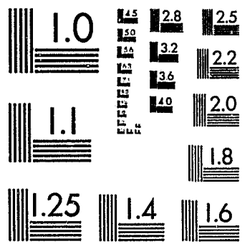

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The Future of the State Courts - A Planning Perspective

John F. X. Irving, 1981

"To Preserve, it is necessary to reform."
Macaulay.

Contents

Introduction

In 1973, the Law Enforcement Assistance Administration (LEAA) sponsored a conference in the nation's capital for several hundred employees of the criminal justice systems and planning agencies of state and local governments. More than a conference, it was an unveiling of The Standards and Goals For Criminal Justice, a monumental work commissioned by this federal agency which was charged by the Congress with leading a national "war on crime." The Standards, prepared by various task forces, were designed to launch the state criminal justice planning agencies, and their subdivisions, into a new phase of planning characterized by the setting of standards and by laying out strategies to achieve them.

Professor Daniel Meador, University of Virginia Law School, and later to become Deputy Attorney General of the United States, had been chariman of the Task Force on the Courts and spoke at its workshop. "The seventies," he said "are the decade for court reform."

Any so they were, but many changes were brought on only after crisis. Inordinate delays in the trial of criminal cases, for example, ultimately caused several state supreme courts to set rigid time frames for the trials of the criminally accused. Some defendants in fact went free because these appellate courts had determined that they were denied the constitutional right to a speedy trial.

There were many stimuli for the changes that were underway not the least of which was the availability of federal funding. This funding however tended to be restricted to projects designed and approved by agencies in the executive branches of government, federal and state, notably the state planning agencies (SPA). Constitutionalists grew concerned over the implications of such funding.

This monograph will explore that development and look at the counter-movement in the closing years of the seventies which shifted the initiative, the pace, and the leadership in court reform. This was the rapid and extraordinary creation in more than two-thirds of the states of an identifiable planning capability within the judicial branch. The creation of these Judicial Planning Committees (JPC) as they were first called, has the potential for becoming in fact the most significant court change in recent years.

But a sense of urgency, if not crisis, also permeates this work because the federal funding support now appears short-lived and the experiment may largely disappear before its potential can be known and its maturity seen. The monograph, essentially a think-piece, therefore has three goals: first to attempt an assessment of the present state of the art of judicial planning; secondly, to search both within the judicial councils that enjoyed a flurry of activity beginning in the 1920's and also within their present progency for the ingredients that seem to insure the existence of a vital planning function; and third, to lay out a beginning strategy

to insure its institutionalization.

The crucial ingredient for the judicial branch of government must be an existing and independent capability to address its many current problems and to prepare for the future, an independence required by the constitutional theory of separation of powers. Independence however may be contingent on the willingness to plan, to forestall an inviting void.

Neither can the planning capability be real if limited to the perspective and comfort needs of the judges alone. This is obviously a very delicate and at times difficult reality and it threatens to throttle the planning effort in some jurisdictions. However, the judicial branch involves other disciplines and must meet other needs. This monograph, perhaps rashly, offers as its final chapter a strategy for recognizing the needs of the several disciplines that work within the judicial branch of government and of the public users of the courts together with a mechanism for survival of the planning capability beyond the federal funding years.

On a personal note, and much of the work results from personal experience and impressions gained at the time, this monograph is borne of responsibility and of deep commitment to the need for judicial planning. The first director of the Illinois SPA and chairman of the national association of SPA directors, I chaired the 1975 special study, LEAA Support of the State Courts which was requested by LEAA after the Conference of Chief Justices and others complained about inequities in the federal funding patterns. The study pinpointed some of the disadvantages that many state court systems were experiencing and recommended the creation of separate judicial planning entities. The recommendation was incorporated into the Crime Control Act of 1976 and each state court system has thereafter been alloted a $50,000 annual grant to help underwrite the planning effort.

In undertaking this study, I relied heavily upon the five monographs prepared by the National Center for State Courts on Establishing an Effective Court Planning Capability. An initial publication, Planning in the State Courts: A Survey of the State of the Act appeared in 1976. The series includes the basic "how to" methods of planning and sufficient information on the membership, organization and funding of the JPC that by the end of the seventies could be found in thirty-nine states.

That series is indispensable for anyone interested in court planning. I have attempted to move beyond that work however, to raise issues and to suggest a new agenda. If I have succeeded, recognition belongs in no small measure to the cooperation of the Washington D.C. staff of the National Center, the National Institute for Justice, and the patient members of my family and my law school.

CHAPTER I

THE CONTINUING MYSTERY OF COURT PLANNING

In American industry, planning is a known quantity. The private sector has utilized and placed a strong value on planning strategies for most of this century. Investment advisors, for example, recommend that young adults purchase securities in companies that commit substantial resources to research, to product development, companies with far-sighted management. These are the growth companies; they will survive and do well because they are anticipating the future.

Planning is also much in vogue in government and at all levels, not always effectively or successfully, but few people argue for the elimination of planning departments in education, transportation, urban renewal or other public agencies. Even the small towns have planning boards and the federal government is replete with study commissions. In fact, the squeeze on the tax dollar and the diminution of available natural resources have placed pressures on agencies of government at all levels to do more with less, to innovate, to try new thrusts at old problems. This, of course, is planning. The familiar IMB sign cautions Plan Ahead, or space and time may run out; the future belongs to those who prepare for it.

There is no mystery then, in the nature of the planning process. Everyone who manages a budget has worked with, and many have mastered, at least the rudimentary techniques because necessity compels it. Employees must be paid, shareholders provided dividents; public services made adequate; professional and corporate competitiveness maintained; mortgages kept current and college costs, summer vacations and retirement kept at least potentially within reach . All of this

requires planning.

The experience of the judicial branch of government with planning however suggests that the nature of the art, the methodology essential for effective planning, and awareness of the need for the active but not exclusive participation of top court leadership are today as elusive as when first attempted in the 1920's. To some observers, the discomfort and apathy of many judges with the propriety and necessity of judicial planning is indeed mysterious. It is evident in the numerous false starts, the parochial approach, the detachment, and the lost opportunities. These judicial attitudes will be documented and analyzed in subsequent chapters because they appear to be the major reason for the failure of court planning to be come a permanent, institutionalized facet of the judicial branch of government in most states.

There are exceptions and exceptional judges in the field of court planning and they aggravate the difficulty of understanding the otherwise wisespread apathy. California is the most notable example of a state which has sustained a court planning effort for some sixty years. An analysis of the current planning efforts in a sample of the state court systems in Chapter VI attempts to locate solid and dynamic planning.

A failure in more than a few jurisdictions both to perceive the urgency for aggressive planning and to recognize that ostrich-like detachment is unwarranted confounds the mystery. Books have been written on the crisis in the courts. Howard James of the Christian Science Monitor did an award winning series of articles on the failure

of the juvenile courts. And study upon study has appeared with increasing frequency since the advent of the federal "war on poverty" which focussed attention on the inadequacies and unavailability of court services especially for the indigent.

Public attitudes toward the courts have been surveyed and documented. Popular dissatisfaction is a reality that has plagued the judicial branch at least since Dean Roscoe Pound called attention to it in 1906.[1] Two recent examples, significant because they were sponsored by court-affiliated organizations, are the 1978 survey undertaken for the National Center for State Courts and the 1980 study of the National District Attorneys Association (NDAA). These studies confirm that citizen respect is in indirect ratio to the degree of contact they have with the courts. The NDAA Survey found that many witnesses were dissatisfied with their court experience and that only 36 percent of the litigants surveyed felt that justice had been achieved.

It would seem urgent, then, because the courts are dependent on taxpayer support, either to change court procedures to become more responsive to consumer needs or educate the public about why the courts must continue to do what they now do.

This is in large measure the challenge presented to court planners today and the process is conceptually simple. It begins with assessing the needs that exist (problem analysis); identifying

resources necessary to meet those needs; and then setting out a prioritized strategy to resolve the shortcomings. More sophisticated descriptions of the planning process begin with articulation of goals and objectives, with policy determinations, and include mechanisms for evaluations and plan revision as experience indicates. The National Center for State Courts defines planning as "a process by which a system organized decision making in order to achieve a better future."[2] A more pithy definition is: bridging the gap between promise and performance.

The essential conditions for successful planning identified by the National Center are (1) involvement of decision makers and others whose help will be necessary in achieving results, (2) the availability of adequate staff, (3) data producing systems and (4) a commitment of time and resources that may at times fail.[3] An additional condition that may yet prove essential is the taste of success. The planning body should have some reasonable expectation that the highest court in the state will endorse its efforts and implement its program and strategies, where sound and feasible. Volunteer committees of planners whether judges alone, or others do not work indefinately for free. They have to see the occasional fruition of their planning reduced to action or they will abandon the effort.

This monograph will trace the development and role of several planning and administrative bodies that are influencing the state court systems. The following description of each should prove

useful:

Judicial Planning Committees (JPC's)

The second generation of court planning is the Judicial Planning Committee instigated by the amendments in the Crime Control Act of 1976 which specifically authorized their creation within the judicial branches of state government and allocated $50,000 annually as minimal funding.

Judicial Coordinating Committee

The Justice System Improvement Act of 1979 restructured the LEAA program for crime control and gave this new name to the JPC's. Function was expanded to include planning for both the civil courts and the criminal courts.

Judicial Conference

This is usually a periodic meeting of judges within a court system for educational programs, receipt and discussion of reports from court-appointed committees and consideration of court housekeeping business, etc. Some judicial conferences are required to be held by state law or rule of the state supreme court. They were established by the Congress for the federal courts as the Judicial Conference of the United States. Within the state systems judicial councils and judicial conferences are sometimes used interchangeably. Each state has its own tradition of usage.

The Law Enforcement Assistance Administration (LEAA)

When the Congress initiated the national "war on crime" with the enactment of the Omnibus Crime Control and Safe Streets Act of 1968,

it established LEAA within the Department of Justice as the responsible administrative agency. Today, after several changes in the philosophy and leadership, LEAA has been denied further appropriations except in limited areas, principally research and statistics gathering. These however are spun off into semi-autonomous units.

The State Planning Agency (SPA)

Under the 1968 legislation, states were to receive federal funds (block grants) for local crime control and justice system improvement through the medium identified as an SPA. These state agencies had a three fold purpose: to plan, to allot mini-grants and to coordinate the segments of their criminal justice system. Reaction by court spokesmen against these executive branch agencies planning for the judicial branch was a major stimulus in the creation of the JPC. Some states also created Regional Planning Units (RPU's)

The National Center for State Courts (NCSC)

With a national headquarters in Williamsburg, Virginia and offices in four regions of the country, the National Center is a non-profit organization created at the behest of the late Justice Tom Clark of the Supreme Court of the United States, and by others, to provide a variety of services to the state courts. LEAA funded its State Court Planning Capabilities Project in the mid-seventies to provide technical assistance in initiating a structured planning effort. From that project came the five basic papers referred to throughout this monograph.

CHAPTER II

EARLY ATTEMPTS AT PLANNING

> The administration of justice in the United States is receiving severe criticism by our citizens. They charge that every business and every profession has made progress to meet the needs of the times except the administration of justice.[4]

This quotation could easily be made today. It was uttered however in 1929, by John Marvel, Chairman of the Committee on Judicial Councils and the Rule-Making Power of the Courts, at the annual meeting of the American Bar Association. The device he, like others, had seized upon to improve the administration of justice at the state and local levels was called a judicial council and it was the first generation of the present judicial planning committees. The similarities with these early councils are so striking that we ought to look intensely at the first go-around, especially because the concept flourished for a time, fell out of favor and then, except for the California Council, failed or merged and submerged into other structures. History may repeat.

To meet the needs of the courts, the Marvel Committee recommended "that each state create a judicial council clothed with the double duty

a) of recommending to the legislature from time to time those changes deemed necessary regarding improvement in the judicial system of the State; and

b) of recommending to the Courts having Rule-Making Power such rules or amendments.... as would tend to further the prompt and effective administration of justice."

The Council was in fact a planning body, advisory in nature, and deferential to the joint authority of both the state law-makers and the judiciary in bringing about change. Additional functions for the councils were recommended. The Model Act to Establish a Judicial Council published in 1941 by Maynard Pirsig, a former dean of the University of Minnesota Law School, included the duty of receiving and investigating criticisms of the courts. The California Legislature and the Congress of the United States gave their councils authority to transfer judges as workload required. Others had rule-making authority.

The common characteristic was the study function. The General Act of Massachusetts, 1924, for example, established that state's judicial council to undertake

> ...continuous study of the organization, rules and methods of procedure and practice of the judicial system of the Commonwealth, the work accomplished and the results produced by that system and its various parts.

These judicial councils grew out of successful experience in the first quarter of the twentieth century with special commissions created by the courts to study specific problems in the administration of justice. The technique suggested the desirability of a similar body, but one that would be permanent and to a large extent, self-directed. No longer could the system accept the old dichotomy: the legislature handled courts' budgets (and problems) while the judges gave total attention to litigation. Years before, Roscoe Pound had laid out for the bench and bar The Causes of Popular Dissatisfaction with the Administration of Justice, and constitutional lawyers saw the need to wrest control of the courts from the legislature and from political machines. The 1947 New Jersey Constitution with its strong judicial article, was, in part, a reaction to the undue influence on the courts of the omnipotent Democratic boss, Frank Hague.

The councils were also prompted by the numerous pressures on the court systems, growth in the volume and complexity of litigation, the expansion of the courts, and evidence of corruption such as the selling of judgeships. As far back as 1909, a special committee of the American Bar Association had complained, "it is no one's

business to make part of the system (the courts) effective, to obviate waste and needless expense and to promote improvement." At the early sessions of the National Conference of Judicial Councils participants lamented the lack of information on the total case load in their states; the cost of operation; the size of court staff; and, equally disturbing, variations in practice and procedure. The councils were clearly intended to gather the basic data on the courts' operations and make appropriate recommendations. The businessman and the "progressive" citizen were helping by prodding the courts to believe that such data gathering would enable them to operate with business-like efficiency.

In 1932, the Committee on Reform of the Law, Brooklyn (New York) Bar Association expressed a complaint frequently heard from these citizens:

> For many years and particularly in recent years there has been widespread dissatisfaction with the administration of justice in this state....The complaint most frequently heard is that litigation involves excessive cost and long and unnecessary delay.[5]

And in 1978, at the Second National Conference on the Judiciary held in Williamsburg, Virginia, a National Survey of the General Public was reported on. The survey found that the same complaints persisted, aggravated in

our generation by the disclosure that the more familiar a person is with the courts, the less his confidence in them.[6]

The initial move toward a judicial council began in the Massachusetts Legislature in 1919, but Ohio was first to create one two years later. Massachusetts followed in 1924, and by 1949, Glenn Winters, then executive director of the American Judicature Society, (a court reform affiliate of the American Bar Association) was able to identify 33 such entities in the country. Some writers could find a semblance of a council in all but four states.

The American Judicature Society labelled the growth of the councils by 1927 "little short of miraculous" and two years later, the Marvel Committee of the American Bar Association could not restrain it enthusiasm "...no major reform looking to the better administration of justice has made such progress as has been made by this reform in so short a time."[7]

Fifty years later, the Court Planning Capabilities Project, National Center for State Courts, looked at the status of the second generation councils, the judicial planning committees authorized by the Crime Control Act of 1976 and wrote:

> The creation of thirty-five JPC's within one year is a phenomenon with few parallels in court history. Previous reform movements, which produced judicial councils, judicial conferences and state-level court administrators, were far more gradual.[8]

Major impetus for the creation of the state judicial councils came from the Congress of the United States. In 1922, it created the Conference of Senior Circuit Judges which continues strong to this day as the Judicial Conference of the United States. Each federal court had previously been "operating largely to itself with no unifying structural organization of any kind". The function of the Conference was largely remedial: "...to make a comprehensive survey of the condition of business in the courts of the United States and prepare plans for the assignment of judges to or from the circuits or districts where necessary..."

The parallel with the loose operation of the state courts was obvious to state legislative leaders and a similar umbrella structure was devised. The Federal Practice and Procedure Act, enacted a few years later, also influenced the standardization of practice and procedure at the state bench. Many judicial councils in fact took on this task. The judicial house was being put in order and the reins were in the hands of the bench and the bar.

Composition

In 1939, the National Conference of Judicial Councils surveyed the composition of the existing councils. At the time, Roscoe Pound was Director of the Conference and Arthur T. Vanderbilt was chairman of the executive committee. Of the councils that responded to the survey 16 had been organized by the state legislatures; two by rules of court; four by resolution of their state bar associations; and one by constitutional amendment.[9]

Of the 270 members of the councils, a plurality were the 127 lawyers; there were 105 judges; twelve legislators; seven state's attorneys; and thirteen private citizens. The Model Act called for a council composed of the chief justice of the state or his designee; two district court judges; a municipal court judge; the chairmen of the senate judiciary committee; the chairman of the assembly judiciary committee and seven other members of which five should be lawyers. The chief justice was to appoint the judge members and the governor would appoint the others. All three branches of government were to have a strong voice.

This model structure was held up by the National Conference of Judicial Councils as embodying the best features of similar legislation in the states having judicial councils. Diversity of membership was also

recommended by the American Bar Association Committee on Judicial Administration in 1938 which said "A judicial council most effectively organized is one composed of representatives of the Bench, the Bar, the legislature and laymen".

The role and value of the private citizen were debated then as they are today. The Committee on Law Reform of the Association of the Bar of the City of New York recommended the creation of a judicial council for the Empire State in 1932. It urged that the Council

> ...include judges and lawyers and provision shall be made so that laymen may be appointed. Certain qualifications should be required of all appointees, that they should be possessed not only of standing in the community and of general ability but they shall have special interest in the duties of this position and an independence and freedom from preconception in favor of traditional methods and practices. It is of special importance that lay members shall have these qualities, together with sufficient force of character to impress the lay point of view upon their professional colleagues. With such qualifications the lay members would bring to the council a freshness of view and approach and an experience in the solution of problems of business organization and efficiency which would be of inestimable value and the lack of which is a major weakness in the administration of our judicial system today.[10]

A Texan complimented his state legislature for requiring in 1929 that one of the laymen on the state judicial council be a journalist, saying it was "a wise

move in that the Council has at all times received favorable publicity at the hands of the press". The basic lesson of the 20's has not yet been learned: the product must be sold in order to take hold and evolve.

In 1978, the National Center for State Courts reported on the composition of the 35 judicial planning committees then existing (there are now 39).[11] The similarities are again striking. This time, however, judges predominate and the state court administrators sit on two-thirds of them. Membership drawn exclusively from court personnel repeats one of the fatal errors of the 1920's, especially in a consumer-oriented era, and the work product may suffer from judicial introspection, the limited although invaluable perspective that judges bring to the planning arena.

It is distressing therefore to learn that private citizens serve on only thirteen of the committees, and on seven such committees there is only one lay representative. These tend to be lonely voices, often intimidated, overly deferential or otherwise co-opted, unless carefully selected. An evolving technique, perhaps a compromise, is the utilization of private citizens on subcommittees. Massachusetts, for example, is now using private citizens in that role and the method shows promise.

The sparse representation of the general public on

the planning committees ignores the current federal expectation. That expectation, expressed in the Crime Control Act of 1976 (the primary funding source for the planning committees), is for "public and professional representation". Absent such representation, planning is likely to get lost in the judicial household. Perceived as merely one of several routine committees of judges and as in New York, unknown even to key court personnel, the effort loses its way.[12]

Many courts resisted and brought a change in the federal guideline that prosecution and defense be represented. Twenty percent of the committees function without these rich contributors. The "my court" syndrome dies hard.

Achievements

The track record of many of the early councils is impressive. In California, for example, an all-judge council was established by constitutional amendment in 1926, expanded to 18 in 1960 and to 21 members including lawyers and legislators by 1966. The Council recommended the reorganization of the California courts resulting in a unified system today. Because it is more than an advisory body, the California Council has been a vital entity, an institutionalized segment of the court system.

The California Constitution directs the Council to

survey the judicial business, make recommendations to the governor and to the legislature and to adopt rules for court administration, practice and procedure not inconsistent with statute. And the Council has responded over the years in all these areas.

The durability of the California Council is unique. By contrast, the Arizona Council was created by resolution of the state Bar Association in 1936; two years later it had become inactive. By 1949, only eight judicial councils showed any vitality, and in 1952, Dean Pirsig did a critique of the councils in which he indicated its achievements:

> By and large, the judicial council in this country has contributed substantially to improvement in the administration of justice. This may be summarized into four categories:
>
> 1. Many measures of improvement have been adopted as the result of judicial council efforts. These cover procedure, court organization and court administration.
>
> 2. They have provided the first substantial body of judicial statistics, particularly with respect to civil litigation, thus furnishing much pertinent information about the workings of the judicial system.
>
> 3. Their reports have contributed a substantially increasing body of literature relating to the improvement of judicial administration.

> 4. They have provided an official tribunal to which the citizen can bring his complaint about the administration of justice although it must be said that there is little evidence that the councils have been availed of to any substantial extent for this purpose.[13]

An interesting assessment was also offered by Judge Edward R. Finch, a member of the New York Court of Appeals and Chairman of the National Conference of Judicial Councils in 1941:

> The creation of the judicial council was an important advent in government in the United States. Until such creation, there was practically no systematic effort to evaluate the operation of the courts and no systematic effort to consider improvement in the administration of justice.[14]

Failures

The judicial council was thought to be a panacea for the smooth maturation of twentieth century courts. Expectations were high; Dean Pound, for example, suggested in effect that the judicial council would be all things to all courts. "The future of the law in the United States", he told the participants of the National Conference of Judicial Councils in 1939, "may be in your hands."

Certainly there was a compelling need for an ongoing assessment of the strengths and weaknesses of the judicial branch of state government with recommendations

for such changes as intensive study might suggest. What then went wrong?

The councils were of course highly experimental, and once created, many of their sponsors rested. The same strategy occurs today but a plan is not self-implementing. A recommendation is not adopted simply because the truth is with it, i.e., the accumulated research data. One mechanism for killing an idea is, as most cynics realize, to refer it to a committee. Also, if it is purely an advisory body, its advice, when formulated, may address itself to an issue that no longer seems urgent and in any event may get little audience and no action.

A plan may threaten the interests of a powerful bloc which then sets out to defeat it. Court delay and inefficiency are good examples because they are a boon to certain members of the trial bar and to those insurors who count on the weariness and impatience of litigants to settle their hoary claims. Professionalization will also replace patronage and powerful political interests.

Not only were the expectations for the councils unreasonably high, but the movement was burdened with political naivete and simplistic notions about effecting change. Arthur T. Vanderbilt, for example, said in 1936

that the ingredients for success of the judicial councils were:

> ...one or two men...who have the knowledge of the adjective law as it exists, the vision to see how procedure can be improved and the patience and technical skill to bring about such improvements and if their associates are willing to cooperate with them by way of patient and constructive criticism. 15

Furthermore, when the studies that were undertaken by the councils met indifference or hostility, disenchantment set in. The vogue changed. Court rule-making and professional management personnel became the new panaceas.

This metamorphosis is apparent in the Massachusetts experience. The functions assigned to its judicial council in 1924 quoted earlier were reassigned by the laws of 1958 which created the position of executive secretary to the Justices of the Supreme Court and gave this position the following functions among others:

> Examination of the administrative methods, systems, and activities relating to their offices or employment of the judges, clerks, registers, recorders, stenographic reports and employees of all courts of the commonwealth and the offices connected therewith.
>
> Examination of the state of the dockets of the courts, securing information as to their needs for assistance, if any, and preparation of statistical data and reports of the business of the courts.

> Investigation and collection of statistical data relating to the expenditures of public moneys, state, county, and municipal, for the operation and maintenance of the courts and the offices connected therewith.
>
> Examination, from time to time, of the operation of the courts and investigation of complaints with respect thereto.

And, as so often happens with experiments in court reform, the councils received neither the monetary resources, staff, nor skilled leadership to make them effective. Many had no staff at all and were starved for a budget. The depression had hit and money was diverted to meet more obvious needs. Some councils depended on nominal contributions from the bar association. A discouraged researcher at the John Hopkins Institute of Law reported as early as 1931 that although most state legislatures had created judicial councils they had "left them the bag to hold" providing neither "adequate powers...nor in most cases resources sufficient to hire even a stenographer... only two or three councils have made any substantial dent".

The reasons for the failure of the judicial councils were cogently expressed by Dean Pirsig in 1952:

1. The failure of legislatures to provide even a minimum of funds required for proper functioning. Some of the councils receive no money whatever. In some states, such as New York and Massachusetts, sizeable sums of money have been provided and account in part for their success.

2. As a necessary consequence they have lacked the staff needed for research, investigation and the expenses incident to a going organization. Council members themselves almost invariably are uncompensated and are engaged full time in other activities. This makes it essential that they be provided with assistance in obtaining information and research in the various aspects of the problems considered. Sometimes uncompensated help has been secured from an interested individual or from a law school, but a council entrusted with the important functions it has been given should not be expected to rely on these sources of assistance.

3. Another difficulty has been the failure of the bench and bar to provide the necessary interest, support and cooperation with the council. The council, of course, cannot permit itself to become identified as merely an arm of the bar. On the other hand, the council, by its nature, cannot be an agency of advocacy. This must be supplied by others. Since the subject is one of administration of justice, the promotion of proposed measures should come from the bench and bar of the state. Our inquiries revealed a wide-spread ignorance on the part of the bar concerning even the existence of their council, and of course, of its activities and recommendations. The reported proceedings of bar associations reflect little or no recognition or concern with the judicial council.

4. Public apathy and ignorance. The activities and recommendations do not receive much attention from the press or from the public when reported in the press.

5. There is evidence that members have been selected whose standing with the bar or community did not always command the prestige and respect that are essential if a council's recommendations are to receive

serious consideration.

6. Some councils have made recommendations so far beyond the realm of possible public acceptance that it undermined the confidence generally in the council and in its practical judgment. A council in making its recommendations must consider the element of timing. Some procedural points may be dealt with and recommendations made which are technical in nature and where the public would not have a special interest or concern. On the other hand, in dealing with such basic matters as court reorganization and selection of judges, general public interest and understanding are essential. A premature recommendation may arouse vigorous opposition and distrust of the council itself.

7. In many instances there has been substantial failure on the part of court officials and others in supplying the council with information requested and needed concerning particular aspects of the administration of justice.[16]

The present day judicial committees are, with few exceptions, financed exclusively with federal funds and were initially created in order to apply for existing grant money. If the props are withdrawn, these second generation attempts at court planning may go the way of their forebears. There does not appear to be the leadership, public interest or court commitment to sustain them.

The analogies are disturbing. The judicial councils like the judicial planning committees enjoyed a rapid, nationwide growth. Both were advisory bodies (with a few exceptions) and both found it difficult to muster

interest or support. The voice of the private citizen was tolerated, but its value doubted. "What can the citizen tell us about rules and procedures?", they asked. Today the question extends to all governmental functions: "What can the poor tell us about the poverty program, inmates about their jails, or juveniles about the federal delinquency prevention efforts?" The experience of course is that carefully selected public representatives have a great deal to say. They keep the perspective in focus, sensitize the professionals to public attitudes and merely by asking questions, elicit otherwise unperceived dimensions of a subject.

The JC and the JPC represent genuine attempts to protect and strengthen the invisible third branch of government, the judiciary. The councils sought to limit legislative interference and the judicial planning committees sought to restrain the state planning agencies in the executive branch from usurping judicial independence.

The composition of the JPC and its modus operandi are faltering; a new agenda is needed, a refortified approach. The final chapter will suggest a strategy for making permanent the planning effort and expanding its horizons. The natural evolution must not include retreat or hibernation. There simply isn't enough time.

Chapter III

Court Reform - The Gathering Storm

Reform of public institutions is a cyclical phenomenon. Pressure for pervasive change builds slowly over a period of several years, or ripens by a sudden crisis, and an accomodation occurs. Then, relative tranquility usually reigns; the system has been purged.

In the early nineteen sixties, no sense of crisis prevailed over the conditions under which our state and local court systems functioned. Growth and change were discernible but national attention was not yet focused on the courts.

Public dissatisfaction was mute; professional organizations were stirring. The American Judicature Society (AJS), an organization committed to improving the judicial systems of the country, was preaching its gospels of court unification and of a merit system for judicial selection. Wherever it mounted a remedial effort, it left behind a citizen action committee.

With a flood of dues from the swelling ranks of the legal profession, the American Bar Association (ABA) was able to broaden its scope and effectiveness. New standard-setting committees were being created; services to state and local bar associations were intensified; and additional staff took on a range of research, promotional and service tasks. Real estate brokers were threatening the lawyers' turf and special-

ization and lawyer advertising were difficult challenges to traditional law practice. The ABA role in court reform was therefore limited, partly because of the preeminent position of AJS but also because the crises were elsewhere.

There were three areas however in which the ABA fielded a sustained incursion into court reform. It was pressing hard for the right to screen - and inferentially to veto - all nominees for the federal bench. In a more quiet fashion, the ABA was doing exceptionally effective work in upgrading the traffic courts through judge training and standard setting. And the Section on Judicial Administration, encouraged by the success of its training programs for state trial court judges, began plans for a national judicial college, soon to be a major achievement.

Less impressive - and boding trouble - was the paltry commitment to legal services for the poor. In August, 1962, this author accepted the staff position funded jointly by the ABA and by its affiliate, the National Legal Aid and Defender Association, to promote organized legal services for the poor nation-wide. Legal Aid societies, as they were then called, would provide counsel in civil matters in all cities with pupulations of 1,000,000 or more. Defense services, principally a Public Defender, were urged as an effective means of representing indigents accused of crime. The staff person worked under the supervision of the Committee on Legal Aid Work but was himself in the office, and under the daily supervision of NLADA. The ABA financial commitment to legal

services for the poor in 1962, civil and criminal, was one half the salary of one person, $6,000. The initiative was largely with NLADA.

The inadequacy of existing services at the local level was so extensive and the promotional effort so thin federal intervention was invited. It came with the enactment of the Economic Opportunity Act of 1964, the legislation that launched a "war on poverty" in a nation of rising expectations. Significantly, that legislation omitted any references to legal services as one of the innumerable needs of the poor, but legal services began to blossom everywhere.

For the purposes of this piece, that monemental legislation had two effects. Social scientists, political commentators and others began to assess and comment upon our governmental institutions including the judicial systems as they impacted upon the poor and poverty lawyers soon learned the shortcomings of the courts in which they had begun to practice. Pressure for change started to build.

Judges also were becoming catalysts for change. On return from training sessions of the ABA or the National Council of Juvenile Court Judges (NCJCJ), they were prone to urge adoption in their jurisdictions of the new approaches they had been studying. Younger judges, many of them war veterans, were increasingly impatient with the prevailing court practices and snail-paced services; a deep cleavage erupted for example in the NCJCJ between those in the judge-knows-best school and those judges who pleaded for due process for minors, for

procedural regularity, for fundamental change.

Among the many other instrumentalities of change in the sixties was a string of decisions by the Supreme Court of the United States which expanded the constitutional rights of persons who come into contact with the criminal justice machinery of the states. It began when Clarence Gideon wrote a letter to the Supreme Court from a Florida jail cell advising that although the U.S. Constitution says a defendant has the right to counsel, he was deprived of one at his state trial because of indigency. The majority of the justices agreed and held that accused felons facing the possibility of conviction and long prison terms had the right to have counsel appointed by the state for their defense when they wanted representation but could not afford to pay.[17]

The Miranda decision was the most controversial of the Gideon progeny among both law enforcement personnel and some criminal court judges. At the juncture in police interrogation of an individual when the inquiry becomes accusatorial the suspect is entitled to be advised of the right to remain silent. Many criminal justice personnel were outraged at the Warren Court for being soft on crime; the more reflective judges, law enforcement personnel and others in the field of criminal justice sought out workshops and seminars in order to gain a better understanding of such decisions. With understanding presumably would come reorganization and a strategy to meet the court's mandates.[18]

To assist in providing the resources needed, the Congress passed the Criminal Justice Act of 1964. Federal assistance was now available to supplement, and expand, the achievement of the Ford Foundation which had already made a series of defender type grants to NLADA. This money had enabled the National Defender Project to come into being as a funding and technical assistance program to create and strengthen local criminal defense capabilities.

This federal legislation, modest in amount and impact, seemed to some criminal justice personnel to tip the scales in favor of the defense to the detriment of the prosecution. Also, aggressive defense counsel began a relentless series of attacks on the modus operandi of the police and the correctional institutions. With novel strategies for defense and through the creative use of standard motions made to the court, the defenders were fast becoming agents of change. However meritorious, their performance necessarily exacerbated the delay in litigation.

Inadequacies across the board of the criminal justice systems began to be laid bare and these included the needs of the court for training, better management practices, uniformity in procedure and staff support.

Another energyzing development occurred in 1967 and '68 when the three branches of the federal government all agreed on a basic premise: the juvenile justice system wasn't working. The executive branch was heard in the recommendation issued by President Lyndon Johnson's so called Crime Commission

under the title The Challenge of Crime in a Free Society.[19] The Congress set out the same dismal appraisal of the juvenile justice system in the Juvenile Delinquency Prevention and Control Act of 1968 and Justice Abe Fortes wrote for the majority of the Supreme Court in the landmark case of In re Gault that the "high hopes" for this experimental system had not been realized and that its origins were "murky".[20]

State and local courts with jurisdiction over criminal or juvenile cases then were coming under pressure emanating from two sources; appellate decisions that mandated basic change and the alarming increase in case filings. Affording defendants their "day in court", represented by competent and zealous counsel, while assuring that confessions were voluntary and other required innovations placed severe strain on the capacity of the courts to provide a speedy trial for adults and a timely hearing for juveniles, to say nothing of the personal stress on the personality of the judge.

Simultaneously, legislators were reacting to the crime wave by passing new substantive laws and, in some instances, demanding greater productivity and effectiveness by the courts. There was a popular assumption that the courts could arrest the crime wave if they merely got tough with defendants.

Some observers were suggesting that court calendars be set to expedite heinous offenses, that juvenile courts become family courts (a troubled youngster is a sympton they said of a troubled family and jurisdiction over the entire family is

essential) and that status offenders such as truants and curfew violators be segregated from alleged delinquents in the court process and in the ultimate placement.

Judges in turn were asking many questions: who could better handle the day to day administration of the courts that was taking great chunks of judicial time; what mechanisms could be employed to reduce delays in litigation with resultant inconvenience to witnesses, to doctors, and other experts and to rooms full of jurors waiting to be empannelled; and how might statistical information best be gathered and records preserved?

The possibility of utilizing skilled lay persons as court administrators as New Jersey had effectively done was under consideration and the VERA Project in bail-reform in New York City offered hope that other communities could reduce the number of persons incarcerated while awaiting trial because they could not raise the court-ordered bail. Other insights came from the management technology of American industry which tempted court reformers with its cold efficiency and accountability.

There was, by the late sixties, a crying need for the courts to develop a capability to deal intelligently with these staggering problems or face - at least in large urban jurisdictions - the threat of system collapse. The annual judicial conference clearly wasn't up to the task nor would any study committee of judges devoid of staff and skills be

the answer. A sustained planning capability was now the only rational response. Time, detachment, and some financial support would seem to be called for and these were in short supply.

The National Council of Juvenile Court Judges (NCJCJ); A Search for Help

During the sixties NCJCJ, the organization of America's juvenile court judges, aggressively sought financial support, public and private, to increase services to its then anxious membership. That search affords a genuine insight into the pressures that many courts were experiencing although juvenile courts are specialized, and to a great extent, otherwise atypical.

The juvenile court, for example, in many states has not been a division of the trial courts; the judges traditionally are paid less and have less status than trial court judges. Labelled "Kiddie Courts" by some critics both in and outside the court systems, these judges felt especially isolated and vulnerable as public dissatisfaction grew. Many juvenile judges also felt deep emotional strain removing juveniles from their homes and it was common for them to gravitate down the hall to the relative peace and security of other kinds of litigation.

The uneasiness about these specialized courts emerged partly because of their jurisdiction over a wide range of troubled and troublesome young humanity. These include the dependent and neglected children, the runaways, the status offenders (those whose activity is objectionable because of their being minors) the promiscuous, the abused and abusers, and those juveniles who who commit criminal-like acts. By and large the courts never had the resources to handle this array of challenges meaningfully (individualized justice was the stated goal) nor did the judges necessarily have the temperament or the opportunity to master their responsibilities.

Sensitive juvenile judges were shaken by the arrival in the courtroom of counsel, by the resulting move toward procedural regularity, and by a growing awareness of the inability of the court to respond effectively at any but the simplest levels. Too few in number to push for substantial help from their respective states, juvenile judges looked to their national organization.

Organized in 1911, NCJCJ is one of the oldest councils of judges in the United States. Until the sixties it depended almost exclusively on membership dues. Communication and program services hardly went beyond the calling of an annual meeting. The climate was changing however because of public anxiety and judicial insecurity over the inadeqacies of the juvenile justice system.

A few foundations responded to the appeal for support. The Field Foundation in New York was one and although the grants were small, NCJCJ was able to appoint staff and to rent space at the American Bar Center in Chicago. It then had the credibility and the capacity in the early sixties to apply for major grants and to offer more tangible services to its members. Another grant, this one from the National Institute of Mental Health(NIMH), permitted experimentation with training.

The experience demonstrated that juvenile court judges were eager for training opportunities; many would use their vacation time if necessary to participate. It also revealed the pitfalls of classic sensitivity training which was simply too destructive of necessary defense mechanisms at least when compressed into a three day session. Community team workshops were more successful as were other inter-disciplinary training programs.

Armed with this track record, NCJCJ applied to NIMH and received a $300,000 grant in 1966 to expand its training programs, initiating a "summer college" for judges new to this court. The author became NCJCJ's executive

director and dean of its summer programs.

Many felt at the time that NIMH was an unlikely funding source to assist judges but aggressive efforts could disclose no other federal agency with both the interest and a legislature authority broad enough to provide funding. And so, after a planning year, thirty five juvenile court judges arrived at the University of Colorado Campus for the initial four week summer program. An inter-disciplinary faculty had assembled; among them was Dr. Jay Hall, University of Texas at Austin, an expert in teaching self perception and H. Ted Rubin, the juvenile court judge in Denver, Colorado. The evaluation was prepared by Professor Delmar Karlen, who at the time was Director of the Institute of Judicial Administration at New York University's Law School and a member of its faculty.

A few days after the program began, a request was sent by letter to NIMH requesting release of $34,000 of grant funds to cover expenses. The Public Health Service (PHS) Grant Number 10972 was mentioned. A telegram came in short order advising that the funds in the grant had been fully expended! This being inconceivable, a more detailed request was made. Finally, NIMH sent a check, not in the amount requested and due, but for $10,972, the identifying number of the grant.

After several days and further requests, a check for the differential was received. To immortalize the trauma, the trainees presented the dean with a pennant suitable for hanging over one's desk. The pennant reads PHS #10972.

The following summer a three week program was offered to accommodate those who could not be away from court for a full month. In the "happiness sheets" that the trainees completed, repeated mention was made of the value

of sharing experience with judges from many jurisdictions. The evaluations encouraged NCJCJ to believe it had developed an effective service. The NIMH response was therefore disheartening.

When the three year grant was about to expire, NCJCJ explored the possibility of continued NIMH support. A NIMH review team headed by Dr. Hess of Stanford University concluded, after meeting with NCJCJ officers and staff – but not observing the training programs – that "NIMH should not be in the judge training business."

Where to go? State governments were largely unaware of, and unsympathetic to the training needs of judges. Part time legislators were especially loathe to allocate tax funds for what they perceived to be travel grants for well compensated public officials. Few foundations had a mission broad enough to provide massive support to meet the massive problems of the NCJCJ membership. A void in funding, and in program, ensued until the Nevada – based Fleischman Foundation offered a major sustaining grant conditioned on NCJCJ's relocating its offices in that state. Accepting that grant has meant continued life and staffing and maintained the NCJCJ capacity for a plethora of services to the members and to society. To meet such needs of course, other support was crucial.

Similar stories could be recounted of the search by the ABA Traffic Court Program to obtain federal support for the training of traffic court judges. Originating in the fifties when judge training was unheard of, the ABA obtained federal highway safety and transporation funds and prodded these courts into greater professionalism. At the state level the New York Council of Family Court Judges was able to obtain small private grants and approval by the New York Court of Appeals to offer training opportunities to its

comparatively large constituency.

Despite these few break throughs the general policy of federal and state governments toward the crucial training needs of the courts were reflected in state court budgets. In New Jersey, less than one percent of the state budget has historically been spent on the state courts; Massachusetts commits less than two per cent to this branch of government.

Other Distress Signals

Far more audible and more visible signs of distress could be found in the soaring rates of crime and juvenile delinquency. Glue sniffing, drug abuse, street violence and vandalism perplexed the average citizen and the sophisticated justice system personnel. Rioting and other defiance of authority forced the issue of crime into the presidential campaign of 1965 even as opinion polls disclosed it as a major domestic concern. When suburbia was no longer immune and as urban Americans changed their life-styles abandoning the streets at night to marauders, a general outcry arose that something be done about crime.

Law enforcement personnel complained in large numbers that the decisions of the Warren Court had tied their hands. Overcrowded penal institutions were silent - but sometimes vocal - testimony to the failure of the corrections systems to correct and of the reformatories to reform. Teachers were often reduced to policing the class rather than teaching even as studies were showing that all segments of society were paying a high price for crime. And not a few studies began to identify weaknesses in the juvenile and criminal justice systems. When the states failed to respond, the public demanded that the federal government take action against anti social behavior.

Chapter IV

The National Counter-Attack on Crime

The Congress reacted in 1968 by passing the ambitious Omnibus Crime Control and Safe Streets Act and the Juvenile Delinquency Prevention and Control Act. The titles in themselves raised immediate expectations that the streets would somehow be made safe and that crime and delinquency would be controlled. The rhetoric of the moment became the policy of the legislature; the emphasis was predominately on controls, on law and order.

The Safe Streets Act was soon to prove cumbersome. As if to match the fragmented and ill-equipped non systems of state justice, the Act mandated diverse objections under an administrative troika. The states were required to establish criminal justice planning agencies (SPA's) that would "plan,", "fund," and "coordinate" their police, courts and corrections agencies. When a state's annual comprehensive plan was submitted and approved, the SPA would receive a per capita share of the Congressional block grant appropriation for sub-funding to its various state and local agencies in the justice field.

The work was to be done under the guidance of a policy board that was to be broadly representative of the criminal justice community with citizen representation included. Because the funds were limited and had to be spread programmatically and geographically, an inevitable sense of competition for the funds emerged. The courts could not compete.

The Illinois Experience

The Illinois SPA was created in January, 1969, by Executive Order #1 of the new Governor, Richard B. Ogilvie, a former sheriff of Cook County. The man who had been director of training in the sheriff's office, Arthur Bilek, was named Chairman of the policy Board and given a full-time salary, the only SPA Chairman to be so compensated. In addition, Governor Ogilvie asked the legislature to commit $8 million to the program to match federal funds when grantees were either state agencies or hard-pressed local groups. This permitted 100 percent grants, a unique occurrance, and the courts were among the beneficiaries.

In the frontispiece of the 1969 Comprehensive Plan, the following excerpt from the Governor's speech on April 18, 1969 appears:

> Twentieth century crime cannot be controlled with nineteenth century techniques which still exist in nearly every community of this nation --- every resident of Illinois fully expects that this blueprint for crime and delinquency control will combine imagination, the very best thinking that can be brought to bear, and the full use of the rich resources of this state.

"Control" was the theme.

Two months and nine days after the director was hired, Illinois' initial Comprehensive Plan was delivered to LEAA. The plan asked for $2.4 million, double the amount available to the state. From a start-up grant, $236,202 had already been expended for riot control equipment.

Of the 24 action programs identified for funding in the initial Plan, three could properly be called court projects and the total allocation to these three projects was $92,724, which was close to the 3 percent that the courts generally were to receive nation-wide in the early years of the program.

Court allocations were hard to differentiate because the funding category was a catch-all that included prosecution, defense, the courts and law reform. The Administrative Office of the Illinois Courts, by letter to ILEC dated May 9, 1969, identified a court reporter

recruitment and training project as its primary need. The other two projects specifically for the courts were to provide a speedy trial for felony defendants and a study of court services. The priorities did not convey a sense of crisis in the courts, nor any dissatifcation with ILEC's evolving strategies.

The instantaneous development of a comprehensive plan was guided by the creative recommendations in The Challenge of Crime in a Free Society. In addition, the embryonic ILEC staff circulated a quick questionnaire to determine criminal and juvenile justice needs. The percentage of responses shown here portend the high commitment of funds to law enforcement:

623 Surveys mailed to police agencies; Returned: 362 or 58%

102 to sheriffs; Returned: 84 or 82%

652 to judges and clerks: Returned: 76 or 12%

102 to states attorneys; Returned: 87 or 85%

102 to coroners; Returned: 90 or 88%

The local courts allegedly did not have adequate information with which to respond. Nevertheless, it is significant that law enforcement and prosecution were ready and made their needs known.

As the policy maker, the Governor appointed a 29 member board drawn from agencies that had responsibilities in both criminal and juvenile justice. Two were judges appointed without consultation with the Supreme Court or its Administrative Office. The fragmented court system in the state perhaps made such consultation appear unnecessary. One of those, Judge Daniel J. Roberts, became Chairman of the Courts Task Force; its other members were John Sullivan, a past president of the Chicago Bar Association, and Gerald W. Getty, Cook County Public Defender. All the task forces were created "to help provide, through their members' particular area of specialization, imput into the state comprehensive plan and to recommend priority action programs . . ."

The awesome responsibility for improving the court system in Illinois then rested heavily on a trial judge, two practicing attorneys, whatever staff talent could be assembled, and occasional advice from the Administrative Office of the Courts. The inadequacy became obvious as imbalanced funding developed and as politically astute court spokespersons began to see the "clout" that the increasing federal grants gave the SPA. A growing dislocation of the courts nation-wide was

also evolving and would soon become obvious to experienced court hands; law enforcement was being overfed.

To obtain staff for the new SPA notices were sent throughout the state advising of the agency's personnel needs. As people with talent or experience, however slight, appeared for interviews in the early days of April, they were hired immediately. (One new employee suffered some shock and many sleepless nights when he was told he had 30 days to draft the corrections component of the state plan.) This method, repeated with a dozen new staff and some consultants, met the June deadline imposed by the LEAA but obviously at considerable cost on quality and impact.

For example, two years later the 1971 Plan advised:

> The basic needs of the Illinois courts have neither changed nor been ameliorated . . . . It may well be, in fact, that each year aggravates the basic needs: a modern management system, efficient operation, public understanding and adequate resources.

The Plan that year allotted $500,000 for judicial management and facility improvement and $100,000 for the staffing of six committees appointed by the Illinois Supreme Court. These Committees were to study court-related problems such as pettit jury instructions,

court rules and probation. This $600,000 allocation came from a total federal package of $18,368,000. Again, the percentages by hindsight are meager.

In two ways, however, the Illinois SPA made a breakthrough: a major appellate defender grant and a funding technique called Action Now. Certainly, the Commission was not hostile or unsympathetic to the needs of the court as these projects indicate but the more visible and more vocal segments of the justice system - and the politically powerful City of Chicago - got the primary attention and the bulk of the money. The Illinois Defender Association was invited to undertake a survey to assess the needs of indigents in Illinois from criminal defense services. A $10,000 study grant produced a strong report and the net result was a $3 million, three year grant to set up an appellate defender system statewide. This has been the largest grant of its kind in the ten year life of LEAA and the state legislature has since institutionalized the project. It receives its full budget annually from the state. The federal seed money bore state fruit.

This qualified as a grant to the courts but many judges and observers objected to such a broad classification. In Georgia, however, indigent defense is part

of the total annual court budget; there, such a grant would be more justifiably classified as a grant to the courts.

The other breakthrough occurred in a special funding technique called Action Now. It helped the courts in at least one specific emergent matter: An assistant administrator of the Illinois Courts phoned ILEC one day and advised that certain developments in the law had created an urgent and sudden need for a few thousand dollars to put on a judicial training program. The Action Now Program enabled ILEC to say, "You've got it. Fill out the simplified application form later."

Action Now, a technique proposed to the policy board and adopted with enthusiasm, permitted the executive director, like an insurance underwriter, to sign off on grants up to $10,000. (A task force could sign off on grants up to $250,000 and only those requests in excess of these amounts went to the full board for approval.)

Safeguards were built in. The sign-off authority was limited to requests for "safe" projects such as training and the policy board received a written report on each grant. Project Action Now demonstrated that a public funding program, even in the executive branch can be responsive - and responsive quickly - to certain

needs of the courts, and inferentially, of other potential grantees.

The experience also demonstrates the interplay of action programs within a planning structure. Unanticipated events often required early responses. Five year plans - even one year plans - are a poor substitute for action. The absence of an itemized line in a current funding budget should not render government paralyzed when an emergency arises.

Court Participation

Initially, the Illinois courts appeared willing to stand in line with applicants from other disciplines. Many of its requests were granted and relationships were good. Some of the state's most respected judges meantime, began serving as chairmen or members of the 17 RPU's. Their presence prodded the initiation of applications for local court-related projects.

The Supreme Court, however, was becoming uneasy about the SPA involvement in court reform. The uneasiness was both philosophical and pragmatic. Federal money was suspect and federal money coming into the courts through the executive branch of state government seemed doubly tainted. This was seen as a growing threat to the independence of the judiciary.

Grants to the circuit courts also enhanced their independence at the very time that the Supreme Court was trying to tighten its administrative control over the entire court system. In a jurisdiction containing 102 counties, 21 circuit court districts and five appellate districts, managerial control is no easy task. A separate funding source could become another master.

From a planning perspective furthermore, it was disasterous. New projects were initiated that were unknown to the Supreme Court and some were not in step with the forward movement it envisioned. Similar funding of court projects was occurring in other states with their supreme courts running the gamut of responses from tacit approval to outright opposition.

Two grants in Illinois finally caused the Supreme Court to call a halt. Both were training projects: the one went to the Illinois Council of Juvenile Court Judges while the Illinois Bar Association received the second grant for the training of criminal court judges on sentencing standards. Apparently, it was now clear to the Supreme Court that leadership and coordination were necessary if its administrative role over all the courts were to have any meaning because the Court, soon

after these grants were announced, appointed a Supreme Court Committee on Criminal Justice programs with Professor Wayne Le Fevre, University of Illinois Law School, as chairman. The other five members were judges. That Committee was to do the work of a Judicial Planning Committee for the Illinois court system.

The Committee became the official applicant for funds for the courts and the Supreme Court somehow felt this intermediary Committee would launder the funds of their federal and state executive branch aroma. There were other solid grants to the "courts" in the early seventies. The major defender project was complimented by a three year $1 million grant to strenghen the prosecution. The recipient was the Illinois State Attorney's Association. A $500,000 court remodelling grant went to the City of Chicago and an experimental grant enabled law students from De Paul University to provide council to juveniles under the direction of the Assistant Public Defender of Cook County.

The Committee on Criminal Justice Programs has continued to function throughout the LEAA-SPA life and according to a key ILEC staff person, in the same posture vis-a-vis the SPA and RPU. The Committee submitted project proposals to the SPA; negotiations

developed; some projects were retained and incorporated into the state plan; others were replaced by projects originating at the regional level, usually initiated by local judges who retain considerable independence.

"When the Committee and SPA court planners work closely together, there are no problems," he advised. Nonetheless, it was significant that the SPA retained a "court monitor" on staff. The relationships were always fragile. Now the SPA has folded its tent and the permanence of the Committee is questionable. It has not yet moved beyond laundry listing of fundable projects to genuine planning.

Cracks in the Safe Streets Act

The Act was cheered as it came off the drawing board and was rushed into implementation. There was precious little time to prepare the states in understanding its potential and demands. Mistakes were made. Seen as a law enforcement program, many SPA directors were drawn from the ranks of the military and the police. Policy boards compounded the imbalance with a preponderance of law enforcement representation. The imbalance showed up in the funding patterns to the disadvantage of the courts and corrections agencies. Later, under pressure, separate planning and funding channels were created within the Act to neutralize these disadvantages.

Skilled professionals from within the justice systems were reluctant to leave secure positions to join the staff of an experimental state agency and researchers and academicians were equally cautious about identifying with this flashy program. A dearth of experienced talent in fact plagued many SPA's for much of their existence.

A series of false starts and vacillations bogged the war down. At the first opportunity, the Congress amended the legislation removing the unrealistic "safe streets" momenclature and eliminating the LEAA troika which had proven unworkable. Matching the Congressional shifts, LEAA changed its planning guidelines for the SPA's almost every year. First, the planning was to be, as the Congress intended, "comprehensive." Later standards and goal setting, then "stranger to stranger" crime reduction was the mandate, followed by "planning by objective" and other guidelines that kept each SPA and its universe off balance.

The planning requirements delayed the release of funds to local programs and what filtered through to state and local grantees was

usually a one year, start-up grant. Because the existing justice systems were deemed to be ineffective, the emphasis was on the new, the experimental, demonstration program. In communities that lacked resources to meet minimum standards for law enforcement, these programs brought little enthusiasm and had even less chance of permanence when the grant expired.

Critics were there from the first salvo. The cities, largely Democratic and the scene of most crime, were never happy to see the federal funds going to state agencies that were often controlled by a Republican Governor. The National Urban Coalition took up the cudgels early on and published a scathing - and in some respects - an unfair attack on the entire national program. Others followed and it became hard to identify any natural supporters for the program as structured. A basic thrust - at times denied - was to improve the justice system implying that the efforts of career personnel were not up to the task. As one SPA Director said "We fight everybody".

Inter-play with the federal funding reduced the acceptability of SPA leadership. "Discretionary" grants could be obtained directly from LEAA; a "high impact" program was developed by LEAA prior to President Nixon's re-election that poured millions of dollars, diverted from other sources, into politically important cities; and some members of the Congress were not hesitant to put pressure on the LEAA and the SPA for specific grants to their communities.

Seven major reasons for the failure of the war on crime to win clear victories are set out in the Report of the Special Study Team on LEAA Funding of the State Courts.[21] In essence, the SPA was an artificial transplant into the body politic that needed time to be assimilated and time was against it. Crime was active; the war against it was pre-occupied with drafting battle plans. Heavy planning was the

primary response to a crisis in which citizens demanded "action" and the experimental nature of the program saw the expenditure of large sums of money - some $8 billion to date without any reduction in crime. In fact, more sophisticated, better equipped police departments were able to arrest more offenders and it seemed that crime was rising!

There were great successes however in efforts to improve the administration of justice which can only be alluded to here. Each state has for the first time, created an inter-disciplinary planning body to look at crime and the justice system squarely and to develop a semblance of a remedial strategy; the federal funds did give some help and initiative to nearly every community and justice agency and there are a few monuments to LEAA's contributions that should be continued. The National College For Criminal Defense is perhaps the foremost example. This training, research and publication effort, housed at the University of Houston and funded heavily and almost exclusively by LEAA, is the pioneer national experience in professionalizing and helping the criminal defense bar.

The expectations for this war on crime were unrealistic and much of the effort was of dubious value. Research results on crime, its causation and prevention, were of necessity slow in formulation and limited in scope. The first few years of funding lapsed without major breakthroughs and LEAA had been unable to find established constituencies at the state and local levels.

Because the constitutional authority of the federal government to deal with crime is limited, LEAA could only suggest, urge and even deny approval of an SPA Plan if dissatisfied with a state's efforts. In 1973, for example, it gave conditional approval to two-thirds of the states plans, the condition being that more funds had to be allo-

cated to the courts the next go around.

LEAA by then had lost momentum and credibility. The early skirmishes were at best inconclusive and the mediocrity - and some scandals - in the program had left LEAA vulnerable and defensive. Under aggressive leadership, the state courts now made their move.

Chapter V

Re-Emergence of Judicial Planning

At its meeting in 1974, the Conference of Chief Justices by resolution found that there were "structural and procedural defects" in the LEAA-SPA funding pattern which put their state courts in an untenable posture. As the Chief Justices saw it, state courts had two alternatives: either to reject this increasing source of federal funding to the states' justice systems or to go down to the competitive and political marketplace of the SPA.

The first atlernative was unacceptable because the needs were great and the federal funding of the other segments of the justice system was causing further imbalance. In New Jersey, for example, the unified court system was receiving less than one percent of the state's annual budget and, like most other states, less than five percent of the LEAA funds. The state court administrator, Arthur Simpson, was uncomfortably, the sole court representative on the SPA board.

The second alternative was characterized as a threat to judicial independence. The Justices began dreaming of new funding channels directly from LEAA into the courts or at least of a fixed percentage of annual allocations from the SPA,s. The spokesmen for the state courts had made the same observations before but in 1974, the then Chief Justice of Alabama (now its U.S. Senator) Howell Heflin, was its chairman.[22] That made the difference. He went directly to LEAA.

The Conference of State Court Administrators helped by passing a similar resolution and its chairman, Marion Opala, also arrived for meetings with LEAA. Other groups voiced concern about the inequities in the LEAA program including the American Bar Association.

Behind the imposing figure of Howell Heflin was the appearance at least of solid support by the other chief justices and by the leadership of the organized bar. LEAA had already began to press states to increase the level of court funding and had some evidence of the realities. The SPA Directors however were generally resistant to the appeal for radical change in funding patterns and voiced that resistance through their representative on the advisory committee of the subsequent study.

Reacting to these meetings, Richard Velde, then LEEA Administrator, asked The American University to undertake a study of the allegations being voiced by the courts people and to make recommendations That study entitled LEEA Support of the State Courts is credited with "sparking the current court planning drive.".[23]

The study team consisted of Judge Henry Pennington of Kentucky, Dr. Peter Haynes, a skilled researcher, and this author who was than a law school dean. The team found that the courts were in fact receiving inadequate percentages of LEAA funds, about three percent if grants to prosecution and defense were not included, and a series of recommendations were made. Specifically avoided however, was any encouragement of separate court funding mechanisms or of fixed percentages of the annual funds going to the courts through the SPA's. The team

feared that any such approaches would retard the cooperation and committment of the courts to inter-disciplinary planning and programming. Separate and equal a branch of government, they should not be discriminated against fiscally but neither should they be isolated and detached. The courts share power and should share responsibility for improving the justice systems.

The progress of current court planning can to some extent be measured against three of the basic recommendations of that study. The first recommendation articulated a basic premise of our constitutional form of government: Primary responsibility for court planning should be vested within the judiciary of each state.

Commentary:

The study uncovered countless examples of executive branch SPA's planning for the future of the independent judicial branch. Some of this activity resulted from the lethargy or lack of unification within a state's courts and the SPA's were filling a void. The Criminal Justice Act of 1976, partially in reaction to this recommendation, authorized the allocation of $50,000 annually to support the establishment and staffing of a JPC and by 1978 NCSC could find JPC's functioning in thirty nine states, a rapid if not startling advance.

Recommendation:

Development of the Court's Plan should reflect the input of local

as well as state courts and the program articulated should present a balance of local and state court needs.

Commentary:

The work product of the JPC's is still in the first generation of planning; more often than not it is merely laundry-listing of funding requests. The Califirnia and North Dakota Plans attempt to meet local court needs but these are the exceptions. A perusal of state plans, for example, uncovers scant reference to the municipal courts (partially because they are not the criminal courts where LFAA funding is oriented).

The 1980 Judicial Plan of the Administrative Committee of courts, Wisconsin Supreme Court, proposed basic empirical research in the juvenile court field and adds the critique that such research "has not been widely attempted in other stated."

Planning as generally understood, has not really begun in many jurisictions. The federal funding has been both an enducement to, and a distraction from, genuine planning.

Recommendation:

Planning by the State Judiciary should be conducted in cooperation with the planning for other components of the criminal justice system as well as other components of the court community.

Commentary:

There is extraordinary resistance to inter-branch and inter-agency planning by the courts. The mandate from the 1976 Act that

prosecutors and defenders serve on each JPC created turmoil in LEAA relationships with the state courts. LEAA easily relented on the requirement where state law or tradition "made the presence of these key court-related personnel on a JPC troublesome."

In the bickering and screaming against cooperative planning the Iowa JPC is unique. It proposed cooperative planning be undertaken with corrections because of the inter-dependence that exists between thecourts and corrections within the state. That kind of movement is what the Recommendation envisioned and sets a new direction for JPA activity.

Current Obstacles

The state of the art of judicial planning is emerging but many obstacles are thwarting its healthy evolution. The orientation of the average judge causes him to under estimate the significance of the court planning function or to see

it as someone else's task. These attitudes are not limited to judges alone however. Planning is seen as an esoteric skill and action-oriented leaders and policy makers in government generally want to stay clear of it. They may be interested in the results but shun the process. They ask to know only "the bottom line", the conclusions, not the rationale or the evidence to support it.

The posture of the supreme courts is crucial to success but some never see the court plan. One planner recounts the instruction he received against developing any program for the courts that might offend the legislature. Without strong support from the top court then, a JPC is likely to fade into the unplanned sunset cr, at best, to have weak credentials. The National Center's 1978 Survey of the Status of Judicial Planning in the State Courts reported the following benign neglect:

> Only eight states reported formal endorsement of the judicial plan by either both the chief justice and the supreme ... In New York the state administrative judge authorized the plan in writing on behalf of the court system...In at least four states, the plan received no judicial endorsement at all...The survey indicates

> that judicial plans have not, as yet, been formally embraced by judicial leaders.[24]

The evolving picture is not fully revealing. The Vermont Legislature has absorbed the cost of court planning by funding a revised court administrative structure.

The court planner in Washington wrote the author that planning is now coming into its own and being accepted by the judges. The Supreme Court he wrote is "extremely interested." Planners is other states are less hopeful.

Planning Staff

If the key judges in the state courts need to be educated and motivated to the value of planning, and most do, it appears unlikely that the staff planners can serve that function. The NCSC survey revealed that most are new to court management but four have earned a Master's Degree in judicial administration. They come from a mix of educational backgrounds, but many, as one might suspect, have a law degree. They have the same characteristics as the staff assigned to judicial training: Young and eager to do well, but lacking the leverage that gives easy access to the justices or commands their attention.

Michigan used both a law professor and a lawyer as consultants to develop the '78 court plan. Some state

courts have been permitting the SPA to develop it and in some jurisdictions it is totally a staff product under the direction of the state court administrator. New York engages 18 managers and planners on a full time basis for a total budget of $930,000, by far the largest in the nation. However, administrative reform has diverted attention from conceptual planning.

In June, 1979, Dr. Hugh Collins, President of the National Council for Judicial Planning, reported:

> "The National Council for Judicial Planning has survived its first year ...It has been a year of accomplishments not the least of which has been the increased communication among planners and their courts ..."[62]

This is a significant observation, because the area of communication may ultimately be the nerve center of the total planning organism. Without the ability to talk with the top judges, planners are isolated and ineffectual. Furthermore, the NCSC technical assistance project has now phased out and the future of institutionalized court planning looks clouded.

The National Council for Judicial Planning then takes on increased responsibility in moving to achieve its stated purposes: (Article II, By Laws)

The organization is established:

To provide continuing education opportunities for members and persons interested in the field of judicial planning.

To provide forums for discussion of judicial planning

To provide mechanisms for communication among members and persons interested in the field of judicial planning.

To provide assistance to members and persons interested in judicial planning.

To improve the administration of justice through planning.

The Council therefore sees itself as filling vital educational and technical assistance roles. It deserves whatever support can be generated or courts may revert to the simplistic solution to their perennial problems voiced by a California judge last year: "More judges and more lawyers!"

The National Center Survey gently states the state of the art of court planning in 1978:

> "...judicial plans have not, as yet, been formally embraced by judicial leaders...Very little active implementation has occurred...there has not been a strong emphasis on implementation."

The next chapter offers an analysis of the level of planning undertaken since then in a sample of states.

Chapter VI
Current Approaches to Planning

This chapter attempts to assess the quality of the planning now underway in a representative number of state court systems. It is not a profile of structure or methodology as much as a report of the level of sophistication of the planning effort reflected in the directions and programs being proposed. Special attention is directed to any movement away from mere laundry-listing of projects seeking federal funding support into more visionary - and therefore more authentic - planning.

SPA and JPC Plans from more than twenty states were read and nine are reported on here. They were selected on several bases: geographic and court structural differences were important. Therefore, the unified New Jersey Court system was included as was the Idaho Courts because they are also fully state funded. By contract, Arkansas is fragmented structurally and fiscally.

California has the longest history of institutionalized court planning and Maine uses the most unique approach: the administrative docket system. Ohio plans without a JPC and it seemed crucial to determine whether the quality of the resultant document might vary from the evolving norm as a result. Such factors entered into the selection decision.

A word of caution is warranted about the inclusion of the planning being done in Louisiana, Utah and Washington. Although

justifiable because of demographic differences, the selection was made more because of the vitality and imagination of their planning. Their programs may be replicable in other jurisdictions; without doubt, their creativity is.

The reader should appreciate, therefore, that these Plans are not representative of the majority, that more JPC's are in the first generation of planning than are into intensive, interdisciplinary system change. Perhaps that is understandable given their brief life span and the alien nature of the planning process for the vast majority of the nation's judges.

Arkansas

On December 6, 1976, the Arkansas Supreme Court established a Judicial Planning Committee "to perform research and make recommendations on a long range basis to improve the administration of justice in the courts of Arkansas." Seventeen members were appointed; twelve are judges and five are lawyers including the attorney general of the state, a prosecuting attorney and a criminal defense lawyer. A close relationship with the Supreme Court is maintained through the appointment of its Associate Justice Frank Holt as JPC Chairman. John Stuart, Judicial Department Coordinator is the staff planner.

The need to plan for an improved court system has long been clear. Arkansas is one of the last states to maintain separate trial courts in law and in equity. The 1980 Court Plan, identifies two other problems that also make for inefficiency: the number of courts having overlapping jurisdiction and the variety of funding sources that produce inequality in court services. Several studies over the past fifteen years have recognized these shortcomings.

One of its first projects, therefore, was the drafting of a new Judicial Article and a thirty one member task force of the JPC submitted a draft article to amend the Constitution in May, 1979 to the Constitutional Convention. Unfortunately, no lay persons served on the task force and that was, in the author's view, at best a tactical error. Merit selection of judges and modern judicial disciplinary procedures - two of the issues that lay persons might be expected to promote - were not adopted.

Structural and jurisdictional problems, however, were alleviated in the new Article. But hostility among the delegates to the Constitutional Convention and a lack of enthusiasm for the proposed changes were apparent. In November, 1980, the voters rejected the package.

The effort toward court reform however was hardly wasted. The most glaring deficiencies are now identified in the '80 Court Plan together with a strategy for change and these have been endorsed by the Supreme Court. Other problems identified in the Plan are delay, insufficient support personnel, lack of uniformity in procedure among the lower courts, inadequate court hearing rooms and a gap in public education about the justice system.

In its first 90 days the JPC initiated another ambitious fundamental court improvement project: law students have been sent into each of the 75 countries collecting basic information on the municipal and circuit courts. They identified the sources and extent of court funding; the number of court support personnel; and they inventoried the court facilities and verified the reporting methods of current caseload data. This essential information will allow the formulation of alternative plans for financing the courts statewide with some grasp for the first time, of the impact of court reorganization.

The '80 Court Plan hints at moving beyond grantsmanship which is the first generation of judicial planning and begins to address broader issues, however briefly. In the area of Education and Public Relations, the Plan recognizes that "Efforts to improve jury and witness orientation and promote better public understanding of the judicial system should be intensified and expanded."

A newsletter intended for public consumption was begun in late 1979. The JPC has vitality and momentum. Whether it can be sustained when federal funding support ends however appears speculative.

California

The California Judicial Council was established by constitutional amendment in 1926. From an eleven judge member body, the Council grew in size and diversity and by 1966, its 21 members included judges, lawyers and legislators. Court planning however, became the responsibility of the Judicial Criminal Justice Planning Committee when it was created by the state legislature in 1973.

That legislation also reorganized the SPA (a statutory creature) and permitted the creation of regional planning districts and boards. This initiativeof the legislature is quite unique, accounting for the durability and assimilation of the planning efforts. In the enabling legislation, the JC is instructed to appoint the seven members to the JPC. It appointed seven judges including two who sit in municipal court. An advisory group has been added consisting of two court clerks, a court administrator and a county public defender. The local representation reflects a philosophy of home rule, of "keeping Sacramento out".

Management and coordination by the SPA and the JPC however, have been difficult and tensions have been enervating. The JPC issued a Principles and Priority Statement for inclusion in the 1980 SPA plan update. That Statement is a guide to the ~~RPUs~~ RPU's on the kinds of regional court projects that the JPC will approve.

These priority areas were identified through a survey of court needs as seen by judges, RPU's and two statewide organizations: the County Clerks Association and the Association of Municipal Court Clerks. There were 48 responses.

The SPA has meantime directed the RPU's to allot 10-15 percent of their federal criminal justice funds to the local courts. "Courts" include prosecution and defense and the SPA therefore claims that its 1980 allocation to the courts is $4,822,720 out of a total kitty of $31.5 million, about 16.8 percent of Part C (action) funds.

Of these "court" grants, $2 million were slotted for prosecution and $419,154 for defense, with an amount to the judiciary roughly equal to what both the prosecution and defense will receive. Within the allocation to the judiciary are pretrial status and post-sentence disposition grants which by their description clearly overlap onto other segments of the justice system. The percentage of the SPA funds that ultimately find their way in fiscal year '80 to the courts cannot be assertained; it appears however that the figure might not be higher than the 5% which has been a ceiling on the court funding throughout most of the LEAA experience. (In California it has averaged 5.65%).

In fairness, the matter is complex. The RPU's have not been equally aggressive in trying to upgrade the local courts and a few courts have indicated they have no needs.

Furthermore, Thomas Madden, General Counsel of LEAA, advised the JPC that "the actual dollar share for the judiciary must be finally determined by the State Planning Agency in view of all other criminal justice activities in the State." He noted however, that the judicial plan has a presumption of validity.

This JPC has been very active. It has formally endorsed the proposed State Justice Institute Act of 1980 and is studying the import of Proposition 13 on the already undermanned trial courts. It meets with the RPU's and by law is required to report annually to thelegislature.

The importance of court planning is spelled out by the state legislature in Chapter 4, Title 6 of the Penal Code:

> (a) The California court system has a constitutionally established independence under the judicial and separation of power clauses of the State Constitution.
>
> (b) The California court system has a statewise structure created under the Constitution, state statutes and state court rules, and the Judicial Council of California is the constitutionally established state agency having responsibility for the operation of that structure.
>
> (c) The California court system will be directly affected by the criminal justice planning that will be done under this title and by the federal grants that will be made to implement that planning.

> (d) For effective planning and implementation of court projects it is essential that the executive Office of Criminal Justice Planning have the advice and assistance of a state judicial system planning committee.

Despite the sustained vitality of court planning in this state, it is difficult to see any superiority in the finished plans or in the scope of vision over the more recently created JPC's.

Idaho

Court planning in Idaho is noteworthy. No federal money is used by the Supreme Court and the Plan for Idaho Courts, Fiscal Year 1980, boasts of the state court's ability to function on state funds alone. However, the planning structure is small and inexpensive; the court system is unified and under the supervision of an alert Supreme Court; and the problems confronting the judicial system are seen as manageable.

The five member Supreme Court and the respected state court administrator, Carl F. Bianchi, comprise the planning unit. The plan evolves after consultation with the trial judges in identifying major goals for the court system. Interestingly, the Plan serves as a guide for managing the Idaho judiciary. The 1980 Plan lists six major goals and 25 objectives for achieving them.

Goal #4 suggests the special flavor of this Plan as do the attendant Objectives:

> Maintaining the Independent Nature of the Courts as a Separate Branch of Government and allowing the Supreme Court to fulfill its Constitutional Authority and responsibility to manage the Affairs of the Judiciary.

Objective 14: Continue Supreme Court Independence from federal funds.

Objective 15: Continue comprehensive planning as an essential tool in the Administration of the Idaho court system.

Court planning in Idaho predates the federal support initiative, the first planning document approving in 1973. The state court administrator drafts the proposed plan each year "after suggestions are sought from Administrative Judges and Trial Court Administrators and the five justices take an active role in debating the various goals and language of the plan until a final version is agreed upon."

In addition to the Statements of Goals and Objectives, the Plan contains individual district plans drawn up by the Administrative District Judge and Trial Court Administrator for each of the seven judicial districts. The State Court Administrator assists. Also, the 1980 Plan reviews the progress made toward achieving the prior year's objectives.

The district plans reveal experience in the use of management by objective planning, and in general, traditional judge-oriented projects hold sway.

Considerable progress was reported at the district level in meeting 1978 goals. These included creation of a jury assembly area in one district so that jurors no longer need congregate in court corridors; a successful workshop for the judges (with a recommendation that it be repeated); and a citizens advisory committee for juvenile court. Another district proposed that in child support cases, the payor and the payee each be required to give $1.00 toward the costs of processing such payments.

Statewide, most of the objectives identified by the Supreme Court in its '79 Plan were achieved. A manual for clerks of the district courts appeared and manuals for trial judges were updated; criteria for speedy trials were revised; work progressed toward short and long range planning to upgrade court facilities; and use was made of modern management technology. Failures were also noted: no progress was made in establishing an intermediate appellate court to assist the Supreme Court with its "seriously expanding appellate backlog."

A reader of the Idaho plans senses that planning is fast becoming a standard operating procedure. It is taking hold because the Supreme Court sees it as a mamagement tool enabling it to fulfill its supervisory authority over all the state courts. The Plan can be said to suffer from the lack of citizen participation and the absence of the essential voices of prosecution, defense and the organized bar.

This is a conservative but impressive document that remains safely within the boundaries of American Bar Association type projects; making the existing system work better. With greater experience the planning process ought naturally to look at police-court-corrections interrelationships and at other inter-agency contacts: to greater consumer understanding and use; and to open, imaginative approaches to resolving conflicts.

Louisiana

The citizens of Louisiana ratified a new Constitution in 1974 which substantially unified the state judicial system. The Supreme Court has general supervisory jurisdiction over all the courts and the chief justice is the chief administrative officer of the judicial system. Article 5 of the Constitution affords the Supreme Court the power to establish procedural and administrative rules not in conflict with the law.

Judges are elected to specific terms in all of the courts of the state and except for justices of the peace, they must be members of the bar. Uniformity of practice and procedure for each level of court is an on-going effort. In 1980, for example, the legislature was debating the Uniform Parish Court Jurisdiction and Procedure Act and the responsibility is also entrusted to the Judicial Planning Council.

In 1976, Chief Justice Joe W. Sanders constituted twelve judges as a Judicial Planning Committee with Associate Justice Albert Tate, Jr., as Chairman. At the first meeting on October 5, substantial discussion centered on whether the effort was "a waste of time." The 1980 Judicial Plan indicates that in fact the JPC has become a vital resource for the justice system.

Before 1976 ended, the JPC had been increased to seventeen members. giving it representation of the public, the bar, and prosecution and court administrators.

In short order the JPC authorized the preparation and distribution by the National Center for State Courts of a questionnaire assessing judicial perceptions of the problems and needs of the courts. An undated report by Lansing L. Mitchell, Jr., of the judicial administrator's staff advises:

> The 1976 year closed finding Louisiana for the first time effectively having the judiciary involved in planning for LEAA funding pursuant to the 1976 direction by Congress that the courts be afforded an opportunity to plan for LEAA funding of judicial projects.

Motivating the planners is the 1972 Study of the Louisiana Court System by the American Judicature Society which found "The courts are now faced with untrained personnel, inadequate facilities, poor record keeping systems and inadequate finances." The 1980 Plan adds ominously "The problem has not diminshed with the passage of time; it has become worse."

Consequently, the Plan reiterates these needs and sketches out prioritized short-range goals to meet them, modest but manageable. No cost figures are attached however. As in most other JPC plans, the approach is conservative and cautious.

The actual projects for which funding is sought are listed by planning districts. Salaries for court supportive personnel dominate the agenda. Eighteen judicial districts, for example, are asking for law clerks. Three statewide projects are listed: records management, computerization and preparing a Code of Evidence. They total $165,000.

Despite this array of activity, the 1980 Plan is designed

modestly "to facilitate the funding of programs"...for which it was expected that SPA funding would be utilized, no longer a continuing possibility. The Plan is intended for incorporation into the SPA Plan as its Court component.

The problems and needs of the courts are ascertained through staff contact with judges at all levels and the work of "national experts" is utilized as reference material. Although citizens serve on JPC subcommittees it is not clear how user expectations and experience are ascertained.

There is no systematic attempt to ascertain reliable useropinions. Public attitudes and understanding of the courts were recognized as a problem by 80 percent of the judges who answered the initial JPC questionnaire.

However, the JPC is moving in the right direction. A public education program has been mounted and the role of the newly created public information officer for the courts is expanding. The Plan recognizes, as few do, that without interchange and cooperation between the judicial branch and the community the judicial system may not be "fully responding to the needs of the public."

Another characteristic of the Louisiana JPC deserves mention. The subcommittees not only produce important research material but they are turning out valuable aids for the day to day operation of the courts. The Small Claims Subcommittee is engaged in producing a user handbook; the Court Reporting Subcommittee is working toward statewide standards and remedial legislation may emerge from the Mental Health Commitment subcommittee.

The Long Range Planning Subcommittee now consists of 31

members including representatives of the public. They function as 5 task forces on court structure, trial courts, finance and facilities, court administration and judicial personnel. If not bound exclusively to the type-worn standards for court organization, these task forces might be a prototype for the future of court planning.

The JPC will also be greatly reinforced by achieving the Prioritized Short-Range Goals for the Fiscal Year 1980 Plan. Because they are manageable, they will provide the momentum necessary to sustain a commitment to planning. Listed succinctly in Section III of the Plan, they include:

1. By 1980, the Louisiana Judicial College will be fully operational.
2. (a) By 1981, every judge in a judicial district with a population of more than 23,000 people per judge will have a part-time of full-time law clerk.
   (b) By 1981, every court in a metropolitan area over 50,000 will have two "back-up" court reporters.

A reader catches the creativity and aggressiveness that characterize this JPC.

When Judge Harold J. Rubin retired recently from the Maine Superior Court he said, "The only thing I'll miss is being on this (Court Management and Policy) Committee." And he had been skeptical at the start! The committee appointed in 1977, is Maine's approach to judicial planning. The word "planning" is never used; it is suspect, disturbing to the New England sense of frugality and practicality.

The history of its genesis is interesting and significant. Once a month the members of the Supreme Court would consider administrative problems at its working lunch period. The court administrator, Elizabeth D. Belshaw, (now with the NCSC) would attend and attempt, between bites of her repast, to talk to the court about important managerial matters. It was hurried and unsatisfacory; little hard data were available to the court.

When LEAA proposed funding a court planning capability, Justice Sidney W. Wernich offered to chair a management and policy committee thereby eliminating the pressures of the working lunch and allowing his fellow Supreme Court members more attention to their first love: appellate decision making. The court agreed to create such a committee but skepticism was high.

The five members appointed to the Committee are all judges although lay citizens were involved in a sub-

committee study of small claims court. They achieved rapid acceptance by the Supreme Court because they are:

1. Deferential
2. Keep the Supreme Court informed
3. Tackle one project at a time and
4. Use language familiar to the Court.

The Committee uses a technique called the "administrative docket." Each matter is presented as though it were an appeal and this procedure, together with the wisdom of identifying judicially attractive, early payoff projects, earned it the Court's respect.

"The process will involve some thought of the future" the Committee said defensively "but will primarily be an attempt to deal with issues that need resolution in the present." Jury sequestration was the first project and by hindsight, an ideal one. The practice was costly and irritating. When the Committee proposed that the trial judge hawe discretion in whether to lock up a jury or let them go home at night, the Supreme Court quickly agreed and the reaction was quite positive.

A key ingredient to the success of the Maine formula is the chairman. Justice Wernich is trained in philosophy and mathematics as well as in the law. He is preceptive and sensitive but in conversation he was dubious about the effort, "I'll give it another year" he said.

However, the Chief Justice has said "I doubt that we would ever arrive at the place where we would not need their work." The federal funding support may be crucial to sustain this novel approach to productive planning.

New Jersey

On June 6, 1977, the New Jersey Supreme Court obtained an opinion from LEAA's General Counsel, Thomas J. Madden, on the legality of appointing a Judicial Planning Committee as an advisory committee to itself. The concern of some court officials emanated from the State Constitution, Article VI, which says in part:

> The Supreme Court shall make rules governing the administration of all courts in the state and, subject to law, the practice and procedure in all such courts.

Assured by Mr. Madden that the establishment of an advisory body to the Supreme Court "would appear to be consistent with the requirements of the LEAA Act", the court next obtained a waiver of the then existing requirements that the prosecutor and defense be represented on the JPC. Here again, the concern was that the form of constitutional government in the State of New Jersey would be jeopardized if the Supreme Court were to dilute its superintending function.

The sensitivity to the exclusive role of the Supreme Court in administering the state court system is difficult to appreciate in this context because the court appoints many advisory committees and the JPC was clearly envisioned by this court as merely advisory. The experience however reflects the strong tradition of tight administrative control dating back to the adoption of the 1947 State Constitution.

As members of the JPC, the Supreme Court appointed its seven justices plus the Presiding Judge for Administration of the Appellate Division of the Superior Court, the Administrative Director of the Courts, and the Assignment Judge who serves on the policy board of the state planning agency. The Administrative Office of the Courts

serves as secretariat.

The all-judge composition of the JPC is rare. (The administrative Director of the Courts was a judge on leave.) The recent replacement of the Administrative Director by a non judge will eliminate that exclusivity and it will be important to observe what the progress of a JPC so constituted is in relation to the broader based JPC's functioning in other states.

Perhaps aware of the possible pitfalls of single-discipline planning for a judicial system that depends upon the cooperation of law enforcement, prosecution, defense, probation and other services, the enabling Order of October 13, 1977, states in part:

> Consultation and coordination with defense and prosecutorial representatives and citizen input in the JPC planning process shall be effected through the Administrative Director of the Courts, and the Judicial Conference of New Jersey and Supreme Court Committees, as appropriate ... Meeting with local planners and submission of their funding purposes are also envisioned.

It may also be significant to note that the JPC is established "subject to minimum Part B funding of $50,000 for staff support of the JPC." Whether the existence of this court planning entity depends on annual federal staffing support is not clear. More important is the practical question of whether the planning effort, once begun in earnest in this complex state, can be allowed to disappear if and when this modest federal money terminates.

The 1980 Judicial Plan identifies the two main areas in which the JPC "will continue to focus its attention":

1. Review of all court-related grant applications submitted to the State Enforcement Planning Agency (SLEPA) for funding; and
2. Development of the 1981 Judicial Plan.

A later reference in the Plan expands the functions of the JPC to include 1) "making recommendations to the Supreme Court concerning the overall improvement of the judicial system; and 2) defining, developing and coordinating fundamental court improvement programs."

A question can fairly be raised about the feasibility and desirability of the Supreme Court dominating the JPC, being advisory to itself, and whether the proximity of the court to the problems of the administration of justice permits the detachment and creativity that are characteristic of good planning.

The 1980 Plan is an important 156 page document in that it provides a current profile of the courts of the state with references to problems of delay, adequacy of facilities, etc. An obvious agenda immediately arises to test the planning capability. Beyond that, the Plan is essentially a compilation of funding proposals to deal with twelve defined problems, all in commonly discussed subject areas. They can be grouped in two categories: resources needed to operate the present system more efficiently and programs to divert certain kinds of conflict situations to extra-judicial arenas such as neighborhood resolution dispute centers. Other areas proposed for funding include the training of court personnel; improvement of court services with better technology; and improved programs in probation and in juror utilization.

No systemic changes are considered; none of the more persusive recommendations made over the past several years to depoliticize the judge selection process are even identified. And no reference is made - at least in the 1980 Judicial Plan - to the needs of the prosecution or the defense. This may be inevitable because the planning process is so new. Perhaps a more critical look at what the courts do and who does it, will emerge as the planning process matures. It is premature to do more than suggest the alternate possibility: that the most fundamental changes - and therefore the most urgent changes - are unlikely to be proposed within the court system itself.

OHIO

The Supreme Court of Ohio has chosen not to appoint a JPC and neither that court nor any designee developed any planning document for the year 1980. Instead, the SPA developed a unit on the Courts for inclusion in the 1980 Comprehensive Plan utilizing in part priorities such as judicial training that were set out in 1979 by the Ohio Criminal Justice Supervisory Commission.

It is important therefore to assess whether the Courts unit is appreciably weaker than in those states where a JPC is functioning.

The Ohio Plan does not indicate the composition of the SPA planning board nor the identity or education of the planners who wrote the unit on the Courts. It may be significant therefore that of a total state wide allocation of $12.8 million, $2.1 million are allocated to the courts. These funds are spread over four projects but the one is a career criminal identification program within prosecutors offices and a second project is in the area of indigent defense services.

When a JPC exists, the strong tendency is to exclude such program areas as not legitimately within the court area. If these programs are removed, then the budget for the courts is reduced by about fifty percent, the courts receiving approximately ten percent of the annual LEAA action funds.

The planning methodology is management by objective and in a sophisticated fashion, each program area identifies Objectives, Relationships to Goals, Objectives and Standards and General Strategy for Implementation. This is standardized professional planning.

Interestingly, the single program that is undeniably a "court" program is entitled Judicial Planning and Management. It proposes training opportunities for the system's judges both in Ohio and out-of-state; utilization of "highly skilled professional court administrators" in all major metropolitan areas and in three medium-sized counties; a pre-trial release project that will afford urban courts investigative assistance; and a computerized information system replacing the present manual method of handling information.

Perhaps because of the prior contributions of the Supervisory Commission, the quality of the Ohio Court Plan for 1980 is not dissimilar in methodology, program direction or percentage of total LEAA funds received from those court systems that utilize a JPC with staff and policy board separate and independent from that of the SPA. Further study is indicated however to determine whether perceptions gleaned from the information available has long term validity.

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1 OF 2

Utah

Refreshing is an apt initial description of the court planning effort in Utah. The Judicial Plan for Fiscal 1978 was the first annual plan published by the Utah judicial council which named itself the JPC for purposes of conforming to the federal requirements. The Chairman, Chief Judge Thornley K. Swan, Second Judicial District, sees the creation of the JPC as "an important recognition of the constitutional independence of the judiciary and the need for it to be able to plan for its own future."

Each of the specialized courts, and the trial and the appellate courts are represented on thenine member JPC. The representative of the Utah State Bar Association is a non-voting member. A citizens advisory committee offers recommendations which, if adopted, are incorporated in the Goals for the Utah Judiciary, the Court Plan. One of the citizen recommendations is for the publication of a small claims information brochure and this has led to an assessment of the effectiveness of small claims operations statewide.

Three components of the 1977-79 Goals are noteworthy:

1. A recognition that the courts are a segment of a larger justice system;

2. An articulated strategy to improve communication and understanding with the legislature (even when not in session), the trial and local courts, the bar, and the public; and

3. A scheme for ultimate assumption by the state of federally funded court projects.

Recognition of inter-dependence is seen in the decision to "promote an active role for the judicial branch in the development of a statewide master plan for corrections." This move is certain to force reexamination of the role of the judiciary in the total justice system. The rationale for the activist role is explained:

> "Because the judiciary and the corrections system are integral parts of the criminal justice process, it is essential for the courts to provide input into statewide corrections planning. One area of concern is that of presentence investigation services to the courts' where there is a need to review the quality of investigator presentence evaluations and recommendations."

To achieve its goals, the JPC will move determinedly "to develop a more positive image of the courts at all levels through adoption of an affirmative program of judicial image improvement." This effort includes news releases, speakers bureau of judges working with state and local bar associations in an attempt to involve them in the formation of Judicial Council policy and procedure and "planned contacts with key legislators and committees" between sessions of the legislature.

The Planning effort is aided by the presence of a judicial planner who has both planning and budgetary skills. He tries to reflect in each of the Plan's goals a cost estimate and the source of funds. This awareness of fiscal constraints no doubt accounts for the Plan's scheme for state assumption of those costs of the Utah court system that the Judicial Council determine should be borne by the state.

The judge training program is a good example. Funded by the SPA, state funds are being introduced and permanent state funding is sought. This strategy of course is absolutely essential if services, made adequate with federal help, are to continue indefinitely. Retention of court planning staff will be crucial for all states now dabbling in planning with federal financial encouragement.

A final note on this creative "think tank" that is the Utah JPC! It has found that the reliance of the judiciary for legal counsel on attorneys furnished by the executive branch is "inconsistent with the doctrine of separation of powers." The legislature has its own counsel the JPC points out, and so should the courts. Therefore, the Plan will include in the next budget submitted to the legislature an appropriations request to hire counsel on an "as needed" basis.

Washington

The 1979 Judicial Plan for the state of Washington is the most incisive, revealing, for example, considerable sensitivity about the need for better public understanding. A pioneering project was a two day workshop for press and media personnel. One representative from each of the state's newspapers was to be included among the 300 participants together with district, superior and appellate court judtes. The rationale for this $11,000 effort is explained cogently:

> "At a time when the procedures of the judicary are coming under increased public scrutiny, it has become important for the bench and the news media to understand their individual needs and to clearly establish the standards of their working relationship. As the media moves toward greater coverage, the use of cameras in the courtroom, it must accept the responsibilities and to share in the need to protect the objectivity of the proceedings. For this reason it is essential that the news media clearly understand the procedure of the court. This project will establish and present a training session for that purpose.

The Administrator for the Courts will have an advisory Committee of newspaper people, judges and lawyers. The strategy offers possible models for replication; it recognizes that support for the courts emanates in part from understanding.

The Plan is equally progressive in recognizing the impediments to understanding that unnecessarily result from the separation of powers doctrine. It proposes communication and coordination with the legislative and executive branches in order "to plan for and implement judicial system improvements." Even the need for a dialogue with the federal courts is recognized because of the widely proposed transfer of federal jurisdiction to state judicial systems in diversity of citizenship cases.

Citizen participation in the courts is encouraged as a specific goal and alternative hours for court operations will be considered in an attempt to improve their convenience for litigants and other users. However, no public representative serves on the JPC.

The problems of the judiciary, so called, are also problems of the litigants and taxpayers. To identify these problems however, a detailed questionnaire was sent only to judges and court-related personnel: prosecutors, defenders, and court administrators. The results of some 25 questionnaires together with the Council's members' "personal knowledge", formed the basis for the 1979 Plan. Interestingly, although 74.7 percent indicated that civil trials were not considered unreasonably delayed, the JPC determined that ten counties had an excessive caseload; that the average appeal takes nearly 17.5 months to perfect in the Court of Appeals and 13 months in the Supreme Court; and that even at top efficiency,

the year would close out with an additional 30,000 cases backlogged. The Council concluded that "the underlying problem of the judiciary is the inability to dispose of the pending workload." This, of course, is complicated by the disinclination of the bench to recognize that delay is a problem.

The Plan identifies 12 statewide projects for funding and 27 that are regional and local. Included are the commonly seen projects in records keeping, information systems and judicial education but also innovative efforts in citizen dispute resolutions centers, law-related education for juveniles, an appellate defender project that has already caused the state legislature to increase from $450 to $750 per case the compensation for indigent appeals, and a laudable exploration of the expanded use of law persons as referees, coordinators, etc., in the judicial system. The reader cannot help but be impressed with the creativity of this planning process.

A member of the Supreme Court, Justice Robert F. Utter, is chairman of the fourteen member Planning Council and it submitted without formal endorsement of the Supreme Court, 39 such projects to the SPA for inclusion in its Plan for LEAA funding.

At its initial meeting in 1976, the Council debated expanding its membership to include prosecutors, defenders, administrators, and lay citizens. Only the defender and administrators won a seat. The 1979 Plan explains:

> "The Council attempted to balance the need for judicial independence with the political realities of the Washington court system. For this reason, the Council felt that it was not appropriate to have the executive branch of government represented on the Council. The Council, as it

> presently stands, consists of the following: two supreme court justices, one judge of the court of appeals, three superior court judges, three district or municipal court judges, one juvenile court administrator, one district court administrator, one superior court administrator, the state court administrator, and one county clerk. In 1978, a representative of the Washington Defender Association was included on the Council. Members were nominated by their respective judicial or professional association and appointed by the Supreme Court. . . ."

The composition of a JPC seems then to have a strong influence on the projects that it supports as witness the appellate defender program. This relationship warrants further study but even at this early stage, it appears to indicate that the appointment of a member to a JPC is the first step in setting a discernible direction. The numerous citizen-oriented projects however are a surprise because of the absence of the lay citizen voice on the planning committee and in the soliciting of views for court reform. (The 1980 Plan echoes many of the same strategies. Public information packets are mentioned as a new educational tool.)

Chapter VII

Judicial Discomfort with Planning

The greatest obstacle to maintaining a dynamic capability within a court system is the blurred judicial perception of this basic management tool. Because the concept of planning is not clearly understood, its significance remains elusive. And even when judges accept the importance of planning, they rarely see a central role for themselves.

It tends to be thought of as an alien science better left to their Supreme Court or to the legislature or to subordinate staff personnel who are trained in such management skills. Some see it as an undue distraction from the heavy day to day burden of deciding cases and writing legal opinions, the increasingly difficult duty of "managing" one's own courtroom.

"I take one case at a time" some judges will say explaining that they can hardly keep abreast of today's court calendar, stay informed of controlling appellate decisions and handle the paper work, participate in training programs, and numerous conferences. Tomorrow's crises are for tomorrow's judges. The preocupation, historically and often of necessity, is almost exclusively with case decision making. That is the real world and it provides immediate gratification: litigants are awarded damages; offenders are punished; the appellate decisions advance the law; justice is done. Conversely, planning

appears unrewarding; by its very nature it looks to future achievement. Tedious as daily work-outs before the big game. No audience, no visible winners.

To some judges planning also connotes governmental bureaucracy, (Five Year Plans), make work, a waste of time and tax funds. There remains in some states a special reluctance to participate in a federal funding program; over the years many federal initiatives have had few controls and the press has focused repeatedly on incidents of dubious expenditures and outright corruption.

Another cause of judicial diffidence is the fear that judicial ethics could be impaired by serving on planning boards that may bring them into the political arena and if litigation results it may present a conflict of interest dilemma. To become involved is to become implicated, compromised. Working for systemic change is seen as proscribed political activity. The basic fear is that planning, sparked and funded out of Washington, D.C., is a boondoggle and a judge is well advised to stay clear of it.

Discomfort comes also from the novelty of the planning enterprise. Disciplines other than the law are basic to planning and participation requires adaptation to management and planning concepts, to empirical research methodology and statistical analysis. The further the judge strays from traditional roles into multi-disciplinary planning the more intimidating it becomes. It is therefore comforting, but

facile, to expouse that judges should judge and planners should plan.

Legal education contributes to this insular attitude. Except for a few schools with vision, the bulk of the 162 accredited law schools offer precious little understanding of the inter-dependence of the law with other disciplines. Theduty of the lawyer is to the client and to the profession. Law reform and improvement in the administration of justice are not among the priorities.

The focus is case law and on the case at hand. Individualized justice, not social reform. The pervasive question for the law student, the lawyer and the lawyer-judges is "What is the law in this case?" Concerns about what the law should be and whether there is a preferable way to resolve conflict are left to the end of the class, time permitting, or to other disciplines and other settings.

Further insight into judicial attitudes can be gleaned from the history of our courts. It is a history of precedent building and tradition setting. From our earliest years as a nation there has been a compelling predeliction toward developing our own case law. Today's litigation is resolved by reference to prior appellate decisions which are controlling. Therefore, our courts set an early course in delineating and applying the law of the land, substantive and procedural, and this has remained their primary, if not exclusive, preoccupation.

Any why not? The rapid evolution of American society

continually presented changing and novel areas of conflict. The legislatures had the court funding responsibility for state courts and through the first half of this century at least, case loads were manageable. When circumstances warranted, funding bodies could provide for more judges and more courts because tax revenues were increasing. Expansion was easier than efficiency.

The staffing of the courts is a principal factor that has discouraged judges from taking an active role in preparing the courts for the future. Judges are appointed or elected to a court for a specific term and many hope to go up the judicial ladder or into high public office. They see themselves as temporary occupants of the bench, sworn to uphold the Constitution and apply laws fairly. Not to be managers or planners. They are sitting judges not activists. They are resistant to the change-agent role.

The budgeting for the court is the constitutional responsibility of the legislature and that responsibility includes the study of court statistics in order to ascertain court needs. Furthermore, a judge who argues for new programs may be vulnerable to attack. The chief justice and his administrative office can better do it through the annual budgetary requests. All other judges should step aside. That is the judicial perception developed over many decades.

The judge then is left to look to precedent, to the application of the law to specific parties in litigation. The legislature looks to the future via the budgeting process and,

as representatives of the people, takes responsibility for the general good, for the umbrella policies of court governance, even rule making. The court building, the hearing rooms, bailiffs ancillary services, parking, waiting rooms - all these are not seen as the responsibility of the individual or collective judges but of the legislature or the local funding body.

The inherent powers of the court are rarely utilized, and then usually by the supreme court to uphold reasonable lower court budget demands. When the legislature cuts budget too sharply or threatens the integrity of judicial performance, a loud cry is heard: the courts have an inherent right to a reasonable budget! Until then, the judges focus on their traditional role as dispute adjudicators. With such a focus of course, judges cannot see the full picture, the public perception, the overriding shortcomings and management needs, the total system.

The direct election of judges also affects their approach to the total needs of the court. Such judges may feel answerable only to the electorate and reelection means approval. "I don't want to work for the Supreme Court" a judge from Garland County, Arkansas was quoted in the local press when commenting on proposed court unification; "I want to work for the people who elected me". Another example was made clear to the author when participating in a study of the courts of New Orleans in 1972. One judge who was popularly elected was unmoved by statistics showing that his two peers had heard

a much larger caseload than he. "I put on the speed at the end of the year and it evens out," he said.

There are other influences on judicial role perception. Most of the nation's 22,000 judges are lawyers who came from the trial practice. Individual initiative was the key to successful practice. The eye is on the single client, not the societal need, the immediate decisions, not the long range goal. Inefficiency in the courts provided options to maneuver; the status quo was comfortable. Except for the small segment of the bar that had vision and responsibilities of leadership in the bar, reform was threatening and undesirable.

Adaption to the role of the judge is not easy; old attitudes die hard. Court reform is someone else's responsibility; the legislatures's,the political parties', or the top courts'. The judge is, in addition, the passive referee. The cases, the problems, come to him; he need not anticipate them.

For the members of the state supreme court, the attitudes take on different shadings. The independent decision-making of each judge in the system must be inviolate. Management begins to confine each judge, to press in on his sitting time, research and decision writing. It's a delicate business.

Court unification and the advent of the professional court administrator are beating those reservations into the ground but many concerns remain, particularly when the judges are popularly elected.

The supreme courts are the busiest and most isolated appellate courts and the real administrative problems

are not fully discernible through the appellate review process. Internal intrigue; the performance and conduct of individual judges; the exacerbated budgetary constraints; new and rapidly evolving areas of the law that weren't in the law school curriculum - these, and more, distract supreme court judges from the seemingly less urgent world of planning and management. As a result, court administrators are still trying to convince many judges of the value of their services and of the critical need for planning and management. As a result of their preoccupations moreover, the state courts were chagrinned to learn from a 1978 Yankelovich public opinion poll that the more contact Americans have with their courts, the less they respect them.

There were warnings from the beginning of the twentieth century that planning was crucial. Dean Rosco Pownd lectured the American Bar Association in 1906 on the "Popular Causes of Dissatifaction with the Administration of Justice". Among the eighteen courses he identified are many that continue unabated: the delay in litigation, the sporting system of justice in which the goal is not truth but to see which attorney in a case is better skilled at playing the rules to his advantage, the appeals, forum shopping and public misperceptions.

There were the judicial councils of the twenties and the beginning of standard setting for court organization. In 1937, for example, the American Bar Association first recommended that merit systems be created for judicial selection, a

recommendation that gained momentum a generation later. These movements represented a call for professionalization which in more recent years has been repeated in the move toward unification of the state courts; in the continuing education of judges, prosecutors, defenders and other court-related personnel; and in the arrival of the court administrator who brings management skills.

To some extent, judicial discomfort with planning results from the tensions between the traditional and the expanded roles of the judge in our society and in the gradual recognition that judicial independence like judicial discretion, cannot be unbounded.

Certainly not all judges fit into the mold described here. Some have willingly become social planners in deciding law suits like those that challenged school segregation or inhuman prison conditions. Others pioneered training programs, organized judicial organizations and served on national, regional and state committees aimed at improving our systems of justice. In fact, the presence of judges on the Arizona SPA accounted for that state court's satisfaction with the LEAA program that other court systems found wanting.

However, interviews with court personnel undertaken for this monograph reveal that tradition is winning out. Institutionalized planning is directly dependent on federal funding support and in most states may not survive without it. "Our judges were never very comfortable with planning" has been a common response.

Equally significant is the turn-over of court administra-

ors at the state level. Nine left in 1979 alone. They serve at the pleasure of the court but bring an unfamiliar management and planning and approach to court administration. Some find the judges are insufferable aloof and condescending. "After nine years in existence" James Parkison, State Court Administrator in Missouri said when discussing the 1979 turnover "we are still trying to prove our value!"

The responsibility of the courts to plan has been urged for several years. Fall-out comes in identifying the organizational structure. The Conference of Chief Justices and the Council of State Court Administrators were as forceful as good taste would permit in asserting the damage underway when the SPA's were doing court planning. Their outcry prompted the national study LEAA Support of the State Courts in 1975 which emphasized that

> "Primary responsibility for court planning should be vested within the judiciary of each state. A concentrated effort should be undertaken by the courts. . . to establish and strengthen independent planning capability."

Recently, a Joint Task Force of the Conference of Chief Justices which has been studying (and recommending) a State Justice Institute Act said in an (undated) Report:

> In order to meet requirements of efficiency in both civil and criminal fields, courts must adhere to some performance standards set at either a local or statewide level and use goals and objectives as well as measurement tools to meet these performance expectations...In the final analysis, the judiciary must recognize it is their responsibility to establish and maintain effective organization and procedures...

And the 1973 National Advisory Commission on Criminal Justice Standards and Goals urged that inter-disciplinary

coordinating councils at statewide, regional and local levels be created to

> Survey the organization, practice and methods of administration of the court system...and make suggestions for improvement in the operation of the court system. (Standard 95)

The importance of judge participation in planning that transcends the courts was emphasized in a significant commentary on NAC Standard 10.5, Participation in Criminal Justice Planning:

> Few situations can bring courts into greater disrepute than obvious demonstrations of lack of cooperation with other agencies of the criminal justice system... The necessity for the court to preserve its independence to adjudicate disputed issues of fact does not require, in the Commission's view, that judges and other court personnel avoid direct and vigorous involvement in criminal justice planning. Consequently, ...court personnel have an obligation to participate actively in such planning programs.

The growing literature on the subject is replete with emphases on the urgency of good court management including the planning function. And it is clear that if the courts do not take an active leadership role in charting their future, the planning will be done for them by less well informed, and potentially hostile, actors.

In Edward McConnell's swan song to the New Jersey State Bar Association in 1973 as he left the state court administrators post to become Executive Director of the National Center for State Courts, he warned against complacency. Although our courts are operating reasonably well he said, we should not wait for "convulsions" before initiating reform.

The relationship of public esteem and organizational

planning was sharply identified by Dean Ernest C. Friesen Jr. at the Second National Conference on the Judiciary in 1978:

> In the long term, the better the public understands the judicial function and the costs of carrying it out the more likely it is that legislatures will appropriate the necessary funds, and the organizational structure of courts ultimately depends on the provision of adequate resources... An organization involved at all levels in the planning process will provide the will to adapt. Effective internal organization and procedures will be tested by the adaptability that can be demonstrated under conditions requiring change.[63]

It would seem then, that the will to adapt, to look ahead, is the will to survive.

The Voice of the Citizen

The first meeting of the Judicial Planning Council of North Dakota which was created in the closing days of 1976 was chaired by Justice Vernon R. Pederson of the Supreme Court. The 23 members represented a broad cross-section of North Dakota life. In addition to 11 judges and three lawyers (two representing prosecution; one the defense) there are three administrative members: a trial court administrator, a court reporter and a juvenile supervisor. The final six members are three citizen representatives, two state legislators and a prominent newspaper editor. The North Dakota Judicial Master Plan for the FY1977-79 Biennium was developed after informal consultation with the Supreme Court, trial judges, nonjudicial court personnel, lawyers and citizens. An opinion survey was undertaken.

The open planning process is healthy and the presence of citizen representation will probably be essential long term. The judicial branch is far too invisible in most jurisdictions and widely misunderstood. That is certainly dangerous in a free society. One may wonder also how long the taxpayer will support requests for more judges and more courthouses without having a

voice in the projected growth.

And certainly the national war on poverty teaches that if government intends to provide services, it should involve the potential users of that service in their design.

The presence of citizens in planning for the courts of North Dakota can be seen in two of the four goals adopted in its Plan:

Goal 2: To increase the accessibility and improve the sources of all courts to the public.

Goal 3: To improve communication among courts and between courts and between courts and citizens at all levels of the North Dakota judicial system.

No judicial introspection in this planning. The courts do not exist for the convenience of the lawyers and judges and these user-oriented goals reflect that much needed recognition.

The presence of citizens gives vitality and depth to the work of the planning committee. In some states, citizen input is already credited with the improvement of small claims courts. In New Hampshire, public hearings on the proposed court plan allows broad participation and citizen education and in one of the mid-western states a retired business executive is regarded as the most

insightful and creative member of his state's judicial planning committee.

Planning committees that are exclusively judge-lawyer run the danger of turning out more mechanical, single dimension documents than those with broad-based representation. The cultivation of citizen support would seem in any event so desirable that their presence on court planning committees would be welcome. The views and skills of a representative from the communications media ought to prove invaluable, for example, as the courts struggle with the issues of fair trial - free press, citizen understanding, jury participation, the willingness of witnesses to come forward and similar major issues confronting our present day courts.

Gnawing

Other Gnawing Concerns

Planning is a detached, reflective enterprise; court administrators are committed and involved. Whether planning can thrive as one of the responsibilities of such action-oriented court personnel seems doubtful despite the Standards of the American Bar Association on the subject and other commentators.

Sound planning would need to look at the function of all court personnel and make proposals for change that may be very threatening to court administrators. As if to substantiate that possibility several court administrators have been less than enthused about the emergence of a semi-independent JPC. It would seem then that planning, subsumed within the many duties of a court administrator, could be thwarted and remain a purely mechanical, unimaginative taxk.

This fear takes on added dimensions because of the apparent instability of the role of the professional administrator in our courts. Serving at the "pleasure of the court" as many do, affords little sense of permanence. Others complain that the position has not yet been accepted by many judges.

The JPC's are also struggling to gain credence with the Supreme Courts in many states. One court administrator for a state better left unnamed wrote the author in June 1980:

> Quite frankly, I see the end to judicial planning. There are members of our court who were never for the idea in the first place and reduced funding might cause them to withdraw their support for the whole concept.

Other communication, written and oral, indicate how thin the thread of judicial support is for planning in many of the states. Th se court systems that saw the JPC only as a vehicle for grant proposals might be expected to lose interest. Mr. James Bogart the Planning Director within the Office of the State Courts Administrator in Missouri, for example, by letter dated June 27, 1980 wrote the author:

> With the imminent phase-out and demise of LEAA in the coming fiscal year, the work of the JPC will be greatly diminished, as they have historically spent the bulk of their time and energy on LEAA grants activities. At this time, a subcommittee of the JPC is exploring the various options for possible continuation of the JPC or formation of a new body for purposes of advising the Supreme Court on judicial planning issues. The subcommittee is just starting its work, and it is therefore too early to predict the future of judicial planning in the state.

In another state court system which plans without a JCP, the court administrator wrote that "on good days" he believes the state trial judges are beginning to accept planning by objective. A meeting with a court planner in an eastern state revealed open disdain for the members of

the Supreme Court, his employer, because of their perceived disinterest in the long term durability of the system and a preoccupation with their own states.

In the final paper of its series on court planning The National Center for State Courts concluded

> The early indications are that higher juricial leadership does not yet take judicial planning seriously or view it as integral to their administrative role. Planning appears to be conceived as an esotoric art of projection and goal setting or as a mechanical process for obtaining federal funds.

A further development creates anxiety for those who would see other state courts working jointly with other justice system personnel and with public representatives to improve the quality, efficiency and effectiveness of the total system. That development was the introduction into the last session of the Congress a bill called The State Justice Institute Act of 1980. The bill died but its proponents are strong and committed to its concepts.

Essentially, the bill would have provided a direct channel for federal funding of state court projects under a theory espoused in the bill of a "Federal-State partnership of delivery of justice". The result, unintended perhaps but almost inevitable, would be a retreat of the courts away from inter-agency cooperation and planning. Such federal funding might well perpetuate the isolation of the courts and allow unbridled growth along traditional lines. Planning in a vacuum.

CHAPTER VIII

A NEW AGENDA NEEDED

A succinct criticism of judicial planning was offered by the SPA executive director from California. "Reform is not coming from the JPC", he said, "such as municipal court reform or court consolidation. In police ranks the reform does come from within the discipline. Not so with the JPC."

It is probably inaccurate to generalize and certainly premature to render final judgment. The analyses of JPC plans in this text, for example, reveal traces of originality and reform: the Arkansas JPC drafted an entire judicial article for inclusion in a new state constitution. Utah has raised the desirability of court-corrections planning and Washington conceived a training program on the courts for the communications media.

These are the exceptions, however. Court planning has hardly begun. In most states surveyed, the planning is still grant-oriented listing requests for the personnel or equipment necessary to do the present tasks more efficiently. The LEAA hand in pushing "planning by objective" is immediately apparent, and most plans contain a

generous litany of goals and objectives. Most are commonplace, reflecting perhaps that basic day-to-day needs are still unmet. In such a context long-range planning becomes for many an unrealistic exercise.

Fundamental to authentic planning are the questions: "What is the judicial branch trying to achieve?"; "Where does it fall short?"; and "Is there a better way to approach its several tasks?" Such questions initiate open-ended planning, creativity and experimentation. It signals the death knell to many myths that distract the justice system from objectivity and even from justice. And such critical thinking unveils the needs of the many constituencies of the courts and their service components: the litigants, counsel, witnesses, jurors, probation services, law enforcement as it impacts on the courts and on the personal safety of court personnel, community-based treatment agencies, and local and state correctional facilities.

The late Chief Justice of the Ohio Supreme Court, William O'Neill, put it well in his 1978 lecture at the National Judicial College:

> It is to be remembered that the courts are created not for the convenience of judges nor for the benefit of lawyers, but to serve the litigants and the interests of the public at large. When cases are unnecessarily delayed, the confidence of all people in the judicial system suffers. The confidence of our citizens in the ability of our system of government to achieve liberty and justice, under law, for all, is the foundation upon which the American system of government is built.

This being so, it would seem that a primary thrust of judicial planning should be toward instilling citizen confidence. Not merely planning for, but planning with, lay citizens to insure that the direction is consumer-oriented. Delay, cost, convenience -- the concerns of Dean Pound in 1906 remain valid and unresolved in nearly every jurisdiction today.

In his lecture to the judges, Justice O'Neill argued strongly in favor of judicial participation in planning, but he warned against the dangers of judicial introspection. The comments bear repeating:

> To the charge that we need better judges, do you respond by saying that we need higher salaries? Don't say it. Earn it by the quality of your work.
>
> To the charge of why the long delay, do you respond by saying that we need more judges? First, say that we are determined to see how much better we can do with what we have...
>
> If you really want to improve the quality of justice in your court, then set yourself a goal for improvement in the next six months and the next year, and make it public in advance; get to work; work harder than you even thought you could and achieve your goals and give yourself more personal satisfaction as a judge than you ever thought possible.

It was not merely to fill the agenda that the sixth and final topic at the Second National Conference on the Judiciary in 1978 was The Implementation of Court Improvements. The erosion of purchasing power of the dollar and the difficulty of getting substantial increases in state court budgets forced the planning issue to the floor of the Williamsburg meeting. The National Center for State Courts, the Conference sponsor, has published the papers in an important volume entitled State Courts: A Blueprint for the Future.[64]

A lengthy but of necessity incomplete agenda for court modernization can be excised from that Task Force Report and everyone interested in court reform should read it. The flavor of the piece can be garnered these random selections:

- Judicial assignments should be based on skill, not subject matter
- A hierarchy of judicial officers should be created at the trial level: Commissioners (referees) handling routine cases, associate judges more difficult cases, associate judges adjudicating the complex ones
- A better rationale must be found for appointing presiding judges
- Rational personnel selection systems should be perfected in order to reduce patronage and politicalization
- A judicial ombudsman is needed to receive grievances

- The high court in each state is too busy to be an effective policy board. The service and advisory functions should be developed through a different entity.
- Members of the high court should take turns at trial court.

At that Conference, the Task Force on Courts and the Community, proposed to the Conference a striking idea: the judicial branch is a department of public health in the legal field and it should take the responsibility to upgrade the level of sophistication of the community.

The Conference Blueprint and other contributions to the literature on court modernization plead for fresh approaches to conflict resolution. These pleas emanate from the fundamental assessment that the state and local courts are not fully effective agencies for dispensing justice in all instances; that urbanization and an avalanche of new laws and social dislocations are aggravating their problems; and that more of the same is not going to be enough.

Some informed voices are also urging reconsideration of the accelerating movement toward court unification. David Saari, a professor at the American University, wrote in the Justice System Journal (1976):

> The 1974 American Bar Association Standards on Court Organization continue to encourage judges and court administrators

> to over-centralize, over-formalize and rigidify management at a time when the exact opposite is highly desirable.... A decentralized court system with administrative autonomy, modern court management and independent, well-educated and continually re-educated judges who are responsive to people's needs is most likely to do justice and maintain liberty in performing the tasks that identify our courts and sustain our nation.

Those of us who have seen independence degenerate into private judicial fiefdoms may not accept Saari's management principles. At the very least, however, the planning process should be sufficiently detached and unhurried so that the implications of its organizational proposals can be fully assessed. Experts in the field can be found in Schools of Management who would be willing and eager to advise a JPC. (Few JPC's appear to be involving such outside consultants.). And inherent in planning is evaluation: Do the advantages of court unification outweigh the negatives?

Selection, Training and Motivation

Perhaps it is too threatening, or seen as extra-judicial; more likely it is not a perceived need because of the restricted composition and goals of the JPC; but for whatever reasons, issues that touch the nerve center of the judicial system are not yet being reviewed. These begin with the selection process for all court personnel.

Improved means of identifying lawyers for judicial careers are needed. Temperament, stability, and educability are elusive and usually only disclosed after an individual moves onto the bench. Then it is too late. It is so difficult to remove medicore and unstable judges that research in better selection processes would be well worth the effort.

A national study of judicial education published in 1978 by the American University Criminal Justice Technical Assistance Project captures the best thinking of a cross section of judges and court-experienced personnel. The report sets out a career training tnack for all judges from pre-service orientation through periodic refresher courses and mind-expanding seminars on wide ranging subjects from economics to humanistic studies.

It proposes the creation of an advanced degree in judicial sciences by interested universities in order to create a pool of potential judges and to enable those who already sit as judges to enhance their capabilities. A sabbatical program on a limited basis is also urged so that a judge might engage intensively in research, court planning, teaching or other court-approved projects. This study is a beginning point for the upgrading of judges and other court personnel moving beyond whatever training, usually quite limited and often counterproductive, is now available within the states. It also is relevant for the several national judge training centers.

Some suggestions appeared earlier to resolve the dilemma of judicial talent being underutilized in some courts while others in the same state are overburdened. Building incentives into the system is an untouched agenda item and one that becomes more important as unification in organization and procedure advances.

Court Services

The emphasis in court administration today is heavily on methods to move the assembly line faster. National standards to reduce trail delay, for example, are given great deference and rightly so. However, in reviewing the totality of court services from the perspective of the litigant, other issues quickly emerge. Must unification of our courts necessarily mean centralization of services?

Especially in days of energy shortages, should the court not go where the litigants are? The usual pattern is for litigants from a wide geographical area to drive into a central, or inner city courthouse. There appears to be great advantages in having small claims and other courts travel the circuit, as courts did in earlier days, utilizing suitable council rooms in municipal buildings on a regularly scheduled, advertised basis.

Consider the possibilities. A group of citizens in each neighborhood might serve as advisors to the court,

sensitizing the court to community attitudes and also interpreting the role of the court to the community at large. From such periodic court sessions in a neighborhood might grow citizen committees to deal extra-judicially with nuisance cases and other minor disputes. Such committees appear to work well in New Jersey under certain circumstances and they relieve the juvenile court of matters that are not really amendable to resolution in a court. Dean Rosenheim of the University of Chicago School of Social Work has written about the effective use of neighborhood councils in England.

Issues abound for planning. Ironically, the heavy volume, high visibility municipal courts are getting scant attention by the JPC's. The upper courts which presumably have the more talented, experienced judges also have the libraries, law clerks and other aides that are desperately needed in the front lines. There likely is some relation between the JPC composition and the empahsis in the plans it develops.

One mechanism for expanding the horizons of the JPC might be to invite court-related personnel to present a statement of concerns at a JPC meeting. Adoption workers, marriage counselors and such social service agencies as Alcoholics Anonymous would invariably open up the planning process to include shortfalls not yet brought to the consciousness of the relatively isolated JPC. The five juvenile court judges in Jerusalem meet each month with

a field worker from a social service agency that works with one court. Conversations with the chief judge revealed that he insists that the agencies send to such meetings those who have street knowledge. This method can be emulated profitably by JPC planners.

Our court system reflects the legal and judicial culture. As a public agency it must improve its capacity to absorb and deal with the concerns and culture of the cummunity at large.

Those concerns are reflected in a 1979 survey of the nation's governors undertaken by the National Governors Association. There was an 80 percent response. The concerns are so broad, incisive and pertinent for the courts and their planners that the applicable responses are suitable for summarizing and concluding this chapter.

RESULTS OF THE GOVERNORS' 1979 SURVEY ON THE RELATIVE IMPORTANCE OF SELECTED CRIMINAL JUSTICE - CRIME CONTROL ISSUES

		Average Score
	Maximum Score = 10.0	
	Minimum Score = 0.0	
	CRIMINAL JUSTICE ORIENTATION	
1.	Components working together as a system	8.1
2.	Criminal justice system planning and program development	7.8
3.	In-service training for criminal justice personnel	7.4
4.	Assistance to victims and witnesses	7.1
5.	Criminal justice information systems development	7.0
6.	Citizen involvement in the criminal justice system	7.0
7.	Privacy and security for criminal justice information system	6.1
	COURTS ORIENTATION	
1.	Career Criminal prosecution	7.0
2.	Sentencing disparities	6.9
3.	Speedy trials	6.6
4.	Court organization and administration	6.5
5.	Selection methods for judges	6.1
6.	Plea bargaining	5.3
7.	Turnover rate of district attorneys and staff	4.4
	ADULT CORRECTIONS ORIENTATION	
1.	Overcrowding of prisons and jails	7.8
2.	Correctional organization and administration	7.1
3.	Alternatives to traditional incarceration	6.6
4.	Re-entry assistance for incarcerated offenders	6.1
5.	Restitution	6.0
	JUVENILE JUSTICE ORIENTATION	
1.	Community-based treatment alternatives for juveniles	7.3
2.	Handling of violent juveniles	7.3
3.	Organization and administration of juvenile services	7.2

CHAPTER IX

The Politics of Implementation

Recommendations

It is possible to detect, even now, certain gaps in the rapidly changing planning dynamic, gaps which need to be plugged. Beyond that, few definitive comments or recommendations can yet be made. The diversity of technique is no doubt good; as are the individual styles of organization, staffing and plan production. No single model is ahead of the pack, there is no "right way" to plan effectively for the future of the state courts.

As greater experience develops, strengths and weaknesses will become obvious and as they do, the judicial and legislative leadership will have to be alert to the need for accommodation and adoptation.

One reality emerges already: there is a strong correlation between the significance of the planning process and the support it receives. Planning for its own sake invites absenteeism. Grant-directed planning is mechanical and ultimately stultifying. To become more than another dust collector, or a list of transitory projects, the court plan must have multi-faceted support. That is the lesson of the twenties and it is being re-taught today.

This means that the legislature must see the JPC as a crucial segment of court administration, as basic as budget preparation, resource conservation, manpower allocation. The judicial leadership in turn, must recognize the fundamental role that planning has - and the inherent obligation that each judge has - in insuring the sound transition of the courts to the next generation. More so than auditors who come once a year (a necessary inconvenience) and more so than monthly productivity reports prepared for the court administrator (One judge calls them "monthly obscenities"). And even more so than the annual report of the supreme court to the governor and legislature saying, as too often has to be said, that the best possible job is being done with undermanned and poorly compensated personnel, interspersed with one or two new program achievements. The appointing authority must take great care to see that the natural leaders of the bench are on the JPC and the top court in each state should give the JPC the full prestige and authority that are endemic to viability.

The lessons of the past speak forcefully to the need of awareness and involvement of the organized bar which has a primary role in court reform. Citizen participation and the participation of the other actors in the total justice system are other ingredients in realistic, responsive planning. The litigant-taxpayer has something to say,

and will one day demand the right to be heard before paying more taxes for more of the same. In an era of consumerism, the courts cannot be effective and responsive without hearing from the litigant who is the consumer of court services and from civic, social and consumer organizations. The police officer, social service worker, prosecutor, defense counsel, the trial and appellate attorneys, the probation and parole officers and the corrections administrator all bring to the planning table equally invaluable perspectives.

Because of the correlation of support to planning effectiveness, the following recommendations for early implementation and institutionalization of meaningful state court planning are set forth:

1. Because of its unique supervisory responsibility for the judicial branch of government, the supreme court in each state should insure the existence of a permanent and separate problem-solving capability.

Commentary

The rapid acceptance of the JPC may in fact be a recognition that the mounting burden of addressing the needs of America's courts can no longer be handled causally or occasionally. Not by a supreme court at its weekly working luncheons nor by judges alone not at annual conferences. Nor exclusively with federal funds for whatever period such uncertain money might be available. Planning is basic to long term survival. If the courts fail to take a leadership role in such planning however,

further encroachment of the judicial branch by the governor and legislature are inevitable. The nature of government is to abhor a vaccum; growing problems must be addressed; future crises must be anticipated. If a supreme court does not at long last recognize its full responsibility in this facet of court management, then the future of the state court system is cloudy. The present occupants of a supreme court afterall hold their positions in trust for their successors and have an obligation therefore to pass on to them a managerially sound and effective court system.

Many devices are available to the top court in each state that will lead to effective problem solving. The court should above all, extend its own prestige to make certain that the planning is taken seriously. Many courts do this by appointing a justice of the highest court to chair the JPC. Each supreme court should also formally endorse the court plan when finalized and should appoint to the JPC judges from the specialized, trial and appellate courts who have the respect of their peers, a willingness to consider shortfalls and a sensitivity about effecting change. Judges who have training in disciplines beyond the law can be invaluable members.

Other possibilities exist. A talented member of the bench might be relieved of his regular assignment and attached to the planning unit for a short term, intensive effort in research, program evaluation, on site appraisal of physical and personnel needs, or the preparation of a judges' handbook.

Similarly, the appointing court should identify members of the bar and citizen representatives who are likely to speak up and have something to say. The JPC membership should be sufficiently diverse to give credibility and objectivity to the undertaking and simultaneously recognize the several constituencies that the planning serves.

2. Lay citizen representation in the court planning process is essential to insure objectivity and responsiveness. The planning body should be interdisciplinary and every level of court should be presented.

Commentary

Several JPC's are using citizens at one or more levelsbut some use none despite the clear lessons of the Twenties. Planning cannot be one dimensional; when it is, there are traces of judicial introspection and myopia. The task really is not merely to make the litigation process move faster or increase judicial comfort or efficiency. That can be done with more of the same. What is needed is the freshness of approach that an interdisciplinary JPC will bring so that the result is something more than oiling

the present machinery. Although no one can yet verify the superiority of any current organizational structure or composition the social sciences and the emerging experience dictate that lay citizens must have a voice in the plan development. On some issues their perspective will be more valuable than on others but this should not deter the invitation to participate.

The planning process should involve a broad cross-section of court-related personnel from all of the courts as well as court users. The federal regulations at one time suggested that the presecution and defense be represented. As the subject matter warrants, jurors, expert witnesses, police officers, case workers and others who accelerate or retard the litigation process should be brought into the planning process.

Participants at the Second National Conference on the Judiciary held in Williamsburg, Virginia in 1978 perhaps put it most succinctly:

> Representatives of relevant community groups should serve on judicial councils, court advisory committees and other policy-making and administrative organizations of the court system.

3. The court administrator and the court planner are the key to modern court management practices. They ensure efficiency and continuity. The planning body should therefore look, as few yet do, to making their roles permanent, career-oriented and with built-in incentives to participate as professionals in upgrading the judicial system.

Commentary

Court planners often complain that judges do not take planning seriously and do not regard them as professionals. This complaint is voiced somewhat differently but just as forcefully by state court administrators and many of them, discouraged, having been leaving their posts. They serve generally at the pleasure of the court and when the chief justice steps down, the administrator may follow.

A legislative expectation that the annual court budget will include a report on planning and management would strengthen and expand the life of these key employees. Ultimately, these professionals must be fully assimiliated into the court family, and in some states they are, but the progress has been slow and erratic.

4. Each state should utilize a planning structure suited to its own philosphy and traditions.

Commentary

The one court system has been utilizing "the administrative docket" mechanism to effectuate problem solving. In a unified system, the Supreme Court itself may be serving, however awkwardly, as the planning committee. The court-appointed JPC is the predominant structure but many varieties are evolving and each structural form bears watching. The several recommendations in this chapter

are applicable regardless of the mechanism used. Experience is essential and we will learn in a few years whether some approaches are preferable and more likely to produce good planning results. The evidence is not yet in; the several planning styles should be studied and their productivity compared.

5. Court planning should be open, constructively critical of current operations and imaginative. Long term improvement planning should supplement grantsmanship and police statements.

Commentary

There needs to be open-ended consideration of the entire litigation process with searching examination of alternatives to the current "sporting method" of justice which many critics say subordinates the search for truth to clever trial tactics. There also needs to be a critical assessment of the performance and productivity of the several specialized, trial and appellate courts. Failure should be confronted when it is discovered.

The world of court planning must also break out of the strait jacket of grant identification and the mouthing of ABA projects or those made fashionable by a nod from the Chief Justice of the U.S. Supreme Court. These alone, though worthy in themselves, can be a substitute for original, creative problem identification and resolution and may not be useful in every jurisdiction. The proceding chapter elaborates on these concerns.

One court plan, for example, looks to the creation of a legal advisor to the Supreme Court, a lawyer on the court payroll. This moves beyond the common use of counsel furnished by the executive branch of the government, the attorney general'a office. This is fresh thinking!

6. Court planning must be inter-agency directed.

Commentary

Many agencies, executive, legislative, state and local, interact with the court and serious court planning must recognize these realities. Law enforcement, for example, has a direct effect on the juvenile and criminal courts. The time police officers lose waiting for cases to be called is a court concern as well as a problem for law enforcement. Similarly, the corrections field may be aggravating the rate of recidivism. The Utah Court Plan, for one, wisely proposes joint planning with corrections because of these direct inter-governmental impacts.

The courts do not exist in a vaccum and they cannot effectively plan as though they are the entire justice system.

7. The courts must at long last mount a strong information and education program aimed not only at the general public but at the legislature and the chief executive of the state.

Commentary

In some states, the judicial budget incongrously goes first to the governor for review and many a line item has been arbitrarily stricken there before the legislature can even receive the request. Judges also bemoan the hostility of legislators to the courts and speculate on the cause. Public ignorance of the justice system is staggering as all studies show and the daily press tends to distort the picture as do television programs that focus upon courtroom drama.

There are other, less obvious, aspects of this problem. The law schools for example, use the so-called Socratic method of teaching in which the students are asked questions dissecting the judicial opinions and then second-guessing them. Was the court right? Did the presiding judge misunderstand the issues? Is it a strong court (or mediocre)? Studies are beginning to show that the result is a discernible erosion of respect for the personalities on the bench.

Popular dissatisfaction with the administration of justice should therefore be a major target in judicial planning. Here especially, many disciplines are indispensible including of course the communications media. Some significant strides are being taken and the courts can learn from one another how the war stories can be changed into success stories.

8. As a matter of deference, if not obligation to the funding source, the judicial branch should report to the state legislature on its problem solving strategies as an addendum to its annual budget proposal.

Commentary

Within the checks and balance of government, the courts should report -- and the legislature should ask for and study -- not only court budgetary needs but the management of the funds especially as they impact upon the personnel, administration and service problems that exist in every judicial system. The former Chief Justice of New Jersey, Richard J. Hughes, voluntarily began this practice in his state by personally giving an annual State of the Courts address to the legislature. The Chief Justice of the Supreme Court of the United States has been giving his annual report to the Congress for several years.

The California Legislature insists on it. In 1973, it created the Judicial Criminal Justice Planning Committee and Section 13834 of Chapter 1047 of the California Statutes requires:

> The Committee shall report annually, on or before December 31 of each year, to the Governor and to the Legislature on items affecting judicial system improvements.

The reason for this imposition on the JPC is found

in a 1969 study by Ronald Goldfarb for the Committee on the Judiciary of the California Assembly:

> The Legislature of California should . . . require that a continuing program be designed to monitor the performance of the courts and meet those demands for their services that signal necessary changes in court resources and management practices in sufficient time to allow appropriate legislative action.

Without such endeavors it is hard to see how the independence and effectiveness of the judiciary can at once be assured and how the law-makers can fulfill their obligations to the taxpayer in overseeing state expenditures. The reporting is, in addition, an excellent mechanism for increasing understanding and support.

A demand for planning, for problem resolution, is a demand for accountability. It moves the judges squarely into a long overdue recognition that they must expand their role perception to include functions never studied in law school and foreign to many courts. Simultaneously, it moves the legislature into saying that more of the same is no longer enough, that the courts must wrestle with new approaches to delay, congestion, adjudication, rather than expand what now exists. Furthermore, the demand for greater accountability fits nicely into the current mode of zero-based funding and requires a new justification of the traditional litigation process. All to the good.

9. <u>The legislature should appropriate whatever budget is necessary to create and maintain an adequately staffed planning unit within the judicial branch of government.</u>

<u>Commentary</u>

If thinking ahead is good government, then the state legislatures need to give the courts the resources to plan. This means at least a core budget to undertake and sustain serious study, research and demonstration of new programs. It begins with providing funds for such planning staff as the courts can justify and includes necessary related expenses in the logistics and administration of the planning process. It should also embrace the capacity for monitoring and evaluation.

Modest budgets are envisioned. In a small state it may mean the salary of a single planner, a secretary and the related costs of committee meetings, travel and physical production of the plan. State court costs are now such a small percentage of total state budgets that these proposed new line items will simply move to a more realistic allocation of tax revenues.

With $50,000 in planning funds from LEAA now no longer assured, many state courts may not be able to justify their present planning concepts. More open-ended, more sophisticated and less grant-oriented planning is in order. The substitution of state funding for the current federal support is now crucial not only because

state court planning has some momentum but because new sources of federal funding may not emerge in the Reagan Administration. Precedence for state legislative support can be found in the Idaho experience which declines

federal funds at the state court level. Florida court planning unit receives a separate fund from the legislature and major ongoing state support is provided the court planners in California and New York.

The federal funding has not been an unmixed blessing. Professional court planning may be postponed as long as it is tied into and motivated by, grantsmanship. The function is much broader. It needs freedom to expand its horizons, to provide career opportunities for planning personnel.

10. <u>An impact statement should be attached to all legislation that will directly affect the organization and personnel of the courts, or the volume and nature of their work.</u>

<u>Commentary</u>

Legislators typically react to a problem by suggesting "There ought to be a law!" but new laws tend to increase the volume and diversity of the litigation process. A family court may be proposed, increased jurisdictional limits set for small claims tribunals, or a new penal code may be drafted. These familiar proposals and others

that tend to move quietly through judiciary committees of the state legislature, may catch the courts by surprise. There may be neither the space nor person-power to cope with them. At least minimal time is required for court planning before the new law takes effect.

The sponsors of such legislation should therefore, be required to attach to each such bill a statement showing what the impact on the courts may be, whether the courts can at present cope with it and if not, what budgetary or other needs must be provided. In practical terms, this recommendation may thwart the tendency to throw all social problems into the legal arena. More importantly, it will necessitate consulting with the court personnel alerting them to possible developments at an early stage in the legislative process and allowing the courts an opportunity to be heard, not only on the bill's merits, but on its mechanical impact on the courts.

There is precedence for this recommendation. Impact statements are required of all federal agencies by the National Environmental Policy Act and although not perfected, the device shows promise. The heavily burdened court systems, if only as a matter of deference by the one independent branch of government for another, should have the same benefit of being forewarned, of requiring the law-makers in fact to look ahead to the consequences

of their lawmaking.

Conclusion

The judicial branch of government is gingerly exploring how extensive its inherent powers are, whether as a separate and independent branch it can insist upon a reasonable budget not only for day to day operation of the courts but for the training and sabbaticals for its judges, the management of the system and its attempts to solve problems and try new approaches. Even when the inherent powers are embraced, courts may find it impolitic to use them in a confrontation with the governor or the legislature. And caution is warranted if only because the theory of inherent powers is not self-implementing.

Inherent powers impose inherent obligations on the courts. Distasteful they may be to some judges who are preoccupied with litigation and whose interest, experience and training are limited to the law and legal process. These obligations however are now so clear and so compelling that they cannot be shirked except at great risk. The management function is gaining acceptance largely because it is seen as essential and can be delegated to specially trained non-judicial personnel. The planning function however, is resisted; it does not have early payoff and may appear to be an impractical science.

In discussing their use of discretion, police officers often deny they have any. Similarly, rather than confront

and embrace the planning function many courts still reject the role. It requires acquisition of new skills and even of a new jargon; it is elusive and experimental and to that extent, suspect.

The old order changeth. Public expectations are on the rise; the poverty program, class actions, the indefinitiveness of the justice system in crime and delinquency and many other developments have put the public spotlight on the judicial branch of government and its shortcomings are now quite apparent. Change is urgent; justice is nor being fully served within our traditional adversary system.

New social concerns ultimately wind up in the courts. Troubled and troublesome juveniles have defied our best remedial efforts. Nuisance cases clog the court calendars while environmental actions and sex discrimination cases create new challenges for the courts. A wide array of governmental, industrial, and commercial power struggles move to the court arena. A fractionalized society is increasingly litigious and part-time legislatures leave many a gap that the courts are being urged to fill.

Today, courts are overseeing school busing programs, deciding on the proper size of prison cells and becoming to some extent, the social architects of society. The dangers and limitations of these roles are not even fully perceived.

The message in any event is deafening: the courts of this country have much hard thinking to do about their

tasks. They cannot and should not be expected to do it alone. A multi-discipline planning body is therefore a minimal safety valve. The courts thereby become more accountable and more responsive.

The judge is not an independent contractor elected or appointed for a single task. His inherent obligation is to hold the integrity and effectiveness of the judicial branch in trust and to pass on to the next generation a governmental system worthy of respect and tax support.

This inherent obligation, dimly perceived and often rejected, is an inherent opportunity to perfect the democratic experience. There are no exemptions from the draft, this call to a fuller duty.

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