

PROGRAM MODELS

53624

# Trial Court Management Series



## Personnel Management

U.S. Department of Justice  
Law Enforcement Assistance Administration  
National Institute of Law Enforcement  
and Criminal Justice



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Program Models are a synthesis of research and evaluation findings, operational experience, and expert opinion in a criminal justice topic area. Each report presents a series of programmatic options and analyzes the advantages and disadvantages of each. The intent is to provide criminal justice administrators with the capability to make informed choices in planning, implementing, and improving efforts in a program area. The Models may also serve as the basis for LEAA testing and demonstration efforts.

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**Trial Court Management Series**

**Personnel Management**

by  
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**July 1979**

**U.S. Department of Justice  
Law Enforcement Assistance Administration  
National Institute of Law Enforcement and Criminal Justice**



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## PREFACE

The Court Management Project was initiated by LEAA's National Institute of Law Enforcement and Criminal Justice to provide trial court judges and administrative staff with a management report series addressing three critical aspects of workload and resource management: financial, personnel and records. In addition, extensive attention was also given to trial court caseflow management in the course of this study, and general observations regarding caseflow management are offered in the project's Executive Summary Report. The Project began August 1, 1977 and was completed August 31, 1978.

The principal purpose of this report series has been to provide a framework within which the operations of trial court systems can be assessed, monitored and improved as needed. Although this framework is intended to have general application to all trial courts, there are many variables which must be considered before any specific management approach to an individual court is developed. These variables should be noted by the readers as they use these reports and analyze management activities in their jurisdictions.

We would have preferred to develop a set of integrated handbooks, each organized around a common set of topics and following a consistent pattern of development and application. However, because of the considerable differences in the locus of authority and scope of responsibility for managing each of these areas of court operations, each report was organized in a manner to reflect the nature of management activities involved. As a result, the reports do not follow a consistent format.

There is, however, a common philosophy which underlies all of the reports and a number of common elements contained within them. The basic premise of the report series is that each of these management areas must be approached systematically. To this end, each report has been developed around the principal management goals and functions which the various operational components of a court must support and against which a court's management activities can be assessed. Suggestions for developing or improving management capability in each area is measured both in discussions of specific management activities and in a series of assessment questions. Since some of the suggested management goals may be in conflict, these assessment guidelines can also enable a court to determine management priorities and weigh the tradeoffs of pursuing one course of action rather than another.

In preparing these reports, much effort has been made to draw upon the experiences of a diversity of trial courts in handling specific aspects of these management responsibilities. Where possible, we have identified and documented those management techniques and approaches which have been effective in one environment and might be adaptable to other jurisdictions. Whether or not they can, in fact, satisfy the management needs of other courts must be determined on the basis of the goals and priorities which those courts have set and by the range of structural and organizational factors which determine the system in which they would function.

Despite the extensive site investigation upon which this project has been based, the focus of each report is upon the overall management process of a trial court in dealing with each of the specified court operations. No attempt is made to prescribe procedure. Study of numerous trial courts during the thirteen months of the project's operation has made it apparent that there is no "best way" to handle any of these functions. With proper planning, communication, coordination, and monitoring, a variety of management tech-

niques can prove useful; without such groundwork—and particularly, without a sensitivity to and appreciation for the needs, expectations and informal relationships among the individuals and organizations comprising a local trial court system—what works well in one jurisdiction can fail in another despite surface similarities of organization, size and structure.

Each report consists of two interrelated parts: text and examples. The text provides the framework in which identified management activities occur; the examples, generally provided in the appendices, demonstrate their specific application. Together, they are intended to provide a frame of reference for managers in developing their management programs. Implementing and monitoring the management processes described is a task which must be performed by the individual court and must be geared to the local needs, resources, and structure which that court serves.

*In all, four reports have been produced by the Project:*

- Financial Management
- Personnel Management
- Records Management

Executive Summary: Background, Methodology and Supporting Materials

The reports are organized on the basis of subject for ease of use, not to suggest strict segregation of areas without interdependence. This report addresses Personnel Management. However, any "personnel" management activities necessarily have potential records and financial implications. In using these reports, we suggest that the interrelationships of all management activities be continually kept in mind. Where possible, cross references to other portions of the report series are provided together with a cross index by subject matter to all reports.

This project owes an enormous debt to many individuals who provided information, suggestions and support during the course of our work. Each person with whom we spoke enriched our perspective and added to our understanding of trial court management needs.

The willingness and candor of trial court judges and staffs across the country to discuss their management activities was the cornerstone for the project's work. Those who helped us on site, over the phone, and by responding to the project survey gave us insight into many trial court management issues which might not otherwise have been noted. Although the number of individuals involved precludes listing them by name, we are grateful to them for their time and help. Their cooperation made this project possible.

Our Advisory Board, composed of researchers and court officials, met with us regularly, carefully reviewed our drafts and provided many helpful suggestions for increasing their utility. The representatives of the three court membership organizations—the Conference of State Trial Judges, the National Association for Court Administration and the National Association of Trial Court Administrators—helped prepare the project's survey and distribute it to their organizational memberships. They maintained an exchange of information about project activities and data needs with their members, and thereby, greatly expanded our information base and the range of courts and court activities incorporated into the reports.

The consultants who worked with us gave far more help and guidance than any compensation they received. In addition to providing their expertise on selected issues, many freely offered their assistance in reviewing our drafts and providing suggestions for their improvement. The extensive knowledge of L. M. Jacobs (collective bargaining); Mark Koenig (records management); Lawrence Siegel (space planning); Frank Zolin (budgetary strategies); Hon. Henry Pennington and Diane Morris (trial court management improvement programs) was essential to developing this report series and was directly incorporated into the project reports.

Several trial court staff followed up our site visits by subsequently meeting with us to critique our analyses and test our draft reports against management activities in their respective jurisdictions. These individuals were: Gordon Allison, Michael Hall, Robert

Harrall, Dennis Howard, Charles Starrett, Frank Zolin and Norman Zoller. Several consultants not directly involved with the operations of a specific trial court also provided assistance. To broaden our perspective, David Bourland and William Higham offered their experiences with prosecutorial and defender agency operations to the project's work in the caseload area and to the development of the records report. Dale Lefever provided similar assistance in our development of the personnel and financial reports. Continued guidance in developing these latter reports was given by William Bohn and Gerald Kuban and many helpful suggestions for the financial report were offered by Carl Baar who reviewed the final draft. Candid and very helpful review of all drafts was provided by Ernest Friesen and David Saari.

A special note of thanks is given to Harry Lawson who helped us at each stage of our work. His suggestions for site studies, his insight into the management operations of a diversity of court systems, and his rigorous review of our drafts were a source of invaluable help and support to all of us.

Particular appreciation is extended to the three program monitors at The Law Enforcement Assistance Administration who were always helpful and accessible. Carolyn Burstein gave the project its initial stimulus and direction; Susan Oldham guided it through a difficult transition period; and Anthony Pasciuto provided the advice and support needed to bring it to the publication stage. In addition, Natalie Solomon and George Moody of the Contracts Division made it possible to administer the project easily and smoothly.

The production of the Financial and Personnel Management Reports was made possible by the perseverance and good humor of Brenda Self who typed the manuscripts in their various drafts, and the advice and help of James Crowell, both of Systems Consultants, Inc. Graphics were prepared by Sara Travis of The American University.

In launching the project, William Wilson was of great assistance in providing a preliminary review of available literature. As responses to the organizational surveys were received, John Daniel, a graduate student at American University's School of Justice diligently began their analysis and offered many insights which we later explored.

Finally, my special thanks go to Dixie Knoebel, my assistant. Her patience, hard work, and knowledge of the area made it possible for the project to run and for these reports to be prepared.

Caroline S. Cooper, Director  
Court Management Project  
The American University  
Washington, D.C.  
August 31, 1978

Harold C. Petrowitz, Director  
Institute for Advanced Studies in Justice

# PERSONNEL MANAGEMENT IN A TRIAL COURT ENVIRONMENT



Illustration 1

# I. PERSONNEL MANAGEMENT IN A TRIAL COURT ENVIRONMENT

## A. The General Management Environment of Trial Courts

There is a normal tendency to equate trial court management with the management of executive branch agencies and to assume a high level of transferability for management procedures. In fact, there are a number of factors in the trial court environment which make its management needs distinctive.<sup>1</sup>

The first distinctive factor is the judiciary itself. Unlike an executive branch agency, which is normally headed by one executive, the administrative authority of a trial court generally resides in trial judges as a group, even where there is a presiding judge or a court administrator. Trial courts are characterized by collegial exercise of authority. This would render management difficult, even if the management group were administratively oriented. Judges rarely have such an orientation and yet are often reluctant to delegate their authority to people with management expertise.

The second distinctive factor is the structure of trial courts, which rarely follows the neat organizational lines popularized in public administration text books. Very often, trial courts are a loose coalition of organizations cooperating in the support of the adjudication function, rather than a neat hierarchy of divisions and sections. The organization chart for the Superior Court of Maricopa County, Arizona, reflects a fairly typical trial court structure, as illustrated in Figure 1.

Due to the often fragmented nature of a trial court structure, trial courts are often not full-fledged adminis-

trative entities. There is a strong traditional view that a trial court consists essentially of the judiciary and its confidential employees and that most court functions, other than adjudication, can be supplied by various court-related agencies which are administratively independent (e.g., probation agencies, clerical offices, sheriffs' offices, etc.). Trial courts have struggled to gain control over court-related functions, but many have not achieved such control.

The problem of control raises the broader issue of judicial branch independence. Locally-funded trial courts are the third branch of local government. Where this leads to the assertion of independent administrative authority by a court, there may be tension with the executive branch and even a deliberate rejection of the management procedures promulgated by the executive branch. Where court personnel management is concerned, there may be a test of power to determine whether a trial court can set its own personnel policy, set up separate personnel mechanisms and ignore personnel freezes or other executive branch mandates. Very often, a compromise will be reached, with the court using an executive branch personnel system for some purposes, but not others.

The decisions that a trial court makes in regard to managerial independence depend on another unique factor of trial court management, the reluctance or inability of the judiciary to create strong court administrative offices. Most large trial courts have court administrators, but many medium-size courts do not have an administrator. Even where such positions are created, the powers of the office are often weak and limited to those functions not already exercised by some of the traditional court agencies. Trial courts may simply not have the administrative mechanisms to implement management systems.

Stated simply, trial courts often lack some or all of the management characteristics specified in public administrative models:

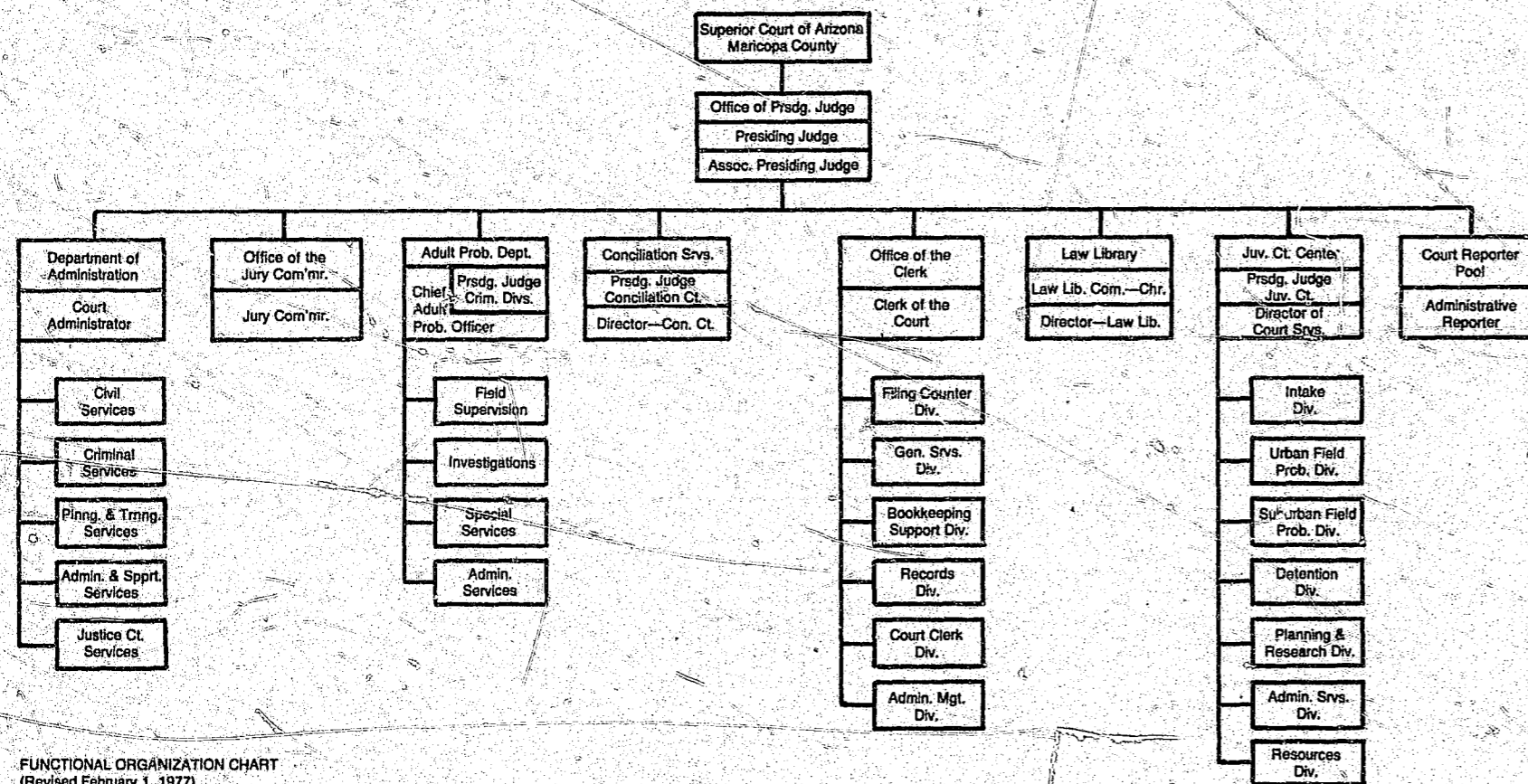
- clear focus of authority on a management executive;
- clear lines of authority;
- coherent organizational structure; and
- authority to control basic organizational functions.

<sup>1</sup> There are a several good works dealing with the unique aspects of court personnel management:

Woods, John and Fuller, Donald E. *Court and Personnel Systems: A Personnel Administration Handbook*. Denver: Institute for Court Management, 1975.

Lawson, Harry O., Ackerman, H. R., Fuller, Donald E., *Personnel Administration in the Courts*. Monograph No. 3. Criminal Courts Technical Assistance Project, Washington, D.C.: American University, 1978.

FIGURE 1  
Maricopa County Superior Court Organization Chart



FUNCTIONAL ORGANIZATION CHART  
(Revised February 1, 1977)

## 8. Special Factors Affecting Personnel Management in Trial Courts

1. **Organizational factors.** General jurisdiction trial courts are generally constitutional courts with an organizational structure defined by statute. While general jurisdiction trial courts are part of a statewide system for the adjudication of cases, each geographic component for the system may be relatively autonomous in matters of administration. These geographic components, often called circuits or districts, are in most states closely intertwined with county government. Court personnel management is thus affected by the personnel practices of local governments.

General jurisdiction trial courts vary in organizational structure, even in the same state, but only a few of these structural variations have any significance for court personnel management:

- degree of vertical administrative unification;
- degree of horizontal administrative unification; or
- number of counties in a multi-county judicial district.

a. **Vertical administrative unification.** In most states the geographic components of a trial court system exercise considerable autonomy in personnel matters. There are, however, a few states where administrative authority over trial court operations has been centralized in a state supreme court acting through a state court administrator and applying its rule-making powers to trial court management.<sup>2</sup>

There is a close relationship between vertical administrative unification and state financing of trial courts. Where trial court employees are all on the state payroll, the key budget decisions are made at the state level. Control over personnel management is linked to budgetary responsibility. In short, management control tends to follow the dollar and gravitates to the state level when trial court employees are paid from funds appropriated by the state legislature.

The practical implications of state financing of trial courts are:

- increased potential for state-level control over trial court personnel management policy;
- minimal control over personnel procedures, which are set and sometimes administered at the state level; and
- control of hiring, supervision, evaluation and basic personnel decisions at the local level are subject to

the overall policy set by the supreme court.<sup>3</sup>

b. **Horizontal administrative unification.** In a few states general jurisdiction trial courts are horizontally unified.<sup>4</sup> Such trial courts typically have a presiding judge with statewide administrative authority, a small administrative staff assigned to the judge and rule-making power of statewide application. In such a court the potential exists for a statewide personnel system covering only employees of general jurisdiction trial courts. This potential is unlikely to be realized since horizontally unified courts are not, on the whole, invested with a strong administrative authority. Moreover, there is a certain absurdity in a personnel system covering only one tier of a court system.

c. **Multi-county judicial districts.** A more general structural problem for court personnel management is that the great majority of trial courts span several counties of small population. A few employees may serve on a supra-county level, for example, a court reporter or a regional court administrator,<sup>5</sup> but more commonly there are a few court employees in each county, some of whom may also perform non-court functions. Unless such employees are integrated into a statewide judicial branch system as the result of unification, there is no feasible way of dealing with them through a structured, centrally administered system. Rather, it may be necessary to negotiate personnel needs with a number of county commissions.<sup>6</sup>

This is an aspect of court personnel management, but it involves skills and procedures far different from those associated with personnel management in a populous, one-county judicial district staffed by a number of court employees.

It must be conceded at the outset that personnel management, in its more highly developed form, is largely a concern of trial courts located in counties or cities that are relatively populous.

2. **Legal factors.** The administrative authority of trial courts is often poorly defined in the law. Legal ambiguity is particularly pronounced in the area of court personnel management.

a. **Legal authority to manage personnel.** Trial

<sup>3</sup> Several states have judicial branch personnel systems with rules that place much of the control at the local level. The state monitors and maintains the system, including post-audit and classification studies. These include: Alaska, Colorado, Delaware, Kansas, Kentucky, Maine, Nebraska, New Mexico, North Carolina, South Dakota, Virginia and West Virginia (data supplied by Harry O. Lawson).

<sup>4</sup> For example, Superior Court of Massachusetts and Superior Court of Rhode Island.

<sup>5</sup> Employees, who do not fit into county government structure, tend to end up on the state payroll. Court reporters are usually among the first court employees to receive state funding.

<sup>6</sup> Regional court administrators in rural areas often fulfill this role.

<sup>2</sup> Colorado, North Carolina, Hawaii, Alaska, South Dakota, Maine, Rhode Island, New Mexico and Alabama are states with a high degree of administrative centralization and statewide personnel systems encompassing trial court employees.

courts have not traditionally been perceived as administrative entities with management control over all functions related to adjudication. Many statutes on the administrative authority of trial courts date back to a period when court personnel management was embryonic, or unknown. The underlying premises of these statutes were that:

- a trial court is a loose coalition of judges coordinated by a presiding judge, whose role relates mainly to docket control and assignment of judges;
- aside from the confidential employees of judges, other personnel services are provided to the judiciary by court-related agencies such as a clerk's office or a sheriff; and
- all a trial court needs in the way of personnel management authority is control over its confidential employees and a general power of superintendence over persons working in the court.

In recent years, these traditional concepts have given way to more modern concepts of court administration and judicial branch independence. Powers of presiding judges over personnel have been strengthened, judicial control over court personnel has been clarified, and rule-making power has been applied in the personnel area. Despite these developments, some trial courts still lack a strong legal basis for the exercise of court personnel management.

b. *Distribution and delegation of management authority.* Even where it is clear that a trial court has management authority over personnel serving the court, it may be very unclear how this authority is to be exercised by the judiciary. There may be doubt as to what power resides in a presiding judge and his power to act on behalf of the court.<sup>7</sup> Likewise, there may be doubt surrounding delegations of authority to administrative judges in various court divisions or to court administrators.<sup>8</sup>

Much of this confusion results from the fact that the state court judiciary has traditionally favored individual judge autonomy in administrative matters. The exigencies of judicial administration have eroded this individual freedom and caused trial courts to rely more heavily on presiding judges or judicial committees to administer trial court operations. There is, however, considerable resistance to centering administrative authority in one judge or even a group of judges.

<sup>7</sup> In Colorado, New Jersey and South Dakota, where the Chief Justice of the Supreme Court appoints presiding judges, there are very explicit delegations of authority.

<sup>8</sup> There occasionally is doubt that state law permits delegation of authority by the court, a conclusion reached by some trial courts in Ohio.

This resistance is reflected in state laws which reserve many administrative functions to the full trial court or to individual judges. Another manifestation of this resistance is the tendency to rotate the position of presiding judge or to establish, by law, separate presiding judgeships for various specialized jurisdiction courts (e.g., juvenile, family or probate courts).

Some of this tension results from failure to distinguish between the power of the full court to set policy and the actual execution of this policy. While it is generally recognized that the rules governing personnel management should be enacted by the full court, there is no consensus about delegating the execution of this policy to particular judges. In many courts, individual judges still retain significant control over day-to-day personnel management.

In the courts where administrative authority over personnel is more centralized, various organizational patterns exist, such as:

- the presiding judge personally executes the policy;
- the presiding judge reserves ultimate authority, but delegates much of his authority to administrative judges in various court divisions;<sup>9</sup>
- the presiding judge of the full court invests a trial court administrator with general authority for personnel management, reserving review power in the judiciary; or
- some courts use judicial committees to make personnel determinations; these committees may act through a court administrator or directly manage personnel.

Clarity in defining the delegation of authority to judges or court administrators is occasionally ignored. Management authority can be undermined by lack of such a definition.<sup>10</sup>

c. *The trial court as employer.* The personnel who serve courts are often paid from city or county funds and

<sup>9</sup> Some courts even delegate administrative rule-making authority to divisions of the court (e.g., Circuit Court of Multnomah County, Oregon).

<sup>10</sup> An example of rules defining the delegation of authority are those enacted by the Circuit Court for Multnomah County, Oregon:

#### 2.00 ORGANIZATION

2.01 The General Committee of Judges shall constitute an advisory committee to the Presiding Judge for personnel policy matters.

2.02 The Court Administrator shall be responsible for developing, implementing and maintaining a personnel plan to assure that all positions substantially similar with respect to the type, difficulty and responsibility of work are included in the same job group or class.

2.03 The Office of the Court Administrator shall serve as the Personnel Office for the Circuit Court, responsible for administering the personnel plan in accordance with the provisions of the plan and the policy guidelines of the Presiding Judge and/or General Committee. . . .

are regarded by local government officials and by state legislators as employees of the local government which pays them. Trial courts often find that statutes on local government place them under the management authority of local governments in matters of personnel. Trial courts may choose to assert their administrative authority by invocation of their inherent powers, but the fact remains that there is considerable doubt as to who is the employer of personnel serving courts.

This legal problem has particular significance for collective bargaining and affirmative action. If a trial court is not legally an employer, it cannot bargain collectively and must permit county or city officials to enter into agreements affecting court personnel. Similarly, a trial court cannot very well develop an affirmative action program of its own, if the employer of court personnel is an agency other than the court.<sup>11</sup>

d. *Who is a court employee.* Many persons working in trial courts are not, strictly speaking, court employees. They may be employed by executive branch agencies of state or local government, by independent court-related agencies, such as a sheriff's office or even by a private court reporting firm.

A few states have resolved this dilemma by a systematic definition of court employment, usually in connection with state assumption of trial court costs. Such definitive clarity is, however, not common.

To achieve such clarity, a trial court must determine its personnel management authority in relation to each category of employee serving a court. A trial court may find that its authority is very limited in some categories and very broad in others. The key factors in such an analysis are:

- the power to hire or appoint;
- the power to supervise and assign duties;
- the power to impose disciplinary sanctions, including dismissal; and
- the power of ultimate review over decisions made with respect to the personnel in a particular category.

A typical situation in trial courts is the case of the executive branch probation agency and the overlap of personnel authority which often arises from this situation. Table 1 provides a hypothetical illustration of this problem.

Many trial courts must literally fight to obtain management authority over the personnel who serve the court.

### 3. Political factors. Trial courts have not operated in

<sup>11</sup> Case law in Michigan defines trial courts as the "employer" of court personnel: *Wayne Circuit Judges v Wayne County*, 386 Mich. 1 (1971); *Judges v Bay County*, 385 Mich. 710 (1971); *Livingston County v Livingston Circuit Judge*, 393 Mich. 265 (1975).

TABLE 1.  
*Court Authority Over Executive  
Branch Probation Officers*

Type of Authority	Court Role	Executive Branch Role
Initial Selection	Often none	Hiring done by probation agency
Supervisory	Court exercises control over court-related functions	General supervision resides in probation agency
Disciplinary Sanctions	Court has power to demand that a probation officer no longer function in the court	Dismissal authority lies with agency
Authority to Review Ultimate Personnel Decisions	No power to review decisions of probation agency	Agency may answer to a board or to a chief executive

a political vacuum. Judges are frequently elected on a partisan ballot or are appointed by political processes. Clerks, sheriffs and other officials serving a court may also be elected. Many people working in trial courts may also be politically involved. Trial courts have been, and are, part of the political milieu of their county.

In localities where public employment decisions are highly politicized, trial courts tend to follow the local pattern. Some trial courts have large numbers of employees who are selected by political mechanisms and are largely exempted from any structured form of personnel management. It occasionally occurs that a trial court will have some personnel on a patronage system and other personnel on a merit system.

Where a strong patronage system exists, the judiciary may feel obliged to defer to local political leaders in the choice of personnel. In this situation, a patronage system is an important constraint on court personnel management.

Often, however, the term "patronage system" is applied to any system which is not a merit system. Many so-called patronage systems have several trappings of a merit system (e.g., job classifications, personnel procedures, and employee evaluations), but accept no restrictions on management control of hiring and firing.

Many such modified patronage systems arise because elected officials cannot afford the disruptive mass turn-overs associated with a "spoils system," and yet wish to retain strong personal control over employment decisions. What occurs is that regularized personnel procedures are instituted and a considerable degree of job continuity is assured, subject to the political reality that

all employees can be fired or dismissed at the pleasure of the court.

The arbitrary power to hire or fire may seldom be exercised, but its existence may contribute to management effectiveness.

#### 4. Public policy factors.

a. *Unionization.* The right of public employees to organize themselves into unions is accepted policy in many states. There are some unionized court employees in at least fourteen states.

Not surprisingly, unionization of court employees has been most common in industrialized areas where labor unions have been well entrenched for years. Unionization has been most commonly brought about by public employee unions, such as the American Federation of State County and Municipal Employees (AFSCME), but some court employees have elected to use industrial or trade unions with strength in their locality or to form their own unions.

Unionization leads to a collective bargaining contract, which becomes a focal point for personnel management. In some instances, the contract does little more than incorporate an existing merit system and make the union, rather than a civil service board, the key protector of employee rights. In such a situation, a trial court may find that management has not changed greatly as the result of unionization.

Where unions move into a court without an existing personnel system, the situation is much different. The collective bargaining contract creates a completely new structure and may cause a quick change in management decision-making. The contract rapidly becomes a point of reference for many management decisions formerly made with few constraints.

As a practical matter, few courts have enough employees to invite union organization of court employees alone. Court employees are very often part of a larger bargaining unit. Since court employees are often joined with executive branch employees in the same bargaining unit, executive branch managers may end up negotiating a contract applicable to courts.

It often occurs that court employees are part of several bargaining units. Court reporters, for example, have sometimes organized themselves separately.<sup>12</sup> Social service employees of courts also tend to organize separately. Thus, a personnel manager may have to deal with different contracts and, perhaps, different unions. In the same court, the manager may also have to deal with non-union employees. These are typical of the factors that affect personnel management in a unionized court or a partially unionized court.

<sup>12</sup> For example, New Mexico, where there is a statewide organization.

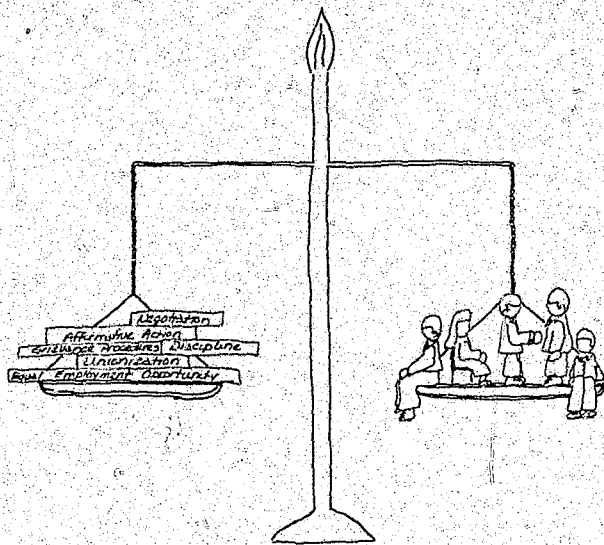


Illustration 2: Balancing People and Policies

b. *Fair employment practices.* Federal policy requires the equalization of employment opportunity in state and local governments.<sup>13</sup> Some states and localities have made their own policy commitments in this area.

It is already clear that equal opportunity and affirmative action programs will force courts to document their personnel system. These procedural mechanisms are virtually required to avoid the appearance of arbitrary action. This is a new experience for courts that have not had to account to outside agencies for their personnel actions.

#### C. The Necessity to Improve or Initiate Court Personnel Management

The personnel of a trial court are its most basic resource. The application of personnel resources to achieve the objectives of the court is the primary purpose of personnel management.<sup>14</sup> Achievement of this purpose requires some management system, however rudimentary it may be.

The constraining factors noted in earlier sections do not negate the need for a management system, but may influence the type of system erected. No particular system is advocated in this booklet. It is advocated only that trial courts establish a personnel management policy that provides a workable management framework. It is further advocated that there be some management

<sup>13</sup> Courts are most often subject to this policy by receipt of grants from the Law Enforcement Assistance Administration (LEAA).

<sup>14</sup> Personnel management is not synonymous with personnel administration. The latter concerns the largely ministerial tasks of maintaining a personnel system. Personnel management creates the management framework in which personnel administration occurs and deals with the broader policy issues concerning personnel.

**TABLE 2.**  
*Steps in Developing a Personnel Management Framework*

Type of Step	Description of Step
Articulation of Trial Court Personnel Policy (may be articulated by the supreme court in a unified system)	Comprehensive statement, by rule or general policy declaration, setting forth the court position on lines of authority, employee compensation and benefits, employee obligations and rights and all major aspects of personnel relations.
	— or —
Creation of Mechanisms of Personnel Management	Formal adoption of executive branch personnel procedures, with perhaps minor variations.
	Designation of one person or a group of persons as responsible for personnel management.
	Development of a system in the court for coordinating information, decisions and procedures relating to personnel.
	— or —
Adoption of a Rational Job and Compensation Structure	Delegation of routinized personnel administration functions to an executive branch agency.
	Development of a job classification plan for the court.
	Development of a compensation plan based on the classification plan.

guidelines to govern the operation of the system so that personnel administration routine does not become an end in itself.

The elements of a management framework can be said to exist if a trial court has taken the following steps:

Where the rudiments of a personnel system exist, the opportunity is present to improve such things as:

- the basic structure of the system;
- its relationship to the budget process;
- its ability to provide adequate staffing; and
- employee performance.

In addition, the opportunity exists to adapt the system to various specialized requirements, such as:

- affirmative action programs;
- collective bargaining; and
- grievance procedures.

Once a management structure exists, the court may begin to articulate management guidelines to govern the operation of the personnel system. Table 3 lists some typical guidelines:

**TABLE 3**  
*Hypothetical Guidelines Governing Court Personnel Management*

Type of Guideline	Nature of Guideline
Relationship of Personnel Management and Budgeting	Need to link personnel system to the budgetary process: (1) to ensure that the number of authorized positions matches staffing requirements; (2) to project future staff needs and also the budgetary impact of personnel policies (e.g., merit increase, cost-of-living, fringe benefits); and (3) to relate turnover and filling of vacancies to the budget posture of the court.
Maintenance of Staffing Levels	Need to make system quickly responsive to the staff needs of the court (i.e., to minimize delay in filling job vacancies).
Flexible Allocation of Personnel Resources	Need to make system flexible enough so that staff resources can be allocated in relation to workload, thus avoiding the phenomenon of overstaffing and understaffing in two divisions of the same court.
Employee Performance	Need to deal with and ensure the productivity of the employee force, as well as to document individual employee performance.
Employee Accountability	Need to establish clear lines of authority, to clarify supervisory responsibilities and employee duties and to make employees clearly accountable to someone.
Responsiveness to Users	Need to prevent a personnel system from becoming so self-contained that responsiveness to user needs is a minor consideration in job descriptions and performance evaluations.
Execution of Public Policy	Need of court to respond to national and state policies affecting personnel management (in particular equal opportunity policies).
Protection of Employee Rights	Need to create procedures which permit employees to present grievances and to be given a hearing when they are the subject of adverse personnel actions or sanctions.
Giving Employees a Stake in the System	Need to create some career development opportunities; to provide opportunities for improving knowledge and skills; to provide for lateral mobility; and to broaden knowledge of the court system.
Responsiveness to Employee Organizations	Need to deal with representatives of employee groups in good faith and to honor their right to organize themselves as a collective bargaining unit or as an employee organization.

If a court lacks operational guidelines for court personnel management and also lacks any basic personnel structure, it is in no position to introduce specific and discrete personnel procedures. Such a court must develop the basis for a personnel system.

If a court has some type of operating personnel system, its management needs are substantially different.

Self-assessment, system modification and introduction of additional procedures are appropriate.

The chapters which follow are responsive to these two basic options. Chapter 2 assumes the existence of some system and deals with system improvements and the development of specialized procedures. Chapter 3 describes the process for creating personnel systems.

## II. IMPROVING COURT PERSONNEL MANAGEMENT

### A. Basic Criteria for Assessing Court Personnel Management

Court personnel systems may be very rudimentary or quite sophisticated; they may be largely under court control or may involve substantial executive branch participation; or they may be dominated by collective bargaining considerations or be free of such concerns. While these and other differences will lead to some variations in management approach, they do not preclude some commonality in assessing court personnel systems. There are some personnel management objectives which largely transcend local variations and which suggest general criteria for appraisal of court personnel systems.

These criteria fall into four categories: organizational criteria relating to the basic policy and structure governing a personnel system; staffing criteria relating to the ability of a system to fulfill the personnel needs of the courts; performance criteria relating to the ability of court staff to adequately perform their functions and; employee relations criteria pertaining to the system's ability to deal with employee needs.

Stated in question form these criteria are as follows:

1. **Organization.** Has the court made a formal policy commitment to some type of court personnel management?

Is the policy statement comprehensive enough to provide clear policy direction in each major aspect of personnel administration?

Do the policies and procedures clearly spell out the roles of the following participants: the full court; the presiding judge and other administrative judges, if any; judicial committees; non-judicial administrators; employee organization and their representatives; special boards or panels, if any; and executive branch personnel offices, if they are involved?

Are the channels of authority clear so that it is understood who is responsible to whom?

Is there a responsible management officer charged with implementing court personnel policy?

Is there some established internal routine for implementing court personnel policy?

Is there a personnel record system for maintaining basic employee records (e.g., applications, testing or

interview results, evaluations, leave records, etc.) and management data (e.g., affirmative action and employee profile data, vacancy and turnover data, etc.)?

2. **Staffing.** Is there a coherent trial court job structure based on a job classification plan linked to compensation scales?<sup>15</sup>

Do the compensation scales achieve parity with those in the local labor market?

Is the personnel system linked to budgetary formulation, particularly in documenting need for new positions?

Has the personnel system been successful in keeping the staff at authorized levels and in avoiding delay in filling vacancies?

Are employment decisions based primarily on qualifications prescribed in job descriptions and validated by selection procedures?

Has the personnel system provided the court with personnel who have the qualifications and skills needed to operate the court?

Does the personnel system provide an open opportunity for employment through outreach and recruitment programs or through general advertising of jobs?

Do job descriptions and selection procedures apply standards and qualifications which are pertinent to each specific job and avoid overstated or unreasonably restrictive requirements?

3. **Employee performance.** Are employees made aware of what is expected from them in their specific job and in terms of overall personnel procedures?

Has employee performance been adequate as measured by court needs, by user perceptions of employee responsiveness,<sup>16</sup> by supervisor assessments of work force performance and by productivity?<sup>17</sup>

Is there a regularized system of employee evaluation which is used in connection with merit increases, promotions or other personnel decisions?

<sup>15</sup> Such a job classification plan may exist as a subset of an executive branch system.

<sup>16</sup> Commonly measured by complaints, or by jury, witness or litigant questionnaires.

<sup>17</sup> Productivity, or lack of it, may be viewed as a line officer responsibility (i.e., the responsibility of an officer in charge of an operating division), but it is also an indicator of weakness or strength in employee selection and training.

Is there a training program for each employee category?

Is the training directly related to improving performance?

4. **Employee relations.** Is there a significant level of employee discontent as measured by complaints, grievances, turnover or other factors?

Does the system provide grievance procedures or other mechanisms for dealing with employee problems?

Does the system provide a process of appeal or review from adverse personnel actions?

Does the system provide for dealing with employee organizations or their representatives?

Does the system provide employee incentives in the following areas: adequacy of compensation scales and in-grade increases, upward mobility and promotional opportunities and rewards for superior performance?

The above questions constitute a very basic checklist. Supplemented by questions reflecting the specific management objectives of a trial court, they could be used to identify areas for improvement.

## **B. Improving the Organizational Structure of a Personnel Management System**

1. **Authority structure and policy.** The starting point for court personnel management is a statement of policy by the court which is usually, but not necessarily, in the form of rules. The policy may be very comprehensive, setting forth a great deal of procedural detail, or it may be very broad. It may even incorporate by reference many aspects of an executive branch personnel system.

The considerations normally addressed in such a policy statement are indicated below:

### *a. Authority structure.*

*Description of policy area.* Typically, the full court sets policy and enacts rules, but policy authority may be lodged in a judicial committee. Some official, normally a court administrator, must be authorized to implement personnel policy, perhaps to develop a classification plan and compensation plan, as well as detailed procedures. Finally, it must be made clear who makes employment choices; who has general administrative authority over various categories of employees; and who has supervisory authority. In short, there should be a chain of command and some clear limitation on the power of individual judges.

### *Specific policy considerations:*

- designation of policy-making body;
- delegation of system administration duty;
- defining authority for appointment, administration, supervision of personnel; and
- defining relationship with executive branch, if any.

### *b. Defining employment and tenure.*

*Description of policy area.* A key decision is whether there will be some type of career service, giving full-time employees a form of job tenure challengeable only for cause or for reduction in the work force. Even if a career service concept is adopted, it can be greatly limited if many employees are exempted. Typically, the coverage of a personnel system does not extend to elected or appointed officials or the personal employees of judges. The latter category can be confined to secretaries or expanded to court reporters, bailiffs and courtroom clerks.

A probationary category is very important since system rights should not fully attach until permanent status has been achieved. It is similarly important that the status and rights of other nonpermanent employees be spelled out.

A provisional category permits some flexibility in filling positions where final processing steps have not been completed.

### *Specific policy considerations:*

- permanent employees and their status;
- confidential and exempt employees;
- probationary employees;
- part-time employees;
- temporary employees; and
- provisional employees.

### *c. Job classification.*

*Description of policy area.* The essential consideration is to require an orderly system of job classification and to assign responsibility for devising a classification system. It is important in this regard to define terms so that it is clear what is meant by a job classification and how this classification fits into the scheme of personnel administration. Reclassification is sometimes a controversial matter and should be dealt with definitively.

The job classification scheme is the cornerstone of a personnel management system.

### *Specific policy considerations:*

- mandate to construct a job classification scheme;
- defining relationship of job classes to budget, employee titles and position descriptions;
- reclassification; and
- defining relationship, if any, to the executive branch system.

### *d. Compensation/expense vouchers.*

*Description of policy area.* Compensation scales are complex. A policy statement can only deal with the responsibility for devising a compensation plan and the particular pay grid to be used in the compensation plan (typically the executive branch pay grid).

Employee benefits, for obvious reasons, must be clearly spelled out, as well as the ground rules covering such potential trouble spots as overtime, merit increases

and entry at a level above the first step in a pay grade.

Reimbursement of travel expenses is another frequently troublesome item which requires ground rules.

Computation of pay increases in relation to anniversary and promotion dates can be an issue and a policy should be established in this regard. Some limits on maximum pay increase in one year are another consideration which arises when reclassification occurs.

*Specific policy considerations:*

- mandate to develop a compensation plan;
- relationship to executive branch pay system;
- policy on entry above first step in pay grade and on in-grade increases;
- policy on overtime pay; wage and hour payment for some work;
- compensatory pay;
- severance pay;
- computation of pay;
- benefits:
  - cost-of-living
  - retirement
  - health/disability
  - life insurance
- application of benefits to employees without permanent status;
- dollar limits on annual pay increases;
- special merit pay raises, if any; and
- rules governing travel.

*e. Hours/leave.*

*Description of policy area.* Many personnel problems relate to hours of work. The length of the work week must be defined as a starting point. The duties of employees and supervisors to see that the hours are observed is one side of the coin. The other side is the question of requesting employee services beyond normal working hours, a frequent occurrence when a trial is in progress.

Leave and holiday policy very often reflect the prevailing policy in the governmental system of which the trial court is a part. It may be adequate to simply incorporate these policies by reference, noting the variations from executive branch policy.

*Specific policy considerations:*

- normal working hours;
- special shifts;
- authority to require additional work;
- defining types of leave:
  - without pay
  - sickness
  - administrative
  - educational
  - military

pregnancy

terminal

- holidays/vacation;
- leave accounting:
  - entitlement
  - accruals; and
- permission for leave or vacation.

*f. Selection/promotion.*

*Description of policy area.* The policy in this area largely determines whether a system is a "merit" system with an open employment policy or an "insider" system where jobs are filled by individual administrators, or judges based solely on personal criteria. This area is particularly crucial for affirmative action and equal opportunity programs.

Where a union is involved, a special set of considerations apply. Normally, union status does not attach until after selection, but promotional policy will inevitably be determined by negotiation. Lateral entry is a serious problem for most unions.

*Specific policy considerations:*

- policy on openness of hiring, recruitment;
- policy on hiring of minorities and women;
- policy on lateral entry;
- policy on residential requirements;
- qualifications as factor in selection;
- application of these qualifications to personal employees of judges;
- policy on testing and interviewing;
- policy on listing of qualified employees;
- determining power of selection;
- trial period or probation; and
- policy on filling vacancies, promotional opportunities.

*g. Conditions of employment.*

*Description of policy area.* Conditions of employment normally take the form of restrictions which employees accept as a condition of employment. Such conditions, however, may also be constraints on employers. Thus, for example, the authority of a court administrator to transfer an employee may be limited by a collective bargaining contract. Moreover, employees may demand a minimum of space in which to work or some guarantee of a suitable physical environment. The key consideration now is that conditions may be more negotiable and more mutual than they have been in the past.

An increasingly controversial point is the control by the court of release of information by court employees. The inclusion of such restraints in rules of court sometimes raises more issues than it solves.

*Specific policy considerations:*

- limitation on holding elective office or engaging in partisan political activity;

- prohibition on entering into activities which involve a conflict of interest with duties in court;
- limitations on outside work;
- limitation on law practice;
- dress code;
- acceptance of transfers to new work location;
- limitations on hiring members of the same family;
- guarantee of acceptable physical environment for employees; and
- limitations on release of information about the court.

#### *h. Employee evaluation.*

*Description of policy area.* Policy in this area is important for several reasons:

- pay increases or promotions based on "merit" demand some factual basis; and
- adverse actions or reprimands likewise require a factual basis.

Adverse employee actions are often based on selective documentation (i.e., keeping a dossier on troublemakers). This is a legally dubious policy.

#### *Specific policy considerations:*

- requirement of periodic evaluation by supervisors;
- right of employees to have access to evaluations; and
- use of evaluations in personnel decisions.

#### *i. Separation and layoffs.*

*Description of policy area.* There is a very definite routine required for separation, since employees may have vested rights. They may also hold court property or have uncompleted obligations. Ground rules are necessary, particularly where separation is mandatory (i.e., compulsory retirement).

Layoffs, while not common, are traumatic and require a very definite statement of the order of layoffs and also rights of reemployment. Often, laid-off employees are given a preference when positions open up.

#### *Specific policy considerations:*

- resignation procedures and severance rights; and
- layoff procedures.

#### *j. Discipline and adverse actions.*

*Description of policy area.* Employee discipline requires consideration of due process. One aspect of due process is substantive (i.e., the spelling out of infractions which warrant disciplinary action and the sanctions related to these infractions).

#### *Specific policy considerations:*

- grounds for reprimands;
- procedure for reprimands;
- defining other adverse actions:
  - dismissal
  - demotion
  - suspension without pay
  - reduction in salary grade or step;

- grounds for taking adverse action; and
- procedures governing the taking of adverse actions.

#### *k. Grievance procedures.*

*Description of policy area.* Grievance procedures are most successful when they are seldom used and seldom result in formal hearings. Grievance procedures provide an outlet for tensions and a means to settle issues informally. However, if a grievance cannot be resolved informally, the grievance procedure must meet the basic requirements of procedural due process (this does not require a super-legalistic approach).

#### *Specific policy considerations:*

- policy statement on employee rights to express grievance:

who may seek relief  
discrimination problems  
representation  
access to files

- informal procedures for grievance resolution; and
- formal procedures for grievance resolution and appeal from adverse action.

**2. Administrative responsibilities.** A personnel policy must be implemented by a person charged with administrative responsibility. In a large trial court this person is usually the court administrator, who may in turn delegate his responsibility to a personnel officer. The salient point is that someone must be responsible for managing a personnel system, even if the scope of this responsibility does not warrant the full time of one person.

The status of the person having the administrative responsibility is significant. It may range all the way from an administrative judge or court administrator to the secretary for the presiding judge. The status of the responsible person is a pretty certain indicator of how seriously a court regards its commitment to personnel management.

In addition to administrative leadership, a personnel system will require the authorized individual to perform some or all of the following administrative functions:

- to provide advertising, outreach, application processing, initial screening, testing, scheduling of interviews and maintenance of qualified applicant listings;
- to handle induction, processing and orientation of new employees or processing of separated employees;
- to maintain employee records and ensure that required personnel actions are taken in a timely fashion;
- to maintain the job and classification structure, write

job descriptions, review requests for reclassifications and classify new positions;

- to handle routine in connection with employee benefits (e.g., health benefits);
- to handle routine associated with promotions and status changes;
- to disseminate information on the system to supervisors, employees and applicants; and
- to file required reports (e.g., affirmative action reports).

In a small system, these functions may not require even one person and can often be delegated to the executive branch. If so delegated, they must still be monitored by a court official.

A significant aspect of administrative responsibility is maintenance of employee personnel records, which generally include some or all of the following:

- application/resume;
- test and interview results;
- letter of appointment;
- evaluation reports;
- reprimands or commendations;
- leave records; and
- forms reflecting changes in status (e.g., pay increases, promotions).

Records may not be located in one place in the court, or even located in the court at all. Moreover, even where these data are located in a central file, it may not be used to produce reports of general management utility (e.g., a profile of the employee force). Such records are used almost exclusively for routine administrative purposes.

### 3. Job structure and compensation.

*a. Importance of a job structure.* A trial court depends for its operation on the performance of a variety of functions. Some of these functions are assigned by statute to certain court officers; some of the functions may be performed by court-related agencies; and others may be performed by court employees answerable only to individual judges. Due to such variations, trial courts, more so than most government organizations, have had difficulty developing a job structure encompassing all jobs within the court.<sup>18</sup>

A job structure provides a framework for personnel management and has three basic elements:

- job classifications which organize work functions around well-defined categories;
- a compensation plan which links each job classification to a pay grade; and

- job descriptions detailing work requirements for the various positions in each job classification.

At the heart of the job structure is the systematic classification of major job categories, commonly called a classification plan. Such a plan normally reflects the major functional areas within the court, breaking each into a series of job classifications identified by a title and a description, setting forth the skills, aptitudes and responsibilities required for positions within each classification.

Thus, in the clerical area a job classification plan would include:

- identification of the general functional area (e.g., Clerical);
- job classifications within the area (e.g., Clerk I, II, III);<sup>19</sup> and
- job classification descriptions.

The job classification descriptions have to be sufficiently specific to permit a personnel manager to relate individual positions to a job classification and relate job classifications to a pay scale.

For example, a trial court may have a number of entry level clerical positions, each with different job requirements and job descriptions. It might be determined that a clerk-cashier and a civil intake clerk must have roughly equivalent responsibilities and skills and could thus both be classified as a Clerk I. This automatically fixes their compensation if each job classification is linked to a pay grade on the salary grid normally maintained by governments with a substantial number of employees.

Very commonly, jobs in a court carry two titles, the general classification title (e.g., Clerk I) and a working title (e.g., Intake Clerk). The former title is used for all personnel and budgetary transactions, but may encompass a number of jobs that are functionally different. Thus, positions may require a working title for purposes of operational management. These multiple titles often cause confusion.

The allocation of a particular job or position to a job classification involves both money and status. The decision may involve some interaction with employees or their bargaining representatives.

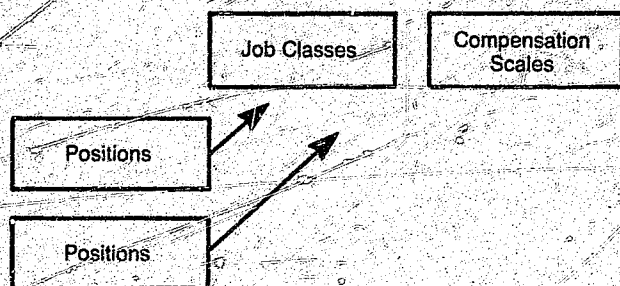
It almost inevitably involves some interaction with other branches of government, since money is involved.

One of the principal purposes of a job structure is to rationalize decisions of job status and pay. The decisions should be related to a common framework:

<sup>18</sup> It is not absolutely necessary that a court have its own separate personnel system to develop a job structure. Often this can be done within an executive branch system.

<sup>19</sup> Where classes have a vertical relationship and are arranged in series, channels of advancement are made clearer.

**FIGURE 2**  
*Job Classification*



Some courts ignore formal job classification and have a series of discrete job descriptions. Often, job descriptions are drawn up over a period of time, as needs arise, until the job structure becomes an incoherent listing of jobs without a sound basis for their rank. This inevitably results in a management situation where each job decision is made in isolation with no general frame of reference. This invites chaos and charges of arbitrariness.

A classification plan benefits management substantially by:

- rationalizing compensation by relating pay to some orderly hierarchy of jobs;
- establishing vertical job relationships (or series) so that there are discernible advancement steps;
- providing a means to compare pay and qualifications for jobs of a similar nature within and external to the court; and
- providing a means to more rationally justify decisions on selection, transfer and promotion—a key factor in affirmative action and equal opportunity programs.

There are some arguments advanced against building a formal job structure around a job classification plan because:

- many courts feel that they do not have a sufficient number of personnel to warrant a formal job structure;
- there is a fear that such a structure will unduly interfere with judicial prerogatives in regard to personnel;
- there is reluctance to stir up employee concerns associated with a ranking of job responsibilities unless the benefits are highly visible and substantial;
- there is a reluctance to create a formal job structure unless the resources exist to periodically review job classifications and pay scales, and to modify them as required;<sup>20</sup> and

<sup>20</sup> Court rules for the Colorado judicial system actually specify the cycle of review.

- there is a general fear, not entirely unwarranted, that the net effect of rationalizing job categories is often an increase in personnel costs.

On balance, most trial courts benefit from having a coherent job structure, provided that some resources are devoted to keeping it current and vital. The days of arbitrary judicial control of court employment are numbered. Too many forces are converging to bring about a more structured personnel approach: equal opportunity; unionization; court unification; and a general trend toward more professionalized court management. For many trial courts, the question is not whether to have a job structure, but how to institute or improve such a structure.

b. *General policy considerations affecting job structure.* The development or major revision of a job structure is quite complex and usually requires the aid of specialists. The ongoing review and revision of a job structure can often be handled internally. In either event, the changes must be guided by some policy on the nature and purpose of the system. Some of the general policy issues are noted below:

(1) *Openness of the system.* It is quite possible, though usually not advisable, for a court to insulate its personnel system from related personnel systems, or even from the general community. Such a policy may be chosen as an expression of judicial branch independence and may be reflected in the way jobs are described, restrictions on lateral entry, a high degree of internal compartmentalization and a very closed hiring process.

Some jobs are entirely court specific (e.g., court reporters). Some jobs require specific knowledge of courts, but involve general aptitudes (e.g., clerical jobs). Some jobs involve general skills (e.g., accounting). A key question is whether courts attempt to isolate their personnel by use of unnecessarily court-specific job classes and descriptions or whether they encourage broad lateral mobility with related personnel systems. Some courts choose to have very court-specific job classes to prevent pay comparisons with related employee groups in executive branch agencies.

Closely related to the above issue is whether job classes are few in number and broad in scope, or highly specific and numerous. Generally, there is a tendency to the latter extreme with the result that virtually any specific job is treated as a separate class, and the basic benefits of a job structure are lost in a maze of job specifications.

Another related issue is whether a court personnel system makes lateral transfer into the system very hard or very easy by permitting entry at upper levels or forcing all entry at one or two lower levels. The openness of a

system depends on how much court-specific knowledge is required of upper-level employees.

Finally, there is the question of whether to define some functions on a court-wide basis or within organizational units. There is a tendency to make overly detailed class descriptions to reflect the particular division in which an employee is located (e.g., criminal court clerk). Likewise, a personnel system can treat all heads of court divisions equally or make distinctions based upon size or other factors. In short, there is a problem in transcending organizational structure on one extreme or being strongly influenced by it.

(2) *Scope of the system.* A key problem in any judicial branch personnel system is its scope. Some positions may be excluded from the system because an executive branch agency controls them. Other positions may be excluded because of their political, appointive or confidential nature.

The issue of confidential employees is a crucial one. If too many employees are exempted from central management control, a personnel system is undermined. Each judge becomes a personnel manager with his or her own policy on handling employees. This often causes wide disparities in the way employees are treated and may create great internal friction. For this reason the policy decisions on the scope of a personnel system are very important.

(3) *System maintenance.* Ideally, a personnel system is a set of closely integrated procedures that must be kept synchronized by a continuous review of job classifications, job descriptions and pay scales. Thus, for example, job descriptions would lay out work specifications and performance criteria that could be used as the basis for evaluation and subsequent development of training programs. Similarly, there would be a constant interplay between changing work demands and the overall system of classification. In actual practice, such administrative finesse is often lacking, either because the resources do not exist or because a trial court's personnel management needs do not extend much beyond a simple, but coherent, job structure. It is a responsibility of the trial court judiciary and their top administrative officers to determine the level of system complexity. This decision turns on the level of resources that can be allocated to personnel administration.

(4) *Competitiveness and attractiveness of the system.* Personnel specialists can assist a court in assessing the court's personnel system in relation to competitive employment systems in the area. The extent to which a court wishes to compete is a policy decision involving the judicial viewpoint on the skills required for court employment. For example, some courts do not regard clerical positions in career terms and assume a

high turnover. Other courts attempt to develop some upward mobility.

A job structure can be designed to provide some promotion incentives and to set pay scales which are designed to keep employees in court service or it can accept, as a given, that some court jobs "dead-end" early and that only a few high-skilled positions must be classified and compensated in a competitive context.

c. *Compensation scales.* The technical aspects of fixing salary scales can be quite complex.<sup>21</sup> They involve a number of factors, such as:

- ranking or evaluating jobs to fit their monetary value;
- determining the number of pay grades between jobs in the same vertical series;
- allowing for wages negotiated with employee organizations;
- allowing for wage minimums set by the federal Fair Labor Standards Act for non-exempt positions;
- making adjustments to reflect a decision to encourage turnover or to meet a strong competitive demand for a particular skill; and
- making allowances for local political factors which affect the status assigned to jobs.

In essence, however, the fixing of rational and just compensation scales reduces itself to some type of job rating system.<sup>22</sup> This can be highly quantitative and be based upon a detailed numerical assessment of the factors associated with each type of job, or it can be more qualitative and be based upon informed assessment of how a job relates to some predetermined ranking structure.

The techniques of job evaluation vary—the purposes do not. A court must present its pay scales in a way that is understandable, persuasive and fair. Sooner or later, this involves some analysis of the factors which determine the importance of a job.

One of the better methods of job evaluation is that developed for Michigan's district courts.<sup>23</sup> This methodology, which is based on a point system of job evaluation, is particularly valuable because of the analytical factors which it uses.

Two sets of factors were developed; one set of ten to

<sup>21</sup> See *Courts and Personnel Systems*, *supra*, pp. 27-54.

<sup>22</sup> Rating jobs for compensation purposes is much easier if there is an existing pay grid used by the executive branch. If, however, there is no existing pay grid, this must be constructed by the trial court. Normally, these grids have fifteen to twenty pay grades with five or six steps in each pay grade. However, this is an area where specialized expertise is required. For guidance, see *infra*, pp. 15-16.

<sup>23</sup> *Michigan District Court Employees Classification and Compensation Project*, Lansing, Michigan: State Court Administrative Office, February, 1977.

evaluate nonmanagement jobs <sup>24</sup> and one set of eight for supervisory or management jobs.<sup>25</sup> Each job in the system was defined, as either a management or nonmanagement job, and then evaluated on the basis of the specified factors.

This evaluation was entirely numerical. Each factor was broken into numerical levels and assigned a point value on a scale of 0-100. For example, the factor of work experience was broken into ten levels of work experience based upon months and years of experience (e.g., service of one month or less would be assigned a

point value of ten points, service of one to three months rated twenty-five points, etc.). By performing similar numerical assessments in the other areas of job evaluation, a total point value is accumulated for each job. This total fixes the monetary value of the job in relation to other jobs.

The Michigan job evaluation system was designed to help trial courts in dealing with county officials and as a prelude to anticipated state financing. It produced the following ranking of nonmanagement jobs in relation to local pay scales.

### PROPOSED GRADING OF ALL NONMANAGEMENT JOBS

Total Job Evaluation Points Range	Grade	Job Title	Total Job Evaluation Points
0-165	1	General Clerk	135
166-205	2	Vacant	—
206-245	3	Deputy Court Clerk I	240
246-285	4	Vacant	—
286-325	5	Secretary I	300
		Probation Aide	310
		Bailiff	310
		Account Clerk	325
		Deputy Court Clerk II	325
326-365	6	Court Recorder	335
		Magistrate I	340
		Assignment Clerk I	340
		Secretary II	350
		Court Officer	355
		Judicial Secretary	360
366-405	7	Ct. Recorder/Judicial Secretary	380
		Account Clerk II	390
		Deputy Court Clerk III	400
		Assignment Clerk II	400
406-445	8	Magistrate II	425
		Law Clerk	430
446-485	9	Court Clerk IV	450
		Assignment Clerk III	480
486-525	10	Magistrate III	500
		Probation Officer I	510
526-565	11	Vacant	—

<sup>24</sup> Preparation and training; work experience required; independent judgment and probable consequence of errors; contacts with others; responsibility for the welfare of others; responsibility for the work of others; analytical ability; mental and visual strain; adverse working conditions; and physical effort.

<sup>25</sup> Preparation and training; work experience required; planning and analysis; contacts with others; decision-making; characteristics of subordinate population; responsibility for policy development; and responsibility for the welfare of others.

# PROPOSED GRADING OF ALL NONMANAGEMENT JOBS—Cont.

Total Job Evaluation Points Range	Grade	Job Title	Total Job Evaluation Points
566-605	12	Probation Officer II	580
606-645	13	Probation Officer III	630

The Michigan system helps provide a rational framework for fixing compensation where none previously existed. Where such a framework exists, the problem of evaluating a job is far easier. If a new position is created, it can usually be equated with other positions that have been previously classified and ranked. Usually, some jobs serve as benchmark jobs for this purpose.

As in many other aspects of personnel administration, the procedures may overwhelm or occasionally obfuscate the managerial purposes. The ultimate purposes of a compensation plan are to establish:

- relationship of work done to pay received;
- internal coherence of the compensation system;
- consistency with related pay scales in the public services;
- competitiveness in the job market; and
- some incentives.

d. *Job-specific considerations in job classification and compensation.* Many management decisions on a job structure can only be made in the context of specific jobs. To facilitate such decision-making, court personnel can be subdivided into ten functional areas:

Functional Category	Characteristics
Administrative	Pertains to need for administrative personnel to direct each organizational component within a trial court, as well as to provide overall direction.
Clerical	Pertains to those functions of record creation, maintenance and control that are of a non-technical or non-administrative variety. May include courtroom clerking, cash handling, jury handling and similar operations.
Secretarial/Typing	Pertains to all levels of secretarial service, from typists to legal stenographers and executive secretaries.
Counseling/Social Services	Pertains to interviewing, counseling and supervisory services generally related to probation, diversion, pretrial release and informal dispute resolution.
Technical	Pertains to those skills which are technological, in particular those related to information technology.

## Functional Category

## Characteristics

Administrative Specialties

Pertains to specialized functions of public administration, such as budgeting, personnel administration, statistics and accounting.

Court Reporting

Pertains to the function of recording testimony and transcribing it. May include secretarial services to judges.

Custodial

Pertains to maintenance functions in a court facility or a juvenile detention facility under court control.

Security

Pertains to all matters of court security: prisoner transportation, courtroom security, judge security, building security and jury security.

Legal/Para-judicial

Encompasses all functions of a para-judicial nature or legal research nature.

The above categories are not all-inclusive. There are a number of miscellaneous job functions in courts, such as law library functions, process-serving, translation services and even such highly professionalized services as psychology and psychiatry. These types of positions are not, however, found in most courts.

(1) *Top administrative personnel.* The great majority of trial courts in the United States have less than ten employees. These courts require good administration, but do not need a management hierarchy of the type found in a large court. In these courts, judges and a court clerk often handle administrative functions themselves.

There is a second category of trial courts with 10-50 employees where significant management authority is probably exercised by several people other than members of the judiciary. The administrative hierarchy of such a court is simple and usually easy to classify.

A trial court with a sizeable number of employees and a multi-divisional structure has a more complex problem of defining administrative jobs.

Administrators bear many different job titles, but are usually distinguished by their authority over a major organizational component of a court or over a number of such components. Deputies to an administrator may,

depending on their authority, also be considered as part of the executive hierarchy of a court.

Several endemic trial court weaknesses affect definition of administrative jobs, such as:

- organizational structures which fail to distinguish clearly between major and minor components of the court;
- lack of clarity in lines of administrative authority;
- lack of delegation by the judiciary;
- presence of elected officials or patronage officials in the executive hierarchy; and
- degree of subject matter expertise required of the administrator.

Courts have not been noted for neat organizational structures with an orderly hierarchy of units, sections and divisions. Unlike many executive branch agencies, where the nature of an organizational component often determines the job level of its administrator, courts frequently have an undefined organizational hierarchy. It is not at all unusual for every organizational component in a trial court to report directly to a presiding judge, regardless of the relative size or importance of the component.

Lack of organizational hierarchy does not, of course, preclude an assessment of the administrative responsibility associated with managing each court component and separately rating them. This, in fact, must be done. However, this imposes on the personnel system a duty for making distinctions, which should be reflected in the organizational structure, and makes it far more difficult to determine levels of administrative responsibility.

An example of how organizational structure affects definition of administrative roles is provided by the Clerk's Office in Orange County, Florida, where three definable levels of administrative authority are clear in the organizational structure, as illustrated in Figure 3.

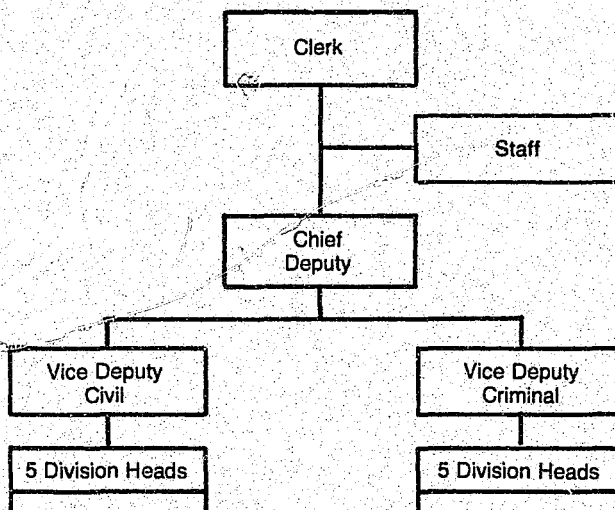
Most large courts have at least two and often three levels of executives. In Figure 3 the levels are clear. In many courts they must be painfully worked out. The problem is particularly difficult where a large new program, for example, a bail program, has been initiated but is not yet fully integrated into the court structure.<sup>26</sup>

In attempting to define levels of administrative authority for purposes of classification, several criteria are important:

- the number of employees managed;
- the reporting channels; and
- supervision over other executives.

A primary administrator is easily distinguishable by

FIGURE 3  
*Organization of Clerk's Office in Orange County, Florida*



the fact that he exercises control over all court employees or a substantial percentage of them; that he reports directly to the presiding judge of the court; and that other administrators report to him. Some, but by no means all court administrators fall in this category. Some courts without a central executive may have four or five primary executives each reporting directly to the court and managing some other executives.

When a court employee staff reaches a level of approximately 50-75 employees, there will start to emerge a second-tier of administration, serving as deputies to a primary administrator or as heads of major court components or programs. These administrators report to a primary administrator or an administrative judge for their division of court. Also in this secondary category are heads of relatively small organizational units who may, for some reason, report directly to the presiding judge or full court, but do not have significant managerial responsibility.

In a large court a third-level of executive will emerge. These officials head subdivisions of a major court component or program and report to a second-level administrator. This occurs where the number of employees in various court divisions requires that there be managers, not just supervisors.

Also of significance in determining executive job classifications are lines of authority within a court, since job status is affected by the channels of reporting. Sometimes the judiciary blurs the lines of authority by the way it organizes itself administratively. If there is a collegial administration with a number of judicial committees and administrative judges in each division of court, it is far more difficult to determine reporting channels. It may

<sup>26</sup> How to handle program directors for federally-funded programs is particularly difficult since they eventually may have to fit into the local executive cadre. Sometimes this is not considered when the program is initiated.

occur, for example, that the head of one division reports to a judicial committee, while the head of another division reports directly to a presiding judge, even though both divisions would appear to be of equal organizational status.

A further job classification factor is lack of delegation by the judiciary. Some trial courts retain all major administrative authority, having each segment of the court managed at a detailed level by a judge or a group of judges. In such a court the judges are the primary administrators. When this situation exists, it should be frankly reflected in the qualifications and pay of nonjudicial administrators.

Another complicating factor is the elected clerk who is a key administrative official, but somewhat independent of judicial control of his office. Top administrative jobs in a clerk's office may be patronage jobs and may have to be distinguished from other administrative jobs in terms of qualifications, even though the responsibilities may be similar.

Finally, there is the problem of determining whether administrative positions must be defined in terms of subject matter expertise. Must the director of a computer center be a technician? Must the head of social services have education and experience in the social science area? Public administrators argue that a manager is a manager and should be able to run anything. If this position were adopted, all top administrative positions in a court would be generically classified (e.g., Court Executive I, Court Executive II, Court Executive III).

In actuality, most courts still place heavy emphasis on subject matter expertise. This is reflected in job titles (e.g., Director of Social Services) and job qualifications.

Lateral mobility of executives in courts will probably remain somewhat limited until there is more acceptance of management skills as a preeminent consideration.

Since many administrative positions in courts are defined in terms of subject matter factors, it is easy to ignore the need to cross-compare and rank all administrative jobs in a trial court, yet the benefits of such careful classification and ranking are substantial. Such benefits are:

- clarification of the relative status of executive positions, which, in the long run, reduces misunderstandings over promotions and compensation;
- enhancement of lateral mobility and upward mobility for court executives within a court and in government employment generally;
- paving the way for a more generic definition of management positions; and
- provision of a rational basis for compensation.

Defining compensation for administrative positions is a key reason for a coherent job structure. Administrators

are at the pinnacle of the trial court salary structure. Thus, their salaries are more subject to scrutiny and to invidious comparisons. Criticism is reduced by placing such salaries in a defensible context.

Certain considerations are important in fixing these salaries, such as:

- the linkage to judicial salary levels if the administrator has been given significant responsibility;<sup>27</sup>
- the inevitable comparison with salaries of top administrators in executive branch agencies (e.g., city and county managers and their top deputies);
- comparisons between heads of various court divisions are also inevitable (where an elected clerk has a statutory salary, this can be an inhibiting factor on the salary of other top administrators); and
- comparison with salaries paid to court administrators in other states, since there is a national market for such skills.

The increasing emphasis on public management qualifications is affecting not only salary scales, but also the requirements for selection. While many trial courts still do a lot of inside hiring with strong emphasis on experience rather than formal management training, job descriptions for administrators are increasingly being defined in terms of management education, even specifying master's degrees in public or private management.

(2) *Administrative specialties.* The increasing sophistication of trial court administration has led to an emergence of various staff roles of a specialized nature. The day of the all-purpose clerical staff has pretty well passed, at least in larger trial courts. In its place, there is an emphasis on recruiting support personnel with expertise in specific functions essential to public management: accounting, budgeting, purchasing, personnel administration, records and forms control, facility management, planning and legal staff skills.

In a large court, a number of related administrative responsibilities may be integrated into a management division headed by a high-ranking executive (e.g., a director of finance who controls accounting, budgeting, purchasing, investments and auditing). At this point, most trial courts are simply trying to acquire specific administrative skills and have not generally created large management divisions.

Some of the general characteristics of administrative specialties are:

<sup>27</sup> This linkage is important. It fixes the status of the administrator as closely related to the judiciary and means that the administrator's salary will tend to rise in proportion to judicial salaries. Ideally, the linkage could take the form of fixing an administrator's salary at a fixed percentage of judicial salaries or at a set dollar amount below judicial salaries.

- they are common to any public agency so that personnel classifications should be generic and closely related to those in the public service generally;
- in courts of modest size two or more of these specialties can be assigned to one person; similarly, one person may exercise both line functions and administrative specialties.
- administrative specialty functions will, in a large court, normally be staff roles<sup>28</sup> rather than line roles, with the staff being assigned to a primary-level administrator; in a large and decentralized court some second-level administrators may also have specialized staff expertise (e.g., a divisional budget officer); and
- many trial courts utilize the staff expertise of executive branch agencies and do not try to create specialized functions within the court personnel system.

Some of the more occupation-specific considerations are noted below:

**Accountant.** This is a function where executive branch services are often used by courts, but courts with a significant cash flow are well advised to have their own accountants and to maintain formal books of account covering all revenues and pass-through funds handled by the court. Where a court does these functions with its own staff, internal audit is also a possibility. Job specifications can be the same as those in the public services. The basic requirement is education and experience in government accounting. This need not involve a college degree requirement, much less a CPA.

**Budgeting.** A trial court cannot rely on the executive branch in this area since there is a potentially adversary relationship. However, budgeting is seen by many courts as a more or less routine function confined to a few months of the fiscal year. Even some large trial courts do not have a full-time budget officer. In a court with a program budgeting approach, a budgetary monitoring system and a concept of the budget as an internal control device, there should be a post of budget officer (perhaps even supported by a budget analyst in a large court with many divisions). The description of this job class can be derived from executive branch agencies of comparable size.

**Purchasing.** This is a relatively esoteric function for most courts. It is usually easier to use executive branch agencies (or in a unified system, a state court administrator's office). If the job is created in a court, it involves ability to maintain an inventory, handle bid specification

and negotiations, knowledge of procurement regulations and some knowledge of contracting.

**Records and form control.** Courts have a particular need for records management (perhaps in a large court even specialized forms design).<sup>29</sup> Unfortunately, records management skills and training remain fairly undefined. Such roles as filing, file access, microfilming, updating and record retention are usually defined as clerical functions. There is a need to define management skills in this area. Such positions now exist in a number of state court administrative offices, and these offices are the best source of job descriptions.

**Management analysis.** This job classification is increasingly appearing in court personnel systems. It is differentiated from the system analyst associated with information technology and involves the general management science skills associated with public administration.

**Personnel management.** Many trial courts rely heavily on executive branch agencies (or in a unified system, a state court administrative office) to provide personnel administration. Commonly, trial courts have no one specializing in personnel functions. These functions are often assigned to some staff member or, sometimes, to a line officer with other responsibilities. When a court has its own personnel system, it must, however, develop staff positions to deal with personnel matters. These positions may range from the managerial level (e.g., a Director of Personnel) to the ministerial level (e.g., personnel to handle job descriptions, interviewing and testing, etc.). These positions are well-defined in the general public service.

**Facilities management.** Many courts rely on non-court agencies for facility management or assign this role to a court administrator as a subsidiary function. Facility management rarely is defined as a separate court position at the trial court level.

**Planning.** The position of judicial planner is now becoming common at the state level. The best job descriptions for judicial planners can be found in state-level court administrative offices. Similar positions can be defined at the trial court level in large courts. Some trial courts, which have actively sought federal grants, have created staff planner positions which are primarily grantsmanship roles.

**Law.** Courts, like agencies of the executive branch, often need staff attorneys. These attorney jobs should be tied to the classifications used in the public law offices of the jurisdiction, particularly staff attorney jobs. These

<sup>28</sup> A staff role is normally a supportive or advisory role, not involving a direct management responsibility for operations, which is a line role.

<sup>29</sup> See Ernest H. Short, *Trial Court Management Series, Records Management*. Washington, D.C.: Law Enforcement Assistant Administration, Department of Justice, 1978.

jobs, unlike law clerk jobs, must be geared more to career attorneys and must require experience for purposes of advancement.

**Statistics.** The emphasis on quantitative managerial data for trial court administration may lead to creation of positions for statisticians. Such a definition is probably too narrow for most trial courts. The job can be subsumed under court planning by adding statistical qualifications to the job qualification of judicial planner.

(3) *Clerical functions.* A significant portion of court employees are engaged in clerical functions. These functions have certain characteristics:

- they are often performed under the aegis of a clerk who is fairly autonomous and who may exercise personal political control over all aspects of employment;
- clerical functions do not, on the whole, require too many special aptitudes or skills, but may require knowledge of court operations and procedures;
- the term "clerical functions" encompasses many types of activity: record maintenance and control, calendar management, handling public information requests, courtroom clerking, jury handling, money handling and issuance of process, etc.;
- clerical offices of any size are apt to have supervisory positions which are beneath the administrative level, but are above the working clerical level;
- clerical offices tend to define job titles, and even jobs, in very narrow terms confining the job by court division (Criminal Clerk), by a specific job function (Intake Clerk) or both (Criminal Intake Clerk);
- clerical jobs tend to dead-end very quickly, since the skill requirements and pay scales are low and the promotional ladder limited; often clerks must await death or retirement of senior clerks to obtain fairly minor advancements; and
- clerical jobs, more so than most jobs, lend themselves to general classifications leaving job descriptions to provide detail, as illustrated in Table 4.

Several factors affect the application of such a structure, as indicated below:

- some clerks will never be able to exercise a significant administrative function, but may have very great knowledge of the system; it is important that the system make use of and reward this knowledge (for example, the talents required where a clerk has to operate a complex scheduling system dealing with many people and make some tough decisions);
- the system should encourage, not discourage, lateral mobility between court sections, granting that the civil and criminal sides of court have different rules of procedure;
- typing may be required of all clerks or only of a

**TABLE 4.**  
*Typical Job Series for Clerical Functions*

Job Class	Functions/Responsibilities
Clerk V	Heads of major clerical division
Clerk IV	Heads of section or small organizational unit; Deputies to head of major divisions
Clerk III	Supervisors of clerks, specialized clerical functions which may require experience and knowledge, for example: <ul style="list-style-type: none"> <li>• calendaring and scheduling</li> <li>• courtroom clerking</li> </ul>
Clerk II	Higher-level entry positions <ul style="list-style-type: none"> <li>• data terminal operators</li> <li>• microfilm operators</li> <li>• clerk-bookkeepers</li> <li>• data coordinators</li> </ul>
Clerk I	Lower-level entry <ul style="list-style-type: none"> <li>• routine record functions/filing</li> <li>• cashiers</li> <li>• jury clerks</li> <li>• keypunchers</li> <li>• clerk-typists</li> </ul>

designated group of clerk-typists; secretarial skills may also be required of courtroom clerks who prepare judgments or orders and keep minutes;

- handling of public inquiries, particularly attorney inquiries, is a crucial aspect of the clerk function and requires special knowledge; this is hard to adequately build into job descriptions, but this ability should be demanded and rewarded;
- juror handling often is the key aspect of public relations; yet, jury-related job functions seldom require anything but general aptitudes (e.g., making juror lists, handling calls, processing juror questionnaires, running a jury reception room, handling juror orientation or juror payment, etc.); and
- record maintenance functions involve skills which are very general clerical skills easily transferable to non-court agencies; however, certain complex aspects of record updating and process issuance cannot be handled by lower-level clerks; some courts require that only senior clerks update records (often the courtroom clerk who witnessed the judicial action changing case status).

The key to a good clerical classification is simplicity and avoidance of the temptation to make each individual task into a separate job classification.

(4) *Secretarial and typing functions.* Secretarial and typing functions are not unique to courts, but have

certain special characteristics when they occur in a court environment, as indicated below:

- requirement in some secretarial positions of knowledge of legal procedures and terminology;
- a frequent job classification of "judicial secretary" which may entail legal secretary requirements, but is a position so personal to individual judges that job requirements may not be applied as strictly as those applied to other secretaries;
- some overlap with court reporters who may not prepare transcripts, but may perform some secretarial services for judges whether or not these services appear in a job description; and
- relationship of secretarial hierarchy to court hierarchy so that the secretary to a presiding judge or primary administrator may be an executive secretary with some supervisory power over other secretaries.

Typical of the secretarial hierarchy in a court is:

- executive secretary;
- judicial secretary or legal secretary;
- secretary; and
- typist (frequently subsumed under a clerical title and not separately classified).

The job descriptions and skills tests for secretarial positions in courts do not vary from those for other secretarial positions in government, except for possible requirements of legal knowledge. Problems are less in job descriptions, which are fairly routine, than they are in dealing with some problems unique to courts, such as: the special status of judicial secretaries; the disproportionately large number of high-status officials who want private secretaries; and the problem with respect to clerks and reporters, who may have typing and even secretarial requirements associated with their jobs.

(5) *Counseling/social service functions.* Courts employ large numbers of employees whose functions relate generally to social behavior. Encompassed under this general heading are the functions performed by probation agencies, pretrial release programs, small claims counseling and the broad variety of social or casework services which may be performed by court employees, particularly those employed by juvenile or family courts.

Local perspectives on the need for such social programs vary widely, as do the types of jobs defined. While probation has gained fairly wide acceptance, many other social programs fall into the category of court functions called "non-mandatory," meaning that they are not considered essential to the court function and are more vulnerable to budget cuts and personnel reductions. Moreover, social programs have received heavy federal funding, thus incurring anti-federal hostility and the normal resistance to transferring federally-funded employees to state or local payrolls.

There is still considerable difference of opinion over the education and skills required to perform functions in social programs. Some courts set very high professional requirements for virtually all of these jobs, while other courts have created a number of para-professional positions. The latter course is very important for affirmative action purposes, particularly if a program goal is to make the percentage of minority group members in the employee force match the percentage of minorities in the client group.

It is important that trial courts strike a happy medium between over-professionalization and the "dumping-ground" approach which once characterized the attitude toward probation in many courts. The social area of court employment can easily become mired in patronage considerations, but it also presents great opportunities since the social area is new enough to be free from the legal strictures governing more traditional court jobs and is flexible enough to provide a broad range of employment opportunities. What is required is a realistic assessment of the functions and related skills within social programs.

The key social program remains probation. Employment practices in this area are often indicative of court attitudes toward social programs generally, provided, of course, that probation is not entirely an executive branch function. There are several conflicting trends in probation personnel systems. The dominant trend has been toward higher educational requirements. A master's degree in the behavioral sciences may even be required for entry. An alternative is to permit entry with a bachelor's degree and to require a master's for advancement. The educational requirements may even be quite specific as to the types of behavioral sciences studied.

Running counter to this has been an attempt to define more para-professional roles under pressure from minority groups and political leaders concerned over the costs of a highly educated corps of probation officers. Para-professional positions have been most acceptable in the supervisory area where middle-class professionals have problems, particularly where street supervision is necessary. It is important to seriously consider creation of such para-professional positions, even though this may encounter strong resistance from professionals.<sup>30</sup>

There are other considerations in defining probation jobs, such as:

- probation job structures are not complex, and there are few realistic gradations (most commonly: officer, officer-supervisor, director of some specialized area of probation and head of probation ser-

<sup>30</sup> There has been a proliferation in the number of persons graduating with degrees in the social area, and thus there has been considerable pressure to upgrade many jobs which are only marginally professional.

vices);<sup>31</sup> probation officers reach their career pinnacle quickly, thus encouraging considerable turnover; there have been traditional tendencies to set higher standards and pay for juvenile probation officers than for adult probation officers; the job requirements are justifiably different because of specialized requirements in child counseling, child psychology and similar disciplines for juvenile work, but there is some doubt if there should be such a clear status difference;

- there are jurisdictions where there is great reluctance to assign females to supervise male probationers or *vice versa*; since males constitute a significant part of probation caseloads, job opportunities for females are sharply reduced if there is a policy that supervisors and their probationers should be of the same sex; and
- the pre-sentence investigation role of probation officers is increasingly being distinguished from their supervisory and counseling roles for job purposes; the former requires a different set of skills and is directly supportive of the adjudication function; the latter roles are more external to the court and may even be combined with parole functions in some jurisdictions.

Other social functions of courts are too varied to describe in detail, but they generally involve:

- a screening or interviewing function to develop initial data, to determine program eligibility and to make referrals;
- a counseling function which may range from counseling families to counseling people on how to use forms in a small claims court;
- remedial or rehabilitative functions, which are often provided by non-court agencies but may be provided by a court (e.g., juvenile caseworkers);
- supervision of persons who are in some way subject to court authority (e.g., persons on bail); and
- serving as a broker between persons needing help and various community resource agencies.

The salient fact about most jobs in social programs is that they involve a number of different skill levels. Initial screening does not involve high skills. Some counseling positions require only some special knowledge of a particular court procedure and should not be defined in highly professional terms. Similarly, many jobs requiring client supervision are largely clerical in nature. Rehabilitative positions, on the other hand, are likely to require professional credentials.

Typical of the job titles found in court social programs are the following:

#### Professional Titles

- Probation Officer
- Family Counselor
- Juvenile Caseworker

#### Non-Professional Titles

- Probation Supervisor Aide
- Small Claims Counselor
- Interviewer

The above titles illustrate the division between professional and non-professional jobs in the social area.

(6) *Technical functions.* Most technical positions in courts relate to information technology. The number and type of such positions depends largely on whether the court operates its own computer or uses a computer external to the courts.

In the latter situation, it is conceivable that a court might employ a systems analyst or a programmer, particularly if the court-related computer applications were under major revision. Generally, however, it would be unnecessary for a trial court to employ persons to perform high-level technical functions or even, in most instances, to perform keypunching functions. What might be necessary are:

- data terminal operators to input data to an on-line system;
- persons to code and verify data prior to submission for keypunching in a batch system; and
- data coordinators (i.e., persons charged with the responsibility of seeing that court data is collected and transmitted in proper form).

All of the above positions can be handled within standard clerical classifications, since they are not, strictly speaking, technical.

Where a court operates its own computer system, there must be a definition of technical jobs. The job classifications for computer jobs are fairly standard, although specific job descriptions may vary with the sophistication of the configuration (i.e., teleprocessing requires some unique programming skills). Mini-computer technology, which is more oriented toward the user will probably change the range of required skills, but the basic job categories generally are: machine operator, systems analyst, senior programmer and junior programmer. Key punchers may be included as an additional category.

A fairly large EDP center will require some administrative roles (e.g., Director of Information Services, Data Center Director), but few trial courts have this level of complexity in the computer area. Most, in fact, find it advisable to use executive branch computers.

No great problem exists in defining computer-related jobs. The classifications and job descriptions are abundant. The problem is selecting those appropriate to the needs of the particular system and being aware of competition in the public and private sector for technical personnel.

There are, of course, many jobs of a technical or

<sup>31</sup> This last position may be included in the administrative hierarchy.

quasi-technical nature outside of information technology. Many of these are fairly low-level mechanical skills, such as PBX operator, microfilm specialist and various word processing skills. The latter skills are of increasing importance, but can generally be linked to secretarial job descriptions. PBX skills can be linked to receptionist roles.

(7) *Court reporting.* Court reporting is a unique, court-specific function with a variety of special characteristics, such as:

- court reporters have a very close relationship to judges and the adjudication function and have had great difficulty freeing themselves from judicial domination;
- the court reporters' labor market is multi-state in scope, so that job requirements and pay must take into account the competitive market in a multi-state area, as well as in the federal courts;
- many court reporters prefer free-lance reporting since the compensation is often high; this may cause difficulty in attracting reporters and lead to the use of free-lance reporters in civil trials;
- many court reporters feel threatened by technology and are sensitive to creation of technical or quasi-technical jobs which might limit their role (e.g., videotape specialist, electronic recording specialist); yet, increasingly, trial courts are using electronic recording as a back-up device;
- court reporters are trained in schools which may not be responsive to court needs in the equal opportunity area and which may not be producing enough reporters;
- in some jurisdictions, court reporters still receive fees for transcriptions, a fact which complicates the setting of pay scales; and
- there are few internal gradations within the profession; there is basically one job level, even though there are great variations in skill.

Court reporters have two principal functions: the recording of testimony in court proceedings and, where required, the transcription of testimony. The latter is largely a secretarial function, but it is sometimes difficult to delegate the function due to the symbols used or lack of secretarial familiarity with courtroom practices.

Transcription is a crucial aspect of the court reporter role, since it affects appellate delay, the amount of fees clerks receive and, ultimately, the whole question of who can tell a court reporter that he must produce his work more quickly. Very often, judges are the supervising official and fail to exert much pressure on delinquent reporters. This is a major problem of personnel administration.

Technology may ameliorate the above problem, since

automated transcription is in the offing. This may be acceptable to many reporters, but will be resisted by some who prosper from additional transcription fees (which are often set by rule or statute). From a personnel management standpoint, automated transcription may mean the end of shorthand<sup>32</sup> or voice-mask reporting and a requirement that all reporters be certified on stenographic machines with machine-readable symbols.

A special problem in court reporting is certification. The certification of court reporters may be handled outside a personnel system by a board dominated by court reporters. Such a board may also serve as a personnel clearing-house. Certification, in theory, means that a board determines qualifications<sup>33</sup> and that non-certified reporters are denied a place in the system or are placed on a lower pay level than certified reporters. Yet, even where certification has official legal status, judges in some states can and do hire non-certified reporters with impunity.

In some states, court reporters use the judiciary as their advocate and assume a subservient role in seeking their own political initiatives. In other states, court reporters have assumed a more independent stance and have shown themselves receptive to unionization.

The essential professional problem of court reporters has always been their relationship to the judiciary. They have been often treated as mere appendages of judges and have occasionally filled the role of judicial secretaries or courtroom clerks. These extra roles, which may be defensible in an undermanned rural court, are not defensible in a multi-judge court. Great pressure has been exerted by court reporters and court administrators to create court reporter pools under the direction of a chief reporter and to end the practice of having a one-to-one relationship between a judge and a reporter.<sup>34</sup> The pool concept permits a reporter to have more professional status and more security, since he or she does not serve at the pleasure of a judge.<sup>35</sup> Court administrators favor it because it is more efficient, and it eliminates the great unevenness in supervision and control of court reporters answerable to individual judges.

<sup>32</sup> Shorthand reporting is still used by some reporters. There has traditionally been a competitiveness between shorthand reporters and stenographic machine reporters. Court reporting has a very special internal tradition.

<sup>33</sup> Usually graduation from some school accredited by their national organization and a minimum speed in recording testimony.

<sup>34</sup> Some courts have a modified pool concept; each judge has a reporter, but there is a central pool of back-up reporters. Ironically, pool reporters may have tenure under a merit system, while the other reporters serve at the pleasure of their judge.

<sup>35</sup> Nonetheless, court reporters have often supported continuation of a one-to-one relationship with judges.

Defining reporter job classification and job descriptions is not very hard. The job is quite specific, and there are some standard qualifications and various examples to draw upon. The key problem in classifying court reporters involves fitting this unique and very important group into the overall system. Ideally, court reporters would be subject to qualifications set by the court, but handled as a pool of professionals answerable to their own administrative chief, who, in turn, would be answerable to a court administrator or presiding judge.

(8) *Custodial functions.* Most trial courts occupy city or county facilities, which are maintained by non-court agencies. Thus, courts tend to have relatively few employees whose role relates to building maintenance or operation.

Jobs related to court facilities fall into standard categories common to building maintenance anywhere and include such roles as: building superintendent, custodian or elevator operator. Custodial positions vary in level of skill required and may include electrical, plumbing, carpentry or boiler-room skills. Generally, however, the skill requirements are not high and usually follow the prevailing local practice for defining jobs relating to building maintenance.

Special situations apply in juvenile detention facilities, which are often under court management. These facilities require the standard functions of a building custodian, but also require the custodial roles associated with supervision of juveniles. Thus, it is often necessary to define such roles as detention counselor or juvenile matron.

(9) *Security functions.* There are five basic security functions in courts:

- prisoner transportation and control;
- building security;
- courtroom order;
- juror and witness supervision; and
- security of judges and court personnel.

Prisoner transportation and control is usually handled by a law enforcement agency. In many trial courts, even the other security functions are handled by a sheriff or police department. A common pattern, particularly in rural courts, is to have the sheriff provide bailiffs or attendants to the trial court judiciary for all security purposes.

In larger trial courts, bailiffs or court attendants may be court employees. Bailiffs, like court reporters, have traditionally been viewed as personal attendants of a judge, so that bailiffs often serve at the pleasure of a judge and are chosen without reference to their qualifications for a security role. Some bailiffs are actually law clerks whose main role may be research.

This anachronistic and somewhat casual treatment of

security is now a matter of concern to many judges, since there have been major problems of disorder and some personal attacks on judges and court personnel.

It is clear that security jobs in courts must be reexamined in the light of such occurrences as:

- crowd control problems in major, controversial trials;
- bomb threats and even attacks against court facilities, judges and court personnel;
- special problems associated with mass civil disorders and with control of disorderly behavior by individuals; and
- jury tampering.

It is increasingly clear that security in large courts must be organized under a separate administrative authority with responsibility for an overall security policy and some standby procedures. This requires some thought as to where security problems are likely to arise,<sup>36</sup> rather than just general dissemination of bailiffs among judges. For personnel management purposes, security jobs should be defined in terms of training in crowd control, knowledge of techniques for protecting individual officials, knowledge of the jury process and knowledge of those court operations which have some relationship to security. In a large court, it might be advisable to have an administrative director of security and even some specialized security roles. For most courts, the problem amounts to redefinition and upgrading security jobs. Some consideration should be given to requiring certified law enforcement training for court security officers. This should include some training in applicable law enforcement technology (e.g., use of metal detectors).

(10) *Legal<sup>37</sup> and para-judicial functions.* Among the most difficult jobs to define in any court system are those of a para-judicial nature, since questions arise as to the level of required legal knowledge for para-judicial positions, the appropriate status of para-judicial officers and the level of their pay in relation to judges.

The common para-judicial functions are:

- preliminary criminal processing, (e.g., warrant issuance, bail and arraignment, probable cause hearings, assignment of counsel and receipt of pleas in minor criminal cases);
- adjudication of small claims or very minor criminal cases (e.g., traffic);
- findings of fact in complex cases; and

<sup>36</sup> The tendency is to overstaff criminal courts, but some of the greatest problems occur in landlord-tenant courts, domestic relations courts and even in informal dispute resolution.

<sup>37</sup> Staff attorneys are treated under the section pertaining to Administrative specialties.

- conduct of hearings and recommendations of judgment in specialized matters, (e.g., juvenile cases, divorce cases, incompetency, condemnation).

Many jurisdictions require that para-judicial officers be lawyers, but some do not. The method of selecting and removing para-judicial personnel also varies. The more exalted their judicial functions, the more they are treated like judges. The less important their judicial functions, the more they are treated like regular employees. The nomenclature for para-judicial positions is also varied: commissioner, referee, magistrate or master.

The characteristics of these type of positions are:

- they are not typically included in merit systems, although there are states where magistrates are encompassed by a statewide court personnel system (e.g., North Carolina and Colorado);
- para-judicial jobs are not normally career-ladder jobs and have no internal gradations;
- not infrequently the positions are part-time, (e.g., the weekend bail commissioner); and
- the positions are very often confined to one area of law (e.g., Juvenile Referee, Divorce Commissioner, Bail Commissioner, Civil Magistrate, etc.).

Para-judicial positions may exist in a limbo between judicial positions and other court positions. Yet, the classification of these jobs is important to the overall job structure, since they may be important to the operation of the court. If legal education and a certain level of experience is required, the status and compensation of the job increases, as well as the likelihood that the para-judicial officer will require staff support. Decisions on para-legal jobs are strictly indigenous and are a function of state law, local legal economics and attitudes toward lay judges.

The other remaining legal category in trial courts is the law clerk. These clerks serve at the pleasure of the judiciary, normally on a short-term basis. A law clerk normally requires a law degree, but the job can be defined to permit second-year or third-year law students to fill the role. The pay scale is determined by the local legal market.

(11) *Other functions.* There are some personnel functions which are occasionally encompassed by court personnel systems: law library functions, process serving, language translation and psychiatric services.

Law libraries are important to courts, but may or may not be under direct control of the judiciary. Where the courts have such control, the functional definitions are those of library science with some additional measure of legal bibliographical knowledge. Most law libraries will not have a full range of law library functions and should have very simple functional categories, since acquisitions are often dictated by judicial or bar groups.

Occasionally, some process-servers may be under court auspices rather than under an outside agency like the sheriff's office. If the position is primarily that of messenger, the skill requirements may be low. If, however, a process-server has important collateral functions in dealing with the public (e.g., in matters of eviction), higher-level skills are required.

Most courts obtain professional services as needed and either pay for them on a fee basis or use government agencies (e.g., a forensic unit in a health department). A particular problem has been medical and psychiatric services, so that a few large courts are using staff doctors and psychiatrists. Staff psychologists in courts are more common.

There are other services of a less exalted professional nature which may also be required on a court staff (e.g., linguistic skills for interpreting purposes). Most professional positions are classified elsewhere in the governmental structure, and there are usually good available models.

## C. Staffing Considerations

1. **Authorized positions.** Development of a classification and pay structure is no guarantee that a trial court will be adequately staffed. To ensure such staffing, a trial court must translate its personnel needs into a series of positions or job slots and document the necessity for these positions.

The ultimate decision on positions to be filled usually lies outside the court and is determined as part of the budgetary process. The budget ultimately fixes the number and type of positions which will be funded, and a trial court must then operate with the designated number of authorized positions.<sup>38</sup>

Personnel management tends to revolve around the concept of "authorized positions." First, there is the need to analyze and document court workload, so that some rationale exists for requesting a certain number of positions. Second, there is the need to see that the court maintains the level of staffing finally authorized. Personnel managers are commonly judged by their efficiency in filling job vacancies, as evidenced by the average daily manpower in relation to authorized positions in each job category and the average time for filling jobs in each job category.<sup>39</sup> Third, there is the occasional conflicting need to cover budgetary deficits by deliberate slowness or

<sup>38</sup> For budgetary purposes authorized positions are usually grouped by job classification rather than working job titles, since the former are used for fixing compensation levels.

<sup>39</sup> Merit systems are often criticized for the roadblocks they create to filling job vacancies.

**TABLE 5.**  
*Basic Factors in Estimating and Documenting Personnel Needs*

Factor	Examples	Application
Work Units	<ul style="list-style-type: none"> <li>• Number of reports produced</li> <li>• Number of filings processed</li> </ul>	Many court jobs have easily definable work inputs and outputs (e.g., case intake), so that employee needs can be quantified in terms of employee work productivity (e.g., one pre-sentence investigator is required for every fifty reports to be produced).
Client Group	<ul style="list-style-type: none"> <li>• Number of persons under supervision</li> </ul>	In the social program area, employee needs are defined in terms of the number of persons they must service, process, supervise or counsel. Each type of personal contact varies in time required, but quantification is possible.
Confidential Employees of High-Ranking Officials	<ul style="list-style-type: none"> <li>• Number of high-ranking officials entitled to personal employees</li> </ul>	This factor may be minor in most organizations, but not in courts, since each judge may have two or more confidential employees. These employee needs are based on the number of high-status officials, not workload.
Court Facilities	<ul style="list-style-type: none"> <li>• Size of main facility</li> <li>• Number of outlying facilities</li> </ul>	A large facility with many rooms demands a certain level of staffing just for security. In courts with outlying facilities, courts often document employee needs in terms of minimum staff just to operate such a facility. Thus, the existence of the facility, rather than its workload, is the key factor.
Working Hours	<ul style="list-style-type: none"> <li>• Hours in sessions</li> </ul>	Increasingly, courts are operating in off-hours: weekend, evening, and for some services, around-the-clock. Employees will be needed simply because the court is open in odd hours, although there may also be workload justifications.
Employee Force	<ul style="list-style-type: none"> <li>• Employees to be supervised</li> </ul>	Administrative and supervisory positions are often defined in terms of the size of the employee force.

non-action in filling job vacancies. This practice, in addition to its negative impact on staffing, carries the risk of undermining the rationale for existing staff levels.

For purposes of this section, the first need is paramount. Some trial court official must translate the personnel needs of the court into numerical and financial terms which are persuasive to public officials holding the purse-strings. This requires that the need for authorized positions be quantified in some manner.

**2. Management considerations in determining needed positions.** Since quantification of personnel needs takes place within a budgetary context, certain factors influence the documentation of need. These factors are:

- personnel needs are best defined within organizational units, since budgets tend to be fashioned along organizational rather than programmatic lines;
- personnel needs are best defined in terms of full-time positions;
- regular part-time positions can be treated with the same specificity as full-time positions; and

- temporary personnel needs and part-time personnel needs are best made the subject of a separate quantification process, which relates these needs to such factors as vacation time for full-time employees, seasonal variations in workload or, where applicable, cost of overtime for full-time employees.

Quantification of personnel needs focuses on six basic factors, as indicated in Table 5.

The basic means of documenting personnel needs is workload. Some forms of budgeting literally require that there be quantifiable work measures for each employee category.<sup>40</sup> Normally, however, a trial court is free to develop its own form of workload quantification by simply:

- identifying the principal work units performed by its various organizational units;
- estimating the work units to be performed in the budget year;

<sup>40</sup> The trial courts of Cook County, Illinois, are subject to a PMS budget system and have developed very detailed work measures for every category of court employment.

- linking specific types of work units to particular types of employees;
- estimating the work output per employee; and
- calculating the number of employees needed to perform the work.

Thus, for example, the need for clerk-typists in a clerk's office could be defined in the following three-step process:

- define principal work units performed annually:
  - new dockets typed 4,000
  - docket entries for updating 12,000
- estimate annual outputs per employee:
  - new dockets 2,000
  - updates 4,000
- compute employee needs:
  - 5 clerk-typists

Other typical work units applicable to clerical employees are:

#### Records Clerks

Cases opened  
Cases pending  
Cases closed  
Inquiries handled  
Attachments, garnishments  
Court papers issued

#### Courtroom Clerks

Courtroom days<sup>41</sup>  
Trial judges served

#### Clerk-bookkeepers

\$ volume handled  
Number of cash receiving points

#### Jury Clerks

# jurors summoned<sup>42</sup>  
# jurors empanelled  
# jury trials  
# jury days

On a par with work units as a quantification factor is the number of clients served. Certain court functions are directed toward groups of people who are provided services, processed or supervised. Employee needs in these functional areas are therefore documented in terms of the number and type of contacts with individuals who comprise each client group, for example:

<sup>41</sup> Days in which a judge formally opens court.

<sup>42</sup> Unlike most other clerical functions, jury clerking can often be categorized in terms of clients served or processed (i.e., jurors). In this sense, it is somewhat analogous to the social programs of a court.

#### Type of Employee Function

#### Quantification Factor

##### Probation <sup>43</sup>

- pending probation caseload
- anticipated increments in caseload (new probation sentences and compact cases minus discharges or revocations)
- families screened; families under counseling

##### Family Counselors<sup>44</sup>

A number of court jobs are not justified either in terms of workload or clients served. They are justified primarily as direct personal support to a high-ranking official. In a trial court, there are often a great number of such employees, since each trial judge may be accorded the right to hire several confidential employees, not to mention the secretarial help which may be given to a court administrator or other high-ranking administrators.

In a court with a significant proportion of confidential employees, the principal quantification factor may be the number of judges. The application of this factor might result as follows:

TABLE 6.  
*Employee Needs of High Officials*

Title of Official	Number	Confidential Employees					Total
		Sec'y	Bailiff	Reporter	Ct. Rm. Clerk		
Presiding Judge .....	1	2	2	1	1		6
Judges .....	10	10	10	10	10		40
Court Administrator ....	1	1	—	—	—		1
Director of Probation ...	1	1	—	—	—		1
Clerk of Court .....	1	1	—	—	—		1
Totals .....	14	15	12	11	11		49

It is often difficult to justify the number of confidential employees, since their hiring reflects the status of their supervisor rather than an identifiable workload. There has been increasing pressure to reduce the number of employees in confidential categories.

An additional factor in quantifying employee needs is the nature of the court facilities. Certain types of employees are hired because of the nature of a facility (i.e., custodial employees, elevator operators and the building security force). The size of a court building, the location of courtrooms in relation to detention facilities, the size

<sup>43</sup> Probation can also be defined in terms of work units (e.g., pre-sentence investigation, pre-sentence reports, counseling sessions, revocation hearings, etc.).

<sup>44</sup> Family counseling can also be defined in terms of work units (e.g., counseling sessions, interviews, etc.).

of a courtroom and even the number of building entrances can affect the size of a security force and the number of custodial employees.

Similarly, if a trial court maintains outlying court facilities, there will have to be a basic cadre of employees assigned to each facility, regardless of workload. Outlying facilities are usually established for public convenience, rather than efficiency, and it is quite possible to present employee needs in terms of the facility staffing required to provide public service.

A quantification factor closely related to facilities is that of working hours. Personnel needs are normally based on a normal work day and a normal work week. However, many trial courts function on weekends, evenings, and even, for some purposes, around-the-clock. The principal reasons for providing court services in off-hours is convenience to working people and speedy handling of bail and of warrant issuance. The operation of a court at irregular times obviously requires additional personnel, justifiable in part by the workload in off-hours, but also justifiable by the fact that certain employees must be physically present while the court building is open or in session for some purpose. Thus, a key factor in estimating employee needs may become the additional hours a court is in session or open for some purpose.

A final, and quite obvious, quantification is the size of the employee work force in each organizational unit of a court. This factor is important for documenting managerial and supervisory positions, documentation which is based in large part on the number of employees to be supervised. There is no exact rule-of-thumb as to how many court employees must be in a unit to justify a major administrative position or how many employees must be in an organization before supervisory positions must be developed. Usually, where more than eight or ten employees are reporting directly to an administrator, some mid-level supervisor jobs are needed. The factor in such a justification is the number of employees.

**3. Documentation of personnel needs.** Many trial courts are never severely challenged to document their personnel needs in some quantifiable form. Even lacking this external incentive, trial courts may find it useful for their own managerial purposes to systematically look at the relationship of personnel positions to work performed or services provided. This need not be a complicated process, as indicated in Table 7.

Table 7 only deals with one functional area—secretarial and typing services. A similar analysis can be done for each function. Court reporting, in particular, lends itself to numerical analysis, both as to required court time to cover open court sessions and to number of transcripts on appeal. Security functions, on the other

hand, are more difficult to quantify, since they are essentially reactive and protective. But even these functions have some obvious measures—trial days, prisoners transported and juries supervised. In the final analysis, these measures provide a better indication of need than some generalized traditions that each judge needs a bailiff.

#### **4. Recruitment, testing and selection.**

a. *Open and closed systems.* Trial courts have started in recent years to open up their employment process. There is still, however, considerable "inside" hiring.

Inside hiring is characterized by:

- lack of recruitment;
- lack of job postings or advertisements;
- lack of any testing or rating; and
- use of political references or lists of favored applicants.

Inside hiring practices are inconsistent with two objectives which should be found in a trial court personnel system:

- an opportunity for all members of the community to compete for jobs in the trial court; and
- competitive selection of the most qualified applicants.

Inside hiring is completely inconsistent with EEO and affirmative action goals (see *Infra*, Chapter II, Section F.(1)). Use of open employment practices is the only possible alternative for a trial court.

b. *Enlarging the applicant pool.* The primary characteristic of an open employment system is a vigorous outreach program to develop a large pool of qualified applicants. The standard means of reaching applicants are: newspaper advertisements; job postings within government agencies or in government personnel bulletins; notices to schools or training institutions; or notices to organizations and media specially oriented toward women or minorities. The latter form of outreach is essential to any EEO program.

The scope and nature of outreach varies with the job. Some high-level jobs in a court system require a national type of recruitment, using such sources as:<sup>45</sup>

- the National Center for State Courts Report;
- the Court Systems Digest;
- the Criminal Justice Newsletter (National Council on Crime and Delinquency);
- various court organizations and publications for which the National Center for State Courts provides secretarial services;

<sup>45</sup> Adapted from a list in a recruitment project performed by the National Center for State Courts for the Seventh Judicial District of Iowa, September 1977. This list was confined largely to court or court-related sources, but there are general public administration sources which can also be used (e.g., The Journal of the American Society for Public Administration).

TABLE 7.

*Estimating Secretarial and Typing Needs by Court Component and Job*

Job Category	Job Title	Quantification Factor	Superior Court		Juvenile Court		Adult Probation		Clerks Office		Employee Total
			#	Employees	#	Employees	#	Employees	#	Employees	
Secretarial/Typing	Judicial Secretary	Number of judges	25	25	5	5					30
	Secretary	Number of administrative officials	2	2	1	1	2	2	2	2	7
	Administrative Secretary	Number of typists under supervision (1 per 8)							10	1	1
	Clerk Typist	Docket entries (10,000 per year/per employee)							81,000	8	8
		Pre-sentence reports (500 per year/per employee)					2000	4			4
		Intake forms (3000 per year/per employee)					1500	1/2			1 1/2

NACA Court Crier  
NATCA The Column

- state judicial newsletters; or
- organizations engaged in education of personnel, including:

Institute for Court Management;  
Denver College of Law;  
University of Southern California; and  
American University.

Some jobs are so specialized that they require a unique type of outreach. For example, court reporters may be trained at only a few locations in the state. It may be necessary to contact these schools, certification boards or the National Association of Shorthand Reporters.

Some jobs require in-court experience, and it may be pointless to advertise them generally. A very selective approach may be required. Openness does not require massive advertising of each job, only a realistic effort to reach possible applicants.

For most positions, general notices and ads are appropriate, even where these positions are not full-time. EEO and affirmative action requirements emphasize such general outreach methods and further specify that ads or notices encourage women or minority group members to apply.

Since general advertising often evokes a broad response, there must be some built-in devices to ensure that patently unqualified applicants do not apply or that such applicants can be identified. Ads and notices should, to the extent possible, summarize the qualifications in the job description, and for more complex jobs, should require submission of personal qualifications in writing. This initial screening must ultimately be followed by screening which detects various disqualifying factors specified in court rules.<sup>46</sup>

Some courts will use the outreach mechanisms of the executive branch personnel system. This is often advisable, since recruitment requires administrative effort, expense and some specialized methods.

Quite often, executive branch personnel systems will maintain registers of qualified applicants in each job classification. Courts may also have such registers, but considerable administrative effort is required to maintain them, particularly if the registers are maintained by an ongoing process of recruitment and periodic examination of applicants. Some registers are really no more than a

listing of qualified applicants compiled to fill a specific vacancy.

The use of registers to fill jobs is consistent with an open employment policy, provided that the register is developed by an open and well-advertised process and is well-maintained. It is, in fact, possible within the context of an affirmative action program to maintain special registers of qualified minority or women applicants. It is necessary, however, to make sure that a register is not an actual obstacle to open employment.

Some federal programs provide opportunities to courts to expand their capabilities and staff through the Intergovernmental Personnel Act of 1970 (PL-91-648, Title IV) and Comprehensive Employment Training Act of 1973 (PL-93-203, Titles II and VI).

The former program permits qualified federal employees to serve for extended periods (up to two years with a possible two-year extension) in state and local governments with the federal government paying negotiated differentials in salary, if any. This program, operated by the United States Civil Service Commission, offers a court the opportunity to obtain specialized personnel on a short-term basis.

The latter program, operated by the United States Department of Labor, is designed to help the low-income, unemployed by federal subsidization of public employment. It offers increased public employment in trial courts, particularly to those courts which have previously applied for and received CETA funds.

*c. Choosing qualified applicants.* An open, competitive process of employment requires some objective standards of evaluation, so that the most highly qualified applicants are identified. Personnel administrators generally feel that a selection process is sound if it produces a choice between three to five qualified applicants. Many civil service systems use a "rule of three," which provides an appointing authority with the choice of the three most highly qualified applicants. This process has been criticized as inimical to affirmative action and equal opportunity employment, but its use would probably represent an improvement over current practices in most jurisdictions.

There are many means of evaluating the qualifications of applicants and considerable difference of opinion as to the best means of evaluation. Yet, two requirements are unquestionable: there must be some reasonably objective method of evaluation, and the evaluation must be documented.

There are some standard methods of evaluating applicants:

- oral examinations;
- performance or skill tests;
- written examinations; and
- evaluation of experience and training.

<sup>46</sup> Rule 4.2(a) of the Judicial Merit System-Maricopa County, Arizona, cites thirteen disqualifying factors, among them: addiction to narcotics or alcohol; falsification of the application; cheating on examinations; conviction of a felony or misdemeanor involving moral turpitude; being under indictment, etc. A number of courts disqualify applicants who have not established residence in the state or jurisdiction.

Relatively few trial courts use such formal methods, since they do require some sophistication in personnel administration. Quite frequently, trial courts rely solely on unstructured interviews between applicants and the appointing authority. Such interviews, standing alone, do not provide a very objective basis for selection. A free-form interview can be distinguished from an oral examination by several factors: in an oral examination each applicant must respond to questions that test ability to apply knowledge and experience to some specific job-related problems; the oral examination is normally in front of a panel with at least two persons on it; and the responses are rated.

Oral examinations by panels can be costly, time-consuming and administratively burdensome. Some courts may find it wise to limit oral examinations to jobs involving managerial discretion or which simply do not lend themselves to written examinations.

Written examinations have been used by civil service systems for years. The process of designing and administering these exams is administratively time-consuming. Moreover, written exams are subject to challenge as discriminatory if they are not relevant to the job for which they are given or if they reflect cultural bias. Few trial courts are in a position to develop and administer their own written exams, but a number of trial courts may find it possible to use validated executive branch examinations with slight additions of court-related material, a practice followed by the Superior Court of Los Angeles County.

Written examinations are appropriate for many administrative support jobs in the lower levels of the job hierarchy, particularly those of a clerical or routine administrative nature. Among the subjects appropriate to a written examination might be: ability to understand orders (or in the case of a supervisor, ability to give them); general knowledge of court procedures and legal terminology; knowledge of office practices or records management; and dealing with the public.

Written examinations can be weighted to reflect the importance attached to various areas of knowledge or judgment. They lend themselves to quantification.

Performance or skills tests also lend themselves to quantification, since they usually involve measures of speed and accuracy in producing certain outputs (e.g., words typed, shorthand transcriptions, stenographic transcriptions and keypunch strokes). Skill testing largely relates to secretarial and court reporting functions and is used more widely than most other types of standardized tests.

Evaluation of experience and training is also widely used, but usually not in a very objective or quantifiable way. Experience evaluation is obviously not a major

factor for entry-level jobs, but it may be a key factor in filling supervisory jobs and therefore must be quantified.

Experience is best measured in time units such as years, but this alone is not adequate. It may be important that experience be obtained in the court rather than outside it or that the experience be obtained at a certain rank. Thus, each type of experience can be separately rated and quantified. Finally, there are factors other than years served that normally enter into the equation, such as specialized training received. The latter may be a tie-breaker.<sup>47</sup>

Whatever types of evaluation are used, there must be a documentation of the application process and prompt notice to all applicants of the employment decisions made. The public employment process cannot be treated as a secret prerogative of the appointing authority. Records should exist to chart the process and such records should be available to applicants or their representatives. EEO and affirmative action requirements provide a further reason for such documentation.

## **D. Ensuring Performance of Court Personnel**

**1. Defining performance criteria.** Employee performance cannot be evaluated unless there are some performance criteria. It is a rare court where such criteria exist. This is a lack which makes personnel management very difficult, since most aspects of personnel management are tied to articulated employer expectations.

Some performance criteria deal largely with traits, qualities, attitudes and general behavior. These criteria, since they are not particularly job-specific, can be applied to employees generally. Typical of these criteria are:

*Qualities.* Dependability, judgment, creativity, ambition, stability, perseverance, leadership.

*Attitudes and inter-personal relations.* Attitude toward job, consideration of rights and needs of co-workers, general courtesy, consideration for court users.

*General behavior.* Attendance, punctuality, observance of dress and demeanor codes, following directions, observing rules and regulations.

Where more job-specific performance criteria are concerned, the criteria should be specific and should yield more detailed supervisor comments. Job-specific performance criteria are those built into a job description and relate specifically to the tasks to be performed and the employer expectancy in relation to each task. Thus, for example, a job description for a court reporter can

<sup>47</sup> Reference checks are also tie-breakers.

state the requirement of timely and accurate transcript preparation in a way that provides a means to evaluate reporters in terms of their error rate and the timeliness of their transcript production.

An example of a basic set of performance criteria associated with a job description are set forth in Table 8.

Ideally, the following sequence of events should occur in relation to performance criteria for each job, such as:

- the job description sets forth some general criteria;
- these criteria are explained during the employee selection process;
- a more detailed explanation of the criteria is given during the orientation process;
- subsequent evaluation is based on these criteria;
- training and motivation is based on strengthening performance in areas where evaluation shows weaknesses; and
- rewards are based on performance criteria.

This type of logical sequence is probably utopian, but it is not unrealistic to expect that each court employee be informed of the criteria on which his or her performance will be judged. Thus, for example, a clerk whose role is calendar management would be evaluated far differently from a courtroom clerk. The former has to maintain good relations with a broad array of persons in the litigation process and might be judged on ability to deal with these people, whereas performance of the latter role is much less likely to be evaluated on the basis of public relations. The hard work of defining roles and performance expectations is only avoided at the risk of:

- undermining effective evaluation;
- rendering training irrelevant to performance; or
- creating misunderstandings and conflict between employees and supervisors.

## 2. Orientation and training. Orientation and initial

training of court employees are often neglected. To the extent that such processes occur, they are usually highly informal on-the-job-training techniques, which vary greatly in effectiveness.

Ideally, orientation and initial training should convey:

- a knowledge of employer expectation for the particular job;
- a knowledge of specific functional responsibilities;
- a knowledge of the overall system and the employee's place in it; and
- a knowledge of general personnel procedures and guidelines, often presented in a manual.

A good orientation prevents many personnel problems arising from false employee expectations. Many problems arise from a failure to understand the peculiarities of the court environment, the peculiar rhythms of a trial court and the scheduling irregularities or sudden emergencies which may force sharp changes in operation.

The most serious employee problems in courts appear to arise less from functional ineptitude than they do from:

- problems in dealing with the demands of individual judges;
- problems in dealing with attorneys;
- problems in dealing with the public, particularly jurors and witnesses; or
- resistance to changes in working hours, work location and scope of duties.

Underlying many of these problems is a lack of understanding about court operations, the court environment and the role of individual employees in the court process. In many courts, employees work for years without a full knowledge of the process of which they are a part and thus lack a clear perception of how their job serves the needs of the court.

Moreover, they lack the ability to handle public inquiries well or to refer people to other parts of the system.

Even if a court is not in a position to develop job-specific training packages, it can provide employees with a good overview of the system and their role in it. An orientation course should include:

- a description of how the state court system is organized;
- the place of the trial court in the overall system;
- the internal organization of the trial court, its components and units, the names and titles of top administrators;
- the type of cases or other business handled in each part of the court;
- the steps in the civil and criminal process; and
- administrative rules and systems applicable to court employees.

TABLE 8.  
*Sample Performance Criteria Intake Clerk*

Duties	Performance Criteria
Receives Case Papers for Filing	Accuracy of filing.
Receives Filing Fees and Issues Receipts	Compliance with financial procedures.
Makes Initial Docket Entries	Completeness, timeliness and accuracy of entries.
Maintains Index of Pending Cases	Completeness, timeliness and accuracy of entries.
Answers Inquiries about Pending Cases	Level of public satisfaction as measured in complaints or plaudits.

In addition to general orientation, new employees need initial training in functional responsibilities. This is particularly important for clerical employees and for employees engaged in security, since both types of jobs require some knowledge of the legal process and involve a high level of contact with attorneys or other citizens. Where these types of jobs are defined in a specific way, it is possible for a supervisor to provide some fairly detailed instruction on job performance, perhaps even to prepare simple written materials on tasks to be performed.

If adequate job descriptions or performance criteria are lacking, it not only inhibits initial training, but adversely affects later training. Few courts have integrated training with specific job responsibilities.

**3. Supervision and evaluation.** Evaluation of performance presupposes that supervisors will make evaluations and that there is some basis on which performance can be evaluated. Both premises are dubious in court systems.

Supervision in courts is adversely affected by the following:

- judges often have a supervisory role which they do not exercise;
- lines of administrative and supervisory authority are often unclear; and
- supervisors are often not instructed in their responsibilities.

The last-mentioned problem is not unique to courts, but is particularly true in courts, since the newness of court administration and the non-managerial tendencies of judges have combined to retard the development of strong systems of employee supervision. Supervisors must be literally indoctrinated in the need for evaluation since it is not a welcome task. It rarely occurs unless there is strong top-level management and a more or less constant pressure on supervisors to periodically appraise employees.

While there is a general consensus that employee evaluation is important, there is considerable disagreement as to the type of evaluation to be used and its purposes. There is some opposition to the idea of highly structured or numerical gradings of employees (e.g., ratings on a scale of 1-10 for each performance criteria). The opposition is based on the following:

- use of grades and rating systems adds a largely pseudo-specific coloration to the evaluation, since the ratings are very subjective;
- the management decisions based on evaluations (i.e., primarily merit increases and promotions) do not require such detailed ratings; and
- rating systems lead to bickering with employees

(who must be apprised of the evaluation), since they are so purely arbitrary.

Some court administrators favor written evaluations which are not cast in some highly structured matrix, preferring a more narrative, personalized commentary. Other court administrators favor an almost entirely informal, oral approach with periodic discussions of work performance between a supervisor and each employee under his supervision. The rationale for this approach is that really serious problems are best handled by a resignation with no formal records and that correction for lesser faults is best handled personally rather than through a formal process.

Realistically, evaluations should be in writing, particularly those which determine whether an employee shall pass from probationary to career status. Managerial decisions should have some demonstrably factual basis if they are challenged in an EEO grievance proceeding or in some other type of proceeding by an employee. Written evaluations, moreover, impose a form of managerial discipline that is lost if evaluations are not recorded. Such evaluations surface personnel problems and occasionally cause conflict, which is why it takes managerial discipline to ensure that the evaluations are done.

Working counter to this discipline is the difficulty of having judges objectively evaluate their confidential employees. It is hard and perhaps unrealistic to impinge on these close, personal relations by imposition of an evaluation requirement, so that a number of court employees may be exempted from periodic review of their performance.

Another problem is the linkage of evaluation and merit increases. When supervisors evaluate their employees just prior to their anniversary date, they are under pressure to make a favorable rating. There is good reason for having evaluations made months before an anniversary date, so that an employee is forewarned of any deficiencies in his performance and has an opportunity to review his work with a supervisor without a salary increase hanging in the balance.

Currently, it appears that most trial courts do not require supervisors to make regular written evaluations. The result is that court employees are usually not evaluated unless one of the following situations occurs:

- the employee proves to be obstreperous and resists direction;
- there are complaints about the performance of the employee, usually from judges or attorneys; or
- a decision has been made to fire the employee, but documentation is lacking.

Where courts are engaging in *post facto* evaluations to build evidence against employees identified as troublemakers, the process is not really evaluative. It is

largely probative and defensive. It is also subject to legal challenge for its patent selectivity.

4. **Incentives.** Evaluation, more often than not, indicates good performance, rather than poor performance. Evaluation can be used as an incentive to improve performance and provide a basis for rewarding superior performance.

Obviously, no dossier is needed to praise an employee who has performed well. Direct personal thanks or praise will always remain a fundamental means of encouraging employees to make a maximum effort.

However, where incentive is to be encouraged by more tangible rewards, it is necessary that there be some more formal record of employee performance. Among the more common methods of providing incentive are:

- formal written awards, possibly coupled with a gift or money award;
- promotion, perhaps 2-step promotion (assuming, of course, existence of a vacancy); or
- salary increases, perhaps 2-step increases or addition of a pay step in each pay grade for special merit increases.<sup>48</sup>

There are, of course, various techniques of group dynamics which are designed to provide individuals with more zest for fulfilling their role, but at this juncture in the development of court personnel management, emphasis on individual incentives is more appropriate.

To the extent that the incentive involves an extraordinary change in pay or job level, there should be some formal method of documenting the unusual personnel action. The best documentation is a formal evaluation that is superlative, coupled by a supervisor's request that the employee be considered for a special incentive pay boost or promotion. The request should be based on details of performance, rather than general superlatives, and should be considered by the highest administrative authority in the system, usually the presiding judge. The system should be detailed enough to prevent supervisors from gross favoritism.

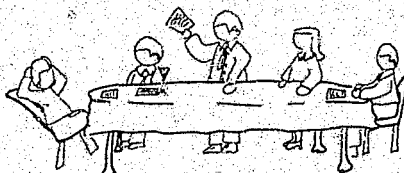
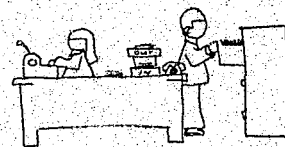
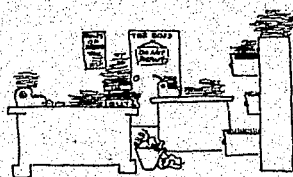
## E. Employment Environment

1. **Conditions of work.** The various factors which determine the ground rules and general environment of work are referred to in this section as the conditions of work. These conditions encompass:

- constraints on employee behavior;
- constraints on employer prerogatives;
- the physical environment; and
- special problems of the court environment.

<sup>48</sup> See 4.10(d), Personnel Policies for the Employees of the Circuit Court Multnomah County (Oregon), which permits additional pay steps to reward superior performance.

## Illustration 3: Employee Environments Vary



a. *Constraints on employee behavior.* Trial courts differ quite a bit in how they approach codes on employee behavior. There appear to be, however, certain requirements of behavior which are considered fundamental:

*Political activity.* Political activism by court employees has been fairly common in the United States due to the politicized nature of court employment in many jurisdictions. This type of activity is flatly in conflict with professionalization of court employment and is prohibited by rules of courts in a number of jurisdictions. The problem is the scope of the prohibition, since court employees have political rights which cannot be unduly abridged.

Certain types of activity would appear to be inappropriate, depending upon the laws of each jurisdiction: seeking elective office while holding a court position; seeking or holding an office or position within a political party; participating in a campaign to elect a person to office on a partisan ballot;<sup>49</sup> participating in a campaign to elect a person to a judgeship or court-related office, even if the election is non-partisan; and seeking administrative leave to perform any of the above activities.

There is some doubt as to whether a court can or should prohibit employee activities relating to activities which are clearly non-partisan. The judiciary could end

<sup>49</sup> The personnel rules in Maine contain very specific prohibitions: passing out campaign literature, wearing campaign buttons, making contributions, etc. The personnel rules of Idaho are similarly specific dealing with bumper stickers, endorsement, etc.

up in the position of regulating employee participation in the civic life of the community.<sup>50</sup> The decision of a trial court on this point must depend on the nature of the local political environment.

*Conflict situations.* It is ethically self-evident that a court employee should not engage in activities which involve a conflict with his work, specifically: to have a substantial interest in transactions or business which might affect or influence the discharge of his duties; to accept gifts or incur obligations which might affect or influence the discharge of his duties; to use his position to obtain exemptions or privileges for himself or others; to accept an outside, off-hour job that would impair his ability to perform his court functions; to engage in outside activities during regular work hours without permission of the court; or to engage in the practice of law.

*Dress and demeanor codes.* Because of the formality surrounding the public functions of a trial court, there is usually a sound basis for requiring that employees dress and comport themselves appropriately. One aspect of this requirement can be the demeanor of employees in dealing with the public.

Considerable controversy has surrounded the application of dress codes, especially their application to female employees. Yet, many courts attach great significance to preserving some standards of dress.

*Public information.* Many trial courts feel it essential to control the flow of information about the court and strictly forbid employees to release information to the communications media. Typically, employees must refer information requests to a high-ranking court authority.

b. *Constraints on employer prerogatives.* A number of grievances arise from changes in the normal working conditions of an employee, such as changes in the location of work, addition of new work tasks, changes in hours or addition of hours. No matter how specific court rules are in permitting court officials to make such changes in the interest of efficient operation, serious consideration must be given to the impact of such decisions on employees.

This recognition of employee concern can be spelled out in rules; for example, a rule that states:

"All transfers shall be preceded by a written evaluation and discussion with the employee."<sup>51</sup>

Such rules are not unduly restrictive of managerial prerogatives and represent a recognition that employees have a legitimate concern about changes in their work

situation. It is, of course, possible to deal with these employee concerns informally without inclusion in the rules. This is a local judgment.

c. *The physical environment.* Court facilities run the gamut from modern, spacious buildings to cramped and dingy buildings. Very often, unfortunately, the physical environment of court work is unpleasant. If employee militancy increases, it is almost certain that a major work issue will be improvement in the physical environment of court employment.

There are a number of reasonable conditions which employees could demand:

- a concept of adequate working space to avoid the anthill appearance of some courts;
- some definition of the environmental amenities, such as access to bathroom facilities and water, air-conditioning and heat, cleanliness and a reasonably well-maintained work area; or
- some definition of privacy so that court employees are not working in a mass of lawyers, police and citizens wandering freely through their work area.

Improvement of the physical environment for employees should achieve a high priority in personnel management and also in court facility construction.

d. *Special problems of the court environment.* A trial court has a high-tension environment. Lawyers and judges are under great pressure to avoid error; personal freedom and large sums of money are at stake regularly; and the people coming into the court are often scared and bewildered, or perhaps hostile. Court employees not only have to deal with the built-in tension of the system, but may themselves be in situations where their errors or omissions can affect the course of a legal proceeding.

Court employees, unlike judges, do not enjoy immunity from civil suit for their negligence in the performance of their duties. Where their errors affect a case substantially, they may be sued. This is one of the penalties for being enmeshed in a totally litigious environment.

Furthermore, court employees are subject to the contempt power of the judiciary. The clerk or court reporter who is egregiously inept or insubordinate can be jailed by the court.

Court personnel management must take into account the pressures associated with certain court positions.

2. *Discipline and adverse actions.* Discipline is required in any organization. It must be based on: a clear delineation of employer expectancies;<sup>52</sup> a definition of those actions which warrant disciplinary action; and a

<sup>50</sup> Court rules in Maine impose much stricter restraints on the civic activity of upper-level employees than they do on the civic activity of lower-level employees.

<sup>51</sup> 5.90, Personnel Policies for Employees of the Circuit Court of Multnomah County (Oregon).

<sup>52</sup> In a fairly sophisticated system, job descriptions may state employer expectations so explicitly that gross employee failure to meet these expectations can be used as the basis for disciplinary action.

specification of the types of sanctions which may be applied.

Among the more definitive listings of grounds for corrective or disciplinary action are those contained in Rule 25(d) of the Colorado Judicial System Personnel Rules:

1. Causes for initiating corrective or disciplinary action shall include, but are not limited to:

2. Violation of, or failure to comply with, the state constitution or statutes, or local court rules and regulations;

3. Failure or refusal to comply with a lawful order or to accept a reasonable and proper assignment from an authorized supervisor;

4. Documented inefficiency, incompetency, negligence, or brutality in the performance of duties;

5. Under the influence of or unauthorized possession of alcohol, narcotics, or other drug while on duty;

6. Medical evidence of physical or mental incapacity to perform duties;

7. Careless, negligent, or improper use of state property, equipment or funds;

8. Use of undue influence to gain, or attempt to gain, promotion, leave, favorable assignment, or other individual benefit or advantage;

9. Failure to obtain and maintain a current license or certificate as a condition of employment, if required by law, supreme court standards, or these rules;

10. Conduct unbecoming to a state officer or employee;

11. Chronic absences or tardiness in reporting to work; or

12. Taking unauthorized leave.

The Colorado rules do not distinguish between disciplinary action in terms of their seriousness, leaving it up to system administrators to determine the severity of the sanction. Some courts do, however, classify infractions in terms of their seriousness, limiting the sanction for an initial minor infraction to a reprimand.<sup>53</sup>

Regardless of the seriousness of the sanction involved, it is important that the decision be made by the highest administrative authority in the organizational unit of the employee.<sup>54</sup> It is the responsibility of supervisors to report an infraction, not to pass upon it in a judgmental sense. In fact, some reported infractions may arise from a personal conflict between a supervisor and employee.

There are a number of possible disciplinary actions which can be taken as the result of an infraction, among the more common are:

- a written reprimand;
- reduction in salary grade or step;
- suspension without pay;
- demotion; and
- dismissal.

It is important that these sanctions be specified in rules and that some standards be set for their application. Quite commonly, the grounds for dismissal will be spelled out in some detail because of the seriousness of the sanction.<sup>55</sup> In actual practice, dismissals are often averted by resignation after discussions between an employee and an administrator.

It must also be noted that an employee who is disciplined may also suffer some additional penalties as the result of his behavior, for example, an unfavorable performance rating which denies him promotions, grade pay increases or good recommendations for a new job.

The impact of disciplinary actions on employees is so substantial that fairness requires that there be some sort of review process to protect employees from arbitrary or unjust penalties.

3. **Grievances.** Trial courts have not traditionally been receptive to the idea that court employees have the right to a formal redress of grievances concerning personnel decisions by judges or top court officials. The idea of an employee filing a grievance against a judge is still shocking to many judges. There is a strong and persistent view that court employees should accept adverse personnel decisions with docility. The view has been countered, however, by a number of realistic considerations:

- the effect of union activity;<sup>56</sup>
- legislation prohibiting discrimination;
- pressures to professionalize court management and to use modern personnel procedures; and
- genuine concern over relieving tensions within the court work force.

The last consideration is often influential in bringing about a grievance system. Serious disruption or law suits arising from conflicts between employees and managers can provide an impetus for a grievance procedure as a

<sup>53</sup> For example, Disciplinary Guidelines for Employees of the Clerk of Circuit and County Courts, Orange County (Florida).

<sup>54</sup> Confidential employees of judges answer to their judges.

<sup>55</sup> Where an employee has two disciplinary actions taken against him in one year, even for less serious infractions, this should constitute grounds for dismissal.

<sup>56</sup> Collective bargaining contracts usually specify a grievance process, perhaps establishing an arbitrator. Some of these issues are legal and involve an interpretation of rights and duties under the collective bargaining contract.

#### Illustration 4: A Grievance Procedure Can Relieve Tensions Within the Court Work Force



means for heading off major confrontations. In fact, many grievances result from failures in supervision, which can be rectified if detected early.

a. *Nature of grievances*<sup>37</sup>. The term "grievance" is properly applied to an employee complaint that he or she has been subjected to an unjust condition of work, unjustly denied an advance in pay or status or treated unfairly in a matter of administration that does not involve an adverse action (i.e., actions which involve loss of a position, job status or pay.) Typical grievances include complaints about:

- unsatisfactory performance ratings;
- denial of in-grade pay increases;
- written reprimands;
- leave restrictions;
- denial of promotions; and
- discrimination on grounds of race or sex.

Since some grievances will involve charges of discrimination, it is important to link an EEO program to the grievance process rather than have a separate EEO grievance process. It is also helpful to have the same official administering both the EEO program and the administration of the grievance process.

The grievance process must also be able to accommodate appeals from the adverse actions taken against employees, usually as the result of a major disciplinary

infraction. The most fundamental adverse actions are: dismissal, demotion, reduction in salary grade or step and suspension without pay. Such actions have such a substantial impact on employees that they must be handled with procedural fairness, including advance notice, the right to be heard and some opportunity to have the adverse action reviewed. The process for hearing appeals from adverse actions is legally different from that required for the typical grievance and should be considered procedurally distinct.

It is possible to include job classification reviews among employee concerns classified as grievances, but it is best to treat job classification problems separately.

b. *Persons eligible to file grievances*. Eligibility to file a grievance usually is associated with some concept of job tenure or permanent status. An employee who serves completely at the pleasure of his employer, or who is on a trial status, is not normally encompassed by the grievance process, at least not in its entirety. The types of employees largely outside the scope of a grievance process are:

- confidential employees;
- probationary employees; and
- employees in the upper administrative positions who are charged with major responsibility for making or implementing policy.

Where, however, some of the employees in the above categories are encompassed by an EEO plan and allege discrimination, their use of the existing grievance and appeals procedure should be permitted.

There are situations where a grievance is shared by two or more employees. Grievance procedures can, under strictly controlled circumstances, permit two or more eligible persons to file a joint grievance.

c. *Starting the grievance process*. A formal grievance proceeding is a last resort, not a first step. Great priority should be placed on informal resolution of disputes at the supervisory level. Thus, it is important that there be an informal stage in the grievance process so that the time, cost and trauma of a formal process can be avoided. Discussion of the grievance with a supervisor can even be made a prerequisite of filing a formal complaint.

Very often, grievances arise from personal conflicts that can be resolved by transfer of an employee or a suggestion to a supervisor that he or she make some changes in their style of operation. Where the grievance involves deeper issues, formal proceedings may be required.

The initiation of a formal complaint usually involves the following:

*Administrative direction*. Some official must be charged with responsibility for overseeing the grievance

<sup>37</sup> The terminology and classifications used in this section were adapted from unpublished works of Frank Dosai, North Central Regional Office of the National Center for State Courts.

process, including the supply of forms or advice pertaining to the grievance process, receiving and filing all papers relating to grievances, scheduling hearings, disseminating findings and seeing that decisions on grievances are implemented. The most important role of the grievance administrator is arranging informal resolutions of disputes.

*Filing of a written grievance.* The grievance should have two characteristics: a clear statement of the facts constituting the grievance and indicated compliance with any conditions which are a prerequisite to filing, commonly;

- timeliness (i.e., filed within 30 to 45 days of the acts constituting the grievance); and
- exhaustion of informal procedures (i.e., statement of interchanges with supervisor).

A complaint may indicate the name of the employee's representative, if any.

*Acceptance of grievance.* The administrative officer should be accorded the right to refuse grievances which are frivolous or do not meet the prerequisites for filing.

*Supervisor response.* The response of the supervisor places a grievance in issue and establishes the differences to be resolved.

*d. Organization and composition of grievance boards.* Three considerations should govern the machinery of a grievance process:

- judges should be insulated from the process;
- the grievance process must be sufficiently objective to achieve credibility; and
- there should be a very simple two-step process that permits speedy and inexpensive resolution of disputes.

The trial court judiciary is an employer. It is inappropriate for trial judges to adjudicate grievances of their own employees, particularly if these grievances might also be the subject of court litigation. It is prudent to insulate trial judges from the grievance process.

High-court officials tend to dominate the grievance process, depriving it of the aura of objectivity which it needs. Occasionally, a court administrator serves as the original hearing officer or as an appellate reviewer, with both roles having conflict connotations. Moreover, there is considerable doubt as to whether division heads should be on grievance panels, since they are usually placed in the position of having to pass judgment on the managerial performance of a fellow administrator.

There is a great deal to be said for having hearing examiners or grievance commissioners who do not hold high administrative positions in the court, or who are not even court employees. Similarly, court employees should be afforded the opportunity to have their appeal from a grievance decision taken before an executive

branch official or a civil service commission. There must be some balance between the understandable desire of a court to control its internal processes and the right of an employee to a reasonably objective consideration of his complaint.

*e. Grievance procedures.* The procedures governing formal grievances are essentially those used in administrative hearings, with the following possible exceptions:

- a preliminary meeting may be held with the parties before opening a formal hearing in order to facilitate informal disposition and to ascertain the factual issues;
- if there are no factual issues, or the issues are so small that they could be resolved by some investigation by the grievance panel, a decision could be rendered without a formal hearing;
- time deadlines should be very short, since grievance issues are not usually complex and can fester if left unresolved;
- no transcript should be rendered as a matter of course, but formal hearings should be recorded electronically or by standard court reporting techniques;
- if anything, the rules of evidence should be more relaxed than in the average administrative hearing;
- review of proceedings and decisions should not involve determination of factual issues and should be restricted to the following: procedural fairness of hearing; legal sufficiency of recommendations of panel and the relief granted by panel; and sufficiency of evidence to support panel recommendations; and
- the appellate period should be very short.

The essential hallmarks of grievance procedures should be simplicity, speed and finality. This is in the best interest of the employee and the court.

## **F. Special Considerations**

### **1. Affirmative action and equal employment opportunity.**

*a. Section purpose.* This section deals with those issues of affirmative action and equal employment opportunity which are of particular concern to trial courts. It does not replicate the detailed instructions which are contained in various government manuals, among them:

*Equal Employment Opportunity Program Development Manual*, U.S. Department of Justice, Law Enforcement Assistance Administration, Office of Civil Rights Compliance.

*Affirmative Action and Equal Opportunity*, A Guidebook for Employers, U.S. Equal Opportunity Commission, Washington, D.C.

*Equal Employment Opportunity Plan Development*

*Participant's Reference Handbook*, prepared under contract to the Law Enforcement Assistance Administration by University Research Corporation, Washington, D.C. 1976.

b. *General concepts of fair employment.* The term *equal opportunity*, as used in the personnel area, refers to the principle of non-discrimination in basic personnel decisions, primarily hiring and promotion. An equal opportunity program involves analysis of the employee work force and existing personnel procedures as a prelude to designing a set of procedures to enhance the employment opportunities of minority groups and women and to eliminate any barriers to such opportunities.

The term *affirmative action* refers to a plan or program to correct the effects of past discriminatory practices in hiring and promotion. Affirmative action has commonly been associated with situations in which a pattern of discrimination has been found to exist by a court or by an administrative agency. It need not, however, be limited to such situations and can be made an addition to an equal opportunity program in a court which has a substantially lower percentage of minority group members or women in its work force than exist in the service population.

Realistically, most trial courts do not embrace activist concepts of equal opportunity employment and tend to avoid affirmative action. This may not be a conscious policy decision, but, in one way or another, trial courts will fit themselves into the following categories:

- total avoidance of equal opportunity programs on the grounds that the court is not legally required to have such a program;<sup>58</sup>
- minimal compliance with legal obligations;
- full and faithful observance of equal opportunity guidelines, but avoidance of any steps to atone for past discrimination; or
- a strong commitment to an activist concept of equal opportunity employment.

c. *Legal considerations.* Title VII of the Civil Rights Act of 1964, as amended by the Equal Opportunity Act of 1972, prohibits discrimination in employment by state and local governments. This national policy has been reinforced by a variety of state and local enactments.<sup>59</sup>

In addition to the broad principles of non-discrimination in public employment, there are more

specific federal enactments dealing with non-discrimination in employment by recipients of federal funds (e.g., Section 518(c) of the Omnibus Crime Control and Safe Streets Act of 1968, as amended). For trial courts, the most pertinent enactments are those contained in the regulations and guidelines issued by the Law Enforcement Assistance Administration on the subject of equal opportunity employment in agencies receiving LEAA grant funds.<sup>60</sup>

Many trial courts are subject to these guidelines through receipt of LEAA funds,<sup>61</sup> either as the direct recipient or as the indirect recipient through a local government or, in a unified system, through the state supreme court. The applicability of the guidelines to trial courts turns on three factors:

- receipt of LEAA funds cumulatively totalling \$25,000 during the period of the LEAA program;
- a work force numbering fifty or more;
- a service population with a minority representation<sup>62</sup> of more than 3%.<sup>63</sup>

The legal obligation to develop an equal opportunity program devolves upon the agency which uses the funds, even though the agency may not be the direct recipient of the funds (e.g., when a county commission receives a grant for use by a circuit court).

Even though a particular trial court is required to meet the legal requirements set by LEAA, the court does not necessarily need to have its own EEO plan. It is possible for a trial court to be included in a county, city or state judicial branch plan, provided that the trial court segment of the overall plan meets the guideline requirements.

Where a trial court is county funded, and its employees are included in an executive branch personnel system, it may be wise to seek inclusion in the county's equal opportunity program, if one exists. In this way, the county can respond to all existing federal, state or local requirements within one administrative framework and lift much of the administrative burden from the courts. It would still be the responsibility of the court to ensure that the local government plan meets LEAA requirements and that the court exercises its personnel authority in a manner consistent with the guidelines.

<sup>58</sup> 28 C.F.R. 42.201 et seq., Subpart D; 28 C.F.R. 42.301 et seq., Subpart E. Trial courts may be subject to other federal procedures, for example, those pertaining to revenue-sharing funds.

<sup>61</sup> The LEAA guidelines refer to "criminal court systems," a term with limited administrative significance. As a practical matter, the civil side of courts must be included.

<sup>62</sup> Where Indians and persons with Spanish surnames are concerned, there is often a major problem of determining percentages. The groups are not well-defined.

<sup>63</sup> Even if the minority group population is less than 3%, an EEO plan for women is still required.

<sup>58</sup> The LEAA guidelines do not apply to the great majority of trial courts in rural areas. They do not even apply in some large urban courts that have never received LEAA funds.

<sup>59</sup> For example, Section 49(b), Annotated Code of Maryland, proclaiming the state's policy on non-discrimination.

Where a trial court is covered by a judicial branch equal opportunity plan for the whole state, each trial court should probably still shape its employment goals in relation to its own service population. Arguably, a unified trial court could claim the population of the whole state as its service population, but this could adversely affect minority groups concentrated in a few regions of a state. The ideal is for a state to have overall goals and centralized administration of an EEO program, with trial courts in each region having employment goals adapted to local factors.

Another legal factor in developing an EEO plan is the scope of the plan, in particular, its application to personal or confidential employees of judges and employees of court-related agencies.

Equal opportunity guidelines do not apply to elected officials and their immediate appointed aides (e.g., the chief deputy of an elected clerk). Where judges are elected, considerable doubt surrounds the scope of this exemption, since state law sometimes permits individual judges to name several personal employees.

Ironically, federal guidelines do not permit any exceptions for employees of judges who are appointed, rather than elected. Thus, even though a court personnel system exempts personal employees of judges from many aspects of the system, this does not mean that they are exempted from the enforcement provisions of an equal opportunity program.<sup>64</sup> As a practical matter, this is a serious problem, since it is hard to apply equal opportunity provisions to judges who reserve the right to function independently of the personnel system.

A related problem is the application of a court's equal opportunity program to court-related agencies over which the court exercises a general administrative authority, but not a direct control of personnel decisions. Thus, for example, a court may have general administrative power over a clerk's office, since the operation of that office affects the court, but yet may lack direct control over the personnel decisions of the clerk. This is an ambivalent area of management control, and it may be that trial courts lack the requisite authority to enforce an equal opportunity program in court-related agencies, even those commonly considered to be part of the court. There must be some direct control over personnel administration to fully implement an EEO plan.

A far more controversial issue is the legality of the various means which a court may choose to employ in correcting past discriminatory practices. No particular problems are involved where a court relies on recruit-

ment, advertising and training to enlarge the pool of women and minority group candidates for hiring and promotion. The problems arise when the selection process includes some form of preference for women and members of minority groups (e.g., requiring that a certain ratio of jobs be filled from a pool of qualified minority group applicants or that a minority group applicant be given additional rating points at the time of screening and testing).<sup>65</sup>

Most courts do not use affirmative action on their own initiative, unless there is a very serious imbalance between the composition of the court work force and the service population. This can easily occur in a trial court located in an area undergoing rapid changes in the ethnic and racial characteristics of the population. Indicative of the problems raised by this situation is the experience of the Supreme Bench of Baltimore (Maryland) where studies revealed that whites constituted the bulk of the work force in a city that is increasingly black in racial composition. The Supreme Bench has instituted one-for-one hiring to correct this imbalance.

When a trial court chooses to take a strong stance on affirmative action, it is important that there be a policy statement embracing the methods, as well as the goals, so that the court presents a unified front in a controversial area. The routine legal formulas associated with equal opportunity pronouncements will not suffice.

d. *Assessment of existing fair employment practices.* There are several key aspects to an assessment of a court's status in regard to equal opportunity:

- assessment of the work force itself by measuring the ratios of women and minority groups in the following categories:
  - in the court as an entity;
  - by job classification and pay;
  - by organizational unit;
- assessment of procedures in terms of their quantitative impact on hiring of women and minority group members.<sup>66</sup>
  - outreach programs, job advertising;
  - testing;
  - interviewing;
  - selection procedures;
  - promotion;
  - disciplinary sanctions; and

<sup>65</sup> See *Regents of the University of California v Bakke*, Case No. 76-811, Supreme Court of the United States, decided June 28, 1978. The case, while striking down a specific school admissions system used in California, left open the use of affirmative action programs.

<sup>66</sup> Federal guidelines assume a much more highly structured personnel system than actually exists in many courts. Equal opportunity is hard to enforce without some administrative framework.

<sup>64</sup> Judicial immunity from suit does not extend to judges acting in an administrative role.

- assessment of the service populations and labor market;

general demographic characteristics of community served by court;

breakdown of the labor market;<sup>67</sup>

identifying client groups, such as persons using the court, being brought before the court or under supervision of the court.<sup>68</sup>

The purposes of such an assessment are: for the court to compare the makeup of its work force with the makeup of the general community, the labor market and the court's principal client groups; to identify areas where minority group members or women are not being employed; to identify procedures which foreclose opportunity or involve bias; and to develop a plan for altering the existing procedures and raising the levels of minority group members and women in the work force.

The basic steps in designing an EEO plan and related procedures are:<sup>69</sup>

- self-assessment to determine under-utilization of women and minority group members;<sup>70</sup>
- development of specific programs to meet each specific need identified (e.g., outreach programs and changes in job descriptions);
- promulgation of a policy statement of the court on EEO;
- appointment of a top official to implement the EEO program with a full statement of this person's responsibilities and powers;
- statement of the responsibilities of appointing officials and supervisors;
- setting forth procedures for internal and external dissemination of the EEO plan;
- modification or amendment of personnel procedures, as required;
- creation of more structured personnel practices, as required; and
- certification to the State Planning Agency that a plan is on file.

e. *Monitoring personnel practices.* The weakness of many plans prepared in response to external pressures is that they are never implemented or monitored. The monitoring of an equal opportunity employment plan is

fairly simple, since the essential gauge of its success is quantitative—the increased employment and promotion of women and minority groups.

Quite apart from whether there are explicit numerical or percentage goals, an equal opportunity program can be measured in terms of trends. These trends should be measured by the number of males and females in each ethnic group over a span of several years. It is important that this be done by court unit, by job classification and by types of personnel action, as exemplified by the tables on page 43.

These tables are indicative of annual compilations, not monthly reporting forms. Both monthly and annual formats would, however, reflect the same data categories. Trends could be measured on a quarterly basis within the year.

The main consideration is not mechanics, but a feedback to top managers so that failure to implement is made known and some impetus for action is created.

f. *Impact of EEO programs.* Equal employment opportunity plans have impact on personnel management in a number of ways, other than providing equal opportunity. EEO planning forces a review of all existing employment practices and often reveals weaknesses other than those which directly affect EEO plans.

As equal employment opportunity becomes more institutionalized, trial courts can anticipate the following:

- a reduction in "inside hiring" and a more open employment process;
- a more formalized and well-documented record of selection, promotion and disciplinary actions;
- more emphasis on quantitative criteria for personnel decisions and less subjectivism;
- development of more detailed data on the employees;
- more structure in job classification and job descriptions; and
- more clarity in defining who makes employment decisions.

EEO may, in effect, be an impetus to more serious personnel management.

## 2. Unionization.

a. *Legal basis of unionization.* The right of public employees to organize is now recognized in most states. Although the exercise of this right by court personnel has thus far occurred on a very random, localized basis,<sup>71</sup> it appears probable that court personnel management will become increasingly concerned with collective bargaining.

<sup>71</sup> There are, however, unified court systems where court personnel are organized on a statewide basis (e.g., Hawaii).

<sup>67</sup> Women may be 52% of the population, but often 40% or less of the local labor market. Employment goals based on the higher figure may be a little unrealistic.

<sup>68</sup> Some minority groups may compose a much higher percentage of a court's clientele than they compose of the general population.

<sup>69</sup> Adapted from TA report prepared by the National Center for State Courts for the Florida Supreme Court.

<sup>70</sup> The assessment must be done by translating court job classification into federal job categories: officials and managers; professionals; para-professionals; office/clerical; technicians; protective service; skilled crafts; and service maintenance.

**TABLE 9A.**  
*EEO Assessment by Organizational Unit*

Organizational Units	1975				1976				1977			
	W <sub>M</sub>	W <sub>F</sub>	B <sub>M</sub>	B <sub>F</sub>	W <sub>M</sub>	W <sub>F</sub>	B <sub>M</sub>	B <sub>F</sub>	W <sub>M</sub>	W <sub>F</sub>	B <sub>M</sub>	B <sub>F</sub>
Criminal Division Civil Division (etc.)												
Totals												
% of Totals												

**TABLE 9B.**  
*EEO Assessment by Federal Job Classification*

Federal Job Classification	1975				1976				1977			
	W <sub>M</sub>	W <sub>F</sub>	B <sub>M</sub>	B <sub>F</sub>	W <sub>M</sub>	W <sub>F</sub>	B <sub>M</sub>	B <sub>F</sub>	W <sub>M</sub>	W <sub>F</sub>	B <sub>M</sub>	B <sub>F</sub>
Officials and Managers Professionals (etc.)												
Totals												
% of Totals												

**TABLE 9C.**  
*EEO Assessment by Type of Personnel Action*

Personnel Action	1975				1976				1977			
	W <sub>M</sub>	W <sub>F</sub>	B <sub>M</sub>	B <sub>F</sub>	W <sub>M</sub>	W <sub>F</sub>	B <sub>M</sub>	B <sub>F</sub>	W <sub>M</sub>	W <sub>F</sub>	B <sub>M</sub>	B <sub>F</sub>
Applications New Hires (etc.)												
Totals												
% of Totals												

The right of public employees to organize is most commonly based upon state legislation governing the whole area of public employee labor relations. Many states adhere generally to model legislation on Public Employee Relation Commissions. These agencies, however entitled, are usually empowered to conduct representation elections; to determine the bargaining unit; and to generally protect the right of public employees to engage in concerted activity and to choose a bargaining representative. Some of these agencies also provide mediation and fact finding services and make determinations of unfair labor practices (i.e., actions interfering with rights granted by labor laws or frustrating the intent

of such laws).<sup>72</sup> On occasion, these executive branch agencies are called upon to make decisions which greatly affect the management authority of the judiciary over its personnel.<sup>73</sup>

<sup>72</sup> Typical unfair employee practices are: coercing employees in the exercise of their rights, interfering in formation of an employee organization, discouraging membership in an employee organization, discriminating against employees for union activity, blacklisting, refusal to bargain or dealing directly with employees in matters covered by a contract.

<sup>73</sup> This executive branch intrusion has been strongly challenged by the judiciary in Pennsylvania: *Sweet v. Pennsylvania Labor Relations Board*, 316 Atlantic 2nd 665 (1974) and *Sweet v. Pennsylvania Labor Relations Board*, 322 Atlantic 2nd 364 (1974).

Typically, state legislation on public employee relations imposes on public agencies the responsibility to consider the demands of its employees and, usually also, to bargain in good faith with a representative of the employees. What constitutes "good faith bargaining" is a matter of local law with which many trial courts will have to become familiar.

Since many public agencies, including trial courts, have operated within the context of a civil service system, collective bargaining often appears at odds with existing merit systems. In fact, there can be a high degree of compatibility, since collective bargaining agreements normally deal with and incorporate many aspects of an existing merit system, including testing, certifications, job classifications, etc. If there is a conflict, state law determines if a collective bargaining agreement can override existing merit system regulations. In general, a collective bargaining agreement takes precedence, so that unionization tends to shift power from civil service commissions to employee representatives or arbitrators. In general, collective bargaining is facilitated by the existence of an existing personnel system, since this obviates the need to create a personnel structure *de novo*.

b. *Trial courts as employers.* It is usually quite clear that court personnel are "public employees" within the meaning of state legislation on labor relations. It is often very unclear whether trial courts are "public employers" under the terms of such legislation. The term "public employer" is commonly defined in terms of standard political subdivisions (i.e., state, cities and counties) so that trial courts have no recognized legal status as employers. This legal problem has been resolved in a number of ways:

- some states have specifically recognized trial courts as employers;<sup>74</sup>
- some states have declared the judicial branch and executive branch to be co-employers;<sup>75</sup>
- some states have recognized the executive branch as the employer;<sup>76</sup> and
- one state has recognized courts as employers for certain purposes of negotiation.<sup>77</sup>

Where trial courts are not recognized as employers for bargaining purposes, several administrative problems arise:

- executive branch officials negotiate contracts applicable to the judiciary; and
- bargaining units tend to transcend court lines so that court employees are subsumed by larger bargaining units dominated by executive branch employees.<sup>78</sup>

Unionization reemphasizes the weaknesses of courts as administrative entities and their reliance on executive branch management systems.

c. *The collective bargaining process.* The collective bargaining process is built upon a trial court's legal obligation to negotiate if requested to do so by an organization that represents a majority of the employees in an appropriate bargaining unit. If state law does not recognize a right to organize, and if there is no formal demand for negotiations, no obligation exists to recognize or deal with an employee organization. However, once the employees choose to bargain collectively, a trial court can no longer take unilateral action in personnel matters and must adapt its operations to the collective bargaining process.

This loss of control is sometimes difficult for judges to accept, since some trial courts function in a relatively paternalistic manner. It is important for the judiciary to accept collective bargaining and to avoid any hint of obstruction. Moreover, judges must face the possibility that their role as employer limits their right to adjudicate disputes arising from employee relations problems relating to unionization and the collective bargaining process.

The collective bargaining process has four basic elements:

- organization;
- recognition;
- negotiation; and
- contract administration.

(1) *Organization.* This element of the collective bargaining process concerns the choice of a bargaining agent by employees. The organizational methods will be determined by state law, but generally follow one of two paths—representation elections or voluntary recognition procedures. Public Employee Relations Commissions are usually involved in both processes.

Representation elections are by secret ballot permitting employees a choice of one or more representatives or an option not to be represented at all. Where a bargaining representative receives the legally requisite percentage of votes, certification normally follows. Certification makes the bargaining agent the exclusive representative of the employees and bars the right of others to organize employees during the period of certification.<sup>79</sup>

<sup>74</sup> Michigan and New Jersey.

<sup>75</sup> Pennsylvania and New York.

<sup>76</sup> Wisconsin, California, Missouri and Rhode Island. Massachusetts has had an inter-branch confrontation on the issue of state laws, which failed to recognize the judiciary as an employer.

<sup>77</sup> Washington law restricts the courts to bargaining in areas which have not been delegated to a civil service system.

<sup>78</sup> This is partially a function of union economics. A small number of court employees may not warrant a separate organizational effort.

<sup>79</sup> State laws also accord employees the right to vote out a bargaining agent by a process of decertification.

Voluntary recognition procedures are not based on elections. A bargaining agent gathers evidence of employee support, normally by signed authorization cards and presents this to the Public Employees Relations Commission. While state laws differ, voluntary recognition does not normally bar other organizations from attempting to organize employees. The status of the bargaining agent is thus less secure, a factor to be considered in the collective bargaining process.

The employer posture during a period of organization must be one of non-interference. The employer cannot intrude upon the employees' right to organize, nor discriminate against employees who participate in organizational efforts.

This does not mean, however, that the corrective posture is one of aloofness. The initial response of an employer to organizational efforts can set the tone for future labor relations and must be reasonably tolerant and receptive. Moreover, it is important that trial court leaders start to prepare a labor policy and that they position themselves for the hard bargaining which may follow the organizational efforts.

Developing a labor policy involves two main steps:

- analyzing the existing personnel structure, if any, to determine what parts of it are worth fighting for and which parts could benefit from a negotiated improvement or elimination; and
- developing a list of key management concerns and formulating a position on each; typically, selection procedures, discipline and grievances and methods of compensation.

In short, trial court managers should start preparing a bargaining position so that collective bargaining becomes a two-way street, rather than a series of management reactions to employee demands.

(2) *Recognition*. This step in the process involves the recognition by an employer that henceforth employees will be represented by their chosen agent.

The important issue in the recognition phase is the determination of the bargaining unit or units. Employees are usually grouped into bargaining units according to such criteria as community of interest, wages, hours and other conditions of employment, past history of collective bargaining and the desires of the employees involved. If the employer and the collective bargaining representative are unable to agree on which employees are included in the bargaining unit, then the Public Employees Relations Commission generally is empowered to decide the employee unit.

The unit is important, since the existence of too many units may cause the employer to be in constant negotiation and to be dealing with bargaining unit rivalries. Conversely, if one bargaining unit contains too many

diverse groups, effective representation is difficult, with the result that employee dissatisfaction undercuts the credibility of the collective bargaining process.

The composition of the unit is important for other reasons. Only the employees within the unit can decide if they want to enter into collective bargaining, and if so, who will represent them. This means that bargaining units may be defined in such a way that some court employees are unionized and some are non-unionized. This often causes internal tensions, since non-unionized employees may benefit from provisions negotiated by a union.<sup>80</sup>

The composition of court bargaining units can take many forms:

- all court employees can be included in the same unit, regardless of their function, analogous to an industrial union;
- court employees can be organized along functional lines, such as court reporters;<sup>81</sup> this is analogous to a craft union;
- court employees can be organized into broad functional units including all employees of the local government<sup>82</sup> who are in the same functional category; or
- court employees can be in a bargaining unit including all public employees of a particular political subdivision, such as a county.

If a court is not regarded as the employer, the bargaining unit tends to transcend court organizational lines leaving court managers substantially isolated from negotiations, but nonetheless subject to the negotiated contract.

(3) *Negotiations*. This element of the collective bargaining process concerns the methods and issues involved in arriving at a collective bargaining agreement. Major considerations in this phase are:

- the composition and attitudes of the bargaining team;
- scope of bargaining and key issues;
- breaking deadlocks; and
- contract ratification.

The members of a bargaining team should know the working conditions of the employees affected by the negotiations and should have the authority to negotiate.

<sup>80</sup> A parallel situation exists where court employees are not unionized, but benefit from provisions negotiated by a county employees' union.

<sup>81</sup> Managerial, confidential or supervisory employees are excluded by law from employee bargaining units, but state laws often permit supervisors to form their own bargaining unit.

<sup>82</sup> In a unified system, court employees could be in a statewide bargaining unit.

A trial court team might be composed of the trial court administrator and heads of major court divisions. In general, it is best that judges stay out of direct negotiations, reserving to themselves the role of ultimate ratifier.

In a jurisdiction where an executive branch bargaining team negotiates a contract covering court employees, the trial court should take the following steps:

- request a position on the bargaining team; and
- demand a veto power over provisions affecting employees with court-specific functions or court operations (e.g., working hour provisions impeding case disposition).

Regardless of the composition of the management bargaining team, its members must engage in "good faith bargaining", as that term is defined in the jurisdiction. This is more than mere willingness to reach agreement; it means that parties must make an earnest effort and act conscientiously to help bring an agreement into being. The parties should be willing to sit down at reasonable times and exchange nonconfidential information and their views on proposals or subjects within the scope of bargaining. When bargaining fails to bring an agreement, differences should be justified with reasons. The parties must be ready to put into writing their agreements. Therefore, good faith bargaining requires that there be a willingness to consider compromise solutions and an open mind and willingness to find a mutually satisfactory basis for an agreement.

Good faith bargaining does not require that management bargain on any or all issues. Usually, statutes dictate the mandatory areas of negotiation, most commonly "wages, hours and working conditions." In practice, employers sometimes voluntarily negotiate on other matters. There are usually some areas which are prohibited areas of negotiation, since they are governed by law (e.g., binding arbitration between public employers and public employees or equal opportunity requirements).<sup>83</sup> In fact, the latitude of public employers in labor negotiations is circumscribed by many legal and administrative factors. Not infrequently, for example, public employee union contracts must be submitted to a legislative body for approval.

For the most part, the areas of negotiation are the same areas covered by rules or regulations of government merit systems. Where collective bargaining is imposed upon an existing merit system, there tends to be a carryover of many existing personnel policies. Collective bargaining does, however, cause special consideration of management prerogatives and issues closely related to unionism.

A central issue in any negotiation is the power of a public employer to manage personnel, specifically:

- to direct the work of its employees;
- to hire, promote, demote, transfer, assign and retain court employees;
- to maintain the efficiency of operations;
- to suspend or discharge employees for proper cause;
- to take emergency actions to meet pressing operational needs; and
- to choose specific employees for positions and specific work methods.

Preservation of the basic management prerogatives is a key factor in negotiation. Closely related to this is the issue of when an employee enters the union. Most commonly, courts strive for and obtain the right to freely choose employees and to keep them on probationary status for three to six months. Union membership coincides with the acceptance of an employee as a permanent employee.

A related area of concern is the union status of project employees (i.e., employees funded on a short-term basis by a state or federal grant). These employees should be dealt with specially in any negotiation if they are legally within the bargaining unit.

Other matters which tend to be raised by unionization are issues of strikes and work stoppages, dues, seniority, lateral entry and grievance procedures.

State law often prohibits strikes by public employees and requires some form of arbitration. Depending on state law, a contract should contain a no-strike clause or a clause dealing with unauthorized work stoppages with the authority of the court to exercise disciplinary action to deal with these problems.

The issue of dues is largely between a union and employees, but if a union provides evidence of an agreement with employees for withholding of dues from salary, this can be an inclusion in a contract.

A more troublesome problem is the role of stewards, both in reporting grievances and in conducting business during work hours. Some reasonable time allowance for their union function is a common contract provision. Stewards play a key role in relations between a court and its employees.

Unions are often committed to the seniority principle and are skeptical about "merit" systems where merit is determined by the employer. Seniority is hard for many courts to oppose because the judiciary is itself very prone to rely on seniority to choose presiding or chief judges. Yet, the seniority principle, if accepted, can seriously erode court control over promotions, not to mention its control over layoffs if there is a reduction in force.

Unions tend to oppose lateral entry and to insist upon promotion from within. This is a valid demand, but if

<sup>83</sup> Unions are also subject to equal opportunity requirements.

carried to extremes in a contract it can greatly inhibit the court's authority to attract upper-level employees or to inject new blood into a weak component of the personnel system.

A key bargaining issue, perhaps the most important bargaining issue, is grievance resolution. The contract provisions dealing with grievances govern the handling of disputes and have a lot to do with labor-management harmony. Most agreements limit grievances to disputes over interpretation or application of the collective bargaining agreement. Defining the scope of the grievance procedure is crucial, as is the methodology for resolving grievances. Most collective bargaining agreements include an arbitration clause, an inclusion which is not generally palatable to the judiciary if the arbitration is binding. Often the arbitration issue turns on the choice of the arbitrator.

On occasion, arbitration may even be necessary to break a deadlock in negotiations. Another, less extreme, form of breaking an impasse in negotiations is mediation between the parties or use of a fact-finder to make recommendations for settlement.

When a contract is finally negotiated, it requires ratification by the judiciary and by the managers who will actually administer the contract. A trial court, even if it is the employer and negotiator, must seek contract ratification by the local government which funds the court. Such approval may not be forthcoming, thus raising a question of the inherent power of the court. This issue is not yet legally resolved.

(4) *Contract administration.* This aspect of the collective bargaining process concerns the day-to-day

management of a court with a collective bargaining contract.

A collective bargaining agreement changes management in a variety of ways, but mainly makes the agreement the basic framework for many personnel decisions formerly made with few constraints on management discretion. This often works to the advantage of the manager, since employees are similarly constrained. Many employee demands or complaints can be dealt with by reference to the agreement or by deferring the demands to the next contractual negotiation.

Managers have a special obligation to understand and operate within the agreement(s) covering court employees. There is a special need for each manager and supervisor to understand both the content and intent of each contractual provision. There should be an ongoing review of the agreement throughout the life of the contract to prepare for the next negotiating session, but there should also be an open communication of ideas with the bargaining agent. This communication is crucial. Grievances will arise, but most can be solved short of arbitration. Neither side desires the risk of defeat present in arbitration, nor the costs.

d. *Conclusion.* Collective bargaining by public employees is here. Sooner or later, most large trial courts must cope with it. While it reduces the management prerogatives of the judiciary, it can be used affirmatively to improve personnel procedures and to deal more satisfactorily with employee problems. Unionization may also cause some trial courts to assume a stronger personnel management role and to assert the administrative power of the court.

### III. ESTABLISHING A JUDICIAL BRANCH PERSONNEL SYSTEM

#### A. Chapter Purpose

This section is designed to aid those trial courts which plan to develop a court personnel system or substantially restructure an existing system. The section assumes development of a relatively self-contained and independent judicial branch system. The section also has utility for trial courts which plan to rely on the executive branch for some major aspects of personnel administration, but still wish to have a personnel management policy for the court.

The section describes five steps in the development of a personnel system. The steps are largely chronological, but the middle three steps often overlap. The five steps are depicted in Table 10.

#### B. Developing a Judicial Branch Personnel System

1. **Initial policy decisions.** The decision to develop a more structured court personnel system is a major one. On the one hand, it requires some commitment of re-

Illustration 5: The Personnel Management Mile

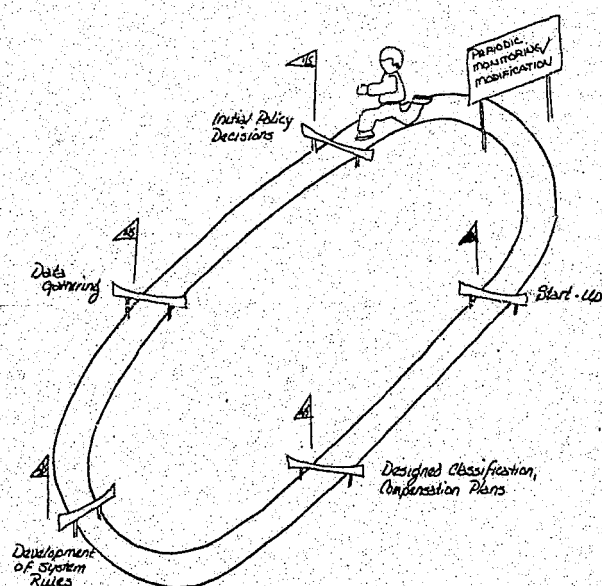


TABLE 10.  
*Steps in Developing a Court Personnel System*

Step	Description of Step
I. Initial Policy Decisions	Includes basic decision to develop a system and encompasses relationship of system to external agencies and decision on whether to use contractors. If contractors are used, this decision must be implemented prior to the next phase.
II. Policy Proposals	Data gathering and detail includes data on pay, personal qualifications and work functions of employees, and collateral data necessary to determine job classes and pay. Culminates in a set of policy proposals for court on structure and operation of the system.
III. Detailed Policy Decision	Includes the process involved in developing, revising and promulgating a set of rules to govern the system.
IV. Implementation	Includes the process of designing job classifications, compensation scales and classifying individual employees; includes the establishment of administrative mechanisms to operate the system; and includes orientation and training of judges, administrators, supervisors and employees.
V. Start-up	The turnover of the system to the court in an operational mode.

sources to develop the system; an ongoing administrative burden to maintain it; some employee unrest during the transition; and some disruption of customary practices. On the other hand, it provides a higher level of management control within the court; provides a more rational and defensible process of selecting, promoting, disciplining and paying employees; provides some protection of employee rights; and provides a means of upgrading employee qualifications. The strong and weak points have to be weighed by the court.

If a decision is made to develop a court personnel system, a determination must be made of the extent to which the court would like the system to be independent of the executive branch.<sup>84</sup> A further decision should be made on the ability of the court to develop such a system with the help of a local government personnel office or perhaps with the support of the state court administrator. Usually, it will be necessary to seek contractor support.

If contractors are required, there are several steps to be taken:

- ascertaining whether funds are available for contractors; if not, grant applications may be requested as a prelude to, or an accompaniment to, a request for proposals (RFPs);
- ascertaining the pertinent legal provisions governing procurement of contractor services; open procurement through design and issuance of RFPs is usually required; and
- the appraisal of proposals, selection of a contractor and negotiation of a contract are the final steps prior to system design.

## 2. Data gathering and detailed policy proposals.

The creation of a structured court personnel system requires a great deal of data on individual employees and their work functions. This can be a time-consuming and costly process, but it is also a necessary process to build a sound system.

The basic chronology of steps in this process is:

- development of background data on each employee: age, experience, education, skills, work history and salary record (i.e., the data necessary to later classify employees and determine pay scales; this will normally be done by questionnaire, but there may be existing biographical data that is accurate);
- analysis of job functions by interviews with individual employees (i.e., desk audits), by questionnaires or by both;
- survey of administrative personnel for system overview and job interrelationships; and
- development of collateral data that will influence job classifications and pay;

executive branch pay scales and fringe benefits; existing fringe benefits, vested rights, accumulated leave of court employees;

existing policies of related governments on tenure, leave and conditions of work;

policies and pay scales of comparable trial courts.

At the conclusion of the data gathering effort, sufficient knowledge of personnel functions and needs exists

to define some of the policy issues the court must decide prior to formulating its policy. Among the issues which might be presented to the court are:

- relationships to local government personnel systems, specifically the exact areas in which the court will have an independent posture on policy, procedure and personnel administration;
- system coverage of employees who are paid from state or federal funds, or who are in court-related agencies not directly under the management control of the court;
- application of tenure and merit concepts, as opposed to service at the pleasure of the court;
- the period to be allowed for transition to a new system (usually governed by budget cycles)<sup>85</sup>; and
- determination of basic procedural issues:
  - roles and responsibilities of system participants (i.e., judges, administrators, supervisors, employees);
  - judicial prerogatives in hiring and dismissing certain employees and in consideration of grievances;<sup>86</sup>
  - control of selection process;
  - employee status (e.g., exempt, probationary, permanent and temporary);
  - promotion procedure and lateral entry;
  - employee obligations and conditions of work;
  - disciplinary and grievance procedures;
  - work hours, leave, holidays;
  - travel.

3. **Detailed policy decisions.** The response of the court to the personnel issues placed before it will constitute a policy decision on the nature and scope of the personnel system. This response will normally be contained in rules of court, but a policy statement would suffice.

The methodology for developing personnel rules is largely determined by rule-making mechanisms in the particular jurisdiction, but the pattern of development is fairly standard, as follows:

- articulation by the court of some policy guidelines;
- drafting and dissemination of rules for comment;
- modification of rules; and
- promulgation of the rules (many jurisdictions have a waiting period before rules become final).

The level of detail in the rules is a local judgment. It is only necessary that the rules be explicit enough to clarify

<sup>85</sup> If legislation is needed to implement the system, the time frame must be related to the legislative cycle.

<sup>86</sup> The exclusion of judges from the grievance process is probably best, but in some courts the policy is to have judges involved in the hearing of grievances.

<sup>84</sup> At this point the decision would have to be very general. The more specific relationship would have to be developed as part of system design.

court policy on the major aspects of personnel administration. More detailed procedures or directives can be issued, as required.

**4. Implementation.** There are three basic aspects of implementing court personnel rules:

- the mechanics of creating a job and pay structure;
- the development of administrative instrumentalities to direct the system; and
- orientation of system participants.

a. *Job and pay structure.* Commonly, court personnel rules require that a job classification and pay plan be developed as a centerpiece for the personnel system. This undertaking is usually technical and is one of the major reasons why contractors are often used for initial data gathering, for suggestion of policy alternatives and for the purpose of developing a job pay structure. Contractors also can provide important help in classifying individual employees.

The typical process for developing a job and pay structure is:

- developing a set of job classifications and job descriptions;
- relating current positions to the new job classes;
- determining the compensation scale to be used (most commonly the executive branch pay grid) and related issues of in-grade increase steps and number of pay grades between jobs in the same promotional series;<sup>87</sup>
- relating job classifications to the compensation scale;
- classification of individual employees;
- establishing a procedure for classification appeals;
- hearing classification appeals;
- revision of employee classification, as required;
- submission of job classification, pay scheme and employee classification to the court for approval; and
- building the pay plan into the budget process and validating it by interactions with the other branches of government.

The above process seems fairly straightforward, but it very often involves judgments of a somewhat political nature since the ranking of jobs for pay purposes is a sensitive matter. Some of the problems which commonly arise are:

- the status of senior employees who lack the qualifications required in the new system, particularly

middle-echelon administrators in the old system who cannot realistically be classified as administrators;

- existing pay differentials between employees whose jobs are rated as being on the same level;
- employees whose existing pay exceeds the maximum pay in their new classification;
- very major pay increases for employees whose positions were underclassified; and
- employees who may have to be placed at the upper level of a pay grade due to seniority.

The problems of initial employee classification have to be handled on a fairly personalized basis, and some decisions must be made that reflect a stretching of the rules, for example:

- "grandfathering" senior employees who may not meet qualifications; or
- placement of employees in the middle or upper steps of a pay grade to preserve existing salaries without upsetting position classifications.

The essential feature of employee classification is to achieve fairness to individual employees without distorting the basic structure of the new system.

b. *The development of administrative instrumentalities.* One aspect of implementing personnel rules is to develop an in-house capability for operating the new system.<sup>88</sup> At the time the personnel system goes into effect there must be an operating administrative mechanism.

During the period of implementation, the following steps should be taken to create the needed mechanisms:

- appointing a personnel manager with delegation of authority;
- creation of any boards or panels specified in the rules as part of the personnel process (i.e., a grievance appeal board);
- development of a record system for personnel management;
- development of internal procedures for implementing the court's personnel rules, perhaps in the form of a manual; and
- development of a work schedule for the first year of operation.<sup>89</sup>

c. *Orientation of system participants.* A commonly neglected aspect of implementing a personnel system is the need to educate employees, supervisors, administrators, and judges in its use. Where a contractor is used to develop the system, it is common to contractually

<sup>87</sup> It is quite possible to run into situations of "overlap" where an employee in the upper steps of a lower pay grade makes more than an employee in the first steps of a higher pay grade. Personnel specialists are skilled at fixing pay gradations between grades and within grades. Typically, in-grade increases are 5% and promotional jumps 15%.

<sup>88</sup> For detail on these administrative responsibilities, see Chapter II, Section B. (2) *supra*.

<sup>89</sup> Very often, a contractor will be charged with the responsibility of developing such a work plan, as well as with the responsibility for developing record systems and internal procedures.

require that the contractor provide a series of orientation sessions.

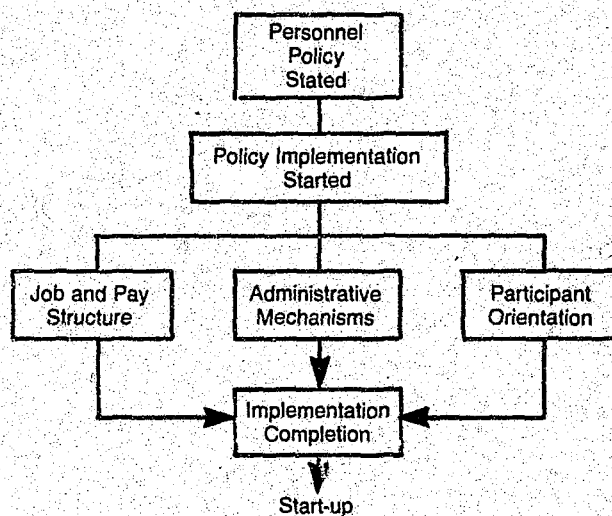
These sessions will normally group employees at a similar level in the employment hierarchy. Non-managerial employees will require a knowledge of rules affecting employee behavior, hours of work, employee obligations, employee benefits, employee rights, the means by which they can express complaints and the procedural mechanics that will affect them (for example, requesting leave). Managerial employees and supervisors will cover much of the same material, but from a very different perspective; specifically, their role in motivating, instructing, rewarding, reprimanding, and evaluating employees and their responsibility for making the system work. It is particularly important that judges receive this type of orientation. These sessions should serve certain basic purposes:

- to clarify court policy and to spell out differences between the new and old environments;
- to clarify participant roles;
- to build understanding and support for the system;
- to convey basic information about system operation in a forum which permits questioning and free discussion; and
- to introduce the person responsible for personnel administration and make their functions known.

**5. Start-up.** The operational beginning of a personnel system occurs when the policy of the court has been translated into an administrative reality by the completion of the major implementation steps, as diagrammed in Figure 4.

A key aspect of starting the system is budgetary. The system design is meaningless unless the other branches accept the job classification and pay plan. As a practical

**FIGURE 4**  
*Steps Preceding System Start-Up*



matter, the start-up of a new personnel system will often coincide with a new budget year.

The start-up of a system is often shaky due to inexperience or unanticipated events. It cannot be assumed that everything will work smoothly. The central feature of the start-up phase is tight monitoring and quick response to problems. Monitoring and modification of the system during the first year is a responsibility often imposed upon contractors.

The ultimate operational goal is a personnel system that serves the needs of the trial court. This goal can be met in so many ways. This booklet should help to suggest the principal alternatives and considerations which should be weighed by trial court leaders.

**END**