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American Court Management: Theories and Practices

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AMERICAN COURT MANAGEMENT: THEORIES AND PRACTICES. By *David J. Saari*. Westport, Conn.: Quorum Books. 1982. Pp. xviii, 163. $27.50.

Despite the relative abundance of unhappy commentary on the inability of our judicial system to process its caseload efficiently, there is a dearth of literature on the use of management theory and techniques to ease the burden of courtroom administration. In *American Court Management*, David J. Saari[1] makes a valuable contribution to this relatively new field; one to which judges and court administrators will probably refer in the course of managing litigation. Saari, himself a former court administrator, notes at the outset that both legal scholars and political scientists have made some significant contributions to the field of court management.[2] These approaches, however, have failed to recognize judicial management as an independent discipline, or, as Saari puts it, as "an emerging and evolving multidisciplinary profession" (p. 4). Of course, in new professions one finds new groups of professionals. Saari directs his analysis primarily to the role of these professionals — contemporary court administrators.

While Saari claims to analyze court management from a multidisciplinary perspective, his book does not range far from the principles of business administration (which might itself be considered multidisciplinary). In the first part of the book, the author reviews four schools of management theory: the "bureaucratic," "human relations," "systems," and "contingency" perspectives.[3] This discussion is somewhat cursory; the relation between the theories and practical role of the court manager is left unclear. The author suggests only that court administrators "keep an open mind" as to the theories propounded and "be open to further education as the field changes . . . ." (pp. 25-26).

One of the more disheartening aspects of this discussion is Saari's dis-

1. Professor, School of Justice, American University. Professor Saari served as a trial court administrator for eighteen years prior to joining American University.

2. Saari observes that addressing the problem from a legal perspective "stresses the judicial role, the formalities of trial, the intricate questions of jurisdiction and power of court, and the jury-trial practice." P. 3. *See, e.g.*, D. NELSON, JUDICIAL ADMINISTRATION AND THE ADMINISTRATION OF JUSTICE (1974). Likewise, Saari finds the political science perspective to be dominated by questions of power and general public welfare. P. 4. *See, e.g.*, E. FRIESEN, JR., E. GALLAS & N. GALLAS, MANAGING THE COURTS (1971).

3. Saari cites Max Weber as his source for the "bureaucratic perspective." Pp. 20-21. *See* M. WEBER, THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM (1958); FROM MAX WEBER: ESSAYS IN SOCIOLOGY 196-244 (H. Gerth & C. Mills eds. 1946). The "systems perspective" is part of the progeny of classical bureaucracy. While retaining notions of bureaucratic structure, this perspective sees itself as an "open system," continuously interacting with the environment. Pp. 23-24. *See generally* H. KOONTZ, C. O'DONNELL & H. WEIRICH, MANAGEMENT 24-28 (7th ed. 1980). The "human relations" approach involves fostering the needs of workers and managers so as to create an environment that will enhance efficiency. Pp. 22-23. The contingency approach is described as advocating that there is "no best way" to manage and that an organization must have the flexibility to adjust and adapt to changes in the environment. Pp. 24-26. Saari seems to favor this perspective. *See* J. THOMPSON, ORGANIZATIONS IN ACTION: SOCIAL SCIENCE BASES OF ADMINISTRATIVE THEORY (1967).

dain for the "bureaucratic perspective." He claims that "sick bureaucrats may be so fearful that they overpaper the world . . . to account for their behavior . . . ." and that "[b]ureaucratic approaches to management are coercive and authoritarian" (p. 21). Judicial administrators, however, will face a great deal of difficulty in designing an efficient docket-management system that is not "bureaucratic." To the extent Saari's indictment condemns "bureaucratic" mindsets rather than institutional structures, few will find his argument either unpersuasive or informative. A computerized, assembly-line judicial system administered by humane and flexible individuals is immune to this critique; a disorganized, decentralized administrative structure governed by unimaginative martinets is guilty of all with which Saari charges bureaucracy, although some other label might better describe such a system. Also distressing is Saari's failure to address meaningfully the opportunity to accommodate the positive aspects of the four schools of managerial thought in a single theoretical model, a position advocated by several noted theorists.[4]

In the second part of the book, Professor Saari discusses the emergence of *court* management theory in several basic areas including structure, effectiveness, and decisionmaking. The fundamental message which emerges from this analysis is that there is no "best way" to manage a court; "America's courts are home-grown products of very local cultures" (p. 32), and what is best for the courts of Chippewa Falls, Wisconsin[5] may not be best for those of Seattle, Washington. This view might suggest, as Saari intimates, opting for the "contingency perspective" which would permit a continuous adjustment of structure and goals in court management as communities grow and change. In his discussion relating to organizational effectiveness, however, the author deals primarily with the attainment of goals and periodic self-assessment by court managers: an analysis which is highly reminiscent of the bureaucratic perspective.

Perhaps Saari's most interesting and useful application of court management theory concerns decisionmaking. In Saari's view, judges wear three hats: adjudicative, administrative, and political. While their main service is adjudication, the majority of the nonfederal bench is elected and must periodically devote time and energy to the electoral process. Additionally, judges, like many other professionals (Saari notes lawyers, physicians, and university professors in particular) have a secondary role which is administrative. The author notes that judges often regard this latter role as "an unwanted administrative chore" which, in the context of a multijudge bench, is rotated frequently (p. 50). This is also reflected in a survey of judges discussed in regard to judicial morale later in the book.[6] The constraints which time and lack of motivation place on the functioning of judges in their role as administrators make it unlikely that judges will oper-

4. *See, e.g.,* R. HALL, ORGANIZATIONS: STRUCTURE AND PROCESS 49-66 (1977); H. KOONTZ, C. O'DONNELL & H. WEIHRICH, *supra* note 3, at 73-78.

5. *See* F. LAURENT, THE BUSINESS OF A TRIAL COURT, 100 YEARS OF CASES: A CENSUS OF THE ACTIONS AND SPECIAL PROCEEDINGS IN THE CIRCUIT COURT FOR CHIPPEWA FALLS, WISCONSIN, 1855-1954 (1959).

6. Saari cites a survey of judges which indicates that the factor tending to detract the most from judicial morale was "too much pressure to move cases." P. 123. *See* J. RYAN, AMERICAN TRIAL JUDGES 240-42 (1980).

ate effectively in that role. As a result, Saari emphasizes that defective court management "will probably impinge upon the adjudicative role of the judges and thereby contribute to production of substandard justice . . ." (p. 53). The court administrator, then, must assume generally this administrative role while steering clear of the adjudicatory and political roles. In subsequent parts of the book, however, the author makes clear that this, to a significant degree, is easier said than done.

In the third part of *American Court Management*, Saari looks at the responsibilities of the court administrator in managing the quotidian details of a functioning judicial system — case-flow, personnel, finances, records, etc. The author describes case-flow as one of the most difficult managerial tasks confronted by court administrators, and certainly one of the most important. Saari finds it particularly difficult to manage case-flow because, as he sees it, cases are "fights" and "[i]n 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" (pp. 69-70). While case-flow management is no easy task, the difficulty probably does not result solely from the parties' interest in delay. At least in part, case-flow management is tricky business because of the number of unknown quantities, *i.e.*, settlement possibilities, joinder of claims and parties, cases remanded, and other variables which make reasoned predictions difficult. In any event, Saari helpfully draws together several factors which contribute to a more predictable case-flow. These include (1) continuous cognizance and control of the progress of individual cases, (2) the establishment of a simple record system specifically designed to facilitate case-flow, (3) the use of case processing time standards and case-flow performance standards to monitor delay and to provide feedback in the case-flow process. In these suggestions, and in the author's emphasis on *control*, however, the haunting presence of classical bureaucracy makes itself felt once again. It seems that if goals of judicial efficiency are to be set, monitored, readjusted, and ultimately achieved, the courts must depend on at least some degree of bureaucratic structure.

Apart from administrative tasks involving personnel management, the preparation of financial studies and budget requests, and the supervision of an ever-growing records system, Saari, in the last part of *American Court Management*, discusses important policy questions in which court managers are likely to become involved. The first of these relates to the problems of case-flow management and deals with the duty of the court administrator to schedule criminal trials in compliance with the "speedy trial" mandate of the sixth amendment. The author suggests that state court administrators must make a policy decision as to whether to adopt individual versions of the federal Speedy Trial Act, which sets time standards for the disposition of all pretrial matters. While this is a policy decision in which the court administrator will play a key role, Saari warns that "[u]ncritical acceptance of speed at any cost is unacceptable policy development" (p. 104).

A second policy problem which Saari sees court administrators facing in the future is the inability to secure adequate and "equal" counsel for indigent criminal defendants. He notes that the present mood of fiscal restraint threatens the court manager's ability to secure an adequate number of com-

petent defense counselors. What the administrator can practically accomplish under this scenario is not altogether clear, but Saari suggests that

> [c]ourt managers will probably need to probe much more deeply into the way professional service of defense is offered to assess quality, cost, and availability within speedy-trial standards and to prepare assessments for public consumption on the integrity and cost-effectiveness of the public defense function. (pp. 108-09).

Unfortunately, given political constraints on judicial resources, the most thorough and creative studies are unlikely to result in more competent counsel or speedier trials for all criminal defendants. In an era of expanding dockets and shrinking resources, either or both of these judicial components must suffer. The only way in which a court administrator might act to stem this tide is through the development of more efficient information access and processing devices.

Another policy issue which the author sees the court administrator ultimately confronting is the institution and management of equal opportunity and affirmative action personnel politics. Here, Robert Tobin is quoted as saying that "most trial courts do not embrace activist concepts of equal opportunity employment . . ."[7] (p. 110). The public reaction to an awareness that the judiciary does not abide by the equal or affirmative hiring criteria it imposes on the private sector would dramatically diminish the perceived legitimacy of court-enforced compliance with those important standards. Saari suggests that court managers are in an excellent position to institute studies and programs "to improve the egalitarian, representative nature of court employees" (p. 111).

At present the field of court management is limited to case-flow, personnel, financial, and records management. In a prognosis of the field, Saari sees a greatly expanded role for the court administrator, one which involves participation in the decisionmaking process concerning important policy questions, serving as the court's liaison to other agencies and branches of government as well as to the public, and acting generally to improve judicial morale. *American Court Management* makes an important contribution toward achieving these goals by confirming the status of court administration as a professional field of study and practice, grounded firmly in theories of organizational management, yet unique in its partnership with the American system of justice.

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7. R. TOBIN, TRIAL COURT MANAGEMENT SERIES: PERSONNEL MANAGEMENT 40 (1979).