THE PROFESSIONAL PROJECT OF PARAJUDGES: THE CASE OF U.S. MAGISTRATES

CARROLL SERON

The Magistrate Act of 1968 (Pub. L. 90-578, tit. I, § 101, 82 Stat. 1113) introduced a new tier of judicial officers into the federal district courts. As a result of this act and two amendments (Pub. L. 94-577, § 1, 90 Stat. 2729 (1976); Pub. L. 96-82, § 2, 93 Stat. 643 (1979)), magistrates may now work on a wide variety of civil and criminal pretrial tasks at the discretion of Article III judges; indeed, with the consent of both parties, magistrates may hold jury trials in civil cases. In addition, the act and the amendments encourage courts to delegate "additional duties" to magistrates with a view toward developing innovative work relations between two tiers of judicial officers.

Since both groups are lawyers, magistrates and Article III judges share the same formal training and professional expertise. Organizationally, however, magistrates work for federal judges. There is the potential, therefore, for a wide variety of work relations between these two tiers of judicial officers. The history of magistrates' "professional project" (Larson, 1977) to expand their formal duties, their autonomy and control over decision making, and their organizational status provides a useful entry point for analyzing recent developments in judicial work relations, the subject of this article.

I will first report the results of a study of U.S. magistrates. These findings suggest a typology of three distinct patterns of response to these new judicial officers: additional judge, bureaucrat, and team player. I next consider why courts opt for the occupational models they do. Finally, I speculate about the implications of the variations for understanding contemporary developments in judging and judicial process.

I. A TYPOLOGY OF JUDGE-MAGISTRATE WORK RELATIONS

The appropriate use of magistrates to perform "additional duties" has been the subject of some debate within both the judicial and academic communities. At least three arguments have been put forward. Some assert that the delegation of certain tasks to magistrates (i.e., aspects of case preparation for trial) is a step toward bureaucratic justice (see, e.g., Resnik, 1984; Higginbotham, 1980). Others have claimed that while judges need to be educated to manage effectively, delegation to magistrates is inefficient (see, e.g., Schwarzer, 1978). Finally, some have suggested that in a pe-

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riod characterized by the use of innovative and early settlement strategies coupled with a turn toward a more activist posture during pretrial (Provine, 1986), the delegation of tasks to magistrates may safeguard the integrity of the adversarial model and avoid conflicts of interest (see, e.g., Alschuler, 1986; Silberman, 1975). Each of these arguments suggests quite different professional images for this tier of officers. Each of these roles for magistrates is, moreover, described from the standpoint of Article III judges.[1]

Magistrates have also participated in the articulation of their professional role. Most notably, they have formed a professional association to lobby within the judicial community and before Congress. In taking this step, magistrates join a long list of other occupations seeking to carve out a "monopoly" over an arena of professional practice (see, e.g., Freidson, 1971; Larson, 1977).

Professional lobbying is, however, a very controversial strategy within the judiciary. First, magistrates are subordinate to judges, and both are bound by the decisions of the Judicial Conference of the United States.[2] Second, as a relatively new profession within the judicial community, magistrates are not accorded the deference and respect of their older professional colleagues. Despite these powerful sources of resistance to lobbying efforts, magistrates do bring some persuasive arguments to their cause. Most importantly, in an era of fiscal conservatism and cost containment,

[1] Title 28 U.S.C. § 636 specifies the range of magistrates' duties. Sections 636(b) and 636(c) specify courts' discretionary authority and the area of jurisdiction that is the focus of this study. Section 636(b) specifies that magistrates may be assigned either dispositive or nondispositive pretrial motions.

A dispositive motion (e.g., a summary judgment on certification of a class) refers to an action that may be dispositive of the case. A magistrate assigned this action under section 636(b) has the authority to write a report and recommendation for final review by the judge assigned to the case. In addition, parties may demand a *de novo* decision on the motion by the judge.

A nondispositive motion (e.g., a discovery dispute) refers to an action during pretrial that is not likely to terminate the case. In this instance the magistrate has the authority to hear and decide the action; here too parties may file a request for a *de novo* decision on the motion before a judge.

Section 636(c) gives magistrates the authority to hold jury trials in civil cases with the consent of all parties to the case. For a further discussion, see McCabe, 1979.

Further, magistrates are appointed by the district in which they reside for renewable eight-year terms. Unlike Article III judges, they serve at the pleasure of the judges within a district. By statute, a merit selection committee participates in the screening and selection process of magistrates.

[2] Magistrates may join a professional association known as the National Council of U.S. Magistrates. At the present, there are 292 full-time magistrates; 86% are members of the Council. In addition, there are 169 part-time magistrates; 60% are members. Like their U.S. commissioner counterparts (for further discussion, see below), some magistrates work on a part-time basis, generally in more rural areas where a federal officer is needed to handle a petty offense and misdemeanor docket. There has been an overall policy, however, to phase out part-time positions; for a further discussion, see Seron, 1983.

Federal judges make policy decisions through the Judicial Conference and its committees; the issue of appropriate presentation of the court's position on a policy issue before Congress has been a complex and debated point. For additional discussion, see Fish, 1973.

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magistrates are a less expensive addition to the judiciary: They are cost-efficient judicial officers. Courts may thus have reasons to try to avoid alienating these new professionals.[3]

Research examining professionals working in large-scale organizations provides an appropriate framework for sorting out the meaning and implications of the roles magistrates have developed for themselves. The pivotal sociological question in the literature has been how an occupational group that seeks autonomy over process and control over outcome reconciles the demands of accountability central to contemporary organizational settings.

To answer this question, I undertook an in-depth examination of magistrates across a variety of courts. In this study, I found three professional models operating.[4]

A. Magistrate as Additional Judge

The image of a judge is that of a professional working in a chamber with a law clerk, bailiff, and secretary at her side. Indeed, this model suggests a loosely connected network of judicial and administrative activities in which management procedures are regarded with suspicion, individuality and autonomy are prized, and nonhierarchical work arrangements among professionals are taken for granted (Heydebrand, 1977a). The traditional judicial organization can be described as prebureaucratic.[5]

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[3] The threat of alienation should not be underestimated. The judiciary is still recovering from the extensive, and successful, lobbying efforts of bankruptcy judges to secure a higher status within the judicial community. For a further discussion, see Seron, 1978.

[4] For a description of the research design of this project, see Seron, 1985; 1986. Briefly, this project, which was administered in the fall of 1981, was divided into two phases. In the first part, I surveyed all full-time magistrates concerning the range of 28 U.S.C. § 636(b) and 636(c) duties assigned, the frequency of assignment and the mode of assignment; the findings are reported in Seron, 1983.

Based on the results of this survey, I selected 9 districts for in-depth, on-site investigation; the factors that guided the selection of districts for study included geographical variation (urban-rural), size of court, and innovative approach to magistrate use. For my study I chose 4 large districts (the Northern District of California, the Northern District of Georgia, the Eastern District of Pennsylvania and the Southern District of Texas); 3 medium districts (the Eastern District of Kentucky, the Eastern District of Missouri, and the District of Oregon); and 2 small courts (the Eastern District of North Carolina and the Eastern District of Washington). In each court judges, magistrates, and a cross-section of practicing attorneys were interviewed using an open-ended instrument. Data collection took place from 1982 to 1984. In total, I interviewed 259 lawyers, 78 federal district court judges, and 35 magistrates across 9 districts. A detailed breakdown of the distribution of interviewees as well as instruments, and other design issues are reported in Seron, 1985.

In this paper, I have incorporated examples from the findings where they help clarify a theme. Much more extensive discussion of the findings from interviews can be found in the various reports.

In addition, I systematically analyzed a random sample of magistrates' actions for 1 year in these 9 courts; this too is reported in Seron, 1985.

[5] I am using the term *bureaucratic* in a very specific manner, that is, to refer to an organization characterized by the introduction of formal rules, hi-

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In such an organization, magistrates can be assimilated as additional judges. Statutorily, the range of options for the delegation of pretrial tasks is broad; because lawyers must consent to have magistrates try civil cases, however, special steps must be taken to encourage this practice. Some courts have educated the bar about what magistrates may do so that these officers will, in practice, carry their own civil caseload. To facilitate the realization of this professional model, judges in these courts have taken special care to select magistrates who are highly regarded members of the local bar; careful selection of magistrates facilitates their acceptance by the bar, which is crucial.

For example, in the District of Oregon, one of the magistrates (before he was elevated to be an Article III judge) received the highest rating by lawyers of any judicial officer in the state. In another district where the magistrate is treated as a judge, he was the former dean of the local law school and had, in fact, been the teacher of most practicing lawyers as well as the judges of the bench. Open-ended interviews with lawyers in these districts disclosed that they felt equally comfortable arguing a case before a judge or a magistrate.[6] Further, the development of this model for magistrates is borne out by the numbers, that is, magistrates do carry a wide variety of cases under 28 U.S.C. § 636(c) in these districts.[7]

Reflecting a commitment to maintain a core of generalist judges in the district, courts that have opted for this professional model have taken steps to include magistrates in bench-bar educational efforts; to assign them to court committees; to encourage their participation at regularly scheduled meetings of the court; to attend the Judicial Conference of the circuit; and, perhaps most notably, to solicit their involvement through informal social activities. For example, in these courts magistrates may share private elevators, use eating facilities reserved for Article III judges, and socialize off the job.[8]

The development of informal contacts between judges and magistrates is an especially important indicator for two reasons. First, the generalist model of judging requires a collegial infra-

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erarchical work arrangements, demarcated offices, and specific educational credentials for a position. See Weber, 1946.

[6] This model was found in the districts of Oregon, Eastern Washington, and Eastern North Carolina.

[7] For a breakdown of assignments, see Seron 1985. Yet this approach does remain controversial. Although overturned by the Supreme Court, the *Pacemaker* case originated in Oregon, a district that uses magistrates extensively (see *Pacemaker Diagnostic Clinic of America v. Instromedix, Inc.*, 725 F.2d 537 (9th Cir. 1984)). In this case, the Ninth Circuit found that it is unconstitutional for magistrates to hold civil trials under 28 U.S.C. § 636(c).

[8] For the reader who is surprised by these indicators, it should be noted that in some courts, by contrast, there is almost no formal or informal interaction between judges and magistrates.

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structure in which informal channels of communication are encouraged so that decisions may be made through committees of equals. These judges seek to avoid rules and hierarchy. Including magistrates in decision making reconciles an organizational commitment to a collegial style with practice. Second, a long tradition of sociological research on professionals has documented the importance of examining latent and manifest or formal and informal activities (see, e.g., Merton, 1968). These courts' commitment to a professional model of magistrates goes beyond a reading of the organizational chart that formally places magistrates in a subservient position.

Yet this organizational model simply replicates what judges have always done, that is, hear and decide their own cases as they determine. It is the least challenging to the conventions of judging and judicial process. Individualized discretion and responsibility for case processing and management have not been altered. Instead, there are simply more judges doing what they have always done: hearing and deciding their own cases.

B. Magistrate as Bureaucrat

Another response to the presence of magistrates is to have these officers hear and recommend action on a clearly circumscribed portion of the court's docket, that is, to employ magistrates as organizational specialists. Such specialization may take two forms. In some courts, magistrates are delegated the social security and prisoner docket to hear and recommend action for final review by the assigned judge to the case.[9] Interestingly, in interviews with public interest and legal aid lawyers, many reported that they were initially quite skeptical about this development but have, on balance, come to value the expertise that magistrates bring to their decision making.

In other courts, judges may assign a task to magistrates on a regular basis on the assumption that one may develop an expertise in expeditiously moving an ongoing and demanding area of the docket. The most commonly reported task assigned to magistrates is the resolution of discovery disputes in complex cases; magistrates may also be encouraged, however, to develop an expertise in settlement techniques or post-trial negotiation over attorney fees.[10]

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[9] It should be kept in mind that under U.S.C. 28 § 636(b), magistrates may hear and recommend action on motions that may be dispositive of the case. Because most social security and prisoner cases fall into this category, magistrates' tasks in these instances are circumscribed. My findings suggest, however, that judges do tend to accept magistrates' recommendations (Seron, 1985). They appear to be the de facto final decision makers in these cases (for a critical discussion of this development, see Resnik, 1985). A review of magistrates' descriptions of their work load suggests that this is the most commonly assigned set of tasks to these officers (see Seron, 1983).

[10] See Seron, 1983 where survey results from magistrates disclose that

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In this model the position of magistrates in court activities and decision making is narrow and circumscribed. In courts that treat magistrates as specialists, they do not participate in bench-bar activities or meetings in the court; while magistrates may hold their own administrative meetings, their concerns are rarely aired with judges. Rather, exchange of information among judicial officers generally takes place through the clerk of court or written communications as the need arises. Indeed, in these districts, it is not unusual for judges and magistrates to report that months if not years go by without contact.[11]

The basis for a bureaucratic approach to magistrates may be traced to pre-1968 practices. Until 1968, U.S. commissioners performed the pretrial tasks of the criminal caseload; upon completion of these initial duties, the cases were assigned to judges. The legislation that replaced commissioners with magistrates also expanded the number of specialized tasks (e.g., social security, prisoner matters, and discovery disputes) that they could perform. The bureaucratic model thus requires little if any modification of the older relationship between parajudges (i.e., commissioners or magistrates) and judges. There are two tiers of judicial officers in which differences in authority are clearly articulated and a division of tasks is maintained through formal procedures for communication.

C. *Magistrate as Team Player*

An innovative division of labor between judge and magistrate may be identified in some district courts. In these courts, magistrates automatically hear all pretrial matters and determine when or if a judge's assistance is necessary. When the magistrate's work is completed, she delivers a pretrial "package" to a judge; that is, she turns over a dispute as it becomes ready to go to trial.[12] The job of the magistrate is thus to prepare the case, and the judge intervenes only if requested or if some additional authority is needed. In this model the magistrate is, in practice, the pretrial officer of the case with responsibility for the range of issues that may arise and, of equal importance, with discretion to determine when or if an Article III judge's intervention might be helpful.[13]

Districts that have expanded upon a teamwork model also in-

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the assignment of discovery disputes (i.e., nondispositive motions) is a frequently allocated task.

[11] This was reported in the Northern District of California (a 12-judge court) as well as the Eastern District of Kentucky (a 5-judge court).

[12] Following the broad guidelines of the Federal Rules of Civil Procedure of 1986 (Fed. R. Civ. P. 16), this will include the resolution of all discovery disputes, reports and recommendations on any pending dispositive motions, and a pretrial order outlining the issues in dispute. In some courts, tasks may include a discussion of the steps taken to achieve the settlement of the dispute.

[13] This finding parallels the results of Heinz and Laumann's (1982) study of Chicago lawyers in large law firms, where they report that an interdepen-

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clude magistrates in the collegial life of the legal community. As in the professional model, the involvement of the magistrates goes beyond case management to include input into questions that arise about court administration, participation in bench-bar committees, and invitations to informal social activities.

A teamwork operation uses a synthetic approach to case management and court administration that suggests a transformation in adjudication. Where formerly all decisions were the responsibility of judges, in this model judges and magistrates share decisions. In processing a case a division of labor unfolds that evidences peer and specialist roles for both judges and magistrates.[14] They are professional peers to the extent that each has discretion and expertise; they are specialists to the extent that each has a demarcated role. Yet in the process, a new work relationship emerges in which case responsibility is shared and each is dependent on the other for the completion of the task.

The emergence of three quite different roles for magistrates—professional, bureaucrat, and team player—suggests that the presence of these judicial officers need not inevitably lead to bureaucratization, as some have suggested (see especially Higginbotham, 1980). Before considering the organizational implications of these developments, I would like to discuss why courts vary in their responses to these officers of the court.

II. THE INTERORGANIZATIONAL ENVIRONMENT OF COURTS: PRESSURES TO MODERNIZE

As noted, the organizational infrastructure of the judiciary is prebureaucratic, that is, courts predate the emergence of modern concepts of rational management, such as Taylorism (Wheeler and Whitcomb, 1976), at the turn of the century. Rather, the organizational "management" of courts was collegial and professional; to the limited extent necessary, judges made their own administrative decisions. The concept of administration, or the integrated processing of tasks, is a relatively recent development in federal courts. Yet the findings from the study of magistrates discussed above suggest that there have been some notable changes in the process of judging. What are the sources of these developments?

Because of the federal courts' long tradition of judicial autonomy, decentralized decision making, and federalism, it is essential to consider this problem from two vantage points. I will begin by sketching a national picture of the pressures to modernize confronting the entire system of federal district courts. Of equal im-

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dent teamwork model characterizes work relations between associates and partners.

[14] This is to be distinguished from the bureaucratic model, in which the division of labor unfolds around the delegation of specialized and repetitive tasks to magistrates.

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portance, however, judges continue to exercise a great deal of control at the grass-roots level; thus, it is equally important to speculate about this question with a view from the bottom up and to weigh the specific or idiosyncratic factors within districts that push toward change (Provine and Seron, 1987; Kanter, 1983).

A. From the Top Down

The two most proximate causes giving rise to innovative techniques in federal courts are the twin pressures of increasing caseloads and a relative decline in resources.[15] As Rolph and Hensler (1984: 163) have noted, "traditionally, as backlogs grew, courts simply requested additional judicial positions to handle the work. But fiscal constraints . . . are now forcing the United States courts to consider new alternatives." Cost realities and caseload pressures have created structural constraints that push toward the use of various alternatives to the labor intensive, formal, and discrete practices of the traditional adjudicatory model with judges at the organizational helm.[16]

There has been a great deal of debate about whether we are in the midst of a caseload crisis (see, e.g., Friedman, 1985; Galanter, 1983); the figures for the federal courts suggest clearly, however, that there has been a relative increase in their caseload. Examination of the trends in the courts' tasks from 1904 to 1985 discloses both an absolute and a relative increase in the size and variability of these demands (Heydebrand and Seron, 1987).

Yet there is probably some truth to the claim that, for a large proportion of civil cases, the magnitude of the docket has not changed dramatically. It is equally important to note, however, that there is little doubt that a major increase in the "mega" cases and their impact on the courts' operation has occurred. A case with multiple parties, issues, and parts that in turn demands sophisticated remedies in which the court may be placed in the position of overseeing a major policy change is a case of a qualitatively different magnitude (see, e.g., Chayes, 1976). Thus, change in the size of the courts' docket is only one source of pressure. It is equally important to consider changes in the variability of demands on the federal court system. Together, these factors push toward the exploration of alternatives.

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[15] For an analysis of the federal budget of the U.S. courts since the turn of the century, see Heydebrand and Seron, 1981.

[16] Rolph and Hensler (1984: 163) go on to suggest that there are four "basic types" of responses to this problem: (1) "programs designed to improve the efficiency of the judicial process" by using management techniques to "streamline" pretrial steps; (2) programs to place " 'easy cases' " on a track toward settlement; (3) the development of alternative dispute resolution forums; and (4) the screening of " 'frivolous' " cases.

Using their typology it is probably reasonable to argue that the introduction, diffusion, and expansion of magistrates fits into the first type they described, that is, programs designed to streamline pretrial case processing.

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B. The Power of the Chief Judge

Escalating caseloads and diminishing resources form a powerful set of preconditions that push toward innovation. My findings show, however, that two grass-roots developments are equally important sources of creative change: (1) a forward-thinking and managerially sophisticated bench, often led by an imaginative chief judge; and (2) an onslaught of demand for service generated by a sudden increase in caseloads without adequate judicial personnel (as, for example, occurred in the Sun Belt states during the early 1970s).[17]

Traditionally, a chief judge was selected *primus inter pares* to fill an administrative position because of seniority on the bench but was otherwise no different from her brethren. In keeping with the collegial craft, the chief judge was a figurehead who represented the court to the public. Yet the position generates as well a great deal of space for thoughtful "change masters" (Kanter, 1983). For example, a chief judge may set the agenda for modernization; define the parameters of the delegation of "administration" to clerks and court managers; expand the linkages between the bench and bar; or, as in the case before us, create an environment ripe for an expansive use of magistrates. It is in this context that we may begin to explain the variety of organizational roles outlined above.[18]

In courts where a chief judge is concerned with preserving a traditional notion of adjudication yet recognizes the realities of recent pressures, he might opt to encourage his bench to approach magistrates as additional judges.[19] Historically, adjudication is the hub that organizes judicial practice. Faced with growing caseloads, the logical and traditional response to more work is to add judges. When, however, additional "real" judges are not available, it follows that the next best solution is to select parajudges from a legal community's "elite." In districts selected for study where magistrates have joined the judicial bench as nearly equal partners, the groundwork is laid for a professional approach to the use of magistrates. Thus, a caseload crunch, a traditional view of judicial process, and a willingness to expand the construct of an appropriate judicial officer of a court are the necessary, if contradictory, preconditions for a professional approach to magistrates.

My findings suggest, moreover, that this model, unlike the other two approaches, is organizationally dependent on individuals

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17 In these states (e.g., Florida, Arizona, and Texas) during this period there was rapid growth and essentially no expansion of the size of the courts due to the resistance of a democratically controlled Congress to give President Nixon the power to appoint Article III judges.

18 It is important to keep in mind that in each instance the pattern reported was found in more than one district. For a detailed description of each court, see Seron, 1985.

19 All of the chief judges interviewed for this study were males.

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and personalities.[20] Of the three models, this one has a radical element, because magistrates do not have Article III status. There is, to put it differently, a charismatic quality to this model that rests, as Weber (1968) so aptly noted, with the leadership style and following of the individual who holds the position—often both chief judge and magistrate. In this sense, then, the professional model is organizationally precarious and will, following the tensions generated by charismatic leadership, face a problem of routinization when transitions occur.[21]

But there are no guarantees that a chief judge will take the activist approach to the job needed to weigh the various ways that courts may respond to social forces that require creative solutions. Indeed, some chief judges may take a quite passive approach, often claiming that their position does not carry any special leadership responsibilities. Here, a chief judge may send a message to his court that nothing has changed; magistrates, it follows, should be approached as more support.

In this context, Article III status is often viewed as an exclusive and limited title conferred on a select group. Once conferred, it follows that elite status may be tarnished by extending its prerogative to non-Article III officers (see, e.g., Higginbotham, 1980; Posner, 1985). A reading of judicial and legal periodicals discloses the significance of this "conservative" position within the fraternity. Change, from this perspective, is suspect, for the traditional elites guard the status quo. Problems, backlogs, complex cases, and the like are viewed as temporary externalities to be "muddled through" (Lindbloom, 1965) as the need arises. This conservative, "wait-and-see" approach to adjudication thus side-steps the question of innovation (Provine and Seron, 1987).

It should not be surprising then that magistrates will be approached as support in a manner quite similar to their U.S. commissioner precursors. Demarcated and circumscribed tasks (e.g., social security or discovery disputes) are delegated on a repetitive basis that underscores a hierarchical view of the appropriate relationship between judge and magistrate. In these courts it was not unusual for judges to claim that a specialist approach to magistrates is the most efficient. This theme is of course reinforced through formalized channels of communication, secrecy, and rules. Again, Weber's (1946) insight is enlightening: It is the constellation of these elements—formal office, hierarchy, rules, secrecy, and efficiency—that prepares the way for bureaucratization. In

[20] For example, when attorneys in these districts were asked about their willingness to consent to magistrates in larger civil cases, they repeatedly reported that they were willing to do so because of the current crop of magistrates, but they almost always went on to report that they would reevaluate their position if the magistrates changed.

[21] I would like to thank Colin Loftin for suggesting this point about the meaning of these findings.

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fact, judges in these courts often expressed a concern about the courts' taking on the worst elements of bureaucracy; magistrates similarly reported that they often felt that they were "operating in the dark." This model, as Weber suggests, tends to breed rigidity and unresponsiveness to new ideas as the bureaucracy takes on a life of its own.

This is not, however, the whole story. In some district courts, a chief judge, often in concert with a well-trained clerk, a district court manager, and support from his colleagues, may build upon adjudication to incorporate new ways of organizing dispute resolution. A long tradition of judicial autonomy and decentralized control has also left judges at the grass-roots level with a great deal of room to run their own show and thus to develop flexible, individualistic, and personal styles of judging. Recent developments have, moreover, given a new lease on life to flexible adjudication, especially in the area of pretrial experimentation.

Pretrial forms of dispute resolution are neither a recent nor major shift; in fact, this has probably been the norm since at least the turn of the century (see, e.g., Friedman and Percival, 1976; Daniels, 1984, 1985). What has changed, however, is the language used to weigh the appropriate pretrial judicial posture.

Today judges share ideas about creative settlement techniques, the use of private dispute resolvers, and the advantages of nonbinding arbitration or mediation procedures as well as the viability of delegation of pretrial tasks to magistrates. Judges now come together in educational workshops to exchange their latest techniques, are engaged as popular speakers across the country, and share these procedures that have proved effective in newsletters and law reviews (Provine, 1987; Provine and Seron, 1987).

Placed in this context, the delegation of pretrial tasks to magistrates is simply part of a much larger trend in the judicial community toward informalism, flexible dispute resolution practices, concern for improved efficiency, and experimentation based on research and development. An emphasis on flexibility is an element of the traditional adjudicatory model, but, flexibility linked to informalism, a concern for efficiency, and an interest in research suggest elements that may transform adjudication into something quite different from traditional expectations. This newer model exhibits some elements of the professional and bureaucratic models but in the process transforms both (Heydebrand and Seron, 1987).

III. PROFESSIONAL, BUREAUCRATIC, AND TECHNOCRATIC PROJECTS

Autonomy and control over a domain of judging describe the political goals of magistrates. They work to this end, however, in a postprofessional and in many respects a postbureaucratic organiza-

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tional world. In part the professional model of magistrates is precarious because of its charismatic elements. Beyond this, however, the model is proving a too-costly luxury for contemporary courts and society.

The history of professionalization has been told many times (see, especially, Bledstein, 1976; Friedson, 1971; Larson, 1977). The goal of this movement, which began in the Progressive Era, was to assert control over the process and outcome of work, that is, to enjoy the privilege of working without oversight or supervision. The steps taken to this end are also well-known: (1) the accreditation of specialized knowledge; (2) training through a university-based curriculum; (3) the development of a code of ethics to guide peer review and self-regulation; and (4) the formation of professional associations that centralized and legitimated collective interests through political lobbying to control state licensing. Lawyers, but especially doctors, were particularly successful at their endeavors to construct a freestanding and individualistic work setting for those select few who joined the professional ranks of the labor force.

These professions consolidated their power through organizational strategies by forming firms or joint ventures (see, e.g., Freidson, 1975; Heinz and Laumann, 1982). In taking this step, however, the limitations of overspecialization and the high cost of autonomy were exposed. Today, most lawyers and doctors work in large-scale organizations where, like their "new" or semiprofessional counterparts, they are supervised and held accountable for time and costs.

Contemporary examination of older professions (e.g., medicine, law [including judging], and university teaching) reveals a trend toward what some have called "deprofessionalization" (Derber, 1982; Oppenheimer, 1973; Rothman, 1984).[22] As Haug (1973: 205) has noted, "demands for accountability and client control call for an end to professional decision-making power."

With the management of "old" professionals, a number of important themes have emerged. Research and development have been used to evaluate professional productivity and organizational effectiveness. Selected tasks are delegated to new workers (e.g., paralegals and paramedics), which in turn leads to new teamwork models and interdependencies (not unlike that found in some courts between judges and magistrates). Finally, there has been a growing reliance on technologies to absorb support functions and new procedures for cost accounting.

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[22] In this context it is helpful to distinguish between "old" (law and medicine) and "new" (e.g., engineering, social work, and public school teaching) professions. The "new" professional has always been organizationally dependent, whereas the traditional professions have gradually moved into organizational settings. Thus, the "new" professionals have always been less autonomous.

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Federal courts have not been immune from these developments (Heydebrand, 1979). In the last twenty years, district and circuit executives have been introduced to improve court administration; the Federal Judicial Center has played an active role in research, development, and the education of judicial personnel; *pro se* law clerks have been added to prepare prisoner cases (a repetitive part of the docket); and there have been extensive efforts to computerize aspects of case management, including the development of accurate "case weights" so that all judges may carry a "fair" and reasonable caseload. Like trends in most modern organizations, organizational developments in federal courts are transforming the "old" professional model.

Placed in this context, we can begin to sort out why magistrates confront an uphill battle to assert their professional autonomy. In addition to the status distinctions between judges and magistrates that work against their professional project, autonomy and control are becoming luxuries of a bygone era. Thus, even where magistrates have been successful, as has occurred in some districts for idiosyncratic and specific reasons, it is reasonable to speculate that the project will not be long lasting.

The tendency toward bureaucratization has deeper and more complicated implications for both judges and magistrates. In its day, the discovery of bureaucratic organization exhibited many progressive elements, especially a tendency toward meritocratic selection and objective or impersonal treatment of individuals. Bureaucratization proved a very effective strategy for putting to rest the power of cronyism in American politics.[23] Bureaucratic practices for allocating social services were introduced in part to maintain fair delivery to diverse ethnic and racial groups. Nevertheless, the history of the modern welfare state has revealed the myriad obstacles to progressive change created by bureaucratic organizations. Research on welfare state organizations discloses that following the rules and being efficient has become more important than the quality of service (Blau, 1955; Lipsey, 1980). Practices that began as rational procedures have become, in bureaucratic organizations, quite irrational and alienating for both clients and workers.

For most of the judiciary's history, federal courts have been spared the modern bureaucratic plight. It is ironic that some district courts face the possibility of falling into this trap just as other sectors of the modern state have begun to grapple with its limitations (see, e.g., Heydebrand, 1983; Wolfe, 1977). While these findings make it clear that a bureaucratic relationship between judges and magistrates is by no means inevitable, they also show that it

[23] One should not underestimate some of the mixed motives of this project or the many unintended and negative consequences (see, e.g., Lowi, 1979; Skowronek, 1984).

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can emerge. Interestingly, the bureaucratic solution appears to be associated with courts in which judges draw a strong organizational demarcation between their Article III status and all other judicial and nonjudicial officers. Where judges assert a quite conservative posture toward their judicial role, in other words, the pitfalls of bureaucracy, including reports about alienating work settings, are more likely to emerge. In their defining of their role in a manner that no longer comports with practice, in their tendency to emphasize the timelessness of the institution, and in their refusal to acknowledge the structural changes taking place all around them, these judges appear to be constructing their own worst fears—the bureaucratization of judicial process.

If the bureaucratic solution found in some courts suggests a regressive solution, the progressive organizational solution of the moment is clearly the teamwork model in which judge and magistrate share responsibility for case management. Yet a team is indicative of a larger transformation whereby the angle of judicial process has shifted from trial to pretrial solutions, from formal adjudication to flexible alternatives, from judging to managing cases (Fiss, 1981; Resnik, 1982), and from standard to diagnostic treatments (Provine, 1986). Taken as a package, these developments point toward the "technocratic administration of justice" (Heydebrand, 1979).

This newer process evidences elements of bureaucratization (e.g., the role of management) and professionalization (e.g., higher status for magistrates) but upon closer scrutiny transcends both. In this constellation, magistrates have had the opportunity to carve out a creative and central—if not fully autonomous—role in some courts. At the same time, judges have admittedly experienced a relative decline in the degree of autonomy they once enjoyed. Because judges and magistrates are, however, only two of the many actors in this formative calculus, important political questions remain.

IV. CONCLUSION

The story of magistrates' attempt to carve out their domain of control within this closed and traditional judicial network raises a series of important political questions about modern American federal courts. Together, the findings point in apparently contradictory directions (Heydebrand, 1977b). Within the same institutional sphere, we may document attempts to keep the old professional project alive, moves toward the twentieth-century bureaucratic trap, and lively experiments with some of the more far-reaching and innovative concepts of modern management. Because the old professional model is becoming extinct and we already know a great deal about the political damage of bureaucratization (see, e.g., Bendix, 1956; Mannheim, 1936; Wolfe, 1977; Wolin, 1960), it is

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appropriate in closing to speculate about the implications of these newer developments for American courts.

As noted, an emergent division of labor between judge and magistrate around case management and court administration describes only a part of the picture. In addition, there has been a diminution in judicial autonomy over decision making that reflects what some have referred to as a trend toward deprofessionalization. Work relations have changed, revealing interdependencies between "old" (judges) and "new" (parajudges, paralegals, and staff attorneys) legal professionals using new modes of treatment reflecting "changes in the occupational mix involved in the delivery of . . . services" (Haug, 1973: 199). Computerized and systems applications of oversight and court management functions are of growing importance. There is also an extensive interest in informal, flexible, and diagnostic modes of dispute resolution, including mediation, arbitration, and settlement conferencing, so that the timing of dispute resolution occurs earlier and earlier in the game.

In addition to the above developments, others have documented related changes that must be considered in order to appreciate fully the themes and patterns contained in this new mode of administration. In many respects, these developments also reflect a political disenchantment with professionalism and the politics of professional expertise. Here we may point to new demands for an improved *quality* of work that emanates in part from a feminist and political consciousness (Menkel-Meadow, 1984; 1985). There has been a push to synthesize judicial process and substance to be more responsive to individual needs by incorporating a "helper-therapy" principle (Haug, 1973) as, for example, in the trend toward client involvement in dispute resolution practices at neighborhood justice centers (Abel, 1982). Dispute resolution evidences both privatization and state involvement, which suggests the development of a new, corporatist synthesis, as seen in judges' referral of cases to the American Arbitration Association for resolution. Another example is the use of self-help or do-it-yourself legal manuals dealing with matters such as divorce, probate, and wills (see, e.g., Rothman, 1984).

Technocratic and bureaucratic administration share a common characteristic. When we disentangle these developments it becomes apparent that, like its nineteenth-century counterpart, bureaucratization, there are *progressive* elements embedded in technocratization. That is, like bureaucratization, the elements that compose this new mode of organizational and work coordination contain contradictory themes and practices. For example, there is the possibility of both greater rationalization through computerization as well as greater public, political demands to assert control over forms for dispute resolution as the troubles of professionalism are exposed (Abel, 1982). Do we, as a society with limited fiscal resources, want to commit our funds to the development

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of costly and restricted technologies at the expense of exploring new and democratic practices for all citizens? Technocratization has the political possibility for progressive social change as well. It is our task to take seriously the elements of that contradiction as we push toward the possibility of democratization from below.

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