

SAGE CRIMINAL
JUSTICE SYSTEM ANNUALS

Volume 15

COURTS AND JUDGES

James A. Cramer
Editor

Contributors

James J. Alfini
Lenore Alpert
Carl Baar
Dean J. Champion
Catherine Conly
James A. Cramer
Charles W. Grau
Randall Guynes
Thomas A. Henderson
William M. Rhodes
Arlene Sheskin
Paul B. Wice



SAGE Publications

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SAGE PUBLICATIONS Beverly Hills London

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For information address:

SAGE Publications, Inc.
275 South Beverly Drive
Beverly Hills, California 90212



SAGE Publications Ltd
28 Banner Street
London EC1Y 8QE, England

Printed in the United States of America

Library of Congress Cataloging in Publication Data

Main entry under title:

Courts and judges.

(Sage criminal justice system annuals; 15)

Bibliography: p.

1. Courts—United States—Addresses, essays, lectures. 2. Judges—United States—Addresses, essays, lectures. I. Cramer, James A. II. Series

KF8719.A2C68

347.73'1

81-5611

ISBN 0-8039-1640-X

347.3071

AACR2

ISBN 0-8039-1641-8 (pbk.)

CONTENTS

Preface	9
1. Introduction JAMES A. CRAMER	11
PART I Court Organization	17
2. Organizational Design for Courts THOMAS A. HENDERSON, RANDALL GUYNES, and CARL BAAR	19
3. The Organization of Trial Judges DEAN J. CHAMPION	59
4. Trial Courts on Trial: Examining Dominant Assumptions ARLENE SHESKIN	77
PART II The Judiciary	103
5. Learning About Trial Judging: The Socialization of State Trial Judges LENORE ALPERT	105
6. Judicial Socialization: The Philadelphia Experience PAUL B. WICE	149
7. Judicial Supervision of the Guilty Plea Hearing JAMES A. CRAMER	173
8. Federal Sentencing Guidelines: Will They Shift Sentencing Discretion from Judges to Prosecutors? WILLIAM M. RHODES and CATHERINE CONLY	197
9. Judicial Responses to Technocratic Reform ARLENE SHESKIN and CHARLES W. GRAU	225
10. Mississippi Judicial Selection: Election, Appointment, and Bar Anointment JAMES J. ALFINI	253
About the Authors	277

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Volume 15. **Sage** Criminal Justice System Annuals

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SAGE PUBLICATIONS

Beverly Hills

London

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Dedicated to my wife, Mary Jane

PREFACE

This volume is designed to offer the reader a sourcebook of recent empirical research and thought on several of the major issues relating to the organization of the courts and functions of the judiciary. Hopefully, it will be of interest to researchers, practitioners and policy makers alike. The articles selected represent years of research by authors drawn from the disciplines of criminology, law, political science, and sociology. The authors have employed a variety of conceptualizations and methodologies in compiling the body of works presented here. And, while it was not possible to address all of the major issues pertaining to the organization and tasks of the judiciary, an attempt was made to focus on some of the more critical aspects which are in need of greater understanding.

The reader will note that in some instances, for example the socialization of judges, differences surface between the respective contributing authors. These differences reflect both the perspectives of the authors and the current state of knowledge in the field. There does not exist a seamless web of knowledge on matters concerning the judiciary. Furthermore, as with most areas of social inquiry, no single theory or approach will likely be sufficient for understanding and explaining the complex organization of the courts and decision making of the judiciary. Those who cast about in search of a single theory are apt to be dogged by frustration, disappointment, and, ultimately, defeat.

I would like to express my appreciation to the contributing authors for their cooperation in assembling this volume

of essays. The role of the National Institute of Justice in furthering knowledge about the criminal justice system should also be recognized. Most of the chapters in the present work are the direct result of research funded by the Institute. This support is gratefully acknowledged.

INTRODUCTION

JAMES A. CRAMER

Criminal Justice, The Courts, and Organizational Theory

In the past two decades the courts, and criminal justice system generally, have undergone a reconceptualization in the minds of many legal practitioners and researchers. Previously the justice system was viewed as being a unique amalgamation of agencies, loosely bound together by a body of law and a set of overlapping functions. It was argued that the system and its specific agencies were unlike other kinds of organizations, particularly in terms of the functions fulfilled and the nature of the relationship between the components within the overall organization.

Now, however, there is a growing body of literature that suggests that the criminal justice system and its agencies share many characteristics with other types of complex organizations (Eisenstein and Jacob, 1977; Stott et al., 1977; Sarri, 1976; Feely, 1973). Thus, it is increasingly common to see criminal justice agencies being cast into the existing body of organizational literature. The fact that this was relatively uncommon before the 1960s had the effect of fostering the belief that the criminal justice system was somehow different than other forms of organizations that were commonly the focus of social research. This implied, although it was usually never stated, that a different body of theory would be needed to understand and explain how the system worked. This attitude, coupled with problems of access to certain criminal justice agencies by social scientists, had the effect of

dampening the interest of researchers whose concerns were not confined solely to an analysis of the justice system.

In no criminal justice agency has the impact of organizational analysis had greater impact than in the courts. There are several factors that may account for this. These include, among others, the structure of the courts, the division of labor among court personnel, and access by researchers to the court system.

First, the court system as a unit is probably the most structured of all criminal justice agencies. There is a readily identifiable organizational structure. The span of control of each of the divisions of the court is clearly delineated and a formal hierarchy of court personnel can be observed. Although some researchers, notably Eisenstein and Jacob (1977), have reported that they have failed to ascertain a recognizable hierarchy in the courtroom workgroup, this should not be confused with the hierarchy within the court structure itself. Whether the unit of analysis is a specific court, the body of courts in a particular jurisdiction, or the complete court system on the state or federal level, a logically consistent and integrated organizational structure and hierarchy exists.

Second, the division of labor in the courts is more clearly prescribed than in other criminal justice agencies. The functions are not, for example, as blurred as those within the police organization, whose frequently overlapping functions between patrolmen and investigators or between departments such as traffic and patrol are characteristic of that organization. Thus, the *formal* division of labor in the courts is much more likely to be paralleled by the *actual* division of labor in the day-to-day operations than that which occurs within the police organization. This is not to suggest that there are not considerable differences in how work gets done or between "law on the books and the law in action." There is

ample evidence to suggest that is indeed the case. What can be said, however, is that even when judges differ markedly in their practices in matters such as plea negotiation and sentencing, their *functions* are remarkably constant.

A third factor which may account for the focus of organizational theory and research on the courts is the general accessibility for conducting research. Two factors seem relevant here. First, the physical arrangement of the court system(s) in any given jurisdiction is appealing. The activities of the judges are generally confined to the courthouse, their chambers, or the courtroom. Second, most judicial activities occur in a public setting. Arraignments, bail hearings, preliminary hearings, guilty pleas, and trials are open proceedings. And while other activities, such as preplea discussions and certain pretrial hearings, are sometimes held in chambers, it is usually possible to obtain permission from the presiding judge to gain entrance for purposes of observation. By way of contrast, many of the activities of the police (investigation, interviewing, report writing) and the prosecutor (case preparation, screening) occur in the privacy of their offices, hidden from public view.

Organization of the Book

This volume is divided into two basic components: the courts and the judiciary. By the courts I refer to the agencies which have the authority and jurisdiction to conduct legal proceedings of a civil and criminal nature for the purpose of resolving disputes of fact and law. Courts may be either trial or appellate. The former conduct pretrial hearings, guilty pleas, trials, and sentencing hearings. Appellate courts serve primarily to resolve issues of law as it applies to particular cases.

The term *court organization* as it is conventionally used may encompass not only the activities of judges but also addi-