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ADMINISTRATION OF SUPPORTING SERVICES IN THE TRIAL COURT*

GEOFFREY C. HAZARD, JR.**

THE PROBLEM

The operation of a modern court of original proceedings involves the services of many people besides judges.[1] The services of such nonjudicial personnel, referred to here as supporting services, range from para-judicial to pure housekeeping. They include the services performed by such officials as the court's administrative office, the clerk of court, court reporters, and secretaries. They also include services performed by bailiffs, probation officers, psychiatrists and psychologists, investigating caseworkers in domestic relations matters, jail custodians, purchasing and auditing officers, building service personnel, and courthouse parking attendants. It is now an established proposition that the court itself should have direct administrative authority over the people who provide many of these services. Thus, Section 1.41 of the American Bar Association Standards Relating to Court Organization provides that the functions of the clerk of court, court reporters, and other specified officials should be within the court's administrative jurisdiction. At the same time, it seems evidently impractical and inappropriate for a court to have administrative authority over all persons who perform functions that relate to or impinge upon the operation of the court. To take extreme examples, it would be inappropriate for the court to have administrative supervision of the police simply because police are intimately involved in the presentation of criminal cases, or to run the janitorial staff in a civic center building simply because that staff serves the courts as well as other occupants of the building.

Between these apparently clearcut instances is a large area of doubt and controversy. Some of the disputations on the subject are more or less notorious. In the federal court system, there has been conflict over whether the Federal Probation Service should be part of the court's apparatus or part of the Department of Justice.[2] In Utah, a marriage conciliation service designed to help

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* *This paper was prepared as background for work of the American Bar Association Commission on Standards of Judicial Administration. The views expressed do not necessarily represent those of the Commission or the American Bar Association.*

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[1] *See* Agencies, Public and Voluntary, Involved in the Operation of the Courts in the City of New York; *A Report prepared by the Subcommittee on Liaison with Public and Private Agencies of the Departmental Committees of the Appellate Divisions, First and Second Departments (1972).*

[2] *Compare 43 Stat. 1259 (1925), establishing the federal probation system under dual administration of the federal courts and the Department of Justice, with 53 Stat. 1223 (1939), placing the system under the Administrative Office of the United States Courts, a decision confirmed in 62 Stat. 842 (1948). Peter G. Fish, "The Status of the Federal Probation System,"* 12 Crime & Delinquency *365 (1966); Albert Wahl, "Federal Probation Belongs with the Courts,"* 12 Crime & Delinquency *371 (1966). The President's Commission on Law Enforcement and the Administration of Justice explored a reassignment of the service to the Department of Justice but abandoned the effort in the face of opposition by the service and the courts. A similar controversy arose in Illinois*

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the courts came to grief in part because of conflict as to whether the service could function properly in an administrative affiliation with the department of welfare rather than the court itself.[3] A report a few years ago in New York City recommended greatly expanded monitoring powers for the courts over the operations of agencies having care of children who were subject to court jurisdiction.[4] A study by the American Bar Foundation of commitment of the mentally ill criticized some arrangements in which the examining physician in such cases was an appointee of the court rather than being professionally more independent.[5]

These and many other specific instances may be cited, but there has apparently been little systematic thought given to the question of the "proper" allocation of administrative authority over services that support the trial court.[6] The meagre literature consists largely of more or less dogmatic assertions that a particular service should be within the administrative supervision of the court. Many of these assertions seem prompted by frustration and exasperation at the inadequacy or ineptitude of the particular service in question. Whatever the impetus for such assertions, however, they have rested on necessarily limited vantage points and have not so far been supported by analysis of the underlying management problems they reflect.

Implicit in assertions in favor of court administrative authority over a supporting service is the assumption that such authority will result in a kind and level of service better attuned to the needs of the court. There is something to this idea, as we will try to suggest below. Yet the idea that having administrative authority necessarily implies having better services seems, on reflection, to be superficial. Indeed, in certain circumstances a court may get *less* effective help from a service over which it has administrative authority than from one that is autonomous. The purpose of this paper is to explore this question. The general theme and conclusion is that no invariable formula exists by which to resolve it. At the same time, certain guiding considerations can be identified.

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in 1970-72. See also A.B.A. Standards of Criminal Justice, Standards Relating to Probation, § 6.1 (b) (it is appropriate for probation services to be administered at either the state or local level, but in no event should control be vested in an agency having prosecutorial functions).

3 *Bridgitte M. Bodenheimer, "The Utah Marriage Counselling Experiment: An Account of Changes in Divorce Law and Procedure,"* 7 Utah L. Rev. *443 (1961).*

4 *Committee on Mental Health Services Inside and Outside the Family Court in the City of New York,* Juvenile Justice Confounded: Pretensions and Realities of Treatment Services; *(1972). This recommendation was implemented in the significantly modified form of creating for the New York courts a system to provide them with better information concerning services relating to children available from outside agencies. See New York Judicial Conference,* 19th Annual Rep., *p. 17 (1974).*

5 *Ronald S. Rock, Marcus A. Jacobson, and Richard M. Janopaul,* Hospitalization and Discharge of the Mentally Ill. *(Chicago: University of Chicago Press, 1968).*

6 *For analyses and recommendations in the correctional field see, e.g., American Law Institute,* Model Penal Code, *Art. 401 (Tent. Draft No. 5, 1956); Nat'l Advisory Commission on Criminal Justice Standards and Goals, ch. 9 and 10, and Report of the Task Force on Corrections, Standards 8.2, 9.4, 10.1, and 16.4 (1973). Compare the holding in Bowne v. County of Nassau, 358 N.Y.S. 2d 144 (App. Div. 2d Dep't 1974), that a probation service is inherently a component of the judiciary, possibly defensible as a matter of construction of the New York State Constitution but certainly not supported by analysis of the legal and administrative implications of that conclusion. The peremptory tenor of the opinion is reminiscent of the cases involving the judiciary's "inherent" power to compel financing of auxiliary services it deems integral to its functions. See Note, "Judicial Financial Autonomy and Inherent Power," 57* Cornell L.Q. *975 (1972). See also Hazard, McNamara, and Sentilles, "Court Finance and Unitary Budgeting," 87* Yale L.J. *1286 (1972).*

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Types of Supporting Services

The range of supporting services in fact available to courts of course varies greatly. Some such services, particularly those of clerk of court and security officer (bailiff), are essential and universally provided. Others, such as diagnostic services, may be available only in urban courts with specialized departments. Nevertheless it may be said that supporting services needed by a modern trial court include the following:

Administrative and clerical services: Caseflow management (including calendaring, jury administration, and related data systems); budgeting and financial administration; personnel administration; secretarial service; providing and managing office equipment and services, including purchasing; recording, filing, and retrieval of documents traditionally performed by the clerk of court; and data processing.

Investigative and diagnostic services: bail and recognizance release investigations; determinations of eligibility for assistance of counsel; presentence investigations; domestic relations investigations in custody, support, adoption, and marriage proceedings; mental illness diagnoses in criminal and civil commitment cases; juvenile investigation and evaluation; probate and conservatorship file monitoring and verification.

Security Services: bailiff and police services in and about the courthouse.

Detention services: custody pending trial in criminal cases, juvenile detention and temporary shelter, temporary care and detention of mentally ill persons; and related transportation.

Correctional services: adult and juvenile probation services for persons not committed to institutions.

Housekeeping services: courthouse facility maintenance.

In small or middle-sized communities, and some large ones as well, some of these services are combined in various ways in the hands of a few traditional and more or less versatile officials, such as the clerk of court, the sheriff, the county treasurer, or the clerk to the county supervisors. In some states, particularly in the eastern part of the country, a few of these services–for example, legal aid eligibility determinations and psychiatric diagnoses–are performed by agencies that were originally, and still are nominally, private rather than governmental. In a large urban court, they may have become highly specialized and performed through separate offices and departments within the court. The present pattern of administrative authority in any state or locality is the product of historical origins and pulling and hauling between the courts and the other offices of government that have assumed or asserted responsibility for providing one or another service.

Certain patterns are widely encountered. In some localities, the independent office of county clerk performs the functions of clerk of court, while the sheriff is responsible for detention services (including transportation to and from court) for adult criminal defendants. Some services created in more recent times are provided by offices nominally within the court's administrative jurisdiction but which may in fact be semi-autonomous, for example the jury commission and juvenile probation department. Purchasing of office equipment and services is usually through central purchasing by county government, while maintenance of

courthouse facilities is usually by an office of county or city government outside the courts. Although many aspects of this pattern may well make sense as a matter of administrative rationality, they are the result of decisions that were made ad hoc and without regard to general considerations of sound organization and management.

It is important to recognize that, certainly in the short run, the existing patterns of administration of supporting court services are not easily or lightly to be changed. Some supporting court services may remain under court administrative supervision for the simple reason that they would not likely be continued without the institutional and political support which the courts can provide for them. For example, well-staffed juvenile probation and detention services have often been the product of the efforts of interested judges in securing their legislative authorization and obtaining continued appropriations from state or local government to maintain them. Similarly, some types of services that have been provided to the courts by local government agencies, such as the sheriff or the board of county supervisors, might not continue to enjoy financial support from local government if their administration was transferred to the courts.

Apart from such political and financial exigencies, the process of transferring a service to or from the management of the courts involves some temporary disruption of service and may involve adverse long-run change in working relationships. For example, it may be that diagnostic services in the mental health field simply would not be performed at the same level of professional competence in a court-affiliated agency as in a service unit connected with a state or local mental health department. This is not to say that such consequences are inevitable or even likely in any given situation. It is only to say that the relation between administrative organization and service effectiveness is a complicated issue whose practical outcome cannot always be confidently predicted. Moreover, it is important to recognize that allocation of administrative jurisdiction is only one aspect of the relationships between the court and services that support or contribute to its operations. Whatever the formal administrative structure may be, day-to-day working relationships between the judges and those interacting with them should involve reciprocal understanding of responsibilities and expectations, effective communication, and mutual respect. There must also be sympathetic understanding of the constraints on the responsiveness of any supporting service that result from limited resources, competing priorities, and external pressures from other governmental and political forces.

Pros and Cons of Court Administered Services

The beginning point in analyzing the appropriate administrative jurisdiction of the court, as it might be called, perhaps should be a recognition that most courts, at least at present, are not outstanding for the quality of their administrative capability, however applied. Many courts lack an administrative staff, with the result that whatever administration they undertake is necessarily performed by the judges themselves. Aside from the fact that assumption of administrative responsibilities competes and may conflict with performance of the judges' judicial responsibilities, the fact is that most judges have had neither training nor experience in managing a complicated organization. The staff of many court administrative offices often exhibit similar deficiencies in training

and experience. Courts that lack a well-staffed administrative office usually have great difficulty with efficient management of their strictly judicial activities, let alone being capable of running services that involve administrative and professional staff engaged in non-judicial activities. The wish and hope for providing better supporting services through court supervision should not obscure realization that the prospects for doing so are most unfavorable when the court is not already equipped with a high level of staff capability.

On the other hand, courts cannot fulfill their responsibilities regarding supporting services simply by delegating their performance to an outside agency. Many such agencies are no better administered than the courts. Moreover, the courts at minimum must maintain enough continuous contact with such services to be satisfied that they are being performed competently, expeditiously, and in conformity with the procedural and substantive requirements of the law. This is particularly important since many such services in their nature directly affect the legal rights of the persons involved, as in jail detention and the conduct of investigations or diagnostic evaluations on which court determinations may be based.

Given these initial considerations, the most compelling reason for subordinating a supporting service to the administration of the court is that the court can give immediate guidance to operation of the service. It can directly specify the goals and priorities of the service, the qualifications and responsibilities of the personnel performing the services, and the working relationships between the service and the court. It can command more complete staff loyalty to the needs of the court and the values that the court seeks to implement. It can project and solicit the level of financial support for the service that the court deems necessary or appropriate. All these are obvious advantages from the viewpoint of the courts and are compelling considerations for certain types of services. Thus, it is clear that the court's own staff should perform the court's administrative functions, including such matters as caseflow management, jury selection and utilization, and bail-recognizance and pre-sentence investigations.[7] This is particularly clear because in regard to such services there are no policy or organizational objectives that militate in an opposite direction.

Additional considerations militate in favor of direct court administration of services involving investigative or diagnostic evaluations on which judicial determinations are based. The factual and judgmental product of such evaluations must be responsive to legal criteria formulated by the court and are intended to form, largely or partly, the basis of determinations for which the court is itself responsible. Moreover, where such evaluations are performed by professionals in disciplines other than the law, for example psychiatry or social work, problems recur in translating the concepts, terminology, and standards of evaluation in such disciplines into terms of legal relevance and significance. On

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[7] *These factors of administrative effectiveness could be taken as the criteria for determining the content of the concept of "inherent" judicial functions. That is, where it could be said that the authority to specify goals, qualifications of personnel, etc., is of especially great practical importance in the court's operations, it correspondingly defines the appropriate contours of the judiciary as an independent branch of government. The coherence of such a functional definition of "the judiciary" is, however, confounded by the circumstance that historically inherited divisions of administrative authority over supporting services contradict that definition at its core, i.e., in the independent office of clerk of court existent in most state court systems. That independence is often established in state constitutions.*

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the other hand, it may be difficult for a court-administered service to attract and hold non-legal staff professionals having suitable qualifications because, as a "law shop," the court may be regarded by them as alien to their own professional orientation. Moreover, well qualified professionals may not be interested in a vocation whose responsibilities extend only to evaluation or diagnosis and not to treatment or analogous professional practice as well. These considerations may indicate the desirability of obtaining diagnostic services needed by the court through a part-time or retainer arrangement with professionals based in some other agency, or who are in private practice.

Still other considerations may be pertinent to the question of administrative jurisdiction over certain types of court related services. For example, in court systems that have not yet been unified under central authority at the state level, purchasing of court equipment and office services may be done most economically by requisition through a central purchasing office of county government having the specialized staff, organized purchasing procedures, and strength of purchasing power that the court could not maintain for itself. There are few local courts large enough to achieve this level of specialization. More importantly if more subtly, court involvement in the administration of some kinds of services may be a drain on the court's energy, a diversion of its attention, and an embarrassment to its independence of judgment. To assume administration of a services program is to assume responsibility for defining its goals, assuring the competence of its staff, and above all accepting the burden of its failures and mistakes. If a court undertook direct supervision of jail detention of defendants awaiting trial, for example, it would be responsible for the daily routine of jail operation and would be accountable for such blunders or misfortunes as are involved in jail suicides, prisoner assaults, and jail riots. It a court seeks to carry out a driver education program in traffic cases, some judicial effort will have to be diverted from the adjudication function to what is essentially a correctional service, and the court itself would be accountable for the cost-effectiveness of the program.

Appropriate allocation of administrative authority over a supporting service thus depends in the first instance upon analysis of the practical considerations involved in the operation of that service. If such an analysis suggests that the court can administer the service effectively, and that doing so has concrete prospects for improving the service so far as the court is concerned, a case is made for subordinating the service to the court system. Such an analysis is possible in any given situation only in terms of its specific characteristics: the history of the service; the political and financial supports and constraints affecting its vitality; the relative importance to the court of using its energy and attention to supervise operation of the service; and the prospects that the court can recruit and hold the needed staff to manage the service efficiently.

Given these specific characteristics, further analysis of the appropriate administrative disposition of a supporting service should be made in terms of the functional requirements of any organizational activity. The question should be particularly asked whether the court can, as well as or better than some other agency of government, perform the following essential functions:

> (1) Initiating and regularly reexamining the goals and policies of the service; (2) providing leadership, general supervision, and sufficiently close direct management of the service; (3) monitoring the quality,

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punctuality, integrity, and efficiency of the service, giving principal attention to the main flow of business and avoiding preoccupation with specific. cases or merely crisis intervention; (4) recruiting, orienting, training, and retraining staff for the service, giving particular attention to the problem of staff distortion or dispersion of goals and policies; (5) continuously orienting the judges of the court to the functions of the service and the needs and capabilities of its staff; (6) seeking and securing necessary financial support; (7) handling conflict arising within the service and between it and other agencies and officials with whom it must deal, including the court itself.

Effective performance of these functions is essential to delivery of an effective service, whatever its auspices or location in an administrative configuration. In proposing to take over the management of a supporting service, the court system should be reasonably confident that it can perform them well. Indeed, the more fundamental point is this: A court should ascertain, in terms of these functions, whether each of its supporting services is presently operating at an optimal level. If the service is not satisfactory from the viewpoint of the court, the source of dissatisfaction cannot be eliminated by transferring administrative authority over the service to or from the courts. Such a transfer merely relocates responsibility for the problem without necessarily solving it. The court is not better off for having a poorly-oriented or inadequately-staffed or underfunded or conflict-ridden service transferred to its administrative jurisdiction. Indeed, it may be worse off because the deficiencies involved will then be its own responsibility.

In this light, it would appear that many of the disputes over administrative jurisdiction of court-supporting agencies, though conducted in terms of authority and responsiveness, are controversies arising from inadequately communicated needs and expectations on both sides. It is a central and continuing problem of *administration* when the service is court-administered. It is a central and continuing problem of *interagency relationship* between the court and an autonomous service agency when the service is provided by such an agency. In either event, goals, policies, service quality, and responsibility for results must be effectively identified and communicated as between the judges using the services and the staff providing them. If the court's needs and expectations can be particularized, the problem of administrative jurisdiction may disappear or at least become subordinate.

Service Characteristics Affecting Administrative Jurisdiction

Another order of considerations is also relevant to the analysis. These have to do with the nature of the service itself. Factors indicating that the service should be administered by the court can be identified as follows:

1. The service involves frequent, continuous, or confidential interactions between judges or judicial officers of the court and those providing the service.

2. The economics of scale in the service are such that it can be effeciently performed by an office or agency serving the court exclusively or primarily.

3. The service is rendered exclusively or primarily to the court and only

infrequently or not at all to other branches or agencies of government.

4. Where the service consists of investigating or evaluating matters to be determined by the court, the agency performing the service is not ordinarily places in an adversary relationship to other parties before the court.[8]

The first of these factors indicates the degree of intimacy in the functional relationship between the court and the service. The second and third factors indicate the extent to which a specialized court-oriented service is economically feasible and, if the court had administrative jurisdiction of the service, the extent to which the court might be in the position of itself being a service agency for others. The last factor concerns the minimization of conflict of role within the court with regard to services under the court's management.

If a service has all of these characteristics, it should be under the direct supervision of the court. If it has most of them, it should be under the direct supervision of the court unless there are compelling considerations to the contrary. On the other hand, if few or none of these characteristics are present, then it will probably be an inefficient and diversionary undertaking for the court to try to run the service. Such a service should be provided the courts by "contract" with some other agency of government, *i.e.*, an arrangement in which the court formulates its needs or service requirements and the other agency takes responsibility for meeting them.

With regard to all supporting services managed by the courts, written policies and procedures should be formulated for guidance of court, staff, the bar, and the affected outside agencies. With regard to all supporting services that are not under the direct administrative supervision of the courts, statements of policy and standard operating procedures should be developed by consultation and agreement between the court and the agency providing the supporting service. The procedures and relationships thus specified should be subject to regular review and revision in the same way as the court's own administrative procedures are reviewed and revised. It is especially important that there be periodic analysis and discussion of need for revision of procedures, including efforts to obtain "feedback" at all levels of connection between the court and the outside agency. The court's administrative office, under supervision of the court, should initiate and implement the formulation of policy and procedures that govern supporting services, including both services that are directly administered by the court and those provided by outside services.

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[8] *CF. In Matter of Appeal in Pima County Anonymous, 110 Ariz. 98, 515 P.2d 600 (1973), rejecting challenges under Due Process and Equal Protection clauses to the fairness of juvenile court trial where judge has supervisory authority over the staff by whom the charges are presented. The dissenting opinion of Douglas, J., in the United States Supreme Court's denial of certiorari in this case, 94 S.Ct. 3063 (1974), indicates that the Constitutional issue cannot be considered foreclosed and lends weight to the considerations of policy suggested in the text.*

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