

1-15-1978

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### Recommended Citation

James A. Gazell *Chief Justice Warren's Neglected Accomplishments In Federal Judicial Administration*, 5 Pepp. L. Rev. Iss. 2 (1978)

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# Chief Justice Warren's Neglected Accomplishments In Federal Judicial Administration

JAMES A. GAZELL\*

## INTRODUCTION

Earl Warren, while still Chief Justice of the United States, made the following statement in 1967 to an annual meeting of the American Law Institute, probably the nation's best-known legal organization.<sup>1</sup>

The problems which you will be discussing this week are primarily problems of the substantive law. I should like, however, to direct your attention for a few moments this morning to what I regard as the greatest problem [that] we face today in the federal courts and that is the problem of judicial administration.<sup>2</sup>

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\* B.A., Roosevelt University, 1963; M.A., Roosevelt University, 1966; Ph.D., Southern Illinois University, Carbondale, 1968; Professor of Public Administration and Urban Studies at San Diego State University where he teaches courses in the administration of justice, general public administration, organization theory, and methodology. The author has written extensively in the field of Judicial Administration.

1. J. FRANK, *AMERICAN LAW: THE CASE FOR RADICAL REFORM* 24 (1969).

2. 44 ALI PROCEEDINGS 1-2 (1967), *reprinted in* Warren, *The Supreme Court—1967*, 39 N.Y. ST. B. J. 388 (1967), and Warren, *Administrative Problems of the Federal Judiciary*, 23 BUS. LAW. 7 (1967).

This statement is significant not only because it is his clearest public statement on the salience of court administration but also because it illuminates a neglected side of his sixteen-year tenure (1953 to 1969) as the country's highest-ranking judicial officer.

Analyses of Earl Warren's role as Chief Justice have concentrated almost invariably on his substantive work, the Supreme Court decisions in which he participated. More specifically, he has received much attention for his landmark judicial opinions in such highly controversial areas as race, reapportionment, religion, and criminal proceedings.<sup>3</sup> An emerging consensus among legal commentators is that the tribunal over which he presided—commonly called the Warren Court—brought about a constitutional revolution through its broad interpretations of the federal Bill of Rights and the Fourteenth Amendment of the United States Constitution.<sup>4</sup>

For some legal authorities Chief Justice Warren was a man who believed in the equality and dignity of all people and championed fairness, justice, and protection against government. In their view he was a judicial activist who had succeeded, to an

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3. Here is a partial list of some of the famous Supreme Court decisions in which Chief Justice Warren participated. In the field of race relations the following cases are among those that stand out: *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954); *Cooper v. Aaron*, 358 U.S. 1 (1958); *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241 (1964); and *Katzbach v. McClung*, 379 U.S. 294 (1964). Leading decisions in the area of reapportionment include *Baker v. Carr*, 369 U.S. 186 (1962); *Wesberry v. Sanders*, 376 U.S. 1 (1964); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966); *Avery v. Midland County*, 390 U.S. 474 (1968); and *Kirkpatrick v. Preisler*, 394 U.S. 526 (1969). Important cases in the field of religion include *McGowan v. Maryland*, 366 U.S. 420 (1961); *Engel v. Vitale*, 370 U.S. 421 (1962); *School District of Abington Township v. Schempp*, 374 U.S. 203 (1963); *Sherbert v. Verner*, 374 U.S. 398 (1963); and *Board of Education v. Allen*, 392 U.S. 236 (1968). Finally, notable decisions in the area of criminal procedure embrace *Mallory v. United States*, 354 U.S. 449 (1957); *Roth v. United States*, 354 U.S. 476 (1957); *Mapp v. Ohio*, 367 U.S. 643 (1961); *Robinson v. California*, 370 U.S. 660 (1962); *Townsend v. Sain*, 372 U.S. 293 (1963); *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Fay v. Noia*, 372 U.S. 391 (1963); *Malloy v. Hogan*, 378 U.S. 1 (1964); *Escobedo v. Illinois*, 378 U.S. 478 (1964); *Estes v. Texas*, 381 U.S. 532 (1965); *Shepard v. Maxwell*, 384 U.S. 333 (1966); *Miranda v. Arizona*, 384 U.S. 436 (1966) (easily the most controversial case); *In Re Gault*, 387 U.S. 1 (1967); *Berger v. New York*, 388 U.S. 41 (1967); *United States v. Wade*, 388 U.S. 218 (1967); *Katz v. United States*, 389 U.S. 347 (1967); *Terry v. Ohio*, 392 U.S. 1 (1968); and *Chimel v. California*, 395 U.S. 752 (1969).

Other controversial decisions, especially in the area of national loyalty and political expression, include the following: *Pennsylvania v. Nelson*, 350 U.S. 497 (1956); *Slochower v. Board of Higher Education of New York City*, 350 U.S. 551 (1956); *Yates v. United States*, 354 U.S. 298 (1957); *Trop v. Dulles*, 356 U.S. 86 (1958); and *Scales v. United States*, 367 U.S. 203 (1961).

4. Among the commentators who view the work of the Warren Court as a constitutional revolution are the following: J. WEAVER, *WARREN: THE MAN, THE*

unprecedented degree, in extending the Constitution's guarantees to powerless and unpopular minorities, by making its promises into a reality for many, and in prodding the national and state governments, especially their legislative and executive branches, into action toward the alleviation of serious social and political problems. These admirers saw him as a jurist who tried to make the law more accurately reflect the noblest ideals of the nation and maximize individual liberty without undermining social order. They considered his chief justiceship to be as illustrious as those of John Marshall and Charles Evans Hughes.<sup>5</sup>

Others viewed Warren as an activist but one whose purposes, decisions, and methods deserved sharp, widespread, and enduring public criticisms. They believed he had sought unwisely to initiate new legal, political, social, and economic policies; to usurp policy-making authority from elected legislative and executive officials at the federal, state, and local governmental levels; to enlarge the powers of the high court to the maximum; to interpret the Constitution in accordance with his own

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COURT, THE ERA 347 (1967); Cox, *Chief Justice Earl Warren*, 83 HARV. L. REV. 3 (1969) finding in the court's decisions an expression of the "common will," Lewis, *Earl Warren*, in R. SAYLES, B. BOYER, & GOODING, JR., THE WARREN COURT: A CRITICAL ANALYSIS 1 (1969) H. CHASE & C. DUCAT, EDWARD S. CORWIN'S THE CONSTITUTION & WHAT IT MEANS TODAY 245 (1974) discussing the court's integration of "out-groups" to the political system; Fortas, *Chief Justice Warren: The Enigma of Leadership*, 84 YALE L.J. 411 (1975); and, implicitly, R. FUNSTON, CONSTITUTIONAL COUNTERREVOLUTION (1977), deciding that the court must reduce its expectations of itself.

5. All the sources in note 4, except for the last one, saw Warren and the court over which he presided in a favorable light. Among the sources—mostly eulogies—with complimentary outlooks are the following: J. FRANK, THE WARREN COURT 36 (1964); G. SCHUBERT, JUDICIAL POLICY-MAKING 136, 153-157 (1965); L. HUSTON, PATHWAY TO JUDGMENT 187, 191 (1966); Clark, *Dedication to Chief Justice Warren*, 48 NEBRASKA L. REV. 6, 12-13 (1969); Goldberg, *Dedication: A Tribute to Chief Justice Earl Warren*, 69 NW. U. L. REV. 331-334; Groll, *Chief Justice Earl Warren, 1891-1974*, 23 DEPAUL L. REV. 1341-1343 (1974); *Remarks of United States District Judge William T. Sweigert at the Earl Warren Memorial Services, Grace Cathedral, San Francisco, July 12, 1974, Contemporaneously with Funeral Services Being Held in Washington, D.C.*, 14 SANTA CLARA LAW. 737-739 (1974); Kuchel, *Earl Warren: A Giant of Our Time*, 49 L.A.B. BULL. 449-454 (1974); Simmons, *Earl Warren, the Warren Court and Civil Liberties*, 2 PEPPERDINE L. REV. 1-7 (1974); Gressman, *The World of Earl Warren*, 60 A.B.A. J. 1228, 1230-1231 (1974); Brennan, Jr., *Chief Justice Warren*, 88 HARV. L. REV. 1, 3-5 (1974); G. SCHUBERT, THE JUDICIAL MIND REVISITED 8-15 (1974); *Chief Justice Earl Warren: a Tribute*, 2 HASTINGS CONST. L.Q. 1-20 (1975); Kuchel, Williams, and Beytagh, *In Memoriam: Earl Warren, Chief Justice of the United States*, 64

ideological predilections rather than as the framers intended; to issue broad policy holdings transcending the facts of a case at hand; to disdain an incremental, organic process of adjudication; to infuse the Constitution with unenumerated rights; to disregard judicial precedents; to prefer desired results over the means of achieving them; and to ignore fiscal, personnel, and informational restraints on judicial policy formation.<sup>6</sup>

However, despite the lingering controversy over Warren's substantive achievements as a jurist, no public disputes have ever raged over his administrative work. In fact, little has been published<sup>7</sup> about the managerial side of his stewardship, even though his contributions are surprisingly extensive and may prove to be lasting.<sup>8</sup>

This article seeks to fill such an analytical gap and to explore the significance of Warren's efforts in the field of American judicial administration, especially at the federal level where his greatest accomplishments lie. The central theme of this article is that he was a catalyst who advocated, furthered, implemented, and presided over numerous administrative changes that

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CALIF. L. REV. 3-5, 5-9, and 10-13 (1976); and Editors, Prologue to E. WARREN, *THE MEMOIRS OF CHIEF JUSTICE WARREN* ix (1977).

For more balanced assessments, see Graham, *Warren Era Ending Today after 16 Years of Reform*, N.Y. Times, June 23, 1969, at 1, col. 3, 24 cols. 1-6; Patrick Young, *Accenting [the] Rights of the Individual*, Nat'l. Observer, June 16, 1969, at 18, cols. 1-5; Lewis, *Earl Warren, 83 Who Led High Court in Time of Vast Social Change, Is Dead*, N.Y. Times, July 10, 1974, at 1, cols. 2-4, 24, cols. 1-4; Alden Whitman, *For 16 Years, Warren Saw the Constitution as [the] Protector of Rights and Equality*, N.Y. Times, July 10, 1974, at 24, cols. 1-6; *Earl Warren Dies at 83; Chief Justice for Sixteen Years*, L.A. Times, July 10, 1974, part 1, at 1, cols. 2-3, 16, cols. 1-6; and Lanouette, *Warren v. Warren*, Nat'l Observer, July 20, 1974, at 22, cols. 1-6.

For Warren's views, see E. WARREN, *A REPUBLIC, IF YOU CAN KEEP IT* (1972) and E. WARREN, *supra* at 275-320, especially 316, 318-319 (1977).

6. Critical commentaries are contained in all the balanced assessments in note 5; Duesenberg, *The Warren Court and Civil Liberty: An Appraisal*, Wall Street J. July 10, 1969, at 16, cols. 3-6; and R. SAYLES, B. BOYER, & GOODING, JR., *supra* note 4. The most recent—and probably the most incisively critical—analysis may be found in R. FUNSTON, *supra* note 4, at 297-298, 302-303, 305-306, 312-313, 315-316, 318 (1977) seeing in the court a profound contempt for legislative agencies of government, and a "militant egalitarianism" which coerced rather than convinced.

7. The best published materials on Warren's administrative efforts include J. FRANK, *supra* note 5, at 18-23; J. FRANK, *supra* note 1, at 2-3, 5, 19-21, 24-25, 27, 30-32, 53, 84, 170, 190-192; P. FISH, *THE POLITICS OF FEDERAL JUDICIAL ADMINISTRATION* 170-173, 224-225, 238-241, 248-249, 252-255, 264-269, 292-293, 304-305, 314-317, 336-337, 348-353, 360-361, 364-365, 368-369, 376-377, 410-411, 414-415 (1973); and Gressman, *supra* note 5, at 1229, col. 1 (1974). For Warren's comments on his administrative efforts, see E. WARREN, *supra* note 5 (1977).

8. This neglect may stem from the unexciting nature of the subject, its low public visibility, or its low priority in scholarly interest. See A. VANDERBILT, *MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION* xvii, xx-xxi.

moved the federal judiciary toward greater centralization, enhanced its efficiency, and improved its prospects for maintaining its position as a roughly co-equal branch of the national government.

To illuminate this thesis, one may delve into four interlocking areas: Chief Justice Warren's philosophy toward judicial administration, his work to improve the procedures of the federal court system, his actions toward upgrading its personnel, and his efforts to modernize the structure of the federal judiciary.

# I

## CHIEF JUSTICE WARREN'S PHILOSOPHY TOWARD JUDICIAL ADMINISTRATION

An exploration of the late Chief Justice's philosophy toward judicial administration must begin with a definition of what is still a developing field. Although the contours of this new profession remain uncertain, one would probably find considerable agreement about its components, which fall into two broad, overlapping categories: external and internal.<sup>9</sup> The external subdivision embraces at least seven topics focusing on issues in the environment surrounding judicial organizations: trial-court unification; the elimination of fee offices (such as justices of the peace); managerial leadership; security; co-operation between courts and other justice agencies, such as police, prosecution, and corrections; working relationships between higher and lower courts; and technology, especially computerization. The internal category encompasses eight areas located largely within

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9. Gazell, *The Principal Facets and Goals of Court Management: a Sketch* in L. BERKSON, S. HAYS & S. CARBON, *MANAGING THE STATE COURTS* 24 (1977).

It is noteworthy that Chief Justice Warren's conception of judicial administration presaged the current external-internal dichotomy. Near the end of his stewardship he described his conception of this subject in these words:

The problems of judicial administration are many and formidable. They range from management and organizational questions such as proper utilization of appropriations, personnel, space, and statistics to such serious and intricate questions as jurisdiction, judicial selection, judicial disability, jury selection and management, calendar control, ruling making, and geographical organization of the courts.

Apart from these varied problems yet part of each of them is the planning function of court administration. . . .

Warren, *A New Discipline: Judicial Administration*, 4 TRIAL 10, col. 1 (Dec.-Jan. 1967-1968), reprinted in Warren, *The Administration of the Courts*, 51 JUDICATURE (formerly J. AM. JUD. SOC'Y) 197, col. 2 (1968).

the courts: staffing (including the selection and tenure of judges and chief judges as well as court administrative officials); fiscal administration; space management; caseload control; record-keeping; delay; personnel administration; and jury management.<sup>10</sup> Of these matters, Chief Justice Warren regarded unwarranted delays as the most serious. Early in his tenure as Chief Justice he told an annual meeting of the American Bar Association:

I must report that interminable and unjustifiable delays in our courts are today compromising the basic legal rights of countless thousands of Americans and, imperceptibly, corroding the very foundation of constitutional government in the United States. Today, because the legal remedies of many of our people can be realized only after they have swallowed with the passage of time, they are mere forms of justice. And, to the extent that this is so, there is created a disrespect for law at a time when everyone should be continually conscious of the fundamental principle that it is primarily the law and its adequate enforcement which makes individual liberty possible.<sup>11</sup>

Although this statement was probably the strongest expression of his discontent with such delay, it was only one of numerous comments about this problem. He reiterated, in fact, this impatience yearly in his addresses to the American Law Institute.<sup>12</sup>

To Chief Justice Warren judicial delay *per se* was no reason for alarm. He realized that a lapse of court time in handling cases was essential to procedural fairness and to just decisions. As Figure 1 illustrates, his outlook suggests a curvilinear relationship between dispositional speed and justice. On the one hand, if cases were handled too slowly, aggrieved litigants in civil cases as well as the public and defendants in criminal cases would suffer. Such concern underlies the legal maxim that justice delayed is justice denied. On the other hand, if courts placed too high a premium on speed (as measured by the median time from filing to trial) and efficiency (as measured by the number of dispositions), due process of law would be endangered.<sup>13</sup>

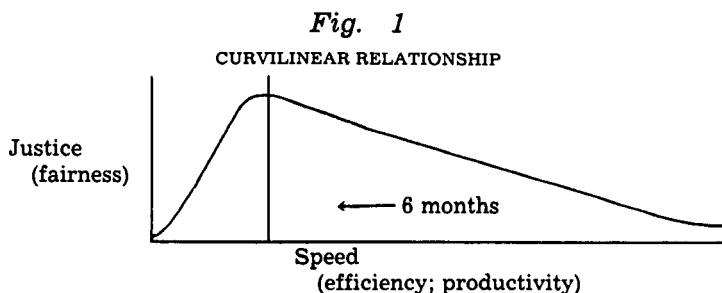
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10. Gazell, *supra* note 9 at 25-35 (1977). See also Nelson, *Preface* in D. NELSON, *JUDICIAL ADMINISTRATION AND THE ADMINISTRATION OF JUSTICE: CASES AND MATERIALS* xxv (1974).

11. Warren, *The Problem of Delay: A Task for Bench and Bar Alike*. 44 A.B.A.J. 1043 (1958).

12. Citations to Warren's annual American Law Institute addresses: 31 ALI PROCEEDINGS 1-6 (1954), 32 ALI PROCEEDINGS 1-7 (1955), 33 ALI PROCEEDINGS 24-36 (1956), 34 ALI PROCEEDINGS 30-37 (1957), 35 ALI PROCEEDINGS 23-37 (1958), 36 ALI PROCEEDINGS 27-43 (1959), 37 ALI PROCEEDINGS 26-40 (1960), 38 ALI PROCEEDINGS 20-29 (1961), 39 ALI PROCEEDINGS 23-38 (1962), 40 ALI PROCEEDINGS 25-38 (1963), 41 ALI PROCEEDINGS 21-35 (1964), 42 ALI PROCEEDINGS 21-31 (1965), 43 ALI PROCEEDINGS 144-156 (1966), 44 ALI PROCEEDINGS 1-14 (1967), 45 ALI PROCEEDINGS 1-18 (1968), and 46 ALI PROCEEDINGS 2-13 (1969).

13. See *supra* note 12, at 27 (1958), where the late Chief Justice referred to "undue delay—that is, delay from one to four years between the date of filing



Chief Justice Warren contended that federal—and, by implication, state—courts should be able to try ordinary civil and criminal cases within six months of their filing date.<sup>14</sup> The basis for this proposed standard is not clear, although its foundation may have been partly intuitive and consensual, especially since the Judicial Conference of the United States (the policy-making body for the federal courts since 1948)<sup>15</sup> adopted this criterion during Warren's tenure.

The former Chief Justice ascribed what he called "undue delay"<sup>16</sup> to three causes: rapid population increases, the intricacy of the nation's economy, and a desire of Americans to litigate.<sup>17</sup> His enumeration of these causes amounted largely to an updating of factors publicly cited in 1906 by the renowned legal scholar Roscoe Pound whose writings in the first half of the twentieth century now underlie conventional thought in modern

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and the time of trial." On the subject of procedural fairness, see Justice Felix Frankfurter's famous comment in *Malinski v. New York*, 324 U.S. 401, at 414 (1945); "The history of American freedom is, in no small measure, the history of procedure." On the subject of justice, see J. RAWLS, *A THEORY OF JUSTICE* (1971). For the legal maxim on denying justice by delaying it, see L. KATCHER, *EARL WARREN: A POLITICAL BIOGRAPHY* 330 (1967).

14. See *supra* note 11, at 1044, col. 1, but noting only seven out of ninety-four districts had met this standard as of 1957.

15. 28 U.S.C. § 331 establishing the conference, its membership purposes, and duties, P. FISH, *supra* note 7, at 228. Fish's book contains the best historical account of the Judicial Conference's development at 228-339.

16. See *supra* note 13, first item.

17. Warren, *Dedicatory Address*, 21 U. FLA. L. REV. 286 (1969) also citing an "addiction to outmoded procedures and the resistance to change." See also *Address Delivered by [the] Honorable Earl Warren*, 25 F.R.D. 222 (1960) noting particularly, a rapidly growing population.



judicial administration.<sup>18</sup> Warren adopted Pound's philosophy as a middle ground between two unsatisfactory extremes.

On one side, a traditionally proposed means of reducing or eradicating excessive judicial delay rested on seeking legislative authorization for additional judges. Warren realized that such increases, although necessary, were still insufficient to effect significant administrative improvements. The failure of this customary panacea to alleviate congestion in the federal and state judiciaries over the years as well as Congressional resistance to the establishment of extra judgeships deepened his skepticism about the efficacy of this method when used alone.<sup>19</sup> In 1967 he declared: "We have learned by sad experience that merely adding more judges to courts will not solve the problem of judicial administration. Indeed, adding more judges to courts using outmoded methods of administration is more likely to retard production than . . . to stimulate it."<sup>20</sup>

Conversely, Chief Justice Warren did not embrace the position that mounting judicial caseloads could be handled most effectively by reducing criminal and civil inputs into the courts. (This approach could logically supplement the traditional one of increasing judicial positions.) Reductions in criminal litigation would stem from a contraction in the scope of the criminal law, particularly a lifting of legal sanctions from what are often labeled "victimless crimes" such as abortions, bribery, drug addiction, espionage, gambling, marijuana use, narcotics consumption, private fights, pornography for adults, public drunkenness, sexual conduct between consenting adults, and

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18. Pound, *The Causes of the Popular Dissatisfaction with the Administration of Justice*, 29 A.B.A. REP. (part 1) 395-417 (1906), reprinted in 46 J. AM. JUD. SOC'Y (now JUDICATURE) 55, 59-62 (1962). Pound arranged his "causes" under four topics: (1) causes for dissatisfaction with any legal system—the mechanical nature of rules, popular notions of "justice," and public impatience with restraint; (2) causes peculiar to the Anglo-American legal system—the "individualist spirit" of our common law, "contentious" procedure, reliance on case law; (3) causes peculiar to the American judiciary—the multiplicity of courts and concurrent jurisdiction; (4) the environment of judicial administration—the strain on law that is required to serve for morals, increasing legislation, the politicization of the courts, and public ignorance of court operations.

The most prominent sources containing Pound's thoughts on the subject of judicial administration are the following: *Report of the Special Committee to Suggest Remedies and Formulate Proposed Laws and to Prevent Delay and Unnecessary Cost in Litigation*, 34 A.B.A. REP. 578-502, at 588-598 (1909); Pound, *Organization of Courts*, II J. AM. JUD. SOC'Y 69-83 (1927) calling for the unification of state courts; Pound, *Principles and Outline of a Modern Unified Court Organization*, 23 J. AM. JUD. SOC'Y 225-233 (1940) further developing the concept of a single, unified state court with three branches: supreme, superior, and county; and R. POUND, *ORGANIZATION OF COURTS* 273-294 (1940).

19. See Warren, *supra* note 11, at 1046, col. 1; *supra* note 12, at 32 (1957), at 23-24 (1961), and at 27 (1963).

20. See *supra* note 1, at 3 (1967).

vagrancy. Such behavior would be legalized, as in the case of abortions, or decriminalized, as in the case of minor marijuana use, or handled by governmental agencies in a primarily therapeutic rather than punitive fashion, as exemplified by the use of detoxification and drug-treatment centers.<sup>21</sup> Furthermore, civil cases that might be removed from the courts include such matters as automobile accidents, child custody and adoptions, divorces, and probate. No-fault automobile insurance, no-fault divorce statutes, and a greater availability of arbitration to settle minor cases represent means to accomplish this end at the state level.<sup>22</sup> Although he gave sporadic attention to these areas,<sup>23</sup> there is no published evidence of Warren's support for the general theory of jurisdictional restriction.

Chief Justice Warren's views toward possible remedies for judicial delay were firmly ensconced in a position somewhere between recommending additional personnel and a withdrawal of extensive court jurisdiction. This position had long been occupied by the eminent Roscoe Pound, the source of Warren's—and most other analysts'—philosophy toward court administra-

21. *Id.* at 61. The concept of "victimless crimes" has received public analysis since 1964. Among the most notable contributions are F. ALLEN, *THE BORDERLAND OF CRIMINAL JUSTICE* 3-13, 23 (1964) discussing the interaction of behavioral science and legal institutions; E. SCHUR, *CRIMES WITHOUT VICTIMS* 169-179 (1965); N. MORRIS & G. HAWKINS, *THE HONEST POLITICIAN'S GUIDE TO CRIME CONTROL* 3 (1970); SAN FRANCISCO COMMITTEE ON CRIME, *A REPORT ON NON-VICTIM CRIME IN SAN FRANCISCO*, PART I: BASIC PRINCIPLES, PUBLIC DRUNKENNESS, PART II: SEXUAL CONDUCT, GAMBLING, PORNOGRAPHY 1-14 (part 1), 46-47 (part 2), 56-82 (part 3) (1971); and Morris, *The Law Is a Busybody*, N.Y. Times, Apr. 1, 1973, § 6 (Magazine), at 10-11, 58-62.

22. J. FRANK, *supra* note 2, at 70-85, 110-124. In this vein, see also Rich, *Carter Backs No-Fault Bill, Sponsor Says*, L.A. TIMES, July 15, 1977, § 1, at 6, cols. 3-6; *Surge in 'No-Fault' Divorce and Its Spreading Impact*, U.S. NEWS WORLD REP., July 25, 1977, at 76; Sexton, *Arbitration Urged To End Lawsuit Jam*, San Diego Union Aug. 14, 1977, § 1, at 1, cols. 1-5; Pierce, *Liberalized Pot Laws Pick Up Steam*, L.A. Times, Sept. 11, 1977, part IV, at 5, cols. 3-5; Jones, *Michigan No-Fault Insurance Gets Results*, San Diego Union, Sept. 11, 1977, at C-5, cols. 3-6, C-7, cols. 4-6; and *No-Fault Insurance—How It's Working*, 83 U.S. NEWS & WORLD REP. 35-36 (September 26, 1977).

23. In 1960 he noted with approval that a study of federal jurisdictional scope had taken an "affirmative" approach, centering on what courts should hear, not on what they should dispense with. See *supra* note 17, at 217 (1960) and note 12, at 31.

In 1962 and 1967 he mentioned a growing use of arbitration proceedings as devices for handling some kinds of business litigation, particularly at the federal level. Warren, *Developments in Federal Judicial Administration*, 34 PA. B.A.Q. 54 (1962); Warren, *supra* note 10, at 10, col. 2 (1967-1968). However, there is

tion.<sup>24</sup> Pound strongly believed that an acceleration of judicial caseflows depended on centralizing alterations in court procedures, personnel, and structures.

Pound stressed procedural changes which encompassed three concepts. First, he believed judiciaries should be entrusted with the authority to make their own criminal, civil, and administrative rules on system-wide and individual bases. He expected that courts could thus simplify their procedures, adapt them to changing circumstances, eliminate many retrials, and increase their case dispositions. His second change called for authorization for courts to assign their judges from one region, division, or case to another as needed to alleviate or prevent congestion. Such changes, in his view, would enhance a judicial system's flexibility in coping with its problems. Last he recognized a need for the introduction of the latest business methods into judicial environments to regulate their costs and increase their efficiency.<sup>25</sup> Pound saw the role of the highest court's chief justice as the managerial head of an entire judicial system, presiding over judges serving as executive heads for the general trial courts who in turn would be assisted by court administrators and other supporting personnel such as clerks, bailiffs, librarians, physicians and psychiatrists, probation officers, secretaries, stenographers, and accountants. He expected that such a system would conserve judicial power—that is, relieve all other judges of numerous administrative duties so that they could spend more time on their primary function: adjudication.<sup>26</sup>

Pound's structural proposals entailed the unification of a court system into a single appellate tribunal, one level of general trial courts, and a layer of lower courts which would be tribunals of limited or specialized jurisdiction. This consolidated judiciary would operate under the supervision of the respective chief justices who would be responsible for the quantity and quality of judicial decision-making, for vertical and horizontal personnel assignments within the overall system, and for staff functions, such as budgeting and the gathering of relevant statistics.<sup>27</sup>

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no published evidence that he gave further consideration to this alternative, although one scholar implied that the late jurist favored the elimination of automobile-acident claims from judicial systems. J. FRANK, *supra* note 1 at 84.

24. Warren, *supra* note 9 at 9, cols. 1-3 (1967-1968), citing Pound's *Causes of Popular Dissatisfaction*, *supra* note 18.

25. Pound, *supra* note 18, at 64-65 (1962) and *Principles*, at 225, col. 1, 228 col. 1, 231, cols. 1-2 (1940).

26. *Id.* at 225, 227-230.

27. *Id.* at 225-229.

Chief Justice Warren favored Pound's philosophy of judicial flexibility through procedural changes, conservation of judicial power through personnel alterations, and unification and a consequent growth of judicial responsibility through structural innovations.<sup>28</sup> However, the Chief Justice did not show the same degree of concern for court administration at all levels.

28. One sign of Warren's interest in the field of judicial administration lies in his publication record on the subject. Fig. 2 underscores this interest by making four generalizations evident. First, during a span of approximately forty years, nearly a third (30.6%) of his publications were at least partially concerned with this subject. In fact, from August 1952 until his death on July 9, 1974, at age eighty-three, 34.0% of his publications were devoted at least in part to this topic. Second, it is plain that his concern for judicial reform began at about the time that he became Chief Justice in October, 1953—a position with administrative responsibilities and a forum from which he could exert catalytic leadership. *Id.*; Huston, *Warren Sworn In; President Attends*, N.Y. Times, Oct. 6, 1953, at 1, col. 4; *Warren, Earl*, CURRENT BIOGRAPHY 637, col. 2 (1954). For Warren's early public speeches containing references to judicial administration, see *supra* note 12, at 1-6 (1954); and Warren, *The New Home of the Profession: The American Bar Center Dedication Address*, 40 A.B.A. J. 944-956 (1954) decrying delays and haphazard judicial appointments also found in 79 A.B.A. REP. 439-441 (1954).

Third, it is apparent that his preoccupation with this subject deepened during his stewardship. Parenthetically, it is noteworthy that this figure understates his devotion to this field because it does not include all his annual addresses to the American Law Institute. Only several of those speeches were published in legal periodicals. Finally, it is observable that his interest in this subject continued, albeit at a lower level, even after his retirement from the bench in June, 1969. Here is a list of the partial and full reprints of Warren's American Law Institute Addresses in legal publications: Warren, *Probation in the Federal System of Criminal Justice*, 19 FED. PROBATION 3-4 (Sept. 1975) (a partial reprint); Warren, *Delay and Congestion in the Federal Courts*, 42 J. AM. JUD. SOC'Y 6-12 (1958); *Address*, *supra* note 17, at 213-224 (1960); *Address of the Honorable Earl Warren*, 35 F.R.D. 181-193 (1964); and *supra* note 1. The last four sources in this note are full reprints.

Fig. 2

#### CHIEF JUSTICE WARREN'S WRITINGS FOR LEGAL PUBLICATIONS

Time Span	Judicial Administration	Other Subjects	Total
Before October, 1934	0	0	0
October, 1934-July, 1937	0	3	3
August, 1937-July, 1940	0	2	2
August, 1940-July, 1943	0	1	1
August, 1943-July, 1946	0	3	3
August, 1946-July, 1949	0	1	1
August, 1949-July, 1952	0	1	1

Although he displayed a sporadic interest in the progress of state courts-particularly in Arizona, California, Michigan, and, most importantly, New Jersey, he devoted almost all his efforts to the adaptation of Pound's philosophy at the federal level.<sup>29</sup> Warren, beginning in the 1950's, attempted to put into practice an outlook which, by that time, had come to represent a body of orthodox but theretofore largely unrealized thought.<sup>30</sup>

Chief Justice Warren's advocacy and implementation of Justice Pound's theories took several forms. He personally selected many of the members who served on the various committees of the Judicial Conference of the United States. Moreover, he took a personal interest in Conference committee work, taking time from his judicial duties to attend meetings of all the committees and sometimes to participate in their discussions. He reportedly monitored the flow of committee reports as they made their way through the Conference, the Supreme Court, and the Congress. Consequently, it is hardly surprising that he exercised much influence in the formulation of Conference legislative recommendations as well as internal policies.<sup>31</sup>

The political acumen that Warren had developed as governor of California served him well in moving controversial reforms

August, 1952-July, 1955	1	2	3
August, 1955-July, 1958	5	14	19
August, 1958-July, 1961	5	10	15
September, 1961-August, 1964	3	8	11
September, 1964-August, 1967	7	10	17
September, 1967-August, 1970	6	8	14
September, 1970-August, 1973	1	6	7
September, 1973-August, 1974	3	6	9
September, 1974-August, 1975	2	0	2
Total	33 (30.6%)	75 (69.4%)	108 (100.0%)

Source: THE INDEX TO LEGAL PERIODICALS 1926-1977, Vols. 1-16, 69-70 through No. 11 (August, 1977). Note, first, that the time-span demarcations used in this figure parallel those found in all volumes of THE INDEX and, second, that some of his publications were posthumous.

29. Warren, *supra* note 11, at 1145, cols. 1-2, Warren, *supra* note 9 at 10, col. 1 (1967-1968).

30. For statements of orthodox thought in judicial administration, see, e.g., A. VANDERBILT, *supra* note 8, at xvii-xxxii, 513-516 (1949) and *Reports of the Section of Judicial Administration*, 63 A.B.A. REP. 517-656 (1938), summarized in SECTION OF JUDICIAL ADMINISTRATION, A.B.A., THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE, xi, 142-155 (5th ed. 1971). The most perceptive critique is Gallas, *The Conventional Wisdom of State Court Administration: A Critical Assessment and Alternative Approach*, 2 JUST. SYS. J. 35-55, especially 40-41 (1976).

31. E.g., see J. FRANK, *supra* note 5, at 21-22 (1964); J. FRANK, *supra* note 1, at 25; and P. FISH *supra* note 7, at 293 (1973), telling of instructions by Warren to the 1959 Committee of Habeas Corpus to bring out a report endorsing his position.

through the Conference. He encouraged and privately approved many novel ideas of conference members while refraining from public support until such proposals had achieved widespread acceptance among the federal judges. When stronger action was required he would offer his support for a proposed Conference policy at a timely moment either personally or indirectly through Warren Olney III, the Director of the Administrative Office of the United States Courts, a staff arm of the Supreme Court, and a long-time friend whom the jurist recommended for this job in 1956. Olney filled this position for eleven years and closely consulted with Warren before setting Office policies and making recommendations to the Conference.<sup>32</sup>

## II

### CHIEF JUSTICE WARREN'S PROCEDURAL CONTRIBUTIONS

The late jurist's procedural contributions derive from his earliest area of major interest. They provided a higher level of administrative centralization for the federal judiciary and fell into six categories.

First, influenced by Pound's espousal of judicial rule-making authority, Warren urged Congress to broaden the power of the Judicial Conference of the United States so that it could undertake continual studies of federal criminal, civil, and administrative rules in operation. Such research was expected to help the Supreme Court increase the efficiency of federal procedural practice. In 1958 Congress authorized this change. The Conference began to carry out these changes through advisory committees with the participation of bar representatives and legal scholars as well as judges.<sup>33</sup>

Second, Warren enhanced the significance of the Conference by entrusting it with the production of a handbook to aid judges in trying protracted cases more efficiently. It also was given the sponsorship of educational programs for newly appointed federal district judges on subjects such as calendar management,

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32. See, e.g., P. FISH, *supra* note 7, at 172, 264-266, 268 (1973); and N.Y. TIMES, *supra* note 6, July 10, 1974, at 25, col. 4. For information on the Administrative Office of the United States Courts, see 281 U.S.C. §§ 601-608 (1967) establishing the office, as well as Fish's discussion at 166-227.

33. 28 U.S.C. § 331, Warren, *supra* note 28, at 10, col. 1 (1958); and J. FRANK, *supra*, note 5, at 21 (1964).

depositions and discovery, motions procedures, and pre-trial practice.<sup>34</sup> He also encouraged the Conference to consider the desirability of uniform evidentiary rules for the federal courts.<sup>35</sup> At that time the admissibility of evidence was determined by federal trial judges on a case-by-case basis. Although this project had begun in 1961, it was not fully realized until fourteen years later.<sup>36</sup> Again, this was nothing more than the adaptation to the federal level of a concept from Pound, who had favored an expansion in the authority of state judicial councils to oversee the operations of all state courts.<sup>37</sup>

Third, following Pound's lead,<sup>38</sup> the Chief Justice sought to augment the flexibility of the national courts by insuring that sufficient judges were available for temporary assignment to other districts where serious congestion prevailed. Warren prodded the Conference into establishing an Advisory Committee on Assignments to serve this purpose. He noted that some judges were already consenting to such assignments when it did not interfere appreciably with their normal workload and he cited one instance in which such assignments had proved effective. In 1959 fifteen district judges made a three-month visit to the Eastern District of New York, the most congested federal jurisdiction with a civil trial delay of fifty months, and reduced such delay to thirty months. A similar program, involving eleven visiting judges, was launched in this district in 1968.<sup>39</sup>

Fourth, pursuant to Pound's philosophy,<sup>40</sup> Warren encouraged the American Law Institute to begin a massive study to determine the proper distribution of jurisdiction between the federal and state courts. In particular, the late Chief Justice worried about the diversity-of-citizenship and federal question issues confronting the federal district courts. He wanted to reduce the flow of such cases, which usually centered on corporations chartered in one state but doing their business principally in another, and which typically represented the most lengthy form of litigation for such trial courts.<sup>41</sup>

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34. See *supra* note 17, at 220-221 (1960).

35. ALI PROCEEDINGS, *supra* note 12, at 26-27 (1961), at 34 (1962), and at 33 (1963).

36. F. KLEIN, *FEDERAL AND STATE COURT SYSTEMS—A GUIDE* 185 (1977).

37. Pound, *supra* note 19, *Principles*, at 232, col. 1 (1940).

38. *Id.*, at 226, col. 2, 228, col. 1, 229, col. 1, 231, cols. 1-2.

39. *Address, supra* note 17, at 221 (1960); ALI PROCEEDINGS, *supra* note 12, at 28 (1962); and Ranzal, *Speed-Up Starts in Federal Court*, N.Y. Times, Mar. 12, 1968, at 1, col. 4, 34, col. 1.

40. Pound, *supra* note 18, *Principles*, at 225, cols. 1-2 (1940), and at 63, col. 2, 64 col. 1 (1962).

41. Warren, *supra* note 29 at 10, col. 1, 12, cols. 1-2 (1958); ALI PROCEEDINGS,

The late Chief Justice sought Congressional authorization to permit the district courts to handle fewer cases by raising the federal jurisdictional amount from \$3,000 to \$10,000, by granting corporations citizenship in both the state of their charter and the state of principal business, and by forbidding the transfer of workmen's compensation actions from state tribunals to the federal courts. This statute proved to be effective by immediately reducing the total civil filings by sixteen percent. However, such relief for the federal civil dockets has been only temporary.<sup>42</sup>

Moreover, such efforts were undercut by Warren Court decisions which added to the caseloads of the United States district courts.<sup>43</sup> This trend is exemplified by Court decisions which broaden the rights of state prisoners to appeal their convictions because of alleged defects in their trials or in state post-conviction proceedings.<sup>44</sup> Consequently, the number of petitions by state prisoners for federal writs of habeas corpus skyrocketed from 2,625 in 1963, the year of these holdings, to 9,312, an increase of 354.9%, in 1969, the year that Warren resigned as Chief Justice. Only since 1970 has this rise begun to slow.<sup>45</sup>

Fifth, Warren adopted Pound's philosophy in still another respect by introducing managerial reforms to accelerate the flow of litigation through the federal courts.<sup>46</sup> Among the ad-

*supra* note 12, at 31-32 (1959), and at 31 (1960); Warren, *supra* note 23 at 55 (1962); J. FRANK, *supra* note 1, at 24. The study began in 1960, was not completed until 1969, see Burger, *The State of the Federal Judiciary—1972*, 58 A.B.A. J. 1053, cols. 1-2 (1972).

42. *E.g.*, see ALI PROCEEDINGS, *supra* note 12, at 31-32 (1959); ADMINISTRATIVE OFFICE OF THE U.S. COURTS, 1976 ANNUAL REPORT OF THE DIRECTOR 67, 75, 96 (1976). See also U.S. CONST. art. 3, § 2, ¶ 1 (jurisdiction of the courts), and H. CHASE & C. DUCAT, *supra* note 4, at 187-188 (1974).

43. George, Jr., *From Warren to Burger to Chance: Future Trends in the Administration of Justice*, 12 CRIM. L. BULL. 271 (1976).

44. *Townsend v. Sain* and *Fay v. Noia*, involving drug-induced and otherwise coerced confessions, *supra* note 3. See also Clark, *Minimum Standards of Criminal Justice*, 1971 WIS. L. REV. 579 (1971) discussing A.B.A. Proposals for minimum standards on post conviction remedies, and Haynsworth, Jr., *A New Court to Improve the Administration of Justice*, 59 A.B.A. J. 841, cols. 1-2 (1973) proposing an alternative to current Habeas Corpus procedure.

45. ADMINISTRATIVE OFFICE OF THE U.S. COURTS, *supra* note 42 at 96 (1976). However, Warren once intimated that, since an overwhelming number of such petitions obviously lacked merit, they added little to the actual workloads of the lower federal courts or the Supreme Court. Warren, *Retired Chief Justice Attacks, Chief Justice Burger Defends Freund Study Group's Composition and Proposal*, 59 A.B.A. J. 726, col. 2 (1973).

46. Pound, *supra* note 18, *Principles*, at 225, col. 1, 233, col. 2 (1940).



ministrative procedures he favored were a greater use of pre-trial conferences to settle potentially protracted civil cases; the adoption of the master (or central) calendar, where criminal and civil actions are divided into components and assigned sequentially to the first available judge; and broader discovery powers for enhancing the ability of legal adversaries to determine each other's strength and thus decide on the advisability of a pre-trial settlement or a negotiated plea of guilty. The improvement of jury operations, the gathering of judicial statistics, summer judicial sessions, and a resort to arbitration were other devices that attracted his attention.<sup>47</sup>

Finally,<sup>48</sup> Warren followed Pound's advice on the subject of adapting modern business methods to a judicial milieu. The Chief Justice pioneered the introduction of computers into the federal judicial system for all aspects of court management, especially to facilitate caseflow control, jury selection, the identification of cases that might be settled without a trial; the testing of methods for handling of lengthy cases; the search for the best geographical reorganization of federal jurisdiction; the administration of multi-district cases featuring the same questions, evidence, and witnesses, and the appraisal of the federal probation system's effectiveness.<sup>49</sup> Near the end of his tenure, he complained:

In an age in which industry and other professions are availing themselves of modern technological developments as tools, the courts have as yet taken little advantage of data processing.

Little has been accomplished to determine where these devel-

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47. See, e.g., ALI PROCEEDINGS, *supra* note 12, at 32 (1957), at 32-33 (1958), at 37 (1959), at 36 (1960), at 38 (1962), and at 34 (1963); Warren, *supra* note 28, at 11, cols. 1-2 (1958); Warren, *supra* note 11, at 1045, col. 2, 1046, col. 2; Warren, *supra* note 23, at 55, 57-58, 60-61; and P. FISH, *supra* note 7, at 350 (1973).

However, by 1969, Warren had reversed his position on calendaring; for by then he espoused the use of the individual calendar, where a judge has sole responsibility for all stages of a case from beginning to end. "I believe that the judges must run their own calendars; and," he declared in his final address to the American Law Institute, "they must determine who is going to trial and when they are going . . . if we are going to do our job." ALI PROCEEDINGS, *supra* note 12, at 8 (1969). Nor should courts use certificates of readiness to relinquish control over individual calendars by entrusting it to the contending attorneys. *Id.*, *supra* note 12, at 6 (1968). Perhaps the late jurist was influenced to change his attitude in this regard because of mounting congestion in judicial districts which employed the master calendar and a growing need for experimentation with a different mode of caseflow control.

48. Lest it be thought that Warren's procedural innovations were wholly derivative, it should be noted that two of his most important suggestions—extending the indigent defendant's right to counsel and revamping the bail system—had no basis in Pound's teachings. *E.g.*, see *supra* note 12, at 26-28 (1965), at 152 (1966), and at 5 (1968); Criminal Justice Act of 1964, 18 U.S.C. § 300A; and Bail Reform Act of 1966, 18 U.S.C. § 3146.

49. *Id.*, *supra* note 12, at 151-152 (1966) and at 6, 10 (1967); 12 U.S. Judges Will

opments could help the courts and bar from the standpoint of administration.<sup>50</sup>

In fact, the level of business technology in the federal courts had been so low that Warren reportedly needed three years merely to induce the office of the Supreme Court clerk to use typewriters and end the practice of making long-hand docket entries. He told federal judges that a failure to modernize their procedures would invite legislative intervention.<sup>51</sup> His concern impelled him to seek the creation of an organization which would use such technology for court administrative research purposes and for the implementation and monitoring of operational changes.<sup>52</sup> In 1967 Congress granted his request by establishing the Federal Judicial Center.<sup>53</sup>

### III

#### CHIEF JUSTICE WARREN'S PERSONNEL CONTRIBUTIONS

From an administrative perspective Earl Warren's sixteen years as Chief Justice included his efforts to adapt Pound's procedural recommendations to the federal courts and later to extend the renowned legal authority's outlooks on the subject of court personnel. As mentioned in the preceding section, Pound had written about four kinds of court personnel: chief justices (or judges) at the appellate and trial levels, trial judges, court administrators, and court-related officials. Warren made early contributions to the development of such personnel, especially federal trial judges, because they represented the heart of the national judiciary, who received the preponderance of his attention.

To assist these jurists, the Chief Justice went far beyond seeking Judicial Conference resolutions in support of additional judgeships from Congress. Shortly before he retired, he praised Congress for having "been quite liberal in giving us a number of judges . . ."<sup>54</sup> Like Pound, however, he lacked confidence that

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*Study Court Role for Computer*, N.Y. TIMES, Oct. 1, 1966, at 18, col. 6; Warren, *supra* note 9, at 10, col. 1 (1967-1968); and J. FRANK, *supra* note 2, at 170-171.

50. Warren, *supra* note 9, col. 1 (1967-1968).

51. L. DOWNIE, JUSTICE DENIED 140 (1972); P. FISH, *supra* note 7, at 352 (1973).

52. ALI PROCEEDINGS, *supra* note 12, at 7-12 (1967), and at 7-13 (1968).

53. 28 U.S.C. 620 (1967); Clark, *The Federal Judicial Center*, 1974 ARIZ. ST. L.J. 537 tracing the center's history and accomplishments.

54. ALI PROCEEDINGS, *supra* note 12, at 8 (1969).

such a change would reduce the extent of federal judicial delay unless it were coupled with new managerial procedures for handling cases and for preserving the initially high motivation that new appointees brought with them.<sup>55</sup>

Specifically, the late jurist was instrumental in implementing several changes that improved the status, power, and competence of the federal judges, especially those in the district courts and in special courts such as the United States Court of Customs and Patent Appeals. Initially he persuaded the Judicial Conference to seek legal authority to expand its membership base. As a result, district and special court judges were admitted to the Conference, which before had embraced only the chief judges of the eleven circuits and the Court of Claims.<sup>56</sup>

Chief Justice Warren believed the Conference would benefit from the experience that trial judges, who daily faced court congestion, would bring to such areas as calendaring, statistics, jury administration, and pre-trial procedures.<sup>57</sup> He might have added that their participation in policy formation would more likely insure their cooperation in implementing courtroom changes.

With the inclusion of younger district judges the Conference ceased to be what one analyst called "an old man's club, its members averaging 80 years."<sup>58</sup> Little tolerance was shown for once prevalent filibusters, and the conference sought to reach policy decisions expeditiously. Fresh speed may have become excessive haste with only *pro forma* review given to many committee proposals before adoption,<sup>59</sup> but Warren was not discouraged. "We meet twice a year, on each occasion we spend three long, hard days reviewing the work of those committees, and I assure you that there is a great deal of valuable work being done, and I am sure that we are making progress in the field of judicial administration, slow though it may be."<sup>60</sup>

In addition, the late Chief Justice endeavored to raise the position of federal judges by encouraging in-service education. He praised the efforts of New York University and Stanford University, which, in 1957 and 1958 respectively, allowed federal judges to use their facilities as meeting places to exchange views

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55. *Id.*, at 6-7; Pound, *Principles*, *supra* note 18, at 225, col. 2 (1940).

56. Warren, *supra* note 23, at 57-58 (1962); P. FISH, *supra* note 7, at 248-257 (1973); and 28 U.S.C. 331.

57. P. FISH, *supra* note 7, at 350 (1973).

58. *Id.* at 265 (1973).

59. ALI PROCEEDINGS, *supra* note 12, at 28 (1961).

60. L. KATCHER, *supra* note 13, at 330 (1967).

on such subjects as pre-trial conferences and protracted litigation. The University of Colorado at Boulder soon became a third forum, especially for seminars in the latter area.<sup>61</sup>

Additionally, Warren wanted Congressional authorization for the Conference to set up a sentencing institute and joint councils for criminal cases in each federal judicial circuit. He expected this change to aid federal trial judges in making their sentencing policies more uniform. Unwarranted sentencing divergencies had been widespread not only between the federal districts but also within them. He foresaw two benefits flowing from this enactment: a higher degree of fairness in sentencing and a subsequent facilitation of prison discipline.<sup>62</sup> He also explained how such institutes typically operated:

Now, I have had the pleasure of attending several of these institutes. I remember one well. This is the way we proceeded there, and are now proceeding in most of them. A number of actual cases that have been through our federal procedures are taken for discussion: The facts are given in detail to all of our judges who are present, and they are asked to consider them and to state what punishment they would inflict.

Well, the difference is hardly understandable, because in most of them we found that the punishment differed all the way from probation to 10 to 12 years in the penitentiary. There ought to be a little more consensus than that . . .<sup>63</sup>

By 1960 opportunities for judicial education had expanded in two directions. One centered on subject matter, including *ordinary* civil cases, and encompassing such matters as calendaring, depositions and discovery, motions practice, and pre-trial techniques. These seminars were conducted by respected federal jurists who sought to ferret out and share the best thoughts and experiences on these topics. This expansion stemmed from the success of the initial seminars in persuading district court judges to alter their pre-trial procedures systematically and to accelerate their dispositions of complex cases.<sup>64</sup>

The other aspect was directed toward personnel, for instructional opportunities were available not only to veteran judges

61. Warren, *supra* note 11, at 1045, cols. 2-3; and ALI PROCEEDINGS, *supra* note 12, at 39-40 (1959).

62. *Id.*, 28 U.S.C. § 334 (1958) establishing institutes on sentencing under the auspices of the Judicial Conference.

63. ALI PROCEEDINGS, *supra* note 12, at 31 (1962). For additional discussion of sentencing institutes, see pp. 460-61 of this source as well as *supra* note 12, at 36 (1960).

64. *Id.*; Warren, *supra* note 23, at 60-61 (1962).

but also to those newly confirmed jurists, who could learn more rapidly about the numerous practical problems of their positions as well as the most effective administrative procedures. The first of such seminars was conducted in Monterey, California, in 1962. Soon three regional seminars were flourishing.<sup>65</sup> By 1964 the Chief Justice reported that the Judicial Conference's Pre-trial Committee had sponsored four seminars attended by 111 newly appointed federal judges, representing two-fifths of the total number of district judges then on the bench.<sup>66</sup>

To buttress the positions of chief judges, the former California governor sought statutory clarification of their administrative responsibilities and provision for their periodic rotation. Moreover, he worked to persuade chief judges of circuits and districts to relinquish their managerial responsibilities as well as their right to represent their own court at the Judicial Conference upon reaching the age of seventy. Although nearing this age himself, Warren realized that most judges cannot effectively discharge their administrative responsibilities beyond a certain age and that such duties should devolve to younger judicial leaders who would help mold the Conference into a more innovative policy-making body.<sup>67</sup>

To facilitate the development of court administrators, Warren advocated the creation of a circuit executive's office for each of the eleven federal circuits.<sup>68</sup> The proposed administrators would work for each Chief Circuit Judge and would devote full-time attention to the numerous facets of judicial administration such as caseload, data processing, finances, juries and witnesses, liaison with other courts, governmental branches and legal organizations, personnel, record-keeping and statistics, and facilities and equipment.<sup>69</sup>

The former California political leader implored law schools to offer courses in judicial administration for such prospective executives as well as for judges and lawyers, all of whom, in his view, were obliged to improve the justice and efficiency of court operations.<sup>70</sup> However, not until 1971, two years after his retire-

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65. ALI PROCEEDINGS, *supra* note, at 24-25 (1963), at 28-29, 32 (1964), and at 24 (1965).

66. *Id.*, at 28-29 (1964).

67. *Id.*, at 24 (1961); Warren, *supra* note 23, at 58 (1962); J. FRANK, *supra* note 5, at 19-20 (1964); and L. KATCHER, *supra* note 13, at 330 (1967); and P. FISH, *supra* note 7, at 257 (1973).

68. ALI PROCEEDINGS, *supra* note 12, at 15-17 (1968).

69. *Id.*, at 16; D. SAARI, MODERN COURT MANAGEMENT: TRENDS IN THE ROLE OF THE COURT EXECUTIVE 4-10 (1970).

70. Warren, *supra* note 9, at 10, col. 3 (1967-1968); Warren, *supra* note 17, at

ment, did this recommendation become a reality with the passage of federal legislation.<sup>71</sup>

Finally, to raise the quality of court-related personnel, Warren urged the same kind of educational and training opportunities be made available to them that had been available to federal judges. With the establishment of the judicial center, bankruptcy clerks, chief clerks, court clerks, deputy court clerks, jury clerks, librarians, probation officers and their assistants, public defenders, reporters, and secretaries were given extensive in-service opportunities.<sup>72</sup>

#### IV

##### CHIEF JUSTICE WARREN'S STRUCTURAL CONTRIBUTIONS

Along with his procedural and personnel efforts, Chief Justice Warren contributed to the centralization of the national court system. In this respect the late Chief Justice again followed his philosophical mentor, Roscoe Pound, who favored *inter alia* a more unified court system, a single tier of lower courts, and judicial councils as sources of overall court administrative policies.<sup>73</sup> Although the federal judicial structure had been largely unified by the time Warren became Chief Justice, his role in three structural changes merits attention.

One development was the founding of the Federal Judicial Center—the research, development, and training arm of the national judiciary. According to the late Justice Tom C. Clark, the Center's first director, Warren was highly influential in persuading Congress in late 1967 to authorize such an organization.<sup>74</sup>

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288-289 (1969); and ALI PROCEEDINGS, *supra* note 12, at 4 (1969).

71. 28 U.S.C. § 332(e) and (f) (1971) authorizing the appointment of "circuit executives" and describing their duties.

72. ALI PROCEEDINGS, *supra* note 12, at 9-10 (1967), at 8 (1968), and at 8-9 (1969). See also Gazell, *A Taxonomy of State Court Management*, 49 ST. JOHN'S L. REV. 83-84 (1974); Gazell, *University and Law School Education in Judicial Administration: A Case of National Proliferation*, 1976 DET. C.L. REV. 435-436 (1976).

73. Pound, *Principles*, *supra* note 18, at 226, col. 1, and 232, col. 1 (1940).

74. The Former Chief Justice also received considerable assistance from President Johnson's administration. See *supra* note 53, ALI PROCEEDINGS, *supra* note 12, at 7 (1968); P. FISH, *supra* note 7, at 369-370 (1973); and R. WHEELER & H. WHITCOMB, *JUDICIAL ADMINISTRATION: TEXT & READINGS* 30 (1977).

The impetus for such an agency stemmed from a widespread desire to expand and consolidate a variety of Judicial Conference programs. The Conference appointed a special committee to examine such matters and suggest whether legislation for a centralized structure was needed. The committee found support throughout the federal judiciary for expansion of continuing education programs for judges and court-support personnel<sup>75</sup>

In addition, the committee learned that the Conference had authorized many overlapping projects such as the use of computers for caseflow control, jury operations, federal probation system evaluations, settlement of civil cases without trial, tests of methods of accelerating the disposition of lengthy cases, setting optimal geographical boundaries for judicial circuits and districts, and the administration of multi-district suits with the same issues, evidence, and witnesses. A different Conference committee had apparently been delving into each of these inter-related problems. Consolidation of such projects under the jurisdiction of a single organization was expected to eliminate much duplication of efforts and waste of time, personnel, and funds and to yield a higher degree of efficiency.<sup>76</sup> The Chief Justice declared:

From these considerations there emerged the idea of establishing in the Administrative Office [of the United States Courts] a Federal Judicial Center for the purpose of seeking knowledge of the best methods of judicial administration, to be obtained by means of thorough scientific study, so that it might be possible to administer justice in the federal courts with maximum effectiveness and minimum waste.<sup>77</sup>

The new center was designed to facilitate judicial acceptance without antagonizing the Administrative Office, which might have been authorized to add research, development, and educational functions to its long-standing housekeeping duties, such as budgeting, judicial assignments, personnel, and probation. Although located in the Administrative Office whose director, along with the Chief Justice as *ex officio* chairman, participated on the Center's board of control, the Center still featured its own independent board of judges elected by the Conference and responsible for operating the Center and for selecting a director.<sup>78</sup>

Chief Justice Warren enhanced the judicial acceptability of this new institution by inducing the board to choose Tom C.

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75. ALI PROCEEDINGS, *supra* note 12, at 7-11 (1967).

76. *Id.*, at 10.

77. *Id.*, at 10-11.

78. *Id.*, at 11; 28 U.S.C. §§ 620-624 (1967); P. FISH, *supra* note 7, at 172-182, 372-374 (1973); and 28 U.S.C. § 604 (1967).

Clark as its first director in 1968.<sup>79</sup> Clark was a veteran associate justice on the Supreme Court of the United States from 1949 until his retirement in mid-1967.<sup>80</sup> He was well-known and deeply respected by virtually the entire federal bench because he had devoted much of his extra time to help improve the management of its courts.<sup>81</sup>

A second development centered on the establishment in 1968 of the United States Magistrates, a new lower federal court structure, to decide minor criminal and civil matters and to allow district judges additional time for publicly complex litigation.<sup>82</sup> In 1964 Warren began to advocate such change by suggesting a system of salaries rather than fees. In addition he suggested an expanded criminal jurisdiction for the United States Commissioners, the predecessors of the Magistrates.<sup>83</sup> A year later he took another step by questioning the competence of the Commissioners to hold formal hearings under the new Criminal Justice Act which provided counsel for indigents in federal cases. His skepticism rested on knowledge that a third of the Commissioners were not lawyers.<sup>84</sup>

When Congress created the Magistrates office with authority to try misdemeanor as well as petty cases and to handle some pre-trial work, the late Chief Justice warned:

The question now is how seriously the judges of the country view those magistrates. Some of them would like to appoint their old commissioners. They can't all do that, because some of them are barbers and blacksmiths, and so forth, and the new law provides that a magistrate must be a lawyer. It also provides him with a fairly good salary. If the system works out all right, it can be of great benefit to the judiciary and help break this backlog. There is no statutory limitation

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79. *Tom C. Clark Will Direct Federal Judicial Center*, N.Y. Times, March 5, 1968, at 25, col. 3; and ALI PROCEEDINGS, *supra* note 12, at 8-9 (1968).

80. His son Ramsey had become Attorney General of the United States, and Clark stepped down to avoid possible conflicts of interest in federal government cases.

81. *Id.*; *Tom C. Clark, Former Justice, Dies; On the Supreme Court for 18 Years*, N.Y. Times, June 14, 1977, at 1, cols. 1-2, 34, cols. 1-2; and J. FRANK, *supra* note 5, at 77 (1964). See also Graham, *Warren Looks to Future, Hoping to Speed Justice*, N.Y. Times, Sept. 30, 1968, at 1, cols. 4-5, 31, col. 1; and Hunter, *Fledgling Federal Judges Are Back in Classroom*, N.Y. Times, November 2, 1968, at 22, cols. 3-7.

82. 28 U.S.C. §§ 631, 636 (1968).

83. ALI PROCEEDINGS, *supra* note 12, at 30-31 (1964), reprinted in, *Address of the Honorable Earl Warren*, *supra* note 28, at 189 (1964).

84. ALI PROCEEDINGS, *supra* note 12, at 27 (1965).



on the number of magistrates that can be employed to do the job, and the court can figure out its problem and can use these magistrates to help them in a great many ways.<sup>85</sup>

A third development, unlike the first two structural changes, involved the reinforcement of an existing federal court organization: the judicial councils. These consisted originally of the court of appeals judges in each circuit, and were later augmented by district court representation. Since their creation in 1939, they have possessed the authority to supervise district courts in their respective circuits and to promote their efficient administration.<sup>86</sup> However, the councils had seldom used their statutory powers. This reluctance stemmed largely from a desire to maintain the traditional independence of federal trial judges. For Warren the effective administration of courts was a requirement for their continued autonomy and their utility as a genuinely co-ordinate branch of government.<sup>87</sup>

Warren sought to strengthen the councils in two respects. First, he encouraged the Judicial Conference to support the inclusion of federal district judges in the councils and to emphatically remind the counsels of their administrative responsibilities.<sup>88</sup> Second, he joined a majority of his Supreme Court colleagues in granting the councils extra-constitutional powers to remove federal trial judges from office. In 1966, the court declined to overturn a circuit council's interlocutory order, forbidding a federal trial judge from proceeding further with his pending litigation and from handling any future cases.<sup>89</sup> Although the Constitution provides impeachment as the sole remedy, the order effectively removed the judge from office.<sup>90</sup>

The late Chief Justice's position was hardly surprising in view of the fact that nearly a decade earlier he had joined in a Supreme Court decision strengthening the supervisory powers of the courts of appeals over the district courts. This was accomplished by upholding the former's writ of mandamus preventing a district judge's referral of two complicated anti-trust cases

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85. *Id.*, at 12 (1969).

86. 28 U.S.C. § 332; Warren, *supra* note 23, at 58-60 (1962); and P. FISH, *supra* note 7, at 379 (1973). Fish's book contains an extensive discussion of the federal circuit councils at 379-426.

87. ALI PROCEEDINGS, *supra* note 12, at 26 (1964); and Warren, *supra* note 23, at 59 (1962).

88. *Id.*

89. *Chandler v. Judicial Council of the Tenth Circuit*, 382 U.S. 1003 (1966), at 1004-1006 (Justice Black's dissent); and U.S. CONST. arts. 1 § 3, ¶ 6, (power to try impeachment) 2, 4 (impeachment), and 3, § 1 (holding office during "good behavior.")

90. This order was modified and the case finally resolved four years later: 398 U.S. 74 (1970).

to a master for disposition on the grounds of a congested docket.<sup>91</sup> However, the two decisions raise a question whether in Warren's mind, the circuit councils or the courts of appeals should exercise primary administrative authority over the federal trial courts. It is likely that he preferred the use of the council for this task since it included district judges and could therefore expect better compliance with its decisions.

#### CONCLUSION

This article has attempted to explore a facet of Earl Warren's stewardship as Chief Justice that analysts have virtually ignored: his interest in judicial administration, especially at the federal level. Its central theme is that, as a catalyst and activist, he helped to initiate, further, implement, and preside over numerous changes centralizing the federal judicial system enhancing its efficiency, and insuring its continued survival as a co-ordinate branch of the national government.<sup>92</sup> An examination of this thesis has entailed a consideration of his philosophy toward this subject which was based primarily on the views of legal scholar Roscoe Pound whose ideas he hoped to adapt to the federal courts. In addition a review of the late jurist's procedural, personnel, and structural contributions was detailed.

Several of Warren's contributions to the development of administrative excellence merit brief attention in closing. One aspect is that his perspective toward judicial administration stretched beyond the courts, which he saw as subsystems in an overall justice system that also featured police, prosecutorial, and correctional organizations. He realized that such components were interdependent and that successful court administration required a knowledge of the external consequences of procedural, personnel, and structural changes. He knew that the decisions of the other organizations comprising these subsystems influenced court operations. He suggested that alterations in law enforcement and prosecutorial practices could increase the ability of courts to handle their congestion.<sup>93</sup> He also

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91. *La Buy v. Howes Leather Company*, 352 U.S. 249 (1957).

92. Warren, *supra* note 23, at 59 (1962); P. FISH, *supra* note 7, at 437 (1973).

93. ALI PROCEEDINGS, *supra* note 12, at 33-34 (1960), reprinted in *Address*, *supra* note 17, at 218-219 (1960); and *Address: Honorable Earl Warren, Chief Justice of the United States*, 39 F.R.D. 474 (1965).

sought the creation of a national training center for probation officers and a unification of federal probation services to improve the quality of correction and lower the incidence of recidivism.<sup>94</sup>

The second point is that although Warren presided over extensive changes in federal judicial administration, he might have been even more successful if he and the leaders of the American Bar Association had been able to work together. In 1959 he resigned from the A.B.A. because of its strong public criticism of Supreme Court decisions at meetings to which he had been invited since this placed him in the awkward position of appearing to acquiesce in such excoriation by his silence or of having to counter-attack and suggest restraint by this organization in its exercise of its right to free speech.<sup>95</sup> In contrast, his successor, Warren Burger, has succeeded in enlisting the A.B.A.'s help in bringing about such important changes in this field as the establishment of the Institute for Court Management in Denver, Colorado.<sup>96</sup> However, the late Chief Justice's relations with another prestigious legal organization, the American Law Institute, were cordial, enabling him to use it as a forum to deliver his annual speeches on the condition of the federal judiciary.<sup>97</sup>

A third consideration is that Chief Justice Warren's interest in the development of federal court management flourished even during his retirement. Illustrative of his concern were his efforts during the last two years of his life to mobilize opposition within the nation's legal community to a far-reaching proposed change in the federal judicial structure: a national court of appeals, a seven-member tribunal to be located between the Supreme Court and the courts of appeal. The proposed judicial unit would be staffed either by appeals judges serving staggered terms or, in a variation of the original plan, by its own members. Its main function would be to reduce the Supreme Court's caseload by handling a large portion of its litigation and by forwarding to the latter only the 400-to-450 cases deemed most important.<sup>98</sup>

The late jurist viewed this proposal and its variants as un-

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94. ALI PROCEEDINGS, *supra* note 12, at 36 (1963), at 34 (1964), and at 28-29 (1965).

95. E. WARREN, MEMOIRS, *supra* note 5, at 326-329 (1977); Lewis, *U.S. Bar Accepts Warren's Action*, N.Y. Times, Feb. 21, 1959, at 44, cols. 4-5.

96. Interview with Chief Justice Warren E. Burger, 69 U.S. NEWS & WORLD REPORT 32-33, 42 (Dec. 14, 1970).

97. See *supra*, note 12. Cf. P. FISH, *supra* note 7, at 315-317 (1973).

98. An alternative would have permitted a right to appeal any of the new court's decisions. *E.g.*, see *Report of the Study Group on the Caseload of the*

necessary, ironically counterproductive to the Supreme Court's attempt to reduce its workload, and as harmful to the traditional pre-eminence of the high court as the final arbiter of legal conflicts and developer of the law, especially where issues concern downtrodden or powerless claimants.<sup>99</sup> Even on his deathbed, Warren thought about this subject. Justice Brennan once remarked:

I saw him only two hours before his death. He wouldn't talk about his health. He wanted an update on the status of the proposal to create a National Court of Appeals. He strongly opposed the proposal. Its adoption, he was convinced, threatened to shut the door of the Supreme Court to the poor, the friendless, [and] the little man.<sup>100</sup>

A fourth point is that the Californian's record in federal judicial administration rivals those of the chief justices widely credited with the most significant accomplishments in this area: William Howard Taft, Charles Evans Hughes, and Warren Earl Burger. Taft was much admired for his role in establishing the Conference of Senior Circuit Judges, the precursor of the Judicial Conference, and in persuading Congress to allow the Supreme Court discretionary control over its docket. Hughes was best regarded for his role in the establishment of the Administrative Office of the United States Courts and the circuit judicial councils, which limited the degree of centralization in federal judicial administration. Burger is widely known for his efforts to set up the Institute for Court Management; the National Center for State Courts, a counterpart of the Federal Judicial Center; his much publicized annual state-of-the-federal-judiciary addresses, the first of which was nationally televised;

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*Supreme Court*, 57 F.R.D. 611-612 (1973); Torenberg, *Warren Mobilizes Drive to Block Plan for Miniature Supreme Court*, Nat'l. Observer, Dec. 16, 1972, at 4, cols. 4-5; *Warren Assails Proposal to Screen High Court Cases*, N.Y. Times, May 2, 1973, at 50, cols. 3-6; and Weaver, Jr., *Warren Attacks Plan to Screen Supreme Court Cases*, N.Y. Times, May 7, 1973, at 29, cols. 2-6. The most thorough review of various proposals for a national court of appeals may be found in G. CASPER & R. POSNER, *THE WORKLOAD OF THE SUPREME COURT* 93-118 (1976).

99. E.g., see Warren, *supra* note 45, at 724-730; Warren, *The Proposed New 'National Court of Appeals'*, 28 REC. A.B. CITY N.Y. 627-645 (1973); Warren, *Let's Not Weaken the Supreme Court*, 60 A.B.A. J. 677-680 (1974); Warren, *A Response to Recent Proposals to Dilute the Jurisdiction of the Supreme Court*, 20 LOY. L. REV. 221-230 (1974); and *Address Delivered by Honorable Earl Warren, Chief Justice of the United States Supreme Court, Retired, at the Commencement Exercises at the Law School, University of Santa Clara*, 14 SANTA CLARA LAW 744-746 (1974).

100. Brennan, Jr., *supra* note 5, at 4 (1974).

and his sympathy for a national court of appeals.<sup>101</sup>

The late Chief Justice should be remembered in this field, especially for his modernization of the Judicial Conference, his efforts toward creation of the Federal Judicial Center, his work to bring about a system of United States Magistrates, and his advocacy of circuit executives. Moreover, Warren's deep commitment to civil liberties put him in a position to contend persuasively that greater judicial efficiency would not undermine such freedoms by fostering assembly-line justices.<sup>102</sup>

Finally, Warren's reputation as a jurist should rest not only on the numerous - and sometimes controversial - Supreme Court decisions in which he participated but also on his accomplishments in the field of court management, especially at the federal level. In 1964 a noted scholar, John Frank, referred to him as "the first true 'Chief Justice of the United States' as distinguished from being the 'Chief Justice of the Supreme Court,' that the country has ever had."<sup>103</sup> Later in dedicating a book to him Frank called Warren "A Great Judicial Administrator."<sup>104</sup> Because of the prior contributions of Taft and Hughes the first reference may be an overstatement—but the second label certainly is not.

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101. P. FISH, *supra* note 7, at 40-90, 109, 125-165 (1973), contains a detailed analysis of Taft's and Hughes' contributions to the development of federal judicial administration. For Burger's efforts, *see, e.g., supra* note 96, Graham, *Burger Warns New Issues May Overload U.S. Courts*, N.Y. Times, Aug. 11, 1970, at 1, col. 6; Burger, *Deferred Maintenance* in W. SWINDLER, *JUSTICE IN THE STATES* 19-21 (1971); and Burger, *Retired Chief Justice Warren Attacks, Chief Justice Burger Defends Freund Study Group's Proposal*, *supra* note 48, 59 A.B.A. J. 721-724 (1973). For an overview, *see* Berkson, *A Brief History of Court Reform* in BERKSON *et. al.*, *supra* note 9, at 8-16.

102. ALI PROCEEDINGS, *supra* note 12, at 13 (1969); and Graham, *supra* note 81.

103. J. FRANK, *supra* note 5, at 22 (1964).

104. J. FRANK, *supra* note 1, dedication.