BOOK REVIEWS

MANAGING THE COURTS. By Ernest C. Friesen, Jr.,[1] Edward C. Gallas,[2] and Nesta M. Gallas.[3] Indianapolis: Bobbs-Merrill, 1971. Pp. vii, 341. $9.50.

Managing the Courts is the first of a new genre in court administration literature: a textbook for the students in the present graduate programs for court executives at the University of Denver, American University, and the University of Southern California. Since there are few research monographs on court administration to serve as a foundation for such a text, the authors developed generalizations based primarily on their own personal experiences. The pioneering nature of their effort is revealed in the situation which they describe (p. 9):

> No person in academic life today is known as a specialist in court management. The lawyers in judicial administration have concentrated on procedures and jurisdictional law. The public administrators have concentrated their efforts on the executive and legislative branches of government.

These three professionals in cognate fields have pooled their talents and experiences with state and federal courts to persuade the reader of the value of management to the third branch. Ernest Friesen was Executive Director of the Administrative Office of the U.S. Courts and understands the delicate and hazardous nature of executive, judicial conference, and trial judge relationships. Edward Gallas was Executive Officer of the multi-judge Superior Court of Los Angeles County during the developmental stages of the office, and Nesta Gallas is a Professor of Public Administration with a research interest in court administration.

In their effort to avoid personal reminiscences and case examples, they contrive a cold didacticism and deprive their text of richness and flavor.

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The lack of a bibliography and extensive footnotes further weakens its utility as a textbook. Although the literature in the field is sketchy and diverse, there are a number of relevant books and articles which could have been recommended to the student.[4] The chapter on automation fails entirely to cite any studies although a *Jurimetrics Journal* has been published since 1959 and there exists a community of scholars interested in the subject.[5]

The literature on court administration provides three traditions to the authors of a comprehensive work. The muckraking tradition, from Lincoln Steffens to the contemporary reporting of complaints about the judiciary, focuses a spotlight on corrupt judges, decrepit facilities, congested dockets, and inequitable outcomes.[6] The public administration tradition provides a choice of models from the rigid hierarchial model to the flexible systems models. The reform tradition stemming from Herbert Harley,[7] currently represented by the American Judicature Society and its publication *Judicature,* preaches the benefits of structural rearrangements, from the interior design of courtrooms to the unification of state courts.

This book does not fit any one of the three traditions, but to some extent draws upon each. The authors assume that their readers are fully aware of the current distress of the courts and avoid morbid anecdotes in favor of a sophisticated systems-structural analysis of constraints, inherent power, and government relations. The book resembles a muckraking product only in a few solemn simplifications. Political scientists would prefer to subject to further inquiry purported statements of fact such as "the courts as institutions differ dramatically from other institutions in our society" (p. vi) and "If there were no courts, no

4. *See* P. FISH, THE REVOLUTION OF THE FEDERAL JUDICIAL ADMINISTRATION (1972); E. LEMERT, SOCIAL ACTION AND LEGAL CHANGE: REVOLUTION WITHIN THE JUVENILE COURT (1970); Gazel, *State Trial Courts: An Odyssey Into Faltering Bureaucracies,* 8 SAN DIEGO L. REV. 275 (1971); Wettick, *A Study of the Assignment of Judges to Criminal Cases in Allegheny County—The Poor Fare Worse,* 9 DUQUESNE L. REV. 51 (1970).

5. The original name of the *Jurimetrics Journal* was *Modern Uses of Logic in Law. See also* Loevinger, *Law and Science as Rival Systems,* 19 U. FLA. L. REV. 530 (1966-67); Mermin, *Computers, Law and Justice: An Introductory Lecture,* 1967 WIS. L. REV. 43; Zeisel, *Methodological Studies in Sentencing,* 3 LAW & SOC'Y REV. 621 (1969).

6. *See, e.g.,* L. DOWNIE JR., JUSTICE DENIED: THE CASE FOR REFORM IN THE COURTS (1971); H. JAMES, CRISIS IN THE COURTS (1968).

7. 55 AM. JUDICATURE SOC'Y J., No. 5 (1971).

institutional means would exist for the peaceful settlement of conflict" (p. 18).

The authors recognize organization theory as a potentially useful tool for examining and understanding court systems. However, they point out that studies of complex organizations usually concern business institutions and that the uniqueness of judicial institutions requires special modifications of existing models. An organizational chart of positions in the judicial branch and related offices in the executive branch would reveal very little about the realities of the judicial process. They expect an administrator to have a thorough understanding of the "shadow" power structure underlying the authoritative structure and to work through it to achieve court goals. In effect, they suggest that under the guidance of the administrator each court experiment with various management designs to solve its own idiosyncratic problems. The authors, then, do not offer a panacea but simply an approach which employs some administrative concepts and suggests some general propositions. In the chapter on "The Utilization of Judicial Manpower," they offer some testable propositions; for example, that "The more work lawyers are required to do, the less court time a case will take," (p. 166) and "The greater the number of professionals . . . the more complex the problems of manpower utilization become" (p. 149).

Although the authors reject the typical structural concerns of the reformist tradition, they assert that the real key to effective judicial performance is professional management and the application of management principles to entire court systems and urban courts. Their plea is for the training and employment of administrators in courts. Thus, the book fits the reform tradition with a new emphasis on the status, salary, and selection, not of judges, but of court managers. They recommend as a rule of thumb, that a court of general jurisdiction with six judges needs an administrator (p. 124), and warn that the lack of trained court executives is a drain on the time and energy of trial judges (p. 120). The court administrator particularly needs a temperament to handle situations involving power by facilitating the accomodation of conflicting interests (p. 127). A legal education does not prepare a court administrator for his role (pp. 128-29).

The repetitions and contradictions in the book stem partly from the joint authorship and the newly turned academic ground. However, some of the disorganization is a byproduct of the effort to fit material

already published in article form into a crossword puzzle of a book. The pieces entitled "Constraints and Conflicts in Court Administration" by Friesen and "The Court as a Social Force" by E. Gallas were published in the same issue of *Public Administration Review* (vol. 31, pp. 120-33, March-April 1971) and appear without credit in expanded form as chapters three and eleven. The first five chapters overlap to the point of extreme irritation.

In contrast to the confusion in the opening chapters, the appendices have clarity and utility. Appendix C excerpts the rules of the Superior Court of Los Angeles County which apply to the organization of court business, the structure of internal decision-making, and the office of court executives. Since the fifty state court systems are often strangers to each other because of lack of data collection and channels of communication, the printing of this document is a real service to urban courts throughout the country. Appendix A outlines a research design developed by N. Gallas for the study of the court executive role in Los Angeles County and presents in tabular form the executive's role relations with public and private actors in the judicial process. This tabular format is presented more effectively than the explication in the body of the text.

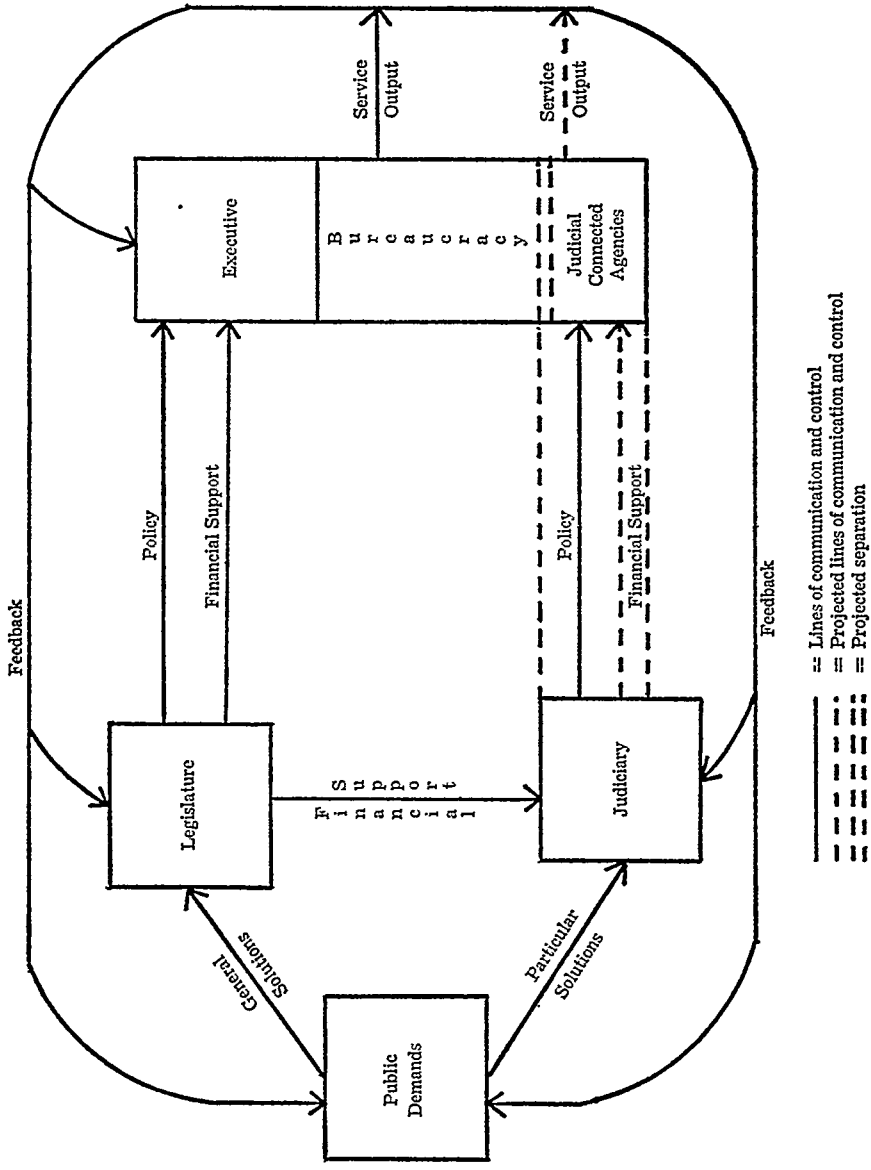
Chapters six through ten, at the heart of the book, vindicate the publication. They are distinct and well-organized chapters on the relationships, tasks, and techniques of modern court administrators. For the reader new to the field the chapters on case assignment and on automation are detailed and informative. Less concrete but more important is the discussion of judicial responsibility for drawing up the policy guidelines for the court and the correlative responsibility of the administrator to gather data and present alternatives for the judges' consideration. This mutual dependency seems to echo the role relations of the city manager and the collegial city council. In fact, the author is indirectly proposing an expansion of the scope of court rule-making power to bring consistency to decision-making, inevitably at the expense of the individual judge's discretion. A prescription which might make trial judges nervous is that "[t]o dispose of individual cases, all personnel in a judicial system must be coordinated under a team leader—usually the judge." (p. 146). The gains in court performance are worth the price of individual autonomy, from the point of view of a public administration expert utilizing a welfare economics analysis. Despite their insistence that the expert is a servant of the court, who molds his

role to fit the peculiar structure and environment of the court he serves, the potential power of such a position is evident. The message of the book is two-fold: first, that the court as a system must stop paying deference to the independence of individual judges for the sake of strength and unity; secondly, it must resist the countervailing power of lawyers in the private sphere and of executive and legislative officers of government. The court executive apparently has the know-how to achieve cohesiveness to the end of the aggrandizement of the judicial branch.

The authors of this book have a very clear perception of the proper role of the judge. He has dual functions "as a decider of controversies and as a dispenser of social services" (p. 36). The traditional function of case disposition requires the service of a court manager where the volume of work is large (some variables useful in gauging the workload are listed on pp. 120-21). The second task of the courts, to solve social problems, demands the coordination by a court manager of the diverse professional staff which supports the judge. Friesen sees the judge as a "rehabilitator, counselor, conservator, and protector" (p. 210). The judge is also concerned with many diverse establishments which render various services. These include prisons, jails, juvenile facilities, mental health clinics, legal service centers, child care centers, counseling clinics, rest homes, and law enforcement offices. Without liaison help from an administrator the judge has no adequate tactic for meeting his responsibility to monitor the impact of every decision.

If this social justice function were to be fully implemented, then the incorporation of agencies supporting the court would expand the third branch into a full-blown bureaucracy. The emphasis on the exact equality of the judicial branch to the legislative branch in the role of decision-maker may be illustrated by the facing diagram.

The diagram shows that the public requires broad statements of public policy from the legislature, which in turn finances general programs and services for the public welfare through the executive branch. The public requires resolution of particular conflicts from the courts, which channel their dispositions through service agents. Some of these agents are in the judicial branch, such as marriage counsellors in state trial courts and probation officers in federal district courts. Most of them are in the executive branch or the private sphere, but when the facilities are in the executive branch, their transfer to the judicial branch would



facilitate coordination.[8] Services now provided on a voluntary basis, such as big brothers for delinquents, are likely to come under public regulation and financing, if the historical course of other welfare functions

8. Fish, *The Politics of Judicial Administration: Transfer of the Federal Probational System*, 23 WEST. POL. Q. 769 (1970).

is predictive.[9] The diagram suggests the probable growth of administrative services directly controlled by the courts and the channeling of the financial support for these agencies through the budget for the third branch. The failure of legislative bodies to perform adequately their duty to oversee prisons and law enforcement agencies might suggest the transfer of responsibility for these agencies to the courts. In this projection the position of court administrator would be of prime significance. The prophecy itself may be self-filling, as newly trained court administrators with a social justice mission flex their muscles and employ their lobbying skills to expand the boundaries of the third branch.

BEVERLY BLAIR COOK*

TOWARD A RATIONAL POWER POLICY-ENERGY, POLITICS AND POLLUTION. By Neil Fabricant and Robert M. Hallman. New York: George Braziller, 1971. Pp. vi, 292. $3.95.

In some ways, it is a pity that this volume does not fulfill the promise of its title. We badly need serious thought about the requisites of a rational power policy that would address not only the engineering aspects of such an enterprise, but also the politics and economics that would be necessary to make it feasible. Rather, the writers have chosen to make a case against the power industry, the regulatory bodies and Governor Rockefeller. Since they are spokesmen for the Lindsay Administration, the animus against the Governor was perhaps inevitable. Unfortunately, the authors' perspective has given their work the air of a polemic rather than that of a balanced and hence more credible treatment of the principal issues involved. It is the work of an environmental prosecuting attorney rather than a serious effort to see the world not in terms of sheep and goats but in terms of cost benefits, trade-offs and compromises between conflicting values. The end result is moralizing of a tendentious sort, where a more sober recognition of the in-

9. Leenhouts, *Volunteers in the Lower Courts—The Weak Become Strong*, 55 AM. JUDICATURE SOC'Y J. at 239 (1972).

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