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## Friesen, Gallas & Gallas: Managing the Courts

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## RECENT BOOKS

### BOOK REVIEWS

MANAGING THE COURTS. By *Ernest C. Friesen, Edward C. Gallas and Nesta M. Gallas*. Indianapolis: Bobbs-Merrill. 1971. Pp. xvi, 341. \$9.50.

*Managing the Courts* comes as a timely and authentic addition to the fast-growing literature dealing with expediting judicial business without sacrificing the essentials that safeguard justice. Each of the authors is qualified, by academic background and practical experience, to offer meaningful suggestions in this difficult field: Ernest C. Friesen, formerly Director of the Administrative Office of the United States Courts and ex officio member of the first Board of the Federal Judicial Center, is presently Professor of Judicial Administration at the University of Denver College of Law and Executive Director of the Institute for Court Management; Edward C. Gallas, Director of Personnel of the Port of New York Authority, served as Executive Officer of the Superior Court of Los Angeles; and Nesta M. Gallas is Associate Professor and Chairman of the Division of Government, History and Economics at the John Jay College of Criminal Justice.

Most judges, and especially the older ones, would find the phrase "managing the courts" as inherently unacceptable as a United States Senator would find the phrase "managing the Senate." Few judges, when they speak with candor, are committed to the need for court administration; they would deny the analogy that the judges of a court are like a board of directors of a corporation or that administrative personnel of a court are like corporate executives. Yet, even a casual review of the increasing complexity of the burgeoning case-loads, which appear not only in metropolitan areas but also in smaller judicial areas, suggests that there is a pressing need for more efficient managerial practices than existed as recently as a decade ago.

The authors properly recognize that there is a basic need, in developing more efficient court systems, "to put court management in the context of management generally, to distinguish its uniqueness, and to draw from as many disciplines as possible relevant experiences and knowledge" (p. vii). But while the future impact of the appropriate use of court executives may be remarkable,<sup>1</sup> a pro-

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1. See Brownell, *A Development Program for Court Administration*, 54 JUDICATURE 99 (1970); Saari, *Court Management and Administration of Justice*, TRAL, Feb.-March 1970, at 41. Cf. Tydings, *A Fresh Approach to Judicial Administration*, 50 JUDICATURE 44, 48-49 (1966). For an example of how court executives trained in systems analysis can speed the proper administration of justice, see, e.g., THE MITRE CORP., *STUDY OF THE FEDERAL COURT SYSTEM* (rev. 3d ed. 1968); Navarro & Taylor, *An Application of Systems Analysis to Aid in the Efficient Administration of Justice*, 51 JUDICATURE 47 (1967).

fessional court administrator is neither a panacea nor a *sine qua non* in the efficient management of courts. One should bear in mind that there are additional ways to strengthen the administration of justice.<sup>2</sup>

Judges, and especially federal judges, used to be islands unto themselves, often with limited communication even with fellow judges. Happily, it is believed, this attitude no longer exists to any appreciable extent. Seminars for new judges, initiated in the early 1960's by Judge Alfred P. Murrah, then Chief Judge of the Tenth Circuit and presently Director of the Federal Judicial Center, and a general recognition of the need for continuing legal education of members of the judiciary have resulted in widespread self-examination by judges and analysis of our system of federal and state courts. As a result, there now exist numerous organizations and agencies that are dealing—with increasing effectiveness—with the problems of administration of justice in state and federal courts. The Chief Justice of the United States has added impetus to the drive for court reform by the institution of his annual "State of the Judiciary" address, the first of which was given in August of 1970.<sup>3</sup> Furthermore, the American Bar Association is expressing strong interest in the establishment of a national public agency for an in-depth study of the entire judicial system, and Bert H. Early, Executive Director of the American Bar Association, believes the time has come for such an agency.<sup>4</sup> The Chief Justice also made this recommendation in his address at the opening meeting of The American Law Institute in May 1972; and on May 16, 1972, Senator Humphrey introduced a bill "[t]o establish a National Institute of Justice, in order to provide a national and coordinated effort for reform of the judicial system in the United States, and for other purposes."<sup>5</sup>

The authors are critical, perhaps with reason, that some courts assign the primary responsibility for court management to judges on the basis of seniority or occasionally upon political connections. But alternatives and acceptable solutions are hard to come by. It may be conceded that "[t]he combination of skills as they relate to processes of a multi-judge court are most likely to be found in a trained executive. They are seldom found in a judge. They never exist in a committee of judges" (p. 109). It is submitted, however, that the mere existence of a multi-judge court does not compel the conclusion that a trained executive is required. The fear existing among many judges and other members of the legal profession, that professional

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2. See generally McRae, *The Administration of Justice in the Federal District Court*, 23 U. FLA. L. REV. 237 (1971).

3. 56 A.B.A. J. 929 (1970).

4. Early, *National Institute of Justice—A Proposal*, 74 W. VA. L. REV. 226 (1972).

5. S. 3612, 92d Cong., 2d Sess. (1972).

management may interfere with individual judgment of the judiciary, may be well founded unless there is assurance that the quality of professional management is highly competent. Intrusion into the judicial function is unacceptable, and court managers must necessarily be carefully trained so as to exercise only functions that are basically administrative. The authors are sensitive to this basic concept and recognize that the judges themselves must be not only the titular but the actual heads of court operations. Court management cannot carry with it arbitrary decisions imposed by a "boss," whether he happens to be a chief judge, a presiding judge, or a professional manager.

The authors properly contend that the managerial work of the court cannot be left undone without sacrificing the primary goal of all courts, which is the administration of justice. The scope of this work for a large multi-judge court, whether trial or appellate, differs widely from the work of smaller courts. Although the checklist of tasks to be performed by the manager of a large multi-judge court, as listed by the authors (pp. 122-23), may suggest a sound starting point, such a list is clearly inappropriate to smaller courts that may, in fact, require no professional administrator at all. For example, the proper training of the clerk of a court in many cases would be a more satisfactory solution than the use of an administrator. There has been a recognition of a need for this kind of training of clerks by the Federal Judicial Center. Furthermore, there should be a more candid recognition of the need for the training of presiding or chief judges, if not by seminars for that purpose, then at least by the provision of carefully prepared manuals.

It is submitted that this book, as helpful as it may be in many respects, does not adequately distinguish between the wide differences in the problems of large and small courts, districts and circuits. In the federal system, for example, the problems of the First Circuit, with three judges, are vastly different from those of the Fifth Circuit, with fifteen active judges and four senior judges. Likewise, the problems of the Mother Court in the Southern District of New York, with twenty-three district judges, or the Central District of California, with sixteen district judges, can hardly be likened to the far more numerous districts having a much smaller number of judges. The apparent assumptions of the book, that court problems are substantially the same over such a wide spectrum, and that the answers are essentially similar, is unsupportable. The differences between state courts in metropolitan areas and less populous areas are even greater.

Although the authors have developed many innovative ideas that would be helpful to multi-judge courts, both on the trial and appellate level, guidance is lacking for small and medium-size courts. This

subject is yet to be developed in a practical and constructive way. *Managing the Courts* is a helpful addition to the solution of a difficult and mercurial problem. Its principal weakness is that it seems to assume that all courts are large courts, and even though it recognizes that no two courts are alike any more than no two judges are alike, the conclusion appears irresistible that the solutions to problems of the small and medium-size state and federal courts are still to be dealt with. It can only be hoped that those who deal with them have the training and experience of the authors of this book.

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