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THE FORGOTTEN POLITICIANS: COURT CLERKS

LARRY BERKSON* and STEVEN HAYS**

Although court clerks occupy a strategic position in county government, they have not been examined in detail. Their crucial role in the budgetary process, coupled with the vast panoply of duties assigned them, elevates their office to semi-sovereign status within the county. The state of Florida was chosen as a focus for an indepth study of the clerk's office. The study revealed that despite the fact that clerks are well-educated, they are relatively unknowledgeable about modern technology and techniques to assist in the operation and management of their offices. This, coupled with the county court clerk's conservative nature, accounts in part for why states have been victims of archaic and outdated court systems and procedures.

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I. INTRODUCTION***

In Southern and Western States county government is a key element of local government.¹ Despite this fact, the subject has not received a great deal of attention. However, a few works have ap-

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*** A special note of thanks is extended to Susan Carbon for editing and typing several drafts of this manuscript.

1. See, D. LOCKARD, *THE POLITICS OF STATE AND LOCAL GOVERNMENT* 102 (1969).

peared on such topics as county commissions and commissioners, county courts and judges, and county law enforcement offices and sheriffs.² Noticeably absent from this list is one of the most powerful county officials in many states, the clerk of the county's court system. Indeed, he is scarcely even mentioned in contemporary texts on state and local government.³

The study of this important figure has been neglected for several reasons. First, despite his preeminent position in county government, the title attached to the position does not command a great deal of respect or enjoy a high level of status in American society. For example, in one study of occupational prestige in the United States, the general title of clerk was ranked 68th in a list of 90 possibilities.⁴ By assigning the label "clerk" to this officer, many scholars have misunderstood both the vast dimensions of his duties and the large amount of authority vested in his office.

Second, the position is one of low profile. Unlike the judge, the clerk's duties do not require him to make important decisions involving life, death, freedom, or imprisonment. Nor do his decisions directly result in the construction of new roads and waste treatment facilities, or the providing of other services, as do those of the county commission. Thus, his name does not regularly appear on the front page of the newspaper, nor does he occupy a conspicuous position during commission meetings. Rather, his office is usually located in an inner sanctum behind a cadre of secretaries and assistants.

A third reason why the study of court clerks has been neglected is because political scientists have generally misperceived the true nature of their office. Historically, the clerk's duties have been viewed as nonpolitical. For example, in 1929 William F. Willoughby, the former President of the American Political Science

2. See, e.g., D. BRAMMER & J. HURLEY, *A STUDY OF THE OFFICE OF THE SHERIFF IN THE UNITED STATES SOUTHERN REGION* (1967); K. DOLBEARE, *TRIAL COURTS IN URBAN POLITICS: STATE COURT POLICY IMPACT AND FUNCTIONS IN A LOCAL POLITICAL SYSTEM* (1967); D. JACKSON, *JUDGES* (1974); Hanson, *County Commissioners of Oklahoma*, 9 *MIDWEST J. POL. SCI.* 388 (1965); Henderson, *The Relative Effects of Community Complexity and of Sheriffs upon the Professionalism of Sheriffs Departments*, 19 *AM. J. POL. SCI.* 107 (1975); Snider, *American County Government: A Mid-Century Review*, 46 *AM. POL. SCI. REV.* 66 (1952).

3. See, e.g., C. ADRIAN, *STATE AND LOCAL GOVERNMENTS* (1972); D. BERMAN, *STATE AND LOCAL POLITICS* (1975); J. BURNS & J. PELTASON, *GOVERNMENT BY THE PEOPLE* (6th ed. 1966); T. DYE, *POLITICS IN STATES AND COMMUNITIES* (1969); D. GRANT & H. NIXON, *STATE AND LOCAL GOVERNMENT IN AMERICA* (1975).

4. Hodge, Siegel & Rossi, *Occupational Prestige in the United States, 1925-63*, 70 *AM. J. SOC.* 286, 292 (1964).

Association, stated that the clerk's duties are "in no sense either political or judicial; they are wholly administrative."⁵ This philosophy is still prevalent today. However, as an elected official, the clerk is not able to disassociate himself from politics. He must be responsive to his constituency. His actions and decisions are subject to political evaluation and restraint. He therefore must be conscious of his demeanor and constantly strive to consolidate and enlarge his political support and increase his political power if he is to remain in office.

A final reason why the study of court clerks has been neglected is that court administration in general, and state judiciaries in particular, have only recently been subjected to close scrutiny.⁶ Indeed, it was not until Warren Burger assumed the Chief Justiceship of the United States Supreme Court that the scholarly community began a detailed examination of the internal administration of local courts.⁷ Consequently, court clerks, the primary administrators in these judicial systems, are only now achieving some degree of recognition.

Despite the recent trend, most investigation today is still concentrated at the federal level. As a result, very little is known about the position, occupants, roles, functions, and duties of court clerks at the county level. This is most regrettable in view of his strategic political position in county government. To fill the hiatus, an in-depth study of the court clerk and his office was undertaken in Florida. Questionnaires were sent to each of the 67 clerks. A response rate of 82 percent (N=55) was obtained. Additionally, a number of court clerks, deputy clerks, court administrators, and chief judges were interviewed.⁸

II. THE ROLES, FUNCTIONS, AND DUTIES OF COURT CLERKS

The origins of the clerk's office extend into early English history.⁹ Subordinate judicial officials were chosen from among the

5. W. WILLOUGHBY, *PRINCIPLES OF JUDICIAL ADMINISTRATION* 340 (1929).

6. See K. DOLBEARE, *supra* note 2; *THE POLITICS OF LOCAL JUSTICE* (J. Klonoski & R. Mendelsohn ed. 1970).

7. See, e.g., Burger, *Bringing the Judicial Machinery Up to the Demands Made on It*, 42 PA. B. ASS'N Q. 262 (1971).

8. Interviewed were 8 clerks, 30 deputy clerks, 5 court administrators, 15 chief judges and the staff of a legislative committee studying court clerks in Florida.

9. For a general description of the clerk's functions see 10 AM. JUR. 2d *Clerks of the Court* § 1 *et seq.* (1964).

clergy, the only literate group at the time. Thus, the name clerk is derived from the Latin *clericus* meaning clergyman. In the colonies, officers of the common pleas courts were known as county clerks, a title utilized in most states today.¹⁰ In Pennsylvania and Delaware, however, the clerk is referred to as a prothonotary, and in Massachusetts, Maine and New Hampshire, he is called a register of probate. The clerk enjoys constitutional status in no fewer than 36 states.¹¹ The only state in the South which does not so provide is Georgia. There, as in various non-Southern States, the office has been created by statute.¹²

In all but three states, clerks are elected and thus are independent of other county officers, including members of the county board. In Connecticut and New Hampshire they are appointed and hold office at the pleasure of the judges.¹³ In Rhode Island the governor, with the advice and consent of the senate, appoints clerks. Court clerks usually serve terms of 4 years. However, in Arkansas, Kansas, Oregon, and Wisconsin they hold office for 2 years; New York for 3 years; and Rhode Island, 5 years. In Alabama, Massachusetts, and West Virginia, they serve 6 years, while in Virginia they serve 8.

The roles, functions and duties of clerks vary from state to state. In a few jurisdictions, their duties are confined exclusively to

10. For a general discussion see, A. BROMAGE, *AMERICAN COUNTY GOVERNMENT* 170-71 (1933); *COUNTY GOVERNMENT ACROSS THE NATION* 16 *passim* (P. Wagner ed. 1950); J. FAIRLIE & C. KNEIER, *COUNTY GOVERNMENT AND ADMINISTRATION* 155-56 (1930); E. KIMBALL, *STATE AND MUNICIPAL GOVERNMENT IN THE UNITED STATES* 329 (1922); R. MADDOX & R. FUQUAY, *STATE AND LOCAL GOVERNMENT* 507-08 (1966); *THE STATE TRIAL JUDGE'S BOOK* 15 (1969).

11. ALA. CONST. art. VI, § 159 (b); ARIZ. CONST. art. VI, § 23; ARK. CONST. art. VII, § 19; CAL. CONST. art. VI, § 14; COLO. CONST. art. XIV, § 8; DEL. CONST. art. IV, § 26; FLA. CONST. art. 5, § 16; IDAHO CONST. art. V, § 16; ILL. CONST. art. VI, § 18 (b); KAN. CONST. art. III, § 7; KY. CONST. § 99; LA. CONST. art. VII, § 66; ME. CONST. art. VI, § 6; MD. CONST. art. IV, § 10; MICH. CONST. art. VI, § 14; MINN. CONST. art. 6, § 13; MISS. CONST. art. 6, § 168; MONT. CONST. art. VIII, § 18; N.H. CONST. pt. 2 art. 82; N.J. CONST. art. VI, § 2; N.M. CONST. art. VI, § 22; N.Y. CONST. art. VI, § 6 (e); N.C. CONST. art. IV, § 9(3); N.D. CONST. art. IV, § 108; OKLA. CONST. art. XVII, § 2; ORE. CONST. art. VII, § 15; PA. CONST. art. V, 15; S.C. CONST. art. V, § 27; S.D. CONST. art. V, § 11; TENN. CONST. art. VI, § 13; TEX. CONST. art. V, § 9; UTAH CONST. art. VIII, § 14; VA. CONST. art. VII, § 4; W. VA. art. VIII, § 26; WISC. CONST. art. VII, § 12; WYO. CONST. art. 5, § 9.

12. CONN. GEN. STAT. REV. § 51-146 (Supp. 1976); GA. CODE ANN. § 2-7901 (1973); HAWAII REV. STAT. § 606-1(a) (Supp. 1975); IOWA CODE ANN. § 39.17 (Supp. 1976); MASS. GEN. LAWS ANN. ch. 221, § 3 (Supp. 1975); MO. REV. STAT. § 483.015 (Supp. 1975); NEB. REV. STAT. § 32-307 (1974); OHIO REV. CODE ANN. § 2303.01 (Supp. 1975); R.I. GEN. LAWS ANN. § 8-4-5 (Supp. 1975); VT. STAT. ANN. § 171 (1975).

13. In other states the office was originally an appointive one. See C. ANDREWS, *ADMINISTRATIVE COUNTY GOVERNMENT IN SOUTH CAROLINA* 65 (1933).

those of a judicial officer.¹⁴ For example, in Minnesota, the county auditor acts as the secretary to the county board, and the clerk of the court acts solely as an adjunct of the judge.¹⁵ In extreme instances, he acts as a judge. Indeed, in North Carolina he is judge of probate (he determines the validity of wills and administers the estates of decedents, minors, and incompetents), and judge of juvenile court (he handles neglected, dependent, and delinquent children). Further, he has jurisdiction over a variety of special proceedings such as adoptions, condemnations of private lands for public purposes, and sales of land. He also has exclusive jurisdiction in proceedings for the hospitalization of mentally ill persons and alcoholics.¹⁶

In most jurisdictions the clerk does not perform such extensive judicial functions. Rather, he is generally vested with a large number of administrative duties. The court clerk's responsibilities in Florida are typical.¹⁷ There, he is not only the clerk of the circuit court, but he is the county treasurer, recorder, auditor, finance officer, comptroller, and secretary-accountant to the county commission. In a recent study by the Joint Select Committee on Judicial Personnel of the Florida Legislature, it was calculated that the clerk and his subordinates perform 926 tasks. Some are very trivial in nature. Others are highly unusual and amusing. For example, the clerk in Florida is charged with being the "custodian of stray hogs and horses." Table 1 summarizes his most significant duties.

14. See, e.g., C. THARP, A MANUAL OF COUNTY ADMINISTRATIVE ORGANIZATION IN MICHIGAN 130-41 (Mich. Gov't. Studies No. 15, 1944).

15. For a brief description of county clerks having no judicial duties see C. SNIDER, LOCAL GOVERNMENT IN RURAL AMERICA 152 (1957).

16. See COUNTY GOVERNMENT IN NORTH CAROLINA 1603 (G. Coltrane ed. 1965).

17. The county clerk is prohibited, with a few minor exceptions, from holding any other office. FLA. CONST. art. II, § 5(a). No person who has been convicted of a felony or has been adjudicated as mentally incompetent is eligible for the office until his civil rights have been restored or his disability removed. FLA. CONST. art. VI, § 4. To qualify for election in Florida, a candidate for the clerk's office must be a resident of the county for at least 6 months and a qualified elector. FLA. CONST. art. VI, § 2. He must also swear the traditional oath of office. FLA. CONST. art. II, § 5(b). Once elected he is prohibited from bidding on public works contracts (FLA. STAT. §§ 839.07, .10 (1975)), purchasing supplies from himself (FLA. STAT. § 839.08 (1975)), and appointing any person as a deputy who is related to him within the fourth degree by blood or marriage. (FLA. STAT. § 116.111(1)(c), (2)(a) (1975)). The county clerk may be suspended by the governor for malfeasance, misfeasance, nonfeasance, or neglect of duty. The clerk may also be suspended if he commits a felony, or is declared an alcoholic or an incompetent. FLA. CONST. art. IV, § 7(a). He may be removed from office by the governor with the approval of the Senate. FLA. CONST. art. IV, § 7(b).

TABLE I

DUTIES OF FLORIDA COURT CLERKS

1. *Duties as A Member of the Court*
 - A. Prepare Transcripts for Appeals
 - B. File Indictments, Informations and Verdicts
 - C. Issue Receipts for Money Paid to the Court
 - D. Oversee Jury Selection
 - E. Disburse Judicial Funds
 - F. Be Present or Have a Deputy Present at Each Session of the Court
 - G. Send by Registered Mail Copies of Notices to Record Holders of Liens in Foreclosure Suits
 - H. Issue Citations Directing Persons Having Any Claim on Property or Money to File the Claim
 - I. Receive Gambling Equipment Seized by the Sheriff
 - J. Supervise the Fines and Forfeiture Fund
2. *Duties as Secretary, Accountant and Auditor to the Board of County Commissioners*
 - A. Prepare the Minutes of All Regular and Special Meetings
 - B. Prepare the Monthly Accounting Report
 - C. Prepare the Election Ballot
 - D. Prepare the County Budget
 - E. Audit All County Vouchers
 - F. Mail Notices Requested by the Board
 - G. File Notices for Hearings on Board Validations
 - H. Keep an Inventory of All County Property
 - I. Furnish the Judges with Quarters and Courtrooms
 - J. Responsible for the Upkeep of the Courthouse
 - K. Have Legal Custody of the Official County Seal and Affix it to Official Papers
3. *Duties as County Treasurer*
 - A. Custodian of All County Funds
 - B. Responsible for Income from Taxes, Licenses and Fees
 - C. Deposit All County Moneys in Banks
 - D. Keep All Records Pertaining to Outstanding Indebtedness
 - E. Verify and Audit All County Bills
4. *Duties as County Comptroller*
 - A. Issue All Checks Paid from the County Treasury
 - B. Handle the County Payroll
 - C. Expend Money for the Construction and Maintenance of Buildings and Equipment
 - D. Pay Welfare Recipients, State Health Units, and Foster Homes
 - E. Make Social Security and Income Tax Withholding Payments
 - F. Pay Jurors
 - G. Pay Bounty on Rattlesnakes
 - H. Withhold Payment Whenever Charges are not Authorized by Law or by Resolution of the County Commissioner
5. *Duties as County Recorder*
 - A. Record and Index Deeds, Mortgages, and Descriptions of All County Property
 - B. Record All Tax Liens and Claims Against Estates, Instruments of Conveyance, Agreements, Contracts, Maps and Plots of Subdivisions, and Surveys
 - C. Record Licenses to Doctors, Osteopathic Physicians, Chiropractors, Naturopaths, Optometrists, Dentists, and Dental Hygienists
 - D. Keep All the Vital Statistics of the County

It is clear that the clerk's responsibilities extend into many diverse areas. Even the most cursory examination of these duties reveals that the clerks occupy a strategic position in county government. Although no one task, taken individually, imbues the office with a great deal of influence, taken collectively the tasks provide the clerks with a strong political base. For example, as county auditor, treasurer, comptroller, and accountant, the clerk has a sizeable influence on the formulation of the county budget. Likewise, these same responsibilities allow the clerks to monopolize information sources upon which the county commission relies to operate efficiently.

A close look at the duties of the clerks (Table 1, *supra*) reveals that there is an apparent violation of the separation of powers doctrine. The clerk performs duties which are clearly both executive and judicial. This has resulted in a variety of local conflicts. In some counties the clerk clearly works closely with commissions in budgetary matters. The courts have consequently suffered severe financial difficulties. Judicial budgetary requests for various capital and personnel expenditures have fallen victim to a biased executive branch which is motivated by a desire to restrict expenditures, thereby preventing tax increases. In other counties, clerks have been more receptive to the needs of the judiciary and have sought to increase financial allotments to the courts. This has resulted in some displeasure on the part of county commissions. Resolution of these fundamental systemic inequities cannot be achieved without a broad structural reorganization of the clerk's office.

The clerks in Florida were asked which duty they perceive to be most important. The political nature of the office is reflected in their responses (Table 2). Seventeen of the 47 respondents (36 percent) suggested a duty very general in nature, such as serving the public, being an efficient administrator, or following the intent of the law. Four simply responded by stating that all duties are equally important. Such abstract and politically neutral responses are befitting the astute candidate seeking reelection to office. It is suggested that placing such an individual in the role of an administrator may be unwise, for the first and most important concern of a politician is his tenure.¹⁸ His demeanor, actions, and decisions are directed

18. See, e.g., D. WALDO, *THE ADMINISTRATIVE STATE* 115-45; H. WALKER, *PUBLIC ADMINISTRATION IN THE UNITED STATES* (1937).

toward this end. Under these circumstances the idealized goal of administrative efficiency is relegated to secondary importance.

TABLE 2

THE CLERKS' MOST IMPORTANT DUTY

1. *General Duties*
 - A. Serve the Public (6)*
 - B. Be an Efficient Administrator (5)
 - C. All Duties are Equally Important (4)
 - D. Follow the Intent of the Law (2)
2. *Specific Duties*
 - A. Record Keeping (8)
 - B. Court Administration (7)
 - C. Fiscal (5)
 - D. Court Work and Assist County Commissioner (3)
 - E. Personnel Management (3)
 - F. Implement New Procedures (1)

*Number of clerks suggesting the duty as most important.

III. THE IMPORTANCE AND POWER OF THE CLERK

In 1928 a study conducted in Virginia concluded that the clerk's office "is one of the most important offices in the county government"¹⁹ The statement is no less true today. In fact, a few authorities have recognized that the clerk may be the most important county official.²⁰ He is much more than an administrator and records keeper. Indeed, his broad responsibilities in the judicial arena, coupled with his administrative duties for the county, allow him to be one of the most important and powerful local political figures. This is evidenced by the fact that he is generally compensated with a very high salary. Surprisingly, in Florida his income is often equivalent to that of a circuit judge, and in some instances his salary even surpasses that of the latter.²¹ He earns approximately

19. COUNTY GOVERNMENT IN VIRGINIA 16 (1928).

20. See BROOKINGS INSTITUTION, REPORT ON A SURVEY OF THE ORGANIZATION AND ADMINISTRATION OF STATE AND COUNTY GOVERNMENT IN MISSISSIPPI 784 (1932); C. FORTENBERRY, A GUIDEBOOK OF THE CHANCERY CLERK (1949).

21. For example, the Florida Statutes provide the following schedule:

Each clerk of circuit court . . . shall receive as salary the amount indicated, based on the population of his county. In addition, a compensation shall be made for population increments over the minimum for each population group, which shall be determined by multiplying the population in excess of the minimum for the grouping times the group rate.

the same income as the county sheriff, and earns more than county commissioners, supervisors of elections, tax assessors, and tax collectors.

One of the single most important factors contributing to the clerk's power is the elective nature of his office. Neither judge nor county commission may remove him. Extrapolation from the data suggests that he generally serves a lengthy period of tenure, and this, coupled with the fact that he usually enters office at an early age, gives him several advantages over both groups of officials.

Judges are generally appointed or elected at a much older age than are clerks and thus are not as politically entrenched. As was recently pointed out, some "judges have been reluctant to cross swords with elected clerks who are charged by the constitution or law with staffing the courts with clerical help."²² The result has long been recognized. Clerks "occupy positions practically independent of the direction and control of the judges of the court"²³

Commissioners, on the other hand, appear to serve shorter terms, and their turnover rate is thus much greater. This results in their being less politically entrenched than clerks. The county commission relies on the clerk to provide much of the vital information which is needed to conduct county business. Moreover, as has been recognized, "in actual practice the clerk is in a position to make a

PER GROUP	CO. POP. RANGE		BASE SALARY	GROUP RATE
	Minimum	Maximum		
I	-0-	9,999	\$14,000	\$0.300
II	10,000	49,999	17,000	0.075
III	50,000	99,999	20,000	0.060
IV	100,000	199,999	23,000	0.025
V	200,000	399,999	25,500	0.015
VI	400,000	999,999	28,500	0.005
VII	1,000,000		31,500	0.000

Fla. Stat. § 145.051 (1975).

22. E. FRIESEN, E. GALLAS & N. GALLAS, *MANAGING THE COURTS* 16-17 (1971).

23. WILLOUGHBY, *supra* note 5, at 341. See also Temple, *Court Officers: Their Selection and Responsibilities*, 22 N.Y.U.L. REV. 401, 404-08 (1947).

recommendation to the board that is quite likely to be accepted by that body."²⁴

The type of information which proves to be most valuable to the politically ambitious clerk is that which relates to the budgetary process. As auditor and comptroller, the clerk in most locales has traditionally constructed the county budget. His recommendations are often given great credence by county commissions for a variety of reasons.²⁵ Most important, the clerk devotes a much larger proportion of his time to county budgetary considerations than does the typical commissioner. His familiarity with the economic necessities and capacities of the county is widely recognized. Attempts by a rebellious commission to digress radically from the clerk's requests and recommendations could easily create negative consequences. Certainly, no elected commissioner desires to be accused of "subverting the constitutional duties of the clerk."

In some respects, county commissioners pursue a course of action similar to that of Congress in dealing with its subcommittees. The committees are perceived as possessing a great deal of expertise in certain policy areas. Thus their recommendations are usually honored. Likewise, the commission, hindered by inadequate time and resources, must often concede to the wishes of the more "expert" clerk.

It is interesting to note that the clerks themselves acknowledge the extent of their power. When asked if they thought that their present levels of power and authority were adequate, 38 (69 percent) responded in the affirmative. Only two clerks suggested that they need more authority. One desired to have a veto power, while the other wished to have total control over the assignment of judges. The remaining clerks indicated that they have an adequate degree of authority, but that there are certain materials and resources that they also desire which might enhance their authority.

Although it should be apparent that an ambitious clerk has the capacity to exert great influence on the decisionmaking process of county commissions, it would be an exaggeration to assume that

24. R. ROSS & K. MILLSAP, *STATE AND LOCAL GOVERNMENT AND ADMINISTRATION* 93 (1966).

25. This situation is analogous to city councils and their dealings with city managers, and school boards in dealing with school superintendents. *See, e.g.*, E. BANFIELD & J. WILSON, *CITY POLITICS* 168-86 (1966); R. LOVERIDGE, *CITY MANAGERS IN LEGISLATIVE POLITICS* (1971); J. POIS, *THE SCHOOL BOARD CRISIS* (1964); J. WILSON, *CITY POLITICS* (1966).

this power is used indiscriminately or malevolently.²⁶ In fact, most clerks seem to identify closely with the county commission. Obviously, an alliance between these offices can result in a great deal of centralized power.

In sum, neither the county commission nor the judge is willing to directly oppose such a powerful, well-entrenched individual who enjoys a solid political base, who has more experience and expertise, and who has more knowledge about county politics.

IV. A COLLECTIVE PORTRAIT OF FLORIDA COURT CLERKS

Socio-economic and attitudinal data were collected on Florida court clerks.²⁷ Quite unexpectedly, an almost total degree of uniformity was found among the variables. Indeed, this uniformity is so pervasive that statistical cross-tabulations provided no significant information. Consequently, the data presented below is essentially descriptive in nature. (Table 3)

TABLE 3
SOCIO-ECONOMIC DATA ON COURT CLERKS IN FLORIDA

<i>Variable</i>		<i>Number</i>	<i>Percentage</i>
RACE	White	55	100.0
	Other	0	0.0
SEX	Male	52	94.5
	Female	3	5.5
RELIGION	Catholic	3	5.5
	Jewish	0	0.0
	Protestant	50	90.9
	Other	2	3.6
PARTY	Republican	8	14.5
	Democrat	46	83.6
	Independent	1	1.8
	Other	0	0.0
AGE	Below 31 years	1	1.8
	31-40 years	7	12.7
	41-50 years	13	23.6
	51-60 years	23	41.8
	Over 60 years	11	20.0

26. For a parallel with Congressional chairmen see R. FENNO, *CONGRESSMEN IN COMMITTEES* 114-23 (1973).

27. For more elaborate studies on other groups see D. MATTHEWS, *U.S. SENATORS AND THEIR WORLD* 11-67 (1960); J. SCHMIDHAUSER, *THE SUPREME COURT: ITS POLITICS, PERSONALITIES, AND PROCEDURES* (1960).

<u>Variable</u>		<u>Number</u>	<u>Percentage</u>
LENGTH	Less than 11 years	1	1.8
OF	11-20 years	2	3.6
RESIDENCE	Over 20 years	52	94.5
LENGTH	Less than 1 year	0	0.0
OF	1-5 years	15	27.3
TENURE	6-10 years	8	14.5
	Over 10 years	32	58.2
IDEOLOGY	Liberal	1	1.8
	Conservative	49	89.1
	Unrecorded	5	9.9

As one might expect, the clerks are typically white male Protestants over the age of 50 who are long-term residents of the state. Further, they almost overwhelmingly perceive themselves to be conservative Democrats. With four exceptions their grandparents were born in the United States. Their fathers were generally farmers or blue collar workers. Only one was the son of a court clerk.

For the most part, the clerks occupied white collar positions prior to taking office. Only five had been deputy clerks. Nine had been elected, and 16 had been appointed to other public office. Subsequently, most have held their present positions for over 10 years, although many have recently been elected to office.

The study revealed that the clerks, as a whole, are moderately well educated. (Table 4)

TABLE 4

EDUCATIONAL BACKGROUND OF COURT CLERKS IN FLORIDA

<u>Extent of Education</u>	<u>Number</u>	<u>Percentage</u>
Some High School	0	0.0
High School Diploma	19	34.5
Two Years of College	16	29.1
Four-Year Degree	8	14.5
Some Graduate Work	6	10.9
Masters Degree	5	9.0
Law Degree	0	0.0
Ph.D. Degree	0	0.0
Unrecorded	1	1.8

Each possesses a high school diploma and 63.5 percent have attended college. Moreover, 50 report that they have regularly attended seminars conducted by the State Clerk's Association. Additionally, 10 report that they have attended seminars conducted by the Institute for Court Management.²⁸ Despite this fact, relatively

28. The Institute was established in 1971 to train court administrators. Its base of operation is Denver, Colorado.

few clerks have received specialized training which assists them in the overall operation and management of their offices. Their college experience is generally that of a liberal arts student; consequently, they have received little pragmatic instruction in specific management techniques. Further, the local seminars they attend are often devoid of an educational experience.

As a result, most clerks are relatively unknowledgeable about modern computer technology and data processing methods. Thus, outdated filing and retrieval systems continue to be utilized. Information gathered from the personal interviews suggests that current budgeting techniques are often unknown. Indeed, it is a rare clerk who is able to distinguish between such fundamental concepts as line item budgeting and program budgeting. Further, most clerks are unaware of recent innovations in methods of supervising personnel. For example, many clerks ultimately hire employees on the basis of personality rather than on the basis of merit. Other clerks are simply not apprised of modern procedures of coordination and control which may be employed to regulate the internal procedures of their offices.

Most specialized training that the clerks have received has been "on the job." This practice produces one very important negative consequence: individuals thus trained have a natural proclivity to accept methods utilized in the past and to reject new procedures as either unnecessary, too complicated, or inconvenient.

The backgrounds of the clerks dictate that they are generally very parochial and conservative in nature. Indeed, their roots are deeply implanted in the past and they are well-entrenched politically. As bureaucrats and important adjuncts of the county commission, they are compelled to oppose radical changes which would affect the relationships between themselves and their colleagues. They must also take precautions not to antagonize their constituency, the voters, by proposing new systems, be they clerical or technological, which are costly and lead to temporary, if not permanent, tax increases. This conservative orientation, coupled with the fact that clerks generally lack specialized training, has had a profound effect upon the operation of the courts and the judicial system as a whole. For quite some time now, court procedures have been attacked as archaic and outdated. Backlogs and case loads have been staggering. Defendants have been allowed to languish in jail for months and even years before their cases come to court. Often parties to civil litigation may be delayed as much as 5 years before

their cases are heard. One of the major reasons for these phenomena is that the court managers have not kept abreast of the modern techniques of business administration. Put simply, the personnel who have occupied the highest administrative positions in the system, the clerks, do not possess backgrounds which encourage innovation, flexibility and receptivity to change.

V. THE PROBLEMS OF COURT CLERKS

The court clerks were asked to suggest the problems they most often confront in performing their duties. Two general categories resulted: problems involving relationships with other political entities, and problems involving scarce resources.²⁹ Within the first category (55 percent), the state legislature ranked highest (48 percent). It is apparent from the responses that many clerks believe the legislature exerts too much control over them. Specifically, most clerks dislike the creation of the office of the State Court Administrator. Other clerks believe that they should play a more important role in constructing legislation. The legislature, clerks argue, does not really understand the problems of the clerk's office and constantly enacts laws which require rapid change. Often the effective date of the statute is so immediate that it is impossible for clerks to establish requisite procedures to deal with it. In Florida for example, clerks were expected to implement the Uniform Disposition of Infractions Act³⁰ in a mere 3 months. Furthermore, many statutes are poorly written and do not clearly indicate what is expected of the clerk. The recently enacted Residential Landlord and Tenant Act³¹ has caused numerous difficulties in this respect, and after a year of operation, it still presents formidable administrative problems for the clerks.

In the political entities category, problems with judges ranked second (33 percent). It is claimed that, in several locales, directions from judges lack uniformity. A number of clerks allege that local judges are simply uncooperative and have no real understanding of the clerk's problems. For example, several noted that certain judges continually seek to have additional deputy clerks present in the

29. The following percentages are based on N=38. Two clerks did not respond to the question and the remaining responses were either unintelligible, vague, or of a miscellaneous nature.

30. FLA. STAT. § 318.11 *et seq.* (1975).

31. FLA. STAT. §§ 83.40-.73 (1975).

courtroom. The clerk, on the other hand, simply does not retain a staff large enough to provide such service.

The county commission also presents problems for some clerks. One, for example, suggested that the commission did not understand the financial problems of the county and therefore was very difficult to work with. Other clerks apparently have personality conflicts with members of the commission.

There are few constitutional or statutory provisions establishing the relationships between the office of the clerk and other political entities. Although the statutes contain a great number of directives to the clerk regarding administrative minutiae, the matter of control over his office is all but ignored. Technically, the chief judge of each circuit is responsible for the administrative direction and supervision of the clerks in his district.³² However, no judge could be found who conscientiously assumes this responsibility. As a result the clerk is in fact essentially autonomous.

The consequences of this lack of supervision are numerous. Because no one authority is able to direct his activities, the clerk in some administrative problem areas is confronted by a myriad of contradictory demands from the various political organs which have inputs into his office. For example, the judicial branch incessantly demands rapid and efficient procedural attention to litigation, while the legislature is constantly formulating new procedural requirements which negate many of the clerk's attempts to expedite the handling of litigants. In these areas the clerk is likely to complain of "over-supervision" or "too much control." The malady is actually the result of too little coordination. The effects of this lack of coordination are compounded by the fact that very little communication occurs between the various political bodies. Feedback is therefore inhibited, and existing problems and inconsistencies are perpetuated.

In other administrative problem areas external direction is totally absent due to the unwillingness of any group to exercise supervisory responsibility. In such areas the clerk's own preferences become the procedural and administrative norm. He is free to select the course of action which is most conducive to the interests of his constituency or himself. Unfortunately, there is often a discrepancy between that which the clerk favors, and that which would be more

32. FLA. CONST. art. V, § 2(d).

beneficial, efficient, and effective for the county. For example, this situation has resulted in the continued reliance upon archaic recording and transcription techniques when more contemporary and efficient (yet expensive) methods are readily available.

Due to the lack of coordinating supervision from a centralized source, the various clerks' offices resemble sovereign domains. There is no uniformity or continuity either in procedural techniques or in the legal forms used in the various counties. Attorneys attempting to conduct business in more than one county are confronted by the task of familiarizing themselves with each county's practices. Often when a newly elected clerk assumes office he is compelled to discard many of the previous clerk's procedures due to his inability to comprehend the system. Moreover, the standard practice of most clerks is to have their own letterhead prominently displayed on any paper that relates to county business. This practice results in substantial waste, for all the old forms must necessarily be discarded when the clerk leaves office.

The folly of the clerks' desires to gain more independence should be apparent. Many of the inherent weaknesses in county administration in Florida can be traced directly to the independence they now enjoy. Vesting the office with greater authority and decentralizing the system even further would only accentuate present inadequacies.

The second category of problems encountered by the clerks is that of scarce resources (45 percent). Included among those mentioned were a lack of space (29 percent), time (12 percent), equipment (6 percent), and finances (6 percent). One of the reasons that these inadequacies exist is that many clerks make a concerted effort to reduce expenditures in order that they may administer self-sustaining offices. Indeed, many in the past have taken great pride in returning large amounts of money to the county commission to be used for other purposes.

Another reason that clerks do not enjoy adequate resources is that they continually oppose state-wide funding. Article V of the revised Florida Constitution (1972) was originally intended to eliminate many of the financial burdens on counties.³³ This was to be achieved by instituting a unitary budget system relying on state

33. Remarks by Susan A. Knudsen, Staff Director to the Joint Select Legislative Committee on Judicial Personnel, Jan. 13, 1975 (unpublished); Florida Supreme Court Position Paper presented to the Joint Select Legislative Committee, Nov. 1, 1973 (unpublished).

expenditures rather than on fragmented local appropriations. However, the clerks, who collectively represent a formidable political lobby in the state, perceive this program as a direct threat to their autonomy. The clerks correctly assume that their powerful position in local planning and budgetary matters would decrease, for a unitary budget would necessarily place the ultimate responsibility for all judicial expenditures in a centralized authority based in Tallahassee. Consequently, they have mounted an offensive which has thus far been successful in subverting the intent of Article V.

Additionally, a number of clerks (35 percent) complained of an excessive amount of red tape and paperwork. Their criticism generally is directed at the state legislature for creating the Uniform Case Reporting System³⁴ which requires a daily reporting of court related information to the state capital. In order to obtain standardized information concerning arrests, convictions, and the like, the state was forced to resort to this centralized, monolithic method. Extracting the pertinent information from 67 different types of county forms would have been financially infeasible. Thus, despite the clerks' complaints, the state-wide system appears justifiable.

VI. CONCLUSION

Many of the erroneous beliefs surrounding the clerks and their offices have been dispelled by the present research. In the first place, they have been extremely underrated in terms of power and authority. Their unique position allows them to identify and coalesce with both the legislative and judicial branches of government. Moreover, their numerous roles, functions and duties provide a solid political base from which to operate.

Second, they are predominantly political actors, if for no other reason than the fact that they are elected officials. Clerks face the cross-pressures of political demands for action not only from the county commission and the local judiciary, but from the attentive electorate as well. Further, their professionalism dictates that they operate, at least nominally, within certain bounds of policy neutrality and expertise.

Third, contrary to the speculations of some scholars,³⁵ clerks

34. FLA. STAT. § 25.075 (1975).

35. Oglesby & Gallas, *Court Administration-A New Profession: A Role for Universities*, 10 AM. BUS. L. J. 1, 7 (1972).

generally do not progress upward through the system. Indeed, only five clerks in Florida have previously occupied the position of deputy clerk.

Fourth, it was not anticipated that the backgrounds of the clerks would be so remarkably uniform. Little variation exists in their socio-economic status.

Fifth, it was not expected that the clerk would be as well-educated as was discovered. Only 35 percent had not attended college. Despite this fact, as was anticipated, the clerk generally has had little, if any, formal management training.

A final unanticipated finding is the degree to which the clerk influences policy. Information gathered during the personal interviews makes it clear that he virtually controls the sources of information for the county commission and the local court. Additionally, he plays an important role in the formulation of the county budget, both executive and judicial, and makes critical decisions regarding the expenditure of public funds.

Because of their political ideology, clerks influence policy in a conservative direction. This orientation has caused numerous consequences. For example, the clerks are in large part responsible for the archaic state in which the present-day local judiciary finds itself. More specifically, clerks often attempt to limit expenditures despite the need for new equipment and facilities. Also influenced is the manner in which they relate to the public. They are, for the most part, receptive to the needs of the business community and the attentive public. On the other hand, minority groups and the underprivileged often find themselves confronted by unfriendly clerks.

The present study represents an initial attempt to investigate the numerous facets (and nuances) of the county clerk's office. As is common in most exploratory research, more questions were raised than were answered. For example, to what extent do clerks exercise their enormous discretion? What are the dimensions of their power base? Most significantly, what are the consequences of their actions? Additionally, one might ask, how has revenue sharing affected their office? Clearly, more detailed examinations of the various power relationships between the clerk and other political actors must be conducted. It is hoped that the present endeavor will stimulate at least a modicum of interest in this direction.