

*Ralph N. Kleps**

The Chief Justice of California is the constitutional chief executive of the state's judicial system. As Chairman of the Judicial Council, Donald Wright discharged that executive responsibility from 1970 to 1977 with competence, courage, and candor. His prior service at all levels of the California court system, his management experiences in the military service and in California's largest trial court, and his willingness to delegate duties to his associates and to his staff all contributed to a golden era of court administration in California.

Chief Justice Wright's first priority was the improvement of trial court calendars. The work of the 1971 Chief Justice's Select Committee on Trial Court Delay¹ produced significant and productive changes in the system. He strengthened the role of presiding judges, with whom he held regular discussion sessions that produced major changes in the statutes and in the rules of court administration. Under his guidance, the Committee of Administrative Presiding Justices was created as a management structure for the Courts of Appeal. The Chief Justice's concern about the efficiency of the appellate court system led to increased research staffing for the Courts of Appeal, doubled the output of opinions, and, remarkably, reduced the creation of new appellate court judgeships despite a constantly increasing caseload.² His determination to reduce the unnecessary publication of Court of Appeal opinions led to a series of improvements in California's system for limiting the printing of routine decisions.³

* Former Administrative Director of the California Courts and Secretary of the Judicial Council, November 1971 to July 1977. Prior to assuming his position as Administrative Director, Ralph Kleps was at various times Legislative Counsel of California, Director of the California Office of Administrative Procedure, and Director of the Judicial Council Administrative Agencies Survey. He was also a member of the California Council on Criminal Justice and past chairman of the National Legislative Conference and of the National Conference of State Court Administrators.

1. See JUDICIAL COUNCIL OF CALIFORNIA, 1972 JUDICIAL COUNCIL REPORT 41 [hereinafter cited as 1972 REPORT].

2. JUDICIAL COUNCIL OF CALIFORNIA, 1976 JUDICIAL COUNCIL REPORT 33-40 [hereinafter cited as 1976 REPORT]; NATIONAL CENTER FOR STATE COURTS, THE CALIFORNIA COURTS OF APPEAL (Pub. No. R0013, 1974).

3. 1972 REPORT at 75; NATIONAL CENTER FOR STATE COURTS, REPORT ON UNPUBLISHED OPINIONS OF THE CALIFORNIA COURTS OF APPEAL (1976); WITKIN, MANUAL ON APPELLATE COURT OPINIONS, § 18, at 27-28 (1977).

Donald Wright's skillful use of staff, Judicial Council committees, and advisory and liaison committees led to a remarkable series of judicial improvements: establishment of a permanent Center for Judicial Education and Research;⁴ reorganization of the justice courts;⁵ organization of a central system for the handling of venue changes in criminal cases;⁶ development of an independent Judicial Criminal Justice Planning Committee to handle federal grants to the judiciary;⁷ creation of a state public defender's office;⁸ completion of the system for handling minor traffic offenses as infractions;⁹ expansion in the use of trial court executive officers;¹⁰ creation of a calendar management technical assistance team;¹¹ improvement of caseload measurements for determining the need for new trial judgeships;¹² development of standards of judicial administration;¹³ creation of procedures for the development of uniform court forms;¹⁴ procedural improvements by rulemaking, including cases involving dissolution of marriage, arbitration of civil cases, and the coordination of cases with common questions;¹⁵ development of a statewide program to improve court interpre-

4. See JUDICIAL COUNCIL OF CALIFORNIA, 1974 JUDICIAL COUNCIL REPORT 92 [hereinafter cited as 1974 REPORT]; Witkin, *What Every Lawyer Should Know (And Do) About Judicial Education*, 49 CAL. ST. B.J. 437 (1974).

5. JUDICIAL COUNCIL OF CALIFORNIA, 1977 JUDICIAL COUNCIL REPORT 164-68 [hereinafter cited as 1977 REPORT]; 1976 REPORT at 78-82; JUDICIAL COUNCIL OF CALIFORNIA, REPORT AND RECOMMENDATION FOR A REORGANIZATION OF THE JUSTICE COURTS, 1975 CAL. ASSEMBLY J. 5909-34; Kleps, *Contingency Planning for State Court Systems*, 59 JUD. 62 (1975); Kleps, *Crisis Planning for Court Reorganization*, 60 JUD. 268 (1976).

6. See JUDICIAL COUNCIL OF CALIFORNIA, 1971 JUDICIAL COUNCIL REPORT 11-17, [hereinafter cited as 1971 REPORT].

7. See 1974 REPORT at 13-16; CAL. PENAL CODE §§ 13830-34 (West Supp. 1977).

8. See 1976 REPORT at 59; 1972 REPORT at 48; 1971 REPORT at 77.

9. See 1974 REPORT at 77; 1972 REPORT at 46-47; JUDICIAL COUNCIL OF CALIFORNIA, 1970 JUDICIAL COUNCIL REPORT 63 [hereinafter cited as 1970 REPORT].

10. See 1977 REPORT at 153; 1976 REPORT at 43-44; 1972 REPORT at 45-46.

11. See 1976 REPORT at 74.

12. See 1972 REPORT at 61-64; JUDICIAL COUNCIL OF CALIFORNIA, A STUDY OF THE WEIGHTED CASELOAD SYSTEM FOR DETERMINING JUDICIAL MANPOWER REQUIREMENTS FOR CALIFORNIA'S SUPERIOR AND MUNICIPAL COURTS, FINAL REPORT (Arthur Young & Co., 1971); FINAL REPORT, JUDICIAL WEIGHTED CASELOAD PROJECT (Arthur Young & Co., 1974).

13. See CAL. RULES OF COURT, Supp., Standards 1-15.

14. See 1977 REPORT at 169-73; 1976 REPORT at 69-72; JUDICIAL COUNCIL OF CALIFORNIA, 1975 JUDICIAL COUNCIL REPORT 57-60.

15. Family law rules: see CAL. RULES OF COURT 1201-91.40; 3 WITKIN, CAL. PROCEDURE §§ 737-40 (2d ed. 1971 & Supp. 1977). Coordination of civil actions: see CAL. RULES OF COURT 1501-50; 1977 REPORT at 177; LEVIT AND YAKUTIS, COORDINATION OF CIVIL ACTIONS (1976); 3 WITKIN, CAL. PROCEDURE §§ 265A-265P, at 82-98 (2d ed. Supp. 1977). Arbitration of civil cases: see CAL. RULES OF COURT 1601-17; 1977 REPORT at 162-63; JUDICIAL COUNCIL OF CALIFORNIA, 1973 JUDICIAL COUNCIL REPORT 27-147; 4 WITKIN, CAL. PROCEDURE §§ 201A-229A, at 38-49 (2d ed. Supp. 1977).

ter services;¹⁶ development of comprehensive rules to improve juvenile court procedure;¹⁷ and creation by rule of sentencing criteria for determinate felony sentences.¹⁸

Chief Justice Wright would be the first to deny that these and other Judicial Council achievements are to be attributed to him personally. Court reform requires a form of tripartite support. First, there must be system leadership based on the prestige and stature of the Chief Justice; second, there must be a general willingness to follow that leadership based upon its credibility within the judicial system; finally, there must be a strong judicial management structure comprised of informed policy advisors and a competent staff. Donald Wright's term as Chief Justice of California was characterized by all of these attributes. This commentary, however, concentrates on the Chief Justice's role with respect to the Judicial Council of California and the Administrative Office of the Courts.¹⁹

The Chief Justice's court management obligations are exercised under the guidance and with the concurrence of a representative Judicial Council that has policy formulation and rulemaking powers. The council has many other constitutional and statutory delegations, including responsibility for appointing judicial members to some state agencies and for preparing studies on court organization for local governing boards.²⁰ Since its creation by constitutional amendment in 1926, the Judicial Council has become the judiciary's formal agency for the expression of policy, for the representation of judicial interests in Sacramento and Washington and in consultations with other legal and judicial agencies. Continuing liaison arrangements are carried on by the Council with the California Judges Association, the State Bar of California, and other organizations.

16. 1977 REPORT at 174; JUDICIAL COUNCIL OF CALIFORNIA, A REPORT TO THE JUDICIAL COUNCIL ON THE LANGUAGE NEEDS OF NON-ENGLISH SPEAKING PERSONS IN RELATION TO THE STATE'S JUSTICE SYSTEM (Phase I Report: Analysis of Language Needs and Problems (Arthur Young & Co., 1976)); (Phase II Report: Provision of Court Interpreting Service: An Overview (Arthur Young & Co., 1976)); (Phase III Report: Results of Court Interpreter Demonstration Project and Final Study Recommendation (Arthur Young & Co., 1977)).

17. 1977 REPORT at 1-137.

18. CAL. RULES OF COURT 401-53; JUDICIAL COUNCIL OF CALIFORNIA, SENTENCING PRACTICES ADVISORY COMMITTEE, UNIFORM DETERMINATE SENTENCING ACT OF 1976, REPORT AND RECOMMENDATION CONCERNING PROPOSED SENTENCING RULES AND RECOMMENDED REPORTING SYSTEM, L.A. Daily Journal, Feb. 10, 1977, Supp.

19. See CAL. RULES OF COURT 990-95; Kleps, *Courts, State Court Management and Lawyers*, 50 CAL. ST. B.J. 45 (1975).

20. CAL. CONST. art. VI, §§ 6, 18(e). Kleps, *State Court Modernization in the 1970's: Forces for Reform in California*, 55 JUD. 292-97 (1972); Traynor, *Rising Standards of Courts and Judges*, 40 CAL. ST. B.J. 677-91 (1965). See statutes cited in foreword to 1977 REPORT.

The Judicial Council, with its broadly-based membership and its long record of accomplishment, is the most significant element in the Chief Justice's support structure. Although the "judicial council" movement of the 1920's is generally described as disappointing in most states, the Judicial Council of California has continued to grow in prestige and effectiveness.²¹ Its role has been described elsewhere, however, and for that reason, this paper concentrates on the staff role. No discussion of staff support for a Chief Justice and a Judicial Council, however, could be meaningful without an analysis of the working relationship between the Chief Justice and the Administrative Director of the Courts.²²

An effective, cooperative relationship is essential if the Administrative Director is successfully to create and direct an organization that will assure accomplishment of the Chief Justice's goals. In this regard, a crucial element of the relationship is confidence. The Chief Justice must be able to delegate maximum responsibility to the Administrative Director rather than having to undertake many projects personally. This kind of confidence does not arise automatically; it depends on discreet, energetic, and effective performance, often under conditions of substantial stress. A Chief Justice has multiple sources of advice and is often flooded with suggestions from judges and lawyers. Any Chief Justice finds that lunch hours, social engagements, and periods of relaxation are filled with ideas requiring thought and action. Many of these matters are referred by the Chief Justice to the Administrative Office staff for study and to the Judicial Council for recommendation. The Judicial Council and its committees are thus used as a source of policy direction and as a screening device for unworkable proposals. If the Judicial Council is used in this way, it provides the Chief Justice with real security and it constitutes a reference body to which few judges or lawyers would object. In addition, such a policy involves the important Judicial Council committees directly in the decisions for which they will often be spokesmen.

When questions involve court operations and management, it is often essential that an answer be in writing. Chief Justice Wright usually referred such issues to the Administrative Office for a draft response. Responses were, at times, sent on behalf of the Chief Justice under the signature of the

21. See CAL. RULES OF CT. 990-95; Kleps, *Courts, State Court Management and Lawyers*, 50 CAL. ST. B.J. 45 (1975); Wheeler & Jackson, *Judicial Councils and Policy Planning: Continuous Study and Discontinuous Institutions*, 2 JUST. SYS. J. 121-40 (1976).

22. Legal capacity is essential in a state court administrator's office and nearly all such administrators are themselves lawyers. All Judicial Council heads of staff have been lawyers, to wit: Hon. Harry A. Hollzer (1927-1931), B.E. Witkin (1941-1942), Ralph N. Kleps (1943-1945, 1961-1977), Hon. Martin J. Katz (1946-1953), Norris J. Burke (1954-1956), J.D. Strauss (1957-1961) and Ralph J. Campbell (1977).

Administrative Director—a practice that protected the Chief Justice from a subsequent confrontation regarding a response for which he had been unable to make the traditional detailed Supreme Court check. This practice did not extend to correspondence that required Donald Wright's personal touch, although the Chief Justice often welcomed a staff draft even if the letter that was ultimately mailed was quite different. The virtue of such staff participation was that the Administrative Office remained fully apprised of the Chief Justice's decisions and actions and a consistent pattern of response could be maintained.

The position of Chief Justice of California²³ is said to be too overwhelming an assignment for any one person. That observation can of course be made about many other high-level executive positions in our society, but on a high court, decisionmaking is personal and nondelegable. The California Constitution makes it clear, however, that the management functions are delegable.²⁴ Chief Justice Wright's achievements in both decisional law and administration rest upon his understanding of the difference between these two areas of responsibility and upon his skillful use of the management tools available to him. In this way, the Chief Justice could concentrate his energies on the essentials insofar as the management of the general court system was concerned, and could devote most of his personal energy and effort to the operations of the Supreme Court itself.

A final comment must be added concerning the nature of the staff that must be assembled if the management responsibilities of the Chief Justice of California are to be discharged effectively. Multiple skills are essential and during the Wright period, the Administrative Office of the courts was staffed with able lawyers, management analysts, statisticians, accountants, secretaries, and clerical workers. Through their efforts, the concerns of the Chief Justice and the Judicial Council were addressed by experienced and dedicated personnel, whether the problem involved law, management or research and whether the issue was federal, state, or local.

23. In 1966 the voters of California made it clear that their Chief Justice is not merely Chief Justice "of the Supreme Court", but like the federal parallel, is Chief Justice "of California." CAL. CONST. art. VI, § 2.

24. CAL. CONST. art. VI, § 6.

