JUDICIAL DECISIONS AND ORGANIZATION CHANGE: SOME THEORETICAL AND EMPIRICAL NOTES ON STATE COURT DECISIONS AND STATE ADMINISTRATIVE AGENCIES

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This article reports on research evaluating the impact of five Pennsylvania Supreme Court decisions on five Pennsylvania state agencies. Rational choice theory is used to explain several different responses to the judicial decisions: (1) initiating a search for more information, (2) conducting an extensive search, and (3) complying with the court decision and degree of compliance. The analysis demonstrates that the decision to initiate a search depended upon the agency's interpretation of the judicial decision as adverse. The extent of the search was related to the enforcement possibilities. The degree of compliance differed according to whether the agency viewed the decision as adverse and what resources the agency had at its disposal. In general, all of the agencies failed to comply actively with the state court decisions.

Judicial decisions are not self-executing. Scholars have effectively demonstrated that lower courts, administrative agencies, and other institutions may critically influence the implementation and impact of judicial policies.[1] These studies have made a substantial contribution to our understanding of the effects of judicial policy making, but they are limited in at least two respects.

First, many tend to be result oriented. The primary theoretical concern is whether the reacting institution or group evaded or complied with the judicial decision. Little attention has been paid to the *process* by which reacting groups respond to judicial policies. A second limitation is that almost all of the

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[1] For a review of recent judicial impact analyses see Wasby (1970), Johnson (1977), and Baum (1978).

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studies concern the impact of U.S. Supreme Court decisions, particularly major controversial decisions such as *Mapp, Miranda*, various prayer decisions, and the school desegregation cases. It is open to question whether findings about the impact of such decisions may be generalized to all Supreme Court decisions, or to decisions of other courts. The research reported here seeks to address, at least in part, these two concerns.

The theoretical part of this article offers an explanation of the process through which agencies respond to judicial decisions, based on the work of March and Simon (1958) and Downs (1967). The theory has been presented more fully elsewhere (Johnson, 1979), and will just be summarized here. The empirical focus of this study is the impact of state supreme court decisions on state administrative agencies. Although state supreme courts appear to be significant policy makers in many states (Glick and Vines, 1973; Rainey, 1974), these courts have received very little attention by impact analysts. The small number of judicial decisions analyzed here will not follow formal hypothesis testing, but will permit a more detailed description of response to judicial decisions than would be possible in an aggregate analysis.

I. EXPLAINING THE IMPLEMENTATION OF JUDICIAL DECISIONS

Even a casual acquaintance with bureaucracies attests to the inertial forces that so often undercut attempts to change organizations and their policies. There is considerable evidence of government organizations which have failed to comply with judicial orders (e.g., Dolbeare and Hammond, 1971; Carmen, 1966; Medalie *et al.*, 1968). But not all organizations have been noncompliant or evasive—some schools have abandoned their religious practices (Johnson, 1967; Muir, 1967); some school systems have been desegregated (Mayer *et al.*, 1974; Rodgers and Bullock, 1976); and some police departments have changed their arrest and search policies (Canon, 1977). What accounts for this variance in the response of different organizations?

Organizational responses to judicial decisions arise out of complex factors which reflect conflicting organizational motivations: an organization's degree of commitment to existing programs and policies, its desire to avoid sanctions for failure to change programs and policies, and the wish to

conserve resources. It seems reasonable to predict that an organization will react to a judicial decision by trying to preserve the status quo to the extent possible while avoiding potential sanctions for not complying and minimizing use of resources.

The theory proposed here also assumes that organizations, specifically administrative agencies, respond to court orders according to a rational decision making process (see Downs, 1967; March and Simon, 1958). Agency officials will expend resources to initiate a search for more information about and possible alternatives to a court decision only if the decision is viewed as potentially adverse. If the search indicates that agency's policies or resources are not threatened by enforcement or sanction possibilities, then it will limit the search, thereby conserving resources, and ignore the judicial decision's directive for changes. Finally, if the agency believes it cannot avoid enforcement and sanctions without some expenditure of resources or some action, then an extensive search will be conducted and the agency will pursue a strategy of evasion. In sum, an agency is expected to react to judicial decisions in a series of related stages, each of which uses or risks more of its resources.

This theory of administrative agency responses to judicial decisions suggests three major decision points in the process: (1) whether or not to initiate a search, (2) whether or not to conduct an extensive search, and (3) whether or not to comply with the court decision.

Initiating a Search. If an agency believes that a court decision is not adverse (e.g., that the decision does not conflict with existing policies or goals and does not adversely affect a policy to which the agency is highly committed), then no search will be initiated. On the other hand, if an agency determines that a decision may be adverse, then it will initiate a search for more information about the decision and alternative responses to the decision.

Extent of the Search. If, after initiating a search, the agency determines that enforcement and sanction probabilities are low, then its search will be limited in time and scope. If, on the other hand, enforcement probabilities appear high, the agency will undertake a more extensive search for alternatives.

Programmatic Responses. (a) If the agency did not view the decision as adverse and did not undertake a search for alternatives, then it will respond to the court decision with only minor changes (if any at all) in agency policies or decision making. No feedback to the courts or to other agencies can be expected. (b) If an agency views a decision as adverse, but undertakes only a limited search due to limited enforcement and sanction possibilities, then its response to the court decision will be characterized by few or minor changes in policies or decision making practices. (c) If the agency views the decision as adverse and has conducted an extensive search because of high enforcement possibilities, then the agency's response will depend on whether it possesses sufficient resources to resist or evade the judicial policy. If the agency possesses sufficient resources to evade the decision (e.g., if the costs of evasion are not too great), then it will evade; if it does not possess these resources, or if the costs are too great, then compliance is expected, in some form.

Because the sample of cases utilized in this article is small, the analysis is necessarily qualitative. The aim is to suggest, for future research, the general patterns of response which might be expected of agencies faced with adverse judicial decisions.

II. RESEARCH DESIGN

The research involved three separate stages. First, a state where fruitful research could be undertaken was selected, and a set of its supreme court decisions whose impact could be analyzed was identified. Second, public records and documents were reviewed to determine whether agency policies had in fact been changed in response to those decisions. Third, agency officials were interviewed to identify decision making behavior resulting from those decisions.

The Pennsylvania Supreme Court was selected. It is a court known as an active policy maker (Glick and Vines, 1973); and several of its decisions during the past five years are suitable for impact analysis. Pennsylvania was accessible to the author during this period of research, and hence provided an opportunity for extended interviews with agency officials.

Five cases were selected from the Pennsylvania court's decisions from 1970 through 1974. Two criteria of selection were employed. First, cases had to concern the actions or policies of a centralized state agency. Focusing on such agencies facilitated the collection of data and also controlled for gross

variations in organizational structure. Second, the court decision had to be a "blocking" or "initiatory" decision (Rainey, 1974). That is, it had to overrule the policy of an agency and/or establish a new policy or function for the agency, thus providing a situation where potential and actual agency responses could be compared.

Ideally, in research such as this, where the nature of the decision (e.g., how much change was required of the agency) is not formally considered an independent variable, the decisions analyzed should be roughly equal in terms of changes perceived as required. But this is a difficult assessment to make. All of the decisions selected for this analysis *appeared* to have blocked agency policies, overturned agency decisions, or given new responsibilities to the agency. All appeared to require the agencies to adopt new policies or procedures. But after the fact, the decisions proved not to be equally adverse and did not require equal degrees of change. This was particularly apparent when agency interpretations of the decisions were obtained—some agencies, in fact, did not even view the judicial decision in question as adverse. But this permitted more extensive focus on the interpretation stage of agency response, and served to highlight the very subjective—and perhaps self-serving—nature of how judicial decisions may be perceived.

The five agencies affected were: the Workmen's Compensation Board, the Bureau of Correction, the Department of Transportation, the Human Relations Commission, and the Board of Probation and Parole. Table 1 summarizes the cases comprising this analysis.

The history of these cases and subsequent litigation were traced through *Shepard's Citations*. *Shepard's* was useful in determining how lower courts responded to the decision and whether the agency requested a rehearing or sought further litigation on the particular issue in the case. The statutes interpreted by the Supreme Court were also examined for any changes in statutory language made after the Court decision. Rule making or nonstatutory policy changes proposed and adopted by the administrative agencies were also investigated.

A major source of data was a set of interviews with 26 agency officials conducted in March, 1976. Directors of the agencies, assistant directors of the bureaus or divisions most immediately affected by the court decision, and legal counsel for the agencies were interviewed. Five officials were

Table 1. Cases Studied

Agency	Case	Summary
Bureau of Corrections (BOC)	*Bryant* v. *Hendrick* (1971)	Habeas corpus proceedings by two inmates of a county prison resulted in the Supreme Court affirming a lower court decision that where conditions at a county prison were degrading and disgusting, and the personal safety of inmates was in danger, such conditions constituted "cruel and unusual punishment" and entitled petitioners to habeas corpus relief in the form of transfer to another institution.
Board of Probation and Parole (BPP)	*Rambeau* v. *Rundle* (1973)	A petition for mandamus which challenged a parole revocation had been dismissed by a lower court. The Supreme Court reversed. It held that a convicted parole violator as well as a technical parole violator was entitled, under the Constitution, to a due process hearing before the full Board of Probation and Parole.
Workmen's Compensation Board (WCB)	*Morrison* v. *Allied Chemical Corp.* (1971)	The Workmen's Compensation Board held that in order to recover under the Occupational Disease Act, an industrial chemist had to show both the likelihood that he had contracted benzol poisoning while working at the laboratory and also that such poisoning was uncommon in the general population. The Supreme Court reversed, and held that it was only necessary for the plaintiff to prove that he had contracted benzol poisoning while working in the laboratory.
Department of Transportation (DOT)	*Conroy-Prugh Glass Co.* v. *Pennsylvania Department of Transportation* (1974)	A commercial property owner filed a petition for the appointment of viewers under the Eminent Domain Code, alleging that the Commonwealth had, by means of advance hearings and publicity, effected a taking of his property without filing a declaration of taking. The Supreme Court reversed lower court rulings, holding that the advance publicity coupled with the fact that condemnation of the property was inevitable caused the property to become unprofitable, placed the property owner in jeopardy of losing the property, and amounted to a de facto taking which warranted the appointment of viewers; and that a hearing should have been held on the commercial property owner's petition.

Table 1 (cont'd)

Agency	Case	Summary
Human Relations Commission (HRC)	*Pennsylvania Human Relations Commission* v. *U.S. Steel* (1974)	An action by the Human Relations Commission to compel employer accused of discriminatory practices to comply with the Commission's demand for answers to interrogatories. The Supreme Court, affirming a lower court's decision, held that a complaint which alleged that the employer had discriminated in the past, and continued to discriminate in employment practices on the basis of sex, race, and national origin, did not meet the statutory requirement that such a complaint set forth the particulars of the alleged discriminatory practice. The Commission also did not have power to compel answers to interrogatories pursuant to general investigatory powers, the court said.

interviewed in four of the agencies, and six officials were interviewed in the other. A standard interview schedule was used and, when permitted, the interviews were tape recorded. Most questions were open-ended, and in a few cases questions specific to particular agencies were included. When officials mentioned memoranda or internal policy documents, copies of these were requested and, in most cases, provided. If no documents were mentioned, officials were asked about the existence of any internal memoranda; if the answer was affirmative, a request for copies was made. Policy manuals compiled before and after the decision were also compared to determine the effect of the decision on formal rules within the agency.

An effort was made to collect information on agency decision making behavior after the court decision. Such decisions were not easily retrievable, however; many were not recorded in a usable form. Samples of these decisions were collected from several of the agencies, and these permitted at least some limited observations.

Letters and a questionnaire were also sent to members of the Pennsylvania Bar Association requesting their evaluation of the five decisions selected for this study. Twenty-five attorneys were selected by bar association representatives from a list of administrative law practitioners. Responses were received from 18. The questions concerned interpretations of the court's holding in each case and solicited the attorneys' judgment of the specific changes required by the court

decision. The objective of this survey was to provide independent and objective interpretations of the judicial decisions against which the agency officials' own interpretations and actions might be compared.

III. INTERPRETING THE COURT DECISIONS AND INITIATING A SEARCH FOR ALTERNATIVES

Interpretation of a court decision is critical to the future reactions of the affected agency. Evaluation of whether the decision is adverse, and what is expected of the agency, lays the foundation for the agency's responses to that decision (Dolbeare and Hammond, 1971). The assumption was that judicial decisions would be interpreted so as to require minimal change within the organization. Generally, this proved true of all five agencies in the study. The initiation of a search for alternatives was also expected to depend on the initial interpretation of the decision. If the decision were considered adverse, then a search would be expected; if the decision were not viewed as adverse, then no search would be expected. Generally, this too turned out to be true of the five agencies in this study.

Agency officials were asked how the agency interpreted the court decision and what they believed was expected of the agency by the court. Specific questions were asked regarding the perceived degree of change required by the court, the importance of that change, and the commitment of the agency to the challenged policy. They were also asked whether other functions or policies of the agency might be affected by the court decision. Commitment to the affected policies was explored by questions concerning the length of time the policy had been in effect, whether the policy was perceived as effective, and whether the agency would maintain the policy if it could do so legally. These measures are admittedly crude and imprecise; nevertheless, when supplemented with other information about the particular agencies, they produced a reasonably accurate description of each agency's interpretation of the decision.

Search processes are designed to procure information about alternatives which the agency might consider. A search was distinguished from a one-way exchange of information—e.g., a memo describing an interpretation of the decision—by two features. First, a search involved two or more officials, each of whom contributed alternative ideas to the discussion.

Second, a search was capable of generating differing interpretations of a court decision and consideration of alternative responses. To measure the initiation of a search (and the extent of the search, to be discussed later), officials were asked whether discussions about alternatives had been held with attorneys inside or outside the agency, with other officials in the agency, and with officials or interest groups outside the agency. Here too, the measures are crude, but are supplemented with other situation-specific information enabling production of a reasonably accurate account of the events following the court decision.

Interpreting the Decisions

Data regarding the perceived change, the commitment to existing policies, and the initiation of search activities by agency officials are summarized in Table 2, which reports the predominant responses (in most cases the unanimous responses) of agency officials.

Table 2. Perceived Change, Commitment to Past Policies, and the Initiation of a Search for Alternatives

Concepts and Indicators	Agencies				
	WCB	BOC	DOT	HRC	BPP
I. Decision Interpreted as Adverse	NO	NO	YES	YES	YES
II. Change Required by Decision	NO	NO	NO	YES	YES
a. Major policy involved	no	no	no	yes	yes
b. Major change in policy	no	no	no	no	yes
c. Other functions affected	no	no	no	yes	yes
III. Commitment to Affected Policy	NO	YES	YES	YES	YES
a. Policy was effective	n/a*	yes	yes	yes	yes
b. Would restore policy if could	no	n/a*	yes	yes	yes
IV. Initiation of a Search	NO	NO	YES	YES	YES

*Insufficient or inconsistent data to code a response on this variable.

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Two of the five agencies did not view the affected court decisions as adverse, and therefore initiated no search for alternatives. The Workmen's Compensation Board (WCB) did not even seek to limit the applicability of the *Morrison* case to benzol poisoning, or even just to chemical poisoning, but accepted its applicability to all industrial diseases. A major factor explaining the WCB's full acceptance of a seemingly adverse decision was the intervening appointment of a new chairman who, with other members of the Board previously in the minority, sympathized with workers in compensation claims and thus agreed with the philosophy and requirements of the *Morrison* decision. Thus, while the court decision overruled an earlier agency decision, it was not adverse to the current view of a majority of the Board.

The Bureau of Corrections (BOC) interpreted the *Bryant* decision as requiring changes to be made only in the Philadelphia prison where the case originated. It did not believe the case adversely affected its own operations and did not believe the court "expected the Bureau to step in" to alter conditions at other state penal facilities. Officials of the Bureau maintained that the standards set forth in the decision were, in fact, exceeded in most state prisons. Only one official suggested that "maybe [the court expected] the Bureau's evaluations and reports should be stiffer" in regard to county prisons. It was unclear, however, whether this interpretation was one made immediately following the court decision, or was prompted by the interview itself. Insofar as the Bureau was concerned, the *Bryant* decision did not establish new standards for the conditions of state or county prisons other than in Philadelphia and did not suggest that changes ought to be made in the inspection procedures of the Bureau.

Unlike the WCB and the BOC, the remaining three agencies viewed the relevant court decisions as adverse, and each one initiated a search for more information and alternatives. The Department of Transportation's (DOT) interpretations of the *Conroy-Prugh* decision relied heavily on a memo prepared by the legal division of the Department. The memo stated that the court "held that the facts pleaded by the petitioner, if proved, would constitute a 'de facto taking.' " The facts identified in the memo were those averred by the petitioner in the case and mentioned by the court in a concluding footnote—(a) taking of the property was inevitable;

(b) the publicity surrounding the property and construction rendered the property "totally useless"; and (c) the property owner faced actual loss of the property (through a tax sale). Accordingly, the memo argued that showing (a) that the taking was not inevitable; (b) that publicity did not render the property useless; *or* (c) that the property was not about to be lost in a tax sale was sufficient to prove that a de facto taking did not occur. Finally, the memo noted that the opinion "relates to *commercial* properties and probably does not extend to residential properties (emphasis original)."

With this limiting interpretation of the decision, DOT officials indicated that the decision, even though adverse, imposed no costly new obligations on their department. They believed it was not necessary either to review or change DOT's right-of-way land acquisition procedures, or its planning procedures. A division within the Department—the Operations Review Group—charged with the responsibility of assuring enforcement of the Department's internal rules and regulations felt no obligation to investigate the events leading up to or following the *Conroy-Prugh* decision. Though a few properties were acquired by the Department after the *Conroy-Prugh* decision, in such a manner as to suggest a de facto taking, officials in the agency felt that they were under no obligation to do so as a result of the decision.

All of the interviewees at the Human Relations Commission (HRC) characterized the *U.S. Steel* decision as being only moderately specific in defining what was expected of the agency regarding the major issues in the case—particularly of complaints and the agency's authority to use interrogatories. One Commission attorney commented that the court "was specific in that more particulars were necessary but gave no indication as to how particular." Presumably the court could have required that complaints be so particular that specific instances of employment discrimination be cited and proven. Less stringently, the court may have required that patterned discrimination complaints be based on aggregated complaints over a period of time. Or, it could have required only that complaints be based on employment statistics compared with the available work force in the community.

The general counsel's office viewed the *U.S. Steel* decision as requiring "significantly better notice of the unlawful practice the employer had allegedly committed." But the emphasis in a memo from the general counsel's office was on statistics, and

the *minority* opinion in the decision was cited in support of this interpretation. In general, the memo interpreted the decision as *not* requiring citations of specified instances of individual discrimination when claiming a pattern of discrimination. While viewing the decision as adverse, this interpretation was nonetheless among the most favorable to the agency. It required few changes in policies or procedures. Implementation of the decision, interpreted in this way, required no new resources or costly outlays.

HRC officials maintained that the court was even less clear on the issue of the agency's interrogatory powers. The court did not prohibit the Commission from compelling answers to written interrogatories, they said, but it did state that interrogatories could not be enforced where the complaint was defective. As to the power of the Commission to compel responses to interrogatories pursuant to an investigation or after a proper complaint had been filed, the court indicated that these issues remained undecided. The common response among respondent officials was that the court "made no decision on the Human Relations Commission's [interrogatory] authority." Only one official contended that the court had in fact questioned this power of the Commission. The general counsel's memo gave this interpretation of the decision.

> The Majority expressly does not reach the issue of whether we have the power under our [enabling] act to compel answers to Interrogatories. The Majority did say "we have serious doubts regarding the Appellant's power to compel answers to Interrogatories in the absence of a proceeding initiated by proper complaint." This is unfortunate because we have the power to investigate even without the filing of a complaint and we believe we should have the power to use "discovery" tools at this stage as we wish. However, I don't see that our not having such powers will seriously hamper us.

Could the Commission continue to use interrogatories to gather information? According to the general counsel, "we should still use them. . . ." As with the other agencies, these interpretations may have been correct or merely self-serving, but they were consistent with the objectives of the Commission at that time.

The procedures used to revoke parole upon conviction of another crime were at issue in the Court's *Rambeau* v. *Rundle* decision. The Board of Probation and Parole (BPP) revoked Rambeau's parole without a prior hearing. Citing a recent U.S. Supreme Court decision, *Morrissey* v. *Brewer* (1972), the Pennsylvania Supreme Court, with two justices dissenting, ruled that a hearing was required as a matter of constitutional right even if a parolee were convicted of a crime while on

parole. The court also ruled that the existing practice of holding hearings before a single Board member, or before an agent of the Board who afterward filed a report with the full Board for its decision, was inadequate. It interpreted the *Morrissey* decision as requiring a revocation hearing before the full Board. But what constituted a "full Board"? According to Board officials, this was open to interpretation. One Board member contended that hearings before the entire five-man board were "logistically impossible. . . ." After consultation with the assistant attorney general assigned to the Board, and the Attorney General's office, the decision was interpreted as requiring hearings before a "majority" of five members of the Board.

A few final observations regarding interpretations and the initiation of a search are in order. First, it is difficult to determine whether the interpretations of these agencies were "correct" in any objective sense, unless one asked the judges who voted in the majority in each case. However, if one assumes that a range of interpretations was possible in each case, then the interpretations given by these agencies were certainly limited, if not unduly self-serving.

Second, previous analyses of the impact of judicial decisions (Johnson, 1967; Muir, 1967), and this study, suggest that the initial, important step of interpreting a judicial decision is largely the province of top executives or the legal department in an agency. Whether the interpretation were narrow, expansive, or something in between depended on the attitudes of top-level agency management. Little or no effort was made to obtain the views of others within the organization or to achieve a consensus within the middle or lower ranks.

Finally, one might observe that the three agencies defining the decision as adverse and initiating a search were all directly involved as litigants in the Pennsylvania Supreme Court's decisions. One agency not initiating a search—the WCB—was involved in the court decision only indirectly. That is, an appeal of its decision led to the court's decision in *Morrison*, but the WCB was not a party to the suit. The other agency not initiating a search—the BOC—was not involved in the litigation at all, and its policies were not directly addressed in the court's order. Direct involvement of the agency as a party in the case may be a necessary, if not sufficient, reason for initiating a search. Such involvement may reflect an agency's greater commitment to the policies being challenged, or it may

heighten that commitment where an adverse judicial decision occurs. Most importantly, an agency as litigant will most likely have to respond to a direct court order.

Searching for Alternatives

Three of the five agencies initiated a search for alternatives to existing procedures or policies. While the range of alternatives in any search may vary, and categorization is difficult at best, it is useful to classify potential alternatives as those substantially in compliance with the decision and those designed substantially to evade the decision. In general, compliance with a court order may require changes in agency policy or specific procedures. Compliance may also require new allocations of funds, and quite often the cooperation of other state agencies, particularly in the transfer and use of personnel and the temporary use of facilities controlled by other agencies.

Alternatives designed to evade a decision, either fully or in part, may require some symbolic satisfaction of the form but not the substance of the decision. In more serious instances, efforts to overturn or modify the offending decision may be in order, either by further litigation or by legislation. A decision must also be made on the timing of responses to a decision. An agency may decide not to openly defy a court order but rather to simply do nothing and shift the burden of enforcement to the judiciary, or to those interests who favor the decision in question. By proceeding in this manner an agency may risk further court reversals, but little more (see Shapiro, 1968).

In exploring the search for alternatives by these agencies, officials interviewed were asked three basic questions. First, did they know of comparable situations elsewhere in the state, like the events which precipitated the court decision, which might provide a basis for further litigation? Second, did they foresee the possibility that private groups might initiate further litigation? And, third, if further litigation were possible, what was the probability that the court decision in question would be upheld and the agency's policies and procedures again overturned?

Another concern of agency officials is the relative cost of compliance or noncompliance. Officials must assess whether the expenditure of funds to minimally comply with a decision is greater than the potential cost of noncompliance, and then determine the probability that a course of minimal compliance

will be accepted by the court. Likewise, there must be some assessment of the cost of evasive responses. For example, if the agency decides to pursue a course of further litigation in attempting to overturn the decision, there are certainly financial costs involved in that decision, and there may be political costs as well. Attorneys' fees and court costs, should the agency lose the case again, might easily exceed the cost of minimally acceptable compliance with the initial court order. Further, an agency which more openly defies a court order, initially or at a later stage, risks court-imposed fines or judicial intervention in the agency's affairs. Courts have been known to assume responsibility for the operation of a particularly intransigent agency, or at least for certain of the agency's responsibilities. This has happened in a number of school desegregation cases, and in a number of instances involving the operation of state penal and mental institutions. The political costs of losing control of one's policy responsibilities may be immense.

As shown in Table 3, the Department of Transportation evidenced the least apprehension about enforcement (of the *Conroy-Prugh* decision) through litigation. As expected, the search initiated by the Department was a limited one. There was no review of alternative land acquisition procedures, no discussion of internal screening procedures for de facto claims, and no discussion about new legislation or policies that might be required or that might be used to circumvent the court order. Two officials did indicate, however, that there had been some discussion of a legislative proposal, made three or four years prior to *Conroy-Prugh*, that the Department be allowed to acquire or condemn property prior to the final stages of highway planning. This procedure would allow the Department to actually buy property it believed would be needed in the future instead of waiting for approval of the complete project. This discussion apparently was limited to officials in the Bureau of Right-of-Way, and did not continue over an extended period of time. The only other alternative considered was a "wait-and-see" policy. Claims would be taken on an "as they come basis," and no further plans were made.

Like officials at DOT responding to *Conroy-Prugh*, HRC officials predicted that a number of situations would arise with circumstances similar to those in *U.S. Steel*. Unlike DOT, however, HRC also anticipated a number of court suits challenging its authority as a result of the *U.S. Steel* decision.

Table 3. Perceived Enforcement and Sanction Probabilities, and the Extent of Search Activities

Concepts and Indicators	DOT	HRC	BPP
I. Perceived Enforcement Probabilities	Moderate	Moderate	High
a. Similar situations in the state	yes	yes	yes
b. Further litigation probable	no	yes	yes
c. More negative court decisions probable without change in policies.	no	no	yes
II. Perceived Sanction Probabilities	yes	yes	yes
a. Financial sanctions for noncompliance	yes	no	no
b. Programmatic sanctions for noncompliance	no	no	no
III. Extent of Search	Limited	Extensive	Extensive
a. Discussion with legal staff	yes	yes	yes
b. Discussion with others in the agency	no	yes	yes
c. Discussion with outside legal counsel	no	no	yes
d. Discussion with others outside the agency	no	no	no
e. Time period for search	1 mo.	6 mo.	1 yr.

However, HRC officials felt that the court would eventually uphold its authority to investigate pattern and practice cases with the discovery tools used in *U.S. Steel*. This perception was particularly evidenced in the interpretive memo circulated after the *U.S. Steel* decision. In it a great deal of attention was given to the dissenting opinion and to the possibility of one other justice joining the three dissenters in another case to comprise a new majority. The search conducted at HRC also involved more officials than did the one at DOT and took a longer time.

Officials at BPP considered judicial enforcement of the *Rambeau* decision to be highly probable. Not only did the Court decision apply to *all* revocation hearings, but officials were certain that if the Board failed to establish the procedures

mandated by the decision, further litigation would follow. Officials felt that if a similar case reached the Pennsylvania Supreme Court, the Court would reissue the same order requiring full-Board hearings. Use of full-Board hearings by parolees was initially expected to be high. Failure to grant these hearings or excessive delays would, therefore, make further litigation a virtual certainty.

A second factor that influenced the Board's search for alternatives, one not originally anticipated in the analysis, was the capacity of the agency to implement the decision according to its own interpretation. The members of the Board believed that the changes required by *Rambeau* strained the resources of the BPP, particularly with reference to the requirement that revocation hearings be before a "full Board." From the Board members' perspective, if the court applied the "full-Board" requirement literally, implementation was nearly impossible.

Given the certainty of enforcement and the strained capacity of the Board under even a limited interpretation of the decision, the Board considered a range of alternatives, some of which would have led to compliance with the decision and others which would have undercut it. These latter alternatives included efforts to persuade the court to reconsider its decision and an attempt to have the state legislature rewrite sections of the law regarding BPP decision making procedures in such a way as to lessen the strain on the Board. Based on this behavior, one might speculate that where an agency cannot escape compliance with an unfavorable court decision, it is more likely than not to devote some resources to evasion of that decision.

In addition to enforcement probabilities perceived by agency officials, the potential sanctions for noncompliance were also expected to be a major factor governing search behavior. The data reported in Table 3 do not support this expectation. Only one agency, DOT, expressed a concern about financial losses that might result from noncompliance. These losses would have been in the form of attorneys' fees for suits that the Department might lose in light of the *Conroy-Prugh* decision. The other agencies, HRC and BPP, did not express a concern about programmatic sanctions. These programmatic adjustments may follow immediately after a court decision, after a limited search, or after an extensive search for alternatives. The theory advanced here suggests that different

factors are systematically related to these adjustments, depending on when the adjustments are made.

IV. PROGRAMMATIC ADJUSTMENTS

Adjustments by an agency after an adverse court decision may involve a variety of changes in policies and procedures. For our purposes a few crude, but distinctive, categories of behavior were used to classify programmatic adjustments: (a) noncompliance, evidenced by the lack of any changes in policy or procedures in response to the court's decision; (b) evasion which could include slight changes in policies, procedures or decisions; and (c) compliance, evidenced by adjustments to conform to the decision. In each of these categories an agency's response may range from active to passive, from "going public" with its opposition to expressing that opposition merely by doing nothing.

No Conflict, No Commitment, No Search, and No Change

Both the Workmen's Compensation Board (WCB) and the Bureau of Correction (BOC) viewed the court decisions as not adverse. They reacted with limited interpretations; from their perspective few changes were necessary and few were made.

Agency officials maintained that *Morrison* affected only a minor policy and implied but a minor change for the WCB. Given this interpretation, it is not surprising that the decision brought about no changes in policy, no changes in procedures for processing compensation claims, and no changes in the decisions of officials beyond the diseases specifically enumerated in the Workmen's Compensation Law.

The response of the WCB put it in minimal compliance with the *Morrison* decision. The Board did not revise claims forms or provide information to claimants regarding the changed burden of proof for enumerated occupational diseases. Additionally, there was no effort to draw the attention of the referees to *Morrison* or to monitor the decisions of the referees to assure compliance with the court order. The response of the WCB could not be characterized as noncompliant, since it approved all claims filed in a sample of subsequent cases, involving occupational diseases listed in the law. There was, however, no active implementation of the Supreme Court's decision.

The BOC also considered the *Bryant* decision to be a minor one. It believed the standards generally maintained in

the state penal facilities to be superior to those required by the decision; and it believed that existing inspections of county jails were effective. The Bureau initiated no search for alternatives, and there was virtually no programmatic response to the decision.

The BOC did not re-evaluate the standards governing state or local institutions and made no effort to be especially severe in its mandatory annual inspections. Though actual inspection reports were unavailable, Bureau officials related (and discussions with state inspectors confirmed) that the inspections before and after the *Bryant* decision were the same.[2] There was, in fact, some uncertainty as to whether prison inspectors were ever formally advised of the *Bryant* decision. One supervisor indicated that the inspectors were informed of the decision, but interviews with other officials produced no corroboration. In any case, this verbal order, if given, did not make a lasting impression on the inspectors. They could not remember reading the *Bryant* decision or any of the facts surrounding the case, and could not recall any discussions about it at the Bureau.

There was also no feedback to the legislature as a result of the *Bryant* decision. The Bureau did not seek enforcement authority over the county prisons. Similarly, there were no court suits brought by the Bureau against other county prisons on the basis of the *Bryant* decision. Statistics regarding the overcrowded conditions in county prisons and the age of some prisons suggest that there were situations where action, or at least an investigation, might have been initiated by the Bureau. In 1972, for example, 14 of 69 county prisons (20 percent) exceeded their maximum housing capacity, and 31 prisons (45 percent) were over 100 years old. Eight county prisons (12 percent) were both overcrowded and over 100 years old (Summary Data, undated). The actual conditions in these jails cannot be inferred from these statistics; however, they do suggest that Holmesburg Prison—the facility involved in the *Bryant* decision—was not necessarily a unique case.

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[2] The Bureau is responsible for the operation of eight state-owned correctional facilities. It must also inspect annually all county and municipal correctional facilities in Pennsylvania to report on their condition and programs. The Bureau has no authority to compel changes in local facilities, but Bureau officials maintained they could file suit against a local facility if infractions were found and not corrected. It was not clear, however, upon what basis the Bureau could file suit against county facilities or to what end the suit might be filed.

Limited Enforcement, Limited Search, and Limited Change

The Department of Transportation initiated a limited search in response to the *Conroy-Prugh* decision. The Department made only marginal changes in policies and procedures. There was no feedback about the case from the Department to either the judiciary or the legislature.

Based on the decision in *Conroy-Prugh*, one could have expected policy changes in how and when the Department of Transportation acquired property where de facto claims could be lodged. For example, DOT could have adopted a procedure or issued guidelines for processing claims of de facto taking within the Department instead of automatically refusing all claims and fighting the case in court. Also, the Department could have made some effort to avoid extended periods of time between preliminary planning and actual land acquisition for highway construction. Shortening this time period would have substantially reduced claims by individuals that their property had been rendered useless (e.g. had been taken de facto) because DOT was planning to build a highway on or near the property but had not yet bought the right-of-way.

The actual adjustments of the Department were less dramatic. The policy statement regarding right-of-way acquisitions, published in the Department Policy Manual thirteen months after the decision, did not reflect the substance of the *Conroy-Prugh* decision and revealed no substantive changes in policy, the scope of the policy, or the responsibility of the Bureau of Right-of-Way in the administration of its program. Changes in informal, unwritten policies of the Department were minor. According to officials in the Bureau of Right-of-Way and the Legal Division, the informal policy of the Department before and after the *Conroy-Prugh* decision was to contest any de facto claims on a case-by-case basis. The decision changed the weights to be given to certain considerations in "amicably" acquiring property and thus had some indirect effect. As one official explained, "*Conroy-Prugh* helps [the Bureau] gain acceptance of [its] requests" for early acquisition of property where de facto taking claims might be filed.

Information about the effect of *Conroy-Prugh* on the actual decisions of the Department of Transportation was somewhat conflicting. Officials in the Bureau of Right-of-Way indicated that the number of claims of de facto taking were on the rise and that the Department had acquired more property by early,

"amicable" acquisition after *Conroy-Prugh* than prior to the decision. Officials in the legal office, on the other hand, indicated that there had been no increase in de facto claims, and that the number of "amicable" acquisitions had not increased after the *Conroy-Prugh* decision. They argued that the only effect *Conroy-Prugh* had on acquisition decisions was that they "did go back and look at two other cases in Pittsburgh in similar situations, but [the Department] did not go beyond this." Data from the files of the Department regarding acquisition decisions would have been helpful in sorting out these conflicting perceptions of agency officials. Unfortunately, the files of the Department were not organized so that "amicable" acquisitions where property owners claimed a de facto taking could be distinguished from other acquisitions.

Officials outside the Legal Division of the Bureau of Right-of-Way maintained that they were even less affected by *Conroy-Prugh*. The Deputy Secretary, who had responsibility for highway construction after the initial planning stages, maintained that the *Conroy-Prugh* decision led to no changes in Departmental policy and immediately affected only a small number of decisions to acquire property. The Deputy Secretary for Planning maintained that no policies regarding planning had been changed due to *Conroy-Prugh* and that the decisions regarding planning similarly were not affected. Finally, an official in the Operations Review Group, an internal investigation unit, reported that his group did not initiate any investigations regarding acquisition practices after the *Conroy-Prugh* decision.

High Enforcement, Extensive Search, and Programmatic Adjustments

Two agencies in this study perceived high probabilities of judicial enforcement. The HRC and the BPP initiated extensive searches for compliance and evasion alternatives. The programmatic responses of these agencies were expected to depend on the resources of the agencies.

Some agencies possess resources that make them more effective than others in evading a court decision. One resource is the agency's staff, especially the legal staff. If the legal division of the agency were large, and if it could devote time to develop alternatives to the court decision, then evasive responses were possible. An effective legal staff could develop

new justifications for continuation of the original policy challenged by the court decision.

Other resources of an agency, less tangible than its staff budget, such as the agency's prestige or political support, may also be useful in generating support for evading a court decision. Positive or supportive relations with the legislative or executive branches of government, or influential interest groups, could be translated into support for evasive programs, either by fostering "corrective" legislation to allow the agency to continue enforcing its prior policies or by eliciting additional funding to support an evasion policy. Finally, support of the agency in the lower courts through limited interpretation of the state supreme court's decision, could reduce pressures for enforcement. And there is always the chance that the state supreme court will accept less than a fully compliant response from the agency or, with changes in personnel, reverse its original decision.

Table 4. Summary of Agency Resources and Programmatic Responses for HRC and BPP

Agencies	Resources	Programmatic Adjustment
Human Relations Commission	Staff: Large legal staff, EEOC cooperation. Finances: Tight budget given the number of cases the commission processed. Political: a. Governor very supportive of the commission; b. Legislature very negative and very questioning; c. State supreme court usually very supportive, lower court not supportive.	Adjustments in Policies and Procedures: Greater reliance on statistics in filing complaints. Written questions termed "questionnaires" instead of "interrogatories." Rules authorizing interrogatories proposed in *Pennsylvania Bulletin* (March, 1976). Decision Making Adjustments: Approximately one-half the original patterned and practice cases dropped and others revised with more particulars. Few patterned and practice cases filed. Feedback Responses: Complaint based on statistics taken to court for approval. Suit to compel responses to an interrogatory filed in court.

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Board of Probation and Parole	Staff: Small legal staff assisted by the Attorney General's Office. Finances: Tight budget and heavy work loads. Political a. Governor neutral about the board; b. Legislature nonresponsive to board problems; c. Generally supportive state supreme court.	Adjustments in Policies and Procedures: Procedures for three-man board hearings at state prison announced. Waiver of attorney and full-Board hearing rights initiated. Decision Making Adjustments: Agents and supervisors reportedly more cautious in decisions. Some evidence of differential treatment of parolees requesting full-Board hearings. Feedback Responses: Application for rehearing filed before the Pennsylvania Supreme Court. Legislation authorizing smaller panels for hearing suggested in a report to the legislature.

Table 4 summarizes the resources and responses of these two agencies. The picture is ambiguous at best. The HRC and the BPP claim certain resources that could be helpful in evading court decisions, but the resources are not overwhelming. Similarly, if they did not fully comply with the relevant court decision, neither did they completely refuse to change their behavior or practices.

A few brief comments about the data reported in Table 4 may be useful. Concerning the HRC, the choices facing the Commission regarding the specificity of complaints were relatively limited. It could have sought to change the relevant sections of the Human Relations Act upon which the *U.S. Steel* decision was based. Or it could have asked for a rehearing to persuade the state supreme court that its original decision was incorrect. The Commission could have made its complaints more specific than the complaint at issue in the *U.S. Steel* petition. In fact, this is what it did to comply with this aspect of the court order.

Because any recommendation to change the Human Relations Act would have been blocked by an unfriendly legislature, and because the Pennsylvania Supreme Court probably would not reverse itself (since all of the justices indicated the *U.S. Steel* complaint was too general), the only

alternative for the Commission was to change its procedures regarding complaints. The use of statistics in patterned discrimination cases was not, however, new to the Commission. A review of the old and new (draft) copies of the HRC Policy Manual revealed that both recommended the use of statistics in drawing up a patterned complaint. The instructions included in the new policy manual only mention the *U.S. Steel* decision indirectly by indicating that a mere statement of the law (as was done in *U.S. Steel*) is not sufficient for a complaint. A greater reliance on statistics was not a difficult adjustment for the Commission, since it could draw on its own (limited) staff resources and on Equal Employment Opportunity Commission statistics.

A shift to the use of statistics and a greater awareness of specificity in filing complaints was, in fact, reflected in the subsequent decision of the Commission. Slightly more than half of the original 83 patterned and practice discrimination cases filed at the same time the *U.S. Steel* case was adjudicated were amended or continued after the decision; and the remaining cases were withdrawn. Amendments to the complaints included additional statistics regarding employment practices and specific charges of discrimination aggregated over several months or years to support a contention of patterned discrimination. Where such information was not available, the complaints were withdrawn without prejudice.

Regarding the other issue in *U.S. Steel*, that of the power to submit interrogatories, the HRC believed that it possessed sufficient resources to change or at least clarify that aspect of the decision. The large legal staff of the Commission, the existence of a special unit for pattern and practice cases, and the belief that the Pennsylvania Supreme Court would eventually uphold the Commission's interrogatory authority resulted in just a few policy changes in the way complaints were filed. A memo circulated by the legal division suggested that interrogatories could still be used to gather information regarding discriminatory practices. If a respondent refused to comply with the interrogatory, the memo suggested that the case would be considered on its merits by the regional counsel and the general counsel. Another suggestion was that interrogatories be termed "questionnaires." Substantively, however, the questionnaires and interrogatories would be seeking the same information, and the evasiveness of this would be transparent.

In March, 1976, approximately 18 months after the *U.S. Steel* decision, the HRC also proposed new "Special Rules of Administrative Practice and Procedures." These proposed regulations asserted that "interrogatories may be served by the Commission at any time after filing of a complaint." Further, if respondents refused to answer, or failed to answer the interrogatory sufficiently, the "staff counsel may petition the appropriate court for relief and sanctions, or refer the matter to the Attorney General or appropriate District Attorney, or both."

The origin of these regulations was not clear. Attorneys for the Commission maintained that they were under consideration before *U.S. Steel* or that at least the need for such regulations was recognized before *U.S. Steel*. Other officials indicated that they did not know the background or events leading up to the promulgation of the new regulations. If the regulations were considered prior to the *U.S. Steel* decision, then they were only slightly affected by that decision, since they describe the procedures used prior to the decision. If the regulations were a response to the *U.S. Steel* decision, then they must be viewed as clear noncompliance with it. When questioned about the apparent conflict, an attorney in the General Counsel's office replied, "there is nothing to indicate that we don't have the power to issue interrogatories . . . certainly the courts have the final word on it, but the courts have in no way indicated we don't have the power."

Issuance of the regulations was a "safe" response to the limits imposed by *U.S. Steel*. The new regulations did not require the approval of the legislature and they could be challenged only through the courts, where, except for *U.S. Steel*, the HRC had usually been successful. Finally, the proposed regulations would, after adoption, have the effect of law and could provide a basis for decisions and interpretations of the HRC by the judiciary. The Commission was resisting change by relying on its staff and ultimate judicial vindication while avoiding a hostile legislature and not jeopardizing the agency's tight financial situation.

Like the HRC, the Board of Probation and Parole (BPP) did not have or was unwilling to allocate sufficient resources to fully comply with the *Rambeau* decision. The agency did, however, possess resources that enabled it to evade certain aspects of the decision. Since the court's decision in *Rambeau* was relatively specific, the choices open to the Board were more limited than in the HRC case. The programmatic

responses of the agency, based on a limited interpretation of the decision, are partially explained by the resources the agency could and could not rely upon.

The requirement that revocation hearings be held before the full Board would have severely taxed its financial and physical capacities. Prior to the decision, a Board member or a representative of the Board conducted the hearing and reported back to the Board. After the report was circulated, the Board decided the case by majority vote. *Rambeau* required that revocation hearings be conducted in person by the full Board, for both technical and convicted parole violators. The Board adjusted its procedures by providing that a majority of the Board would satisfy the full-Board requirement, by allowing the parolee to waive his right to a full-Board hearing, and by establishing a procedure for conducting monthly hearings in state prisons for those requesting a full-Board hearing. The first two adjustments were made with the advice and approval of the Attorney General's office, and the third required cooperation with the Bureau of Correction, a bureau within the Department of Justice.

The filing system at the Board was such that cases decided with full-Board hearings could not easily be separated from those decided by other means. The only statistics regarding full-Board hearings concerned their monthly frequency, from August, 1973 (the month of the *Rambeau* decision) to April, 1976 (the time when agency officials were interviewed). Fewer than 30 hearings were conducted during the first year, a relatively small percentage of the 1,060 violation decisions by the Board during that time. Table 5 compares the average number of full-Board hearings with the number of violation decisions by the Board per month. Clearly, while there is a trend toward an increasing number of full-Board hearings, the frequency of such hearings remains very low relative to the number of violation decisions for which hearings could have been held. It is possible, of course, that this low number of hearings merely reflects a slow start-up time for implementation of the "full-Board" policy. Nevertheless, these figures also seem to reflect the reluctant acceptance of the decision by the Board.

Data were requested on the decisions of the Board in cases which the full Board heard to determine whether these decisions differed from partial-Board hearing decisions. Because the filing system of the Board did not separate cases

Table 5. Average Number of Monthly Full-Board Revocation Hearings and Partial-Board Revocation Hearings

Type of Hearing	8-1973 to 7-1974	8-1974 to 1-1975	2-1975 to 7-1975	8-1975 to 1-1976
Full-Board Hearings	2.4	1.5	6.0	7.0
Partial-Board Hearings	88.3	78.2	71.8	59.1

heard by the full Board from those heard by only a partial Board, staff could provide only a limited sample of full-Board decisions, and then only after considerable effort on their part. It was easiest for the staff to identify full-Board decisions for cases heard at one of several state prisons where the full-Board hearings usually took place. To aid in this part of the research, the staff provided the files of all full-Board decisions at a single state prison during the months November, 1973, through January, 1974; March and April, 1975; and February and March, 1976. While this procedure provided a statistically nonrandom sample of full-Board decisions (n = 34), I was assured that these cases were not unrepresentative of the cases decided by the full Board at other times and at other prisons.

Table 6. Outcomes of Full-Board and Partial-Board Hearings

Outcome of Hearing	Type of Hearing	
	Full Board*	Partial Board**
Violator continued on parole	26.4%	43.6%
Violator recommitted to prison and parole revoked	73.6%	56.4%
	100.0%	100.0%

* Hearings for November, 1973, through January, 1974; March and April, 1975; and February and March, 1976 (n = 34).

** Hearings for November, 1973, through January, 1974; March and April, 1975; and January and February, 1976 (n = 850).

The outcomes of the full-Board hearings (violator continued on parole or parole revoked) were compared to the outcomes of all partial-Board decisions during approximately the same months. (These latter statistics were maintained by a statistics division of the Board.) As Table 6 shows, a large percentage of all these cases, full-Board and partial-Board, resulted in revoked parole status for the violators. But, the full

Board recommitted a substantially larger percentage of violators than did the partial Board.

Of course, this surprising outcome may reflect the greater percentage of marginal and more difficult cases coming to the full Board for decision. But without adequate statistical controls for the offense of the violator or for other potentially significant variables, such as race and previous criminal record, it is not possible to conclude that parole violators who requested full-Board hearings received harsher treatment. Nevertheless, the infrequency of violator requests for full-Board hearings (see Table 5) and the limited evidence showing a higher ratio of parole revocations by the full Board, suggest that the spirit if not the technical requirements of *Rambeau* had been undermined. Certainly the implicit goal of *Rambeau* to provide all parole violators with a full-Board pre-revocation hearing was not achieved. And the limited evidence about the relative disposition of cases by the full Board and by the old procedure suggests again what is now a commonplace observation in research of this kind: increased "due process" procedures required by courts to protect the rights of individuals subjected to criminal process often provide little or no substantive relief.

The BPP did attempt to alter the decision in *Rambeau* by requesting a rehearing before the Pennsylvania Supreme Court and by asking the legislature to change the statutes regarding the decision making procedures of the Board. In both instances, the Board made appeals to institutions that had previously been either supportive of, or at least not hostile to, the agency. However, the Pennsylvania Supreme Court refused the petition for a rehearing, and the legislature failed to pass the requested legislation.

Unlike the first three agencies considered in this paper, the HRC and the BPP were both highly committed to the procedures and policies overturned by the Pennsylvania Supreme Court. They believed that if compliance did not follow, then enforcement was inevitable. These circumstances required some adjustments. A review of the resources of each agency reveals that if neither had the power to sustain a fully noncompliant position, they did possess sufficient resources and had a strong incentive to embark on a course of partial evasion.

V. CONCLUSION

What do these findings suggest about the impact of judicial policies on state administrative agencies? First, the responses observed in these five cases were similar to those observed by other scholars of judicial impact (Dolbeare and Hammond, 1971; Carmen, 1966; Milner, 1971). The agencies here read the state supreme court decisions as subjectively as possible, complied as little as possible where the decisions were adverse to their interests, and utilized common techniques of avoidance and relief. Second, more detailed empirical work can certainly be done with respect to the interpretation and search phase of agency response, and on indicators of agency response to a court decision. Finally, one or more studies could profitably explore the relative importance of the stages at which agencies decide to comply with or evade court decisions, and relate these findings to the apparent reasons for agency response. Two agencies did not comply because of their limited initial interpretation of the decisions. Another did not comply because enforcement probabilities seemed low. The others did not comply because they had sufficient resources to support a policy of evasion and because the costs to the agency of compliance were simply intolerable (or so they believed). A research design focusing on the multiple responses of a single agency to many court decisions, or on the responses of similar agencies in different states to similar court decisions, would facilitate the search for answers to these questions.

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