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STRUCTURING JUSTICE: THE IMPLICATIONS  
OF COURT UNIFICATION REFORMS

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## ABSTRACT

Debate continues over the wisdom and effects of court unification reforms despite the successful efforts to implement such changes in most states. This monograph summarizes the policy implications of a three year study of the judicial systems of five states and their experiences with court unification reforms. It is presented as a companion to the final report which summarizes the detailed findings of the study. (Henderson, et al, 1983)

We argue that four sets of issues must be considered when assessing court unification. First, unification reforms are an attempt to improve court operations by manipulating the structure of judicial institutions. The attributes of this new structure are a judiciary in which all courts and most ancillary functions are part of the same, statewide system; policy-making for this system is centralized; and trial courts are consolidated into a few operating units. Second, court unification can be characterized as a management approach to judicial operations which emphasizes explicit, proactive policymaking by an explicit set of managers. Implicit in this approach is the assumption that courts are analogous to other public agencies and thus subject to the same management techniques. Third, the efforts of court reform must take account of the functional requirements of the judiciary. We suggest that most of the reforms have been implemented without taking account of the underlying dynamics of courts. Fourth, court unification has cast in sharp relief the issue of judicial accountability by creating a set of offices at the state and local level which can be called to account for the accomplishment of management objectives (productivity, standardization, economy and efficiency) as well as traditional justice issues.

The policy implications depend upon the perspective on the judiciary. The problems of state level

managers who are concerned with directing the system as a whole are very different from the issues at the trial court level. Those at the state level must give primary attention to boundary issues because of their responsibility for the system as a whole. They must take a broad perspective, balancing the requirements of various courts and administrative units within the judiciary against the requirements for dealing with external sources for funding, personnel, and other needs.

At the trial court level the focus is more on the logistics of scheduling and processing cases. The critical issues are the functional requirements of the adjudicatory process. Field work suggests that three types of adjudicatory processes are involved, each with its own set of functional requirements. These three processes have been labeled procedural, decisional, and diagnostic.

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## CHAPTER ONE: THE COURT REFORM MOVEMENT

Over the last thirty-five years the judicial systems in the states have undergone dramatic changes in design. Drawing on the inspiration of Roscoe Pound in a speech to the American Bar Association in 1909, court unification advocates have attempted to improve the administration of justice by restructuring state judicial systems. The reforms have simplified court jurisdictions, made financial and budget control a state function, and lodged administrative rulemaking responsibility in central offices. In addition, chief judge and presiding judge positions have been charged with managing statewide systems and multimember trial courts; and administrative offices have been created to assist them in these efforts.

The success of court unification advocates has furthered debate over the wisdom of these changes, in large part because there have been very few efforts to assess the effects of the reforms. (Jacob, 1983b; Broder, et. al., 1981; Tarr, 1981; Green and Cass, 1980) This monograph is an outgrowth of a project initiated to remedy this deficiency. It summarizes the policy implications of a three year study of the judicial systems in five states — Georgia, Iowa, Colorado, New Jersey and Connecticut — and their experiences with reform. We shall examine the impact of unification on these states and apply the lessons to court reform in general. (The more detailed findings are reported in the final report of the project: Henderson, et. al., 1983.)

### Court Unification: The Issues

A great deal of the debate over unification has centered on whether a particular organizational model is appropriate for the judiciary. The more fundamental issue, however, is whether the court is meeting its objectives. Is the quality of justice improved? Is the

court dispensing justice with greater speed or consistency? Is the court accountable?

One of the significant contributions of the court reform movement has been the explicit recognition of linkages between the formal and functional aspects of judicial systems. Such recognition emphasizes the multiple objectives to which a court must be devoted: Judges, lawyers, court managers, and legislators all have unique perspectives on how courts can perform most effectively in dispensing justice. In this way, unification has increased the need for the judiciary to be accountable for the many activities of the court.

These are the issues which will guide this discussion. They can be summarized as follows:

- What structural changes have been implemented in the states under study?
- How does structure affect trial court management?
- How does the adjudicatory process affect structure and define management issues?
- What objectives can be met by a unified court?

Three bodies of literature provide the intellectual foundation for the original research and for this report. The first centers on the debate over unification which has furnished the vocabulary, if not the substance, for many judicial reform efforts in the states. The second is the growing body of literature reporting studies of court operations and procedures, especially those treating the problems of court management. Most of the materials from these two sources will be familiar to judicial practitioners and scholars alike. The third source of guidance is the extensive material on organization theory and the empirical studies of nonjudicial organizations. This third body of literature will be less

familiar to a judicial audience than the first two, although it is becoming more prominent in recent behavioral inquiries into court dynamics. (Jacob, 1983a; Clynn and Neubauser, 1981) A major effect of unification reforms is to create the structural foundation for courts to use the management techniques available to other formal organizations. This literature, therefore, has much to offer courts but only if the unique characteristics of the judiciary are taken into account.

#### Court Unification As Court Structure

Much of the debate over unification has centered on the specific structural changes which should be included within the rubric of reform. (Berkson and Carbon, 1978; Flango, 1981; Tarr, 1981) Roscoe Pound's initial proposals focussed on three components of judicial organization: the bench, the jurisdiction of the courts, and administrative services. (Pound, 1940, 1963) In a review of the court reorganization movement in the states, Berkson and Carbon (1978) describe how these original proposals have been expanded by subsequent reformers to include a wide range of specific changes designed to improve judicial operations through structural changes. Recommendations for improving the bench have included proposals to establish minimum qualifications for appointment, merit selection processes, judicial compensation commissions, mandatory retirement requirements, and parajudicial positions. Proposed changes in the definition of court jurisdictions have included reducing the number of trial courts, writing uniform appeals procedures, and establishing discretionary judicial assignment processes. Pound's concern with court administration has been translated into such reforms as the appointment of a professional court administrator, the use of trained administrative staff, uniform requirements for record-keeping and an independent personnel plan for non-judicial employees. In addition, the original list of proposals has been expanded to include state financing



of the courts, shifting the locus of court policymaking from local to state officials, and unification of the bar.

Collectively, these proposals define court unification. Berkson and Carbon (1978, 4-16) suggest that the many proposals put forward as a result of Pound's call for change can be summarized in terms of five reforms:

- consolidation and simplification of court structure,
- centralized management of the judicial system,
- centralized rulemaking,
- centralized budgeting process, and
- state financing.

To assess the degree of unification present in a system, they identified 16 attributes of judicial structure, assigned a value to each attribute ranging from zero to four, and summed the scores for each state.

Although the indicators are valuable, the summary index that Berkson and Carbon devised assumes that unification structure can be arrayed along a single dimension. However, a review of the content of the indicators suggest that they measure three attributes of a state's judicial structure, not one. First, there are several reforms which are designed to reorganize the horizontal relationships among judicial actors at the local level (consolidation of trial courts). Reforms of this kind include placing jurisdictions into one or two courts, shifting administrative functions from an independent agency to a judicial division, and assigning managerial authority to a presiding judge and a court administrator. Second, there are several reforms which affect the vertical links between trial courts and a state office (centralization of administrative and policymaking functions). A state court administrator, state

funding, centralized rulemaking, and the judicial assignment powers in the hands of the supreme court are all examples of reforms directed at the vertical dimension of the state judiciary. The third category of reforms contains those designed to protect the judiciary against external influence by clarifying the boundary lines between judicial and nonjudicial functions. Efforts to exclude the legislature and governors from rulemaking, budgeting, and judicial selection processes are examples of these kinds of reforms.

The unification literature has tended to assume that the three dimensions are interdependent; that is, a system cannot be consolidated without being centralized and the boundaries being clearly defined. Much of the rhetoric is cast in terms of all-or-nothing arguments. (Berkson and Carbon, 1978: 18-43) However, there is no reason in the abstract to assume that one cannot occur without the other. A system may have a simple trial court structure with a very weak central authority and intensive legislative involvement in rulemaking; a strong state office with many special jurisdiction courts; and intensive legislative involvement in rulemaking with both a consolidated and centralized structure. Moreover, as a result of this study there is ample empirical evidence that such arrangements exist.

Distinguishing among these three dimensions makes it possible to recast the issue of unification in a much more useful form. The literature on court unification frequently implies an absolute categorization scheme which makes clear distinctions between state systems which are unified and those which are not. (See, e.g., Tapley, 1981) The three dimensional concept shifts the issue from identifying the ideal to assessing the effect of different combinations of centralization, consolidation, and boundary definition.

A second implication of this approach to unification is that there are two units of analysis which must be given attention: trial courts and judicial systems. The unification literature assumes the judicial system

will operate as a coherent, centrally managed process. (Mahoney and Solomon, 1981; Gallas, 1976) However, as will be clear during our discussion, the issues for trial courts are very different from those of central authority. Each perspective must be taken into account.

#### Court Unification As Management

The common theme which distinguishes the unification reforms from other efforts to improve the judiciary is their focus upon manipulating the structure of the courts. The proponents argue that it is necessary to replace a large set of loosely associated, autonomous courts with a reduced number of operating units integrated into a single, coherent organization. (Kleps, 1981) The exact boundaries of this organization are subject to debate, e.g., should there be some court of limited jurisdiction and are appellate courts to be included. What is to be created, in effect, is a collective body with established lines of authority and responsibility to ensure individual activities of judges and administrators serve a common purpose.

It is frequently assumed that the structural design will lead, inevitably, to changes in behavior. However, unification reforms are not self-implementing. As Berkson and Carbon argue, "it is really irrelevant whether a state adopts the collective definition of court unification. What is critical is whether the objectives of a unified system can be met by a state's approach to systematizing the judiciary." (1978: 17) Unification is not an end itself, but rather a means for realizing a set of goals and objectives. As Berkson and Carbon argue, it is a matter of empirical inquiry what form those means may take, and whether they are necessary or sufficient for improving the administration of justice.

A close examination of the various unification reforms suggests that the specific changes in structure may be less important than the philosophical approach

to judicial management. The traditional approach to courts places the individual judge at the center of all decisionmaking. No distinction is made between questions of justice and the problems of directing the day-to-day activities of a court. Court management issues are resolved by each individual judge within the broad confines of the administrative rules and procedures governing all judges.

Unification reforms challenge this approach to judicial policymaking. They assume that courts are analogous to other public agencies and, as such, are subject to the same management techniques. (Wheeler, 1977; Gallas, 1976; Burstein, 1980) Instead of policy reflecting the summation of individual judicial decisions, it is expected to grow out of an explicit, collective process. Instead of leaving certain issues to the direction of others, judicial management is to include all activities which affect courts, from case processing to financial and personnel policies. (Klep, 1981; Hodson, 1981; National Center for State Courts, 1976)

Effective management requires a general understanding of court activities and a conceptual framework which will permit the manager to take into account the multiple functions and objectives a court must meet. Like all formal organizations, courts must address three broad categories of issues. (Thompson, 1966; Perrow, 1967; Mintzberg, 1979; Burstein, 1980; Cook, et. al, 1982) The first category contains the issues associated with the core of the judiciary - the adjudicatory process. It is common to assume that since case disposition is the exclusive prerogative of a judge that the whole process is subject to his/her control. The judge's decisions, however, are only a part of a much larger process involving clerks, lawyers, plaintiffs, defendants, security personnel, etc. (Eisenstein and Jacob, 1977; Nardulli, 1978; Jacob, 1983b; Henderson, et. al., 1983) Although the judge's decisions on the law or facts of a case are not subject to managerial control, the context within which the hearing of a trial takes place are very

much part of the management process. (Nagel, Neff and Munshaw, 1978; Knab and Hough, 1979; Ryan, 1982; Ryan, et. al., 1980)

The second category of issues are those associated with administrative services. (Mahoney and Solomon, 1981; Lawson, Ackerman & Fuller, 1979) These are commonly treated in the literature as the sum and substance of court management. (Saari, 1982; Gallas, 1976) Included here are such things as record-keeping, personnel issues, financial issues, security, building maintenance, and all of the other details associated with operating a bureaucracy.

The final category of issues is the problems courts have in dealing with nonjudicial agencies. (Hydebrand, 1975; Eisenstein and Jacob, 1977; Fretz, 1981; Schair, 1981) These are not trivial questions. Budgets must be negotiated with state legislators, financial offices, county commissioners, and city councils. (Baar, 1975) Arrangements must be made with the city, county, or state for office space. The sheriff may provide bailiffs for the courtroom. The computer is often under the purview of a central data processing agency. Members of the media demand constant access. And the bar association cannot be ignored.

#### Adjudicatory Process

Effective management of the judiciary requires a clear understanding of the functional requirements of the adjudicatory process. The legal literature has tended to assume that the process is constant. From a management perspective, however, it is clear that there are differences. (Henderson, Guynes and Baar, 1981) Efforts to identify those differences have tended to focus upon the case content, e.g., criminal versus civil complexity of the legal issues involved, felony versus misdemeanor. Other efforts have focussed on the characteristics of the litigants, e.g., number of litigants, juvenile versus adult defendants, value of the

claim. (Alfini and Doan, 1977; Sarat, 1982; Lawson and Geltne, 1980)

During the course of our field work, it became clear that from a functional perspective there were three different approaches to case processing in the trial courts we observed. We have called these approaches procedural adjudication, decisional adjudication, and diagnostic adjudication. All three approaches shared a commitment to the classic norms of due process. However, they differed in how the norms were translated into practice depending upon the complexity of the case and the purposes to be served. All courts, be they general, limited or special jurisdiction, employed all three approaches to process cases. It was the relative importance of certain practices which differentiated the courts.

The distinction among these three adjudicatory processes is critical to understanding the implications of court unification. Each process had very different requirements for administrative services and posed different problems for external relations. An understanding of these differences gave meaning to the observed variations in activities among trial court administrators, judges and state level officials.

At this point in the discussion we will only summarize the underlying differences among the three adjudicatory processes and provide some illustrations. The implications of these differences for administrative services and external relations will be developed more fully in the remainder of this report.

Procedural Adjudication. Procedural adjudication lies at the heart of the common law tradition in the United States. (Parker, 1967; Roper and Maline, 1981; Clarke and Koch, 1980) It emphasizes adherence to established rules and procedures to ensure a just resolution of a case. The primary role of the judge prior to and during a trial is to ensure that proper procedures are followed and to determine the appropriate penalty

in criminal cases or remedy in civil suits. The cases which actually go to trial are usually characterized by unclear fact situations or complicated applications of the law and always relatively high stakes. The emphasis, therefore, is on careful deliberation and extended fact finding.

Trials are time consuming affairs which typically require from half a day to several weeks of a judge's time. Moreover, the case is likely to appear pretrial before a judge on several occasions as motions are filed by attorneys for each side. Too much emphasis, however, should not be given to the trial as a form of disposition. Only a small percentage of cases are resolved by formal adjudication by a judge. The more common practice is for resolution of the issues through direct negotiations between attorneys for each side in the form of plea bargaining in criminal cases or settlement conferences in civil cases. Formal motions may narrow the range of negotiation but are rarely dispositive of the case. In this situation, the judge rules on motions, serves as a referee during face-to-face discussions and as a public ratifying authority for private agreements.

The effect on the trial characteristics and the settlement procedures is an adjudicatory process which is oriented toward treating each case as sui generis, standing on its own rather than as a part of a continuous flow. Cases are collections of events which often follow no predictable pattern and which may or may not involve the judge. The process moves in fits and starts to ensure ample opportunity for deliberation and negotiations. From a due process point of view this process may have great virtue; from an organizational perspective it has critical implications for the kind of administrative structure which is likely to emerge.

Decisional Adjudication. Decisional adjudication is designed to establish the facts in a case so that the law can be applied as quickly and directly as possible. Its most striking characteristics are the simplified rules

and procedures followed in hearings. (Alfini and Doan, 1977; Sarat, 1976; Rubin, 1977; Knab and Lindberg, 1977; American Judicature Society and Institute for Court Management, 1981)

The sentences and financial awards which can be imposed in decisional adjudication tend to be limited. So, too, its orders, e.g., denial of bail or committal to trial are either temporary or subject to automatic review. Therefore, the matters dealt with in decisional adjudication lend themselves to or require speedy disposition. Litigants generally will not or cannot invest considerable amounts of money to sustain their positions. As a practical matter, this limits the nature of actions in decisional adjudication to those with narrow and specific factual and legal issues.

This simpler proceeding is sometimes confused with a disregard for due process because judges may take a more active role in all phases of the adjudicatory process even when lawyers are present. (Feeley, 1979) In fact, since many of these attorneys are handling a high volume of cases themselves, the judge may be the only guarantor of real fairness in the proceedings by assuring that the attorneys have not overlooked a critical issue.

The simpler proceedings serve several functions without necessarily infringing upon the rights of the litigants. (Knab and Lindberg, 1977) The cases involve simpler fact situations than those commonly heard in the court of general jurisdiction and an elaborate procedure is less critical. The decisions to be made are usually highly routinized. (Hydebrand, 1979) Everyone has heard descriptions of the old night court in a large city. But the patterns of routinized decisions occurs in rural as well as urban settings. The most highly routinized decisions are probably found in traffic courts.

Diagnostic Adjudication. Diagnostic adjudication is often adjudication in name only. It is not predicated



on determining guilt or innocence. (Flicker, 1981; Clarke and Koch, 1980) Nor is there an assumption that a just decision will emerge from a regulated conflict between opposing sides. Instead, the objective of diagnostic adjudication is to identify the problems which are the source of the dispute before the court or require court action for the protection of both the persons before the court and the broader societal interests at stake. The key characteristic of diagnostic adjudication is, therefore, its focus on the proactive role of the court in defining the issues and fashioning appropriate remedies.

The archetype of the court dominated by diagnostic adjudication is the juvenile court. Its objective is to identify the problems which are the source of the juvenile's behavior and to provide the remedy which is in the best interest of the juvenile. The Gault decision requiring the presence of attorneys for children charged with serious offenses has mitigated this orientation. (Flicker, 1981; Clarke and Koch, 1980) But this decision has not yet converted juvenile courts to dominance by procedural adjudication; the basic approach is still much more akin to that of a social worker than a lawyer.

Juvenile courts are not the only courts dominated by diagnostic adjudication. The orientation toward diagnosis and search for a remedy is also characteristic of family and domestic relations courts, some probate courts, and many equity proceedings. Disposition of the case does not depend solely upon establishing the facts in a case and applying the law to determine guilt or liability; rather, disposition becomes closely intertwined with clarifying the issue. The law is frequently less important than the feelings of those directly involved; and there may be no contending parties, as in a no-fault divorce. The judge in diagnostic adjudication may, therefore, go beyond a reactive role to search out appropriate solutions.

It is important to understand the difference between the concept of adjudicatory process, as used here, and other attempts to categorize judicial activities. The labels reflect observed differences in how judicial decisions are made in various settings. The following matrix presents examples of actions which occur in different types of courts categorized according to the adjudicatory process involved. Several points should be clear from this brief summary. First, we make an explicit distinction between the formal structure of trial courts (i.e., general, limited, and special jurisdiction) and the adjudicatory processes which occur within them (procedural, decisional, and diagnostic). Second, individual courts house different mixes of adjudicatory processes. For example, a juvenile court is likely to employ diagnostic adjudication much more frequently than a traffic court. Third, a case is likely to undergo several different processes as it moves from filing to final disposition. For example, a felony case may begin with a bail hearing handled by decisional adjudication, a trial conducted as procedural adjudication, and sentencing decided within a diagnostic framework. This matrix should not be treated as a definitive list of actions for each adjudicatory process. Rather, it is presented for illustrative purposes only to demonstrate the kind of actions included in the various categories.

#### Court Unification And Judicial Accountability

The court unification movement has cast in sharp relief the issue of accountability of the judiciary. (Baar, 1975; Alfini, 1981; Cook, et. al., 1982; Hosticka and Murphy, 1981) The traditional court system relied primarily upon the appellate structure and trial de novo, supplemented by electoral politics, to hold judges accountable for their actions. One of the ironies of the unification movement is that the successful effort to expand judicial control over its own affairs has simultaneously expanded the ability of external agencies to hold courts accountable for effective management of their affairs.

# ADJUDICATORY PROCESS

General Jurisdiction

## Procedural Adjudication

- Civil trials
- Criminal trials
- Valuation cases

## Decisional Adjudication

- Suppression of evidence
- Pretrial motions
- Civil damage determination (simple)
- Calendar status call
- Trial de novo from lower court

## Diagnostic Adjudication

- Pro se litigation
- Criminal sentencing
- Equity motions
- Divorce settlement

COURTS

Limited Jurisdiction

- DWI hearings
- Commercial matters (lawyers present)

- Misdemeanor actions
- Traffic hearings
- Small claims actions
- Indictment hearings
- Suppression of evidence
- Bail motions
- Housing matters

- Pro se litigation
- Sentencing

Special Jurisdiction

- Contested probate actions
- Mental health (commitment) cases

- Support actions
- Simple estate actions in probate

- Juvenile actions
- Child custody
- Complex probate matters

The traditional system camouflaged administrative responsibility. The overlapping jurisdictions of the numerous courts which were part of a traditional state system confused efforts to identify who was responsible for what activities. To further confound things, administrative functions were usually shared among several independent agencies, some of them part of the judiciary, but most of them outside of judicial boundaries.

Accountability can mean many things, depending upon the perspective of the viewer. (Cook, et. al., 1982) Each perspective emphasizes different objectives, with its own means for ensuring they are achieved. Ultimately, however, all of the objectives involve the concepts of justice. For judges the primary emphasis is upon whether the law is appropriately applied to a fact situation. From their perspective all other criteria of evaluation must be subsumed under the requirements of justice. The most appropriate control mechanism, from this perspective, is other judges, either through the appellate process or through administrative rules and procedures.

Legislators are likely to take a different perspective on the courts. Their concern is with what are considered to be appropriate resource allocation questions and politically sensitive court decisions. Requests for additional judges and staff are translated into questions of judicial productivity. A large backlog of cases may be seen as a signal of inefficiency rather than a need for additional personnel. Unpopular decisions, as sometimes happens with well publicized criminal cases, are potential ammunition for electoral campaigns. From a legislative perspective, the judiciary is likely to be seen as far too insular.

A third perspective is represented by the media whose representatives see accountability as information. In their view the judiciary will only be held accountable if specific objectives and goals are less important than the fact that the activities are available

for public scrutiny. A simple reporting of events is expected to ensure that courts do not stray too far from the accepted norms of the community.

The legal profession has still another perspective on the accountability of the courts. For them the central issues are ones of fairness and access. If the courts are to meet their needs, they must be predictable, adhering to accepted legal norms.

These perspectives illustrate the diversity of objectives to which the judiciary must respond at one time or another. No organizational structure can guarantee that any or all of these values will be equally well met. Effective court management, however, requires that these objectives be balanced against each other to ensure that no one objective is emphasized at the expense of another. A major issue for consideration in this monograph concerns which objectives are most appropriate for which form of organization.

#### **This Monograph**

The discussion which follows reflects the issues raised in this introductory chapter. Drawing on the in-depth study of the courts in five states — Georgia, Iowa, Colorado, New Jersey, and Connecticut — we examine the relationship between judicial structure and court management, and the effect of this relationship on trial court operations. Our central concern throughout the monograph is with judicial reforms and their impact on court operations and accountability.

Chapter two lays the foundation for the discussion by describing the system characteristics of the judiciary in the five states. The need to establish a coherent, integrated judicial system is a central theme in unification reforms. The experience of these five states suggests that the system concept may take a variety of forms when translated into specific organizational structures. Chapter three describes the organizational structure of trial courts in the five states we visited.

Chapters four and five are concerned with the forms and efficiency of management activities at the system and trial court levels, respectively. These chapters attempt to capture the range of management efforts in both unified and nonunified states. Finally, chapter six summarizes the implications of this study for policy development and suggests major issues for future research.

## CHAPTER TWO: THE STRUCTURE OF JUDICIAL SYSTEMS

The concept of a judicial system is prominent in the literature on court unification. The advocates of unification argue that all units in a judicial system should be part of a single, comprehensive, statewide structure which defines the constituent units and their interrelationships. (Berkson and Carbon, 1978) Under this model the power to make and enforce policy is to be vested in state level officials, and these policies are to be carried out in trial courts which have been organized into simplified operational units, with comprehensive, uniform jurisdictions. Such a judicial system it is argued, allows for active management of activities at both levels and holds the promise of effective and efficient justice.

The five states selected for detailed study — Connecticut, New Jersey, Colorado, Iowa, and Georgia — reflected as wide a variation in the design of their judicial systems as possible. At one extreme was Connecticut with a strong central authority, and a single trial court. New Jersey, Colorado and Iowa were offered variations on these themes, differing in the authority they assigned to the state level office, and the design of their trial courts. Georgia was our control state with a weak central direction, and numerous trial courts with overlapping jurisdictions.

The extent to which a state judiciary appears to be integrated depends, in large measure, on what is considered to be the primary structural attribute of a system. One attribute is the substantive jurisdiction of the trial and appellate courts in a state. There are several efforts in the literature to compare state judiciaries using this model. (State Court Organization 1980, 1981; National Criminal Justice Information and Statistics Services, 1973, 1977) A second attribute of a system is the structure of the bench. States differ in the number of classes of judges defined, the authority



of each class, how they are selected, and the degree of independence from each other. A third attribute is the organization and operation of the various administrative services required by a judiciary. This has received increased attention in the literature in recent years. (Lawson, et. al., ND; Institute for Court Management, 1975; Nieland and Doan, 1979)

The descriptions of the five states which follow take account of all three attributes of a judicial system. The discussion is organized around the following sets of questions.

- How does the central authority of a unified system differ from one which is less unified? Are there important differences in the powers and capabilities of central authorities to make policy and manage judicial activities?
- What are the critical structural features of trial courts which define them as organizational units? How do judges, substantive jurisdictions, and administrative services fit together? (Jacob, 1983)
- What mechanisms and relationships, if any, bind together central authorities and trial courts to form a judicial system? Are there significant differences in the substance of these contacts?

We will begin the discussion with a description of the process followed for selecting the five states, and the data collection techniques. This will be followed with descriptions of the five judiciaries.

#### Selecting The Five Judicial Systems

Site selection was done through a two step process. The first step was to classify all 50 states according to the degree to which they had centralized and consolidated their judicial systems. Five states

were selected to represent the extreme ends of the continuum - Georgia, Iowa, Colorado, New Jersey, and Connecticut. In the second step a set of trial courts was identified for detailed study in each of the five states. The court of general jurisdiction was used as the initial trial court sampling unit. From three to five local districts or their functional equivalents were selected in each state. Then, a set of limited and special jurisdiction courts was drawn from within each district. A total of 103 separate courts were selected for study. They included large, multimember urban courts, single member rural courts, general jurisdiction, limited jurisdiction, juvenile courts, and all of the combinations thereof. (Henderson, et. al., 1983)

The information we collected on the judiciaries in each state came from personal interviews conducted in two stages. The first stage involved extensive interviews with the most prominent leaders of the judiciary within the state. Our sample included chief justices and their representatives, supreme court justices, and directors of state administrative offices and their senior staff. (Henderson, et. al., 1983) From these interviews and a review of state documents and reports, we formulated descriptions of each judicial system from the perspective of central authorities.

In the second stage, interviews were conducted with local court actors, i.e., judges, court administrators, clerks, and administrative staff. Informal background discussions were held with local attorneys, prosecutors, and other officials knowledgeable in trial court activities. This data collection effort provided a rich source of information on the effects of structure on the five different judicial systems.

#### Georgia

The judicial system in Georgia at the time of our field work was a system in name only. It could be best characterized as a constellation of independent judges and administrative officials, held together through

traditional appellate processes and common titles. There were a variety of courts and judges with varying and overlapping jurisdictions, operations, and organization. Administrative services were supplied by independent agencies and officials. The authority of the central authorities was limited or nonexistent. It was, in short, an ideal control state for purposes of assessing the importance of unification.

Almost all control over trial court operation in Georgia rested with the individual judges. There was a single court of general jurisdiction, the superior court, which was divided into 43 circuits. Constitutional amendments had established eleven different additional classes of courts with limited and special jurisdiction. Many of these amendments defined unique jurisdictions for specific municipalities. This resulted in a patchwork of local units, almost too numerous to count, with little uniformity even within the same general class. For example, the 383 courts falling into the municipal or city class were variously named the recorder's court, mayor's court, criminal court, city council court, and police court. The structure of the judicial bench varied as greatly as the types of courts. The process for selecting judges and the educational requirements of potential candidates depended more upon the criteria of local officials than on state law.

The Administrative Office of the Courts (AOC) had limited responsibilities, principally confined to gathering statistics on court workload. Funding for the judiciary came primarily from local sources, not the state. Most administrative services for trial courts were provided by independent offices — superior court clerk, police department, sheriff's office, the state probation office, and the county or city government. The primary control mechanism over the trial courts was the appellate process or trial de novo for lower courts.

Georgia had little management capability to support central initiatives. The authority of the Supreme

Court to supervise the lower courts through procedural or administrative rulemaking was a matter of dispute. The number of staff of the Administrative Office of the Courts declined dramatically with the loss of LEAA support. Even when federal grants supported a larger operation, the only substantial work done by the AOC, in addition to collecting statistics, was in the areas of training and research. There was no management structure linking the AOC or the Supreme Court to local trial courts. Any central influences which were felt were channeled indirectly or informally.

The judiciary in Georgia, then, was not a judicial system. While local trial courts delivered justice, they did so with little or no direction from central authorities and with no coherent organization binding them together. There were common characteristics within classes of courts, especially within the Superior Court. But the primary mechanism linking one class with another was the appellate process. In most respects the Georgia judiciary was more akin to a constellation of independent organizations than to a system of interdependent actors and procedures.

#### Iowa

The structure of the Iowa judiciary stood in marked contrast to that of Georgia. A universal system defined the jurisdiction of all courts in the state. Members of the bench were subject to managerial controls as well as appellate review. The locus of authority, however, lay with local units rather than the state. There were clearly defined management positions at the local level administering judicial activity in the trial courts. In many respects the Iowa judicial system was analagous to a confederacy — an active central government (the Supreme Court, and the Administrative Office of the Courts) exercising powers and functions specifically ceded to them by the constituent units (trial courts).

The policymaking body for the judicial system was the Supreme Court of the state; but it shared its most significant powers, budget and rulemaking, with the legislature. The Office of the Supreme Court Administrator was responsible for administration of the judicial system, but its activities were limited primarily to routine tasks.

The only class of trial court in Iowa was the district court. It was organized into a few large geographical districts with a presiding judge and district administrator in each one. The bench was divided into three classes of judges: district judges with unlimited jurisdiction over cases; district associate judges who were full time judges with limited jurisdiction; and magistrates, who were part time judges with limited jurisdiction operating within each county. All members of the bench located in a district were subject to the managerial direction of the district presiding judge. Administrative services for the trial courts were provided by independent agencies, with local funding and recruitment of personnel.

The Supreme Court of Iowa was empowered by law to assure effective and efficient administration of justice. And it was supported in this task by an administrative office. But the Supreme Court had to vie for authority with an independent organization of trial judges in policy and administrative matters. As a result, its work and influence tended to be confined to legal and judicial functions. The work of the administrative office was devoted to support of the various legal functions of the Supreme Court, collecting case statistics for purposes of allocating judgeships among the districts and monitoring certain expenditures by judges. As we will discuss in the next chapter, the central office did perform certain managerial functions which influenced trial court operations. But the methods tended to be indirect rather than through the exercise of hierarchical authority.

The outlines of a coherent, comprehensive judicial system were present in Iowa. The trial courts and bench had been consolidated and all were linked to a central office. However, any tension between the prerogatives of the state level office and those of the constituent trial courts tended to be resolved in favor of the latter. The bonds between the two levels were very tenuous because the powers of the former were consciously limited.

#### Colorado

The Colorado judiciary also contained strong system characteristics. Unlike the Iowa structure the central authorities exerted substantial control over a variety of trial court functions. This authority was not unlimited, however, as local court units had substantial control over key policy areas. The management efforts in Colorado were directed almost exclusively to administrative services rather than the supervision of judges. The structures linking central authorities to local courts reflected this priority.

Most trial courts which were part of the state system were organized into twenty-two districts and divided between a court of general jurisdiction (district court) and some highly specialized limited jurisdiction (county court). In addition, Denver courts had a unique set of jurisdictions, and there were anomalies in other districts as well. Finally, one class of courts - municipal - was outside of the state system altogether.

Judges were recruited locally regardless of the type of court. The Supreme Court appointed a chief judge to serve in each judicial district. No evidence was found to suggest that the chief judges were conduits of central policies. In fact, no strong bonds existed between central and local authorities concerning judicial activities except for traditional appellate relationships.

The distinction between judicial and administrative direction by central authorities observed in Colorado provided a new perspective on court unification. The relationship between state and trial court interests was analagous to that of a federation, that is, a strong central authority which had to contend with well established local prerogatives. Central direction is possible, in such a system, but it must be tempered by a recognition of local interests and concerns.

Administrative services on the other hand, were closely supervised by central authorities. The Administrative Office of the Courts was responsible for funding, personnel, recordkeeping, and legislative matters. While the Supreme Court was among the most active in issuing rules for both judicial procedure and administrative practice, enforcement of the latter was more prominent and better supported by the central office. Strong ties existed between the state and local levels on administrative matters.

#### New Jersey

The New Jersey judicial system also exhibited many of the characteristics of a federal system. In contrast to Colorado, however, the focus of central office activities was judicial rather than administrative. Most of the rules and procedures were directed at the judges' behavior and practices. Administrative services were funded and controlled by local authorities.

The formal structure of the New Jersey judiciary suggested a system which was centralized and unconsolidated at the time of our field visits. The Supreme Court was charged with establishing and enforcing policies and procedures for the judiciary. It had supervisory authority over the members of the bench as well as control over all rules and procedures governing courts in the state. At the local level the trial courts appeared to be nonconsolidated as the constitution defined four types of trial courts - superior, county

district, juvenile and domestic relations, and municipal - and three types of judges - superior, county district, and combined into two classes - general jurisdiction and municipal. The general jurisdiction (superior) was divided into districts (called vicinages) with an administrative judge appointed to manage all courts operating in the area. The judges on these courts were appointed and funded by the state. Municipal court had limited jurisdiction. The judges were appointed by the local government and served on a part-time basis. Although the administrative judge of the vicinage had some administrative authority over the municipal courts in his/her district, the primary control was through the appellate process.

Central authorities had a long history of intense involvement in organizational reform in New Jersey. The Supreme Court and the Administrative Office of the Courts (AOC) were closely linked, as in Colorado. The AOC had the largest staff of any of the central offices we studied. The Supreme Court had formal authority for supervision of both judicial and administrative aspects of the judicial system. Unlike Colorado, though, there was high priority placed on enforcement of the rules which pertained to judicial proceedings, while management of administrative services appeared to be less prominent. Central influences in the administrative activities of trial courts were discernible, but clearly circumscribed by local organizations and prerogatives. For example, funding for the trial courts was provided largely by county boards of freeholders and administrative services were provided by independent agencies.

Although central office control over judges was strong, central direction of administrative services was much more limited. Funding for most activities, other than judges, was provided by county government. Staff and administrative services were the responsibility of locally elected officials - clerk, sheriff, surrogate - who received their funding from local revenues.



And the municipal courts and judges were entirely funded and staffed by the various city governments.

The effect of this distribution of responsibilities was a judicial system in which there were strong institutional bases at both the state and local level which could (and did) contend for dominance over particular activities. Responsibility for the conduct of the bench was clearly assigned to the central authorities. It was less clear who had authority over the conduct of administrative services and this lack of clarity was the source of recurring tension at the time of our field visits.

#### Connecticut

The Connecticut judiciary came closest to conforming to the centralized, consolidated system prescribed by the advocates of unification. It had a single trial court, a single class of judge, and had fully integrated most administrative support services into the judiciary. The state central office housed a number of functions devoted to monitoring and supervising virtually every aspect of trial court operations. All judicial and administrative policies were established centrally and any direction enjoyed by individual judges or administrators at the local level was exercised within the bounds of central direction. The only units outside of this system were Probate Courts which had elected judges and were organized into their own independent statewide structure.

On a superficial level the Connecticut judicial system was a simple organization which combined all judicial and administrative functions into a coherent, statewide, and centrally directed structure. There was only one court, the superior court, which operated with a single class of judge. The judges rotated every six months to a new location or jurisdiction. The superior court met in three types of locations — judicial district, geographic area, and juvenile. Each of these locations had a specific substantive jurisdiction which corre-

sponded to traditional distinctions between courts of general jurisdiction, limited jurisdiction (criminal only), and juvenile. All trial courts operated with uniform, statewide rules and procedures.

Judges served in a variety of supervisory positions. There were three divisions of the superior court — civil, criminal, and family — and each had a statewide chief judge. The judicial district had an administrative judge with authority over the superior court locations in the district. In the larger judicial district and geographic area locations presiding judges were appointed to supervise the work of judges assigned to specific divisions of the superior court jurisdiction.

The Chief Court Administrator's Office (CCAO) had extensive authority over the bench and administrative services. Rulemaking for legal procedures and judicial assignment, which are key elements of central authority, were controlled by judges working either in committees or in senior management positions in the office itself. Most administrative services, e.g., judicial education, budgeting, personnel negotiations, jury management, and external relations, were supervised by nonjudicial staff. The relationships between administrators at the local and state level were well defined. Each court location — district, geographic area, and juvenile — had its own clerks' office with direct ties to a counterpart in the central office. The clerks also reported to several functional divisions in the CCAO, such as jury management, financial services, facilities management, and information systems.

The relatively simple organization of the courts in Connecticut was, in actuality, a complex network. The orientation was toward strong central control with virtually no local direction.

#### Conclusion

Central to the unification reforms is the presumed need to create a coherent judicial system in each

state which binds together the constituent parts. Advocates have argued that such structures are necessary to ensure that policies can be developed and implemented which will promote the efficient delivery of justice which is fair and equitable.

In four of the five states selected for study, a statewide judicial system had been created which clearly defined interrelationships among its members. The glue holding the systems together was based on administrative authority as well as the more traditional network of trial *de novo* and appellate review. As a result, policies could be made and implemented for the constituent parts of each system. Only in Georgia, our control state, was it difficult to describe the judiciary as a system. The distinction between judicial and nonjudicial institutions was difficult to draw for many of the limited jurisdiction courts. And there were very few mechanisms binding the various courts together beyond trial *de novo* and appellate review.

Among the states which had created systems, however, there were major differences. There was wide variation in the range of activities which had been included in the statewide system. Colorado and Connecticut had integrated most administrative support services into their system. However, in both states a set of courts was outside the system - municipal courts in Colorado and probate courts in Connecticut. In Iowa and New Jersey the system held a monopoly over the bench, but major administrative services were the responsibility of nonjudicial agencies.

From a management perspective, the more interesting variation among the states was the difference in the relationships among state and local officials. The debate over unification has focused on the advantages or dangers of strong, central direction of the judiciary. The reformers have argued that justice requires uniformity of practices and procedures across the state; others have contended that justice must be tailored to the requirements of the community. (Gallas, 1976;

Saari, 1976) Both concepts of justice can lay claim to legitimacy. The five states described here represent different solutions to the resolution of these competing perspectives on justice.

At one extreme is the union system of Connecticut which assigns ultimate authority to state level officials. There is no clear institutional base to support local concerns. At the other extreme is the constellation of Georgia courts in which all power lies with the individual trial units. Efforts to impose statewide constraints must depend primarily upon the appeal process. In between are the confederacy of Iowa and the federation of New Jersey and Colorado. These models do not resolve the tension between the two perspectives in favor of one level over the other. Both perspectives are given credence by the management structures at each level.

These formal descriptions lay out the potential tensions among the constituent parts of these five systems in establishing judicial policy. We must now examine the structure of trial court management to determine if and how these system level concerns affect the delivery of justice in the five states.

### CHAPTER THREE: THE MANAGEMENT STRUCTURE OF TRIAL COURTS

One of the ironies of the court unification movement is that although improved trial court performance has been a major argument behind the reforms, most of the actual changes have focused on restructuring the judicial system and centralizing its administration; only recently has any attention been given to the problems of managing trial courts. (Green and Cass, 1980; Cook, et. al., 1982; Solomon and Doan, 1981; Weake, 1980; Knab and Hough, 1979; Mahoney and Solomon, 1981) It has been assumed that if a central authority is created with control over rulemaking, budgeting, financing, and personnel, improved trial court management and performance will automatically follow. (Cashman, 1981; Harris and Dodge, 1982; Hoffman, 1982; Hays, 1978) Our research makes clear that such an assumption is much too facile.

The effectiveness of court management is strongly effected by the dynamics of both structure and the adjudicatory process. The experiences of these five states in managing the courtroom make explicit the tension that occurs from the differing management requirements of formal structure and of the adjudicatory processes. The management structure is a product of the formal design of the judiciary. It establishes the leadership positions, the jurisdictional and geographic boundaries, and the administrative resources available to each court. (Henderson, et. al., 1983) The success of court managers, however, depends upon the ability to resolve issues created by the particular attributes of each adjudicatory process.

It is not an easy task to identify the organizational focus for trial courts. As testimony to the difficulty, several authors have argued that the formal structure of the courts is less important than the work group which operates around each courtroom. (Eisenstein and Jacob, 1977; Nimmer, 1976; Nardulli,

1978) Our research suggests, however, that variations in structure are important. First, they define the kinds of courts which must be managed in a state by defining their jurisdictional and geographic boundaries. It is one thing to direct the activities of a single member small claims court (Sarat, 1976); quite another to manage a large criminal court in a metropolitan area. (Eisenstein and Jacob, 1977) Second, formal structure determines the management resources available to a court. Some state statutes or rules and procedures provide for strong presiding judge positions and professional court managers; others depend upon each judge for direction and external agencies for administrative support. (Henderson, et. al., 1983; Jacob, 1983a)

Finally, structure can affect the range of management issues which must be resolved at the trial court level. At the very least, structure determines the scope of management problems by defining single or multimember courts. On a more abstract level, structure can affect the complexity of the issues which must be resolved. A major problem for any court manager is balancing the functional requirements of procedural, decisional, and diagnostic adjudication. The broader the jurisdiction of a trial court (i.e., the more consolidated), the more complex will be the problems of coordinating these functional requirements.

The trial courts in the five states represent the full range of structural variations. Their experiences illustrate the general issues raised about alternative organizational arrangements and their impact on the adjudicatory process. Let us briefly consider the management structures of the courts in each of the five states.

#### Georgia

The structure of the trial courts in Georgia encouraged each judge to operate as an independent entity, depending upon informal arrangements with non-judicial agencies for staff. In part this is a function of

the large number of single-member limited jurisdiction courts which are dependent on city or county government for their administrative staff, and over which there is little judicial direction beyond trial de novo. But even on multimember, urban courts this independence is the norm; very few courts have the organizational resources necessary for strong consolidated leadership.

Formal leadership positions at the trial court level are very limited, especially on the Superior Court (the court of general jurisdiction). All superior court circuits have a position of chief judge; but they must handle full caseloads in addition to their administrative duties. Their position as chief judge was more akin to that of chairman of a committee of volunteers rather than director of an organization. There was very little administrative staff available to the chief judges to support their management efforts, especially in rural areas. Administrative services were the responsibility of an elected clerk, a sheriff, and the local probation offices of the State Department of Corrections. There was little incentive for a chief judge to take an aggressive management position on internal issues.

Limited and special jurisdiction court management positions differed from those on the superior court, especially in urban areas. The large, multimember juvenile, state and municipal courts were under the direction of a chief judge who had significant management responsibilities. Moreover, administrative support services — recordkeeping, probation and secretarial staff — were part of the court, under the direct authority of a trial court administrator who was appointed by the chief judge. Although the relationship among the judges was essentially collegial, the chief judge had the authority to decide and implement internal practices in the court.

In rural areas the need for administrative support for courts of limited and special jurisdiction was no less intense than in the urban setting. However, these



courts tended to be single member jurisdictions, often with part-time judges only. Support staff was drawn from the clerk's office, sheriff's department, various municipal agencies, even staff from the law office of the judge. Since most of the judge's attention to the court was part-time, the administrative staff provided the continuity in management. These judges operated with little judicial supervision other than trial de novo of a handful of cases.

Still, the Georgia judiciary demonstrated that effective court management practices can occur without a formal management structure. On the Superior Court most management activities were carried out by individual judges, or through informal arrangements among independent offices rather than by formally designated positions of authority. In many instances the personal commitments of individual judges, court staff, and nonjudicial agency members were sufficient ingredients for a well managed organization. At the same time, the Georgia experience also makes clear that without formal management positions with explicit responsibilities the use of such procedures will be episodic, waxing and waning with each shift in personnel. It is no accident that the most ambitious and purposive management operations tended to be found in the urban courts of limited jurisdiction which had formal management staff. Overall, Georgia's trial courts exhibited the wide range of variations in management capabilities and activities one would expect from a judiciary which lacks the homogenizing influences of a formal system. We observed in Georgia courts a highly professional staff who used standard procedures to manage caseload, prepare and implement budgets, and negotiate with external agencies. We also observed courts with operations and procedures which bore only the faintest resemblance to a judicial forum, well managed or not.

## Iowa

The Iowa trial courts are highly consolidated. A chief judge, assisted by a court administrator, is charged with directing the activities of all judges within each of the eight judicial districts. Their authority extended to all three classes of judges — district (general jurisdiction), district associate (general and limited jurisdiction), and magistrate (part-time, limited jurisdiction). It included the power to assign judges to the several circuits contained within each district. (Henderson, et. al., 1983)

Despite this superficial consolidation of management, the courts in Iowa tended to operate as simple organizations, centered around individual judges, rather than as complex, multimember entities. Most district judges rode circuit among two or more counties, undermining any efforts to integrate them into a single organization. The district associate judges and magistrates operated in a single county. This tendency to fragment was reinforced by the practice of rotating circuit assignments of district judges every three months, and by the part-time status of the limited jurisdiction judges.

Iowa also demonstrates the difficulty of case management in a rural setting. It was not possible to move judges or cases on a moment's notice to relieve backlog or make better use of resources. A full-time case flow manager in the form of the district court administrator was required to minimize the problems.

This tendency to fragment was reinforced by the independence of the administrative support services. Bailiffs and clerks were organized around counties, not the district. It was not surprising that the closest working relationship between the clerk's office and the bench was with the limited jurisdiction judges — magistrates and district associate judges — rather than the district court.

Finally, it was obvious that the simple organizational structure was appropriate for most rural areas. The problems of recordkeeping and courtroom security were not very great. A complicated organizational structure which demanded equally complicated coordinating mechanisms would have been inappropriate. In one site visited, the ancient record books may have needed replacing, but a more complicated filing system would not have significantly improved on the information available from the two people who had a combined work experience of 30 years. It is no accident that most of the district court administrators devoted their time to managing the calendar for the district court; that was the most complicated coordination task requiring intense effort and skill for success.

#### Colorado

Colorado trial courts illustrate the important distinction between the organization of administrative services and the structure of the bench. (Lawson, 1982) Nearly all administrative services were part of the judiciary in Colorado, rather than an independent agency. The bench, however, was divided into two units - district court (general jurisdiction), and county court (limited jurisdiction). In most of the districts of the state the administrative services tended to operate as part of the same organization, regardless of the level of judge served. The bench, on the other hand, was clearly divided into two operational units with only nominal coordination between them.

Colorado also demonstrates that a state's judiciary frequently contains important variations on the primary organizational structure. Most of the states were organized around the two courts of district and county, which were part of the statewide judicial system. In Denver, however, there were three courts - district, juvenile, and superior - which were all part of the state system but operated as independent management entities, and a fourth - county court - which was outside of the state system all together. Finally,

there was a class of courts - municipal court - which was not part of the statewide system. Their jurisdiction was municipal ordinances and they operated more as a subunit of town government than as members of the judiciary.

There were several management positions at the trial court level in Colorado. The chief judges of the district court were charged with directing the activities of the district court and county court in most jurisdictions. There was, in addition, a court administrator responsible for all administrative support services. Although the chief judge was the formal executive officer of the courts, in practice the court administrator tended to fill a large management role because of the extensive support activities which were part of the judiciary in Colorado.

The chief judges viewed their role as that of coordinator, rather than supervisor, particularly of district court activities. The primary management officer was the court administrator in each district. However, the focus of their activities was directing administrative services rather than the adjudicatory process. Their duties included such things as preparing the budget for both the district and county court, personnel, case scheduling, facility management, recordkeeping and all of the other administrative support duties associated with the two levels of courts.

An important deviation from the statewide pattern was the role of the chief judges of the Denver juvenile court and the Denver county court. Unlike their district court counterpart in Denver, they took an active part in the management of all aspects of the court - adjudication, administration, and external relations. In both cases, however, these activities were carried out in close collaboration with the court administrator.

Colorado demonstrates the difficulty of defining consolidation in simplistic terms. Our findings add to

the rich variation in approaches to consolidation and its perceived effects on management reported elsewhere. (Hosticka and Murphy, 1980; Schepard, 1979; Berkson, et. al., 1978) From an administrative perspective the courts were highly consolidated. With some notable exceptions, i.e., the Denver courts and all municipal courts, management of the administrative services was integrated into a single, comprehensive organization. The bench, on the other hand, had a very different pattern.

#### New Jersey

The lessons to be learned from New Jersey practices are two-fold. First, they demonstrate a management structure which concentrates more upon supervision of judges than of administrators; and second, they illustrate how managerial policies can be used to consolidate a trial court system without altering the jurisdictional definition of its components. If we focus on formal definition, there were four distinct courts in New Jersey - superior, county district, juvenile and domestic relations, and municipal - each of which had its own class of judges with unique appointment and retention rules. In practice, however, county district and juvenile and domestic relations courts were treated as subdivisions of the superior court with judges regularly moved from one bench to the other depending upon administrative policy. Only the municipal courts were a separate entity. The key to informal consolidation lies in the character of the management structure in New Jersey.

Trial court administration was organized around geographic vicinages - as the districts were called in New Jersey - which consisted of one to four counties. The assignment judge was charged with directing the activities of the superior court, county district court and juvenile and domestic relations court, and with supervising municipal courts. He/she was assisted in this effort by a trial court administrator. An inde-

pendent clerk and sheriff provided important staff support for all but the municipal courts.

The most important of these management positions were the assignment judges. They viewed themselves as holding intermediate positions in a hierarchical authority structure with the Chief Justice at the top and below them the judges and administrators in their vicinages. Assignments to divisions, including juvenile and domestic relations and county district courts, was at the discretion of the assignment judge. In all of the sites visited there were examples of judges being reassigned on a regular basis to meet workload requirements, to match judge skills with the subject area, or, in at least two instances, as punishment for lack of cooperation. The assignment judges were charged with enforcing Supreme Court rules governing housekeeping, time spent on the bench, qualification of judicial staff, judicial ethics, caseload management, and local government relations.

Each vicinage has a trial court administrator position. The duties of this position were not spelled out by court rule, but rather depended upon the discretionary delegation of authority or responsibility of the assignment judge. The primary role of the trial court administrators in the sites visited was that of staff aide to the assignment judge rather than general manager of administrative services. (Mort and Hall, 1980)

The assignment judge was also responsible for overseeing the municipal courts in the vicinage. The judges on the municipal courts were hired by the city, were usually part-time, and were physically separated from the other courts. As a consequence, the assignment judges interviewed only gave cursory attention to these courts or used the trial court administrator to conduct periodic reviews. The control over the conduct of these courts were governed more closely by the appellate process than through administrative direction by the assignment judge.

The majority of municipal courts were single member jurisdictions, dependent upon the city or town for staff. Since all municipal judges were part-time positions the chief clerk played a major role in the operation of the court as he/she was a full-time employee.

Most administrative staff were employees of independent agencies — county clerk, sheriff, and probation office. However, the informal direction of judges over staff assigned to them had been formalized in a New Jersey Supreme Court rule. Under the rule, all personnel were under the administrative supervision and authority of the assignment judge while engaged in judicial activities. In all of the sites visited the county clerk and sheriff's offices were bifurcated between those staff members who worked for the independent office and those who worked for the court. Supervisory authority over the latter clearly lay with the individual judges to whom they were assigned, not the independent office.

In sum, the emphasis in New Jersey was on integrating the trial court judges into a single bench structure without necessarily disturbing the traditional jurisdictional boundaries between the various courts. The key figure in this effort was the assignment judge who was given broad, hierarchical authority to manage the bench. Administrative services were given much less attention. The status of the trial court administrator and the decentralized personnel supervisory structure in the sites visited reflected the low priority assigned such activities.

#### Connecticut

Connecticut had the most consolidated judicial and administrative court system of our five states. With one exception, judges were members of a single class regardless of case assignment, and all support services except courtroom security were under the direction of judicial officials. At the same time, trial

court management was highly fragmented with responsibility distributed among several state and local judicial and administrative officials. Judges were regularly rotated across district lines, undermining any identity with a locally defined court organization; administrative services were divided into discrete units organized around each division and several functions; and the systemwide functional divisions were as important a source of trial court management decisions as the geographically defined districts.

The complexity and fragmentation of the trial court management structure in Connecticut is reflected in the large number of positions responsible for trial court direction. Each judicial district contained a chief administrative judge. In the sites visited their role was largely confined to handling local housekeeping problems rather than general management of judicial and support resources. Judges were assigned to each judicial district and to divisions with the superior court by officials in the Office of the Chief Court Administrator. State level administrative judges headed each of the substantive law divisions of the superior court — criminal, civil, and family. They were responsible for the movement of cases and conduct of judicial business for their divisions in all judicial district, geographic area, and juvenile locations. To assist these statewide division administrators, local presiding judges for divisions were named in those districts where caseload was substantial. While technically subordinate to the district administrative judges, these presiding judges answered primarily to the statewide division administrative judges.

The administrative management structure was similar to that of the bench. There was a separate clerk's office for each judicial district, geographic area, and juvenile court. In addition, the adult probation, juvenile probation, court reporter, and matrimonial services were organized into separate units. The district administrative judge was the nominal supervisor of these offices. However, as with the bench, a statewide



director for each type of service was of equal or more importance in determining policies for these services. The independence from each other carried over to the relationship between the administrators and the judges. The managerial authority of individual judges was undermined by the practice of regular rotation, precluding the development of any personal relationships with administrative staff.

### Conclusion

It is common to speak of trial court management as if the term described a uniform set of positions and activities. These thumbnail sketches of five states indicate that the reality is very different. Trial court management may be the responsibility of a formally differentiated position as in the Colorado district court or New Jersey vicinages; or an incidental effect of judges and administrators conducting their day to day activities as in most Georgia courts. The responsibility may be broadly defined to include case processing, administrative services, and negotiations with outside agencies as we found in the Denver juvenile and county courts; or narrowly construed to mean only scheduling judges or administrative services as we found in Iowa and Georgia.

Without a consolidated court system it is unlikely that systematic management activities will be carried out, but it is also obvious that formal simplification of judicial structures is not enough. The evidence from Connecticut makes clear that there must be local focus to trial court management if policies are to be directed locally.

Structure has an important influence on which of these patterns is likely to emerge. The definition and authority of the local management leadership is directly related to the organizational boundaries of the court as Connecticut's simple trial court structure demonstrates. It also affects whether management will be institutionalized as an on-going, legitimate activity, as

in New Jersey; or as an episodic, tertiary endeavor as in Georgia.

This brief review also suggests some limitation on the effect of structure. One influence which carries implications beyond the scope of this monograph, but which should not be overlooked, is the character of the environment of the court. The problems in managing a small rural court are very different from directing one in an urban setting. The management structure of the district court in Des Moines is, in practice, very different from the rest of the state although its formal outline is the same. Structure is important in this issue because it can define the relevant environment for a trial court. The large districts in Iowa contain numerous county seats in which court must be held. By contrast, the New Jersey multicounty vicinages require very little traveling. Hence, structure is important to the extent it defines the relevant environment - urban or rural, concentrated or dispersed - of trial courts.

Although the variations between the states are interesting, of far more significance are the similarities. There were marked differences in the management structures of the different classes of courts. The strongest management structures were found on courts of limited jurisdiction and juvenile/family, regardless of which state they were in. Such courts were far more likely than their general jurisdiction counterparts to have a presiding judge and court administrator who actively managed the activities of the court. (Henderson, et. al., 1983) Even in Georgia the limited jurisdiction courts in the major cities were actively managed. General jurisdiction management was far more likely to work indirectly through general rules and procedures rather than direct supervision.

Strong management was far more difficult on the courts of general jurisdiction. The prerogatives of the individual judge were much stronger, undermining efforts at central coordination. The individual calendar was the rule of such courts rather than the exception.

Each judge had a far more important part to play in caseload management and supervision of staff on courts of general jurisdiction than they did on courts of limited jurisdiction. Even in New Jersey, with its strong administrative judge position, the individual judge was a major management figure. Connecticut was the exception to this rule because of the weak local management structure and the strong direction from the state for all courts.

There were also marked differences among the different classes of courts in who managed the courts. On courts of general jurisdiction there was a clear demarcation between judges and administrative personnel on management issues. Judges could manage other judges and administrative personnel; administrators could only manage other administrators. In almost all instances it was difficult, if not impossible, for administrators to supervise judges, even on logistics issues, unless they were clearly acting in the name of the presiding judge. This was not the case on courts of limited jurisdiction, or on juvenile and family courts. It was much easier for the administrators on such courts to manage caseload, staff assignments, and courtrooms without threatening the prerogatives of the judges.

These differences among the three general classes of courts appeared in all five states. This should not be interpreted as meaning that structure had no importance. As the brief descriptions make clear, there were significant differences among the five states which could be directly ascribed to the differences in structure. However, within each state structure was important in that it served to either reinforce or mute the management tendencies of each class of courts.

We will argue in a subsequent chapter that these differences can be best understood as reflecting the different combination of adjudicatory process operating in each of these courts. For the moment it is only necessary to recognize that these differences exist and

appear to persist regardless of the formal judicial structure.

#### CHAPTER FOUR: MANAGING THE JUDICIAL SYSTEMS

Judicial management is frequently treated in the court reform literature as a singular concept. In practice, however, there are great differences between the issues confronting those attempting to manage a judicial system and the problems trial court administrators must face. Managers at both levels must deal with the three organic categories of functions confronting any judicial organization: adjudicatory process, administrative services, and external relations. But the content of each function, and the relative priority of each of the three activities differs depending upon the level of manager involved.

Those at the state level must take a broad perspective, balancing the requirements of the various courts and administrative units within the judiciary against the requirements for dealing with external sources of funding and other resources. At the local level the focus is more often on the logistics of scheduling and processing cases. In general, the problems of administrative services and external relations are defined by the needs of the adjudicatory process and secondary to them. It is not that any of the three activities are ignored at either level; rather it is a matter of emphasis and orientation. These differences in priorities affect the organization and operations of those who manage judicial institutions at each level. They are also the source of confusion about the importance of unification for the courts.

In this chapter we will focus on the problems associated with managing a judicial system at the state level. All five states had an office with some system-wide responsibilities, although they differed widely in the authority they wielded over the constituent units. We will examine how the various states resolved the problems associated with the three functional areas of

management — adjudicatory process, administrative services, and external relations.

In our field work we paid particular attention to the operations of the administrative office of the courts (AOC) in each state. The AOC occupies a critical juncture in efforts to centralize management of the judiciary. The traditional approach relied on rule-making and the appellate function to provide central direction to the judiciary. The unification reforms supplement this authority by assigning to the supreme court or the chief justice administrative control as well. At the very least the AOC provides the staff support for carrying out this responsibility. Its activities, therefore, are a clear indicator of the extent to which a state has moved to establish central direction of the judiciary.

The discussion will begin with a consideration of efforts by the AOC in each state to manage external relations. We found these issues dominated the attention of the central authorities, affecting how they approached the other functional areas. (Henderson, et. al., 1983) The reason for this importance lay in the visibility of the AOC as spokesman for the judiciary. A growing literature deals directly or indirectly with the performance of courts and issues of accountability. (Sarat, 1983; Ryan, 1983; National Center for State Courts, 1983; Cook, et. al., 1982; Dubois, 1982) They were held accountable by other state institutions for judicial performance, even in those states where they had very limited powers to manage the components of the system. Legislators, executive branch agencies, various groups interested in the judiciary, and the press made regular demands upon the central authorities for information and explanation of the quality of justice, the productivity of the courts, the behavior of judges and administrative personnel, and the expenditures of funds. Much of what central authorities and offices did can be understood as management of these demands for purposes of accountability.

### Managing External Relations

The maintenance of effective external relations for a judicial system and its components has been a major issue in the unification debate. The most extensive scholarly and professional attention has been given to funding of the judiciary and the difficulties faced by the courts when attempting to secure resources for their operations. (Barr, 1975; Lawson, et. al., ND) Our research indicated that this was a major concern for central authorities as well, even in states with decentralized funding. But we also found that budget activity, while important, was only one of several types of external relations efforts performed by central offices. Also important were monitoring of general legislative activity which might affect the courts; compiling and reporting court statistics; negotiations with executive branch agencies; coordination of relations with the media; and work with a multiplicity of advisory commissions and groups. (Nieland and Doan, 1979)

Legislative liaison was an important activity for all five AOCs. They differed, however, in their ability to regulate the exchanges between the judiciary and the legislature. As might be expected, those states with substantial state funding — Connecticut and Colorado — were also the states which were most effective in serving as the primary, if not exclusive, spokesman for the judiciary. However, New Jersey was a significant exception to this pattern. Although state funding was limited in that state, contact between judges and the legislature was strictly controlled by the chief justice and state court administrator.

In Connecticut, where state funding was virtually complete, and in Colorado, which was largely state funded, the leadership and staff of the AOC dominated budget discussions with their state legislators. Budget requests were formulated by central officials and all contacts between judicial and nonjudicial personnel were coordinated by the central office. Both states



also maintained an ambitious monitoring and liaison program for pending legislation.

The role of the New Jersey central authorities in legislative liaison activities was similar to those in Connecticut and Colorado. Contact was the exclusive prerogative of the chief justice and state court administrator on both budgetary and substantive legislation. The AOC even became involved in budget negotiations at the local level by reviewing the requests of each vicinage before they were submitted to the county boards of freeholders. The explanation for this role lies in the longstanding authority of the central authorities over the behavior and performance of judges. Protecting the integrity of the bench from external interference was the principal reason for the reorganization of the judiciary in 1948. Control over legislative liaison activities was a logical extension of this concern.

State funding in Iowa was limited to support for district judges. The Supreme Court, with the assistance of the state court administrator, took the lead in budget negotiations with the legislature, but there was no attempt to monitor or regulate contacts by local judges or court personnel. Organizations representing various judicial and nonjudicial court personnel regularly pursued their separate agendas with the state legislature.

As might be expected, the most limited legislative liaison role was that of the Georgia AOC. It collated budget requests from local judges and transferred them to the legislature. It also monitored substantive legislation. However, the longstanding tradition in Georgia of passing legislation which affected specific counties or municipalities precluded any efforts to control contacts between local judges and the state legislature. To further complicate their role, a continuing conflict between the Chief Justice and a prominent member of the legislature undermined the effectiveness of AOC efforts as well.

Maintaining relations with executive departments at the state level followed patterns similar to that of legislative liaison. In each state, including Georgia, the AOC served as the hub of a network of both permanent and temporary advisory groups and commissions concerned with one or more aspects of judicial system operations. The AOCs provided staff support reporting assistance, publication and dissemination of studies and policies, or simply served as a conduit of communication between the groups. It is easy to underestimate the importance of this activity. The involvement of the AOC can be a centralizing influence if it provides a focus for external contact with the judicial system and a degree of overall coherence to the work of external groups. Also, by directing the activities of external groups, central authorities can have a direct effect on the criteria for which the judiciary will be held accountable.

All five AOCs devoted a significant proportion of their resources to collecting and reporting statistics on filings and dispositions. In one sense, these data were objective instruments of accountability. They were used to support budget positions and requests for more judgeships in addition to serving, in some states, system management purposes. The availability of such statistics enhanced the legitimacy of the judiciary's position in negotiations with the legislature. They also gave the legislature information needed to determine the productivity of the court and how well public resources were used. (Flango and Elsner, 1983) The most elaborate data collection operations were in those states where external interest in quality and productivity issues was greatest, i.e., Connecticut and New Jersey. In most states the statistics were supplied to central authorities by local officials. In Georgia, the case counts were done with personnel under contract to the central office to ensure their accuracy.

### Managing Administrative Services

Central direction of administrative services is a major tenet of unification reforms. In all five states this was a prominent part of the AOCs' concerns. The thrust of these efforts, however, was on setting standards, monitoring local practices, and developing general policies rather than providing direct support for the day to day trial court activity. This is not surprising, given the implication of administrative services for accountability. The use of public resources, the quality of nonjudicial personnel, and the productivity of the court were the major concerns of the other state institutions, particularly the legislature. Much central office effort was devoted, accordingly, to these aspects of administrative services. To demonstrate the variations in central office efforts to manage administrative services we will limit our discussion to four areas: resource allocation, personnel, information systems, and technical assistance.

Resource Allocation. The most important control mechanism an AOC can have is authority over the allocation of the financial resources of a judicial system. In Connecticut, the budget for the entire system was prepared in the central office. The process for developing that budget was frequently characterized by extensive negotiations among central officials, the chief judges of the districts and geographic areas, and chief clerks at the local level. The final authority to fix the budget was in the hands of central authorities. Moreover, once the budget was adopted local courts had little discretion over expenditures. Adherence to the budget allocations was supported by full and regular audits of court financial records.

Colorado exhibited similar central influence over resource decisions. The budget development process was supported by a formal judicial cost model. Unlike Connecticut, however, Colorado's central authorities had only limited control over expenditures because

local court officials maintained considerable discretion over the expenditure of allocated funds.

Central officials in New Jersey and Iowa prepared budgets for the state's contribution to system expenditures. But the primary source of funding was local government. The New Jersey AOC took an active part in support of local efforts to obtain funds from county government. New Jersey was also moving toward full accountability for all spending in courts by developing fiscal accounting forms. Iowa's AOC maintained fiscal data relating to judicial payrolls and travel reimbursements for district judges which were received by the comptroller of the state. Georgia served as bursar for the state share of budget funds for the Superior Court judges. But the AOC had no control over the amounts or patterns of spending of funds received from local sources.

Judges are the most important resource in any judicial system, but we found only one state, Connecticut, in which assignment of judges was a significant responsibility of central officials. Technically, there was only one assignment for trial judges in Connecticut - the Superior Court. But that court had several types of location and substantive law divisions. Judges were rotated among the many possible assignments every six months by officials in the AOC. If necessary, judgeships, as well as individuals, could be reallocated among the locations or divisions by administrative directive. The officials making the assignment decisions were themselves judges, specifically the chief court administrator and the deputy chief court administrator. The decisions were based on caseload figures; needs assessments of chief judges of the statewide divisions; and assessments of the quality of work done by individual judges in current assignments. The control of central authorities over assignment was moderated only by self-imposed restraints to ease the potential disruptions of the six month rotation rule. For example, there was an implicit agreement not to place judges in courts far from their places of residence.

Reassignments to the same jurisdiction were not uncommon, but normally the same assignment would not exceed a year. These extensive assignment powers transformed the judge from a fixed asset to a flexible resource which central authorities allocated according to their perception of the needs of the judicial system.

The assignment power in Connecticut constitutes a radical departure from the general pattern we found across the other states. In New Jersey, Colorado, Iowa, and Georgia, the traditional practice of permanent assignment to a court in a specific jurisdiction was the rule. Even temporary movements of judges across jurisdictional boundaries were uncommon and fraught with political and administrative complications. In New Jersey, the Chief Justice had the power to move judges across locations of the court to which they were initially assigned. However, such reassignments were rarely done, even on a temporary basis. Because of the need for compensation to affected counties, any reassignment required specific orders by the Supreme Court and the agreement of assignment judges.

Judicial selection varied across the states. In Iowa, judicial selection was a state level function, as it was in New Jersey. Judgeships were distributed among the districts according to the previous year's case statistics to minimize disparities in caseloads. However, temporary cross assignment of judges was rare. In Colorado, nomination to the bench was a local prerogative. While cross assignments in New Jersey and Colorado were rare, when they occurred the AOC acted as an informal broker between the chief judge needing help and the chief judge willing to supply it. In Georgia, all aspects of judicial assignment were controlled locally. All states used senior or retired judges as caseload pressures demanded. In this area AOCs played more significant roles ranging from actual assignment to payment of vouchers.

**Personnel.** Managing nonjudicial personnel is another aspect of trial court administration. Central

controls over personnel rarely, if ever, included the power to move individual administrators, professional employees, or clerical workers from court to court or jurisdiction to jurisdiction. In Connecticut and Colorado central office authority over personnel matters was extensive. Statewide systems dictated terms of employment, records maintenance, and payroll disbursements. New Jersey also had a statewide personnel system, but it included only judges and their personal staff, trial court administrators, and probation officials.

The extent of central influence over personnel in Connecticut was limited somewhat by the presence of a union which represented a large percentage of employees in Superior Court. The emergence of collective bargaining for clerical and administrative employees was not a process that the AOC could control, but it did lead to creation of a labor negotiator position. Instead of negotiations with employees being handled on an ad hoc basis by a temporary committee of central officials, or by local officials, the negotiator provided a degree of coherence and consistency.

In no state we studied did central authorities exert significant influence over individual hiring decisions in the trial courts except at the most senior level, e.g., chief clerk and trial court administrator. Individual appointments were approved by central officials in Connecticut and Colorado, but this activity amounted to little more than pro forma ratification of decisions by the leadership of local trial courts. Day to day supervision of nonjudicial personnel in trial courts was also largely a local trial court function, although central office policies provided a context for such management in Connecticut and Colorado.

No state reassigned administrative and clerical personnel across court boundaries. This was true even in Connecticut, where the trial court was supposedly fully consolidated. In New Jersey, we observed de facto consolidation of the bench through the judicial

assignment process; but clerical personnel were assigned to the jurisdiction of one or another of the trial courts. In Colorado, there was greater coherence among various administrative units in the trial courts than on the bench. Not surprisingly, in neither Iowa nor Georgia did we find evidence of any significant central effort to direct the administrative component of trial courts.

Information Systems. Our research indicates that the potentially strong centralizing and homogenizing influence of information systems are not fully appreciated or understood in the literature on court administration. Much of the business of trial courts can be classified as information. Too often, our discussion of information systems fails to capture their significance in a centralized judicial system. If central authorities control the manner in which information is received, classified, retained, and reported they will be structuring a substantial amount of the administrative services associated with trial courts.

We found great variations across the states in the status and use of information systems. Accountability was a focus for the development of these systems. The greater the volume and diversity of information which central officials were expected to provide external parties, the more elaborate and centralized information systems were likely to become. All states maintained information systems which central authorities used to conduct external relations. These systems consisted of traditional caseload and disposition figures reported to the central office on a regular basis by local court officials or, in the case of Georgia, collected directly by agents of the AOC. Every state used these summary statistics in an annual report to justify budget and judgeship requests to the legislature.

In three states—Connecticut, New Jersey and Colorado—the AOCs went beyond simply assembling summary statistics. They attempted to develop in-

formation systems which would allow them to influence directly trial court operations and administration.

Connecticut operated eight distinct information systems. The systems for family and civil divisions of the Superior Court covered all docketing activity, file maintenance, and notification processes on an on-line basis. Both systems provided the central office individual and aggregate case tracking capability. Similar systems were being developed for criminal, motor vehicle, juvenile, and adult probation cases. Another information system operated by the AOC supported jury management. It included selection of panels, prior notification, and payment to jurors. Two systems were devoted to payment of fines and fee collections. Finally, the judicial component of the Connecticut State Employee Information System was maintained by the AOC. Central officials in Connecticut made a conscious decision to develop systems related to case processing first. In so doing they exerted a powerful influence over the way certain administrative functions were carried out in the various locations of the Superior Court. With on-line docketing and system specifications for the entry of case related information, clerical tasks were structured and administrative procedures were made more uniform. Regardless of the local variations in paper handling and hard copy filing, there was a standard data base, records system and docketing protocol which bound together all elements of the Superior Court. In many ways the central control over case processing provided by the information systems more than offset the lack of day to day supervision of local administrative personnel by the AOC.

New Jersey presents a complicated case. The AOC maintained many information systems at the same time some counties independently acquired their own. The AOC received a large amount of hard copy due to procedural requirements calling for filing of civil cases in the central office. Other information systems were dispersed throughout various divisions of the AOC. These included systems for monitoring compliance with



the Speedy Trial Act; auditing of attorney trust accounts and background checks on judicial nominees; payroll accounts for AOC employees; and the collection and disbursements of child support payments and caseload and disposition data. Plans were developing for installation of the PROMIS and CAMIS systems as well. The combination of county operated and AOC operated information systems created a diversified but fragmented information base. With no caseload system or constraints on local recordkeeping activities the central office's influence on case processing at the trial court level had to be indirect.

Colorado's information systems were devoted to support of the budgeting process, personnel records, payroll maintenance, and caseload measurement. In addition, jury selection and notification was done by the AOC.

Technical Assistance. Technical assistance to local courts was a significant vehicle for central office influence and direction. Since this activity varied widely and tended to be episodic, its impact was difficult to trace and measure. However, its service orientation gave the AOCs an important means for influencing trial court operations without appearing to threaten local prerogatives. Even Georgia was able to use this technique effectively. The AOC in Georgia developed model forms and procedures for recordkeeping which were adopted voluntarily by many local courts. The AOC in Iowa provided staff support to a number of study groups sponsored by the Judicial Coordinating Committee. Many of the products published by the AOC of study groups were disseminated widely throughout the trial courts. In addition, the AOC developed model procedures for the elected clerks and published them in handbook form. Several of the central offices had written staff manuals for local clerical offices and court personnel. All of the AOCs disseminated the results of research and management studies of interest to those working in the trial courts. Services were even more direct in some instances. For

example, the coordinator of clerks in Connecticut assisted one Superior Court clerk when a temporary shortage of personnel, coupled with increased volume of work, created a crisis in that court. By having the paper physically transferred to Hartford for processing by central office staff, the clerk averted falling far behind in processing paperwork.

The services provided by the AOCs can be reasonably expected to reflect the AOC's view of good management. The influence gained when providing these services inevitably reinforces coherence and consistency in trial court operations and such services become priorities of the central office.

### **Managing The Adjudicatory Process**

Adjudicatory activities of trial courts are the furthest removed from central office control. The focal point of such activities is usually the judge. His/her professional training and skills, coupled with the norms of judicial integrity, provide powerful insulation against supervisory authority. The most obvious mechanisms of central direction of the adjudicatory process are the appellate and rulemaking processes. However, these processes are judge oriented. They enjoy a long tradition in all the states and their legitimacy at the local level is very high.

These traditional techniques of central control were supplemented in several states by administrative supervision of bench activity. Most of these activities were designed to enhance the qualifications of members of the bench through such things as education programs, or investigation of complaints against judges. But case management was also a concern and occupied the attention of central office staff as well. This administrative involvement in adjudicatory process issues did not affect the content of cases, but it did influence the framework within which adjudication occurred.

AOC efforts to supervise the adjudicatory process were motivated, in part, by the increased efforts by external institutions — legislature, executive, media — to hold the judiciary accountable to performance standards, particularly productivity standards. Requests for additional judges prompts questions about current case management practices. The AOCs can only satisfy these concerns by becoming involved in the adjudicatory process.

Judge Qualifications. Influencing the general demeanor of judges was one of the major ways a central office affected adjudicatory process. In Iowa, for example, AOC staff assisted nominating commissions and screened candidates for the bench. New Jersey's AOC was particularly concerned with the qualitative aspects of adjudicatory process. The division of ethics and professional services monitored the competence and integrity of judges and attorneys. A major function of this division was to receive, investigate, and take appropriate action when complaints were filed by attorneys or the public regarding judicial conduct in individual cases. The office was guided in this activity by its recently completed manual of legal ethics. Colorado and Connecticut had similar units, although not on the scale of New Jersey.

In three states — Connecticut, New Jersey, and Colorado — central authorities developed compilations of all relevant rules of procedures for trial judges called bench books. Frequently referred to as "bibles" by trial judges, these books influenced the consistency of judicial decisions across the states. New Jersey's office reviewed all felony sentences for compliance with appropriate guidelines, demonstrating the degree to which an AOC can be engaged in evaluating the results of adjudicatory processes. In several states central office staff played important roles in organizing judicial education. In New Jersey, the Committee on Judicial Performance offered seminars on special topics, and sponsored an annual Judicial College which surveyed developments in legal and bench matters.

Iowa operated a more modest program. The central office prepared an agenda for the annual judicial conference, organized evaluations of lower jurisdiction judges, and developed a comprehensive judicial plan for the Supreme Court. The Colorado AOC assisted with programs for biannual judicial meetings. The most ambitious program was encountered in Connecticut. A specialized unit of the CCAO conducted periodic formal needs assessments on which an extensive program of continuing education seminars was based.

Caseflow Management. All of the AOCs were concerned with the movement of cases through the courts. In part this reflected the professional commitment of the staff with court delay and backlog issues. But an additional incentive was provided by the legislatures' concern with judicial productivity. Although the interest in case flow management was universal among the five states, the authority and resources available to them to become involved in such issues varied widely.

Connecticut's was the most ambitious and organizationally complex caseflow management program. Using monthly statistics, a caseflow manager for each division of the Superior Court — criminal, civil, and family — monitored the movement of cases in each judicial district and geographic area location. Relative performance levels were reported to the chief judge of each division, who in turn, communicated his/her views or concerns to the administrative judge in each district. The administrative judge had the authority to move trial judges, as needed, across divisions. The central office used these powers on occasion to respond to crises in case movement. Twice in the last several years the chief court administrator ordered a criminal blitz to clear what he considered serious backlogs in several courts. It entailed placing all available judicial resources on criminal cases until the docket was current.

Other state offices were concerned with case movement but they had fewer resources than Connecticut and less authority to take significant actions. The New Jersey AOC used its extensive statistical reporting and analysis system to inform assignment judges of their position vis-a-vis other courts. It also monitored compliance with a speedy trial act. The effectiveness of these efforts, however, depended on the ability of the assignment judges to encourage greater productivity from their judges or to move cases across courts. The AOC power to reassign judges was far less extensive than in Connecticut.

In Colorado, Iowa, and Georgia, the central offices had minimal influence over the pace of adjudication. Temporary assignment or reassignment of judges in each state was rare except for use of senior or retired judges. The state offices disseminated information and advice on how to expedite caseflow. However, the use of delay reduction techniques and case processing innovations was discretionary at the local level.

Traditional norms of judicial independence ensure that the adjudicatory process and the outcome of individual cases will be insulated from central direction except through appellate review and the use of standardized rules and procedures. However, in some states direct or indirect central influence over the pace and quality of litigation was considerable and it is difficult to state how these pressures affect individual cases. In other states the most powerful mechanism of the state offices to encourage satisfactory levels of caseflow was the circulation of comparative court performance statistics. In these instances only peer pressure or individual judicial standards could affect the adjudicatory process.

#### Conclusion

The court unification literature has tended to focus upon the positive benefits of centralization reforms. There is a strong tendency to confuse system

management with trial court management. (Summarized in Berkson and Carbon, 1978.) Our observations of these five states suggest that those who have argued that there are critical limitations to such reforms are on firm grounds. (Gallas, 1976; Saari, 1976; Burstein, 1980.) The most important functional area for a central office appears to be external relations, followed by administrative services. The issues surrounding the adjudicatory process, while important, were far less visible in these five states.

This orientation toward managing external relations is not surprising given the role the AOC played as major spokesman for the judicial system. There were heavy demands for information by nonjudicial agencies and actors. In all five states the central office was held accountable for judicial performance. Their statistical reports were used to justify judicial appropriations, additional judgeships, and administrative reforms. In most of the states they were the focal point for complaints about members of the bench from attorneys or the general public. And members of the media made frequent demands for information about the judiciary. The incentive to devote significant energies to external relations came from within the offices as well. The central authorities were expected to ensure that the integrity of the courts was protected from outside influence. In short, the greater the pressure to hold the judiciary accountable for efficient as well as effective justice, the more important external relations become for central officials.

Administrative services also received much attention from the central offices. The techniques varied by state, depending upon the supervisory authority of the AOC. Where central authority was limited, as in Iowa and Georgia, technical assistance and training programs were the primary instruments. In those states with greater authority direct supervision was possible. Colorado and Connecticut central offices exercised direct supervision over personnel, budget, recordkeeping procedures, and information systems. New Jersey

operated more indirectly, because of the independently elected offices at the county level. But they too were able to have a substantial effect on local administrative services through the use of detailed rules and procedures.

The most difficult functional area for a central office to manage was adjudication. In part this was a function of the formal powers available to administrators to become directly involved in the adjudicatory process. With the exception of Connecticut and, to a lesser extent, New Jersey, efforts to influence the adjudicatory process had to depend upon indirect techniques — education programs, publicizing case backlogs, writing benchbooks, etc. New Jersey officials supplemented these indirect techniques by working through the administrative judges in each vicinage to promote specific case management techniques and enforce the speedy trial rules. But only Connecticut authorities had the ability to redistribute judges between districts as a matter of routine to meet shifting caseloads.

Further complicating central office efforts to manage the adjudicatory process is the status differences between most AOC staff and judges. As discussed in Chapter 3, it is difficult, if not impossible, for administrative staff to supervise judges. The status differences appear to be so great as to undermine, if not preclude, nonjudge managers from directing the activities of judges. It is no accident that the two states in which the central office was heavily involved in the adjudicatory process — Connecticut and New Jersey — judges were prominent in the management process at the state, as well as local, level.

In all five states, most of the attention of the AOC was devoted to the courts of general jurisdiction. Limited jurisdiction courts were given short shift, or ignored altogether. This inattention is somewhat ironic as the history of court reform in most of these states, as with other states, frequently began with a concern over the condition of the lower courts, not the court of

general jurisdiction. (Johnson, et. al., 1981; Berkson and Carbon, 1978; Hays, 1978)

It is problematic whether expanding the activities of the central authorities to include greater attention on the limited courts would enhance or undermine the position of the judiciary, or the AOC. Given the greater prestige of judges on courts of general jurisdiction, AOC staff could not ignore their requests for attention without jeopardizing their position within the judiciary. This orientation is reinforced by the concerns of legislators, state executive agencies, the bar, and the media. The demand for accountability appears to center on the courts of general jurisdiction, not limited, even in those courts primarily funded by the state.

On the other hand, our observations indicate limited and special jurisdiction courts may be far more amenable to standard management techniques than their general jurisdiction counterparts. As we described in Chapter 3, the former tended to have much stronger management structures. This would suggest they might be more responsive to new case management techniques. To understand these differences we need a clearer understanding of the management issues confronting the two sets of courts. Those are the issues we will address in Chapter 5.



**CHAPTER FIVE:  
MANAGING TRIAL COURTS:  
THE IMPORTANCE OF ADJUDICATORY PROCESS**

The description of the managerial structure revealed dramatic differences in the organization of trial courts among the five states. The kaleidoscope of jurisdictions, judges, and administrators observed in Georgia stand in marked contrast to the uniformity and simplicity of the Connecticut system, or the coherent design of Colorado. This organizational diversity, however, is tempered when we turn to how the trial courts operate in each state.

When we focus our attention on the operations of the trial courts as many similarities appear across state lines as differences. (Henderson, et. al., 1983) The source of this uniformity is the adjudicatory process. The functional requirements of the various adjudicatory processes led to operational distinctions in states where structural uniformity was the norm, as in Connecticut, and a degree of coherence where laissez faire was the norm as in Georgia. Perhaps the most dramatic evidence of the importance of adjudicatory process in defining trial courts is the operational definition of court boundaries observed in Connecticut. There was only one court and one category of judge - Superior Court. Yet this single, fully consolidated institution consisted in practice of three types of courts, each one dominated by a distinct adjudicatory process: Judicial District Court (procedural adjudication); Geographic Area Court (decisional adjudication); and Juvenile Court (diagnostic adjudication).

The reasons for these deviations from structural design lie in the functional requirements of the three adjudicatory processes. We argue in this chapter that each type of adjudicatory process handles and disposes of cases differently, and that the distinctive features of procedural, decisional and diagnostic adjudication influence greatly the nature and extent of management

efforts in trial courts. Our field observations made clear that the adjudicatory process differed in the kind of administrative services required and the interdependence of judges, managers, and staff. Let us consider each of these adjudicatory processes in turn.

#### The Functional Requirements of Procedural Adjudication

Of all three processes, procedural adjudication depends most heavily upon the individual judge for management decisions. The emphasis upon careful deliberation, extended factfinding, and adherence to established rules and procedures puts a premium on the knowledge and skills of the judge. There is a strong tendency to treat each case as sui generis, standing on its own rather than as part of a continuous flow. From a due process point of view this process has great virtue. From an organizational perspective, it has critical implications for the kind of administrative services required and the interrelationship of judges and staff.

The striking fact for an outside observer of courts is how little direct administrative support a judge needs to be effective in procedural adjudication. Most of the information a judge requires to conduct a trial is provided by the attorney in the case, not by an administrative support staff. On occasion, legal research may be undertaken by a judge or his/her law clerk when ruling on a point of law. But, for the most part, the facts of a case, written documents and legal arguments are presented by the lawyers who appear in the courtroom or who file papers with the clerk. (Grossmant Sarat)

The character of procedural adjudication encourages a court dominated by this process to operate, for the most part, as a loose coalition of independent offices rather than as a closely knit, coherent organization. Each judge tends to work in isolation from his/her colleagues on the bench.

In Georgia, Iowa, and Colorado this was a fiercely asserted norm, institutionalized, in most instances, in the use of an individual calendar system. In New Jersey and Connecticut this independence was tempered by the hierarchical authority of the presiding judges and the more extensive use of a central calendar system. However, even in those states en banc meetings were rare, and the day to day activities of the judges tended to be carried out with little contact with other judges.

The emphasis on due process and careful deliberation makes administrative review of a judge's competence difficult, even if the law allows such review and the presiding judge is so inclined. Evaluations necessarily fall back on vague comments about attributes such as judicial temperament and, in those courts with a large backlog, the judge's ability to move cases. In most states the focus of evaluations was on judicial ethics issues rather than an individual's skills. The exceptions to this pattern, again, were New Jersey and Connecticut. In those states case management skills were taken into account when moving judges from one division to the other. The primary opportunity for taking into account a judge's skills was when making assignments to a specialized bench in those courts large enough to support specialization. This occurred most frequently in the large, urban courts in Connecticut and New Jersey. In both those states judicial managers had the authority to reassign judges based on workload and did so on a regular basis.

Given the limited need for administrative services by judges, it is not surprising that there is little integration between administrators and the bench. The tendency is for the judges to work closely with one or two individuals who are members of their personal staff. The character of the personal staff varied from one state to the next in the test sites. It included someone from each of the potential service areas: courtroom clerk, secretary, bailiff, assignment clerk, court reporter, law clerk, probation officer. In most states, however, only one or two staff persons were

assigned full-time to a judge; the remainder were drawn from a general pool as needed or in relationships which were completely informal.

Since administrative demands of the judge are minimal, it is not surprising that these demands have been traditionally met by public officials outside the court. In three of the states — Iowa, Georgia, and New Jersey — recordkeeping for the court dominated by procedural adjudication was the responsibility of an independently elected clerk. In Connecticut, clerical staff for the district court were part of the judiciary, but their management reflected the functional requirements of procedural adjudication carried to its logical extreme. The clerk's office was staffed by attorneys, as well as clerical personnel, allowing them to more effectively respond to the questions of lawyers. In addition, all support staff, including secretaries, were members of a pool on which judges draw as needed; there were no staff assigned to individual judges.

#### The Functional Requirements of Decisional Adjudication

The character of decisional adjudication leads to a high demand for administrative support and close contact between judges and administrators. Moreover, judges on multimember courts dominated by decisional adjudication were more likely to have regular contacts with their colleagues and be subject to direct supervision of their day to day activities.

The reason for these organizational dynamics lies in the emphasis in decisional adjudication on reaching a resolution of the dispute at issue as quickly and directly as possible. The result is a high turnover in cases, placing a premium on an effective flow of paper and people through the courtrooms. The rapid turnover in cases has led some observers to characterize courts dominated by decisional adjudication as high volume courts. (Blumberg, 1967; Sibley, 1981) Certainly they can hear many more cases than do procedural adjudication courts. But volume is less important in affecting

court management than is rapid turnover. Even in rural areas which had few cases the hearings were brief and required a steady movement of files and people.

The high turnover of cases placed a premium on the effective coordination of judges, administrators, plaintiffs, defendants, lawyers (when present), paper-flow and courtrooms. As a consequence, we found the most elaborate management activities in these courts, even when there was no formal authority for such activities. Most of the courts dominated by decisional adjudication consisted of a single judge operating on either a part-time or full-time basis. In those settings the primary issue was the relationship between the judge and administrative support staff.

Where there was a multimember, limited jurisdiction court there was a strong tendency for a hierarchical structure among the judges. The chief judge on the court was likely to take an active part in assigning cases and courtrooms among the other judges. Moreover, the individual calendar was the exception with such courts. And where an individual calendar system was used, each judge's performance was closely monitored by the chief judge. In one court, for example, each judge was required to submit a weekly summary of activities which included dispositions, continuances granted, and type of disposition. The presiding judge reviewed these summaries. If he felt that a judge was not keeping up with his caseload, he would call the individual in to review the procedures followed. On this court, as on most courts, the chief judge had no formal authority over the other judges. However, he could apply indirect pressure, including embarrassing an errant member before his/her peers.

The pronounced need for administrative support services encourages a type of relationship between the chief clerk or trial court administrator and the judges that is different from the relationship that occurs in courts dominated by procedural adjudication. In the decisional adjudication setting, there is a much greater

sense of two specialists doing mutually reinforcing jobs. For example, the administrator of a limited jurisdiction court in one state first described his role as "I am the office administrator of the clerical staff for this court. I am under an administrative judge who has a very active role in . . . administration." He then went on to explain his success as an administrator "because of my strong partner (i.e., the administrative judge) in handling adjudication." This partnership relationship occurred regularly in courts of limited jurisdiction even when the judge was part-time and the administrator was a subordinate clerk in an elected clerk's office. The status differential between the two positions was much less than that found in a general jurisdiction trial court.

This close identification is not surprising given the large proportion of cases in these courts which are disposed of in fact, if not in name, by the clerk's office. A significant proportion of cases in traffic and small claims are handled at the clerk's desk with little or no supervision by the judges. The decision is made according to a formula and can be handled by non-judicial personnel as well as judicial.

#### The Functional Requirements of Diagnostic Adjudication

The administrative service needs of diagnostic adjudication are extremely high. The most important component of this adjudicatory process is not the procedures followed or the speed of disposition. Instead, the most important component is the development of a remedy to the problem which has been identified. This emphasis upon outcomes means that the members of the court may need access to a range of services at the time of disposition. Moreover, many cases are heard pro se in diagnostic adjudication. The judges, therefore, must rely on administrative staff to provide them with the information they need to make the appropriate diagnosis. As a consequence, the administrative services provided by these courts are frequently more important to the outcome of the

adjudicatory process than is the judge. Indeed, in these courts most cases never reach a judicial hearing; they are resolved by a parajudicial office with the concurrence of all parties (e.g., the juvenile case screening unit). In other instances, the factfinding function may similarly be taken over by a parajudicial officer (e.g., the master in equity proceedings appointed by the court to oversee the carrying out of its orders).

There are wide variations from one state to the next and from one jurisdiction to the next as to the location of the administrative services attached to the courts dominated by diagnostic adjudication. For example, juvenile courts may administer a wide range of services, including shelter homes, probation, detention homes, and family counseling. In other jurisdictions, such services are provided by the county or city governments, or a state department, and the juvenile judge is a part-time official.

By the same token, probate matters are sometimes treated entirely within the court; sometimes a separate administrative office is established. In Denver, Colorado, for example, there was a single member probate court, complete with its own administrative staff. In Connecticut the probate system was outside of the rest of the judicial structure; the judge was a locally elected official who was responsible for recruiting and organizing the court's staff. In New Jersey, routine probate matters were also handled by an elected official; adjudication of contested matters was handled by the court of general jurisdiction with the elected probate officer serving as clerk of the court.

The confusion over probate reflects the confusion over how to conceptualize and organize diagnostic adjudication. Probate, like other diagnostic matters, does not conform to the traditional definition of the judicial process in the United States. First, there is no presumption of a point at issue between two parties; and second, there is no assumption the parties have properly defined the issues that would bar the court



from broadening them beyond those issues originally brought.

Diagnostic adjudication is substantive due process in the purest sense; it is not the procedures followed in adjudication which justify the outcome, but rather the appropriateness of the remedy given the diagnosis of the problem. Administrative activities are more than staff support for judges or necessary ancillary services to the adjudicatory process. As often as not they are the source for the form and substance of a case. For example, juvenile probation staff routinely determine whether there will be a court hearing or whether the child will be sent to another social service agency for disposition. A presentence investigation by probation staff are a major determinate of that process; and clerks in a probate court are regularly involved in determining the level of bond required for executors.

Because of the integral role of support agencies, courts dominated by diagnostic adjudication are more likely to take on all of the attributes of an integrated service bureau than are the other courts. The critical role that administrative services play in the adjudicatory process encourages a close working relationship between judges and staff. Administrators were much more likely to be accorded status by the judges on these courts and to be consulted on adjudicatory as well as administrative matters. Moreover, judges on such courts were much more likely than their counterparts on the other two types of courts to adopt the perspective of the administrators. For example, during interviews, full-time juvenile judges readily discussed in detail the needs of the youth in the community and the social services available to meet those needs.

This interdependence is not without its strains. One chief judge on a juvenile court described the problems of supervising the administrative staff:

We promote that the administrator is responsible to and serves the needs of the

court and the court is the judges. The probation department thought they were the equal of the judges. Bringing that under control was no easy trick.

This tension between the probation staff and the judges was repeated in other settings. In Connecticut which had a policy of rotating judges out of the juvenile court every six months, the chief juvenile probation officer commented that the judges do not bother him very much:

By the time a judge gets a feel of things, his six months are up. It's good and it's bad... We had a judge we never saw in all the six months he was on the juvenile bench. Had another judge... who used to drive us crazy. He couldn't wipe his nose without seeing us.

In that same state, we saw a juvenile court clerk advising the judge on the appropriate legal procedures for transferring a juvenile from a detention facility for a court hearing. The clerk had a year of experience in the court; the judge had only one month's experience in that assignment. The judge signed the form as advised.

#### Adjudicatory Process and External Relations

The linkages between adjudicatory process and administrative services require different types of external relations for procedural, decisional, and diagnostic adjudication. The resource requirements of each adjudicatory process vary and these requirements impact on the budget process. Procedural adjudication appears to place the least demands on appropriated funds, decisional adjudication somewhat more demands than procedural adjudication, and diagnostic perhaps the most expensive on a per case basis.

More important than the amount of resources is the process used to assemble and secure budgets. Little

or no information is available on how, if at all, the individuals responsible for budget preparation and presentation differentiate the needs of each adjudicatory process.

Efforts to maintain effective working relationships between court personnel and outside agencies providing services is likely to be highly variable across the different adjudicatory processes. The extent of these relationships depends on which services are included within the formal organization of the judiciary. In addition, the range and type of administrative units which may service a given adjudicatory process varies by process. Each adjudicatory process differs in the degree to which it depends on external agencies for service and in the types of services it uses. The task of coordinating these services and negotiating with responsible external authorities also varies considerably.

It is apparent that outside agencies come to depend on adjudicatory processes to a certain degree. The revenue producing role of decisional adjudication, i.e., support payments, fines, shifts to a revenue preservation function. Diagnostic adjudication is frequently employed by social welfare agencies seeking to resolve family or juvenile problems. Since administrative service needs vary by adjudicatory process and they are frequently located outside the judiciary, adjudicatory process is a major determinant of the importance and conduct of external relations at the trial court level.

#### Conclusion

Given the functional requirements of each adjudicatory process, the potential effect of court consolidation becomes more obvious. Although most courts use all three adjudicatory processes, they differ in which one dominates. The substantive jurisdiction determines what the exact mix will be. The more consolidated the court, the more difficult the balancing of the requirements of the different adjudicatory pro-

cesses. The evidence from these five states suggests that there may be functional limitations to trial court consolidation.

The strongest evidence for this conclusion is the operational distinctions which persisted in Connecticut. The divisions within the superior court — that is, judicial district, geographic and juvenile — coincided with the occurrence of three dominant adjudicatory processes — that is, procedural, decisional, and diagnostic. The organization and operations of support personnel and staff relationships with the judges and each other reflected the peculiar needs of the dominate adjudicatory process. These differences in support staff reflect different administrative service requirements of each adjudicatory process. The functional requirements of the secondary processes were supported, but the influence of the dominant form of adjudication was evident.

The process which appears least susceptible to traditional management techniques is procedural adjudication. The emphasis upon procedure undermines any tools which depend upon outcomes for their success. It is difficult to quarrel with the contention of a judge that accelerating the pace of a trial endangers the quality of justice. Whether it does or not is a judgement which only the judge involved is qualified to make (subject, of course, to second guessing by fellow members of the bench at the appellate level). Procedural adjudication places primary emphasis upon each case, on a case by case basis. Management, by definition, assumes that there are collective goals which override, or at least compete with, the objectives of each case. Thus, due process values when applied to a particular trial require adherence to established procedures, regardless of how long the process takes. A court manager concerned with court delay will attempt to insert a new value into the process. As the court delay literature makes clear, most cases can be moved through the process much faster without jeopardizing due process. (Church, 1982; Grossman, et. al., 1981;

Church, et. al., 1978) However, the exact balance must, in the final analysis, be made by a judge, not by a manager.

The most complicated management problem for procedural adjudication is coordinating the numerous independent parties who must be brought together. As was made clear in the discussion, administrative services are not a major issue in most instances. This is not the case for the other two processes, particularly diagnostic adjudication. It requires the most complex set of support services, ones which we do not normally associate with the judiciary, or judicial skills. Decisional adjudication are high. But the tasks tend to be routine permitting the use of standardized procedures as the primary administrative techniques.

It is tempting to argue that courts should be structured to homogenize the adjudicatory process involved in its jurisdiction. And, it can be argued that there is a strong tendency for a single adjudicatory process to dominate in individual courts. But only those trial courts with the most severely limited jurisdictions can successfully exclude one or more adjudicatory processes. Certainly it is clear that the broader the jurisdictional definition of a trial court the more complicated the management requirements are likely to be. But a narrow definition is no guarantee of success either. If courts are too narrowly defined they run the high risk of becoming judicial orphans, dependent upon incompatible sources for administrative support, and subject to capture by nonjudicial officials such as the police.

Having admitted this limitation, however, there remains the fact that highly consolidated courts must give close attention to balancing the diverse demands for administrative services and procedural arrangements required by the various adjudicatory processes. At the very least these findings indicate that consolidation of administrative services must be given the same thoughtful consideration as consolidation of the

bench. Without such forethought we run the risk of having courts which are either unnecessarily cumbersome, or beyond control, or subject to capture by nonjudicial actors.

## CHAPTER SIX: POLICY AND RESEARCH IMPLICATIONS

Court unification in practice is a far more complicated set of changes in court organization than one would expect from a review of the literature. (Berkson and Carbon, 1978; Gazell, 1978) Our research reinforces those who have argued that the implementation of the reforms has taken a variety of forms which require a rethinking of the underlying concept of court organization. (Lawson, 1982; Flango, 1979) We have argued that a distinction must be drawn between the efforts to create a strong, central authority charged with managing a coherent, judicial system (that is, centralization); and the changes at the trial court level which, by combining jurisdictions, are expected to provide an organizational foundation for effective trial court management (that is, consolidation). We also argued that from a managerial point of view it was important to recognize whether the focus of the reforms was on administrative services, the bench, or the substantive jurisdiction of the trial courts. (Lawson, 1980)

The five states studied confirm the richness of the forms which unification may take when translated into practice. Three of the five states have strong central offices. But to say this is to lose the important distinctions between the strong central direction of administrative services in Colorado, and the close control over the bench in New Jersey, which is different still from the complex statewide management structure of the Connecticut judiciary.

The policy implications of our research can be summarized around three general headings: creating a judicial system; the central perspective; and the trial court perspective. How a state's judiciary is organized goes far to define the goals and objectives for which judges and administrators can be held accountable.

## Creating a Judicial System

The variety of techniques for reorganizing a state judiciary are so great as to be almost overwhelming. A consolidation of the experience of these five states, however, suggests some underlying themes which can guide the decisions of policymakers. Critical considerations in the design of a state judicial system are the relative coherence of the systems itself, and the relative importance of the state and local operating units in determining policy. Four different answers are represented by the states we examined in depth.

The least coherent system is the traditional court structure — as found in Georgia — which we described as similar to a constellation of independent operating units. Under this approach the central office must compete with much more powerful local interests to encourage changes in judicial operations. The effectiveness of the central office will depend largely upon the political skills of its leadership. The second design we described is one in which there is a coherent judicial system operating, but the central office is still at a disadvantage when dealing with local interests. We characterized this judiciary — Iowa — as analogous to a confederacy in that the whole was largely a sum of its parts. Although the powers of a central office are limited, its status is far more secure than its constellation counterpart because at least there is a consensus that the integrity of the system is important. At the very least the office can assume that procedural uniformity among court sites is considered a virtue rather than a derogation of local prerogatives.

The third type of design gives even more advantages and resources to the central office. The operations of both Colorado and New Jersey were similar to a federal system of government in that authority to make policy was distributed between both levels. In such a system it is possible for the central office to adopt a management perspective on major components of the judiciary — setting policy, developing

programs, and monitoring implementation. At the same time, the local operating units retain a clear identity and significant resources with which to contest central authority. As a consequence, the central officials of a federal system must be both administrators and politicians, issuing directives where they have the authority, wielding influence where they do not. Their position can be difficult since they may be held accountable for behavior and performance they have no formal authority to influence. Only in the union system are the central officials in a position to take a direct part in all phases of the judicial system. Local units lose much of their importance except as a focal point for state oriented policies. In a union it is the system which is the primary unit of analysis, not the local trial court.

The labels for the four models were carefully chosen because they suggest multiple centers of authority, in most instances, competing for the dominant voice as issues arise. The four designs have been presented as static forms. It should be clear, however, that most state systems are in a constant state of flux. Our descriptions of these five systems have all been made in the past tense to reflect their status at the time the field visits were carried out. However, in every instance there have been significant changes adopted, or under consideration, in the two years since the field work was completed.

We do not mean to suggest that there is a natural evolution from one system to the other, for example, from constellation through confederation and federation to union. That assumes that the local interests will disappear as legitimate or effective managers of justice. However, as our examination of trial courts in these states makes clear, there are major constraints on central authority which result in the persistence of local operational units with significant managerial powers. In our view, the demands of accountability and external relations which encourage central management of the system compete with the demands of adjudi-



catory process, which encourage local management activity.

### Managing the System

The experience of these five states suggests that policymakers should consider carefully what they can expect of a central office. A state office can be most effective in dealing with those issues which require an overall perspective on the judiciary. It is less well equipped to deal with day to day problems which arise in trial court management and with issues in individual cases, except as a support to the appellate process.

State level officials are in the best position to balance the legitimate demands for judicial accountability against the need to protect the integrity of the courts. Removed, as they are, from the day to day problems of processing individual cases, they can take a general perspective on court performance when productivity is the issue. Activities well within their capabilities include running interference against attacks in the media or from elected officials over unpopular decisions by the bench; enforcing codes of ethics without personal favoritism; ensuring uniformity in procedures across the state in both the courtroom and administrative services; establishing general standards of performance and monitoring compliance.

External relations are the easiest functional area for the central official to manage. The system level perspective provides them with both the information and the resources to deal effectively with the legislature, media, executive agencies, and the bar. Administrative services issues are also amenable to central influence. Techniques to develop and put in place statewide personnel systems, recordkeeping procedures, information systems and devices influence the other ancillary activities required by an effective local organization are numerous, and may, or may not require formal authority in the hands of central officials.

There are limits on the ability of a central office to manage the adjudicatory process. The experience of these five states suggest that the general location of the central office makes it an effective means of maintaining the integrity of the bench. Their overall perspective allows the central office staff to establish and monitor productivity in the courts and recommend levels of performance. However, it is difficult for a central office to become directly involved in the day to day problems of caseload management. This is especially true in courts of general jurisdiction where productivity may not be highly valued. As the Connecticut experience suggests, a major commitment may be necessary to influence the pace of litigation in these courts. Where fewer resources are available, the central office must rely on indirect techniques such as publishing comparative statistics, technical assistance, education, and training programs or actions of "agents" such as administrative judges. Given this position, holding the central office accountable for the productivity levels of a judiciary must be tempered by the resources and authority at its disposal. We found no evidence of substantial central influences over the outcome of individual cases and little reason why such should be present.

### Managing Trial Courts

Court unification is usually justified in terms of its expected yield in more effective and efficient justice at the trial court level. Consolidation of trial courts is expected to lead to more effective management of court operations. It is difficult to draw firm conclusions about the effect of consolidation on trial court performance. The overwhelming importance of the distinctions among the three types of adjudicatory processes suggest at the very least different criteria be applied when evaluating the effects of changes on courts dominated by different procedures. As we note below, future research must account for the different operational standards of justice at work in different courts and different adjudicatory processes. It is also

clear from our work that the adjudicatory process drives both administrative services and external relations. These variations must also be considered.

One thing is clear. Regardless of the adjudicatory process in question, the performance objectives of the unification movement can only be met if explicit management positions are created at the trial court level. The functional requirements of the various adjudicatory processes place a premium on a strong local leadership. This is especially true for procedural adjudication which does not usually place high value on productivity; but it holds for decisional and diagnostic as well.

This local leadership is difficult to establish in the courts of general jurisdiction which tend to be dominated by procedural adjudication. Effective leadership requires the involvement of both a judge and administrator who can strike an acceptable balance between productivity and due process values. This is not an easy balance to achieve. Management of limited and special jurisdiction courts is less problematical because of the functional requirements of their dominant adjudicatory processes, that is, decisional and diagnostic. The importance of productivity issues are more obvious and the centrality of administrative personnel to case processing make it easier to incorporate them into the management function.

It is unclear from our research that there is a single, appropriate combination of trial courts. The apparent need for strong local leadership as a condition for effective trial court management reinforces the positions of consolidation advocates. Isolated, single member courts, especially those with part-time judges, are unlikely to have the resources necessary to be efficient. What is even more important, they are highly vulnerable to capture by outside agencies which are providing the administrative services they need. Consolidation provides judges with the protection of their peers against outside influence and managers with the resources needed to process cases more efficiently.

At the same time, consolidation can complicate trial court management by creating geographically dispersed trial court sites in sparsely populated areas, and, more important, multiple adjudicatory processes within the same management structure. It is much more difficult to manage efficiently judge and administrative resources when they must travel between different county seats to hold court. The logistics of case management and record keeping are compounded when the judges must travel from site to site. Consolidation increases the likelihood of creating court jurisdictions which suffer from these problems.

The problem of balancing the functional requirements of a courtroom dominated by decisional adjudication with one dominated by procedural are clear. The skills needed by the managers of each appear so diverse as to call into question whether they can be balanced at all. As we have observed, it is inevitable for different adjudicatory processes to be present in a single court structure. What distinguishes one type of court from another is the relative importance of each process in the overall operations. Even courts dominated by decisional adjudication will hear procedurally complex matters, or have to make awards, or render sentence. Cases and stages in the process, not structure, ultimately determine the range of adjudicatory processes present in a given trial court. It is difficult to imagine how jurisdictional redefinition could ever eliminate the diversity of adjudicatory processes in a trial court. Hence, any effort to restructure trial courts must account for the different needs of the various forms of adjudicatory process that will be present, and to plan both management structures and management processes accordingly. The key issues, of course, are what these structures and processes should be, given the different characteristics and demands of the different adjudicatory processes. While we cannot answer this question, we can suggest an agenda for research which will make the choices clearer.

## Research Implications

Our research indicates that organizational changes have greater impact when linked directly to management structure, operation, and performance at the trial court level. We suggest that it is now time to shift the focus of research away from questions of formal organization and turn to a more instrumental set of concerns. It is impossible to list all of the research issues raised by this study. Following are some questions which we feel should be given special consideration.

Defining Justice. Our findings suggest that we need to reconsider how the concept of justice is translated into empirical inquiries. Justice is frequently treated as a unidimensional concept. We have argued that it has different meanings dependent upon the adjudicatory process involved. What distinguishes them is the relative emphasis given to different objectives. For procedural adjudication it appears the first priority is to due process issues; decisional adjudication emphasizes reaching a decision, that is, justice delayed is justice denied; and diagnostic adjudication puts first priority on individual justice. We have argued that all three processes share a common concern with justice. However, it is also clear that these differences in priorities can lead to a distortion of justice if one set of objectives is emphasized to the exclusion of the others. Under what circumstances are distortions likely? How can a balance be maintained for courts dominated by the various processes? Can objective measures of performance be developed which take account of these various objectives?

The Adjudicatory Process. The character of the adjudicatory process was a central concept in our research. The theoretical foundation for this emphasis came from the organizational theory literature which emphasized the underlying production process in understanding how different organizations function. (Henderson, Guynes and Baar, 1981). Its application to

the judiciary and the tripartite categorization scheme was grounded in on site observations of the variety of courts found in the five states studied. Although the definition provided was adequate for our purposes, it will need much more careful refinement if it is to be helpful to others. Specifically, there are several conceptual issues which need to be addressed and tested empirically. Our definition of these categories has moved rather freely between case content, stage of the adjudicatory process, and court jurisdiction to distinguish them. More careful indicators of when a court or judge is engaged in one process as opposed to another need to be developed. For example, should the primary unit of analysis be a stage in the process? Or is a better unit of analysis the case; that is, do different kinds of cases need different types of processes, regardless of the overall process operative in a particular court? Our research has convinced us of the validity of the distinctions and the importance of the adjudicatory process in organizing and managing courts. However, the scheme needs extensive refinement.

Reorganizing the Courts. The major thrust of this research was to address the question of how state court systems should be organized. We have, however, only begun to address the many questions regarding the relationship between structure and court performance. We have argued that the adjudicatory process stands as a major inhibitor on the impact of structure at the trial court level. To what extent will restructuring the courts around particular adjudicatory processes lead to a distortion of the objectives rather than enhancing effectiveness? Is there any reason to organize all administrative services around certain objectives or should they reflect different adjudicatory processes? Does broadening the jurisdiction of a court to include an equal emphasis on all three adjudicatory processes lead to a diminution of the effectiveness (or justice) of any one? There are an equal number of questions regarding the relationship of structure and performance at the system level. Can a balance between central and local authority be maintained? Will increased central-

ization lead to an even greater emphasis upon accountability of the judiciary to management objectives by other government institutions? It is clear from our research that no single structural change such as central financing or a state-wide personnel system is necessary, or sufficient, to accomplish the objectives of unification advocates. But the issue remains: what combination of changes are likely to lead to different objectives?

Judicial Management Issues. When one moves beyond formal organization to the actual instruments of management, it is imperative to ask why judicial systems are managed. First, we must recognize the multiple objectives to which management might be devoted. Improvements in the quality of justice, greater consistency in justice, greater speed of justice, greater accountability of justice are all legitimate objectives. Different management techniques may be initiated to achieve each of the objectives, but they are not necessarily compatible. For example, emphasis on consistency might involve review and adjustment of trial court decisions by central authorities, e.g., New Jersey's criminal sentence review process, while emphasis on speed might suggest a more productive technique, e.g., Connecticut's caseload management system. A higher quality of justice might require a management structure which contributes to better judicial decisionmaking through education and proper support services for judges. More accountable justice might require the specification of criteria for measurement and regular external evaluation of judicial and nonjudicial personnel. There must be a recognition in future research that different standards of justice carry profound implications for both accountability and management efforts at both the system and trial court level. More work is needed in developing the explicit linkages between standards of justice, characteristics of different adjudicatory processes, their administrative and external relations dimensions, and management.

Hence, future research needs to focus on techniques for effectively managing the courts. What techniques are appropriate for procedural versus decisional versus diagnostic adjudication? What types of skills are needed to support and effectively direct each form of adjudicatory process? Should management be specialized or incorporated into existing judicial or administrative positions. What supervisory techniques are appropriate for judges? To what extent can central office staff create incentives of increased performance by trial court judges and administrative staff?

Information Systems. The discussion of management issues leads to a special emphasis on information systems and their importance in our rapidly expanding world of automation. Intuition tells us that management information systems should increase the ability to effectively manage the courts. However, the history of information systems for courts is filled with as many failures as successes. We suggest that one of the reasons for the failure is that most systems have been designed primarily to access case oriented information. It is no accident, we think, that the most successful attempts to automate have occurred in courts dominated by decisional adjudication, e.g., traffic, or misdemeanor. One would expect major differences in function from the supporting systems based on adjudicatory processes, since each process requires different levels of information. General jurisdiction courts need immediate information at a different stage in the process than decisional adjudication, e.g., preliminary hearings, pretrial motions, sentencing hearings, etc. In short, each adjudicatory process has distinctive information needs. A system which takes this into account might have much more success.

Performance Measures. The increased importance of accountability issues for the judiciary reinforces the significance of the search, now going on, for effective performance measures. If care is not given to their definition, however, they will be misleading, at

best, and at worst, lead to distortions of the judicial process. The performance measures used to date have emphasized volume, or speed, or disposition rates. Our research suggests we need to rethink why we are collecting such statistics. At present most statistics are collected for purposes of negotiating with external agencies over budgets, personnel and services. They have little relevance for internal management or for assessing the quality of justice dispensed by the court. Shifting to an adjudication based system is likely to increase their utility. Future research should focus on developing appropriate measures for assessing the performance of the different adjudicatory processes. Can we develop indicators that do not distort the adjudicatory process but still serve the other values of justice? Is it possible that a more effective performance measure would focus on procedures, i.e., preliminary hearings or sentencing, rather than overall dispositions? We suggest a balance must be struck which accommodates the obvious need for simple productivity measures (caseloads, dispositions, elapsed time) with the need to produce information reflecting the peculiar characteristics and objectives of procedural, decisional, and diagnostic adjudication.

#### Conclusion

Perhaps the greatest contribution of the unification reforms has been an explicit recognition of the linkages between the formal and functional aspects of the judiciary. The underlying theme of all of the many advocated changes is the conversion of the judiciary from a loose collection of independent judges and administrators to a coherent organization capable of making and implementing operational policies for the courts. Decisionmakers and analysts alike must consider all aspects of judicial operations rather than adopting views which segregate adjudicatory process from administrative matters.

The unification reforms have laid an institutional foundation for this integrated perspective by creating

leadership positions within the judiciary charged with developing operational policies for both judges and administrators. As our research makes clear, these positions can take a variety of organizational forms and still have a significant impact on the style and content of operations. It is less important whether the locus of authority is centralized or decentralized than that there is a coherent policymaking process at the system and trial court levels.

The changing character of the demands being made on the judiciary place a premium on this integrated approach to the courts. Rising caseloads are common to nearly every state system. At the same time, courts are being asked to demonstrate that they are using scarce resources efficiently. These demands for managerial accountability must be balanced against the ultimate objective of the judiciary - to deliver justice fairly and equitably. The unification reforms do not guarantee that a proper balance will be struck. But they make it possible for explicit choices to be made by those most directly involved in the process. That is its ultimate justification.



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