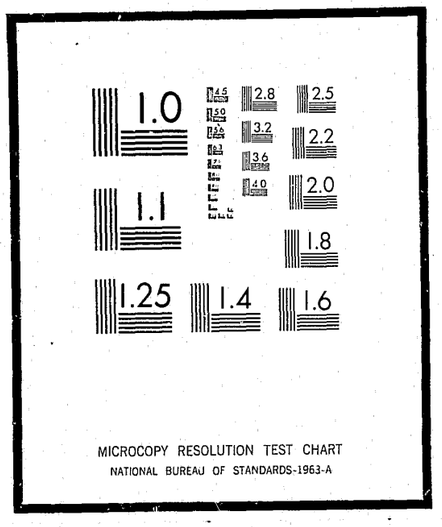

X

PLANNING AND ORGANIZING A COURT STUDY*

by J. L. Ebersole

Federal Judicial Center

When ICM assigned this topic to me I at first thought of preparing something in the nature of a primer. It soon became obvious it would require many months of solid work to develop a thorough, comprehensive tome of this ilk. I decided therefore to prepare some comments on the topic which I believe are of broad applicability, and to present material which can be grist for the discussion sessions of this conference and which will, I hope, be occasionally controversial enough to elicit energetic rebuttals from subsequent speakers.

I must confess I find problems with a term like "court study" (or for that matter with a term like "judicial reform"). It has its negative connotations and is subject to substantial misunderstanding on the part of the objects of the study. Nevertheless, I found, after reviewing a number of candidate surrogate labels, that this term is as good as any, so I will continue to use it while wishing for a better one.

If we are to discuss planning and organizing a court study we should have some agreement on what we mean by a

---

* Presented at the Conference on Court Studies, sponsored by The Institute for Court Management, May 6-9, 1973, Denver, Colorado.

study. I would suggest that a court study be broadly defined as a study, the purpose of which is: to identify and analyze problems and needs; to develop specific programs for change; to design a plan for implementation of these changes; and, to assure successful implementation of the changes. The definition is incomplete unless we include the ingredient of implementation. This does not mean that persons conducting a study should be responsible for implementation, but it does mean their planning should be aimed at achieving implementable results.

When one mentions implementation, one is really talking about change. In planning a study it is essential that one consider the implications of change both in the broad context of court reform and in the context of court improvement studies which are concerned with court reform even though they may not involve the type of radical surgery usually associated with that term.

At the broad level of court reform we confront a paradox. The objective, in general, is often to remove politics from the courts, but the road to this objective is political compromise.[1] Beverly Blair Cook[2] has set forth the thesis that court reforms lose not because of lack of popular support but because of failure to take account of political variables concerning the impact of structural changes upon lawyers and judges. She suggests that the reason reforms are not put into effect is the

paradoxical rejection of the only instrument which can achieve reform goals, viz., political bargaining and accommodation to satisfy the incumbents of the judicial positions and the lawyers and their clients involved in the judicial process. One should not overlook the fact that courts are agencies of government, and that, therefore, changes can be achieved only by political action.

Although the scope of many court studies may be far less sweeping than what we think of as court reform, major consideration still has to be given to the change process. During the planning stage this requires, as a minimum, identifying all of the potential obstacles to change whether these be present statutes, present rules of procedure, budgets, traditions, or most important of all, individuals.

Organizational Location and Relationship to A Study

One's concern with the planning process depends to some extent on organizational location and one's relationship to a study. Because our concern here is with planning in general we should distinguish the various ways in which one may relate to a court study. A person who is located in a court organization which is the passive object of a study will not be involved in planning. But there are a variety of other circumstances in which individuals will become involved in planning. For example, one may be in a court which is the object of the study and be actively involved as an in-house participant or a project monitor.

In some cases the study may have been requested by the court, in others the study may have been requested by a separate organization such as the state administrative office, the judicial council, or the Supreme Court. In other cases a court may be an object of a study conducted by a non-profit organization or a University which has received a grant to conduct studies in selected courts. One might also be in the position of a potential contractor who is preparing a proposal for submittal to a court or other agency which plans to fund a study. The functional responsibilities of persons in these situations will differ, but the basic planning principles will be the same.

A Caveat On Technique

Courts should be cautious when selecting an outside consultant to conduct a study. In addition to the many other factors which are considered in selecting a contractor, the proposed methodology and the relative emphasis placed on it should be carefully evaluated. In my experience in both industry and the courts I have sometimes observed management and organization studies which had a disturbing overemphasis on technique. Such overemphasis in effect presents the technique as the solution. Techniques are means. Allowing them to loom too large in a study can result in distortion which causes "means" to become de facto "ends." In this context, people who are planning and

implementing change have to be artists, not technicians. Musicians, painters, or photographers do not realize their full potential until they get beyond technique. Technique, though important, must become almost unconscious before beauty and truth emerge in a work of art. Although you may accuse me of stretching a bit here let me try to analogize by asserting that whereas an artist is effective only when he goes beyond technique, so a court study can be effective only when it goes beyond technique and places primary emphasis on the goals to be achieved.

Types of Objectives

A study plan should be organized around objectives. Probably the most important step in planning is the definition of objectives. Stated objectives actually define types of studies and tell us what types of people are needed for a study. The sample list of objectives below illustrates the potential variety of types of studies. You can see quite easily that each objective tells you a lot about the nature of an associated study, the condition of the court system where such a study is proposed, the types of skills required, and the potential for implementation. I have not attempted to categorize these or label them as to type, but you will note there are major differences in the degree of specificity and that some objectives are a response to a problem while others aim toward problem definition.

Sample Objectives

1. To study non-court system structures and alternative court system structures and recommend a new structure;
2. To study judicial selection plans and recommend a new plan;
3. To improve the management of the court;
4. To identify organizational and procedural pathology;
5. To provide a description (using narrative, flowcharts, organizational charts, etc.) of court processes and practices;
6. To compare the operating procedures and organizational structure of several courts in order to find correlations between types of procedures and organizations and court effectiveness;
7. To analyze procedures and practices of a court to determine which are effective and which are dysfunctional;
8. To reduce elapsed time from filing to disposition;
9. To reduce judge-time per case;
10. To determine resource needs and resources allocation;

11. To develop work measurement standards;
12. To reduce juror costs;
13. To develop a system for handling the engaged counsel problem; and
14. To develop an ADP plan for a court (or court system).

As a general rule one should aim for narrow, precise objectives. This may not be possible in some instances so the first step may have to be a reconnaisance survey or preliminary study which has the objective of finding out what needs to be studied.

The condition of a court or court system is a controlling factor in determining objectives. A unified court system which is well administered will benefit from very different types of studies than would the type of court or court system which Roscoe Pound inveighed against in 1906 and which, unfortunately is not yet a remnant of the past. The results of some types of studies, especially those having more specific objectives, are just not ingestible by some court organizations. In fact, there seems to be a tendency on the part of judges and administrators in poorly administered or poorly structured court systems to resist studies per se. The parable of the talents is still operative. Better administered courts are usually more interested in studies, take active steps

to request and obtain funds for studies, and are better able to implement the recommendations resulting from studies. I suggest you look at the sample objectives above again and note which ones make sense for various courts with which you are familiar. Some of the more general objectives may be completely inappropriate for well administered courts, some of the more specific objectives may be very low on the priority list for courts which are not well administered.

Even though the relative "well-being" of a given court will affect the feasibility of some types of studies, you should still strive for maximum specificity in your study objectives. There should be an attempt to achieve the degree of precision required for hypotheses in sophisticated research projects. Of course in an action oriented study you are not able to control variables and you will run into the problem of the interrelationships which exist among almost every area of study in a court. But don't let this deter you. The discipline involved in formulating researchable hypotheses can help you to define more realistic objectives and will hone your thinking and result in better planning. Furthermore, the planning process involves developing groups of sub-objectives for each major objective. A plan, in effect,

consists of a heirarchy of objectives which not only defines your goals but reveals the steps necessary to achieve them. In contract proposal parlance, these are tasks and sub-tasks. The lowest level in the heirarchy should be used to determine the types of skills required for the study. This is also the level at which cost estimating should start. The discrete costs of the sub-objectives are the budgetary building blocks for the total cost estimate for a study.

Even though you should aim for specificity and "research-type" objectives you cannot expect finality, i.e., you cannot expect the objectives to remain the same throughout the course of a study. Unless a contemplated study is very narrow in scope it is both presumptuous and naive to assume that objectives can be adequately defined before funding a contract, hiring a project team, or assigning responsibility to an in-house group. A study plan thus has to be a dynamic description of work to be performed which is modified at periodic intervals during the study as more knowledge is gained. Only the general goals one starts with can remain fixed.

Perceived Problems and Needs

If you are an outsider planning a court study you should not assume that your determination of the problems

and needs of a court is an adequate enough reflection of reality upon which to base study objectives. Nor should you assume that the problems as defined by the court are necessarily accurate. This lack of knowledge is recognized in some instances and a study aimed at defining the problems (see items 3, 4, and 5 under Sample Objectives above) is requested. But in many instances--especially if this is the first study of a given court--planning is initiated based on an external organization's concept of what needs to be done. This approach entails a high risk of wasting study funds. Therefore, you should start with the problems and needs as perceived by a large sample of the judges and supporting personnel of the court which will be the object of the study. In other words, start with an objective summary of subjective impressions. These perceptions are essential facts which must be determined initially. They can be obtained through questionnaires, through interviews or through various behavioral science techniques. The information so gathered may require a major change in the study objectives and may result in the first study phase being one of identifying the actual problems and needs of a court.

A Priori Solutions

Usually the people in an organization will know the best solutions to some types of problems. As you will

recall several of the sample objectives defined studies which had the purpose of developing a methodology (for example, reducing juror costs, developing work measurement standards). In these instances the problem is a given and the purpose of the study is to design a tool to be used or to develop a method for implementation of a known solution. But in the more general type of study where the court is interested in overall improvement the perceived problems should be compiled, and to this should be added a compilation of suggested solutions. Management consultants have for years known that one of the best sources of solutions to the problems of an organization are the people in the organization. Consultants often see their role as one of serving as a communications link to bypass the organization's information impasses and consolidate the knowledge which already exists. Often individuals who are not in positions of authority are the best source for solutions, but they have not had a chance for a hearing by those who have the authority to adopt new methods. Thus, you should be alert for situations where study efforts can be best devoted to educating and persuading the "higher-ups" to adopt solutions already known somewhere in the organization.

Perceptions of the Study Per Se

If members of a court organization see themselves as mere objects of a study the prognosis for a successful

study outcome is very dim. This perception is likely to exist where an external organization initiates the study. Therefore it is important, when compiling perceived problems and searching out suggested solutions, to also try to determine how judges and supporting personnel perceive the study itself. The study may be perceived as a burden or an irritant which, if disregarded, will soon go away. If a majority of the individuals in a court do not perceive the study as being potentially beneficial you, as planners, must take this into account. It has been noted that a judge may not take any leadership in a reform campaign for structural or personnel changes unless his position is safeguarded and his autonomy and authority increased rather than decreased.[3] Although the suspicions generated by most court studies will not be as great as those generated by major reform movements, negative responses can still be expected. Perhaps the simplest way to handle this in the planning phase is to ask "What's in it for the court?" For example, how will the study improve the quality of the judicial process? How will it make a judge's work easier? How will it help him to increase his productivity? How will it make the jobs which supporting personnel perform more interesting? How will it make them more effective? How will it result in greater respect for the courts by the citizenry?

Answers to these questions will help shape the general objectives of the study so they are responsive to felt needs which an outsider might not otherwise be aware of. Existence of resistance to a study or--the more deadly--neutrality to a study are conditions which can best be ameliorated by using participative management principles for every stage of the study including planning.

Effect of Implementation Factors on Objectives

Once the implementation stage is reached definition of objectives becomes simple. At this point you know what the objectives are and you have to be concerned primarily with technique and methodology. However, the problems of implementation should be anticipated during the planning stage. These anticipations will often have a significant influence on defining objectives and fashioning a project plan. Some examples of the ways in which implementation considerations may affect the definition of study objectives are:

1. What types of changes do you think you may be recommending and what authority is required to implement the recommended changes?
   (a) Legislative (state, county, city?)
   (b) Supreme Court approved rule

(c) Local Court rule

(d) Vote of judges (majority or unanimous)

(e) Decision by Chief Judge, Presiding Judge, Administrative Judge, President Judge

(f) Court administrator decision

(g) Court Clerk decision

Foreknowledge of the probability that the required authority will act gives one feedback in advance which can help in setting realistic, attainable objectives.

2. Can the change be made without requiring changes in the practices or procedures or--God forbid--the traditional habits of members and officers of the court? If so, you are lucky. If not, you should carefully distinguish those practices or procedures which have a rational basis and those which exist merely because it has always been that way. Changes in the former will require a more persuasive argument in support of recommendations for revision. The point is you should know how strongly wedded the court is to certain practices so you will know the degree of effort which will be required to move in a different direction.

You should also be alert to situations where major improvements can be made without affecting traditional modes of behavior. I cannot sketch the range of possibilities here, but I can give you an example which is illustrative. The Federal Judicial Center recently conducted a juror utilization study in a large federal district court. One suggested method for improving juror utilization is to stagger trial starting times, i.e., to require judges to start their trials during time slots which will fit into a systematic utilization scheme. During the planning stage we had discussions with several judges in the court and found there was great resistance to this method. We therefore made our first objective the compilation of data on the actual starting times of trials over a period of several months. We found there was a natural distribution of starting times which would allow improved utilization without putting judges into straight jackets. We thus developed a methodology for "inventory" control based on what amounted to a natural phenomenon. Once the recommendations were implemented, the wastage of juror

cost and juror time was reduced by fifty percent in the following six months. In cost-benefit terms we achieved a return on investment in excess of 10/1 in the first year without requiring judges to make major changes in their traditional way of operating.

3. Can more resources be made available if the study determines they are needed? You must know this in advance. If additional resources cannot be made available you have to design your objectives so as to achieve improvements within these constraints.

4. If the study is performed by outsiders, can the court afford the time (on the part of judges or administrative personnel) to participate in a meaningful way? Where they can, problems and costs of implementation will be greatly reduced. With continuous participation, the study team can function as a stimulant. This can be described as a leverage situation and you can aim for greater results for a given budget. I might add that if you are in a situation where you have a choice among courts which may be the situs of a study, look for leverage situations and select the court where this condition obtains.

5. What will be the probable loyalty conflicts engendered by the recommendations of the study? Although you will not know what your recommendations will be in advance, you will probably have some notion of the types of changes which may be required. You can expect conflicts between loyalty to known procedures and a known organizational structure and loyalty to new procedures and organizational structures which may cause shifts in existing relationships. Loyalty conflict is just another label for describing the problems of change. If the study is designed so as to foster participation by members of the court and if this involvement is properly nurtured, it should lead to a commitment to change by members of the court and the resolution of otherwise troublesome conflicts.

6. Who will be in charge of implementation? For some studies a key person or persons who can be in charge of insuring implementation should be identified in advance. This may be the individual who has the authority to decide about the recommended change or it may be a group of individuals who are committed to improvement of the court. But don't be naive enough to think the "strong leader" can always assure

success. The lowest person in the pecking order in an organization can sometimes easily stifle or block desirable changes. So you have to consider the impact of a change on everyone in the system. If you have used participation and involvement; if you have tried to apply principles of job enlargement; and if your study has been, inter alia, a continuing educational process for all members of the organization, then you have set the stage for implementation.

Use of Organization Theory Concepts

Herbert Simon[4] states that the components of a business organization are: stockholders, management, employees and customers. If, as he claims, it is not possible to understand a corporate organization without viewing customers as members of the organization; then surely, by analogy, it is not possible to understand a court without considering lawyers and litigants, the role they play and the ways in which they influence the court system.[5] This is not new to any of you, but it suggests that helpful insights may be gained by using organization theory concepts. Such concepts are also applicable to the court's relationships to other organizations with which it interacts. A study which is restricted to observation and analysis of the court alone has a small chance of success. You can't really understand courts unless

you view them with a perspective which includes all interacting organizations and individuals.

Hidden Objectives

Be sensitive to "hidden objectives" which a court may have. Let me give two examples of what I mean by this term.

(a) Sometimes a court sees a study as a method for getting rid of a Clerk or Administrator. This may not be revealed to you if you are a consultant, but careful discussion about the study may alert you to it. If you become aware of such a hidden objective before the study begins I question whether you should continue. It is not that I think to do so would be unethical - this may be a legitimate objective. Instead, I say this because in a situation of this type (and I have known of some such situations) the court will achieve greater improvement by hiring a new Clerk or Administrator than they will from your study. If the court wants to spend money, let them do so after they make the personnel change.

(b) Another "hidden objective" may be to sell an idea to a legislature, or to a judicial council, etc. The court may know what changes are needed but may need an outsider to confirm it or may need the recommendation to come from an outsider because of special circumstances. This is a legitimate objective for a study, but be sure that you as a consultant are aware of it. You can be much more effective if you know the real objective.

Shifting the Queue

In planning or conducting a study, watch out for a solution or change which merely shifts the queue to another point in the process. For example, at the appellate level, a change which results in a dramatic reduction of the time required to prepare the record on appeal may cause a queue to build up at the oral argument or decision writing stage. Unless the study also addresses methods for reducing the time at these latter stages, the only effect will be to shift the queue without any change in the overall case processing time. Such shifts can often occur when changes are made at a given stage in the trial court process. One can expect the elapsed

time for some stages to be longer than others. Efforts should be focused on reducing those time periods which will not affect the substantive outcome of a case. This principle will not limit a study since most cases have stages which involve only mechanical steps or involve essentially "dead time" on the part of the attorneys.

Delegation

There has been much discussion about delegation (by judges) of nonjudicial duties and increased use of parajudicial personnel so I would expect this subject to be considered in a court study. Increasing use of delegation holds great promise for improving the performance of the courts but it does raise other questions. For example, a Federal Judicial Center time study showed federal district judges spend 26% of their time on non-case related duties and most of this is spent on court administration. This should definitely be reduced, but we don't know how much. Judges may not be willing to give up all administrative burdens. At the trial court level, this may be the way in which they maintain contact with the pulse of the court and it may be an important factor in achieving a sense of collegiality. Some duties of this type may be important to keep them in contact with the administrative environment. So don't assume that all nonjudicial duties should be

delegated. The problem is to determine the optimum level of delegation.

The quantum of human interaction is an important feature of any job. Many stories are told about appellate judges recently promoted from the trial bench who find the relative solitude and lack of human contact to be almost overwhelming. Stories are also told about trial judges who feel "left out" if contacts with supporting personnel are reduced when a new administrator is appointed or a new administrative system implemented. There are other values of importance which we should not overlook in trying to make the courts more efficient.[6]

Another facet of the subject is the effectiveness of particular types of delegation. If decisions made by a delegee are subject to review by a judge, and 95% of such decisions are in fact referred or "appealed" to a judge, then such delegation is dysfunctional. Be sure to look for situations where a delegated responsibility has become a mere ritual. I question, for example, whether pretrial examiners can be truly effective. The concept makes sense, but it may be useless in practice.

Use of Statistical and Empirical Data in Planning a Study

The ideal way to plan a study is to start with extensive data on various characteristics of a court and the cases it processes. If such data are available for several courts, a comparative study, which analyzes the reasons for differences in individual court characteristics,

should be fruitful. Most importantly, you start from a base of knowledge instead of from a base of ignorance. A few years ago this was not possible, but today there are enough information systems in operation and enough studies have been conducted to make it feasible in a number of states. This is a manifestation of the gradual emergence of court administration as a discipline and although the field is still weak in theory development a knowledge base is accumulating beyond the inchoate stage.

The Federal Judicial Center will be undertaking a district courts study during the coming year. We plan to use statistical and empirical data in developing objectives for this study. Some of the examples which follow illustrate the potential for planning based on such information.

A study of civil case processing in the largest federal district courts showed that courts which have the longest case processing time were those which have the highest percentage of diversity cases on their docket. The study also showed that diversity cases (especially personal injury cases) tended to be "slower type" cases, but that the proportion of this type of case in a court's docket did not fully explain differences in case processing time, i.e., the "fast" courts dispose of diversity cases in a shorter period of time than do "slow" courts. We intend

to make one objective of the study the determination of the reasons for this difference. By analyzing procedures and various Court and Bar characteristics we hope to be able to show what types of changes would be required to make the slower courts' performance equivalent to that of the faster courts. For example, the Initial Pretrial procedures used by some fast courts seem to have the effect of flushing out (shortly after filing) diversity cases which do not meet jurisdictional requirements. Since such cases have a very short life span this could be one of the reasons Courts using this procedure are faster courts. Once the Bar becomes aware of this procedure there may be a reduced tendency to invoke federal jurisdiction in diversity cases which do not clearly meet jurisdictional requirements and this may explain the smaller proportion of diversity cases filed in the faster courts. In effect, this may be a method by which a federal court can exert a degree of control over its input.

Another center study has shown that the number of civil case dispositions per judge is more in accordance with the disposition rates of their colleagues sharing the same bench than in accordance with the average for the system. This seems to indicate that the share-the-work or "bellwether" effect is operant. If so, this

suggests that differences in local traditions and differences in shared expectations (by judges and by attorneys) should be analyzed in order to determine the causes of this phenomenon. On the other hand, since cases in these courts are randomly distributed to judges under the individual assignment system, and since each judge can, therefore, be expected to have a relatively equivalent proportion of each type of case the explanation for the apparent "bellwether" effect may lie partially in case mix (e.g., the percentage of diversity cases). Thus one of the study objectives will be to explore the possible reasons for the effect and to determine what types of changes should be recommended.

In another center study we have looked at potential measures of performance for clerks' offices in district courts. Various analyses were performed to determine whether judges productivity was directly related to the amount of clerk support. On a system-wide statistical basis we were able to conclude that economic measures of clerks' office performance could be separated from judge performance once a given threshold level for support was reached. The amount of clerk support when measured on a total court caseload basis showed no relationship to the median time for case disposition per court. But

another analysis indicated that the ratio of clerks per judgeship has some effect on the median time to termination for civil cases but not for criminal cases. The first measure was based strictly on weighted filings as a clerk workload measure. The clerks-per-judgeship ratios revealed a possible individualized effect which does not emerge in a system-wide economic measure. One of our objectives, therefore, will be to select several courts where the economic measure shows that the degree of clerk support has no effect, but where an individual judge support ratio shows effects on judge performance. By analyzing the reasons for the differences in these measures, we hope to be able to identify environmental and procedural factors which may lead to better insights into the ways in which supporting personnel can affect the overall performance of a court.

Our studies show there are very definite size effects in the federal court system. By this I mean that on a number of measures there are economies of scale related to size of court. For example, small courts tend to have higher costs per case than medium size courts and medium size courts tend to have higher costs than large courts. This is characteristic of many types of organizations and it indicates that a single standard for resource allocation cannot be applied to all courts. I should clarify by

noting that here we are looking at data which may help in determining budgetary requirements for courts of different sizes. It appears that for this purpose there should be three different standards for courts which fall into three size groups. However, even within these size groupings we find rather significant variations. Using clerk salary dollars per weighted filing as a measure, there are variations within each group of as high as two or three to one. Our plan here is to select the courts having the highest and lowest costs within each size group and compare their procedures, organizational structure, and environmental factors, in order to determine what steps can be taken to improve the performance of the high cost courts. As can be seen, the data identify relatively economical clerks' offices and the final objective of this part of the study will be to make improvements in other offices in order to make them more like the most economical offices.

The size effects which have shown up in our studies indicate that we need to know much more about optimal organizational structures for courts of different sizes. Therefore, another objective of this study will be to attempt to establish guidelines for types of management procedures and organizational structures which are appropriate for a given size of court. Federal courts have grown dramatically in recent years and sufficient attention

has not been paid to the types of management problems that occur with an increase in size. Much of our information for this objective will be obtained from analysis of changes that have been made in courts which are now operating effectively even though they have experienced substantial size increases. This experiential data will be combined with concepts from organization theory in order to develop recommendations which will help metropolitan district courts to be more responsive to the problems which they face.

We have constructed charts comparing several other characteristics of courts. On each chart there are "outliers," i.e., those operating much better than the average and those operating much less effectively than the average. Again by looking at the "outliers" and finding the reasons for their relative standing, we hope to be able to derive a number of principles which will point us toward better overall court administration.

CONCLUSION

Politics has been called the art of the possible. To some extent a court study is an exercise in the art of the possible, but it has to go beyond this. It should be an exercise aimed at converting the previously impossible into the possible.

When you approach the task of planning and organizing a court study, I urge you to do so with a full appreciation of the unique nature of the institution which will be observed and analyzed and of the special position of law in western societies. You will find that courts cannot be viewed as though they were identical to other organizations. Their unique nature can most succinctly be highlighted by a statement made by Thurman Arnold:

> "The task of Jurisprudence has been to make rational in appearance the operation of an institution which is actually mystical and dramatic, and which maintains its hold upon popular imagination by means of emotionally relevant symbols. . . ."[7]

I do not mean by this allusion to infer that you should hesitate when you see an apparent need for change in a court. I do mean to infer that you must be sensitive to the potential impact of each change and that changes will usually be more difficult to make in courts than in other types of organizations. When you confront these difficulties (as you undoubtedly will) keep in mind the oft quoted statement by Arthur Vanderbilt:

> "Manifestly, judicial reform is no sport for the short-winded or for lawyers who are afraid of temporary defeat. Rather, must we recall the sound advice given by General Jan Smuts to the students at Oxford: 'When enlisted in a good cause, never surrender, for you can never tell what morning reinforcements in flashing armor will come marching over the hilltop!'"[8]

BIBLIOGRAPHY

1) Of course it is impossible to remove politics completely from courts since courts are political institutions whose functions encompass the authoritative allocation of values. (See David Easton, The Political System and Sheldon Goldman & Thomas Johnige, The Federal Courts As A Political System.) It could be argued that it is more precise to state that the objective of court reform is often to remove differential advantages and disadvantages that accrue as a result of partisan politics as well as other forces.

2) Cook, Beverly Blair, The Paradox of Judicial Reform: The Kansas Experience, Report No. 29, The American Judicature Society, March, 1970.

3) ibid.

4) Simon, Herbert A., Administrative Behavior: A Study of Decision-Making Processes in Administrative Organizations, Free Press, 1965, p. 37.

5) This analogy is somewhat stretched since courts do not actively try to induce customers to use their services. Courts, in effect, are resources available for use (under prescribed conditions) by litigants. As such, court organizations are purveyors and lawyers and litigants are consumers.

6) See the text associated with Footnote 7 for an example of broader values which anyone studying a court should not overlook in attempting to make courts more efficient.

7) Arnold, Thurman, Trial By Combat and the New Deal, 47 Harvard Law Review 913-922, (1934).

8) Vanderbilt, Arthur T., Minimum Standards of Judicial Administration, The Law Center of New York University, 1949, p. xix.

END