts in the modernization of their operations. More important, it will encourage ambitious young people to become professionally trained in judicial management and thereby render valuable and lasting service to the court system. Mr. Saari is due the thanks and appreciation of the judiciary for putting to paper the findings of his long and fruitful experience. They form broad guidelines for immediate action that will bring efficiency and dispatch to the implementation of our laws and continued strength and human dignity to our society.

ABSTRACT OF REPORT

The increasing complexity of American urban life creates an administrative burden on court systems which simply cannot be handled by judges and routine court staff alone. A professional court executive is needed to organize and administer non-adjudicative work in the courts under the general guidance of judges just as city managers, school superintendents and hospital administrators administer the organizational and management burden in other aspects of our lives. The fully effective court executive would manage a court efficiently and economically, and by such activity would relieve judges of most administrative functions which prevent them from fully performing their adjudicative role. By establishing and improving managerial expertise in judicial systems, there is a greater likelihood of having a well-run court which would contribute to the well-being of the community.

Since 1950, court executive positions have developed rapidly through constitutional, legislative and judicial actions. In some cases, new positions were created; in other cases, old positions were expanded. In both cases, increasing professionalization of the court executive position has resulted. This growth, however, has been uncoordinated and is not based on any underlying body of theory. Future directions in the court executive position should focus on the development of a coherent philosophy of judicial management as well as the improved management capability of the court executive. Exchange of management ideas, allocation of additional resources to management, and increased emphasis on modern managerial techniques should be more fully incorporated into the design of the court executive position.

PREFACE

This report presents background information relating to the growth of the court executive position. Specific functions of the court executive are described along with his relationship to key members of a court. A section of this report is devoted to general questions and answers for those who wish to deal with court administrative problems by changing a current court executive position or by creating a new position. In addition, recommendations are submitted in an effort to anticipate the critical managerial problems of the decades ahead. The purpose of this report is to stimulate those concerned to evaluate critically the judicial systems in the communities where they live.

The author of this report is David J. Saari, the Director of the Washington D.C. Court Management Study, who is a lawyer with several years of experience in a multi-judge trial court working in the capacity of trial court executive. That experience, coupled with several years of independent research, is brought to bear on the problems examined here.

The report is prepared in response to a request from the Law Enforcement Assistance Administration of the United States Department of Justice in Washington D.C. In January 1969, the District of Columbia Court Management Study was granted partial financing from the National Institute of Law Enforcement and Criminal Justice.¹ The Institute, created on June 19, 1968, is a division of the Law Enforcement Assistance Administration. A statutory purpose of the Institute is:

"to encourage research and development to improve and strengthen law enforcement."²

As a major part of its work and to further that goal, the Court Management Study documented backlogs and delays in both civil and criminal cases in the District of Columbia, and it prepared recommendations for better case processing and scheduling. Special

¹ Major financing was accomplished by grants from the Ford Foundation, the Russell Sage Foundation and Eugene and Agnes Meyer Foundation. The grants were made to the Committee on the Administration of Justice, a local group of Washington lawyers appointed by the U.S. Circuit Court of Appeals to oversee the Court Management Study.

² P.L. 90-351, Section 402(a). (1968, 90th Cong.)

effort was made to assist the courts in implementation of the recommendations.

The Court Management Study necessarily explored court organizational problems. In the District of Columbia, for example, court organization is inadequate because of a lack of a management staff of professionals to serve the judicial system. The results are obvious; everyone suffers: police, prosecutor, public defender, assigned counsel, judges, probation officers, witnesses, jurors—not to mention the victims of crime, court litigants and the general public. The implications of poor court management are not readily grasped. This report attempts to close a needless gap in our understanding. The need for court executives is not unique to a single jurisdiction such as Washington D.C. The need is part of a larger national problem which should be studied and described.

Those interested in obtaining additional information beyond that included in this report may write to the following organizations:

American Judicature Society
1155 East Sixtieth Street
Chicago, Ill. 60637

Federal Judicial Center
725 Madison Place, N.W.
Washington D.C. 20005

Institute of Judicial Administration, Inc.
40 Washington Square South
New York, New York 10012

Law Enforcement Assistance Administration
633 Indiana Ave., N.W.
Washington D.C. 20530

National College of State Trial Judges
University of Nevada
Box 8051
Reno, Nevada 89507

Caroline Cooper provided vitally needed editorial and research talent in preparation of this report. Credit is due to her, to the Court Management Study Staff and to many practicing court executives and others who graciously reviewed drafts of this report. Responsibility for errors remains with the author.

TABLE OF CONTENTS

FOREWORD	iii
ABSTRACT	vi
PREFACE	vii
I. COURT ADMINISTRATION	1
A. <i>The Court Executive Role</i>	1
Judge-Court Executive Relationships	2
The Essential Management Skill	3
Court Executive Management Functions	4
1. General Management	5
2. Personnel Management	6
3. Data Processing Management	7
4. Financial Management	7
5. Calendar Management	8
6. Jury and Witness Management	8
7. Space and Equipment Management	9
8. Public Information and Report Management	9
B. <i>Trends in the Court Executive Role</i>	10
Growth of Court Executive Positions	10
Some Developments	11
Professionalization of the Court Executive Position	13
II. QUESTIONS AND ANSWERS CONCERNING THE ROLE OF THE COURT EXECUTIVE	16
III. RECOMMENDATIONS	24
IV. SELECTED BIBLIOGRAPHY	28
V. APPENDIXES	31
A. State Court Executive Positions	31
B. Local Court Executive Positions	32

I. COURT ADMINISTRATION

A. THE COURT EXECUTIVE ROLE

As modern life becomes increasingly complex and urban areas become more crowded, judicial systems serving such areas grow in administrative complexity. Often such complexity is joined with expanded demand for prompter justice by larger populations; the result is intensified pressure on the courts. Such pressure produces explosive change which affects our views of governmental problems. Yet, it is unlikely that many persons realize the extent of management changes made in the courts during the last 20 years in response to such pressure. Even fewer appreciate what is likely to occur in the decades ahead.

Hence, this report emphasizes anticipated developments by outlining basic trends and by exploring fundamental questions which are likely to be of future significance. In looking ahead it is essential to restudy the key court management posts to assess whether they are capable of carrying the increasingly heavier workloads which will be required of them. Just as many of the roads of the 1930's and 1940's are inadequate for 1970 traffic, many court management positions are fast becoming outdated. Those offices about to be created or renovated in the next few years should be designed with some reasonable anticipation of future circumstances.

Sound modern court management and court executives are not strangers in some courts today. Both are part of an increasingly familiar progressive scene. Examples of improved court management are developing from coast to coast and will be described later.

Central to the trend of improved management in judicial institutions is one vital government job: the court executive. Let us focus on it. Quite often the role of the court executive is confused with that of a statistician or chief clerk. More understanding is needed to dispel such misconceptions and to offer a clearer definition of the court executive position and its functions in judicial management. Those unfamiliar with court operations may wonder why the creation of a single position—the court executive—is so significant to court management. What does the court executive do? Who benefits from such a post? How is such a position created? What is its cost? How will it affect current work practices?

From a practical standpoint the position of court executive has evolved in two ways: by expansion of existing positions and by creation of new positions. Regardless of the method of creation, such specialization of function in the judicial branch of government evolves from current positions (judge, clerk, jury commissioner and others) which are overburdened by the growth and diversification in the judicial system. Research to date confirms the fact that there is no typical court executive position; each is subject to a different pattern of growth and each is at a different stage of development. Yet, to some degree, there is a recognizable pattern of standardization.

Generally speaking, court executive positions are centrally located in judicial systems at state and local levels³ for coordination and control to serve professional purposes, and such positions usually are placed immediately under the general direction of the judges in a court. Management functions relate to budgets, personnel, space, facilities, caseload, jury and witness coordination, and liaison with the bar, executive and legislative branches,⁴ and within the judiciary. Obviously, in carrying out these functions the court executive becomes involved in many daily relationships. Before examining his functions in detail we should describe the most significant of these relationships—that of the court executive with the judges in a court system.

Judge-Court Executive Relationships

Court executives work in a complex environment. Within the web of relationships one of the most significant is that between judges and the court executive. The public expects judges to be ultimately responsible for effective court management. Frequently constitutions and statutes make this duty clear; other times the duty is implied. In either case, the responsibility is non-adjudicative and could be delegated by the judges to the court executive. The process of delegation of broad management power to non-judges is complex and must be properly sanctioned. That sanction has come increasingly from judges, legislatures and voters. In contrast, the adjudicative role of the judges is usually non-delegable, except when the legislature authorizes use of limited judicial or quasi-

³ See Appendix for list of state and local positions. The state positions and local court posts are different in many ways. The distinctions are clarified later in this report.

⁴ For an understanding of management functions and new trends one should consult Leonard R. Savles, *Managerial Behavior: Administration in Complex Organizations*, McGraw-Hill, 1964. Those seeking further analysis should study the classic work of Chester I. Barnard, *The Functions of the Executive*, Harvard University Press, 1938, (32th anniversary edition).

judicial officers such as referees, masters, commissioners and magistrates.

Nevertheless, some judges continue to devote large portions of time to management. In some courts judges hear few cases; they administer almost all day. Others manage quite reluctantly because they honestly believe a judge should spend most of his time working on cases. It is common to find that growing management responsibilities result in a serious misallocation of judicial time. Management responsibilities may be driving out time for adjudication. Even so, the courts must be managed. In such circumstances the court executive serves a dual function. He saves a judge's time for adjudication and he exerts professional management knowledge and experience upon problems of the judiciary.

As a consequence, judges with a court executive in the court reserve for themselves broad decision-making power in the administrative sphere. Judges in multi-judge courts sit *en banc* to establish court policies to guide the chief judge and court executive. There should be no thought of completely relieving a judge or group of judges of final administrative responsibility or of expecting a court executive to carry the entire management load. Either viewpoint is too extreme. For example, in regard to the court budget, a court may wish to set guidelines and give final approval before budget submission. However, all of the other tasks of budget execution are then carried out by management. In personnel management, a court may review the establishment of personnel selection standards, pay levels, personnel benefits and methods of employee discipline and removal. However, creating and establishing the framework for a personnel system and running it is up to management. The pattern of selective management involvement by the judges in a multi-judge bench with a court executive is a good method for promoting simultaneously (1) better policy-making in management, (2) better execution of policy and (3) more time for adjudication for judges. Thus, the court executive aids the judiciary and allows judges to concentrate upon their primary professional duty of judging cases while at the same time being assured that the court is run well according to acceptable management standards.

The Essential Management Skill

What do we really think is most important in management? One way to answer the question is to consider the problems confronting executives. For example, Eric Hoffer says:

In human affairs every solution serves only
To sharpen the problem,
To show us more clearly what we are up against.
There are no final solutions.

Managers need not a memory for principles but, as Theodore Levitt suggests, the ability to "determine what the problem really is."⁶ Levitt feels that many managers are not aware of the difficulty of management and, thus, not enough of them manage. Too many are custodians; they do little thinking in the course of their work but rest, rather, on formula, dogma, principle, textbook maxims and resounding cliches.

Yet most organizations have some people who *can solve* the management problems *if only they can see them*. Some managers do not think in sufficient depth to develop a critical managerial prerequisite: the accurate definition of organizational problems. In too many instances, the result is that management is blind to organizational deficiencies. The consequence is ineffective management which seriously impinges upon the ability to render quality professional service which, after all, is the main service of the judiciary. The identification and resolution of management problems are vital skills to a judicial organization. To perform these tasks, courts need self-educating executives who will not rest on cliches, but who will instead be constantly alive and sensitive to the administrative and professional demands of their organization's environment. This essential managerial skill is needed in each functional management area.

Court Executive Management Functions

What management functions of a court or judicial system would be performed by a completely developed court executive position? Presumably there is an array of management functions involved in court administration. The Chief Judge and other judges may be exercising some of the functions; other functions may be unattended. The dormant functions are just as important as those actively exercised. The court executive will assume responsibility for all of these although, in many cases judges will obviously maintain final management authority along with their undelegable adjudicative responsibility. The court executive's role is restricted because he does not participate in the main professional work of adjudication any more than a hospital administrator prescribes medicine for a patient in the hospital which he administers. The court executive's role is secondary; it provides administrative support to the judiciary.

The basic management functions exercised by the court executive are these:

⁶ Theodore Levitt, "The New Markets—Think Before You Leap." *Harvard Business Review*, May—June 1969, 53-67 at 67.

1. General management
2. Personnel management
3. Data Processing management
4. Financial management
5. Calendar management
6. Jury and witness management
7. Space and equipment management
8. Public information and report management

The extent to which the court executive exercises his talents in each of these functional areas depends upon various factors: (1) whether the court executive is a state or local official, (2) the size of the court or judicial system, (3) the statutory or constitutional powers of the judiciary and court executive, (4) the understanding between the court executive and the court about the extent of delegated authority, (5) the customs and traditions of the court, etc. The court executive may decide some questions alone; he may prepare staff memoranda for judges to help them decide. On the other hand, he may merely bring interested parties together so that the judges have an opportunity to be informed prior to decision. The precise management practices depend upon the specific situation.

The pattern of delegation of administrative power by judges to court executives will vary among jurisdictions. Courts themselves vary in management organization and much research must be done in the area of court management to know more about the differences and the reasons for them. There are many conflicting management models in both public and business administration, differing definitions of identical terms, new theories and continual disputes over what is true or false. Within this context of growth and change in management thought, let us examine the functions performed by court executives at state and local levels. The following examination is general, and obviously it is not intended to be conclusive or definitive. Court management with court executives is still in an early formative stage; it needs a minimum of one or two more decades of experiential development to reach an optimum design for judicial systems.

Thus, each functional management area is analyzed through basic management questions. The list is merely suggestive and brief textual description follows with further explanation. In general, the functions described below are performed by both state and trial court executives although state court executives will have less daily concern with calendar, jury and witness management.

I. General management

Is the Court properly planning ahead? Is the Court organized and staffed to achieve maximum professional pro-

ductivity? Is there effective direction and control of the support functions in the Court? Are units of the Court properly coordinated?

Are judge's meetings effective? Are the Court rules up-to-date and enforced?

Are relationships with other judicial, legislative and executive groups and with city and county government, properly conducted?

Is there a need for special study of a particular problem and, if so, who will do it?

Is a management consultant needed? Are there laws or constitutional provisions hampering the effective operation of the court?

Many persons erroneously believe general management functions encompass every management function. Indeed, general management functions are important because they include planning, organizing, staffing, directing, controlling and, most important, coordinating the parts of the organization. Managers become involved in trading relationships, workflow problems, service to others, advisory functions, auditing responsibilities, stabilizing duties and innovative relationships. Today, the use of modern technology by organizations increases the technical management demands on general management operations. Court executives require a legal staff for rule changes and for legislative planning and research. A court executive must be able to work daily with the myriad details and complexities involved in administering a large organization. Timing is often the essence of management and increases the complexity of general management responsibilities. Leadership in management activities, if it is to occur, is also a part of these functions. Each of the following functional management areas must be coordinated with the others to achieve integrated management.

2. *Personnel management*

Does the court have enough competent employees?

What uniform standards of employment should be followed by the court?

How should court employees be trained?

Is there a way to motivate for higher levels of performance?

Is it possible to convince employees to make organizational goals their own?

Who will maintain relationships with groups of employees who are not directly hired by the court such as sheriff deputies serving court process?

The quality and quantity of professional service is determined in large part by support staff. Although there has been little research in this area, judicial systems in the United States enjoy a

ratio of support staff to judges of approximately 5-10 to 1. A juvenile court may have a ratio of 55 to 1. Some additional employees are indirectly subject to court management—i.e., sheriffs, clerks, bailiffs, and others. Court personnel systems are multiple and complex. City, county and state personnel systems are mixed in a single judicial system. Courts, just as other organizations, must come to terms with management of this vital human element. They must provide adequately for personnel appraisal and evaluation, employee selection, training and development, wage and salary administration, health and safety requirements, counseling and discipline, labor relations, benefit planning and communication systems with large numbers of employees—all of which require careful court executive attention. Each phase of personnel management is vital to the ultimate success of the institution and the morale of its employees.

3. *Data processing management*

What should the court automate?

How can the state, county or city computer be used?

What electronic or other equipment will help the court?

How does the court select criteria of system design and assist others to prepare an information system?

Should the court operate its own computer?

Who will work with systems analysts and computer programmers?

Modern information technology presents a complex package of management questions which require considerable study. Significant amounts of public funds are required for each application of computer equipment. Software and hardware are developing rapidly and current knowledge requires continual management attention. Since data processing is a vital aspect of organizational management it is essential for courts to have court executives who are familiar with data management.

4. *Financial management*

Is the court receiving sufficient financial resources to modernize and keep up with demand for service?

Who will maintain liaison with city, county and state financial managers?

Who will create and execute an annual court budget?

Who will seek non-governmental financial resources for the court?

Who will account for funds received in the form of fees, fines, support payments, etc?

Are the audit controls for public funds entrusted to the court effective?

Courts need public funds to operate. These funds are not obtained simply through budgetary requests to public authorities. The exceptional complexity of funding resources for courts requires maintenance of a large number of relationships. A single court may receive private funds and public funds from city, state, county and federal sources. The creation, presentation, approval and execution of a single government budget is a demanding subject to those conversant with effective budgetary relationships. A court executive must present numerous and varied aspects of court operations to many groups in a clear and convincing manner in order to obtain sufficient resources for the judiciary.

5. *Calendar management*

Is the current system the most effective system of distributing the caseload among the judges?

What time standards for controlling litigation should be adopted to control each class of cases?

On what grounds should cases be continued for trial at a later date?

How should cases be set for trial?

What information is needed to manage a calendar?

Should there be review of judicial case performance in a multi-judge court?

Is the court suffering a backlog or delay of cases?

The essence of calendar management involves the effective division of caseloads among the judiciary. However, more is involved in this management function than mere mechanical division of cases. It is now becoming better known that extraordinarily complex techniques are required to achieve successful coordination of litigation. For example, criminal cases present a unique workflow series extending far beyond the organizational boundaries of the judiciary. On the other hand, civil cases present public-private workflow complexities only slightly understood. No area of functional management is of greater need of constant management attention and management research.

6. *Jury and witness management*

Who should summon, screen, qualify and instruct jurors preparing for service?

How should this be done?

Who should manage the jury pool and account for juror finances? How should this be done?

Who will oversee the proper reception and facilities for witnesses?

Should some jury and witness management functions be automated?

To process daily a large number of persons for jury and witness service is a considerable management responsibility. It alone would justify a court executive even if he had no other functions. In one 16-judge court, over 165 jurors served daily. During cyclical panel changes the old panel (165 persons) would be processed for pay, a new panel (175 persons) would be sworn in and a new panel (500 persons) would be subpoenaed. Thus, during a period of peak jury management overload, the court executive is involved with 830 individuals simultaneously. Such daily management requires a breadth of knowledge about the citizenry, precise timing and stamina. Paper work is voluminous. Maintaining organizational equilibrium with such temporary human resources requires an exceptional management effort.

7. *Space and equipment management*

Is a new courthouse needed?

Is an addition to the courthouse needed?

Are renovations to court space needed?

Does the court have proper control and custody of physical items such as typewriters, automobiles and microfilm units?

Are acceptable maintenance standards being followed for each piece of equipment?

Should the inventory control records be automated?

Every organization—including courts—needs a broad spectrum of material and unique arrangements of physical space. The management of physical inventory is not merely a static activity. Constant maintenance, obsolescence, damage and personnel changes create problems requiring immediate management attention. The expansion of urban court systems, urban renewal programs and other developments frequently require explicit management decisions on space allocation or construction—or both. In addition, during planning, constructing or renovating space, the court interests must be fully protected. Research is only now being conducted at the University of Michigan to establish standards for court system construction.

8. *Public information and report management*

Does the public understand what the court is doing?

Do other branches of government appreciate the role of the judiciary?

Is the court properly accounting to the public for its activities?

Has the court prepared information for League of Women Voters, school groups, bar associations and other civic and fraternal groups who wish to know more about the court?

The public pays for judicial services. It is entitled to know what its institutions are doing. The accountability of public institutions to various and diverse public groups is a well-developed management function in the executive and legislative branches. Similarly, many courts are now issuing meaningful annual reports. In addition, public buildings frequently attract visitors and courthouses are particularly fascinating to large groups who come to tour them. Making public institutions meaningful is also a vital management function and a key responsibility of the court executive.

Obviously, salaries for court executives must be set sufficiently high to attract well-qualified professionals to the positions. Status is connected with salary. For example, we expect a high degree of management expertise from school superintendents and their salaries reflect this concern. Court executives are receiving increasing recognition in salary. The upper ranges for the post vary between \$30,000 to \$40,000 per year. The typical post is paid annually between \$15,000 and \$25,000.

B. TRENDS IN THE COURT EXECUTIVE ROLE

Growth of Court Executive Positions

In the last two decades there has been dramatic growth in state and trial court executive positions. Since all prior decades had no such specialty, the data below reveal significant growth in management-oriented posts in court systems.⁹

Decade	Position created per decade			Total
	State court executive	Local court executive	Non-state or local	
1920-29	1	—	—	1
1930-9	1	—	1	2
1940-9	2	—	—	2
1950-9	17	6	1	24
1960-9	14	40	—	54
	35	46	2	83

Most of these positions required some community group action for creation—often both constitutional and statutory. The data reflects a broad and growing community sentiment at local and state levels for better court management in this nation—not simply lawyer and judge concern.

The trends reflected in this growth chart of court executive positions will rise sharply with the creation of proposed federal

⁹ See lists of positions in Appendix.

court executive positions⁷ and similar posts in other multi-judge courts and allied occupational fields in the United States. For example, in the 100 largest standard metropolitan statistical areas there are approximately 70 having no court executive in one or more of the counties.

Some Developments

Why has the search for essential managerial skill to serve judicial systems proceeded so rapidly in the last two decades? What accounts for this change in attitude? Perhaps the best stimulus for this spirited achievement rests with forces within the judiciary itself. Judges are becoming increasingly convinced of the need. These forces for modern management prepared the seedbed for growth of management concepts in a receptive environment.

The three principal contemporary management models—New Jersey, the Los Angeles Superior Court and the Administrative Office of the U.S. Courts—helped to point the way for other jurisdictions. The Chief Justice of New Jersey could write with pride in 1957 that after constitutional reform, his state had built a management team between 1947 and 1957. A Supreme Court set policy by rule, a chief justice acted in the role of an executive head, and an administrative office provided staff assistance with local assignment judges translating policy into action in the local courts.⁸ Flexibility and constant experimentation were needed to keep the system in equilibrium.

In the late 1950's another series of developments began and hastened the pace of change in every judicial system in the nation. The creation of Project Effective Justice,⁹ the revival of the American Bar Association Section on Judicial Administration, the creation of the National College of State Trial Judges (and California and New York counterparts), and the creation of the Federal Judicial Center have changed the face of the map in judicial admin-

⁷ S. 952 in the 91st Congress provides for District Court executives in U.S. District Courts with six or more judges and for U.S. circuit court executives. See also S. 2601, 91st Congress, 1st Session and Report No. 91-405, *Reorganizing the Courts of the District of Columbia* to accompany S. 2601. See Hearings before the U.S. Senate Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, 91st Congress, 1st Session, part 3. Hearings: May 19-22, July 15-17, and August 7, 1969.

⁸ A. T. Vanderbilt, *Improving the Administration of Justice: Two Decades of Development*. 26 U. of Cincinnati Law Review, 155-276 at 232 (Spring 1957). See also Arthur T. Vanderbilt, *The Challenge of Law Reform*, Princeton, (1955) and Edward B. McConnell, *The Administrative Office of the Courts of New Jersey*, 14 Rutgers Law Rev. 290-303 (1960).

⁹ Institute of Judicial Administration. *Project Effective Justice: An Appraisal*. (December 1964). The project began in 1961.

istration. Most of these changes occurred in the 1960's. Behind them was the constant vigorous energy of Justice Tom C. Clark of the United States Supreme Court. The scope of judicial administrative progress is fully described elsewhere,¹⁰ but its impact on court executives—and particularly on the public receptivity for such positions—has been highly beneficial. The role of the court executive is being defined with greater precision and clarity and with appropriate stress on managerial requirements. The full meaning of these developments should unfold with increasing clarity in the decade ahead.

In 1963, the National College of State Trial Judges was created and it immediately offered one course for a month each year in court administration to judges while gathering materials and publishing handbooks on the subject each summer session. The Holbrook report had already defined the court executive position for Los Angeles; the managerial component was dominant.¹¹ A study of the court administrator positions in the United States examined the diversity of state and local posts and particularly stressed the dynamic role of the court administrator.¹²

During the summer of 1966, the Institute of Judicial Administration surveyed some 200 courts for the presence of court executives with 95 courts responding.¹³ The study revealed increasing growth and some similarity in duties in a wide range of positions included in the responses. On May 16, 1967, Chief Justice Earl Warren addressed the American Law Institute warning his audience that the finest legal thinking would avail us little if it were stifled by outmoded management techniques which did not coordinate all of the courtwork such as the activities of marshals, bar and supporting personnel.¹⁴

At the same time, the second meeting of trial court executives was held in San Jose, California under the auspices of the National Association of Trial Court Administrators. Some of the papers presented were published in a special issue of *Judicature* on court

¹⁰ John P. Frank, *Justice Tom Clark and Judicial Administration*, 46 *Texas Law Review* 5-56 (1967-68), and see Tom C. Clark, "The Federal Judicial Center," 53 *Judicature* 99-103 (October 1969).

¹¹ James G. Holbrook, *A Survey of Metropolitan Trial Courts—Los Angeles*. See also California Statutes 1957, c. 1221, p. 2505, and compare National Conference of Commissioners on Uniform State Laws, Model Court Administration Act 9 Uniform Laws Ann. 253 (1957).

¹² Eugene Holder, *The Court Administrator in the United States*. unpublished thesis, U. of Southern California. (1965).

¹³ Institute of Judicial Administration, *Survey on the Position of Trial Court Administrators in the States*, released April 1967. See also Fannie J. Klein, *The Position of the Trial Court Administrator in the States*, 50 *Judicature* 278-280 (April 1967).

¹⁴ Chief Justice Earl Warren, Address to 44th Annual Meeting, American Law Institute, May 16, 1967.

administration.¹⁵ In addition to managerial responsibilities, the planning function of the court administrator was more clearly defined.¹⁶ Court management was further defined and additional programs suggested by a staff report to the National Commission on the Causes and Prevention of Violence.¹⁷

While the court executive position is still in its formative stages, accomplishments are already noted. Many courts have instituted automation procedures for calendars and for juries, and court executives have been instrumental in direction of design and implementation. In Colorado, for example, purchasing economies, administrative uniformity, enhanced employee perception of management and better recruitment procedures have been directly attributed to the office of the court executive. All of the above developments contribute to the continual role clarification and ultimate professionalization of the court executive position.

Professionalization of the Court Executive Position

Occasionally people in a given occupation attempt to transform that occupation into a profession and to transform themselves into a professional group. This is true of court executives.¹⁸

Creation of professional associations, changing the name of the job, articulation of a code of ethics and prolonged persuasion in legislative, judicial and executive branches of government—all of these steps are part of the professionalization process of an occupational group. The goals of this process are:

- (1) Delivery of a more standard service.
- (2) Development of objective standards of service.
- (3) Expansion of knowledge of a specialized technique.
- (4) Promotion of group identity.
- (5) Relating the group's significance to society.

¹⁵ 50 *Judicature* 256-286, April 1967.

¹⁶ Edward C. Gallas, *The Planning Function of the Court Administrator*, 50 *Judicature* 268-271, April 1967. As court administrator in Los Angeles, Gallas gained valuable management experience in a large metropolitan court system and has long been a public advocate of professional court administration. See *Creating University Trained Managers*, 4 *Trial* 9 (D. '67-Jan. '68); *The Profession of Court Management* 51 *Judicature* 334-336 (April 1968) and Chapter 26 "Courts," in *Guide to County Organization and Management*. National Association of Counties, 1968.

¹⁷ David J. Saari, *Court Management and the Administration of Justice*, Chapter 21, pp. 509-526, from *Law and Order Reconsidered*, a staff report to the National Commission on the Causes and Prevention of Violence. (October 1969), and see D. J. Saari, "New Ideas for Trial Court Administration—Applying Social Science to Law," 51 *Judicature* 82-87 (October 1967).

¹⁸ Editorial Vol. 50 No. 8 pp. 256-57. *Judicature*. Problems in professionalization are compounded by the lack of judicial acceptance, the absence of a significant number of true professional court executives and the absence of academic recognition of the field of court administration.

Some occupational groups are more or less professional, but the most highly developed professional groups such as lawyers and physicians, tend to have identifiable elements:

- (1) A systematic body of theory requiring less apprentice-like training and more formalized education with a higher degree of rationality and less traditionalism, and sustained continuing education throughout career life.
- (2) A clientele which increasingly recognizes expertise and special knowledge and the methods of application of this knowledge.
- (3) Approval of and community determination to permit some degree of screening to ensure certain standards of behavior in the occupation—such as accreditation, licensing, etc.
- (4) An increasing degree of professional association to sustain a professional culture.
- (5) An increasing degree of ethical statement of sound practice.

The court executive position has become partially professionalized. In comparing it with the five requirements for professionalization mentioned above, we note the following:

1. *Systematic body of theory.* Although there are no textbooks on court administration, some are in draft stage in 1969¹⁰ and at least two universities²⁰ are laying plans to provide some professional educational opportunities. The basic knowledge of public and business administration, law and social sciences will be the foundation for a specialized systematic body of theory to apply to judicial systems. For example, the University of Denver Law School and School of Business Administration will inaugurate in 1970 a program leading to the master's degree in judicial administration. A broad program to train court executives in the federal and other courts is currently being planned in Washington D.C. In addition, some of the universities plan to provide career development programs for those now in service.

2. *Clientele which recognizes specialized expertise and knowledge.* Chief Justice Warren E. Burger suggested in August 1969 that the day may be gone when judges fear interference with judicial independence by court executives. However, some experts maintain that such fear remains an obstacle to understanding. Nevertheless, judges, lawyers and legislators are increasingly recognizing the expertise required.²¹

¹⁰ See for example, Ernest C. Friesen and Edward C. Gallas, *Managing Courts*, to be published Spring of 1970.

²⁰ American University in Washington, D.C. and Denver University in Denver, Colorado.

²¹ For example, see Joseph D. Tydings, "Modernizing the Administration of Justice," 50 *Judicature* 258-261 (April 1967) and "A Fresh Approach to Judicial Administration," 50 *Judicature* 44-49 (August-September 1966).

3. *Approval of standards of behavior and performance.* Some standard setting has already taken place in California, Colorado, and federal legislation recently proposed.²²

4. *Foundation for professional association.* The National Conference of Court Administrative Officers was established in 1954 and has met every year since. It is an active group. The Council of State Government serves the organization. The National Association of Trial Court Administrators was created in 1965 and has met annually thereafter. It, too, is a rapidly growing organization. The National College of State Trial Judges assists the trial court group. Annual meetings are the pattern. These developments provide evidence of the foundation of a professional culture.

5. *Development of a code of ethics.* The progress in the above areas has to be matched by development of a written code of ethical statement for court executives. None has been drafted at this date.

A professionally oriented court administrator ideally combines a professional education with a managerial personality and practice.²³ Special educational programs, in-service training and opportunities for interchange of ideas are all part of a needed professional program essential to improve the current court executive positions.

²² The Judicial Council of California on November 16, 1968 adopted *Standards for Trial Court Administrative Officer*. Qualifications and functions were defined and have become a part of the *California Rules of Court*. A court with six or more judges in California is supposed to be concerned with such a position. The Colorado Supreme Court and its office of state court administrator have created court administrator positions in the new personnel plan for the entire state. Colorado has job specifications in some detail for court executives issued in a May 1969 preliminary report entitled *Judicial System Personnel Plan*. College education is a basic qualification in both Colorado and California. S. 952 (91st Congress, 1st Session) provides that the qualifications of the court executive "should emphasize management expertise. The Court Executive shall not be required to have a law degree." The 1969 federal bill is similar in intent to both Colorado and California. Legal experience is not critical.

²³ See Amatai Etzioni, *Modern Organizations* (1964) p. 83.

II. QUESTIONS AND ANSWERS CONCERNING THE ROLE OF THE COURT EXECUTIVE

Specific questions and answers often highlight essential points to be considered. The following questions were formulated in an effort merely to emphasize and summarize fundamental aspects of the court executive position. The answers are offered to suggest some of the factors requiring consideration.

1. *Is this report relevant to all jurisdictions?*

Yes. Whether or not a court has a court executive position, it must be determined whether the position provides adequately for the predictably heavier managerial load which will be placed on the position in the decades ahead. It is not a question of whether incumbents have the personal capacity to do the future work; concern should be focused, rather, on providing the necessary authority and resources for the court executive to perform his role effectively. The task of designing—or redesigning—the positions is the critical focus of this report.

2. *What conditions warrant having a court executive?*

Regardless of delay or backlog, any court should consider the advisability of having a court executive if the court has six judges or more. Indeed, some proponents urge such a position for any court of three or more judges which has a high number of employees to judges. Obviously, the critical variables are the volume of business, the presence or absence of large numbers of social workers such as in a Juvenile Court, the population served by the court, and the scope of tasks assigned to the court by the constitution or statutes of a state. If a court must govern bar associations, if it must offer a wide array of services, if it houses a wide variety of professionals—its administrative needs will increase correspondingly. Similarly, the presence of a state prison near the court makes a significant difference in caseload. A court located in a state capital could have an unusual caseload of complex litigation involving the state. A one judge probate court with complex statutory fee arrangements may also have increased managerial problems.

Conditions such as those noted above warrant consideration of the creation of a court executive post.

3. *How powerful a position should the court executive post be?*

The answer is short: powerful enough to accomplish the judicially approved objectives in managing, but not so powerful to cause fear among judges and court employees. The court executive brings his talent to bear on court problems to help solve them for everyone's benefit. Naturally, the court executive should answer to the chief judge—who works closely with and guides the court executive. The court executive is accountable to the bench and, like every public employee, answerable to the public. He will help generate consideration of policy questions; through research and study he may guide the determination of policy questions relating to court administration. The final determiner will be the judiciary.

As a minimum, the court executive must be involved significantly in the personnel management of every non-judicial employee; in that way he is able to control the administrative offices he supervises and exert integrated management policies.

4. *What should be the court executive's overall scope of functions and responsibilities?*

Management functions and management responsibilities—these are the core of the court executive role development. Certainly, the court executive today has a wide variety of functions but, rather than examine the current array, let us focus on what *should be*; what do we want in the court executive position? The answer to that question is indicated by the following suggested list of duties:

The court executive shall have the following duties and responsibilities to be exercised under the direction of the chief judge of the district:

- (1) *Organization and administration.*
organize and administer effectively and economically all of the non-judicial activities of the court.
- (2) *Employee assignment and supervision.*
assign, supervise, and direct the work of the non-judicial officers and employees of the court.
- (3) *Employee appointment and removal.*
appoint and remove all non-judicial personnel except the personal staffs of the judges.
- (4) *Personnel administration.*
formulate and administer a system of personnel ad-

- ministration including an in-service training program for non-judicial personnel.
- (5) *Court budget.*
prepare and administer the court's budget, fiscal, accounting, and procurement.
 - (6) *Space utilization.*
administer the space available to the court and maintain it, assist in planning for new space or renovations.
 - (7) *Research and evaluation.*
conduct studies of the business of the court and prepare appropriate recommendations and reports relating to the business and administration of the court.
 - (8) *Statistical analysis.*
define management information requirements and collect, compile, and analyze statistical data with a view to evaluation of the performance of the court and preparation and presentation of reports.
 - (9) *Jury system.*
establish procedures for the management of the jury system.
 - (10) *Meetings of the judges.*
attend administrative meetings of the judges of the court and serve as secretary in such meetings.
 - (11) *Liaison with government and community.*
maintain liaison with governmental and other public and private groups having an interest in the administration of the courts such as the prosecuting attorney, sheriff, public defender, mental hospitals, and others.
 - (12) *Annual report.*
prepare and submit to the court periodically, at least annually, a report of the activities and the state of business of the court, which the chief judge shall publish. This report shall include meaningful and current data in a standard format on the ages and types of pending cases, method of disposition of cases, information of current operating problems and measures to indicate standards of performance. Median ages and the age ranges of oldest to youngest cases at date of disposition shall be specified for all matters requiring court action by trial or hearing. The report shall include a description of innovations and modifications introduced to improve the court.

- (13) *Other necessary administrative duties.*
perform such other duties as may be assigned to him by the chief judge and as may be necessary for the proper administration of the court.

The effective court executive should appraise the strengths and weaknesses of existing programs, solve problems by determining their causes and by presenting alternative solutions. If the courts desire, they could create the court executive post by court rule stating precisely what is expected of a court executive. Some courts may wish to gain supreme court or legislative acceptance and some may find legislatures insisting that they have such a position. Statutory enactment is a mixed blessing, for a position may become frozen in a certain set of words. However, with continuous evaluation, the danger of rigidity can be overcome.

5. *How insulated or isolated should the court executive position be from partisan or non-partisan politics?*

Obviously, the position of court executive should not be an object of political patronage. Consider a rule enacted by the New Jersey Supreme Court limiting political activity, outside employment and extraneous tasks of judges and court personnel.

RULES OF GENERAL APPLICATION

1:17-2

RULE 1:17. JUDGES AND COURT PERSONNEL; LIMITATION ON POLITICAL ACTIVITY, HOLDING OF OTHER PUBLIC OFFICE OR POSITION AND OTHER GAINFUL PURSUIT

1:17-1. Persons Prohibited

The following persons in or serving the judicial branch of government shall not hold any elective public office nor be a candidate therefor, nor engage in political activity, nor, without prior written approval of the Supreme Court, requested through the Administrative Director of the Courts, hold any other public office, position or employment:

- (a) Judges;
- (b) The Administrative Director of the Courts, the Standing Masters of the Supreme Court, the Clerk of the Supreme Court, the Clerk of the Superior Court, and all employees of their respective offices, and official court reporters;
- (c) Probation officers and all employees of county probation departments;
- (d) Jury commissioners, clerks to jury commissioners and all persons employed by or regularly assigned to offices of jury commissioners;
- (e) Clerks to grand juries, assistants to clerks of grand juries, and all employees regularly assigned to attend or serve grand or petit juries;
- (f) Law secretaries, stenographers, sergeants-at-arms, court criers, assignment clerks, courtroom clerks, court attendants and all public employees regularly assigned to a judge or court;

(g) Deputy surrogates and all persons employed by or regularly assigned to a surrogate's office;

(h) Clerks, deputy clerks, violations clerks and all persons employed by or regularly assigned to a juvenile and domestic relations court, county district court, or municipal court.

Note: Source—R.R. 1:25C(a).

1:17-2. Non-Applicability

Rule 1:17-1 shall not apply to surrogates, county clerks, county prosecutors, sheriffs, nor to employees of their respective offices except as such employees are specifically referred to therein and except as otherwise provided by N.J.S. 2A:158-21 (proscribed political activity of county prosecutors and their staffs).

Note: Source—R.R. 1:25C(b).

1:17-3

RULES OF GENERAL APPLICATION

1:17-3. Ineligibility of Judicial Employees for Appointments

No person in or serving the judicial branch of government full time including any person in the employ of a surrogate shall be eligible for appointment as or serve as an appraiser, receiver, commissioner, guardian ad litem, administrator or other appointment for which a fee may be allowed in any matter pending in any court unless he agrees in advance to waive such fee.

Note: Source—R.R. 5:5-4.

1:17-4. Other Employment of Judicial Employees

No public officer or employee employed by or regularly assigned to a judge shall hold any position or employment in private business or engage in other gainful pursuit except upon the recommendation of such judge and upon the written approval of the Assignment Judge, which shall be filed with the Administrative Director of the Courts.

Note: Source—R.R. 1:25C(c).

RULE 1:13. DUTY OF JUDGES

It shall be the duty of every judge to abide by and to enforce the provisions of the Canons of Professional Ethics, the Canons of Judicial Ethics and the provisions of R. 1:15 and R. 1:17.

Note: Source—R.R. 1:26-6, 8:13-7(a).

Justice should not take sides and such a rule provides for neutrality.

6. *What qualifications should be set for the court executive position?*

Qualifications are directly related to functions defined above. Since those functions of the executive are primarily managerial, so must the qualifications point toward an executive officer. Positions described in Colorado, California and federal legislation suggest that being a lawyer is not mandatory; it may be helpful, provided the lawyer is well-versed in management. Some lawyers are.

Specifically, the court executive should have completed considerable graduate study in the fields of public administration, business administration, social sciences and law. In addition, he should have a familiarity with government and business organization and operation. On a personal level, he must be able to communicate skillfully with others, and to elicit the cooperation and confidence of the community he serves.

7. *How should the court executive be selected and removed?*

A court executive should be selected and removed by a group decision—preferably by a majority vote in a multi-judge court. The post is the most important non-judicial position in the court; hence each judge should have a vote on it. This policy is practiced by the Los Angeles Superior Court, the Portland Circuit Court in Oregon, and others at the state level such as Colorado.

Some states and localities lodge the appointment and removal power in a chief judge. This is not particularly desirable. Since the court executive serves the court—i.e., all of the judges—the relationship between the chief judge and court executive should be governed by a majority of a bench. In many courts the chief justice or chief judge position is frequently rotated. Such a policy of joint appointment and removal would provide for continuity and would give recognition to a court executive position and its unique role in the court. In addition, the joint process places a measure of equality of treatment among the judges who gain the right to express themselves on one of the most critical personnel decisions: the hiring and firing of a court executive.

The term for the court executive should be indefinite; he should serve at the pleasure of the court.

Courts should undertake a nationwide recruitment for candidates for the court executive post. This will further the professionalization of the position. A clearing house through which candidates could be recommended, is a necessity for judges and court executives.

8. *What is the key problem court executives now encounter and what remedies are proposed?*

The court executive's key problem is that too much is expected of the post. His post is often not able to deliver. In such cases, the position must be redesigned along the lines suggested in this report. Organizational guidelines need to be rethought so that the position will be effective in the future. On the other hand, the position may be lacking in sufficient resources. Such positions require a different

approach for strengthening with greater focus on staffing and finances.

9. *How will the creation of the court executive positions affect the operation and personnel of the court?*

Assuming the role of the court executive is developed along the lines suggested in this report several results are predicted. Every major department head in a court would report to a court executive—not the chief judge. The duties of the clerk of court, probation officer, and other employees would be immediately altered. The judges would look to the court executive for many services previously requested of the chief judge and various other offices.

At the same time, it could be predicted that the more effective the post is, the greater the likelihood of some employees and judges resenting the involvement of another force in dealings. Resistance is normal and should be dealt with sympathetically. To avoid creating just another court job, the ideas of control and function suggested for management should be followed. In this way, court administration will be expedited, and judges will be freed to effectively perform their adjudicative role.

10. *What criteria should be established to measure the effectiveness of the court executive position?*

Obviously, the evaluative criteria should relate to qualifications and functions. Since the subject of organizational effectiveness is sufficiently complex to warrant an inventory of propositions about the subject,²¹ the answer should not be oversimplified. However, some general guidelines can be suggested. The criteria should relate to the morale of employees and judges, to the degree of coordination, to the improved treatment of witnesses and jurors, to improved relationships with city, county and state government, to increased productivity on the part of court staff, to more profitable utilization of court and community resources and talents, etc. In addition, the court executive should be judged on his ability to anticipate problems and to understand the operational impact of policy decisions. Moreover, every jurisdiction has specialized needs and they should be articulated at the outset. The broadcasting of specific responsibilities and standards for measurement would be beneficial to all involved.

11. *How should courts contribute to the professionalization of the court executive position?*

By financing meetings, research materials and openly en-

²¹ James Price, *Organizational Effectiveness*, Irwin, 1968.

couraging court executives to improve themselves, as other professionals do, the community would advance the professionalization of the court executive position. Continuing education programs at universities and development of special in-service training for court executives should be promoted.

12. *What benefits will the position of court executive have for the community?*

Effective fiscal policies should be achieved. Resource allocation should be improved. Individuals' time should be better preserved and more carefully watched so that the court is not needlessly imposing on lawyers, witnesses, jurors and others called to the court. In addition, the community should be better informed by annual reports of the court executive. His activities should contribute to public understanding of the courts and of the administration of law and justice. Furthermore, an effectively administered court should contribute significantly to the well-being of the community. In short, the court executive should make the court more responsive to the public it serves.

III. RECOMMENDATIONS

When considering the future growth of the court executive position, a critical question arises: what, from among the mass of thoughts, are the most important aspects of the court executive role for the future? The recommendations outlined below conform with current functions and significant trends and should be considered in the future development of the court executive position.

1. *Improve management:*

Improved managerial capability must be developed in every court system to the greatest possible extent—and it should be started promptly. We should hasten the professionalization of the court executive.

2. *Exchange management ideas:*

Judges and court executives from metropolitan, regional, state, and national judicial systems should exchange information and ideas about management practices regularly and frequently—at least monthly in some areas.

3. *Allocate more resources to management:*

Increased expenditure of public funds and absorption of time on complex management problems must be encouraged in every court system by responsible budgetary and appropriating authorities inside and outside judicial systems.

4. *Change the court executive role:*

There should be increased questioning about the concept of a sole "staff" or "advisory" characteristic of the court executive role, with more stress placed on a fuller concept of the court executive's entire capability and the increasing managerial responsibilities in the years ahead.

RECOMMENDATION NO. 1: IMPROVED MANAGEMENT:

Improved managerial capability must be developed in every court system to the greatest possible extent—and it should be started promptly. We should hasten the professionalization of the court executive.

Courts are deficient in manpower formally educated and experienced in management. Some courts are fortunate to have judges

who know how to manage, but such courts are rare. It is rarer still that such a judge wishes to occupy the management role for very long. Even so, judges are preoccupied with adjudication and little time remains for management. The result is often an uncoordinated whole. Generally speaking, the deficiency of management results in no one central officer being directly in contact with all judges, no one directly in contact with all employees, and no one directly in contact with key persons in the court's environment. Contact involves daily—possible hourly meeting for some problems. Without a court executive a court is less likely to reach proficient management levels of other large organizations. It is inconceivable to think of any business today without a managerial figure in the central role. So, too, it is becoming less plausible to accept courts without such a position.

The professionalization trend is one which would benefit judicial systems and the public. It is far better to have a professional and cosmopolitan management approach in the court executive position than simply an additional employee who is just working at a job which he may not even merit. Seniority is no measure of management expertise. Setting sufficient standards, salary and qualifications will assure courts of the proper type of managerial assistance. National recruitment would help.

RECOMMENDATION NO. 2: EXCHANGE MANAGEMENT IDEAS:

Judges and court executives from metropolitan, regional, state and national judicial systems should exchange information and ideas about management practices regularly and frequently—at least monthly in some areas.

The need for more interchange among jurisdictions and within jurisdictions is essential. Court executives must attend seminars, conferences and meetings to keep informed of changing management practices and to share ideas. Management knowledge is growing so rapidly that many persons who should be knowledgeable managers are unaware of these new trends. Imagine what this means for judges who are attempting to manage *on a part time basis*. They are totally unaware of how much they should know.

National meetings are normally annual, but regional meetings among states should begin to convene quarterly, and within the largest urban areas consideration should be given monthly or bi-monthly to meetings. Such conferences will encourage better comparative management on a face-to-face level where it means the most. Today there are too few meetings, inadequate agendas and not enough sustained thoughtful treatment of difficult management problems.

RECOMMENDATION NO. 3: ALLOCATE MORE RESOURCES TO MANAGEMENT:

Increased expenditure of public funds and absorption of time on complex management problems must be encouraged in every court system by responsible budgetary and appropriating authorities inside and outside judicial systems.

The increased emphasis on better management should take time and money, and significant amounts of both. Such expenditure should be evident in every court system. It is natural to expect that requests for new expenditures may well meet a conservative attitude on the part of budgetary authorities. Effort should be made to insure a long-term budgetary authorization. A regular annual program of management improvement based on a five or ten year plan should be established. The first year, a court may wish to revamp its personnel system and bend efforts toward its modernization. The next year, it may be the files, or automation, or legislative problems. It is not that such programs should take a year; the critical point is that one cannot turn on the financial and time spigot one day and off the next. No decent program of court modernization is built in such an unsustained manner. Therefore, it seems obvious to urge that a degree of continuity in development and a degree of willingness to take time and spend money be associated with development of better managed courts.²⁵ This approach accepts a time-worn axiom that change in judicial systems is characteristically slow, and that it takes long periods of time and sustained effort to improve and maintain efficient management at a high level. The task is perpetual.

RECOMMENDATION NO. 4: CHANGE THE COURT EXECUTIVE ROLE:

There should be increased questioning about the concept of a sole "staff" or "advisory" characteristic of the court executive role, with more stress placed on a fuller concept of the court executive's entire capacity and the increasing managerial responsibilities in the years ahead.

The New Jersey management model *in theory* places the key court executive at the state level in the role of a staff assistant to the Chief Justice who remains the executive head.²⁶ The same is true of almost every other state court executive. However, a few state court executives exist—namely in Alaska, Hawaii, Puerto Rico, Colorado and North Carolina—whose offices have a higher

²⁵ See also *Commission Statement on Violence and Law Enforcement*, October 1969, National Commission on the Causes and Prevention of Violence. The Commission urges a doubling of "... our investment in the administration of justice ... " p. 11.

²⁶ See page 11 above, footnote 8.

managerial component. The local court executives, using the Los Angeles model, already have a managerial example to use for comparison. All of these latter jurisdictions have moved away from the pure "staff assistant" or "staff advisor" concept of the state court executive role as dependent upon action by the Chief Justice to one that emphasizes the managerial or support aspects of the job with increased expectation of management initiative. The daily management activities are a high proportion of the work of such state and local court executives. Recent developments provide increased capability for increased centralized management. Telephones and other communication media, computers and long distance data transmission, freeways and jet planes—all facilitate efficient management in large states. If data from the moon can be transmitted and analyzed, then data from courts in a state judicial system can be transmitted and analyzed. The technological capability is at hand. Hopefully, in the next decade courts will equip knowledgeable management executives and their teams with modern technological apparatus to serve the judicial systems and the public. In so doing, the court executive position should go beyond its traditional staff or advisory nature, and become an effective and integral instrument for administrative and technological progress.²⁷

We should begin to recognize that staff-line analogies are reversed in a professional organization. The judiciary is the "line" and the dominant group to which the "staff" (the court executive and support personnel) reports. The word "staff" connotes in a non-judicial organization a purely advisory position. In a judicial organization, the word staff includes *both* advisory and operational support personnel. Perhaps future research will clarify which analogies and vocabulary from other management situations will be applicable to court systems.

²⁷ For over-centralized court systems, however, such as the federal courts, the detailed management needs will probably be met by a decentralization of some management functions and their delegation to local court executives.

SELECTED BIBLIOGRAPHY

BOOKS

- Barnard, Chester I. *The Functions of the Executive*. Harvard University Press, Cambridge, 1968.
- Caplow, Theodore. *Principles of Organization*. Harcourt, Brace and World, 1967.
- Etzioni, Amitai. *Modern Organizations*. Prentice-Hall, 1964.
- Frank, John P. *American Law: The Case for Radical Reform*. MacMillan Co., 1969.
- Howard, James. *Crisis in the Courts*. McKay, 1967.
- Holbrook, James G. *A Survey of Metropolitan Trial Courts—Los Angeles Area*. University of Southern California, 1956.
- Price, James. *Organizational Effectiveness*. Richard D. Irwin, 1968.
- Sayles, Leonard R. *Managerial Behavior: Administration in Complex Organizations*. McGraw-Hill, 1964.
- Vanderbilt, Arthur T. *The Challenge of Law Reform*. Princeton University Press, Princeton, 1955.
- Zeisel, Hans, Harry Kalven, Jr. and Bernard Buchholz. *Delay in The Court*. Little, Brown and Co., 1959.

ARTICLES

- Clark, Tom C. "The Federal Judicial Center," *Judicature*, Vol. 52, pp. 99-103, October 1969.
- Frank, John P. "Justice Tom Clark and Judicial Administration," *Texas Law Review*, Vol. 46, pp. 5-56, 1967-68.
- Gallas, Edward C. "Creating University Trained Managers," *Trial*, Vol. 4, p. 9, Dec. 1967—Jan. 1968.
- Gallas, Edward C. "The Profession of Court Management," *Judicature*, Vol. 51, pp. 334-336, April 1968.
- Gallas, Edward C. "The Planning Function of the Court Administrator," *Judicature*, Vol. 50, pp. 268-271, April 1967.
- Klein, Fannie J. "The Position of the Trial Court Administrator in the States," *Judicature*, Vol. 50, pp. 278-280, April 1967.
- McConnell, Edward B. "The Administrative Office of the Courts of New Jersey," *Rutgers Law Rev.*, Vol. 14, pp. 290-303, 1960.
- National Association of Counties. "Courts," *Guide to County Organization and Management*, Ch. 26, 1968.
- Saari, David J. "Court Management and the Administration of Justice," *Law and Order Reconsidered*, Ch. 21, pp. 509-526, October 1969.
- Saari, David J. "New Ideas for Trial Court Administration: Applying Social Science to Law," *Judicature*, Vol. 51, pp. 82-87, October 1967.
- Tydings, Joseph D. "Modernizing the Administration of Justice," *Judicature*, Vol. 50, pp. 258-261, April 1967.
- Tydings, Joseph D. "A Fresh Approach to Judicial Administration," *Judicature*, Vol. 50, pp. 44-49, Aug.—Sept. 1966.
- Vanderbilt, A. T. "Improving the Administration of Justice: Two Decades of Development," *U. of Cincinnati Law Rev.*, Vol. 26, pp. 155-276, Spring 1957.

REPORTS

- Institute of Judicial Administration. *Project Effective Justice: An Appraisal*. December 1964.
- National Commission on the Causes and Prevention of Violence. *Commission Statement on Violence and Law Enforcement*. October 1969.
- National Commission on the Causes and Prevention of Violence. *Staff Report*. Vol. 10, 1969.
- President's Commission on Law Enforcement and Administration of Justice. *Task Force Report: The Courts*. 1967.

MISCELLANEOUS

- Holder, Eugene. *The Court Administrator in the United States*. U. of Southern California, Unpublished Thesis, 1965.

APPENDIX A

STATE COURT EXECUTIVE POSITIONS*

State	Year Created
1. North Dakota	1927
2. Connecticut	1937
3. Missouri	1943
4. New Jersey	1948
5. Rhode Island	1952
6. Virginia	1952
7. Michigan	1953
8. Oregon	1953
9. Kentucky	1954
10. Louisiana	1954
11. Iowa	1955
12. Maryland	1955
13. New York	1955
14. Ohio	1955
15. Massachusetts	1956
16. Washington	1957
17. Alaska	1959
18. Colorado	1959
19. Hawaii	1959
20. Illinois	1959
21. New Mexico	1959
22. Arizona	1960
23. California	1960
24. Wisconsin	1962
25. Minnesota	1963
26. Tennessee	1964
27. Arkansas	1965
28. Kansas	1965
29. North Carolina	1965
30. Idaho	1967
31. Indiana	1967
32. Utah	1967
33. Vermont	1967
34. Oklahoma	1967
35. Pennsylvania	1968
Administrative Office of U.S. Courts	1939
Puerto Rico	1952

* Source: Council of State Governments *Book of States, 1968-69*, p. 118 and direct correspondence with some offices. North Dakota's post is not funded. Some offices existed in a different form before the date listed which is the date of a continuously similar position to the 1968-69 period. States excluded are Alabama, Delaware, District of Columbia, Florida, Georgia, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, South Carolina, South Dakota, Texas, West Virginia, and Wyoming.

APPENDIX B

LOCAL COURT EXECUTIVE POSITIONS*

A. Created in 1950 Decade:

Date of Creation	Locality	Date of Creation Unknown
1. 1950	Delaware Co., Media, Penn. (Common Pleas)	1. Boston
2. 1955	Alameda Co., Oakland, Calif. (Superior Court)	
3. 1957	Cleveland, Ohio (Common Pleas)	
4. 1957	Los Angeles, Calif. (Superior Court)	
5. 1959	Montgomery Co., Norristown, Penn. (Common Pleas)	

B. Created in 1960 Decade:

Date of Creation	Locality	Date of Creation Unknown
1. 1960	Phoenix, Arizona (Superior Court)	1. Littleton, Colorado
2. 1962	Orange Co., Calif. (Superior Court) San Diego, Calif. (Superior Court)	2. Denver, Col. (District Ct.)
3. 1963	Pittsburg, Penn. (Common Pleas)	3. Philadelphia, Pa. (Common Pleas)
4. 1964	San Mateo Co., Calif. (Superior Court) Portland, Oregon (Circuit Court)	4. Chicago, Ill. (Circuit Court)
5. 1965	Santa Clara Co., San Jose, Calif. (Superior Court)	5. Pontiac, Mich. (Circuit Court)
		6. Canton, Ohio (Common Pleas)
		7. St. Paul, Minn. (District Ct.)

* Source: Correspondence and survey in 1967 by Institute of Judicial Administration. This data is incomplete and should be treated as such. Many positions are fully developed, but others are limited positions where the range of functions is constricted. For convenience here we have grouped the positions under one descriptive title principally to indicate presence of the position in some form, not to describe its nature completely.

Date of Creation	Locality	Date of Creation Unknown
6. 1966	Tucson, Arizona (Superior Court) Contra Costa Co., (Superior Court) Minneapolis, Minn. (District Court) Baltimore, Md. (Baltimore City)	8. Detroit, Mich. (Circuit Ct.)
7. 1967	Pr. George's Co., Md. (Circuit Court)	9. Warren, Ohio (Common Pleas)
8. 1968	Clayton, Missouri (St. Louis Co.) San Francisco, Calif. (Superior Court) Kansas City, Missouri (Circuit Court)	10. Montgomery Co., Md. (Circuit Court)
9. 1969	Omaha, Nebraska (District Court) St. Louis, Missouri (22nd Circuit)	11. Seattle, Washington (Superior Court)
		12. Martinez, Calif. (Superior Court)
		13. Baltimore Co., Md. (Circuit Court)
		14. Brighton, Colo. (District Court)
		15. Colorado Springs, Colo. (District Court)
		16. Newark, New Jersey (Superior Court)
		17. Paterson, N. J. (Superior Court)
		18. Elizabeth, N. J. (Superior Court)
		19. Camden, New Jersey (Superior Court)
		20. Cincinnati, Ohio (Common Pleas)
		21. Dayton, Ohio (Common Pleas)
		22. Sacramento, Calif. (Superior Court)