Visiting Fellowship Program

Criminal Justice Organization, Financing, and Structure: Essays and Explorations.

National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
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Daniel L. Skoler

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ABSTRACT

The structure and organization of criminal justice services is an important building block in the quest for improved institutional performance. Virtually every national study commission and standard-setting group has offered recommendations on structure, usually as part of larger bodies of reform doctrine. Yet, structural proposals have rarely been sorted out, compared and analyzed across criminal justice components.

This collection of essays examines some key dimensions of criminal justice organization, financing and structure. The volume's ten chapters probe current organizational theory, governmental diversity, trends in general governmental organization and standards for criminal justice organization. "Unification" of system components is viewed through the past decade's emphasis on "comprehensive planning", through one criminal justice service--corrections, and through the "total system" perspective spotlighted by several national study commissions. Also presented are descriptions of such organizational dimensions as system financing, the role of private sector service delivery, and the application of complex organization and public administration concept to proposed structural reforms. A challenge to the conventional wisdom of governmental consolidation and criminal justice unification comprises the last part of the work.

In general, and often implicitly, the author endorses greater structural integration of each criminal justice component and the total system, increased state supervision through standard-setting, financing, and monitoring (even where substantial autonomy of local operation remains desirable), careful attention, within this regime, to regional and decentralized delivery networks, and a belief that unification of this kind can serve not only values of greater efficiency and accountability but also accomodate substantial degrees of local choice and responsiveness.

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PREFACE

This volume is based on a collection of essays, studies and papers prepared by the author in course of his one year Visiting Fellowship with the National Institute of Law Enforcement and Criminal Justice. Most of these were published in journals and periodicals, a few were developed as lecture or seminar papers and one is a distillation of a 50-state survey published by the National Institute in monograph form. With one exception, all of the source writings preceded and were separate and distinct from the book-length study prepared by the author as his major fellowship work product (soon to be published by Lexington Books under the title Organizing the Non-System: Government Structuring of Criminal Justice Systems). That exception is the "building blocks" essay which appears as chapter 2 of this volume and is a textual adaptation of the second chapter of Organizing the Non-System. That particular essay was viewed by the author as so basic to the subject matter of this volume and to laying a foundation and perspective point for the other papers as to warrant republication.

All of the materials of this volume have been revised somewhat from their original text, some more than others. Additional text has been added in many cases, footnotes have been expanded and updated, and where the original article did not feature footnote documentation, appropriate documentation was provided. Additional editing has been undertaken to provide continuity of text and some uniformity of format.

A brief identification of sources is in order:

--Chapter 1 is derived from an article which originally appeared in the Criminal Law Bulletin (Vol.12, No.4--July/August 1976) under the title An Analysis of Standards for Criminal Justice Structure and Organization.

--Chapter 2, as indicated, is taken from the author's fellowship book manuscript.

--Chapters 3, 4 and 5 are based on three short articles which appeared in the Criminal Justice Digest published by the Washington Crime News Service. The respective titles are Coordinating the Criminal Justice System: Is Planning Enough? (June 1976), Financing the Criminal Justice System Taking Stock, 1965-1975 (February 1976), and Private Sector Delivery of Criminal Justice Services: The Hidden Input (April 1976). Chapter 4 also includes the substance of an article prepared for JUDICATURE, the journal of the American Judicature Society. Under the title Financing Criminal Justice: The National Standards Revolution (June/July 1976), this piece reflected on the potential and startling fiscal impact of the national

crime commission structural reform proposals. (A variant also appeared in the September 1976 issue of the National Civic Review.)

--Chapter 6 appeared in the Winter 1976 issue of State Government, quarterly journal of the Council of State Governments. The title was State Criminal Justice Superagencies: Antidote for the Nonsystem?

--Chapter 7 is a textual presentation of a fellowship survey conducted with the assistance of the National Conference of State Criminal Justice Planning Agency Administrators and published in limited quantity by the LEAA National Institute of Law Enforcement and Criminal Justice. The title was Recent Criminal Justice Unification, Consolidation and Coordination Efforts: An Exploratory National Survey. Supplemental inserts were released as additional responses were obtained, until a full 50-state picture was achieved (which has been integrated in this volume).

--Chapter 8 is an adaptation of a seminar paper prepared for a special seminar session and consultation held with faculty of the Management and Behavioral Science Center of the Wharton School, University of Pennsylvania (March 2, 1976).

--Chapter 9 is an expansion of a manuscript published in the March 1976 issue of Federal Probation. The title was Correctional Unification: Rhetoric, Reality and Potential.

--Finally, Chapter 10 makes available an unpublished paper presented at the National Council on Crime and Delinquency's 23rd National Institute on Crime and Delinquency (New York--June 1976).

The author owes a debt of gratitude to the above-mentioned periodicals and, in particular, to their editors, many of whom are longstanding acquaintances. This is not only for their ready assent to republication and revision of the articles they originally carried but, more significantly, for their generosity and energy in moving the original pieces to prompt publication. Every one of the original articles was published during the year of my LEAA fellowship, an extraordinary feat in this age of delayed publication of scholarly and not-so-scholarly articles and due, in no small measure, to their willingness to consider manuscripts for issues that had already passed submission deadlines. It is a pleasure, in this regard, to publicly record thanks for such courtesies to David Allbright, Donald Chamlee, Barbara Schulert, Fred Cohen, Joan Casey and, certainly not least, Dick O'Connell (a publisher for whom the author nearly achieved the exalted status of syndicated columnist).

ACKNOWLEDGEMENTS

These writings trace back to a busy mid-career fellowship at the Justice Department's National Institute of Law Enforcement and Criminal Justice. The time span was approximately fourteen months, running from late 1975 to early 1977 and divided by a brief leave of absence to administer an ailing mental health reform program. My fellowship goal -- one book plus roughly one published article or paper per month and a graduate seminar on the chosen subject (criminal justice organization and structure) -- turned out to be a handful. Fortunately, the reading, thinking and writing was largely transferable from article to book to seminar to this collection of essays and, even more fortunately, the author was able to rely on a generous measure of hospitality and helpfulness at the National Institute that extended from the "head man" down through virtually every support service that a struggling fellow would need to contend with in dealing with tough deadlines and a "mid-life" professional crisis.

There were many beautiful people at the National Institute and LEAA from 1975-1977 but the ones who stood most directly in the author's line of fire and performance were Gerald Caplan and Geoffrey Alprin (top executive staff), Winifred Reed and Dick Barnes (fellowship program overseers), Morton Goren and Lavonne Wienke (library services), Marjorie Freeman and Michael Favicchio (graphics), Robert Gray, Jesse Baker, and George Lightfoot (xerox and reproduction), Ben Renshaw and Sue Lindgren (statistical data), Carrie Smith and Ken Masterson (administrative services), Margaret Chase and Harriet Dash (messages, calls and many favors) and, for this particular monograph, Jay Merrill and Joe Pate (contract administration). The debt for their collective help and first rate skills is enormous.

Additional thanks are due to The WorkPlace of Washington, D.C., an exciting new office service venture, which handled manuscript preparation efficiently, professionally and with dispatch and to Ms. Randy Bergman within that organization who carried the weight on the "camera ready" load. Also, mention should be made of the special help provided by research assistant Armond Cohen of Brown University in background research and the organization of this particular volume. He is the kind of "comer" who, perhaps a dozen years hence, will be a pleasure to claim credit for in acknowledgements like this. A final round of applause must go to Shirley and Debbie who thought that the "midnite oil" would be put away with completion of the original book manuscript but waited a few months more with patience and grace while this volume of essays was being readied.

EXECUTIVE SUMMARY

Standards for Criminal Justice Structure

The structure and organization of criminal justice services is an important building block in the quest for improved institutional performance. Virtually every national study commission and standard-setting group has offered recommendations on structure, usually as part of larger bodies of reform doctrine. Yet, structural proposals have rarely been sorted out, compared and analyzed across the criminal justice components.

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals issued a comprehensive set of improvement standards. Its structural proposals evolved from prior concepts, models and trends. However, they exhibited interesting variations and emphases. With respect to court and correctional systems, the Commission took a stronger stand on statewide unification and administration than virtually any prior group. In prosecution and defense, the Commission resisted pressures toward centralization (other than central financing) and largely endorsed the current local autonomy of service delivery, particulary for prosecution. In the highly fragmented police area, a multi-faceted program of small department consolidation, local and regional combination of services and functions, and state level staff support was offered. This was essentially "mainline" in reform wisdom, but somewhat more aggressive and specific than past formulations. On total system organization, the Commission seemed to envision no structural or hierarchical linkages between system components, relying on cross-system planning and improved information and communication capabilities to achieve coordination within the "nonsystem".

Activity among the states in the four years since the National Advisory Commission analysis shows a significant amount of new planning and implementation of structural reform measures, normally a politically difficult arena for change. These were undoubtedly influenced by the Commission contribution but probably reflect, in greater degree, the cumulative impact of the many groups to urge similar changes during the past decade's "rediscovery" of the criminal justice system.

Issues in Organization

In assessing criminal justice structure and charting paths for improvement, it is valuable to consider special characteristics, dilemmas and problems within American government and our criminal administration institutions that bear on organizational

planning and redirection. These concerns range from problematic criminal justice characteristics (e.g., executive-judicial separation of powers, elective law enforcement officials, discretionary accommodations, inherent system tensions, private sector roles) through general public administration issues (e.g., federal system diversity, local unit viability, government reorganization trends, mounting fiscal pressures) and organizational and bureaucratic quandaries (limits of hierarchy and the structural contribution, central administration versus central regulation, system accountability and monitoring).

America, for example, is a portrait in contrasts for criminal justice structures, one painted by fifty "sovereign" state governments with independent lawmaking and law enforcing powers. Virtually every level of variation, centralization and decentralization imaginable can be found in some state or region with respect to most components of the criminal justice system. This does not mean that movement toward higher levels of central standard-setting and control may not be desirable but rather that such change must be translated into the diverse contexts and preferences that exist within the federal system. Then, too, the executive-judicial separation of powers is a "given" of the American system and will prevent full structural integration of judicial with other criminal justice apparatus.

Elective criminal justice officials predominate in some criminal justice areas (judges, prosecutors, attorney generals) and this will remain a barrier to the merging of criminal justice agencies into larger departments, districts or administrative structures. Moreover, the past decade has witnessed a massive movement toward state government reorganization and simplification of agency structure. In the same way that elective offices complicate unification schemes, the state government simplification movement may facilitate them, encouraging the bunching of functionally related activities such as those comprising the criminal justice complex in common administrative structures.

There are those, however, who espouse the necessity and desirability of separateness and healthy tension between criminal justice components. This goes beyond the executive-judicial separation of powers and is seen most clearly in the adversary orientation and conflicting mission of the prosecution and defense functions. Such forces, of course, encourage administrative and structural independence rather than integration. Also, our nation has learned, in many instances quite painfully, of the limitations and inefficiencies of complex, hierarchical bureaucratic structures. Thus, despite the theoretical nicety of integrated and effective criminal justice systems, the bureaucratic costs and distances created by unification and consolidation initiatives may frustrate goals of cooperation and coherence.

A fundamental issue in the achievement of "equal justice" and reasonable uniformity and consistency in criminal justice service delivery is whether services should be centrally directed or centrally regulated. In some areas, the trend is toward central operation (courts and corrections) and in others, reform efforts have focused on central standard-setting, monitoring and regulation (e.g., police and prosecution). What really exists are varying mixtures of these two techniques and often similar results can be achieved under either mode.

To a large extent, criminal justice reform, especially in regard to the smallest units and jurisdictions, is tied to the problem of local government viability. The part-time prosecutor and the one-man police force is often part of a local government unit that is too small to adequately meet responsibilities in a number of areas, not just criminal justice. The reform options include small government consolidation (normally highly resistant to change) or transferring responsibilities to larger governmental levels, i.e., state control or the establishment of district or regional agencies that encompass more than one governmental unit. Then, too, local government fiscal pressures are mandating shifts in criminal justice responsibility -- both operational and financial. Unified court and correctional systems relieve local governments of growing fiscal burdens but also assume central policy direction. At the other end of the spectrum, state fiscal relief for criminal justice can be provided through subsidies, equalization payments and grants without altering local control and responsibility for operations.

With what appears to be an inevitable push toward greater centralization of criminal justice services, new monitoring and accountability mechanisms will be required. These are needed as an external check on inefficiency, non-responsiveness and over-bureaucratization. Fortunately, much experimentation is in evidence in criminal justice and government-in-general, ranging from ombudsman, direct advocacy, monitoring and internal inspection mechanisms to "sunset" legislation and "sunshine" decisionmaking. Such counterbalances will help insure the success of structural integration efforts for criminal justice. Also, the past generation has shown much development in complex organization knowledge, demonstrating that structure is only one determinant of organizational effectiveness and that factors such as leadership, internal communication, reward systems, decisionmaking styles, task complexity and environmental factors shape organizational performance as much and perhaps even more than hierarchy and structure.

A final issue in structural analysis is the enormous and pervasive role that discretion has played in the criminal justice system. Virtually all reform studies have called for narrowing and better articulation of the ground rules for exercise of discretion. To the extent that this need is met, new levels of local autonomy and decentralization in criminal jus-

tice can be tolerated without the dangers of unacceptable disparity and discrimination in the administration of what should for all levels of society be a relatively uniform and equal application of criminal justice principles and powers.

Financing the System

The nation has now acquired some ten years of experience since release of the analyses and improvement proposals of the President's Commission on Law Enforcement and the Administration of Justice (1967). The rhetoric about the depth and breadth of the crime problem has continued unabated (not without reason), and concern has been expressed about the impact of the new billions which the nation invested over the ten-year period in police, court and correctional operations. A pause to examine what has really happened on the financial side of criminal justice would seem worthwhile. This essay addresses a part of that task. Within the broad universe of fiscal analysis possible, selected inquiries have been selected for exploration. These focus, first, on the true extent of increased financial commitment to the system:

(i) What has been the real increase in criminal justice system investment during the period 1965-1975?

(ii) How does this increase compare with national expenditures for other governmental functions such as health, welfare and education?

(iii) How have these increases been distributed among the various components of the system, i.e., police, courts, corrections, prosecution, defense?

(iv) How have these increases been distributed among the government levels responsible for law enforcement and public safety activity, i.e., federal, state, county and municipal?

Next, speculation is offered about the effect of structural reform recommendations on who foots the crime control bill, a question of more than passing interest in this era of "fiscal squeeze".

Summarizing the "expenditures" findings for the ten fiscal years under examination, it appears that:

--Government investment in criminal justice functions increased significantly, but closer to a 95% real dollar gain than the 275% figure suggested by a national statistics recording "inflated" dollar outlays.

--The increase for this period was indeed greater for law enforcement than for all other major governmental functional expenditure categories except "public welfare".

--Shares of the criminal justice dollar remained substantially the same between the major functions of police, courts and corrections but (i) a sharper increase for the smallest functions, i.e., prosecution and defense, took place (particularly in the area of "defense" where court decisions vastly expanded the indigent accused's mandatory right to defense counsel) although this did not greatly change overall expenditure ratios and (ii) there was some relative gain by corrections and some relative loss by courts and police (a few percentage points in either direction).

--Increased expenditures by government levels showed the greatest relative gains at the federal level and the least at the local level, recognizing that the major fiscal burdens carried at the local level (well in excess of state and federal expenditures combined) made it more difficult for local governments to respond at a similar rate.

Throughout the foregoing period, the criminal justice standard-setting and study commissions have been increasingly explicit in calling for shifts in financing responsibility for police, court, corrections, prosecution and defense services. Their proposals have rarely been examined together in terms of fiscal impact within criminal justice systems and among state and local governments.

The 1973 proposals of the National Advisory Commission on Criminal Justice Standards and Goals typify the policy trends toward increased state government financing and are among the most specific and comprehensive formulations issued. If fully implemented, they would produce a radical reversal of state-local financing roles. For the first time in history, states would become the dominant funder for criminal justice services:

--Application of the Commission standards to 1975's $15 billion in state-local criminal justice expenditures would, for example, require the transfer of nearly $5 billion in cost burden from local government to state government shoulders, transforming the current 70% local-30% state share of criminal justice outlays to a 63% state-37% local ratio.

--Court and defense costs, now paid primarily by local governments, would become a complete state responsibility; correctional expenditures, now roughly 60%-state and 40%-local, would also become a state responsibility.

--While police and prosecution expenditures would continue to be borne primarily by local government, the state share would be significantly increased (more than doubled for police) by recommended subsidies.

These proposed funding shifts would bring varying degrees of unification, standard-setting and monitoring to criminal functions but would not necessarily require central state administration for functions now carried out by independent local agencies. They are also consistent with and promise relief to hard-pressed local governments facing fiscal crisis, shrinking tax bases and unprecedented municipal service overburden. Criminal justice planners and decisionmakers should treat the financing reform standards as seriously as the more visible operational, manpower and management standards, even if politically more difficult to achieve. In the long run, the former may prove to be a needed precondition for full realization of criminal justice improvement goals.

Coordinating the System

For many years, reform groups have been urging administrative unification or greater centralization within each of the major components of the criminal justice system. The proposals have varied; of course, with the different law enforcement functions and are quite familiar to professionals who have followed the literature. One would have thought that similar unification proposals might be offered for the overall criminal justice system, especially in light of the past decade's reawakening to the concept of an interdependent criminal administration system as the "ball park" for effective response to crime and criminals.

The national study commissions and the experts have indeed been sensitive to the fragmentation and isolation of the various segments of criminal justice. However, the prescriptions for cure have largely avoided alternatives of structural unification or organizational integration. Instead, the basis technique chosen for coordinating the criminal justice system has been that of "planning". This is reflected in the literature of reform, in federal grant-in-aid policy, and in the growth of a national network and bureaucracy of agencies at state, regional and local levels devoted to criminal justice coordination through planning and fund distribution initiatives. It is the evolution of this coordination approach and the shift toward new directions that this essay explores. The following portrait is offered on recent efforts to better coordinate the component parts of the criminal justice system:

--Comprehensive planning, backed by federal funding incentives, has been viewed and used as the major technique for harmonizing, coordinating and meshing the

activities of the major elements of the criminal justice system--police, courts, prosecution, corrections and defense.

--Theory and technology have become increasing specific as experience with planning has progressed. In terms of structure, state, regional and local planning/coordinating units have all been viewed as necessary and important elements of the planning strategy (with regional and local mechanisms tending to be combined in large metro areas) and an extensive bureaucracy of professionals and agencies has arisen to operate this structure. In terms of scope and "clout", official planning missions are beginning to expand beyond federal aid programming to cover total system operations, to attract legislative and quasi-line status, and to be reinforced by "minimum standards" criteria.

--Coordination strategies are rapidly expanding beyond the strict confines of planning as common information systems, educational/training programs, and integrated regulation of system components by legislative bodies receive recognition and visibility as equally valuable coordinative devices.

--A new questioning of the utility of state-directed comprehensive planning for our fragmented criminal justice machinery and increasing frustration with the complexities of written plan submission as a federal aid prerequisite suggest a coming subordination of that technique to new coordination roles and strategies.

--Direct consolidation or centralized supervision of criminal justice functions has largely been ignored as a coordinating mechanism, partly because of the constitutional separation of powers, partly because of the fractionalization of law enforcement between state, county and local government, partly because of legitimate needs for autonomy of certain components vis-a-vis others, and partly because recent consolidation of state government functions has tended to place criminal justice units in other governmental service groupings.

--Experimentation with central criminal justice administration, at either state or local levels, would seem valuable in view of the potential contribution that a common structure can make to coordinated service delivery and because of the frequent inability of voluntary coordination efforts to achieve adequate service integration. The difficulties of such centralization

are real and call for attention to a host of issues such as appropriate levels of decentralization and freedom of action among system components.

The foregoing trends seem more advanced as ideas, concepts and reform wisdom than driving forces of criminal justice activity at the delivery level and recent studies show considerable lag between planning and coordination concept and actual system performance.

Private Sector in Criminal Justice

Among public functions and services, the activities of criminal justice are perhaps the most closely associated with direct governmental operation. Notwithstanding, few persons appear to realize the full extent to which private firms and individuals are responsible for providing criminal justice services. This is true in all sectors -- police, courts, prosecution, defense and corrections. Part of this problem of omission lies in our failure to view the criminal justice system functionally and to include within its scope all who are actually engaged as "deliverers". Part also lies in the tendency of professionals to drum the private sector out of statistics, standards and reform analyses as they examine its activities and diagnose its ills. In some cases, our concepts of reform and progressive practice welcome the private contribution; in others, they condemn it. But its scope and volume continue largely unabated with future prospects suggesting even greater roles for private agencies and individuals than now exist.

While our data on the private sector role is imprecise and quite fragmentary, it is clear that private firms and individuals provide surprisingly substantial portions of police, indigent defense, and prosecution services in the United States. For example, the number of workers and amount of dollar expenditures for private security services has been growing enormously and may now equal that of the public police agencies. Also, criminal defense is still largely provided by private law practitioners (i.e., for all accused persons who can afford to pay for a lawyer, as "assigned counsel" in jurisdictions both with and without public defenders, and even in a public defender capacity where private practitioners serve as part-time defenders in small jurisdictions or where private legal aid groups contract with local governments to provide defender services.) Even the "public prosecutor" is essentially a private sector professional in the many jurisdictions (perhaps a majority of the nation's counties, albeit the low population ones) where part-time prosecutors must be drawn from the practitioner-for-profit pool. Our reform wisdom might have it otherwise but the facts and circumstances of criminal justice administration, as well as increasing budget pressures, seem to militate against significant

change in this situation. Private participation in judicial functions seems to be reducing (as reformers would have it) but with some new thrusts in informal dispute resolution; and we would like to see a larger private role in correctional services (where progress appears to be somewhat hesitant) particularly in community-based programs.

As spotty as this picture may seem, one overall message emerges quite clearly. It is delusion to count the private sector out of criminal administration. The sooner we have better information about its scope and character, the better we will be able to plan for and evaluate not only its proper contribution but the true criminal justice service demands of our larger society.

Criminal Justice Superagencies

The past decade has been a pacesetter in efforts to reorganize, rationalize and modernize state government. In the period from 1965 to 1975, more than one-third of the states undertook general reorderings of their executive departments and an even larger number accomplished significant overhaul and integration of individual departments, --by all measures, a national record of governmental change. One major feature of the reorganization efforts has been reduction in the number of agencies reporting directly to the state chief executive and their clustering under "umbrella" or "superagency" units permitting clearer delineation of functions, more realistic spans of control, sharpening of policy response, better allocation of resources, and coordination of programs to cross jurisdictional lines and focus on "client" and "delivery" goals. It has not been unusual for states to take 200 or 300 independent agencies and consolidate them into 10 or 20 new departments.

The low level of criminal justice visibility in the state reorganization movement (which seems to have focussed on such areas as human services, education, transportation, environmental protection, housing and community affairs) is somewhat surprising. If the decade of 1965-75 was characterized by the urge to modernize state government, it was equally marked as a period of awakening to the concept of an interrelated, interlocking criminal justice system as the proper arena for dealing with an alarming crime and public safety problem. A succession of national study commissions, the introduction of large scale federal assistance for crime control, and the best thinking from both professional administrators and the academic community emphasized the impact of each system component on the others. The fragmentation and isolation of the various segments were deplored and the need for coordination and planning proclaimed. However, only a few states sought to engage the total justice system concept in administrative structure. Their example is

explored in this essay.

Today, there are eight states which have administratively grouped together, at state level, more than one major criminal justice component. Five of these are direct products of the executive reorganization movement. These are Maryland, whose 1970 Department of Public Safety and Correctional Services combined state police and correctional programs under one Secretary reporting directly to the Governor; Kentucky, whose 1973 Department of Justice consolidated state police, corrections, state law enforcement planning agency, and public defender offices under one cabinet level Secretary; Montana, which, in 1973, expanded the Attorney General's office into a Department of Justice embracing the state prosecutive function, the highway patrol, the state criminal justice planning agency, a law enforcement academy, and a local prosecutor's coordination unit; Virginia, which emerged from a loose coordinating secretariat format to inaugurate a Division of Public Safety in 1976 including the state police, adult and juvenile corrections agencies, state planning agency, a criminal justice training and standards commission, and certain emergency highway safety and regulatory functions; and New Mexico which in 1977 brought together in a new Department of Criminal Justice the state police, adult and juvenile corrections agencies, a cluster of training and support functions (e.g., law enforcement academy, jail inspection unit) and administrative housing for independent public defender, parole board and organized crime commission offices. Three other states had earlier "umbrella" organizations covering more than one criminal justice component, but added significant new criminal justice functions during the 1965-75 period. These are Pennsylvania's Department of Justice, New Jersey's Department of Law and Public Safety, and the North Carolina Department of Justice.

In these departmental arrangements, commissioners of state police, directors of correctional systems, and criminal justice planning agency chiefs still function with broad power and visibility but under the administrative aegis of a cabinet level attorney general or departmental secretary. What distinguishes this group of states is the combination of state level police/correctional/prosecution/defense functions (at least two or more such elements), demonstrating that separate components of the system can live, interact and function under a common administrative umbrella, along with a miscellany of other criminal justice-related functions. None of these groupings are really complete, even discounting for judicial independence from the executive branch mandated by the Federal and state constitutions. Nor has the record been one of instant success for this hardy band of consolidators. However, a beachhead has been established, experience has been accrued, and some of the resulting lessons deserve attention. Hopefully, dialogue and attention from both the criminal justice and public administration communities will encourage a fuller examination of the integrated justice agency

(both "pros" and "cons") as an alternative to distributing criminal justice functions among separate executive departments.

Survey of Recent Unification Initiatives

In late 1973, the National Advisory Commission of Criminal Justice Standards and Goals issued its comprehensive series of reports offering priorities, recommendations and standards for improvement of all aspects of criminal justice administration. As in the case of previous national study commission and standard-setting efforts, several of the NAC standards related to unification, consolidation and integration of criminal justice agencies and services. These included such proposals as (i) unification of all correctional facilities and services in a statewide correctional services agency, (ii) unified, state-financed judicial systems under central state administration and supervision, (iii) statewide organizations to provide assistance and support to local prosecutors, (iv) state financed defender systems, (v) consolidation of small police departments (i.e., less than 10 sworn personnel), and (vi) state provision of police services and functions through techniques ranging from full merger through shared support functions and contract service arrangements.

To assess progress and activity in the direction of the foregoing standards, and as part of the author's study program as visiting fellow of the National Institute of Law Enforcement and Criminal Justice Program, a 50-state questionnaire survey was developed and implemented through the good offices of the National Conference of State Criminal Justice Planning Administrators. The survey sought state-by-state information on major "unification" programs which were currently being implemented within all criminal justice segments. The inquiry was a simple one, consisting of:

- --a careful definition of "unification" activities as applied to each criminal justice segment - police, courts, corrections, prosecution, defense, the total system
- --solicitation of "yes-no" answers on the extent to which unification initiatives in each criminal justice segment were actually implemented or made the subject of serious planning and development effort since 1973 (the year of the NAC recommendations)
- --solicitation of brief one-sentence descriptions of the unification efforts involved wherever "yes" answers were provided.

The survey was transmitted in late 1975 to directors of the fifty state criminal justice planning agencies (and three territo-

rial SPA'S) which had evolved and were responsible for criminal justice planning and funding activities under the Omnibus Safe Streets and Crime Control Act. By mid-1976, responses were received from all 50 states, Puerto Rico, the Virgin Islands and Guam. Seven respondents reported no unification action at all, whether by way of planning or implementation and another six reported activity in only one area. The remaining 40 jurisdictions reported significant activity within two or more of the six criminal justice areas, specified, with "programs being implemented" outnumbering "programs being planned" in all categories. This picture remained relatively stable through mid-1977 as documented by a follow-up questionnaire to which over 85% of the state responded.

Generally speaking, the following patterns emerged from the survey data:

--the highest levels of unification activity were evident within state court and correctional systems (over half the states in the court area and more than two thirds in corrections, the former focussing on central administration and trial court integration and the latter on consolidation of previously separate correctional service agencies)

--the lowest levels of state integration and unification were to be found in prosecution and defense (less than half the states in each case with dominant prosecution activity centering on statewide or state-level technical assistance units and, in indigent defense, on centrally administered and integrated public defender systems)

--relatively little centralization of police services was evident but a frequent incidence of local-level contract policing and departmental merger efforts was reported by several states (usually of limited instance and generally involving low population areas) along with a scattering of regionally consolidated support and tactical services plus state provision of central facilities and services to local agencies.

--very little planning or implementation of cross-system consolidation was in progress (e.g., departments of criminal justice, public safety, etc., organizationally combining police, correctional and other criminal justice functions) but statewide criminal justice training and information systems designed to serve multiple system components were often reported.

In reviewing these findings, it should be recognized that unification schemes developed and implemented before 1973 were not reflected in survey responses (except by inadvertance), several states identified certain actions as unification initiatives which were not properly reportable as such under survey definitions, and the imprecise nature of many of the short activity descriptions supplied by responding SPA's made categorization difficult.

Organization Perspectives on Prosecution and Defense Structure

While study commissions and professional standard-setting groups have accorded significant attention to optimal ways of organizing and structuring criminal justice systems, much of the dialogue and analysis, not inappropriately, has focussed on the developmental history, characteristics, and goals of the particular components being analyzed -- police, courts, corrections, prosecution, defense. However, another potentially fruitful source of guidance and insight has received relatively little attention and, in turn, has offered little contribution to the important issues arising in this field of inquiry. That is, the growing body of knowledge, theory, and design principles on bureaucratic structures, complex organizations, and "public goods and services" delivery has not been related in any intensive way to the various institutions of criminal justice. Indeed, it is only in the past few years that capable analysts have turned to this subject.

Each of the criminal justice elements reflect different delivery patterns and missions -- and a consiberable body of organizational theory can be brought to bear on these variations to help illuminate the policy analyses and social imperatives which have evolved for delivery of justice services. The relevant questions include:

(i) how should the diverse elements of the system be linked -- loosely or tightly? through hierarchical or non-hierarchical arrangement?

(ii) given the size, services, and resources of each component, what structural and design characteristics seem best adapted for decisionmaking and cost-effective operation?

(iii) what organizational and structural constraints are imposed by the values, constitutional protections, and statutory mandates applicable to criminal administration?

(iv) how do the general lessons about "flat organizations," "vertical organizations," lateral and horizontal

communications channels, professional and semi-professional staffing, human dynamics in organizational settings, team decisionmaking, rulemaking versus post-review as a control device, etc., impact on our criminal justice functions and the values behind them?

This essay offers profile date and some speculations about two criminal justice service areas -- prosecution and defense. First, mini-portraits are presented of American prosecution and defense systems as they are organized in most states. Then, the ideas and constructs of several organizational analysts are related to the prosecution and defense settings with particular focus on proposals for unification or greater measures of central control and regulation.

It is suggested, among other things, that "professional-intensive" prosecution and defender offices would not be unduly constricted by inclusion in larger hierarchies (Hall); that "federal decentralization" modes of organization (Drucker) seem well-adapted to the defense and prosecution functions; that different approaches to the review function (Simon) permit substantial decentralization within hierarchical defense or prosecution structure; that the basic "mechanistic model" of organizational design and its fundamental coordinating mechanisms (Galbraith) may be quite adequate for defense and prosecution systems, requiring little recourse to alternate strategies; and that the values of bureaucratic competition (MacKenzie-Tullock and Niskanen) make public-private and state-local overlap tolerable and, quite likely, desirable in prosecution and defense activity.

Correctional Unification

Theoretical movement and reform wisdom in the criminal justice area suggests greater measures of correctional unification. Indeed, events of the past decade and further acceleration in the mid-seventies indicates that reorganization to this end has become a priority of lawmakers, executive branch chiefs and correctional leaders themselves. If properly appreciative of organizational knowledge, it may hold the key not only to administrative accountability, control and efficiency but provide a more rational basis for effectively decentralized operations and achievement of a leading priority in offender treatment -- community-based corrections.

Notwithstanding, "diversity" has been a central force and descriptor for all American governmental service systems and in corrections, the most fractionalized of all criminal justice components, there is little reason to expect that it will disappear in favor of some homogeneous model. Within this reality, the future should show more of the following:

--a continuing movement toward consolidation of both traditional and new correctional responsibilities at the state level (adult-juvenile, institutional-community, and state-local) with perhaps slowest progress in the local jail area;

--a reexamination of continued inclusion of correctional functions in large human services superagencies in favor of (i) unified and independent corrections departments (themselves approaching adequate size to command cabinet status in modern executive structures) or (ii) placement in criminal justice or public safety parent agencies;

--a drive toward integration of correctional services at substate levels with focal points in (i) regional groupings (possibly coextensive with developing state regions for general urban service delivery) or (ii) at more decentralized county-focused levels;

--correctional administrative structures which, because of their multifunctional scope, can more readily absorb the sharp program, manpower and financial regroupings which seem an inevitable part of the correctional future (e.g., abandonment of parole, deinstitutionalization in the juvenile area, splitting of pretrial detention and misdemeanant confinement, subordination of rehabilitative purpose and programming, and increased use of private sector service delivery);

--more explicit choices among options of (i) standard-setting, subsidization and monitoring or (ii) direct service administration, depending on state size, inclinations and decentralization needs.

Today, the nation seems to be entering a watershed period in correctional purpose and technology with some idea but also much uncertainty as to the precise shape of change. In that stance, the utility of the old bromide about "form following function" takes on special significance. Hopefully, the emerging "forms" will serve the new "functions" well and show sufficient resilience to do likewise with future waves of reform wisdom.

Challenge to Criminal Justice Consolidation

The ten-year record of progress on criminal justice unification since the landmark studies of the President's Crime Commission would, in general, be gratifying to a "consolidationist." The doctrines of unification have been reinforced, taken on some

sophistication, and attained an unprecedented degree of implementation in many areas. Yet, a new conventional wisdom has arisen -- one that stresses decentralization, local participation and responsiveness -- which suggests that the unifiers may have devoted too little attention to the values of autonomy, local decisionmaking, and diversity within the criminal justice system. At the least, these insights require a close examination and, possibly a focus on structures and methods which would stress (i) central regulation, standard-setting and monitoring rather than central management and service delivery in most areas; (ii) collegial participation and decisionmaking in development of criminal justice policies and administrative rules (especially involving the local, regional and field officials who must implement them); (iii) attention to service unification and integration at local and regional as well as state levels; and (iv) design of effective decentralization patterns suitable to each of the various criminal justice functions.

At the same time, there would need to be stress on elimination or consolidation of local agencies and service units which are too small to meet minimum service standards for the justice function (e.g., part-time prosecuter and defender offices, one-man or few-men police departments) and movement to central funding and resource allocation schemes where these promise a minimal level of service required to preserve the quality and equality of local justice administration. Moreover, we should continue to see experimentation with central state agencies for each criminal justice function and, possibly, for the system as a whole (subject to separate judicial system identity) within the range of roles and values enumerated above. Throughout, however, it is important to recognize that with the diversity of the American federal system, prescription of simple or single models of structure and organization is neither possible nor desirable and that centralization measures must take into account political tradition, variations in size and demography, and modern organizational technology.

To respond to centralization thrusts, state-local tensions, increasing mission complexity and service workloads, and needs for better integration of criminal justice services, other mechanisms must also shoulder a load. There will have to be, for example, continued recourse to criminal codes, legislative regulation and constitutional principles, as a system mediator and integrative tool; continued recognition and use, along with structure and hierarchy, of such coordination tools as planning, common information systems, and cross-system education and orientation; and greater reliance on both inside and outside grievance, inspection, and client advocacy mechanisms to counterbalance the added authority of centralized administrative structures. Also of importance will be a well-executed federal government role as supporter of the foregoing concepts in its national leadership and grant-in-aid policies, preserver of national values and constitutional guarantees in the criminal justice arena, and maintainer of operational, coordinative and sup-

port capabilities not readily shouldered by state and local govwenmwnr.

A final note of caution should be sounded. The healthy tensions of a multi-faceted criminal justice system and the desirable search for centers and matrices of responsibility at different points in our federal system do not negate the values of unification, integration or large scale organization within the criminal justice system. The "challenge" of criminal justice unification is still with us, even though its contours have broadened, grown more complex, and taken on an agenda of decentralization and local responsiveness that many thought might be resolved automatically with the advent of rational order, structure, and more central control.

ABBREVIATED REFERENCES

Set forth below are short-form references and acronyms for study groups, national commissions, and professional associations whose names and works appear repeatedly in this volume. The abbreviated references are used intermittently throughout the text.

Advisory Commission on Intergovernmental Relations	ACIR
American Bar Association	ABA
American Correctional Association	ACA
American Law Institute	ALI
Committee for Economic Development	CED
Council of State Governments	CSG
Law Enforcement Assistance Administration, U.S. Department of Justice	LEAA
National Advisory Commission on Criminal Justice Standards and Goals	National Advisory Commission or Peterson Commission or NAC
National Association of Attorneys General	NAAG
National Commission on Law Enforcement and Observance	Wickersham Commission
National Conference of Commissioners on Uniform State Laws	Commissioners of Uniform State Laws or CUSL
National Council on Crime and Delinquency	NCCD
National District Attorneys Association	NDAA
National Legal Aid and Defender Association	NLADA
President's Commission on Law Enforcement and Administration of Justice	President's Crime Commission or Katzenbach Commission
State Criminal Justice Planning Agency	SPA

INTRODUCTION

This collection of essays explores various facets, issues, and dimensions of the organization, financing, and structure of criminal justice systems -- an insufficiently examined area. While virtually every recent national study commission and standard-setting group has offered commentary and recommendations on these subjects, they have rarely been sorted out, compared and analyzed across the system. Yet, these institutional dimensions of society's crime control response are important to the quality, nature and adequacy of the criminal justice apparatus and to the service levels which citizens can count on. As the reader will note, much of the volume's content relates to national commission, study group, and professional organization recommendations for greater unity, integration, and coordination, both within and among the traditional service components of criminal justice administration -- police, courts, corrections, prosecution, and indigent defense.

Monograph content, in order of presentation, commences with a review of recent reform standards for criminal justice structure, laying out the "unification" bias of most of the contemporary study commissions but distinguishing between prescriptions for various components and, in particular, the greater measures of decentralization and localism accorded to police and prosecution activities. This is followed by an exposition of special characteristics, dilemmas and factors which need to be considered in assessing criminal justice structure and charting paths for improvement. Discussion here ranges from problematic criminal justice characteristics through general public adminstration issues and organizational and bureaucratic quandaries. The next essay probes a selection of fiscal issues, focussing on two broad questions -- the extent to which national investment in criminal justice services has really increased over the past decade of "rediscovery" of the criminal justice system and the striking realignments of system financing that would occur, particularly as between state and local government, if reform recommendations for statewide unification of services were widely implemented. Two further essays complete the first five chapters, one examining the "planning" ethos of the past decade that has dominated attempts to coordinate and strengthen criminal justice systems (along with emerging new approaches to system coordination and integration) and the other drawing attention to the substantial and growing, but curiously neglected, private sector role in delivery of criminal justice services.

The second half of the monograph commences with a review of the new "state criminal justice superagencies" which combine under one administrative and organizational umbrella two or more major criminal justice functions much in the fashion of similar entities in other governmental service areas (e.g., human services, education, transportation, housing) which have emerged

from the unprecedented wave of state government reorganization in the sixties and seventies. This is followed by a national survey report on unification, consolidation and coordination initiatives since release of the last set of comprehensive national commission recommendations on criminal justice improvement (the 1973 reports of the National Advisory Commission on Criminal Justice Standards and Goals) and a paper offering speculations on the applicability of selected organizational concepts and theories to the situation of prosecution and defense services. The penultimate essay explores (and makes a brief for) unified correctional systems incorporating, at state level, both adult/juvenile and field/institutional services and suggests the consistency of such an approach to emerging correctional theory and concept.

The final paper relates the challenges of criminal justice consolidation and governmental fiscal crisis facing American local government, tracing developments over the ten-year period since the landmark studies of the 1967 President's Commission on Law Enforcement and Administration of Justice and emphasizing sound decentralization as well as unification patterns in seeking to maximize the ability of criminal justice structures to meet both citizen expectations and professional standards in achievement of efficient and responsive service delivery.

As will be recognized from the text, sometimes explicitly and just as often implicitly, the author generally supports national study commission conclusions and recent movement toward unification and greater state influence in all components. However, stress is placed on (i) careful selection of techniques (hierarchical control, regulation and standard-setting, monitoring and review, subsidies, merger of small units), (ii) attention in unification designs to political and regional diversity within the federal system, (iii) a focus on appropriate modes of decentralization and local service integration within unified systems, (iv) greater recognition and integration of today's substantial private sector participation in criminal justice service delivery, and (v) emphasis on the importance of unification and administrative coherence to equal justice and consistency in criminal administration.

CHAPTER 1. STANDARDS FOR CRIMINAL JUSTICE STRUCTURE--THE REFORM WISDOM

In late 1973, the National Advisory Commission on Criminal Justice Standards and Goals ("NAC") issued a series of reports incorporating a comprehensive set of priorities, recommendations and standards for improvement of all aspects of criminal justice administration.[1] As in the case of previous national study commission and standard-setting efforts, several of the NAC standards related to unification, consolidation and integration of criminal justice agencies and services--a response to the fragmentation, duplication and lack of coherence in criminal justice administration which was brought to national attention by the President's Commission on Law Enforcement and Criminal Justice in 1967 ("President's Crime Commission")[2] and further highlighted in the early 1970's by such distinguished urban problems analysis groups as the Advisory Commission on Intergovernmental Relations ("ACIR")[3] and the Committee for Economic Development ("CED").[4]

The NAC effort represented the entry of the federal government's major crime control assistance program into the intellectual leadership arena, responding to criticism that it was evolving as an uncritical dispenser of large quantities of federal funds without adequate guidance to states and localities on how resources, time and effort could best be deployed for the improvement of criminal administration. NAC was sponsored, financed and the "brain child" of the Justice Department's Law Enforcement Assistance Administration. It was an ambitious effort. To the surprise of many and delight of all, it worked, producing a credible work product and, despite great ambivalence as to its official status and relation to grant-in-aid programming and policy, seems to have been exercising significant influence in the criminal justice field ever since its reports were released.

The NAC structural recommendations spanned all components of the criminal justice system--courts, police, corrections, prosecution and defense. They included such proposals as:

- --unification of all correctional facilities and services in a statewide correctional services agency (Corrections Standard #16.4).
- --unified, state-financed judicial systems under central state administration and supervision (Courts Standard #8.1).
- --statewide organizations to provide assistance and support to local prosecutors (Courts Standard #12.4).
- --state financed defender systems (Courts Standard #13.6).
- --consolidation of small police departments (i.e., less than 10 sworn personnel), state provision of certain support services, and combination of police services and functions through techniques ranging from full merger

through shared support functions and contract service arrangements (Police Standard #5.2).

This analysis will place a searchlight on the NAC structural recommendations and those of earlier national commissions and study groups--a relatively rare undertaking in the criminal justice literature.* Although the years have yielded a liturgy of structural reform for criminal justice agencies, these have usually been sandwiched in with larger bodies of improvement concepts covering manpower, programs, operating procedures and management policies--and not without reason. After all, structure needs to be integrated with the goals, techniques and substantive programs of governmental service systems. Nevertheless, and particularly with the past decade's focus on the agencies of criminal justice as an interlocking, interdependent system (often despairingly called a "nonsystem")[5], it is believed that value and understanding may be gained from excising, comparing and reflecting on the structural issues and proposals that have been presented for each major criminal justice component and the total system.

In focusing on organization and structure, no claim is made that this provides the key to the nation's profound crime control problems or that there are single or simple solutions or models for our diverse, pluralistic government structure. Indeed, the traditional and still prevailing reform approaches, dating back to the pioneering work of the Wickersham Commission,[6] have been to call for greater measures of centralization, consolidation and coordination--a prescription bound to cause uncertainty in an era where the values of decentralization, local decisionmaking, competition in "public goods" markets, and "smallness" are being urged as an answer to the often shocking mediocrity and diseconomies of large scale bureaucracy.[7] Whatever the case, government cannot proceed without choices as to structure and organization. It is an "indispensable" to service delivery and, for that reason, worthy of special attention.

Compared with earlier reform proposals, the NAC recommendations show a penchant for strong centralization in some areas (courts and corrections) and the local option, decentralized approach of the New Federalism in others (police, prosecution and defense) tempered with an overlay of increased state funding, coordination and technical assistance in local delivery systems. Let us look at the record.

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*Occasional reference will also be made to more recent standards of a structural character issued by subsequent professional and study groups. By and large, these are confined to a particular system component since no total criminal justice reviews of the NAC and President's Crime Commission scope have been undertaken since 1973.

Corrections

Despite a vigorous commitment to community-based treatment programs, local planning and citizen involvement, the National Advisory Commission came up with the most complete correctional unification position of any recent study commission or professional group. Briefly, it called for fully unified correctional services, to be administered by a statewide correctional agency, covering (i) adult and juvenile programs, (ii) parole, probation and institutional services; and (iii) both felony and misdemeanant institutions.[8] Qualified only by a caveat that while the unifications standard was applicable to most jurisdictions, there might be exceptions based on local conditions or history which justified separation of adult and juvenile services or pretrial and postconviction services, NAC had, nevertheless, ventured beyond where distinguished predecessors had dared to go.*

The President's Commission on Law Enforcement and Administration of Criminal Justice (1967), although cataloguing and deploring the heavy fractionalization of correctional services in American jurisdictions, offered no specific prescription for remediation. Its only explicit recommendation on correctional structure was a proposal to integrate local jails and adult misdemeanant institutions into state correctional systems (a structural adjustment that has enjoyed less success than any other correctional unification prescription). The Advisory Commission on Intergovernmental Relations a few years later (1971) suggested a rather comprehensive joinder of correctional responsibilities under state government administration but felt that adult and juvenile detention, short term jails, and juvenile and misdemeanant probation should remain under local government aegis subject to state standard-setting, monitoring and technical assistance.[9] The Model Penal Code of earlier days (1962) never thought to suggest the combination of juvenile and adult services although it contemplated a rather complete integration of adult services.[10] The standards of the American Correctional Association (1966), national organization of correctional administrators and workers, hesitated to go beyond centralized departments of institutions, a preference for integrated institutional, parole, and probation services, and a state standard-setting control over local institutions and probation services.[11]

*Indeed, on the issue of adult-juvenile system joinder, two subsequent standard-setting groups (one the "official" NAC successor) have issued clear calls for separation of adult and juvenile corrections systems--ABA-IJA Juvenile Justice Standards Commission (1976 Standards on Corrections Administration, #2.1-2.5) and National Advisory Committee on Criminal Justice Standards and Goals (1977 Juvenile Justice and Delinquency Prevention Standards, #19.1).

It would be overreaching to suggest that the NAC total integration position has impelled a wave of states to pursue that course. The correctional unification movement was well in progress by the time NAC reported out, including a handful of states that had achieved almost totally unified systems and several more that had attained unification within adult or juvenile services. The movement has succeeded, for example, in bringing probation responsibility into a number of state departments of corrections (over twenty) even though probation services began as local government functions and tended to stay apart from prison systems when they moved into the state executive structure. Moreover, a new Council of State Governments study documented that over 80% of the states had undertaken reorganization of correctional functions in the ten-year period 1965-1975 and virtually all of these involved some measure of service consolidation.[12]

More realistically, the NAC formulation seems to have induced a number of states to examine possibilities for further integration and unification than they had achieved and move in that direction. For example, a late 1975 survey* revealed that since release of the NAC standards, at least two-thirds of the states had either implemented some further measure of state correctional system unification or were engaged in serious planning of such action.[13]

Courts

NAC was very much in the mainstream of contemporary wisdom on judicial reform in proposing that:

> "State courts should be organized into a unified judicial system financed by the state and administered through a statewide court administrator under the supervision of the chief justice of the state supreme court."

Indeed, its concept of unification was purer and less compromising than predecessors in its insistence on a single trial court of general criminal and civil jurisdiction. That is, NAC rejected "two-tiered" levels within the unified system, I.E., separate courts of general and limited jurisdiction and the relegation of jurisdiction over less serious offenses to lower status judicial officers such as "magistrates" or to specialized divisions of the unified trial court.

The NAC stance might be criticized as an unduly rigid interpretation of the unified court system concept. For

*See chapter 7 for further data on this NILECJ Visiting Fellowship Program undertaking.

example, the 1971 analysis of the Advisory Commission on Intergovernmental Relations also recommended unified, simplified state court systems as a reform model but stipulated that it was appropriate to establish subdivisions of the general trial court to perform the duties of courts of limited jurisdiction and that justices of the peace could be retained if placed under state supervision.[15] The earlier Model Judicial Article of the American Bar Association (1962) and the National Municipal League's Model State Constitution (1963) both contemplated within the unified system two trial court levels--general jurisdiction and limited or "inferior" jurisdiction.[16] Since that time, the American Bar Association, in its new standards relating to court organization (1973), has moved closer to the NAC disapproval of separate trial courts of general and limited jurisdiction.[17] It should be noted that the 1967 study of the President's Crime Commission contributed analysis and impetus to the NAC movement toward fully unified trial courts through its endorsement of unified statewide court systems and specific recommendation that the shocking deficiencies of misdemeanor courts be cured, in part, by merging them into felony courts.[18]

The NAC input, then, was a more exacting formulation toward the "ideal" in a developing movement toward statewide, state-financed court unification and simplification. Many states were already on the path and more were to follow. Although NAC could claim that it went beyond what any court had actually achieved, the true state of unified court implementation was probably closer to the ACIR judgment that some 14 - 18 states have achieved "unified or substantially unified court systems" and a number of others had taken significant steps in this direction.[19] The trend continues strong today. A late 1975 survey established that half the states were engaged in planning court unification programs or actually undertook implementation of previously authorized programs since the year of the NAC reports. (1973)[20] Of these, at least ten involved formal constitutional/legislative action permitting them to be added to the ACIR list of 18 states which had achieved unified or substantially unified systems (i.e., could claim at least three of ACIR's four "unification" criteria of a single administrative head and organization for the entire system, unified rules of practice and procedure, single strata appellate and trial court levels, and flexible assignment of judges at each level). NAC influence must have played some role in this acceleration of the historically slow pace of judicial reform and, coupled with the ongoing court improvement movement within the legal profession, promises to achieve about as heavy a degree of centralization as one can expect from 50 disparate state judicial systems.

Police Services

The NAC structural recommendations concerning police services focus on three areas (i) consolidation of the smallest police departments, (ii) exploration of possibilities for combined and contract services among all police agencies with respect to total services, special operations and staff services and (iii) state technical support for local police departments.[21]

Like such predecessors on the President's Crime Commission and ACIR, NAC joined in disapproval of the host of American police departments with too few officers to provide full patrol services or operate cost effectively. Unlike the predecessors, NAC adopted a specific minimum size standard (fewer than 10 sworn employees) as the basis for small department consolidation. In so doing, it had taken a forthright and challenging position that threatened the organizational life of the numerical majority of American police forces within this category (over 80% of the nation's 20,000 independent police agencies). This was a tall political order, perhaps to the point of non-feasibility. However, there were dramatic precedents suggesting that a major reduction of small governmental service units could take place in this nation (the school district consolidation experience)[22] and within democratic locally-oriented police structures (the British police amalgamation experience).[23]

The NAC recommendations have had to proceed in the face of a growing and impressive literature to the effect that police department consolidation tends neither to produce savings or reduce service costs nor offer hard evidence that "bigger is better" in terms of police efficiency or responsiveness, particularly in rural and suburban areas.[24] Fortunately, the NAC "fewer than ten" standard was a cautious one pegged to minimum full-service patrol capability, thereby neutralizing the very real and serious challenge that might be made to a broader policy of small forces consolidation similar to the British effort. Indeed, at the "less than 10 levels", there seems to be, in addition to longstanding professional consensus, empirical suggestion that increases in size yeild gains in efficiency.[25]

The actual impact of the NAC standard is difficult to assess, in part because of the federal government's ambiguous stance toward advocacy of this "sensitive" reform. Nevertheless, there does seem to be more activity in small department merger than in many years, stemming not so much from formal consolidation of one or more departments than discontinuance through the technique of contract policing (and de facto merger) of small forces. That is, the most feasible way of eliminating the one-man or few-man force seems to be discontinuance by the

local government unit maintaining it and contracting with some larger force (the county sheriff, a sizable municipality) to provide police protection. This technique leaves the matter of "consolidation" to voluntary local action rather than state legislative mandate, although some have claimed that state governments, through their LEAA-financed planning agencies, have pursued funding policies that are forcing the tiny police forces out of business.[26]

Although "head counts" are hard to come by, the pace of small unit mergers seems to be picking up. In a late 1975 survey (chapter 7, infra), nearly 40% of the states reported some planning and experimentation with small department merger, primarily through contract service arrangements with state, county and local units. This is confirmed by other sources but the overall volume, however, appears to be low.[27]

As regards the NAC recommendations on exploration of other uses of combined and contract services, there seems to be a sensible wave of experimentation focused on specific functions that seem well-adapted to state, regional or metropolitan combination and pooling. In this area, the NAC recommendations were less specific than earlier studies, merely listing the generaly types of combined service arrangements possible and urging governments to consider them when there appeared to be benefits in terms of reduced costs or increased service levels. By contrast, the President's Crime Commission (1967) and ACIR formulations (1971) were more specific. For example, the President's Crime Commission explicitly recommended that state or metropolitan departments should help smaller communities with laboratory facilities, major investigations, area-wide records, communications needs and the like.[28] ACIR advanced alternative solutions to the failure to provide full-time services or adequate specialized supportive services, indicating which units of government should be authorized to step in and alleviate the problem rather than suggesting, like NAC, that solutions be negotiated from the complete spectrum of pooling and consolidation possibilities.[29]

NAC also continued to suggest political consolidation as a possibility. It did this despite the uniformly poor success record of local government consolidations of this kind (of the few local government consolidations attempted from 1945 to 1974, over 70 percent were defeated at the polls) and the general turning in public service technology to functional consolidation approaches based on careful study and assignment of roles to community, areawide and federated governments best equipped to handle specific services.[30]

The notion of increased staff services by state governments, where beyond the capacity of individual units, preceded NAC and

was reinforced by NAC endorsement. It has continued to show progress through the increasing service roles being assumed by state police forces in providing information, laboratory and communications systems and networks and through special state councils and commissions constituted to develop and monitor police selection and training standards.

Prosecution Services

The organization of prosecution services has raised two major concerns for study and standard-setting groups, these going back as far as the Wickersham Commission probe (1931). The first, and most critical, has been the lack of supervision and coordination in the nation's localized, powerful and highly autonomous system of prosecution. The second relates to the existence and hazards of the system of part-time prosecution offices prevailing in most of the nation's counties (well over half of the less populous counties).

Virtually every national study commission has sought ways to introduce some regulation, policy consistency, and central leadership in the prosecution system. Few sought to follow court system models and opt for centrally administered prosecution systems as had developed in a few states. Almost all, however, called for some state leadership to coordinate policies and assure reasonable uniformity in prosecution approaches, monitor poor or improper performance, and meet needs for resources and assistance that many prosecutive offices could not support locally. The Wickersham Commission called for a state director of prosecutions to provide strong supervision to local prosecutors;[31] the American Bar Association endorsed longstanding but little-used authority for state attorneys general to intervene in or supersede local prosecutors where responsibilities were being badly handled; the President's Crime Commission and ACIR also called for expanding the coordinative and watchdog authority of the state attorney general, but seemed to rely more on creation of councils of local prosecutors to develop their mutual assistance needs and capacities and help formulate policies that independent elected local prosecutors would respect and follow.[33] All groups called for state funding and technical assistance in the many dimensions that would improve the quality of local prosecution (training, data exchange, research, investigative services, supplemental manpower, etc.).

In contrast to these predecessor groups, the NAC standards virtually abandoned any concept of increased state supervision or monitoring over local prosecutive performance and discretion. Instead, NAC structural recommendations seemed to

embrace the notion that state technical assistance programs, preferably run by councils of prosecutors, were the only centralization measures needed to bring more coherence and effectiveness to fragmented prosecution systems.[34] NAC, apparently relying on the accountability deriving from local election of most prosecutors, saw existing autonomy as the desirable norm for this most powerful of all criminal justice functions. The view was somewhat consistent with its position on defense services (where it left state and regional administration to local option) and in sharp contrast to its hard unification line for the judiciary and correctional services. In fairness, NAC may well have assumed that the central constraints of a single state criminal code, strong legislative and court practice rules, and bar discipline against improper behavior, coupled with voter accountability, provided most of the safeguards that would have been achieved by a centralized bureaucratic or inspection structure.

Strangely, in calling for state organizations of prosecutors, NAC did not even suggest that the prosecutors themselves could exercise a collegial rule-setting authority to assure minimum levels of performance and prosecutorial consistency. Instead, it tentatively expressed the hope that these voluntary entities "should try to eliminate undesirable discrepancies in law enforcement policies". This position was largely echoed by the National District Attorneys Association in prosecution standards issued in 1977--both with regard to the central coordination role of state prosecutor organizations and the voluntary nature of any self-regulation or statewide policy-setting. NDAA seemed to focus, in regard to the latter, on the tool of "office manuals", models of which would contain sound policies and practises and, when adopted or utilized by individual offices, would work to eliminate undesirable inconsistency, mitigate unduly disparate use of discretion, and promote uniform policies in areas not covered by state law or court rules.[35]

The NAC stance seems to have had a critical effect since the only progress in prosecutive structuring in the past three years has been a flowering of staffed, state-funded prosecutive assistance organizations, some authorized by statute, some operating out of the offices of state attorneys general, and some administered by voluntary associations of local prosecutors.[36] These have provided a much needed improvement force, but have left largely unsolved the problems of prosecutive unevenness and fractionalization that have been the subject of concern for so many years.

It should be pointed out that NAC substantive recommendations on improvement of personnel selection, elimination of plea bargaining, and better prosecution linkages with courts,

police and other criminal justice agencies would, if implemented, have addressed some of the abuses in local prosecution systems that others would have approached through state supervision and hierarchy.

With regard to the part-time prosecutor, NAC expressed the same firm opposition as predecessor commissions.[37] Viewing the challenge to professionalism in this area, NAC seemed less solicitous of local preferences and accountability. Its standards provided a clear call for elimination of the part-time prosecutor, even when this required legislative redesigning of the basic one-county prosecutorial jurisdiction (and replacement with district or regional offices) to achieve the desired result. Progress in this area had been halting, limited to a much-publicized district prosecutor system initiated in Oklahoma in 1965 and the elimination of part-time prosecutors in Colorado at the turn of the decade. Now in the post-NAC period, a flurry of full-time, district-oriented prosecution system conversions (four states in the past three years and more on the drawing boards) promises new headway toward the long sought reform goal of full-time prosecutor services for all jurisdictions.

Defender Services

The structural issues in the indigent defense field have had three focuses: (i) whether to rely on full-time salaried public defenders or modern, systematized assigned counsel systems utilizing the private bar; (ii) whether to eliminate jurisdictional units too small to support a full-time defender; and (iii) whether to unify local indigent defense units under statewide defender systems.

The formulations of NAC were quite interesting.[38] On centralization, it called for state funding but local option on whether defender services should be administered by state, local or regional units. On choice of system, it declared that full-time defender agencies should be available in all jurisdictions but not as the exclusive delivery technique. There should be room for, and substantial participation by, assigned counsel arrangements (i.e., beyond the inevitable need for assigned counsel to handle "conflict" cases* even in exclusive public defender jurisdictions). On the part-time defender agency, it insisted that no office be established

*These are typically crimes involving multiple defendants where, under the circumstances or because of potential conflicting interests, it would not be appropriate for the local defender office (even using different staff attorneys) to represent all of the accused individuals.

unless it could be staffed with a full-time defender, even at the high political costs of creating district or regional delivery systems that alter the county-wide jurisdictional patterns in most states.

It is striking, with its strong state unification bias for the judiciary, that NAC failed to give comfort to a burgeoning national movement toward state defender systems. In 1973, the year of the NAC report, a national survey revealed the creation of 16 state administered defender systems in less than a decade where none existed before below the appellate level (including a few which primarily handled financial support for local units)[39] and the pendency of state defender office legislation in almost the same number of states. NAC expressed no preference as to state, local, or regional administration, feeling that the evidence did not as yet demonstrate the superiority of central administration. Interestingly, in the three years since the NAC report, not a single new state has joined the statewide defender agency group.[40] While some statewide defender legislation is pending, the NAC neutral stance has apparently helped dampen movement in this direction.

Two national study efforts since NAC have divided on the state system versus local choice issue. The National Study Commission on Defense Services (1976), a federally-funded blue ribbon group sponsored by the national professional organization of indigent defense (National Legal Aid and Defender Association), expressed a clear preference for statewide defender systems organized under a single director. On the other hand, NLADA itself approved standards that same year which endorsed the NAC approach, i.e., state financing of defender services but actual administration at either state, regional or local levels (depending on which could best assure adequate funding and independence in a given state context).[41]

On transition to full-time local offices and the creation of defender offices as an option in all jurisdictions, the record is not clear. However, the 1975 survey on unification activity since the NAC standards (chapter 7, infra) has revealed little progress toward these structural goals.

Indigent defense still remains helplessly behind in meeting service levels required to fully comply with Constitutional mandates on right to counsel--now covering felony, juvenile and misdemeanor proceedings and all stages of criminal prosecution from custodial interrogation through trial, sentencing and appellate review. The National Legal Aid and Defender Association, in 1973, viewing a manpower pool of some 5000 defenders (half full-time) produced a well documented, conservative estimate of need for 17,000 full-time lawyers (apart from

assigned counsel handling of 25% of the indigent caseload) to meet constitutional mandates for representation.[42] It is this imperative which indigent defense structure must accommodate and be measured against in the years ahead.

Total System Unification

Despite its stands on centralization and unification within separate criminal justice components, NAC's prescription for the total system was less demanding. It "put its money" on planning and information systems as the way to link the elements of the "non-system" into a system--i.e., planning units and coordinating councils at state, local and regional levels supplemented by ambitious, coordinated information systems and systemwide orientations in training and code revision.[43] This largely followed the approach of predecessors such as the National Crime Commission and the Advisory Commission on Intergovernmental Relations.[44] The technique is a legitimate one.*

Unification and coordination does not always have to be achieved by bureaucratic arrangements. What is surprising, however, is the lack of discussion or attention accorded to hierarchical or supervisory alternatives by the NAC standards. Voices have long urged, for example, the creation of state departments of justice which combine major criminal justice components such as police, corrections and prosecution. (Courts, of course, must remain, constitutionally separate.)[45] A recent contributor to this school was the Council for Economic Development, and organization of businessmen, educators and economists which has been outspoken on a variety of topics relating to improved management in government. The nation also has the long-standing and impressive example of the United States Department of Justice which combines law enforcement, correctional and prosecutive functions in a massive, far flung and yet reasonably efficient single executive agaency. State models are also beginning to emerge[46] (e.g., the new Kentucky and New Mexico Departments of Justice and Maryland Department of Public Safety and Correctional Services) but NAC apparently did not consider functional grouping of criminal justice agencies under a single executive department as an alternative worth mentioning.** With the current trend, at least at state government levels, toward simplification, combination and reduction in number of independent executive agencies, history

*See chapter 4, infra.

**See chapter 6, infra, for a more detailed discussion of the criminal justice umbrella department or "superagency" concept.

may reveal this to be a significant oversight.

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Lest the diverse picture of structural reform presented in the NAC formulations and this analysis produce discouragement, the reader should be warned that simple answers are neither to be found nor desirable in this area. Emerging knowledge about organizational theory and design (of which government bureaucracies are a subset) suggests that, while structure is important, there are no single prescriptions. A variety of effective structural arrangements can be developed by careful attention to sound organizational principles, whether in the public or private sectors.[47]

The diversity in history, traditions, outlook, size and political framework within our federal system make this good news to the criminal justice planner and decisionmaker. It means that differing constraints can be approached and compensated for in organization design to produce satisfactory and responsive service systems. American society is very much in turmoil today on the values of centralization versus decentralization[48] and it would be unrealistic to expect that criminal justice services could remain untouched by the dilemmas and uncertainties involved. The fact that countervailing values are reflected in the NAC structural recommendations are, therefore, not unexpected. Indeed, both unification and localism are worth pursuing and can often be reconciled. The important thing is thatour concepts of criminal justice organization pursue the best in reform thinking, continually seek to reflect our larger goals and hopes for criminal administration, and not ignore hard evidence on what is working and not working for us. The caution that "form should follow function" is, of course, a sensible one. This, however, may be only the beginning of wisdom in a complex society where the art of divining form may ultimately prove as critical to government service delivery as that of defining function.

FOOTNOTES TO CHAPTER 1

1. The standards, priorities and recommendations of the Commission (referred to throughout this essay as "NAC") are reflected in six reports entitled respectively, A National Strategy to Reduce Crime, Police, Courts, Corrections, Community Crime Prevention and Criminal Justice System (U.S. Govt. Printing Office, Oct. 1973). This analysis does not cover, except by occasional pertinent reference, the "special focus" standards issued in 1976 and 1977 by the NAC successor group, the National Advisory Committee on Criminal Justice Standards and Goals. Reflected in five reports dealing, respectively, with organized crime, juvenile justice, research and development, disorders and terrorism, and private security, these useful standards do not have the broad system administration scope of the initial NAC reports.

2. The Challenge of Crime in a Free Society (1967).

3. State-Local Relations in the Criminal Justice System (1971).

4. Reducing Crime and Assuring Justice (1972).

5. See Freed, The Nonsystem of Criminal Justice, Report of Task Force on Law and Law Enforcement, The National Commission on Causes and Prevention of Violence, pp. 265-84 (1969); Millman, Criminal Justice in the United States: Restructuring a Non-System, 6 National Municipal Review 25 (May 1973).

6. National Commission on Law Observance and Enforcement (1931).

7. See, generally, Schumacher, Small is Beautiful, ch. 5 (Harper and Row, 1970); Tullock, Politics of Bureaucracy, (Public Affairs Press, 1965); Elazar, Authentic Federalism for America, 62 National Civic Review 474 (1973).

8. Corrections Report, Standard 16.4 ("Unifying Correctional Programs") and Standard 9.2 ("State Operation and Control of Local Institutions").

9. State-Local Relations in the Criminal Justice System, Recommendations 34 ("Refocusing State-Local Correctional Responsibilities") and 35 ("Consolidating State Administrative Responsibilities"), pp. 49-54.

10. American Law Institute, Model Penal Code, Part IV on "Organization of Corrections" (1962). See also National Council on Crime and Delinquency, Standard Act for State Correctional Services (1966) (offers alternatives ranging

from completely unified system to less complete forms). Another model statute with an intentional juvenile corrections exclusion is the new Uniform Corrections Act of the National Conference of Commissioners on Uniform State Laws (tent. 1977).

11. Manual of Correctional Standards, ch. 2 on "Scope of Correctional Process" (rev. 1966).

12. Council of State Governments, Reorganization of State Correctional Services: A Decade of Experience (1977). Approximately 8 states have fully or near unified systems, 8 have unified adult systems, and 4 states have unified juvenile corrections systems. See American Correctional Association, Directory of Juvenile and Adult Correctional Departments, Institutions, Agencies and Paroling Authorities, chart on pp. 250-257 (1965 ed.); Skoler, Correctional Unification: Rhetoric, Reality and Potential, Federal Probation (Mar. 1976).

13. LEAA Visiting Fellowship Program, Survey of Recent Criminal Justice Unification, Consolidation and Coordination Efforts, pp. 4-6 (Jan. 1976).

14. Courts Report, Standard 8.1 ("Unification of the State Court System").

15. State-Local Relations in the Criminal Justice System, Recommendation 16 ("A Uniform, Simplified State Court System"), pp. 34-38.

16. See, e.g., ABA Model Judicial Article, Sections 1-4, reproduced in President's Crime Commission, Task Force Report: The Courts, pp. 92-96 (1967).

17. ABA Commission on Standards of Judicial Administration, Standards Relating to Court Organization, Standards 1.10 and 1.11 (1973).

18. The Challenge of Crime in a Free Society, pp. 129 and 157.

19. State-Local Relations in the Criminal Justice System, p. 187.

20. Survey of Recent Criminal Justice Unification, Consolidation and Coordination Efforts, supra f.n. 13, pp. 6-7 and 20-22.

21. Police Report, Standard 5.2 ("Combined Police Services").

22. Ostrom, Parks and Whittaker, Do We Really Want to Consolidate Urban Police Forces? A Reappraisal of Some Old Solutions, Public Administration Review (Sept.-Oct. 1973);

Ostrom and Parks, Suburban Police Departments: Too Many and Too Small?, Urbanization of the Suburbs, Vol. 7, (Sage, 1973); Ostrom, The Design of Institutional Arrangements and the Responsiveness of the Police, People vs. Govt: The Responsiveness of American Institutions (Indiana Univ. Press, 1975).

23. In 1938, there were approximately 1100 independent constabularies and police forces in England which reduced to slightly over 100 by 1966 and, then, pursuant to new consolidation programs (Police Act of 1964 and Local Government Act of 1973) were reduced further to 43 police forces, none of which have fewer than 600 personnel. Skoler and Hetler, Criminal Administration and the Local Government Crisis, 5 The Prosecutor (1969). British Home Office, Report of Her Majesty's Chief Inspector of Constabulary for 1974, pg. 1 and 97-99 (H.M. Stationery Office 1973).

24. In the 25 year period from 1942 to 1967, the number of the nation's independent school districts was reduced through consolidation of small districts from 108,000 to 22,000. ACIR, State-Local Relations in the Criminal Justice System, pp. 24-25. In the following eight years, the number was further reduced to 16,500 or approximately 700 consolidations or mergers per year. National Education Association, Estimates of School Statistics, 1974-75, pp. 6-7 (1975).

25. See, Suburban Police Departments: Too Many and Too Small?, supra, n. 22, p. 383 (evidence of economies of scale and positive citizen evaluations of suburban police departments as size of units increases up to 20,000 population range).

26. See Ostrom, Scale of Production and Service Delivery Problems, pp. 4-5 (1975).

27. Op.cit., f.n. 13, at pp. 8-9 and 21-24. See also, National Sheriff's Association, An Evaluation Study in the Area of Contract Law Enforcement: Review of the Literature (1975).

28. Challenge of Crime in a Free Society, pp. 120-23.

29. State-Local Relations in the Criminal Justice System, Recommendations 1, 2, 3, 6 and 7, pp. 17-26.

30. See ACIR, Substate Regionalism and the Federal System, Vol. IV (1974).

31. Report on Prosecution, Vol. No. 4, pp. 1-30 and 37-38.

32. ABA Project on Standards for Criminal Justice, Standards Relating to the Prosecution Function, Part II ("Organization of the Prosecution Function").

33. The Challenge of Crime in a Free Society, pp. 148-49.

34. Courts Report, Standard 12.4 "(Statewide Organization of Prosecutors").

35. National District Attorneys Association, National Prosecution Standards, standards 1.3, 1.5, 2.1 and 6.1 (1977).

36. National District Attorneys Association, Comparative Survey of Prosecutor Training Coordinator Functions (Feb. 1976, monograph).

37. Courts Report, Standards 12.1 and 12.2 (standard for chief prosecutors and assistant prosecutors)

38. Courts Report, Standards 13.6 ("Financing of Defense Services"), 13.5 ("Method of Delivering Defense Services"), and 13.7 ("Defender to be Full-Time").

39. National Legal Aid and Defender Association, The Other Face of Justice, ch. 1 (1973).

40. See NLADA National Study Commission on Defense Services, Draft Report and Guidelines for the Defense of Eligible Persons, pp. 374 and 459-477 (1976).

41. National Study Commission on Defense Services, Guidelines for Legal Defense Systems in the United States, pp. 174-75 (1976); National Legal Aid and Defender Association, Standards for Defense Services (1976). The Model Public Defender Act (1970) developed by the National Conference of Commissioners on Uniform State Laws also now embodies a centralized, statewide defender system concept.

42. The Other Face of Justice, supra n. 36, pp. 72-75.

43. Criminal Justice System Report, Standards 1.1 through 1.5 (planning) and 3.1 through 3.4 (information coordination).

44. See, e.g., ACIR, State-Local Relations in the Criminal Justice System, pp. 63-65 and 244-251 (recommendations on total system linkages limited to comprehensive system planning and formalized coordinating councils and mechanisms).

45. Committee for Economic Development, Reducing Crime and Assuring Justice (1976) (recommending state departments of justice drawing together all criminal justice functions except those of an independent judicial branch and assuming administrative responsibility for all functions except urban police forces).

46. See Skoler, State Criminal Justice Superagencies--Antidote for the Nonsystem?, State Government (Winter 1976).

47. See, e.g., Galbraith, Designing Complex Organizations, ch. 1 (Addison-Wesley, 1973); Lawrence and Lorsch, Developing Organizations: Diagnosis and Action (Addison-Wesley, 1971); Hall, Organizations, Structure and Process (Prentice-Hall, 1972).

48. See Olson, The Optimal Allocation of Jurisdictional Responsibility: The Principle of Fiscal Equivalence, Committee for Economic Development, Compendium on Analysis and Evaluation of Public Expenditures (GPO 1969); Public Administration Review, Essays on Citizens, Politics and Administration in Urban Neighborhoods (Oct. 1972) (special issue on decentralization and citizen participation in urban government).

CHAPTER 2. ISSUES IN ORGANIZATION--THE BUILDING BLOCKS

In 1973, a symposium on "Organizations for the Future" appeared in the Public Administration Review. Based on contributions to an earlier university-sponsored lecture series, some half dozen distinguished organizational theorists speculated on the shape of organizational life and dynamics in the year 2000 and beyond. One commentator predicted the continuance of large scale organization and a repeating succession of centralization and decentralization in public and corporate administration. Another stressed the emerging importance of a variety of government-private institutional blends and organizational mixes for improved delivery of public goods and services. Still another pointed to the diminishing authority of formal organization and the need for "synchronization" to manage the complexity, redundance and fragmentation surfacing in all aspects of government, business and urban life. One author even allowed as to the impotence of "those who study and write about organizations" to undertake this task.[1] He saw the current juncture as particularly elusive:

> "I suggest we are in a watershed period, and that in the more developed parts of the world, at least, we are in the process of determining which organizational configurations are viable for new conditions and which are not--just as we can look back now upon the 1940's as the watershed decade which determined that supermarket food stores were viable for United States conditions but the 'mom and pop' grocery was not, or that the one'room school house was no longer adequate to the task. In the 1940's, both kinds of groceries and both kinds of schools existed. But at the time, only some saw what almost all of us now see--that forces already in progress were rendering certain organizational forms invalid."[2]

These thinkers, of course, had a great deal more to say than suggested above but certainly a collective implication of the papers, applicable to every public or quasi-public function from criminal justice to solid waste disposal, was the need to respond to mounting levels of complexity and unprecedented demands for management and coordination that were already taxing existing structures and creating an "open field" for new configurations and techniques. Perhaps the beginning of wisdom for those who would seek to test organizational doctrine in any functional area and speculate on new and preferred forms, is to identify some of the key forces and constraints that must be dealt with. That is the business of this essay for the criminal administration function.

Here we shall review special characteristics, dilemmas and factors which need to be considered in assessing criminal justice structure and charting paths for improvement. The topics range from problematic criminal justice characteristics (e.g., executive-judicial separation of powers, elective law enforcement officials, discretionary accommodations, inherent system tensions, private sector roles) through general public administration issues (e.g., federal system diversity, local unit viability, government reorganization trends, mounting fiscal pressures) and organizational and bureaucratic quandaries (limits of hierarchy and the structural contribution, central administration versus central regulation, system accountability and monitoring). The selection is eclectic, the order is somewhat arbitrary and the mixture may seem haphazard, but the collective portrait is important and should prove worthwhile.

American Diversity--Tradition and Fact

For the analyst of contemporary institutions, it is always fashionable (and hardly original) to stress diversity in American federal government and in the criminal administration systems that have developed across the nation. Yet, this can hardly be underestimated or understressed.

America is a portrait in contrasts for criminal justice structure, one painted by 50 "sovereign" state governments with independent lawmaking and law enforcing powers. Virtually every level of variation, centralization and decentralization imaginable can be found in some state or region of the country with respect to almost every component of the criminal justice system. Apart from the separation of courts from executive agencies (and even this is attenuated at the municipal or justice court level), the only exception may be the fact that in no state is the police function totally administered by state government.

Despite the highly local and autonomous character of most prosecutive offices, we have a few states where prosecution is centrally operated. Despite the acute fractionalization in correctional services at all government levels, we have a few states where all correctional functions are centralized under a state executive department. We have appointed judges and elected judges, appointed prosecutors and elected prosecutors, appointed defenders and elected defenders.

Within this arena of diversity, most systems seem to be working, some perhaps better than others and some at greater costs than others. However, experts would be hard put to establish the clear superiority of certain systems when divorced

from the traditions and context in which they evolved or to discredit others in terms of their format of unification or fractionalization. To be sure, state systems often exhibit bad features (corruption, waste, incompetence) but it is hard to imagine situations in which improvement could not be achieved within both centralized and decentralized structures without radical restructuring.

This does not mean that for given system components and because of the uniformity and equal administration desired of the justice function, movement toward higher levels of central control, standard setting, and hierarchical authority may not be generally desirable. Indeed, that is a central thesis of these essays. It does suggest that the step from general principles and approaches into the diverse contexts of the American federal labyrinth may be a large one that will always preclude the neat, clean and uniform patterns achievable by non-federal, more centralized national governments.

Executive-Judicial Separation of Powers

Our nation's constitutional separation of powers, reflected in the federal and all state constitutions, precludes administrative joinder of court systems with other justice agencies.[3] The executive branch of government cannot "run" the courts or dictate the policies and procedures that apply to judges as they exercise their adjudicative functions. This is neither undesirable nor does it necessarily preclude a substantial degree of general administrative and policy coordination between judicial and other criminal justice functions. It does, however, place a firm structural constraint on criminal justice organization and often renders more difficult the achievement of non-hierarchic coordination.

This "given" of the American polity could have been otherwise. Courts are not always administratively separated from other criminal justice apparatus in democratic nations. For example, in Denmark and Sweden, court systems are administratively located within the ministry or department of justice, their "independence" being guaranteed by legislative or constitutional fiat but not necessarily by structural separation.[4] In England, the misdemeanor courts are operated by the Home Office, the executive department which combines the nation's central criminal justice responsibilities. It is only the felony courts which are "crown courts" and organizationally separate from England's centralized justice ministry.[5]

The exact extent of the American judicial-executive-legislative separation is not always clear at administrative and fiscal levels--and the judiciary is a zealous guardian of

its prerogatives. However, it appears to be the case that principles of separation of powers are not necessarily violated by:

--executive appointment of judges,
--legislative review and executive disbursement and auditing of court budgets,
--requiring personnel below the judge level to participate in and be governed by state civil service systems,
--administrative agency adjudication (boards, commissions, hearing officers) of claims and rights under federal, state and local laws that increasingly rivals trial court determinations in social and economic impact,
--judicial participation on policy and decisional councils in criminal justice planning and grant-in-aid programs, and
--court cooperation in common policies and procedures with defense, prosecutive, police and correctional apparatus to permit the system to work better.

Some of the foregoing practices have become controversial issues, especially executive oversight of court personnel and markups of court budgets before they go to legislative or appropriation bodies.[6] In some states, these have been determined to violate constitutional mandates but seem to be prevalent practices at the local level in many states.[7] Certainly the trend, reinforced by the unified state court system movement, is to achieve and maintain virtually complete administrative self-sufficiency and separateness within judicial structures. The doctrine of "inherent powers" asserts that courts require such authority to discharge their constitutional responsibilities and preserve their independence. It is being pressed with increasing vigor in a cluster of administrative areas and the battle lines are drawn along extending fronts which encompass, in addition to traditional budget and staff control issues, such questions as mandatory court participation in criminal justice information systems and the need for courts to seek and justify federal aid through executive planning agencies.[8]

Elective Criminal Justice Officials

The governmental reform trend at both state and local levels in the United States has been to reduce the number of independently elected officials, to focus executive responsibility in single elected functionaries and, within the judiciary, to move toward appointive or quasi-appointive selection mechanisms. Nevertheless, key criminal justice officials and administrators hold elective offices at many points in the system.

These include judges (elected in substantial proportion in more than half the states), state attorneys general (elected in 42 states), local prosecutors (elected in 44 states), local sheriffs (elected in 47 states), and local public defenders (elected in 4 states).[9] Often such elective positions are also constitutionally defined offices.

Elective status and direct accountability to the voters is regarded as a barrier to the merging of criminal justice agencies into larger departments, districts or administrative structures. It is not an insuperable hurdle as evidenced by the fact that in a few states locally elected judges can and do enter administratively centralized court systems upon taking office.[10] From that point on, they are theoretically subject to the same rules, controls, and supervision as appointed judges except, possibly, for removal. Even here, however, the distinction is minimized where judges under elective or appointive systems can be removed for cause and, thus, even elective judges hold office subject to some standard of performance apart from voter satisfaction at periodic elections."[11]

The problems created by elective officials are several. At state level, it is difficult for a state to achieve an integrated criminal justice agency or policy where one major function (i.e., state level prosecution responsibilities) is vested in an independently elected attorney general. At local level, it is hard to bring local officials into statewide systems and obtain the same performance, commitment, and policy unity as might be expected from an official appointed by the parent agency or chief state executive.

This is not to suggest that tangible advantages may not accrue to systems using elective officers, but rather that they present special issues and problems when unification or coordination initiatives are being considered.

Government Reorganization and Criminal Justice Coherence

The past decade witnessed an unprecedented trend in state government executive reorganization. Nearly twenty states underwent pervasive reorganizations featuring clearer lines of gubernatorial control, marked reductions in the number of independent executive departments, the grouping of services by functional mission, and movement toward single agency heads rather than the boards or commissions that had come to exercise administrative direction of so many functions.[12]

While "criminal justice" might have been considered a natural functional grouping for combining component activities, the fact is that most criminal justice services were dispersed

among other parent departments. The state correctional apparatus was more often than not placed in the new "human services" superagencies which grew out of reorganizations dealing with social services, health, mental health, welfare, and employment assistance. State police or highway patrols were placed in departments of public safety (most common) or transportation (also not infrequent) where they were functionally identified with fire, national guard, vehicle safety and other missions rather than prosecution, corrections and indigent defense.

Perhaps half of the state level police and correctional agencies are now administratively slotted under these public safety, human services, transportation or other departmental umbrellas.[13] Another half dozen have moved toward a "criminal justice" definition.[14] The remainder continue to operate as independent agencies.

Kentucky was almost unique in coming close to a complete administrative joinder of criminal justice functions at the state level (at least until New Mexico took similar action in 1977). In 1974, Kentucky's reorganization yielded a Department of Justice combining the state police, adult corrections system, state criminal justice planning agency, public defender, and a common criminal justice training operation.[15] In this format, its record was exceeded only by the Federal Department of Justice which combines, in one executive department, federal police, prosecution and correctional functions. Elective attorneys general within most states complicate the problem of administrative clustering of justice functions. This is because state prosecution responsibilities are normally under their ambit while the state governor is responsible for police and correctional activities.

The significance of the reorganization movement is that it has made little contribution to simplifying or integrating criminal justice organization at the state level. Like the separation of powers, it has tended to reinforce earlier criminal justice separation--often with some justification since functional grouping is always an exercise in best alternatives rather than obvious answers. Nevertheless, criminal justice components tied administratively to other government services rather than each other is a reality that must be recognized.

Tension Between Criminal Justice Components

It has become popular to refer to criminal justice as a "non-system" because of its multi-level, multi-government, multi-functional separations, an inordinately large number of

administratively independent agencies and serious gaps in coordination and planning. However, some have suggested that amalgamation of criminal justice functions might be counterproductive and contrary to role perceptions and responsibilities of the respective functions.

The American adversary system of prosecution and adjudication places prosecutors and defenders in conflicting roles. Administratively attaching them to the same agency could raise tensions and questions as to supervision, policy conrol, and bureaucratic "set" at variance with their perceived missions. Defenders have stressed how even the appearance of cooperation or liaison with court and prosecutive personnel can affect their positions of credibility and trust vis-a-vis criminal defendants.[16] Police and correctional personnel often perceive no substantial nexus or day-to-day interconnection between their respective activities. Police are often grouped with andviewed as more rationally connected with public protection functions such as fire, highway safety, and national guard services than corrections. Correctional agencies are often seen as more closely related in function to other groups delivering institutional and social services (mental institutions, social casework, etc.) than law enforcement bodies.

These "pulls" create continuing problems in the coordination, design and structure of criminal justice services--and they apply to almost any government service grouping. That is, no matter how the basic functions of government are defined--transportation, urban affairs, mental health, social services, employment security, education--there will always be lost linkages and questions of better classification. In the criminal justice area, they are especially real and based on functional substance.

Bureaucratic Limitations and Inefficiencies

The limitations, diseconomies, and control problems of centralized, heavily-layered, numerically large organizations, particularly in the government service structure, have become increasingly manifest in our society--partly through the contribution of eloquent analytic voices and partly through the frustrations of poor performance, poor responsiveness, and inability to deliver creditably on policy and service goals.[17]

For criminal justice, this means that whatever the theoretical benefits of centralized policy and administrative control, hazards must be calculated which, in extreme, could operate to harm rather than advance the achievement of improved service and efficiency. In this regard, the service units involved in the judicial, prosecution, and defense functions, even with full

administrative centralization at the state level, are rather small in size and undifferentiated in function. This contrasts considerably with other governmental departments and tends to make hierarchical arrangement feasible and relatively uncomplicated. Individual courts, prosecution offices, and defender units rarely exceed a few hundred workers, even in populous metropolitan jurisdictions, and supervisory layers, except in the largest states, would seem to admit of a single layer headquarters/field office structure.

This simplicity of bureaucratic organization would be less true of centralized correctional or law enforcement services. The former involves significant differentiation of function (field versus institutional services, adult versus juvenile services, short term versus long-term custody arrangements, expensive physical plant) and the latter raises the possibility of staffs numbering in the thousands should widescale centralization be achieved (police personnel substantially outnumber all other criminal justice personnel combined, and the largest forces have already reached this order of size).[18] Accordingly, these components would require fairly complicated hierarchical structures, even allowing for broad "spans of control" and liberal field unit decentralization measures.

In approaching criminal justice organization, this does not necessarily mean that centralization must be avoided at all costs. The "equal justice" imperative may call for highly centralized policy structures. What it does suggest is that techniques of decentralization, optimization of autonomy in field structures, "competitive" arrangements within bureaucracy, clear delineation of service objectives, informed human engineering, and solid accountability mechanisms must be counterposed against known hazards of over-hierarchy when analysis dictates commitments in that direction.

Central Operation versus Central Regulation

The administration of criminal justice, by its nature, requires and should provide a large measure of uniformity in policy and application. Citizens have a right to expect equal treatment in all corners of a state. Criminal codes, of course, are defined by states and establish for all citizens (except in the case of minor ordinances) the common ground rules concerning behavior which may be proscribed as illegal and punished. State constitutions and codes, along with the federal Bill of Rights, mandate what the rights of the accused are when confronted by state criminal justice apparatus. However, the quality of justice not only for the accused but the citizens and communities whose interests are protected by the criminal law, may be as much impaired by uneven resources, implementation and service as by unfair normative rules of wrong and right.

In a nation like the United States where localism prevails as a tradition and format for service delivery in so many criminal justice components, the technique for achievement of desired consistency and uniformity has led to two reform calls--central operation and central regulation. For example, those concerned with the grave deficiencies of local jails have either advocated the direct takeover of local jails by the state or the regulation of jails through minimum standards, periodic inspection, and enforcement apparatus to assure decent physical conditions, programs and treatment.[19] Few have recommended central operation of police forces or prosecutive agencies (although many would like to see smaller units combined into more viable agencies). Centralized court systems under direct hierarchical supervision, on the other hand, have been a firm reform concept for many years.[20] At almost every juncture of the system where better coordination and upgrading is desired, either direct operation or regulatory alternatives are available. Much of the disagreement about criminal justice improvement turns upon which course will best serve society's goals in a given context; and virtually all reform groups espouse a mix containing elements of both approaches.

Often social philosophies and values are involved. The regulatory mode seems to leave more room for local autonomy and initiative. It places constraints on local operations but recognizes the basic integrity of the local agency and suggests its superior responsiveness and accountability as an independent unit. The central operation approach stresses the efficiency and consistency of a common organization. Even management pundits like Peter Drucker, who would like to see more competition in public service delivery and who lean toward regulation rather than direct operation of public enterprises have recognized the special dilemmas of the justice area. On the one hand:

> "There are those service institutions in which means are as important as ends, and in which, therefore, uniformity is of the essence. Here belongs the administration of justice or defense and most of the areas which, in traditional political philosophy, were considered policy areas."[21]

And on the other:

> "A government-owned monopoly may not exploit, but the customer has no redress against inefficiency, poor service, high rates, and general disregard of his needs. An independently managed monopoly under public regulation is likely to be far more responsive to customer dissatisfaction and consumer needs..."[22]

These principles were offered in the context of public-private rather than state-local regulation but their applicability to the latter seems valid and certainly the value clash

between desired uniformity and needed responsiveness applies in both situations.

In the pull between direct operation and regulation, one should not look for formal arrangements alone. Regulation of "independent units" can be so confining and precise as to approach direct control. A centralized hierarchy for a given criminal justice service (e.g., a statewide defender system) can have ground rules assuring local discretion in service delivery to such a degree that the result is basically a federation of independent units with "centralization" limited to an administrative support framework. As Herbert Simon observed:

> "Review can have three consequences: (1) if it is used to correct individual decisions, it leads to centralization, and an actual transfer of the decision-making function; (2) if it is used to discover where the subordinate needs individual guidance, it leads to centralization through the promulgation of more and more complete rules and regulations limiting the subordinate's discretion; (3) if it is used to discover where the subordinate's own resources need to be strengthened, it leads to decentralization. All three elements can be, and usually are, combined in varying proportions."[23]

Thus, the nature and uses of oversight, whether within or among governmental agencies, can be a more critical element in system design than hierarchical nicety. For those who seek greater coherence in the dispersed criminal justice system, the lesson should be clear.

Local Government Viability

A whole cluster of structural reform issues in criminal justice turns on the existence of service units or jurisdictions which are too small to support acceptable levels of service and professionalism. These include part-time prosecutors and part-time defenders in non-populous counties, small police departments unable to achieve even the basic service capability of full-time patrol, and county or municipal jails that hold too few offenders to warrant the facilities and staff needed for humane and secure custody.

These shortcomings reflect problems of governmental unit viability as much as criminal justice service capability. That is, counties too small to support a single full-time prosecutor are often too small to provide a number of other essential government services. The natural corrective may be a restructuring of the small unit rather than creation of special new

criminal justice jurisdictions. Yet, small unit consolidation, particularly of units of general local government, has shown enormous resistance to change, both historically and in our time.[24] This has forced attention toward other alternatives, including transfers of responsibility for local criminal justice functions to larger government levels, i.e., state control, or the establishment of district or regional agencies that encompass more than one governmental unit.[25]

Reform proposals cover both types of alternatives, and often they carry justifications beyond merely welding tiny service units into reasonable aggregations for effective criminal justice work, e.g., establishing a consistency in justice administration that all citizens can count on. The important thing to remember is that the fate of criminal justice restructuring is often tied inextricably with that of local government restructuring--and the difficulty of achieving the latter complicates the mission of the former, frequently stimulating even bolder centralization proposals than might otherwise receive consideration.

The only major example of small jurisdiction reduction in American governance over the past generation relates to a class of special purpose governments. These are our school districts. In the period 1948 to 1975, the number of operating school districts in the United States was reduced from approximately 89,000 to under 17,000, almost exclusively as a result of consolidation of small rural districts into larger or combined districts.[26] This process has maintained a significant momentum even into the current decade (there were approximately 400 consolidations a year from 1970 through 1975). It should be noted, however, that school district consolidation has not required divesting counties or municipalities of existing service functions--a prerequisite for comparable criminal justice consolidation. Voters were able to look at the functional issue alone. Also, few criminal justice consolidation proposals suggest recourse to the special government district mechanism. Despite expansion in some areas as an areawide service technique (fire protection, water and sewage), special districts have encountered increasing disfavor. They are viewed by many as lacking the accountability and responsiveness achievable under general purpose government; and criminal justice is considered, with justification, as a cluster of functions requiring special sensitivity to the citizenry served by its machinery.

American resistance to small unit consolidation and preference for transfers and amalgamations of specific functions is largely at odds with current European experience. Since 1970, Europe has undergone a virtual "explosion" in local government reorganization. A recent 9-nation review identified drastic reductions in the number of governmental units in such

nations as Great Britain (over 1700 municipalities to under 500), Germany (over 24,000 municipalities to under 11,000) and Sweden and Denmark (over 1000 municipalities each to under 300). The thrust also included similar but less dramatic curtailment of county-type units (more than 40% reductions in Germany, Great Britain and Denmark). Only France in this group of nations (selected because of its county-municipal framework approximating American local government systems) bypassed the consolidation approach. France moved toward service realignments through federations of municipalities.

Although the Advisory Commission on Intergovernmental Relations optimistically identified America's eleven successful county-city consolidations between 1962 and 1972 as besting the sluggish record of the previous century and a half, the United States would have to turn to functional transfers (permanent handovers of service responsibility) and intergovernmental service agreements (reimbursed use of other government facilities) to match the scale and dynamism of the European changes. Here, recent surveys among large samples of municipalities showed that substantial percentages had been transferring, bartering and reassigning functions, sometimes under legislative mandate, up and down the state-county-municipal chain. In the 1965-75 decade, nearly a third of 3300 responding municipalities, for example, had transferred responsibility for a given function (e.g., public health, law enforcement, sewage and waste disposal, taxation, social services) to another government unit, most often to counties (56% of transfers) and most frequently by larger cities (4.1 transfers per city over 500,000 population as against 1.5 for cities under 100,000). This pace was surpassed, moreover, by utilization of intergovernmental agreements to reassign service roles (60% of responding municipalities), a movement fostered by interlocal cooperation statutes in virtually all states. Thus, the American bias in approaching service fragmentation leans toward barter and reshuffling, rather than political merger; and that influence will be clearly discerned in the criminal justice arena.[27]

Local Government Fiscal Pressures

Traditionally, local government has carried the bulk of fiscal responsibility for criminal justice services. This is true today. Approximately 60% of all criminal justice costs (and 65% of state-local outlays) are borne by local governments; and no major component is financed primarily by state government except corrections.

Yet, the ability of local government to continually carry such responsibilities is rapidly diminishing and an important

impetus of structural reform proposals has been the promise of state financing for major criminal justice functions. Recommendations for full state financing of courts, corrections, and indigent defense are now standard reform wisdom -- and momentum for major state subsidies for police and prosecution is increasing.[27]

Shifts in fiscal responsibility do not necessarily require centralization in structure or administration of criminal justice services. At one end of the spectrum, central financing can be inextricably tied to central administration. At the other end, subsidies, equalization payments, or "special revenue sharing" can be adopted as techniques for relieving fiscal pressure, upgrading criminal justice resources, and reducing inequitable service disparity without change in current jurisdictional or delivery arrangements. In-between, a variety of control, accountability and coordination measures can be imposed on the current structure of services concomitant with new fiscal roles and responsibilities -- hopefully measures that will take into account the special characteristics and needs evident in the affected service areas.

What cannot be ignored, however, is the local fiscal plight. Local government tax revenue is largely based on property taxes. Over four-fifths of the combined tax revenues of city, county and town governments and school and special districts come from the property tax. This tax has major problems, including competition over its base from different local units, unevenness of revenue generating capacity, and a dwindling tax base in core cities (where criminal justice service demands are greatest). These difficulties have contributed to the fiscal duress facing many large cities and pressing upon even affluent municipalities and urban fringe areas. The quest for new revenue sources, redistribution of federal revenues through grant-in-aid, and the recent advent of general revenue sharing (now exceeding $6 billion annually) have helped. Nevertheless, the ability of local government to continue to finance traditional services is being sorely taxed. A close review is needed of which responsibilities (including the criminal administration functions) can be assigned to other government levels and when it is appropriate to do so.

The more flexible and generally greater revenue generation abilities of state government may well harmonize with study commission judgments that the criminal justice system is a social responsibility whose demands require recourse to resources outside the vagaries of local fiscal capacity. This kind of trend is discernable within the highly local function of primary and secondary education. Here, fiscal patterns are rapidly moving (often under the equal treatment banner raised for justice functions) toward state fiscal dominance. State governments

now provide more than 40% of school costs from their own sources and 22 of them are meeting more than half of the state-local spending for public schools.[28]

Private Sector Roles in Service Delivery

Of all public goods and services, the activities of criminal justice are among those most closely associated with direct governmental operation. Notwithstanding, few persons seem to realize the full extent to which private firms and individuals are responsible for providing criminal justice services. This is true in all sectors--police, courts, prosecution, defense and corrections. Part of this problem of omission lies in a longstanding failure to view the criminal justice system functionally and to include within its scope all who are actually engaged as "deliverers". Part also lies in the tendency of professionals and experts to drum the private sector out of statistics, standards and reform analyses as they diagnose system ills.

In some cases, concepts of reform and progressive practice welcome the private contribution; in others, they condemn it. But its scope and volume continue largely unabated with future prospects suggesting even greater roles for private agencies and individuals than now exist. The impact of such developments on criminal justice structure, although as yet imperfectly articulated, will of necessity be direct and significant. For one thing, they will require structures geared to regulatory and monitoring tasks as opposed to direct service delivery.

The nation's massive police establishment, for example, is rarely defined or discussed as an entity which includes a huge and growing private police complex. Most of the private endeavor is directed to security functions (industrial, commercial, transit, housing, etc.) and the prevention of property crime and violations. Property crime, however, constitutes the bulk of all criminal offenses and occupies a major portion of the time, attention and resources of public police agencies. Over five years ago, a Rand Corporation study revealed that more than a third of all individuals engaged in police or security work were privately employed (then nearly 300,000 persons) and that private agencies accounted for a similar proportion of national expenditures for police services (then some $3.3 billion). That $3.3 billion private policing outlay equalled all expenditures during fiscal 1970, the year of the Rand study, for the other criminal justice functions combined (courts, prosecution, defense and corrections). Every subsequent study in this area (most dealing with particular state or metropolitan areas) suggests that private policing has "caught up" in size with public police operations, quite likely

matching today's $10 billion in public police expenditures and 650,000 in public employees.[29]

In contrast to police, the private presence in the judicial sector seems to be steadily shrinking. Formerly represented by lay justices of the peace who were primarily engaged in private pursuits but served part-time as minor offense magistrates (37 states a decade ago), the number of states which permit such part-time endeavor is probably less than a dozen today. All reform standards call for elimination of lay justice systems and their integration into unified court systems. Part-time practicing attorney judges also exist in less populous areas but their number and presence is likewise shrinking. In one area, however, an expansion of private participation seems to be on the horizon. That is the use of citizen or community tribunals for minor complaints, family disorders, or arbitration dispositions, as a substitute for criminal court handling. As yet, the trend is insubstantial. However the first experiments are well under way and more are being "piloted," a new Presidential administration has made this a priority justice system goal, and pressures are considerable to direct lesser business of this kind away from the criminal courts (and civil courts as well). The future may witness transfer of a significant volume to the laps of private groups with varying degrees of linkage, sponsorship, and autonomy from official court apparatus.[30]

More than half of all prosecutors (65% according to a 1973 survey) serve part time in this county. This means that they are in effect private practitioners hired or elected to exercise prosecution functions in the less populous jurisdictions (but not exclusively so). Thus, the nation looks to the private sector in many jurisdictions for discharge of the sensitive and powerful prosecution function. Despite consistent reform group recommendations that prosecution be reorganized in non-populous areas to support full-time prosecutors, change has been painfully slow. Until 1975 (when a handful of states may have started a bandwagon effect), the last major statewide reorganization along these lines was the initiation of a district prosecution system in Oklahoma in 1965.

In somewhat comparable vein, criminal defense services are provided in the main not by publicly employed defenders but rather by private attorneys. First, the private bar handles the defense of non-indigent persons, estimated at roughly half of all charged felony and misdemeanor defendants (with often higher indigency rates for felony cases). Even in the case of indigent defendants, however, there is a division of function between publicly employed defenders and private practitioners. Probably close to half of all indigent defendants are handled by private attorneys--either part-time public defenders who devote most or much of their effort to private practice (estimated at over 40% of all chief defenders and defender staff

attorneys) or private attorneys assigned on a case-by-case basis to indigent defense (ranging from 10% - 20% of the caseload in jurisdictions which make substantial use of full-time defenders to virtually all the caseload in jurisdictions which have no paid defenders and rely on assigned counsel systems).

It should be noted that although full-time defender systems are recommended and growing, the role of the private attorney in criminal defense is welcomed as a healthy balancing element and as a necessary resource for handling "conflict" and "overload" cases which a full-time defender system cannot appropriately accept. Moreover, private legal aid and defender agencies are handling full-time defender services in some of the largest cities (e.g., New York, Philadelphia, Cleveland and Milwaukee).

Curiously, private participation is probably lowest in the correctional system although correctional services (counselling, education, vocational training) are of the kind that can most readily be privided from other disciplines and the private sector. Recent standard-setting efforts encourage the purchase of services from non-correctional groups, including private industry, but the bulk of correctional services contines to be delivered by public personnel. This is probably as true of treatment services as it is of custodial staffs. Perhaps the greatest private sector involvement in corrections has been the correctional volunteer movement of the past decade (focusing initially in the probation area and building up to an estimated 100,000 private citizens across the nation actively providing one-to-one assistance to offenders or otherwise augmenting paid staff resources). Part-time teachers, counsellors, physicians, etc. are also retained by a number of agencies for special service delivery and the recent "deinstitutionalization" of juvenile corrections in Massachusetts offers an example of reliance on private sector contracts to deal with most of a major state's juvenile offender caseload.[31]

Notwithstanding the foregoing delineation of private sector impact, it should be apparent that distinctions between public and private service delivery can often become blurred. The possibilities are so rich in terms of blends and mixes of private, business and government elements that Dr. Amitai Etzioni has carved out a "third sector" of new institutional forms for dealing in public goods which promise to be the wave of the future and may prove "significantly more effective than either expanding the federal and other levels of government or dropping them on the private sector". These range from the non-governmental, non-commercial, non-profit hospitals, universities, and social agencies through NASA-like public-private sector mission consortia to new and powerful public corporations like Amtrak (intercity passenger service), "Fannie Mae" (government insured mortgages), COMSAT (satellite development

and exploitation) and the U.S. Postal Service. To these may be added normal purchase of service arrangements with commercial enterprises and direct sale of "public services" by profit-making endeavors.

While data on the private sector role is imprecise, rarely correct and quite fragmentary, it is clear that private firms and individuals provide surprisingly substantial segments of criminal justice services in the United States. It is delusion, therefore, to count the private sector out of criminal administration or planning for optimal organization of criminal justice services. Indeed, the time to think through roles and fully integrate its contribution is long overdue.

Outside Monitoring and Accountability as a Counterbalance to Unification

Development of an array of monitoring, "consumer" or "client" advocacy, legislative oversight and ombudsman-type institutions is now well in progress in the United States. Indeed, the movement seems to have become a "good government" imperative and may well have significance for the unification proposals confronting virtually every component of the criminal justice system. These mechanisms offer an external check on inefficiency, non-responsiveness, and overbureaucraticization beyond internal efforts at rational organization, information flow, and appropriate decentralization of criminal justice systems.

Critics of unification and greater regulatory control over local service delivery tend to ignore the contribution of such institutions, possibly because of the newness and experimental nature of the programs that have arisen. Nevertheless, the failures of large scale government programs, whether of incompetence, indifference, or malfeasance, have been so pronounced as to make quite clear the need for outside checks of the kind mentioned and progress has been remarkable. The American Bar Association reports, for example, a wide variety of ombudsman and quasi-ombudsman programs now operative in the United States. As of mid-1975, these included four general state-level ombudsman programs under various names (Hawaii, Nebraska, Iowa, and Alaska) plus several special purpose ombudsmen statutes within state government (e.g., nursing homes, corrections, environmental protection), 3 dozen general local ombudsman offices, about three dozen local, state and federal department complaint-handling mechanisms similar to ombudsman offices, and a large quantity of pending proposals for ombudsman, citizen complaint and public advocate units.[33]

One need not subscribe to American adaptations of the Imperial Chinese Censorate, spanning many centuries, to recognize such external inspection and oversight techniques as a potent tool for dealing with today's governmental complexity. The Chinese system developed a complete, separate and quite effective cadre of young public servants with high reward/punishment incentives and no purpose except to monitor the effectiveness of public administration and the honesty and loyalty of provincial officials.[34]

Special focus programs for criminal justice have not been wanting. It is true that the "police review board" concept of the late sixties, featuring outside citizen review of complaints of police dereliction and misconduct, never took hold in this nation. However, a virtual explosion in internal grievance mechanisms and ombudsman/prisoner advocate programs for those under correctional control has made this a leading area in citizen-state conflict resolution.[35] Pushed by judicial activism and frightening signs of decay and unrest in prisons, the early seventies saw the rapid multiplication of such procedures.

External prosecutive or defense checks of this kind have not surfaced, but citizen court-watching has enjoyed some attention and court review had increasingly focused on the obligations and derelictions of counsel in criminal representation (the most fundamental thrust being the development and expansion of the right to counsel itself as a prerequisite to valid conviction and imposition of criminal penalties). The new juvenile justice standards of the American Bar Association devote a whole volume to techniques, both internal and external, for monitoring every aspect of official processing of delinquents and identifying violation of rights, mistreatment, ineffectiveness or official and agency shortcomings.[36]

In a real sense, the components of the criminal justice system serve as monitors of each other's activity. This is quite obvious in terms of court protection of basic constitutional rights of offenders as handled by police, judges and prosecutors. Indeed, in the past two decades, the federal appellate courts, armed with the Bill of Rights, the 14th Amendment "due process" and "equal protection" guarantees, and the Federal Civil Rights Act of 1871 have functioned as perhaps the most effective external regulatory check of all on police and correctional behavior in relation to accused and convicted prisoners. An explosion of cases has defined both broad parameters and even the niceties of official day-to-day conduct with system clients. This judicial oversight technique is almost without precedent among Western nations where, in lieu of Constitutional litigation, the tendency has been to rely on special inspectorates and procurator offices, supervisory judges and magistrates specifically assigned to this function,

and visiting commissions and committees.[38] The defense attorney function, likewise, is oriented beyond individual case representation (and often as an inherent part of it) to identification of improper procedures and practices on the part of courts, prosecution, and corrections.

Structural reorganization or unification proposals should consider the availability and impact of these inter-system "checks and balances" and, where appropriate, assure their preservation or applicability within integrated service structures. Beyond that, however, the new external ombudsman/monitoring/advocacy institutions can rightfully be relied upon as counterweights to mediate the costs of even well-conceived integration and consolidation initiatives.

Of similar potential, but also quite experimental, is the development of voluntary accreditation techniques, similar to those now existent in the education and health fields, for outside monitoring and verification of the quality and responsiveness of criminal justice services. Under auspices of the national professional association for correctional administrators and personnel, a quasi-autonomous Commission on Accreditation for Corrections has been established and is now structuring a formal accreditation system (standards, candidate status, accreditation) for correctional functions and agencies.[38] This will be the first major accreditation system dealing exclusively with public (governmental) agencies. A similar proposal has been articulated in national standards developed by the professional association of the legal aid and indigent defense field.[39]

Finally, a new quasi-external accountability mechanism is on the horizon and should be noted. It addresses the critical need, and yet extremely difficult task, of managing and assessing governmental service institutions (or, for that matter, any "budget" rather than "profit-based" service institutions) for performance. In addition to expansion of the historic and widely-used "auditor general" concept for this purpose (i.e., a separate independent governmental agency to examine the integrity, efficiency, and accomplishment of government agencies), an emerging point of view suggests that it may be necessary to treat virtually all governmental agencies as impermanent and subject to automatic termination unless periodically reappraised and renewed by legislative bodies. This is the concept behind the "sunset legislation" which has been introduced in many states and is now pending in the Congress.[40] Briefly, these enactments call for a specified and limited life to some or all government agencies (e.g., five to ten years) with careful evaluations near the end of these periods (both by executive staffs and legislative committees) and automatic termination of operations unless they are affirmatively renewed or recreated by the legislature. Colorado was the first

state to enact such a law when, in March of 1975, the Governor signed a bill decreeing limited life spans and "sunset" machinery for the state's 43 boards and commissions. Since then and through mid-1977, at least ten more states enacted some form of sunset system.* While the institutions of justice can hardly be discontinued for nonperformance, the particular forms and structures which have been selected for service delivery need not escape scrutiny of this kind. Thus, variations and adpatations may evolve as an important tool for assessment of the criminal justice bureaucracies that are likely to emerge from reform doctrine and new organization concepts.

The point to be made is that structural innovation, higher levels of unification, and even experimentation with further decentralization can count on a new commitment to evaluation, monitoring and accountability to offset some of the discomfiting evidence of governmental incompetence when it seeks to plan comprehensively, integrate functionally, or broaden its service nets. We may have new resources to address old frustrations and hazards as we assess the organizational future.

Structure as One Determinant of Organization Design and Effectiveness

While this analysis focuses on the structure of law enforcement services, our growing knowledge of organizations, public and private, makes it clear that structure is only one of the important determinants of organizational effectiveness. Indeed, with the explosion in organizational design theory and technology since World War II, there has been, if anything, a deemphasis of the role, significance and value of structure or hierarchy in managing the business and maximizing the capabilities of organizations.[41]

Departing from the bureaucratic structure and rational organization concepts of Max Weber, a succession of organizational analysts has laid bare new insights, dimensions, and values concerning the "complex organizations" through which so much modern social, economic, and governmental endeavor is channelled. From the "classical" or "structural" school of organization, focusing on specialization of function, hierarchy, formal rules and regulations, "careerism", and rational management, the underplayed values and impact of the "human factor" began to emerge. The Hawthorne studies, followed by the writings of such theorists as Mayo, Barnard and Lewin, brought an

*These include Alabama, Arkansas, Florida, Georgia, Indiana, Louisiana, Montana, Oklahoma, South Dakota and Utah.

increasing appreciation of social norms, psychic rewards and sanctions, and the importance of group behavior and leadership in organizational life and effectiveness. It also brought an appreciation, and often a preference, for new principles of organization challenging the rational-legal-hierarchical tenets of the classical school. These included (i) flat, collegial organizations as superior to hierarchic-authoritarian structures; (ii) democratic-participative leadership as more efficient than hierarchically-imposed leadership; and (iii) an orientation to "people" as well as "task" as a precondition for satisfying and efficient organizational performance.[42]

From this searchlight on human concerns in organization, a new integrative focus emerged and largely characterizes current organizational theory. It recognizes the legitimacy of both structural and human factors in organization, placing emphasis on the processes of interaction between structure and participants; formal and informal elements of organization; the scope, interrelations and contribution of informal groups; interactions between organizations and their environment; the many modes of communication and information processing within organizations; and the roles of lower and higher personnel ranks, social and material rewards, and work and nonwork organization in organizational life. Spokesmen for this integrative approach, although focusing on different facets and constructs, have been such analysts as Herbert Simon, Amitai Etzioni and James Thompson.[43] A number of able scholars are further developing integrative theories and approaches in complex organization design, in large part based on private sector, manufacturing and commercial organizations. Public sector analysis seems to be lagging somewhat behind, largely preoccupied with the enormous problems of accountability, evaluation of performance, and bureaucratic paralysis displayed in society's growing complex of governmental service institutions.[44]

One of the new breed of complex organization analysts, Dr. Jay Galbraith, refers to five relevant domains in organizational design and life. Beyond structure, these include task, personnel, reward systems and decision processes. Other theorists vary the classifications, but the message that structure is but one determinant is universal and needs to be kept in mind in any attempt to isolate and expound doctrine on that variable.[45]

Apart from "downplaying" formal structures, Galbraith's perspective on the significance of structure probably represents, more or less, the prevailing view of complex organization experts, although articulated, in his case, as a major construct of a "contingency theory" of organizational design. This is that (i) there is no one best way to organize but (ii) not all

ways of organizing are equally effective. This approach acknowledges the relevance of structure to the mission of organizational design but suggests that several structures (though not all) may be appropriate for certain public and private institutions, provided other design elements are taken into account in formulating the equation for optimum organizational performance. For example, a hierarchical (centralized) model for defender systems may be quite adequate where tasks are clear, existing procedural and substantive rules cover most information exchange needs, and one can rely on professional discretion to select appropriate responses at the action level without overloading communication channels when uncertainty arises. On the other hand, an atomized (autonomous unit) configuration may be equally effective if mechanisms are designed to assure that local perspectives and discretion do not work against the total goals and needs of an adequate defense system (e.g., adequate liaison and integrating roles, information systems to apprise local units of technology and developments elsewhere, and obligatory rules and standards of performance even though not imposed by an organizationally superior unit).

These are formulations that comport well with the nation's broad range of governmental diversity and the many variations in approach, citizen preference, and institutional mix permitted by our federal/state/local form of government. They suggest that less structural hierarchy and less central authority can often deliver services and products as well as (and possibly better than) more centralized arrangements if other information processing and coordinative techniques are used. This may be true even in areas like the administration of justice which require both uniformity and a great measure of central prescription as a matter of basic social value. The "polycentrist" political theorists make this case in their espousal of a governmental system of multiple, consciously overlapping jurisdictions which feature (i) "matrix" and coordinative rather than hierarchical relationships, (ii) a bargained or "market" approach to determine which government levels deliver various public services, and (iii) reasonable ground rules for the participating units rather than a consolidated polity when, as in the justice area, larger interests require consistency of treatment or maintenance of certain values.[46] Nevertheless, it is this very quality of evenhanded justice administration that may justify a greater emphasis on central hierarchy, rulemaking and planning than modern organizational theory would mandate for other organizations and social endeavors.

These factors should be kept in mind as issues of centralization, decentralization and coordination within the justice system are addressed. They hardly preempt the serious and

important questions of political philosophy (as opposed to organizational effectiveness) which will continue to haunt our approaches and preferences for structuring of justice functions and other institutions of governance;[47] however, neither the new organizational insights nor the complexities they address can be safely ignored.

Discretion in the Criminal Justice System

Whether viewed as "issue" or "building block", the administration of criminal justice is permeated with discretionary latitude; and a major reform concern has been to harness and rationalize the exercise of discretion. Proposals abound to curtail discretion in decisions to arrest, to prosecute, to negotiate pleas, to fix sentences and to release on parole. Guidelines and policies for the ordering of such discretion have been recommended by virtually all study groups and are being formulated and implemented, in at least some respects, in most jurisdictions. Legislation to eliminate large segments of discretionary authority (e.g., the imposition of fixed or mandatory sentences, the elimination of plea bargaining) is also receiving widespread consideration.

The structural implications of the presence of discretion and the push toward its containment are varied but limited. On the one hand, proposals to abolish parole systems carry major structural implications. If enacted, they would eliminate a sizeable justice system and wipe out a whole class of agencies. On the other hand, the plea bargaining and sentencing constraints do not necessarily call for structural readjustment but rather the elimination of certain practices of ongoing agencies. To be sure, workload implications may prove so great as to force organizational changes, but the initial impact is not an organizational one.

To the extent that the bounds and bases of discretionary action are tightened, this should make it increasingly feasible to push decisionmaking downward in the system and better tolerate current patterns of local autonomy. This is because the spheres of unacceptable disparity are narrowed and the task of measuring proper exercise of authority is facilitated. If one knows the precise reasons and basis for a parole denial, the job of tracking discriminatory treatment is simplified. Likewise, if a judge can only impose one "flat" term of confinement for offenders of the same class or can vary this period only within narrow ranges, "headquarters" intrusion is less necessary to avoid disparate handling. Accordingly, greater degrees of administrative unification can be achieved without intolerable over-the-shoulder watching or second-guessing. Clear and common rules exist for the line professional which obviate the need for

day-to-day administrative oversight and ease the burden of monitoring discretionary decision-making after the fact.

Opposing this apparent obviation of oversight intensity is the uncomfortable way that discretion narrowed at one decision point of the system tends to balloon in others. Thus, where the ability to plea bargain is foreclosed, discretion in arrest and charging decisions may expand or be modified to permit the same level of idiosyncracy or intake control in processing offenders.[48] In order to fully rationalize discretion, its exercise needs to be regulated and harmonized at all decision points in the system, from broad delineation via statutes and regulations through guidelines for individual case determinations; and, in the end, considerable spans of discretionary authority will probably always need to be vested in line decisionmaker hands (prosecutors, judges, prison administrators, etc.).

Here, something should be said about the professional character of criminal justice decisionmakers. Judicial, prosecution and defense systems are "professional-intensive" mechanisms whose lawyer personnel are trained for and well-equipped to exercise discretion (although, according to organizational experts, this area is a thicket of complexity in terms of motivation, organizational goals, personal propensity, and agency power structure).[49] Research shows that while professionalization and bureaucracy are inherently antithetical, chiefly because the latter threatens strong professional norms and allegiances, (i) professionals can and will accept and adapt to hierarchy and rules (balking nevertheless at excessive formalism and division of labor) and (ii) even in large hierarchies, will carve out environments similar to those found in other professional milieus (e.g., legal departments of large public and business organizations tend to organize and operate much in the same manner as moderate-sized private law firms).[50] Thus, the presence of "professionalism" in these criminal justice components and its increasing emergence in others (police and correctional services) seems to offer some assurance that unification or central administration will not overwhelm the line decisionmakers who make the system "go". There seems, for example, to be no indication that prosecutors and defenders in the few centralized state systems that exist (e.g., Delaware, New Jersey, Connecticut, Alaska) operate with less case-to-case professional independence than their locally elected counterparts in other states. Indeed, the United States Attorneys within the federal system, as every Attorney General has learned, find little difficulty in asserting their professional identity and judgement, even though under the official and direct supervision of a central headquarters (U.S. Department of Justice) and a cabinet level boss.

It appears, then, that the current dynamic and controversy

on discretionary justice may be largely bias-free in terms of structural arrangements although, of course, still an enormous problem. Indeed, there seems to be a suggestion that the trends toward narrowing and regularizing the criteria for exercise of discretion can be best synchronized through central imposition, recognizing that professional performance at field levels will insist on its prerogatives in both centralized and decentralized contexts.

* * * * *

Federalism, diversity, discretion, accountability, privatism, bureaucracy, fiscal pressure, constitutional tension--has this been a journey without point? Perhaps, but hopefully not without perspective. In stretching the contours of analysis beyond criminal justice borders, we may have identified new resources to bring to criminal justice organization. The rummaging has been casual, possibly misguided on some of the difficult issues addressed and certainly in need of management by better and more thorough hands; but the ideas--and the building blocks--have, it is believed, something to offer for architects of criminal justice systems. Indeed, it is more than likely that they may be ignored only at the cost of effectiveness.

FOOTNOTES TO CHAPTER 2

1. The relevant symposium articles and authors, in the order described, are Herbert Kaufman, "The Direction of Organizational Evolution," Amitai Etzioni, "The Third Sector and Domestic Missions," Bertram Gross, "An Organized Society," and James Thompson, "Society's Frontiers for Organizing Activities," Public Administration Review (July-August 1973).

2. James Thompson, op.cit. n.1,p. 329.

3. See Arthur Vanderbilt, The Doctrine of the Present Day Separation of Powers and Its Significance (Lincoln: University of Nebraska Press, 1953).

4. Ginsberg, Bader and Bruzelius, Civil Procedure in Sweden (The Hague: M. Nijhoff, 1965), pp. 108-112; Civil Code of Denmark, Article 13. Inclusion of courts within the ministry of justice also existed in prewar Japan. See John M. Maki, Court and Constitution of Japan (Seattle, University of Washington Press, 1964) pp. XII-XIV.

5. Home Office, Coordinated Policy Planning for the Criminal Justice System in England (unpublished note, Aspen Institute Conference on Selected Aspects of Criminal Justice, 1976).

6. Geoffrey Hazard, Martin McNamara and Irwin Sentilles, Court Finance and Unitary Budgeting, 81 Yale Law Journal 1286 (1972) pp. 2-6; Gary Spivey, "The Inherent Power of Courts to Compel Appropriations or Expenditure of Funds for Judicial Purposes," 59 American Law Reports 3d (1974), p. 569 et.seq.

7. Carl Baar, Separate But Subservient--Court Budgeting in the American States (Lexington,Mass.: Lexington Books, 1975) ch. 2. Institute for Judicial Administration, State and Local Financing of the Courts (Tentative Report, 1969) p. 74.

8. See, for judicial-executive tension in the information system area, Larry Berg and Leo Flynn, "Independence v. Accountability--California's Tug of War" and David Weinstein, "Judicial Independence in the Computer Age," 59 Judicature (March 1976).

9. Advisory Commission on Intergovernmental Relations, State-Local Relations in the Criminal Justice System (Washington, D.C., U.S. Govt. Printing Office, 1971), pp. 101 (judges), 76 (sheriffs), and 112 (prosecutors).

10. Such states include Florida, Illinois, Kentucky, North Carolina, and Ohio. See Harry O. Lawson, Overview of Court Administration (unpublished paper, National College of the State Judiciary, July 1974).

11. State-Local Relations in the Criminal Justice System, op.cit. n.9, pp. 103-107.

12. Council of State Governments, Reorganization in the States (monograph, 1972); Council of State Governments, The Book of the States 1976-77 (Lexington, 1976) pp. 105-108.

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CHAPTER 3. FINANCING THE SYSTEM: EXPENDITURE GROWTH AND STRUCTURAL REFORM IMPACT

More than a decade has passed since crime and law enforcement catapulted into visibility as a major national issue. The early signposts are well-known -- the Johnson/Goldwater campaign of 1974 revealing the depth of citizen concern, the sharp upward trend of FBI index crimes from 1960-1965, the advent of federal grants for criminal justice improvement in 1965, and the landmark study of the President's Commission on Law Enforcement and Administration of Justice released in 1967. These, of course, were only the beginning skirmishes in a continuum of national study, attention and effort that continued throughout the 1965-75 period and persists today.

One of the products of this focus on crime and public safety, largely a legacy of the President's Crime Commission, was to draw attention to the criminal justice system as a whole, its interrelationships, the governmental roles and responsibilities involved, and the financial and manpower resources behind the "war on crime". Indeed, the President's Crime Commission was probably the first national group to try to assess the total costs of criminal justice administration, estimate future financial needs, and call for infusion of major new resources into the crime control apparatus.

We have now acquired some ten years of experience since the Commission formulations. The rhetoric about the depth and breadth of the crime problem has continued unabated (not without reason), and concern has been expressed about the impact of the new billions which the nation invested over the ten-year period in police, court and correctional operations.[1] A pause to examine what has really happened on the financial side of criminal justice would seem valuable. This is a subject which merits more extended and sophisticated analysis than that which will be ventured in this mini-essay. Yet, observations can be offered which should be of interest to all concerned with criminal justice administration.

Within the broad universe of fiscal analysis possible, four inquiries have been selected for exploration. These focus on the true extent of increased financial commitment to the system. All are "expenditure" issues and, briefly stated, seek to address the following questions:

(i) What has been the real increase in criminal justice system investment during the period 1965-1975?

(ii) How does this increase compare with national expenditures for other governmental functions such as health, welfare and education?

(iii) How have these increases been distributed among the various components of the system, i.e. police, courts, corrections, prosecution, defense?

(iv) How have these increases been distributed among the government levels responsible for law enforcement and public safety activity, i.e., federal, state, county and municipal?

Following this discussion, there will be speculation about the effect of structural reform recommendations on who foots the crime control bill, a question of more than passing interest in this era of "fiscal squeeze".

The Net Increase in Criminal Justice Expenditures

The President's Crime Commission reported expenditures of $4.61 billion for the criminal justice system in fiscal 1965 (exclusive of prosecution and defense but inclusive of all court system costs).[2] Ten years later, that figure had swelled to more than $17 billion in fiscal 1975 (the latest year of available statistics).[3] These totals represent direct outlays for law enforcement after eliminating payments between governments for subsidies, grants and purchased services.

The decade's more than three-fold increase is, of course, impressive and beyond any projections of the Crime Commission which estimated an approximate doubling by 1975. However, these figures fail to take into account the marked inflationary trends during the period. Applying the Commerce Department's standard "deflators" for state and local purchases of good and services (adjusted to a 1965 base year),[4] the reported $17.2 billion for 1975 shrinks to the equivalent of $9.03 billion in 1965 dollars or a 96% 10-year increase. If we add prosecution and defense outlays to the 1965 figures (which exclude these elements) to achieve better comparability with the 1975 expenditures, a more sobering increase of 91% emerges. By either test, it appears that the Crime Commission's estimate was remarkably accurate and that system costs have, indeed, nearly doubled from fiscal 1965 through fiscal 1975.

At first blush, this record of increase seems to be hardly better than the previous decade (1955-1965) when the nation had not yet "discovered" its crime problem and, nevertheless, expenditures more than doubled from $2.2 to $4.6 billion. However, applying deflators for that period shows an approximate 50% increase from 1955-1965 compared with the 91% - 96% increase for the 1965-1975 period.*

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* Newly-released criminal justice expenditure totals for 1976 (nearly $20 billion) show continuance of trends in the 1965-75 analysis. Advance Report: LEAA Expenditure and Employment Data for 1976 (Jan. 1978)

Comparing Criminal Justice Increases with Other Government Functions

Criminal justice seems to have fared significantly better over the decade (1965-1975) than other major governmental functions in terms of relative increases in dollar expenditures. This is a fair sign that the apparent national priority for public safety endeavor had substance as well as rhetoric behind it in the hard competition for tax dollars. The criminal justice increase of 274% for the period (here conversion to 1965 dollars is not necessary since all functions are being compared in absolute dollar amounts) was second only to the extraordinary rise in public welfare outlays. It exceeded not only "labor intensive" functions such as education and health (which like criminal justice, focus most expenditures in personnel)[5] but also other major areas such as defense, natural resources, highways, sewerage and sanitation, and even interest on general debt.[6]

Increase Since 1965 in Dollar Expenditures Among Major Governmental Functions -- All Governments[7]

	Percentage Increase	1975 Expenditures (Billions)
Criminal Justice	274%	$17.2
Public Welfare	514%	39.4
Housing and Urban Renewal	166%	5.8
Education	221%	95.0
Health and Hospitals	223%	24.8
Interest on General Debt	189%	33.0
Sewerage and Sanitation	208%	7.4
Local Fire Protection	169%	3.5
Highways	85%	22.8
Natural Resources	46%	16.1

Increases Among Criminal Justice Components

Among police, courts and corrections, the greatest dollar increases have, of course, been for the largest criminal justice function - the police. Expenditures rose from $2.79 billion in 1965 to $9.78 billion in 1975, a net increase of about $7 billion. However, in terms of relative gains, correctional services had the largest comparative increase (271%) and courts experienced the most modest increase (165%), with police inbetween (251%) but closer to the corrections gain. When added to the criminal justice picture, prosecution and defense (particularly the latter), witnessed the most dramatic increase in expenditures. Comparable

statistics for 1965 and 1975 are not available but indigent defense rose 259% in the period from 1969 to 1975 alone (accepting LEAA definitions which include civil legal services in the former and all attorney general, district attorney, corporation counsel activities, including civil, in the latter). Since prosecution and defense represent the smallest expenditure categories in the system, their rapid rise did not effect the percent share of the total criminal justice dollar among the other functions which remained substantially stable (give or take three to four percentage points) throughout the period.

To summarize relative expenditure increases:

	% Increase 1965-75	% Increase 1971-75	% of Direct Criminal Justice Expenditure (FY 1975)*
Police	251%	58.7%	56.7%
Corrections	271%	67.8%	22.3%
Courts	165%	52.2%	12.0%
Prosecution	-	89.9%	5.4%
Defense	-	118.0%	1.6%

*This column deletes a miscellaneous category of 2.0%

Comparing Increases by Level of Government

All levels of American government expanded criminal justice expenditures in the 10-year period with the federal government leading the way. Its total outlays increased 634%, as might be expected since grants-in-aid for crime control started near a base zero point in 1975 and had climbed to nearly two-thirds of a billion dollars by 1975. However, even the federal government's direct expenditures for its own law enforcement activities (i.e., excluding grants-in-aid to state and local government) increased at a rate significantly beyond state and local direct expenditures.

Increases in Criminal Justice Expenditures, 1965-1975

	Total	Direct Expenditures Only	1975 Dollar Outlays - Direct (Billions)
Federal	634%	432%	$ 2.2
State	369%	306%	4.6
Local	243%	241%	10.4

Despite the more modest local government increase, counties and municipalities continue to bear a cost burden well beyond that of the states and federal government combined. In this connection, while state expenditures to assist local government with criminal justice costs have been steadily rising (roughly $40 million in 1969 to $709 million in 1975), this seems primarily attributable to federal aid funds rather than increased subsidies and grants from other state monies. Since 1971, state payments have largely paralleled intergovernmental receipts from federal programs (primarily LEAA awards under the Omnibus Crime Control and Safe Streets Act).

An interesting sidelight is the relative increases in criminal justice expenditures as between county and municipal government. Data permitting comparisons was not available in 1965 nor until the LEAA/Bureau of the Census annual statistical series on criminal justice employment and expenditures began to offer county-municipal comparisons in fiscal 1971. In the five-year period from 1971 through 1975, county criminal justice expenditures (direct outlays) increased 78% as against 72% for state government and 48% for municipal government (the latter even including the large consolidated city-counties).[8]

To the basic question of whether the federal crime control program has stimulated increased state/local investment in criminal justice, the answer must remain uncertain pending more careful study. However, there are indicators suggesting that the impact may not be significant. For example, had federal intergovernmental crime control grants to states and localities ($831 million in fiscal 1975) been eliminated from the 1965 to 1975 comparisons, the relative increase would have been much closer to, and not significantly different from, that of other "labor intensive" government services such as health and education.* Also, it appears that a slice of federal revenue sharing funds even greater than the LEAA crime control "block grants" is being devoted by state and local governments to law enforcement purposes (nearly $1 billion of the 1974 allocation, extrapolating from Office of Revenue Sharing "actual use reports"). Most of this, according to Brookings Institution studies (in the range of 80%), has been for "substitutive effects" rather than "new spending".[9] Thus, as revenue sharing peaked in 1974 and 1975 (over $6 billion per year), it was quite likely that federal intergovernmental payments (LEAA and ORS) were absorbing much of the increased criminal justice expenditures, and freeing funds for substitutive uses (relieving budget pressures in other areas, tax stabilization, etc.), particularly at the local level, rather than significantly stimulating new criminal justice spending (capital goods, expanded operations, or personnel augmentation), even recognizing the propriety and fungibility of revenue sharing resources for use in this way.

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* Studies also show little increase in manpower accompanying marked expenditure increases. See, e.g., LEAA Adm'r Memo to Regional Admr's (Nov. 1975).

Conclusions on Ten Years of Expenditure Growth

Summarizing briefly for the ten fiscal years from 1965 to 1975, it appears that:

--Governmental investment in criminal justice functions increased significantly, but closer to a 95% real dollar gain than the 275% figure suggested by national statistics recording "inflated" dollar outlays.

--The increase for this period was indeed greater for law enforcement than for all other major governmental functional expenditure categories except "public welfare".

--Shares of the criminal justice dollar remained substantially the same between the major functions of police, courts and corrections but (i) a sharper increase for the smallest functions, i.e., prosecution and defense, took place (particularly in the area of "defense" where court decisions vastly expanded the indigent accused's mandatory right to defense counsel) although this did not greatly change overall expenditure ratios and (ii) there was some relative gain by corrections and some relative loss by courts and police (a few percentage points in either direction).

--Increased expenditures by government levels showed the greatest relative gains at the federal level and the least at the local level, recognizing that the major fiscal burdens carried at the local level (well in excess of state and federal expenditures combined) made it more difficult for local governments to respond at a similar rate.

New Financing Proposals for the Criminal Justice Systems

The decade 1965-1975 was a period of unprecedented national visibility and concern over crime and public safety. It also proved to be the most productive span in our history in generation of national studies, standards and models for criminal justice improvement, enlightened by a new sense of interdependence and linkage between the major governmental services concerned with law enforcement and criminal administration -- police, courts, corrections, prosecution and indigent defense.

An important, interesting and insufficiently examined segment of the reform standards deals with suggested changes or new approaches to criminal justice financing. Usually, these have been in the direction of greater assumption of cost burdens

by state governments. If fully implemented, the combined effect of these recommendations would be to drastically change current spending patterns and allocations of fiscal responsibility in the criminal justice sector. Since criminal administration is now the fifth largest category of state-local government expenditure, there would also be a significant impact on the overall balance of state-local fiscal responsibilities -- an especially sensitive area in view of the pressures of municipal "overburden", declining tax base, central city fiscal crisis, and differential revenue source availability which now confront our urban nation. It is this potential "revolution" which will now be examined.

Current Criminal Justice Fiscal Mix

Today, state and local governments generate about 82% of the funds which support criminal administration and actually spend 87% of those monies:[10]

Direct Criminal Justice Expenditures - Fiscal Year 1975[11]

	Amount (Billions)	Percent
Federal	$ 2.19	12.7
State	4.61	26.7
County	3.83	22.2
Municipal	6.62	38.4
Total	$17.25	100.0

As we have seen, the foregoing totals reflect a 274% rise since 1965 in aggregate dollars spent on criminal justice and a 90-95% increase in real dollars (i.e., after applying appropriate Department of Commerce deflators for governmental services).[12] This increase is typical of governmental service expenditures for domestic functions but somewhat larger for criminal justice than other major categories such as education, health and hospitals, fire protection, sewage and sanitation, and highways.[13]

Despite the escalation of dollar outlays, state and local expenditure ratios have remained fairly stable over the past decade, indicating a slight rise in state share and within the county-municipal sector, a relatively greater percentage increase in county expenditures.[14] State governments are putting approximately 5½% of their dollar expenditures into criminal justice services and local governments are devoting about 12½%. Overall, then, state and local governments are spending about $15 billion annually on criminal admistration, divided roughly

into 55% for police, 25% for corrections and 20% for courts, prosecution and defense.

The Fiscal Reform Proposals

National studies and standards have become increasingly explicit on system financing. The President's Commission on Law Enforcement and Criminal Justice (1967) emphasized the role of money in system upgrading:

> "The most urgent need of the agencies of criminal justice in the states and cities is money to finance the multitude of improvements they must make."[15]

But it offered a good deal less in specific proposals than groups to follow such as the Advisory Commission of Intergovernmental Relations (1971),[16] National Advisory Commission on Criminal Justice Standards and Goals (1973)[17] and, to some extent, the American Bar Association (1970-73).[18] The former two groups were quite explicit on the subject, no doubt in recognition of the critical importance of fiscal arrangements to achieving wide-scale systemic change and because of their special orientations toward planning, structure and actual delivery of needed services. It is the more recent group, the National Advisory Commission, whose proposals will be used as the basis for dollar calculations on fiscal impact but it should be kept in mind that these were generally in keeping with the recommendations of the President's Crime Commission and ACIR and their thrust toward a vastly expanded state fiscal role. However, some reference in the analysis will be made to variations between the groups as well as the comprehensive criminal justice and judicial administration standards of the American Bar Association.

Basically, the National Advisory Commission prescribed:

--for court, defender and correctional services, full state financing (Court Standards 8.1 and 13.6, Corrections Standards 9.1 and 16.4)

--for prosecution services, state financing of central technical assistance activities with no mention of anything else (Court Standard 12.4)

--for police services: (i) state financing or assistance of a cluster of discrete functions, mostly of a support nature, such as statewide laboratory services, information systems, intelligence and communications networks, and management and consultation services, and (ii) subsidization of a substantial portion of local police training and salaries (Police Standards 5.2, 11.3, 14.1 and 16.1).

Other standard-setters were largely in agreement. The American Bar Association, President's Crime Commission and Advisory Commission on Intergovernmental Relations were unanimous on state financing of court services (this, of course, within the framework of unified court systems).[19] The President's Crime Commission and ACIR agreed on state financing of indigent defense services.[20] (ABA expressed no opinion.) Since none of these groups had made the sweeping recommendations of the NAC on correctional system unification, they were not explicit on state financing. However, ACIR came close, recommending full state financing for most of the system and the underwriting of a substantial portion of remaining local activities by the state, i.e., jails, juvenile detention and misdemeanant/juvenile probation.[21] The President's Crime Commission, in its recommendation for integration of all jails into state correctional systems and state financing of model community-based correctional institutions was apparently calling for transfer of all adult institutional costs to state funding.[22]

All of the groups agreed on state financing of central technical assistance offices or councils for prosecutors but, like the National Advisory Commission, shied away from suggesting general state subsidies or absorption of local prosecution costs. There was one exception, however. ACIR recommended that states should pay at least 50% of the costs of local prosecuting attorneys offices.[23] This was a rational suggestion, presumed the continuing independence of local prosecutive offices, and is a surprising omission in the work of the other commissions, considering fiscal pressures and resource deficiencies within prosecutive systems that easily parallel in public importance those of the courts and defender agencies.

The earlier commissions generally agreed with the National Advisory Commission approach on limiting state assumption of police costs to state-wide support systems such as laboratory, communications and information networks plus a measure of subsidies for police training.[24] ACIR was somewhat bolder than the National Advisory Commission in advocating a clear 100% subsidy for police training (NAC conceded that something less was an appropriate alternative). However, none came close to the striking NAC recommendation that states should move to support 25% of the salary bill of all local police agencies meeting minimum statewide training, selection and compensation requirements.[25] In the labor-intensive, highly localized police component, accounting for the bulk of all criminal justice expenditures, this promised to be the most radical fiscal realignment proposal of all (and possibly the start of state subsidy programs comparable to the long-established 50% central government subsidy for local police forces in England.)[26]

Impact of the Proposals

Using the most recent national expenditure data available, implementation of the foregoing proposals, based on the National Advisory Commission cluster, would produce a remarkable realignment. The relative state-local cost burdens for criminal justice services would virtually reverse. In terms of dollar burdens, the state costs would just about double and local costs would reduce by more than 40%. Here is the picture:

Current State/Local Expenditures as Affected by Standards[27]
(FY 1975 - direct)

	Current Annual Outlays - (Billions)	Current State/Local Ratios	Switches to State Budgets (Billions)	New State/ Local Ratios
Police	$ 8.32	18% - 82%	1.80*	40% - 60%
Courts	1.90	26% - 74%	1.40	100% - 0%
Corrections	3.63	60% - 40%	1.43	100% - 0%
Prosecution	.76	28% - 72%	0**	28% - 72%
Defense	.19	34% - 66%	.13	100% - 0%
Total System	$14.80	30% - 70%	4.76	63% - 37%

*Police estimate limited to 25% local force salary subsidy recommendation ($2.08 billion) and state reimbursement of new recruit training costs ($100 million).

**No estimate included for state technical assistance organizations for prosecutors.

Thus, states, given full implementation of the reform proposals, would move from an historical position as minority funder of criminal justice services to the dominant funder, removing a revenue generation burden of close to $5 billion dollars from local shoulders and placing it in state hands. This switch would involve over 30% of all monies currently being spent for state and local law enforcement and, indeed, more than one quarter of all public funds (federal-state-local) being allocated to crime control services. The result of full implementation would be to make the states exclusive funder of three components -- courts, indigent defense and corrections. Local government would remain the dominant financer of police services (about 60% of costs), but the salary and training subsidy standards would increase the state share markedly (doubling from 18% to almost 40%). If the ACIR standard on financing one-half of local prosecution services were implemented (not reflected in the chart), states would also become the greatest funder of prosecution services (probably in the neighborhood of 60% - 65%).

State-Local Revenue Generation

The criminal justice reform standards were generated, quite appropriately, with an eye to improvement of criminal administration rather than dealing with the fiscal dilemmas of local government. However, the realignments they contemplate may prove to be beneficial from the viewpoint of public finance.

The major sources of federal revenue are personal and corporate income taxes with social security taxes occupying a close second (over 80% of all federal revenues). State governments exhibit a diversity of revenue sources, the three principal ones being general sales taxes, individual and corporate income taxes and selective sales taxes (together accounting for roughly 85% of total revenues). These are all national figures and, of course, the variations among states can be and are considerable.

With some important exceptions, however, local government tax revenue is largely a story of the property tax. Over 80% of the combined tax revenues of city, county and town governments and school and special districts derive from property taxes. The property tax has many shortcomings. Competition over its base from different local units, the unevenness of its revenue generating capacity, and the shrinking of the property tax base in inner cities (where criminal justice caseloads are greatest) have contributed to the general malaise of "fiscal crisis" facing many large cities and pressing hard upon the resources of even affluent municipalities and urban fringe areas.[28] The search for new revenue sources, redistribution of federal revenues through grants-in-aid and more recently, the advent of general revenue sharing (now over the $6 billion mark annually) have helped. The techniques are being used and, generally, the money benefits have been flowing in heavier volume to municipal and urban government where help is most needed. However, the capacity of local government to continue to finance traditional services is being sorely taxed and merits a close appraisal as to which responsibilities can be assigned to other government levels and when it is appropriate to do so.

What is important is that local government requires fiscal relief badly. The more flexible, equitable and generally superior revenue generation capacities of state government may well dovetail with study commission judgments that the criminal justice system is a social responsibility whose demands for effective and equal service require recourse to budget measures outside the vagaries of local fiscal capacity. A similar movement has taken place with the highly local function of primary and secondary education where fiscal patterns are rapidly moving (in the name of equal treatment mandates voiced so often for justice functions) toward state fiscal dominance. States now provide more than 40% of school costs from their own sources and 22 of

them are meeting more than half of the state-local spending for public schools.[29]

Some Implications of the Funding "Revolution"

Centralization of financing could be regarded as a threat to the localism that has pervaded American criminal administration from its early days -- a localism which has shown both advantages and disadvantages. Indeed, it is. Several of the financing proposals are coupled with calls for central administration and control. This is true, for example, of the court unification standards, and commentators have shown how the price of "unification" has led agencies and governments to hesitate on needed fiscal reform.[30] It is not necessary in calling for state financing to abandon systems which rely on service delivery by independent local agencies. The NAC standard on defense funding makes it clear that while financing should come from the state, administration can remain state, regional or local. The NAC police salary subsidy presumes continuation of the local structure of law enforcement, i.e., that local agencies will be strengthened by adopting minimum personnel and compensation standards and receiving state aid to do this. It can be administered without the merger or abolition of a single police department (although there are other standards that speak to that issue with persuasive force).[31]

It is true that central financing proposals, even in subsidy form, carry their own controls, i.e., offer minimum standards, frequently monitoring and inspection, always some measure of audit and accountability. This, however, is not a disadvantage in a field that has long needed to better define and pursue principles of performance and capacity which all citizens can count on, apart from accidents of size or location of community. Moreover, recent studies of allocation of public service responsibilities have identified the criminal justice function as the kind of basic societal service that justifies a "larger government" role (i.e., state level) in policy and funding as opposed to local benefit services (e.g., parks, utilities, waste collection) which do not create or address equivalent risk to the interest of state citizens at large.[32]

In considering the task of paying for the comprehensive operational and organizational reforms which have been carefully defined in the past decade, responsible governments cannot ignore proposals for realignments of the fiscal responsibilities necessary to "deliver the goods". The implementation of financing standards merits coequal attention with implementation of substantive standards as planners and decisionmakers move toward transforming criminal justice goals into reality. This may require moving into broader and more difficult arenas of change but the challenge cannot be avoided.

FOOTNOTES TO CHAPTER 3

1. See, e.g., Twentieth Century Fund Task Force, Law Enforcement: The Federal Role (New York, McGraw Hill, 1976); Advisory Commission on Intergovernmental Relations, Safe Streets Reconsidered: The Block Grant Experience 1968-1975 (GPO 1977); Center for National Security Studies, Law and Disorder IV (S. Carey, 1976).

2. President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: Crime and Its Impact-An Assessment (GPO 1967) p. 55.

3. U. S. Bureau of the Census and Law Enforcement Assistance Administration, Expenditure and Employment Data for the Criminal Justice System 1975 (GPO 1977) p. 21. It should be noted throughout this essay that all comparisons of court expenditures include total judicial system costs for both civil and criminal matters since the Census/LEAA series makes no allocation estimate for criminal functions of the courts only. Also, for the same reason, prosecution figures include all criminal and civil activities of attorneys general, district attorneys, corporation counsel, and other state/local government legal departments while indigent defense services include civil legal aid as well as representation of criminal defendants.

4. Bureau of Economic Analysis, U. S. Department of Commerce, The Survey of Current Business (1977) p. 433, chart no. 70.

5. President's Commission, op.cit., n. 1 (pp. 53-55, to establish predominance of manpower outlays in criminal justice expenditures) and LEAA/Bureau of Census, op.cit., n. 3 (total state-local payrolls of $12 billion or 80% of $15 billion in all fy 1975 state-local criminal justice expenditures).

6. Comparing Bureau of the Census, U. S. Department of Commerce, Governmental Finances in 1964-65 (GPO 1966) and Governmental Finances in 1974-75 (GPO 1976) Series GF, No. 5.

7. Ibid. (for chart data sources).

8. Bureau of the Census and Law Enforcement Assistance Administration, Trends in Expenditure and Employment Data for the Criminal Justice System 1971-1975 (June 1977) pp. 8-10.

9. Nathan, Crippen, and Juneau, Where Have All the Dollars Gone?-Implications of General Revenue Sharing for the Law Enforcement Assistance Act, Brookings Institution (LEAA Contract Study, 1976).

10. The 5% difference between state-local expenditures and state-local generation of funds is accounted for by federal grant-in-aid transfers ($642 million in 1974). The federal contribution is probably close to twice as large if general revenue sharing funds applied to criminal justice are also counted.

11. The source of this data is Law Enforcement Assistance Administration and Bureau of Census, Expenditure and Employment Data for the Criminal Justice System -- 1975, Table 2 (GPO 1977). This series is hereafter referred to as "LEAA Expenditure and Employment Data."

12. See Skoler, Financing the Criminal Justice System -- Taking Stock, 1965-1975, 4 Criminal Justice Digest (February 1976).

13. In domestic expenditures, only public welfare (514%) exceeds the criminal justice 10-year increase in government expenditures.

14. Since 1965, the state share of state-local criminal justice outlays has risen from 27% tc 31%. Since 1971, the county share of local (county-municipal) expenditures has risen from 32% to 37%. The comparison is made with LEAA 1975 Expenditure and Employment Data.

15. The Challenge of Crime in a Free Society, p. 281 (1967) (hereafter cited as "President's Crime Commission Report").

16. State-Local Relations in the Criminal Justice System (hereafter cited as "ACIR Report").

17. Reports on Police, Court, Corrections, Community Crime Prevention, National Strategy to Reduce Crime and Criminal Justice System (hereafter cited as "National Advisory Commission Reports"). Perhaps the most extreme proposal for state assumption of criminal justice costs came from the Council for Economic Development which recommended state takeover of all criminal justice functions except urban police forces. Reducing Crime and Assuring Justice (1972).

18. Standards for Criminal Justice and Standards of Judicial Administration (hereafter cited as "ABA Standards").

19. ABA Standards on Court Organization, Standard 1.10; ACIR Report, p. 45; President's Crime Commission Report, p. 157.

20. President's Crime Commission Report, p. 151; ACIR Report, p. 52.

21. ACIR Report, p. 55.

22. President's Crime Commission Report, pp. 173 and 178.

23. ACIR Report, Recommendation 29.

24. President's Crime Commission Report, pp. 113 and 120-23; ACIR Report, pp. 25, 29-30 and 23 (also recommends incentive grants to consolidate subcounty forces into single county police forces).

25. National Advisory Commission Police Report, Standard 14.1.

26. Hewitt, British Police Administration, pp. 64-66 (C. H. Thomas, 1965) (The "exchequer" or "home office" grant has been applied since 1856.).

27. Basic source is LEAA Expenditure and Employment Data -- 1973-4. It should be cautioned that LEAA judicial expenditures include civil as well as criminal operations of court systems (no allocation is made) prosecution data includes all government legal services (state attorney, general operations in civil as well as criminal matters, activities of local corporation counsel, etc.); and indigent defense data includes civil legal services as well as criminal representation. All items on "switches to state budget" are based on the major financing recommendations previously discussed. These estimates do not include recommendations for a variety of new state outlays of (i) modest character (e.g., state establishment of police management consulting services) or (ii) where calculation of the cost of services was difficult (e.g., state organizations of prosecutors with technical assistance staffs and capacity).

28. On current federal/state/local revenue problems and status, see Colman, Cities, Suburbs and States: Governing and Financing Urban America, ch. 3 in general and pp. 30-41 in particular (MacMillan Free Press, 1975); also National Governors' Conference, The State of the States in 1974, pp. 8-18 (1974).

29. National Governors' Conference, op. cit., n. 19; pp. 17 and 25; Colman, op. cit., n. 19, pp. 185-193. See also Advisory Commission on Intergovernmental Relations, Financing Schools and Property Tax Relief - A State Responsibility (GPO 1973); Urban Institute, Levels of State Aid Related to State Restrictions on Local School District Decisionmaking (1973) (no clear relationship between increased state funding and state policy control over local schools).

30. See Baar, The Limited Trend Toward State Court Financing, 58 Judicature 323 (1975) (suggesting speedier progress in state financing from reimbursement and grant-in-aid schemes to local court systems than state court unification with unitary budgeting).

31. National Advisory Commission Report, Police Standard 5.2 ("Combined Police Services").

32. See, e.g., the important study, Allocation of Public Service Responsibilities in California, California Council on Intergovernmental Relations (Part I - June 1970) (classifying criminal court activities as "widespread benefit/broad risk" services warranting state policy and financial responsibility).

Special Note: On the eve of publication of this chapter, criminal justice expenditure data for fiscal year 1976 became available. In virtually every respect, these statistics confirmed the 1965-75 trends identified in the chapter and summarized on page 54, i.e., sizable growth in criminal justice expenditures (to $19.86 billion in 1976, more than 14% higher than in 1975), greater relative increase than expenditures for other governmental functions except for "public welfare" (which equalled criminal justice rate in 1976), and at local levels, a rate of increase for county government substantially outstripping that of municipal government (113% versus 66% over 1971-76 span). The one departure from 1965-75 trends was a higher rate of increase for local government than for state or federal government in 1976 (15.1% versus 12% and 12.8%, respectively, for direct expenditures). This was in contrast to the prior decade of much more rapid gain for federal and state expenditures and should be watched to see if it signals a significant turn-around or merely a short-term aberration. Bureau of Census, Governmental Finances in 1975-76/GF 76 No. 5, (Sept. 1977); Dept. of Justice, Expenditure and Employment Data for the Criminal Justice Systems (Advance Report, Jan. 1978).

CHAPTER 4. COORDINATING THE SYSTEM: PLANNING AND BEYOND

For many years, reform groups have been urging administrative unification or greater centralization within each of the major components of the criminal justice system. The proposals have varied; of course, with the different law enforcement functions and are quite familiar to professionals who have followed the literature. They include, as we have seen in chapter 1, (i) unified, centrally administered state court systems, (ii) state departments of correction which either manage or regulate all correctional services, (iii) statewide systems of indigent defense, (iv) state attorney general oversight and central technical assistance and policy setting for local prosecutors, and (v) consolidation of small police departments combined with a variety of cooperative arrangements in metro areas and state standards and backup support for local forces.[1]

One would have thought that similar unification proposals might be offered for the overall criminal justice system, especially in light of the past decade's reawakening to the concept of an interdependent criminal administration system as the "ball park" for effective response to crime and criminals. The national study commissions and the experts have indeed been sensitive to the fragmentation and isolation of the various segments of criminal justice.

However, the prescriptions for cure have largely avoided alternatives of structural unification or organizational integration. Instead, the basic technique chosen for coordinating the criminal justice system has been that of "planning." This is reflected in the literature of reform, in federal grant-in-aid policy,[2] and in the growth of a national network and bureaucracy of agencies at state, regional and local levels devoted to criminal justice coordination through planning and fund distribution initiatives.[3] It is the evolution of this coordination approach that this essay will explore.

Planning as the Central Coordination Technique

Planning is a legitimate technique for meshing the activities of segmented but functionally related public services--and there are good reasons why it was chosen as the "standard-bearer" for criminal justice rather than, say, central administration. Among these are the constitutional separation of powers (which precludes the melding of courts with other criminal justice functions); the American tradition of localism in criminal administration (which makes it nearly impossible to gather up the many state-county-local criminal justice units into a single

administrative unit); and the natural "tension" in mission between the various criminal justice functions (e.g., prosecution and defense) which suggests that they can function better by remaining "separate but equal", albeit cooperative, rather than by being joined under a single authority.[4]

Few organizational experts, however, would rely solely on planning as the coordinative device for as complex a set of public services as comprise criminal justice--and it is interesting to see how the concept has evolved and expanded as experience has accrued and the gaps and frustrations have surfaced in use of the comprehensive planning technique. This is reflected quite graphically in prescriptions of the succession of national study commissions that have dealt with such issues.

President's Commission on Law Enforcement and Criminal Justice (1967)

The Johnson Crime Commission, which did so much to define the pattern for today's crime control endeavor, realized that planning was critical. It made that point with fervor in defining its national strategy for change:

> "In every state and every city, an agency or one or more officials should be specifically responsible for planning improvements in crime prevention and control and encouraging their implementation... The Commission's point is not the elementary one that each individual action against crime should be planned, but that all of a state's or city's actions against crime should be planned together, by a single body."[5]

Nevertheless, its call was "global" and contained little by way of specific blueprint or design.

Advisory Commission on Intergovernmental Relations (1971)

The Advisory Commission on Intergovernmental Relations ("ACIR") lent body and shape to the Johnson Commission's general appeal for widespread and comprehensive inter-system planning. ACIR was a prestigious study group whose expertise lay not in criminal justice as such but in the areas of federal-state-local relations, government finance and organization, and techniques for public service delivery. Thus, it had a wealth of expertise on how governmental service systems could be brought into harmony. When it turned to a comprehensive criminal justice analysis in 1971,[6] it also had the concrete

example of the Omnibus Crime Control and Safe Streets Act of 1968 which, by then, had already stimulated the organization of a national planning structure. There were fifty state criminal justice planning agencies (SPA's) engaged in comprehensive planning as a key to receipt and distribution of federal "block grants" for crime control; 45 states had created regional law enforcement planning agencies, usually as subunits of the SPA's but many administratively located within planning commissions, councils of government, and areawide bodies dealing with planning in other fields (housing, economic development, manpower, etc.). Finally, there were over 130 cities and metro areas which had created some type of "criminal justice coordinating council" designed to help elected chief executives bring local and metropolitan agencies into a more effective working relationship.

Thus, ACIR had a good deal more to say about the details and mission of planning than the President's Crime Commission. Basically, ACIR put its stamp of approval on the new state-regional-local council planning network. It said that these three kinds of entities should "take primary responsibility for improving interfunctional cooperation in the state-local criminal justice system."[7]

Significantly, ACIR also suggested leadership that began to go beyond the planning process. It called for these agencies to foster other coordination links such as common criminal justice data systems, cross-system membership in existing organizations such as judicial councils and police training commissions, and advancing programs that helped bridge gaps between the criminal justice functions (e.g., sentencing seminars, police legal advisers).

ACIR also stressed the importance of balanced representation on the advisory and policy boards that had been established under LEAA regulation to guide and supervise the work of the state-regional-local planning agencies. It stressed not only the need for contributions from police, judicial, prosecutive, and correctional interests but also from elected officials such as mayors and city managers, citizen interests, and experts in related fields. Finally, the Advisory Commission called for a new mechanism--joint legislative standing committees on criminal jusitce--to analyze progress being made toward a more coordinated system and initiate legislative action to assure such a result. In this regard, ACIR realized that the state legislature was perhaps the only government instrumentality with jurisdiction to review and intervene in all segments and at all levels of criminal justice administration (even bridging, in some degree, the constitutional separation of powers between courts and other system components).

National Advisory Commission on Criminal Justice Standards and Goals (1973)

The National Advisory Commission ("NAC") continued the trend toward more detailed guidance on planning and coordination of the criminal justice system. Indeed, it produced a whole volume devoted to the subject in its 6-report work product, thereby producing a kind of "equal treatment" with the traditional component systems (police, courts, corrections) that had not been seen in earlier national commission studies.[8] Like ACIR, NAC was also able to reflect on and benefit from chinks which had surfaced in the armor of criminal justice planning under the Omnibus Crime Control Act legislation, this time based on four annual state plan submissions and almost five years of LEAA program experience.

While NAC endorsed the preexisting focus on planning as the prime criminal justice coordinating device, it made two contributions of special importance. First, it gave visibility to other coordination techniques as important elements in integrating criminal justice services--information systems, cross-system educational programs, and legislative rulemaking and code revision. Indeed, these were included as major sections along with planning in its "total system" volume.[9] Second, NAC stressed the need for the planning agencies to become official planners and budgeters for the entire criminal justice system, not merely planners for the programming and allocation of federal funds, and to set minimum standards for grant recipients. This, if implemented, would counterbalance the largely advisory role and lack of power base that had troubled analysts in assessing how planning alone could significantly affect decisionmaking within the system.[10]

NAC made other contributions. It insisted on more clarity and budget-relevance in planning products and suggested "crime-oriented" planning that attacked specific problems with concrete projections of resources, timetables, and evaluation techniques needed to show results.[11] Also, while NAC validated the state-regional-local planning council network that had arisen, it dealt with the troublesome problem of fractionalization that was endangering local councils to recommend (i) consolidation of local planning operations in metropolitan areas (i.e., joint city-county efforts) and (ii) fusion of the regional planning agency-local coordinating council operation in metro areas large enough to justify such action.[12]

Thus, coordination was given more muscle, more breadth, and a more realistic scope.

CONTINUED

1 OF 3

The Comprehensive Written Plan

Throughout this evolution of thinking and refinement on criminal justice planning, one characteristic showed remarkable durability. This was the annual written plan which, until 1977 (when administrative transition to a 3-year plan requirement was accepted), remained a structural feature of the federal Crime Control Act and its apparatus for allocation of formula grants to state and local government. The continuing necessity of yearly production of comprehensive written plans in order to tap large scale action funds assured that this feature of planning technology would not be ignored. Production of written plans began immediately in the first year of the Crime Control Act (fiscal 1969) and through 1976, some nine annual plans had been submitted by SPA's to the Law Enforcement Assistance Administration ("LEAA"), administering agency for the federal program within the Justice Department.

Whether comprehensive written plans have, in fact, achieved the desired level of coordination or are viewed as important and influential tools of system programming and fund allocation remains uncertain. On the one hand, the written plans have been viewed as an unavoidable "ticket" for federal funding; on the other, they have become in many states an aggregation of the plans of local and regional units accepted with little modification or questioning. By the mid-seventies, virtually all study groups which had occasion to take a critical look at the federal program (and there were several) seemed to agree that the annual plan submission required by the federal government had become a counterproductive force, focusing planning on short term goals and immediate funding concerns, producing artificial work burdens and demanding an inordinate amount of time within the universe of planning agency coordinative, funding and program missions. The call was almost consensual for either (i) a transfer to multiyear plans with annual funding updates (ultimately joined in by LEAA) or (ii) elimination of a plan submission and approval requirement as a precondition for receipt of large scale formula grants.

Nevertheless, the federal mandate to coordinate through planning had put in place a huge, many-faceted, generalist-oriented planning structure (3400 full-time state and local workers by 1976) that continued to exercise considerable influence in state criminal justice planning. What seemed to be evolving was not an abandonment but rather a call for total planning supervision in this network over all agency operations and expenditures. This was, of course, one thrust of the 1973 NAC recommendations, was reaffirmed by ACIR in a comprehensive 8-year review of experience under the federal Crime Control Act (1977) and even received endorsement from severe critics of the federal planning and block grant programs.[13] But then, even the basic premises of comprehensive planning in the criminal

justice context began to come under question--and from reputable sources.

Reassessment of Comprehensive Planning--The CSG Challenge

Shortly after release of ACIR's 1968-1975 review of planning and block grants under the federal Crime Control Act, the Council of State Governments published another analysis of comprehensive criminal justice planning as it had evolved during that period. While ACIR looked at a huge body of empirical data on planning-directed block grants as administered at federal, state and local levels, the CSG study (entitled The Future of Comprehensive Criminal Justice Planning) was more of an analytical piece. The Council questioned the premise of centralized planning as a realistic and deliverable goal of criminal justice reform and whether it had a place in the more important "coordination" role which CSG saw as the true response to contradiction, duplication and dysfunction in criminal administration.

CSG asked whether the comprehensive planning thrust of the past decade was not ill-conceived:

> The central issue, then, is really whether States should attempt to centrally plan for criminal justice if there is no single administrative or political structure with authority to implement comprehensive changes in criminal justice policy, programs or resources.... Everything we know about American government, and especially about the separation of powers doctrine argues against centralized comprehensive planning and in favor of fragmented functional planning located throughout the various branches and subdivisions of government.[14]

The Council seemed to be saying that effective planning (i.e., development of strategies for the accomplishment of specific objectives through governmental action) must be related to authority to implement and thus made sense only, or at least primarily, as an endeavor of operational agencies. Because of the fragmented character of criminal justice administration, CSG saw little prospect that central state planning agencies could be integrated with authoritative operational agencies who could make central planning efforts meaningful. Instead, the state role should abandon comprehensive planning except as a symbolic, training,or perspective-imparting instrument and focus on coordination--an endeavor quite distinct from public planning as it had evolved in urban America. Accordingly, CSG not only endorsed the emerging recognition of other coordination techniques than planning, but focused on such mechanisms and the coordination process itself as the preferable and overriding mission.

The striking part of the CSG findings was its passing of the integration torch from the "planning" to other "coordination" modes. In practice, many state planning agencies were well into such activities and eager for more authority of this kind. Notwithstanding the Council's "purist" distinction between planning and coordination, the existence of state plans, planning boards and staff hierarchies had obviously served coordination ends in identifying dysfunctions, suggesting their resolution to decisionmakers and implying that state policies and funding would follow planning solutions, even if central plans could not serve direct operational purposes. Whatever the case, CSG had challenged the religion of comprehensive criminal justice planning more directly than any previous study group.*

Other Voices

Despite the increasing sophistication of criminal justice planning and coordination doctrine, it had still managed to steer clear of any suggestion of direct hierarchical or administrative control over criminal justice functions. However, the experts were not completely silent. In 1972, the Committee for Economic Development ("CED"), in one of its succession of policy statements on improved management in government, recommended substantial centralization of criminal justice functions in state government:

> "We recommend that each of the 50 states establish a Department of Justice drawing together all germane functions except those of a separate, independent and unified judicial branch, with which the new Department would maintain close liaison...Furthermore, we recommend that local units be relieved by the states of responsibilities for criminal justice, other than the maintenance of urban police forces."[15]

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*The impact of the CSG challenge was immediate and powerful. Less than six months later, its thesis was accepted and incorporated in the first Justice Department study of LEAA reorganization possibilities produced under the Carter Presidency. Department of Justice Study Group, Report to the Attorney General--Restructuring the Justice Department's Program of Assistance to State and Local Governments for Crime Control and Criminal Justice System Improvement (June 23, 1977). This document not only concluded for much the same reasons advanced by CSG that state-directed comprehensive criminal justice planning was unworkable (whether or not streamlined and simplified), but firmly supported a requirement in future formula grant programs that recipient governments take on a "coordination function". The resulting 1978 DOJ reorganization plan, however, retained a 3-year comprehensive plan requirement subject to federal approval (Memo for President on LEAA, 11/21/77).

At the local level, a similar but somewhat more attenuated suggestion was advanced by the National Commission on the Causes and Prevention of Violence. The Violence Commission recommended full-time, central "Criminal Justice Offices" operating in all major metropolitan areas. These offices were somewhat similar to the local criminal justice coordinating councils that were part of the LEAA planning triumvirate. However, as articulated in the Commission's report, they included not only coordinative functions but the possibility of line authority, budgeting and standard-setting powers over local criminal justice activities as well:

> "The function could be vested in a criminal justice assistant to the mayor or the county executive, with staff relationships to executive agencies, and liaison with the courts and the community. Alternately, it could operate as a ministry of justice and be given line authority under the direction of a high ranking official of local government (e.g., Director of Public Safety or Criminal Justice Administrator)."[16]

The Trend Toward Functional Integration of Government Services

Thus, at least some of the experts and analysts seemed to be edging toward central administration and supervision of the criminal justice "non-system" and not just coordination through planning, education, and improved information/communication systems. In a way, this should not be viewed as surprising, since the past decade has shown a remarkable movement toward administrative groupings of related, previously independent agencies under centralized departments of government--at least at state level. In the period from 1965 to 1975, more than one-third of the states undertook general reorderings of their executive departments to combine numerous agencies into a small number of state "umbrella" or "super-agency" units.[17] The Georgia effort which was brought into the national limelight by Governor Jimmy Carter's presidential candidacy, was by no means unique. It has not been unusual for states (e.g., Florida, Massachusetts, Maryland, Montana) to take several hundred independent state agencies and consolidate them into one or two dozen umbrella departments.

It is true that the leading areas for reorganization have not included criminal justice. Typically, they have involved human services, environmental protection, housing, transportation and community affairs departments. The important point, however, is that states have not shied away from structurally combining functions which, like criminal justice, were fragmented, uncommunicative, and quite independent, despite common bonds and important interrelationships in providing services

to citizens. It should also be noted that criminal justice agencies have not really avoided this "centralization" wave. Like it or not, many have been placed in "superagencies" with which they may feel no greater, and perhaps less, kinship than the criminal justice system. Thus, nearly half of the state correctional agencies have been placed under the authority of human services departments (grouped with mental health, vocational rehabilitation, public welfare, and social service agencies)[18] and an equal number of state police departments have been centralized under state public safety or transportation departments (grouped under fire, national guard, traffic safety, alcoholic beverage, civil defense, highway regulation and similar agencies).

Given the inevitability of executive department consolidation, a coming together of criminal justice functions under a central state justice agency (except for courts) may be not as unrealistic as the "coordinators" have assumed and perhaps as logical as the parent department groupings that have already absorbed so many criminal justice functions at state level. (An important consideration may be which functional grouping most directly addresses the desires and priorities of citizens for governmental focus, since no classification of services can be ideal for all purposes.)

Unified Administration of Criminal Justice Functions

There has been some state experimentation with administrative joinder of two or more major criminal justice services. Today, there are eight states organized in this manner.[19] The Maryland Department of Public Safety and Correctional Services, for example, combines state police and corrections functions (1970 reorganization) as well as local law enforcement training and integrated criminal justice information systems. The Pennsylvania Department of Justice houses not only state prosecution functions, but also the adult corrections system and the state planning agency. The New Jersey Department of Law and Public Safety provides a common umbrella for state police, state and local prosecution coordination efforts, and state criminal justice planning and information system units. Montana links state highway patrol, criminal investigation, prosecution and law enforcement academy functions in its Department of Justice.

In perhaps the most integrated program of all state executive branches, the Kentucky Department of Justice (1973 reorganization) serves as parent agency for the state police, state corrections system, public defender office, state criminal justice planning agency and an integrated criminal justice training system. New Mexico has followed suit with a similar reordering which will take effect in 1978. All of these state

clusterings fall short of the U.S. Justice Department which remains the most integrated criminal justice department in our nation. Here federal prosecution (U.S. Attorneys), corrections (U.S. Bureau of Prisons), law enforcement (Federal Bureau of Investigation, U.S. Marshalls, Drug Enforcement Administration), and criminal justice grant-in-aid programs (Law Enforcement Assistance Administration) operate under the supervision of a single cabinet officer--the Attorney General.[20] And this bureaucracy ($2 billion budget--over 50,000 employees) functions with reasonable efficiency at levels of size, manpower, budget and geographic dispersion that few states would have to deal with if they chose to experiment with coordination via a central administrative authority.

Similar clusterings at the local level are not common except for the "criminal justice coordinating councils" which LEAA has been supporting. These fall significantly short of full line authority status.[21] However, the phenomenon of the state superagency restructuring that has occurred in other fields has revealed the need for similar integration of services at regional and metropolitan levels if responsiveness and efficiency in service delivery is to be maintained--and we may yet see the metropolitan criminal justice superagency proposed by the Commission on Violence (most likely as an offshoot and expansion of the more active "local coordinating councils").[22] Indeed, the first rudimentary models may have already arrived.

In a major county government reorganization in 1973, Multnumah County, Oregon (Portland area) created a Justice Services Agency as one of four cabinet level divisions accountable to the County Board. Headed by a full-time Director with (i) line authority over several justice functions (sheriff's office, adult corrections), (ii) coordinative authority over others (courts, district attorney, juvenile corrections, public defender/legal aid), and (iii) overall budget responsibility for all units, the Multnumah arrangement represented as integrated a local justice operation as could structurally be achieved in a large urban county with a separate core city. Three years later, New York installed under its new city charter an equally dramatic, if somewhat less powerful, Coordinator of Criminal Justice (actually called "deputy mayor for criminal justice") holding concurrent responsibility as criminal justice planner, delegated authority line official (corrections, police and probation), system coordinator(including elected judges and district attorneys) and commissioner of investigation in the nation's largest city-county complex. Few other urban communities could claim such bold unification action although it did appear that metropolitan coordinating and planning councils were taking on increasing criminal justice management and policy responsibilities beyond

Crime Control Act fund allocation in such areas as budgeting, legislative analysis and policy analysis.[23]

Summary

Here, then, is the current, by no means stable, picture on efforts to better coordinate component parts of the criminal justice system:

--Comprehensive planning, backed by federal funding incentives, has been viewed and used as the major technique for harmonizing, coordinating and meshing the activities of the major elements of the criminal justice system--police, courts, prosecution, corrections and defense.

--Theory and technology have become increasingly specific as experience with planning has progressed. In terms of structure, state, regional and local planning/coordinating units have all been viewed as necessary and important elements of the planning strategy (with regional and local mechanisms tending to be combined in large metro areas) and an extensive bureaucracy of professionals and agencies has arisen to operate this structure. In terms of scope and "clout", official planning missions are beginning to expand beyond federal aid programming to cover total system operations, to attract legislative and quasi-line status, and to be reinforced by "minimum standards" criteria.

--Coordination strategies are rapidly expanding beyond the strict confines of planning as common information systems, educational/training programs, and integrated regulation of system components by legislative bodies receive recognition and visibility as equally valuable coordinative devices.

--A new questioning of the utility of state-directed comprehensive planning for our fragmented criminal justice machinery and increasing frustration with the complexities of written plan submission as a federal aid prerequisite suggest a coming subordination of that technique to new coordination roles and strategies.

--Direct consolidation or centralized supervision of criminal justice functions has largely been ignored as a coordinating mechanism, partly because of the constitutional separation of powers, partly because of the fractionalization of law enforcement between state, county and local government, partly because of legitimate needs for autonomy of certain components vis-a-vis others, and partly because recent consolidation of state government functions has tended to place criminal justice units in other governmental service groupings.

--Experimentation with central criminal justice administration, at either state or local levels, would seem valuable in view of the potential contribution that a common structure can make to coordinated service delivery and because of the frequent inability of voluntary coordination efforts to achieve adequate service integration. The difficulties of such centralization are real and call for attention to a host of issues such as appropriate levels of decentralization and freedom of action among system components. However, use of the full range of coordinative techniques from planning through central supervision may be needed for the difficult task of bringing the "nonsystem" of criminal justice together and assuring fuller achievement of its crime control mission.

--All of these trends are more advanced as ideas, concepts and reform wisdom than driving forces of criminal justice activity at the delivery level, and recent studies show considerable lag between planning and coordination concept and actual system performance.

FOOTNOTES TO CHAPTER 4

1. See Skoler and Hetler, Governmental Restructuring and Criminal Administration, 58 Georgetown Law Journal 719 (1970); also published in The American County (May 1971) and Crisis in Urban Government, p. 53. (Jefferson Pub.Co.--1971); Skoler, Standards for Criminal Justice Structure and Organization, 12 Criminal Law Bulletin (July/August 1976).

2. Part B of the Crime Control Act of 1973, as amended, provides grants for the establishment of criminal justice planning agencies in every state and, under Part C, requires the development and submission of comprehensive law enforcement and criminal justice plans in order to qualify for the "block grants" which constitute the bulk of federal aid dispensed under this legislation. See 42 U.S. Code Sec. 3701 et seq., as amended by P.L. 91-644 (1971), P.L. 93-83 (1973), P.L. 93-415 (1974) and P.L. 94-503 (1976). For an early analysis of the federal planning mandate and its impact, see Advisory Commission on Intergovernmental Relations, Making the Safe Streets Act Work: An Intergovernmental Challenge, pp. 21-36 (1970).

3. Today there are 50 state criminal justice planning agencies, more than 450 regional planning units, over 150 local criminal justice coordinating councils (usually in large cities and metro areas), and some 400 other cities and counties which have received funds for criminal justice planning efforts, together involving over $75 million in funding support annually (mostly federal) and a combined full-time work force in excess of 2,500 professional and 1,000 supporting employees. See Advisory Commission on Intergovernmental Relations, Safe Streets Reconsidered: The Block Grant Experience 1968-1975, ch. iv (1976); National Conference of State Criminal Justice Planning Administrators, State of the States Report--1976, Part IV (1976). During the period 1970 to 1975, the average size of state planning agency staffs increased from 9.3 to nearly 40 workers (professional and clerical but exclusive of regional planning unit employees).

4. Skoler, State Criminal Justice Superagencies: Antidote for the Nonsystem?, 49 State Government, 2 (Sping 1976). For commentators who have disapproved or cautioned against consolidation, centralized administration or formal integration of the major criminal justice components, see McGee, The Organizational Structure of State and Local Correctional Services, 31 Public Administration Review 616, 619 (1971) and Baar, Will Urban Trial Courts Survive the War on Crime?, ch. 11, from H. Jacob (ed.), The Potential for Reform of Criminal Justice (Sage, 1975).

5. The Challenge of Crime in a Free Society, pp. 279-280 (1967). For an early analysis of the demands and elements of comprehensive criminal justice planning, see Skoler, Comprehensive Criminal Justice Planning--A New Challenge, 14 Crime & Delinquency 197 (1968) and 30 American Journal of Corrections 29 (May/June 1968).

6. State-Local Relations in the Criminal Justice System, (1971).

7. Ibid., p. 64 (Recommendation 44) and pp.244-251.

8. National Advisory Commission on Criminal Justice Standards and Goals, Criminal Justice System (1973).

9. Ibid. This volume contained 4 parts entitled, respectively, "Criminal Justice Planning", "Criminal Justice Information Systems", "Criminal Justice System Education and Training", and "Criminal Justice System and the Law".

10. Ibid., Standard 1.2 ("Improving the Linkage between Planning and Budgeting"); A National Strategy to Reduce Crime, p.34 (1973). On the necessity for complete planning responsibility for criminal justice activities and not just federal fund programming, see Stenberg and Walker, The Block Grant: Principles, Practice, Prognosis, 1976 National Conference of the American Society of Public Administration, p.41 (monograph-April 1976).

11. Criminal Justice System, Standard 1.1 ("Crime-Oriented Planning").

12. Ibid., Standard 1.4 ("Developing Planning Capabilities").

13. Twentieth Century Fund Task Force, Law Enforcement: The Federal Role (1976); Skoler, The Revamping of Federal Aid for Crime Control, Crime Control Digest (Jan. 1977).

14. Council of State Governments, The Future of Criminal Justice Planning, pp.14 and 25 (Lexington, Ky., 1977). For general perspectives on public planning, see Godschalk (ed.), Planning in America: Learning from Turbulence (Amer.Inst. of Planners, 1974).

15. Reducing Crime and Assuring Justice, p.66 (1972). CED also recommended establishment of a "Federal Authority to Ensure Justice" which would support, through federal grants-in-aid, up to half of the costs of state and local law enforcement systems which met its unification and other modernization standards.

16. National Commission on the Causes and Prevention of Violence,

To Establish Justice and Insure Domestic Tranquility, pp.156-163 (1969) and Law and Order Reconsidered, ch.13 (Vol.10 of Commission Reports, 1969).

17. See Council of State Governments, Reorganization in the States (1972) and The Book of the States, 1974-75, pp. 137-41 (1974).

18. See Council of State Governments, Human Services Integration--State Functions in Implementation (1974) and Human Resource Agencies--Adult Corrections in State Organizational Structure (1975). These studies suggest that less than half of states contain state correctional agencies within "human services" departments but the 50% estimate is based on both adult and juvenile corrections systems and the "umbrella agency" definition used is less rigid than the Council of State Governments requirement that a "human services" department contain at least four of eight major human service programs (public assistance and social services, public health, mental health, mental retardation, corrections, youth institutions, employment services and vocational rehabilitation).

19. Skoler, State Criminal Justice Superagencies: Antidote to the Nonsystem? 49 State Government, pp.3-4 and figure 1 (Spring 1976).

20. Annual Report of the Attorney General of The United States--1973 (budget and manpower figures have increased since 1973 to beyond those cited in text of article).

21. ACIR, State-Local Relations in the Criminal Justice System, pp.249-250 (1973). A recent survey of local criminal justice planning offices in the nation's 55 largest cities showed that approximately 60% were criminal justice coordinating councils and some 45% were participating in some measure of budget review and 30% in regular legislative analysis. National League of Cities and U.S. Conference of Mayors, 1975 Survey Report on Local Criminal Justice Planning, pp.5-14 (1975).

22. In this regard, an LEAA interpretation of the Omnibus Crime Control Act's 1970 amendments, permitting action fund grants to support "Criminal Justice Coordinating Councils" adopts the Violence Commission definition which goes beyond mere planning functions for such Councils. LEAA Office of General Counsel, Legal Opinion No. 75-4 (May 22, 1975).

23. New York City Charter Revision Commission, Report on Preliminary Charter Recommendations (1975) pp.176-79, 186-87; 1975 Survey Report on Local Criminal Justice Planning, op. cit. n.23.

CHAPTER 5. PRIVATE SECTOR DELIVERY OF CRIMINAL JUSTICE SERVICES

Among public functions and services, the activities of criminal justice are perhaps the most closely associated with direct governmental operation. Even management authorities such as Peter Drucker, who would like to see more competition in public service delivery and who prefer regulation to direct operation of some public enterprises, seem to emphasize this perspective:

> "The third category of service institutions is, by and large, the traditional government activities -- the administration of justice and defense and all the activities concerned with policy-making as the term used to be understood. These institutions do not provide public goods in the economist's sense of the term; they provide governance...These institutions have to be under direct government control and directly government-operated."*

Notwithstanding, few persons appear to realize the full extent to which private firms and individuals are responsible for providing criminal justice services. This is true in all sectors -- police, courts, prosecution, defense and corrections. Part of this problem of omission lies in our failure to view the criminal justice system functionally and to include within its scope all who are actually engaged as "deliverers". Part also lies in the myopic tendency of professionals to drum the private sector out of statistics, standards and reform analyses as they examine its activities and diagnose its ills.

In some cases, our concepts of reform and progressive practice welcome the private contribution; in others, they condemn it. But its scope and volume continue largely unabated with future prospects suggesting even greater roles for private agencies and individuals than now exist. Here is the current picture on "privatism" in criminal justice, as can best be determined from today's skimpy data sources.

Police

Our massive police establishment is rarely defined or discussed as an entity which includes a huge and growing private police complex. Its line workers may not have police arrest powers, but they perform many standard police functions, often wear uniforms, frequently are licensed to carry weapons, and their dominant but by no means exclusive focus on property protection and offenses is also a major concern of the public police and, of course, parallels the realities of crime incidence (i.e.,

*Management: Tasks, Responsilities, Practices, p. 164 (Harper & Row, 1974).

property offenses exceed violent crimes by a factor of nearly 10 to 1).

Over five years ago, a Rand Corporation study revealed that more than a third of all individuals engaged in police or security work were privately employed (then nearly 300,000 persons) and that private agencies accounted for a similar proportion of national expenditures for police services (then some $3.3 billion).[1] If this fails to impress, it should be kept in mind that the $3.3 billion private policing outlay equalled all expenditures during the year of the Rand study for the other criminal justice functions combined (courts, prosecution, defense and corrections).[2]

Research since 1970, although not involving full national data tabulations, consistently suggests that private policing has "caught up" in size with public police operations. That is, today's $10 billion in outlays and 650,000 employees in federal, state and local police units is quite likely close to being matched by current dollar and manpower investments in private security services. A widely circulated study of the Cleveland area (Cuyahoga County) showed that private security personnel substantially out-stripped local sworn policemen in number; and similar but not quite so dramatic disparities also appeared in 1975 surveys of New Orleans and St. Louis. Cost parity was also in evidence but in some cases, private policing outlays lagged somewhat behind public budgets and this still appears to be the case nationally.[3]

In the face of this reality, and despite distinctions on the limited scope and authority of much private policing endeavor, it seems incredible that our criminal justice statistics, literature, and dialogue continue to exclude private policing from significant consideration. Comparable shortsightedness is less evident in other governmental service fields, e.g., in mental health where the contributions of both public and private agencies are viewed as indispensable to system analysis and profiling.[4]

It is interesting to note that the latest national standard-setting commission offered only one "standard" on private policing -- a call for a national research study "to determine the duties, responsibilities and interrelationships of public and private police agencies" and develop mechanisms to enhance cooperation (Police Recommendation #5.1, National Advisory Commission on Criminal Justice Standards and Goals). Indeed, this was only a "recommendation" rather than a "standard", the former apparently limited (except for one or two scattered referrals) to publicly operated police agencies.[5] Fortunately, this omission was addressed by the Justice Department's Law Enforcement Assistance Administration and is reflected in a comprehensive volume of private security standards and analysis

released in early 1977.

The LEAA-sponsored Private Security Report of the National Advisory Committee on Criminal Justice Standards and Goals (successor to the 1971-73 National Advisory Commission) turned a welcome and long overdue searchlight on private police services. It offered a number of standards for private security endeavor, including an emphasis on the need for comprehensive regulation of the "private security industry" at state levels* (preferably through legislatively established state regulatory boards and commissions), effective interaction with public law enforcement agencies, and clear delineation of respective roles, improved information exchange and widespread cooperative action.[6] Indeed, as financially hard-pressed center cities begin to cut back or restrict growth in the size of forces, it is imperative that we understand the correlative effects in private policing augmentation to meet the resulting service gaps. Intelligent governmental regulation will clearly be the need for staying on top of the burgeoning private police function, especially in light of its important "life and property protection" mission and delicate nexus with citizen freedom of action and privacy.

Courts

In contrast to police, the private presence in the judicial sector is steadily shrinking. Formerly represented by lay justices of the peace who were primarily engaged in private pursuits but served part-time as minor magistrates (37 states a decade ago),[7] the number of states which permit such part-time endeavor is probably less than fifteen today and all reform standards call for elimination of lay justice systems and their integration into unified court systems.[8] Part-time attorney judges also exist in less populous areas but their number and presence is also shrinking. In one area, however, we may see an expansion of private participation. That lies in the area of citizen or community tribunals for minor complaints, family disorders, or arbitration dispositions, as compared to criminal court handling.[9] As yet, the trend is insubstantial, but the first experiments are being "piloted" and the pressures to direct lesser business of this kind away from the courts may put it in the laps of private groups. Such experimentation should be accelerated not only by the "overload" facing the nation's embattled court systems but also the endorsement of a new Presidential administration and its Attorney General (three major demonstrations are being funded by the Justice Department in

*Although 34 states had licensed some aspect of the private security industry as of 1975, these enactments fell far short of full regulatory scope envisaged by the new Advisory Committee standards.

Atlanta, Kansas City and Los Angeles) and the call of the nation's organized bar to consider alternate dispute forums (via conferences, special committees and staffed clearinghouse efforts).[10]

A recent analysis of the early models for community dispute resolution illustrates the public-private alternatives which are evolving. Of six promising "neighborhood justice center" projects probed in a mid-1977 report by Abt Associates Inc. of Cambridge, two involved public agency sponsorship (prosecutor's office in Columbus and the court administrator in Miami) while four were being conducted under private auspices by non-profit corporations (Boston, New York City, Rochester and San Francisco).[11] Pros and cons inhere, of course, in either kind of arrangement. The report, for example, saw likely advantages of private sponsorship as including "greater user perception of project neutrality, less stigmatization of clients, greater accessibility to community input, and availability of organizational sponsors which are highly sophisticated in alternative forms of dispute resolution." Possible disadvantages were noted also. These included greater difficulties in developing close relationships with referral sources (e.g., police and prosecutor units), difficulties in developing long term funding, and lack of coercive power where this course may be desired or helpful. Quasi-official arrangements (i.e., mixed public-private programs) with varying degrees of linkage, sponsorship and autonomy vis-a-vis court and law enforcement agencies will also no doubt be part of this expanding informal adjudication scene.

Prosecution

More than half of all prosecutors (65% according to the NAAG 1974 survey) serve part time in this country.[12] This means that they are in effect private practitioners hired or elected to exercise prosecution functions in the less populous jurisdictions (but not exclusively so). Thus, our nation looks to the private sector in many jurisdictions for discharge of the sensitive and powerful prosecution function.

Despite consistent reform group recommendations that prosecution be reorganized in non-populous areas to support full-time prosecutors, progress has been painfully slow in this area (largely hampered by the resistance to enlarging prosecutive jurisdiction beyond county boundaries).[13] Only one state moved to a full-time district prosecutor system in the sixties and only one took similar action in the first half of the seventies. However, an acceleration of full-time prosecutor conversions since 1975 (five states have taken the step) suggests that the nation may finally be responding to calls to narrow the scope

of essentially private management of public prosecution via the part-time practitioner.[14]

There also exists a not inconsiderable volume of prosecutorial (or quasi-prosecutorial) activity handled by private disciplinary apparatus. The nation's lawyer discipline systems, for example, often deal with criminal conduct by lawyers in the practise of their profession -- a subset, so to speak, of white collar crime. Here staffed bar-association offices in most states, often with official status but normally not part of the court or formal prosecution machinery, prosecute disciplinary actions against wayward lawyers and impose substantial penalties (license revocation or suspension) of coequal or considerably greater economic impact than criminal fines. Sometimes such proceedings are initiated after or concurrent with criminal prosecutions but quite frequently the bar disciplinary system is the only "prosecution" imposed on lawyers responsible for criminal violations. While it appears that over 60% of the serious disciplinary sanctions imposed in cases (i.e., disbarments, suspensions or mandatory resignations) deal with criminal type misbehavior, only half of these, according to one study, are accompanied by criminal conviction as well.[15] The important point is that bar disciplinary systems, mostly handled by bar-salaried and not state-paid attorneys, are literally a private prosecution system that may be society's only formal response to known criminal behavior in many professional wrongdoing cases. Similar "private prosecution" systems are no doubt operative in other professions and licensed trades and, to some extent, replace or forestall formal criminal prosecutions there as well.

Defense

Surprisingly, criminal defense services are provided in the main in this country not by publicly employed defenders but rather by private attorneys. First, it is clear that the private bar handles the defense of non-indigent persons (estimated at roughly half of all charged felony and misdemeanor defendants).[16] Even in the case of indigent defendants, however, there is a division of function between publicly employed defenders and private practitioners. Probably close to 40%-50% of indigent defendants are handled by private attorneys -- either part-time public defenders who devote most or much of their effort to private practice (estimated at over 40% of all chief defenders and defender staff attorneys)[17] or private attorneys assigned on a case-by-case basis to indigent defense (ranging from 10%-20% of the caseload in jurisdictions which make maximal use of full-time defenders to virtually all the caseload in jurisdictions which have no paid defenders and rely on assigned counsel systems).[18]

It should be noted that although full-time defender systems are recommended and growing, the role of the private attorney in criminal defense of indigent persons is welcomed as a healthy balancing element and as a necessary resource for handling "conflict" and "overload" cases which a full-time defender system cannot appropriately accept.[19] Moreover, private legal aid and defender organizations continue to supply full-time defender services, via contract, in some of our largest cities (e.g., New York, Philadelphia, Cleveland and Milwaukee).

Indeed, one striking proposal for further private bar participation was recently made in a comprehensive study of indigent representation in misdemeanor cases. Here, to eliminate what was seen as an inherent bias in indigent representation through public defenders or even court-assigned counsel, the suggestion was made that states seek to include mandatory criminal representation in the growing complex of low-cost prepaid legal services plans now emulating prepaid health insurance plans among employee, union and other groups.[20] Here the indigent accused person, with his bills paid by the plan (possibly through special state subsidies), would go directly to the private bar to choose counsel in much the same manner as any paying client.

Even without reference to indigent defense, there is good reason to scrutinize the private bar apparatus that now services blue collar, middle and higher income citizens. Recent estimates suggest that there may be 20,000 criminal lawyers (perhaps a third with predominant or exclusive criminal practise) who make up the privately retained defense sector, and handle a good portion of assigned indigent cases as well. However, this number appears to be shrinking. A new study of the private criminal bar in metropolitan areas suggests a reduction by half, over the past 25 years, in the number of lawyers who regularly practice criminal defense.[21]

One problem with the private defense bar is its problematic professional status. National known and even locally eminent defense attorneys are relatively few. Criminal practise carries little prestige and modest financial reward compared to other fields of law. Although in middle-sized and small communities criminal work may occupy a significant part of general practice, this is not the case in large cities. Here day-to-day private criminal representation is largely in the hands of specialists, often of marginal caliber:

> The professional competence of the lawyers who regularly take criminal cases is an especially acute problem. Surrounding most courthouses in large cities are the offices of attorneys such as those called the "Fifth Streeters" in the District of Columbia and the "Clinton Street Bar" in Detroit. These designa-

> tions refer to that group within the legal profession often found prowling the urban criminal courts searching for clients who can pay a modest fee.[22]

Nevertheless, several recent studies have shown no significant difference in productivity (measured by case dispositions) between private counsel and public defenders.[23] What this indicates, of course, is the need for much greater attention to the private sector side of the coin.

Corrections

Strangely, private participation is probably lowest in the correctional system although correctional services (counselling, education, vocational training) are of the kind that can most readily be provided from other disciplines and the private sector. Recent standard-setting efforts encourage the purchase of services from non-correctional groups, including private industry,[24] but the bulk of correctional services continues to be delivered by public personnel. This is probably as true of treatment services as it is of custodial staffs.

Perhaps the greatest private sector involvement in corrections has been the correctional volunteer movement of the past decade (focussing initially in the probation area and building up to an estimated 200,000 private citizens across the nation actively providing one-to-one assistance to offenders or otherwise augmenting paid staff resources).[25] Part-time teachers, counsellors, physicians, etc. are also retained by a number of agencies for service delivery and the recent deinstitutionalization program in Massachusetts offers an example of reliance on private sector contracts to deal with most of the caseload of a major state's juvenile corrections system.[26] Unfortunately, however, overall statistics (even crude ones) on the private/public split in corrections are not available.

A 1976 federally-funded study of contracting for community correctional services, which focussed on five urban areas* and a national sample of presumably private service-provider agencies,** seems to confirm a growing private sector presence in community-based corrections.[27] While study populations and

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*Data gathering was based on interviews with 154 separate community corrections organizations in these locations which included Honolulu, Dade County, Madison (Wisconsin), Boston and San Francisco.

**The sample, drawn from two national lists, included 230 organizations. It was ultimately reduced to 168 entities which were successfully contacted and interviewed, some of which fell outside the private agency definition.

samples were, it appears, neither exhaustive nor scientifically representative, the 5-city probe revealed more than twice as many privately-run programs as directly government-operated ones (a 68%-32% split). It also showed $28 million in receipts and revenues for the 5-city group (not all organizations released dollar figures), about 37% of this derived from state and local governments (including some federal fund pass-through) and about 28% directly from federal agencies. The remainder came from private sources.

The national survey sample recorded a high percentage of privately-operated residential programs (about 80% were exclusive or mixed residential, e.g., halfway houses, group homes), a large number of alcohol and narcotics abuser programs, and a newness of origin (more than half the private agencies began providing services in 1972 or later) which suggests either rapid growth in the private program presence or quick turnover and precarious financial viability of contract provider ventures. Interestingly, less than half of the organizations had contracts with criminal justice agencies. They seemed to be drawing as much government support from non-criminal justice programs (drug abuse, alcohol, vocational rehabilitation, manpower, mental health) as from justice system sources in servicing their offender clients (most commonly in some kind of probation or parole status). However, the total picture, obviously in need of further documentation, is one of a surprisingly large private contract sector for delivery of community correctional services.

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While our data on the private sector role is imprecise, rarely correct and quite fragmentary, it is clear that private firms and individuals provide surprisingly substantial portions of police, indigent defense, and prosecution services in the United States. Our reform wisdom might have it otherwise but the facts and circumstances of criminal justice administration, as well as increasing budget pressures, seem to militate against significant change in this situation. Private participation in judicial functions is reducing (as reformers would have it) but with some new thrusts in informal dispute resolution; and we would like to see a larger private role in correctional services (where progress appears to be somewhat hesitant).

As spotty as this picture may seem, one overall message emerges quite clearly. It is delusion to count the private sector out of criminal administration. The sooner we have better information about its scope and character, the better we will be able to plan for and evaluate not only its proper contribution but the true criminal justice service demands of our larger society.

FOOTNOTES TO CHAPTER 5

1. Kakalik and Wildhorn, Private Police in the United States: Findings and Recommendations, The Rand Corporation, Vol. I, pp. 10-12 (1971); cf. Brennan, The Other Police -- Private Security Services in Greater Cleveland, pp. x-xi (monograph 1975 - Government Research Institute).

2. See Law Enforcement Assistance Administration, Expenditure and Employment Data for the Criminal Justice System, 1969-70, p. 7 (1972) (expenditures of $1.2 billion for courts, including civil duties; $400 million for prosecution; $50 million for indigent defense; and $1.7 billion for corrections).

3. See National Advisory Committee on Criminal Justice Standards and Goals, Private Security, appendix 2 (1976); Brennan, op. cit., n. 1.

4. See, e.g., Taube & Redick, Recent Trends in the Utilization of Mental Health Facilities, THE FUTURE OF THE STATE HOSPITAL, p. 324 (D.C. Heath, 1975) (showing almost a 50-50 private/public split in operation of psychiatric facilities).

5. These references are quite minor, e.g., a call for legislation to require private police personnel to wear uniforms distinguishable from public police uniforms. Police Report, Standard 21.1.

6. Private Security, op. cit., n. 3, ch. 6, 9 and 10.

7. Advisory Commission on Intergovernmental Relations, State-Local Relations in the Criminal Justice System, p. 44 (1971); American Judicature Society, Courts of Limited Jurisdiction: A National Survey (1976) and Judicial Qualifications -- Statutory Requirements: A National Survey (1976).

8. See State-Local Relations in the Criminal Justice System, supra note 7, at pp. 34-37 (Recommendation 16); President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society, pp. 130-31 (1967).

9. See, e.g., the two federally supported projects in Columbus, Ohio (Night Prosecutor Program -- LEAA Exemplary Project) and Boston, Massachusetts (Boston Urban Courts Project) which involve non-judicial dispositions of minor criminal matters through informal law student mediation hearings (Columbus) or use of teams of community-trained mediators (Boston). The Ohio project handled 8% of all local criminal cases in 1972. Expansion of such private sector, informal dispute resolution is being increasingly called for. See Justice in the States, National Conference on the Judiciary, p. 275

(West Pub. Co., 1971); American Assembly, Law in a Changing Society II, p. 12 (1975); and Warren Burger, Address to National Conference on Causes of Popular Dissatisfaction with the Administration of Justice (St. Paul, April 7, 1976).

10. American Bar Association, Report of Pound Conference Follow-up Task Force, ch. 2 and 3 (1976).

11. Neighborhood Justice Centers: An Analysis of Potential Models (June 1977).

12. National Association of Attorneys General, The Prosecution Function: Local Prosecutors and the Attorney General, p. 8 (1974).

13. For national study commission recommendations on establishment of full-time prosecutors in all jurisdictions, see President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society, p. 148 (1967); American Bar Association, Standards Relating to the Prosecution Function, Standard 2.3 (1971); National Advisory Commission on Criminal Justice Standards and Goals, Courts Report, Standard 12.2 (1973); National District Attorneys Association, National Prosecution Standards, standard 1.3 (1977).

14. The states involved were Oklahoma (mid-sixties), Colorado (early seventies) and Maine, New Mexico, South Carolina and Massachusetts (1975 and after).

15, Steele and Nimmer, Lawyers, Clients and Professional Regulation, American Bar Foundation Research Journal, tables 11 and 18, pp. 990-991 and 1002-1003 (1976). The ABA Professional Discipline Center reports that bar associations operate professional discipline programs in most states (probably 35, most of these unified bars).

16. National Legal Aid & Defender Association, The Other Face of Justice, pp. 70-71 (1973) (estimating an indigency rate of 65% for felony defendants and 47% for midemeanant defendants).

17. Ibid., pp. 17-19.

18. National Study Commission on Defense Services, Draft Report and Guidelines for the Defense of Eligible Persons, ch. II (1976); The Other Face of Justice, supra note 16, ch. 2 (nearly half of urban areas and most rural counties are serviced by assigned counsel systems).

19. See American Bar Association, Standards Relating to Providing Defense Services, Standards 1.2 and 2.2 (1968); National Ad-

visory Commission on Criminal Justice Standards and Goals, Courts Report, Standard 13.5 (1973).

20. Krantz, Smith, Rossman, Froyd and Hoffman, Right to Counsel in Criminal Cases: The Mandate of Argersinger v. Hamlin, pp. 298-303 (Ballinger, 1976).

21. Wice, America's Private Criminal Lawyers (National Institute of Law Enforcement and Criminal Justice, Visiting Fellowship Report, 1977).

22. Cole, The American System of Criminal Justice, p. 257 (Duxbury, 1975).

23. See Jean Taylor et al, An Analysis of Defense Counsel in Processing of Felony Defendants in San Diego, 49 Denver Law Journal 233 (1972); Note, Analysis of Defense Counsel in Processing of Felony Defendants in Denver, 50 Denver Law Journal (1973).

24. See, e.g., National Advisory Commission on Criminal Justice Standards and Goals, Corrections Report, Standards 10.2 and 12.6 (1973) (endorsing purchase of service arrangements for probationers and parolees).

25. See Action, Americans Volunteer-1974, pp. 8-9 (estimates 300,000 active "justice" volunteers).

26. See Special Report on Deinstitutionalization of Juvenile Corrections in Massachusetts, Corrections Magazine, pp. 5-9 (Nov./Dec. 1975).

27. Kassebaum et al, Contracting for Correctional Services in the Community, University of Hawaii Department of Sociology (Final Report, LEAA National Institute Grant 75 NI99-0118, Dec. 1976) Volume I summary and Volume II, pp. 32-34, ch. viii and appendix A.

CHAPTER 6. STATE CRIMINAL JUSTICE SUPERAGENCIES

Governors are talking up the new importance, activity and centrality of state government as the "fulcrum" of the federal system--a welcome renewal after a half century during which, by their own admission:

> "...most political scientists and many public leaders viewed state government as a reluctant, timid and fading force in the federal system."
> --National Governors Conference, Responsive Government in the Seventies (1974)

To be sure, the millenium has hardly arrived but if executive branch reorganization is to be taken as any measure of state energy and ascendancy in the new federalism, the transformation has been impressive. Indeed, the past decade has been a pacesetter in efforts to reorganize, rationalize and modernize state government. In the period from 1965 to 1975, more than one-third of the states undertook general reorderings of their executive departments, an even larger number accomplished significant overhaul and integration of individual departments, and "the beat goes on" today[1]--by all measures, a national record of governmental change.*

One major feature of reorganization efforts has been reduction in the number of agencies reporting directly to the state chief executive and their clustering under "umbrella" or "superagency" units permitting clearer delineation of functions, more realistic spans of control, sharpening of policy response, better allocation of resources, and coordination of programs to cross jurisdictional lines and focus on "client" and "delivery" goals. It has not been unusual for states (e.g., Georgia, Maryland, Florida) to take 200 or 300 independent agencies and consolidate them into 10 or 20 new departments.

Perhaps the leading areas for reorganization initiatives have been in the human services, environmental protection, housing, transportation and community affairs fields. For example, in the past fifteen years, at least 25 states established integrated human services departments. By contrast,

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*An earlier thrust was led by Illinois in 1917 to deal with the tangled mass of independent and uncoordinated agencies resulting from the proliferation of state government services at the turn of the century. New executive structures were fashioned in 10 states within the next decade but interest waned and only a handful more undertook substantial reorderings through World War II, a pace well below the current wave. Council of State Governments, Reorganization of State Corrections Functions (1977).

very little combination and reorganization has taken place in the criminal justice area--at least across the traditional and recognized functions of courts, police, corrections, prosecution and defense. There have been good reasons for this inactivity, among them (i) the constitutional "separation of powers" between the executive and judicial branches of government, (ii) the predominantly local character of police and prosecution functions in most states, (iii) the "elective" nature of the attorney general's office in most states, complicating the placement of state level police and correctional activity in that department, (iv) the understandable desire of criminal justice components to enjoy "cabinet level" or other status permitting direct reporting to the state governor, and (v) the tendency to group adult and juvenile correctional services in "human services" superagencies (departments of health, welfare, institutions, etc.) rather than "public safety" or "criminal justice" departments.[2]

Searchlight on the Criminal Justice System

Despite such constraints, the low level of criminal justice visibility in the state reorganization movement is somewhat surprising. If the decade of 1965-75 was characterized by the urge to modernize state government, it was equally marked as a period of awakening--or reawakening--to the concept of an interrelated, interlocking criminal justice system as the proper arena for dealing with an alarming crime and public safety problem. A succession of national study commissions, the introduction of large scale federal assistance for crime control, and the best thinking from both professional administrators and the academic community emphasized the impact of each system component on the others. The fragmentation and isolation of the various segments were deplored and the need for coordination and planning proclaimed:

> "America's system of criminal justice is overworked, undermanned, underfinanced and very often misunderstood...It needs more coordination among its many parts." President's Commission on Law Enforcement and Administration of Justice--1967.

> "The major components of the law enforcement and criminal justice system do not comprise a system in the sense of a smoothly functioning, internally consistent organization. Not only is there fragmentation and lack of coherence within each element; there is also a serious lack of coordination among the elements even though the operation of each component has a direct bearing on the functioning of the others." Advisory Commission on Intergovernmental Relations--1971.

"Every aspect of the 'non-system' of criminal justice is in dire need of modernization. Piecemeal tinkering will not help...each state should gather together and coordinate its separate units and agencies to form a coordinated system within a single department of justice." Committee for Economic Development--1972.

"Fragmented, divided, splintered and decentralized are the adjectives most commonly used to describe the American system of criminal justice... yet, criminal justice agencies are highly dependent on one another. What particular law enforcement, courts and corrections agencies do in handling offenders and processing information affects all the rest." National Advisory Commission on Criminal Justice Standards and Goals--1973.

One would have thought that these forces would impact on the executive reorganization movement. Criminal justice was now a legitimate "functional grouping" and public concern[3] justified high visibility, attention and administrative coherence as the state criminal justice role expanded. In addition, and as a type of reassurance to cautious states, there was the long-standing example of a workable and working superagency in the United States Department of Jusitce. Here for more than a generation, federal prosecution, correctional and law enforcement functions operated together with recognized efficiency and at bureaucratic levels of size, manpower, budget and geographic dispersion that few states would ever have to contend with. The Justice Department, in short, demonstrated that the justice superagency was feasible even with a staff of over 50,000, a budget of more than $2 billion, and a half dozen different regional office structures for its various criminal justice arms (principally, the Federal Bureau of Investigation, Drug Enforcement Administration, United States Attorneys, Criminal Division, Bureau of Prisons and the grant-in-aid dispensing Law Enforcement Assistance Administration.)

In fact, there was an impact but its translation into state executive department structure, the subject of this analysis, was quite limited. It is true that states were given the responsibility for establishing planning networks and dispensing large quantities of federal funds under the Omnibus Crime Control and Safe Streets Act of 1968.[4] All of them enlarged their work and interests in criminal justice and several pursued unification of individual components--unified courts, unified correctional systems, state level coordination and services to local segments. Some states established "public safety" departments (e.g., Arkansas, Maine) which integrated

a number of law enforcement functions and added some fire safety, regulatory and transportation functions but did not encompass other criminal justice segments.[5] However, only a few states sought to engage the total justice system concept in administrative structure. The example of these few merits exploration, analysis and some observations.

The First Justice Groupings

Today, there are eight states which have administratively grouped together, at state level, more than one major criminal justice component. Five of these are direct products of the executive reorganization movement. These are Maryland, whose 1970 Department of Public Safety and Correctional Services combined state police and correctional programs under one Secretary reporting directly to the Governor; Kentucky, whose 1973 Department of Justice consolidated state police, corrections, state law enforcement planning agency, and public defender offices under one cabinet level Secretary; Montana, which, in 1973, expanded the Attorney General's office into a Department of Justice embracing the state prosecutive function, the highway patrol, the state criminal justice planning agency, a law enforcement academy, and a local prosecutor's coordination unit; Virginia, which emerged from a loose coordinating secretariat format to inaugurate a Division of Public Safety in 1976 including the state police, adult and juvenile corrections agencies, state planning agency, a criminal justice training and standards commission, and certain emergency, highway safety and regulatory functions; and New Mexico which in 1977 brought together in a new Department of Criminal Justice the state police, adult and juvenile corrections agencies, a cluster of training and support functions (e.g.,law enforcement academy, jail inspection unit) and administrative housing for independent public defender, parole board and organized crime commission offices.

Three other states had earlier "umbrella" organizations covering more than one criminal justice component, but added significant new criminal justice functions during the 1965-75 period. These are Pennsylvania's Department of Justice, where the Attorney General not only superintends state level prosecution but includes the adult correctional system and the state criminal justice planning agency within his department; New Jersey's Department of Law and Public Safety which includes state police, state prosecution functions, direct supervisory authority over local prosecutors, and the state's criminal justice planning agency; and the North Carolina Department of Justice which combines state level prosecution functions with a state bureau of investigation, a criminal justice training

academy and a local criminal justice standards and training commission.

In all of these departmental arrangements, commissioners of state police, directors of correctional systems, and criminal justice planning agency chiefs still function with broad power and visibility but under the administrative aegis of a cabinet level attorney general or departmental secretary. What distinguishes this group of states is the combination of state level police/correctional/prosecution/defense functions (at least two or more such elements), demonstrating that separate components of the system can live, interact and function under a common administrative umbrella, along with a miscellany of other criminal justice-related functions. None of these groupings are really complete, even discounting for judicial independence from the executive branch mandated by the Federal and state constitutions. Kentucky and New Mexico (the latter not operative until 1978) probably come closest with their amalgamation of police, corrections, defender system and criminal justice planning agency functions along with common training and support bureaus for all personnel in the system. Nor has the record been one of instant success for this hardy band of consolidators. However, a beachhead has been established, experience has been accrued, and some of the resulting lessons deserve attention.

Feasibility of the Integrated Justice Agency

First, the experience of the eight states demonstrates that criminal justice agencies can be effectively merged or consolidated in parent departments of justice or public safety to reduce the number of offices reporting directly to the state chief executive. The wave of current executive reorganizations has made it inevitable that these criminal justice functions will be tucked into some umbrella agency. There is no inherent reason why the criminal justice grouping should be less suitable than others and, as has been suggested, several reasons why it may be better and more responsive to public priorities. The pioneer states in this area have shown that a wide variety of integration patterns are possible to meet each state's special needs and history (see Figure 1).

Locus Within State Government Structure

Reorganizations and amalgamations of state criminal justice functions seem difficult to place in the office of an elected attorney general (at first blush a logical choice) because of

FIGURE 1

STATE CRIMINAL JUSTICE AND PUBLIC SAFETY DEPARTMENTS WITH JURISDICTION OVER MORE THAN ONE MAJOR COMPONENT OF THE CRIMINAL JUSTICE SYSTEM

STATE	NAME OF DEPARTMENT (AND AGENCY HEAD)	ANNUAL BUDGET AND TOTAL STAFF (APPROXIMATE)	PART OF OVERALL EXECUTIVE REORGANIZATION	MAJOR CRIMINAL JUSTICE (CJ) UNITS INCLUDED
Kentucky	Dept. of Justice (Secretary)	$61 million 2,900 staff	Yes (1972-73)	State police, adult corrections, CJ training unit, public defender, state planning agency
Maryland	Dept. of Public Safety and Correctional Services (Secretary)	$85.5 million 5,400 staff	Yes (1969-70)	State police, adult corrections, CJ training commissions, and integrated info system
Montana	Dept. of Justice (Attorney General)	$13 million 510 staff	Yes (1970-71)	Highway patrol, criminal investigation bureau, law enforcement academy, state prosecution functions, local prosecutor coordination unit and state planning agency (admin. only)
North Carolina	Dept. of Justice (Attorney General)	$17 million 650 staff	No (a)	Criminal investigation bureau, CJ training academy, local training and standards commission, state-level prosecution functions, and CJ communications and statistics unit
New Jersey	Dept of Law and Public Safety (Attorney General)	$81 million 6,200 staff	No (b)	State police, state-level prosecution functions, local prosecutor coordination, state planning agency, and integrated CJ info system
New Mexico	Dept. of Criminal Justice (Secretary)	$30 million 1400 staff	Yes (1977)(e)	State police, adult and juvenile corrections, state planning agency, law enforcement academy and (admin. only) public defender, parole boards and organized crime commission
Pennsylvania	Dept. of Justice (Attorney General)	$82 million 3,500 staff	No (c)	Adult corrections, state-level prosecution functions, state planning agency and organized crime/corruption commission
Virginia	Office of Public Safety (Secretary)	$166 million 7,500 staff	Yes (d) (1976)	Adult and juvenile corrections, state police, CJ training and standards commission, integrated info system, state planning agency.

(a) North Carolina underwent a major executive reorganization in 1971, but the Justice Department was only collaterally involved.

(b) While not part of a general reorganization, New Jersey views the enactment of its Criminal Justice Act of 1970 as creating a truly integrated state criminal justice operation.

(c) Pennsylvania has been considering a spinoff of its Adult Corrections Bureau into an independent executive agency. Puerto Rico took similar action in 1974, and in 1970 Illinois divided an integrated department of public safety into separate departments of law enforcement and corrections.

(d) The Virginia reorganization took place in 1972 and involved assigning all state agencies to one of six coordinating secretaries. In 1976, their budget, reporting, and policy resolution authority was substantially tightened thereby moving closer to a unified umbrella department structure.

(e) New department becomes operative in March 1978.

loss of accountability to the state chief executive. They invariably involve functions such as law enforcement and corrections that have traditionally been within the governor's chain of command. It may have been for this reason that the Kentucky, Maryland and New Mexico reorganizations bypassed the Attorney General's office and created new departments with cabinet level secretaries under the Governor. The price paid in each instance was lack of full integration of state prosecution functions with the new department.

Since most states elect their attorney general (all but eight), the Constitutional independence of that office might be viewed as a substantial obstacle. However, the experience of North Carolina and Montana suggests that where an elected attorney general has had significant criminal enforcement powers, legislatures and reorganization planners will not necessarily reject his office as a focus for an integrated state department.

Prosecution and Police Involvement

Beyond the question of departmental leadership, most reorganizations have exhibited difficulty in involving the prosecutive component of criminal justice because of lack of central state control over this function and the existence of locally elected prosecuting attorneys in most states (all but six).

However, New Jersey and Montana have shown how this problem may be productively met in states with strong powers of central supervision (New Jersey) and those with maximum local prosecutor autonomy (Montana). In New Jersey, where prosecutors are appointed by the Governor and the Attorney General has clear supervisory powers, lines of authority and coordination are direct. In Montana, lacking strong central supervision powers, the state's Department of Justice has, nevertheless, been able to establish a statewide support unit for locally elected prosecutors (training, brief writing, technical assistance)--a form of "centralization" accepted as valuable by study commissions, national experts and even autonomy-inclined prosecutors themselves.

A similar problem derives from the essentially local nature of police services. State level police agencies furnish only a small portion of the direct police services provided to state citizens. This is the responsibility of county and municipal police agencies which operate, by and large, with little state control. Nevertheless, all states maintain some kind of police force (which must be placed somewhere in the

governmental structure) and, more important, states are assuming an ever increasing support and standard-setting role for local police operations. Thus, state structure must address a new dimension of system leadership and influence in the largest crime control function of all--local police services (over 50% of all state/local criminal justice expenditures and nearly 60% of all personnel).[6]

Judicial Independence

As previously indicated, it is axiomatic that reorganizations will preclude integration of the state court system and its judiciary within an executive umbrella agency. This would violate the constitutional separation of powers between the executive and judicial branches which exists in all states and is a "given" of the American justice system. The separation, however, need not lock out an integrated department from all functions relating to the courts. Constitutional principles are not necessarily violated by administering court personnel training through a comprehensive academy dealing with other criminal justice workers, by judicial participation on policy and supervisory boards of statewide planning and grants-in-aid units addressing all system components, by court inclusion in comprehensive executive branch-managed information systems, and by some measure of executive review, auditing and integration of court budgets. Indeed, examples of all of these practices can be found within state criminal justice systems today.

Components of the Integrated Department

The major state-level components of any criminal justice parent department would be the state police organization, state prosecution and state juvenile and adult corrections systems. Additional elements that have been incorporated by existing departments and could be considered in new reorganization efforts are: (i) a statewide public defender system, (ii) a statewide training commission for state and local police, corrections, or prosecutive personnel or, in the alternative, a joint criminal justice training entity, (iii) a prosecutive support and coordination unit for local prosecutors, (iv) an integrated criminal justice information, statistics, and/or communications bureau, (v) a local jail inspection and standards unit (vi) a victim compensation bureau and (vii) the federally-supported state law enforcement planning agency which develops comprehensive criminal justice plans and allocates federal "block grant" funds in every state.

These additional units have been significant in providing

the umbrella department with a truly comprehensive scope and feeling of total system stewardship. They serve as a kind of glue for the integration concept; and the state planning agency, in particular, helps bring a focus and perspective on the total system and the many crime control activities carried on by local government units. Indeed, of the eight integrated or partially integrated departments here identified, the state planning agency is either a full operating unit or an administratively attached agency in six.

It will be noted that several elements, by virtue of their functions, require a measure of autonomy from central executive control. This can be provided by special statutory safeguards and "administrative" rather than "operational" attachment to the parent department. For example, it must be administratively assured that state planning agencies are free to judge impartially between competing grant-in-aid requests of state agencies and local units, that public defender systems are free from line pressure and overall prosecutive policy in their mandate to zealously represent indigent accused, and that local jails are free to follow local policies so long as they comply with state-prescribed minimum standards.

It is inevitable that some integrated justice or public safety departments will need to accommodate certain non-criminal justice functions or regulatory responsibilities outside the traditional criminal administration sphere. Thus, the Maryland Department of Public Safety and Correctional Services includes civil defense, victim compensation and state fire prevention offices. The New Jersey Department of Law and Public Safety has a host of tangential law enforcement and regulatory functions (e.g., consumer affairs, alcoholic beverage control, state racing commission, motor vehicles inspection and licensing) plus a major civil law workload. The United States Justice Department incorporates substantial non-criminal justice functions (e.g., tax, antitrust, immigration and naturalization, land and natural resources) and civil law responsibilities occupy a substantial portion of its U.S. Attorney workload.

Some have suggested that preoccupation with the criminal justice mission might produce dysfunction in relation to planning, implementation, and balancing of the non-criminal responsibilities associated with the criminal justice components or with justice administration-at-large.[7] While this is a danger, no executive department grouping organized on a functional basis is free of such dilemmas and, as previously indicated, the justice configurations tend to operate at more modest levels of scale and complexity than many other major governmental services. Organizational designs are possible which accommodate such other functions and do not relegate them to "second-class" status. Moreover, in virtually all

cases, there remains a law enforcement or criminal penalty nexus that binds even basically civil or regulatory functions to the criminal justice mode. On the other hand, responsiveness to integrated criminal justice organization may produce a "head of steam" for sensible transfer of some regulatory and enforcement activities to other departments where they make more functional sense (e.g., motor vehicle regulation and safety from departments of justice to departments of transportation and alcoholic beverage control to departments of licenses and taxation).

Unification Within Components

The integrated justice department can also facilitate "unfinished business" at lower levels. For example, as part of any reorganization, the unification of previously fractionalized criminal justice components (most noticeable evident in the institutional/field and adult/juvenile separations within correctional systems) should be seriously considered. This was accomplished in the Maryland reorganization where previously separate parole, probation, and prison systems were integrated into the new Department of Public Safety and Correctional Services. Similarly, states with separate bureaus of investigation and police/highway patrol service can be placed under common umbrella supervision (e.g., Montana reorganization) thereby strengthening coordination and interface between these major law enforcement activities.

Assistance to Local Agencies

The integrated department offers an excellent vehicle for one of the fastest growing state roles in criminal justice improvement--services, subsidies and monitoring for traditionally local criminal justice activities. As part of any reorganization, state services to local law enforcement entities (local police, county and municipal jails, local prosecutors and defenders) can be expanded, structured on a more rational basis, and accorded proper organizational placement within the parent department.

One sees this in evidence at many points in the six-state structure ranging from local personnel selection and training standards (e.g., Pennsylvania, North Carolina), local training academies (e.g., Maryland and Montana), statewide police communications and information networks (e.g., New Jersey and Maryland), statewide crime lab and identification services (e.g., Kentucky and New Jersey) to local police and corrections subsidy programs (e.g., Maryland and Pennsylvania). It is true

that support of this kind is supplied in other states from a variety of agency loci, but here state government can gather together its local support efforts, gubernatorial and legislative offices can view the total scene and, perhaps, better deal with policy, resource and budget issues in relation to local criminal justice assistance and standards maintenance.

Perhaps today's most complete clustering of local criminal justice support activities within a single state agency can be found in North Dakota. Here, the locus is not any state agency or parent department with criminal justice line responsibilities (those are divided among several entities), but rather the state's criminal justice planning agency. In addition to its federal Crime Control Act duties, the North Dakota SPA (its "Combined Law Enforcement Council") collects criminal justice records and statistics, sets selection standards and certifies police officers, conducts jail inspections, provides training for law enforcement personnel throughout the state and coordinates uniform records management systems.[8] This complex of local assistance functions would be an enviable feature in any state umbrella agency seeking maximal integration of state/local criminal administration endeavor through the justice superagency model.

Gubernatorial Control

It is neither unusual nor surprising for state agencies that have enjoyed independent department status to be concerned with loss of direct communication or accountability to the governor as a result of merger into an umbrella department. This is no less true of criminal justice agencies than other governmental service functions. However, the "direct line to the Governor" issue among powerful and previously independent state police and corrections agencies may be more theoretical than real. While the creation of a parent justice or public safety department will require and should have a single executive head directly accountable to the state chief executive, this need not (i) preclude direct dialogue and contact between major agency chiefs and the state governor nor (ii) impair the visibility, importance, or sense of executive responsibility of a commissioner of police or corrections in relation to counterparts in other states.

The experience in Kentucky and Maryland, for example, has made it clear that direct dialogue between the state police and state corrections chiefs will continue with the governor in pressing matters (e.g., school bussing crises, incipient prison riots) and, subject to proper coordination, is accepted and welcomed by the umbrella department secretary. Indeed, the existence of a single secretary in a simplified state

executive structure can operate to speed up the presentation and resolution of police, correctional and other problems requiring the governor's attention. Independent law enforcement units reporting directly to a governor in a structure of 100 to 200 similar agencies may, in fact, be operating under a regime of "no accountability" and "no access" in view of the sheer span of control inability of a governor to question, review and supervise in the same way that a cabinet level secretary or attorney general could.

Implementation Techniques

The plan and pace of implementation for justice umbrella agencies is critical to successful integration and optimal performance. The various criminal justice components have strong histories and traditions of independence and, only recently, have begun to think "system". Thus sensitivities will be as great, and possibly greater, than in other areas of governmental unification. Discussions with key officials in the eight "integrated" states have confirmed this. By and large, in reorganizations leading to a clustering of criminal justice functions, the new department should (i) move cautiously in assuming central budgeting, planning and personnel responsibilities, (ii) assure itself that it is fully ready and equipped to assume such chores, and (iii) recognize the desirability and continuing need for component agencies to maintain some responsibilities and staff for these tasks even where the function is ultimately centralized. This technique has served several of the six states well and provided object lessons for others.

Other implementation needs must be met. These include sound preplanning, careful staff orientation, development of good interdepartmental communication mechanisms, clear policy channels, and well-defined written directives.

State Planning Functions

As previously suggested, the inclusion of a state's criminal justice planning agency in any integrated department of justice or public safety can add a sense of system coherence and linkage that will be important to departmental rapport and success. Nevertheless, structural arrangement should insure the independence of planning agency judgments in allocating funds and considering competing applications as between state and local government. This was achieved rather well in Montana, New Jersey, Pennsylvania and Virginia and to the satisfaction of both the planning agency and other affected agencies. In Kentucky, adjustments were

necessary to an initial placement in the Secretary's executive staff office which may not have adequately differentiated between the planning agency's grant allocation and operational planning/budgeting functions.

Avoiding New Bureaucracy

As in all superagency restructuring, there has been, and will be, a concern among component units about interposition of new and top-heavy bureaucratic structures between the line agency and the top. This is inevitable and a particularly sensitive area in law enforcement, but some suggestions can be offered based on experience thus far.

The secretariat of newly established parent justice departments should, if possible, (i) include high-level officials with solid backgrounds and experience in criminal justice operations to foster cohesiveness and respect for the new department. (ii) move cautiously in assuming heavy operational responsibilities, and (iii) strive for a low manpower/low budget profile. If achieved, this promises multiple benefits, including keeping down the "price" of integration and avoiding the impression and fact of adding an unwarranted "bureaucratic layer" to existing machinery. Maryland's Department of Public Safety and Correctional Services is an outstanding example of this approach. It has operated for five years now with a central secretariat budget and staff of 1 percent of total department manpower and expenditures (currently at $85 million); yet, the department maintains strong policy control and leadership and probably as much central staff supervision as any of the other integrated departments.

As against these considerations, others have stressed the importance of obtaining adequate staff for the difficult job of bringing together strong and previously independent components of the system and to focus on generalists rather than criminal justice professionals for key jobs in the secretariat.[9] These factors must be weighed against the conditions and environment within which each state seeks to achieve increased administrative integration of its criminal justice services. Simple answers applicable to all jurisdictions have not evolved and probably never will.

Decentralization

It is difficult, and perhaps foolhardy, to pursue the "bigger is better" theme of unification of criminal justice functions without reflecting on equally pressing needs for decentralization and

local responsiveness in criminal administration services. The establishment of an integrated state department of criminal justice can permit an orderly and rational structure for regionalizing and decentralizing services, using common regions and offices for the various criminal justice functions or, where appropriate, separate but complementary decentralized structures adapted to the needs of a particular component (prosecution, police, corrections). Current district, community, and regional networks are often inconsistent and not well-suited to coordination at the local level.

The day may be far off when state police "barracks", prosecutor districts, jail and prison facilities, and criminal justice planning units can be amalgamated into common regional groupings, but if there is ever to be more rational districting of these functions and if current regional structures are to be critically assessed against local needs, the unified, system-oriented agency would seem better able to take a hard look. Moreover, the integrated department must deal with the large portion of the criminal justice iceberg administered by autonomous local officials and agencies at county and municipal levels. Here, it can recognize legitimate desires for community control and participation and foster sound principles of local initiative and service delivery with its grant-in-aid and technical assistance leverages.

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This brief exploration of the still rare, but promising, integrated department of criminal justice begs for elaboration. If the article suggests a bias in favor of the umbrella justice department, the author pleads guilty, largely because it seems to meet needs for better integration, better functional definition, better decentralization, and the extraordinary flexibility demanded by our federal system and state/local division of governmental power. Hopefully dialogue from both the criminal justice and public administration communities will encourage a fuller examination of the idea as an alternative to distributing criminal justice functions among other executive departments (e.g., public safety, human resources, independent agencies). The results might be a bonus for both state government and the citizens it serves.

FOOTNOTES TO CHAPTER 6

1. See Council of State Governments, Reorganization in the States (1972); Book of the States 1974-75, pp. 137-141 (1974); Human Service Integration - State Functions in Implementation, pp. 13-21 (1974).

2. Juvenile corrections services in approximately one-half of the 50 states and adult services in one-third of the states are grouped in larger human resources, social service and institutions departments. See, e.g., Council of State Governments, Human Resource Agencies -- Adult Corrections and State Organizational Structure (Oct. 1975).

3. Citizens have consistently identified crime as an overriding concern in relation to other urban and social problems, e.g., 1966 National Opinion Research Center Poll (crime as second greatest domestic problem), 1972 Gallup Poll (crime and violence as most worrisome domestic problem).

4. 42 U. S. Code sec. 3701 et seq., as amended by P. L. 91-644 (1971), P. L. 93-83 (1973), P. L. 93-415 (1974) and P. L. 94-503 (1976). By fiscal year 1975, states were receiving some $55 million annually for criminal justice planning functions and $.54 billion for block grant distribution to crime control programs and agencies.

5. There appear to be about twenty state public safety departments organized around law enforcement and police power/safety functions rather than the criminal justice theme. See International Association of Chiefs of Police, 1974 Comprehensive Data Report -- State and Provincial Police, p. 47.

6. LEAA and Bureau of Census, Expenditure and Employment Data for the Criminal Justice System 1975, p. 21 (March 1977).

7. Council of State Governments, The Future of Criminal Justice Planning, pp. 25-26 (1977).

8. Advisory Commission on Intergovernmental Relations, Safe Streets Reconsidered: The Block Grant Experience 1968-1975, Part B, pp. 453-455 (GPO 1977).

9. The notion is that generalists without substantive experience may be better able to weld together diverse multi-function superagencies -- and so they may. See Council of State Governments, Human Services Integration, p. 69 (1974). However, solid professional experience somewhere on the secretariat staff seems to offer real advantages in achieving credibility and acceptance in criminal justice unification.

CHAPTER 7. RECENT UNIFICATION INITIATIVES: A NATIONAL INVENTORY

In October 1973, the National Advisory Commission on Criminal Justice Standards and Goals issued its comprehensive series of reports offering priorities, recommendations and standards for improvement of all aspects of criminal justice administration.[1] As in the case of previous national study commission and standard-setting efforts, several of the NAC standards related to unification, consolidation and integration of criminal justice agencies and services -- a response to the fragmentation, duplication and lack of coherence in criminal justice administration which was brought to national attention by virrually all major study groups which, since the sixties, had taken time to scrutinize the nation's criminal justice apparatus.[2]

As we have seen in Chapter 1, the NAC "unification" recommendations spanned all components of the criminal justice system -- courts, police, corrections, prosecution and defense. They include such proposals as (i) unification of all correctional facilities and services in a statewide correctional services agency, (ii) unified, state-financed judicial systems under central state administration and supervision, (iii) statewide organizations to provide assistance and support to local prosecutors, (iv) state financed defender systems, (v) consolidation of small police departments (i.e., less than 10 sworn personnel), and (vi) state provision of police services and functions through techniques ranging from full merger through shared support functions and contract service arrangements.

In an effort to assess progress and activity in the direction of the foregoing standards, and as part of the author's study program as visiting fellow of the National Institute of Law Enforcement and Criminal Justice Program, a 50-state questionnaire survey was developed and implemented through the good offices of the National Conference of State Criminal Justice Planning Administrators.* Here was a chance to probe the impact of the NAC recommendations, at least in the first years following release, as buttressed by earlier and similar formulations from groups such as the President's Crime Commission, Committee for Economic Development, Advisory Commission on Intergovernmental Relations, and even the one generation-removed analyses of the 1931 Wickersham Commission. Then, too, the nation was caught up in a tide of state government reorganization, commencing in the early sixties, which was aimed at fragmentation and duplication in state government-at-large.[3] The move-

*The survey, conducted in late 1975 and early 1976, as supplemented by a mid-1977 update, is referred to throughout this chapter as the "Fellowship Survey."

ment was unprecedented in scope (see Chapter 6) and provided further impetus toward unification and integration of services which might seek to draw on the new criminal justice standards.

The Survey

The Fellowship Survey sought state-by-state information on major "unification" programs which were currently being implemented within all criminal justice segments. The inquiry was a simple one, consisting of the following elements:

--a careful definition of "unification" activities as applied to each criminal justice segment - police, courts, corrections, prosecution, defense, the total system (see appendix A)

--solicitation of "yes-no" answers on the extent to which unification initiatives in each criminal justice segment were actually implemented or made the subject of serious planning and development effort since 1973 (the year of the NAC recommendations)

--solicitation of brief one-sentence descriptions of the unification efforts involved wherever "yes" answers were provided.

The survey was transmitted to directors of the fifty state criminal justice planning agencies (and three territorial SPA'S) which had evolved and were responsible for criminal justice planning and funding activities under the Omnibus Safe Streets and Crime Control Act. It was felt that this group offered the best single source of data and expertise within each state by virtue of its comprehensive planning, funding, programming and monitoring activities as related to all facets of state and local crime control endeavor. Any other approach would have required a multiplicity of mailings to and contacts with state and local criminal justice agencies. Detailed data was not solicited in order to encourage a comprehensive response and on the assumption that follow-up information could be readily requested from jurisdictions which reported positive unification initiatives.

Respondents were cautioned that the survey was not intended to endorse or stimulate unification/consolidation/pooling efforts but rather "to identify the extent to which unification efforts and recommendations of national study commissions and professional groups have...actually been translated into action within state and local criminal justice systems -- for better or otherwise."[4]

The Survey Response

The survey was transmitted to all states in mid-November 1975 under forwarding letter of the Executive Director of the National Conference of State Criminal Justice Planning Administrators. By mid-January 1976, some 60 days later, usable responses had been received from more than 85% of the states and a special follow-up effort yielded the remainder within a few months.

Briefly, responses were received from 50 states, Puerto Rico, the Virgin Islands and Guam. Seven respondents reported no unification action at all, whether by way of planning or implementation* and another six reported activity in only one area. The remaining 40 jurisdictions reported significant activity within two or more of the six criminal justice areas, specified, with "programs being implemented" outnumbering "programs being planned" in all categories. This picture remained relatively stable through mid-1977 as documented by a follow-up questionnaire to which over 85% of the states responded. About ten states, however, reported new unification initiatives and a half dozen affirmed implementation of previously reported planning endeavors.

A component-by-component summary of the survey responses, including the 1977 follow-up, is set forth in the next section. It might be observed, however, that a much greater level of unification activity was reported than had been anticipated, even allowing for incorrect interpretations, inclusion of efforts not falling within the strict "unification" definitions provided, and references to planning efforts that had little chance of adoption or implementation.

Some cautions to be kept in mind in reviewing the data include:

--the fact that unification schemes developed and actually implemented before 1973 would not be included in survey responses (although several states did mention earlier court unification or correctional system integration actions).

--the fact that several states identified statewide service or support initiatives to local crim-

*This "no action" group included states with some of the most centralized criminal justice subsystems in the nation (e.g., Alaska, Puerto Rico and Rhode Island) which, simply, had no occasion to consider or implement further unification initiatives after the 1973 baseline date established by the Fellowship Survey.

inal justice agencies as "unification efforts" although not properly reportable as such.

--the possibility that in some states new local unification initiatives might not yet have been known or reported to the state planning agency.

--the inability to develop clear categorization and assessments of national progress due to the imprecise nature of many of the brief activity descriptions.

Regardless of the foregoing and assuming that positive reports may have substantially overstated actual unification initiatives in the four-year period from 1973 to 1977, the resulting display of efforts to centralize, integrate and better coordinate state and local criminal justice services must be viewed as impressive and suggests a rich field for further inquiry and research.* Indeed, valuable national studies focussing on reorganizations within specific criminal justice components have already emerged since the initial publication of the Fellowship Survey.[5]

Summary of Findings

As indicated, all 50 states and three territories responded to the Fellowship Survey. For each category probed, listings and broad categorizations of the state replies are set forth in subsequent text. However, generally speaking, the following patterns emerged from the survey data:

--the highest levels of unification activity were evident within state court and correctional systems (over half the states in the court area and more than two thirds in corrections, the former focussing on central administration and trial court integration and the latter on consolidation of previously separate correctional service agencies)

*The original survey report, Recent Criminal Justice Unification, Consolidation and Coordination Efforts: An Exploratory National Survey (Jan. 1976, with Aug. 1976 supplement) sets forth the text of the short program descriptions requested with each affirmative answer as to a planned or implemented unification program (omitted from this volume). Researchers may wish to consult this LEAA Visiting Fellowship publication for additional data on the reported initiatives within each criminal justice area.

--the lowest levels of state integration and unification were to be found in prosecution and defense (less than half the states in each case with dominant prosecution activity centering on statewide or state-level technical assistance units and, in indigent defense, on centrally administered and integrated public defender systems)

--relatively little centralization of police services was evident but a frequent incidence of local-level contract policing and departmental merger efforts was reported by several states (usually of limited instance and generally involving low population areas) along with a scattering of regionally consolidated support and tactical services plus state provision of central facilities and services to local agencies.

--very little planning or implementation of cross-system consolidation was in progress (e.g., departments of criminal justice, public safety, etc., organizationally combining police, correctional and other criminal justice functions) but statewide criminal justice training and information systems designed to serve multiple system components were often reported.

A. CORRECTIONS

The most current general summary of the state of correctional system unification can be found in the American Correctional Association's Directory of Juvenile and Adult Correctional Departments, Institutions and Agencies.[6] It preceded the Fellowship Survey and itself is an updating of earlier state-by-state tabulations of correctional system organization carried in the reports of the President's Crime Commission, ACIR and the National Advisory Commission. Indeed, these periodic compilations have served as the author's chief reference points for charting changes in corrections structure over the years, particularly in the direction of merger and consolidation. The survey offered tangible evidence that the pace of organizational change has not yet slackened. Over 30 states engaged in either serious planning or actual implementation of correctional unification initiatives in the four years following release of the NAC reports and standards:*

*"(P)" in this and comparable listings for other criminal justice components refers to a state that reported only planning activity and not implementation for the 1973-77 survey period.

Alabama (P)	Kansas	Nebraska	South Carolina
Alaska (P)	Kentucky	New Jersey	South Dakota
Colorado	Maine	New Mexico	Tennessee
Connecticut	Maryland	North Carolina	Utah
Delaware	Massachusetts (P)	Texas	Washington (P)
Florida	Michigan	Ohio	West Virginia
Hawaii	Minnesota	Oklahoma	Wisconsin
Idaho	Mississippi	Oregon (P)	
Illinois	Missouri	Pennsylvania	

The consolidation efforts reported fell roughly into five divisions:

1. Actual administrative takeover of county and local jails by the state.

   Florida (for juvenile corrections only)
   Hawaii

2. Comprehensive correctional planning by the state* (by Corrections Department or similar agency).

Alaska	Pennsylvania
Hawaii	Oklahoma
Minnesota	Oregon
Nebraska	South Dakota
North Carolina	

3. Separate state or local functions assumed by state or merged statewide (e.g., combination of juvenile and adult services, state takeover of local probation, unified state department).

Alabama	Illinois	North Carolina	South Carolina
Colorado	Kansas	Oklahoma	South Dakota
Connecticut	Kentucky	Pennsylvania	West Virginia
Delaware	Maryland	New Hampshire	
Florida	Mississippi	Iowa	
Idaho	New Jersey	Utah	

4. Promulgation of jail standards, inspections, upgrading.

Massachusetts	Nebraska	Washington
Michigan	Ohio	Texas
Minnesota	Pennsylvania	
Missouri	Tennessee	

*Category not strictly within survey definition of "unification." Other states, under stimulus of special federal aid, undoubtedly engaged in comprehensive correctional plan development during this period.

5. Merger or regionalization of jail facilities.

Illinois	Nebraska
Maine	Ohio
Missouri	South Carolina

The foregoing inventory of organizational change shows an extraordinary level of activity, but one that is confirmed by other studies. For instance, the Council of State Government's recent ten-year study of correctional agency reorganization[7] showed that in a five-year period from 1970 to 1975, 21 states underwent major correctional reorganizations and another dozen undertook less thoroughgoing restructuring.*

B. Courts

In 1975, the Advisory Commission on Intergovernmental Relations conducted an extensive Safe Streets Act Questionnaire Survey among all 50 state planning agencies.[8] This inquired, among other things, on progress in producing a "more unified court system" since 1970 (a period beginning three years earlier than the current survey which used a 1973 cutoff date). Sixteen states indicated "great improvement" in this area. They were Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Maryland, Michigan, Missouri, Nebraska, Oklahoma, Pennsylvania, South Dakota, Utah, Virginia, and West Virginia. Most of these jurisdictions are included in the "unification programs planned" or "unification programs implemented" categories of the Fellowship Survey. The few who responded negatively in the Fellowship Survey may have implemented their court unification efforts prior to 1973. As can be seen, more than half the states reported serious planning, legislative action or actual implementation of major court unification initiatives in the Fellowship Survey:

Alabama	Kentucky	North Dakota (P)	Vermont (P)
Connecticut (P)	Maine	New York	Virginia
Florida	Massachusetts (P)	Nevada	West Virginia
Georgia (P)	Michigan (P)	Pennsylvania	Washington (P)
Idaho	Minnesota (P)	South Carolina (P)	Wisconsin
Illinois	Missouri (P)	South Dakota	
Kansas	Nebraska	Tennessee	

*The CGS review, moreover, did not cover regional or local level initiatives as in the case of the Fellowship Survey.

The reported court consolidation efforts planning or implementation efforts fall roughly into three categories:

1. Complete unification with control and administration by the state's highest court or a judicial agency.

Alabama	Kansas	Nevada	Washington
Florida	Kentucky	North Dakota	West Virginia
Georgia	Massachusetts	Pennsylvania	
Idaho	Minnesota	Vermont	
Iowa	Missouri	Virginia	

2. State coordination, standard setting, technical assistance without direct political control.

Georgia	Mississippi
Illinois	South Carolina
Michigan	Utah

3. Limited merger of state court jurisdictions and services (e.g., circuitwide delivery of probation, court administration or combination of civil and criminal jurisdiction).

Connecticut	Tennessee
Illinois	Pennsylvania
New York	Utah
South Carolina	Wisconsin

Recent Bureau of Census updates for LEAA's National Survey of Court Administration (1975 and 1977) confirm this remarkable pace of court reorganization activity, all the more noteworthy because of the added necessity of state constitutional amendment for effectuation of most court unification schemes. In the five-year period from January 1972 to January 1977, the Census updates identified 14 states which actually reorganized their court systems, over 60% involving constitutional amendment as well as statutory revision.[9] Caution should be exercised in recognizing the great variety in scope and depth of reported court unification intitiatives. One of the best expositions of the various degrees of unification achievable is reflected in the American Judicature Society's recent analysis, Unified Court Systems: A Ranking of the States, demonstrating that the student of court unification must go beyond self-reported characterizations to assess the true extent of judicial system integration.[10]

C. Police Services

In the 1975 survey by the Advisory Commission on Intergovernmental Relations (see Courts, supra), 5 states reported

"great improvement" in "consolidation of small police departments" for the period 1970-1975. These states all offered positive responses in the Fellowship Survey and include Illinois, Kentucky, North Dakota, Pennsylvania and West Virginia. States reporting progress since 1973 in unification and consolidation programs, mostly at local level and in scattered instances, include:

Alabama	Kansas	North Carolina	Texas
Alaska (P)	Kentucky	North Dakota	Vermont
Colorado	Maryland	Ohio	West Virginia
Delaware	Minnesota	Oklahoma	Washington (P)
Georgia	Montana	Pennsylvania	Wisconsin (P)
Idaho	New Jersey	South Carolina (P)	Wyoming
Iowa (P)	New York	South Dakota	
Illinois	New Mexico	Tennessee	

The consolidation efforts can be categorized three ways:

1. Local/County and County/State mergers and contracting police services.

Colorado	Maine	North Dakota	Tennessee
Delaware	Maryland	Oklahoma	Vermont
Idaho	Minnesota	Pennsylvania	Washington
Iowa	Montana	South Carolina	Wisconsin
Kansas	New York	South Dakota	
Kentucky	North Carolina	Texas	

2. Partial regional consolidation (e.g., investigative units, records) of local and county police services.

Colorado	Illinois	New York	Wisconsin
Delaware	Minnesota	Ohio	Wyoming
Georgia	Montana	Pennsylvania	
Idaho	New Jersey	South Carolina	

3. State sharing of resources with counties and local jurisdictions (e.g., forensic laboratory facilities, radio communications).

Alabama	Ohio
Illinois	South Carolina
New Jersey	West Virginia
North Carolina	

Obviously, many more states were involved in new levels of support service than indicated in the third category. It appears that this kind of functional sharing was not naturally seen (or intended) as falling within the police unification definitions of the survey. The predominant consolidation technique for police service, as revealed by survey responses, appears to be

interlocal agreements. This is confirmed by the National Sheriff's Association recording of more than 600 "full service" contract police arrangements across the nation in 1976 where prior studies showed less than 100 at the turn of the decade.[11]

D. Prosecution Services

Most prosecution unification and coordination has been taking place through the establishment of official state offices sponsored by local prosecutors associations, the state attorney general, or others to provide technical assistance, support services, training opportunities, guidance and practice handbooks, and information exchange for local prosecutors. A 1976 study by the National District Attorneys Association documented the existence of over 30 such offices staffed by full-time personnel, probably a majority of which were established since 1970.[12] The Fellowship Survey responses included virtually all of the new offices and a few more. Positive responses on unification activity within prosecution systems, implemented or in advanced planning stages since 1973, were received from about half the states:

Unification Programs Planned or Implemented

California	Kansas (P)	New York	Tennessee
Connecticut	Kentucky	North Dakota	Utah
Colorado	Maine	Oklahoma	West Virginia (P)
Georgia	Massachusetts	Pennsylvania	Virginia
Idaho	Michigan	South Carolina	Vermont
Illinois	Nebraska (P)	South Dakota	Texas

Unification programs reported in the prosecution area break down into those having:

1. State control in prosecutor appointment, payment.

Connecticut
Kentucky
Maine

2. Statewide technical assistance, coordination (often through professional rather than governmental organization.)

Georgia	North Dakota	South Carolina	Vermont
Illinois	Iowa	South Dakota	Virginia
Massachusetts	Oklahoma	Tennessee	West Virginia
New York	Pennsylvania	Utah	Texas

Among the foregoing listings, Kentucky stands out almost alone as having moved to significant centralization beyond the state technical assistance office through an interesting reorganization combining the values of both greater central oversight and funding while retaining the essential features of a local elective prosecutorial system (attorney general as "chief prosecutor", state financing of prosecutor salaries and expenses, collegial "prosecutors advisory council" for policy and rulemaking functions, full-time elected prosecutors on a district basis).[13]

E. Defense Services

According to a 1976 National Legal Aid and Defender Association-sponsored study commission report, the number of states operating defender systems on a statewide basis was thirteen.[14] These consisted of Alaska, Colorado, Connecticut, Delaware, Hawaii, Kentucky, Maryland, Massachusetts, Nevada, New Mexico, New Jersey, Rhode Island and Vermont. Another six had established state appellate defender systems and five more provided some kind of state funding for local defender offices. The Fellowship Survey confirmed the recency of much of this movement toward defender system unification, producing positive responses on post-1973 action from:

Alabama (P)	Illinois	Michigan	Tennessee
California	Kentucky	New York	Texas
Connecticut	Louisiana (P)	North Carolina	Virgin Islands
Florida	Maine (P)	Oklahoma (P)	West Virginia
Georgia (P)	Massachusetts	Pennsylvania	Wisconsin

Programs for defense system integration consist of those with:

1. Central administration, appointment, funding etc. on the state level.

Alabama	Louisiana	Virgin Islands
Connecticut	Oklahoma	Virginia
Georgia	Tennessee	West Virginia
Kentucky	Utah	Wisconsin

2. State-level technical assistance and coordination only.

Florida	Pennsylvania
New York	Texas
Ohio	

Actually, the pace of movement toward centralized defender systems seemed to be lessening toward the mid-seventies. Despite a great deal of planning and proposals, the Fellowship Survey

1977 update revealed only two new states that converted to statewide systems, i.e., Louisana and Wisconsin, with some failures to approve state defender plans, e.g., West Virginia.

Total System Consolidation and Coordination

The Fellowship Survey focussed on total system unification. through (i) combination of more than one criminal justice function under a single umbrella agency (excluding courts, of course by virtue of their constitutionally guaranteed separation from executive branch functions) and (ii) establishment of common executive branch planning and budgeting apparatus for more than one criminal justice function at either state, metropolitan or local levels (excluding LEAA-supported planning agencies unless they dealt with total system operations and not just federal aid allocation.) Other research had identified seven states with departments housing more than one major justice function -- corrections, law enforcement, prosecution, defense or the state planning agency role.[15] Survey respondents identified the more recent of these joinders as well as several in the planning phase and a number of "total system" integration efforts that fell somewhat short of the survey definitions (e.g., integrated training academies and commissions, information systems serving all criminal justice components). The total group of positively responding states included:

Colorado (P)	Maryland	New York	Puerto Rico
Florida	Michigan	North Carolina (P)	Virginia
Illinois	Missouri	North Dakota (P)	West Virginia (P)
Kentucky	Minnesota (P)	Oklahoma (P)	
Maine	New Mexico	Pennsylvania	

Total system unification programs, as reported in planning or implementation stages, can be divided into the following categories:

1. Political consolidation in a state department of criminal justice or cabinet level division.

Maine	Rhode Island
Michigan	Virginia
New Mexico	

2. Provision of standards, training on state level without direct administrative control of county and local criminal justice agencies.

Illinois
West Virginia

3. Sharing of criminal justice data and planning services (information systems, computers, combined planning and budgetary).*

Alabama	Florida	North Dakota
Delaware	Minnesota	Oklahoma
Illinois	Missouri	Pennsylvania
Maryland	North Carolina	Puerto Rico

Probably the last category is the most tenuous since most of the state criminal justice planning agencies were, at the time of the Fellowship Survey, in process of extending their work from programming and monitoring grant-in-aid allotments under the federal crime control legislation to undertaking planning, budgeting, and program coordination and development activities for state systems and agencies in general (with a similar thrust in certain metropolitan areas).[16] Only part of this emerging activity seems to have been reflected in the survey responses (where the line was hard to draw between traditional SPA activity and broader management and coordinative roles).

* * * * * * * * *

A display of the Fellowship Survey responses in chart form appears in Appendix B to this chapter. Subject to cautions expressed earlier and the hazards of "yes-no" categorization of the wide variety of planning and implementation efforts reported by the survey group, the chart gives visual form to the heavy activity in unification initiatives during the four-year period examined.

Within the framework of our diverse federal system, then, it appears that criminal justice reform proposals of a structural nature, at least those in the direction of greater system integration and unification, have attracted considerable attention and activity. While this area of institutional change has traditionally enjoyed less visibility in the crime control arena than proposals for change in operational methods and techniques, the pace of unification has apparently reached new highs within several of the criminal justice components and the reform standards and proposals behind such activity seem to be enjoying an impact beyond anything experienced in earlier years.

*Category not strictly within survey definition. Other responding states were undoubtedly engaged in such activity also but did not so state.

APPENDIX A -- CHAPTER 7

Text of Fellowship Survey Definitions of Unification, Consolidation and Coordination Efforts for Each Criminal Justice System Component.

As used in the survey, "unification program" refers to:

In Corrections:

(i) Unification of juvenile and adult correctional services at the state level.
(ii) Unification of institutional and field (probation, parole, aftercare, community programs, etc.) at the state level for adults or juveniles or both.
(iii) State takeover of local jails or juvenile detention facilities or establishment of state standards and inspection machinery governing operation of local jails and juvenile detention facilities.
(iv) Any initiatives of the kind described above for particular metropolitan areas, regions, or SMSA's within the state.

In Courts:

(i) Organization of all state courts into a unified judicial system under supervision of the state supreme court and state level administration.
(ii) Unification of all courts in the state into a single trial court with general criminal and civil jurisdiction or single trial courts of general and limited jurisdiction.
(iii) Unification of trial courts as indicated above within a major metropolitan area, SMSA, or region of the state.

In Prosecution:

(i) Establishment of a state level entity that provides administrative, training, technical assistance, operational support, or supervisory/policy coordination services to local prosecutors -- either the state attorney general or through an independent conference, commission, council or prosecutor's organization.

In Defense:

(i) Same as (i) above but change "local prosecutors" to "local public defenders or court-assigned defense counsel."
(ii) Unification of defender services under a statewide, state-directed or state-financed public defender system.

In Police:

(i) Consolidation of small police agencies (i.e., agencies with less than 10 sworn personnel or some comparable number).

(ii) Consolidation of police agencies in a major urban metropolitan area as a result of (a) total government consolidation (e.g., city-county); (b) merging of police agencies without general local government consolidation; (c) consolidation or merger of specific police services or functional units or (d) unification through local government contracting for police services from a large police force operating in the area or region.

In System-Wide Coordination:

(i) Combination of more than one criminal justice function under a single "umbrella" agency or administrative department (e.g., police, corrections, prosecution support, defender services, state planning agency -- courts would be excluded here because of the constitutional separation of powers).

(ii) Establishment of a common or shared executive branch planning or budgeting agency for more than one major criminal justice component as defined in (i) above -- at either state or local/regional/metropolitan levels. (This should not include LEAA-supported planning units unless their budgeting/planning responsibilities relate to total agency or department operations as opposed to federal or state aid budgeting and planning.)

STATE (Appendix B)	Corrections			Courts			Police			Prosecution			Defense			Total System		
	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp
Alabama		X				X			X			X		X				X
Alaska		X		X			X			X			X			X		
Arizona	X			X			X			X			X			X		
Arkansas	X			X			X			X			X			X		
California	X			X			X					X			X	X		
Colorado			X	X					X			X	X				X	
Connecticut			X			X	X					X			X	X		
Delaware			X	X				X	X	X			X			X		
Florida			X			X	X			X					X			X
Georgia	X				X	X			X			X		X		X		
Hawaii			X	X			X			X			X			X		
Idaho			X			X		X	X			X	X			X		
Illinois			X			X			X			X			X			X
Indiana	X			X			X			X			X			X		
Iowa		X				X			X			X	X					
Kansas			X			X			X		X		X			X		

STATE (Appendix B Cont.)	Corrections			Courts			Police			Prosecution			Defense			Total System		
	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp
Kentucky			X			X			X			X			X			X
Louisiana			X	X			X					X			X	X		
Maine			X			X		X				X		X				X
Maryland			X	X				X	X	X			X					
Massachusetts		X			X		X					X			X			
Michigan			X		X		X					X			X			X
Minnesota		X	X		X			X	X	X			X				X	
Mississippi			X		X		X			X			X				X	
Missouri		X	X		X	X	X			X			X				X	X
Montana	X			X				X	X	X			X				X	
Nebraska		X	X			X	X				X		X					
Nevada	X					X	X			X			X			X		
New Hampshire		X		X			X			X			X			X		
New Jersey			X	X				X	X									
New Mexico			X	X					X	X			X					X
New York	X					X		X	X			X		X			X	

STATE (Appendix B Cont.)	Corrections			Courts			Police			Prosecution			Defense			Total System		
	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp
North Carolina		X	X	X					X	X				X	X		X	
North Dakota	X				X	X			X			X	X				X	
Ohio		X	X		X			X	X	X					X	X		
Oklahoma			X	X				X	X			X		X			X	
Oregon		X		X			X			X			X			X		
Pennsylvania		X	X			X		X	X			X			X			X
Rhode Island	X			X			X			X			X			X		
South Carolina			X		X			X				X	X			X		
South Dakota		X				X			X			X	X			X		
Tennessee		X	X			X		X	X			X			X	X		
Texas			X	X					X			X				X		
Utah		X				X	X					X		X				
Vermont	X				X			X		X			X			X		
Virginia	X					X			X			X	X					X
Washington		X			X			X		X			X			X		
West Virginia			X			X			X		X			X			X	

STATE (Appendix B Cont.)	Corrections			Courts			Police			Prosecution			Defense			Total System		
	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp	NO	Yes plan	Yes imp
Wisconsin			X			X			X	X								
Wyoming	X			X					X	X			X			X		
Washington, D.C.																		
Guam	X			X			X			X			X			X		
Puerto Rico	X			X			X			X			X					
Virgin Islands	X			X			X			X					X	X		
Total responding jurisdictions - 46																		

Chart Legend

1. States with no check marks are non-respondents.
2. "No" responses mean no unification plans, as defined, were planned, implemented or in process of planning or implementation since 1973.
3. "Yes-Plan" responses indicate that some serious planning or development activity took place since 1973 under the categories shown.
4. "Yes-Imp" reponses indicate that actual implementation began, was in process, or was completed since 1973 in these states.

FOOTNOTES TO CHAPTER 7

1. The standards, priorities and recommendations of the National Advisory Commission are reflected in six reports entitled, respectively, A National Strategy to Reduce Crime, Police, Courts, Corrections, Community Crime Prevention, and Criminal Justice System (Government Printing Office, 1973).

2. See, e.g., President's Crime Commission, The Challenge of Crime in a Free Society (Government Printing Office, 1967); Advisory Commission on Intergovernmental Relations, State-Local Relations in the Criminal Justice System (Government Printing Office, 1971); Committee for Economic Development, Reducing Crime and Assuring Justice (1972).

3. See Council of State Governments, Reorganization in the States (1972); The Book of the States, 1974-75 (1974), pp. 137-41; The Book of the States, 1976-77 (1976), pp. 105-109.

4. Survey transmittal letter from H.G. Weisman, Executive Secretary, National Conference of State Criminal Justice Planning Administrators (Nov. 18, 1975).

5. Council of State Governments, Reorganization of State Corrections Agencies: A Decade of Experience (Lexington, Ky., Feb. 1977); LEAA National Criminal Justice Information and Statistics Service, 1977 Supplement to State Judicial Systems - National Survey of Court Organization (U.S. Dept. of Justice, May 1977) (see also 1975 supplement, Sept. 1975).

6. 1975-1976 Edition, pp. 250-257. For earlier charts, see ACIR, op. cit., n. 2, pp. 282-286; President's Crime Commission, Task Force Report: Corrections, pp. 200-201; NAC, Corrections Report, pp. 610-614.

7. Council of State Governments, op. cit., n. 5 at p. 11.

8. The general results of the ACIR survey are reported in Safe Streets Reconsidered: The Block Grant Experience 1968-1975, pp. 93-94 (Government Printing Office, 1977) but this report does not include discussion of the court unification inquiry.

9. LEAA National Criminal Justice Information and Statistics Service, op. cit., n. 5.

10. Monograph 1977 prepared under LEAA Grant No. 76-N1-99-0124, National Institute of Law Enforcement and Criminal Justice.

11. For 1976 contract policing statistics, see Special Tabulation by Contract Law Enforcement Division, National Sheriff's Association (May 19, 1976); for turn of decade figures, see ACIR, op. cit., n. 2, at p. 79 (citing International City Management Association survey re local contracts for total police services).

12. An Analysis of Training Coordinator Functions: A Comparative Survey, pp. 1-6 (Feb. 1976).

13. National Association of Attorneys General, The Attorney General's Role in Prosecution, pp. 16-17 (1977).

14. NLADA National Study Commission on Defense Services, Guidelines for Legal Defense Systems in the United States, pp. 160-165 (Sept. 1976). Appellate defender systems were identified as operative in California, Illinois, Indiana, Oregon, Wisconsin, and Michigan (the last by court rule only). Systems limited primarily to state level funding of local offices included Florida, Kansas, Missouri, North Carolina, Virginia, and Minnesota (the last also exercising appellate functions).

15. See chapter 6 supra and Skoler, State Criminal Justice Superagencies - Antidote for the Nonsystem?, State Government (Winter 1976).

16. ACIR, op. cit., n. 8, pp. 59-61.

CHAPTER 8. PROSECUTION AND DEFENSE SYSTEM STRUCTURE: ORGANIZATIONAL PERSPECTIVES

While study commissions and professional standard-setting groups have accorded significant attention to optimal ways of organizing and structuring criminal justice systems, much of the dialogue and analysis, not inappropriately, has focussed on the developmental history, characteristics, and goals of the particular components being analyzed -- police, courts, corrections, prosecution, defense.

However, another potentially fruitful source of guidance and insight has received relatively little attention and, in turn, has offered little contribution to the important issues arising in this field of inquiry. That is, the growing body of knowledge, theory, and design principles on bureaucratic structures, complex organizations, and "public goods and services" delivery has not been related in any intensive way to the various institutions of criminal justice. It is only in the past few years that capable analysts have turned to this subject.[1] Yet, perspectives of this kind may serve as a "reality test" for many of the structural proposals that have been advocated, particularly in recent decades, for the nation's far ranging, fragmented, and highly diverse criminal administration agencies.

Each of the criminal justice elements reflect different delivery patterns and missions -- and a considerable body of organizational theory can be brought to bear on these variations to help illuminate the policy analyses and social imperatives which have evolved for delivery of justice services. The relevant questions are many:

(i) how should the diverse elements of the system be linked -- loosely or tightly? through hierarchical or non-hierarchical arrangement?

(ii) given the size, services and resources of each component, what structural and design characteristics seem best adapted for decisionmaking and cost-effective operation?

(iii) what organizational and structural constraints are imposed by the values, constitutional protections and statutory mandates applicable to criminal administration?

(iv) how do the general lessons about "flat organization", "vertical organizations", lateral and horizontal communications channels, professional and semi-professional staffing, human dynamics in organizational settings, team decisionmaking, rulemaking versus post-review

as a control device, etc. impact on our criminal justice functions and the values behind them?

This essay offers profile data and some speculations about two criminal justice service areas -- prosecution and defense. The hope is that these formulations, tentative and somewhat crude, will help stimulate further organizational and bureaucratic design analysis of our criminal justice systems. The pattern will be, first, to present mini-portraits of American prosecution and defense systems as they are organized in most states. Then, the ideas and constructs of several organizational analysts will be applied to the prosecution and defense setting with particular focus on proposals for unification or greater measures of central control and regulation.

Prosecution System Characteristics - Macro

The prosecution function in the United States is primarily a state and local responsibility. It is conducted for the most part by autonomous local prosecutors' offices where responsibility extends to a single county (most states) or a district covering several counties (a few states) or both (very few states).[2]

In only three states does state government directly control and administer prosecution functions, with all prosecutors being appointed by and working for the state. In the great majority of states (all but five), prosecutors are popularly elected and view themselves as accountable and responsible to that electorate.

All states have attorney generals and almost all of these have some criminal justice and prosecutive responsibility even where independent local prosecutors prevail. Such responsibilities include the handling of criminal appeals (the large majority of states), statutory authority to prosecute special types and classes of crime such as corruption, consumer fraud, organized crime, state securities, insurance, and other regulatory infractions (most states) and the authority to initiate criminal proceedings of any kind (a few states). There is also an undefined and uncertain area of common law power to do those things.

In most states the attorney general has some kind of intervention power over local prosecutor activity but it is quite ad hoc. For example, he can step into cases (intervention) at his own initiative or at the direction or request of another state or local official (over 30 states) or, more drastically, he can replace (supersede) the prosecutor in a local case (17 states). These powers are used very rarely, perhaps to the point of insignificance, but the residual authority may have

some influence and seems to be a matter of sensitivity to local prosecutors.

Coordinative forces operating on the local prosecutor short of hierarchy and direct lines of supervision include: (i) the state criminal code which binds all prosecutive action, (ii) the professional accreditation of prosecutors as members of the state bar subject to bar discipline and standards, (iii) judicial regulation of abuses through court litigation which, because of the prosecutor's extraordinarily broad discretion, reaches only extreme malfeasance (e.g., fraud, patently arbitrary action, racial or religious discrimination), (iv) state legislative and court rules on criminal procedure which define how prosecutors must initiate and try cases through the court system and (v) a scattering of removal mechanisms for incapacity or gross misconduct beyond failure to return to elective office (infrequently used and existent in only a few states).

There are about 2700 prosecutorial units in the country (exclusive of city solicitors and attorneys who handle minor crimes) of which more than 60% are operated by part-time prosecutors without significant staff. These operate in less populous areas. Large counties and metropolitan areas have sizable staffs but these are relatively small compared to other government bureaucracies and agencies (e.g., over 500 lawyers in Los Angeles and 300 lawyers in Chicago, representing the very largest offices). The largest state attorney general offices, except for the few which have direct administrative responsibility for prison or state police systems, are also modest in size compared with other state executive departments (e.g., about 1400 in New York and 2000 in California, including non-attorney staff and civil duties).

A recent development to address deficiencies in local prosecution coordination and resources has been the growth of statewide professionally staffed offices of central prosecution services (training, information exchange, management assistance, investigative support). These now exist in perhaps a majority of states, many authorized by statute, some sponsored and managed by local prosecutors' associations, and some managed by the state attorney general.

Short of direct state control of local prosecution and the broad unused statutory powers of intervention, supervision and initiation of local actions, there are few intermediate models of state standard-setting, supervision, visitation or policy formulation for local prosecutors. In a few states (e.g., New Jersey, New Hampshire and California), statutes explicitly make the attorney general the chief law enforcement officer and give him authority to generally supervise local prosecutors and audit and evaluate activities. A handful of states also require peri-

odic reporting to the state attorney general. Kentucky's impending move toward a "unified" prosecutorial system (1976 legislation, 1978 implementation) under which locally elected prosecutors join an integrated statewide prosecution system featuring (i) the attorney general as "chief prosecutor", (ii) a collegial nine-member Prosecutors' Advisory Council (two-thirds local members) as a major policy and regulatory voice, and (iii) full state fiscal responsibility for prosecution salaries and expenses, represents perhaps the most sweeping and innovative scheme in decades to reconcile local autonomy/state oversight interests in this field.*

Study commissions and reform groups have generally criticized the extreme fragmentation and autonomy of the prosecution function but arrive at different prescriptions for cure ranging from a state director of prosecution with strong supervisory and regulatory powers to a variety of inspection and control powers at state level to state technical assistance offices which provide additional resources and, hopefully, stimulate uniformity and coordination on a consensual basis.[3]

There appears to be unanimity among the reform community on elimination of the part-time prosecutor even at the politically difficult cost of restructuring county jurisdiction into larger districts. However, progress has been slow in this area with an encouraging pickup in the mid-seventies involving five state changeovers to mandatory full-time prosecutor systems. In several states, prosecution is further fractionalized below the county level. That is county (or district) prosecutors may handle felony cases while city attorneys and solicitors may have authority over misdemeanors, ordinances and preliminary hearings in felony cases.

Local governments bear most of the costs of the prosecution function. Perhaps half of the states share in financing some of these costs but not more than a dozen (including the few centralized prosecution systems) absorb 50% or more of local prosecution budgets.

Operating concurrently with the state prosecution systems is the federal system which is centralized in a single department (U.S. Department of Justice) with a single officer exercising administrative authority and policy control (the Attorney General) and a highly decentralized and dispersed network of direct prosecution work. This is a simple two-level hierarchy,

*Kentucky Acts 1976, Ch. 17, secs. 1.53(2); see NAAG, The Attorney General's Role in Prosecution, pp. 16-17 (Feb. 1977).

although with staff divisions (e.g., Civil Division, Criminal Division, Tax Division) providing review, support and coordinative inputs in their respective areas of cognizance.

As a final observation, prosecutors exercise broad and powerful roles in the criminal justicesystem. They not only prosecute and try cases as the state's attorney but serve as a critical intake decisionmaker (determining, with almost unreviewable discretion who may be charged and tried for crime and when not to proceed against a person), a law enforcement resource (influencing, supplementing or even independently undertaking the traditional police function of criminal investigation), and a determinant of penal sanctions (negotiating sentences in the vast majority of cases handled through guilty pleas and plea bargaining and often foreclosing or restricting the judge, at least as a practical matter, in the exercise of his traditional sentencing function).

Defender System Characteristics - Macro

The defense of persons accused of crime involves private attorney or law firm representation, on a fee basis, for those individuals who can afford to hire a lawyer (nearly half of all persons charged) and indigent defense systems paid for by state and local government for defendants who are too poor to retain counsel (slightly more than half of all criminally accused).[4]

Indigent defense services are provided today by public defenders (attorneys employed on a public salary or, sometimes, a contract basis, to regularly defend indigent persons) or assigned counsel (lawyers appointed by the court on a case-by-case basis, either ad hoc or pursuant to a procedure of maintaining lists of qualified attorneys and distributing assignments to them on a systematic basis). Assigned counsel systems prevail in most counties of the nation (over 70%) but defender systems operate in the larger urban and metropolitan areas and serve more people (almost 2/3 of the nation's population).

"Mixed systems" of defenders and assigned counsel are quite frequent and, in one sense, every public defender system is a "mixed one". That is, public defenders must resort to use of assigned counsel in "conflict" cases (i.e., where there are multiple defendants in a crime and it would be considered a conflict of interest for the same defender office to represent both, even using different attorneys). At least 10% to 20% of the caseload of any defender jurisdiction must utilize assigned court counsel for these cases.

The demand and need for indigent defense services has increased enormously in the past decade, apart from increases in crime. This stems from an ever-broadening scope of Supreme Court decisions guaranteeing counsel to poor defendants as a matter of constitutional right, i.e., Gideon v. Wainwright, in 1963 (felony defendants); In re Gault in 1967 (juvenile delinquency proceedings); and Hamlin v. Argersinger in 1972 (misdemeanor defendants facing possible jail terms).[5] The expansion has not only been in type of proceeding, but also stage of proceeding so that the counsel guarantee now extends well beyond trial itself to in-custody arrests, police line-ups, arraignments, preliminary court proceedings, the sentencing stage, and criminal appeals.[6]

Indigent defense costs are estimated at about $150 million annually. 1973 survey data shows that there are about 3000 full-time defenders operating in the nation with perhaps an equal number serving on a part-time basis. The race to catch up with Constitutional requirements is a difficult one. At reasonable caseloads and assuming that 25% of all indigents are handled by assigned counsel, a conservatively-estimated minimum of 17,000 full-time lawyers would appear to be required to meet Constitutional mandates for public representation.[7]

There are more than 650 defender offices in the nation, half of which are part-time and do not have full-time staff attorneys. Most staff attorneys are young (under 30) and, like prosecutors, have a high turnover rate. As in the case of prosecution, sizable defender offices exist in metropolitan areas. In fact, the cities of Los Angeles and New York have larger budgets and staff complements ($20 million with 400 staff attorneys for Los Angeles and $22 million with 460 staff attorneys for New York City) than the largest of the statewide defender systems (Florida with a 1976 budget of $11 million).

Although most defender systems are local in nature (typically serving a single county), there is a trend toward statewide systems, largely a product of the past decade. Some 13 states now have state-funded, centrally administered defender systems. A few more have state funding for local systems and few have statewide appellate defender systems but rely on local defender agencies for trial representation.

The majority of defender offices are public agencies of state or county governments. Almost a third, however, are private organizations such as defender associations (e.g., Philadelphia) or a criminal division of a legal aid society (e.g., New York) which have contracted with local government to provide representation for indigent defendants. Although defender systems, like prosecution systems, have the problem in less populous areas of "part-time offices", progress toward multicounty

or district arrangements is spotty. Most regional offices are being established by the statewide systems (e.g., Colorado and New Jersey) which have the authority to draw up districts, eliminate part-time offices and provide adequate staff and support resources. In addition to criminal representation, most defender systems also provide representation in juvenile delinquency and mental illness commitment procedures. Civil legal aid is usually provided by other offices and systems.

Public defenders are selected in a number of ways. In state defender systems, the appointment of the chief defender is usually by the governor or the judiciary. Where local defenders are used, they are most often selected by the county board of commissioners (dominant in urban areas), the court (prevalent in rural areas along with county board selection), or an independent supervisory board or commission (most common for large metropolitan offices). Defenders are elected in only a few states.

Reform recommendations on defender organization and structure show consensus on (i) elimination of part-time defenders in favor of regional or district offices, (ii) assumption of state funding or major financial support of the defense function, (iii) condemnation of random court assignments of counsel as a delivery technique, and (iv) encouragement of public defender systems.[8] However, there is some disagreement on whether state-administered systems are to be preferred to independent local defender agencies and whether public defender systems are to be preferred to coordinated assigned counsel systems.

Indigent defense services in criminal cases are funded primarily by state and local governments. Recent statistics indicate contributions of 35% for state government, 60% for local government, and 5% for the federal government.[9] Although in earlier history, much indigent representation was often provided without fee, reimbursement is now universal for defender personnel or court-appointed counsel, generally at lower salary and fee rates than obtain in normal private practice.

Complex Organization Concepts and Prosecution-Defense Structure

The systematic settings have been sketched. Now let us examine how some organizational models and concepts might apply to prosecution and defense operations, especially with respect to the question of central direction and control.

Hall on Professionalism, Formalism, and Bureaucracy

Research indicates, according to Richard H. Hall, that legal departments in large organizations are not necessarily more bureaucratized than law firms of comparable size. Such professional units tend to be flat, "collegial" and not highly differeniated wherever they exist, i.e., "characterized by a few formal distinctions or norms and by little in the way of formalized vertical or horizontal integration."

This seems to suggest that prosecutor and defender offices which are "professional-intensive" and very much in the character of law firms, would not be impaired or constricted in normal functioning by inclusion in a hierarchy (e.g., a central state system) if "equal justice", better resource distribution, better accountability or other public policy considerations so dictated. That is, they would be quite autonomous in either case in their largely undifferentiated function of prosecuting and defending criminal cases. The proposition is reinforced by findings that while bureaucratization seems to be inversely related to professionalism, professionals are less bothered by the existence of hierarchies and rules (i.e., the inverse relationship here is weak) than by imposed divisions of labor and operating procedures (the inverse relationship is strong).[10]

Drucker on the Federal Decentralization Model

This organizational model, relating to companies organized in a number of autonomous "businesses" with each responsible for its own performance, results and contribution and its own management, seems both descriptive of and well-adapted for prosecution and defense functions placed in statewide systems.

Local prosecuting and defense offices, whether or not part of a larger hierarchical structure, do operate with great autonomy. The model permits large spans of control ("a Sears Roebuck vice president may have 300 stores under him"), simple hierarchic patterns ("there are only two levels in Sears between the lowest management job, section manager in a store, and the president"), and although it can operate well for highly diversified enterprises, seems equally suited to the undifferentiated, professionally and legally defined tasks of prosecution and defense units. Indeed management pundit Peter Drucker, who views this classical Alfred P. Sloan/General Motors formulation (early twenties vintage) as still the best structure for large multiproduct operations, considers its applicability and value to non-businesses, i.e., service institutions, as quite clear.[11]

The federal decentralization model focusses central management efforts and ascendancy on allocation of capital (the budget, resource distribution and funding process in governmental units),

control of key staff appointments and deployment of managers, and decisions on basic values, techniques, and businesses to go into or discontinue (the latter element being largely pre-empted in prosecution and defense by public definition of rules, missions, and values). One special issue for prosecution is whether elected officials can successfully be brought under the aegis of central management or so impair its sphere of influence on behalf of the total enterprise as to make effective functioning of the model unfeasible.

Drucker characterizes this model as an optimal one which comes closest to satisfying all organizational design elements. It seems a good reconciliation of the pulls toward centralism and localism prevailing in the prosecution and defense areas and consistent with the large measure of autonomy that can productively be left to these functions.

Galbraith on the Basic Mechanistic Model

The mechanistic model, as sketched by Jay Galbraith of the Wharton School suggests that the model and its fundamental coordinating mechanisms (rules, hierarchy and targeting) may be quite adequate for design and operation of prosecution and defense systems. That is, the nature and level of information processing complexity involved in these functions would seem to require little recourse to additional design strategies that may be needed for more complex organizations.[12]

Rules and procedures largely define the tasks of prosecution and defense and cover much uncertainty. In large degree, they are imposed by sources outside the organization (i.e., constitutions, statutes, court rules and case decisions). These define what clients must be serviced and how. More could be done in the area of prosecutive discretion (i.e., the decision whether to prosecute at all and for what offense) where formal rules are normally absent.

Uncertainties not covered by rules can be handled by hierarchy which, in both prosecution and defense, is usually a simple step from staff attorney to the head of the local office (or, in larger offices, possibly a two-step procedure from staff attorney to branch office or special subject unit chief and then to the director). There are rarely so many of these supervisory layers as to produce important decisional overloads, especially in light of the heavy degree of professionalization permeating prosecutive and defense organizations. This makes it appropriate to shift decisionmaking downward to be measured against the broad goals of a good prosecution (securing convictions) or an effective defense (securing acquittals or minimizing penalties).

Two trouble spots can be identified where current prosecutive and defense office structure may prove inadequate to handle overload. These are:

(i) Excessive case volume. Prosecutorial and defense functions often overflow with more work than can be handled. In this situation, following Galbraith's analysis, resolution is probably more likely to be had through the automatic interposition of reduced performance standards (closing intake for defense, not prosecuting cases that should be prosecuted, or according cases less time, attention and quality of service than legal or professional obligations demand).

(ii) Exercise of prosecutive discretion. This is an invisible area of prosecutive work. It covers workload where prosecutors decide not to proceed against accused persons or to negotiate guilty pleas (plea bargaining), either for the sound reason that cases cannot be successfully advanced or the "overload" reason that they could not otherwise be handled.

Nevertheless, looking at these overload problems and the nature of the justice system, the traditional mechanistic resolutions, i.e., new rules (e.g., guidelines for use of discretion), more professional discretion (case settlement ability), or vertical hierarchic channels (referring the most sensitive cases up for managerial decision) would seem more appropriate in everyday situations although other strategies have been developed for special situations (e.g., the "self-contained task" technique in organizing special prosecutive teams or task forces to reach intractable prosecution problems such as organized crime, consumer fraud, and official corruption or the "creation of lateral relations" technique where prosecution and defense counsel bypass the formal adjudication process to settle cases before trial (and across organizations).[13]

Simon on Centralization and Decentralization

In the dialogue on centralized or state-administered prosecution and defense systems as a reform measure, the distinction made by Herbert Simon is often clouded that centralization can be used either to (i) take the decisionmaking function out of the hands of the subordinate or (ii) limit the subordinate's discretion through general rules. The nature of prosecution and defense service delivery suggests that limitation of discretion is all that is possible or desirable through rules in most areas and that actual decisionmaking powers must remain vested at the line level in those professional functions.

Simon also throws light on the uses of the review function in this context, pointing out that review can be used either to: (i) correct individual decisions, leading to centralization and transfer of decisionmaking functions, (ii) discover where the subordinate needs additional guidance, leading to centralization and the promulgation of more complete rules, and (iii) discover how the subordinate's resources need strengthening, leading to decentralization. All three are usually combined in large organization.[14]

The case-by-case nature of prosecution and defense services and the bounds on decisionmaker behavior imposed by laws, professional norms and the adversary/judicial process would seem to emphasize Simon's arguments for decentralizing most decisionmaking. These focus on conserving the superior's time and energy for the more important aspects of organizational work (i.e., budget development and control, systems to supplement and support local resources, manpower control, policy and standards) and avoiding the added time and money costs of referring decisions upward. They would also tend to emphasize the advantages to be gained by imposing state controls (hierarchy or some degree of review) on the current national pattern of administratively independent prosecution and defense units, i.e., discovering gaps and strengthening the resources of these units to properly conduct decentralized functions combined with some overall rulemaking authority to better assure achievement of the larger purposes and equal treatment mandates of the justice system.

CCIR "Allocation of Public Service Responsibilities" Analysis

The much publicized 1970 study of the California Council on Intergovernmental Relations, a landmark exercise in assignment of government service functions to proper levels, did not purport to determine the level or quality or optimal efficiency structures for delivery of government services. Rather it sought to identify which levels of government should have funding and policy responsibility for them. Viewing the current court system, inclusive of indigent defense, as offering statewide benefit, i.e., upholding and evolving a legal framework for social and economic activities ("widespread benefit/broadrisk" service category), it called for state policy, financial and administrative responsibility for criminal and chronic delinquency cases and indigent defense.[15] (In contrast, "user charges" via fines or fees rather than tax revenue financing was recommended to support court system administration of traffic safety and personal civil actions).

This analysis, whose basic principle is that the more widespread the service benefit the larger the controlling government

jurisdiction should be, makes the case for state administration or policy supervision of both prosecution and defense (although prosecution was not explicitly covered in the roster of state/local subvention programs looked at.) It is hard to believe that the benefits of prosecution are not as widespread as those of court and defense services, although the study's criteria suggest that:

> "...where benefits are widespread but a local delivery system for the services is necessary, joint responsibility is recommended, including a coordinated, intergovernmental delivery system."

It may well be that the prosecution function could fall within this principle and, in addition, provide peculiarly local benefits (not matched in court and defense services) in responding to community needs and perceptions as to crimes which should be prosecuted most vigorously. But surely the local prosecutor is providing public safety benefits for all state citizens (and indeed externalities for the national polity) when he proceeds against serious crime in his jurisdiction.

On this issue, the study recognizes that personal services often require a local delivery system which can be provided by either a larger level of government or by local jurisdictions, even if they are in the nature of "widespread benefit" service. Apparently state financial and policy responsibility is not deemed inconsistent with local output if that is indicated. A number of reform recommendations of study groups in the prosecution/defense area expand state policy and review powers but leave local delivery systems in place (particularly prosecution).[16]

Tullock and MacKenzie on Bureaucratic Competition

Gordon Tullock and Richard MacKenzie have called for re-examination of the widely held belief that overlapping and duplication in government service delivery units is wasteful and harmful. In a recent book of essays, they suggest competition between government bureaus as in the private market to provide optimal "prices" and quantity of government service and avoid the inefficiency and non-responsiveness of large bureaucratic structures.[17]

Applying the concept to prosecution and defense, it should be noted that service units here are not very large or excessively layered in bureaucratic terms, whether organized on a state or local basis. Competition in prosecutive services would seem, at first blush, somewhat inappropriate and difficult to organize. Yet it would be fostered on a state attorney general/local prosecutor basis, albeit in limited form, by the reform recommendation

that state attorneys general be accorded broad powers to initiate, intervene or supersede in cases. Also, state level original jurisdiction over special criminality such as consumer fraud, organized crime and corruption offers further competition in high citizen interest and visibility areas.

In the defense sector, all kinds of public/private competition relationships are possible and exist, side-by-side or as options for dissatisfied jurisdictions. These include salaried defender versus assigned private counsel representation in all jurisdictions (at least as to "conflict" and "overload" cases and generally beyond), contracted private defender or legal aid organization arrangements versus public employee defender offices, and even quasi-competitive operation between the private fee generating criminal bar and the indigent defense bar.

Tullock and MacKenzie would probably be impressed with the great potential for private/public and public/public sector competition in this government service area. Question then arises as to whether the reform proposals (greater state organization and control, elimination of the part-time office) unduly restrict the competition option. It is true that statewide defender systems might curtail the scope of organizational competition in delivery of defense services. That would depend on the nature of state control and the design flexibility of the system. However, as indicated, the nature of the defense function requires availability of significant private representation in even the most centralized and all-inclusive defender systems; and both the model laws and enacted statewide systems permit the state agency to make use of contract service with private defense organizations and societies as an alternative to civil service staffing.

Feeley on the "Exchange System" Functional Model

Malcolm Feeley, drawing on a line of analysis adapted from the theoretical perspectives of Peter Blau and advanced, in varying degrees and dimensions, in the works and studies of Jerome Skolnik, Herbert Packer, Abraham Blumberg and George Cole,[18] suggests that prosecution and defense work may be viewed as involving an elaborate bargaining and exchange system.[19] Here, despite the formal dedication of criminal adjudication in general and these components in particular to norms of "conflict" and adversary process, prosecution and defense agencies find themselves subject to continuing pressures toward cooperation and accommodation. These pressures relate not only to caseload alleviation and efficiency but to assuring "victories" for the prosecutor and "best possible deals" for the accused. Thus, they permeate the values as well as the overload dilemmas of the system and may provide a more meaningful framework for

understanding, analyzing and even organizing services than reference to models focussing on the formal (more rational) goals and rules of the prosecution and defense functions.

From this perspective, one must ask whether independent prosecutors and defenders (in contrast to those within hierarchical pyramids) can operate these exchange systems more productively and with greater sensitivity to justice system goals as they confront the myriad of daily decisions to prosecute, to permit pretrial diversion, and to negotiate pleas of guilty or understandings as to severity of sentence which make up the heart of the barter process within this functional model. Recognizing that these practices and relationships will go forward under any system and must largely be discharged at the line level, it would seem desirable that there be more rather than less central control or oversight of defense-prosecution operations and, thus, some additional value in centralized or statewide organization of services. That value would be in helping to "bound", define overall policies and limits, and make visible this largely invisible side of prosecution-defense service delivery, rendering even local chief prosecutors accountable to a higher authority (e.g., a state defender) in this enormously sensitive "underbelly" of the time-honored adversary system. To some extent, this "bounding" can be achieved by legislation and court rules (e.g., formal prohibition of plea bargaining) rather than bureaucratic controls and supervision, but it is unlikely that outside prescription can do the complete job (or even an adequate one) in an area so heavily laden with official discretion as the criminal justice system. As Feeley suggests, the dominance of the informal functional mandates seem to lead, ironically, to a reform solution requiring "more bureaucracy, not less."

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Here then are some "translations" of organizational and public administration concept to defense and prosecution structures. We have already touched (chapter 2) on emerging theories of organization and the widening range of factors beyond hierarchy and structure that determine organizational health and effectiveness. To that extent, the foregoing speculations may display a kind of "tunnel vision" in their focus on state versus local administration and appraisal of rationales for large scale organization and central oversight. Nevertheless, such questions will be with us for a long time to come and merit no less attention in affairs of criminal justice than in the other business and service endeavors of democratic government.

FOOTNOTES TO CHAPTER 8

1. See, e.g., Gallas, The Conventional Wisdom of State Court Administration: A Critical Assessment and an Alternative Approach, 2 Justice System Jounal 35 (1976); Feeley, Two Models of the Criminal Justice System: An Organizational Perspective, 7 Law and Society Review (1976); Heydebrand, Context and Resources of Public Bureaucracies: An Organizational Analysis of Federal District Courts, Center for Advanced Study in the Behavioral Sciences conference paper, (1975); Saari, Modern Court Management: Trends in Court Organization Concepts -- 1976, 2 Justice System Journal 19 (Spring 1976).

2. For source material on contemporary prosecution systems and the prosecution role, see National Association of Attorneys General, The Prosecution Function: Local Prosecutors and the Attorney General (1974) and The Office of the Attorney General (1971) ch. 2; National District Attorneys Association, National Prosecution Standards (1977). Also, NAAG, The Attorney General's Role in Prosecution (Feb. 1977).

3. Commissioners on Uniform State Laws, Model State Department of Justice Act (Omaha, 1952) (general supervision over prosecutors by attorney general or a state departmental director); Committee for Economic Development, Reducing Crime and Assuring Justice (1972) (relieving local governments of prosecution responsibility and placing under state director of prosecution); President's Crime Commission, Challenge of Crime in a Free Society (1967) (strengthened attorney general powers with technical assistance and standard-setting by local prosecutors through state councils of prosecutors); Advisory Commission on Intergovernmental relations, State Local Relations in the Criminal Justice System (1971) (similar to the President's Commission plus "removal for cause" powers over local prosecutors); National Advisory Commission, Courts Report (1973) (state assistance offices controlled by local prosecutors organization with no extension of state supervisory authority); National District Attorneys Association, National Prosecution Standards (1977) (similar to National Advisory Commission position).

4. For source material on contemporary indigent defense systems, see National Legal Aid and Defender Association, The Other Face of Justice: Report of the National Defender Survey (1973). and National Study Commission on Defense Services, Guidelines for Indigent Defense Systems in the United States (1976). Also, Goldberg, Defender Systems of the Future, 12 American Criminal Law Review 4 (Spring 1975).

5. Gideon v. Wainwright, 372 U.S. 335 (1963); In re Gault, 387 U.S. 1 (1967), Argersinger v. Hamlin, 407 U.S. 25 (1972). For preceding case law development, see Lewis, Gideon's Trumpet, ch. 8 (Random House, 1967).

6. See, for example, Miranda v. Arizona, 384 U.S. 436 (1966) (police custodial interrogation); Gilbert v. California, 388 U.S. 233 (1967) and Coleman v. Alabama, 399 U.S. 1 (1970) (preliminary hearings); U.S. v. Wade, 388 U.S. 218 (1967) (pretrial lineups for identification); Townsend v. Burke, 334 U.S. 736 (1948) and Mempa v. Rhay, 389 U.S. 128 (1967) (sentencing); Douglas v. California, 372 U.S. 353 (1963) (appeals).

7. The Other Face of Justice, op. cit. n. 4, pp. 72-74.

8. See, e.g., National Advisory Commission, Courts Report, standards 13.5, 13.6 and 13.7 (1973); American Bar Association, Standards Relating to Providing Defense Services, standards 2.1, 3.2 (1968); Commissioners on Uniform State Laws, Model Public Defense Act, (rev. 1974); National Study Commission on Defense Services, op. cit., n.4, pp. 174-175; National Legal Aid and Defender Association, Standards for Defense Services (1976); ACIR, State-Local Relations in the Criminal Justice System, recommendation 31 (1971).

9. See LEAA and U.S. Bureau of the Census, Expenditure and Employment Data for the Criminal Justice System 1975 (1977) (after eliminating civil legal services for the poor from federal expenditures).

10. Hall, Organizations: Structure and Process, pp. 121-123 & 188-191 (Prentice Hall, 1972).

11. Drucker, Management: Tasks, Responsibilities and Practices ch. 46 (Harper and Row, 1974).

12. Galbraith, Designing Complex Organizations, ch. 2 (Addison-Wesley, 1973).

13. Ibid., pp. 14-18.

14. Simon, Administrative Behavior, p. 235 (Free Press, 1965).

15. California Council on Intergovernmental Relations, Allocation of Public Service Responsibilities in California, Part I (1970).

16. Indeed, only the Committee for Economic Development in the prosecution area and the Commissioners on Uniform State Laws and National Study Commission on Defense Services in the indigent defense field have recommended central (state) operation

of prosecution and defense services. Other commissions and standard setting groups have looked toward expanded central review and regulation but not direct operation.

17. MacKenzie and Tullock, The New World of Economics, ch. 17 (R.D. Irwin, 1975). See also, Niskanen, Bureaucracy and Representative Government (Aldine-Atherton, 1971).

18. Blau, Exchange and Power in Social Life (John Wiley, 1964); Packer, The Limits of the Criminal Sanction (Stanford University Press, 1968); Blumberg, Criminal Justice, (Quadrangle Books, 1967) and The Practice of Law as a Confidence Game, 1 Law and Society Review 15-29 (1967); Cole, The Decision to Prosecute, 4 Law and Society Review (1970).

19. Feeley, Two Models of the Criminal Justice System: An Organizational Perspective, 7 Law and Society Review (1973). For another interesting analysis, see Heydebrand, The Technocratic Administration of Justice (conference paper, Sept. 1976).

CHAPTER 9. CORRECTIONAL UNIFICATION: CHALLENGE AND POTENTIAL

The decade from 1965-75 has been one of intensive scrutiny of the nation's correctional apparatus, undoubtedly more pervasive than in any other period of our history. Led by a succession of national study commissions, a number of dilemmas, weak points, and shortcomings have been laid bare, not the least of which has been the fractionalized, uncoordinated character of correctional administration. Indeed, critics have been quite eloquent on the point, as illustrated by the 1971 analyses of the prestigious Advisory Commission on Intergovernmental Relations:

> "Corrections is the stepchild of the criminal justice system. Fragmented internally and isolated both physically and administratively from the rest of the system--the police, courts and prosecution--corrections tends to be forgotten by government and the public alike.
>
> Very little is "systematic" about the state-local corrections system...In most situations, administrative responsibility is divided among the state, its counties and localities; split between agencies at each level that handle adults and those that deal with juveniles; and sliced up within jurisdictions among various functions. Many functions are not even handled by the corrections system but are performed by the courts."[1]

olutions have not been wanting, but they have been slow in coming. The obvious one here - unification of correctional functions within a single state agency - had to await a growing sense of the interrelatedness of correctional functions, the so-called "corrections continuum", that only reached full pitch during the 1965-75 span.

The Unification Movement

Before 1950, "corrections" was not a term of common currency and, when used, referred primarily to prison administration. Both those in the field and those outside of it talked about prison, jails, probation and parole as self-contained systems and services rather than part of an overall correctional function. Even the Wickersham Commission, national trailblazer for total system scrutiny and correlation, eschewed references to a correctional system in its 1931 reports.[2] Like others, it analyzed and wrote about the needs and reform of prison systems, the underplayed value of probation, and the rough edges of the

parole system. Nevertheless, in contrast to its treatment of other criminal justice components, Wickersham had no formal recommendations and little dialogue to offer on central control, combination or coordination of these functions.

The historical reasons are not hard to identify. The American correctional system emerged like a pickup baseball team. Jails were here when the new republic was born, prisons came along a generation later, parole and probation still a generation beyond -- each as a reform force seeking to break away from earlier approaches and with its own structural and bureaucratic trappings. Juvenile counterparts showed similar development, in some areas, a few years behind and in others, a few years ahead of the adult evolution. Then, in the twentieth century, a slow movement began toward central groupings and combinations of components, probably influenced by general currents of administrative reform.[3] This development exhibited modest progress until the second half of the century when corrections acquired a new visibility and "total system" identity and things began to accelerate.

Beginning in the sixties, study groups and professional associations began to issue formal recommendations, "black letter" standards and model legislation for varying degrees of correctional unification.[4] These grew progressively more comprehensive until, in 1973, the National Advisory Commission on Criminal Justice Standards and Goals called on states to: "unify within the executive branch all non-federal correctional functions and programs for adults and juveniles, including service for persons awaiting trial; probation supervision; institutional confinement; community-based programs, whether prior to or during institutional confinement; and parole and other aftercare programs."

This centralist approach was seen as quite remarkable, touching as it did on the sensitivities of agencies which for years had conducted independent correctional operations (e.g., court probation departments, county jails) and coming from a group whose philosophy, at least in corrections, stressed community programs, community-based initiatives, and community planning as the dominant approach to delivery of correctional services.* Its

*Indeed, only four years later, two juvenile justice standard-setting groups, one sponsored by the Institute of Judicial Administration and the American Bar Association and the other a successor of the LEAA-sponsored National Advisory Commission, were to opt again for administrative separation of adult and juvenile corrections systems. See ABA/IJA Joint Commission on Juvenile Justice Standards, Standards Relating to Correctional Administration, Standard 2.2 (Ballinger, 1977) and National Advisory Committee on Criminal Justice Standards and Goals, Juvenile Justice and Delinquency Prevention, Standard 19.2 (Government Printing Office, 1977).

scope was even more sweeping than that of ACIR which, two years earlier, had also recommended consolidation of state correctional responsibilities in a single agency but suggested continued local administration of juvenile detention, local jails and juvenile/misdemeanant probation, subject to state regulation, standards and financial/technical assistance.

Thus, administrative unification joined the rhetoric of correctional reform as a full partner, presumably in the name of greater efficiency, clearer accountability, higher performance standards, more flexible programming and better allocation of resources. These are worthy goals and, indeed, states have been steadily moving in their direction. Since 1960, two or three states a year had been establishing or reorganizing correctional departments to bring together two or more of the traditional functions or, among the most primitive, to merge independent prison units into a single prison system. Most of these departmental configurations, however, fell far short of the National Advisory Commission prescription and, even today, the substantially unified correctional system is the exception rather than the rule.

At present, only seven states can claim integrated departments which have brought together all or substantially all recognized correctional functions (generally grouped into nine categories of activity: adult institutions; juvenile institutions; adult probation; juvenile probation; misdemeanant probation; local jails; juvenile detention; parole; and juvenile aftercare).[5] In 20 states, adult and juvenile corrections are administered by separate state agencies and, in 16, parole and/or probation is administered by an agency independent of the department which operates state institutions. This is true despite the fact that in every state, the operation of adult institutions, juvenile institutions and parole is a state rather than a local or partially local function and could thus be readily unified.

Very few states directly operate local jails and juvenile detention facilities and less than a third effectively regulate and monitor minimum standards for their operation. Probation is very much a shared function between state and local governments and, where local probation is operative, it is subject to "quality control" cognizance by the state corrections department in only a minority of cases.

The Correctional System in Brief

What, then, is the nature of the corrections "beast" that

serves conceptually as a major arm of the criminal justice system, but operates more often than not as a fragmented collection of state and local offices and agencies under diverse administrative unbrellas with little overall supervision and integration.

The correctional function concerns itself with the supervision and management of criminal offenders -- adult and juvenile. It is supposed to isolate the dangerous offender and turn others from crime. Today, the nation's correctional apparatus involves aggregate expenditures of nearly $4 billion annually (about 23% of total criminal justice outlays), custody or supervision of over 1.5 million offenders on any given day, a total work force of 225,000 and daily program operations from literally thousands of federal, state and local institutions, agencies and offices.

Approximately one-third of the offenders under sentence or custody are confined in adult or juvenile institutions (about 500,000) and the remaining two-thirds are under community supervision (probation, parole, or non-resident programs). Yet, nearly 80% of all correctional dollars go toward the maintenance of prisoners in institutions and only 20% for community supervision. The proportion of institutional personnel to probation/parole personnel is substantially the same as the dollar expenditure ratios.

There are over 600 state correctional institutions (about 300 adult and 300 juvenile, exclusive of reception centers and special diagnostic units). There are, in addition, some 4,000 local jails (detention authority of 48 hours or longer), with roughly 160,000 daily inmates. More than half of these inmates are pre-trial detainees and the remainder serve, for the most part, short-term sentences (under one year). There are also some 300 juvenile detention centers at the local level.

An unending dialogue continues about relative importance of the punitive, deterrent, reintegrative goals of the correctional process. Up to a few years ago, a reasonable consensus existed on measures to upgrade correctional performance (more staff training, better resources, diversion of the early offender, greater attention to inmate rights, more programs to prepare the offender for a productive social role, assistance in the transition to community life, maximal use of alternatives to incarceration, etc.) and a widely shared philosophy emphasizing reintegration rather than punishment as the dominant correctional technique. Recently, however, severe doubts have been raised about the rehabilitative capacity of correctional services, especially in the institutional setting, and the validity of broad discretionary powers vested in correctional authorities. As an outgrowth and while the old reform wisdom has not been fully abandoned, new calls for abolition of prisons on the one hand

and a return to "punishment" (albeit enlightened) as the proper business of the system on the other, have created more uncertainty about the future of corrections than in many years.

Throughout this vast institutional complex, with its diverse theoretical and operational viewpoints, the pleas have been insistent for comprehensive planning, rational resource allocation, and a "continuum" of services so that offenders could pass from and between different levels of supervision, custody and services without confronting unnecessary barriers of bureaucracy, jurisdiction, and agency separation. Fragmentation of the system has expressed itself primarily in terms of separation of (i) adult offender services from juvenile services, (ii) field services from institutional services, (iii) local institutions (usually misdemeanant-oriented) from state institutions; and (iv) the quasi-judicial parole decisional function from the people-management function. Divisions have been both horizontal (separate functional agencies) and vertical (state-county-local), together producing an enormously complex scene.

Each of the foregoing divisions will be discussed briefly, along with important issues raised by unification proposals, i.e., meeting legitimate needs for decentralization and community participation in service delivery, preserving valid distinctions and orientations toward adult and juvenile programming, administrative placement of integrated systems within the government structure, and appropriate roles at different governmental levels. Throughout, the reader will discern a bias in favor of (i) correctional unification, one born of impatience with the rift between rhetoric and reality about the "correctional system", and (ii) the view that the integrated system can best meet all legitimate needs -- centralization, decentralization, differential service needs, proper visibility, in the total criminal justice system, and coordinated planning, financing and operation.

Adult-Juvenile Unification

This division of function is discussed first because it has been the least and most hesitantly challenged separation of correctional functions. Early unification proposals and standards either limited their scope to adult corrections (ALI Model Penal Code, ACA Correctional Standards) or offered adult-juvenile integration as one of several alternatives (NCCD Standard Act for State Correctional Services). Even the 1967 President's Crime Commission, while referring with some disdain to the adult-juvenile split, failed to produce a clearcut recommendation for unification:

> "Today, progressive programs for adults resemble progressive programs for juveniles, but more often

than not they are administered separately to the detriment of overall planning and of continuity of programming for offenders. The ambiguity and awkwardness resulting from this division is nowhere more apparent than in the handling of older adolescent and young adult offenders who...are dealt with maladroitly by both systems."

It took the seventies and the ACIR and National Advisory Commission recommendations to come full circle and suggest adult-juvenile unification as the viable goal for correctional administration.

The National Advisory Commission, probably wisely and certainly with political adroitness, recognized that exceptions might exist to its unification standard where "because of local history or conditions" juvenile and adult corrections could "operate effectively on a separated basis." Structure, after all, is not the sole determinant of effective governmental services. Nevertheless, the due process revolution in juvenile justice and the treatment revolution in adult corrections had made old distinctions less meaningful and, as ACIR pointed out, special juvenile units and programming could be readily achieved within a unified department. Recognizing the existing frequency of separate departments handling adult and juvenile services, it, nevertheless, concluded:

"With respect to combining adult and juvenile correctional functions within a single state agency, the Commission concludes that the advantage of greater visibility of a single agency in the eyes of the public and its elected representatives merits prime consideration. Moreover, the resulting integration of services and flexible utilization of staff outweigh the advantages of having a separate organization for juvenile correctional services."

The adult-juvenile amalgam would seem sound. It need endanger no legitimate distinctions or priorities for juvenile offenders; is in keeping with the functional classification of corrections as part of our crime response system (i.e., juveniles are responsible for nearly as much crime as adults);[6] offers more strength and visibility for the perennially neglected correctional function; and promises accountability and flexibility within an already multi-faceted criminal justice system. The current drive to eliminate the "status offender" from the juvenile justice system (truants, ungovernables and other children not guilty of criminal behavior) further attenuates the rationale for continued separation of adult and juvenile correctional systems.

Adherents of the concept and desirability of separate adult and juvenile corrections departments recognize the possibility

of establishing special juvenile services divisions and maintaining basic values such as adult-child physical separation in totally unified correctional systems. However, they express concern that the latter may bring reduced visibility for juvenile corrections, financial disadvantages in allocating scarce budget resources, and the dominance of a kind of "backward", custody-oriented and non-progressive thinking (or, indeed, preoccupation with adult corrections problems) that has in the past characterized adult systems.* Unfortunately, little documentation of these concerns exists and it is quite hard to discern lesser standards of juvenile corrections performance in progressive "combined department" states such as Wisconsin, Illinois and Minnesota than in progressive "separate department" states such as Florida, California and Kentucky.

Even conceding a greater measure of visibility and public sympathy historically enjoyed by juvenile corrections agencies* (and probably because of this factor), administrative unification presents exciting possibilities of enrichment from the juvenile services heritage. The oft expressed hope that the juvenile corrections outlook would add strength, flexibility, and political clout to a unified department and permit decisionmakers to sort out priorities, resolve confusions about current service investments, and make more rational policy and resource allocation decisions among alternative programs (whether redounding to the benefit or disadvantage of particular components) remains a persuasive rationale for the unification stance.

Institutional-Field Services Unification

Originally probation was seen as more of an alternative to or absence of correctional treatment than a part of it. That is why it initially was made available as a suspension of sentence rather than execution of an alternative type of sentence (its present conceptual status).

Within corrections itself, there seems little argument for continued administrative separation of institutional services and community supervision (parole/probation) services. What disagreement exists derives from (i) the historical administration of probation services by the courts and (ii) strong feelings that the local, community-based character of probation warrants autonomy

*The recent Council of State Governments study of correctional restructuring seems to confirm the greater attractiveness of juvenile corrections programs and danger of fiscal cutbacks in "hard times" when lumped with fixed-cost adult institutional systems. However, interviewjudgements rather than actual fiscal histories form the major CSG data base. Reorganization of State Corrections Agencies: A Decade of Experience (Lexington, Kentucky, 1977).

from central supervision and policy-setting.

Today, statewide probation systems exist in 26 states, and several more feature a statewide structure but have independent local offices in major cities and communities. It is difficult to make the argument that the probation function must inherently be placed in courts. It is well and alive in too many correctional systems to do this. Indeed, the variety of community program options now existing between probation on the one hand and total confinement on the other (halfway houses, work release, educational furlough, pretrial diversion) militate against bureaucratic walls between the "confiners" and the "supervisors". Such barriers can create and have created strange and irrational divisions of function between the two as each group exercises jurisdiction over offenders who seem to be operating in the community on much the same basis (probationers, parolees, residentially placed offenders and community program groups).

Probation staff have historically furnished one service to courts which, it might be argued, needs to be administratively located within the courts; that is, the "social history" or "probation investigation" which serves as a vital input to the sentencing decision. Here, too, we have models for delivery of such services from separate probation or corrections departments; but it is entirely feasible, if the court nexus were seen as overriding, to separate the presentence investigation function from the probation supervision function and leave the former under court direction. Indeed, proposals to transfer probation from the courts to an integrated correctional system have, in some instances, suggested the retention of pretrial investigation officers as court staff.

With respect to local autonomy and delivery, incorporation of state probation services within a statewide system necessarily requires a decentralized community-based structure. The local presence cannot and should not be avoided. Given this need, appropriate measures of decentralization (e.g., district or regional office structures) can be legislated into each state system with the added advantage of central policy-setting, and manpower/performance/training standards.

State/Local Institutional Unification

Probably the greatest measure of functional separation today exists between state institutions (primarily for felony offenders) and local institutions (primarily for pretrial detainees and misdemeanant offenders). In the adult sector, for example, only six state correctional departments actually run local jails as well as state institutions.

In this area, integration can be approached in two basic ways.

The first is establishment, inspection, and enforcement by the state system of minimum standards for facilities personnel, and programs within local institutions. Nominally, most states have made some moves in this direction but, in actuality, less than a handful of states appear to have either adequate authority or programs for jail and juvenile detention standards. A 1974 American Bar Association survey on the subject revealed only 15 states with full authority to prescribe and enforce minimum standards for local jails and juvenile detention facilities although many had limited inspection powers (often without teeth) over some of these facilities and, even where the standards and enforcement battle was won in the legislature, implementation proved to be a long and difficult process.[8]

Because of the substandard conditions of many local jails and the unsatisfactory headway made by the jail standards movement, recent reform proposals have advocated direct state takeover of local jails. Indeed, the National Advisory Commission called this "the most important and perhaps the most difficult step" toward unification of corrections. This makes considerable sense in terms of fiscal support and the new focus on integrated community corrections, but is probably farther from widespread realization than adult-juvenile unification or field-institutional unification. Since the President's Crime Commission made this a key structural recommendation ten years ago in its correctional proposals, no new state has assumed administrative and fiscal responsibility for local jails.

The important factor here is that states have either the "regulatory" or "direct administration" option to achieve local-state institutional integration. There has been too little of either to show progress with a deplorable and worsening local jail problem.

Parole Decision-Making

Students of corrections have long recognized the obvious interconnectedness of parole boards to the corrections process. Even the early consolidation proposals contemplated placement of parole boards under the corrections umbrella (a position facilitated by state operation of both the parole and prison systems). Recognizing the quasi-judicial character of parole granting, however, virtually all of these proposals sought to assure the decisional independence of the parole authority from the correctional department. That is, parole boards were to be autonomous in their decision-making functions although administratively attached to the corrections department. A secondary issue was whether parole boards themselves should supervise parole field staff or the staff organization should be under the authority of departmental field services. The latter solution seemed compelling,

especially in light of the similarity and fungibility of parole and probation casework; and that is the direction in which the reform models, as well as the state unification movement, have gone.

So long as there is a discretionary parole granting component within corrections -- and credible studies have recently suggested some far-reaching adjustments and modifications in traditional parole decision-making -- it too should reside administratively in the unified corrections department. Such a joinder provides considerable flexibility in introducing innovations such as advance parole date determination (e.g., the recent California models), parole contract programs (e.g.; Mutual Agreement Programming in Wisconsin, Michigan and Florida), and combining the field operations of probation and parole (some 30 states).* If experimentation were to go so far as to return release discretion to the courts (e.g., Richard McGee proposals) or eliminate parole entirely (e.g., David Fogel proposal), corrections would be losing the historic function in toto or to another criminal justice component rather than fragmenting it from either.[9] These speculations, of course, are not meant to assert that satisfactory levels of coordination cannot be achieved by organizationally separate units (as has been attained within the federal system between the Bureau of Prisons, Parole Board and Administrative Office of the Courts) but, rather, that long

*The proposals have ranged from early determination of parole dates just after conviction and at the time of initial reception and diagnostic evaluation (Norval Morris, 1974) to formal contracts between institution, parole authority and inmate specifying conditions and goals to be met to earn parole within a specified period or automatically upon attainment (Lieberg, 1973), to elimination of parole boards and vesting of release authority in the judiciary (a special sentence review division) to be exercised by periodic review of longer sentences (McGee, 1974) to abandonment of parole boards and parole release in favor of fixed sentences with mandatory "good time" reduction credits (Fogel, 1975) to elimination of parole systems and supervision with "presumptive sentencing" and a concurrent shortening of long American felony sentences (Von Hirsch, 1976) to elimination of parole supervision if the concept of parole release itself proves politically impervious to change (Stanley, 1976) to drastic limitation of parole release terms and sentence reduction powers conjoined with standardized "presumptive sentence" terms (20th Century Fund, 1976) to elimination of parole and substitution of an "independent releasing authority" establishing fixed dates of release shortly after confinement (American Bar Association Prisoner Legal Status Standards, tent. 1977) to establishment of a sentencing commission to prescribe presumptive sentences for trial courts with no parole after release and a heavy burden to justify departure from sentencing guidelines (Commissioners on Uniform State Laws, tent. 1977).

run reliance on such coordination seems less dependable than administrative joinder.

Decentralization of Unified Corrections Systems

The major correctional components currently have their decentralized structures (county probation departments, parole districts, local jails, juvenile detention facilities). These will always be necessary, but serious question may be raised as to whether, in present form, they adequately serve the needs of the corrections continuum. Just as the integrated statewide department combines adult, juvenile, institutional, probation, parole and community corrections units, the local branches of the system should, it would seem, enjoy a comparable measure of integration. Very few instances of integrated local corrections departments can be found in this country. Jails are maintained distinct from the probation service which is usually maintained distinct from the new pretrial diversion programs. Nevertheless, we are beginning to see calls for consolidation at the local level. This is evidenced in the concept of the "integrated pretrial services agency" and the combination of jail/probation authority in such places as San Diego County, California and Ramsey County, Minnesota (the latter stimulated by Minnesota's pioneering Community Corrections Act of 1973).

A second aspect of decentralization is the division of large correctional systems into manageable size through regional units. As greater levels of unification are achieved, correctional systems will attain larger sizes and require regional structures all the more. Here, regional units based on the historical divisions, i.e., separate networks of local or district offices for parole, probation, institutions, etc. can be counterproductive. The answer, appearing for the first time among unified departments, is to establish regions which are responsible and provide unified loci for all correctional services in the region -- prisons, jails, probation, parole, diversion, etc. This may require some "tricky" planning where state prison facilities are not evenly distributed across a state or where some functions require smaller regional or local subunits than others. Indeed, some authorities in favor of regional integration make a persuasive case for continued control of large prisons. But, if unification of corrections is to be a reality, then, it must be achieved at regional and local as well as state levels -- and, if so achieved, may provide better decentralization and coordination options than were ever attainable under the fractionalized corrections structures.

The Swedish correctional system, for example, has long been based on a model of integrated regional corrections units. A decade ago, there were five geographic divisions, each with a central prison and other institutional, prerelease, probation, parole and aftercare services.

These were responsible for all correctional activity within their areas except facilities for female, youthful and habitual offenders which continued to be managed at the national level. The divisions were, in effect, five operationally distinct correctional systems. Under a new regional plan scheduled for full implementation by 1978, the geographical units will expand to 14 with more emphasis on local responsibility. Every region will now correspond to one or two counties and contain one remand prison plus a number of local institutions and community care offices.

The U.S. Bureau of Prison's recent decentralization has achieved similar results within the limits of the Bureau's institutional jurisdiction (including de facto integration with U.S. Parole Board regions). Under the federal plan, five regional directors were named to help cope with the Bureau's increasing size and complexity (up from seven institutions when created in 1930 to 47 institutions today, ranging from penitentiaries to halfway houses and an inmate population in excess of 28,000 at the beginning of 1977). Serviced by five headquarters support divisions (program, planning, medical services, prison industries, research and training) and, in turn, relying on further decentralization in the institutions below through a semi-autonomous "functional unit" team management system (50 to 100 inmates per unit), the regional chiefs superintend day-to-day administration of most correctional functions. Such regional organization is probably a must for larger states, i.e., five million or more population and is now being implemented by the recently unified Florida adult corrections system.[10]

Minnesota, in the mid-sized state class (about 4 million population), offers probably the best example of a largely unified state corrections system* working toward integrated, decentralized service delivery at local levels (county and, in less populous areas, multi-county). Skipping the regional configuration of larger systems such as those of Florida and the federal government, Minnesota has been encouraging local unification through a subsidy/incentives approach initiated under its Community Corrections Act of 1973. The state is planning to commit in excess of $12 million in the 1978-79 biennium to this community-focussed program which requires participating counties to produce coordinated service delivery plans, distributes funds pursuant to formulas based primarily on fiscal need, "taxes" participants for the cost of sending offenders to state institutions, anticipates considerable local autonomy in correctional

*The Minnesota Department of Corrections combines both adult and juvenile corrections functions (institutions, parole and aftercare) and some probation responsibilities (primarily adult) but not jails or juvenile detention (which have remained local functions).

management and features a state role of monitoring, technical assistance and standard-setting.

In short, the Minnesota plan is aimed at a combination of state central authority and "backup" support counterposed against a dominant service provider role vested in counties and integrated either tightly (e.g., the Ramsey County/St. Paul unified corrections department embracing virtually all corrections functions including parole supervision of state prison releasees) or not so tightly (e.g., advisory boards in multi-county groupings which seek voluntary coordination through the Act's required plans but sometimes settle for less). Now in its fourth year of operation, the Minnesota decentralization approach exhibits success and vigor (having expanded from the three original participating county/regions to more than a dozen) and has attracted considerable national interest and the beginnings of emulation elsewhere (e.g., the parallel 1977 Oregon Community Corrections Act providing over $13 million in 1977-79 biennium for local grants).

Governmental Placement of Unified Systems

The decade 1965-75 witnessed an unprecedented wave of state government modernization. In order to increase executive control, accountability and the quality of service delivery, the number of independent executive departments in most states was drastically reduced through consolidations and groupings of existing agencies along functional lines.[12] This has been a sensible public administration development and continues today. With the steady proliferation of government programs and roles, it is probably here to stay. Single functions such as corrections, however they might aspire for independent cabinet status, will need, in most instances, to plan on being administratively located in a larger complex of government service functions.

This has, in fact, happened and when the 1965-75 reorganizations produced new "human services" superagencies in nearly half the states, adult or juvenile corrections departments, were tucked into most of them. The result was the strengthening of an already existing identification of the corrections function with welfare, mental health and social service agencies. In 1965, there were almost 25 states in which corrections services (adult or juvenile) were located in health/welfare/institutional umbrella agencies. By 1975, and even with the executive reorganizations, this picture remained substantially the same. Over two-fifths of all adult corrections departments and nearly two-thirds of all juvenile corrections departments were so placed. This grouping was perhaps unfortunate for 1965-75 was also a decade of awakening to the criminal justice system as a viable functional grouping. Had the "reformation" come earlier, corrections units might have been as easily, and perhaps more rationally, grouped in "justice" superagencies rather than "human services" superagencies. The foregoing (the "justice" or "public safety" group-

ing) was actually achieved in a few state reorganizations (e.g., Kentucky and Maryland) and such an arrangement might well be endorsed as more consistent with modern correctional philosophy.

That is, at a time when the "medical model" was dying as a viable correctional approach and the hue-and-cry was being raised to narrow the corrections base by banishing juvenile status offenses, socio-medical problems and victimless crime actors, states were busy placing corrections in the very departments that dealt with these problems of health, neglect and social maladjustment. None thought to translate the increased and increasing identification of corrections with the justice model into organizational unity.[13]

Many of the human services departments are already considered too large for manageability. Two states disengaged their adult correctional functions only a few years after major state executive reorganizations placed them there.* In light of these developments, the unified corrections department within a coordinated criminal justice system seems much more suited to an administrative clustering with justice functions (police, criminal justice planning agencies, prosecution, defense) than the mammoth human services complex (welfare, the insane, health, social service programs). Moreover, the justice clustering would not preclude service purchase arrangements, as needed, from human services departments, education departments, labor and employment security departments, and other governmental agencies in order to tap their special resources and competencies.

Conclusions

Too much theoretical movement, practical politics and reform wisdom in the criminal justice area suggests greater measures of correctional unification for the mandate to be ignored. Indeed, events of the past decade and further acceleration in the mid-seventies indicates that reorganization to this end has become a priority of lawmakers, executive branch chiefs and correctional leaders themselves. If properly appreciative of organizational knowledge, it may hold the key not only to administrative accountability, control, and efficiency but provide a more rational basis for effectively decentralized operations and achievement of corrections "trump card" in offender treatment -- community-based corrections.

While governmental structure can never be a substitute for

*These are Florida and Delaware. In addition, New Jersey undertook a similar disengagement in the mid-seventies of a prison system that had long been a part of an umbrella human services department.

public commitment, adequate resources, effective leadership and well-trained personnel, it may well serve as a facilitator of what corrections needs so desperately to achieve -- comprehensive, integrated, and flexible programming and service delivery. As such, the unified state corrections department, embracing all correctional functions on either a direct administration or regulatory basis and properly organized for local participation and regional service delivery, merits attention. Similarly, to the extent that correctional activities and departments must be placed within larger functional groupings in state and local government, it is suggested that the "criminal justice" umbrella agency may have more to offer than the "human services" or "institutions" department which now reigns as the most common locus for correctional system activities. Together, these approaches may help strengthen not only correctional services but make a contribution to more rational and manageable government-at-large within our complex federal system.

FOOTNOTES TO CHAPTER 9

1. Advisory Commission on Intergovernmental Relations, Correctional Reform - For A More Perfect Union (1971) p. 1.

2. National Commission on Law Observance and Enforcement, Report on Penal Institutions, Probation and Parole (Patterson-Smith Reprint Series, 1931).

3. Council of State Governments, Reorganization of State Corrections Agencies: A Decade of Experience (Lexington, Kentucky, 1976) pp. 2-8; Nagel, The New Red Barn: A Critical Look at the Modern American Prison (Walker & Co., 1973) pp. 4-12; Carter, McGee and Nelson, Corrections in America (Lippincott, 1975) ch. 10.

4. See American Correctional Association, Manual of Correctional Standards, ch. 2 (1966 Rev.), National Council on Crime and Delinquency, Standard Act for State Correctional Services (1966), American Law Institute, Model Penal Code, Part IV (1962); Advisory Commission on Intergovernmental Relations, State Department of Corrections Act (1971); National Advisory Commission on Criminal Justice Standards and Goals, Corrections Report, Standard 16.4 (1973).

5. Alaska, Rhode Island, Vermont, Delaware, Maine, Virginia and Tennessee (the latter three lacking authority over local jails or juvenile detention). A few additional states have achieved fully integrated adult corrections systems (e.g., Kentucky and Maryland) or juvenile corrections systems (e.g., Georgia and Idaho), again with some exceptions on local jails and detention.

6. National arrest data suggest juvenile participation (i.e., under age 18) in almost half of all major property crime and nearly one quarter of all major violent crime. FBI, Uniform Crime Reports 1975, Table 36 (Aug. 1976).

7. Alaska, Rhode Island, Connecticut, Delaware, Vermont and North Carolina. (Similarly, in only six states is all juvenile detention operated by a state agency).

8. See American Bar Association, Survey and Handbook on State Standards and Inspection Legislation for Jails and Juvenile Detention Facilities, pp. 5-15 (Aug. 1974).

9. See Norval Morris, The Future of Imprisonment, University of Chicago Press - 1975; Richard A. McGee, A New Look at Sentencing: Part II, 38 Federal Probation 3 (Fall 1974); David Fogel, We Are the Living Proof: The Justice Model for Corrections, W.H. Anderson - 1975. The California advance parole date procedure encountered trouble in court challenges but was replaced by a determinate sentencing law (with no parole except for life sentences) which took effect July 1, 1977.

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10. The new Florida system features five integrated regions under a single director (adult institutions, parole and probation, community programs, youth programs). On the Swedish system, see Morris, Lessons from the Adult Correctional System of Sweden, 30 Federal Probation 7 (1966) and Salomon, Lessons from the Swedish Criminal Justice System: A Reappraisal, 40 Federal Probation 40 (1976).

11. Council of State Government, A State-Supported Local Corrections System: The Minnesota Experience (Lexington, Kentucky, Feb. 1977); Minnesota Department of Corrections, Community Corrections Act - A Progress Report of 1973-74 (1975). For subsidy systems in other states, see Council of State Governments, State Subsidies to Local Corrections: A Summary of Programs (Lexington, Kentucky, June 1977).

12. Council of State Governments, Reorganization in the States (1972) and Human Services Integration: State Functions in Implementation (1974).

13. The one exception was the Council for Economic Development, the well-known public issues study group of businessmen, economists and public administration experts who recommended that each state establish a department of justice drawing together all criminal justice functions except a constitutionally separate judicial branch. Reducing Crime and Assuring Justice, pp. 64-66 (1972).

CHAPTER 10. GOVERNMENTAL CRISIS AND CRIMINAL JUSTICE CONSOLIDATION: A CHALLENGE REVISITED

Ten years ago, the author and a colleague wrote a paper entitled Criminal Administration and the Local Government Crisis -- The Challenge of Consolidation. This was probably the most popular article they had anything to do with. Ultimately, it was published in four journals (The Prosecutor, Georgetown Law Journal, The American County and California Journal of Law Enforcement) and then included in a hard-cover volume on urban problems (Crisis in Urban Government, Jefferson - 1971).[1]

The Original "Challenge" Paper

The 1968 "Challenge" article described and dealt with two crises -- the "local government crisis" and the "law enforcement crisis." In the former instance, it focussed on the fiscal plight of large cities and municipal government. In the latter, it dwelt on the fragmented, duplicative and uncoordinated character of criminal justice services, calling for greater measures of consolidation and unification within all system components -- police, courts, prosecution and corrections.

Although the authors were criminal justice "professionals" at one time, they probably demonstrated most insight on the public finance issue. Indeed, their declarations on the subject may have won them a place among the "advance guard" who saw and forecast the era of municipal fiscal crisis which ripened eight years later with the New York City default:

> "By local government crisis, the authors refer to the near impossible demands for financing and for delivery of needed public services facing local government structures as America moves into the 1970's. By any test, the capabilities of the nation's 3,000 counties, 18,000 municipalities, 17,000 township governments and 18,000 special governmental districts, as presently constituted, to do justice to the needs of urban America stand in grave doubt.
>
> With disturbing frequency, large cities and their mayors are proclaiming fiscal emergencies. These are no longer projections of what will happen five years hence, but of "insolvency" about to descend in the next fiscal quarter. In February of this year (1969) the Mayor of Philadelphia warned that the city's schools might have to close down at the end of March. There

was only enough money to pay policemen through mid-April, the municipal hospital had run out of drug funds and the city had postponed 20 miles of street paving and bridge and alley repairs for lack of money. The mayor of Pittsburgh was battling for a unique new "institution and service" tax to help meet what he called the greatest financial crisis in Pittsburgh's history, this situation precipitated by a $5 million settlement on voter-approved, binding arbitration of policemen and firemen disputes. A few months earlier, Youngstown, Ohio was forced to temporarily close its public schools for failure of the voters to approve a needed school tax increase (sixth rejection in two years). East St. Louis, Illinois, which has had to resort to the banks each year for wage assignment loans when its cash balances dipped to zero, was forced to miss a city payroll in its last "rite of bankruptcy" and to learn that this might be the end of the bank credit line for its mounting deficits and shrinking tax base.

Pointing to this "depression of government" on the horizon, the Advisory Commission of Intergovernmental Relations, in its landmark study, Fiscal Balance in the American Federal System, bore down heavily on the fractionalization in local government services and revenue bases that American affluence has thus far enables us to tolerate. Confirming the mounting trend of municipal fiscal failure, the Advisory Commission found that of 12 large metropolitan complexes subjected to a special in-depth analysis, 10 would soon have central city expenditure demands exceeding yields from existing revenue sources. As part of its prescription for cure, the Commission renewed a call for consolidation, establishment of metropolitan government, and combination of units to bring order to the chaos as the nation moved forward."

With respect to the "law enforcement" crisis, the authors were probably more evangelical than prophetic. Departing from a significant but secondary theme of the landmark 1967 study of the President's Commission on Law Enforcement and Administration of Justice, they (i) drew attention to the vivid "non-system" portraits painted by the Commission, especially in their structural aspects,[2] (ii) cited the handful of Commission recommendations calling for consolidation, merger and better coordination of services as well as prior professional standards and model codes endorsing system unification,[3] and (iii) urged not merely better cooperation, communication and joint planning but downright consolidation, centralization, and combination of services in virtually all criminal justice sectors:

"The second crisis, the law enforcement crisis, presses equally on our concern and anxieties...Here fractionalization, fiscal impotence, duplication and lack of coordination are as much a part of the scene as in local government-at-large.

In 1967, a presidential crime commission produced an extensive inventory of needs to improve the nation's response to crime in all sectors of criminal justice administration. Prominent among its recommendations, but by no means inclusive of all of them, were a group designed to cut through present irrational, unprofessional or duplicative organization of criminal justice agencies. The solutions were a combination of efforts by way of consolidation, regionalism, pooling, or joint services touching all components of law enforcement. The targets were such phenomena as (i) 40,000 (sic) separate and independent police agencies at the State and local level, (ii) state court systems lacking centralized supervision or allocation of resources and workloads, (iii) prosecution systems giving the majority of the nation's governmental units no better than the services of part-time prosecutors deriving major income from private clients, (iv) correctional systems where rehabilitative resources, philosophy and programs are divided among agencies servicing independent prison, parole, and probation systems.

* * *

This, then, is the challenge of consolidation in the various arenas of our criminal justice complex. For the police service, it means radical combination of inordinately large numbers of independent agencies, coupled with shared support resources through regional or central arrangements and facilities. For corrections, it means merger of key services often administered as separate systems. For courts, it means central integration and supervision of existing individual units. And for prosecution, it means regional or district organization facilitating both central supervision and the development of a full-time professional force responsible for administration of prosecution throughout the system. For the taxpaying public, it is probably not likely that consolidation will bring absolute dollar savings but rather more efficient crime control services per dollar investment.

While it is clear that consolidation of itself cannot solve our law enforcement problems, it is incredible that this necessary ingredient of efficient public administration has had such difficulty making headway in

the face of the impending urban crisis, increasing public alarm over crime and disorder, and our growing understanding that even local autonomy requires strong, sensible, cost-effective arrangements to realize its full potential for governmental service. Hopefully, and perhaps inevitably, the seventies will witness a massive merger and integration of criminal justice services as part of the total local government reform needed to cope with the urban plight."

The objective of this final essay is to take stock of what has happened since the first "Challenge" paper in terms of the "two crises" and its prescriptions for streamlining the criminal justice system.

The Local Government Crisis: Fiscal Developments

With respect to the general crisis in local government, the record since 1968 is not a happy one but reasonably clear.

-- The wave of large city fiscal emergencies abated somewhat and a period of remission set in as most cities found new bond issues or alternate funding or debt renewal devices to keep operations going without default or other fiscal breakdown.

-- The problem did not go away and mayors continued to sound the alarm and demand federal relief (and, to a lesser extent, state relief) as debt and service costs grew and tax base dwindled.

-- General revenue sharing came in 1972 and, with it, some $35 billion in federal aid through fiscal year 1977.[4]

-- There was no wave of local government consolidation -- not even a trickle beyond a few impressive oddities (Indianapolis-Marion County, Lexington-Fayette County, Columbus-Muscogee County)[5] and public administration experts turned to "functional consolidation", "urban federations", "two-tiered metropolitan government" and any other arrangements that would combine, reassign, or otherwise reorganize governmental service responsibilities while leaving existing county-municipal complexes in place and without the painful need for voter-approved merger.[6]

-- Following a mild step-up in serious municipal defaults and funding crises (none involving major cities), New York City, the nation's largest and most expensive municipality, went to the brink of default in late

1975, losing access to money markets, sending shock waves across the nation, initiating a form of quasi-state receivership and requiring an ambitious service cutback and fiscal austerity program.[7]

-- Despite claims of the uniqueness of the "Big Apple's" situation and assurances that few or no other major cities were "on the brink", a growing body of expert opinion began to project that the difficult conditions confronting the large and decaying central cities, particularly in the Northeast and near Midwest, promised widespread difficulty of the New York City variety in other metropolitan areas.[8]

The Law Enforcement Crisis: Structural Developments

In terms of the "law enforcement" crisis and better organization of criminal justice services, the ten year span has not been marked by spectacular progress but neither is the record an inactive one and, in some areas, growing sophistication has revealed gaps and problems in the "consolidationist" position.

-- Subsequent study groups and professional associations joined in the call for unification and centralization of criminal justice components.[9] In many instances, their standards were more rigid and less compromising than predecessors (e.g., National Advisory Commission on Criminal Justice Standards and Goals re correctional unification; American Bar Association re court unification; Advisory Commission on Intergovernmental Relations re state-level prosecution supervision; and Committee for Economic Development on consolidation of criminal justice functions within a state department of justice).

-- The record among the states in actual achievement of structural unification has been less impressive than the formulations of the standard-setters.[10] Nevertheless in some areas (courts, defender services, and some components of corrections), the pace of unification noticeably quickened and even reached record proportions.

-- The advent of major federal grant-in-aid support for crime control (nearly $6 billion under the Omnibus Crime Control Act through 1977) brought with it a national superstructure of agencies dedicated to comprehensive criminal justice planning and

coordination at state, regional and local levels.[11] This produced a new push behind the reform wisdom on unification -- sometimes marked, sometimes low key and sometimes backed by funding and planning priorities.

-- A new appreciation of the values of decentralization, citizen participation, and movement of decisionmaking down the bureaucratic scale was introduced to public administrators in general and criminal justice administrators in particular. The resulting message suggested that centralization was not enough for responsive, efficient and client-oriented services and that the unification movement had been ignoring an equally important need for effective decentralization techniques.[12]

-- The developing field of management and organizational theory offered a message that finally began to break through, i.e., that centralized, hierarchical organization was just one alternative in the design and coordination of effective public and private services and tended to be overemphasized as against equally important considerations of mission, task, complexity, environment, internal communication patterns, quality of leadership and human and interpersonal dynamics.[13]

-- A few first-rate scholars and analysts began to pinpoint the lack of solid empirical evidence that centralization and consolidation would really improve efficiency, save money, promote fairness or otherwise strengthen criminal justice capabilities.

-- A new focus on integrated regional and local structures, with considerable decisionmaking and administrative latitude, began to emerge as an overlay to the unification position, blending nicely with the long established national tradition of "localism" in criminal justice services.

-- In terms of crime and criminal justice, growth and frustration were the watchwords. Crime continued the steady growth ushered in with the sixties, criminal justice expenditures more than doubled, the criminal justice work force grew substantially, and crime and public safety retained its place in everyone's public opinion polls as one of the nation's top domestic problems. Neither structural reform nor anything else (new techniques, more resources, better planning) seemed to make a difference and virtually every major assumption or practice of the system was brought under critical and adverse scrutiny (e.g., rehabilitation

and parole in corrections, plea bargaining in prosecution, sentencing in the courts, sanction patterns in criminal codes, patrol and investigation in policing, and loosely regulated, broadly exercised discretion within all system components).

This array of currents and developments merits elaboration.

The Standard-Setters

Following on the heels of the 1967 President's Crime Commission was a rather steady succession of national study commissions and professional standard-setting efforts. These largely echoed the calls of earlier studies and the "Challenge" paper for greater rationality, less fragmentation, and more centralization in criminal justice structure.

In 1971, the Advisory Commission on Intergovernmental Relations, a federally-constituted national analysis group with considerable expertise in governmental programs, public finance and federal structure, completed an extensive criminal justice study. ACIR took the basic (and at times amorphous) unification concepts of the President's Crime Commission and fleshed them out with detail, public policy analysis and even model legislation.[14] To illustrate: (i) on correctional unification, it called for a state department of corrections operating all adult and juvenile correctional functions except local jails, juvenile detention facilities and misdemeanant and juvenile probation services (as to which it would exercise funding, standard-setting and regulatory authority);[15] (ii) in prosecution, it called for attorney general inspection and intervention authority over local prosecutors, elimination of part-time prosecutors, and 50% state subsidies for prosecution costs,[16] (iii) in policing, it offered a specific standard for requiring small department consolidation (inability to provide round-the-clock basic patrol) and a host of recommendations for cooperative policing and support arrangements in metropolitan areas, and state-level facilities, standards and backup for local forces.[17]

The National Advisory Commission on Criminal Justice Standards and Goals (1973), a federally-supported, criminal justice standard-setting program, also advanced the consolidationist stance. In corrections, it went to the ultimate of a completely unified state department directing all correctional programs;[18] in courts, its adherence to a centrally administered, simplified court structure with only one trial court and a single level of judicial officers was perhaps the "purest" formulation yet of the unified court concept;[19] in prosecution, it abandoned earlier

notions of centralized watchdog and policy functions and asked only for state technical assistance offices run by prosecutor organizations.[20]

Other groups contributed to the centralization liturgy. The prestigious Committee for Economic Development, in a special criminal justice analysis, shocked everyone by calling for virtually complete consolidation of criminal justice functions under a State Department of Justice.[21] The only excepted functions were to be urban police forces and, of course, the nation's constitutionally separate judicial apparatus. Standard-setting projects of the American Bar Association further developed the ABA'S strong stance on unified, centrally administered court systems[22] and supported the notion of some state attorney general supervision over local prosecution,[23] but were rather weak on defender system unification (leaving that to local option)[24] and had little to say on police consolidation.[25]

Implementation of Structural Reform

A good deal of unification has taken place since the 1968 "Challenge" article. However, the record is quite uneven among the various criminal justice components.

Courts. Developments in the court area have probably been most dramatic. There the concept of court unification has been active (hesitantly at first) since Roscoe Pound embodied the basic elements in his historic 1906 address on "The Cause of Popular Dissatisfaction with the Administration of Justice." Despite a succession of studies, professional standards and model codes endorsing that stance with increasing strength, and at regular intervals, progress was painfully slow until the late sixties, The original "Challenge" article could cite no more than a dozen states that had managed to achieve significant levels of unification following a generation of advocacy (nine of these in the immediately preceding decade).[26] However, in the ten years following, the "lid came off" and the number of states with substantially unified systems more than doubled -- a remarkable record considering not only the complex legislative overhaul needed to effect court reorganization but the almost inevitable requirement of state constitutional amendment as an initial step. Thus, if one is not overly compulsive about definitions of court unification (and the experts complain about variations and vagueness in the different formulations), a majority of the states can be identified as "having arrived" or being well underway through initiatives centered largely in the sixties and early seventies,[27] and "the beat goes on" today.

Corrections. Correctional unification was busily in progress

at the time of the original "Challenge" article. Indeed, a few smaller states had produced substantially centralized systems almost from the time penitentiary systems emerged in this country.[28] Thus, the President's Crime Commission, aided by the comprehensive corrections survey conducted for it in 1965 by NCCD, was able to identify three states with substantially unified systems, 13 states with combined adult and juvenile correctional systems, and 14 states with integrated probation and institutional systems.[29]

In corrections, there is more differentiation of function and, therefore, more disparate elements to centralize or combine than in other criminal justice components -- adult institutions, juvenile institutions, adult jails and detention, juvenile detention, adult parole, juvenile aftercare, adult probation and juvenile probation. All of these evolved in most states as organizationally separate and distinct functions. The span from 1968-78 saw little new achievement in total system unification but considerable success in consolidation of major sub-functions. For example, the number of combined juvenile-adult systems more than doubled (from 13 to 30 states) as did the number of state departments with combined institutions and field supervision authority (from 14 to 34 states).[30] Indeed, a 1965-1975 tracking study by the Council of State Governments showed that 42 of the 50 states engaged in major corrections reorganization initiatives during this period, almost all in the direction of greater unification and integration of services.

Defense Services. Indigent defense exhibited the most dramatic growth in scope, manpower, and financing of all criminal justice components in the period under examination. This was, of course, the product of the succession of Supreme Court decisions mandating the provision of free counsel to indigent defendants in felony cases (Gideon v. Wainwright in 1963), juvenile cases (In re Gault in 1967) and misdemeanor prosecutions carrying possible jail terms (Argersinger v. Hamlin in 1972).[31] Perhaps because it was a relative "newcomer" and did not have to contend with entrenched traditions of localism confronting other functions (e.g., police and prosecution), defender systems gravitated quite rapidly toward statewide organization. Following establishment of the first statewide defender system in New Jersey (1967), some 13 more states launched centrally administered systems in the short span of a half-dozen years.[32] State financing of defender services without central administration has been initiated in three more states.

Police Services. Police consolidation since the "Challenge" paper has, except for one significant movement, been quite modest. The political resistance to merger through municipal annexation, city-county consolidation, establishment of police

districts, or formal combination of departments has left this kind of activity at a virtual standstill. Only a handful of such formal consolidations occurred since 1968.[33] However, the technique of "functional consolidation" through interagency contract has started to boom. Here, a small department in effect "merges" with a larger one when its municipality discontinues direct provision of police services and contracts with the larger jurisdiction for its policing needs. In 1968, it appears that there were not many more than 100 such contract policing arrangements in the nation (i.e., for full services), most of them centered in a half-dozen states.[34] By 1976, a special study project of the National Sheriff's Association had documented the existence of over 600 "full service" contract policing arrangements (i.e., agreements by a local government to buy basic patrol services from another government rather than special services to supplement an existing police force's capabilities).[35] Most of these were arrangements of small municipalities with county sheriff or county police departments but contract services are also being provided by larger departments and state police forces to smaller local entities.

Beyond the contract policing "explosion", there has undoubtedly been an increase in cooperative agreements for provision of law enforcement staff, auxiliary and special task force services as well as an expansion of state police backup services to local forces. The extent of this expanding network of mutual agreement assistance is, however, difficult to identify.

Prosecution. Prosecution has probably remained the most stable and least affected criminal justice component in terms of central supervision or regional/district organization. Despite repeated recommendations for the elimination of part-time prosecutors (now operating over 50% of all prosecutive offices, most in non-populous areas) and some measure of state-level supervision and policy setting over local prosecutors, little implementation had taken place until the mid-seventies when a small cluster of states began to move on the full-time prosecutor concept. Moreover, longstanding statutory powers in some state attorneys general to intervene, supersede, and monitor local prosecution activities seem, if anything, to be falling into greater disuse.[36]

The one major development in prosecutive coordination has been the establishment of state technical assistance organizations to provide support services to local prosecutors. Often operated by local prosecutors associations and sometimes by the state attorney general, there are now more than 30 such units with full-time staff where less than a handful existed at the time of the "Challenge" article.[37]

Future Outlook. Prospects for the future show a continuation of this flurry of unification and consolidation activity,

subject to the different paces of change which pervade the most autonomous local functions (i.e., prosecution and police) as opposed to these with some tradition of state-level interest, participation and supervision (police, courts and defense). In the 50-state survey of unification, consolidation and coordination efforts since the 1973 reports of the National Advisory Commission on Criminal Justice Standards and Goals (chapter 7 supra), a substantial picture of serious planning and recent implementation of unification initiatives was revealed in most states.[38] Only seven states (15% of respondents) reported no unification action at all since 1973 and 35 states (75% respondents) reported significant unification initiatives (major planning or actual implementation) in at least two of six specified criminal justice areas (corrections, police, courts, prosecution, defense, total system). These included numerous new programs in serious planning stages for all criminal justice areas except prosecution and total system integration.

The Total System. A final word is in order on unification of the total criminal justice system. This was not covered in the original "Challenge" article but the "rediscovery" of the criminal justice system by the Johnson and subsequent study commissions has yielded increasing calls for coordination and integration of the whole system (or "nonsystem" as some analysts would have it). For this mission, the basic choice of technique has focussed on comprehensive system planning rather than structural unification or central management.[39] This is reflected in the study commission recommendations, in federal grant-in-aid policies, and in the national network of planning agencies (state, regional and local) which emerged since 1968 under the Omnibus Crime Control and Safe Streets Act. The last development produced a bureaucracy involving over 4,000 workers, more than $70 million in annual operational support (mostly federal funds) and a complex of 50 state planning agencies, over 450 regional planning units, and at least 150 local planning or coordinating councils (including most large cities and exclusive of nearly 400 local governments which have received action funds for various criminal justice planning efforts).[40]

Experience with comprehensive planning has sharpened up and focussed its role. Thus, from the rather amorphous call for planning at all levels of government by the President's Crime Commission in 1967, proposals now call for (i) multi-year and crime-specific planning (with deadlines, specific targets, and concrete resource estimates), (ii) an expansion of planning scope beyond federal fund programming to planning and budgeting for all state and local criminal justice operations, (iii) legitimating planning agencies by giving them statutory status and special legislative linkages and responsibilities, (iv) movement beyond planning to other coordination techniques such as common or shared information systems, cross-system education and orien-

tation for workers in each component, and (v) use of legislative oversight and code revision as a further tool for solidifying coordination.[41] Indeed, by 1977 and with the advent of a new Presidential administration, disillusionment with the costly national planning structure that had evolved, as well as the leveraging power at federal crime control grants, had led to new proposals which would eliminate mandatory planning as a precondition for federal aid and relegate planning itself to a lower status among system coordination techniques.[42]

Thus far, few states have attempted to unify the system by combining two or more major functions under a common authority, although some innovation and experimentation in this area may demonstrate the value of this kind of structural joinder (chapter 6 supra). A recent example is the establishment of an integrated Department of Justice in Kentucky combining state level police, corrections, planning agency, public defender and training functions. Similar, but less comprehensive consolidation of major criminal justice components is also to be found in a few other states (e.g., New Jersey, Maryland, Montana and North Carolina) and two more have moved toward the Kentucky integrated department format (Virginia and New Mexico).

Decentralization and Local Integration

The authors of the "Challenge" paper, like many proponents of system unification, tended to neglect issues of decentralization and local unification which have emerged as critical to responsive and coordinated delivery of criminal justice services. Concepts at this level have, indeed, attracted attention and experimentation since 1968. They include:

-- integration of correctional services)institutions, field supervision, community programs) at the regional instead of state level in unified state departments so that basic administration and decisionmaking is moved closer to service delivery and the state department reverts to a support, standard-setting and monitoring role (incorporated in recent Florida and Oregon reorganizations).[43]

-- unification of local and autonomous agencies into integrated local corrections departments managing adult and juvenile probation, diversion, detention and community programs at the county or metropolitan area level (now being fostered under Minnesota's Community Corrections Act of 1973 and evolving in several California counties).[44]

-- achieving much needed decentralization and community responsiveness in large city police forces through geographically-based team policing techniques which provide city neighborhoods with something analogous to their own small police departments (experimentally operating in numerous large cities and introduced last year as the basis for a total reorganization of the 7,000 man Los Angeles Police Department).[45]

-- focussing with more specificity in court unification standards on establishment of district networks of locally-managed, integrated trial courts operating under state policies and administrative regulations with reasonable day-to-day administrative autonomy.[46]

-- renewal of the largely unheeded call to unify part-time county prosecutor and defender offices into district and regional units capable of supporting full-time staffs and an adequate array of auxiliary services (thereby professionalizing and providing viability to decentralization patterns that no longer meet minimum system demands).[47]

-- continued insistence in legislation and policy setting under the Omnibus Crime Control Act on "pass-through" and special funding for regional and local planning agencies enjoying an effective voice in planning, programming and priority-setting for their jurisdictional areas (e.g., the 1973 and 1976 LEAA amendments permitting local units of 250,000 or more population to develop, submit and obtain block funding for their own comprehensive plans).[48]

The Skeptical Scholars

One would have expected local prosecutors, small police forces, court-attached local probation units and other autonomous criminal justice agencies to express reservations about the unification and regulatory proposals categorized in the original "Challenge" article. Indeed, their resistance has frequently proved more than equal to the calls of the consolidationists for more rational, coherent and accountable criminal justice structures. However, these practitioners have attracted impressive company in a hardy band of scholars who, since the original "Challenge", have come forth to question assumptions, theory and evidence behind the conventional wisdom on criminal justice consolidation.

The group is a small one but includes such fine analysts as Elinor Ostrom of Indiana University on police services, Joseph

Coughlin of Southern Illinois University on correctional services and Geoff Gallas of the University of Southern California and David Saari of American University on court systems.[49] They cite, variously (and persuasively), emerging knowledge on organizational design and behavior, the costs and inefficiencies of layered and complex public bureaucracies,[50] new insights on where economies of scale in public service systems are proving illusory or non-existent, and a theory of governmental responsiveness and efficiency which suggests greater "payoff" from less orderly, sometimes overlapping, and locally autonomous service units than from large, centralized, policy-uniform hierarchies.[51] Some suggest that criminal justice unification has hung on to discredited theories of organizational effectiveness that may quite properly have been advanced by a Roscoe Pound (1918) or a Wickersham Commission (1931) but are no longer defensible with the emergence of new understandings about how public and private organizations, and the people in them, behave or about the secondary importance of "largeness", hierarchy, structure, and rules to factors such as mission complexity, personal leadership, human dynamics, environmental interaction and communication patterns in designing responsive public services.[52]

Perhaps most important, there have been consistent calls from this group, largely unanswered, for credible evidence that unification formats are justified and some suggestion that evidence may go the other way. Elinor Ostrom, for example, has tried to probe the merits of small versus large police departments in a variety of research contexts, concluding that (i) public satisfaction measures generally favor small over large departments in matched communities and on the basis of broad samplings of citizen perceptions (ii) that gains in efficiency with increases in department size are suggested only up to the 20,000 population range for suburban units and the 100,000 population level for center cities (iii) fragmentation of agencies in metropolitan areas does not necessariy reduce service levels (e.g., patrol presence), (iv) bureaucratization of police through large-scale organization may cost far more in quality of service and citizen responsiveness than any efficiencies to be gained.[53]

Full exposition of these positions for the different criminal justice contexts is not possible in this essay. Suffice it to note that the challenge has gone out to prove that "bigger is better", that central administration produces more capacity for responsiveness and improved performance than local administration, and that the values of central management and accountability are not being overly touted as against those of local decisionmaking and administration at the "delivery" level where problems arise, services must be provided and clients must be satisfied.

These are powerful challenges to the conventional wisdom of criminal justice organization and need to be met by those who believe that the special mandates of the justice function require significant measures of central authority and control -- not only through legislative codes but, because of the importance of administration and discretion in the quality of justice services, through policy and administrative oversight. This is not merely an issue for criminal justice services and evidence from some of the early city-based neighborhood government experiments suggests the importance of strong central authority for effective devolution, i.e., "centralization as a precondition for decentralization".

Where to Now?

A "consolidationist" might well take satisfaction from the ten-year record of progress on criminal justice unification which has been laid out. The doctrines of unification have been reinforced, taken on some sophistication, and attained an unprecedented degree of implementation in many areas. This suggests that renewed dedication to the mission and message of unification, as articulated for the various criminal justice components, may be all that is needed.

Yet, a new conventional wisdom has arisen -- one that stresses decentralization, local participation and responsiveness -- which suggests that the unifiers may have devoted too little attention to the values of autonomy, local decisionmaking, and diversity within the criminal justice system. The author's feeling is that the concepts of central regulation, supervision and accountability that permeated the original "Challenge" paper remain essentially valid. At least, however, they require reexamination and a focus on methods of realization which would stress the following:

-- central regulation, standard-setting and monitoring rather than central management and service delivery in most areas.

-- collegial participation and decisionmaking in development of criminal justice policies and administrative rules (especially involving the local, regional and field officials who must implement them).

-- attention to central funding and resource allocation schemes where these promise a minimal level of service required to preserve the quality and equality of local justice administration.[55]

-- attention to effective decentralization patterns suitable to each of the various criminal justice functions.

-- as a subset of the previous principle, continued stress on elimination or consolidation of local agencies and service units which are too small to meet minimum service standards for the justice function (e.g., part-time prosecutor and defender offices, one-man or few-men police departments).

-- recognition that with the diversity of the American federal system, prescription of simple or single models of structure and organization is neither possible nor desirable and that centralization measures and a unification bias must, nevertheless, take into account political tradition, variations in size and demography and modern organizational design technology.

-- continued attention to central state agencies for each criminal justice function and, possible for the system as a whole (subject to separate judicial system identity) within the range of roles and values enumerated above.

-- continued recourse to criminal codes, legislative regulation and constitutional principles, as a system mediator and tool to help achieve integration of criminal justice services and practice.

-- continued recognition and use, along with structure and hierarchy, of such coordination and unification tools as planning, common information systems, and cross-system education and orientation.

-- greater reliance, in addition to normal system tensions, on both inside and outside grievance, inspection, and client advocacy mechanisms to counterbalance the added authority and power of centralized administrative structures.

-- a federal role as supporter of the foregoing concepts in its national leadership and grant-in-aid policies, preserver of national values and constitutional guarantees in the criminal justice arena, and maintenance of operational, coordinative and support capabilities not readily shouldered by state and local government.

A final note of caution should be sounded. The healthy tensions of a multi-faceted criminal justice system and the desirable search for centers and matrices of reponsibility at different

points in our federal system do not negate the values of unification, integration or large scale organization within the criminal justice system. As Herbert Kaufman of Brookings reminds us, large scale organization in government is here to stay, if only to respond to large scale organization elsewhere:

> If the objectives of the dismantlers and the decentralists were realized in their entirety tomorrow, it would not be more than a few years before many of this school reversed their positions. It is a mistake to think small units are without rigidities, inequities, inefficiencies, and other defects parallel to those of larger ones. With today's problems, it could be just as frustrating to live in a world that includes such communities as in a world that includes giants. Disaggregation generates pressures toward reintegration.[56]

Our criminal justice apparatus already operates from a policy of 50 state centers rather than the national pyramid of other nations. In our urban centers, large budgets and large resource aggregations must be mustered and coordinated to address metropolitan and megalopolitan needs. Our criminal codes and protections are not fragmented below the state level. They bind all state citizens. Criminal justice unification, to the extent that it minds long visible lessons of American federalism and localism and is conceived in terms of regulation, coordination, monitoring and support functions as much as direct central administration, would seem to remain an important organizational agenda for the criminal justice "non-system", both at state and urban levels.

Thus, the "Challenge" of criminal justice unification is still with us, even though its contours have broadened, grown more complex, and taken on an agenda of decentralization and local responsiveness that many thought might be resolved automatically with the advent of rational order, structure, and more central control. The ways of the world are not so simple and we may be thankful that time, experience and human intelligence -- even taken in ten-year increments -- serve as steadying and constant reminders of that truth.

FOOTNOTES TO CHAPTER 10

1. See 5 The Prosecutor 261 (1969); The American County, p. 7 (May 1971); 58 Georgetown Law Journal 719 (1970); 5 Journal of California Law Enforcement 68 (1970); Crisis in Urban Government, p. 53 (Jefferson Publishing Co., 1971). The titles and text of these published variants of the 1968 "Challenge" paper have varied slightly. The co-author was June (Hetler) Romine.

2. See Challenge of Crime in A Free Society, pp. 7-12 (1967).

3. Ibid., pp. 120-123 (police), 129, 149, 151, 157 (courts, prosecution, and defense), and 178 (corrections).

4. Nathan, Crippen and Juneau, Where Have All The Dollars Gone? Implications of General Revenue Sharing For The Law Enforcement Assistance Act, Brookings Institution (1976); Nathan, The Roots and Sprouts of Revenue Sharing, Publius (Fall 1976).

5. Marando, The Politics of City-Council Consolidation, 64 National Civic Review 76-77 (1975).

6. See Committee for Economic Development, Reshaping Government in Metropolitan Areas, pp. 18-22 (two-level metro governments); Advisory Commission on Intergovernmental Relations, Governmental Functions and Processes: Local and Areawide, ch. 5 (1974); Warren, Guidelines and Strategies for Local Government Modernization, National Academy of Public Administration (Nov. 1975).

7. For an excellent analysis and background sketch of New York City's fiscal problems leading to "default" (there never was, in fact, a technical, legal default although this was inevitable without the state and federal "rescue" initiatives undertaken in late 1975), see Congressional Budget Office, New York City's Fiscal Problem: Its Origins, Potential, Repercussions, and Some Alternative Policy Responses (Oct. 1975). Although there were over 400 state and local debt default situations reported in the postwar period 1945-1973, most were temporary or technical and involved small municipal units, the aggregate dollar amounts were negligible in relation to outstanding municipal debt, and only two dozen could be deemed major default situations (i.e., were not temporary and involved at least $1 million of principal in default); ACIR, City Financial Emergencies: The Intergovernmental Dimension, ch. 1 (1973).

8. See, e.g., R. Bahl, The Outlook for State and Local Government Finances (unpublished paper for National Academy of Public Administration -- May 20, 1976); D. L. Stanley, Running Short, Cutting Down (address to Congress of Cities,

Miami Beach -- Dec. 3, 1975) and Cities in Trouble, Academy for Contemporary Problems, National Urban Policy Roundtable (monograph, Dec. 1976).

9. These included the Advisory Commission on Intergovernmental Relations (1971), the Committee for Economic Development (1972), the National Advisory Commission on Criminal Justice Standards and Goals (1973), and the American Bar Association (1969-1974).

10. See, generally, Skoler, Standards for Criminal Justice Structure and Organization, 12 Criminal Law Bulletin (July/August 1976) and Chapter 1, supra; Skoler, Recent Criminal Justice Unification, Consolidation and Coordination Efforts -- An Exploratory Survey, National Institute of Law Enforcement and Criminal Justice (monograph, Jan. 1976) and Chapter 7, supra.

11. See Advisory Commission on Intergovernmental Relations, Making the Safe Streets Act Work: An Intergovernmental Challenge, pp. 21-26 (1970) and Safe Street Reconsidered: The Block Grant Experience 1968-1975, Ch. IV (1976).

12. See, in the context of governmental service delivery in general, Bish and Ostrom, Understanding Urban Government: Metropolitan Reform Reconsidered, American Enterprise Institute (1973); Symposium Issue, Curriculum Essays on Citizens, Politics and Administration in Urban Neighborhoods, 32 Public Administration Review (Special Issue, Oct. 1972).

13. Important contributions here include Simon, Administrative Behavior (Free Press, 1945); Simon and March, Organizations (Wiley, 1958); Argyris, Interpersonal Competence and Organizational Effectiveness (Dorsey, 1962); Thompson, Organizations in Action (McGraw-Hill 1972) and, from the "contigency theory" analysts, Lawrence and Lorsch, Developing Organizations: Diagnosis and Action (Addison-Wesley, 1973) and Galbraith, Designing Complex Organizations (Addison-Wesley 1973).

14. State-Local Relations in the Criminal Justice System (1971) supplemented by four pamphlets of suggested state legislation entitled, respectively, "Police Reform", "Correctional Reform", "Court Reform", and "Prosecution Reform", since expanded and incorporated in the ACIR State Legislative Program -- Vol. 10 Criminal Justice (1975)

15. State-Local Relations in the Criminal Justice System, pp. 55-56 (Recommendation 34).

16. Ibid., pp. 47-51 (Recommendations 26-29).

17. Ibid., pp. 17-27 (Recommendations 1-9).

18. Corrections Report, Standards 16.4 (p. 560) and 9.2 (p. 292).

19. Courts Report, Standard 8.1 (p. 164).

20. Courts Report, Standard 12.4 (p. 237).

21. Reducing Crime and Assuring Justice, p. 66 (1972).

22. ABA Commission on Standards of Judicial Administration, Standards Relating to Court Organization, secs. 1.10-1.13 (1974).

23. ABA Standards for Criminal Justice, Standards Relating to the Prosecution Function, Part II, Standards 2.1 and 2.10 (1971).

24. ABA Standards for Criminal Justice, Standards Relating to the Defense Function, secs. 1.2 and 1.3 (1968).

25. ABA Standards for Criminal Justice, Standards Relating to the Urban Police Function, sec. 7.10 (rather generalized standard on "Police Department Organization" calling for flexibility, experimentation and departure from semimilitary, monolithic modes of organization) (1973).

26. This estimate, set forth in footnote no. 49 of the "Challenge" article is based on a review supplied by the American Judicature Society in 1968.

27. The Law Enforcement Assistance Administration, in a recent review of court unification assessments, identified 29 states with substantially unified structures (memo, Office of Regional Operations, Adjudication Division, 3/5/76). In the LEAA, National Survey of Court Organization - 1975 Supplement, nine states were identified as having undergone major reorganizations in the three-year period 1972-1975 alone (seven of these involving substantial streamlining). On the elusive contours of court unification, see Ashman and Parness, The Concept of a Unified Court System 24 De Paul Law Review 1 (1974).

28. On the other hand, it was common for prisons to be administered separately and locally under different boards of trustees with no central administration (now largely extinct as an organizational mode).

29. Task Force Report: Corrections, pp. 199-201 and Table 23 (1967); see also, ACIR, State-Local Relations in the Criminal Justice System, p. 120 and Table A-10 (1971).

30. These increases are based on comparison of Table 23 of the NCCD 1966 survey, published in Task Force Report: Corrections, n. 29 supra, with the 1975 chart of "Parent Agency Responsibility for Administering Correctional Services" set forth in American Correctional Association, Directory of Correctional Departments, Institutions, Agencies and Paroling Authorities, pp. 250-258 (1975-76 ed.). See also Council of State Governments, Reorganization of State Corrections Agencies: A Decade of Experience (Feb. 1977).

31. Gideon v. Wainwright, 372 U.S. 335 (1963); In re Gault, 387 U.S. 1 (1967); Argersinger v. Hamlin, 407 U.S. 25 (1972).

32. National Legal Aid and Defender Association, The Other Face of Justice - A Report of the National Defender Survey, p. 13 (1973); National Study Commission on Defense Services, Draft Report and Guidelines for Defense of Eligible Persons, Ch. III and pp. 459-470 (1975).

33. E.g., the few formal city-county consolidations plus police department mergers such as the 1973 Las Vegas-Clark County merger into a metropolitan force and the formulation of the Northern York County (Pa.) Regional Police Department in 1972. Cf. National Sheriff's Association, A Review of the Literature -- Evaluation Study in Area of Contract Law Enforcement, ch. 3 (1975).

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