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Selection and Training of Judges in Spain, France, West Germany, and England*1

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[Ed. Note] Currently the United States has no formal mechanism for the selection and training of the judiciary. Moreover, there has been little scholarly examination of this very important aspect of legal systems. The following Article is the result of primary field research into the selection and training of judges in Spain, France, West Germany, and England during the years 1978 and 1979. The authors' research and visits to the various judicial schools and centers were part of a study originally aimed at improving the Puerto Rican Judicial Branch through the establishment of a judicial candidate graduate school from which future judges would be selected. The Editors believe that this Article will fill a neglected void in legal scholarship.

I. Introduction

The question of how to attract, train, and retain for the judiciary those to whom we entrust the task of imparting justice has worried people of all ages in all countries. It is natural that this be so. Even the best laws, attuned to a world of rapid technological and value change, need an excellent judicial corps to implement them if there is to be a guarantee of efficient, impartial justice. Legal reforms will prove useless unless adequate attention is also given to the selection and training of the men and women who will implement the new laws.

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1. The authors wish to express their gratitude to the many people who in one way or another helped or stimulated this study. We wish to make special mention of Prosecutor Barnard Delafaye, judicial director of the International Section of the National Judiciary School in Paris in 1978, Prosecutor Horst Richter, Counselor in the Ministry of Justice for the West German state ("Land") of North Rhine-Westphalia, and the staff of the Hispanic and English law libraries of the Library of Congress in Washington, D.C., all of whom dedicated days of effort in order to provide the authors with a great deal of the information which appears in this article. The authors also want to give due recognition to the officials of the judicial schools in France and Spain, including Mr. Joaquin Salvador Ruiz Pérez, Director of the Madrid Center, without whose help it would have been impossible to update this study. Finally, we wish to give special thanks to Interamerican University Professor Judith Berkan, who helped translate and correct the text.
But how does one identify the qualities of these ideal judges? In only a generation's time the former consensus as to even the physical characteristics which judges should have has disappeared. For example, there are countries which no longer bar the blind from serving as judges, despite this undoubtedly serious handicap. If the consensus as to minimum, quantifiable, physical characteristics has begun to weaken, is it not likely that it will be far more difficult to reach a consensus on those academic and personal qualities of the ideal candidate? A serious inquiry into what these qualities are might perhaps seek answers, one U.S. author noted in 1948, "in ethics, in philosophy, in religion, in literature, or even in aesthetics, but not . . . [in] Political Science," not to mention the more limited field of law. Probably a universally valid answer does not exist.

In ancient Greece, some advocated selecting judges from among the eldest; others, from among the youngest. The first argued that experience made elders knowledgeable of the evils which prompt people to violate laws. The second argued that exposure to vice infused these elders with evil thus making them unreliable. Today the English choose experienced, respected elders to be judges. On the European continent, the tendency is to appoint young, easily trainable law graduates willing to accept a prestigious and stable career, if not one as well paid as that of a highly successful attorney or consultant.

We will not attempt to identify all the qualities of ideal judges. We must, however, make some mention of these qualities, for selection and training mechanisms seek to emphasize some of these and provide safeguards that will minimize the impact of judges possessing other undesirable qualities which were overlooked in the selection process.

The qualities of judges can for our purposes be grouped in two broad categories: teachable qualities inherent to learning ability, and unteachable ones inherent to personality. All would agree that ideal judges should be sensitive to social and human problems, hard-working, impartial, honest, patient, courteous, discreet, and capable of distinguishing between facts, lies, and half-truths. They should also be capable of making decisions rapidly, and if possible, be experienced, punctual, and dedicated to their judicial career.

3. As to age, see H. Kolt, The Role and Functions of the Legal Profession in the Federal Republic of Germany 69-83 reprinting West German reports to the XIth International Congress of Comparative Law, Caracas, 1982, who notes that twenty-three percent of German judges are under 36 years of age, while twenty-four percent are over 50. In France, the regulations of the judicial school establish that the majority of the aspirants should be under 28 years of age.
4. Martín, Estudio sobre la Escuela y Carrera Judicial, 12 I.A.U. L. Rev. 147 (1977). Our references are to the mimeographed text, p. 25. Not all would agree with Martín's classification. The Spanish Judicial School's regulations specifically state the institution aims to develop personality traits such as understanding and morality. The French school aims at furthering the student's understanding, impartiality, and independence.
5. Id. at 2-3. See also Rosenberg, The Qualities of Justices — Are They Strainable, 44 Tex. L. Rev. 1063 (1966). An excellent although somewhat outdated study on the subject is that of B. Shientag, The Personality of the Judge (1944). A more recent study, emphasizing the case of Spain, is authored by
these qualities are identifiable. The silly, the indolent, the corrupt, the inconsiderate, and the indecisive have all left an almost indelible mark in the years prior to their consideration for the judiciary. A careful investigation should uncover those traits.

Most would agree that an ideal judge should be knowledgeable in procedural and substantive law and highly skilled in those specialized areas in which he or she will be called upon to issue judgments. The judge should be a legal research expert and a trained draftsman, know judicial administration, have a vast general education, and be aware of current social problems. In addition a judge should be aware of how people have attempted, at different times and in different places, to seek out individual and collective solutions to similar problems.

It is obvious that not all of these qualities can be required of all candidates. It is not easy to find persons who are at once jurists, psychiatrists, sociologists, managers, artists, and prophets. Moreover, were it simple to identify them, it would be illusory to think these modern-day Athenian philosophers would all be eager and willing to rush to the bench. It is also unrealistic to think that even the richest and best endowed nations can offer all future judges a complete training in each of these subject areas. The problem, an eternal and universal one, is just where to draw the line.

In Spain and France, judicial candidates are expected to have a high degree of theoretical legal knowledge which is complemented by training in a judicial school. This knowledge is measured through admissions tests. In West Germany, there is a greater requirement for formal legal training, making complementary formal education in judicial schools unnecessary, or at least it is so perceived. In England, on the other hand, emphasis is placed on the candidate’s “unteachable” qualities and on general (not legal) knowledge which is measured by the candidate’s reputation in the community.

The importance given to “teachable” or intellectual qualities also varies. In England (and the United States, particularly on the appellate level), courts hear cases involving all kinds of disputes: criminal, civil, commercial, administrative, and constitutional. There the new judge can be expected to have only general skills. Specialized knowledge will be developed only with time, particularly if the judge is appointed to a court of limited jurisdiction. It is the attorney who must supply the judge with the technical information. On the other hand, in countries with specialized courts (criminal, civil, commercial, administrative, tax, or labor), the judge can reasonably be expected to have a higher level of subject matter expertise.

This Article begins with a brief explanation of the judicial systems in the four

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J. Tohaira, El juez español: un análisis sociológico, Madrid 1975. See Tohaira, supra this note, at 103 et. seq., 223 et. seq.
countries studied: Spain, France, West Germany, and England. The explanation is necessary to understand the functions carried out by judges in each system, and how this is reflected in the selection and training process.

Following this, we examine the most important aspects of the selection and training of trial judges in each of the countries. We note that the chosen mechanisms alone never guarantee that all the goals set for each country’s judicial system will be attained. Judicial selection and training operate in a larger educational, political, and historical context which, it is hoped, complements the formal judicial selection mechanisms. We end with some observations on the salient aspects of each system. As was noted by an English diplomat, who in the 1930s studied judicial selection and training in three of the four countries selected for our analysis, these observations should point to that which warrants imitation and that which, if copied, will only add to existing woes. We also hope our study will help fill the existing void in American legal literature regarding judicial selection and training in Western Europe in general and in Spain, France, West Germany, and England in particular.

II. Principal Characteristics of Judicial Organization in the Countries Studied: The Contrast with the United States

In the United States the judge, a professional in the law, has a tremendous amount of decision-making power. Nearly all trial courts are single judge courts


7. A recent bibliography on the subject evidences this void. N. CHINN & L. BERKSON, LITERATURE ON JUDICIAL SELECTION (1980). The bibliography lists only three articles on judicial selection for foreign nations other than England or Canada. Only one of these three, a 1973 article on the selection of West German federal judges, deals with a continental European country.

8. For purposes of this study, England includes Wales, but not Scotland or Northern Ireland, which have judicial systems somewhat similar but not identical to that of England.


10. In the first part of this article, we will attempt only a brief summary of the organization of the judiciary in the countries studied. This has been done so that subsequent references to the selection and training of judges can be placed in the appropriate cultural context. The following works offer a more detailed examination of the judicial system of each country. For Spain, see L. PRIETO CASTRO Y. FERNANDEZ, TRIBUNALES ESPAÑOLES: ORGANIZACION Y FUNCIONAMIENTO (3rd ed. 1976); Glos, Spanish Administrative Courts, 9 Mem. St. U. L. Rev. 591 (1979). For France, see Office National d'Information sur les Enseignements et les Professions (ONISEP), Ecole Nationale de la Magistrature (1975) (ONISEP is an organization attached to the French Education Ministry); G. VERPRAET, LE JUGE, CET INCONNU (1975); A. VON MEHREN & J. GORDLEY, THE CIVIL LAW SYSTEM 97-126 (2d ed. 1977). For Germany, see von Mehren & GORDLEY, supra this note at 126-41; N. HORN, H. KOTZ & H. LESER, GERMAN PRIVATE AND COMMERCIAL LAW: AN INTRODUCTION 27-44 (1982); E. COHN, MANUAL OF GERMAN LAW 36-48 (1968); Schram, The Recruitment of Judges for the West German Federal Courts, 21 Am. J.
of wide jurisdiction. This means they can intervene in a broad range of controversies. But U.S. judges do not have a monopoly on judicial functions. They share the legal decision-making function with others, principally jurors and "hearing examiners." The latter are generally attorneys who adjudicate a variety of controversies in the administrative agencies where they themselves are employed and whose decisions, if not appealed, are as final as those of continental European courts.

This system of administrative justice is foreign to the continental European mind. The administrative offices or executive branch of government in Spain, France, and West Germany exercise few judicial functions. Controversies between the government and the citizen are heard before special forums, generally attached to the judicial branch. In Spain, for example, the Audiencias and the Supreme Court have separate sections to consider adversary civil, penal, and administrative controversies. In West Germany, a hierarchy of courts (the Verwaltungsgericht and the administrative appellate courts) have been created alongside those other civil and penal courts, which are said to be of "ordinary jurisdiction." In France, a large number of controversies involving the executive are heard before the administrative courts (tribunaux administratifs and a series of other limited jurisdiction administrative courts) and the adjudicatory section of the State Council (Conseil d'Etat). Although formally these French administrative forums are not part of the court system, they operate as if they were, and their decisions are not reviewable by any court, including the Cour de Cassation.

In the three countries, resolution of administrative controversies is placed in the hands of people totally removed from the agency, which is directly interested in the results of the dispute.

For England, see R. Jackson, THE MACHINERY OF JUSTICE IN ENGLAND (7th ed. 1977); Shetreet, Judges on Trial: A Study of the Appointment and Accountability of the English Judiciary (1976). Due to its peculiarities and intimate relation to the selection process, an explanation of the English judicial structure appears in the following section.

In this article we will not look into jury selection systems, but it must be pointed out that they too are judges in the sense that they decide important issues of fact and law, at least in their application to particular cases.

An administrative agency justice system is sometimes found. Administrative agencies obviously can correct mistakes and at times a quasi-judicial mechanism has been set up for this purpose. The West German tax revisions, and in some instances administrative cases, can be argued before examining officers. Horn, Kotz & Leser, supra note 10 at 33-34; Cohn, supra note 10, at 39. Military courts in all countries provide another case in point. The examples listed constitute exceptions, however, and in general quasi-judicial forums are rarely used.

Spain also has a State Council. The French body exercises both advisory and judicial functions. In Spain, by contrast, it is not an adjudicatory forum, but one whose sole function is to consult with and advise the government. See Organic Law of the State Council (Nov. 25, 1944), arts. 16, 17; Nuevo Diccionario de Legislación, v. No. 6671, at 1099 (1976). The French State Council exercises judicial functions for historical reasons, the explanation of which is beyond the scope of this article.

An additional difference between the French system of administrative justice and that of Spain and West Germany is that the French administrative judges, in general, are graduates of the National School of Administration (Ecole Nationale d'Administration) and not of the judicial or magistrates school.
This points to another difference between the American and the continental European system: the degree of specialization. Many U.S. courts are forums of general jurisdiction. Judges there can decide all types of controversies (civil, mercantile, criminal, administrative, etc.), although in practice, in some jurisdictions, many judges are assigned only a particular kind of case and some specialized courts review cases dealing only with certain technical matters, such as patents and government claims. In continental Europe, a civil judge has no power to decide an administrative matter. The appointment only allows the judge to decide controversies of a civil nature. To decide other kinds of cases, the judge would have to be appointed a second time, as a judge of another court or "section." Such an appointment requires first that the judge meet the legal requirements of that position. In Spain, for example, the judges of the Tribunal Central de Trabajo, which decides labor law controversies, must have some specialized knowledge in this area. Such an appointment also requires the approval of the judge. Indeed, in all three continental European countries studied, it is contrary to the law or the constitution even to promote a judge without first obtaining his consent.

Four even more important aspects distinguish U.S. judges and give them greater power than their continental European counterparts. U.S. judges can review the constitutionality of the laws. Almost all types of controversies may find their way into court. U.S. judges, except in some appellate panel courts, act alone, and therefore their vote is not diluted by other judges. On the other hand, those chosen to carry out judicial tasks in continental Europe are expected to, and generally do, view themselves as civil servants whose task it is to implement existing law, not to create new law.

In Europe, many judges lack the power to declare laws unconstitutional. This
power lies in constitutional courts created by constitutional charters precisely for that purpose. These are: the French Constitutional Council, the West German Federal Constitutional Court, and the Spanish Constitutional Court. Continental European magistrates generally must apply legislation once it is passed, or if its constitutionality is challenged, once it is validated by the constitutional court. The most that an individual judge can do is interpret the law liberally.

Furthermore, in continental Europe, because many such cases are considered political in nature, the number of controversies considered susceptible to resolution by the judicial branch is much fewer than in the United States. Another important factor which limits the powers of the continental European judge concerns the role the judge feels called upon to play. Few Europeans would deny the existence or even the benefits of judicial lawmaking. For example, courts have developed the rules of "good faith" in West Germany and strict liability in France. In fact, recent revisions to the Spanish Civil Code have formally recognized that judicial precedents are a source of law. Nevertheless, it is felt that courts in general and trial courts in particular, should shy away from exercising a lawmaking function. Education, history, recruitment at an early age, and the fact that career advancement depends upon the views of others who may frown on judicial lawmaking inhibit the European judge far more than the fear of reversal on review in the United States, where judges are sometimes appointed precisely because of their judicial activism.

Finally, in Europe, as a general rule, only routine cases or urgent interlocutory matters are decided by courts of one judge. Other cases are generally heard, even at the trial level, by courts involving more than one judge, hereinafter referred to as "collegiate courts." This fact, taken together with the absence of "hearing examiners," has meant that a very high proportion of legal professionals work in the judicial branch. In early 1979, for example, close to twenty percent of Germany's 15,481 attorneys were functioning as judges.

17. See Spanish Const. of 1978, arts. 159 et seq.; Const. Fifth French Republic, arts. 56 et seq.; Const. German Federal Republic, arts. 93 et seq. These bodies are in effect political bodies whose members are entirely, or almost entirely, elected by the legislative chambers or by the executive.


19. The current European tendency, however, is to open courts to persons or entities who in the past had been denied a cause of action. See, e.g., Access to Justice, Vol. I, Books I and II (M. Cappalletti & B. Garth eds. 1978).

20. See Spanish Civil Code, art. 1.6 (rev.).

21. An excellent analysis of the importance of "judicial psychology" appears in Von Mehren & Gordley, supra note 10, at 1145-52.

22. Horn, Kotz & Leser, supra note 10, at 41. See also Kotz, supra note 3, at 71. Although the percentages in Spain and France are less, there are also a great number of attorney-judges. In the U.S. system, the fact that hearing officers are not counted as part of the judiciary serves to hide the real number of adjudicators.
One last point that should be noted concerns the use of lay judges, rarely found in the United States. Of those countries we studied, only in Spain does the legal profession have a comparable monopoly of the judiciary. The English judiciary, by contrast, is characterized by the use of lay judges. There have been years in which close to ninety-seven percent of criminal cases have been heard before lay judges, called Justices of the Peace. In France, trials involving disputes between merchants, or between workers and employers, for example, are heard before collegiate courts made up exclusively of a panel of lay judges elected by their peers, the so-called Tribunaux de Commerce and the Conseils de Prud'hommes. In West Germany, the tendency is to delegate the judicial functions to judges who have formal legal training, but the county level criminal trial court, the criminal division of the Amtsgericht (also sometimes called the Schöffengericht), is also a collegiate court made up in part by elected lay judges. Lay persons also sit in commercial and in specialized administrative, labor, and tax courts.

In the pages that follow, we will pay special attention to the selection and training of professional judges and English lay judges. We will also explain the operation of the selection and training system only with regard to civil and criminal courts, the so-called courts of "ordinary" or "general" jurisdiction, which can serve as a model for the whole system and which, in any event, are the most numerous. We will not address the system of promotion or selection of judges in the appeals courts, the constitutional courts, or the special courts.

III. THE JUDICIAL SELECTION AND TRAINING SYSTEMS

From the perspective of the appointing power, judicial selection systems can be grouped into four different models: selection through popular election, appointment by the executive, selection by the legislature, and appointment by the judiciary itself. In the final stage of the process, the majority of the countries use the executive appointment model, but if we examine the entire process, we note the use of mixed models. In Spain and France, formal appointment is made by the executive, but the judiciary has effective control over the judicial
schools, and the schools’ graduates generally fill court vacancies. In France, selection to some lay courts is through election by one’s peers. In West Germany, although it is also the executive which formally makes the appointments, control is shared with the political parties which participate in the selection process through the state and federal parliaments. In England, where appointments to all but the highest level in the judiciary are made by the Lord Chancellor in the name of the Crown, there are mechanisms of popular control in that the task of advising the appointing power is delegated to more than one hundred local committees made up of community representatives. The Lord Chancellor rarely ignores the recommendations of these committees.

The training processes, like the selection methods, can also be grouped into different models. At one extreme is the case of England, where many of the judges appointed to trial courts have little or no legal training, and prior to their appointment little effort is made to provide them with legal knowledge. Trial judges in principal cities and appellate level judges are legal professionals, usually selected from among barristers or practicing attorneys. They, however, are exceptions to the rule.

In Spain, although all judges except justices of the peace are required to have law degrees, after their appointment they must undertake further studies and additional internship training under the supervision of the Judicial School in Madrid. France has a system similar to that of Spain. French judges are generally required to be professionals in the law, and subsequent to their appointment they must pass through certain courses and an internship supervised by the Ecole Nationale de la Magistrature (E.N.M. or National Magistrates School) in Bordeaux. In France, however, there are important exceptions to the general rule.

West Germany represents the other extreme of the countries studied. Except for a few lay judges, the judge in West Germany must be an attorney, which implies that he or she has received wide training prior to appointment. Once appointed, however, the West German judge is not required to take additional courses. The Deutsche Richterakademie, the judicial school in Trier, only provides short-term, voluntary continuing education seminars. Similar voluntary continuing education programs are organized by the ministries of justice in the various states.

Each national system is intimately related to history. The fact that France and West Germany allow for lay courts has, at least in part, an historical explanation. The commercial courts, for example, date back to the Middle Ages, when the business community formed a separate class governed by special “mercantile law” or “commercial law” administered by businessmen themselves. All French and two out of the three West German collegiate commercial trial court judges

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27. PRIETO CASTRO, supra note 10, at 34.
28. Perhaps it would be correct to say that the West German attorney has been trained to be a judge. See HORN, KOTZ & LESER, supra note 10, at 36; KOTZ, supra note 5 at 69.
are still members of the business community. The search for expertise also plays a role in the existence of lay judges, as is obvious from the fact that they are appointed to the labor or social legislation courts in these countries. In West Germany the tendency is to move away from lay judges in penal matters. Tradition is the main reason lay penal judges remain in existence.

Central to the selection and training system is how each country perceives the role courts should play in society. The English see the courts as guardians of the procedural process which aims at insuring that parties have a real opportunity to convince the judge or the jury of the equity of their position. Since the essence of what constitutes fair play is to be found not within the exclusive realm of attorneys, but rather in that of citizens held in high esteem, nothing is more logical than to choose adjudicators from among the latter, providing them, of course, with legal counselors who can indicate the parameters within which they may exercise their discretion.

In continental Europe, on the other hand, the court is seen as an instrument to guarantee the rights of those who have acted consistently with a pre-established norm. The idea of equity is not completely rejected. Those who abuse the law, act in bad faith, or sue another claiming violations they themselves have incurred but choose to ignore, will find no solace in the law in continental Europe. This is also the case with plaintiffs in common law jurisdictions where notions of "unclean hands" and "estoppel" exist. The difference lies in the perception that codified law encompasses that which is just. For this reason it is considered necessary to have judges who are trained and knowledgeable in the law.

Finally, the prior training of the aspirants to the judiciary will of necessity determine whether they will be required to undergo additional preparation prior to exercising their functions. In England, it is accepted that lay judges should have a minimum of legal knowledge. In order to achieve this, lay judges are asked to attend special courses and seminars and are provided with legal advisors attached to the court. In France, where many new judges are recent law school graduates who were not required to take comprehensive courses in judicial procedure, the Judicial School provides internships and training in procedure. This training provides the new judges with practical knowledge of judicial administration and familiarizes them with the institutions with which they will work in the course of their careers, such as penal institutions, police stations, banks, and chambers of commerce. In Spain, where a law student is

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29. Tallon, Civil and Commercial Law, 8 INT. ENC. COMP. Ch. 2, at 7-9.
30. See infra note 56.
31. F. GorPhe, les décisions de justice, 58 et seq. (1952). It should be added that "new" techniques of judicial interpretation give much greater flexibility to written laws today than in the 19th century, and even then codes were never strictly construed.
32. The decision on the European continent to select new judges principally from among young people has resulted in countries opting for a costly collegiate, or panel, court system. In his article, Le judge unique en droit francais, 29 RIDC 659 (1977), Roger Perrot points out the following:
required to pass certain basic courses on procedure in order to obtain a law
degree, the period of study in the Judicial School is much shorter. In West
Germany, where the student attempting to obtain a law degree must undergo
training designed with the judiciary in mind and where many candidates for the
judiciary have in the course of their university training passed through manda-
tory internships in judicial institutions, no further training between the ap-
pointment to the judiciary and the actual exercise of judicial functions is re-
quired, although some complementary training is provided prior to the judge’s
achieving tenure.

In the following section we will first look at the judicial school model. Follow-
ing this, we will look into the non-school, political selection system. Thirdly, we
will look at the lay judge selection system. Finally, we will examine judicial
continuing education programs. More reference will be made to France than to
any other country, because the highly structured French system makes extensive
use of judicial schooling, continuing education, and lay judges.

A. Competitive Entrance Examinations and the Judicial Schools: Spain\textsuperscript{33} and France\textsuperscript{34}

Both France and Spain have developed a two-phase, academically modeled
selection system. The first phase consists of examinations which rank candidates
mainly according to legal knowledge. Once selected, the aspirant enters the
second phase: formal studies in theoretical and procedural subjects at the judi-
cial schools in Madrid and Bordeaux and internships or special courses else-
where. Internships constitute the principle part of this phase although, particu-
larly

A system of justice involving a single judge is, in fact difficult to reconcile with a system of
recruitment in which a person becomes a member of the judiciary at a young age (between 27
and 30 years of age), making the judiciary a career. The collegiate, or panel, system allows a
young judge acting as an advisor [that is to say, not as the panel president], to acquire practical
professional training over the course of several years. Their exercise of responsibility is diluted
by the panel under the control of experienced judges.

\textit{Id.} at 667 (translation provided). The increasing number of cases has forced the state to use single
judges in matters such as eminent domain, provisional remedies, the determination of probable cause,
certain extraordinary remedies, the supervision of certain procedures related to family, and certain
common criminal proceedings such as driving under the influence. \textit{Id.} at 663-73. \textit{See also} HORN, KOTZ & LESER, supra note 10, at 29-32.

\textsuperscript{33} Part of the material on Spain was obtained in an interview with Mr. Antonio del Rosal, director of
the Judicial School of Spain. In addition to this information, the reader’s attention is directed to an
excellent study by PRIETO CASTRO, supra note 10, in the Regulations of the Judicial School and in the

\textsuperscript{34} The information on France was obtained principally from interviews with the Magistrates
Bernard Delafaye, supra note 1, and Eric Enquébec, who was in charge of specialized training in the Paris
Center of the E.N.M. in 1982. It is also based on the following readings: ONISEP, \textit{ECOLE NATIONALE}
\textit{[hereinafter E.N.M., ECOLE NATIONALE]}; VERPRAET, \textit{supra} note 10. The School was created by virtue of
Art. 14 of Ordinance 58.1270 of December 22, 1958. At that time it was known as the National Center
of Judicial Studies (\textit{Centre National d'Etudes Judiciaires}). Law 70-615 of July 10, 1970, which is still in
effect, gives the School its current name and structure. To a certain degree, Law 80-844 of October 29,
1980 modifies and liberalizes the law.
larly in France, formal education is also provided. In both systems, the number of applications for the admissions examination, as well as the number of vacancies in the schools, are limited. This guarantees recruitment of all graduates.

Both phases serve as a sieve. Through the method "por oposición" (by opposition) in Spain and "par concours" (by competition) in France, only the candidates with the best scores enter the school. Once the period of schooling is completed, students with the highest grades are allowed, in principle, to choose to which of the available vacant positions they will be appointed. Weaker candidates are weeded out and average students sent to less coveted and less sensitive courts.

The two judicial schools, though similar, are not identical. The Spanish school, in operation since 1950,35 theoretically has a broader mission than its French counterpart, which seeks to train only judges and prosecutors. Since 1966, the Madrid school has been empowered to select and train all functionaries attached to the Spanish judiciary. These include local judges and prosecutors not part of the judicial career, court clerks and forensic physicians and medical technicians attached to the National Institute of Toxicology.36 In practice, however, it was not until 1978 that the School started to prepare itself to train officials other than career judges or prosecutors.

The major academic differences between the judicial schools in France and Spain are that (1) studies at the French institution last far longer than in Madrid, (2) contrary to what occurs in Spain, a substantial number of French judges are neither recruited nor trained by the school, and (3) the French Judicial School's continuing education program is far more developed than its Spanish counterpart. The first of these differences may be attributed to differences in the content of each country's basic legal studies; the last two, to the complexities of the French judicial system where exceptions are often almost as common as rules.

1. The French Recruitment System: Norms and Exceptions

It could well be said that French recruitment, and even their judicial system, is characterized by rigid norms and exceptions to them. From a comparative standpoint, France is the only country studied in which the administrative courts do not form part of the judicial system and in which judges and prosecutors form part of the same profession. The system emphasizes the need for judges to be skilled professionals, yet the French are also proud of their lay judges. While it is reaffirmed that judges should be selected through the examination system,

35. TOHAIRA, supra note 5, at 46-47. The School, created by virtue of a law passed on May 26, 1944, is located on the university grounds adjacent to the large Casa de Campo park in Madrid. It is the oldest of the schools we studied. The French School was authorized by a law passed in 1958, and the West German School by an agreement between the state and federal governments in 1973.

36. See Law 11 of March 18, 1966, which modified the original Law of May 26, 1944 which authorized the creation of the institution.
the principal lay judges are elected by their peers. Professional judges are required to submit to the rigors of the National Magistrates School, but a certain number are exempted from theoretical studies at the Bordeaux facilities. The litigation explosion has forced the creation of additional positions and has brought about a relaxation of the recruitment requirements. The administration has felt it should fill all vacancies quickly, even if this means recruiting judges who have not undergone training at the Judicial School.

Access to the French judicial profession can be obtained in three ways: through the School, through direct appointment, and through temporary or contractual appointment. Although the French tend to select judges from among the graduates of the Ecole Nationale de la Magistrature (E.N.M.), in the period between 1961 and 1974, fourteen percent of the new judges came into the judiciary through contracts, and twenty-three percent entered through direct appointment. Temporary appointment consists of the selection of former magistrates and certain other officials with law degrees to carry out functions in the lower courts. Such appointments last three to nine years. A fourth hybrid route for recruitment was created in 1980 and was supposed to last three years but will now be used until at least 1991. Through it, experienced attorneys who pass the entrance examinations and spend only a few months at the school are called to fill new vacancies. Legally, up to half of the new judicial vacancies until 1991 could be filled by this recruitment method.

Direct recruitment aims at government officials and professionals designated by law with several years of experience. The required experience and title vary in accordance with the hierarchy of the court to which the person is to be appointed. The great majority of those recruited by this method have formal legal training prior to their entry into the judiciary. The law has limited the number who can be selected by this means to ten percent of the total, but it allows

37. The school should technically be called the "Magistrates School." As mentioned above, in France there are not two distinct judicial and prosecutorial professions, but rather a single magistrate's profession for judges and prosecutors. Below, we will point out the importance that this aspect has in the training process. In Spain and West Germany, judges and prosecutors are part of related but distinct careers. Recruitment and training are very similar to that of judges in these two countries.

38. Even the decision to locate the School in Bordeaux is exceptional for the professional schools and responds to an attempt at decentralization. Some groups, such as the Judges Union (Syndicat de la Magistrature), have criticized this decision. See their publication, La formation du magistrat, 35-38 (1968).

39. The judges' unions (the Union syndical de la magistrature and the Syndicat de la magistrature) have criticized "lateral recruitment," and in particular direct appointment, asserting that the government's excessive use of this power weakens the judiciary and the independence of judges. See Le Monde, Nov. 4, 1978, p. 13; June 22, 1979, p. 18.

40. This recruitment method was supposed to have ended in 1980, but due to the need to fill positions, its use was extended on October 29, 1980.

41. Among these are included attorneys with a minimum of eight years of experience, notaries, marshalls and clerks of the courts with an equal number of years of experience, and law professors and assistants with at least two years of experience.
for a higher percentage in lower courts, especially where no E.N.M. graduates are available. The government argues that the number of positions it has been unable to fill with school graduates — some 500 in the last few years — has made this recruitment method necessary.

Recruitment through the judicial school occurs in two ways: through direct access\(^{42}\) (without having to submit to the entrance exams) and through the "concours" or competitive admissions examinations. Exemption from the examinations is discretionary with the recruitment panel. There is no right to it. From 1961 to 1978, an average of four percent of the applicants were exempted from the examination requirement. Generally, the exemption is limited to certain legal professionals with varying amounts of experience, such as attorneys, notaries, judicial employees, and teaching assistants in the law schools. These recruits do not undertake their studies in Bordeaux; they go directly to their internships (stages) for on-the-job training.

The Spanish system contrasts sharply with the French recruitment system and its exceptions. Except for a very limited number of special court lay judges, Spanish judges are all recruited through the school and undergo school-supervised training prior to assuming their judicial functions.

2. The Selection Examinations

Entry to both the French and Spanish judicial careers depends upon passing one of the two examinations each school offers. The first of these (the Spanish turno libre and the French premier concours or concours étudiant ou externe) is open to law school graduates with at least a bachelor's degree (licencia or licence). All applicants must be nationals with no penal or adverse moral records. Applicants are young men and women who aim to make a career in the courts. In France they may be no more than 27 years old, although extensions may be made in accordance with factors set out in the law (one year for each child, for example). No maximum age limit exists in Spanish law (only a minimum age limit of 21 years), but in practice new judges are generally young.

In France, institutes or centers of judicial studies affiliated with principal universities offer preparatory courses for the concours, held twice each year. (The Spanish examination is offered only once each year.) Economic aid is available to those who enroll in these courses.

The second examination (the Spanish turno restringido and the French deuxième concours or concours fonctionnaire ou interne) is reserved for government officials. In Spain, one-sixth of all available spaces are reserved for these applicants, who must be local judges (jueces municipales or comarcales) or district prosecutors and

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42. Direct access to the school should not be confused with direct access to the judiciary which we have just described. The requirement of experience for the attorney who requests direct access to the school, for example, is only three years, while the minimum required for direct entry into the judiciary is eight years.
who therefore have law degrees. These officials normally deal with minor controversies and, while they are part of the judiciary, they do not share some of the benefits of career judges or prosecutors. Access to the school thus means a promotion.

The second French examination is open to a designated group of non-judicial functionaries: government employees, military personnel, and others with at least four years of public service. The maximum age for taking this examination is 32, five years more than for the first examination. Law degrees are theoretically not a prerequisite for admission to judicial schools. Experience substitutes for legal training. However, it is understood that non-judicially trained applicants will have difficulty gaining admission. Thus, most of those selected through the second examination (no more than one-fourth nor less than one-sixth of all recruits) have had a legal education even if they do not work with the judicial system. To those without such schooling, a preparatory course (cycle préparatoire) is offered to those who pass the special admission tests designed with the second examination in mind. Although the number of admissions is on the increase, the number of applications is increasing at an even faster rate. In 1973, 24 of 50 aspirants were admitted to this preparatory course. In 1980, 50 of 236 were admitted. The course theoretically provides the means to compete on an equal basis with examinees who have an extensive legal education. The information bulletin of the School, however, advises lay candidates of the difficulties they will face compared to others who have undergone university legal studies. Officials who are admitted to the preparatory course do not lose the benefits of their government employment. If eventually they are not admitted to the school or if they do not complete their studies, they return to their prior positions, with all the prior prerogatives.

In both Spain and France, the content of the selection tests leading to admission to the school are the same for both examinations, that is, all candidates, whether students or officials, are considered in the same selection process. Subsequently, in the internship phase, all undergo the same training and practice.

The selection examinations cover a wide range of subjects, some in detail, and candidates must review all law school subjects if they hope to succeed. There are written and oral exams, and in the case of France, foreign language and physical fitness exams as well. In some instances, statute and case books may be used. In others, candidates are not allowed to use any auxiliary texts.

The subject areas are published to allow candidates to know what to expect. The French school publishes its subjects in the school bulletin. Its Spanish counterpart publishes a list of questions jointly with the test date and regulations.

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43. Statistics reflect that of those admitted to the School in 1974, the year in which the percentage was the highest among those years for which we have data, some six percent had no prior extensive legal training.
announcement in the official daily newspaper, the Boletín Oficial del Estado (the equivalent of the Federal Register). The June 29, 1978 issue, for example, listed 108 questions on civil law, 89 on criminal law, 47 on commercial law, and 79 on court administration and social, administrative and private international law. The questions are chosen at random and are quite broad, which in practice means that all legal matters are being tested.44

The examinations themselves differ as to length and subject matter. In Spain, candidates must take two one-hour oral tests before a panel and one two-hour written examination. In the first oral test the candidate is asked five questions on civil, penal, and commercial law. In the second one, the candidate is asked six questions on procedural law, court organization, social and administrative law, and conflicts of law. The two-hour written examination consists of a case resolution. Statute, regulation, and case books may be used in an initial fifteen minute preparation period.

The French school examinations are longer and require more writing. The candidate must first pass four written tests (épreuves d'admissibilité), each five hours long, prior to qualifying for the oral examination on law and the foreign language and physical examinations. The written test subject areas are: general knowledge (a category which once existed but was later eliminated from the Spanish examination), civil law, penal, or public law, and legal analysis. The last requires candidates to comment on laws, regulations, decisions, records of legislative sessions, and other legal documents.

Candidates who pass the written tests are admitted to the six oral tests (épreuves d'admission), each lasting 15 to 30 minutes. Each examination is preceded by a one hour open book (statute, regulation, and case books) preparation period. Oral test subjects are: a) general knowledge, b) commercial or administrative law, c) criminal or public law, d) procedural law and judicial organization, e) social or welfare legislation, and f) a foreign language. Candidates also undergo a mandatory physical fitness test worth about three percent of the final grade.

The French school allows a candidate to sit for a second foreign language test or take an extra test in one of the following uncommon sports: judo, alpine climbing, parachute jumping, and piloting of planes or gliders, all in order to raise his or her grade a maximum of two percent. This emphasis on physical fitness is peculiar to the French system.

44. Among the Spanish civil law questions are the following:

- The legal relationship: Individual rights: concepts, structures, and categories. Acquisition, exercise, extension, conservation, guaranty, and protection of these rights.
- Objects of law: Things: concept and classes.
- Patrimony: concept and classes.
- Termination of obligations: Causes of termination; compensation; novation; remission or confusion and impossibility of performance.
The French do not publish a list of all possible test questions. They publish a sampling of past written examination questions in each of the main subjects. As in Spain, these are sufficiently broad to require candidates to review everything they studied in law school.45

Few gain admission to the schools and a Spanish sociological study shows that, given the time required to prepare for the tests, the great majority of those who succeed come from the upper and middle classes. The poor cannot count on family aid during their study period. Fewer than ten percent of the Spanish aspirants are admitted.46 According to information provided by the Spanish school director, in 1982 the school accepted 56 judicial, 48 prosecutorial, and 150 court clerk aspirants. At the end of the year, another 80 judicial aspirants were expected.

Statistics published in the French school publications show that in the last few years some twenty to thirty percent of the candidates have been admitted. In 1974, for example, 255 of a total of 1,066 aspirants were admitted to the school. In 1978 and 1979, the number of aspirants had increased (1,637 and 1,592 respectively) and the number admitted decreased (174 and 153 respectively), thus the admissions rate decreased to approximately ten percent of the candidates. Under the March 22, 1980 decree, the school may admit students twice yearly and thus cover the increasing number of vacancies. This has increased the number admitted but, as we will see, has forced the School to cut the duration of the formal period of study.

From 1974 to the present, approximately equal numbers of men and women have been admitted (677 and 623 respectively). From 1959 to 1973, the ratio of men to women was slightly less than two to one (a total of 896 men and 495 women). Spanish statistics were not available.

3. The Curriculum: Courses and Internships

Once admitted to the schools, students normally undergo initial theoretical training and then are required to take internships in courts and prosecutorial

45. Among the questions included in the last years, one finds the following general knowledge questions: the individual and the state at the beginning of the 19th century and today (1960); sound and image in contemporary society (1962); economic growth and the quality of life (1972); the child in contemporary society (1975); the right to happiness (1976); and why be a judge? (1977). Examples of civil law questions include: legal acts of the insane (1961); quasi-contracts (1967); equality between spouses (1974); abuse of law (1977); commutative justice and bilateral contracts (1979). In criminal law we have the following examples: criminal liability of legal persons (1960); intention and motivation (1970); checks without funds (1971); justifiable violations (1978). In the public law area there were questions on: the responsibility of the state in common law (1966); the powers of the President of the Republic from 1875 to the present (1971); the structure of the parliament in the principal contemporary states (1976).

46. TOHAIRA, supra note 5, at 39-40. In 1965, only one of 20 applicants gained admission to the school. This further contributes to substantiate Tohaira's conclusion that, as a group, the Spanish judiciary is quite conservative. Id. at 46. Costly as subsidies for French judicial school candidates or West
offices. The major difference between the two schools lies in the length of these phases. Both institutions, however, are very much aware of the need to provide young judges with real life situations. The following quote, taken from the French School's bulletin, illustrates this:

Whatever the form Justice may take, it is the particular case, a thousand times repeated and a thousand times distinguishable, which is the competency and life of the magistrate; Justice is tailored to each person.47

The Spanish school is the shorter of the two. Schooling there lasts a year, out of which nine months are set aside for internships. The French institution trains its students for two years and requires them to undergo an additional four months of continuing education in the course of their first eight years as judges. Almost a year and a half of the two initial years is set aside for internships.

Courses at the Madrid facilities are both “formative” (legal sociology, ethics, legal method, and foreign languages) and practical (case analysis, criminology, legal medicine, forensic psychiatry, and judicial practice). Personnel and budget difficulties are obstacles to implementing an inter-disciplinary curriculum.48 The need to fill judicial vacancies was also pointed out as a bar to more advanced courses. The fact that Spanish law students must all take courses in procedural law,49 a subject of obvious importance to the judge, makes a shorter stay at the judicial school possible, though perhaps not desirable.

The French candidates once underwent an initial nine month training period at the Bordeaux facilities, but again, the need to provide trained personnel to fill ever increasing vacancies led to a shortening of the initial formal education phase to four months, complemented later by an approximately two month long phase at the new Paris facilities. This new calendar allows the school to train two groups of new judges and prosecutors each year.

In Bordeaux, students take theoretical courses and undergo supervised internships in places such as penal institutions, courts, police stations, law firms, and social security agencies. The theoretical instruction is carried out principally through modules (Directions d'études), which operate as seminars or practical workshops. Students examine files and write decisions. Emphasis is given to dialogue and role playing.

The directors of the School believe that the first study period in Bordeaux and the first internship should prepare “generalists.” They believe judges and pro-

47. E.N.M., ÉCOLE NATIONALE, supra note 34, at 49 (translation provided).
48. TOHAIRA, supra note 5, at 212 et seq.
Prosecutors should have an overall vision of the entire legal system. The early training includes lectures and complementary courses on general theory, but actually emphasizes the practical and procedural aspects of civil, public, administrative, and criminal law.

Teaching procedural law in the French Judicial School is, in our view, indispensable. The French law schools generally place little emphasis on procedural rules. Contrary to the practice in Spain and West Germany, procedural courses in France are elective. Prosecutors who have not taken procedural courses must fill these gaps on their own. French school officials argue that self-teaching often suffices. They emphasize that the School’s required procedural seminars assume students have a basic knowledge of French procedural law, which in any case is far less complicated than U.S. trial procedure. The Bordeaux School also requires introductory and specialized courses in law-related subjects, such as legal medicine, psychiatry and psychology, psychosociology, accounting, and foreign languages.

The initial schooling for judges in France and Spain is followed by internships. Spanish candidates are sent to courts, asked to solve cases seen before collegiate courts, and required to participate in all aspects of a judge’s career. During the internship training the student is under the supervision of an official attached to the school (the jefe de Prácticas) who evaluates the student’s work. Grads from the Madrid school and the internships are then sent to the Justice Ministry which ranks students accordingly. When making appointments, the Ministry takes into consideration, but is not bound by, the preferences of those who received the highest grades.

The French training is somewhat more complex. The period of study at Bordeaux is followed by 15-month internships at centers throughout the country. These are divided into residency periods of varying duration, with the students working in prosecutors’ offices, both hierarchies of trial courts, cours d’instruction, juvenile courts, and the offices of the criminal sentence supervision judges (juges d’application des peignes). During these fifteen months, the students are periodically re-grouped in Bordeaux for discussion sessions and orientations. After the first fifteen months the students go to Paris for two months, taking internships in major central public and private administrative offices, hearing lectures, and performing research related to legal drafting.

The differences between the Spanish and French internships are partly due to the structure of the judicial systems. French magistrates must be prepared to be

50. See, Medina Lima, supra note 49 at 177; the provisions of the 1978 catalogues of the University of Paris II, Programs of “licence” and masters degrees; Nagourney, Symposium: Legal Education, 5 Comparative Law Yearbook 3, 45 et seq. (1981). See, in particular, id. at 57.
51. The Court of Instruction is a penal investigative court whose powers include determining probable cause for prosecution and gathering evidence in favor or against the accused.
52. A judge who, for purposes of individualizing penal sentences, supervises convicts and maintains jurisdiction over them, both in and out of prison.
either judges or prosecutors whereas in Spain the two careers are related but distinct. The differences are also due to the French demand that judges be aware of social and economic realities and take them into consideration when solving judicial controversies. While it may be argued that the exposure is too limited, it must also be admitted that the training system institutionalizes consideration of public policy issues, something which is rarely explicit in the short judicial decisions of French judges.

The French internships are followed by one month of study and written and oral tests. The written exam, lasting six hours, consists of drafting a decision or a prosecutorial statement. The two oral tests last fifteen minutes each. The first is a presentation of a civil or criminal case; the second is an exchange with the examiners. Grades in these tests are added to those obtained in the courses at Bordeaux and the internships and sent to the President of the Republic. Students with higher grades have the first choice of where they will be appointed. The general norm is to appoint the new judges to collegiate courts where the impact of any mistakes due to inexperience will be minimized. In recent years, however, due to the current shortage of judges, some students have been named to single judge courts.

Once the appointment is made, the new French judge must still pass through one last internship in a prosecutor's office or in a court similar to that to which he or she has been appointed. This last internship (the stage de préaffectation) is designed to specialize the judge or prosecutor in the subject matter and skills of the particular position to which he or she has been named.

Up to this point, the auditeur de justice, as the student is called, has received 24 months of theoretical and practical education. Four months of training remain, divided into periods of fifteen days to one month throughout the eight years following the judge's appointment. This continued training is mandatory and of a theoretical nature. After this, the judge may enroll in voluntary continuing education courses organized by the school.

4. School Organization and Budgets

The Spanish institution is supervised by a Director (a judge or prosecutor) and the Patronato, a supervisory body made up of the Minister of Justice (its president), the Supreme Court's chief Judge and prosecutor, the Rector of the University of Madrid, the General Director of Justice, the Technical Secretary General of the Ministry, the Dean of the School of Law, the Dean of the Madrid Bar Association, and the Director of the School. The Director and his or her staff are responsible for the curriculum.53

53. The structure we are describing appears in the Regulations. The political transformation which Spain has undergone since Franco's death has made certain portions of the Regulations inoperative. The Director of the School indicated to us that as soon as the New Organic Law of the Judicial Power is
Teaching is carried out principally by a number of full-time professors appointed for two years, subject to renewal. The inter-disciplinary and continuing education courses are taught by persons who need not be career judges or prosecutors. These teachers are recruited on a course-by-course basis.

The French school is directed by an Administrative Council made up of 18 people including the following: the first president and general prosecutor of the Court of Cassation; judges, prosecutors, and staff of the trial and appellate courts; two lay persons; two university professors; and four students or auditeurs de justice. This Council approves the School’s regulations, supervises the work of the five directors in charge of daily administration, effectuates the fiscal controls, and approves the subjects which will be included in the continuing education program. The five directors in charge of daily management are all judges and prosecutors and generally carry out their functions for two years. One is the principal director and the other four serve as advisors and direct various commissions. The basic courses in Bordeaux and the internships are supervised by the pedagogical commission, to which some auditeurs are appointed, both with regard to the initial schooling and with regard to the more practical training.

Inflation and expansion have taken their toll in both countries. In France, the school budget, which includes salaries to students, tripled from 1974 (32 million francs, or roughly 6.5 million dollars at the time) to 1981 (98 million francs, or roughly twice the previous dollar amount). In Spain, the school budget nearly doubled in just one year (from almost 12 million pesetas in 1982 to almost 23 million in 1983, although in dollar terms the increase was less — from some 110,000 to some 170,000 dollars). The smaller Spanish budget reflects Spain’s smaller size and thus fewer judicial positions, lower salaries and operational costs, shorter training and reduced activities (especially in the area of continuing education).

The French School has a peculiarity which foreigners interested in the system should not ignore, although we will only mention it here. Judges or judicial candidates from foreign countries (mostly, but not exclusively, from the former French colonies) are able to receive special training at the School. A number of U.S. citizens have received such training in the past.

passed, the Ministry of Justice will be reformed, and a new set of regulations for the School will be adopted. The new regulations have not been approved at the time of this writing.

54. French judicial school students are paid by the government which also grants them many of the benefits of public officials. The salary, which in 1975 was some 2,342 francs monthly, in addition to certain special payments, rises with inflation. In 1979, it was 4,301.39 francs for a single person, slightly less than $1,000 monthly at the prevailing rate of exchange. In addition, the state provides benefits in the form of social and medical insurance, monthly payments to cover the cost of raising children, and the free education. Single auditeurs can live in the dormitory of the new building of the E.N.M. in the Bordeaux Center, constructed in 1972. The building, located near the heart of the city, has comfortable study and meeting areas complete with modern equipment, an ample library, and a cafeteria for staff and students.
B. Executive Selection and Previous Training: West Germany\textsuperscript{55} and England\textsuperscript{56}

Both West German and English professional judges are selected by the executive and do not undergo post-selection training. The two systems, however, differ widely. West German judges are career officials who start out on the bench at an early age, generally in their late twenties. They undergo prior training and internships as part of their legal education. English professional judges, on the other hand, are generally respected, experienced lawyers who do not expect and will not be granted the high salary and other raises that normally accompany career positions. The English professional judge’s previous practical training is not acquired in a university, but comes from years of actual practice.

1. The West German University Model of Prior Training

Unlike Spain, France, and England, West Germany is a federated state with two judicial systems: the eleven state (or Lander) systems and the federal system. In West Germany the cases are first heard at the trial and appellate levels of the state courts, and, except for some special matters (notably in patent law), the ordinary federal forums carry out a supervisory appellate function. This contrasts with the situation in the United States, where the federal and state governments have parallel judicial structures. Thus, only two percent of West German judges are federal judges. The main importance of the distinction between the federal and state spheres lies not in the existence of dual jurisdictions, as in the United States, but principally with the powers of each sphere as to their respective subject matters.

The description of the states’ systems which follows concerns mainly the selection and training of judges in the state of North Rhine-Westphalia.\textsuperscript{57} The models of selection and training in other states are similar to that which we will describe. At the time we gathered the facts there were some 3,431 judges in the state, one of the most populus in the federation with some 16 million inhabitants. There were only 260 general jurisdiction federal judges in the entire country.

\textsuperscript{55} Some of the facts which appear on West Germany were provided to us by Prosecutor Horst Richter, first class counselor at the North Rhine-Westphalia Ministry of Justice; Judge Christensen, trial judge at the time of our visit to the federal Ministry of Justice in Bonn; and the then secretary general of the judicial academy in Trier, currently federal judge Henrich-Peter Brauckmann.

\textsuperscript{56} The bulk of the material on England was obtained from Jackson, supra note 10; Shetreet, supra note 10, at 17-84; letters and documents sent to us by Mr. B.U. Reason, Assistant Secretary of the Commissions attached to the office of the Lord Chancellor in London. A short and simple but excellent pamphlet on all aspects of the British judicial system is The Legal Systems of Great Britain (Central Information Office, London, ed. Spanish trans., 1976). The Justice of the Peace Act of December 6, 1979, passed after the date of the pamphlet, made no change in the information provided. The law is a compilation and not a revision of the system, which experienced a major overhaul in 1971. See Halsbury’s Statutes of England, Current Statutes Service, (1979).

\textsuperscript{57} For a description of the selection process at the federal level, see Schram, supra note 10; Const. of the German Federal Republic, art. 95; Law of August 25, 1950 on the recruitment of judges.
The state system. The West German state judge is generally selected from among young people who have recently passed the comprehensive university exams required to practice in the legal profession. Most professional state judges are appointed by the president of the highest state appeals court (the Oberlandesgericht in the case of the civil, commercial or criminal courts). After examining the candidate’s file and after an interview, the court president’s office decides whether to submit the case to the state Ministry of Justice. The Ministry of Justice then orders an additional investigation into the candidate’s citizenship and police file, family relations and physical fitness.

After these studies are completed, a second report is prepared, which is then reviewed by the Minister of Justice and his or her principal advisors. If approved, the candidate is named as a judge on a probationary basis. The tenured appointment is granted after three to five years, but in practice, very few judges are removed once they are appointed. During the probationary period, the judge undergoes special training, which includes aspects of judicial administration. Although the idea of formal previous training and even a selection examination was favorably received by several of the people we interviewed, it was not considered an immediate possibility as it would require significant cost increases and an important change in the process.

West German judges are not required to undergo a great deal of training prior to exercising judicial functions. We believe the explanation lies in the country’s legal education system. By law, legal studies in West Germany last at least five years. Facts on the West German system are based mainly on interviews with Prosecutor Richter, Judges Brauckmann and Christensen, and the following writings: KOTZ, supra note 3; HORN, KOTZ & LESER, supra note 10; Schram, supra note 10; and the Law of September 8, 1961 on the status of judges.

Recently, a new university system, still in an experimental stage, has been implemented. This new system dispenses with the first, or comprehensive, exam, substituting a series of periodic tests on specific subject matters. See also HORN, KOTZ & LESER, supra note 10, at 37. The West German legislation also authorizes law professors and certain high officials to carry out judicial functions on a temporary basis. Law of September 8, 1961, art. 14. In practice, however, there is little use of this option.

The process of appointing prosecutors (which number 1,000 in North Rhine-Westphalia) is similar to that of appointing judges. The prosecutorial profession in West Germany is not considered part of the judicial profession.

In some states, the examination taken by the candidates is prepared by a special office created for this purpose.

The candidate’s membership in a non-democratic party (what in the United States would be called a subservive organization) has at times been a cause for exclusion from judicial posts and other positions. Memories of the Nazi regime and the recent offensive launched by leftist terrorists groups have left a profound and visible mark on the country. During our 1978 visit, we observed posters of the most wanted terrorists in train stations. Some government buildings in Bonn were surrounded by barbed wire fencing and soldiers patrolling, machine guns in hand. The security measures in the embassies and government offices were very strict. Recently, however, there has been a considerable easing of the political tension, and consequently, of extreme security measures.

Certain high positions can serve to fill the requirement of years of service prior to a permanent appointment. Among these positions are: superior administrative officer, law professor, attorney, or notary. Law of September 8, 1961, art. 6 on the status of judges.

A detailed explanation of the system of legal education appears in Geck, The Reform of Legal Education in the Federal Republic of Germany, 25 AM. J. COMP. L. 86 (1977); Braun & Birk, Symposium: Legal
and one half years. In practice they last an average of eight to nine years. (As is customary in continental Europe, legal studies start immediately after secondary school.) Legal studies are generally divided into two cycles. The first lasts, in theory, three and one half years — in practice it normally lasts five to six — and covers both substantive and procedural subjects from a theoretical standpoint. The cycle ends with an examination (the Referendarexamen), which is passed by about eighty percent of those who take it. This exam includes an in-depth theoretical take-home essay, and four written and four oral tests on required and elective subjects.

This is followed by a second cycle which lasts two and one half years or more. It consists mainly of internships in prosecutorial offices, civil and criminal trial courts, lower appellate courts, and a series of agencies, governmental institutions, law firms, and other law-related institutions. Some internships are mandatory. Federal law requires the student to spend at least three months in each of five placements and provides pay for students in this cycle. Formal studies end with a second comprehensive exam (the Assessorexamen), which eighty to ninety percent of the students pass. At this juncture, the student is qualified to be either a lawyer or a judge.

It is partly due to the practical training in the second cycle that no additional studies are required before entering upon judicial duties. The training is not completely sufficient. Once the judge is exercising his or her official functions during the probationary period, he or she must engage in informal education in drafting documents, issuing decisions, and mastering the techniques of case and court administration. After the judge gains tenure, all schooling requirements end. (Of the 3,431 judges in North Rhine-Westphalia at the time of our study, only 655 had not yet obtained tenured status.)

There are less women in the West German judicial structure than the French.
Studies indicate only about twelve percent of judges in the Federal Republic are women.68

2. The English System of Practicing Attorney Judges69

The English judicial organization, although complex in detail, can be broadly divided into two types of courts: those with lay judges and those with professional judges.70 The latter sit in the appellate courts and some trial courts, particularly higher courts and courts located in major cities. For example, certain very important civil cases and cases dealing with serious criminal matters are decided by professional judges. Most of the courts are collegiate. In the following paragraphs we will examine the selection of professional judges. Lay judge selection will be discussed later.

Since English judges are not moved from a lower to a higher position in the hierarchy with time but, rather, are recruited directly from private practice into each echelon, some mention must be made of judicial organization and personnel at the various levels. At the top of the system is the House of Lords, which hears criminal and civil appeals previously considered by the Appeals Commission. This commission, made up of five lawyers, issues a report which is referred to the House for final resolution.71 Below the House of Lords is the Court of Appeal, made up two panels, one civil and one criminal, of three judges each. The civil section hears appeals from the three divisions of the High Court of Justice, the County Courts, and some administrative agencies. The criminal section reviews cases from the Crown Court.

The High Court of Justice, although normally in London, may be constituted anywhere in the country. It consists of three divisions: the Queen's Bench, the

68. HORN, KOTZ & LESER, supra note 10, at 41.
69. The bulk of the English material was obtained through letters with the Lord Chancellor's Office, supra note 56, and examination of the two excellent studies by JACKSON, supra note 10, and SHETREET, supra note 10. Statutory material is available in HALSBURY'S STATUTES OF ENGLAND, supra note 56.
70. To this system, one must add that of administrative justice or of the administrative "tribunals" (the word "courts" is reserved for the judicial system itself), of which there are some 2,000. These bodies hear cases involving pensions, social security, taxes, expropriations and land use, worker disputes, transportation, and other matters. There are generally three judges in these administrative forums: the president, trained in law and appointed by the Lord Chancellor or the government minister in the area of the tribunal's competency, and two lay-persons perhaps experts in the matters considered by the forum or representatives of the groups whose interests are affected by the tribunal's determinations. The members of these collegiate tribunals are not appointed for life; they are named for fixed terms and can be reappointed. The tribunals decide matters of such great complexity that in some cases free legal services are provided to indigents in order to guarantee the legal advice which is considered indispensable. In general, however, the procedures are simpler than in the judiciary. Decisions are generally reviewable by courts within the judicial system. The specific data with regard to each tribunal are so extensive that to attempt to explain them, in the words of one English commentator, would require the almost worthless acquisition of encyclopedic knowledge. For a detailed examination, see S. SMITH, CONSTITUTIONAL AND ADMINISTRATIVE LAW, 509-23, 620-48 (3rd ed. 1977).
71. Countries of the British Commonwealth that choose to can submit to the jurisdiction of the Privy Council, which hears cases in final appeals. This court does not decide English cases.
Chancery, and the Family Division. The first division has unlimited original civil jurisdiction, limited appellate jurisdiction, and jurisdiction to review actions of the majority of the adjudicatory administrative forums. The Chancery Division, whose origin dates back to the early days of common law, mainly decides matters regarding trusts, estates, and commercial law. The Family Division exercises appellate and trial functions with respect to family matters.

The Court of Appeal judges and those who preside over the divisions of the High Court are selected by the Prime Minister. The other High Court judges, and in fact all other professional judges, are selected by the Lord Chancellor. In addition to competence and experience, a conscious effort is made to assure a political and social balance in the courts. The candidate's character, personal opinions, moral solvency, professional conduct, economic stability, and political affiliation are examined. This last factor is considered in order to maintain political equilibrium and a diversity of ideas in the judicial branch. It is considered bad form for the candidates to apply to become judges of a high court. Judges of the High Court, however, are allowed to apply for promotion to the Court of Appeals.

In selecting the judges of the High Court, the Lord Chancellor consults members of the legal profession and the judiciary and particularly the presidents of the divisions in which the vacancies occur. After this, the Lord Chancellor's office interviews the candidate to assure his or her permanent and stable relationship to the judiciary and thus avoid the inconveniences of an early departure, which would force it to reinitiate the selection process.

The candidates for these positions are barristers, generally participants in the so-called "silk" system. Such candidates must have at least ten years of experi-

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72. England does not have a Ministry of Justice. The Lord Chancellor exercises functions normally carried out by the ministers of justice on the European continent. In addition, the Lord Chancellor has legislative and judicial functions, such as presiding over the House of Lords, and forming part of its appellate commission. Despite the fact that the Lord Chancellor is a political figure in the formal sense, and as such serves at the will of the appointing power and is obliged to resign upon a change of government, he or she is generally selected from among the people who enjoy the highest esteem in the profession. See, H. Abraham, The Judicial Process 32-33 (4th ed. 1980).

73. The following are excluded from being judges: those considered ineligible due to a prior conviction or similar judicial order, or due to blindness, deafness or other serious impediment. Also excluded are: candidates over 60 years of age (and in practice, with rare exceptions, those over 55), those who have debts not discharged in bankruptcy, family members of a lay judge, and police and military personnel on active duty.


75. The system is thus known because their robes are silk, symbolizing broad experience, competence, and professional prestige. The legal profession in England is divided into two large groups: barristers and solicitors. The first are attorneys who litigate before the courts, that is, they are in charge of oral and active representation of legal cases before the judicial authorities. The solicitors, knowledgeable in the law, are legal advisors in charge of preparing and filing arguments which initiate the process. The extensive experience of the barristers in the courts, working in close, daily relationships with the judges, results in a great deal of knowledge about the judicial process. This renders previous training, such as we have seen in Spain or France, unnecessary when the barrister is appointed to the judiciary.
ence in law practice prior to being considered for an appointment to a judgeship of the High Court, and fifteen years of experience for an appointment to the Court of Appeals. Only judges of the higher courts, that is, the High Court and the Court of Appeals, can aspire to the House of Lords. In exceptional cases, a barrister with fifteen years of experience can be named to the Appeals Commission of the House of Lords.

On the criminal side, the High Court of Justice is complemented by the Crown Court, which hears the more serious matters at the trial and appellate levels that come from the Magistrates' Courts. The Crown Court and the High Court of Justice are collegiate courts, and some of their members work on a part-time basis. At the lowest level are the County Courts, which have the authority to decide minor administrative and civil matters, and the Magistrates' Courts, made up principally of lay judges. Cases before the County Courts account for more than 90 percent of the civil cases in the country.

Full-time judges of the Crown and County courts (which together are also known as the Circuit Court) form the next echelon of judges. Solicitors with ten years of experience may be eligible for vacancies in the circuit judgeships, or for jobs as part-time judges who substitute for the circuit judges. Solicitors are eligible to be members of the high judiciary only if they have previously acted as part-time circuit judges, for which there is a requirement of ten years of professional practice. This exclusion makes it virtually impossible for members of this sector of the profession to achieve these high judicial positions. This has generated criticism, since the pool from which competent higher court judges can be selected is narrowed. There are those who say it is impossible to achieve excellence both in the judiciary and among barristers if the former pursues the most competent of the latter. Therefore, they argue, solicitors who demonstrate high intellectual and professional qualities should be permitted to enter into the higher court judiciary.

The part-time judges of the Crown Court, known in London as “Recorders” and outside the capital as “deputy judges,” form the third echelon of judges. The practice of appointing part-time judges has been much criticized, since there is little security of employment or length of service (which is never less than one month each year). Because this practice continues to be used, attorneys, principally competent barristers with substantial experience, fill positions for which apt judges cannot be found. These attorneys are not generally willing to leave their practices in order to occupy a judicial post of an intermediate category.

Next in line are the Masters and Registers of the Supreme Court, in effect, the

Letter of Aug. 3, 1978, from the Office of the Lord Chancellor. This division of legal professionals, which dates from the Middle Ages, does not exist in West Germany or Spain, and is preserved only on the appellate court level in France.

76. SHETREET, supra note 10, at 23-25.
77. Id. at 23.
High Court and the Court of Appeals in joint session. Although these are officials and not judges, they decide procedural and interlocutory matters and certain trial questions, such as the amount of damages in default judgments.

The lowest courts are the Magistrates' Courts, usually collegiate courts. These courts decide up to ninety-seven percent of summary, non-jury criminal matters, and some minor civil and administrative matters. In large cities, this echelon is filled by salaried professional judges (stipendary magistrates) who act alone. Barristers and solicitors who have seven years of experience can be named by the Lord Chancellor as stipendary magistrates. This system has also been highly criticized: first, for its cost, and second, because it deviates from the English tradition of lay judges for summary, non-jury criminal matters. In practice, the number of such judges has been limited because there are few attorneys available to fill these positions.

As will be noted, the system has a very broad margin for politicization. Although there have been relatively few cases in which there has been an abuse of this power, there is historical evidence that the system has suffered from this malady in moments of crisis.

The English system differs markedly from that of Spain, France, and West Germany, where the organization ranges from the trial courts, which are divided into higher and lower courts depending on the amount or the subject matter in controversy, to the appellate and supreme courts. In addition to this hierarchical division, continental courts are also divided according to the specialized subject matters. There are exceptions in the continental systems. For example, the structure of the military courts and the organs which handle notarial and registry matters is not exactly like that of the principal courts. The exceptions, however, are few in number and therefore of minor importance.

C. Lay Judges: English Tradition, French Exceptions, and German Doubts

Lay judges are common in all the countries studied with the exception of Spain. Spain uses lay judges only in certain special courts of extremely limited jurisdiction such as maritime or air law courts, irrigation or riparian tribunals.

78. This apparent sharp hierarchical division often disappears, since judges at one level are authorized to form part of an inferior collegiate court, as when judges of the High Court join judges of the Magistrates Court to decide matters of this latter court. These exceptions to a system which is by itself complex make it difficult to completely understand the details of the system, (which has been described as "chaotic"). Ensor, supra note 6, at 36.

79. Information provided by the Office of the Lord Chancellor. See also The Legal Systems of Great Britain, supra note 57, at 17; Shetreet, supra note 10, at 20-22.

80. Originally, such judges were appointed upon petition of the locality, see Justices of the Peace Act of 1949, but since 1973, the Lord Chancellor has been permitted to name salaried judges in localities where he deems it necessary, see Justice of the Peace Act 1973. See, Jackson, supra note 10, at 312-15.

81. Ensor, supra note 6, at 24, notes that this occurred, for example, in the early part of this century.
and eminent domain or tax revision proceedings. The use and prestige of lay judges vary widely, however.

As noted earlier, the vast majority of minor English penal cases are seen before collegiate lay-judge courts. Lay judges also sit in numerous administrative forums. The English cherish this tradition.

The French shy away from using lay judges in criminal proceedings, although juries are used where serious penal violations are alleged. This reluctance to rely on lay persons, seen also in the rigor with which the French train their young judicial recruits, disappears where commercial or industrial-labor relations are concerned. The French commercial and labor trial courts are devoid of professional judges. All those who sit on these courts are selected through election by their peers. Tradition has much to do with the French use of lay judges, but it is not the only reason they are used, for lay judges also sit in other courts of recent vintage.

The West Germans, while making use of lay judges in minor criminal matters and juries in some serious criminal matters, have doubts as to the wisdom of resorting to lay persons to solve legal matters. In more technical areas, however, alleging limitations of judicially trained personnel, they resort to non-judicial experts even at appellate levels. For historical reasons lay judges are also used in commercial courts, but contrary to the French, these judges must share decision-making powers with legal professionals.

In the following pages we will discuss the English lay judge selection system. Following this, we will give particular attention to the French lay judge system, since lay judges are used far more in France than in West Germany.

1. The English System of Guided Popular Justice

English lay judges, persons of diverse socio-economic origin, academic background, attitude, and political affiliation, are appointed by the Lord Chancellor. Appointment is preceded by an extensive investigation carried out by community or county "advisory committees" whose primary task is to assure that the candidate is capable and representative of the community to be served. These committees are made up of prominent community members whose identities are kept secret to avoid undue influence in the consideration of any candidate. Only the name of the Secretary is made public so that interested persons can nominate or oppose particular candidates. The recommendations are sent to the Lord Chancellor who generally follows them. As with professional judges, political ideas are taken into account in order to guarantee an ideological balance on the court. An attempt is also made to balance age, sex, socio-economic origin, and

82. In addition to the sources already indicated, one should examine the pamphlet *Justices of the Peace*, from the Office of the Lord Chancellor.
professional training factors. Women constitute about one-third of the slightly less than 30,000 lay judges in England and Wales. 83

The lay Magistrate Courts are collegiate courts of three or four judges. Their principle function is to judge facts in criminal cases. The judges are counseled by a legal expert, generally a solicitor who acts as clerk of the court. The advisor explains the law to the lay judges, but he or she does not intervene in their appreciation of the facts.

The English have created a two-phase training program for lay judges. The first phase, undertaken prior to the judges' exercise of their functions, consists of attendance at court sessions where the new judges see the courts in operation and learn the conduct expected of them. Lectures are also provided regarding the scope of the judge's duties and the details of the process. 84 The second phase covers the twelve month period after the judge's appointment. This includes internships and visits to various institutions relating to the affairs considered by the municipal courts, or, in some cases, intensive courses during two weekends. 85 Examples of the subjects included in the week-end courses are: civil practice and procedure; violations of the motor vehicle law; family relations; adoption; the use of social worker reports in juvenile cases; and the probative value of evidence. In general, two or three subjects are covered per week-end, and practical exercises are offered on each subject. 86 Lecturers include legal advisors of the lay courts, probation officers, doctors, and police. A permanent commission advises the Lord Chancellor on matters concerning the judiciary and is in charge of coordinating this training with various universities which offer training courses for judges.

Lay judges are expected to serve at least 26 sessions a year and receive no salary for their work in the judiciary. They are reimbursed for transportation, food, and other expenses.

2. The French Lay Judges 87

Five kinds of French courts have lay persons among their judges: juvenile courts; courts which handle complaints regarding agricultural leases; courts with jurisdiction over certain matters related to welfare benefits; courts dealing with employer/employee disputes; and commercial courts. The first three are presided over by a professional judge; the last two, decidedly the most important in

84. Id.
85. Id.
86. See 1979 Courses of Magistrates (descriptive pamphlet of the University of Birmingham).
87. Facts on French commercial courts were obtained mainly through interviews with Ms. Denise Lefevre, honorary chamber president of the Paris Commercial Court, and Magistrate Delafaye. supra note 1. Also important are the works of M. JUGLART & B. IPPOLITO, I DROIT COMMERCIAL 42 et seq. (3d ed. 1979); Boiron, Tribunaux de Commerce, IV ENCYCLOPÉDIE DALLOZ: COMMERCIALE 3-13; Tallon, supra note 29.
terms of numbers and of the amount of money involved in the disputes, are made up entirely of elected lay judges. In the courts handling employer/employee disputes, the election of judges is carried out by worker and employer groups; in the commercial courts, by merchants in the region. Almost all their judgments are reviewable by the collegiate professional courts. The lay judges receive no fixed salary.

Of all the lay courts, the most ancient and important in numerical terms are the commercial courts. Consequently they are the only ones we will discuss. The average number of cases decided in the last few years has been approximately 160,000 per year. Their origin dates to the middle of the sixteenth century, when, as today, their main purpose was to provide rapid resolution of commercial disputes. As can be expected, the French Revolution, the bourgeois revolution par excellence, recognized their worth.

The judges of this court are elected for two years (three, in the case of the chamber presidents), with the possibility of two reelections. The judges are elected by the merchants and industrialists of the area of their competence. The election is indirect with the eligible voters choosing electors who then select the judges.

In the principle cities, those who are interested in becoming judges take part in a concours, or selections examination, administered by the merchants themselves. Those selected undergo a specialized judicial training. Approximately one-third of the applicants pass the concours.

Once they are elected, the judges are invited to take courses in those areas in which they will be called upon to make decisions, such as the commercial code, bankruptcy, and civil procedure. The judges are advised by a permanent legal expert, and if necessary, they can resort to other legal experts who have asked to be included on the official lists of expert witnesses.

3. West German Lay Judges: Doubts and Recognitions

The West German judiciary uses mixed lay and professional judge panels for both penal and technical matters. Lay penal judges serve in the lowest echelon trial and appellate courts. The West German judiciary, however, allows lay

88. Judgments involving 3,500 francs or less issued by a commercial court, an employer/employee court, or a court involving agricultural rents are not appealable.

89. In 1977, for example, the most important commercial court, the Paris Commercial Court, decided some 45,000 matters. The Paris court has 15 collegiate courtrooms of three or more judges each.

90. Tallon, supra note 29, at 139. It is interesting to note that commercial courts ceased to exist in England in the same sixteenth century. Id. at 48. Spain unified its commercial and civil courts in 1868. Id. at 23.

91. There are some doubts as to the future of these courts. Tallon writes that they are "at present in decline." Id. at 136. Reasons for their decline include the complexity of modern commercial disputes, the rising use of conciliation, hostility to the recognition of a special commercial status, and abuses and delaying tactics, especially in smaller courts. Id. at 140 et seq.
technical judges to sit even in the courts of last resort. This is in recognition of the fact that the judicially trained judges lack the technical expertise to adequately decide specialized matters.

The lay judges of the lowest criminal courts are generally elected by municipal assemblies. Candidacies are proposed by the political parties. These judges do not receive a salary, but are reimbursed for expenses and lost salaries. No special schooling is required prior to their exercising judicial functions. It is assumed that the professional judge who, along with two lay judges, makes up the panel of the court, will adequately advise and orient lay colleagues on the legal points. In practice, we were told, the professional judge looks down on lay judges and often controls the court and imposes his or her own judgment.

Lay judges also sit with professional judges in the Landgericht. The three-judge Landgericht criminal appeals panel which reviews Amtsgericht convictions has two persons, as does the five-judge criminal trial panel which passes judgment on more serious offenses. On the civil side, the commercial division of the Landgericht has a three-judge panel consisting of one professional judge and two honorary lay judges. The lay judges are chosen for three year terms from among those recommended by their industrial and business peers.

Lay judges form a majority in the three-judge state trial level labor and social affairs courts and in the three-judge state appellate labor court. The highest federal labor and social affairs courts (the Bundesarbeitsgericht and the Bundessozialgericht) also have lay persons on their panels. The lay judges in these specialized courts are representatives of the various groups (union, employer, doctor, and patient groups) whose interests are to be litigated.92

D. Continuing Education for Professional Judges93

Judicial schools in all three continental European countries studied offer, as part of their regular duties, continuing education courses for tenured judges and prosecutors. The West German Richterakademie in fact provides only this sort of training. Except for France, where newly appointed judges must undergo four months of training in their first four years on the job,94 continuing education is always offered on a voluntary basis.

The only country with no institution formally charged with providing continua-
Continuing education in England occurs on an ad hoc basis and is sponsored by diverse institutions, mostly academic. Suggestions have been made to create a Judicial Staff College to provide three to six months training for professional judges, but the institution has not yet been established. Sabbatical leaves are a rarity, although the English official commission which recommended creating the Judicial Staff College also suggested granting such leaves.

The most developed continuing education programs are those of West Germany and France. The Spanish Judicial School organizes special courses from time to time, but this program does not operate on a regular, nation-wide basis.

Both the West German and the French continuing education programs involve longer lasting national training sessions at special facilities and shorter regional sessions generally held in court building facilities. Since 1970 the French sessions have been organized exclusively by functionaries attached to the judicial school. The West German national sessions are coordinated by Richterakademie personnel and government officials, while the regional sessions are the exclusive domain of state governments. The fact that West Germany is a federal and France a unified nation explains the difference.

The French national sessions take place either in the E.N.M.'s Paris Center, a recently remodeled facility, minutes from the Notre Dame Cathedral, or in Vaucressons, some eleven and one-half miles (nineteen kilometers) west of the capital. Some 30 to 40 judges or prosecutors attend each of the one week sessions. Once the judges' interests are sounded out, the directors of the School, magistrates themselves, select the subjects for the session with the approval of the School's administrative council. In the last few years, the following subjects were among those studied: the new code of civil procedure, civil liability of doctors, drug addiction, tax fraud, court administration, computers and the law, consumer rights, motor vehicle law, and building law.

The West German national two week sessions are really state or federal government training programs which happen to be held at the national academy. The sessions are only open to functionaries of the governments which sponsor them. Some smaller states co-sponsor sessions for their judges and functionaries, thus sharing expenses.

95. Shetreet, supra note 10, at 416.
96. Id.
97. Among the subjects taught in recent years one finds European Common Market law, computer aided judicial and penal administration, prison sentencing, international commercial arbitration, and developments regarding medical expert evidence.
98. The smaller states sometimes join forces in order to offer a greater number of courses and seminars for their officials. The larger states, such as the one we visited, have the resources to offer an average of ten seminars a year, ranging from a couple of days to one week. About thirty officials attend each one.
99. Of the 44 annual two-week sessions (there are two sessions at a time) during 1979, ten were for officials from North Rhine-Westphalia, nine were for those from Bayern, and one was for federal officials. Jahresprogramm 1979 der Deutschen Richterakademie 1979.
Like its French counterpart, the West German program is practice-oriented and deals with specific, specialized courses: legal medicine, family law reforms, European Common Market law, juvenile law, expert witnesses, problems of civil procedure, criminology, and the law and the press. As in France, teaching methodologies vary, but emphasis is given to student participation, a great contrast to continental European university methodologies. There are, for example, 45 minutes to one hour lectures in which audio-visual teaching aids are at times used, followed by group discussions lasting two to three hours.

The academy teaching staff consists of university professors, judges, prosecutors, and specialists contracted for each session. There is no permanent teaching staff. Administration is in the hands of a secretary-general, a magistrate himself, and a permanent staff. State and federal justice ministers and the secretary-general set public policy and pedagogical direction. Those who attend the sessions are polled to see which subjects they feel should be included in future sessions.

The academy is located in the outskirts of Trier. The building which houses the academy has a dormitory, a small library, conference rooms with audio-visual equipment, meeting rooms, a restaurant, and recreation facilities. The building is the result of a 1973 agreement between the federal and state justice ministries. The federal government paid one-half of the ten billion mark construction costs and one-half of the operational budget (1.5 million marks, or approximately 600,000 dollars in 1978). About half of the operating expenses are for salaries and transportation costs of students and personnel. Although shorter, both French and West German regional sessions are very similar to the national ones.

The number of judges and prosecutors who attend the continuing education courses is substantial and on the increase. Demand, however, exceeds supply, especially for the national sessions. If all judges who qualify were to request admission to the Paris, Vaucresson, or Trier sessions, waiting lists would be intolerably long. As it is, waiting time for the Trier academy, for example, is five years, and, according to the institution's secretary-general, only about half of those who qualify request admission. French school officials pointed out that the school only aims at promoting continuing studies and can in no way be a substitute for independent study.

IV. CONCLUDING OBSERVATIONS

In the preceding pages, we have attempted to examine the selection and training of career judges and of some lay judges in three continental European

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100. In the early 1970s, five to six national sessions and no regional sessions were being held in France. In 1980, 21 national and 33 regional sessions were offered, and 1,370 of approximately 5,500 French magistrates directly benefited from them. The proceedings of some sessions were reproduced and made available to judges through the courts.
countries. We have also tried to point out some of the implications and problems of two of those countries which select judges mainly through competitive examinations and train them in judicial schools. An examination of the English system serves to highlight the key characteristics and principal virtues and failures of the three other systems of judicial selection and training.

The first fact that deserves highlighting is that while in those countries with career judges the quality of the judiciary is high, the judicial career is not equivalent or essential to a prestigious judiciary. The English, who have never implemented the judicial career, have a judicial corps of enviable quality.

The decision to establish the career is more a response to the concept of law in each country than to aspirations about the quality of the judicial corps. The common law countries, where in theory the judge determines the just solution on a case-by-case basis, and where the principal guarantee of fairness is having a chance to present one's facts and arguments before an impartial court, all judges need not be experts in substantive law. The English attorney-judge can be a generalist, knowledgeable in the rules of fair play. For this reason also a great number of cases in England can be heard before lay judges who are advised on fair play rules by an attorney who also aids them if there should be need for legal research.

In continental Europe it is felt that justice can generally be determined in the abstract. Case law is not ignored (it fills gaps, updates doctrines, and determines trends), but broader principles are the primary source of law. The broad doctrines of estoppel (or its equivalents), unjust enrichment, and abuse of law, among others, provide an escape valve to avoid the injustice which would result from a mechanical application of the norms. The experience of ten centuries of Roman law gathered in the Justinian Code, and that of the fifteen succeeding centuries which is reflected in the various national codes, justifies this belief. (It merits clarification, however, that in continental Europe it is recognized that there can be variations of the written norm.)

From this point of view, it is understandable that in continental Europe young but legally trained persons are recruited and trained to fill vacancies in the judiciary. As time passes, the young judge acquires experience and technical knowledge and will rise in rank. The dangers inherent in lack of experience will be dealt with by assignment to collegiate courts or by letting the inexperienced judge act alone mainly in cases of minor importance or in interlocutory decisions.

Of course, intellectual achievements are not the only criteria for the selection of judges in Spain, France, and West Germany. In these countries the candidate's personality is also considered. The difference between the systems in these countries and the system in England is that in continental Europe it is not considered necessary to wait until the candidate has demonstrated his or her moral worth in the practice of the legal profession prior to consideration for the judiciary. On the other hand, it should also be noted that in the case of the
English professional judge, the selection is made from among lawyers whose intellectual abilities are also highly regarded. But, contrary to the situation in the other countries studied, this intellectual respect has been earned in the course of daily practice and not through performance on theoretical examinations.

In the continental European countries studied, certain factors have historically guaranteed the high quality of the judiciary. Our analysis points to four such factors: prestige, job security, a tolerable work load, and adequate salary.

The European judge is a professional whose job carries a certain prestige, although admittedly it might be less than that of some outstanding lawyers and law school professors. The judge's power in a law-conscious society, the intellectual quality of members of the judiciary, the adequate pay, job security, in sum, the same factors which attract capable candidates to the judiciary, provide the profession with the prestige that serves as an additional magnet.

Job security is a key factor, given its implications in the context of continental Europe. The French, West German, and Spanish judges are promoted and receive economic benefits based on the their quality of service and years in the job. Furthermore, they have the benefit of a permanent position, from which they cannot even be promoted without their consent. This protection, called "immovability," enjoys constitutional rank and is designed to guarantee the independence of the judicial branch.

With regard to work conditions, a European judge, and especially the trial judge, rarely enjoys the secretarial or technical aid and physical facilities available to judges in the United States, but historically, the work load has been lighter than that of American state judges. This situation, however, is changing rapidly. There is currently a litigation explosion in Europe, reflecting the recognition of new rights and the legitimation of what have come to be known as diffuse interest pressure groups. These changes have already forced the expansion of the Spanish and French judicial school and has led the French to shorten theoretical training sessions and implement new recruitment mechanisms.

The pay received by the judge in Europe is equivalent to that received by an average attorney. Although a judge is not able to accumulate great wealth, he or she is not deprived of the benefits enjoyed by most of those with equivalent legal training. In addition, the system of social benefits in European countries (medical and disability insurance, a cost-free first rate education system, and so on) complement the income, which in some cases has also been adjusted to minimize the effects of inflation.101

Apart from these four factors, which could properly be considered external to the selection process itself, three additional internal factors in the continental

101. A study of the judicial profession, including the issues of permanent appointments, periodic promotions, and economic and professional incentives, goes beyond our goals in this article. For an examination of this subject, see generally, the books and articles cited in note 10, supra which explain the judicial system in several countries of continental Europe.
European countries studied contribute to the entry and continuing tenure of capable persons in the judiciary. These factors are: a) the recruitment of young people, recent graduates of the law schools, to cover the majority of the vacant positions; b) the selection through a process of rigorous examinations; and c) the requirement of long periods of time in internships.

The recruitment of young people responds to the idea that recruits can be easily trained to be judges and that it is only when they are young that the most capable are interested in starting a judicial career. The selection examinations used in France and Spain insure that the best suited applicants are selected.

The system of internships is the third factor common to the three countries of continental Europe. In West Germany, the internships form the final part of the university legal education. Recently appointed judges receive only a minimum of formal judicial training. In Spain and France, where recent recruits are first sent to judicial schools, the internships form a very important part of the school's curriculum (seventy-five and sixty percent of total training time, respectively).

The judicial school is not *sine qua non* to the judicial profession. The West German school, for example, is a center for voluntary continuing education courses, and not for prior training. The newly appointed West German judge starts to exercise the judicial function immediately, without first passing through formal training in addition to that received in the university education.

In Spain and France, where the judicial career dates back to the 19th century, the schools are the result of recent statutes — a 1944 law in the case of Spain and a 1958 law in the case of France. The schools started operations in 1950 and 1959 respectively. Prior to these dates, the judicial career existed without the corresponding school, and even today there are numerous French judges who start to exercise their functions without first passing through the judicial school.