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AMERICAN COURT MANAGEMENT THEORIES AND PRACTICES

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CONTEMPORARY PRACTICING-MANAGEMENT ROLES OF THE JUDICIARY AND COURT ADMINISTRATORS

Practice is the dominant theme of this chapter. What works? What is the state of the art in managing courts? What is the better literature on the subject? Does it make common sense to a practical person? The first task is to describe what managers do in their work. This tests common understanding of managerial behavior; it enables you to check the realism of the description against your personal experience in managing. It should be possible to share an exciting discovery of commonality with others who manage. That excitement both motivates and directs your energies toward a deeper look at managing in courts. The essential ingredients of court management are cases, people, money, paper, and general organizational concerns (for want of a better general description of the residual activities from public relations to space management). Each of the major topics is treated in a manner that summarizes the main thrust of the activities in that field. For example, we examine case-flow management by searching the current literature to determine who makes sense and why in this very complex field of work. At the same time, we cannot overlook the theoretical perspectives developed in the first three chapters. Relevant theoretical points are woven into this chapter wherever it seems appropriate. This approach enables the practice of court management to be linked to the theory. An essential premise is that theory informs practice and makes it more interesting and understandable.

At the manager's level, whether a presiding judge or a court administrator, the leader's impact on trial judges in daily functioning in litigation or adjudication is most keenly felt. It is in the trial courts of all kinds that most of the justice or injustice felt by citizens is experienced—probably in descending order in traffic courts, small claims courts, divorce courts, housing courts, probate courts, general trial courts in auto-accident cases, and in all types of criminal cases as defendants, victims, witnesses, jurors, or observers. Millions of cases and proceedings are launched every year by

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David J Saari
Quorum Books

This is an extract from a widely regarded work on the application of management principles to the operations of courts.

millions of citizens. If poor management hinders judicial performance in deciding cases, substandard justice may result—a point reiterated from the beginning of this book.

At the practicing level of management in courts, it is helpful to recall that the business is dynamic—it is changing all of the time, but that change is normal. Most managers say: "No two days are alike." In courts this has proved to be true for most managers. In other organizations managers experience these same dynamic organizational qualities. This similarity of experience leads to the conclusion that courts are not really unique in management; indeed, they are probably similar to other organizations. The reality of a court manager's work is that each position has its own complex web of tenuous relationships through which management is conducted. Although the court manager positions may vary from court to court, it is better to describe the common patterns of management to which almost everyone can relate. It is generally agreed that managers in courts exercise a variety of roles in managing the operational functions in courts such as case flow, personnel, finances, records, and other aspects of management. In each of these task areas, the court manager is faced with uncertainty, but is asked to be responsible and accountable to others and to be effective in conducting court operations. You will recall that the organizational definition of James Thompson incorporates the duality of uncertainty and flexibility in managing, which is so difficult to handle. The meaning of effectiveness discussed above is a trap for the unwary and uninitiated in managing an organization. Therefore, let us proceed with some caution to identify the behaviors common to all managers, because our knowledge is not secure in such a dynamic managerial situation.

Henry Mintzberg spells out in the best manner those distinguishing characteristics of managerial work:

1. Much work at an unrelenting pace
2. Activity that is brief, various and fragmented
3. Activity that calls for live action
4. Activity that makes one talk a lot
5. Activity between your organization and a network of contacts
6. Activity that blends rights and duties

The manager's job, he argues, is essentially open-ended, continually subjected to definition and redefinition. The nature of managerial work is free flowing; it is not necessarily the highly programmed job that some may imagine it to be. In the court setting, the presiding judge is learning to take cues from his colleagues about what they expect a fellow judge to do in that role. As mentioned above, the derivative nature of the court administrator role requires him constantly to "check with judges" to ascertain their wants and needs. It is the judges' collective public responsibility, after all, that

both the presiding judge and court administrator are affecting. Of course, one exception to this situation may be where a presiding judge or court administrator has an independent statutory or court-rule basis of existence. In that situation the colleague-related expectations may not be so important to survival, but obviously the colleague relations impact tremendously upon the achievement of cooperation in the daily functioning of the court. A statute cannot command high-level cooperation from judges.

Managers take their work home; they frequently have no breaks in activities for long periods during the day. The work is taxing, because there is no end point to it. The pace is unrelenting. Seminars for managers on the subject of stress, burnout, and time management are indicators of ulcer-producing, heart-attack-generating pressure experienced by managers. In courts, as in other organizations, the pressure must be dealt with by managers.

The experience of managerial work flow is episodic. Brief, variable, and fragmented episodes—"minievents"—come marching by a manager's consciousness. Some studies by Leonard Sayles show 457 managerial contacts per eight hour day.³ Other studies show 387 episodes a day. The telephone, the drop-in visitor, the mail, the meeting, the brief exchanges down the hall—all of these things total up to large numbers in very short periods. Desk work may be in fifteen-minute bursts; a telephone call may be six minutes; a meeting may be an hour; a drop-in visitor may take fifteen minutes; or a personal tour may take ten minutes.

Interruption is piled upon fragmented episodes until the end of the day for some managers reaches a dreamlike quality of surrealism. Mintzberg is particularly sound in stating some organizational realities:

In effect, the manager is encouraged by the realities of his work to develop a particular personality—to overload himself with work, to do things abruptly, to avoid too great an involvement with any one issue. To be superficial is, no doubt, an occupational hazard of managerial work.)

He also points out that a specialist such as a judge may have particular difficulty in managing because of the demands to become superficial. The superficial forces create regrets in managers who are now presiding judges, or chief executives of schools and hospitals, and who formerly were practicing professional lawyers, teachers, or physicians. This hectic aspect of management is far removed from the more deliberate, "pigeon holing" process that is required in the professional role.

Managers prefer live action—words, gossip, speculation, and hearsay are important to the live action. Mail, written routine reports, and tours appear to be less attractive. The five basic media—mail, telephone, unscheduled meeting, scheduled meeting, and tours—are used by managers. The mail is disliked; informal communication dominates. The manager

works by verbally transmitting information. This fits in with the episodic, "pressure-pot" nature of the work.

Managers communicate with a wide range of people—superiors, outsiders, subordinates, and peers. Consistently, it is found that managers spend the most time with subordinates and the least time with superiors. Contact studies illustrate that sometimes the manager is in a communication network that looks like an hourglass with the manager at the narrow, information-flow point.

Finally, the manager may be a puppet instead of a composer and conductor. A "diary complex" afflicts some managers (they pay too much attention to a rigid schedule). But there are degrees of freedom depending upon a manager's skill and talent in managing personal time.

The manager's work is described in other ways. Sayles, for example, stresses trading, work flow, service, advisory, auditing, stabilizing, and innovative relationship in a manager's role.⁴ Mintzberg summarizes several views of managers' work: the classical school, the great-man school, the entrepreneurship school, the decision-theory school, the leader-effectiveness school, the leader-power school, the leader-behavior school, and the work-activity school. Apparently, no single description fits all managers. Therefore, we are left to speculate upon the outcome of Mintzberg's research in which he develops an interesting description of ten managerial working roles clustered into three sets: interpersonal, informational, and decisional roles. (See table 4.) This conceptualization of managerial work is, itself, theory, and as Mintzberg suggests, it may hold

together long enough to take us to a better theory. Mintzberg describes the ten managerial roles in general terms, but to save time, think of these roles in terms of what a court administrator would do.

Interpersonal roles require three things of a court administrator. As a *figurehead*, the court manager represents his organization to others in a formal sense at budget hearings and a wide array of other official functions. To gain favors and information, the court administrator interacts with peers, the clerk of court, the jury commissioner, and the county or city manager. The role of *leader* arises when a court administrator is asked by personal staff to determine a course of action, to motivate staff to take action, and to give coherence and direction to daily activities. By interaction as a *liaison* official, an expeditor role is frequently required. The three roles exist in most court-administrator positions and in most presiding-judge positions.

The second set of information roles place the court administrator in a nerve center of critical organizational data flows. Managers in courts *monitor* data—by eye, ear, and a sense of feel about the pulse of the organization. Sometimes moving about a courthouse from floor to floor will alert the court manager to problems. Memorandums of critical information to the entire court on a wide variety of subjects may flow through the court administrator's office. Decisions of the court's governing groups of judges may be communicated through the office. The *disseminator* role of court managers is widespread in courts. Finally, the court administrator may be the court *spokesperson* in union negotiation at various stages of bargaining with court-employee groups. Or the court administrator may meet with bar association committees to explain court operations in some detail to the lawyers. The information flows in a court are communication patterns previously described in chapter 3. The manager's job usually is deeply embedded in many flow processes of communication.

The third set of four decisional roles describe the manager's job in a court system to initiate change (entrepreneur), to deal with trouble in the organization (disturbance handler), to decide where to put manpower and energy (resource allocator), and to negotiate for the court when it needs to bargain (negotiator). *Change processes* are initiated sometimes inside the court, and here the court manager has significant responsibility of choice and change. A new computer operation in a court is a perfect example of thousands of decisions from conception to operation on a daily time track. When employee groups are unhappy or when a single individual is dissatisfied, the court administrator usually winds up talking to the group or individual first as *disturbance handler*. The court has people; the court has tasks; the judges need people to move the cases, and jointly the staff in a court is shifted or resources are allocated into the case-flow processes by conscious design. Finally, a court administrator may bargain for better equipment, mostly newer equipment for judges and their staffs. The role of

negotiation is easier for an advocate rather than a recipient of the benefit. The interjudge comparison is made somewhat less invidiously.

Perhaps the role analysis helps us to understand a court manager's behavior, but it would help to consider Mintzberg's contingency theory of managerial work:

The work of a particular manager at a particular point in time is determined by the influence that four "nested" sets of variables have on the basic role requirements and work characteristics. First, and most broadly, the manager's job is influenced by the organization, its industry, and other factors in the *environment*. Second, there are work variations caused by the job itself—its *level* in the organization and the *function* it oversees (such as marketing or production). Third, there are variations within a given job stemming from the *person* in that job—the effects of his personality and style. Finally, there are variations within a particular individual's job caused by the *situation* (seasonal variations or temporary threats, for example): *The work any manager does at a certain point in time can be described as a function of these four sets of variables.* [Emphasis added.]

Figure 2 depicts these relationships.

The concept of contingency management is not new to us. The contingency school of management thought described briefly in chapter 2 stresses the "no-best-way" philosophy, posits a tension between uncertainty and indeterminateness in organizations, and stresses the dynamic properties of organizations such as self-stabilizing effects and environmental impacts on the organization. The half-closed, half-open organization needs a manager who is:

1. Sensitive to the *environment*—the court, the county, the state, the community.
2. Aware of where the manager's role intersects with judges, clerks, state-court administrators, and county commissioners. The *level* and *function* are at all times significant to each court-administrator position.
3. Aware of the strengths and weaknesses of his or her personality and managerial style in the specific setting with the specific judges who hired him or her.
4. Alert to the time of the year, the day of the week, the hour of the day, and local conditions impinging upon the consciousness of every judge in the courthouse. The local *situation* defines organizational reality.

The contingency factors of environment, level and function, personality, managerial style, and local situation make it possible to describe in general

what a manager does, but, just as with the role analysis, the specific local variations must be taken into account. Once again, the "context-specific" nature of the managerial position takes over to define a reality of management that is usually best understood by the manager in the position. With the passage of time the position evolves. This evolution means that contingency factors change and that a position in management, in time, will alter in nature. To an outsider a person may occupy what appears to be the same position over time, but the nature of the initial position may be subject to a host of different contingency factors compared with the current managerial position. This is *not* just word hocus-pocus, but it is the reality of organizational life to the extent that words can describe a court manager's job. This idea reflects on the judicial position changing over time as well. Contingency theory helps to express the unique qualities of a manager in the courts. There is no doubt that it expresses a reality that is experienced by many managers. No two managers have identical jobs, but they do have a host of common tasks upon which to reflect. The theoretical contingency orientation places the practices into better dynamic focus over time.

Before case-flow management is discussed, it is important to realize, too, that the theories expressed in chapters 2 and 3 tell us what managers do at work. Structure and processes are woven into the manager's job. The problems of decisionmaking are just as complex as the theory suggests. But levels of analysis carry us from the abstract to the concrete. Because we think at one level does not mean the other level disappears. It merely awaits our returned attention while we individually weave theory and practice into a mosaic of comprehension that suits us in an individual way. This is how management philosophy is developed, in an eclectic manner, by real live managers.

CASE MANAGING: CASE-FLOW FACTORS

Courts exist to handle certain designated classes of conflicts in their community. Not every fight winds up in court. Lawyers settle some, parties resolve others themselves, and community organizations handle still others. The conflict for the courts has been through plenty of "talk-it-over" in many cases, although some law firms are known as litigation mills, because they do not bother with negotiation until after a case is filed in court. For them, the filing of a case is a precondition to a negotiated settlement. In all of this the central purpose of courts is to deal with human conflict to keep peace and harmony in the community. The word *case* is applied to human fights, and this professional term cloaks the drama, emotion, and rationale for courts. *Case flow* makes it sound as if we put the widgets called "cases" on a conveyor belt, and eventually there is something called a "case flow" moving inside of a courthouse. This imagery is helpful to some people, but

confusing to others. Therefore, at the outset, it is important to ask what a "case" is.

Who asks this question about the meaning of a case is very important. An attorney with a client has a "case." A prosecutor has a "case." A public defender has a "case." The judge has a "case." But cases in reality involve individual people: people who are injured, people who are accused of committing crimes, and people who are victims. Cases in federal courts can involve thousands of persons in a class-action lawsuit. So it goes. The nature of a case varies widely depending upon who has a disagreement with whom.

As a label, "case" applies to auto accident cases, divorce cases, small-claims cases, housing cases, arson cases, speeding-ticket cases, and foreign bribery cases. The list is truly endless. Whatever people want to fight about could eventually become a case—from child custody to desertion and everything in between. The labeling process—calling a "case"—does not help us to understand why courts have so much trouble moving "cases." If we change the label and say: the court has pending one thousand divorce fights between two thousand spouses and thirty-five hundred child, the nature of the "backlog" is somewhat clearer, but not much. The question then shifts to what is meant by "fights." We all know what a "fight" is like. Perhaps to stop to reflect on the nature of a fight will bring us nearer to comprehending the meaning of a case and case flow, not to mention *case-flow management*, a term defined later in this section.

Confusion also occurs in contemplating the term *moving cases* as it applies to judges and their relationship to cases. If one starts with one judge in a single-judge courthouse in a rural setting, it is obvious that Judge X is not going to share a work load with any other judge under normal conditions. In times of crises—an ill judge, or a disqualified judge—the rural courthouse works out the entry of a new judge amid what becomes a very special time in the courthouse. But what is special and abnormal in the rural courthouse is routine, normal daily work in every courthouse in the nation with more than one judge: a *division of labor* arises. These words describe what is happening in a courthouse with more than one judge. Two or more judges must decide upon some way to share the entire work load of cases (fights) in the community. Every class of litigation is shared in a two-judge court, and probably it is not until specialized judges—probate, juvenile, or others—arrive on the scene that an even more elaborate "division of labor" is achieved. The difficulties faced in managing the cases is that they focus upon the most difficult human situations and involve thousands of fights, many judges, diverse aims, and complex staffs. Coordination of the division of "fights" is not some neat science, nor is it ever likely to become that. The moving of "cases" is the moving of fights, snarls, and all. In fighting, one does not feel obligated to agree upon the "time of day," so to speak. Therefore, fight scheduling is easy in boxing, but very difficult in the

courtroom. "Flu" is the most brutal destroyer of court calendars. Anyone can have flu in the winter in a democracy. Flu wrecks fighting schedules, because who would ask a sick person or a sick attorney to fight? It would not be fair, nor would it be due process.

These rather simple-minded questions—What is a case? What is a fight? What is the division of labor for public and private fights in the community?—expose the sensitive positions into which courts are thrust every day. How would any of us like to be the decider in the wide range of serious human conflicts in any major urban center in the United States? A decider backed by the power of the state is the role of a judge: Whether a final decider in child-support cases, a final decider in traffic-accident cases, or a decider of a life or death sentence in a murder case, a decider must deal with life, liberty, and property—all that human beings have at stake in their six or seven decades on earth. Thus the manager must manage the life and death struggles pressed upon the courts. This is the extraordinary, complex, and variable situation in which courts find themselves today.

Courts become the place to settle cases, to try cases, to finish cases involving automobile accidents. From 1900, when the first car was produced in America, until eighty years later, with more than 150 million vehicles and more than 140 million drivers, the courts have been inundated with human conflict over car accidents. This single source of energy—the internal combustion engine—in 1970 provided 19-plus billion horsepower annually out of the 20-plus billion horsepower consumed in the nation. Railroads, airlines, mass transit—all of these transport networks consume a small part of the total energy resources compared with the "almighty automobile." If a social institution, such as a court, is going to stand willingly in the pathway of such a massive juggernaut of a social problem, which spawns fifty thousand deaths a year, millions of accidents, and billions of dollars in damages, we could well ask: how will it manage daily the fights generated from this trauma? In fact, the picture is dismal, and it will never get better until there are fewer and slower cars, fewer people, less driving, and higher prices of gas so that car use declines drastically. Until that time arrives—among all classes of case filings in a courthouse—court managers are helpless in the face of auto-crash filings, even with no-fault insurance plans.

The conclusion is inescapable: Courts manage the cases filed with them, or they become engulfed and devoured by the case-flow process. The "sink-or-swim" approach to managing cases (crash management) has had experience where struggles have produced continuous organizational drowning, but occasionally a court swims away with honors, only to be drowned the moment attention shifts to some other problem.

It is with this practical insight into fights and cases, fight flow and case flow and fight-flow management and case-flow management that we are in a better position to appreciate the handful of hypotheses that seem to be true in this field.

The application of management concepts to the movement of cases in a courthouse has been a major task of the period from 1965 to 1980. The evolving state of the art is expressed well in several studies and reports. In 1973 Maureen Solomon assisted the American Bar Association Commission on Standards of Judicial Administration. In developing this work, Solomon prepared a brief report entitled *Caseflow Management in the Trial Court*. In it she defines the key term: "The term *caseflow management* as used herein denotes management of the continuum of processes and resources necessary to move a case from filing to disposition, whether that disposition is by settlement, guilty plea, dismissal, trial, or other method."⁸ This definition evolved from Solomon's earlier fieldwork in Los Angeles, Washington, D.C., and other jurisdictions.⁹ The concept of case-flow management describes more accurately the process that causes so much difficulty in courts. *Delay in the Court*, by Hans Zeisel, Harry Kaiven, Jr., and Bernard Buchholz, in 1959 stressed the extraordinary difficulty in which courts with multiple judges found themselves, but they did not approach the subject with a management orientation.¹⁰ Their approach was legal and statistical, which left them without an adequate grasp of the organizational concept. Most other studies of court delay until the late sixties were products of law professors, lawyers, political scientists, judges, and only a few other professionals.

Justification for applying the managerial input into the judicial arena and into one of its most intractable problems—that of case managing—is found in the fact that the American Bar Association adopted the case-flow concept, and that many courts now describe this functional area of management with the concept of case-flow management defined the way Solomon first described it.¹¹ This development paralleled the Ernest Friesen, Edward Gallas, and Nesta Gallas work in court management in 1971, which developed very similar case-flow concepts.¹² In 1980 Friesen reported to court managers in a national conference that the case-flow management concept developed by Solomon and many of its details represent the most advanced thinking in the field at that time.¹³ This finding is based upon extensive field research by Friesen with others reported in two monographs: *Justice in Felony Courts, A Prescription to Control Delay* (1979), and *Arrest to Trial in Forty-Five Days* (1978).¹⁴ Final reports in the project on delay by Friesen are expected to reinforce and refine the basic findings being established throughout the decade. These findings are summarized by Solomon as follows:

The factors emerging as the key elements of a successful caseflow management system are the following:

1. Policy-level commitment by judges to control of caseflow and speedy disposition of backlog. This includes personal acceptance by each judge of responsibility to develop, implement, and rigorously observe effective caseflow management policies and procedures.

2. Continuing consultation among court, bar prosecutor, public defender, *et al.*, about system operation and means of improvement. The court leads the effort but is always open to suggestions from the other participants.
3. Established procedures (to which the judges have agreed and upon which related agencies have been consulted) governing the flow and processing of cases, including judicial commitment to tight control of continuances.
4. Centralized judicial responsibility for operation of the caseload management system.
5. Continuous cognizance and control of case progress.
6. A simple record system specifically designed to facilitate control of case progress.
7. Case processing time standards and caseload system performance standards developed and adopted by judges and administrators.
8. Continuing measurement of system performance against these goals, including monitoring and feedback and periodic modification of the system.
9. Established techniques for avoiding or minimizing the possibility of attorney schedule conflicts.
10. Service of a court administrator to act as a coordinator and innovator in the caseload management process.

Court control of the progress of litigation, once a case has been filed is the basic principle on which these elements depend. As the neutral party to the litigation, the court is the logical coordinator of caseload.¹³

The work of fifteen years across the nation has produced further confirmation that the management concepts discussed in this volume, viewed in relation to the ten factors above, are evolving into a compendium of testable management ideas that will persist for the foreseeable future. The threat is that these ideas will be taken to be gospel, or hornbook law, and that their enshrinement will lead to their demise. To avoid this, the best position to take is that the case-flow processes described above in general terms are "good working hypotheses," comprising a workable theory of how to move cases until something better comes along. Something better inevitably does surface in a creative management setting that exists in some courts. It is surprising to find the discovery of some tentative truths in case-flow management so early in the period of study. But these concepts have yet to work their way into many courts in a recognizable form, including some high-volume courts. The modification of the concepts to fit a wide variety of courts is possible. The future awaits their expanded verification in court after court.

Further evidence of the growth of thinking about case flow appears in the federal courts. The federal courts received a report in September 1977 entitled *Case Management and Court Management in United States District Courts*.¹⁴ This civil case report is further confirmation of the basic concepts of case-flow management developed earlier by Solomon, Friesen, and Gallas, although, curiously, the report fails to mention the prior work of Solomon or Friesen and the Gallases. The report states:

The following factors primarily distinguish the fast and/or highly productive courts from the others:

An automatic procedure assures, for every civil case, that pleadings are strictly monitored, discovery begins quickly and is completed within a reasonable time, and a prompt trial follows if needed. These procedures are automatic in that they are invoked at the start of every case, subject only to a small number of necessary exceptions. Although all the courts visited have procedures designed to achieve early and effective control, most do not attain that goal. In slow courts, much of the time during which a typical case is pending is either unused or violates the time limits in the Federal Rules of Civil Procedure.

Procedures minimize or eliminate judges' investment of time through the early stages of a case, until discovery is complete. Docket control, attorney contacts, and most conferences are delegated, generally to the courtroom deputy clerk or a magistrate. A case comes to the judge's attention only when he is indispensable to resolve preliminary matters, handle dispositive motions, or plan the preparation of an exceptionally complex case.

The role of the court in settlement is minimized; judges are highly selective in initiating settlement negotiations, and normally do so only when a case is ready, or nearly ready, for trial. Some judges also arrange to raise the issue early in each case, or have a magistrate do so.

Relatively few written opinions are prepared for publication.

All proceedings that do not specifically require a confidential atmosphere are held in open court.¹⁵

Some other interesting observations from the federal trial-court study are these:

The District Court Studies Project research revealed problems with some widely accepted opinions about speed and productivity, such as:

— "It all comes down to strong case management." Most courts visited are characterized by "strong case management" in one form or another. The differences lie in the relative effectiveness of alternative forms of case management.

— "It all comes down to the personalities of the individual judges." Two strong indications to the contrary are: (1) the finding that individual judges' rates of terminations per year accord more with their own courts than with the average for the federal judiciary, and (2) our observation that judges who appear to be personally efficient (or inefficient) are as likely to be found on one court as on another. Although judges' personalities (and skills, and attitudes) do affect their own work greatly, it does not appear that differences in judges' personalities explain much of the difference between one court and another.

—“*Fundamental*” differences in the bar. Bar practices clearly differ in the ten districts, and these differences affect the efficiency of the courts. However, the differences are neither accidental nor necessarily permanent. Many courts have changed the practices of their bars, as a matter of policy, over a period of years. Others probably could do so as well.

—“*Backlog*.” If this term is taken to include only cases in which litigants are awaiting court action of some kind (conferences, trial, ruling, etc.), few of the courts visited had a heavy backlog at the time of our visit. The major factors causing delay or inefficiency lie elsewhere.

—*Differences in case complexity.* The fastest courts process most types of cases relatively quickly, and the slowest courts process most types of cases relatively slowly. Thus, differences in case complexity cannot account for differences in overall disposition time.

—*Hard work or laziness.* Most judges in all courts visited work extremely hard, as do most of their support personnel. We saw relatively little difference among courts in this respect. Work weeks longer than forty hours were routine, especially on the part of judges. Although long hours were especially common in certain courts, the differences were not great enough to explain the wide differences in termination rates among the courts.

—“*A comprehensive pretrial order is essential.*” None of the courts enforced this requirement fully in routine cases. The ones that enforced it most vigorously were not necessarily the speediest or most efficient.

—“*Get the lawyers in early and often.*” Our observations suggest that frequent conferences are a poor use of time.

—“*Don't waste time on oral argument.*” Oral proceedings are normal in some courts with excellent records.”

Another confirming report entitled *Justice Delayed, The Pace of Litigation in Urban Trial Courts*, by the National Center for State Courts (NCSC) in 1978, states that the “local legal culture” affects the speed of disposition of civil and criminal litigation, a factor identified earlier by Friesen in 1971 and by Solomon in 1973.” This report concludes, “no infusion of judicial resources or decrease in caseload will change those expectations and practices without court concern with delay, a long-term commitment by the court to expedite case disposition, and a readiness on its part to take an active management role in the disposition of civil and criminal cases.”¹¹ This directly confirms the case-flow thesis presented ten years earlier in the court-management study in Washington, D.C.

It is now possible to see that uncertainty prevails in the case-flow process; this fact is confirmation of James Thompson's basic concept of a complex organization through field research in courts. The Thomas Church-NCSC report reinforces the environmental aspects of case-flow management. Structural variations in master, individual, or hybrid case-flow systems

seem to work. Commitment by the judges was important in the studies. But most telling in all of the studies is the desire for control. The search for control pervades each of these studies. One wonders whether the limits of control in a fluid, very uncontrollable situation should be stressed so much. What of the future research? Thompson suggests that the search for control may *not* be the answer:

It is no accident that much of the literature on the management or administration of complex organizations centers on the concepts of *planning or controlling*. Nor is it any accident that such views are dismissed by those using the open-system strategy.¹²

At a more basic level, the effectiveness of case-flow processes is defined best by Solomon:

The goals of caseflow management are:

- (1) To expedite the disposition of all cases in a manner consistent with fairness to all parties;
- (2) to enhance the quality of litigation;
- (3) to assure equal access to the adjudicative process for all litigants; and,
- (4) to minimize the uncertainties associated with processing cases.

Traditional discussions of managing a court's caseload have tended to focus on the relative merits of various methods of assigning cases to judges. They have not probed the underlying factors that determine the effectiveness of these methods. Recent court studies have demonstrated that the type of case assignment system used is not *per se* the determinant of success or failure of caseflow management.¹³

We should note the balancing nature of the complex goal statement and, most importantly, the goal of minimizing the uncertainties associated with processing cases. The problem-facing-problem-solving approach suggests that a court organization must search and learn and then decide what is best for it. Although Solomon uses the term *minimizing*, the word *satisficing*, from Herbert Simon, sounds more appropriate, because the level of satisfaction with uncertainty may vary considerably from court to court. At least this conceptual approach rests organizational rationality on frankly recognized grounds of the limits of rationality—that we think through what we intend to do in case-flow management with bounded rationality, never fully knowledgeable of all of the case-managing factors impinging on a court. This is an excellent contribution by Solomon toward understanding decisionmaking in case-flow management. The discretionary strategy of choice is probably judgment—as Thompson says, courts are “shooting at a moving target of coalignment” in managing case flow. Certainty clashes

with uncertainty and incomplete knowledge. Such are the general characteristics of the effectiveness of case-flow management.

Think of effectiveness as illustrated earlier in this book—a multiple-criteria approach.¹¹ If effectiveness is many-faceted, the research cited so far supports this definition of the basic concept of effectiveness applied to case flow:

1. No single formula for case flow works in every courthouse in every case flow. There is no best way to manage cases in a specific setting. Contingency theory applies to case-flow management.
2. Effectiveness in terms of Solomon's goals is truly a juggling act that is never ending. There are at least four interrelated major aspects to the goal-attainment process.
3. Environment impinges on case flow in the form of a local legal culture. The fear is that environment will be an excuse to do nothing in case-flow management. This fear can be overcome readily, because no court can escape the judgment that it must serve its community no matter how the environment impinges—the courts are expected to function, even under emergency conditions of public riots.
4. A wide variety of measuring points can be used as indicators of case-flow-management performance. With data processing in the form of minicomputers, even the smallest court can now keep track of its cases in some detail.
5. Case-flow management is a dynamic, perpetual form of work in which the systems model makes sense, especially to implement monitoring techniques. This is a point Friesen stresses in his work.
6. A society can overwhelm its courts with too much fighting over too many subjects, and the barometer for testing overload will be increasingly refined in the future. But with "good" case-flow management, can the courts more readily persuade the legislative and executive branches and the public to permit expansion of resources to handle problems brought to it by the legal profession and public? Or must the courts shed their load to others?
7. Given the complex nature of case-flow management, there is little threat to judicial independence and judicial creativity in handling the flow of cases, for just as soon as courtwide systems of case distribution falter, individual calendars and individual case flow will be readily available and probably will be adopted. Furthermore, there is continual availability of the option to modify cooperation in a professional organization.

The four major theoretical schools of management thought should be applied in a general way to the research on case-flow management. The bureaucratic school finds room for recognition in all of the reports when the

concept of control is approached. The overweaning desire for control in a bureaucratic sense is offset by the environment with its local legal culture, which in the United States may be equal to thirteen thousand cities and three thousand counties. In major metropolitan areas there are even sub-county regional bar associations. But the systems and contingency schools find confirmation when people discover an environment around an organization. The federal study illustrates the human-relations school when it finds a need to explore the meaning in case flow of the statement: "It all comes down to the personalities of the individual judges" or "hard work or laziness." Each of the major schools of management thought are reflected in the work reviewed on case flow. This is, indeed, a heartening discovery—case flow is a viable management topic in all of our courts, and there is a way to see unity in the very great diversity of system.