

**Leading the Unfinished Reform:  
The Future of Third Branch Administration**

**Institute for Court Management  
Court Executive Development Program  
Phase III Project  
May 2005**

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### Acknowledgements

I want to thank the “founders”, named and unnamed herein, for “giving us the business” – that I have grown to love. For young and mid-career people in third branch administration, I encourage you to become familiar with the names and contributions of the founders and their students, who have or shortly will retire and those already memorialized. The people and their contributions should never be lost in the institutional memory. I am thankful that I am able to say that I was a student of some of the founders. I have had the pleasure of working with many of the recognized leaders in the business. An apology is offered to founders and those who helped shape the business that remain unnamed in this paper – time constraints limit the detailed recognition of all. Researching the citations herein will reveal many not named in the work itself. Perhaps there will be time and opportunity in the near future to continue with this work.

I am indebted to my advisor, Dr. Daniel Straub whom I have known and respected for many years. Dan has been involved in this business since 1970. He is a Fellow of the Institute of Court Management from one of its “pioneering” classes. I recognize Dan as one of the self-actualized people who have dedicated much time, effort, and energy into training and developing court managers. Maslow said of leaders – everyone recognizes the contributions of the person and knows that the person and their mission are one. Maslow did not know it, but he was talking about Dan. Dan’s dedication rang true in the discussions he had with me during the development of this paper. Dan engaged me, challenged me, and guided me to works of others for investigation and reflection. Dan was not obligated to advise me – he volunteered to give me guidance – something I know added to his burden. Dan’s efforts are an example of the mentoring and tutoring needed in third branch administration. While I credit Dan for support, Dan should not be held accountable for my statements, my interpretations, nor my conclusions and recommendations – those were beyond Dan’s control, fortunately for Dan Straub!

I want to thank colleagues who took the time to entertain my questions and haranguing. I want to thank Chuck Ericksen, Director of ICM for his constructive criticism and stern reminders on form and function! I want to give thanks to Joan Cochet, Library Specialist at NCSC for her invaluable assistance in locating materials. Finally, I want to thank Don Cullen who, as the first President of NACM, recruited me into NACM and encouraged me to pursue my career in third branch administration.

But now, the call is more important than one of recognition. All of us who have gone before must give our last productive years in mentoring and tutoring our successors so that they may develop the future of third branch administration. It is to the cause of helping third branch administration reach Prime that I dedicate this and future work.

## Table of Contents

List of Figures: Illustrations and Tables .....	5
Abstract.....	6
Introduction.....	8
Methodology.....	12
Research Plan and Modifications.....	12
Creating a Framework for Discussion .....	14
Terms and Definitions.....	14
Review of the Literature .....	19
Personal and Professional Development.....	19
Organizational Development and Life Cycles.....	25
Greiner .....	26
Adizes' Corporate Life Cycles.....	31
Third Branch Administration: Where has it Been?.....	40
Viewing History from an Organizational Development Perspective .....	47
Creativity – Courtship Phase: Conceptualization 1906 - 1948.....	47
American Judicature Society - 1913.....	48
National Council of Juvenile Judges - 1937 .....	50
American Bar Association Minimum Standards on Judicial Administration – 1938.....	51
Institute of Judicial Administration – 1938 .....	52
The Administrative Office of the United States Courts – 1939.....	53
Model Act to Provide for an Administrative Office of State Courts - 1948.....	55
Infancy and Direction Phase: Taking Risk 1949 – 1965 .....	56
Conference of Chief Justices (CCJ) – 1949.....	56
The First “Model Act” State Court Administrator – 1953.....	58
National Conference of Court Administrative Officers (NCCAO) – 1955 aka Conference of State Court Administrators (COSCA) – 1972.....	59
The First Trial Court Administrators – 1950 .....	61
The Joint Committee for the Effective Administration of Justice – 1961 .....	62
National Conference of Metropolitan Courts – 1963 .....	64
The Go-Go and Delegation Phase: Full Scale Implementation 1966 - 1990.....	64
National Association of Trial Court Administrators (NATCA) – 1966 .....	65
National Association of Court Administrators (NACA) – 1968 .....	66
Law Enforcement Assistance Administration (LEAA) – 1968, 1976 .....	67
The National Judicial College – 1978.....	71
The Institute for Court Management (ICM) – 1970 .....	71
Graduate Programs in Court Administration – 1969 – 1973 .....	73

The National Center for State Courts - 1971 .....	75
The National Center for Juvenile Justice - 1973.....	80
Center for Jury Studies – 1978.....	80
National Association for Court Management – 1985 .....	81
Adolescence and Coordination Phase: Performance 1990 - 2004 .....	81
Trial Court Performance Standards (TCPS) 1990 .....	82
The NACM Delphi Process - 1991 .....	84
The NACM Core Competency Curriculum Guidelines 1991 - 2004 .....	92
Findings.....	97
Organizational Development Model for Third Branch Administration .....	97
The Holding Pattern: Third Branch Administration in Transition.....	102
Getting to Prime and the Extra-organizational Collaboration Phase .....	103
Stewardship.....	103
The Nature of the Managerial Workforce.....	103
The Executive Component of the Courts.....	112
The Court Governance Model .....	118
Training the Executive Component of the Court.....	121
Stewardship and Leadership in the Extra-organizational Collaboration Phase ..	130
Financing Court Reform: An Inhibitor to Growth.....	141
Conclusions.....	149
Transitioning Third Branch Administration: Getting to Prime.....	149
From Leaders to Leadership Action .....	153
Building Leadership Action Capacity.....	157
Extra-organizational Collaboration.....	164
Appendices.....	172
Bibliography .....	183

## List of Figures: Illustrations and Tables

Figure 1 Maslow – Hierarchy of Needs.....	21
Figure 2 Greiner’s Phases of Organizational Growth.....	26
Figure 3 Model for Greiner’s Phases of Growth .....	29
Figure 4 Adizes Corporate Life Cycles .....	31
Figure 5: Model for Adizes Stages of Lifecycle Development .....	33
Figure 6: Summary of Findings – NACM Delphi Process .....	88
Figure 7: NACM Core Competencies.....	94
Figure 8: Model for Third Branch Administration Organizational Development.....	99
Figure 9: Synchronizing Self-Actualization with Prime.....	104
Figure 10: Membership of Associations .....	105
Figure 11 –NACM Age Group Distribution By Percentage of Respondents.....	110
Figure 12 – NACM Age Group Distribution by Number of Respondents .....	110
Figure 13: Age of NATCA and NACM Workforces.....	111
Figure 14: NACM Membership Profile Survey Results – Years of Service .....	112
Figure 15: Leadership Centered CCG.....	137
Figure 16: ICM First Class .....	172
Figure 17: ICM CEDP 1971 Post-Intern Class.....	173
Figure 18: ICM CEDP 1971 Pre-Intern Class .....	174
Figure 19: American University Leadership Conference Invitation.....	175
Figure 20: American University List of Invitees .....	177
Figure 21: Survey.....	181

## Abstract

We witnessed the birth of judicial administration in the 1900s – a period rich with founders inventing, explorers defining, and managers developing the field. In contrast, some believe that the last decade of the 1900s was a period of decreased judicial branch leadership – seemingly fewer ideas, less reform, fewer major contributions to literature in the field and fewer persons recognized as leaders contributing value like that attributed to the founders. Some speculate that the field is dying. Is it possible that we witnessed the birth, maturation, and “decline” of judicial branch leadership and administration in 100 years?

This paper explores theories of organizational development through the work of Greiner and Adizes and personal and professional development through the work of Maslow. The theories external to the court environment are used to construct a model of organizational development for third branch administration.

Where has third branch administration been? Where is it now? Is third branch administration in decline or is it in a period of transition? If it is in a period of transition, then what is the nature of the transition and **from** what stage **to** what stage? What do the answers to these questions mean for where it is going? What are the obstacles to growth? How do we overcome these obstacles so third branch administration can continue to grow?

After presenting the theoretical constructs, these questions are addressed. The history of third branch administration is placed within an organizational development context. An organizational development model is constructed for third branch administration that helps demonstrate the validity of the theory, its application, and its utility in helping map the business to the organizational development life cycle. The work concludes that third branch administration is not in decline, but rather, third branch administration is in transition between stages of organizational development. Obstacles in the path of growth, the problems and crises of transition, are identified. The entrepreneurial leadership that created the court reform movement of the twentieth century is not the type of leadership for the next stage of third branch administrative development. Instead of a few entrepreneurs and an army of Taylorian managers, leadership must manifest itself in the action of many who are self-actualized with the vision of the founders, the mission of court reform. A self-actualized third branch operating at Prime will be necessary to complete Tobin's *Unfinished Reform*<sup>1</sup>.

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<sup>1</sup> Robert W. Tobin, Creating the Judicial Branch: The Unfinished Reform (National Center for State Courts, Williamsburg, Virginia, 1999).

## Introduction

Is it possible that we witnessed the birth, maturation, and decline of judicial branch administration in 100 years? The Conference of State Court Administrators (COSCA) concluded in 1981: “**None of these trends** portends a decline in the field of court administration.”<sup>2</sup> The statement suggests that some thought they observed signs of decline when most thought the profession of court administration was prospering! Outside COSCA, Ernie Friesen suggested that court administration had entered the phase of “survival.”<sup>3</sup> In 1991, Lawson and Howard concluded that the court manager was part of an “emerging profession” that had “undoubtedly achieved considerable status and stability” by the early 1990s.<sup>4</sup> In the same issue of the *Justice System Journal*, Geoff Gallas and Ed Gallas said: “There is little reason for complacency; much, much, more needs to be done in the future than was achieved in the past.”<sup>5</sup> Is the stability that Lawson and Howard spoke of synonymous with comfort? Did court managers reach a comfort level that Schaffer refers to as the “psychodynamics of action” - “unconscious negotiations that managers carry on with themselves” “bargain[ing] themselves down to comfortable expectations?”<sup>6</sup> In some respects, the 1990s raise a question about the future of the field of court administration luring many into thinking that the decade of the 90s

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<sup>2</sup> Theodore J. Fetter, [A History of the Conference of State Court Administrators](#) (National Center for State Courts: Williamsburg, Virginia, 1981?) 30.

<sup>3</sup> Ernest C. Friesen, “Court Managers: Magnificently Successful or Merely Surviving?” [First National Symposium on Court Management](#) ed. Geoff Gallas (National Center for State Courts, Williamsburg, Virginia 1982) 45.

<sup>4</sup> Harry O. Lawson and Dennis E. Howard, “Development of the Profession of Court Management: A History With Commentary” [The Justice System Journal](#) Volume 15, Number 2 (1991) HeinOnline 15 Just. Sys. J. (1991-1992) 602.

<sup>5</sup> Geoff Gallas and Edward C. Gallas, “Court Management Past, Present, and Future: A Comment on Lawson and Howard” [The Justice System Journal](#) Volume 15, Number 2 (1991) HeinOnline 15 Just. Sys. J. (1991-1992) 613-614.

<sup>6</sup> Robert H. Schaffer, “Demand Better Results – And Get Them” [The Harvard Business Review](#) (March-April 1991, Reprint Number 91207) 10.

was less significant in the evolution of the profession than the decades of 1970s and 1980s. Can we identify milestones in the last fifteen years that compare with those seen in the 1970s and 1980s? Did court administration begin marking time in the 1990s? Third branch administration was in a period of transition at the time of the First Symposium in 1981 according to Gallas. However, many of the same issues from the First Symposium were discussed at the Second Symposium in 1991 according to Hudzik. In 2004, Gallas and Griller suggested that the profession of court administration is in a “period of decline.”<sup>7</sup>

If there is a decline in “the business” is there also a decline in leadership? Where have all the leaders gone? At the time of writing this paper, the Bureau of Justice Assistance funded a project to plan a conference on judicial leadership in 2005. The grantee, American University’s Justice Programs Office, authored a letter inviting “leaders who have been prominent in judicial system reform activities during the ‘70’s and ‘80s” to help plan the conference<sup>8</sup> (See the Appendices for body of letter and a list of invited attendees). The goal of the conference is to: identify legacy court improvement initiatives and lessons learned; delineate challenges of the early 21<sup>st</sup> century; determine steps in planning the conference, and; to do so focusing the conference on “emerging leaders.”<sup>9</sup>

“Is court administration in decline” and “where have all the leaders gone” are questions emblematic of the court management literature through the last fifteen years. At the heart

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<sup>7</sup> Geoff Gallas and Gordy Griller, “The Court Management Profession: Questions and Issues” The Court Manager Volume 19 Issue 2 (National Association for Court Management 2004) 7.

<sup>8</sup> Letter addressed to Mary McQueen, President of the National Center for State Courts signed by Joseph A. Trotter, Jr., Director, Criminal Courts Technical Assistance Project, dated October 19, 2004.

<sup>9</sup> Trotter letter.

of the literature are three themes. The first theme involves the quality of the relationship between administrators and judges. The subject continues to burn in the literature sparked by an educational program accompanied by an emotional exchange that has been fueled by the departure of a few prominent court administrators. The second and third themes surfaced around the same time (1990) raising the questions of where is court management going and who are the leaders that are going to take it there?

The work creates a framework to help answer these questions in an attempt to contain the emotional response that these questions have been prone to generate. The framework provides definitions for perspective. The framework also summarizes theories and models of professional and organizational development. This framework provides the basis for analyzing the development of judicial administration, court administration, and court reform. The work establishes an organizational view called third branch administration that entails judicial administration, court administration, and court reform efforts of state and local courts and the entities that they help govern.

Following the organizational development framework, the questions “where has third branch administration been” and “where is third branch administration now” are addressed. The work provides a short history of the development of third branch administration from 1906 through 2004. After reviewing history and growth characteristics over time, an organizational development model is constructed for third branch administration to demonstrating that third branch administration is in transition between two phases of organizational development.

The work concludes by making observations, drawing conclusions, and suggesting courses of action to help third branch administration navigate the transition and reach an optimum level of performance described in the organizational models completing Tobin's "unfinished reform."

## **Methodology**

### **Research Plan and Modifications**

The original plan for this work proposed a three level analysis of the allegation that court administration is in decline. The first level of analysis planned was to construct historical accounting of judicial administration and court administration. The history has been constructed preciously but not with design to examine organizational development. The second level of analysis originally planned for this work was to examine those developments to determine if they indicated any trend or direction for the future. The third level of analysis originally planned was to survey people in the business to obtain a sense from practitioners as to: where judicial administration and court administration were in their stage of development; where the business was going, and; who were the leaders that were going to take us there?

Significant changes have been made from the original plan. Upon review of the rough draft, my advisor suggested that the approach taken, paralleled work in the field of organizational development. Based upon that research, the original project design was revised. Advancing the theory of organizational development, the author advances two views of organizational development through models. Surveying the history of judicial administration, court administration, and court reform, the author proceeded to construct a model of organizational development for third branch administration. The research proved a learning experience. Organizational development theory provided a structure for analyzing organizational growth. Changes in management and leadership theory altered former opinions about leaders and leadership that altered the research approach and

significantly influenced personally held opinions and changed the outcome from one envisioned at the beginning of the work.

The work included a review of organizational development theory and the literature of the field of judicial and court administration for the purpose of constructing a developmental history. The research originally included a survey design intended to gather opinions of practitioners about the health of court administration and their perceptions about growth or decline of the business. The investigation into OD theory and models detracted from the time that could be allocated to the survey. Tests of the survey instrument revealed that multiple iterations and tests would be necessary to insure quality of responses. The survey was abandoned. Nevertheless, opinions rendered by practitioners in test surveys have provided some insight despite the inability to use these responses with any degree of research validity. The survey instrument is included herein for information purposes only since the instrument was not perfected.

The research has been significant, but it is recognized that the effort is not exhaustive. More research needs to be done. Hopefully, still buried in the literature are nuggets of third branch administration and organizational development. If so, readers are encouraged to send information that pertains to the subject for future development of this work. The research continually contributed to increasing interest as the work progressed and it is the intent to develop the work more in the future. To that end, constructive criticism, comments, and suggestions are invited for use in the subsequent work.

### **Creating a Framework for Discussion**

Communication is a challenge. Frequently we debate something with each other only to find ourselves retreating from the debate to establish a baseline of terms that were a source for the debate but were not the substance of the discussion. Coming to agreement on terms, phrases, or concepts before we begin a discussion may be a more effective means of communicating. Establishing a foundation of constructs for a discussion or what is referred to here as a framework hopefully will create an environment from which discussion can actually focus on issues with some scientific management precision – but not Taylorian precision. Taylorian precision will require more effort beyond the scope of this initial effort. The framework is intended to serve a second purpose –acting as a governor on the emotional engines that race with passionate debate about the business of court reform. Recognizing that the author is one of the people in need of such a governor does not guarantee that the work avoids impassioned statements! Perhaps, the recognition has served to limit racing the engine!

### **Terms and Definitions**

To begin, terms and phrases need to be defined, not for the purpose of asking the community to adopt them, but for the purpose of providing perspective for this work. Following the definitions, theoretical constructs are presented to help form a vision of the business that may help us understand what the status of the “business” is as we approach a centennial landmark – one hundred years since Roscoe Pound conceptualized the court reform movement.

For the purpose of this work, the phrase **judicial reform** refers to that part of our history characterized by leaders who individually and collectively worked to create a renaissance, a period of thinking about **how American courts should function. Judicial reform** is also used to refer to the implementation and refinement of the ideas emanating from the judicial reform period.

Robert W. Tobin defined **judicial administration** as: “The role of judges in the administration of the judicial branch.”<sup>10</sup> For the purpose of this work, **judicial administration** is the domain of a chief justice and local judicial authorities operating under a number of titles including chief justice, chief judge, presiding judge, administrative judge and other titles. For the purpose of this work, **judicial administration** includes leadership and managerial responsibility, authority, and accountability for judicial functions within a court or amalgamation of courts. **Judicial administration**, as used in this work, includes judicial oversight of judicial and quasi-judicial persons and processes.

For the purpose of this work, **court administration** refers to the domain of a chief justice and local judicial authorities operating under a number of titles including chief justice, chief judge, presiding judge, administrative judge, court administrator, and clerk of court, with authority over the non-judicial business, i.e., non-judicial personnel, ministerial functions, and non-judicial decision making processes of a court.

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<sup>10</sup> Tobin 148.

This distinction does not infer that judicial administration and court administration exist in isolation from one another – to the contrary, they are in symbiosis with one another.

The distinction is simply intended to distinguish one from another within this work.

Judicial administration and court administration are two domains of expertise within one business, the business of the judicial branch of government. When the need arises to refer to both domains acting as an entity the phrase **third branch administration** will be used.

**Third branch administration** is also used more frequently in this work to include not only judicial administration and court administration as domains but it is also used to include court reform entities that are governed by representatives from state and local courts.

The word profession in reference to court administration is an assertion. No attempt is made here to enter or continue the debate on the question: is court administration a profession or merely a vocation. This debate has been going on for years and is not the focus of this work. The focus of this paper is on state and local courts, not on the Federal courts. The phrase “state and local courts” is used because one cannot assume that judicial administration and court administration at the local level within a state are one in the same with judicial administration and court administration of a state.

**Leadership and management:** are they one in the same or are they different? This paper subscribes to the argument that leadership and management are different. Burt Nanus said that **leaders**: “take charge, make things happen, dream dreams and translate them into reality;” that **leaders** “attract the voluntary commitment of followers, energize them, and

transform organizations into new entities,” and; that **leaders** are “masters in designing and building institutions: they are the architects of the organizations future.” Nanus described **managers** as: “people who meet schedules, control budgets, develop plans, or coordinate the efforts of subordinates to provide service or products.”<sup>11</sup> This difference between the **actions** of leaders and managers will be maintained throughout the work.

Are **leaders** born or do they evolve? In the introduction of the new edition of his old tome On Becoming A Leader, Warren Bennis said that his research lead him to conclude that **leaders** emerge through an experience he refers to as the “crucible,” an “essential element in the process of becoming a leader.”<sup>12</sup> Bennis claims that all leaders have four essential competencies, leaders: “are able to engage others by creating shared meaning;” “have a distinctive voice...a purpose, self-confidence, and a sense of self, and the whole gestalt of abilities ...Emotional Intelligence;” “integrity...a strong moral compass,” and; “adaptive capacity...respond quickly and intelligently to relentless change.”<sup>13</sup> Bennis believes that: “The individual brings certain attributes into the crucible and emerges with new, improved leadership skills.”<sup>14</sup>

The word leader centers our thoughts on the person. The literature of court administration is predominantly person centered. Discussion and literature call up images of the founders and developers of the business and claim that no one is emerging to taking their place. The question proposed at the beginning of this work was advanced by recent

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<sup>11</sup> Burt Nanus, The Leader's Edge (Contemporary Books, Inc., Chicago 1989) 6-7.

<sup>12</sup> Warren Bennis, On Becoming A Leader (Basic Books: Perseus Books Group, New York, 2003) xx.

<sup>13</sup> Bennis xxi-xxiii.

<sup>14</sup> Bennis xx.

literature in court administration: are there fewer leaders in the business today? The literature outside court administration advances leadership concepts different from the person centered views found in the field of court administration. One can read the Bennis and Nanus quotes with emphasis on characteristics of leadership and actions of leadership. The question surfaced: is the person centered leadership perspective the perspective of leadership needed at this point in the development of third branch administration? A reference model was needed to begin to answer the question: where was third branch administration in terms of development?

## Review of the Literature

### Personal and Professional Development

The development of people is intrinsic to the evolution of organizations. Persons are recognized as leaders because they are associated with actions that produce a valued outcome. The valued outcome resulted from an action that a person took at a critical point in time frequently within an organization. There are two parts to the outcome equation: the person and the organization. Development issues of people and organizations are critical to the work at hand.

Human development progresses through stages. Many believe that organizations travel a road similar to human development. Like humans, organizations may die prematurely. Unlike humans, organizations do not have to die. Organizations may reinvent or rejuvenate themselves passing through development stages again.

Bennis concluded: "I am surer now than ever that the process of becoming a leader is the same process that makes a person a healthy, fully integrated human being."<sup>15</sup> Bennis observed that persons recognized for their leadership actions possessed some special qualities. Long before Bennis, Abraham Harold Maslow constructed a theory on motivation known as self-actualization. Maslow theorized that need gratification was an instrumental part of human development. Unlike other theorists of his time, he perceived a **healthy human** being as an integrated human being driven by all needs at all times, but by varying degrees. Maslow said: "Man is a wanting animal and rarely reaches a state of

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<sup>15</sup> Bennis xxiv.

complete satisfaction except for a short time.”<sup>16</sup> In terms of motivation Maslow said: “We should never have the desire to compose music or create mathematical systems, or to adorn our homes, or to be well dressed if our stomachs were empty most of the time, or if we were continually dying of thirst, or if we were continually threatened by an always impending catastrophe, or if everyone hated us.”<sup>17</sup>

Maslow’s hierarchy of needs (Figure 1) consisted of five general classifications that he originally divided into “lower” and “higher needs.” Maslow’s theory has most frequently been modeled through the use of a pyramid, providing symbolic meaning consistent with his theory. The lower needs start with physiological needs: homeostasis and related biological needs of food and water. The safety needs emerge upon satisfaction of the physiological needs. Maslow said that safety needs included: “security; stability; dependency; protection; freedom from fear, from anxiety and chaos; need for structure, order, law, limits; strength in the protector.”<sup>18</sup> Upon satisfaction of the physiological and safety needs, Maslow said that the person “would feel keenly, as never before, the absence of friends, or a sweetheart, or a wife, or children” and would “hunger for affectionate relationships with people in general, namely, for a place in his group or family.”<sup>19</sup> Satisfaction of the belonging needs moves the being into the higher needs. Maslow said that “people in our society (with a few pathological exceptions) have a need for a stable, firmly based, usually high evaluation of themselves, for self-respect, or self-

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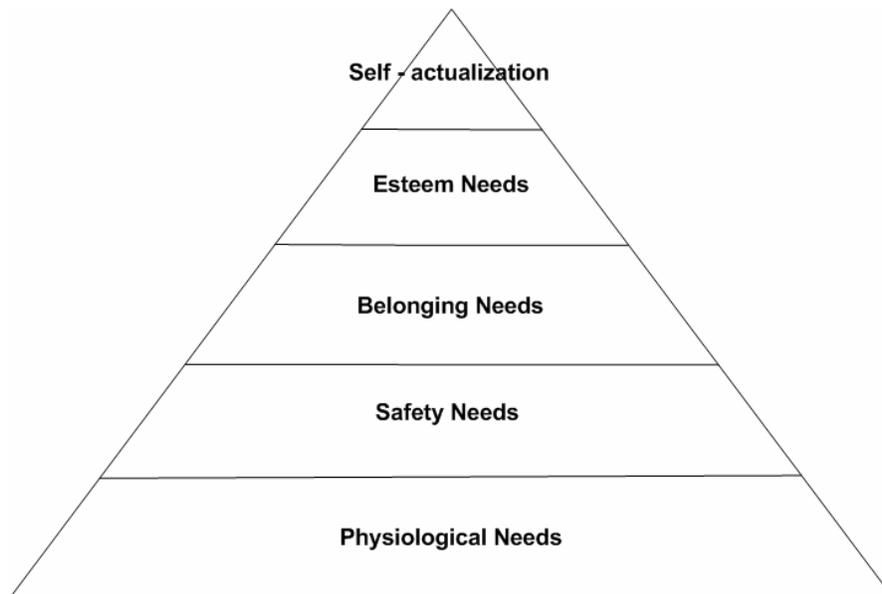
<sup>16</sup> Abraham H. Maslow, Motivation and Personality (Second edition, Harper and Row, New York, N. Y., 1970) 24.

<sup>17</sup> Maslow 24.

<sup>18</sup> Maslow 39.

<sup>19</sup> Maslow 43.

esteem, and for the esteem of others.”<sup>20</sup> Maslow thought that the esteem needs fell into two categories: first, “the desire for strength, for achievement, for adequacy, for mastery and competence, for confidence in the face of the world, and for independence and freedom.”<sup>21</sup> Maslow’s second category of esteem needs included: “the desire for reputation or prestige (defining it as respect or esteem from other people), status, fame and glory, dominance, recognition, attention, importance, dignity, or appreciation.”<sup>22</sup>



**Figure 1 Maslow – Hierarchy of Needs**

Satisfaction of self-esteem “leads to feelings of self-confidence, worth, strength, capability, and adequacy, of being useful and necessary in the world.”<sup>23</sup> Once esteem needs are gratified and assuming no esteem need or “lower” need overwhelms the being in healthy stride (apply for a promotion, unemployment and resulting financial strife or the threat of death, etc.), a person is free to strive to satisfy a state of being that the field of human psychology refers to as self-actualization. It is the need that is the most difficult

<sup>20</sup> Maslow 45.

<sup>21</sup> Maslow 45.

<sup>22</sup> Maslow 45.

<sup>23</sup> Maslow 45.

to describe for it is what it is! Maslow said that a self-actualized person “is doing what *he*, individually is fitted for. A musician must make music, an artist must paint, a poet must write, if he is to be ultimately at peace with himself. What a man *can* be, he *must* be.”<sup>24</sup> This is the state of self-fulfillment and thus, “basic human needs are organized into a hierarchy of relative prepotency.”<sup>25</sup>

Maslow’s theory should make one contemplate the assumptions of motivation in human resource management in organizations. Are lower paid employees in complicated personal circumstances, i.e., single parents with no child support, capable of focusing on mission, goals, and objectives of the organization? People are motivated by needs. When one need is satisfied, it ceases to be motivation. As long as an employee is **primarily** driven by physiological and safety needs, is it reasonable to think that their organizational behavior will be driven by mission, goals, and objectives? Maslow answers: “Clearly, different principles of management would apply to these different kinds of motivational levels.”<sup>26</sup>

If we are wondering “where are the leaders” in third branch administration, then perhaps we should look first at where people capable of leadership action are found within Maslow’s hierarchy? A person capable of leadership action is self-actualized, doing what they are best fitted for, being what they must be. A person capable of leadership action loves the work, is absorbed in the work, and enjoys the work so much that the person and

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<sup>24</sup> Maslow 46.

<sup>25</sup> Maslow 38.

<sup>26</sup> Abraham H. Maslow, Deborah C. Stephens, and Gary Heil, Maslow on Management (John Wiley & Sons, Inc. New York, N.Y., 1998) 19.

the work become one: “the task or the vocation or the duty becoming part of the self, a defining and necessary part, a *sine qua non* part.”<sup>27</sup> Maslow went to great lengths to differentiate between unhealthy persons consumed by their work and healthy persons at one with their work. Maslow also had little tolerance for those who emulated love of their work when, in fact, they were, were “starry-eyed dilettantes – big talkers, great planners, tremendously enthusiastic – who come to nothing as soon as little hard work is required” and “free-loaders, hangers-on, mere talkers, the permanent passive students who study forever with no results.”<sup>28</sup>

Maslow was blunt when he pointed out the difference between management salvation seekers and those who found salvation as an outcome of the work they did:

This business of self-actualization via a commitment to an important job and to worthwhile work could also be said, then, to be the path to human happiness (by contrast with the direct attack or the direct search for happiness – happiness is an epiphenomenon, a by-product, something not to be sought directly but an indirect reward for virtue).<sup>29</sup>

Maslow argued that part of self-actualization was about becoming part of something the person feels and believes is important, providing one with a heart-felt, mind-felt mission, a purpose that is part of the person: “S-A [Self-actualization] work is simultaneously a seeking and fulfilling of the self *and* also an achieving of the selflessness which is the ultimate expression of *real* self.”<sup>30</sup> Becoming one with the mission, the cause, feeling good about working for an organization is critical to healthy satisfaction of the esteem needs, a necessary precursor to “S-A.”

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<sup>27</sup> Maslow, et. al. Maslow on Management 153.

<sup>28</sup> Maslow, et. al. Maslow on Management 5.

<sup>29</sup> Maslow, et. al. Maslow on Management 8-9.

<sup>30</sup> Maslow, et. al. Maslow on Management 9.

Maslow believed that a leader needs to be a healthy person satisfied at each level of need of the hierarchy and especially comfortable with the esteem needs and confident of their knowledge, skills, and abilities, i.e., their competencies. A leader needs to be one with his/her work to the extent that they would “not be the same person”<sup>31</sup> without their work. Again, Maslow spoke of healthy attainment of needs and therefore, constantly need to remind ourselves that unhealthy neurosis and psychosis can give us a person consumed by their work, but not in homeostasis with their work. So, leaders must be S-A people one with their work. Leaders are not people who say they are leaders, but rather, leaders are people identified by others as being leaders. Leaders, Maslow contends, are leaders within the work that they share this fit, but may not be leaders outside the fit that they are best suited. In Maslow’s opinion, a leader is a person who seeks power only to use it well for the purposes of the organization, the mission. And perhaps important to the business at hand: “the good leader in most situations must have as a psychological prerequisite the ability to take pleasure in the growth and self-actualization of other people.”<sup>32</sup>

It is important to recognize the dynamics of Maslow’s need satisfaction. A person may become fixated at a level of development, yearning to fulfill a need characteristic of the phase of development – thus, growth is inhibited. A person may move up and down the levels of need satisfaction over a lifetime. A person may become self-actualized in a totally different pursuit than the one they spent a life time preparing for; the fit may never have been there! The fit may change over time. To take leadership action, personally or

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<sup>31</sup> Maslow, et. al. Maslow on Management 153.

<sup>32</sup> Maslow, et. al. Maslow on Management 166.

professionally, the fit has to be right, the timing has to be synchronized, needs must be healthily fulfilled. A person is capable of taking leadership action when the person is one with the purpose. "To everything there is a season."

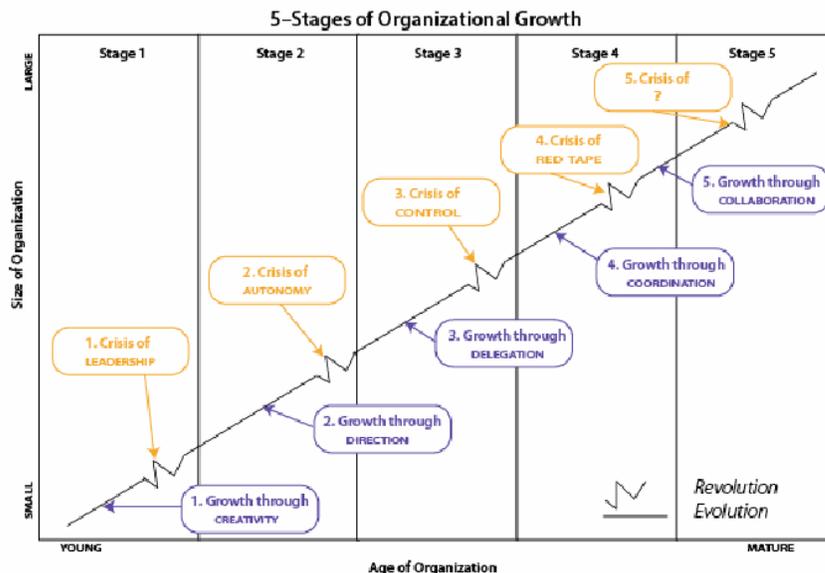
### **Organizational Development and Life Cycles**

Similar to the growth of individuals, organizations have different needs during phases of their life cycle. Organizations are primarily made of people. Drawing on the knowledge outside the world to help us understand the development of third branch administration, we move from psychoanalytical world to the body of knowledge known as organizational development (OD). In doing so, one finds that organizational analysts draw from psychoanalysts and rightly so since organizations are aggregations of people. Analysts looking at growth in organizations study activities and behaviors that characterize stages organizational development. Organizational development is similar to human development, perhaps with the exception that organizations rejuvenate themselves avoiding death. Organizations are born, some progress through developmental stages, some mature, some die of old age, some die prematurely, and some find new life and new purpose and are reborn to run the development life cycle again.

The endeavor here draws upon the work of two organizational development theorists, Larry E. Greiner and Ichak Adizes. Summaries of their theories are first presented and then placed into models of organizational growth.

## Greiner

Greiner said that we fail to ask critical questions about our organizations: “Where has our organization been?” “Where is it now?” “What do the answers to these questions mean for where it is going?”<sup>33</sup> Greiner extended the psychology of personal development to organizations. Greiner theorized that young organizations go through phases as they mature and as they grow in size. Each phase has a predominant theme: creativity, direction, delegation, coordination, and collaboration. “Each phase begins with a period of evolution, steady growth, and stability, and ends with a revolutionary period of organizational turmoil and change.”<sup>34</sup> “The resolution of each revolutionary period determines whether or not a company will move forward into its next stage of growth.”<sup>35</sup>



**Figure 2 Greiner’s Phases of Organizational Growth**

Included in Greiner’s theory is the thought that growth of the organization is “closely related” to the behaviors of its respective industry. Greiner said as organizations age:

<sup>33</sup> Larry E. Greiner, “Evolution and Revolution as Organizations Grow” *Harvard Business Review* May/June 1998. Lexis, November 22, 2004: 1.

<sup>34</sup> Greiner 1.

<sup>35</sup> Greiner 2.

“management problems are rooted in time;” “organizational practices are not maintained” through the organizational life span, and; managerial attitudes become rigid, outdated, and institutionalized resulting in predictable employee behavior. Greiner said that as the size of the organization grows: “new functions emerge;” levels in the management hierarchy multiply; communication and coordination become more difficult, and “interrelated” jobs become another factor in determining structure. Greiner noted that “organizational growth is not linear” nor do growing organizations expand and contract every few years. Instead, growing organizations “enjoy four to eight years of continuous growth” before encountering times of turbulence and crises that the organization must overcome to enter the next phase of organizational development.<sup>36</sup>

Greiner claimed that each phase of growth is “characterized by the “dominant management style used to achieve growth” and the “dominant management problem that must be solved before growth can continue.” Each phase of growth is the “result of the previous phase and a cause for the next phase.”<sup>37</sup> Greiner advocated that his theory was a tool to analyze the organization and its components. “Know where you are in the developmental sequence” and know where the organizational units are within the developmental process.<sup>38</sup> Greiner thought that organizations must grow through the processes of evolution and revolution. Leadership and management has to work the organization successfully and successively through each stage of development.

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<sup>36</sup> Greiner 2-3.

<sup>37</sup> Greiner 2-3.

<sup>38</sup> Greiner 7.

Greiner developed his theory initially by working with private sector manufacturing but later asserted that the model also worked for the service industry. In a Harvard Business Review article, Greiner suggested that a sixth “extra-organizational” phase may be evolving that emphasizes external organizational relationships. Greiner suggested that his original theory needed modified because “there is obviously much more ‘death’ in the life of organizations today,” apparently a reference to a growing number of organizations that fail to make the transition to the next stage of growth.<sup>39</sup>

Figure 3 is a model constructed to illustrate Greiner’s phases of growth. Each phase reflects the associated characteristics of evolution (management style, characteristics of growth) and characteristics of revolution (problems). Subsequent theories will be presented in similar models. The consistency among the models advanced is intended to provide a means of comparison across the theories.

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<sup>39</sup> Greiner 9.

Figure 3 Model for Greiner's Phases of Growth<sup>40</sup>

Phase	Evolution	Revolution
<b>Creativity</b>	<ul style="list-style-type: none"> <li>• Create the product and the market</li> <li>• Founders are technically or entrepreneurially oriented; disdain management activities; absorbed in product and market</li> <li>• Employee communication is frequent and informal</li> <li>• Long hours rewarded by modest salary but promise of ownership benefits</li> <li>• Decision and motivation are highly sensitive to market feedback; management acts as customers react</li> </ul>	<ul style="list-style-type: none"> <li>• Success becomes the problem</li> <li>• Increasing efficiency of production requires manufacturing knowledge</li> <li>• Formal communications replaces informal</li> <li>• New employees not motivated by dedication to product</li> <li>• Founders burdened with undesired management issues – wish for good old days</li> <li>• Additional capital needed</li> </ul>
<b>Crisis – Leadership – Founder vs. Managerial Competence</b> Crisis resolved		
↓		
Phase	Evolution	Revolution
<b>Direction</b>	<ul style="list-style-type: none"> <li>• Hiring a capable business manager</li> <li>• Functional organization introduced to separate manufacturing from marketing</li> <li>• Job assignments become specialized</li> <li>• Accounting systems for inventory and purchasing systems are introduced</li> <li>• Incentives, budgets, and work standards are adopted</li> <li>• Communication becomes more formal and personal</li> <li>• Hierarchy of titles and positions grows</li> <li>• Management assumes responsibility from founders for directing</li> </ul>	<ul style="list-style-type: none"> <li>• Directive techniques channel employee energy but become inappropriate for controlling a more diverse work and complex organization</li> <li>• Lower level employees feel restricted by a cumbersome centralized hierarchy</li> <li>• Lower level employees have more direct knowledge about markets than leaders</li> <li>• Employees who have direct market knowledge are torn between following procedures and taking initiative on their own</li> </ul>
<b>Crisis – Autonomy</b> Crisis resolved		
↓		
Phase	Evolution	Revolution
<b>Delegation</b>	<ul style="list-style-type: none"> <li>• Successful decentralization</li> <li>• Greater responsibility given to managers</li> <li>• Profit centers and bonuses used to motivate employees</li> <li>• Executives limit themselves to managing by exception</li> <li>• Acquisition of enterprises that can be aligned with decentralized business units</li> <li>• Communication from top is infrequent, in writing, by telephone, or brief visits</li> </ul>	<ul style="list-style-type: none"> <li>• Top level executives sense they are losing control</li> <li>• Autonomous managers prefer to run their own shows without coordinating with others in the organization</li> <li>• Freedom breeds a parochial attitude</li> </ul>
<b>Crisis – Control</b> Crisis resolved		
↓		
Phase	Evolution	Revolution
<b>Coordination</b>	<ul style="list-style-type: none"> <li>• Use of formal systems for better coordination</li> <li>• Top executives implement formal systems to achieve greater coordination</li> <li>• Decentralized units organized into product groups</li> <li>• Formal planning procedures established and reviewed</li> <li>• Staff added to initiate companywide programs of control and review</li> <li>• Capital expenditures carefully considered and parceled across the organization</li> <li>• Each project group is treated as an investment center</li> <li>• Operating decisions decentralized and</li> </ul>	<ul style="list-style-type: none"> <li>• Coordination systems prove useful</li> <li>• Managers look beyond needs of their respective units</li> <li>• Managers must justify actions and decisions more carefully</li> <li>• Headquarters becomes a watchdog</li> </ul>

<sup>40</sup> Note: This table was created by the author of this paper. The content of the table is adapted from Greiner's work to illustrate his theory.

	<ul style="list-style-type: none"> <li>support services are centralized</li> <li>• Stock options and profit sharing are used to encourage employee identification with organization</li> </ul>	
<b>Crisis – red tape</b> <b>Crisis resolved</b> ↓		
Phase	Evolution	Revolution
<b>Collaboration</b>	<ul style="list-style-type: none"> <li>• Strong interpersonal coordination</li> <li>• Spontaneity in management teams</li> <li>• Skillful confrontation of interpersonal differences</li> <li>• Social control and self-discipline replace formal controls</li> <li>• Focus on solving problems in teams</li> <li>• Teams are combined across functions</li> <li>• Staff experts in headquarters are reduced in number, assigned to interdisciplinary teams that consult with field managers rather than direct them</li> <li>• Conferences of key managers are held frequently</li> <li>• A matrix structure is used to assemble teams</li> <li>• Formal controls are simplified and combined into single multipurpose systems</li> <li>• Educational programs are used to train managers for improved teamwork and conflict resolution</li> <li>• Real-time information systems are integrated into daily decision making</li> <li>• Economic rewards are geared to team performance rather than individual performance</li> <li>• Experimenting with new practices is encouraged</li> </ul>	<ul style="list-style-type: none"> <li>• Psychological saturation of employees in teamwork</li> <li>• Emotional and physical exhaustion from teamwork, competition, and pressure for innovative solutions</li> <li>• Need to realize that there is no internal solution such as new products; need to look outside the organization for partners, for opportunities and partners, or to sell itself to a larger company.</li> </ul>
<b>Crisis – Psychological saturation and exhaustion from innovation pressure</b> <b>Crisis resolved</b> ↓		
Phase	Evolution	Revolution
<b>Extra-organizational</b>	<ul style="list-style-type: none"> <li>• Creating a holding company or a network organization composed of alliances and cross-ownership built around a core</li> <li>• Organization feeds upon the growth of individual units</li> </ul>	<ul style="list-style-type: none"> <li>• Model not completed</li> </ul>

## Adizes' Corporate Life Cycles

Adizes developed a life cycle theory comparing corporate development to human growth and aging. Adizes' theory and work focused on corporate life cycles. However, his work demands our attention because Adizes consistently asserted that his theory applied to all organizations. Adizes identified the stages of corporate life cycles as: courtship, infant, "Go-Go", adolescence, prime, stable, aristocracy, early bureaucracy, bureaucracy, and death.<sup>41</sup> Adizes demonstrated his theoretical constructs through the use of a model showing the life cycle stages (see Figure 4).

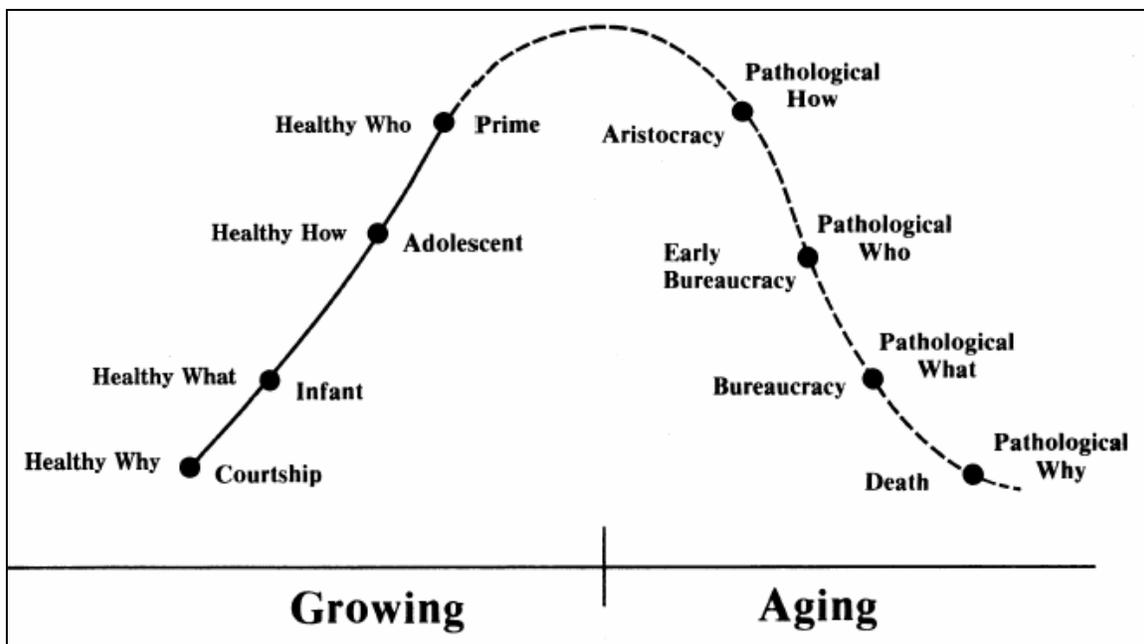


Figure 4 Adizes Corporate Life Cycles<sup>42</sup>

Adizes defined a young organization as one that can “change relatively easily... because it has a low level of control” and “is relatively unpredictable.”<sup>43</sup> An old organization is

<sup>41</sup> Ichak Adizes, *Corporate Lifecycles: How and Why Corporations Grow and Die and What to Do About It* (Prentice Hall, New Jersey, 1988).

<sup>42</sup> Adizes 93.

<sup>43</sup> Adizes 2.

one that is “inflexible,” behavior is controlled, and “has little propensity for change.” Adizes defined growth as: “the ability to deal with bigger, more complex problems.” The optimum stage of development in Adizes’ theory is called Prime. He stated that an organization at Prime is “neither too young or too old,” is both “flexible and controllable,” and “has the advantages of both youth and maturity.” Adizes stated that: “The key to success in management then, is not to eliminate all problems, but to focus on the problems of the present stage of the organization’s Lifecycle so it can grow and mature to deal with the problems of the next stage” with the goal of reaching and staying at Prime.<sup>44</sup> Management has to solve both “normal” and “abnormal” problems. Adizes defined “normal problems” as “those the organization can solve with its own internal energy.” Abnormal problems “require external, professional intervention.” Adizes theory includes a model of predictable behaviors that help determine the stage of development at which an organization is operating (see Figure 5).<sup>45</sup>

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<sup>44</sup> Adizes 4.

<sup>45</sup> Adizes 2-6.

Figure 5: Model for Adizes Stages of Lifecycle Development<sup>46</sup>

Stages	Normal	Abnormal
<b>Courtship</b>	<ul style="list-style-type: none"> <li>Excitement, reality tested</li> <li>Realistically committed founder</li> <li>Product orientation – commitment to its value added</li> <li>Commitment commensurate to risk</li> <li>Founder keeps control</li> </ul>	<ul style="list-style-type: none"> <li>No reality testing of commitment</li> <li>Unrealistically fanatic founder</li> <li>Exclusive return on investment – profit orientation</li> <li>Commitment not commensurate to risk</li> <li>Founder's control is vulnerable</li> </ul>
<b>Risk is undertaken Company is born</b>		
↓		
Phase	Normal	Abnormal
<b>Infancy</b>	<ul style="list-style-type: none"> <li>Risk does not evaporate commitment</li> <li>Negative cash flow</li> <li>Hard work nourishes commitment</li> <li>No managerial depth</li> <li>No systems</li> <li>No delegation – one man show but willing to listen</li> <li>Make mistakes</li> <li>Supportive home life</li> <li>Supportive external intervention</li> </ul>	<ul style="list-style-type: none"> <li>Premature rules, systems, procedures</li> <li>Founder's loss of control</li> <li>No listening – arrogance</li> <li>No room for mistakes</li> <li>Non – supportive home life</li> <li>Founder alienated by external intervention</li> </ul>
Cash flow and activities stabilize		
↓		
Phase	Normal	Abnormal
<b>Go-Go</b>	<ul style="list-style-type: none"> <li>Organization enjoys success</li> <li>Everything seen as an opportunity</li> <li>Goes in too many directions, spreads too thin</li> <li>Selling is the driver</li> <li>Company is organized around people not around tasks</li> <li>Management by intuition</li> </ul>	<ul style="list-style-type: none"> <li>Selling becomes addictive, more is better</li> <li>Believes more sales means more profit</li> <li>Founder fights to retain control</li> <li>Hand picked delegation or nepotism</li> <li>Competent managers leave</li> <li>Lack of systems, controls, processes</li> </ul>
<b>Crisis causes move to professional management</b>		
↓		
Phase	Normal	Abnormal
<b>Adolescence</b>	<ul style="list-style-type: none"> <li>Conflict between partners or decision makers, between the administrative and entrepreneurial types</li> <li>Temporary loss of vision</li> <li>Founder accepts organizational sovereignty</li> <li>Incentive systems reward the wrong behavior</li> <li>Yo-yo delegation of authority</li> <li>Policies made, but not adhered to</li> <li>Board of directors exercises new controls over management</li> </ul>	<ul style="list-style-type: none"> <li>Back to Go-Go and the founder's trap (struggle for control)</li> <li>Entrepreneurs leave, administrators take over</li> <li>Founder is squeezed out</li> <li>Individuals get bonuses for individual performance while company is losing money</li> <li>Paralysis while power shifts back and forth</li> <li>Rapid decline in mutual trust and respect</li> <li>The board fires the entrepreneurial types</li> </ul>
<b>Administrative systemization succeeds and leadership is institutionalized</b>		
↓		
Phase	Normal	Abnormal
<b>Prime</b>	<ul style="list-style-type: none"> <li>Functional systems and organizational structures</li> <li>Institutionalized vision and creativity</li> <li>Results orientation; the organization satisfies customer needs</li> <li>The organization makes plans and follows those plans</li> <li>The organization predictably excels in performance</li> <li>The organization can afford growth in both sales and profitability</li> <li>The organization spins off new Infant organizations</li> <li>Not enough well trained people</li> </ul>	<ul style="list-style-type: none"> <li>Complacency</li> </ul>
<b>Lose flexibility – “if it ain't broke don't fix it</b>		
↓		

<sup>46</sup> Note: This table was created by the author of this paper. The content of the table is adapted from Adizes work to illustrate his theory.

Phase	Normal	Abnormal
<b>Stable</b>	<ul style="list-style-type: none"> <li>• Has lower expectations for growth</li> <li>• Has fewer expectations to conquer new markets, technologies, and frontiers</li> <li>• Starts to focus on past achievements instead of future visions</li> <li>• Suspicious of change</li> <li>• Rewards those who do what they are told to do</li> <li>• More interested in interpersonal relationships than risks</li> </ul>	<ul style="list-style-type: none"> <li>• Creativity becomes dormant</li> <li>• Avoid risks</li> <li>• Distances itself from clients</li> </ul>
"Continuous incremental rotting"		
↓		
Phase	Normal	Abnormal
<b>Aristocracy</b>	<ul style="list-style-type: none"> <li>• Money is spent on control systems, benefits and facilities</li> <li>• Emphasis is on <i>how</i> things are done rather than <i>what</i> things are done</li> <li>• There is formality of dress, address and tradition</li> <li>• Individuals are concerned about the company's vitality, but as a group, the operating motto is "Don't make waves." It's business as usual.</li> <li>• There is low internal innovation. The corporation may buy other companies to acquire new products and markets, or in an attempt to buy entrepreneurship</li> <li>• The organization is cash rich – a potential takeover target.</li> </ul>	<ul style="list-style-type: none"> <li>• Products are out of date: clients know it, sales people know it, the CEO knows it and no one does anything about it</li> <li>• Consulting reports are read but not acted upon</li> <li>• Raise prices to compensate for loss of market share; income levels and drops again</li> </ul>
Fight for individual survival begins		
↓		
Phase	Normal	Abnormal
<b>Early Bureaucracy</b>	<ul style="list-style-type: none"> <li>• Emphasis is on <i>who</i> caused the problem, rather than <i>what</i> to do about it (as if solving the <i>who</i> equals solving the <i>what</i>)</li> <li>• There is much conflict, backstabbing and infighting</li> <li>• Paranoia freezes the organization; everyone is lying low</li> <li>• Focus is on internal turf wars; the external customer is a nuisance</li> </ul>	<ul style="list-style-type: none"> <li>• People do not feel responsible for what is happening</li> <li>• Better people are feared and fired or leave</li> </ul>
Only administrators remain and administration is the only task to do		
↓		
Phase	Normal	Abnormal
<b>Bureaucracy</b>	<ul style="list-style-type: none"> <li>• It has many systems, with little functional orientation.</li> <li>• It disassociates itself from its environment, and focuses mostly on itself.</li> <li>• There is no sense of control.</li> <li>• In order to work effectively with the organization, customers must develop elaborate approaches to bypass or break through the system.</li> </ul>	<ul style="list-style-type: none"> <li>• Commitment is to the political interests that keep the bureaucracy alive</li> </ul>
↓		
<b>Death</b>		

In the courtship stage, the “emphasis is on ideas and possibilities the future offers” and the air is full of “excitement and enthusiasm” despite the fact that the corporation has not been created.<sup>47</sup> The idea stage can be blusterous fluff. Adizes called it an affair as opposed to true love. Culmination of the courtship stage comes at the point that the founder takes risk. In the business world, risk is the expenditure of capital on the idea. It is the expenditure of capital on an idea (courtship) that gives birth to an organization. Once born, organizations immediately enter the infancy stage: “The risk must be covered. Cash is needed to pay bills. The focus shifts from ideas and possibilities to the production of results – the satisfaction of needs for which the company was established.”<sup>48</sup> Adizes claimed that corporate infancy is characterized by: action orientation and is driven by opportunity; few systems, rules, and policies; inconsistent performance; crisis management; no delegation – a one person operation; the organization needs periodic infusions of capital that are not forthcoming from the mission work of the company, and; the founder’s continuing commitment to the idea is crucial to survival. Once the company begins to live off income from selling the idea, Adizes claimed that the founder becomes arrogant and the arrogance tends to parallel success: the more success, the more arrogance. The founder and the company become arrogant making acquisitions of companies foreign to the original idea. Where early infancy is characterized by sales of quality products and service, late infancy (Adizes refers to the period as “Go-Go”) is characterized solely by amount of sales, increasing sales, dollars, and quantity. Direction is clouded: what is the vision? Adizes theory predicts that eventually, the founder

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<sup>47</sup> Adizes 11.

<sup>48</sup> Adizes 20.

struggles for control internally with people who are struggling to put the business back on a defined course regaining confidence and commitment of people in the organization.

This struggle between founder and an organizational culture that was sold originally on the idea becomes the source of growing pains during corporate adolescence. There may be struggles between the old guard and those striving to become the new guard. The organizational goals are clouded, inconsistent with, or in conflict with the founder's original idea and the associated risk. Corporate adolescence is a struggle between control by the founder and delegation of authority. Adizes compared the period in an organization to that of parental control and delegating independence to a teenager. It is a time of struggle between founder, old guard, and professional management. It is a time to question, if more in quantity for the sake of more in profits, actually achieves growth or whether more sales resulting from quality sustains profit over time. It is a time of conflict. Adizes claimed that prime is the "optimum point on the Lifecycle curve."<sup>49</sup> A look at Figure 4 reveals that Adizes did not put prime at the pinnacle of the life cycle but on the up side. Adizes theorized that an organization at prime has the ability to continue its momentum; to increase its vitality; to reinvigorate its success and therefore, still had room to grow. Unfortunately, the organizational dynamics at this point may also eventually contribute to the loss of momentum and market share.

The stable organization reduces its research efforts and focuses on marketing to maintain or boost profits. Finance people and marketing people become more important than research or engineering people. Return on investment dominates the organizational

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<sup>49</sup> Adizes 56.

landscape. Return on investment becomes the dominant performance indicator. Old buddy networks emerge and there is little internal human conflict among people attempting to alter the future. Flexibility is gone. Creativity goes dormant. Still strong, the company “is at the end of growth and the beginning of decline.”<sup>50</sup>

According to Adizes the qualities that contribute to the success of organizational growth can also contribute to its decline. Flexibility is critical, however, uncontrollable flexibility or lack of flexibility, is pathological. The decline in flexibility and the dominance of controls eliminating flexibility are significant contributing factors that age the organization into “Aristocracy.” The advanced stages of Aristocracy reveal that the products of the organization are dated, stodgy, and not satisfying customer needs and everyone in the organization knows it but nobody, not even the CEO will do anything about it. The organization talks about the problem, but nothing is done to stem the decline or reinvent the organization.

Unlike an organization in the aristocracy stage, living off past success, not willing to change, raising prices instead of increasing quality; the organization in early bureaucracy sees a reduction in market share as a result of its lower quality, stodgy products, and higher prices. The old buddy systems fall and the nature of interpersonal relations are blame and “witch hunts” according to Adizes. Persons who sought change in earlier stages are gone and the persons who took less risk say “I told you we were in trouble” but accept no responsibility for the organization’s dilemma. Management in fighting is the name of the game, paranoia strikes deep, and no one is cognizant or concerned about the

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<sup>50</sup> Adizes 61.

outside environment, success of the products – the company is blind to advances of its competitors.

The end is near as the organization fully enters the bureaucracy stage. Adizes said that an organization in the bureaucratic stage accomplishes “very little which has meaning;” “little if anything ever happens.” “There are no results-orientation, no inclination to change, and no teamwork; there are mostly systems, forms, procedures and rules.”<sup>51</sup> “In a Bureaucracy, death is prolonged because the commitment is not to the organization’s clients, but to political interests that keep the organization alive for political reasons.”<sup>52</sup>

Most of us would associate death of an organization to that point in time when the organization no longer does business and closes its doors. Adizes said that death actually occurs before the stage of bureaucracy! Adizes stresses the importance of original idea or mission was that the entrepreneurs or founders use to create the original corporate success story stating that death occurs “when no one is committed to the organization anymore.”<sup>53</sup>

Adizes model also provides for premature death at any of the stages along the life cycle. The same behaviors that contribute to growth, contribute to decline. Adizes provides in his theory examples of wellness behavior resulting in organizational success and development. The model also shows where that same behavior can be pathological and result in the death of an organization along the developmental path. Entrepreneurial ideas

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<sup>51</sup> Adizes 80.

<sup>52</sup> Adizes 84.

<sup>53</sup> Adizes 84.

may never become organizations, organizations may never make it past early developmental stages, and organizations may never make it to prime.

Adizes counseled us to “identify the typical problems in an organization, those problems tell us where an organization is on the Lifecycle curve.”<sup>54</sup> Greiner counseled us to know where we are – know what stage of organizational growth we are operating at and to recognize the characteristics that describe organizations in each stage of growth.

Knowing where we are helps us determine where we need to go. Charting the course to where we need to go gets us to prime. Organizations need not grow old and die.

When the organization reaches Prime, the key to success is to deal with the *causes* of aging so the organization does not age. Aging is a process that does *not have* to occur in organizations. An organization can remain in Prime forever, if it can continuously rejuvenate itself...<sup>55</sup>

That is the good news for third branch administration.

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<sup>54</sup> Adizes 57.

<sup>55</sup> Adizes 4.

### Third Branch Administration: Where has it Been?

The literature on judicial administration and court administration contains a number of historical accounts of third branch administration. Among those histories are attempts to divide the activity into periods with notable beginnings, events, and endings. A few are discussed here.

In *Voices from a Decade Ago: The First National Symposium on Court Management*, Hudzik cited speakers at the symposium and summarized the issues they presented.<sup>56</sup> Hudzik characterized the themes that “carried into the deliberations” of the Second National Conference on Court Administration held in 1990<sup>57</sup>. Quoting Ernest Friesen, Hudzik said:

...court administration has gone through three stages. The first stage, which I call the stage of intrusion, occurred when a few people in a few places began to be accepted as working in the courthouse. ...The second phase was probably a stage of experimentation in which court administrators, court managers, and court executives explored different roles. ...The process of experimentation evolved into phase three – a process of survival.<sup>58</sup>

Perhaps it was this comment by Friesen that would generate twenty years of discussion about the status of court administration. Hudzik also quoted Geoff Gallas’ introductory comments that Gallas made at the symposium:

Each successive [symposium] activity revealed court management as a field in transition; as being made up of people who are engaged in more or less the same activity but who, when they strive toward a common identity, are barely able to achieve it, if indeed they can achieve it at

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<sup>56</sup> John K. Hudzik, “Voices from a Decade Ago: The First National Symposium on Court Management” *The Justice System Journal* Volume 15, Number 2 (1991): 563-579. HeinOnline 15 Just. Sys. J. 567 (1991-1992) August 11, 2004.

<sup>57</sup> Hudzik 563.

<sup>58</sup> Hudzik 566-567 quoting comments of Ernest Friesen.

all... Those engaged in the management of the courts do not make up a unified front. [There is a ] plurality of interests, uncertainty of content, and various criteria of success... Thus no one need apologize if the field is uncertain, unclear in its identity or core dimensions, or unable to reach consensus even of the extent of its boundaries.<sup>59</sup>

Lawson and Howard concluded in 1991 that court administration had evolved through three distinct stages: the court reform period, the “court management explosion”, and the “accountability, performance, efficiency, and effectiveness” period.<sup>60</sup> Lawson and Howard stated that the reform period started with Pound’s comments to the ABA in 1906 and ended in the 1960’s with the advent of the first trial court administrators in a number of states. Lawson and Howard stated: “Court Management was a growth industry during the 1970s” and proclaimed the period “The Court Management Explosion.”<sup>61</sup> Lawson and Howard perceived a change in court management in the 1980s with courts focusing more on outcome oriented concerns. Fifteen years of history have passed since the Lawson and Howard article. Lawson and Howard did not attempt to predict the future of court administration other than to conclude that it was a young profession, but one that had also matured. They did comment that: “...the complexity of state and trial court organization and functions, including those outlined here, require professional managers and staff who can participate with judges in policy formation and have a significant role in policy execution.”<sup>62</sup>

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<sup>59</sup> Hudzik 563 quoting comments of Geoff Gallas.

<sup>60</sup> Harry O. Lawson and Dennis E. Howard “Development of the Profession of Court Management: A History with Commentary” *The Justice System Journal* Volume 15, Number 2, 1991 HeinOnline 15 Just. Sys. J. (1991-1992) 595.

<sup>61</sup> Lawson and Howard HeinOnline 15 Just. Sys. J. (1991-1992) 591.

<sup>62</sup> Lawson and Howard HeinOnline 15 Just. Sys. J. (1991-1992) 597.

In 1993, Cole Blease Graham, Jr. authored the introductory chapter to the *Handbook of Court Administration and Management* providing background for the contributions of other authors to the *Handbook*.<sup>63</sup> Graham placed the court reform movement of the early 1900s into the larger political perspective of the populist and progressive movements. Graham recognized Pound's 1906 address to the ABA and the 1909 ABA response as the beginning of "the early phase (1900-1930)" of court reform and court management. Graham designated the years of 1930 – 1960 as the next phase of development for court management beginning with the leadership of Arthur T. Vanderbilt in the ABA and the creation of the Judicial Administration section of the ABA chaired by Chief Judge John J. Parker. Graham noted that during the 1950s, the first state court administrator (New Jersey) and the first trial court administrator (California) were appointed. Graham again used the larger political-social environment to identify the start of the next phase, the period of societal disorder that began in the 60s. Graham attributed the President's Commission on Law Enforcement and the Administration of Justice in 1967 as providing fuel to the court management movement. Graham said: "By the early 1970s, virtually every state in the country had adopted some recommendation of the court reform literature."<sup>64</sup> Graham said of this period, 1970 – 1990 that LEAA funds were: used to hire many court managers; to conduct research and publish that research, and; to train professional court managers. Graham viewed the period as years in which court management principles and practices were refined. He made special note of the development of standards including the *Standards Relating to Juror Use and*

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<sup>63</sup> Cole Blease Graham, Jr. "Reshaping the Courts: Traditions, Management Theories, and Political Realities" *Handbook of Court Administration and Management* Steven W. Hays and Cole Blease Graham, Jr., eds. (Marcel Decker, Inc.: New York, 1993) 3-25.

<sup>64</sup> Graham, Jr. 16.

*Management and the ABA Standards Relating to Court Organization* that not only helped start the period but that were subsequently revised in 1990 to help bring the period to a close.

Tobin identified periods of development of for judicial administration and court administration: early development of court administration (1900-1940); the development of judicial administration advocating and implementing judicial reform (1955-1980) that coincided with an expansion of court administration (1940-1980); the 80s – a period of implementation; and the “new reform era” that “will profoundly affect the way courts deal with the outside world.”<sup>65</sup>

Tobin identified Pound’s 1906 speech to the American Bar as the beginning of the period of early development of court administration. Tobin characterized that early period as one giving birth to court reform organizations. Tobin recognized the American Judicature Society as the first among them: “focused on judicial selection, tenure, compensation, and retirement rather than on court operations” and “instrumental in initiating the judicial council movement.”<sup>66</sup> Tobin stated that the formation and activity of judicial councils was characteristic of the period. Judicial councils, according to Tobin, “were designed to ascertain the needs of the court system, to propose policy and planning objectives for court improvement, and, in particular, to make recommendations on legislation. Tobin also noted that in California and Utah, judicial councils had considerable administrative

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<sup>65</sup> Tobin, *Creating the Judicial Branch*: 198.

<sup>66</sup> Robert W. Tobin, *An Overview of Court Administration in the United States* (National Center for State Courts, Williamsburg, Virginia, 1997) 15.

authority.<sup>67</sup> Tobin recognized closure of the period 1900-1940 with ABA President Vanderbilt's publication of the first court administration standards that promoted administrative roles for judges and advocated court administrators as the milestone that closed the period (1900-1940).

In *Creating the Judicial Branch: The Unfinished Reform* Tobin identified the years from 1955 to 1980 as years when reformist chief justices became instrumental in implementing judicial reform inside the courts. Up until this time, judicial reform was characterized by activities of organizations external to state courts. Tobin identified the Chief Justices who lead the judicial reform movement during those years: Harold Traynor, California; Edward Pringle, Colorado; Harold Fatzer, Kansas; Edward O'Neill, Ohio; Howell Heflin, Alabama; Arthur Vanderbilt, New Jersey, and; Charles D. Breitler, New York. Tobin said of this period: "In 1971 alone, one-quarter of the states effected major court reforms, a testimonial to the judicial leadership of that period."<sup>68</sup>

Simultaneously with this period, Tobin noted the continuing development of court administration during the years of 1940 to 1980. Tobin said that the period was characterized by "the emergence of a court reform agenda" that included "unification", assigning statewide administrative authority for courts to chief justices, birth and development of court administration as a profession, creation of more national organizations to support court reform, and "a trend toward a broader and more inclusive

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<sup>67</sup> Tobin, *An Overview of Court Administration*: 16.

<sup>68</sup> Tobin, *Creating the Judicial Branch*: 149.

legal culture.”<sup>69</sup> Tobin observed that in the first part of the period that: management accountability and authority and controls were missing; organizational structures competed and conflicted; lack of uniformity, and; there was a lack of management skills. Tobin characterized the period as one of simplifying jurisdictional and organizational structure and centralizing administration and financing. He said that the need for professionally trained court administrators, the formation of professional associations, and the formation of professional training programs were also characteristic of the latter part of the period of 1940 - 1980. Tobin emphasized that court reform agenda depended upon money and “without the federal money professional court administration and trial court administration would have grown at a slower pace.”<sup>70</sup>

Attempting to determine where third branch administration is in terms of organizational development is difficult. One could have followed the counsel and advice of Tobin:

The politics of court reform and unification does not lend itself to structured analysis, because each state moves to a different political rhythm. Moreover, there is no accounting for the gifted political leader who occasionally arises in time of need.<sup>71</sup>

Any attempt to defy Tobin’s warning will result certainly in objections and criticism to my conclusions. However, Gallas and Griller have issued a challenge for discussion and have asked the community to debate – they should be commended for the call to intellectual arms. Greiner and Adizes warn us that growth may be inhibited by the inability of an organization to figure out where it is and where it needs to go.

Organizational development theory does provide us a framework to debate the questions:

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<sup>69</sup> Tobin, An Overview of Court Administration: 18-19.

<sup>70</sup> Tobin, An Overview of Court Administration: 24.

<sup>71</sup> Tobin, Creating the Judicial Branch: 119.

is court administration in decline and are there fewer leaders? Tobin's warning must be cast aside now to place third branch administration within a modified organizational development model in an attempt to answer these pressing questions. Maslow, Greiner, and Adizes will provide structure to the analysis.

The following survey of history of third branch administration identifies milestones, events, action, and thinking from a beginning point, through phases of development, and ending in the here and now. Perhaps the least important part of the task at hand is to designate a specific year for the beginning and end of a phase. Does it matter that an infant left diapers behind and entered the "terrible twos" at 18, 24, or 26 months or is it more important that they just made the leap? For the purpose of this work, setting those years is somewhat arbitrary, but like previous works, an attempt to make a meaningful connection to events is made to distinguish phases. More important to the quest is to identify behaviors of third branch administration within the constructs of organizational development theory that may help determine where is it now?

It appears safe to conclude that those who have written short histories of the business have not analyzed history with the design of placing the events within an organizational development perspective. Unlike previous historical accounts, the history and discussion that follows, draws conclusions about the events and associates them with developmental phases of organizational growth of third branch administration.

To remind the reader, the emphasis here is on third branch administration rather than on analyzing the organizational development of particular entities like NACM or NCSC, nor is it an attempt to analyze parts of the business like training and development. Specific entities are included as indicators of the larger organization that the entities help form, namely, third branch administration. The models offer much for us to learn if we were to apply them to that task. The following section places history within the organizational development context and is followed by discussion and a model to answer the questions: where have we been and where are we now?

### **Viewing History from an Organizational Development Perspective**

If there is one thing we know about the business of third branch administration it is that reaching consensus is not easy. There is agreement in the literature of third branch administration that court reform the introduction of management concepts in courts began with Roscoe Pound's address to the ABA in 1906. It is this event that provides us a beginning for the organizational development analysis of third branch administration.

#### **Creativity – Courtship Phase: Conceptualization 1906 - 1948**

Roscoe Pound was Dean of the Harvard Law School in 1906 when he addressed the American Bar Association at its annual meeting in St. Paul, Minnesota on “The Causes of Popular Dissatisfaction with the Administration of Justice.”<sup>72</sup> The address, controversial at the time, has motivated and energized many court leaders over the years making Pound the defacto leader initiating a century of activity. The literature resounds with references

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<sup>72</sup> Roscoe Pound, “The Causes for Popular Dissatisfaction with the Administration of Justice.”

to and citations of Pound's address by leaders including Arthur T. Vanderbilt who recommended that Pound's address "be required reading once a year for every judge, lawyer, law professor, and student."<sup>73</sup> Roscoe Pound was the first contemporary thinker and leader in court administration and "The Causes of Popular Dissatisfaction with the Administration of Justice" was the contemporary cornerstone in the conceptualization phase of court administration. The conceptualization phase was characterized by the formation of institutions that begin to shape the business of administration of the judicial branch by the judiciary. Perhaps the leader who should be mentioned more frequently, however, is Arthur T. Vanderbilt. Nevertheless, practitioners, reformists, theorists, and academicians also contributed volumes to the field. It was a time when entrepreneurs of judicial reform sought financial investment in an idea. It was an age of excitement. It was an age of thought. It was an age of activism and commitment to judicial reform.

### ***American Judicature Society - 1913***

Herbert Lincoln Harvey, an attorney who thought he was not cut out to practice law, became a newspaper editor. Inspired by an entrepreneur named Ruggles who was at the time entangled in litigation, Harvey began carrying the torch for court reform. Ruggles financed the incorporation of the American Judicature Society (AJS) and financed operations through an endowment. Conceived as part of the Progressive movement, Harvey believed that "the times called for an association created for the sole purpose of encouraging the efficiency in the administration of justice."<sup>74</sup>

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<sup>73</sup> Arthur T. Vanderbilt, ed. Minimum Standards of Judicial Administration (The Law Center of New York University and the National Conference of Judicial Councils, 1949) xviii.

<sup>74</sup> Michal R. Belknap, To Improve the Administration of Justice: A History of the American Judicature Society (American Judicature Society, Chicago, IL, 1992) 25.

The first Board of Trustees of AJS included: Roscoe Pound; Harry Olson, Chief Justice of the Municipal Court of Chicago; Albert Kales, Esq., Northwestern University School of Law; Chief Justice John B. Winslow, Supreme Court of Wisconsin; Governor Woodside Ferris, Michigan; James Parker Hall, founder and Dean, University of Chicago School of Law; Frederick W. Lehman, former president of the ABA; Frederick Bruce Johnstone, Esq., and; Col. Nathan William, Esq.

Within the first couple of years, AJS would advocate for the merit selection of, the appointment of, discipline, and removal of state judges; selection of court officials, selection of juries; procedural rule making authority of courts, and; unification of courts and administration through administrative judges and justices. These ideas are frequently attributed to the National Center for State Courts, but their roots lie in the utterances of Roscoe Pound in 1906 and the “Bulletins” (later to become the “Journal” of AJS and eventually “Judicature”) in 1913 and 1914. AJS was a promoter of judicial administration and became a staunch supporter of court administration by co-sponsoring the formation of the Institute for Court Management (ICM) to train a cadre of court administrators. Gerald Snyder, President of AJS (1968-1970), collaborated with Ernest Friesen to draft a proposal for the Joint Committee for the Effective Administration of Justice that became the battle cry for Justice Tom Clark, Chief Justice Warren Burger, and President Nixon at the Williamsburg Conference in 1971.

Charles Ruggles would continue to underwrite the work of AJS through 1929 and the “loss of its patron plunged the American Judicature Society into a struggle for

survival.”<sup>75</sup> Carnegie stepped in to finance AJS, but in 1927 AJS turned to readers of its Journal asking them to purchase subscriptions and to become paid “members” of AJS which resulted in \$1,712 in income in 1927 and \$1,599 in 1928. AJS almost disappeared when the Carnegie Corporation came to the rescue again in 1933. Foundations and memberships expanded the work of AJS. Like many other judicial reform organizations, AJS would benefit from the Law Enforcement Assistance Administration.<sup>76</sup> Beginning in 1982, AJS began experiencing financial problems again resulting in reductions of staff and limiting research. Philanthropy and grants served to breathe life into AJS and once gone, the life of AJS was almost taken from it. Membership and subscription to Judicature has sustained the oldest reform institution in the business, but not to the level it once enjoyed.

### ***National Council of Juvenile Judges - 1937***

In 1937, the National Council of Juvenile Judges was founded by Gustav Schramm of the Juvenile Court of Allegheny County, Pennsylvania. The purpose of the Council was to provide specialized training for judges presiding over matters involving juveniles. The Council was headquartered at the University of Nevada in Reno, Nevada. The Council has since changed its name and is now known as the National Council of Juvenile and Family Court Judges, located in Reno, Nevada.

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<sup>75</sup> Belknap 69.

<sup>76</sup> Belknap 194.

*American Bar Association Minimum Standards on Judicial Administration –  
1938*

As President of the American Bar Association in 1937 and 1938, Vanderbilt labored for the development of judicial administration standards. Under the presidency of Arthur T. Vanderbilt, the American Bar Association's Section on Judicial Administration approved recommendations or further study from seven committees suggesting needed reforms and formulating standards. The seven committees were: Judicial Administration, chaired by Judge Edward R. Finch, New York, New York; Pretrial Procedure, chaired by Judge Joseph A. Moynihan, Detroit, Michigan; Trial Practice, chaired by Judge W. Calvin Chestnut, Baltimore, Maryland; Trial by Jury including selection of Jurors, chaired by Judge John P. Dempsey, Cleveland, Ohio; Law of Evidence, chaired by Dean John H. Wigmore, Chicago, Illinois; Appellate Practice, chaired by Professor Edson R. Sutherland, and; Administrative Agencies and Tribunals, chaired by Ralph M. Hoyt, Esquire, Milwaukee, Wisconsin.<sup>77</sup> Among the topics of study and recommendations were: promptness of judicial decisions, selection of jurors and courts conducting the voir dire, court control of discovery, calendar administration and procedures regarding the production of the record of proceedings. The Judicial Administration Committee made the milestone recommendations adopted by the American Bar Association at its annual meeting in July of 1938:

- (1) That provision should be made in each state for a unified judicial system with power and responsibility in one of the judges to assign judges to judicial service so as to relieve congestion of dockets and utilize the available judges to the best advantage.

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<sup>77</sup> Vanderbilt 505-506.

(2) That Judicial Councils should be strengthened with representation accorded the Bar and the Judiciary Committee of the Legislative Department.

(3) That quarterly judicial statistics should be required.<sup>78</sup>

In 1948, as Dean of the New York University Law School, Arthur T. Vanderbilt edited the work of the ABA publishing the seminal work: *Minimum Standards of Judicial Administration*. The results of this labor are evident in some of the milestones that follow.

### ***Institute of Judicial Administration – 1938***

Another significant milestone in the conceptualization of the field of court administration was the creation of the Institute of Judicial Administration. Although Pound may have kicked off the game, another stalwart in the field of court leaders, Arthur T. Vanderbilt, took the judicial administration ball and ran with it. The result of Vanderbilt's continual efforts on behalf of court improvement was his success, in almost single handed fashion, creating the Institute for Judicial Administration at the New York University Law Center.<sup>79</sup> The objectives of the institute as stated in the articles of incorporation:

By a systematic, continuous study of the structure, operation and manpower of the state and federal courts of the United States and the courts of other common law and civil law jurisdictions, looking forward to a science as well as an art of judicial administration,

By assembling and supplying information as to all available data on any subject of court procedure or judicial administration, including ways and means of effectuating improvements,

By holding conferences on a local, state, regional or national basis to encourage the improvement of the administration of justice, and

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<sup>78</sup> Vanderbilt 29.

<sup>79</sup> Fannie J. Klein, Changing the System: The Twenty-Five Year Crusade of the Institute of Judicial Administration For Equal Justice in American Courts An Historical Perspective (Meilen Press, Inc. 1978).

By publishing studies in the field.<sup>80</sup>

The Institute of Judicial Administration claims in 1957 to have been the first to train judges, administrators, and others “in the scientific methodology of examining their own court systems.”<sup>81</sup> The Institute’s first Director was Professor Sheldon D. Elliott former Dean of the School of Law at the University of Southern California. A person who was given significant credit for their professional support of the Institute was Professor Fannie J. Klein, Law Librarian and Research Coordinator for IJA. Professor Klein is the author of a number of works in the field of judicial administration and noted for her bibliographical publications on the field. However, from 1937 until his death in 1957, the milestones in judicial administration were largely inspired by one court leader, Arthur T. Vanderbilt.

### ***The Administrative Office of the United States Courts – 1939***

The first judicial conference of the federal courts, Conference of Senior Circuit Judges, was created in 1922.<sup>82</sup> It may shock some readers to know that the federal courts were once administered by the “Department of Justice through the Administrative Assistant to the Attorney General”<sup>83</sup> as is the case for many courts outside the United States. The first attempt to remove management of the judicial branch from executive branch control was not instigated by a court leader, but rather by an executive branch agent, United States Attorney General Cummings. The first bill introduced to create the Office of the Proctor

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<sup>80</sup> Klein 6.

<sup>81</sup> Kline 41.

<sup>82</sup> Act of September 14, 1922. U.S.C. 28 § 218.

<sup>83</sup> Will Shafroth, “Improving Judicial Administration in the State Courts” *Missouri Law Review* January 1943, Volume VIII Number 1 HeinOnline 8 Mo. L. Rev: 6. Note: Will Shafroth served as the Chief of the Division of Procedural Studies and Statistics of the Administrative Office of the United States Courts in 1943.

failed because it was incorporated into a larger court reorganization bill. However, Cummings' idea was endorsed by the Judicial Conference. Chief Justice Hughs appointed a joint committee and asked Attorney General Cummings to draft the statute to create the Administrative Office of the United States Courts.<sup>84</sup> Why replace the Attorney General with a court executive? “ ‘The design of the legislation is to furnish the federal courts the administrative machinery for self-improvement through which those courts will be able to scrutinize their own work and develop efficiency and promptness in their administration of justice.’”<sup>85</sup> Shafroth adds to the justification that creating an administrative office of the courts “is a logical development in judicial administration since it places in the hands of an agency under judicial control such functions as budget making, auditing, and statistical reporting, all of which should be free of executive control.”<sup>86</sup>

The duties of the Administrative Office of the United States Courts as envisioned by the Act were:

1. Supervision of the clerical and administrative personnel of the federal courts, including fixing of salaries and establishment of grades, but not including the appointment of personnel which remains in the control of the judges themselves and of the clerks of court.
2. The collection and reporting of judicial statistics concerning civil, criminal, and bankruptcy cases in the federal courts.
3. Presentation of the budget of the judicial department to Congress.

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<sup>84</sup> Vanderbilt 30.

<sup>85</sup> Shafroth 9.

<sup>86</sup> Shafroth 7.

4. The disbursement of monies for the operation of the courts.
5. The furnishing of equipment and supplies for the courts including law books for the judges, and the providing of accommodations for the use of the court and court personnel.
6. Auditing the accounts of clerks of court, referees in bankruptcy, United States commissioners, and other court officials.
7. The making of recommendations concerning the judicial business to the Judicial Conference.<sup>87</sup>

The federal model for judicial conferences and administrative offices of the courts would become the court organizational model for the states. A few states preceded the federal model with an Executive Secretary of the Judicial Department in Connecticut and an Executive Secretary to the Judicial Council in New York.<sup>88</sup> Some may argue that the title of executive secretary is not the same as court executive but an analysis of the functions of the first appointees to these positions shows that their responsibilities were similar to the federal responsibilities listed above.

### ***Model Act to Provide for an Administrative Office of State Courts - 1948***

In 1942 and again in 1946, the American Bar Association Section on Judicial Administration established a committee whose purpose was to study and serve as a clearinghouse for the creation of Administrators of the State Courts. The Report of the ABA Committee on An Administrative Office of State Courts supported the creation of State Court Administrators. In 1948, the Conference of Commissioners on Uniform State Laws approved a Model Act to Provide for an Administrator for the State Courts. The position known as the state court administrator would be supervised by the court of last

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<sup>87</sup> Shafroth 8.

<sup>88</sup> Shafroth 8-10.

resort and would perform the following management functions: “examining the state of the docket and recommending assignment of judges where courts need assistance, collect and compile statistics, prepare and submit budget estimates, obtain reports from various courts on the state of the business of the courts, and attend to any other matters assigned by the court of last resort.”<sup>89</sup>

### **Infancy and Direction Phase: Taking Risk 1949 – 1965**

The transition between the courtship-creativity phase and infancy-direction involves risk according to the theorists. That risk is the same risk that is taken by the entrepreneurs, the thinkers, the visionaries, the founders – they risk their career, reputation, and money in pursuit of a dream. It should come as no surprise that when Vanderbilt left the ABA as President and became the Chief Justice of New Jersey that he would implement the “Model Act” legislation that he worked to pass. As the Chief Justice of New Jersey he would hire the first management professional recognized as a State Court Administrator. Political risk was added to the entrepreneurial milieu. To say it was an age of no managerial depth in courts is an understatement. These were the days of one person shows – there was no one to delegate professional management tasks to and funding for court management implementation was non-existent.

### ***Conference of Chief Justices (CCJ) – 1949***

The creation of the Conference of Chief Justices is credited to the work of three Chief Justices: Chief Justice Arthur T. Vanderbilt of New Jersey, Chief Justice Robert G.

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<sup>89</sup> Vanderbilt 31-32.

Simmons of Nebraska, and Chief Justice Laurance M. Hyde of Missouri.<sup>90</sup> Forty-four of then forty-eight states were represented at the first CCJ meeting in St. Louis, Missouri, in September of 1949. Attendees elected Chief Justice Hyde chairman and Chief Justice Edward W. Hudgins of Virginia as vice-chairman. Also elected to the Board of Directors (referred to as the executive council until 1983) of CCJ in its first year were Chief Justices: John E. Hickman of Texas, Charles Loring of Minnesota, John T. Loughran of New York, Stanley E. Qua of Massachusetts, and Carl V. Weygandt of Ohio. The first resolution of CCJ was to accept the offer by the Council of State Governments to serve as secretariat to CCJ. As a result of differences over governance of the Council of State Governments in 1974, the governors and state legislatures moved to distance themselves from CSG. In 1976, CCJ voted to designate the National Center for State Courts as secretariat since NCSC was governed by courts rather than legislative and executive branch representatives.<sup>91</sup>

In 1983, CCJ incorporated as a non-stock (non-profit) corporation in Virginia. The bylaws provide that membership in the Conference is limited to the “highest judicial official of each state of the United States; the District of Columbia; the Commonwealth of Puerto Rico; the territories of American Samoa, Guam, and the Virgin Islands; and the Commonwealth of the Northern Mariana Islands,”<sup>92</sup> and the presiding judges of the courts of last resort with exclusive jurisdiction over criminal matters.

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<sup>90</sup> History of the Conference of Chief Justices (National Center for State Courts, 1993) 13.

<sup>91</sup> Fetter 24.

<sup>92</sup> History of CCJ 14.

According to the history of the conference, the articles of incorporation stated that the purpose of CCJ was ‘to provide an opportunity for consultation among the highest judicial officers of the several states, commonwealths, and territories concerning matters of importance in improving the administration of justice, rules and methods of procedure, and organization and operation of state courts and judicial systems, and to make recommendations and bring about improvements in such matters.’<sup>93</sup>

### ***The First “Model Act” State Court Administrator – 1953***

Some states may have had an assistant or executive secretary to the chief justice prior to 1953. However, Chief Justice Arthur T. Vanderbilt of New Jersey appointed the first professional state court administrator as perceived by the “Model Act” of 1948. Chief Justice Vanderbilt appointed Edward B. McConnell who had an A.B. and LL.B. from the University of Nebraska and an M.B.A. from Harvard. He served in the Army Corps of Engineers in the European Theater of operations in World War II. He served as faculty at Rutgers University School of Business Administration. He was an associate of the law firm of Toner, Speakman, and Crowley in Newark, New Jersey. Prior to his appointment as the Administrative Director of the Courts of the State of New Jersey, Ed McConnell served as an administrative and legal assistant to Chief Justice Vanderbilt. In 1973, Ed McConnell became the President of the National Center for State Courts and served until his retirement in 1990. For a more information about Ed McConnell see *A Profile of Ed McConnell* by Mark A. Zaffarano.<sup>94</sup>

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<sup>93</sup> History of CCJ 14.

<sup>94</sup> Mark A. Zaffarano “A Profile of Ed McConnell” The Court Manager Volume 5, Number 3, Summer (National Association for Court Administration 1990) 21.

*National Conference of Court Administrative Officers (NCCAO) – 1955 aka  
Conference of State Court Administrators (COSCA) – 1972*

The Conference of State Court Administrators evolved from the National Conference of Court Administrative Officers. Hubert D. Bennett of Virginia and Edward B. McConnell of New Jersey accompanied their Chief Justices to CCJ meetings in 1953. Bennett and McConnell are credited with the idea that court administrative officers should meet regularly. Chief Justice Arthur Vanderbilt of New Jersey approved of the idea and invited court administrative officers to attend the CCJ meeting in 1954. Eight administrators attended the first meeting in 1955 creating NCCAO and electing Edward C. Fisher the first chairman of the conference. Edward Fisher is considered the first state court administrator in the United States taking the position of Executive Secretary of the Judicial Department of Connecticut in 1937.<sup>95</sup>

Although the founders of NCCAO saw the organization as one for state level administrators, membership was determined by the NCCAO Executive Committee. There being no alternative organization for trial court administrators, NCCAO, perhaps reluctantly, decided to selectively admit trial court administrators. Edward C. Gallas, Los Angeles Superior Court Executive Officer (reportedly the “first metropolitan trial court administrator”<sup>96</sup> and John J. Lavelle, Court Administrator of the Court of Common Pleas of Cuyahoga County (Cleveland) Ohio were admitted as members of NCCAO in 1959.<sup>97</sup>

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<sup>95</sup> Fetter 5.

<sup>96</sup> Michael G. Ryan, “Court Reform: The Metropolitan Trial Court Status in a State Court System” The Column December 1973 (National Association of Trial Court Administrators) 3.

<sup>97</sup> Fetter 7.

Additional trial court administrators were admitted in addition to members of the Federal Administrative Office of the Courts.

The history of COSCA states that the original purpose of NCCAO was: “to facilitate cooperation, consultation and exchange of information by and among those persons and offices directly concerned with the administration of the courts; to foster the utilization of the principles and techniques of modern business management in the field of court administration; and thereby to improve the administrative practices and procedures of the courts in various jurisdictions.”<sup>98</sup>

By 1964, the number of trial court administrators had increased. Seeing a difference between the functions of trial court administrators and state court administrators, the Conference approved an amendment proposed by Edward McConnell limiting membership of trial court administrators to those from jurisdictions with populations of 500,000 or more. However, trial court administrators from smaller jurisdictions could be associate members. In 1972 with Harry O. Lawson State Court Administrator of Colorado as Chair, NCCAO members approved revised bylaws limiting membership to state court administrators only and changing the name to the Conference of State Court Administrators (COSCA).<sup>99</sup> The Articles of Organization of COSCA set forth a more specific purpose:

to deal with the problems of state court systems and,  
toward that end, it shall cooperate with the Conference of  
Chief Justices; shall seek to formulate fundamental policies

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<sup>98</sup> Fetter 8.

<sup>99</sup> Fetter 18.

and standards for state court administration; shall facilitate cooperation and consultation and exchange of information by and among national, state and local offices...; shall foster the utilization of the principles and techniques of modern business management...; and shall thereby endeavor to improve administrative practices and procedures in, and to increase the efficiency and effectiveness of, all courts in the several states.<sup>100</sup>

COSCA followed CCJ in designating the National Center for State Courts as the secretariat for the organization.

The history highlights some of the recurring discussions of NCCAO as it evolved into the more focused and mature organization, COSCA. Obviously, many discussions centered on purpose and membership. The topic of that first opening session in 1956 and recurring many times thereafter was the desire to create uniform judicial statistics among the states.

The subject would later evolve into the Court Statistics Project, an annual statistical comparison among the states, prepared by the National Center for State Courts in partnership with COSCA. Perhaps one of the more interesting recurring discussions centered on the chronic action of the Federal government to ignore courts or relegate courts to minimal financial support by comparison to other justice entities in Federal funding programs, particularly, LEAA.

### ***The First Trial Court Administrators – 1950***

The earliest date documented for the appointment of a trial court administrator was 1950 and Pennsylvania was reported to have 6 court administrators working in trial courts by 1957.<sup>101</sup> However, the literature recognizes Edward C. Gallas as the first professional

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<sup>100</sup> Fetter 20.

<sup>101</sup> Lawson and Howard 589.

trial court administrator. The Los Angeles Superior Court appointed Edward C. Gallas as the Court Executive in 1957.

***The Joint Committee for the Effective Administration of Justice – 1961***

Collaboration for the purpose of judicial reform may be more evident in the past than evidenced today. Perhaps there is not a better example of collaboration than the Joint Committee for the Effective Administration of Justice. Although housed by the ABA, the Joint Committee, as its name implies, was a joint effort, owned equally by the participants as opposed to being owned by one of the sponsors. The Joint Committee was initiated by John Satterfield, then president-elect of the American Bar Association who made judicial reform a part of his ABA Presidency. Satterfield's action was inspired by discussions with U. S. Supreme Court Associate Justice Tom C. Clark who encouraged collaboration of judicial reform groups. The Joint Committee was a collaborative effort sponsored by the ABA Section on Judicial Administration, the Institute of Judicial Administration (IJA), and the American Judicature Society (AJS). Justice Clark became chair of the Joint Committee. Justice Clark appointed Ernest Friesen, then with the Department of Justice, to direct staff efforts for the committee.<sup>102</sup>

AJS contributed the time of their Assistant Directors and paid for Milton Moskau to work with Friesen in direct support of the committee and to search for money to support committee efforts. The Kellogg Foundation contributed \$116,000. The ABA contributed cash and provided facilities and personnel to support the committee staff. Other

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<sup>102</sup> Belknap 175.

foundations and grants supported the effort of the Joint Committee.<sup>103</sup> The work of the Joint Committee focused on education and public relations concerning judicial reform. The objective of the Joint Committee citizen conferences was to build public trust and confidence through judicial reform. Again, concepts that have been credited to the National Center for State Courts actually surfaced much earlier in judicial administration history. However, there was another thread of thought that emanated from the Joint Committee. Justice Clark thought that judicial reform was far too important to handle through committees alone, there needed to be an entity dedicated to judicial reform and the administration of the state courts. Following discussions at the ABA convention in 1969 and inspired by Justice Clark as chair of the Joint Committee, Gerald C. Snyder, president of AJS (1968-1970) and Ernest Friesen discussed the matter further. An action committee was formed and Ernest Friesen, then Director of the Administrative Office of the United States Courts, and Glenn R. Winters, Executive Director of AJS developed the concepts concerning the creation of an American Judicial Center for state courts.<sup>104</sup> The plan was approved by the ABA Section on Judicial Administration, the Conference of State Trial Judges, the Appellate Judges Conference, and the National Conference of Special Court Judges. The work of the Joint Committee had become the roadmap for Chief Justice Burger's call for a National Center for State Courts at the Williamsburg Conference in 1971.

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<sup>103</sup> Belknap 176.

<sup>104</sup> Belknap 186.

### **National Conference of Metropolitan Courts – 1963**

The National Conference of Metropolitan Courts was founded in 1963. Justice Tom C. Clark orchestrated the creation of the Conference consisting of the presiding or chief judges of sixty of the largest metropolitan courts. The purpose of the Conference was to identify best practices and promote adoption of those practices among member courts. The Conference was instrumental in supporting efforts to analyze backlogs, identify causes, and build practices to reduce delay in metropolitan courts.<sup>105</sup> Unfortunately, no history of the Conference resides within the NCSC library. Inquiries were made to determine if a history of the Conference had ever been written but no answer had been received as of the date of submission of this paper.

### **The Go-Go and Delegation Phase: Full Scale Implementation 1966 - 1990**

It can be said that the conceptualization phase was characterized primarily by the formation of court reform organizations. They all contributed to creating a forum for court reform laying the foundation for an implementation phase. The implementation phase, as we have seen, was repeatedly assisted by money from foundations. Typical of such processes, implementation requires resources beyond conceptualization and planning. The implementation of court reform thinking that originated in the conceptualization phase would get its major financial support through Federal grant programs.

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<sup>105</sup> Thomas Church, Jr., Alan Carlson, Jo-Lynne Lee and Teresa Tan. Justice Delayed: The Pace of Litigation in Urban Trial Courts. (National Center for State Courts, Williamsburg, Virginia: 1978) 105.

*National Association of Trial Court Administrators (NATCA) – 1966*

At a meeting in Los Angeles in 1966, six trial court administrators “identified the need for a national organization”<sup>106</sup> separate from National Association of Court Administrators that would be “dedicated to the improvement of the administration of justice in the trial courts.”<sup>107</sup> The six organizers of NATCA were: Gordon W. Allison, Court Administrator, Maricopa County, Arizona; Edward G. Gallas, Executive Officer, Superior Court, Los Angeles County, California; David J. Saari, Court Administrator, Multnomah County, Oregon; Alvin L. Short, Court Administrator, San Bernardino County, California; Paul H. Steiling, Court Administrator, Santa Clara County, California, and; Robert C. Wetherholt, Executive Officer, Superior Court, King County, Washington.<sup>108</sup> The first meeting of NATCA was held in Phoenix in April of 1966 and twenty court administrators attended the conference.

In 1972, NATCA adopted Canons of Ethics. In 1974, NATCA designated the National Center for State Courts as its secretariat. The history of NATCA credits a few organizations and people instrumental in assisting the organization in its developmental years: Ernest Friesen who was a regular speaker at the annual conferences and assisted NATCA in their educational efforts; Dean Laurence M. Hyde, Jr. of the National College of the State Judiciary (National Judicial College) who also helped with educational programming; Dean Fannie Klein of the Institute of Judicial Administration who provided NATCA members with surveys and studies conducted by IJA, and; Glen R.

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<sup>106</sup> Gordon Allison and J. Paul Peoples, “A History of the National Association of Trial Court Administrators” The Column, April, 1974 (National Association of Trial Court Administrators) 1.

<sup>107</sup> Allison and Peoples 1.

<sup>108</sup> Allison and Peoples 1.

Winters, Executive Director of the American Judicature Society who contributed services to NATCA in its early years. David Saari, Gordon Allison, Paul Steiling, Benjamin Mackoff, Paul Peoples, Rita Prescott, and Paul White served as NATCA's Presidents over the first ten years of the organization. Objectives of NATCA as stated in the By Laws in 1974 were:

Increase the proficiency of trial court administrators.  
 Improve the administration of justice through the application of modern management techniques. Promote the independence of the judiciary. Determine, formulate, and declare fundamental policies, principles, and standards involved in the judicial administration, and to standardize judicial terminology and statistical reporting methods. Promote coordination of judicial research activities and furnish a forum for interchange of practical information relating to judicial administration. Aid in the improvement of judicial administration with particular emphasis on the study, development, and use of scientific and technological methods.<sup>109</sup>

Drawing on the discussion that follows, NATCA was one of the “court reform” organizations that benefited in a small way from LEAA funds underwriting a meeting of the NATCA Board to “formulate a plan of action that will provide interplay of ideas and cooperation among the various court-related associations that are springing up throughout the country.”<sup>110</sup>

### ***National Association of Court Administrators (NACA) – 1968***

“The National Association for Court Administration (NACA) was conceived at a meeting held in Chicago in December, 1967.”<sup>111</sup> According to *The Court Crier*, the publication of

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<sup>109</sup> *The Column*, August, 1974 (National Association of Trial Court Administrators) 1.

<sup>110</sup> *The Column*, Volume 3, Number 2, November – December, 1972 (National Association of Trial Court Administrators) 1.

<sup>111</sup> “History of the Association” *The Court Crier* First Edition, March, 1970 (National Association for Court Management).

NACA, fifty court administrators and clerks attending the first ABA Traffic Conference and selected a committee to draw up proposed bylaws for this new organization.

Members of the bylaws committee included: John H. Petersen, Paul Pomponio, Art Anderson, Terry Aragon, Jacque Menke, Harry Shumaker, and John Hayden. In December, 1968, about seventy court administrators and clerks met in New Orleans and adopted bylaws. The first officers of NACA were: John H. Petersen, San Diego, California, President; Paul Pompinio, First Vice President; Arthur Anderson, Second Vice President; Harry Shumaker, Secretary, and; Terry Aragon, Boulder, Colorado, Treasurer. In 1971, NACA had 94 members. By 1976, NACA had grown to 550 members.<sup>112</sup>

NACA stated that its purpose was: “To associate any person serving in a non-judicial capacity as court clerk, administrator, or in any other administrative capacity within the framework of court administration in an effort to better court administration.”<sup>113</sup>

NACA’s stated goal in 1971 was: “The improvement of court management service to the community, exchange of solutions to problems, court administration professionalism, and the exchange of information adaptable to all administrators.”<sup>114</sup>

### ***Law Enforcement Assistance Administration (LEAA) – 1968, 1976***

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<sup>112</sup> *The Court Crier* Fourth Quarter, 1975 (National Association for Court Administration) 11.

<sup>113</sup> *The Court Crier*, Volume 1, Number 4, October-December 1971 (National Association for Court Administration).

<sup>114</sup> *The Court Crier* Volume 1, Number 4, October-December 1971 (National Association for Court Administration).

The Omnibus Crime Control and Safe Streets Act of 1968 created LEAA. LEAA provided federal aid to state and local governments for the following purposes: “(1) to encourage state comprehensive planning for criminal justice improvements; (2) to provide technical and financial assistance to improve and strengthen law enforcement and criminal justice; (3) to conduct research and development projects to improve criminal justice operations; and (4) to develop and transfer to the states new techniques and methods to reduce crime, and detect, apprehend, and rehabilitate criminals.”<sup>115</sup>

Courts were not specifically authorized in the law for grants in the beginning of LEAA. Direct funding through grants to courts was not specifically authorized until 1976.<sup>116</sup> However, even after their inclusion in 1976, courts never benefited to the degree that law enforcement benefited in terms of the total dollars awarded. Part of the problem surrounded the intent of the Safe Streets Act – it was directed at crime. Crime is but one part of the court environment, but efforts of courts to assign resources to criminal cases are always compromised by the necessary attention to all other case types that courts must manage. Adding to these problems were problems of program administration expressed well by then Acting Director of the Office of Justice Assistance in the U. S. Department of Justice:

Increasingly, therefore, recipients found the program mired in red tape and were frustrated at the time-consuming and intricate process to obtain project funding. As the level of funding for the program began to taper off in the late seventies, some jurisdictions concluded that participation in

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<sup>115</sup> Robert F. Diegelman, “Federal Financial Assistance for Crime Control: Lessons of the LEAA Experience” Symposium on the Attorney General’s Task Force on Violent Crime. 73 J. Crim. L. & Criminology 994, Northwestern School of Law, 1982. LEXIS 12/06/2004.

<sup>116</sup> Diegelman 998.

the program simply was not worth the administrative expense and headache.<sup>117</sup>

The short LEAA history for courts is courts were officially recognized as intended recipients of LEAA funds eight years after passage of the Safe Streets Act. Upon authorization of courts as legitimate grant recipients in 1976, processes enabling third branch administration to participate had to be put into place. Each State Planning Agency (SPA), the state organizational unit charged with creating a plan and administering the LEAA program, had to: “contain as a minimum three representatives of the judiciary: the chief justice, state court administrator and a ‘local trial court judicial officer.’”<sup>118</sup> The 1976 amendment to the Safe Streets Act encouraged states to establish Judicial Planning Committees (JPC) and the Act required that for each JPC that the SPA “must allocate \$50,000 from its block grant for use by its JPC.”<sup>119</sup> Courts had barely begun to take advantage of the act when dissension over Federal agency responsibilities and debate on the effectiveness of the program began to erode the stability of LEAA. National Association of Trial Court Administrators (NATCA) sounded the alarm in April of 1977 reporting in *The Column*: “the House Budget Committee has recommended slashing LEAA’s fiscal 1978 budget \$200 million.”<sup>120</sup> But LEAA survived another challenge and perhaps the reason allegedly was best expressed by an aide to then Attorney General Bell: “you can buy a lot of support with 6 billion.”<sup>121</sup> The bill to reorganize and renew LEAA in 1978 changed the name of the state planning agencies to criminal justice councils and

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<sup>117</sup> Diegelman 1004.

<sup>118</sup> The Column Volume 8, Number 1, February 1977 (National Association of Trial Court Administrators) 4.

<sup>119</sup> The Column Volume 8, Number 1, February 1977 (National Association of Trial Court Administrators) 5.

<sup>120</sup> The Column Volume 8, Number 2, April 1977 (National Association of Trial Court Administrators) 7.

<sup>121</sup> The Column Volume 9, Number 4, August/September 1978 (National Association of Trial Court Administrators) 3.

required three representatives of the courts. Judicial Coordinating Committees that were created in the 1976 reauthorization retained with the “minimum” \$50,000 yearly allocation of Federal funds. However, the state plan and approval for the use of LEAA funds remained within the control of the state executive branch. This was in contrast to the resolution of the Conference of Chief Justices that advocated that the “amount of federal funds to be allocated (to state courts) should be fixed by the U. S. Congress itself” and that “federal funds appropriated (for state courts) should be allocated for this purpose in each of the states by that entity responsible under state law for the administration of the courts.”<sup>122</sup>

Over time support for LEAA dwindled amidst the conflict. The resulting reductions in appropriations and continuing dissention lead to the eventual elimination of LEAA. Assistance for the courts would surface in the form of the State Justice Institute (SJI). However, major federal assistance would resurface for the law enforcement community through Byrne funds and homeland security funds while much smaller amounts were made available to courts through SJI and other federal programs, and through earmarked funds including those pushed through by local lobbying efforts. Byrne and homeland security funds appear to be LEAA history repeating itself in terms of Congressional financial help to court reform organizations and state and local courts.

Nevertheless, the Federal government, primarily through the Department of Justice and LEAA assisted in the implementation of third branch administration by providing cash the conceptual and implementation phases of third branch administration. Evidence of

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<sup>122</sup> The Column Volume 9, Number 4 (National Association of Trial Court Administrators) 4.

that fact is abundant as instances of it appear in this capsulated history of the development of third branch administration.

### ***The National Judicial College – 1978***

The American Bar Association offered courses for judges prior to 1978. The National Judicial College was created in 1978 to provide training and education for judges.

### ***The Institute for Court Management (ICM) – 1970***

Chief Justice Warren Burger addressed the American Bar Association in 1969 calling for a “corps of trained court administrators.”<sup>123</sup> Chief Justice Burger initiated a series of meetings to build the corps of professional court managers. The first meeting took place in September of 1969 and included Chief Justice Burger; Bernard Segal, ABA President at the time; and, Ernest Friesen, then Administrative Director of the United States Courts.<sup>124</sup>

The ABA Task Force that grew out of Chief Justice Burger’s efforts conducted meetings in the Winter of 1969. Participants on the ABA task force included: Ernest C. Friesen, Director of the United States Courts and Warren Olney, former Director; Edward McConnell, Court Administrator for the State of New Jersey; Dr. George Graham, Executive Director of the National Academy of Public Administration; Franklin Kilpatrick, Dean of Graduate Studies, University of Delaware; Edward C. Gallas, former Administrator of Los Angeles Superior Court; Judge Gerhard Gessell, U. S. District

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<sup>123</sup> Institute for Court Management, *Annual Report 1976* (Denver, Colorado) 2.

<sup>124</sup> Geoffrey S. Gallas, *Court Executive Training Program Design: “Documentation of First Training Effort”* (Institute for Court Management, University of Denver College of Law, Denver, Colorado 1970) 2.

Court, District of Columbia; Justice Louis Burke of California; Earl Kinter, former Chairman of the Federal Trade Commission; Frank Reifsnyder, then Chairman of the ABA Section on Judicial Administration; Arthur Naftalin, former Mayor of Minneapolis; Dwight Ink, Assistant Director of the Bureau of the Budget; Paul Dembling, General Counsel of GAO; James R. James, Chairman of the National Conference of Court Administrative Officers; Harry Lawson, Court Administrator of the State of Colorado; Bert Early, ABA Executive Director; and, Marvin Bower, ABA Consultant.<sup>125</sup>

With the support \$750,000 from the Ford Foundation, the Institute for Court Management held its first Board of Trustees meeting in February of 1970. The American Bar Association, The American Judicature Society, and the Institute of Judicial Administration each selected four members to the Board of Trustees. The Board appointed Ernest C. Friesen as Executive Director and selected the University of Denver, College of Law to house the Institute.<sup>126</sup> Advice on the educational aspects of the program was sought through a panel of educators and public administration advisors appointed by the National Academy of Public Administration and assisted by a practitioner “Visiting Committee of Judges selected by Chief Justice Berger including Federal judges, state Chief Justices, and Chief Judges of trial courts.”<sup>127</sup>

The Institute for Court Management graduated thirty-one persons in the first class that began study in 1970. Tables 1 through 3 identify the Fellows from the first three classes of the Court Executive Development Program resulting from the initiative described

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<sup>125</sup> Gallas, Court Executive Training Program 2-4.

<sup>126</sup> Gallas, Court Executive Training Program 5.

<sup>127</sup> Gallas, Court Executive Training Program 6-11.

above. These Fellows of the Institute were the first people specifically trained for the new profession of court administration. By the nature of being first ICM Fellows should be considered leaders in the field of court administration. They broke ground for the thousands entering the profession after them (see [www.ncsconline.org](http://www.ncsconline.org) for a list of persons who have become Fellows of the Institute for Court Management by year of graduation).

### ***Graduate Programs in Court Administration – 1969 – 1973***

According to Friesen, Gallas, and Gallas three schools had graduate offerings in court administration or had announced intentions to do so between 1969 and 1971: American University, the University of Denver, and the University of Southern California. These authors writing in *Managing the Courts* also noted that one university had eliminated plans for a court management program due to a lack of interest on the part of faculty and students.<sup>128</sup> These are the Masters Degree programs that the “business” tends to refer to when speaking of advanced degree programs in judicial administration. However, other universities through the years professed to offer public administration programs with studies in judicial administration, however, many of them emphasized criminal justice with course work in judicial administration. Graham claims that as many as 40 universities were offering a “formal master of judicial administration (MJA) degree” in the early 70s.<sup>129</sup>

### **American University Center for the Administration of Justice – 1970**

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<sup>128</sup> Ernest C. Friesen, Edward C. Gallas, and Nesta M. Gallas, *Managing the Courts* (Bobbs-Merrill Company, Inc., New York, 1971) 8-9, 107.

<sup>129</sup> Cole Blease Graham, Jr. 18.

In 1970, American University began offering a Master's Degree in Administration of Justice with coursework in judicial administration. The program began in the School of Continuing Education and moved to the College of Public Affairs. The Masters Program in Administration of Justice terminated in 1980 when the program was renamed and moved to the College of Public and International Affairs offering a Masters Program in Justice. The nature of the program continued to change and degree offered today is a Masters in Justice, Law and Society. During the years when the program provided coursework in judicial administration, Dr. David Saari served as the Director of the Center for the Administration of Justice and the School of Justice.<sup>130</sup>

#### **University of Denver College of Law – 1971**

Harry O. Lawson, state court administrator of Colorado, was also an adjunct professor at the University of Denver and directed graduate studies in judicial administration. Harry O. Lawson is credited with establishing in 1971 “the first graduate program (Master of Science in Judicial Administration) for court managers in the country.”<sup>131</sup> Harry O. Lawson resigned from the courts in 1977 to dedicate all of his effort to the program at the University of Denver.

#### **University of Southern California – 1973**

In February of 1973, the University of Southern California graduated the first thirteen students who obtained a Masters Degree in Public Administration with a certificate in

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<sup>130</sup> Information provided by the University Archivist of American University, March 23, 2005.

<sup>131</sup> The Column Volume 8, Number 1, February 1977 (National Association of Trial Court Administrators) 8.

Judicial Administration.<sup>132 133</sup> The program was “an intensive 13 month course of study” conducted by USC’s School of Law and the School of Public Administration.

Coursework included criminal justice, civil procedure, judicial administration, systems analysis, finance, personnel, research, and administrative theory and behavior. The program was “made possible by funding from the California Council on Criminal Justice and sponsorship by the Southern California Association of Governments.<sup>134</sup> Dr. Peter Haynes was the program director when the first graduates matriculated with their Masters Degree in Judicial Administration.

### ***The National Center for State Courts - 1971***

Originally, the subject of judicial reform in the Commonwealth of Virginia was supposed to be the topic of the conference that the Commonwealth was planning to be held in Williamsburg, Virginia in March of 1971. When Governor Linwood A. Holton asked Justice Tom C. Clark to assume planning responsibilities, the conference purpose expanded to include judicial reform in all of the states. Justice Clark had proposed a National Judicial Center for state courts as an outgrowth of his work with the Joint Committee for the Effective Administration of Justice that was organized in the early 1960s.<sup>135</sup> One could guess that the idea would resurface during the Williamsburg Conference. In the opening remarks, President Richard M. Nixon urged the 450 Williamsburg participants to emulate the Federal Judicial Center in creating a judicial

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<sup>132</sup> The Column Volume 3, Number 3, January-February, 1973 (National Association of Trial Court Administrators): 2.

<sup>133</sup> The Column Volume 9, Number 1, February/March 1978 (National Association of Trial Court Administrators) 11.

<sup>134</sup> The Column, Volume 3, Number 3 (National Association of Trial Court Administrators) 2.

<sup>135</sup> Eric Lowe, National Center for State Courts: A Commemorative History of Its Structure and Organization in Honor of 20 Years of Service to the State Courts (National Center for State Courts 1991) 4.

center for state courts. Later in the conference, Chief Justice Warren E. Burger addressed attendees laying the conceptual framework for a judicial center to serve the state courts. Chief Justice Burger's call for a national center to service state and local courts was endorsed by the conference.<sup>136</sup> For a more detailed discussion of the thinking of Justice Clark and others, see *National Center for State Courts: A Commemorative History of Its Structure and Organization in Honor of 20 Years of Service to the State Courts*.

The Williamsburg Conference endorsed a national resource center for state courts. The Executive Committee of CCJ took responsibility for the task and appointed a steering committee consisting of: Chief Justice James S. Holden of Vermont, Chair, representing CCJ; Justice Morrell E. Sharp of the Supreme Court of Washington, Secretary, representing Chief Justice Burger; Earl Morris represented the American Bar Association; Gerald C. Snyder, Jr. represented the American Judicature Society, and; Orison S. Marden, represented the Institute of Judicial Administration. Justice Louis H. Burke of California, Justice Paul C. Reardon of Massachusetts, and Justice William Frederick of New York were subsequently added to the committee.<sup>137</sup> Gerald Snyder prepared a draft of the Articles of Incorporation and named the entity "National Center for State Courts."<sup>138</sup>

It is interesting to note the differences of opinion that surfaced among members of the steering committee, Justice Burger, and others concerning the governance of the National Center for State Courts. Justice Burger believed that only state judges should be on the

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<sup>136</sup> Lowe 3.

<sup>137</sup> Lowe 5.

<sup>138</sup> Lowe 6.

NCSC Board of Directors and that those judges should represent the diversity of courts; courts of last resort, appellate courts, and general and limited jurisdiction courts.<sup>139</sup>

Others believed that the Board of Directors of the proposed center should be more representative of legal interests including the ABA and other judicial reform groups. A compromise was reached in the Articles of Incorporation filed in June of 1971 that provided for a 12 member Board of Directors to be filled by judges and an Advisory Council, the Council of State Court Representatives, representing organizations active in the field of judicial administration.<sup>140</sup> The judges would be elected to the Board of Directors by the Council of State Representatives.<sup>141</sup>

The first Board of Directors of NCSC were: David Brofman, Judge of Denver, Colorado Probate Court; Louis H. Burke, Associate Justice, Supreme Court of California; James A. Finch, Jr., Chief Justice, Supreme Court of Missouri; M. Michael Gordon, Judge of the Municipal Court of Houston, Texas; Frank R. Kenison, Chief Justice, Supreme Court of New Hampshire; Bernard S. Meyer, Judge of the Supreme Court of New York, Minneola, New York; Paul R. Reardon, Associate Justice, Supreme Judicial Court of Massachusetts; William S. Richardson, Chief Justice, Supreme Court of Hawaii; Morrell E. Sharp, Associate Justice, Supreme Court of Washington; Harold Stevens, Presiding Judge, Appellate Division, Supreme Court of New York; Joseph A. Sullivan, Presiding Judge, Wayne County Circuit Court, Detroit, Michigan, and; Curtis V. Tillman, Judge of DeKalb County Juvenile Court, Decatur, Georgia. Justice Reardon served as the first chairman of the Board of Directors and acting President of NCSC.

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<sup>139</sup> Lowe 6.

<sup>140</sup> Lowe 8.

<sup>141</sup> Annual Report 1971-1973 (National Center for State Courts) 15.

The first chairman of the Advisory Council was Orison S. Marden, of the Institute of Judicial Administration. Other organizations represented on the Advisory Council were: the American Academy of Judicial Education, the American Bar Association, the ABA Section of Judicial Administration, the American Judicature Society, the Appellate Judges' Conference, the Conference of Chief Justices, the Institute for Court Management, the National Association for Court Administration, the National Association of Court Administrative Officers, the National Association of Trial Court Administrators, the National College of State Trial Judges (National Judicial College), the National Conference of Metropolitan Courts, the National Conference of Special Court Judges, the National Council of Juvenile Court Judges, the National Council on Crime and Delinquency, the North American Judges Association, Association of American Law Schools, and the National College of Probate Judges.<sup>142</sup>

The purpose of the National Center for State Courts as stated in the *Annual Report 1971-1973* was; "To improve the administration of justice in the state courts of the nation, to promote and support research, studies, education, training and activities for such courts, and to assist, supplement and coordinate, but not to supplant, the activities of organizations functioning in the field of judicial administration."<sup>143</sup>

The NCSC Board of Directors appointed Justice Winslow Christian of the California Court of Appeals as its first full time President. Justice Christian served from 1971 to

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<sup>142</sup> Lowe 12-13.

<sup>143</sup> Annual Report 1971-1973 (National Center for State Courts) 1.

1973. Mr. Edward B. McConnell, former Administrative Director the Supreme Court of New Jersey, served as President of NCSC from 1973 to 1990. Larry Sipes, previously the Director of the National Center's Western Regional Office, became President of NCSC in 1990 and served until 1995. Roger Warren, former Chief Judge of the Superior Court of California, became President in 1996, serving until August of 2004. Mary McQueen, former Administrative Director of the Courts for the state of Washington became President in August of 2004.

The events concerning site selection for the NCSC headquarters in Williamsburg, Virginia and details concerning construction are detailed in Lowe's *Commemorative History*, 13 through 19. The Governor of Virginia secured approximately one million dollars for construction. Another one million dollars was secured through a grant from LEAA. The Kresge Foundation provided a matching grant of \$750,000 to help cover construction costs. A nominal lease for the seven acre parcel on the campus of the College of William and Mary resulted in the construction of a building that now sits next to the College of Law on the William and Mary campus. Discussion around the construction of a new building for the William & Mary College of Law and the construction of NCSC headquarters provided momentum to accomplish both. NCSC Headquarters sits adjacent to the William and Mary College of Law building, both located at the perimeter of Colonial Williamsburg where revolutionary war thinkers helped shape a government with an independent judiciary.

The cost of operating the Center and financing the work was supported by grants directly from the Law Enforcement Assistance Administration as well as LEAA funds from various state planning agencies and foundations including: the Edna McConnell Clark Foundation, the Sloan Foundation, the Ford Foundation, the Bush Foundation and the Hill Family.<sup>144</sup>

### ***The National Center for Juvenile Justice - 1973***

The National Council of Juvenile Judges recognized a need to do research and development in the field of juvenile justice. In 1973, the National Center for Juvenile Justice in Pittsburgh, Pennsylvania was incorporated as the Council's research arm, appointing E. Hunter Hurst III as Director who serves as the Center's Director as of the writing of this paper. The Center was initially financed by contributions of \$450,000 from Pittsburgh corporate foundations and by a \$170,000 grant from the Law Enforcement Assistance Administration (LEAA) in 1973 and a subsequent LEAA grant for 1974-1975 of \$199,135.<sup>145</sup> LEAA, an arm of the United States Department of Justice, neglected courts in the early years of the agency but became a significant contributor to initiatives of the judiciary.

### ***Center for Jury Studies – 1978***

Funded by LEAA, William Pabst and Thomas Munsterman published a *Guide to Juror Use* in 1974 and in 1975 published *A Guide to Juror System Management*. Together they incorporated the Institute for Jury Studies in 1978. Munsterman became a proponent of

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<sup>144</sup> Annual Report 1971-1973 (National Center for State Courts) 17.

<sup>145</sup> The First Annual Report of the National Center for Juvenile Justice, Pittsburgh, Pennsylvania (July, 1974) ii, iii.

effective and efficient use of jurors advancing the concept of “one day – one trial” and counseling numerous jurisdictions through implementation of the shortened jury obligation. Munsterman became the principal in the cause of effective jury administration. In 1982, the Center for Jury Studies became a part of the National Center for State Courts.<sup>146</sup>

### ***National Association for Court Management – 1985***

In August of 1984, members of the National Association of Trial Court Administrators and the National Association for Court Administration accepted the recommendation of the merger committee and voted to merge their associations forming the National Association for Court Management (NACM). Bobby T. Branum, representing NACA and Gordon M. Griller, representing NATCA, co-chaired the Nominations Committee to create a slate of potential officers for election at the first business meeting of NACM in Forth Worth, Texas in 1985. Donald Cullen was elected the first President of NACM. The publication of NATCA, *The Column* and the publication of NACA, *The Court Crier* were combined shortly after the two associations started to hold their annual conference jointly. The two publications merged and *The Court Manager* was published as the journal of NACM in 1985.

### **Adolescence and Coordination Phase: Performance 1990 - 2004**

Knowing where we are is critical to organizational development. Knowing where we are requires that we continue to look at where we have been and how did we get here? Third

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<sup>146</sup> Tobin, *Creating the Judicial Branch* 218.

branch administration seems to have been characterized by two themes in the 1990's: performance of courts in society and performance of individuals.

### ***Trial Court Performance Standards (TCPS) 1990***

Starting in 1987, the National Center for State Courts began working the Commission on Trial Court Performance Standards to develop standards and to devise and pilot test performance measures for general jurisdiction trial courts. In July of 1990, NCSC published the *Trial Court Performance Standards with Commentary*.<sup>147</sup> The Commission's report stated:

...court reform has focused on the structures and machinery of the courts, not their performance (what courts actually accomplish with the means at their disposal), and on the needs of judges and court personnel, rather than directly on the needs of those served by the courts. No agreed-upon *performance* standards or criteria existed for trial courts of general jurisdiction. There was little guidance in the literature of court management on how to measure trial court performance.<sup>148</sup>

Members of the Commission included: Robert C. Murphy, Chief Judge, Court of Appeals of Maryland, Chair; Robert N. Baldwin, State Court Administrator, Virginia; Carl F. Bianchi, Administrative Director of the Courts, Idaho; John A. Clarke, Trial Court Administrator, Superior Court, Essex County, New Jersey; Judith A. Cramer, Court Administrator, Court of Common Pleas, Montgomery County, Ohio; Robert D. Lipscher,

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<sup>147</sup> Trial Court Performance Standards with Commentary (National Center for State Courts and the Bureau of Justice Assistance 1990).

<sup>148</sup> Trial Court Performance Standards with Commentary 1.

Administrative Director of the Courts, New Jersey; Doris Marie Provine, Professor of Law and Political Science, Syracuse University; Henry Ramsey, Jr., Judge, Superior Court for DeKalb County, Georgia; Whitfield Smith, Clerk of Court, Superior Court for DeKalb County, Georgia; Leo M. Spellacy, Presiding/Administrative Judge, Court of Common Pleas, Cuyahoga County, Ohio, and; Fred B. Ugast, Chief Judge, Superior Court of the District of Columbia, Washington, D.C.

Twenty-two standards were developed in five performance areas: access to justice; expedition and timeliness; equality, fairness, and integrity; independence and accountability, and; public trust and confidence. Over sixty performance measures and their associated data collection methods and requirements were developed as tools for courts to use in implementing the standards. TCPS were “hailed as the harbinger of a new era.”<sup>149</sup> TCPS were the subject of conferences and training sessions. Consultants used the TCPS in their work by helping courts understand and apply the standards. However, Tobin observed: “For the first time, courts had some common criteria of performance...to change the management culture” but TCPS “have not gained acceptance in actual practice.”<sup>150</sup> Years of effort and hype have not resulted in overwhelming acceptance, implementation, or modification by third branch administration in the nation’s trial courts. They do remain the subject of training programs and discussion. Perhaps the expectation that TCPS is implemented as a full set of measurements is not realistic and it is more likely that a court will pick and choose a standard to measure rather than measure 22 standards. Perhaps the national conscience of third branch administration perceived

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<sup>149</sup> Robert W. Tobin, *Creating the Judicial Branch* 204.

<sup>150</sup> Robert W. Tobin, *Creating the Judicial Branch* 204.

and embraced the need for court performance standards more than local third branch administration.

From the national perspective judicial administration was concerned with the performance of courts in society.

In the 1990s the Conference of Chief Justices addressed bias in the courts, lack of professionalism among lawyers, and waning public confidence in courts. These are not issues of the court reorganization and administration. They go respectively to the fairness of the judicial system, relationships between courts and lawyers, and the relationship of courts to citizens.<sup>151</sup>

As in 1906, the causes of public dissatisfaction were once again the topic of discussion.

The National Center for State Courts sponsored public surveys and conferences and conducted research on these subjects throughout the 1990s.

### ***The NACM Delphi Process - 1991***

To start the decade of the nineties, then NACM President, Karen Wick, initiated a modified Delphi process for strategic planning purposes. A significant portion of the business of third branch administration should have been represented by NACM, theoretically, since it represented the combined interests of former NACA and NATCA members and the interests of new members possibly drawn to NACM as a result of the merger. Referring to the NACM Delphi survey project, then President-elect and Chair of the NACM Delphi Process Advisory Committee, K. Kent Batty said:

This work product provides the board [NACM Board of Directors] with the means of establishing a blueprint for the future, particularly in the areas of organizational development and educational programming. Its task now is

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<sup>151</sup> Robert W. Tobin, *Creating the Judicial Branch* 198.

to take the raw material of this analysis and to mold it into the appropriate building blocks for NACM's future. To accomplish this, the board will maintain its special Delphi committee for oversight purposes, while using its standing committees to consider, develop, and recommend policies, directions, and programs in their subject matter areas.<sup>152</sup>

In addition to Kent Batty, other NACM members who served on the Delhi Process Advisory Committee were: John Clarke, Sheila Gonzalez, Linda Lovelace, Tom Ralston, Jeff Arnold (ex officio) and Randy Kitchen (ex officio).

What was the Delphi Process of NACM and what did it reveal for NACM to use in its organizational development? The project was funded by equal contributions from NACM and the National Center for State Courts. John Hudzik, a professor at Michigan State University and faculty for NCSC's Institute for Court Management was the project's principal consultant. Working with staff of NCSC, namely Barry Mahoney, then Senior Staff Associate for NCSC's Institute for Court Management, Hudzik surveyed NACM members. Rather than paraphrase the methodology and risk error, the following quote is from John Hudzik writing in his *Executive Summary* report to the NACM Board of Directors.

The project used a modified Delphi survey method for collecting opinions about existing and future NACM goals, services, and priorities. Two surveys were administered. The first asked respondents to rate their degree of agreement or disagreement with the various responses that had been received to the first survey. A stratified sample of 401 NACM members was selected to participate in the survey. The sample consisted of three groups that were defined on the basis of the extent of members' participation in NACM governance, committee involvement, and

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<sup>152</sup> K. Kent Batty, "Delphi Process Advisory Committee: Report of the Delphi Process Advisory Committee Members to the NACM Board of Directors" The Court Manager Volume 6 Number 4, Fall 1991 (National Association for Court Management) 26.

conference participation. The 158 responses to round two constituted an overall 40 percent return rate.<sup>153</sup>

The first survey was sent in September of 1990 and it generated 88 responses.<sup>154</sup> The first survey asked survey recipients to: “review the existing NACM purposes and to suggest changes”; determine “whether any of the numerous constituent groups served by NACM should receive more attention from the association”; “identify important activities that NACM should undertake, and services and benefits that NACM should offer”; “identify topics/issues that should receive greater attention than presently from NACM”; identify specific organizations or types of organizations”... “for NACM to develop or strengthen relations”; provide suggestions for changing NACM structures and procedures; identify “the most serious problems facing courts, court management, and them in their work in the years ahead”, and; “rate various managerial knowledge, skills, and abilities (KSAs) in terms of their importance to the effectiveness of court managers and how frequently these KSAs are needed or used.”<sup>155</sup>

“A stratified sample of 401 NACM members was selected to participate” in the second round survey.<sup>156</sup> Respondents were asked to rank a list of 24 suggested NACM purposes; rank a list of constituent groups to receive more attention; rank service and publications that NACM should undertake or continue; rank a list of 38 topics or issues that should be addressed; rank 32 organizations that NACM should develop relations; rank 31 issues or problems that will face courts in the future, and; rank 57 KSAs

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<sup>153</sup> John Hudzik, “Executive Summary” (to the Delphi Report) *The Court Manager* Volume 6 Number 4, Fall 1991 (National Association for Court Management) 33.

<sup>154</sup> Batty 26.

<sup>155</sup> Hudzik, Delphi Executive Summary 34-39.

<sup>156</sup> Hudzik, Delphi Executive Summary 34.

according to frequency of use and “criticality of the skill to effective managerial performance.”<sup>157</sup>

The results of the 159 NACM members who responded are summarized in Hudzik’s findings published in the *Executive Summary*. For convenience, the top rankings for each category as Hudzik published them are included in the table in Figure 6. Hudzik provided the NACM Board with his draft to review at the June Board meeting in Chicago, 1991. Following the meeting with the Board, Hudzik finalized his report and created an executive summary of the findings.<sup>158</sup>

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<sup>157</sup> Hudzik, Delphi Executive Summary 39.

<sup>158</sup> Batty 26-27.

Figure 6: Summary of Findings – NACM Delphi Process<sup>159</sup>

NACM Purposes <sup>160</sup>	Constituent Groups	Activities	
		Publications	Services
Promote the profession of court management and enhance the proficiency of court managers	Trial court administrative staff	<i>The Court Manager</i>	Annual meeting's continuing education program
Develop and improve leadership in the judicial system and the leadership qualities of court managers	Trial court staff of all kinds	Court manager manuals	Regional NACM meetings, workshops, conferences, educational programs
Promote improvement of the administration of justice through application of modern management techniques	Rural court administrators	Court management exemplary projects	Build government and public understanding of the importance of court management
Encourage fellowship, a network, and a sense of unity among NACM members	Administrators of small courts	Resource guide for court managers	Help policymakers (legislative) understand trial court importance and needs
Promote and encourage the continuing educational opportunities of court managers	Urban court administrators	The NACM membership list	Specialty meetings for NACM subgroups (for example, small courts, large courts)
Promote the development of ethical standards and ethical conduct of court managers	Administrators of general jurisdiction courts	Technical assistance resource guide	Promote NACM Model Code of Ethics for court managers
Promote the interdependence of court managers and judges (the executive component: managers and chief judges)	Administrators of large trial courts	<i>Forum Conveniens</i>	Offer the Justice Achievement Award
Educate the public on the role and importance of courts	Administrators of limited jurisdiction courts	National salary survey	Develop and implement standards for trial courts and trial court performance
Provide a forum for court managers to debate issues and exchange information and viewpoints	Chief/presiding judges	NACM trial court statistics	Regularly survey NACM members on a variety of issues
Promote judicial system information exchange and research related to judicial administration	Minorities and women		Maintain an employment vacancy and job listing service for NACM members
			Develop and maintain a lending library of materials on court management
			Establish and promote minimum continuing education standards for NACM members
			Develop and administer a national certification process for court managers
			Broker an on-site technical assistance service
			Develop peer review teams to assess/audit trial court performance
			Start a NACM grant to encourage applied research on court problems
			Financial aid to members for professional improvement or to attend conferences
			Develop and administer a process for trial court accreditation
			Conduct independent NACM assessments of new or pilot court projects
			Develop a benefit package for NACM members

<sup>159</sup> Note: The survey results are included in the table in the order that Hudzik identified as the top responses in each category ranked from most important at the top to lower importance at the bottom. However, Hudzik noted that almost all survey items received support to be included in NACM's efforts. Few survey questions were deemed of little use by NACM members.

<sup>160</sup> Note: Hudzik identified those purposes included in the NACM Delphi survey that were in the existing NACM organizational statement of purpose (E) and those not included as (N).

Figure 6 (continued): Summary of Findings – NACM Delphi Process

Topics/Issues	Relationships, Structures, and Procedures	Future Problems	Managerial Skills
Court efficiency, effectiveness, and quality control	Institute for Court Management	Competing successfully with other units of government for scarce resources	General leadership skills and abilities
New technologies and impact on courts	National Center for State Courts	Managing technology and automation effectively	General management and administrative KSA
Courts and the future; future trends	State court management associations	Decreased budgets and fewer staff	Relations with judges
Judge/administrator team building	Conference of State Court Administrators	Increasing caseload volume of work	Ability to make decisions and to act decisively
Strategic planning and priority setting	State Justice Institute	Inadequate space or antiquated facilities	Listening skills
General/comprehensive court management	National Judicial College	Decreasing public confidence and trust in the courts	General communication skills
Leadership and career development	Conference of Chief Justices	Developing effective management teams: judge/administrator and other combinations	Ability to motivate and inspire people
Problem diagnosis and problem solving strategies	State Court Clerk's Association	Cost of litigation	Diplomacy and tact
Case management, scheduling, and docket control	American Bar Association	Transition from paper to electronic data exchange and retention	Openness' to change and innovations
Computers and automation technologies	Bureau of Justice Assistance	Threats to judicial independence in setting its own administration and practice	Writing ability
		Depersonalization of the judicial process because of increased workload and decreased budget	Knowledge of the judicial system
			Knowledge of judicial and legal procedures
			Ability to coordinate activities of many
			Budget planning and request justification
			Determination and drive
			Team management skills
			Vision of what a good court should be
			Relations with nonjudicial personnel
			Ethical sensitivity and behavior
			Problem diagnosis and analysis procedures

Kent Batty reported that the committee thought the work was extremely valuable and “a useful starting point for developing a strategic plan for NACM as an organization.”<sup>161</sup>

However, Batty also noted: “committee members found Professor Hudzik’s narrative interpretation of data helpful, but recognize that in many instances the data are open to alternative interpretations.”<sup>162</sup> The Advisory Committee’s report stated that: “The primary purpose of the Delphi survey has been to assist the board in developing a strategic plan for NACM.”<sup>163</sup>

To that end the committee suggested questions that might help the NACM Board in utilizing the knowledge gained from the Delphi process into the NACM Board strategic planning process:

1. Consider both the statement of purposes in the current bylaws and the responses to the Delphi survey (especially Section 1), what should be NACM’s principal goals for the next five to ten years?
2. What should be the principal program objectives under each goal?
3. What should be NACM’s priorities with respect to expenditure of its own funds, in terms of publications, services and activities focused on substantive areas?
4. What structural changes should be considered in order to achieve the goals and objectives that are established?
5. What changes should be made in the dues structure to help support implementation of the strategic plan?

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<sup>161</sup> Batty 27.

<sup>162</sup> Batty 27.

<sup>163</sup> Batty 32.

The report of the committee highlighted and framed for the NACM Board issues raised by the Delphi survey. Although the Advisory Committee did make recommendations for the Board to study further, the committee's report made no specific action or recommendations for NACM to take or actions to include in the strategic plan.

The Delphi process revealed that NACM could work on many fronts to address the issues prioritized by the survey participants. How NACM proceeded to use the Delphi information, the decisions NACM made, and where NACM was at in its stage of organizational development and where NACM is at now in terms of its organizational development are questions not within the scope of this research. Nevertheless, the questions are important to the author as a NACM member and former member of the NACM Board of Directors. NACM should heed the advice of Greiner and Adizes and determine where it is in terms of organizational development to help it decide where NACM members want the organization to go and to determine the actions needed to take NACM to Prime.

For the purposes of this work, though, it is interesting to note that the themes appearing herein were among the highest ranked issues in the Delphi study: professional development of court leaders and managers, developing the leadership team of judges and administrators, and recognizing the importance of money to enhance court improvements directly and through organizations intended to assist efforts in third branch administration. One of these themes emerged as a forerunner in the '90's and to dominate the beginning of the century in court management – the core competencies.

### ***The NACM Core Competency Curriculum Guidelines 1991 - 2004***

A review of NACM's professional journal, *The Court Manager*, for the years of 1990 through 2004 was disappointing in terms of documenting the evolution of the core competencies as the concept matured through the '90s'. Perhaps there are other bread crumbs of institutional history, in addition to *The Court Manager*, that refresh institutional memory, but fortunately we have one readily available article from *The Court Manager* that provides that history: "Core Competency Curriculum Guidelines: History, Overview, and Future Uses"<sup>164</sup> jointly authored by the members of NACM's Professional Development Advisory Committee (PDAC). The next paragraphs draw heavily on this one source for the history and development of the NACM Core Competency Curriculum Guidelines.

There can be no argument that NACM member participants in the Delphi survey not only thought professional development should be one of the highest priorities of the Association, but respondents consistently ranked learning high across the Delphi categories of member needs. Respondents repeatedly ranked education, training, publications, and professional networking high among their development needs. According to the PDAC history "NACM responded with two prototype regional conferences and a multiyear education and professional development plan." More directly, "a special NACM professional development study committee was formed in 1992 ... to focus NACM educational programming by reaching consensus on the core

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<sup>164</sup> NACM Professional Development Advisory Committee, "Core Competency Curriculum Guidelines: History, Overview, and Future Uses" *The Court Manager* Winter 1998 (National Association for Court Management) 6-18.

areas of court management skill and responsibility.”<sup>165</sup> The history does not provide any background as to why a special committee was formed (PDAC) for this purpose as opposed to using the standing committee structure. The NACM By-laws provide that the President can appoint special committees as the President deems necessary. The article is not clear when the State Justice Institute provided initial funding to develop the core competencies, however the article does say that SJI also provided funding for the “follow-on Core Competency Curriculum Guidelines Project, which began in 1996.”<sup>166</sup>

NACM, ICM staff, many educators from the ICM program, the Justice Management Institute and others began trying to determine the core competencies. An original list of fourteen core competencies was reduced to ten by the special committee. PDAC “began with a survey of over 200 experienced court managers, which was designed to produce KSAs for each of the ten core competencies.” Focus groups worked to refine the results of the survey. “Ninety carefully selected court administrators, educational program faculty, and researchers delineated the substance and structure of a survey of 250 respondents who:”

- (1) evaluated how essential it was for senior court managers to master the ten previously identified core competencies and their related KSAs as well as twelve general management and administrative KSAs; (2) estimated the proportion of court managers who had substantial performance inadequacies with regard to these KSAs; and (3) selected the ten KSAs with the highest priority for NACM education and programming.<sup>167</sup>

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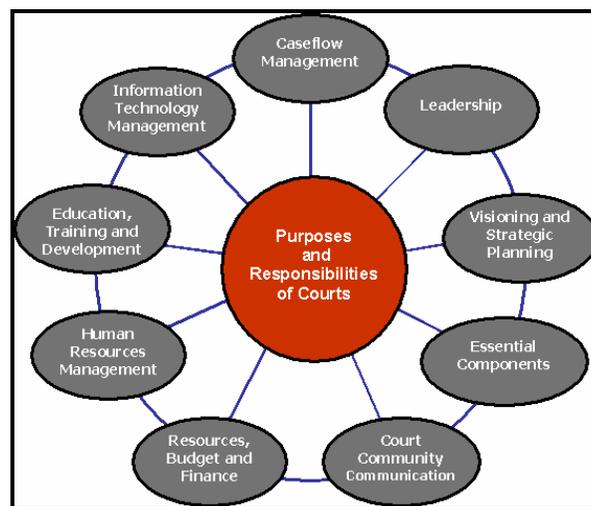
<sup>165</sup> NACM PDAC, Core Competency Curriculum Guidelines 6.

<sup>166</sup> NACM PDAC, Core Competency Curriculum Guidelines 6.

<sup>167</sup> NACM PDAC, Core Competency Curriculum Guidelines 6.

PDAC envisioned that the Core Competency Curriculum Guidelines (CCG) would serve to improve educational and training efforts for the field. PDAC thought that “educational providers – not for profit, public, and for profit – will use” the CCG and that “curricula built around the guidelines will be delivered face-to-face at NCM annual and midyear conferences” as well as through “distance learning” and the CCG would “stimulate relevant education.”<sup>168</sup> The ten core competencies are illustrated in Figure 7. Anyone wishing to know more about the NACM Core Competency Curriculum Guidelines should visit the NACM web site at <http://www.nacmnet.org/>.

**Figure 7: NACM Core Competencies<sup>169</sup>**



The article written in 1998 stated that the “PDAC project goals are ambitious” but predicted that the Guidelines would be completed in 1999.<sup>170</sup> Whether the target date of completion was achieved or not is not important. The important fact is that the NACM Core Competency Curriculum Guidelines exist as of 2004. The NACM CCCG’s fill a

<sup>168</sup> NACM PDAC, Core Competency Curriculum Guidelines 6.

<sup>169</sup> See “Competency” at <http://www.nacmnet.org/>, the web site of the National Association for Court Management.

<sup>170</sup> NACM PDAC, Core Competency Curriculum Guidelines 6.

void, satisfy a professional goal and need, and; are a significant contribution to the field of court administration and administration of the third branch.

Objectives of this paper are to provide a framework for discussion about the stage of development that the third branch administration finds itself and to suggest what should be done about it? Now that tribute has been paid to a significant accomplishment in the field, namely the CCG, the core competencies must be placed in a development perspective. What did PDAC have to say about the core competencies and the NACM Core Competency Curriculum Guidelines that may relate to organizational development?

It is interesting to note what PDAC said the CCG's were not. "They are not intended, nor are they appropriate to test or grade practicing or aspiring court managers." "...their purpose is expressly limited to *self-assessment* and *self-improvement*."<sup>171</sup> PDAC said they are: "what court managers should know and be able to do" and they are "areas in which court managers should have acceptable levels of knowledge, skills, and ability." But PDAC also clarified the intent and their position despite these broader statements: "NACM does *not* assume that *any single* court manager has or could master every core competency, much less every single curriculum guideline area KSA."<sup>172</sup> A refreshing statement for many, certainly, as PDAC notes there were seventy KSAs in the caseflow management competency and sixty-four KSAs in the resource and financial competency! Finally, PDAC makes one other statement about the CCGs and what they are and what they are not.

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<sup>171</sup> NACM PDAC, Core Competency Curriculum Guidelines 6.

<sup>172</sup> NACM PDAC, Core Competency Curriculum Guidelines 6.

NACM recognizes that curriculum guidelines for these three [competencies that were finished at the time of the article] and the other seven core competencies must evolve as the field's issues and challenges change. However, as the guidelines are updated, they will *not* become lesson plans or cross the "curriculum development line." They are *not* curricula or lesson plans. ... While the guidelines assume that lifelong learning and continuous development are the professional court manager's essence, they leave the planning, designing, and delivery of education programs to professional judicial educators.<sup>173</sup>

There is disagreement that PDAC's position announced in 1998 has been maintained.

NACM is pursuing development of lesson plans and curriculum for each core competency. In doing so, one can hear, observe, and conclude that some have an opinion that only NACM or NACM partners can develop lesson plans and curriculum. Anyone that has been around educators knows that discussion of how to prepare a lesson plan around a curriculum and how to deliver adult training is subject to a range of professional opinions. NACM can continue to assert ownership of the CCG but in doing so, inhibits the market from taking a good product and using the talent of the third branch to enhance the product, broaden its horizons, and broadcast its value to the larger community outside NACM. Educators and practitioners will by their very nature draw upon their experience to deliver relevant content. PDAC's request that educators "embrace the core competencies"<sup>174</sup> is a legitimate expectation. Following the PDAC recommendation made to NACM in 1998 to allow the education and training sector to develop appropriate lesson plans and curricula is a logical course of action.

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<sup>173</sup> NACM PDAC, Core Competency Curriculum Guidelines 7.

<sup>174</sup> Comment made by Frank Broccolina in an ICM Advisory Committee meeting in Washington, D.C. Frank Broccolina was the chair of PDAC at the time of publication of the PDAC article in *The Court Manager*. Frank Broccolina is the State Court Administrator of Maryland and past president of NACM.

## Findings

### **Organizational Development Model for Third Branch Administration**

The organizational development model for third branch administration appears in Figure 8. In the creative phase, the founders of third branch administration were the epitome of entrepreneurial leadership in the organizational development models. The founders did not talk about leadership – they demonstrated it. In the infancy and direction phase, leaders exuded energy expounding ideas, selling ideas and developing a mission for court reform. The message was powerful and the founders developed sources of financial support from private and public sectors to underwrite court reform. In the go-go and delegation phase, managers were trained and hired. Trained managers helped build third branch organizational infrastructure. In the adolescent and coordination phase, managers began exerting control by applying scientific management to the judicial branch, revising processes, rules and procedures, and putting the founders' ideas to work. Near the end of the adolescent and coordination phase the founders had succeeded – their ideas had been embraced by a core of trained managers engaged in full scale implementation of court reform at the state and local levels – managers were ensconced in the third branch. The founders were not necessarily thrown out as the theory asserts, but nevertheless became disengaged from the organizational change they helped create. Founders began to pass away, retire, or “slow down.” The large core of managers began asserting themselves and promoting the business from their own perspectives with the growth of professional organizations in the third branch. The entrepreneurial days of court reform, the creative juices, lost influence to draw cash to the “unfinished reform” for the focus was now on implementing the managerial science the founders promoted. Founders were not thrown

out, but become part of history, not part of the action. Unfortunately, the fire of court reform thinking that characterized the creative phase is but a glowing ember in the adolescent and coordination phase. Those embers are glowing, waiting for a surge of oxygen to rekindle creativity to address the unfinished reform in the Prime and extra-organizational collaboration phase.

Figure 8: Model for Third Branch Administration Organizational Development

Stages	Normal	Abnormal	Third Branch Administration
<b>Courtship and Creativity 1906-1948</b>	<ul style="list-style-type: none"> <li>Excitement, reality tested</li> <li>Realistically committed founder</li> <li>Product orientation – commitment to its value added</li> <li>Commitment commensurate to risk</li> <li>Founder keeps control</li> </ul>	<ul style="list-style-type: none"> <li>No reality testing of commitment</li> <li>Unrealistically fanatic founder</li> <li>Exclusive return on investment – profit orientation</li> <li>Commitment not commensurate to risk</li> <li>Founder's control is vulnerable</li> </ul>	<ul style="list-style-type: none"> <li>POUND'S ADDRESS TO ABA</li> <li>Age of excitement, thought, and commitment</li> <li>Conceptual ideas abundant, diverse</li> <li>Entrepreneurs have ideas – AJS and Vanderbilt take up Pound challenge</li> <li>Commitment requires risking reputation in a community of non-risk takers</li> <li>Founders maintain control because they are the people with the vision</li> <li>Graham's early phase</li> <li>Lawson and Howard's court reform period begins</li> <li>Tobin's early phase of court administration</li> </ul>
<b>Risk is taken Company is born</b>			<b>Risk is taken Business is born</b>
↓			↓
Phase	Normal	Abnormal	
<b>Infancy and Direction 1949-1965</b>	<ul style="list-style-type: none"> <li>Risk does not evaporate commitment</li> <li>Negative cash flow</li> <li>Hard work nourishes commitment</li> <li>No managerial depth</li> <li>No systems</li> <li>No delegation – one man show but willing to listen</li> <li>Make mistakes</li> <li>Supportive home life</li> <li>Supportive external intervention</li> </ul>	<ul style="list-style-type: none"> <li>Premature rules, systems, procedures</li> <li>Founder's loss of control</li> <li>No listening – arrogance</li> <li>No room for mistakes</li> <li>Non – supportive home life</li> <li>Founder alienated by external intervention</li> </ul>	<ul style="list-style-type: none"> <li>FIRST STATE AND TRIAL COURT ADMINISTRATORS</li> <li>Friesen's stage of intrusion</li> <li>Risk repetitively taken</li> <li>Constantly seeking cash</li> <li>Founders work incessantly</li> <li>Recognition of need for managers</li> <li>Support of the judicial branch independence by the executive branch</li> <li>Graham's Vanderbilt-ABA phase</li> <li>Tobin's development of judicial administration and reform</li> </ul>
Cash flow and activities stabilize			
↓			
Phase	Normal	Abnormal	
<b>Go-Go and Delegation 1966-1990</b>	<ul style="list-style-type: none"> <li>Organization enjoys success</li> <li>Everything seen as an opportunity</li> <li>Goes in too many directions, spreads too thin</li> <li>Selling is the driver</li> <li>Company is organized around people not around tasks</li> <li>Management by intuition</li> </ul>	<ul style="list-style-type: none"> <li>Selling becomes addictive, more is better</li> <li>Believes more sales means more profit</li> <li>Founder fights to retain control</li> <li>Hand picked delegation or nepotism</li> <li>Competent managers leave</li> <li>Lack of systems, controls, processes</li> </ul>	<ul style="list-style-type: none"> <li>TRAINING PROGRAMS CREATED</li> <li>PROFESSIONAL MANAGERS PROLIFERATE</li> <li>Lawson and Howard's court management explosion</li> <li>Friesen's stage of experimentation</li> <li>Momentum of founders generates public and private sector support</li> <li>Concept is sold</li> <li>Founders are the drivers</li> <li>Reform organizations proliferate</li> <li>States take up their own reform</li> <li>Projects abound</li> <li>Federal funds create opportunity</li> <li>Graham's LEAA to ABA standards phase</li> <li>Tobin's implementation and new reform</li> </ul>
<b>Crisis causes move to professional management</b>			
↓			
Phase	Normal	Abnormal	
<b>Adolescence and Coordination 1991-200?</b>	<ul style="list-style-type: none"> <li>Conflict between partners or decision makers, between the administrative and entrepreneurial types</li> <li>Temporary loss of vision</li> </ul>	<ul style="list-style-type: none"> <li>Back to Go-Go and the founder's trap (struggle for control)</li> <li>Entrepreneurs leave, administrators take over</li> </ul>	<ul style="list-style-type: none"> <li>PUBLIC TRUST, COURT PERFORMANCE, ACCOUNTABILITY</li> <li>Friesen's stage of survival</li> </ul>

	<ul style="list-style-type: none"> <li>• Founder accepts organizational sovereignty</li> <li>• Incentive systems reward the wrong behavior</li> <li>• Yo-yo delegation of authority</li> <li>• Policies made, but not adhered to</li> <li>• Board of directors exercises new controls over management</li> </ul>	<ul style="list-style-type: none"> <li>• Founder is squeezed out</li> <li>• Individuals get bonuses for individual performance while company is losing money</li> <li>• Paralysis while power shifts back and forth</li> <li>• Rapid decline in mutual trust and respect</li> <li>• The board fires the entrepreneurial types</li> </ul>	<ul style="list-style-type: none"> <li>• Reform organizations and states compete for reform money</li> <li>• National vision lost in favor of state, local, and individual organizational visions</li> <li>• Organizations begin to succeed on their own</li> <li>• Financial incentives provided for executive branch determined court reform rather than third branch initiated reform fuel competition and defeat national vision</li> <li>• No vision, stream of thought, no reform authority, organizations continue to proliferate to serve interests</li> <li>• G. Gallas' plurality of interests and lack of a unified front</li> <li>• Focus is on management; management has control; entrepreneurial ideas are not encouraged and risk is discouraged</li> <li>• NACM Core Competency Guidelines complete</li> <li>• Power struggles &amp; competition cloud vision</li> <li>• Overemphasis on management rather than leadership action</li> <li>• Founders – aging, seen irrelevant out of touch with today; retiring or passing away, contributions fading from institutional memory</li> </ul>
<b>Administrative systemization succeeds and leadership is institutionalized</b>			
↓		↓	
<b>Phase</b>	<b>Normal</b>	<b>Abnormal</b>	
<b>Prime and Extra-Organizational Collaboration</b>  <b>The Future</b>	<ul style="list-style-type: none"> <li>• Functional systems and organizational structures</li> <li>• Institutionalized vision and creativity</li> <li>• Results orientation; the organization satisfies customer needs</li> <li>• The organization makes plans and follows those plans</li> <li>• The organization predictably excels in performance</li> <li>• The organization can afford growth in both sales and profitability</li> <li>• The organization spins off new Infant organizations</li> <li>• Not enough well trained people</li> </ul>	<ul style="list-style-type: none"> <li>• Complacency</li> <li>• Becoming bureaucratic</li> <li>• Emphasis on control, avoid risks, business as usual</li> <li>• We know what is good for them</li> </ul>	<ul style="list-style-type: none"> <li>• TOBIN'S UNFINISHED REFORM</li> </ul>
<b>Lose flexibility – “if it ain’t broke don’t fix it</b>			
↓			
<b>Phase</b>	<b>Normal</b>	<b>Abnormal</b>	
<b>Stable</b>	<ul style="list-style-type: none"> <li>• Has lower expectations for growth</li> <li>• Has fewer expectations to conquer new markets, technologies, and frontiers</li> <li>• Starts to focus on past achievements instead of future visions</li> <li>• Suspicious of change</li> <li>• Rewards those who do what they are told to do</li> </ul>	<ul style="list-style-type: none"> <li>• Creativity becomes dormant</li> <li>• Avoid risks</li> <li>• Distances itself from clients</li> </ul>	

	<ul style="list-style-type: none"> <li>• More interested in interpersonal relationships than risks</li> </ul>		
“Continuous incremental rotting”			
↓			
Phase	Normal	Abnormal	
<b>Aristocracy</b>	<ul style="list-style-type: none"> <li>• Money is spent on control systems, benefits and facilities</li> <li>• Emphasis is on <i>how</i> things are done rather than <i>what</i> things are done</li> <li>• There is formality of dress, address and tradition</li> <li>• Individuals are concerned about the company’s vitality, but as a group, the operating motto is “Don’t make waves.” It’s business as usual.</li> <li>• There is low internal innovation. The corporation may buy other companies to acquire new products and markets, or in an attempt to buy entrepreneurship</li> <li>• The organization is cash rich – a potential takeover target.</li> </ul>	<ul style="list-style-type: none"> <li>• Products are out of date: clients know it, sales people know it, the CEO knows it and no one does anything about it</li> <li>• Consulting reports are read but not acted upon</li> <li>• Raise prices to compensate for loss of market share; income levels and drops again</li> </ul>	<ul style="list-style-type: none"> <li>• GALLAS AND GRILLER suggest court administration is in decline: within the models it means that court administration exhibits characteristics of the Aristocracy and Bureaucracy phases</li> </ul>
Fight for individual survival begins			
↓			
Phase	Normal	Abnormal	
<b>Early Bureaucracy</b>	<ul style="list-style-type: none"> <li>• Emphasis is on <i>who</i> caused the problem, rather than <i>what</i> to do about it (as if solving the <i>who</i> equals solving the <i>what</i>)</li> <li>• There is much conflict, backstabbing and infighting</li> <li>• Paranoia freezes the organization; everyone is lying low</li> <li>• Focus is on internal turf wars; the external customer is a nuisance</li> </ul>	<ul style="list-style-type: none"> <li>• People do not feel responsible for what is happening</li> <li>• Better people are feared and fired or leave</li> </ul>	<ul style="list-style-type: none"> <li>• GALLAS AND GRILLER suggest court administration is in decline: within the models it means that court administration exhibits characteristics of the Aristocracy and Bureaucracy phases</li> </ul>
Only administrators remain and administration is the only task to do			
↓			
Phase	Normal	Abnormal	
<b>Bureaucracy</b>	<ul style="list-style-type: none"> <li>• It has many systems, with little functional orientation.</li> <li>• It disassociates itself from its environment, and focuses mostly on itself.</li> <li>• There is no sense of control.</li> <li>• In order to work effectively with the organization, customers must develop elaborate approaches to bypass or break through the system.</li> </ul>	<ul style="list-style-type: none"> <li>• Commitment is to the political interests that keep the bureaucracy alive</li> </ul>	<ul style="list-style-type: none"> <li>• GALLAS AND GRILLER suggest court administration is in decline: within the models it means that court administration exhibits characteristics of the Aristocracy and Bureaucracy phases</li> </ul>
↓			
<b>Death of an organization</b>			

### **The Holding Pattern: Third Branch Administration in Transition**

Third branch administration demonstrates mostly characteristics of adolescence and coordination stage. It occasionally will demonstrate a characteristic of the prime and extra-organizational collaboration phase. The conclusion is that third branch administration is in transition between the adolescence/coordination stage and the prime and the extra-organizational collaboration phase as indicated in the model of Figure 9.

Greiner stated that between stages of growth there is a crisis. Adizes stated that between stages of development there were periods of transition. Both theorists stated that it is vital for organizations to know where they have been, where they are, where they want to go, and how they are going to get there. In addition, organizations need to renew those traits and characteristics that contributed to their success. Organizations need to recognize, avoid, and eliminate pathological behaviors that threaten development and growth. Organizations must avoid aristocratic behavior and must constantly stay in tune with needs of their customers and be constantly aware and in equilibrium with their environment – risk is never ending if one is to reach prime and periodically renew the life of an organization.

The study of organizational development theory and models leads one to conclude that third branch administration is in transition from the Adolescence – Coordination phase to Prime and the extra-organizational collaboration phase. Greiner stated that the organization must go through a crisis to get to the next stage of development. Adizes stated that an organization does not just grow into Prime, it must actively work to achieve

Prime and work to stay there. Gallas and Griller have done third branch administration a favor in prompting discussion about decline. If third branch administration does not surmount the challenge of the transition, then we can complete the model as third branch administration fulfills Adizes behavioral pathological predictions of organizations in decline. It is now time to discuss the nature of the crises of transition and the obstacles to growth.

### **Getting to Prime and the Extra-organizational Collaboration Phase**

If third branch administration is not in decline but in a period of transition and crisis between the Adolescent/Coordination phase and the Prime/Collaboration phase, then what is the nature of the crisis, what are the inhibitors to growth, and what kind of stewardship will be needed to lead third branch administration to Prime?

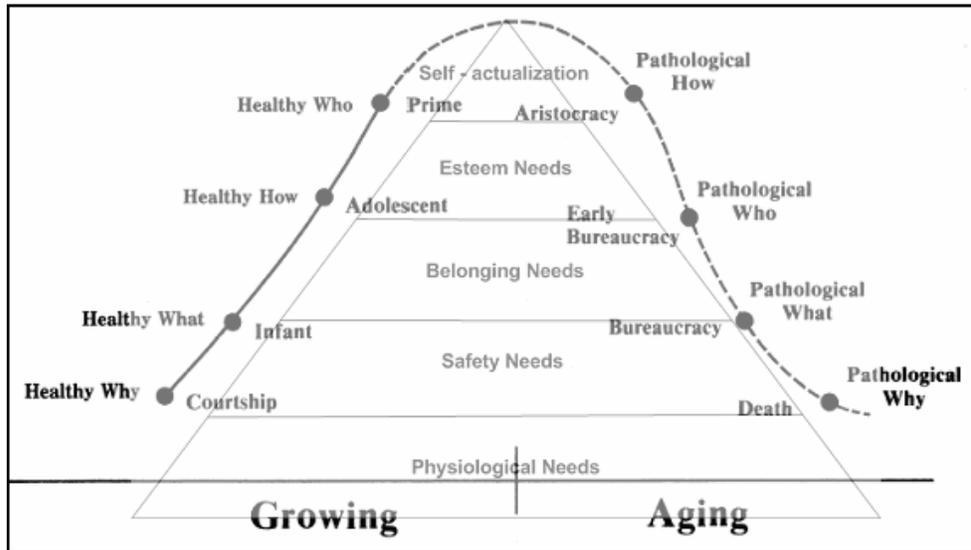
## **Stewardship**

### **The Nature of the Managerial Workforce**

Maslow tells us it is not the organization, it is not the business of third branch administration, it is us, the individuals in the business that contribute to or inhibit organizational development. It is among the ranks of these expert managers that leadership capacity is found. Many court domain experts sit on the edge of a crucible experience. What they do with the opportunity when it presents itself is the test. For an organization to develop into prime and the extra-organizational collaboration phase, it is necessary to have persons within the organization that are meeting their esteem needs and are poised to become or are becoming self-actualized. For third branch administration to

grow, individuals within the organization need to be self-actualized. Synchronizing self-actualized individuals with organizational growth is necessary (see Figure 9).

**Figure 9: Synchronizing Self-Actualization with Prime**



The world loves marketing and we are prone to hype. One may cite the numbers as an indicator that court administration is healthy, alive, and remains in the Go-Go – Delegation and Trendy Implementation Phase. Conducting original membership profile surveys on all the third branch administration associations was not within the scope of this work. The information that was readily available was in the form of published articles containing data inconsistent in structure from one article to the next, thus limiting comparisons.

Figure 10 shows the growth in membership of the court administration associations discussed herein.

**Figure 10: Membership of Associations**

Association	1966	1970	1975	1980	1985	1990	1995	2000	2005
NACA		94	550						
NATCA	20		311 <sup>175</sup>	300 <sup>176</sup>					
NACM					954 <sup>177</sup>	1183 <sup>178</sup>			2200
MAACM									600 <sup>179</sup>

Some are forecasting that the demise of court administration is on the horizon. If third branch management has a problem, it does not appear to be a problem of a declining number of court managers in the business. Clearly, the numbers indicate that the business is growing. More managers are employed in court environments than ever before. ICM figures show that more court managers are being trained. NACM is spending significant resources in delivering training to its membership in accordance with the Delphi direction. Growth in numbers of court managers does not assure third branch administration that it will have self-actualized people with capacity for extra-organizational collaboration.

Drucker said that we are all becoming familiar with trends involving “*Second career*” and “*second half of one’s life*.” Drucker defined them as:

employees ...take early retirement as soon as their pension and social security rights are guaranteed...but they do not stop working. Instead, their ‘second career’ often takes an unconventional form. They may work freelance ...or work part-time or as ‘temporaries’ or for an outsourcing contractor or as contractors themselves. Such ‘early

<sup>175</sup> The Column, Volume 7, Number 3, July 1976 (National Association of Trial Court Administrators) 7.

<sup>176</sup> The Column, Volume II, Number 3, June-August 1980 (National Association of Trial Court Administrators) 10.

<sup>177</sup> The Court Manager, Volume 1, Number 3, Fall 1986 National Association for Court Management: 4.

<sup>178</sup> Reinkensmeyer, “A Profile of Court Managers: Findings of a National Survey” The Court Manager Volume 5 Number 1 Winter 1990 (National Association for Court Management) 5.

<sup>179</sup> See “About MAACM” at <http://www.maacm.org/history.html>.

retirement to keep on working' is particularly common among knowledge workers, who are still a minority among people reaching fifty or fifty-five, but will become the largest single group of older people in America from about 2030.<sup>180</sup>

Knowledge workers seeking second careers after retirement are: "The only fast-growing group in the workforce in America;" accounting for "a full third of the American workforce;" and, in twenty years, "are likely to make up close to two-fifths of the workforce in all rich countries."<sup>181</sup> Drucker warned that the growing knowledge workforce has implications for management:

Effect knowledge is specialized. That means knowledge workers need access to an organization – a collective that brings together an array of knowledge workers and applies their specialisms to a common end product. ...The most brilliant consultant on product development is effective only if there is an organized and competent business to convert her advice into action. ...Knowledge workers therefore see themselves as equal to those who retain their services, as 'professionals' rather than as 'employees.' The knowledge society is a society of seniors and juniors rather than bosses and subordinates.<sup>182</sup>

Drucker also observed that these aging second career workers are not only knowledge workers, they are knowledge seekers.

Such workers have two main needs: formal education that enables them to enter knowledge work in the first place, and continuing education throughout their working lives to keep their knowledge up-to-date.<sup>183</sup>

Drucker predicted that the information age will have the greatest impact on knowledge workers. While all persons engaged in education and training will be impacted by the information age in their learning methods, knowledge workers will be the ones to engage the medium to make the most use out of new delivery systems. Knowledge workers,

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<sup>180</sup> Peter F. Drucker, *Managing in the Next Society* (St. Martin's Press, New York 2003) 249-250.

<sup>181</sup> Drucker 253.

<sup>182</sup> Drucker 254.

<sup>183</sup> Drucker 257.

Drucker said consider themselves professionals rather than employees. There are associated behaviors of second career knowledge workers that management must understand in terms of Maslow's "hierarchy of needs." Knowledge workers, Drucker said, "identify with their knowledge" and therefore identify "with someone who practices the same specialism in another institution than with their colleagues at their own institution who work in a different knowledge area."<sup>184</sup> Other behavioral characteristics Drucker points out for knowledge workers include:

- knowledge workers are highly mobile within their area of specialization;
- knowledge workers are loyal to their area of specialization and not to an organization;
- knowledge workers see themselves as professionals and outside the scope of organizational hierarchies;
- money is important, but most knowledge workers see their job as a life.

Writing in 2001 Peter Drucker said that "the proportion of older people in the adult population will rise steeply in the next thirty years."<sup>185</sup> As an example of a trend that is occurring in all developed countries: "By 2030, people over sixty-five in Germany, the world's third-largest economy, will account for almost half the population, compared with one-fifth now."<sup>186</sup> He predicted: "By 2030 at the latest, the age at which full retirement benefits start will have risen to the midseventies in all developed countries, and benefits for healthy pensioners will be substantially lower than they are today."<sup>187</sup>

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<sup>184</sup> Drucker 259.

<sup>185</sup> Drucker 243.

<sup>186</sup> Drucker 242.

<sup>187</sup> Drucker 243.

Drucker continued with his predictions in *Managing the Next Society*: “In future there will almost certainly be two distinct workforces, broadly made up of the under-fifties and over-fifties respectively” and they “are likely to differ markedly in their needs and behavior, and in the jobs they do.”<sup>188</sup>

Our founders admitted they gave preference to younger people in the first years of ICM in an attempt to recruit people who would commit to court administration for a significant time. The age of participants in 1970 ranged from 24 to 50, a mean age of 34.3, and a median of 31 years.<sup>189</sup> In 1971, two classes were selected. In the first class selected in 1971, participants ranged in age from 24 to 55 with a mean age of 36.2 and a median of 33 years of age. In the second class selected in 1971, participants ranged in age from 28 to 60 with a mean age of 42.7 and a median age of 46.<sup>190</sup> In the class selected in 1972, participants ranged in age from 24 to 57 with a mean age of 36.2 years and a median age of 32.<sup>191</sup> The self-proclaimed early objectives of ICM were to build a cadre of “young specially trained court managers. The CEDP graduates of the early 70’s ICM classes are now certainly past 50, many in their 60’s, and one would be 87 years old if still living!

Surveys of court administrators have been conducted over the life of the profession. Alan Carlson reported in *The Column* in 1984 that 70 percent of NATCA members had responded to a membership survey. “Typically, NATCA members are between 30 and 40 years old (44 percent). Only 13 percent are under thirty years of age, and only 22 percent

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<sup>188</sup> Drucker 248.

<sup>189</sup> Gallas, Court Executive Training Program 1970 144.

<sup>190</sup> Gallas, Court Executive Training Program 1971 13.

<sup>191</sup> Gallas, Court Executive Training Program 1971 149.

are over fifty.” Carlson also reported: “Fewer than 54 percent of the members have served fewer than five years in their current position. Another third have served between six and ten years. None of the respondents indicated more than twenty years of service.”<sup>192</sup>

NACM conducted its first survey in 1989. Marcus Reinkensmeyer published the results in *The Court Manager*. Of the 1,183 regular members polled in 1989, 608 responded. Data concerning the distribution of respondents among age groups was not included. The respondents ranged in age from 26 years of age to 71. The average age of respondents in the 1989 survey was 44 years of age.<sup>193</sup> Reinkensmeyer said that the average age of 44 was two years older than the average age of a survey conducted by Mays and Taggart in 1982.<sup>194</sup>

As new NACM members join the association, they are asked to complete a profile survey. As members leave the organization, their data is removed from the demographic pool. The result is a profile of respondent members. Unfortunately, as of the September 2004 data, only 1185 members of approximately 2300 responded to the survey. The average age is not among the data included in the automated profile report of NACM. The percentage distribution of the member respondents among the age groups is presented in Figure 11.

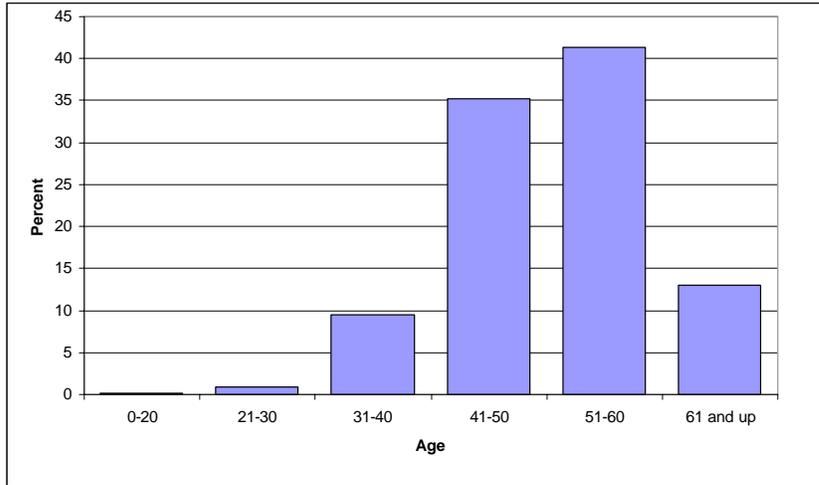
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<sup>192</sup> Alan Carlson, “Survey Reveals Profile of NATCA Membership” *The Column* Volume XV, Number 1, May 1984 (National Association of Trial Court Administrators) 16.

<sup>193</sup> Reinkensmeyer 6.

<sup>194</sup> Reinkensmeyer 6.

**Figure 11 –NACM Age Group Distribution By Percentage of Respondents<sup>195</sup>**



The actual number of respondents in each age grouping appears in Figure 12:

**Figure 12 – NACM Age Group Distribution by Number of Respondents**

0-20	21-30	31-40	41-50	51-60	61 and up
0	1	9	35	41	13
1	10	112	418	490	154

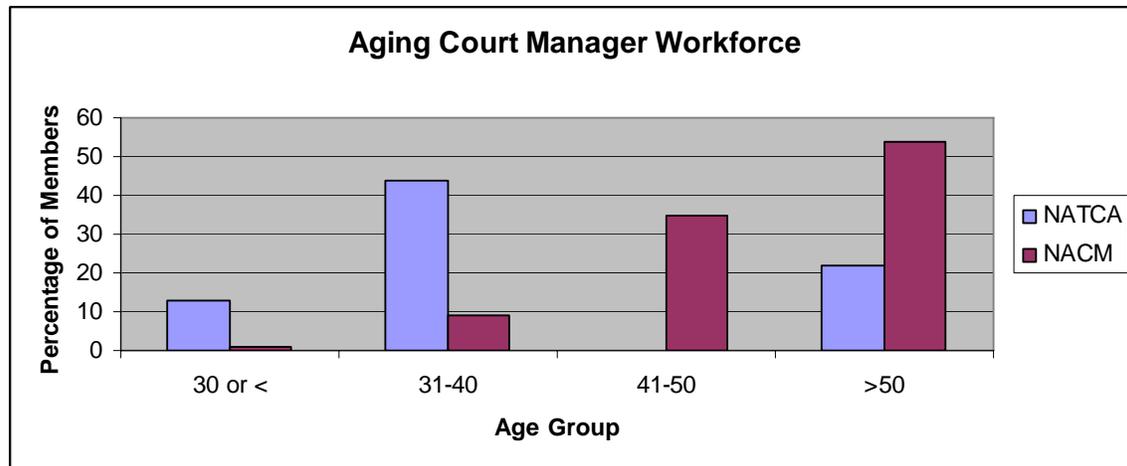
Unfortunately, Carlson’s *Profile* article does not provide the data for the percentages he quotes. The problem it creates is that the total of the three age groups accounts for only 79 percent: 44 percent between thirty and forty; 13 percent under thirty, and; 22 percent over fifty. One assumes Carlson is talking about percent of respondents rather than percent of all NATCA members. Only 70 percent of the members responded, therefore it would be difficult to get to 79 percent age distribution. Assuming that it is respondents that Carlson is referring to, it leaves one to wonder in what age group were the remaining 21 percent? One would assume they were in the 41 to 50 age group, they did not answer the age question on the survey, or some combination of both.

<sup>195</sup> Source: National Center for State Courts, Association Services: September 2004.

Research did not reveal any similar profile conducted by NACA prior to the merger.

However, the comparison of the age of the workforces in Figure 13 is an indicator that may require us to look at the workforce differently to successfully navigate the transition and to help third branch administration grow.

**Figure 13: Age of NATCA and NACM Workforces**



Only twenty-two percent (22%) of NATCA member respondents in 1984 were over fifty years of age compared to fifty-four percent (54%) of the NACM member respondents in 2004. The Carlson article does not reveal the number of NATCA respondents in the 41 to 50 age group in 1984 but NACM had thirty-five percent (35%) respond they were in the 41 to 50 age group. In 1984, forty-four percent (44%) of NATCA respondents were 31 to 40 years of age compared to nine percent (9%) of NACM respondents in 2004. NATCA respondents under thirty years of age represented thirteen percent (13%) in 1984 as opposed to NACM's one (1%) in 2004.

Since NATCA merged with NACA to form NACM, perhaps the reality is that it is simply an aging of the "regulars." However, the NACM Membership Profile Report seems to indicate that aging regulars may be only a small part of the story and that a larger number

of middle age or older members have fewer years of court manager experience (See Figure 14).

**Figure 14: NACM Membership Profile Survey Results – Years of Service**

Yrs of Service In	Government	As Manager	As Court Manager
0 – 5 years	80	154	343
6 – 10 years	189	208	284
11 – 15 years	237	193	231
16 – 20 years	254	186	172
21 – 25 years	261	91	88
26 years or more	221	67	50

Fifty-four percent of the NACM respondents were over 50 years of age. It makes one ask: would NACM prefer a larger number of its members to be under the age of 50 to rejuvenate the managerial workforce? The fact that less than ten percent of the NACM members are under 40 begs the questions: is NACM not recruiting younger members aggressively enough; are there fewer court management types under 40 in the workforce; are persons under 40 not able to convince higher management to pay the dues; are persons under 40 not willing to pay the dues themselves; are court management types under 40 not interested in NACM; are persons under 40 members of other court organizations, or; are there no court management types under 40 employed in the courts; do people believe that court management is declining?

### **The Executive Component of the Courts**

Lawson and Howard in *Development of the Profession of Court Management* reviewed the history of the development of judicial administration and court administration teams. These teams consisted of the Chief Justice and the State Court Administrator at the state court organizational level and the chief judge and trial court administrator at the local court organizational level. Lawson and Howard claimed the teams were fostered by the

Institute for Court Management.<sup>196</sup> Evidence of the state court teams can be found in joint sessions of CCJ and COSCA held at their annual conferences since 1955.<sup>197</sup> The Lawson and Howard article emphasized the managing judge – court administrator team, implying that there was some of harmony in a common cause.

In 1991 Gallas and Gallas raised relationship issues between judges and court managers by noting problems from the literature of the field and citing the debate at the Second National Conference on Court Management in Phoenix, Arizona in 1990.<sup>198</sup> Should judges report to court managers? Should only judges become court administrators? Should judges stay out of administration? The debate generated some heated moments and the discussion lingers on among professionals in the field.

A judge can become a professionally trained administrator and manager. A court administrator can become a judge. Both have happened. Assuming that the court is not taking a “sitting judge” off-line and relegating that judicial resource exclusively to managerial tasks, the valid question to ask is: is the court executive a **good court executive**?

The better question to ask is: should the court executive be professionally trained in the management discipline? That question was answered in 1948 by the Model Act. Gallas, Gallas, and Friesen answered the question again in *Managing the Courts* in 1971. The ABA answered the same question and reaffirmed it in the 1990 *Standards*. Tobin

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<sup>196</sup> Lawson and Howard 597.

<sup>197</sup> History of the Conference of Chief Justices (National Center for State Courts 1993) 15.

<sup>198</sup> Gallas and Gallas 615-616.

addressed the issue in his book *Creating the Judicial Branch* in 1999. The answer has consistently been “Yes” – the court executive component should have a professionally trained administrator. That does not mean that judges should not be trained in administration and management nor does it mean that judges should not be active in administration and management.

Richard Hoffman stated in his article “*The Revolt of the Judges*” that prominent administrators left their positions “not by choice” but as the result of “a new chief or presiding judge” ... “asserting their authority to demand a larger role in running the court system.”<sup>199</sup> Hoffman continues to say that personalities were involved, but states “the phenomenon has been happening often enough now for us to discern the beginning of a trend.”<sup>200</sup> Gallas and Griller seem to concur by suggesting that a “possible ‘revolt of the judges’” may be a sign of the decline of the profession.<sup>201</sup> To say that recent events indicate a trend or to imply that the failure of administrative judges and court administrators to establish and maintain good relationships is something new, is to ignore the history of the field of court administration. History tells us that administrators have been discharged or left of their own volition in the past. Some of those discharges inspired discussion at NACM conferences and some made association publications (see “*Bench Resistance to ‘Management Accountability’ seen as Cause of Blacklock Dismissal*”).<sup>202</sup> Perhaps Hoffman is merely reacting to the notoriety of the court

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<sup>199</sup> Richard B. Hoffman “The Revolt of the Judges.” The Court Manager Volume 19 Issue 2 (National Association for Court Management 2004) 14.

<sup>200</sup> Hoffman 14.

<sup>201</sup> Gallas and Griller 5.

<sup>202</sup> The Column Volume 9, Number 2, April/May 1978 (National Association of Trial Court Administrators) 4.

administrators involved in the situations referred to in his article. Despite accountings of poor chief judge – trial court administrator relationships, the business is rich with success stories. The issue has always been and always will be one of roles, authority, and relationships.

To argue that one profession – judges, attorneys or professionally trained managers – inherently, is better than the other; that one profession is more qualified than the other; that one profession is more competent than the other; that one profession is more entitled or empowered than the other, ignores the importance of the individual as someone knowledgeable and skillful in the environs of their discipline. Friesen, Gallas, and Gallas said:

Judges and lawyers – except where educational efforts have been expended, interpersonal skills developed, or unusual personal attributes possessed – are not particularly suited to deal with the problems of management.<sup>203</sup>

Friesen, Gallas, and Gallas said of managers:

...is not intended to imply that other managers moving into a judicial setting can function effectively as court executives. Even the most skilled managers from the private section would find that legal constraints complicate transposing economically based business theory into justiciary based judiciary theory.<sup>204</sup>

The argument asserting one profession is inherently better at leading and managing our courts is simply an exercise in blowing smoke and ignores the importance of professional management training, individual development, and experience in third branch administration.

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<sup>203</sup> Ernest C. Friesen, Edward C. Gallas, and Nesta M. Gallas, Managing the Courts 13.

<sup>204</sup> Friesen, Gallas, and Gallas 12-14.

Supporting the conclusion reached by Gallas and Gallas makes good sense: “As a matter of practice and necessity, more judges need to become more involved in day-to-day court management both as leaders of trial court committees and projects and as committee members and project team participants with court managers and their staff as committee and project leaders.”<sup>205</sup> Vanderbilt envisioned “the management of court business in a systematic manner, under the direction of one judge whose power and responsibility it would be to utilize available judicial manpower most effectively.”<sup>206</sup> Will Shafroth, Chief of the Division of Procedural Studies and Statistics of the Administrative Office of the United States Courts in 1943 arguing for states to adopt the federal model including relationship of judges and judicial councils to court executives said the administrator:

should be given no control over judges, but should be given power by law to require reports from clerks of courts. The power to take steps to remedy any unsatisfactory conditions shown by reports and statistics must rest in the judiciary itself.<sup>207</sup>

In *Creating the Judicial Branch: The Unfinished Reform* Tobin spoke of the myriad of relationships of chief judges to judges, administrators, and others. He also described the various models of selecting chief judges and the various administrative models at the trial court level and in doing so, provided a good description of trial court reality: “A trial court reaches its administrative apogee when the judge and the administrator constitute a team and the court, rather than an executive branch agency or an elected official, has control of functions that are central to court administration.”<sup>208</sup> Tobin said: “the chief

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<sup>205</sup> Gallas and Gallas 616.

<sup>206</sup> Vanderbilt 29.

<sup>207</sup> Shafroth 16-17.

<sup>208</sup> Tobin, *Creating the Judicial Branch* 180.

judge-court administrator tandem is in most courts the heart of the trial court administrative system.”<sup>209</sup>

Judges should not lead courts simply because they are adorned with title. Court administrators should not lead courts because they have the title of court administrator. Elected and appointed clerks should not lead courts because they bare the title of clerk of the court. Court technologists should not lead courts because they bear the title of CIO or CTO. Academics should not lead courts because they are academics, etc., etc., etc. Although titles add a dimension to authority, people can lead without having a formal title. Titles do not bestow leadership capabilities to the beholder of the title. The future of courts lies not in persons with title, but in persons with leadership capacity and management competence.

The future of courts lies not within single individuals with those traits, but within teams of individuals with leadership capacity and management competence. Understanding that teams are the essence of court operations is not a new concept to third branch administration. Again, reading from the contributions of founders:

Court operations are performed by a group of specialized teams coordinated by a team leader. The more effectively the teams work together, the more effective the courts. A team may consist of the judge, the court reporter, the clerk, the bailiff, and a legal assistant. ... Each member must recognize and respect the special competence of the other members of the team. The need for a relationship of mutual trust is paramount. The interaction of the team members

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<sup>209</sup> Tobin, *Creating the Judicial Branch* 176.

one to another is rarely subject to hierarchical control mechanisms.<sup>210</sup>

Building the executive-managerial components of courts is about building leadership capacity where the sum of the collective talent exceeds the capabilities of single individuals. Not every member will bring the same level of leadership capacity to the team. Every member brings different management competencies and different types of competence to the team. The future of courts rests with our ability to build an executive team consisting of judges, court administrators, clerks of court and others to contribute to the *resonance* of the judicial branch rather than to the *dissonance* of the judicial branch.<sup>211</sup>

### **The Court Governance Model**

The preferred governance model for a court should be a presiding judge and a professionally trained administrator model supplanted by the court executive team and committees of judges and managers. This is a model in use by many courts. There is nothing inherently wrong with the model – the model is sound. However, the conclusion begs the age old question: can the presiding or administrative judge and the court administrator develop a professional working relationship? Can the court administrator consistently develop good working relationships each time there is a change in judicial leadership?

One managerial process that directly impacts the ability of a court administrator to build relationships with successive presiding judges is the manner of appointment of the court

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<sup>210</sup> Friesen, Gallas, and Gallas 108.

<sup>211</sup> Daniel Goleman, Richard Boyatzis, and Annie McKee, Primal Leadership (Harvard Business School Press, Boston, Massachusetts 2004, paperback edition) 5-6.

administrator. The model providing appointment and removal of the court executive by the presiding justice or judge may be more likely to create difficulties over time as the presiding judge changes. The model providing appointment and removal by a majority vote of the justices or judges may create more opportunity to develop relationships with each and every member of the bench. This model can be extended to the judicial authority structure between the presiding judge and the board of judges – all judges in a court acting en banc in determining policy, processes, and procedure to address the managerial and ministerial affairs of a court.

A conceptual framework for court management includes the judge as the titular head of court operations. ...

Members of multi-judge courts frequently devote time serving as a member of the courts' governing board. Their efforts in this capacity are directed to resolving important controversial matters in a legislative or policy context. Since judges are an elite group, the entire court –sitting as a board – derives special prestige. Committees of the board are utilized to formulate and to recommend policies to the entire board. A qualified professional, working as a general manager, is used to define managerial problems and to recommend and implement policies for problem resolution. Judges in most courts form part of a multi-judge team. As individuals they are also the focal figure in separate court teams. A judge must be an able team leader as well as a conscientious team member.<sup>212</sup>

The model of court organization that collectively establishes a board of directors of judges, one among them as the administrative head of that judicial board, and a professional manager made sense in the conceptual phases and implementation phases of third branch administration:

The duties prescribed for a court executive should be separate from but supportive of those that are carried out by a chief judge or presiding judge. Unless the authority of the court executive is differentiated from that of the chief

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<sup>212</sup> Friesen, Gallas, and Gallas 115.

judge, the two positions may conflict. Where there is no specific delegation of authority is made, the chief judge is obliged to function as the chief executive officer as well as the chief judge.

The powers and duties delegated should be subject to general supervision by the presiding judge. There should not be any confusion as to where ultimate responsibility for the effectiveness of the court rests. Supervision by the presiding judge should be ministerial in nature, since a court executive is an appointee of the entire court.<sup>213</sup>

In speaking on the subject of organization and authority of the executive component of the court, Friesen, Gallas, and Gallas said:

A court executive may be appointed in a number of ways. He may be designated by formal action of the court as a whole. He may be appointed by the presiding judge. He may function by sufferance of the judges in accomplishing his work. The best arrangement is for the court executive to be responsible to the court and only to the court. An appointee should not be the choice of any individual judge, even though the judge is the chief judge of the court. An appointment by the state judicial conference or by any government agency outside the court is equally inappropriate. The entire court should have the authority to appoint him and to remove him if he lacks suitability. This arrangement assures his responsiveness to the courts' collective requirements. The court executive will be able to relate in a businesslike way to the best interests of the entire court organization.<sup>214</sup>

The model made sense in the beginning of third branch administration and it makes sense for the future. Lack of adherence to a professional organizational model may be one obstacle for third branch administration transition to prime and the extra-organizational development phase.

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<sup>213</sup> Friesen, Gallas, and Gallas 121.

<sup>214</sup> Friesen, Gallas, and Gallas 123.

### **Training the Executive Component of the Court**

Hoffman stated: “this situation bespeaks a failure to educate judges on the basic precepts of court administration.”<sup>215</sup> Has there been such a failure? In 1976, reflecting on his training in the first ICM Court Executive Development Program, Michael D. Hall said: “A frustrating aspect of court management, and one which I do not think the Institute adequately dealt with in 1970, is the relationship between the court administrator and elected officials, particularly Judges...”<sup>216</sup> The court community has not consistently recognized the importance of building relationships between judges and administrators. Ernie Friesen, speaking to NATCA in May of 1977 said: “At the National Judicial College the two courses on court administration and court management have been regularly and fully subscribed to 30 to 35 and one time even 60 judges and court administrators worked together. It is a mark that they will sit down together, a mark of progress which, if suggested in the mid 60’s, wouldn’t have happened.”<sup>217</sup> Although these judge – court administrator events were marks of progress, history shows that training administrative judge – court administrator teams would not be sustained.

The Institute for Court Management began preparing professional court administrators for employment in the courts in 1970. However, it was not until 1977 when “the first effort by the Institute to bring together teams of administrative judges and court administrators to enhance their problem solving skills” was attempted.<sup>218</sup> In 1988 ICM offered an enhanced workshop stating: “the Institute designed this program

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<sup>215</sup> Hoffman 14.

<sup>216</sup> Institute for Court Management, Annual Report 1976 (Denver, Colorado) 8.

<sup>217</sup> Ernest Friesen, “On Court Administration” The Column Volume 8 Number 4, August/September 1977 (National Association of Trial Court Administrators) 10.

<sup>218</sup> Institute for Court Management, Annual Report 1977 (Denver, Colorado) 7.

[Strengthening the Executive Component of the Court] to improve the cooperation between court administrators and judges in the performance of the executive functions within the courts.”<sup>219</sup>

Multiple experiences during the course of a career proved that attending training programs specifically designed for the administrative judge and the court administrator as a team, had value. Those experiences had more impact when the administrator attended with newly selected presiding or administrative judges. Although work is currently underway between the National Center for State Courts and the National Judicial College to offer the course again, the concern remains that this is just another mark in history rather than an effort that will be sustained. History shows that the commitment to promote administrative judge – court administrator training rested on financial issues. The spirit of the creative years is but a glowing ember and finance will likely be the determining factor whether the course currently being planned is offered more than once – if they come, perhaps it will be offered a second time. This is the nature of the transition that third branch administration finds itself – it lacks the vision and dedication to principle that the creative phase held.

ICM first offered the “Court Executive Component” workshop in 1977 with funding from the Law Enforcement Assistance Administration awarding 20 certificates of completion.<sup>220</sup> In 1978 the Executive Component workshop was offered twice awarding 14 certificates in the first workshop and 27 certificates in the second

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<sup>219</sup> Institute for Court Management, Annual Report 1978 (Denver, Colorado) 8.

<sup>220</sup> Institute for Court Management, Annual Report 1977 (Denver, Colorado) 7.

workshop.<sup>221</sup> In 1979, the Institute offered “Strengthening the Executive Component of the Court” awarding 28 certificates and 30 certificates in two workshops.<sup>222</sup> In 1980, two more workshops “Strengthening the Executive Component of the Court” were offered awarding 22 and 12 certificates to attendees.<sup>223</sup> In 1981, ICM offered one workshop on the Executive Component awarding 31 certificates to attendees.<sup>224</sup> In 1982, ICM offered one Executive Component workshop nationally awarding 23 certificates.<sup>225</sup> In 1982, ICM along with the National Center for State Courts jointly sponsored “Management for Chief and Presiding Judges” awarding 23 certificates.<sup>226</sup> In doing so the Institute said: “aside from the Executive Component workshop for teams of presiding judges and court administrators, a new course was presented specifically for judges involved directly in administration.”<sup>227</sup> In 1983 ICM only offered the Chief and Presiding Judge workshop as a national program awarding 23 certificates.<sup>228</sup> In addition to the national programs, ICM conducted management training for judges and administrators for individual states: in 1979 for 60 judges and administrators in Illinois<sup>229</sup>; in 1982 for 36 judges and administrators from the states of Wisconsin and Minnesota;<sup>230</sup> and offered the Executive Component for the state of Washington awarding 30 certificates to chief judge and administrator teams.<sup>231</sup>

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<sup>221</sup> Institute for Court Management, Annual Report 1978 (Denver, Colorado) 9.

<sup>222</sup> Institute for Court Management, Annual Report 1979 (Denver, Colorado) 7.

<sup>223</sup> Institute for Court Management, Annual Report 1980 (Denver, Colorado) 7.

<sup>224</sup> Institute for Court Management, Annual Report 1981 (Denver, Colorado) 6.

<sup>225</sup> Institute for Court Management, Annual Report 1982 (Denver, Colorado) 9.

<sup>226</sup> Institute for Court Management, Annual Report 1982 (Denver, Colorado) 11.

<sup>227</sup> Institute for Court Management, Annual Report 1982 (Denver, Colorado) 9.

<sup>228</sup> Institute for Court Management, Annual Report 1983 (Denver, Colorado) 7-8.

<sup>229</sup> Institute for Court Management, Annual Report 1979 (Denver, Colorado) 8.

<sup>230</sup> Institute for Court Management, Annual Report 1982 (Denver, Colorado) 10.

<sup>231</sup> Institute for Court Management, Annual Report 1983 (Denver, Colorado) 8.

ICM annual reports for years after 1982 could not be located – that may be the result of records lost in the merger with NCSC. The frequency of courses focused on judge – administrator teams during the years of 1983 to 1993 could not be documented through records at NCSC. However, since 1993, only one ICM course was advertised as one that required administrative or presiding judges and court administrators to attend in teams. In 2001, the course, Trial Court Judicial Leadership Program, was cancelled because only three courts registered. ICM offered an Executive Team Leadership course once each year in 1994, 1997, and 1998. It did not require the judge – administrator team. In 1999, a Strategic Planning: Strengthening Your Executive Team was offered but again it did not require judge – administrator teams.

To meet the challenges of the future, many competent court managers and management competent judges must be trained as teams. The administrative judge and the court administrator should be at the core of a larger executive component of the court and the entire executive component of court should be trained as teams. Every member of the executive component must have leadership capacity and must be capable of behavior in behalf of the mission in an extra-organizational environment. Our development efforts must continue along the dual paths of management competence and leadership capacity. One of the leadership actions that is necessary to reach and sustain third branch administration in prime is creating and sustaining training and development of the executive component of courts.

### Where are the Leaders?

Unfortunately we are at a time in the development of third branch administration when many of the founders and early leaders are entering an age of shortened professional productivity. Some have retired but continue working in the business on special short term projects. Some have retired achieving Maslow's self-actualized state in something other than third branch administration.

Collins E. Ijoma, President of The National Association for Court Management 2004-2005 said in his first "Presidents Message" in *Court Manager*:

Leadership is at the core of our mission statement. Many of you remember the process that started more than 20 years ago to merge the National Association for Court Administration (NACA) and the National Association of Trial Court Administrators (NATCA). Forming NACM took bold and visionary leadership, plus some real pragmatism.

So where are some of those leaders now? Over the next year, I would like to use a portion of this column to celebrate our past presidents and indicate where they are now. The first NACM president, Don Cullen, served from 1985 to 1986. He is presently living in Williamsburg, Virginia and working at the National Center for State Courts.<sup>232</sup>

Persons interested in knowing about leaders who have contributed to third branch administration development should follow Ijoma's messages as he serves as NACM's President to see where these NACM former leaders are today.

Also of interest in 2005 will be plans of American University Justice Programs Office for the 2005 conference on judicial leadership. Attending will be a must for those who think

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<sup>232</sup> Collins E. Ijoma, "President's Message" *Court Manager* Volume 19 Issue 3, 2004 (National Association for Court Management) 3.

that leadership in third branch administration is important. The first planning meeting was held in December of 2004. At that planning meeting, American University brought together “leaders who have been prominent in judicial system reform activities during the ‘70’s and ‘80s”<sup>233</sup> to help plan the conference (See Appendices). Attendees at the meeting in December were to: identify legacy court improvement initiatives and lessons learned; delineate challenges of the early 21<sup>st</sup> century; determine steps in planning the conference, and; to do so focusing the conference on “emerging leaders.”<sup>234</sup> It is apparent that third branch administration has failed thus far in succession planning for national leadership. But perhaps we are guilty of looking at leadership from a jaundiced perspective? Perhaps we are looking for entrepreneurial leaders when we should be looking at leadership from an organizational point of view?

Leadership is **the** issue for third branch administration in the prime and extra-organizational phase in the 21<sup>st</sup> century. Some may argue that leadership is one component of the Core Competencies of NACM and institutionalizing the CCG will make leadership a part of our daily operations. The nation’s courts are full of managers, albeit, constantly needing to replenish them, constantly needing to train them, but life is a learning process. And, yes, we need to continue the national networking to enable court managers to continually improve their KSAs. But implementing the CCGs will do little to replenish the loss of entrepreneurial leaders in third branch administration. Furthermore, it may be an activity ill focused – attempting to make new leaders when in fact the management science tells us that leaders emerge from crucibles. Perhaps the need of third

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<sup>233</sup> Letter addressed to Mary McQueen, President of the National Center for State Courts signed by Joseph A. Trotter, Jr., Director, Criminal Courts Technical Assistance Project, dated October 19, 2004.

<sup>234</sup> Trotter letter.

branch administration is to focus on creating courts and court reform entities capable of taking leadership action – in other words, improving the capacity of organizations to take leadership roles. Taking this course, we teach people about leadership action; we focus on inspiring the mission; we focus on the development of individuals; we select individuals for management and the executive component of the court based upon whether they are poised for self-actualization, and; we combine those qualities with organizations willing to take the risks similar to those that the entrepreneurial leaders did when they originally pursued judicial reform.

A few court administrators were interviewed to test whether any of the opinions offered in this paper were shared by practicing court administrators. The answers revealed weaknesses in both the survey and conceptualization. Respondents gave immediate recognition to local individuals (people they thought of as leaders within their respective states). Respondents were slower in recognizing national leaders whether founders or contemporaries. Generally, respondents were less likely to name founders except in cases where the respondent had been a student in a court management program, namely ICM. The national leaders named in the interviews were retired or approaching retirement. The nation's courts may be full of leaders, but if they are, those leaders are operating more at the state and local level of leadership recognition rather than national recognition. One flaw of the survey design was that it fell into the trap that third branch administration has fallen into, thinking about leadership personified – person centered leadership. The survey was not constructed to look at why the respondent thought of a person as a leader.

Although the survey failed its original intended purpose, it provided insight for a future effort.

How do we get people to embrace the concept that leadership is demonstrated in the actions they take rather than looking for an organizational messiah? As said above, the executive of the organization must provide that environment and must also communicate the concept to everyone in the organization. The field of court administration, as a component of third branch administration, has done a good job in developing capacity for management – coping with complexity. Third branch administration now needs to develop the capacity for leadership action.

Leadership action can be found in state and local courts. The literature tends to ignore instances of state and local leadership. Rather, the field continues to focus on the entrepreneurial leaders in the initial phase of its organizational development. Aligning third branch administration with today's management science indicates that the transition to Greiner's intra and extra-organizational phase and Adizes' prime phase requires third branch administration to think about leadership in terms of leadership action, people taking leadership action, and organizations demonstrating leadership action and doing so inter-organizationally and extra-organizationally.

There are people in state and local government and in court reform organizations capable of taking leadership action. If there is to be a course of action in response to the "leadership crisis", it should not be an attempt to create a few stellar leaders in the image

of the founders. Instead, we should launch an effort to identify people who demonstrate leadership talent. We should help them hone their leadership skills. We should help them to understand and embrace the idea that leadership today is getting people inside and outside the organization to adapt to change, make a difference, and contribute to improvement of justice both inside and outside their respective organizations. Much of the literature on leadership tells us that “leaders” in the people centric sense do not emerge as leaders from leadership training programs, rather they emerge from crucible experiences. However, the literature also supports the concept that leadership training programs can help persons that demonstrate leadership action to become more knowledgeable and better skilled, managerially, technically, and organizationally. Navigating a crucible experience; taking leadership action; inspiring and engaging others in the task or mission, and; improving organizational achievement are demonstrations of self-actualized persons. The obstacle that courts face is the same for organizational development everywhere: identifying people in courts that may contribute to the organization taking leadership action. This perspective on succession is different than the traditional one that the court administration literature has focused on recently – continuing to look for entrepreneurs and messiahs rather than focusing on leadership action.

We should not abandon management training, but we should plan for succession – train and provide opportunity for persons that demonstrate growth to accept challenge, take risk, and enter the crucible. This means that we recognize that there are two distinct professional development objectives: train people to help them become competent

managers and provide them opportunity to enter and evolve through crucibles of experience. Third branch administration has met the challenge and is meeting the challenge of training and employing competent managers, a characteristic of organizational development that both Greiner and Adizes predict in their models. But Greiner and Adizes warn us of times when the entrepreneurs, the idea people, the leaders who founded and created the organization will be gone! What is the nature of the stewardship of an organization in prime?

### **Stewardship and Leadership in the Extra-organizational Collaboration Phase**

What is the nature of leadership needed for third branch administration to make the transition to Prime? Is the role of the third branch administrators changing as may be suggested by the management and leadership literature? The literature of the last decade of the 20<sup>th</sup> century identified trends that suggest that the core competencies are necessary components of court management. However, the literature external to courts suggests that we should focus our attention on the leadership qualities and leadership actions necessary to succeed in today's rapidly changing executive environment. Our fixation with replacing the founders with new icons is an obstacle to growth and will only prolong the transition delaying future organizational growth.

Kanter claimed traditional organizational characteristics like hierarchy, titles, performance reviews, rewards, career paths, and many others that court administration still embraces as core competencies were fading in the late 1980's. She claimed horizontal working relationships and external partnerships were replacing hierarchical

internal relationships. According to Kanter, personnel in these changing organizations worked more in teams that cut across hierarchical structures. Individual employees were loyal to their projects rather than their boss or to the organization. Kanter called the new practices “postentrepreneurial” and claimed that leaders had to learn and use new motivational techniques “different from those of traditional bureaucrats.”<sup>235</sup>

Kanter stated that one important quality of leaders is their ability to work across organizational lines, internally and externally, in an interdependent milieu to achieve goals and objectives. This is not a new concept in court management. Those who think it is new should read the founders and in particular the chapter on the “Functions and Role of the Court Executive” from *Managing the Courts*.

The court environment – both internal and external – is a major factor contributing to success or failure in court management. ...

The court faces an extraordinary need to cope with the persons and circumstances, both internal and external, in its unique environmental setting. Persons presumed to be supportive and subject to its authority are loyal to, and take directions from, individuals or agencies over whom the court exercises no control....

Two structural variables are especially significant in studying the court environment. These are the power structure, i.e., who can influence whom, and the authority structure, i.e., who is in what official position. ...A conscious concern for and attention to the locus of authority and of power is basic to court management control. Authority and power as organizational concepts are not the same.<sup>236</sup>

Others have added to the third branch institutional knowledge emphasizing the importance of “interorganizational networks.” John A. Martin and Nancy C. Maron

<sup>235</sup> Rosabeth Moss Kanter “The New Managerial Work” *Harvard Business Review* (November-December 1989 Reprint 89606) 1-12.

<sup>236</sup> Gallas, Gallas, and Friesen 111.

contrasted court management perspectives of the “big court machine” and “the court as the apex of a hierarchical judicial system.” In the second perspective, Martin and Maron noted that: “no single agency can or should attempt to control the entire judicial system.” Martin and Maron argued that courts must discard their traditional management style and suggested that courts should adopt the inter-organizational perspective emphasizing:

(1) interdependence among the numerous “essential” organizations forming a complex interorganizational network; (2) the importance, as determinants of performance, of local legal culture and implicit negotiated orders as well as formal rules, procedures, and other traditionally recognized attributes of organizational structure; (3) the anti-hierarchical nature of the judicial process; (4) the presence of diffuse decision making in today’s trial courts, and; (5) the court’s role as an integrator.<sup>237</sup>

Martin and Maron advocated that administrative judges and court administrators serve as social system integrators. The CCG’s may be the core skill set for a court manager, but the executive team may need more emphasis social systems integrator KSA’s. Knowing the environment outside courts is as important as knowing the court environment itself.

Organizational development (OD) theory grew out of a humanistic approach to managing organizations as an alternative to the traditional power management theories. Initially, the two theories were contentious and contemptuous of one another. Over time, the humanistic approach began to incorporate aspects of power into organizational development theory and power theorists began recognizing aspects of the humanistic approach to organizational growth. Theories and theorists progressed through stages of “development.”

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<sup>237</sup> John A. Martin and Nancy C. Maron, “Court Delay and Interorganizational Networks: Managing an Essential Tension,” Justice System Journal Volume 14-15, Number 3 -1, 1991 268-288.

Greiner and Schein were among those who incorporated aspects of traditional (legacy) management theory with its strong power orientation into organizational development theory.<sup>238</sup> They re-defined power as: “the capacity to influence another person or group to accept one’s own ideas or plans.”<sup>239</sup> Greiner and Schein recognized the value of both theories in that organizations need both theories at different times and at different places within the organization. Unlike the early OD theorists, Greiner and Schein suggested that OD theory must make enlightened use of power as they have defined it.

Greiner and Schein said that “*downward* power” is the influence of a superior over a subordinate” and “*Upward* power refers to attempts by subordinates to influence their superiors.”<sup>240</sup> That is not to disregard “*position* power... a combination of one’s job title, job description, and prescribed responsibilities.”<sup>241</sup> Perhaps third branch administration has depended too much upon position power and its associated downward and upward power intonations. If we subscribe to organizational development theories and models, then, then focusing on position power is a characteristic of third branch administration growth, i.e., getting our own house in order before venturing outside the court organization. Greiner and Schein stated that position power is “of limited value except in the case of downward influence.”<sup>242</sup> Position power in courts partially emanates from the American concept of an independent and free judiciary – the court has position power. A

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<sup>238</sup> Larry E. Greiner and Virginia E. Schein, Power and Organization Development: Mobilizing Power to Implement Change (Addison-Wesley Publishing Company, New York, New York. 1988).

<sup>239</sup> Greiner and Schein 13.

<sup>240</sup> Greiner and Schein 14.

<sup>241</sup> Greiner and Schein 25.

<sup>242</sup> Greiner and Schein 26.

judge within the court has position power. The administrative judge has position power. The person to whom the administrative judge delegates has position power. If position power is the only power used, then the use of position power loses value and may be detrimental to the “balance of power.”

In addition to position power, third branch administrators must excel in the use of “*sideways* power... influence attempts directed at those people who are neither subordinates nor superiors in one’s immediate reporting chain of authority.”<sup>243</sup>

“*Horizontal power, interdepartmental power, external relationships, and lateral relationships*” are examples of sideways power.<sup>244</sup> The use of sideways power is dependent upon the development of individual power: “particular abilities and background experiences” of the person holding the position.<sup>245</sup> Greiner and Schein identify eight bases of individual power:

- Knowledge base power<sup>246</sup>
  - “*Expert power* ... possession of a specific body of knowledge acquired through formal academic training or job experience.”
  - “*Information power* allows one to influence others by creating information, withholding it, distorting it, or redirecting flow toward the selected recipients.”
  - “*Tradition*” – historical knowledge about the organization that can be used to influence others.

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<sup>243</sup> Greiner and Schein 14.

<sup>244</sup> Greiner and Schein 14.

<sup>245</sup> Greiner and Schein 26.

<sup>246</sup> Greiner and Schein 28-29.

- Personality<sup>247</sup>
  - “*Charisma*... the ability to inspire devotion and enthusiasm from others.”
  - “*Reputation* ... power stemming from others who have a favorable opinion of your work and capabilities.”
  - “*Professional credibility*” consists of involvement in industry meetings, associations, speaking engagements, and publications resulting in the recognition by one’s peers.
- *Others’ Support*<sup>248</sup>
  - “*Political access* refers to the ability to call upon networks of relationships within the organization.”
  - “*staff support*” relies on power capital of subordinates to enhance the power of the superior.

Of these, mastering the NACM Core Competencies speak means one has mastered mostly expert power and that accomplishment should provide one with expert power, but does not necessarily make one competent in the use of other power essential to organizations performing in a collaborative world. Effective and responsible use of power as it is defined by Greiner and Schein are necessary qualities of third branch administration in the prime and extra-organizational collaboration phase.

In discussions with a software developer concerning information sharing in the justice system, the developer said that projects are more likely to move forward when the court is the driver. The developer did not mean driver from an autocratic – “big court machine”

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<sup>247</sup> Greiner and Schein 30-31.

<sup>248</sup> Greiner and Schein 31-32.

perspective, he meant driver from the perspective that the court demonstrated leadership, coordinated, and collaborated with other authorities, and impressed upon others the importance of the goal. The comment adds weight to the argument that the court executive must be expert in working with people of authority and power external to the court organization and must be capable of initiating and leading the collaboration. “In a modern organization, this primordial emotional task ... remains foremost among the many jobs of leadership: driving the collective emotions in a positive direction and clearing the smog created by toxic emotions.”<sup>249</sup> To be successful, Goleman states that “Without it [emotional intelligence], a person can have the best training in the world, an incisive, analytical mind, and an endless supply of smart ideas, but he still won’t make a great leader.”<sup>250</sup> According to Goleman, emotional intelligence involves the self-management skills of self-awareness, self-regulation, and motivation and the ability to manage relationships with empathy and social skill.<sup>251</sup> Edward C. Gallas, tried to tell court managers that the future would require something more than becoming masters of core management competencies telling the ICM graduating class in 1974: [Court Management] is “a very important specialization in the management of complex organizations ... that requires policy, decisional and behavioral skills, all of which depends on the ability to use power and to manage conflict constructively.”<sup>252</sup>

The focus of third branch administration and especially court administration in the growth phases of the 70s, 80s, and 90s has been on management – defining court

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<sup>249</sup> Goleman, Boyatzis, and McKee 5.

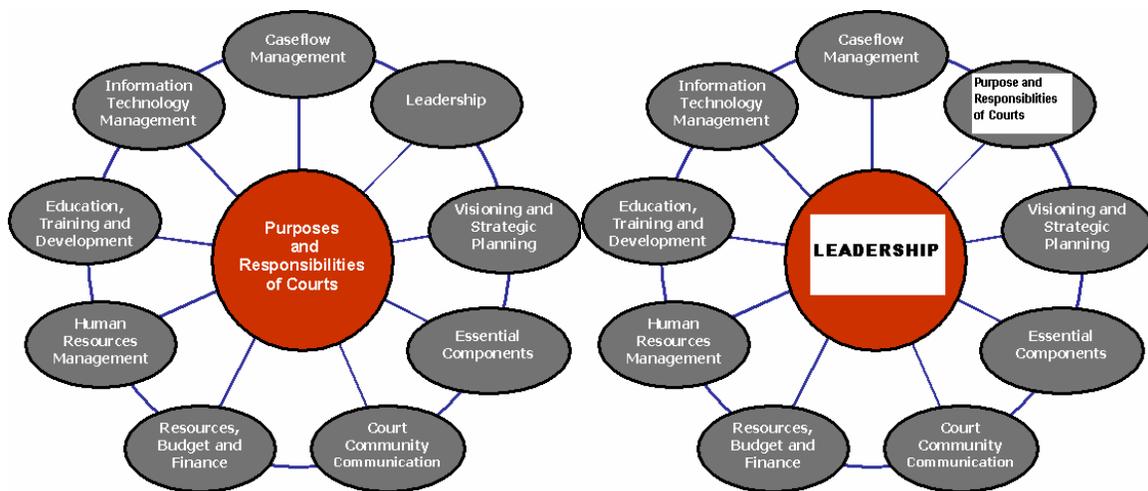
<sup>250</sup> Daniel Goleman, “What Makes a Leader” Harvard Business Review: Inside the Mind of the Leader January 2004 2.

<sup>251</sup> Goleman 9.

<sup>252</sup> Gallas and Gallas 608.

management, training managers, and evaluating performance. Third branch administration has not focused on the qualities of leadership, leadership action, and stewarding organizations toward leadership action. The CCG was intended, targets, and is a good tool for creating court management experts. Leadership is but one of the competencies as depicted in the NACM Core Competency model pictured on the left in Figure 15 and that is probably an accurate reflection for a court manager.

**Figure 15: Leadership Centered CCG**



The purpose and responsibilities of courts represents expertise that court managers should have in the mission and processes of courts and would be better graphically displayed as a circle around the competencies representing the court domain. For courts in the collaborative phase of organizational development, court managers must have leadership capacity enabled by their collaboration skills. The NACM Core Competency model may better serve third branch administration in the 21<sup>st</sup> century by adopting a leadership centric model as depicted in the graphic to the right in Figure 15. It is conceivable that a totally separate model could be constructed reflecting the qualities of a leadership capacity within an organization. Leadership capacity in a collaborative world is a quality

of management necessary to reenergize third branch administration and continue with the unfinished reform.

A vision of the founders has been achieved. They succeeded in creating the field of court management. A core of professional managers has been trained. We witnessed the institutionalization of court management with an accepted set of principles,<sup>253</sup> a code of conduct,<sup>254</sup> and a detailed set of knowledge, skills, and abilities that people should have to manage the courts (NACM Core Competencies). All are commendable and necessary steps in the organizational development of third branch administration. The competencies are a milestone in the business, albeit out of phase for the organizational development model – ten to fifteen years earlier would have been very helpful.

Gallas and Griller point out that the “court executive leadership team” was an “early model” of the ICM Court Executive Development Program.<sup>255</sup> Another point made by Gallas and Griller was that more court administrators act as “project managers” under the direction of an administrative judge rather than demonstrating “organizational leadership.”<sup>256</sup> There is no flaw in the concept that court managers should be project managers; in fact, we need more court managers with better project management (PM) skills and the CCCG’s state as much. It is conceivable that the future of federal grants may hang on the grant recipient having some level of PM certification! Project management skills are, in fact, NACM core competency requirements. Once again the

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<sup>253</sup> National Association for Court Management. *The Court Administrator: A Manual*, National Association for Court Management, 1992.

<sup>254</sup> See NACM Model Code of Conduct at <http://www.nacmnet.org/codeofconduct.html>.

<sup>255</sup> Gallas and Griller 7.

<sup>256</sup> Gallas and Griller 8.

issue hangs on interpersonal relationships with administrative judges, with court managers, with employees, with externals – both court related and other entities.

It is rather obvious, as PDAC recognized in 1998, that a court manager is unlikely to have direct knowledge of, skills in, and ability to do 70 to 100 individual KSAs contained within ten core competency areas. PDAC made three statements on this subject in the history of the CCG: CCGs are what a court manager should have or should know; court managers should have acceptable levels of KSAs in the ten core competencies, and; PDAC did not assume that a court manager could master every competency, much less every KSA under a competency. If we put on our Maslow hat and think of individual development instead of organizational development, we identify what are the KSAs needed for a position? We assess what are the strengths and weaknesses of the KSAs of the person in the position or aspiring to the position? What is the gap analysis of talent possessed vs. talent needed? How do we then train the person in the deficient areas? How do we prepare a non-court manager to become a court manager generalist? Answer: by training them in all ten core competencies – but, at what level – mastery of seventy KSAs in caseflow management along with the hundreds of others? Perhaps that is how we approach training the case manager, but not the court manager generalist and certainly not the court leader who must skillfully get to “Yes” with co-equals or officials of other branches of government and executive agencies. The challenge we face concerning the CCGs is developing a diverse approach to training with an understanding of the individuals we are attempting to train and with a method and design about how to educate the intended student(s).

Demands for increased responsiveness through flattened, lean organizational structures are likely to continue in the court environment. The future success of court organizations in such an environment is likely to require executives to reach a point in professional development where leadership qualities and court management expertise have a symbiotic relationship within their human host. Courts will continue to need managers trained and skilled in their respective specialty core competencies to manage various components of our courts. Court executives will need to achieve the manager-leader symbiosis through self-actualization in order to help courts take leadership action in a collaborative model.

However, the theorists suggest that entrepreneurial ideas and dedication to mission are necessary for organizational growth. It is suggested that an organization in prime and extra-organizational collaboration is one that leads as an organization that lives each day based upon leadership actions taking by many in the organization. The leadership icon is the organization rather than the entrepreneurial leader. The person in the front office of organizations in prime and operating at the extra-organizational collaboration level is a person that enables and empowers the organization to perform and collaborate – the steward of the unfinished reform.

## Financing Court Reform: An Inhibitor to Growth

Without foundation seed money and federal grants, court reform may have never happened. Without foundation funds and federal grants, the profession of court administration may have never developed. The history of court reform and third branch administration is replete with instances of court reform and management financed by dollars external to state and local court budgets.

In 1938, the Institute of Judicial Administration had difficulty getting the Ford Foundation to provide funds to give birth to IJA and get it off the ground. Fortunately, the Rockefeller Foundation made an award of \$250,000 (\$50,000 per year for five years) and a subsequent grant of \$150,000 for three years.<sup>257</sup> The Ford Foundation then provided a matching grant of \$225,000 for three years conditional on the IJA raising the same amount from other sources. Like ICM, IJA benefited from LEAA through a number of grants directly and indirectly including funding judicial education seminars.<sup>258</sup> IJA projects were supported by contributions from private sector companies, like West Publishing and by contributions from membership dues of judges, court administrators, and academicians.

The first two meetings of the Conference of Chief Justices may not have happened without funds provided by the Rockefeller Foundation and the Davella Mills Foundation paying for one of those perennially hard to justify line items: “the traveling expenses of

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<sup>257</sup> Klein, *Changing the System* 89.

<sup>258</sup> Klein, *Changing the System* 47.

the chief justices to the first two meetings.”<sup>259</sup> The steering committee of CCJ that developed the concepts and articles of incorporation for NCSC was supported by an LEAA grant.<sup>260</sup>

One difference in educating court managers today is that the federal dollar is no longer driving students to the business. Foundations and LEAA paid the cost of training the first three classes of the Institute for Court Management. As federal financing dried up, interest and opportunities in the new profession continued to drive people to education in the business, albeit perhaps, in fewer numbers. Then, as most federal grant funding cycles go, the LEAA bottom fell out and federal funding of educating people to manage courts subsided. An infusion of training dollars from the SJI helped revitalize interest, but not to the levels supported by LEAA. The business of training court leaders eventually was left to the demand and practices of the education and training market. As most practitioners know, it is the training and travel dollar in a state or local budget that perhaps has the highest risk in budget trimming exercises. As stated by Gallas and Griller: “higher education is often about what will be profitable.”<sup>261</sup> The impact was predictable.

The Institute of Court Management started in 1970. ICM is operating today as the educational arm of the National Center for State Courts. The fact that the program remains as the one professional development effort sustained over time is not because educating court professionals is profitable. Until recently, the program has been subsidized from its inception taking various forms, direct and indirect, large and small.

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<sup>259</sup> History of the Conference of Chief Justices 13.

<sup>260</sup> Lowe 5.

<sup>261</sup> Gallas and Griller 7.

The financial solvency of the Institute for Court Management was questioned as early as 1976. “In sum, 1976 ended with the Institute in a more sound and stable financial position than in 1975. During the coming year; however, this position must be improved if the Institute is to build a satisfactory financial framework...”<sup>262</sup> The Institute began looking for, and in my opinion, continues to look for a sustainable business model in an environment significantly different from the implementation phase of the business.

The Institute for Court Management is a financially challenged proposition without the support of foundation and federal dollars. The cost of educating and training must be placed on the consumer with some support from state charges that are necessary to sustaining the Institute. The first three CEDP classes were financed by a Ford Foundation grant of \$750,000 in 1970 that included “stipends equivalent to the present salaries of those [CEDP candidates] selected, as well as funds for travel to and from training and internship sites, and, where necessary, living subsistence.”<sup>263</sup> In addition, the Law Enforcement Assistance Administration (LEAA) provided a grant in the amount of \$357,000 for the Institute to study metropolitan courts.<sup>264</sup> These funds paid for the expenses of the students to “intern” in courts and return to ICM to help build the knowledge of American courts. LEAA also provided an additional \$44,000 in 1970 to pay for the “evaluation and documentation of the training effort.”<sup>265</sup> After the first few successes, ICM recognized that the program would have to change – practitioners could

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<sup>262</sup> Institute for Court Management, Annual Report 1976 (Denver, Colorado) 15.

<sup>263</sup> Gallas, Court Executive Training Program 1970 4-5.

<sup>264</sup> Gallas, Court Executive Training Program 1970 7.

<sup>265</sup> Gallas, Court Executive Training Program 1970 7.

not afford the sabbatical like time away from their jobs to complete the program and “the funding base for ICM was to change – with a direct effect on the six-month program.”<sup>266</sup>

A review of ICM financial statements from 1976 through 1983 show four years in the black and four years in the red with a small net loss proving that educating court leaders is a financial challenge. The financial reports for those years indicate a significant direct federal subsidy from the Law Enforcement Assistance Administration (LEAA). The total of federal funds received in the eight years was \$1,860,804 or an average of \$232,601 per year. Program income for the educational programs for the eight years was \$ 1,896,117 or an average of \$237,015. In addition to this large federal direct subsidy, it is reasonable to assume that some students attended ICM classes by getting their fees paid through LEAA education grants (LEEP) made to them as employees in the justice system. This large infusion of federal cash made ICM more financially viable as an educational program for judicial and non-judicial personnel than if the entire expense of classes had to be born by the student. The impact may have been similar for university supported justice system education.

Perhaps one thought behind merging the Institute for Court Management with the National Center for State Courts was that the larger organization could somehow make educating court managers more financially viable. If it was an assumption, experience has proven the assumption false.

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<sup>266</sup> Gallas, Court Executive Training Program 1971 152.

In its history, NCSC has had years of significant financial support from federal grants and foundations. Construction of NCSC headquarters was supported by a one million dollar grant from LEAA and the Kresge Foundation contributed \$750,000 toward construction. However, the Center has also encountered Justice Burger's fear of sustainability, enduring lean years, but perhaps at a cost to the lofty dreams of NCSC's "founding fathers." Many do not know that Ed McConnel, President of NCSC, asked staff in the 1970s to accept layoffs in significant numbers or accept a reduction in pay which staff honored in order to meet expenses.<sup>267</sup> Federal support of the Center is limited to grant programs with individual grants typically short-lived. COSCA recognized the importance of federal funding in the activities of NCSC and ICM that "changed radically the field of judicial administration."<sup>268</sup> COSCA recognized the role of the federal government in financing court reform and judicial administration: "Largely as the result of the availability of federal funds, several new organizations were created, of which the most important was the National Center for State Courts."<sup>269</sup> COSCA noted the passing of the LEAA program, expressing concern about the impact of dwindling federal dollars on the National Center for State Courts: "Spawned on federal grants, it [NCSC] now must live virtually without them."<sup>270</sup>

As early as 1972, CCJ began "developing proposals for long – term federal funding for the National Center for State Courts, as well as for state courts themselves."<sup>271</sup> In

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<sup>267</sup> Interview on August 10, 2004 with David Steelman, Principal Court Management Consultant for the National Center for State Courts.

<sup>268</sup> Fetter 13.

<sup>269</sup> Fetter 15.

<sup>270</sup> Fetter 29.

<sup>271</sup> History of the Conference of Chief Justices 26.

response to declining federal dollars to NCSC and to state and local courts, CCJ passed a number of resolutions encouraging Congress to financially support state and local courts and the NCSC.<sup>272</sup> In the early 1980's, CCJ began to assert itself in support of and direction of NCSC.

First, the members of the Conference [CCJ], along with the members of the Conference of State Court Administrators (COSCA), elect the governing board of the National Center for State Courts. The National Center, in addition to acting as the Conference's secretariat, now serves as the Conference's instrumentality for carrying out many of the responsibilities that go with leadership. By resolution adopted in 1984, the Conference formally designated the National Center as the instrumentality to provide the states services essential to the operation of state courts. The "ownership" by the chief justices (and the state court administrators) of the National Center for State Courts imposes a responsibility on the Conference of Chief Justices to obtain the financial support for the National Center through the state charge program and through appropriate federal funding.<sup>273</sup>

In 1980 the National Center was restructured to recognize more fully that the Conference of Chief Justices has the primary responsibility for its governance. The Conference, along with the Conference of State Court Administrators (COSCA), became the fundamental governing body for the National Center.<sup>274</sup>

The president of CCJ is automatically the chairperson of the NCSC Board of Directors and the president of COSCA automatically is the vice-chairperson. The top three officers of CCJ and COSCA are ex officio members of the NCSC Board. CCJ developed and sustained the initiative to create the State Justice Institute (SJI). SJI provided an infusion of federal dollars to state and local courts and grants to NCSC but not to the extent of underwriting NCSC operations. NCSC would be dependent upon state assessments to the

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<sup>272</sup> Conference of Chief Justices, Resolution I, 1973; Resolution 5, 1974; Resolution I, February 13, 1979; Resolution I, 1980; Resolution I, February 5, 1981, and; Resolution I, August 1981.

<sup>273</sup> History of the Conference of Chief Justices 7.

<sup>274</sup> History of the Conference of Chief Justices 16.

high court of each state to sustain year to year operations. In the absence of sustaining federal funding, NCSC was left to address constituent needs by contracting for services to state and local courts and chasing multiple federal grants from various federal programs with no assurances that the work aligned with priorities of NCSC's governance.

Foundation money has helped fuel all phases of development of court reform and the development of third branch administration. Federal funds contributed to all phases of development, especially to the Go-Go and adolescent phases. The future of court reform is dependent upon a sufficient and stable source of funding.

Institutions that conduct research, study business processes, collect information and disseminate information to constituents, serve as direct service providers, educate and train current and future generations of court managers can succeed only if the court community helps sustain those institutions. It is remarkable that the states, with some exceptions, have consistently provided the "state charges" to help finance NCSC. It reflects CCJ's and COSCA's commitment to the mission. Including the item in a state court budget may be an internal exercise for the highest court of each state, but it begs the question: what does the highest court and its administrative arm get from their respective state charges? It is a necessary budget preparation exercise to answer the question, both from a state perspective and from the perspective of NCSC. The corollary question can be asked: what do the states lose if NCSC disappears? What does CCJ-COSCA lose and what does court reform and third branch administration lose if NCSC disappears? Accepting that performance of court reform entities can vary over time, the real question

is what potential is lost to third branch administration when and if any court reform entity managed by representatives of the third branch disappears?

States may be able to afford court reform initiatives in their own state. They may be able to do their own research, training, judicial administration, etc. From the beginning of court reform, from Pound's speech forward, court leaders have recognized the importance of communicating and exchanging ideas with court and legal professionals and academics across the states and territories. The state charge to NCSC, modeled after the state legislators and governors associations, are intended to give state courts a national forum to exchange ideas and express a collective opinion of the highest courts in the states and their administration. Support of NCSC initiatives beyond supporting that forum are another issue. One of the earliest examples of national scope research was recognized by COSCA in 1962 – the need for state by state comparisons of judicial statistics.<sup>275</sup> In 1976: “the new National Courts Statistics Project, with an LEAA grant and a National Center staff, created for the first time a COSCA committee to oversee the work of an independent staff on a specific project.”<sup>276</sup> Special projects like these may be of interest to NCSC governance and may, in fact, be among its priorities. However, translating those priorities into financed undertakings is an exercise typically outside the scope of support of state charges.

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<sup>275</sup> Fetter 11.

<sup>276</sup> Fetter 25.

## Conclusions

### **Transitioning Third Branch Administration: Getting to Prime**

Organizational development theory provides a logical framework to analyze third branch administration development and to develop a strategy for its future. Organizational development theory helps answer the question: where in the life cycle of development is third branch administration? To detractors of the argument one must concede that third branch administration is not one business organization. On its face one may believe that the theory and models were constructed for use with single entities. However, those single entities in the business world are frequently anything but single entities. When the theory and models are used for large companies, those companies are often conglomerates of interests more alike third branch administration than differing from it. Third branch administration is the sum of a number of organizations – governmental, quasi-governmental, and non-profits – each thread and entity developing along the organizational life cycle somewhat independently from the other, but each having a symbiotic relationship to a larger, somewhat ethereal organization that I have called third branch administration.

The claim that court administration is “in a holding pattern” is consistent with the nature of transitions in organizational growth: vague, ambiguous, lacking direction, etc. If the theory of organizational development tells us anything it is that the holding pattern that third branch administration finds itself, is a period of transition between phases of growth – but, between what phases?

Suggesting that court administration is in decline ignores aspects of organizational development theory that tell us otherwise. Incidents do not document trends. No trend has been substantiated concerning the general deterioration of relationships between court administrators, judges, and clerks of court. Judge – court administrator – court manager – clerk relationships exist in state and local courts in greater numbers than ever before necessitated by the sheer increase in number of judicial and non-judicial management positions in our courts. It is the quantity, frequency, and quality of those relationships that should be of concern to us as recent articles have exclaimed. However, history of the business reveals incidents of success and incidents of dismal failure in these relationships. History reflects more successes than failures: accomplishments touted in the literature, awards and recognition, model courts held out for others to emulate – achievement is difficult without a degree of success in these relationships. Success stories in third branch administration are seldom stories of one person even when one person is primarily recognized as the leader in the story. Observing state and local courts in action, one sees more success stories than failures, even if those success stories are a matter of degree – progress is progress. Threads of discussion citing a few relationship failures do not substantiate a trend. Statements that claim otherwise fan the emotional fires that retard growth. Suggesting a decline fails to recognize the work and success of persons in third branch administration, persons without notoriety, third branch’s silent majority that are taking leadership actions in state and local courts. There is always room to improve these relationships, but no trend in declining relationships has been substantiated between managing judges and court administrators.

Time constraints have limited the history herein to the major court reform organizations that grew out of the reform movement and to one major non-judicial court management organization, NACM. Court reform organizations, judicial associations, regional associations such as the Mid-Atlantic Association for Court Administration, judge and court administrator associations have proliferated over time. If one was to expand this investigation to include them, accounting for the actual number of persons engaged in managing our courts, numbers alone would demonstrate substantial growth in the business, not decline. The activity of court related organizations account for thousands of people actively engaged in the management of state and local courts. Many more persons are actively engaged in managing our courts who are not association members – they are simply employees of our state and local courts. The number of persons engaged in managing courts could be expanded further by broadening our horizons – looking internationally to our colleagues in Canadian and around the world. Third branch administration in the United States has much to offer others just as others in the world have much to offer American third branch administration – to adopt any other view is to make reality out of the novel, *The Ugly American*.

There is no decline in the number of persons being trained in court management. NACM structures part of each mid-year and annual meeting to train its membership in the core competencies. Organizations referred to in the previous paragraph dedicate part of their programs to management training. Many states have charged state judicial educators to do something not done in the past –allocate scarce resources to train court managers within their respective states. The Institute for Court Management has experienced a

significant growth in the partnerships it has created with the states. ICM has trained more people in the fundamentals of court management in 2004 than in any previous year of its existence. Third branch administration has overcome the weakness that was characteristic of the early stages of both organizational development models – a workforce deficient of managerial competence. Third branch administration is engaged in employing and training the managerial competence needed by an independent judiciary.

Suggesting that court administration is in decline or inferring that judicial administration is in decline ignores the wealth of information about the organizational development of third branch administration. This review of the development of third branch administration, however limited, demonstrates that third branch administration has grown beyond the adolescence/coordination phases of the models. Organizational development theory states that knowing where an organization is in the life cycle is critical to making decisions to successfully navigate the transition to the next phase of growth. Failure to determine where the organization is in that life cycle may result in the decline of the organization. According to these models, growth of the business, growth in the number of court consultants, and growth of industries serving courts are “spin-offs” and they are additional evidence that third branch administration has developed beyond the adolescent/collaboration phase. The analysis here concludes, however, that third branch administration does not yet demonstrate extra-organizational collaboration nor does it demonstrate characteristics of organizations in prime in the Adizes’ model. Third branch administration **is not in a period of decline**. In organizational development parlance,

third branch administration **is in** a period of **transition** between the adolescent/collaboration phase and the prime/extra-organizational collaboration phase.

### **From Leaders to Leadership Action**

If third branch leadership is in transition to prime/extra-organizational collaboration stage of organizational development, then what is the leadership challenge for third branch administration? This paper began by subscribing to theories about leadership and management, using Nanus and Bennis, emphasizing the person centric focus that continues to dominate the discussion of leadership in court administration. Ironically, the choice of the definition in the beginning of the work was intended. When this work started, the author believed that court administration needed more leaders cloned from the cells of the founders. The question subsequently raised by the research is whether the entrepreneurial leader, referred to herein as “the founders” may have done their job. They started the concept of court reform and they started third branch administration – they gave us our mission! As third branch administration evolves, we may need to think of leadership differently. Over the course of this work more and more of the literature outside the field of court management and court reform was explored. Inspired by that research, a new perspective of leadership and leaders began to take shape.

Nanus provides that emotional flare that many of us are prone to use when we think of the founders of the business and the progress third branch administration has made since 1906. Bennis addressed the KSA’s of a leader in a manner similar to NACM’s core competency on leadership. The literature of court administration demonstrates a strong

bias for person centered leadership. We personify leadership in individuals, especially the individuals that stepped forward to create the field of third branch administration. We now are looking at the field and asking: Where have all the leaders gone? We ask that question because Pound is gone; Vanderbilt is gone; Justices Burger and Clark are gone; Friesen, Gallas, and McConnell are retired. Students of the founders are retiring or thinking about it. Who will lead? Where is Pound Junior and where is the reincarnated Vanderbilt? Are we asking the wrong question? Is court administration fixated on characteristics of an organization in its youthful stages of development?

Giving recognition to people that emerged from a crucible having contributed something major to the business of third branch administration is an honorable behavior.

Recognizing Pound, Vanderbilt, Clark, Burger, Friesen, Gallas, McConnell and others is honorable. Third branch administration should not forget these individuals but more importantly, third branch administration should not forget their contributions.

Recognition is an outcome of their contributions.

However limited the survey associated with this paper proved to be, it is both informing and alarming that the persons with ICM training provided names of the founders and persons without exposure to ICM did not recognize the names of the founders. Not only are we on the verge of losing part of our heritage, but we are losing our institutional knowledge of the business. It also suggests that those of us who have been in the business are the ones keeping the names of the founders alive. We unfortunately are the institutionalized knowledge as long as we live. It is incumbent upon the National Center

for State Courts to institutionalize the history of third branch administration in hard copy and digital form as archives for future research. But more importantly, for those of us who understand the contributions of people from the past, it is time to put our affinity for the founders in perspective and begin to focus on the nature of their leadership actions that caused us to give them the recognition. It is an obstacle to growth as long as those authoring the literature in the field continue to promote the need for third branch leaders in likeness of our founders. It is our responsibility to focus on the crucibles they entered, the actions they took, and the results they got. Leadership is action centered, not person centered.

An examination of the literature on leadership and management outside court administration suggests that much of the literature in court administration over the last fifteen years is passé, centered more on individuals than on organizational action. Organizational development theory demonstrates that the creative phase of organizational development is person centered on entrepreneurial leaders. It makes sense. The founders were the entrepreneurial leaders of third branch administration. Third branch administration followed the models, developing an army of competent managers. Perhaps inadvertently, that army of managers now controls as the models suggest. The entrepreneurial leaders are gone, but according to the models, entrepreneurial leadership is not the type of leadership needed to navigate the transition to prime and extra-organizational collaboration.

Comparing the earlier work of Nanus to the work of John P. Kotter reveals the nuances of this change in perspective. Kotter said: “leadership and management are two distinctive and complementary systems of action. Each has its own function and characteristic activities. Both are necessary for successes in an increasingly complex and volatile business environment.”<sup>277</sup> Kotter stated: “Management is about coping with complexity” and “Leadership, by contrast, is coping with change.”<sup>278</sup> Kotter explains these nuances in “*What Leaders Really Do*.” Kotter said: “Most U.S. corporations today are over-managed and underled.”<sup>279</sup> The conclusion here is that Kotter’s observation is true of third branch administration and it is especially true of court administration. The NACM Core Competency Curriculum is more about coping with complexity than about coping with change.

Is there a collective vision of the future of state and local courts in America? Is there a collective strategic plan for state and local courts to cope with the change envisioned by the strategic plan? Organizational development theory warns us that growth may actually be inhibited if the organization is controlled solely by competent managers. We should continue to improve our ability to manage complexity, but it is time for third branch administration, collectively, to focus on leadership action to cope with the change that we have yet to envision.

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<sup>277</sup> John P. Kotter, “*What Leaders Really Do*” Harvard Business Review (Harvard Business School Publishing Corporation 2001 reprint R011F) 3.

<sup>278</sup> Kotter 4.

<sup>279</sup> Kotter 3.

### **Building Leadership Action Capacity**

The suggestion made herein is that third branch administration has fulfilled a prediction of the organizational development models, namely, that it has succeeded in building a cadre of managers. The accomplishment should not diminish efforts to improve preparation of future managers or replenish the ranks – for example, NACM’s work on the Core Competency Curriculum and ICM’s Court Manager Program. Drucker’s warning about the aging workforce suggests that we need to develop a plan not only to recruit and attract young people but also, retain good managers seeking second careers as well as attract outsiders seeking second careers. We should encourage and provide opportunity for third branch talent and expertise to move about the business consistent with their second career interests. Entrepreneurial leaders gave rise to the business and helped it grow through its early stages of organizational development.

Now we need to work on changing court administration’s focus from person centric to action centric leadership. Many people in the organization, not just the top executive, must be capable of scanning the environment, recognizing change points, assessing options, and acting upon, through, and with the organization to effectively meet challenges. We must augment our “current managerial preoccupation with “implementation””<sup>280</sup> in managerial core competencies (to do the thing right) with training that develops leadership capacity – to do the right thing at the right time.

Organizational stewardship is a collaborative activity dependent upon people competent in managing complexity, but also skilled at entering crucibles, navigating them

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<sup>280</sup> C. K. Prahalad, “Forward” The Boundaryless Organization: Breaking the Chains of Organizational Structure. Ron Ashkenas, Dave Ulrich, Todd Jick and Steve Kerr (Jossey-Bass: San Francisco, CA 2002) ix.

successfully, and producing results. Our selection process must improve so that we are training people who have achieved needs satisfaction and are operating at the esteem or self-actualization levels of Maslow's hierarchy. This must be true for all managers. A manager can be one with their manager position – self-actualized in place but not retired in place! However, the CEO of an organization must work to provide an environment that encourages the introduction of managers to crucible experiences for both opportunity to fail and opportunity to succeed as problem solvers and navigators. Promotion of the environment and encouragement of self-actualized people or nearly so is the type of stewardship that is going to help third branch administration reach prime. This type of stewardship can encourage self-actualized people to become part of organizational leadership action.

Obviously, part of the steward's responsibility is to promote extra-organizational collaboration in addition to intra-organizational collaboration that is the more traditional "team building" model. To do this the steward must remove pathological boundaries and replace them with boundaries that are "permeable, flexible, moveable membranes."<sup>281</sup> In addition to retooling organizational structure, the steward must change the nature of human resources within the organization:

Gaining competence throughout an organization results from more than training; it also comes from changes in staffing and recruiting philosophy. Rather than viewing employees as cogs that can be repaired or replaced, the organization with loosened vertical boundaries sees the workforce as the engine that drives the firm<sup>282</sup>

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<sup>281</sup> Ron Ashkenas, Dave Ulrich, Todd Jick and Steve Kerr, The Boundaryless Organization: Breaking the Chains of Organizational Structure. (Jossey-Bass: San Francisco, CA 2002) 3.

<sup>282</sup> Ron Ashkenas, Dave Ulrich, Todd Jick and Steve Kerr: 47.

In this way, organizations themselves become self-actualized. In this way, people throughout the organization become one with the mission, the vision and become part of leading the unfinished reform.

Problem solving, leadership action, navigation, and stewardship are dependent upon selection. Training the masses may be a necessity, but it is an inefficient, if not ineffective model. Spending resources on people who are not interested in learning is counterproductive. Human resource management in the courts needs to be improved or at the least, human resource management in the courts should recognize that a person wrestling with the lower needs of the Maslow hierarchy is not likely to be the best student until those basic needs are satisfied. People engaged in satisfying the higher needs of the Maslow hierarchy may be good students if they are becoming self-actualized in third branch administration or some aspect of it.

The Institute for Court Management has long been a training program designed to develop court managers. The Court Manager Program and the Court Executive Development Program have contributed significantly to the core of trained court managers working in third branch administration today. NACM's Core Competency Curriculum is being implemented in a partnership between NACM and Michigan State University. Training people to manage complexity and orienting them to third branch business processes is a function aimed at masses of people. In its current form, this management training has few bars to admission.

Perhaps those bars should be raised for the Court Executive Development Program? At the request of Chuck Ericksen, ICM Director, Don Cullen conducted an assessment of ICM's Court Executive Development Program. Cullen recommended that NCSC appoint a task force to study a number of issues including the content and quality of the learning experience.<sup>283</sup> Quality assurance should be a perpetual part of operating any program. But perhaps key to the learning experience is the learning capacity of the student. The leadership literature today argues that development programs alone do not produce managers capable of successfully navigating crucible experiences. The individual that demonstrates leadership action has something in their makeup in addition to academic preparation and work experience that helps them meet the challenge of the crucible. The bar for admission to the Court Executive Development Program should not be the ability to pay tuition nor should it be to attend a number of prerequisite courses. The bar for admission should be based upon the potential and performance of the student. The potential should be measured both in terms of personal and professional development and learning capacity – desire. Cullen recommended that the task force “Consider a different entry into Phase II.”<sup>284</sup> The bar for admission to the Court Executive Development Program should be raised to select people poised to make the transition from Maslow's esteem needs to self-actualization within the third branch. Sorcher and Brant in *Are You Picking the Right Leaders*, state: “...many companies tend to focus their energies on developing leaders rather than on accurately identifying them in the first place.”<sup>285</sup>

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<sup>283</sup> Donald Cullen, Court Executive Development Program (CEDP): Review and Recommendations (National Center for State Courts unpublished report August 2004) 21.

<sup>284</sup> Donald Cullen 21.

<sup>285</sup> Melvin Sorcher and James Brant “Are You Picking the Right Leaders?” Harvard Business Review (Harvard Business School Publishing, Volume 80, Number 2, February 2002) 81.

Are we selecting the right candidates for CEDP? The answer to that question is that ICM is not selecting candidates; rather, ICM is accepting candidates. People competed for entry into ICM for the first three classes because there were tremendous employment opportunities for the first graduates. Those that won admittance, in effect, earned a full ride scholarship including subsistence. By contrast, the student or their employer now pays the full price of tuition along with the cost of subsistence. Financial considerations, maturity of the business, and competition eliminate the competition witnessed in the first three classes.

ICM has long been under pressure to make CEDP a profitable business proposition. Recruitment and selection of candidates is an underlying goal of ICM but it has not been the driver for some time. In its founding years, 1970 and 1971, the Institute used a seven step selection process that included intense screening of the five hundred and twenty (520) applicants for the second class. Review of qualifications, staff filtering and selection, Trustee review and selection, group meetings with applicants and interviews of applicants lead to the final selection of thirty-six (36).<sup>286</sup> The selection process was revised slightly for the 1972 class that seven hundred (700) applicants competed for entry.<sup>287</sup> The competition for entry into CEDP was intensified by the promise of a new profession as well as the “free ride” financially for those winning admission. We cannot hope to return to the days in Snowmass, Colorado, but we can hope to develop scholarships to defray significant expenses for those winning admission. The financial analysis herein suggests that selection and recruitment began to lose ground as a driver as

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<sup>286</sup> Gallas, Court Executive Training Program 1970 165-167.

<sup>287</sup> Gallas, Court Executive Training Program 1971 147.

early as the fourth class. Finance considerations became the driver as federal and private support dwindled and underwriting tuition and subsistence disappeared. The total cost of CEDP is now upon the student or the employer of the student. In an age of competition, pricing and value are critical in decision making. To generate competition for CEDP candidacy, we have to provide financial incentive for both the student and the employer. Financial incentive is more important today than in the days of the first classes when there were more astronauts than court administrators.<sup>288</sup> The observation has been made herein that many state and local third branch individuals and organizations are demonstrating leadership acts. There are people in the business worthy of investment. But there is no process nor is there money to seek out these individuals, promote them, encourage them, mentor them, or financially support them in pursuing their CEDP.

In his report to ICM Director, Chuck Ericksen, Donald Cullen recommended that NCSC: “Seek funding sources through foundations, government agencies and direct appropriations to fund student’s tuition and living costs while attending Phase II.” Asking students and their employers to invest in Phase I is a rational approach. The wager is that the student, state and local government or other employers invest in the managerial basics. A process needs to be developed whereby people in Phase I are recognized as potential CEDP candidates. The process of selection and development needs to be created, perhaps starting with approaches that were used for the first three ICM classes and refined. Mentoring and tutoring and collaboration are necessary parts of these processes. The higher expectations for CEDP students must be defined. Writing a paper

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<sup>288</sup> Chief Justice Warren Burger. “Court Administrators – Where Would We Find Them?” 53 Judicature 108, 1969.

that simply **replicates** a best practice should be an expectation for a Phase I student or to gain entry into CEDP. The expectation for a CEDP student should be **creating** a best practice or contributing to the research or body of knowledge of third branch administration. Third branch administration should support an enhancement of the Cullen plan to encourage that level of dedication on the part of the student and the entity that employs the student. A student should enter Phase II with full financial support. A student should not automatically enter any phase of CEDP, entry should be earned. Upon successfully earning entry into subsequent phases, then a subsequent full ride scholarship should be the reward for the effort. The reward for the contribution of a best practice or addition to the research or literature in the field is a fellowship in the Institute for Court Management. Recognition should be given both to the student and the employer. In addition to Cullen's suggestions for funding, contributors to the Friends of the Court should be able to designate where their charitable contributions are to be used by the Center. This would include designating contributions to scholarships for CEDP candidates.

In addition to financial incentives, ICM must be seen as an elite third branch training program. The program should be aimed at building the executive component of the court. CEDP training should target all the members of the executive component of the third branch including: judges, elected clerks of court, court administrations, and other executive officers of the third branch, such as directors of operations, finance, public information, technology, research and others with executive responsibility. The curriculum should include management training and developing leadership capacity of

individuals and of organizations. The Cullen report recommended an in depth look at the curriculum, both historical and current, by a representative committee. The desire to keep committees manageable sometimes makes them exclusive. Historical, present, and future interests need to be included. A disaster threatens the business as it forgets and buries the people and the knowledge of the history of third branch administration. As to the future, there are many third branch administration entities that should be included in the ICM reengineering. One only has to look at the NCSC web site to see a number of associations that should have a seat at the table. One does not have to look too hard to realize there are entities in addition to those NCSC serves as secretariat (the National Conference of Metropolitan Courts is served by NCSC but was not listed on the web site at the time of writing this work) like the National Judicial College, the National Council of Juvenile and Family Court Judges, and other entities governed directly or indirectly by court representatives. Finally, reengineering ICM should also be done with representation from the educational community. Perhaps the vision for a reengineered ICM is an emulation of executive business schools, like the Harvard Business School and the *Justice System Journal* could be the equivalent publication of the *Harvard Business Review*. One additional attraction for CEDP candidates is competition for publication of their work. These are among the enhancements that could help revitalize CEDP.

### **Extra-organizational Collaboration**

If third branch administration is to take leadership action, then it must pursue a different approach from waiting for organizational messiahs to appear and advance court reform. We are not likely to see another age of court reform and professional development like

the 20<sup>th</sup> Century without the equivalent financial support of the federal government and private foundations that sustained the first age of court reform. However, to what extent can third branch administration grow if its strategic planning process is limited in its action planning when Congress and executive branch agencies sets the priorities for funding state and local court and court reform efforts?

One can argue that local courts are but agents of the state court administered by the Chief Justice of each state. Such an argument would lend credence to the idea that gave birth to the National Center for State Courts' Council of State Court Representatives (Conference of Chief Justices and Conference of State Court Administrators acting collectively). The Council is central to NCSC governance and it is intended to speak for all the state and local courts in the land. Such an argument could easily be countered. One can argue that the local courts and the major metropolitan courts are entities unto themselves especially so in non-unified states. One can argue that the court reform organizations governed by representatives of state and local courts, i.e., the National Council of Juvenile and Family Court Judges, the National Center for State Courts, and the various associations are separate and distinct entities. One can argue that each of the fore mentioned has little to do with the other. In fact, there are many instances where they conflict with one another and compete with one another. History shows that the entities lobby congress for legislation and financial earmarks to further their own interest, one locality over another, one state over another, and one court reform group over another, one association over another. Third branch administration at the state and local level and the court reform entities represented by state and local courts do not determine Federal agency priorities

for court reform. Rather it is the inability of third branch administration to speak with one voice that enables Congress to set the agenda for state and local courts. Congress determines the priorities, provides financial incentives for courts to pursue those congressional priorities, and strengthens federal executive branch influence on an “independent” state judiciary.

Changing the situation requires leadership action. Leadership action requires stewardship capable of large scale collaboration. Collaboration requires organizations capable of collaboration throughout each participating organization. Collaboration of each organization requires leadership action by many members in the organization. What if third branch administration were to be trusted with a large sustaining appropriation for court reform? Given the current phase of development of third branch administration, there is no doubt that the non-profits serving courts would find themselves competing against one another as would state and local courts. We have only to look at the formation of NCSC to see competitive interests surfacing even when they were united in a common cause. The articles of incorporation of NCSC originally provided for a Board of Directors consisting of judges, the Council of State Court Representatives, and an Advisory Council consisting of “representatives of cooperating and sponsoring organizations and other individuals designated by the Board.”<sup>289</sup> These other representatives were all the court reform organizations nationally active at the time of NCSC incorporation. Organizers debated whether the judges nominated to the Board should consist of State Supreme Court Chief Justices or designees or whether Board members should include judges of trial courts and specialty courts and whether the Board

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<sup>289</sup> Lowe 8.

should contain members of the court reform groups. The Advisory Council was seen as a method of maintaining support for the Center from the justice and business community and a way of maintaining input to the Center. The articles of incorporation did not specify a role for the Advisory Council and the court reform groups did not get adequate representation on the Board of Directors. The details of governance were left to bylaws originally drafted by Justice Reardon and Judge Gordon using material from Gerald Snyder's effort in drafting the articles of incorporation. Once again differences of opinion surfaced over the Advisory Council, renewing discussions about the make up of the Board of Directors and reviving the debate on governance. Lowe summarized some of the concerns in the debate: "the possibility of self-perpetuation of the Board, the lack of participation in management processes by state judicial systems, and the need to fill vacancies on the Board that would be responsive to the will of the judicial community."<sup>290</sup> The purpose of the Advisory Council would continue as an issue and in 1978, the Council voted to terminate its advisory role to the NCSC Board, designate NCSC as its secretariat, and to "change its name to the Coordinating Council of National Court Organizations...to coordinate the activities of court-related organizations."<sup>291</sup> The governance of NCSC was left strictly to the Conference of Chief Justices and Conference of State Court Administrators acting collectively as the Council of State Court Representatives and to the Board of Directors. The larger collaborative idea failed to win support. Although the history of the National Center for State Courts hints that some envisioned the Center as the organization through which state and local courts would collectively speak, the reality is that local and state judiciaries and court reform

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<sup>290</sup> Lowe 10.

<sup>291</sup> Lowe 13.

organizations may and do speak individually. Third branch administration is not in prime or in an extra-organizational collaboration phase of development where it can collectively lobby for or collectively plan, prioritize, and administer a large sustaining appropriation for court reform.

Is third branch administration poised for entry into an extra-organizational phase of development? Early in the history of the National Center for State Courts a significant sum of federal dollars was given to the NCSC for its governance to pass through to related entities. The concept, however, small, was that federal dollars would be disseminated in accordance with priorities determined by a governance body representing the interests of a collective and independent state judiciary. To make such an argument today would require all state courts to act collaboratively and they do not. It would require all court reform groups governed by representatives of the state courts to act collaboratively and they do not. It would require all associations to act collaboratively and they do not. To speak with one voice from a single organization representing all state and local courts would require unraveling history. However, to continue to lobby individually as is the past and current practice, guarantees that Congress and executive branch agencies of the Federal government will control or strongly influence court reform in the states through the power of the purse.

Extra-organizational collaboration is the means by which all of the entities mentioned above speak with one voice. At this time in the organizational development of third branch administration, it appears that future court reform rests upon the ability to

implement an extra-organizational collaborative governance model of third branch administration. Third branch administration should call upon its members to form such a governance organization to collectively devise a strategic plan, short and long term, determining the priorities for the state judiciaries, form teams, define deliverables, assign tasks and time lines, devise performance measures and metrics, create accountability, and process in a cycle of continual quality improvement for all state courts. A national judicial council of the states can place its plan before Congress along with a formula for financial assistance for governance, research, reform, knowledge dissemination, training and education. The infrastructure exists within the organizations already in existence. The test of third branch development is can it act collaboratively as one organization in carrying out the mission? Can third branch administration form a national judicial council that can speak with one voice and take responsibility for the unfinished reform? An alternative to a national judicial council at large is to reinstitute the concept of the Advisory Council within the National Center for State Courts. The National Judicial Council would serve as a vehicle for strategic planning within NCSC to assist the Council of State Court Representatives (CCJ and COSCA) and the NCSC Board of Directors in formulating a national strategic plan for state and local courts that included the coordinated plans and budgets for judicial reform organizations governed by representatives of state and local courts.

Achieving true collaboration in Prime can empower court reform. State and local governments are not likely to finance court reform and ongoing court improvement. There are three sources for financing ongoing court reform – the private sector,

philanthropy, and the federal government. Court reform organizations and state and local government bombard these funding sources with individual requests. There is no national voice of collaboration. There is no national strategic planning for state and local courts created by collaboration. There is no single strategic plan for court governed court reform organizations (although credit should be given to the National Council of Juvenile and Family Court Judges and the National Center for State Courts on their collaborative efforts). There is little implementation of court improvements by national collaboration. There is no truly representative collaboration to approach the private sector, the philanthropic community, nor the federal government on a financial plan to underwrite a program of court reform and court improvement for state and local courts.

Representation should include the state court leadership; local court leadership; court governed court reform entities like the NCSC, the National Judicial College, the National Council of Juvenile and Family Court Judges and its research arm the National Center for Juvenile Justice, and; the numerous court related associations. A collaboration of this nature would provide one voice of court reform – the collective voice of the judicial branch of the states and territories. The resulting collaboration could produce a strategic plan along with a strategy for private, philanthropic, and Federal financing.

Perhaps more importantly, the strength of a collective voice and the collective power of the group could serve to place planning judicial reform of the future within the collective third branch of government of state and local courts. Court reform financing currently emanates from programs created by and managed by the federal government through a federal planning process. That process is an executive branch process operating from a

federal perspective. Attempting to make that process representative, does not take the place of the third branch stepping forward, collaborating, and charting its own course of improvement. The result is federal financing of executive branch planned court improvement. State and local courts participate in grant programs that do not necessarily address state and local court priorities. State and local courts participate in local lobbying efforts to earmark funds for their priorities and thus preclude the benefit that may be gained through sharing planning, implementation, and evaluating results by the collaborative. Court reform that was envisioned in the creative phase of development has been subsumed by the executive branch of government and by executive branch processes. How did this dream of the founders disappear? There is a simple answer, the executive branch stepped in to fill a vacuum in the absence of a collective, collaborative third branch voice for court reform among the states and territories.

The transition period in the organizational development of third branch administration has no collaborative vision of where it is going or how it is going to get there. The current literature in the field resounds with talk about what we are seeing or not seeing, experiencing or not experiencing. Third branch administration is at a defining moment in organizational development terms, perhaps, it is at a defining moment in any terms. We can take leadership action to reach Prime or we can fail to meet the challenge and accept the prophetic end that Gallas and Griller suggest. I for one am unwilling to accept it. Let Tobin's unfinished reform begin.

## Appendices

The names in the following tables represent the students enrolled in the first three classes. For a list of graduates see [http://www.ncsconline.org/D\\_ICM/icmfellows/gallery.htm](http://www.ncsconline.org/D_ICM/icmfellows/gallery.htm) on the web site of the National Center for State Courts.

**Figure 16: ICM First Class**<sup>292 293</sup>

<i>Fellow</i>			
Carl Barr	Russell Sage Law Fellow, Yale Law School	L. M. Jacobs, IV	Court Administrator, Wayne County Circuit Court, Michigan
Jerome Berg	Institute for Court Management	Thomas F. Lane	Research Associate Federal Judicial Center
Einar Bohlin	Director, Court Management Project Cleveland, Ohio	Robert D. Lipscher	Assistant Director Institute of Judicial Administration
James Borra	Faculty, Bowie State College Bowie, Maryland	Arnold M. Malech	Executive Director District of Columbia Courts
W. Wayne Buckner	State Court Administrator Missouri Supreme Court	James R. Manspeaker	Deputy Clerk U. S. District Court, Denver, Colorado
Howard O. Child	Assistant State Court Administrator Oregon Supreme Court	John P. Mayer	Court Administrator Oakland County Circuit Court, Michigan
Francis K. Cholko	Director of Administrative Services Los Angeles Superior Court	Dwayne L. Oglesby	Professor Colorado State University
H. Stuart Cunningham	Clerk, U. S. District Court Chicago, Illinois	Jon D. Pevna	Associate Director of Organizational Development, National College of State Trial Judges, Reno
Ronald Fremlin	Director of Organizational Development National College of State Trial Judges Reno, Nevada	Samuel W. Phillips	Clerk U. S. Court of Appeals, 4 <sup>th</sup> Circuit Richmond, Virginia
Donald Fuller	Institute for Court Management	Charles B. Rodway, Jr.	State Court Administrator Supreme Judicial Court, Maine
Geoffrey S. Gallas	Institute for Court Management	Harvey Solomon	Institute for Court Management
Lester Goodchild	Court Administrator New York City Criminal Court	Maureen Solomon	Institute for Court Management
Michael Hall	Deputy Court Administrator Hennepin County Municipal Court	H. Andre Talley	Court Administrator Superior Court of the State of Delaware
Robert Harrall	Supervisor, Management Systems Rhode Island Supreme Court	James D. Thomas	Institute for Court Management
Frank M. Hepler	Administrative Assistant to Director Federal Judicial Center	Austin Van Buskirk	Court Administrator Jackson County Circuit Court, Missouri
H. Paul Haynes	Assistant Executive Officer District of Columbia Courts		

<sup>292</sup> Gallas, Court Executive Training Program 1970: 138-141.

<sup>293</sup> Geoffrey S. Gallas. Court Executive Training Program Documentation of First Training Effort: Institute for Court Management, 1971, University of Denver, College of Law: 173-206.

**Figure 17: ICM CEDP 1971 Post-Intern Class<sup>294</sup>**

Fellow			
Wayne Blacklock	Court Administrator Superior Court of New Jersey Atlantic, Cumberland and Cape May Counties	Peter Lopez	Director of Ventura County Courts Project State of California
Robert Bonner	Court Program Specialist LEAA Philadelphia, Pennsylvania	Steven Madson	Assistant Director Court Management Project Cleveland, Ohio
Raymond Burghardt Arthur Christean	Courts Division LEAA Washington, D. C. Administrative Assistant and Fiscal Officer Missouri Supreme Court	Robert McKeever Philip Murray	Administrator Supreme Bench of Baltimore City Educational Coordinator for Executive Secretary Supreme Judicial Court of Massachusetts
Samuel Conti	Court Administrator Superior Court of New Jersey Hudson County	Sofron Nedilsky	Director of Judicial Education Wisconsin Supreme Court
Larry Coughenour	Court Administrator Second Judicial District Albuquerque, New Mexico	John F. Paul	Director, Wayne County Probation Department Detroit, Michigan
James Dunlap	Criminal Court Administrator Harris County District Court, Texas	Ellis Pettigrew	Municipal Court Administrator Toledo, Ohio
Patrick Gaffigan	Court Administrator Superior Court of New Jersey Burlington and Ocean Counties	Philip Sinsky	The Maxwell Graduate School Syracuse University
Julian Garza	Student	Frank Stevenson	Clerk in Charge Family Court of the State of New York New York, New York
Maurice D. Geiger James L. Gullet	Boston Regional Courts Specialist LEAA Boston State Legislative Office Legal Advisor Oklahoma City, Oklahoma	Donald Teasley Jack Thompson	Student Assistant to the Dean Denver University College of Law Court Administrator Fulton County Superior Court, Atlanta
Peter Haynes	Director of Judicial Administration University of Southern California	Charles W. Wagner	Chief Deputy Clerk U. S. District Court for the Northern District of Illinois
Charles Heaney	Administrative Clerk New York Supreme Court Appellate Team Second Judicial Department, Brooklyn, New York	Jack Wagner	Court Administrator Court of Common Pleas, Toledo, Ohio
Carl Hopkins	Superintendent Contra Costa County Juvenile Hall Martinez, California	Jean M. White	Director, Innovative Programs and Projects Office of the Court Administrator, Court of Common Pleas Philadelphia, Pennsylvania
Edward M. Kritzman	Assistant Chief Deputy County Clerk Los Angeles, California	Paul White	Court Administrator District Court of Douglas County, Omaha, Nebraska
J. Earl Langner	Research Associate, Courts Specialist Federal Judicial Center, Washington, D. C.	John E. Woods	Consultant, Institute for Court Management
R. Hanson Lawton	Appellate Case Reviewer, Supreme Court Reporter State of Iowa		

<sup>294</sup> Gallas, Court Executive Training Program 1971 142-146.

**Figure 18: ICM CEDP 1971 Pre-Intern Class<sup>295</sup>**

Note: The reader may be inquisitive as to the nature of the employment of many of the students in this class. The “Pre-Intern” Class of 1971 as it was called: “was formed to increase the pool of qualified applicants available to fill eleven newly created positions – Federal Circuit Court Executives.”<sup>296</sup>

Fellow Ernest Bailey	Assistant Executive Officer District of Columbia Courts	Wilbur S. McDuff	Director of Research and Law Libraries Executive Assistant Circuit Court, Dade County, Florida
John Bodley	Court Management Analyst Judicial Council of California	Benjamin W. Reisch	Clerk of Court U. S. District Court for the Eastern District of Louisiana
Robert C. Cassidy	Assistant Director for Administration Office of Economic Opportunity Washington, D. C.	George V. Rosenberg	District Director Immigration and Naturalization Services Department of Justice, California
Joseph De Sio	Deputy Associate General Counsel Division of Operations National Labor Relations Board	Merril Sobie	Executive Officer Family Court of the State of New York New York, New York
W. A. (Pat) Doyle	Circuit Court Executive U. S. Court of Appeals for the Third Circuit Philadelphia, Pennsylvania	Joseph A. Suozzi	Justice of the Supreme Court of New York State
Joseph Goldstein	Chief Clerk Nassau County Court, Long Island, New York	Robert H. Taylor	Special Agent in Charge of Presidential Protection Division United States Secret Service
Robert Hartzell	Assistant Chief Division of Business Administration Administrative Office of the United States Courts	Robert C. Tucker	Clerk U. S. Court of Appeals for the Eighth Circuit
James A. Higgins	Clerk U. S. Court of Appeals for the Sixth Circuit Cincinnati, Ohio	James Ueberhorst	Director of the Administrative Office Florida Supreme Court
“Mark” H. J. Koenig	Assistant Archivist for Records Management National Archives, Washington, D. C.	William H. Whitehurst, Jr.	Executive Assistant to the Associate Director Department of Human Resources District of Columbia
Thomas V. Lucas	Director, Program Review and Resources Management National Aeronautics and Space Administration	Wilbur B. Wilcox	Executive Assistant Tenth Judicial Court for the State of Florida Winter Haven, Florida

<sup>295</sup> Gallas, Court Executive Training Program 1971 47-49.

<sup>296</sup> Gallas, Court Executive Training Program 1971 13.

**Figure 19: American University Leadership Conference Invitation**

Date

Name

Address

City, State Zip

Re: Planning Meeting for Judicial Leadership Conference

Dear Name:

The Bureau of Justice Assistance has asked the Criminal Courts Technical Assistance Project to facilitate a meeting of judicial system leaders who have been prominent in judicial system reform activities since the '70's and '80's to discuss the potential focus and feasibility of a national conference in 2005 on judicial leadership. We would very much appreciate your participation in this meeting. The meeting will be held at American University on Thursday and Friday, December 16 and 17, 2004.

The focus of the meeting will be on (1) identifying the legacy of court improvement initiatives undertaken and related lessons learned during the last half of the 20<sup>th</sup> century which are essential to be known and understood by emerging judicial system leaders; (2) delineating the challenges which court systems are likely to face during the first several decades of the 21<sup>st</sup> century and for which the lessons of the reform experience of the 20<sup>th</sup> century are an essential factor in developing an effective response; and (3) determining the key steps for planning and implementing a national conference to address (1) and (2) above with a targeted focus on emerging leaders. Barry Mahoney has agreed to facilitate the meeting discussions.

The idea for the meeting has two underlying hypotheses:

- as courts enter the 21<sup>st</sup> century, the lessons learned and insights gained by individuals centrally involved in judicial system improvement during the past several decades can provide a valuable frame of reference for addressing the new challenges which the 21<sup>st</sup> century will bring, some of which are already evident; and
- with the judicial system reform leaders of the '70's and '80's leaving the field, and given the attrition or change in priorities of traditional institutional judicial system change agents in both the government and private sectors, it is critically important to assure that new and emerging leaders are reinforced in their understanding of where the field has been, where it is now, where it is going? and the special challenges of the present and future which will, in the opinion of the past generation of leaders, require an accurate perspective on past reform and strategies to achieve it.

Name  
Date  
Page 2

We hope that the meeting will result in our being able to advise the Office of Justice Programs regarding the desirability of a national conference and/or other national forum on issues identified at the meeting and to recommend critical topics to include, faculty to present and discuss them, the type of audience the forum should seek to reach and methods to do so, and the format and media to be used.

Within the next few weeks, we will send attendees a brief “thought piece” to help frame the meeting discussions and to generate additional suggestions attendees may have before the meeting.

The Criminal Courts Technical Assistance Project will arrange and pay for your transportation, lodging and per diem expenses to attend the meeting. While, unfortunately, we are not able to offer participants an honorarium, the University will make a special effort to extend its hospitality to all who are attending, which, together with the lively interchange among what Ernie Friesen has long referred to as “the workers in the vineyard”, will, hopefully, make the trip worthwhile.

Attached is a list of the invitees to this meeting.

We would appreciate your indicating by November 15th whether you will be able to attend the meeting. Feel free to call me or Caroline Cooper (1/800/203-2671 or 202/885-2875) or to send a note to our office email: [justice@american.edu](mailto:justice@american.edu). We will be in touch with you during the first week in November to make your travel arrangements.

With warm regards.

Sincerely,

Joseph A. Trotter, Jr.  
Director  
Criminal Courts Technical Assistance Project

JAT:tj

Enclosure

Cc: Lonnie McDougal, BJA

**Figure 20: American University List of Invitees**

List of invitees was provided by American University and begins on the next page.

**Bureau of Justice Assistance/American University-Justice Programs Office  
Criminal Courts Technical Assistance Project  
CCTAP #3-001-Planning Meeting for Judicial Leadership Conference  
List of Invitees**

Chief Justice Shirley S. Abrahamson  
President  
Conference of Chief Justices  
Supreme Court of Wisconsin  
P.O. Box 1688  
Madison, WI 53701-1688

Charles D. Cole  
Professor  
Cumberland School of Law  
Samford University  
800 Lakeshore Drive  
Birmingham, AL 35229

Daniel J. Becker  
President  
Conference of State Court Administrators  
P.O. Box 140241  
Salt Lake City, UT 84114-0241

Samuel D. Conti  
Professional Services  
Administrative Office of the Courts  
P.O. Box 037  
Trenton, NJ 08625

Greg Berman  
Director  
Center for Court Innovation  
520 8<sup>th</sup> Avenue  
New York, NY 10018

Hon. William F. Dressel  
President  
The National Judicial College  
University of Nevada  
Judicial College Building, MS 358  
Reno, NV 89521

Judge Kevin S. Burke  
Hennepin County District Court  
Fourth Judicial District  
300 South Sixth Street, C-1005 421  
Minneapolis, Minnesota 55487

Ernest C. Friesen  
P.O. Box 533  
Silverthorne, CO 80498

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Executive Director  
National District Attorney's Association  
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Alexandria, VA 22314

Dr. Geoff Gallas  
AEQUITAS  
444 Harvey Street  
Philadelphia, PA 19144

Maurice D. Geiger  
Birch Hill  
North Conway, NH 03860

Cait Clarke, Esq.  
Director, National Defender Leadership  
Institute  
National Legal Aid and Defender  
Association  
1140 Connecticut Ave. NW, Suite 900  
Washington DC 20036

Gordon M. Griller  
8507 East San Jacinto Drive  
Scottsdale, AZ 85258-2576

**Bureau of Justice Assistance/American University-Justice Programs Office**  
**Criminal Courts Technical Assistance Project**  
**CCTAP #3-001-Planning Meeting for Judicial Leadership Conference**  
**List of Invitees (Page 2)**

179

Judge Harl Haas  
6259 SW Burlington Avenue  
Portland, OR 97201-2632

Marshall Hartman, Esq.  
Attorney at Law  
6554 North Spaulding Avenue  
Lincolnwood, IL 60645

Senator Howell Heflin  
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Tuscumbia, AL 35674

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Washington, DC 20008

Charles Hollis  
1200 First Street  
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Alexandria, VA 22314

Collins E. Ijoma  
President  
National Association for Court  
Management  
Superior Court of New Jersey  
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Newark, NJ 07102

Suzanne H. James  
Court Administrator  
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14735 Main Street  
Upper Marlboro, MD 20772

Harry O. Lawson  
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Denver, CO 80212

Barry Mahoney  
The Justice Management Institute  
1900 Grant Street, Suite 815  
Denver, CO 80203

Jay Marshall  
Senior Associate  
National Criminal Justice Association  
720 7<sup>th</sup> Street, NW, Third Floor  
Washington, DC 20001

Edward McConnell  
7 Mile Course  
Williamsburg, VA 23185

Mary C. McQueen  
President  
National Center for State Courts  
300 Newport Avenue  
Williamsburg, VA 23185-4147

Justice Marian P. Opala  
Supreme Court of Oklahoma  
Room 238  
State Capitol Building  
Oklahoma City, OK 73105

Larry Polansky  
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Marcus Wm. Reinkensmeyer  
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James C. Swain  
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David Tevelin  
Executive Director  
State Justice Institute  
1650 King Street, Suite 600  
Alexandria, VA 22314

Robert Tobin  
Principal Court Management Consultant  
National Center for State Courts  
2425 Wilson Boulevard, Suite 350  
Arlington, VA 22201

Robert Yegge  
Dean Emeritus  
Strum College of Law at the University of  
Denver  
2255 East Evans Avenue  
Denver, CO 8020

**Figure 21: Survey**

The survey is intended to satisfy the author's curiosity about the opinions of court administrators, judges, and educators on the subjects discussed in this paper. The survey is not intended nor structured in its methods to provide statistically valid results. The survey is intended only as an indicator to see if the observations and conclusions of the author are aligned with the business. The survey is intended to provide some insight to the author for further research on the subject beyond completion of the CEDP requirements.

**Survey Questions**

1. Demographics
  - a. How many years have you worked in courts?
    - i. 0 -5
    - ii. 6 -10
    - iii. 11 -20
    - iv. 21-30
    - v. 31-40
    - vi. 401 or more
  - b. How many years have you held a management position in courts?
  - c. How many years have you held the top administrative position in a court?
  - d. Age range?
    - i. 20-30
    - ii. 30-40
    - iii. 40-50
    - iv. 50-60
    - v. 60 +
2. Have any of the courts you have worked for received federal funds?
3. Have you ever received funding to attend educational seminars and from whom?
4. Have you ever attended a class on leadership that required the attendance of the administrative judge and the court administrator?
5. Focusing on court reform, judicial administration, and court administration, what are the important texts or articles that you think every student of the field should read?
6. In your opinion, are those significant written works coming more frequently than before, less frequently as before, or about the same?
7. In the Gallas-Griller article *The Court Management Profession: Questions and Issues of The Court Manager* Volume 19 Issue 2, the authors offered the opinion that the profession of court administration may be in decline. Do you agree or disagree? Please elaborate.
8. Do you think we have fewer leaders in judicial and court administration than when you began working in courts?
9. Think about national leaders and state and local leaders in the fields of judicial and court administration; what names come to mind? They can be practitioners, researchers, authors, academics, politicians, etc.
10. Think about the field of court administration; where do you think the field is in terms of development? How do you think the field will develop in the future?

11. If I ask you to think about leadership, "What kind of leadership do you think is called for in today's court environment and in that future court environment you described?"
12. In the business of administering our courts, are judges and administrators working together more, less, or about the same? Do you see any rift developing between judges and court administrators in administering our courts?
13. May I use your name:
  - a. As a survey participant?
  - b. May I associate your answers to these questions with your name?

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