COURT STUDY PROCESS

THE INSTITUTE FOR COURT MANAGEMENT

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ACKNOWLEDGEMENTS

This project was made possible by a grant from the Law Enforcement Assistance Administration of the Department of Justice. Since the Institute for Court Management has had extensive experience in conducting court management studies, it seemed appropriate for the Institute to undertake this project. However, the contributions of many individuals were necessary to complete this work. In fact, much of the material in Part I of this report is based on the discussion and papers presented at the Conference on Court Studies, which was conducted as part of the project. We are especially grateful to each one of the participants at the Conference for their time and effort. Of course, the points of view or opinions stated in Part I are ours and not those of the participants.

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Project Director

THE COURT STUDY PROCESS

PART I

A GUIDE TO CONDUCTING COURT STUDIES

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INTRODUCTION

This is Part I of a project funded by a technical assistance grant from the Law Enforcement Assistance Administration to provide guidance for the successful conduct of court studies. As stated in the grant application, the goal of the project was to evaluate the court study process and develop guidelines to help assure that future studies achieve maximum effectiveness.

Two products were specified: first, the development of a guide or monograph discussing the court study process as a whole; second, a related report on a Conference on Court Studies (which was held as part of the project) compiling the presentations of the conference participants.

The Conference on Court Studies was held in Denver in May, 1973. The objective of the Conference was to bring together individuals with extensive experience in conducting court studies to present and discuss papers concerning all aspects of the process.[1]

This monograph, as well as the Conference papers in Part II, are principally concerned with studies whose major emphasis is empirical, rather than theoretical, research. Consideration of studies whose ultimate goal is to facilitate

change was deemed of primary importance, since it has been asserted by many that the vitality of our courts is dependent upon an "action" orientation--analyzing problems and devising new procedures, etc. to solve those problems. Thus, although pure research and evaluative studies play an important role in court improvement, they are not the primary concern of this project.[2]

In our experience, much more insight is needed into the processes of effecting change in courts. Since change usually necessitates people modifying their behavior and attitudes, in a very real sense, this monograph centers on the people in the courts and their relationship to studies and change as much as on studying court procedures themselves. As in any life situation, mastering problems of behavior and attitude modification is the key to success.

This monograph (and Part II) is designed to be used by a broad range of people including judges, court administrators, state planning agencies, and those organizations and individuals that conduct court studies. All who may be involved in the study process need to understand what can realistically be expected from most studies, what the study process involves, and how study results can be implemented. Misunderstanding in these areas is often the cause of study failure. In this document we establish basic guidelines for both those conducting studies (the producer) and those who are the sponsors or the subject of the study (the consumer).

It is our hope that by shedding some light on the subject, common understanding can be reached and future problems avoided.

This paper is arranged to parallel the normal sequence of events which would take place in initiating, conducting and concluding a court study. Thus, guidelines are proposed for the preparation and issuance of requests for study proposals, the selection of a consultant or contractor, study initiation (pre-planning), monitoring the project, study reports, and implementation.

BASIC ELEMENTS OF A SUCCESSFUL STUDY

The focus of this monograph is on the application of proven management consulting techniques to the particularized problems of the courts. Management consulting has been defined as "the professional services performed by specially trained and experienced persons in helping managers diagnose management problems associated with the goals, objectives, strategies, organization, operation, procedural and technical aspects of the principal institutions of our society; in recommending optimum solutions to these problems; and helping to implement them when necessary.[3]

In the presentations and discussion at the Court Study Conference three proven techniques or elements of the process were identified as necessary to insure the successful implementation of recommended changes resulting from a study. They are: a) extensive pre-planning leading to a clear definition of study goals; b) broad, continuing involvement of the people in the court system in the study process; and c) a regular and organized exchange of information, on a nation-wide basis, about court study projects, techniques, and management and procedural advances. These elements are summarized below and along with certain study techniques are discussed in more detail in the next section of this paper.

Pre-planning

The need for early consideration and definition of study goals may seem self-evident, but experience indicates that while its importance may be acknowledged, in actual practice, it is over-looked in favor of proceeding directly to the study itself. There are many reasons for this. First, management consulting in, and the attempted application of management principles to, the courts and other justice system agencies, is fairly new.[4] Thus, many of those who sponsor court studies are not familiar with the concept of goal setting and do not operate their own offices in terms of setting goals and devising means of measuring performance against those goals. Accordingly, in entering into an agreement to have a court management study conducted, there is an understandable lack of emphasis on goal definition by the sponsor or consumer of the study. As stated above, the stress has been on initiating work on the project.

Another important reason for the absence of pre-planning is the complexity of the justice system and the fact that the subject of the study is often not the sponsor of it.[5] Many court projects are funded by state planning agencies or directly by the Law Enforcement Assistance Administration. Often the grant applications are drafted by staff people not directly attached to the court who do not have an intimate knowledge of court operations. Court staff, while they may have the knowledge, generally lack the expertise and experience

needed to draft a grant proposal and the time required to shephard the application through the maze of bureaucracy typically involved.[6] These problems are compounded by the fact that most court studies also impact on other oganizations such as the bar; the prosecuting attorney; the bail system; city, county, or state government, etc. Thus, not only is an understanding of court operations required, but a full grasp of the entire justice environment is needed if the proper pre-planning and goal definition is to take place. With professional training of court administrators only in its infancy, there is a critical lack of trained personnel to aid in the design phase of a court project. The inevitable result is no, or poor, pre-planning in many court projects.

The process of goal setting will be discussed subsequently. It should be sufficient to state here that it is a two-way proposition; involving both the consultant and the court. It may even involve a third party, the sponsor of the study. Issues such as study sponsorship, who or what is the subject of the study, what kind of activity will be involved, etc., should be jointly considered and resolved. The point is that a study, which is designed to produce change, is not done to a court. The organization being studied must be involved actively in the entire process if change is to actually take place. Goal setting should be an "expectation-setting" activity which, if done well, can become the basis for the successful implementation of recommendations.

Broad Involvement

A closely related matter is the need for broad involvement of system participants in the entire study effort. This is especially important as to the people and agencies to whom the system depends for action. This point was made repeatedly at the Conference on Court Studies. Traditionally and structurally, courts and the complex of public agencies which constitute a "court system", resist change even when it is clear that it is needed. In such an environment, the best hope for insuring the implementation of changes is to involve all the key people in the system in the study process. This may be accomplished by the creation of a consortium or interagency advisory committee to sponsor the study and be responsible for its implementation. (This approach will be discussed in the next section of this paper.) Judges, no matter how committed and prestigious, cannot effect basic changes in the system without conscious support from its interdependent parts. This support cannot be commanded, it develops only through involvement in the process from the very beginning.

An integral part of the involvement process is establishment of a feedback mechanism between the court (and/or consortium-committee) and the consultant. The objective is to keep the court informed of study progress and findings. By the same token, the feedback mechanism should enable the court to give the study team, in turn, reactions and observations.

The exchange of information should result in a final study product which contains no surprises for the consumer and includes recommendations that are well understood and can be implemented.

Nationwide Information Exchange

This element might seem to be misplaced as a necessary ingredient in a successful court study. However, it became apparent at the Conference on Court Studies that a national exchange of information about the court study process (which is what the Conference actually was) is required if studies are to achieve maximum effectiveness. By exchanging information, the "re-invent the wheel" syndrome, which has characterized much of the study activity in the field, could be avoided. New developments and techniques in one locality could be made available for use by others. Many courts could benefit from unique problem solutions developed in one court. Studies, in effect, could build on each other both as to substance (e.g. transmission of new ideas) and study techniques (e.g. use of organization development methods). Progress of this nature would improve the quality of the study process which, in turn, would mean more successful implementation of study recommendations.

While there is some exchange of information within the court study field today, it is irregular and unsystematic. This may be due partially to competitiveness among various

companies and organizations, profit and non-profit alike. In fact, the distinction between profit and non-profit is, in itself, a bar to the trading of information. The attendees at the Conference generally agreed that such a distinction should be de-emphasized. Organizations or consultants should be hired to conduct court studies on the basis of their competence, not whether they are profit-making or not.

The issuance of this monograph is a step toward increasing the flow of information. But it is only a step. The field is rapidly changing and the guidelines presented here must be reviewed periodicially and updated in order to insure their continued usefulness. Some sort of ongoing, regular exchange of information is needed.

Who should be responsible for this process, and what more should be done, are major unresolved issues. The Conference consensus seemed to be that there was a need for a "clearinghouse" to facilitate the exchange of information among studiers as well as among consumers of studies. One notion advanced was that a comprehensive inventory of court studies should be compiled, with the listing to contain a synopsis of the study and identification of the organization conducting the study. While there was some sentiment for having a national organization, such as the National Center for State Courts or the Institute of Judicial Administration, assume this responsibility, there was also a feeling that that organization should not itself conduct court studies;

its only role would be limited to that of a clearinghouse or a center of information about the work being done in the field.

The notion that the listing should be evaluative to protect the unwary from hiring an incompetent consultant was also advanced. However, such questions as who should make the necessary judgments and according to what criteria, make this approach unfeasible. The best safeguard against hiring an unqualified consultant is to check references and credentials. By calling prior clients of the consultant, the potential user can make a background check in an attempt to insure competency. Of course, this should be done in any event prior to the hiring of a consultant. The listing may be useful, however, in giving a more complete catalog of previous clients than the consultant may choose to supply on his own.

If the inventory was organized by subject, it could also serve as a directory for those interested in having a certain type of study conducted, e.g. a computer application, jury management, etc. Rather than canvass a host of organizations, the potential consumer of a particular type of study could use the listing to find the organization which seems to have the best experience with regard to the study contemplated.

In any event, although the mechanism for establishing a regular nationwide exchange of information about court

studies remains to be worked out, the need is clearly there. Without such an exchange, progress in the field will be retarded; mistakes will be repeated and new ideas, concepts, and techniques will not receive the widest possible circulation.

A further reason for formalizing an exchange of information regarding court studies is to provide a vehicle for transmitting empirical data back to organizations and groups that in recent years have been establishing standards for the administration of justice.[7] If the standards issued are to have any continuing validity, they should be evaluated in the light of actual experience and periodically updated when necessary. Instead of simply calling a group of "experts" together periodically on an ad hoc basis to propound standards it would be highly desirable if standards projects were more permanent in nature and had continuing access to the empirical data developed by court studies.

Therefore, it seems fair to conclude that much more has to be done to facilitate the exchange of information about court studies on a national basis. Hopefully, this monograph will signal the beginning of the process, and a more formal process and framework will be developed in the future.

THE COURT STUDY PROCESS

Initiating A Study

In many instances, a major step in initiating a court study is the issuance of a request for proposals (RFP). Since the RFP may be the vehicle for conveying to potential consultants and to the public the scope and dimension of the contemplated study, it is important that it be as precise as possible in a number of areas. These areas are: what the study seeks to accomplish; what funds are available; the time constraints, if any; and what mechanism will be created to promote and carry out the project and implement results.

In defining project goals, the most desirable approach is to be as narrow and specific as possible. However, in some instances this cannot be done. For example, a court may be facing a growing inventory of pending cases and lengthening lapse times to disposition. While these symptoms may have one or more causes, the court's administrative staff may be unable to isolate them. This hinders project goal definition. Under these circumstances, it may be wise to employ a consultant to conduct a reconnaissance survey to lay the proper foundation for the study itself and assist in defining its goals.

This approach was discussed extensively at the Court Study Conference. Some were of the view that the organization involved in the preliminary survey should not be permitted to submit a proposal for the study itself, thereby, ensuring objectivity in the pre-study work and avoiding the appearance of inside dealing. Others felt such an approach would foster discontinuity in the study process and that the court/consumer should be free to deal with whomever it believes can do the best job. Furthermore, it was asserted that if an organization was precluded from submitting a proposal for the main project, its incentive to perform effectively on the field reconnaissance might be diminished.

As part of this discussion, the architect model was considered. Under this approach, one or more organizations might specialize in the design of court studies to be undertaken by specialists who conduct studies. In addition to developing the study plan, the "architect" might also assist in reviewing proposals and monitoring study activities. The major drawback to this model is that if an organization's sole function was to assist in the development of RFP's by doing reconnaissance surveys, it may eventually lose credibility. By not doing fullscale studies, it may become increasingly difficult for the organization to keep abreast of the changing nature of the problems and issues in the court administration field. Although this issue was not resolved at the Court Study Conference, it was generally agreed that in many

situations a reconnaissance review may be necessary before a comprehensive and well-conceived RFP can be prepared.[8]

The RFP, aside from defining goals, should also give some indication of the funds available for the project and any necessary time constraints. Both items will give those who seek to conduct the study the information needed to make a judgment as to what can and cannot be accomplished. A lot of wasted effort in preparing and evaluating proposals can be avoided if an RFP is explicit on these matters. In any event, the proper setting of expectations on both sides requires an early resolution of these questions.

In addition, the RFP should delineate the mechanism to be created to support and monitor the project and to lead the implementation effort. While in practice many RFP's ignore or deal very superficially with this issue, such a mechanism is crucial if there is to be a communication link between the study team and the consumer/court. As noted earlier, a communication link is vital in a change-oriented court study. The involvement of the court and other key system participants is not an alternative; it is, in our view, the only way to conduct an effective study.

One effective technique for encouraging the needed involvement is the creation of a consortium or inter-agency advisory group to sponsor and monitor the study. Even though we are dealing with court studies, the committee should be broadly representative of the justice system. The

judges, no matter how well thought of and committed, cannot unilaterally bring about basic changes without the active support of the constituent parts of the system.

It would seem appropriate, therefore, to include on the sponsoring committee, in addition to judicial representatives, members of the bar, especially the trial bar; law enforcement officials; media representatives; legislators or county commissioners; and lay citizens representing such organizations as the League of Women Voters, Urban League, Chamber of Commerce, etc.

With regard to a study primarily focused on a court, we further suggest the creation of a second monitoring group composed only of judges and the court administrator, if there is one. Judges have the responsibility to manage the court and rightfully can expect to be involved more directly in a management study of the court than other participants in the justice system. The study team and/or project director would meet more regularly and frequently with the bench or a committee of judges to brief them in depth about study progress and to receive comments from them. Less frequent and more general meetings would be held with the larger advisory committee; the purpose, however, would be the same - to brief the participants about the study and receive feedback from them.

Another reason for proposing a two-tier monitoring mechanism is to de-emphasize the judicial role in the

broader-based sponsoring committee. In general, judges are high status people accustomed to exercising authority and independent judgment; they do not necessarily make good team members. Experience has indicated that free and open discussion concerning court problems and alternative solutions may be hindered by more than a token presence of judges in the group. While somewhat cumbersome, two sponsoring/monitoring groups, one broad based and one composed solely of judges (and the administrator) could avoid this possible problem. The consultant would serve as the communication link between the two, with the goal of laying the appropriate groundwork so that eventually joint discussion of problems and solutions can be achieved.

If implementation is to result, there has to be at least as much two-way communication with the judges and others as there is information and data gathering. Interim written reports along with periodic oral presentations can be effective devices for insuring understanding of the study process and work product.

If an outside consultant is hired and the project is to extend over a period of six months or more, a local project coordinator, who is on the scene all the time, should be designated. This will serve to facilitate the needed communication. As further aid in this regard, whenever possible, a local coordinator who is or was employed in the justice system staff should be selected.

In general, the use of in-house staff during the course of the study should be encouraged. Direct involvement not only contributes to the study's credibility, but it can also serve as a training vehicle leading to the upgrading of the quality of the local staff. Effective implementation and a strong staff go hand-in hand. However, such involvement should be carefully defined in advance so that day-to-day court operations do not suffer as a result.

To facilitate information gathering, a useful device is to designate a contact person within each agency that is concerned with the subject of the study. This person could be the agency's representative on the advisory/sponsoring committee, and he would be responsible for arranging access to his agency's records and personnel for the study team. Creating smooth paths of accessability is another vital aspect of the communication and feedback mechanism that should be established at the outset of a project.

Selection of Consultant

Guidelines in this area are difficult to formulate since part of the selection decision may rest on political/practical grounds. The decision may be political in the sense that those sponsoring the study may prefer that an outside consultant be hired in order to insure, or convey the appearance of, objectivity. On the other hand, there may be a strong distrust of "outsiders" which could lead to the rejection of the most effective study. Thus, who to

select may rest, at least in part, on a practical judgment as to the probable impact of the various organizations that are being considered to conduct the study.

However, while in some situations it may be necessary to bring in outside expertise, as a general proposition, it would be foolish to pass over a local person or organization merely because they are local. Outside assistance usually involves substantial travel, thereby elevating project costs. Therefore, local expertise should be used whenever feasible.

Aside from political/practical considerations, the real test in hiring a consultant should be competence, not local versus outside, or profit versus non-profit. Capability can be determined on the basis of the consultant's performance record in comparable studies. Past performance should be reviewed and checked carefully.

In this regard, the consultant's proposal should designate the study team members and specify their degree of involvement. In evaluating past performance, one issue to consider is how frequently did the consultant change the study team and for what reason. As to determining competence, what was said earlier bears repeating. There is a clear need for some type of "clearinghouse" to facilitate the exchange of information, especially among consumers of court studies.

The pat, pre-packaged approach should be avoided. The proposal should be examined to see whether the consultant truly understands the particular tasks to be accomplished.

The clarity and the logic of the methodology should be determining factors, not how well packaged the proposal.

Pre-Study Considerations

As noted previously, pre-planning or "front-end loading," as it is sometimes called, is a key element in a project which results in the implementation of the recommended changes. Pre-planning involves a number of issues and considerations. While they will be discussed separately, these matters are closely related to each other and to the issues discussed earlier.

Even though the RFP should define the objectives of the project, there is usually a need for more specificity. The consumer and consultant should know, in great detail, what the project is expected to accomplish. Thus, part of pre-planning is expectation setting which involves making determinations with regard to the timetable for the project, how the study team will operate (how the project will be conducted and why), and most important, determining what the study team needs from the court and others in terms of the time of certain individuals, space and facilities, and any other resources.

Another aspect of pre-planning concerns determining the nature and environment of the study. Since court studies can be sponsored by a number of different agencies other than the court being studied, at the outset, it is important

to determine who is the subject and who is the consumer. If they are different organizations, as in the situation where the state court administrator's office or a state or regional planning agency retains a consultant to conduct a study of a local trial court, this fact should be fully explored at the beginning. The prognosis for a successful conclusion to the project will be dim if an external agency initiates the study and members of the court organization perceive themselves as mere objects rather than participants. As noted previously, broad involvement is a key element in the successful completion of a court study. Thus, not only must such constraints as budgets, statutes, rules, procedures, and traditions be ascertained, but a clear understanding of the nature of the study should also be gained. This understanding should be utilized in establishing the appropriate mechanism to sponsor and guide the project, discussed above.

In sum, pre-planning involves more than just delineating in detail the expected products of the study. The nature of study and the environment in which it will be conducted must be fully explored in order to bring into the open, as soon as possible, any problems that could impede the carrying out or acceptance of project results. This type of pre-planning is a shared responsibility among the consultant, the court, and the other concerned justice system agencies. Broad participation at this stage is a pre-condition to a successful

outcome. It is also a basic approach that should be followed throughout the project's life.

Two caveats as to project planning need to be mentioned. First, unless the contemplated study is very precise and narrow in its objectives, the study plan may have to be modified at periodic intervals as knowledge is gained during the course of the project. Thus, while the general goals should remain fixed, the intermediate or sub-goals may have to be varied to fit the emerging reality. Second, care should be taken to avoid over-complexity. Some court organizations, because they are poorly administered and/or structured, may not be able to implement certain types of recommendations. Not only must the court's capability be realistically assessed, but study techniques must also avoid being overly complex. This is especially important if the study team's activities (e.g. monitoring some process or procedure) are to be carried on by court personnel after the project concludes. The techniques used should be as simple as possible, consistent with getting the job done. That means that the study approach should be readily comprehensible and sensible to court personnel and equivalent to their capabilities.

In this regard, it should be borne in mind that study techniques are merely means to accomplish project goals; they should not loom too large in a study or they will, in

effect, displace the goals. While computer processing of data and complex equations and statistical measures may demonstrate technical competence on the part of the consultant, they may also disguise a lack of understanding of the nature of the problem, the court being studied, and the goals to be achieved. In assessing study techniques, the court/consumer should understand basically the what, how, and why of the study approach.

The pre-planning stage also involves anticipating problems of implementation. Certain project results may require legislative, rule, or work habit changes. Knowing at the outset what may be involved can help structure the study so that the necessary information and data can be developed during the course of the project to support study recommendations.

With regard to implementation, it would be advisable to determine early in the study who will be in charge of the implementation effort. While a consultant can and should assist, effective implementation rests on the court's own ability to proceed with the recommendation. The court administrator, chief judge, or some combination of judges and support staff may be the logical person or persons to lead the implementation effort. To do that effectively, these key individuals should, of course, be members of the sponsoring/monitoring mechanism discussed earlier.

Study Techniques

This monograph is not intended to be a primer on the various techniques for gathering data or information. Since much has been written about such matters as sampling, conducting interviews, developing questionnaires, etc. details of that nature will not be repeated here. We will concentrate instead on general guidelines which should be followed during the course of conducting a court study.

As a first step at the beginning of a study, the project director and key project staff should meet with each of the departments or agencies that will be involved in the study to introduce themselves, explain the goals of the project, and describe the study team's activities, especially as they relate to the particular department or agency. This is another aspect of expectation-setting. While somewhat time-consuming, meetings such as these are essential to the process of developing a positive attitude on the part of the people in the system toward the study. In addition, early contact can serve as a means of correcting any misconceptions about the project's objectives and the way it will be conducted.

Since one of the study team's first responsibilities is to obtain information, another important initial step is a determination of what data, information, and statistics will be needed, in addition to that which is already available, in order to gain a sound understanding of court operations and to support anticipated recommendations. This activity

should be initiated as early as possible, because setting up and testing data collection procedures and training personnel to collect data can take a number of week.

The three major techniques available for collecting needed information are: interviews; data collection and examination of records, reports and other materials; and observation. As a general rule, all three techniques should be used in a court study and the data and information gathered by one technique should be cross-checked with the materials generated by other techniques.[9]

Interviews

One of the most important functions of interviews is to establish contact and set up a communication link. While the interviewer should also try to elicit factual information, the information should be cross-checked carefully since many times perceptions and outlook can color the "facts" being recited. It is most important to discern and take into account the feelings and attitudes of the judges and court personnel. Attitudes can have great influence on whether certain proposals will be adopted. An awareness of the prevailing attitudes should guide the study approach and the presentation of recommendations.

Interviews and structured group meetings are the best ways to get at feelings and attitudes. Therefore, the subjects of a court study should anticipate such meetings

and attempt to be as open as possible in expressing their views about the subject of the study.

During interviews, the study team should encourage a free exchange of ideas. Management consultants have found, and experience in court studies strongly confirms, that one of the best sources of solutions to the problems of an organization are the people in the organization. In the court setting, members of the administrative staff may be reluctant to approach the bench with new ideas, possibly because no one has encouraged innovation or created an environment where personnel can freely express their concerns, perceptions of problems, or ideas about change. In some courts, the judges are accustomed to issuing directives rather than exchanging views with non-judicial staff and personnel. In those situations, the study team should serve as a communication link within the organization by drawing upon and consolidating the knowledge which already exists.

Data Collection And Examination of Records

As noted above, an early determination should be made of what additional data is to be collected. Collection methods should also be defined. Development of a data collection instrument should be done in close consultation with court staff so that pecularities of the records or filing system are taken into account. In addition, in some studies it may be appropriate to use members of the court's

clerical staff to actually collect the information. This would be especially important where the data collection would become part of a new procedure to be implemented (for example, developing certain records needed to monitor juror utilization.) In any event, no matter who is utilized, data collection should be closely supervised by the study team to insure accurate results.

Observation

Observation of the processes being studied is mandatory. Often, what people think happens and what actually happens varies greatly. And, in any event, it is easier to understand a process, and all that can happen, when seeing it first hand.

Observation, to be worthwhile, should be structured. Detailed guidelines for the observer should be prepared so that the maximum benefit is derived. Just sitting in a courtroom is not enough. For instance, if an assignment court procedure is to be studied, the observer could be instructed to record the following: number of cases announced ready; number of continuances requested, by whom, and for what reasons; time it takes to send a case to a courtroom, etc.

Observation can be useful not only to verify perceptions, but also to cross-check data and information obtained by other means.

Monitoring the Study

Earlier we discussed the need to create one or more sponsoring/monitoring groups to guide the conduct of the study. During the course of the study, the study team should meet periodically with the advisory group(s) to report study progress, air any problems, and, at appropriate stages, discuss tentative findings and conclusions. In some situations, the advisory group could also be used to obtain feedback on specific measuring instruments. Significant data collection problems could be avoided in this way.

In a comprehensive study of substantial duration, it may be desirable to schedule an early conference to examine progress as to problem identification, data collection, etc. At this early session, no effort should be made to detail findings and conclusions. Suggestions and ideas developed at this stage should be considered as tentative, preliminary pieces of information to be used only as a means of assessing the study team's initial efforts and grasp of the situation. In this regard, it is important to keep in mind that at the beginning of a study the first objective is to gather information concerning the court's organization, operations, and other matters related to the topic of the study. Suggestions for improvement should be made only after the study team has acquired a sound understanding of the court and its operations, and, therefore, the court/consumer should avoid exerting any pressure to receive major recommendations early in the study process.

While it is important to keep the advisory group fully informed, communication should not be limited only to that channel. Discussions should be held with operating officials at all levels of the organization. In some circumstances, these discussions can coincide with interviews being conducted as part of the study. But it also would be appropriate to schedule special feedback meetings with different groups of operating personnel, especially where a new procedure may be recommended or certain corrective action needs to be taken. Formal and informal communication, up and down the line, between the study team and the court agencies being studied is needed for a study to be successful.

Final Report

If the communication links are strong, the court should already be familiar with the material presented in the final report. Even though the report may be critical of current practices, the tone should be constructive, designed to help the court improve operations, not to fix blame or expose incompetence. (The latter may be a valid goal in some situations, but it would be difficult to implement changes in the climate that usually is produced by the issuance of such a report.)

As a general rule, the report should not be made final until all involved have had a chance to review and comment on it. The goal of review and discussion is not a bland

concensus, eliminating controversial findings and recommendations. Rather, it is to confirm findings, correct errors, and identify sections that need clarification. At a minimum, the final product should be understood by all.

If possible, the report should propose alternative courses of action rather than absolutist doctrine. For example, in the caseflow management area, a number of case assignment systems can be effective in establishing the necessary judicial responsibility and control over the movement of cases. In dealing with such an issue it would be appropriate for the final report to explore the alternatives and highlight the positive and negative aspects of each approach. Since it is for the court to decide whether or not to implement a recommendation, the consultant's report should cover the full range of viable alternatives to enable the court to make an informed decision.

Implementation

Implemenation is not really a severable issue from the matters already discussed. The implementation of recommendations will follow naturally if the guidelines outlined above are followed. In fact, some implementation may even take place before the study phase of the project comes to an end.

As noted throughout this paper, successful implementation rests on the development of a climate of involvement in and commitment to the study on the part of the personnel in the

system being studied. Participation not only legitimizes the change process, but it also allows the members of the organization to overcome suspicion or misunderstanding and to develop ownership of the process.

Implicit in this approach is the notion that implementation is the responsibility of the organization being studied. The consultant is only an advisor and assistant; he should have no management responsibility for operations. Therefore, the study report should be sufficiently precise so that implementation can go forward without conducting another full-scale study. However, items such as preparing detailed operational rules or new forms and records may well be part of the implementation phase, rather than the initial study, so long as the thrust of the recommendation is clear.

The implementation effort itself should follow the same basic approach as the study. In other words, the goal has to be defined with precision, detailed plans have to be developed, and above all, those involved have to be fully briefed and, in some instances, trained. Changes in operations have to be closely monitored so that adjustments and modifications can be made where appropriate. This means that there should be a strong feedback loop built into the implementation process.

Experience indicates that experimentation, e.g. establishing a pilot project, is an effective implementation tactic. The proposed change is implemented for a specified period as a

demonstration project in one part of the organization. The results of the demonstration are monitored and evaluated. If modifications are needed, they can be made in the final design, or a decision may be made not to go ahead based on the results of the experiment. Either way, the planned change is fully tested before final action is taken.

Full implementation should not be the end of the process; each new program should be evaluated periodically to determine whether and to what degree the purpose of the program has been achieved and how it has effected overall effectiveness. Thus, it may be advisable to provide money and time for follow-up and evaluation in the consulting contract. Since the degree of improvement resulting from an implemented change is often not immediately measurable, the follow-up and evaluation date should be fixed at six months or even one year after the start of the new program. This type of periodic review can keep a program from growing old or irrelevant. Since monitoring, feedback and evaluation are also basic to good management, the recommended re-examination calls for no more action than should be taken normally with regard to any court operation.

Court Computer Projects

What has been said thus far about implementation and the entire court study process applies to all types of studies. Some studies may require more data than others or

a more lengthy exposition in the final report, but the general framework outlined above should have broad applicability. This is true even with regard to projects involving the application of computer technology to court administration. While such projects may be more complex, time-consuming, and costly, they too should be conducted in accordance with the recommended guidelines.

In fact, some of the issues discussed above need to be emphasized with regard to computer-oriented projects. Extensive pre-planning is especially important before embarking on any project looking toward some computer application. Since some people see the computer as a panacea for all sorts of personnel and management problems or as a symbol of modern management, it would be wise to have cost/benefit analysis prepared in advance to assure that such erroneous thinking is not the basis for the decision to use a computer.

As to who should conduct a computer project, it may be advisable for a court to retain an outside consultant. An in-house analyst, if one is available, may be a captive of his environment and may not have the broad perspective that a competent outside consultant should have. Furthermore, an outside consultant, not being part of the system, would be more able to make controversial recommendations concerning the elimination of unnecessary tasks or the reorganization of an office.

Nevertheless, if an outside contractor is retained, care should be taken to avoid the tendency to over-rely on the

consultant. Experience indicates that many individuals are so overwhelmed by the introduction of a computer into court operations that they turn all responsibility over to the consultant. What may well result is a technically sound system which does not meet any of the user's (court) requirements. It is, therefore, extremely important that the communication linkages discussed earlier be established in any court computer project. The court management staff must be involved throughout so that upon the departure of the contractor the system becomes a useful aid in court operations.

In this connection, it should be noted that the training of personnel is a significant aspect of computer projects. The training effort should be an integral part of the overall study approach.[10]

As in other types of projects, the implementation phase of a computer project should emphasize testing or experimentation. Before full implementation of the computer application, there should be parallel operations with the old and new systems operating side by side until the new system is fully tested. This may take six months or more because of modifications that may be required as a consequence of the parallel operations. In fact, because of the complexity of the undertaking, all phases of a computer project may take longer than the comparable phase of another type of court project. The court should not be impatient for results; from beginning to end, a computer project could take anywhere from 18 to 36 months.[11]

CONCLUSION

This paper is not intended to set forth doctrinaire approaches to the court study process. The guidelines advanced are merely that - guidelines that, hopefully, can be used to assist in achieving maximum effectiveness in court studies. However, while approaches may vary, there are certain ingredients which we believe are basic to any successful court study. These are the necessity for thorough and extensive planning prior to embarking on the study ("front-end loading") and the requirement that there be broad and meaningful participation in the study on the part of those affected by it. In addition, in our view, studies will not achieve maximum effectiveness until there is established on a national basis a formal and regularized exchange of information about projects, techniques, and management and procedural advances. Court studies designed to result in change should be built on these premises.

FOOTNOTES

[1]The Appendix at the end of Part II contains the program for the Conference and a list of the participants.

[2]Research and evaluation techniques are well known and well documented. See, for example, the report prepared by the National Bureau of Standards for the National Institute of Law Enforcement and Criminal Justice entitled, "Studying Criminal Court Processes: Some Tools and Techniques" (1970).

[3]Philip W. Shay, How to Get the Best Results From Management Consultants, published by the Association of Consulting Management Engineers, Inc. (1967), p. 1.

[4]While the Institute of Juvenile Administration has conducted a number of excellent studies since the 1950's, those efforts related principally to structure and jurisdiction. The first large scale management review of a court system was undertaken in 1968 when the Court Management Study of the Washington, D.C. court system was initiated. See U. S. Senate, Committee on the District of Columbia, 91st Congress, 2d Session Court Management Study, Parts 1 and 2 (May, 1970).

[5]See the papers in Part II by Maureen Solomon, Ernest Friesen, and Harry Lawson for discussion of the various types of court studies.

[6]"Grantsmanship" is not discussed in any detail in this monograph; that is a subject that may well be worthy of extended discussion in a separate publication.

[7]The American Bar Association has promulgated a set of criminal justice standards and a separate set relating to court organization. The L.E.A.A. funded National Advisory Commission on Criminal Justice Standards and Goals has also issued a series of standards, among which are a number dealing with the organization and administration of courts.

[8]The American University Criminal Courts Technical Assistance Project (funded by L.E.A.A.) has provided some assistance in this area. Under this program, a court can obtain the services of one or more consultants to review operations and possibly even draft a request for proposals.

[9]Specific guidelines for the use of each technique are set forth in Maureen Solomon's paper in Part II.

[10]For a full discussion of computer oriented training see "Guidelines for Development of Computer Training Curricula for Court Personnel" issued by the National Center for State Courts, Denver, Colorado, Publication #R0015, September, 1974.

[11]For further discussion of court computer studies, see the papers of Einar Bohlin and Ernest Short in Part II.

THE COURT STUDY PROCESS

PART II

PAPERS PRESENTED AT THE CONFERENCE ON COURT STUDIES

PREFACE

As noted in Part I, a Conference on Court Studies was held in Denver, Colorado in May, 1973. The papers presented at the Conference are reproduced in this section of the report. The Conference program and the list of participants are included in the Appendix at the end of the report.

AN OVERVIEW OF THE COURT STUDY PROCESS

by

Ernest C. Friesen

The Boundaries and Objectives of a Court Study

The dominant characteristic of a court is its dependence on others for its effective operations. The routine disposition of an uncontested divorce case involves two lawyers, a clerk, often a court reporter, and a judge. The court reporter is sometimes an independent contractor. The lawyers, though officers of the court, are economically independent. The judge is on tenure of some sort, either appointed by the executive branch of government, or elected, and paid by the county or the legislature. The clerk, usually a deputy of an independent elected official, may be a civil servant.

In a contested case the dependence is increased by witnesses, jurors, and sheriff's deputies. In a criminal case a group of other officials, hired and paid by a wide variety of agencies, is brought into play. The complexity of the system which constitutes the aggregate of interdependence provides the study of even a simple court system with a task of broad proportions.

The dependence of the judge and his immediate staff upon the activity of persons not under the judge's direct control

forces any study of courts to include the study of the activity of external organizations. The workload of the prosecutor, the competence of a public defender, the responsiveness of the sheriff (to mention only a few of the variables), may determine whether a court can efficiently schedule trials. The willingness of an elected clerk to change procedures, and the relation of county boards to judges, may determine the speed with which recommended solutions may be implemented.

To assure, as many court students have in the past, that the system will respond quickly to perceived needs is to err from the beginning. Public agencies traditionally and structurally resist change. The complex group of public agencies which constitutes a "court" multiplies the difficulty in the number of agencies involved in accepting any given change.

It may be a misnomer to talk about a court study. If by a court is meant the judge and the supporting staff immediately under his direction, there is little to be gained from studying a court. If, however, a court is perceived as all of the agencies and people who contribute to the disposition of a case or controversy, the combinations for study are nearly infinite. Two lawyers and a judge being necessary for a proper disposition of any adversary proceeding, the relationship of the three, in any combination, challenges the imagination. By adding clients, witnesses, and necessary

support staff to each of the participants, conclusions about the simplest of processes are tenuous, and are true only if qualified by variants that may exceed the generality in significance.

By way of illustration, a person who seeks to measure the backlog of cases in a court may find the backlog not in the court but in the lawyers' offices. The ability to dispose of the cases may be in the court, but the lawyers may not have the time to perform their duties to achieve the disposition of the case. An overloaded court may, in another instance, be unable to process cases on a timely basis, leading to an endless cycle of time consuming unproductive lawyer appearances.

The existence of a high degree of interdependence with little in the way of traditional control, and the nature of the boundaries with the independent agencies which make up the system, forces the student of the courts into an early decision to define clearly the objectives of a given study, and to solicit the cooperation of the independent agencies involved. It is extremely important that the scope of the study be defined with particularity before the study encounters resistance. Only by identifying the people and agencies on whom the system depends can the objectives be properly defined.

The absence of consistent lines of authority, coupled with the normal constraints of governmental intransigency, dictate an approach to setting the objectives of a study which may be unique to the courts. The fundamental fact is that the agencies and persons who do not see the objective as helpful to them or to the system in which they work, will resist participation, or at best avoid any effective contribution. The findings will lack the vitality of support, and the results, properly, will sit on the shelf as a monument to the people who predicted the study would do no good.

A consortium of all agencies which must execute the results is the logical sponsor for a court study. The judges, no matter how enthusiastic or prestigious, cannot effectively change the system without conscious support from the interdependent parts of the system.

A consortium which includes judges creates special problems. In most communities, judges are high status people who see their role as one of leadership. They are accustomed to exercising authority and are trained and conditioned in the exercise of independent judgment. As a generality, they do not work cooperatively with people who are perceived by them to have less status.

As a consequence of their sometimes exaggerated independence, judges do not make good team members. If they are to be included in a consortium, special techniques of communication need to be developed. Their trust must be encouraged, and even won. Their professional expertise must be recognized, but, in most instances, not be allowed to overshadow the valid concepts needed from other disciplines.

A technique which seems to work in this respect is to separate the judges from the consortium of other people by having separate meetings with the judges. The student becomes a link between the representatives of the other agencies and the court. The staff work is prepared for both groups, and presented separately, allowing adequate time for multiple meetings to accommodate the flow of information in both directions. The best solution would, of course, involve an open face-to-face exchange between the participants in the system. Substantial experience indicates that this kind of exchange is not effective when judges are involved. The dominance of judges in the group tends to limit the free and open discussion necessary to an effective exploration of alternatives.

The skill of the person providing the link between the judges and the other agency is critical. That person must be able to confront with diplomacy, and represent with diligent accuracy, the ideas of the absent participants. The "link" person who succumbs to the judicial assertiveness will destroy

the potential of the mechanism.

The consortium of agencies which should define the objectives of the study must include all the essential actors in the process. The definition of the objective will more than any other one factor determine the outcome of the study. The participation, more than the words used to describe the objectives, will be the basic determinant.

Court study objectives may, of course, be imposed by the funding authority without consulting the agencies which will be involved in the results. Such studies have been almost universally without results, whether in new insights or systemic change. Where the funding authority has specific objectives which it needs to reach, it is invariably better to share the expression of those needs with the principal actors of the system before they become hardened into action.

When court study objectives are developed in conscious interchange, multiple needs can be met. Results will have the support of the necessary participants. Truth will be more readily found, and alternative solutions to identified problems will be rich with the insights which defy data.

This is not to suggest the compounding of group ignorance as the basic process. A field reconnaissance to develop insights about the system, and which puts the students on a sound communication base with the consortium, is essential.

Independent exploration of asserted facts (even though they amount to a consensus) is essential in defining objectives. Feedback of facts to counter ignorant consensus and false assumptions usually leads to a strong effort to find the better assumptions in the meetings as they occur.

In the foregoing conceptualization, the fixing of objectives is a process, not a product. As the operating system gains more insight about itself, it may articulate different objectives and pursue them. The only risk to the student is in providing a sufficiently structured framework to justify auditors of funds who must constantly measure performance unambiguously.

Conceptually, the objectives of court studies fit one or more of the following categories:

1. To reinforce the prior perceptions of the clients about their needs.
2. To investigate the incompetence of the other agency which is causing problems.
3. To prove that the procedures and practices of the organization are effective (it's not the client's fault everything is going wrong).
4. To delay facing a problem which the client does not want to face.

5. To develop a justification or plan for adopting a particular model in the client's system.
6. To propose a treatment for a symptom where the cause is concealed by insurmountable obstacles.
7. To define the problems of the client system.
8. To solve a defined problem.
9. To increase knowledge about the dynamics of a certain process, or of the system generally.
10. To develop a strategy and outline for change, or a mechanism for renewal.

To Reinforce the Prior Perceptions of the Client about the Needs of the System

Many studies start with this objective in the minds of the client. The introduction of the student to the system starts by an announcement that we know what we need, but we need an outside expert to confirm it. The number of identified needs is directly proportional to the number of persons representing the client group. Each may say he agrees with his brethren and then proceed to define a contradictory problem, or outline contradictory assumptions.

The study which starts with this kind of an introduction need not be abandoned. The first phase, however, involves the process of helping the client group to see that they

disagree, and that their assumptions differ.

To Investigate the Incompetence of the (Other) Agency Which is Causing the Problem

The "defensive" study is a response to the universal belief in the justice system that all the particular component does is respond to the demands of society. Each component sees its position as uncontrollable, and therefore not responsible to others for its work. The response to the request for this type of study is an educational one. The potential student must help the client to understand that how the actors in his organization behave does affect the other components. The admission that part of the problem is in the client's shop may provide a ground on which to start setting objectives. Objectives which state a change only in an excluded agency will never be reached.

To Prove that the Procedures and Practices of the Organization are Effective

Otherwise known as a "whitewash," the study to confirm the genius of the system studied serves no useful purpose. It is sometimes concealed in rhetoric which suggest "our system is basically sound, but maybe you can suggest some things which will refine it." The possibility of change under such circumstances is about as remote as reform of the alcoholic who believes he doesn't have a drinking problem.

The description of the problem in these terms does not always mean the client is hopeless. It may mean that he doesn't trust the student. The client may be afraid of an exposé of an admission, and though genuinely wanting help, must not publicly admit the need.

To Delay Facing a Problem Which the Client Does Not Want to Face

The use of a study to delay action is a classic strategy. Closely related to the process of referring the matter to a committee or taking the matter under advisement, the study-delay may be the dominant reason for studying courts. One serves his client well by exceeding all time estimates, and by recommending another study as the solution to the problem studied.

If, contrary to expectation, the study comes up with a viable solution when delay is its basic purpose, the study findings and recommendations will be attacked until forgotten. The client being in the driver's seat, payment may also be withheld indefinitely. The delay student, like the defense lawyer for the guilty, should get the fee up front.

To Develop a Justification or Plan for Adopting a Particular Model or Standard into the Client's System

With the proliferation of conventional wisdom about solutions to court system problems, this type of study will

become more common. Where the study is aimed at a plan for adoption it has a valid purpose. It compares with the engineering necessary to put a new type engine in an old car. It takes great care and substantial knowledge of the old and the new.

Where the study is to justify the adoption of a standard, it amounts to a proof for the standard. Some of the standards (such as selection of judges, qualifications commission, etc.) are not capable of verification by study techniques. Basic research is needed. Whether particular standards or a particular model will work under the legal and cultural constraints of a given court system needs analysis, even study, but not in the traditional problem identification-data collection method which has heretofore been employed. This area needs attention beyond the scope of this guide.

To Propose a Treatment for a Symptom, the Cause of Which is Concealed by Insurmountable Obstacles

This type of objective is much like the objective stated in 3 above. The client wants relief but not very much. Help to develop a better method of scheduling cases, but don't suggest longer hours. Make the other judges work harder, but don't mess with the vacation schedule. Improve the image of the court, but don't suggest any changes in operations of the court.

The usual request is for a very narrow study of a very narrowly defined problem. An honest student, in responding to this request, will get his money up front, and duck when the report is filed.

To Define the Problems of the Client System

Problem definition is the firm part of court studying. With no solutions required, the student can pronounce with great authority that "there are too many continuances; that the lawyers are settling too many cases on the courthouse steps;" and that there are too few judges to try all of the cases filed with the court each year.

If problem identification gets even one level below the symptoms, so that the participants accept the second order of possible cause, the identification serves the useful purpose of changing an attitude perceived as a continuing process. With an increase in the client skill to identify his own problems, it may be the most useful of all studies.

To Solve a Defined Problem

The definition of the problem, if valid, i.e. based upon assumptions which are true, may well lead t· a worthwhile product. The objective here is not a report. A report may even be dysfunctional if flexibility in administration is the best solution (reports usually reduce the

flexibility in dealing with a defined problem). Where, for instance, the perceived problem is excessive delay in reaching the trial of criminal cases, the solution may not be an a,b,c of process, but an understanding by the participants of the variables that cause delay and a determination (attitude) to meet each variable as it becomes a cause. The a,b,c solution tends in many instances to set up new variables which, in turn, make delay possible. A report is not a solution.

To Increase Knowledge about the Dynamics of a Certain Process or the Processes of the System Generally

The acquisition of knowledge is not an end in itself. To the extent knowledge is increased there is another tool for action. Knowledge should be defined for a purpose - to know where the system is - to describe its interactions - to provide a basis for the design of processes - to provide a basis for the adoption of a model.

To Develop a Strategy and Outline for Change or a Mechanism for Renewal

Systems are basically evolutionary unless designed from a basis or discovered truth. Technology may break through in an area, and, when properly applied, may revolutionize a process or even make a process unnecessary. Court systems

need, above all else, the capacity to change in response to the needs which are perceived. The most effective study will result in the creation of a process for renewal. It may be the result of structure, communication, information, or re-orientation of values.

In this last objective is the recognition of studies as a process of inquiry, exposition communication, analysis feedback, further inquiry, analysis, etc., resulting in the kind of internal insights and knowledge which is itself the solution. Studies in their broadest sense are a cure for ignorance. If the problem is ignorance, a study which finds answers and communicates them may be the solution.

Skills for the Study of Courts

The skills necessary to study courts depend upon the objectives chosen. In the effective study, as viewed by this writer, the interpersonal skill is as important, but no more so, than the analytical skill. Most important is therecognition that uncommunicated and unaccepted data is wasted.

The involvement of the client-participant in the system is not an alternative method of effective court studies. It is the only way to be effective. There may be many

techniques of involving the participants, but the requirement of involvement is indispensable.

Data collection and analysis may be difficult. Participant involvement is time consuming. A study designed only on the basis of the time necessary to collect the data will fail to meet its deadlines. The time necessary to develop the confidence of the participants in the data is at least equal to the time for collection, probably more.

The foregoing (not totally accepted) assertion dictates a phasing of court studies which includes a time for communication and involvement as a necessary part of a study program. Whether the product is information, a plan of action, or recommendations for change, the study needs at least two parts of communication (two way) for every one part of collection. To provide less is to fail.

This is not an argument for the compounding of ignorance. The collection and analysis of data in more and more sophisticated forms is an essential of the highly technical interdependence system comprising the litigative process. Untested and uncommunicated information fails by virtue of its secrecy.

The demands on the participants in the justice process are multiple and highly specialized. Amidst the glut of information descending upon any one of the participants in

the study, results will receive low priority if the involvement and commitment has not been obtained and maintained during the course of a study. The time frame as well as the amount of time is critical to the maintenance of the necessary involvement.

The skills of the student, as a critical element in studies, deserves special comment at this juncture. The insights about the behavior of the principle actors in the system, and an understanding of its basic assumptions, are the essentials of a competent student of any system. He must be a broad generalist, and at the same time a narrow specialist, to do the whole job. The impossibility in this definition of skill suggests a complex rather than a simple solution.

The people in the system should develop their capacities to understand the system and to evaluate and communicate with the specialist who is needed for specific area. The courts should have project directors to link the specialist to the system - generalists who have the basic understanding of people and processes to bring to bear the technology. Most court systems are shorthanded in the first category.

The specialist is usually too expensive to maintain within any court organization. The specialist is usually

less expensive to consult with at $300 per day than he is to employ at $100 per day, if two thirds of his time is doing something other than his skill. The economics of specialization is established if there is someone within the organization to link him to it. The need for today is to develop the project generalist who can provide the link. It will continue to cost more than the visible product warrants for some years to come. Until the generalist is formed and in adequate supply, the system will continue to pay for rare talent at high prices to learn the system.

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PLANNING AND ORGANIZING A COURT STUDY

by

Joseph L. Ebersole

When the Institute for Court Management 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 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 statutues, 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 resource allocations;
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 reconnaissance 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. Further more, 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 define your goals but reveal 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 objective summary of the 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 courts?" 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 of which an outsider might not otherwise be aware. 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 consideration 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 contraints.
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:

1. 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 it will from your study. If the court wants to spend money, let it do so after it makes the personnel change.

2. 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 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 non-judicial duties and increased use of para-judicial 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 non-judicial 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 judicial 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 judicial 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 effect 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 bee 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 "outliners", 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 organization. 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 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 often quoted statement by Arthur T. 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]

FOOTNOTES

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

3) Ibid.

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

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

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PLANNING AND ORGANIZING A COURT STUDY: Initiating the Change Process

by

Allan Ashman

Conducting a "court study" is more than simply the sum total of data collection, field interviews and report writing. A court study is, in a real sense, an ongoing process leading to and effectuating change. Laying the proper foundation for change should be the overriding concern of those who bear the prime responsibility for planning and organizing a court study. If change is the ultimate objective of a court study, it is essential that among all parties seeking and desiring change that there be a high level of communication and a high degree of commitment. Without these two critical ingredients the likelihood of effecting any kind of change is minimal. What follows, then, is an attempt to underscore the significance of the planning and organization phase of the court study by suggesting factors to facilitate communication and techniques that will promote involvement and commitment.

Increasingly it is becoming clear to those who do court studies and to "consumers" of court studies that pre-study considerations often characterize the course of the study and

determine its ultimate impact upon the system under scrutiny. For this reason, the extent and nature of "front-end loading" can shape the overall scope and quality of the final work product and influence implementation of its recommendations.

Perhaps the most important and least emphasized task in planning a court study is the need to develop a court "game plan." Whether this be by informal agreement among the consumers as to broad objectives or by development of a formal request for procurement (RFP), initial planning must entail a process whereby the broad objectives and goals of a study are identified, comprehended and agreed upon. This is vital if such goals and objectives are to be communicated precisely and effectively to potential court study consultants and organizations.

Assuming for a moment that the basic vehicle for conveying to the public the scope and dimension of a contemplated study will be either an RFP or reasonable facsimile, it is important that the vehicle be specific as to:

1. The scope of the study (What do you want to do?);
2. The cost of the study (What can you afford to spend?);
3. The essential time frames (When must the study be completed either for political or practical purposes?); and

4. The manner of coordinating information with state and local agencies, judges, bar and legal associations, etc. (How do you want to carry out the study and promote it?).

If all of these factors can be addressed and identified at an early stage there will be a clear perception of what are the broad study goals. Those who seek to conduct a study will be put on notice not only as to what is expected of them but that the consumer is an aware, interested partner in the change process.

The court or agency contemplating a study also should develop and make available early in the planning process, information about the existing court system, with special emphasis on court structure, organization, administration and personnel. When possible, specific problems and local resources should be identified. In addition, sufficient time should be allowed for a response. A well-conceived, properly designed RFP requires planning. It is a futile exercise to spend hundreds of man hours designing a comprehensive RFP and expect that it will be answered within a few days. At the very least, one month should be allocated to permit the development of a reasoned and responsive proposal in the context of a formal bidding situation.

Before actually engaging in a court study two further considerations merit thought and resolution: whether a preliminary survey is desirable to further define and refine goals and objectives, and whether the individuals or organizations who bear primary responsibility for conducting a study should come from within the state or not. Both are important factors that can dramatically affect the character of the study and determine whether the study's ultimate recommendations receive acceptance. Generally, it is wise to lay a foundation for a court study by engaging the services of a consultant to conduct a preliminary survey. The purpose of such a survey might be to identify broad study goals, help define objectives, establish time frames, suggest organizations and individuals to conduct the study, and to assist in drafting the study design. A great deal of time and money could be saved by such pre-study analysis, design, coordination and synthesis.

Whether it would be wise or proper to call on local persons or organizations to conduct a study is, in a sense, both a political and practical decision. The decision is political in that outside expertise may be the only way to insure objectivity or to convey the appearance of objectivity. Conversely, there may be intense local pressure to work with local individuals and organizations. Distrust of "outsiders" can be strong and could undermine even the most effective study. Who to engage must be a decision that is made on

practical grounds that takes into account the probable impact of the individual organizations that are being considered to conduct the study. In any case, it may be that there are local persons and organizations as equipped and as competent to carry out the study as any out-of-state organization. It is foolish to pass over such an organization and to call upon the services of an organization or individual thousands of miles away if for no other reason than to bring in outside expertise. Local expertise should be utilized wherever possible. However, whether local expertise or outside expertise is utilized, it is crucial that those who desire a study get a clear picture of the capability of the person or persons who are being considered to do the work. There must be a clearly defined "track-record", or well-established performance record in comparable studies, that can be weighed in arriving at a final choice. This information should be reviewed and evaluated carefully prior to any final selection decision.

Once these initial steps are wrestled with and resolved, the next major hurdle facing a consumer is how to evaluate a study proposal. This is crucial in that all the time and effort and planning that has been put into developing, preparing and laying a foundation for the study now comes to fruition only if a proper choice is made. How, then does one evaluate the

merit of a particular proposal or the competency of a proposed study team? For one thing, one must discern between "puffing" and competency. The proposal should demonstrate on its face and by reference quality and substantive achievements. Language extolling the virtues of an organization and its staff but with nothing else, should be given little weight. The ability of the proposed grantee to mesh his understanding of what he intends to do with what the court expects him to do is a significant factor. Also, the degree to which the proposal evidences understanding or acknowledges existing national standards and other substantive criteria is important in terms of gauging the proposed grantee's familiarity with the subject matter.

In addition to clarity of thought and expression and the logic of his methodology, it is important to determine whether the proposed grantee has sufficient staff to accomplish the tasks he has outlined. Project personnel, members of grantee's own staff and retained outside staff should be identified and their resumes included in the proposal.

It is important to determine the reasonableness of the time frames that have been set forth for various stages of the project. One must ask whether these time frames fit into the overall pattern for submission of recommendations and

for any implementation phase that might be required. For example, if the study is being done in conjunction with a specific constitutional convention or legislative session, it is vital that the report be completed and the recommendations submitted well before the convention or legislative sessions end.

Lastly, it is important to look at the cost of the proposal. This, perhaps, might be the most challenging and frustrating of all tasks. Whether the cost analysis and breakdown is reasonable is often difficult to ascertain. It is important to try and look at the project in terms of what it is that needs to be done, the basic staff that is needed to accomplish the task and arrive at a precise appraisal of the cost, both in terms of salaries, consultant fees and overhead to achieve that objective.

There are several other major considerations that should be thought through prior to engaging in a court study. For example, it is important to develop a mechanism for monitoring a study. Such a mechanism is crucial if there is to be communication and liaison between the consumer and the study team. There must be direct and frequent communication to prevent surprises along the way and at the end. An advisory committee comprised of judges, members of the bar, press and

lay citizens might be a convenient vehicle. A local project director who reports frequently to an advisory committee should be considered. Interim written reports along with periodic oral presentations and briefings are also effective devices for insuring understanding of the study process and work product.

Another important consideration that should be confronted before engaging in a study is whether a study should have an implementation element and, if so, how that should be built into the planning and organization stage. In a sense this is another political decision that must be made early. It may be well for the local people who would like the study to specify legislative or constitutional changes or changes in court rules to effect the recommendations that have been made. But this depends very much on the nature and the context of a particular study. It may be that implementation would be best left to local legal, judicial and political experts who will have to work through the very difficult political problems and social problems that often affect implementation of a study's recommendations. Many people find that it is one thing to be told what is wrong with their system, but quite another thing to be told how they should correct it. The question of local sensitivity is crucial in gauging the wisdom of building

in an evaluation stage. If you are called upon to provide short-term technical assistance then, generally speaking, some precise insight as to how one can effectively improve or change the existing system, should be submitted. This is an area in which consultants might be able to provide general guidance, but local persons can also provide insight. In any case, persons contemplating a court study should give long, hard thought to the practical implications of requiring an implementation element to any study.

Similarly, the question of evaluation should be considered before any formal study process is begun. Evaluation is crucial to determining the success of a study, and to see whether a study has met its initial objectives and goals. However, who is to do the evaluation? Should it be done by those who conducted the court study, or should it be done by outside individuals who will in turn evaluate the persons who conduct the study? When is the evaluation to be done? Should it be done immediately upon the conclusion of the study, or should it be done a year or two later? What will be its desired use? Will the evaluation attempt to gauge community improvement, or will it be used to gauge the success or failure of the persons conducting the study? How will the evaluation results be disseminated and utilized? Will the evaluation be an attempt

to "white-wash" the study, or an attempt to further disseminate the study's recommendations? I think it is important to remember that an evaluation of the study can be as effective an instrument as the study itself in promoting or inhibiting change.

These then, are some thoughts on what the consumer of a court study might think about prior to engaging in a court study, and the posture that he might assume in developing a plan and a procedure for engaging in a court study. At the same time, some of these ideas might assist an agency or an individual that contemplates doing a court study to help him focus upon some of the potential pitfalls and hazards that must be confronted at the very outset when talking with the consumer, so as to avoid embarrassment and failure later in the process.

ALLAN ASHMAN

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CONDUCTING THE COURT STUDY

by

Maureen M. Solomon

Introduction

This paper discusses the essential elements in conducting court studies. It is organized into two sections:

1. Preparing for in-depth study activities.
2. Conducting the study; and post-study considerations.

Feedback between client and consultant is covered in the paper prepared by James Davey.

Preparing for the Study

There are several important topics the consultant and customer should think about in undertaking a court study. For example: What is peculiar about a court consulting engagement? That is, what circumstances or factors may make a court study different from studies of business organizations? One condition is the existence of jurisdictional and statutory barriers to immediate change in the area being studied. However, the consultant should not allow these barriers to deter him from making change-oriented recommendations where appropriate. He should acknowledge the existing statutory constraints and recognize that certain recommendations must necessarily be of a long-range nature; but he should not

summarily dismiss potential improvements because they require revising existing statutes.

Second, in the administrative structure of court organization there can be a very uneven power balance between the judges and administrator/administrative staff. Communication is often primarily vertical only and principally downward, i.e., from the bench to the administrative staff. This raises potential problems for the consultant and customer and/or court administrator, particularly in the recommendation and implementation stages, since it may be difficult to involve the whole organization in decision-making and agreement, and securing action may be very slow.

The third condition, possibly peculiar to courts which must be considered, is the occasional tendency toward extreme independence by judges. In most other organizations it is unusual to find one group which has the degree of autonomy we often find in the judiciary. This can hinder implementation efforts.

Another topic which should be considered early might be labeled "obligations." The comments under this topic are addressed to both the consultant and the clients, but especially to the client of the court study. It is important to recognize that a double obligation is involved in a court study. On the other hand, by agreeing to undertake the assignment, the consultant assumes a number of fairly obvious obligations to the court, or

whomever his client may be. On the other hand, the client (which may be the court or another organization) is under certain obligations, too. It is important to focus on the question of "obligation" before proceeding.

One of the most important obligations of the consumer of court studies is to recognize and carefully evaluate the nature (or morphology) of the study he wants dones, including the implications of that morphology. Thinking critically about this at the beginning is really loading the front end of the study to ensure satisfaction at the end. It is best for the client and consultant to jointly discuss the nature of the study (including the expected product and potential impediments to success) at length before beginning the detailed study. This is an "expectation-setting" activity which determines the direction of the in-depth work. Merely labeling this activity "defining the study" detracts from its pervasive importance. It is really a comprehensive definition of who the client is, who the subject of the study is, what kind of study activity will be done, and what tasks/problems will be involved, and what the study product should be.

The matrix on the following page presents a new, graphic method for use by the consultant and client in jointly answering these questions. It seems that confusion could be avoided by having such a tangible representation available to help structure

STUDY MORPHOLOGY MATRIX

Type of Study and Product

WHO IS THE CLIENT / WHO IS THE SUBJECT OF THE STUDY	(1) EXPOSE'	(2) DIAGNOSIS ONLY	(3) DIAGNOSIS AND RECOMMENDATIONS	(4) DIAGNOSIS, RECOMMENDATIONS AND IMPLEMENTATION	(5) DIAGNOSIS, RECOMMENDATIONS, IMPLEMENTATION, FOLLOW-UP	(6) EVALUATION ONLY	(7) SHORT-TERM TECHNICAL ASSISTANCE
(1) Judges & Administrator (court) / Judges & Administrator (court)	(1) (1)	(1) (2)	(1) (3)	(1) (4)	(1) (5)	(1) (6)	(1) (7)
(2) Administrator / Judges & Administrator (court)	(2) (1)	(2) (2)	(2) (3)	(2) (4)	(2) (5)	(2) (6)	(2) (7)
(3) Administrator / Administrator Only	(3) (1)	(3) (2)	(3) (3)	(3) (4)	(3) (5)	(3) (6)	(3) (7)
(4) State Administrator or Judicial Council / Court	(4) (1)	(4) (2)	(4) (3)	(4) (4)	(4) (5)	(4) (6)	(4) (7)
(5) Outside Agency / Court	(5) (1)	(5) (2)	(5) (3)	(5) (4)	(5) (5)	(5) (6)	(5) (7)
(6) Independent Researcher / Court	(6) (1)	(6) (2)	(6) (3)	(6) (4)	(6) (5)	(6) (6)	(6) (7)

discussions.

The matrix requires some explanation. That is briefly presented here and in more detail in the attachment to this paper. Along the vertical axis, on the left, is a representation of the potential study in terms of who the client is as opposed to who is the subject of the study. Along the horizontal axis, we portray the kind of study and study product that is desired.

Theoretically, when the client and consultant have agreed on which squares in the vertical and horizontal axes represent the existing conditions and type of study that is to be done, future confusion can be avoided. This also forms a basis for a realistic discussion of the approach that will be used in the study and the problems that may be encountered during the study. The study approach and the potential problems will be different in each locale, but they should be jointly definable, nevertheless.

As an example, refer to the matrix: if the court-study client and the consultant agree that they are engaged in a study where the client is an agency truly external to the court and the subject of the study is "the court" (row 5) and the type of activity desired is "Short-term Technical Assistance" (column 7), then they can consider that their study typology lies in cell (5)(7). When this agreement has been achieved, the discussion

can proceed. What are the potential problems? The court may resent outside intrusion; time limitations may constrain study depth, etc.; how will these problems be overcome; and who will assume what responsibilities in that regard; and what tasks will be performed? The answers here are infinite of course, depending on the location of the study and people involved. But this example shows how the matrix can be used to reach joint agreement at the beginning of the study.

In summary, then, we are trying to point out to potential consumers of court studies that they have a very important obligation to recognize the problems that the consultant may face due to: a) disparity between the client and the subject of the study; and, b) failure to carefully define, on the basis of expected product, just what kind of a job is to be done. Thus, at the beginning of the study, the project leader, the client, and the subject, have a heavy responsibility to spend sufficient time together to accomplish the following:

1. To carefully define in much more detail than appeared in the proposal, or request for proposals, exactly what the client wants to accomplish and how this may or may not be congruent with the desires of the subject of the study--the court. The study team must make sure it understands what product the client

expects, and, if in the judgment of the study team this is not a realistic product, help revise expectations about the outcome.

2. For the study team to set court expectations about:
   a. How the team will operate and conduct the study (what they will be doing and why);
   b. What the team needs from the court (in terms of time and other resources) during the study;
   c. What accomplishments can realistically be realized at study conclusion;
   d. How long the study is expected to take.
3. To set up a mechanism for feedback to the court. This is a very important point. There should be early establishment of a means of keeping an interchange of information flowing from the study team to the court and getting reactions from the court so that at the completion of the study, there are no surprises. Agreement should be reached, at least tentatively, about the type, form, and contents of reports which will be issued during the study, and at study conclusion. The client and consultant should also discuss the anticipated distribution of the report, as the distribution may

affect the form and content of the report.

4. When the study cuts across organizational lines, to possibly create an inter-agency committee to participate in the study. Participation of such a committee would usually be at a high level, with the study team making periodic reports to them, and occasionally asking the committee to establish, or advise on, policy in certain areas.

The client should expect the team to review all the previous studies of the court as well as applicable statutes, court rules, and procedures, to prepare for the study and for interaction with court personnel. The consultant should be as well informed as reasonably possible when commencing the study. Otherwise, the time of the court personnel can be wasted during interviews. It is wise for the study team to familiarize itself with these things before they begin detailed interaction with the court.

Finally, the client can reasonably expect the consultant prior to beginning the detailed portion of the court study to acquire a sound understanding of: 1) basically, what kind of study is desired (this goes back to the discussion of the matrix); 2) the overall attitude of the judges and administrators toward the study. (In other words, the consultant should expend some pre-study effort in exploring the arena in which he is going

to be working); 3) the power base from which the study issued (sponsorship) and how much support for recommended change can ultimately be expected from this sector. The consultant and client must have some common agreement on the amount of follow-up and support for recommendations the client will supply.

Conducting the Study

At the very beginning of the study, the project director should arrange for himself and principal members of his study team to meet with each of the departments or groups of departments that will be involved in the study. The purposes are to get acquainted with personnel, to explain the purpose of the study, and describe the activities which the study team will be engaged in during the study. It is important at this point to solicit the cooperation of the department with the study team, and obtain these personnel's expectations about the purpose of the study and the expected product so that any misconceptions can be corrected early. Interviews with judges are equally important at this point.

Early in the study, the study team should determine whether data and statistics in addition to that already produced by the court will be needed in order to understand court operations and support subsequent recommendations. A discussion of data collection itself appears in a later portion of this paper, but it should be mentioned here that setting

up data collection procedures, testing, and training personnel takes several weeks of solid work and should be initiated early.

There is another aspect of conducting a successful court study that is rarely explicitly recognized. It is a study component that the consumer of court studies should expect. While it is important for the team to begin the study gathering and sorting out factual material and learning as much as possible about the organization and its operation, it is very important that they also discern, and take into account, the feelings and attitudes of court personnel and judges toward a number of things. For example, while the team should be gathering facts about the size and composition of the court and caseload, about the way the calendar operates, backlog conditions, and the administrative structure and practice, etc., they should also be soliciting the subjective feelings of the court personnel, about the apparent problems and their causes, peoples feelings about their job, and other peoples' jobs, and about possible solutions to problems. The team should encourage open expression of attitudes toward the study itself, certain concepts relevant to the study topic, personal prognosis for the possibility of improvement, and the willingness of the personnel to contribute to and participate in change. These "feelings and attitudes" will greatly

impact study success or ultimate improvement in the court system, particularly where an implementation component is involved. This kind of information is usually best elicited during interviews. But specially structured group meetings may be used to obtain feelings and attitudes. Face to face contact for assessing feelings and attitudes is by far preferable to the use of questionnaires.

Further, whenever possible, the study team should incorporate ideas and solutions originating with judges and court staff, and give them the credit in the report. The court and the consultant should recognize that a study is really a joint effort. In truth many excellent solutions to problems surface during interviews with the court's operational personnel. They may not have emerged in the past because no one has encouraged innovation, or created an environment where personnel can freely express their concerns, perceptions of problems, or ideas about change. In reality, the knowledge base of the court's personnel is as valuable a resource as the expertise the consultant brings to the study.

It is important to appreciate that when a consultant does solicit possible solutions from court personnel, it is not a "cop out"! It may be one of the most significant aspects of his technique to ensure ultimate change in the organization.

During early stages of the study, the client should frequently

assess the degree of understanding of operations being developed by the study team and their grasp of the problems. People who are experienced in the court-study field, who have fulfilled the responsibility of carefully defining the expected product and familiarizing themselves with the court prior to beginning the study, should soon have some tentative, but well-informed hunches about the basic problems in relation to the subject of the study. Experienced study people know where to start looking for problems and what to look for.

The consumer of court studies has a right to expect this level of competency and a reasonably rapid grasp of the situation. The client should have an early feedback conference with the study team to see how it is getting along with problem identification. That is not to say that they should try to extract findings and conclusions from the team at this point. Suggestions and ideas developed at this point should be considered tentative. Further, it is probably best for this kind of feedback to be strictly an oral discussion. We re-emphasize that the client should be able to determine whether the study team knows what it is doing by meeting with them after about a month or so for feedback and preliminary evaluation of the situation. Even so, the client should never pressure the team for early recommendations. This can lead to misunderstanding and incomplete recommendations.

At the same time, the study team must keep in mind that its

first objective is to gather information: to find out how the court is organized and operated, and other matters related to the topic of the study. Valid suggestions for improvement can only be made after the team knows and understands the operation of the organization. They should not be led into the trap of making early recommendations unless they involve minor matters on which the customer can take action soon.

Information Gathering

Regardless of the topic of the study, the consultant's first responsibility is to obtain information. And preliminary to that, effort should be devoted to defining what information is needed about that topic, and where that information is likely to be obtained. In this activity, prior court study experience can save considerable time.

There are many mechanisms for obtaining information. The consultant should tailor the technique to the type of data/information desired, and the source. Also, there is a logical sequence to the use of some information-gathering techniques. For example, data collection from available records should usually start early in the study, but sometimes it is wise to wait until later in the study to collect specific sample data on topics which arise during the study. Another example: judges and department heads should be interviewed early in the study, but other interviews might wisely be deferred pending results of some

statistical data-gathering and observation of operations.

Most experienced consultants are familiar with the strengths and limitations of the most common information-gathering techniques, but for the use of the client of court studies, this paper discusses guidelines concerning these techniques.

Interviews

Interviews can yield facts; however, the "facts" should be cross-checked from interview to interview and against statistical data that is collected. Importantly, an experienced interviewer should be tuned into the feelings and attitudes of the interviewee. These have a significant bearing on study approach and expected success of the study.

Some guidelines for interviewing are the following:

1. The team must try to interview all judges and department heads early - for proctocol as well as for information gathering.
2. Interviews of workers can profitably be done in connection with observation of the operation in which they are involved, e.g., assignment court, docket entries, calendar preparation, etc.
3. Always be on time for the interview and try to limit it to one hour maximum. Generally:
   a) Guide the interview, i.e., keep it on the subject, but let the interviewee do the talking;

   b) Set a time limit for the interview and don't run over it unless interviewee really insists. A follow-up interview is preferable to extending the initial interview;
   c) Be well prepared for the interview and know what you want to accomplish;
   d) Don't be argumentative;
   e) Ask interviewee's permission to take notes - usually they don't mind and it doesn't make them nervous;
   f) Write up interview ASAP after completion; keep complete interview file;
   g) Never reveal information source if information was given in confidence and/or disclosure would be embarrassing to source;
   h) Never give the impression that you may be a "gossiper" or "carry tales", or a trusting relationship between interviewer and interviewee will be impossible;
   i) Don't tell war stories from other jurisdictions except to give comparative information or establish credibility.

Data Collection and Record Examination

The following are a few guidelines for data collection;

Someone must determine what data to collect, where to get it, what kind of a form would be best suited to collection of the data, develop the form, and test the form. Possible data collection problems must be identified early, then the form can be finalized and data collection can get started. Also, during the preliminary period, the data collectors must be trained; and the team must determine how the data is going to be analyzed once it is collected.

It will take <u>at least</u> three weeks to accomplish these activities so they must be initiated early as possible. Sometimes it may be possible to obtain the assistance of court staff to collect data, but it is probably better to have a team member do it; even so, arrange for him to consult with a resource person in the clerk's office, for example, with any questions about the files or the way the information is recorded.

1. A five percent sample is usually adequate in casefile and/or docket surveys of 1,000 cases or more.
2. Don't try to draw too many inferences from one sample, i.e., it may be more accurate to take a one percent sample to get continuous data, a new one percent sample to get delay, etc.

3. If the total number of cases is 100 or less, look at all of them, and collect data on all variables at the same time.
4. If the total number of cases is more than 100 but less than 1,000, and you want to collect all data at once, take at least a ten percent sample.
5. Before starting, be sure to identify any systematic biases that could enter due to the order in which cases are filed, or other variables; e.g., a large firm filing 200 collection cases at once.
6. Before starting, try to assess the accuracy and completeness of the sources from which you are working; also be sure you understand the meaning of the entries in the records and the definition of terms - wrong assumptions can invalidate data analysis.
7. Depending upon the purpose of the study, one may want to draw stratified samples, i.e., one sample of pending cases, one sample of terminated cases, one sample of cases scheduled for trial during some specific time period. One may want to devote more analysis to certain groups of cases and limit

the work on others. For example, it may be appropriate to examine at length all civil cases pending more than "X" years in an effort to pinpoint reasons for delay.

Observation

1. Observation of most processes being studied is mandatory. What people think happens and what actually happens often varies greatly. Further, it is very hard to completely understand a process without observing it and most of the exceptions that can occur.
2. Use observation to cross-check data/information obtained by other means.
3. Observation should often be highly structured, i.e., it should include collection of data (e.g. counting the occurence of activities); there should be detailed guidelines for the observer as to what and how to count or collect data, etc. Otherwise, debriefing may yield little information of value.
4. Occasionally, a very useful data collection technique is photography to show a poor office layout, out-moded furniture and equipment, or a poor filing system.

Study Complexity

How complex should a court study be? As simple as possible. The complexity of the study approach and the depth and detail of the study should match the complexity of the problem. For example, if the outcome of the study will not be substantially influenced by historical statistics, then an extensive data collection effort should not be mounted.

Particularly when some of the study team's activities will be carried on by court personnel after study conclusion, the techniques should be as simple as possible to get the job done. They should be readily comprehensible (and sensible) to the court personnel and equivalent to their capabilities. Complex equations and statistical measures are likely to be discarded by court personnel once the study team is not available to assist. Over-complexity in the problem solutions can endanger implementation success.

Sometimes complexity, in the sense of agency interrelationships and politics, cannot be avoided. This is true when the study involves/affects a number of agencies in the justice system. However, even in this situation, every effort should be made to create reasonably simple communication paths and mechanisms for decision-making and concensus building.

A word of caution to the client: beware of overly complex study approaches. They may mask lack of understanding of the

problem, or inflated project cost, or both. The client should basically understand what is being done, how it is being done, and why it is being done.

Measures of Study Effectiveness

In some situations, client satisfaction is about the only yardstick by which effectiveness can be measured. Especially where there is no implementation component, "effectiveness" (from the consultant's standpoint) is whether the customer's expectations have been fulfilled. If realistic expectations were mutually set at the beginning of the study, then this is a fair statement. Unrealistic expectations lead to dissatisfaction with the product.

Sometimes client expectations are unrealistic in spite of the consultant's "front-end" efforts in this direction. When dissatisfaction occurs under these circumstances, it is best for the client and consultant to openly discuss the issues and try to achieve client satisfaction. This usually means that each must be willing to make some concessions. Where implementation is anticipated, the satisfaction of the "subject" (if he is not the client) must be considered as well.

From the client's standpoint, in non-implementation projects, effectiveness should be measured in terms of:

1. The accuracy with which the consultant has pinpointed and described the basic problems;
2. Whether his analysis is realistic and in sufficent depth; and
3. The clarity and realism of his recommendations or suggested course of future action.

In studies with an implementation component, success should theoretically be measured by the degree of change/improvement that occurs as a result of the study. But several caveats are needed to bring this method of measurement into proper focus. First, there are sometimes impediments to implementation closely following acceptance of recommendation - for example, where legislative or constitutional changes must be sought. Where implementation is delayed, the client's understanding and acceptance of the study recommendations is a realistic measure. The second caveat is that the degree of improvement resulting from changes is often not immediately measurable. Sometimes the degree of improvement may not be apparent for a year or more. Thus, in this writer's opinion, it is important to build into the contract the money and time for follow-up and evaluation some reasonable interval after study completion and acceptance. One year is probably appropriate.

Follow-up and monitoring are mandatory to assure successful

change. This can often be accomplished primarily by the court administrator; but it is useful to bring the consultants back after about a year to re-apply the same objective eye that made the original system appraisal.

ATTACHMENT

DETAILED EXPLANATION OF MATRIX

Analysis of the Left-Hand Column

The consumer of the court study must recognize that there are certain classes of problems which develop depending on the relationship of the client (who sponsors the study) and the subject of the study. Ideally, to avoid conflict, the subject and the client would be the same - the court; that is, the ideal situation occurs when the judges and administrative staff of the court are united in a desire for a court study (first vertical square). This facilitates the client and consultant reaching agreement on the dimensions of the study and the desired product. This suggests that the court administrator desiring to commission a court study should strive to obtain the enthusiasm and commitment of the judges. Otherwise, he may find himself in the second vertical square, where the court administrator desires a study which will necessarily involve the whole court, but the judges are disinterested, suspicious or opposed to the study. There is a potential for friction and unsatisfactory results when the judges are not wholeheartedly behind the request for the study.

Third vertical square represents a study similar to square number one (i.e., the client and subject of the study are the

same) except that it is a study commissioned by the administrator to cover certain administrative problems only. For example, he may want a records study, or a personnel classification study, etc. which will involve the judges only minimally.

The fourth vertical square is one in which the state administrator or the judicial council (the client) commissions a study of the court (the subject). This may set the state administrator (or judicial council) in a hostile juxtaposition with the judges and administrator of the court. The consultant can be caught in the middle, facing many problems in trying to do the study. The client is irresponsible if he fails to recognize the potential problems posed in this arrangement and adjust his expectations accordingly. It is surprising how frequently this oversight occurs. Unless there is good, open communication between the client and the court being studied and some acceptance by the court, the consultant's job is going to be very, very difficult, and the product may be less than optimal.

Vertical square number 5 represents an arrangment where some outside agency such as the Governor's Crime Commission or the local Criminal Justice Coordinating Council sponsors a court study. In this situation, there can be a great deal of resentment and hostility on the part of the court. Thus, it is incumbent upon the outside agency to seek solutions to these difficulties, possibly by involving the judges and administrators as much as

possible in defining the study and selecting the consultant.

The last square (#6) is one in which independent research is done. It may be a situation where someone comes to the court with his own funding and a proposal for a study, his goal being advancement of knowledge. If he is able to obtain court permission to do the study, this arrangement can probably work out just as well as one in which the court commissions its own study. But the independent researcher/consultant has an obligation not to disrupt the court by his study. Sometimes, the independent researcher may have a hidden agenda, turning his study into an exposé, and totally excluding the court administrator and judges from participation in the study. The court should be alert to and foreclose this kind of activity.

Analysis of the Horizontal Headings

The horizontal headings basically relate to the type of study product expected. The first type of study is one in which the sole goal is to expose existing conditions. This generally will be sponsored only by an outside agency, judicial council, or court administrator sending in someone to uncover all the ills of the court. It may be undertaken by an independent researcher.

The next kind of study is diagnosis only. The difference between diagnosis/problem identification and the exposé-type study is obvious. It is a matter of intent. A study which is

designed purely to diagnose and define problems may be commissioned by any one of the potential consumers identified above.

The next kind of study is diagnosis accompanied by recommendations for change.

Following on, in normal sequence, we have a study which includes diagnosis, recommendations, and implementation in which the consultant is expected to participate.

This can be expanded to the type of study shown in heading five: diagnosis, recommendations, implementation and follow-up after a suitable interval by the consultant.

There is also a kind of study involving only implementation. The consumer of a court study has an obligation to recognize that this can be a most difficult type of study for a consultant to undertake. When a consultant has not participated in: a) developing the findings which led to the recommendations or, b) formulating the recommendations which are to be implemented, implementation can be tricky. This is especially true when the recommendations or the procedures which are to be implemented are: a) complex, b) already cemented in legislation, c) not based on a thorough understanding of the problem or d) not wanted by the court, or when the previous conditions which led to the recommendations have changed. The client has an obligation to be sensitive to these conditions and be open to consultant suggestions for modification.

There is a type of study which is basically an "evaluation" only. This can be distinguished from a diagnostic study as being an evaluation of work that has previously been done (for example, a prior study or a study in progress), evaluation of a new process or procedure which is being implemented, or evaluation of a plan of action or a plan for change.

Finally, under heading 7, we have short-term assistance which may be applied to a variety of specific problem areas.

Perhaps the number of vertical and horizontal categories on the matrix could be expanded. But this example at least demonstrates the use of graphic representation to facilitate early identification of: a) who the client and subject are in relation to, b) what product is expected from the study.

MAUREEN M. SOLOMON

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DEVELOPING FINDINGS, CONCLUSIONS, RECOMMENDATIONS IN "CHANGE ORIENTED" COURT STUDIES

by

James F. Davey

Introduction

One of the principal goals of this conference is to develop a short, practical guide or manual that not only would help court studiers do their jobs better, but would also assist judges and court administrators to better understand the court study process. With these goals in mind, this paper is written in a "how to" fashion. It describes some of the basic techniques I have found useful in developing findings, conclusions and recommendations during management studies, including court management studies, that have led to significant changes.

FEEDBACK RELATIONSHIP WITH COURT RE DATA COLLECTION, ANALYSIS AND DISCUSSION OF TENTATIVE FINDINGS

General

Depending on the size of the court and the scope of the study, you will be discussing your findings, as you go along, with either the court administrator or lower operating officials. In some cases you will be having discussions

with the chief judge or a committee of judges, or an advisory committee of public and private officials. It is essential to reach agreement at the outset of the study as to how, and with whom, tentative findings will be discussed. Try to work out an arrangement where you can discuss your findings with the lowest operating official who can take corrective action. For example, if the court being studied has a computer section, seek authority to discuss tentative findings involving computer operations with the head of the computer section. The benefits to the court administrator of such an arrangement are that you will not be taking up his time to discuss relatively minor findings, or very tentative findings. In any event, be guided by the court administrator's wishes regarding discussion with lower operating officials.

Regardless of your findings, it's a good idea to meet with the court administrator, and with the chief judge and/or the advisory committee in appropriate cases, on a scheduled basis throughout the study to discuss how the study is progressing, and to discuss tentative findings and conclusions. Some additional topics to be covered at such meetings are: Are you ahead or behind schedule? Why? Is the original scope of the study being widened or narrowed? Why? Any data collection problems? Any problems obtaining cooperation of

lower court officials? Have study objectives changed?

Data Collection

Emphasize to the court that the more data it can give you in written form regarding the caseload, standard operating procedures, personnel resources, etc., the less time you'll have to spend obtaining data through time consuming interviews. To ensure a minimum of misunderstanding about the data you will need, it is a good idea to give the court administrator a list describing the types of information you want. At this point you will also need to get a clear understanding that all court records and reports will be made available to study staff.

After the court provides you its basic background information, and makes its records available, the rest of the data collection should be performed by study staff from records made available by the court. Exception: If the court assigns someone to assist you, let him participate in data collection.

Analysis

Before going too far with analysis of apparent problem areas, confirm your initial impressions of the accuracy and the meaning of the data with the operating personnel who generate or work with the data. Often these early discussions

can save you from going off on a tangent, and/or incorrectly sizing up a situation. In short, you may want to get off into a room by yourself to initially analyze data, but don't stay in that room and draft your report. Instead, come out and test your initial conclusions in the real working environment. Then go back in to draft your report.

Since you don't want to "surprise" the court at the end of the study with a "blockbuster" report, freely discuss your tentative conclusions with appropriate court personnel as you go along.

These discussions serve a number of purposes:

1. They keep you in contact with court people, and if you are sincere and constructive it will show, and they'll begin to loosen up and might start viewing you as a help rather than a threat.
2. You get to know court people better, and can begin to size them up in terms of their overall effectiveness.
3. Your ideas and conclusions are subjected to some testing during these discussions, and you can begin the weeding out process - dropping insignificant or erroneous ideas - firming up the better ideas.

Caution: Don't expect complete agreement with all your conclusions. When disagreement arises, don't "argue." Instead "listen" and respect the court's point of view. If after discussion you haven't reached agreement on a problem or a proposed solution, and if you believe the item is "material," include the matter in the final report, being careful to fairly present the court's position.

During these discussions, encourage operating officials to begin correcting problems and implementing recommendations. However, be sure to make it clear that decisions to implement are theirs, and that you are merely acting as an advisor. In short, you can't "manage" for the court; you can only "advise" and suggest ways they might manage better.

VARIOUS PRESENTATION FORMATS

Reporting formats will vary considerably depending upon such factors as: Whether it is a preliminary or final report; who the audience is - chief judge, court administrator or first line supervisor; materiality of "problem" - i.e. minor procedural matter or major policy question. Early in the study, the various presentation formats should be discussed with the court, and agreement should be reached on which formats will be used.

In deciding on which format to use, the court studier should keep in mind that the overall purpose of the study is to help the court improve its operations. If the studier remembers that "improvement of operations" is the goal rather than "credit and recognition for the studier," and if the studier will follow the principle of getting as many things corrected as quickly as possible with a minimum of fanfare, then the court studier will select the format that will cause him and the court the least bother.

The simplest format is an oral one where the studier tells a front line supervisor about a minor, isolated condition, and then forgets about it.

The next simplest format is a so-called "Memorandum of Minor Matters," which consists of a series of short statements of problems and/or recommendations that are relatively minor in nature. The memorandum should contain space for the appropriate court official to indicate what action he has taken or will take on each item. These memos should be prepared and discussed as each segment of the study is completed. Eventually they may be consolidated into one appendix to the final report.

The material findings developed during the study of each segment should also be discussed with the first line supervisor and his superiors. At these discussions the court officials should be given a draft of your tentative findings,

and be given an opportunity to comment upon them. If they're in agreement, generally no more work needs to be done. If they disagree, then you'll have to reevaluate your initial conclusions. If upon further reflection you still believe your point is well taken, include the matter in the draft of the final report, state the court officials' position, and then rebut it.

Even though you may have discussed the findings resulting from each segment of the study with court officials as you went along, you still need to submit to them for review, comment, and discussion, a draft final report which ties everything in together (it's surprising how many times operating officials will change their position, often for good cause, once they see a draft final report). Give them sufficient time to digest the draft before arranging a meeting to discuss each item. (See page 148 for a suggested final report format.)

It takes great skill and tact to achieve the goal of these discussions - the goal being to have a rational discussion of matters that by their nature (and no matter how constructively presented) are critical of the ways things have been done. The best preparation is to be sure you have your facts right, and have reached reasonable conclusions based on those facts.

GENERAL CONSIDERATIONS IN WRITING FINAL REPORT

In order to ensure your report stimulates positive action rather than negative reaction, there are a number of principles that must be observed in writing the final report. These are discussed below. Keep in mind, however, that unless the entire study has been properly conducted, and a trusting, cooperative relationship established, there is no way a final report can salvage the job.

Tone

Be constructive and positive throughout. Emphasize the need for improvement rather than past mistakes. Avoid harsh, negative language such as "failed to", "neglected to."

Assumptions and Opinions

Keep to a minimum, but wherever used, clearly identify assumptions and opinions.

Organization

Discuss most serious findings first.

Length

Keep as short and simple as possible. Avoid technical discussions whenever possible. Generally, the more important

and the more controversial an item is, the longer will be the writeup.

Don't spend time elaborating upon an item for which corrective action has already been taken.

Good Operations

Identify and briefly discuss operations that study disclosed were being performed well.

Corrective Action

If corrective action was started or completed during study, recognize this in final report.

Timeliness

No matter how well the report is written, it will lose much of its impact if it is not timely received. The final report should normally be submitted within 60 days of completing field work.

Statements or Representations of Court Officials

Use such statements with caution, and only when essential to impart a full understanding of a situation. Never, of course, include any comments to embarrass someone, or if such comments could have an adverse or injurious effect on relations between court officials.

SUGGESTED FINAL REPORT FORMAT

These are a variety of ways to organize the final report. One way would be to divide the final report into five principal parts:

1. Introduction and Background of Study
2. Summary of Findings, Conclusions and Recommendations
3. Discussion with Court Officials
4. Details
5. Minor Matters

Introduction and Background of Study

This part should consist of a brief statement of purpose and scope of study, how it was conducted, and size and scope of court operations that were studied. If any major areas of court's operations were not studied, they should be identified. In some cases, depending upon the scope of the study and the distribution of the report, the report should include a detailed description of the operating system(s) that was studied. In general, the wider the distribution of the report, the greater the need for a system description.

Summary of Findings, Conclusions and Recommendations

This part should include, in capsule form, a picture of significant conditions - good or bad - disclosed by the study. It should be written for the judge and court administrator, and should be so written that they get an accurate understanding of the major study conclusions without reading the entire report. If the study disclosed certain operations that were being performed well, they should be commented upon.

Usually the study will disclose areas in need of attention by different levels of management within the court. Therefore, the recommendations section should be divided into a separate section for each level of the court's organization to which recommendations are directed (recommendations should always be directed to the lowest organizational level that can take corrective action).

For example:

1. Recommendations for the Board of Judges
2. Recommendations for the Chief Judge
3. Recommendations for the Court Administrator
4. Recommendations for the Chief of Computer Operations

Discussion with Management

It is essential that prior to issuance of a final report, a draft report be discussed with appropriate court officials. The final report should summarize the results of

that discussion. Include the names and titles of the individuals with whom the report was discussed, dates of discussion, and a concise statement of the operations officials' position concerning each major recommendation. A detailed explanation of why they disagree with a particular recommendation will be set forth in the DETAILS section of the report.

For example, this section of the report might state: "On December 8, 1974, a draft report was discussed with Chief Judge Jones and Court Administrator Brown. They agreed to implement Recommendations 1, 2, 3, 4 and 7; disagreed with Recommendation 5 because they thought it would be too costly to implement; and reserved judgment on Recommendation 6 pending further study."

Details

This part contains the detailed data supporting each recommendation. It is divided into sections with the most significant problem area normally discussed first.

For each problem area discussed, there will be the following information:

1. Relevant data or facts developed by the study. If sampling was performed, sampling details should be shown - i.e. "Our random sample of 20 of the 200 Murder I cases terminated during the period_____to_____ disclosed that..."

In general, the report must contain sufficient factual data to fully support the conclusions and recommendations. If considerable statistical data are considered necessary to present a complete picture, summarize them in this section and include the details as an appendix to the report.

2. The underlying reason or cause for the problem area, and the actual, probable or possible adverse effect on operations. (If you don't identify the cause of a problem you are in no position to make recommendations for corrective action.)
3. The studier's conclusions and recommendations. It is important that these conclusions and recommendations be supported by sufficient competent and relevant evidence (enough to lead a prudent and reasonable person to the same conclusion). It is unacceptable to load the report with unsupported opinions and conclusions. (If the court wanted only your opinions, they would have asked you to make a speech, not a study). Don't ever be guilty of bringing in canned problems and solutions. There's always something unique about each court, its problems, and how it can best solve its problems. Although two courts might have the same problems, i.e. inadequate training programs- the

solutions to this common problem might be quite different.

4. The court's reactions to your recommendations. Present their views fairly and completely.

5. Often there are alternative courses of action that can be taken to solve a problem. If so, identify the major ones and either state your recommendation in the alternative, or indicate why you believe a particular course of action is preferred.

Minor Matters

You might want to include as an exhibit to the final report, a listing of the relatively minor matters disclosed by the study that warrant corrective action. Don't elaborate - normally a two to three sentence description of the problem will do. If corrective action was initiated or completed during the study, so indicate.

FOOTNOTES

1) Roy A. Lindberg, Operations Auditing, Amacom, 1972.

2) Edward L. Norbeck, Operational Auditing for Management Control, AMA, Inc., 1969.

3) U. S. General Accounting Office, Standards for Audit of Governmental Organizations, Programs, Activities and Functions, 1972.

4) U. S. Department of Agriculture, Office of the Inspector General Manual, Audit Reports - Preparation and Issuance.

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CONDUCTING A COURT STUDY

by

Bruce L. Oberlin

Introduction

Several earlier presentations have well defined the unique aspects of studying the courts, and have covered the key ingredients which must be part of a court study. My comments are primarily directed toward those areas which I believe require emphasis. In making these comments I will follow the same outline used in the presentations.

Pre-Study Considerations

Before the study begins, the court administrator and/or judges who are considering a study should do some preliminary analysis and planning. First, this should include an effort to define the end result which they would expect to achieve from the project, and to describe this end result in writing, as specifically as possible. If the end result cannot be clearly identified at this time, then the effort should be directed toward defining and describing the process which will be used in defining the problems(s), analyzing the problem(s), and in seeking solutions. Second, court personnel should identify and analyze those factors which will affect the realization of the end result. This would include the following considerations:

1. How long should the study take, or how much time can be permitted?
2. Would the study affect or impact organizations and agencies outside the court's control? And if so, in what way(s)?
3. What types of skills and experience will be needed by the people who will conduct a study of this type?
4. How much would the project cost, or how much money can be made available?
5. Could it require jurisdictional or statutory changes?
6. How will the court supervise the study and who should have final approval?

In considering the answers to these and other similar questions, the court can start drawing some boundaries around the study. For example, the type of study which should be conducted may be clarified, the initial definition of the end result may have to be modified, a better definition of the customer and the subject of the study (as covered in the presentation) will begin to form, and based on the subject/customer aspect, consideration for the role of non-court subject agencies in the study effort can be determined.

A third part of the initial analysis and planning effort by the court is to identify how the study results will be measured. In some studies the degree of success will be very obvious when the study is concluded, but in other studies a list of criteria must be established in order to measure how successful the project has been in meeting expectations: for example, looking at court dispositions to see if more than 50 percent of the felony cases are disposed of in less than 120 days now that a new procedure has been put into effect.

In performing this type analysis and planning, the court will, I believe, be performing the obligations it has in recognizing the type of study needed; clarifying who the customer and the subject of the study are; and in establishing the court's decision-making responsibility for the study.

And if for any reason the court is unable to conduct this type of analysis, it should seek the assistance of a consultant. This assistance could be provided with the stipulation that the person or organization would be excluded from participation in the study effort itself.

Beginning the Study

In this section I would like to emphasize two points which were brought out in earlier presentations: the importance

of reaching mutual agreement and understanding between the court and the group conducting the study; and the necessity of informing all of the people about the study whose departments and agencies will be included in the study.

The first point of reaching a mutual understanding at the beginning of the study between the consultant and the customer is, in my opinion, more important than any other single element in determining the success of the project. Implicit in this mutual agreement is: the development of a clearly defined, well detailed written statement of the goals and objectives of the project; the roles and responsibilities of the consultant and the customer (including specific staffing commitments and task assignments of customer employees); the detailed work plan for completing the project; and the project monitoring, review and approval process.

The second point pertains to the subject and customer people. The employees of departments and agencies included in the study should be made aware at the beginning of the study why the study is being conducted, what the purpose is, how the project will be conducted, what their role will be, what information they are to provide, and how the project results could affect them. They should also have the opportunity to ask questions and to express their concerns.

The ultimate success of the project may well depend upon the attitudes of these people toward the project.

Conducting the Study

In her presentation, Maureen Solomon mentioned the importance of determining the feelings and attitudes of the court personnel. I fully agree with this comment, and would suggest that this process starts when the study is beginning, and continues throughout the entire study effort.

My second comment related to conducting the study pertains to the identification of sources of information. The presentations have discussed the collection of information from the court as the subject of the study. I submit that, depending on the type of study, it is helpful to get information about the court from without as well as from within. By this I am suggesting that persons outside the court, who have contact with the court, can be very useful sources of information. These could include the prosecutor's office, defense attorneys, the police, probation officers, persons serving on jury duty, and witnesses.

In conducting studies, understanding the meaning of the entries in the records, and looking behind the statistics and summaries, may appear to be obvious, but can be too easily passed over lightly with unfortunate effects to the study.

I recall an instance when the court statistics showed that the number of criminal complaints filed during the current year was actually less than the number filed during a comparable period the previous year, until some further analysis revealed that, in the previous year, the magistrates who prepare the complaints were paid a fee for each complaint written. So in many instances, a separate complaint was prepared for each charge against a defendant on a criminal action. When the fee system was eliminated at the end of the year, multiple charges against a defendant or multiple defendants were being prepared on a single complaint form. The initial inference that the court's criminal caseload was decreasing was, in fact, not true.

My final point on this section of conducting the study is to re-emphasize Maureen Solomon's comments about the importance of observing the process being studied to see first hand what actually happens. Those people who are part of the process may skip over things during an interview which they don't consider important, or which they assume you already know. On the other hand, interviews may bring out different points of view of what actually happens, and these differences can only be resolved by first hand observation.

Study Team/Court Interaction

The main point in this aspect of the study is for the court to be continually informed about the study effort and

how it is progressing. This becomes even more important when the study includes implementation. The more the court people know about the project, and feel a part of the project, the more successful the implementation will be. A related point, I believe, is for the study team to actively seek ideas and suggestions from the people they interview, to acknowledge the source of the ideas, and to incorporate them to the greatest extent possible.

As James Davey has mentioned, the format to be used in presenting the findings should be mutually agreed upon at the beginning of the study - preferably including a report outline - subject to refinement or modification resulting from new information or developments uncovered during the study.

Summary

I will conclude my commentary on the court study process, by once again stressing the importance of starting the project with a well defined, mutually agreed upon end product; with a detailed project plan which clearly identifies the roles and responsibilities of both the court and the study team; and with a regular monitoring and review process built into the project as it is carried out.

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IMPLEMENTATION: THE PROCESS OF CHANGE

by

Neely Gardner

When Moses came down from Mount Sinai with the two tables of testimony, his face shone, and Aaron and all the children of Israel were afraid. Moses called to them, and when they came near he gave them the commandments that he had received from the Lord.[1]

More than three thousand years later Thomas Jefferson wrote in the Declaration of Independence that governments derive "their just powers from the consent of the governed."

Between these two events we have seen a long, slow evolution of the concept of legitimacy. Historically there are two basic and widely accepted principles for legitimizing authority. "The first principle rests on supernatural sovereignty."[2] Today there are not many rulers or administrators that have the appropriate contacts to govern by divine right (although some may give that impression). While we often overlook its pervasiveness, the secular myth of popular sovereignty is today accepted on almost a world wide basis. Further, there is growing evidence that the effectiveness of the administrative process varies directly with the degree of legitimacy of government.[3]

Arnold Toynbee, in his Study of History, makes a case for participation and support as a necessary ingredient for survival of a culture. For, he states dramatically, "The piper who has lost his cunning can no longer conjure the feet of the multitude to dance; and if, in rage and panic, he now attempts to convert himself into a drove sergeant or a slave driver, and to coerce by physical force, a people he can no longer lead by his magnetic charm, then all the more surely and swiftly he defeats his own intention."[4] Toynbee notes that charisma and tyranny are at best temporary measures which ultimately fail. The strength of a culture is the meaningful involvement of its people.

When "we the people" ordained and established the Constitution, we set in motion an accumulating series of events which have lead us to think ever more seriously about individual freedom. Most of us, would probably subscribe to the notion that more freedom is better than less freedom. We might argue over the nature of freedom. Generally, however, it might be described as the absence of obstacles to the realization of desires. Thus one defines his own freedom as being able to do what is "good," and by not being coerced into doing what is "bad." Subjective freedom exists when there is an absence of frustration.

There are generally three limits to freedom: 1) nature, 2) inner conflict over one's goals, and 3) limits imposed by the activities of others. Given these limits freedom probably requires social organization and social indoctrination. Under popular sovereignty where high legitimacy prevails, a preference for freedom means that the preference is for the highest degree of freedom possible.[5]

Today the notion of legitimacy is still developing. In "think tanks" at Santa Barbara, the Hague, and elsewhere there is a growing concern over the relationship of organizational democracy to governmental democracy. The question is being raised, "Can any government be democratic in fact, when within their bounds, industries and governmental units, those organizations in which human beings live so much of their lives, are administered in a tyrannical or paternalistic way?" Experiments in common market countries and particularly in the Scandinavian countries are indicating that industrial democracy does provide hope for enhanced and more productive living.[6] Time and time again, experiments in this country have shown that democratic leadership based on adapted consent models, may be one way to solve some horrendous organizational problems that are brought on us in what has been described as a time of turbulence.[7] The concept of "turbulent fields" suggests that we have transcended an

environment of accelerating change, and entered an era of explosive, disoriented, and unpredictable change.

One of the difficulties we encounter in a turbulent environment is establishing reference points on which to make rational administrative decisions. In a heteroclitical milieu, administrative actions probably should be incremental, tentative, and experimental, rather than all encompassing and long enduring.[8] Unfortunately, many administrators, reared in a tradition calling for charisma and decisiveness, commit themselves just as if they understood what they were doing.[9] As a consequence there is a high organizational cost, as well as a personal cost. Considerable turnover in the highest places in government is not at all unknown, nor the least consequence of as if decisions in our society.

Several directions are indicated for an organization if one accepts the near incomprehensibility of the turbulent environment. The first is to attend to the matter of values. Social values may be regarded as coping mechanisms that make it possible to deal with the obviously great areas of uncertainty. Values are not strategies or tactics. Rather, they act in an injunctive way. They are conceptual in character. In the heteroclitical milieu, a widely held set of effective values may be among the few things that

help us live in an environment which is not understood. If values meet the requirements of the emerging environment, then they help in the adaptive process. If they do not, they may spell disaster. And values can be rational, though they need not be.[10]

A second direction addresses the need for the constant sensing of the environment. Chance for organizational survival and improvement may be enhanced if administrators find ways to constantly assess the current condition of the political, social, technological, and economic environments for problems and opportunities. There is also the need to look at the relationship with enablers, clients, suppliers, and competitors. The literature of institution-building stresses the necessity of understanding and developing such linkages in ways that increase the value of the institution, or of an organization which is developing toward becoming an institution.[11] Within a framework of relevant values, sensing provides a mechanism for pro-active relationships with the changing field. Sensing makes it possible to modify internal structures, practices, and norms in ways advantageous to employees, the organization itself, and the citizens served, in keeping with the consent model.

At least one more direction may be important in the organization's survival kit, and that is the need for care and nurture of the internal democratic process. Legitimacy, it appears, is an effective short range, as well as a useful long range, condition. "The effectiveness of planned change is often related to the degree to which members at all levels of an institutional hierarchy take part in the factfinding and the diagnoses of needed changes, and in the formulating and reality testing of goals and programs of change."[12] There are valid data which suggest that participation not only provides legitimacy, but also allows the organizational citizen to address the situation in such a way as to overcome his own suspicion or misunderstanding. He begins to develop ownership of the process.

I have tried to discuss the change process in a value context in order to stress the ethical as well as the pragmatic issues which seem to confront us: 1) Democracy is our verbalized social value. 2) Change is a condition that exists, whether as the intended or unintended consequences of human activity. 3) There is a compelling argument that this changing is occurring in turbulent fields. 4) Organizations should be able to better note and act upon data

collected from sensing the environment. 5) Employees in an organization may have an inalienable right to a democratic work environment. 6) A democratic process permits employees to take psychological ownership of the changes undertaken. Thus, within this value setting the major focus of this paper is to discuss the process of change as it relates specifically to court studies. So let us begin by looking at the process of change itself.

Change may be conceived of as the process of moving from one state or condition to a different state or condition. The individual behaves in a way that appears to him to be to his own advantage.[13] The delinquent youth may behave in self-destructive ways, but when this occurs, the act seems appropriate to that individual at the time it is happening. Change will occur when the individual processes new data which suggests that a different type of action will now be advantageous. Each person, then, acts in relation to a private world that interprets the field or environment in a way unique to the individual. Individual perceptions tend to be stylized and habitual. Some force is needed to re-adjust perceptions if change is to occur. This force might take the form of reward, tension, discomfort, or new knowledge (insight). Kurt Lewin describes this process of re-adjustment as unfreezing.

According to Lewin, change occurs when driving forces for change are reinforced, and restraining forces are diminished. This change in the force field causes an unfreezing, and locomotion will occur until a new quasi-stability is found. When changing reaches a new quasi-stable point, re-freezing tends to take place.[14] Change is always taking place because the elements in the force field are constantly re-adjusting. Planned change can occur when the driving and restraining forces are increased and decreased to make locomotion to a different level possible. Since the human organism is goal-seeking and self-enhancing, he will indeed change as he perceives it to be in his best interests to do so. Chester Barnard has noted that employees will act upon a communication from management when four conditions simultaneously obtain:

1) They can and do understand the communication
2) Believe that it is not inconsistent with organizational purpose
3) Believe it to be compatible with each person's personal interest as a whole
4) They are mentally and physically able to comply.[15]

Barnard's theory might help explain why governors, departmental secretaries, and even presidents have been

frustrated because they were unable to introduce new policies and programs by executive fiat. It seems true that the executive is in a position to stop or veto organizational action, but somewhat helpless in generating change unilaterally. More and more research indicates that the sanction and reward approach to motivation must be re-examined. Punishment and threat of punishment, as B.F. Skinner points out so effectively, influences behavior without making a lasting change in outlook.[16] It creates what Skinner terms aversive behavior. This causes avoidance rather than creative activity. Authoritarian managers are often misled by the appearances of efficiency that prevail in their offices when they are present. They should see the shop when they are not there, or be aware of the degree that "busy work" takes the place of real productivity. To bring about a more desirable change pattern, we need to consider means that do not create aversive behavior. Rewards do condition behavior, but for adults there are two kinds of rewards. Extrinsic rewards, such as promotions, more pay, praise, or a carpet on the floor are important motivators. But Frederick Herzberg, after rather exhaustive research, has determined that such rewards are negative, rather than positive, motivators. In other words, if you are not receiving the status reward you think you deserve,

you will be de-motivated. If you do receive those rewards you so richly deserve, you will not be motivated, you are simply not de-motivated.[17] After all, you are only getting what is coming to you. The situation is quite different than when by dint of your own effort, you grow and improve your capabilities in order to achieve improved status. You are motivated then by the promise of recognition, if you are but worthy. But once, if in your self-view you have become worthy as compared to those second rate people you have been working with, then your superiors had better recognize your good work or you are likely to be turned-off.

Intrinsic rewards fare better. We strive, succeed, and strive again, pleased by the fact that we ourselves are succeeding. What we accomplish adds to our sense of self worth. The more significant the accomplishment appears to the individual, the more satisfying is the feeling of success. I recently read an article by William Chapman in the Los Angeles Times, who said the success of retirement depends upon what a person retires from.[18] Professional persons such as doctors, lawyers, psychologists, and journalists appear to be more unhappy in retirement than do blue collar workers. His conclusion was that how we view retirement may have nothing to do with what we look forward to, but a lot to do with what we look back on.

Work with intrinsic rewards is satisfying in the doing, and retiring from such work is not necessarily seen as rewarding. Herzberg's studies confirm the notion that interesting, important, and satisfying work are positive motivators.[19]

This moves us to the antithesis question: If self-enhancement, goal centeredness, and motivation are part of the force-field which moves toward change, what are some of the factors which cause resistance to change?

Individuals and systems logically resist change when they do not perceive how the proposed change will improve their circumstances. Perceptions are influenced by factors such as:

A. Attitudes about self -- the person may have little interest in the job; feel incompetent; be uncomfortable with ambiguity; fear his capacity to learn new concepts and skills;[20]

B. Value conflicts -- when the change appears to violate: the individual concept of the system's mission; established norms; political or religious tenets.[21]

C. Lack of understanding - members and the system do not understand the nature of the proposed change nor how it might be brought about.[22]

D. Lack of skill -- the change population does not have the appropriate skills to carry out the proposed change.[23]

E. Rejection of outside input -- when ideas for change are imposed on the individual or group, rather than being considered by those doing the changing.[24]

F. Distrust -- of the "they" of the system and of the agents of change.

G. Narrow margin for risk -- Change is resisted when the individual or group is struggling to maintain itself, and the present margin of success is so small as to be jeopardized by the slightest error.

H. Not seeing a problem -- sometimes the need for change is not felt internally because principals do not see a problem.[25]

I. Change of role -- individuals may not agree that a change in role or role status will be satisfying.[26]

J. Rigid stratification of systems -- often conditions of social inequality, vested interests, and community fragmentation will make it difficult to accept change.[27]

Leadership is an important ingredient in effecting change action. It is necessary to realize that several persons may, and generally do, share the leadership function. Both formal and informal leadership can be helpful, particularly in testing boundaries between people, groups, and organizations, and in raising the activity above the zone of indifference. The zone of indifference is that portion of an individual's perceived life space that he may recognize, but about which he does not have sufficient feeling to induce him to action. When active, caring leadership exists, it tends to supply an impetus toward action and away from indifference. This seems to be particularly true when there is leadership at the top. "Resistance will be less if the project clearly has the whole-hearted support of top officials in the system."[30]

In examining questions of legitimacy, turbulence, the force field, resistance, motivation, and leadership, I have tried to suggest a theoretical background which will help us consider change strategies that might have application to the conduct of court studies. There are, of course, a number of strategies of change. Three ways of classifying change strategies are proposed by Robert Chin and Kenneth D. Benne: Power -- Coercive, Empirical -- Rational, and Normative -- Re-educative.[31]

Power-Coercive strategies have more utility in the political and inter-cultural arena, than as a means of intra-institutional change. Power-coerciveness comes in several varieties, for example: the non-violence strategies of Ghandi, Thoreau, and Martin Luther King, or in the disruptive tactics of the administrative guerrilla who, from a respected position inside the organization, peacefully puts "butter in the works."[32] Use of political institutions as traditionally played in important part in effecting change. Political-coercion, invoked by a legislative body or the courts, need not be oppressive if the quality of the democratic process is not violated.[33] A third power-coercive approach is recomposition, or manipulation, of power elites. Marx incorporated this approach in his strategic model for societal change. He thought that if you changed the power elite, then the power elite would change the system. The use of political-economic means of coercion is not unknown in intra-institutional change strategies. Such strategies do often place a strain on the system by designating adversaries, and developing situations where some win and some lose. When the losers are colleagues, friends, or neighbors, losing can be a costly process. Inevitably there is a loss of motivation, not to mention the loss of energy expended in the win-lose effort.

Empirical-Rational strategies for changing have had more influence in developing and diffusing "thing" technologies than in developing and diffusing "people" technologies.[34] This does not mean that adaptations of the empirical-rational approach cannot be useful. Any number of very well done consultant studies gather dust on the shelves, not because the research is faulty, but because the excellence of the studies is not owned by those who would be called on to implement the recommendations. When using empirical-rational methods, the challenge is to devise means for gaining acceptance of the findings. Illustrations of the empirical-rational means of change include basic research and education. These knowledge building strategies are long term. Together they have worked well in "thing" technologies. The knowledge generated is useful in educating change agents who must use other and more effective change processes. Another dimension of the rational strategy moves to personnel selection and replacement. Reformers frequently appeal to drive the unfit from office in the hope that the right people in the right position can bring about rationally based changes. Scientific approaches to finding the "right" people have been less than noteworthy in accomplishment. Systems analysis,

another change approach, has been effective in changing procedures, but often has developed more rigidity in the total system. There is growing sentiment for conducting systems studies as part of the people problem, not people as part of the systems problem. Empirical-rational approaches seem to suffer most because of the passive role of the recipient which impedes the diffusion of innovation. The Normative-Re-educative strategy overcomes this problem.

Normative-Re-educative approaches involve a collaborative relationship between researchers and clients. Kurt Lewin's studies convinced him that in order to change, people had to participate in their own re-education.[35] It is by assisting in collecting the data, defining the problem, and experimenting with possible solutions that people learn and change. Therefore, an effective change process improves the problem-solving capabilities of the system. And if the process implies changing, rather than simply one discrete and final change, each cycle of change provides for re-evaluation and further change. This process releases the energy and fosters the growth of the people in the system. John Dewey saw this as invention, development, and testing of strategies.[36] The growing utilization of Action Research,

Action Training and Research, and Organization Development provide important means for change. We do not have time to cover fully the wide range of tools available in these areas, but let me try to interest you in their use by describing AT&R and O.D. methodolgy.

Action research is applied research which is diagnostic, involves the persons who will be affected as participants, is sometimes, but not always empirical, is experimental and leads to action as a result of conscious problem solving effort." Typically, outside consultants work with persons inside an organization in an effort to deal with the factors that are creating tension in the system. Events that normally occur include:[37]

A. Orientation -- The consultant makes his values clear. Responsible management makes known its authority and willingness to undertake the study. Clients and consultant estimate resources that will be required, and the kinds of communication that will be needed to maximize trust and involvement. Client and consultant also discuss leadership requirements and possible areas of conflict. Orientation is a time for raising and answering questions in a way that will increase understanding.

B. Agreement -- Essentially this step covers resource commitment; assurance that those involved in the project will own their own data; agreement that communication to those affected will take place at each phase of the undertaking; that data gatherers will observe carefully the client/researcher confidences; and that the client expresses a willingness to utilize study findings to the extent possible.

C. Reconnaissance -- A team of participants explores the field to be studied, and collects data relevant to the change project. These data will emerge as perceived opportunities, problems, and possible solutions. It may be that involving the "resident" population in data collection is a key to an implementable study project. The data may be better because communication is more clear, but even if the data are less precise, they are still understood by the principal actors in the change action. In the reconnaissance phase, data are usually collected by interviews conducted, if possible, by resident action researchers.

In some cases an expert is required, but there is some loss in commitment if this is so.

D. Opportunities and Problems Identified -- In action research, it seems more open, as well as scientific, to avoid the assumptions that a clear conception of opportunities or problems can be known in advance. Delineation of problems and opportunities grow out of the data. Given an accumulation of individually held notions expressed by persons interviewed, some means needs to be utilized to obtain a more comprehensive view. Either in a meeting, if the population is manageable, or by questionnaire, if the organization is large, researchers establish the intensity of agreement or disagreement with each opportunity or problem, and also the degree of importance of each one as seen by participants. Opportunities and problems that emerge as important are converted into action statements.

E. Aspirations -- Action items are the anticipated solutions to problems, or the means by which opportunities are seized. In the data collection period, researchers have collected a series of statements which represent problems and opportunities. One workable way of bringing aspirations into focus is to convert opportunity and problem statements into a "How to" format. For example, if your priority problem has been stated, "Delegate position classification to operating sections," it would be changed to read, "How to bring about delegation to operating sections?" Posed in this manner, participants can bring to develop action options, actions that will lead to the solution of the problem. The resulting list of action options should represent the range of participant aspirations

F. Analysis -- While a number of analytical methods might be used to examine high priority action items, there is much to be said for utilizing Kurt Lewin's force field analysis. Participants develop a comprehensive list of the driving forces which can assist in realizing the

aspriation. They also detail the restraining forces which oppose achievement. By the end of this analysis, participants should be able to determine which action options are attainable, and which ones must be deferred. In the achievable options they decide driving forces which can be reinforced, and restraining forces which may be neutralized. Some of the action options may be easy to implement and may be started immediately so that early successes will be made visible.

G. Experimentation -- The action research model encourages experimentation. Action options are implemented in a demonstration area for a discrete and limited time in the total organization. Tentative, time-limited experiments give study participants the chance to deal with any unexpected consequences of the change action.

H. Experiment Evaluation -- In evaluating the experiment, participants ask themselves "How well did we do? What new data do we need? How do we feel about the change action? What can we do to change the change that will improve it? Shall we go ahead with the change action on a continuing basis?"

I. Program Design -- As a result of evaluation of the experimental phase of the study there is an opportunity to design the change action in its final program form. As in all other steps participants are involved in a meaningful way in program design.

J. Program Implementation -- The decision to implement the change action, either in its experimental or program phase, should be communicated in as many ways as possible, and those affected be given an opportunity to make final suggestions.[38] It also seems to be useful to take note of the beginning of actual implementation in some ceremonial or ministerial way. This type of recognition helps communicate and provide awareness of change.

K. Program Evaluation and Feedback -- A feedback loop should operate at each step in the action research process. Feedback and evaluation can keep a program from growing old. I would recommend that each program have a destiny date. This is a date at which the program will be looked at by participants who can assess the degree to which the change purpose has been accomplished, and the effect of the process on the well-being or the effectiveness of the court.

The evaluation can serve to provide a sense of closure. For in this time of turbulence, a changing organization needs to be able to "wipe the slate clean" from time to time, and start over from a zero base.

L. Recycle -- At an agreed upon time the whole process is done over again. By planning for re-cycling, organization renewal becomes a continuing process.

There are many ways in which one might approach action research. There is no orthodoxy. There is no litany. The rule of uncommon sense prevails; meaningful participation is an important ingredient; the experimental approach, coupled with a problem solving action, is essential; a value system that declares that the right to decide is based on the consent of those who must execute or be governed by the decisions. Action training is a powerful implementation strategy. Action training has been quietly noted in the literature. It is not a noisy strategy. But it is one of the major, potent, and often unrecognized strategies available to administrators.

Action training is training specifically designed to help responsible persons comprehend and translate program

concepts into reality. Training, traditionally, conveys skills and knowledge that help people become better managers, more knowledgeable budget officers, faster readers, or improved letter writers. Action training is designed to give people specific skills and knowledge to execute specific jobs and responsibilities within a foreseeable time span. It is used as a means of converting new policies and new programs into services delivered. Action training calls for:

1) A focus on objectives.
2) Developing an understanding of the context in which the proposed action is to take place.
3) Either overcoming the resistance to the proposed action by developing an understanding of the change itself and the reasons behind it, or failing this, influencing the elimination or modification of the proposed action.
4) Helping persons who have implementation responsibility to acquire needed knowledge and skills to be effective in the implementation process.

Action training is a necessary accompaniment to action research because only through training can people comprehend

and develop knowhow to participate in a meaningful and effective manner in the self-searching activity. Administrators do not seem to understand the importance of training as an implementation tool. Action training could very well be an administrative strategy that is equally important to budgeting and personnel processes. Action training represents a relatively untouched method for enhancing the quality, credibility, execution, and acceptance of needed court studies. Organization development, which in method has many elements akin to action research and training, also offers a rich resource to those interested in solving the people problems which accompany court management.

Organization development is "a complex education strategy intended to change beliefs, attitudes, values, and structures so that they can better adapt" to new techniques and challenges.[39] Organization development generally takes place in a group setting with a change agent/consultant acting as a facilitator of an educational process that is intended to bring about organizational change. The changes sought are those which involve the more troublesome problems faced by the group. "Thing" problems which have been examined in an empirical-rational way are now examined in relation to human problems. Human

problems amenable to examination and solution, such as problems of the organization's viability, human satisfaction, and development and organizational effectiveness, are the kinds of issues which have been addressed and solved by the O.D. process.[40]

Methods used to examine the problem emphasize the reality of experienced behavior as the work group 1) generates data relating to the problems being examined, 2) feeds back these data to relevant decision makers and implementers, and 3) plans action to be taken. Organization development is a collaborative effort between the client group and a change agent, who, more often than not, share the democratic values expressed in this essay. With these values, the normative goals most commonly sought are increased inter-personal competence; an awareness of group tensions and how to reduce them; better communication; a higher level of authenticity and trust; organic, rather than mechanistic, problem solving; and more effective team management.

If you have not yet heard of the application of organization development to court management studies exemplified by the program with the Rhode Island Superior Court, I should like to call it to your attention. It was sponsored by the Institute for Court Management. Both cross-sectional,

i.e. a judge, attorney, public defender, etc., and functional-area groups considered three major problems which could be accomplished by "one year from today." Participants were not told what to do. They sat down together and worked on possible solutions that they knew only they had the capacity to carry out. Participants were able to talk together to utilize their pooled expertise to find workable and acceptable solutions. The Rhode Island effort was a start. It represents a miniscule investment considering the great possibility for payoff a more comprehensive O.D. effort might provide.[41]

As in action training and research, there are a wide variety of O.D. strategies available which have direct application to court management studies. There are now many independent and university-based consultants with wide experience in industry and the public service who might be helpful. The Institute for Court Management, with a limited staff, still has highly competent O.D. capability. In the end it may be that you need to "grow your own" action trainers and O.D. consultants since combinations of internal and external consultancy seems to have the greatest change impact. It is with such strategies that consultants can help clients develop and achieve their own objectives.

In fact, with an action training and research and organization development experience, it is useful to think about a management by objectives approach for the organization.

Management by objectives elicits genuine participation of the employee in determining and accepting responsibility and benefits for his work unit within the legal constraints and values of the larger organization.[42]

Basic concepts embodied in management by objectives (M.B.O.) can be summarized as follows:

A. The objectives (explicit expected results to be accomplished) are diverse and multi-dimensional.

B. In order to be useful the objectives need to be understood by persons designated to achieve them.

C. Objectives developed by persons who are to achieve them are likely to be more acceptable and have greater utility than those developed for them by management.

D. Organizations must take cognizance of goals and objectives of the individual so that

integration of those goals and objectives supplants differentiation of such goals and objectives.

E. Statements of objectives are of little use unless they enable the organization to determine whether or not the desired result has been achieved in the time specified. When objectives are so conceived they may be considered as operating objectives.

F. Operating objectives are inadequate if they do not permit the development of a schedule of events which communicate progress toward achievement of results.

G. Objectives should meet the needs of individuals and organizations for both immediate and deferred gratification, if possible, but, in any case, the former should not supercede the latter.

H. Individual responsibility for achievement of objectives should be a matter of specific understanding.

I. Once objectives have been accomplished, resources should be re-oriented and re-grouped toward achievement of other organization and individual

objectives, which should, in turn, strive for ethical, psychological, social, and material improvements.[43]

An underlying value which attaches to M.B.O. is that "Man will exercise self-direction and self-control in the service of objectives to which he is committed."[44]

It should be clear by now that the normative-re-educative strategies proposed in this paper strongly suggest that institutions are open systems, changing in nature, constantly interacting with social, technical, and organizational environments. The final implementation strategy to be discussed here addresses socio-technical systems.

Socio-technical systems studies employ action training and research and O.D. strategies to develop organizational environments compatible to both the social and technical needs of the persons in the client organization. Investigators with Tavistock Institute Socio-Technical Systems studies believe that the following psychological requirements are present in most types of work, and should serve as the basis for developing jobs from tasks:

A. The need for the content of the duties of the position to be reasonably demanding in terms other than sheer endurance.

B. The need for being able to learn on the job and to go on learning (but not too much, nor too little).

C. The need for some area of decision making that attaches to the individual.

D. The need for social support and recognition in the work place.

E. The need for the individual to relate what is done at work to the social processes of life.

F. The need to feel that the job leads to some sort of desirable future.[45]

The efforts in the socio-tech approach are applied to help 1) the client institution's productive efforts meet environmental requirements, 2) make changes in the environment which may be induced by the institution, and 3) become sensitive to changes independently taking place in the environment.[46] In working to achieve a pro-active inter-relationship in turbulent fields, the socio-tech approach is to pay attention to people, the organization, and the environment, while giving great attention to values, which are the persistent response to a milieu of relevant uncertainty.[47] The socio-technical systems strategy provides another compatible approach to dealing with "changing." Its values are democratic and supportive of the consent element inherent in popular sovereignty.

SUMMARY

The normative re-educative change strategy seems to have unique application to court management studies. It is a sound strategy because it incorporates the concept of legitimacy working toward the democratic involvement of those who must make the changes work. In the end people will change their way of operating and behaving because they see it to their advantage to do so. The advantage becomes much more clear when people understand the reason for change as well as the relationship of the change to the environment in which the change takes place. When carried on in collaboration with high talent consultants or other substantive experts, normative re-educative approaches tend to produce a more vital and higher quality product than those produced by the empirical-rational processes alone. In these uncertain but interesting times, the basic institutions which provide the foundation for a livable world must find ways to function in a manner congruent with the problem environment. This, of course, can only be accomplished with the willing assistance of the actors in change process. You may find that knowledge of change theory, and ability to use change strategies that preserve and enhance the democratic process, will be most helpful to you.

FOOTNOTES

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COMMENTARY ON THE PROCESS OF CHANGE

by

Harry O. Lawson

Professor Gardner has provided an excellent conceptual framework for trying to understand the process of change and the factors and actors therein. I used the phrase "trying to understand" purposely, because to paraphrase Judge Walter Ely of the 9th Circuit Court of Appeals in Los Angeles, Professor Gardner can explain it to you, but he can't understand it for you. A lack of understanding of what causes change and how to help it along, in my view, has been a common condition among those making court studies, whether outside consultants or resident staff.

If I have any contribution to make at all, it is to try to help you understand the change process as it applies to judicial administration. This, perhaps, can be done best by taking both a pragmatic and a practical approach to the conduct of court studies which are action oriented in the sense that they are aimed at adoption and implementation, rather than academic journals or the archives.

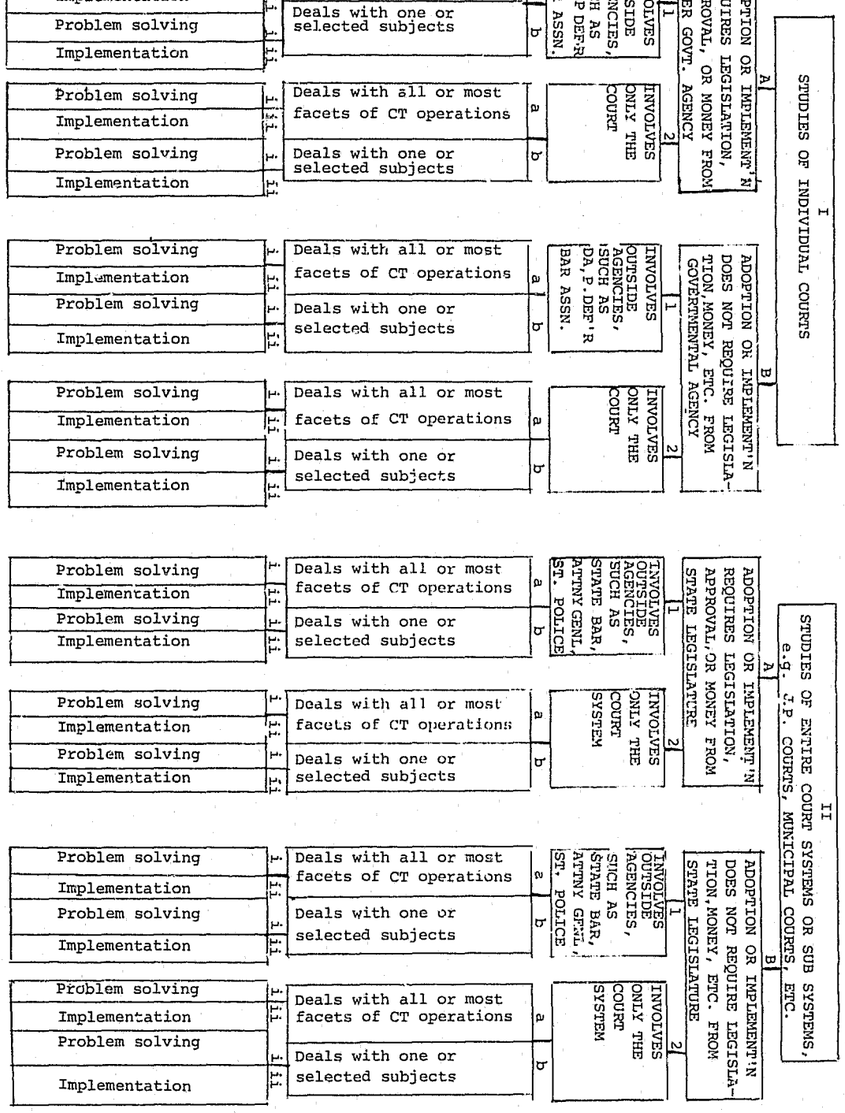
As a starting point, it is my thesis that how a court study is conducted, when it is done, and by whom will determine to a great extent its degree of acceptance and

its ultimate adoption. In other words, the likelihood of adoption may have been foreclosed by the way in which the study was conducted, by the people selected to make the study, by bad timing, by all three, or any combination thereof.

To develop this thesis, and to try to relate Professor Gardner's concepts specifically to court studies, I've developed a different way of classifying court studies: according to whether a study is system-wide or local; whether adoption requires legislation, a decision, or money from a governmental entity outside the court or court system; whether the study itself involves outside agencies; and, finally, study scope or content, and whether it is aimed at solving a problem or problems, or at implementing a solution already decided upon.

This classification scheme identifies the actors and those to be acted upon quite clearly and, consequently, provides a way to focus on the change process in relationship to the conduct of court studies. Perhaps it would be helpful to explain this classification scheme, as shown on the following chart, in a little more detail.

First, court studies are divided into two major categories: This is a very simple differentiation, between studies limited to an individual court and those involving entire court systems or sub-systems. An example of a sub-system study would be



a study of the justices of the peace throughout a whole state, a study of municipal courts in a state, or a study of all courts in a particular metropolitan area.

The second division deals with how the study will be adopted or implemented. The first category is for court studies which require legislation for adoption or implementation, or money from the state or a local government unit outside the court. This category applies to both local and state level studies, but court studies at the state level are more likely to fall in this category, since legislation and constitutional revision are often involved. The second category covers studies which can be adopted or implemented by the court or court system without approval by or money from other governmental body.

The next division is again made into two categories [identified as A(1) and (2) and B(1) and (2) on the chart]. First, those involving outside agencies which should participate in the study and the decisions to be made, regardless of how it is to be adopted or implemented. For example, a study of criminal caseflow in a court should involve, obviously, the public defender, the district attorney, and the bar association.

The other category [A(2) and B(2)] applies to studies which don't involve outside agencies at all, even though they might require legislative implementation or financial support

from another governmental body. The same two categories apply also where adoption or implementation is not dependent on legislative action or the granting of funds.

The next differentiation [identified as (a) and (b) on the chart] is between studies which deal with all or most facets of court operation, and those which deal with only one or two aspects of a court's operation, such as jury selection or a court personnel plan.

The last delineation is the distinction between studies which are problem solving, and those which are implementation studies. Further reference will be made to these categories in the course of my remarks.

Previously, "how," "when," and "who," were cited as important factors in whether the findings and recommendations of a court study would be accepted, adopted, and implemented. To this list should be added "why." Is the study being made because there is common recognition of a problem? Do those in the court system, especially policy makers, recognize the problem? If the results are going to require legislation, money, or approval by an agency outside the judicial system, does that agency also recognize the need for the study? If these questions cannot be answered in the affirmative, the study process is likely to be impeded by those being studied and not supported by outside decision makers, so the results will gather dust on someone's shelf. An example was given

earlier, by Maureen Solomon, of a study which was authorized by an agency outside the court system when the court didn't want it. Outside consultants were used on the study, as well as the resulting recommendations. This example shows how a combination of "how," "who," and "why," can virtually doom a study before it starts. As to "when," it would appear that almost anytime would have been better.

This example leads to two observations. First, a study is less likely to be successful - that is adopted and implemented - if there is a big battle over whether the study should be made at all. Second, and closely related, is that sometimes it may be necessary to wait until the study is "an idea whose time has come."

Most of my time here will be spent on developing the impact of change on "how," "when," and "why," with respect to studies of state systems or sub-systems as indicated on the chart. This is the court study area with which I'm most familiar: first, as a senior research staff member responsible for the conduct of a state study; second, as a consultant; and third, in my present position, as a consumer of court studies.

No study of the magnitude of state-wide court reorganization is going to have acceptable results if it doesn't

involve, from the start, all of the key decision makers, both within and outside the judicial system. In fact, there is no way you can make a viable study of a state court system without the initial involvement and participation of the state legislature. The executive branch should also be involved, but the legislature is more important, because it is the body which must adopt implementing legislation, appropriate funds, and place constitutional amendments on the ballot.

The way that a state court system study usually gets started, especially if there is legislative involvement, is that there is a public issue or matter of importance (or people think there is) related to the court system. Examples might be: accusations that some judges are corrupt; concern over the handling of criminal cases; concern over backlog in the courts; or that favorite of court reformers, the inadequacy of the justice of the peace system.

Looking back over time and over changes made in a number of states, the observation may be made that if we didn't have justices of the peace courts, court reformers would have had to invent them. The JP courts have caused studies to be made in many states. They have caused people to get upset and insist that something be done, resulting usually in a study. Then, if the study is put together in the right way, the study group finds that trying to

do something about justice of the peace courts has an impact on the whole court system. Very often this conclusion leads to a study being made which is much broader than reform of JP courts.

While the changes that can result from a statewide study are usually of greater magnitude than those from other kinds of court studies, the consequences of failure are also much greater. If, after a statewide study of some duration, a judicial reform constitutional amendment is rejected by the voters, or defeated by the legislature so that it never gets on the ballot, judicial reform may be stymied for many years.

It is hard to rekindle public interest or get up another head of steam. Those who made or supported the study are naturally discouraged, and it may take a number of years before it is tried again.

Nevada will be a state to watch in this regard. The proposed new judicial article was defeated in the 1972 general election. It will be interesting to see how soon efforts start again in that state. All that has been done so far is the elimination of the position of state court administrator by the legislature (probably considered a forward step by many).

Arkansas went through the same experience in 1970. The situation in that state was different from Nevada's.

In Nevada, the judicial article appeared on the ballot as a separate and distinct item. In Arkansas, it was part of a new state constitution. The new constitution was rejected, not necessarily because of the judicial article, but the effect was the same on judicial reform.

Partial solutions to statewide judicial problems can also hinder rather than advance statewide judicial reform, because once a partial solution is adopted, there is a tendency to feel that no further effort is needed, and people turn their attention to something else. This could happen (and has happened) with studies dealing with justice of the peace courts. Those making the study may see that changes in the JP courts have an impact on the whole system, but may be afraid to take on the larger responsibility. This has happened in some states. In Washington State, for example, changes were made in the JP system several years ago, and, for whatever reason, nothing future was done at that time. Since then, citizens' committees, some legislators, and some members of the bench and bar have been trying to revamp the entire state court system, but have not yet been successful.

How can failure or partial success be avoided? There is no way to assure success, but there are some things which can be done to minimize the possibility of failure in a statewide court study.

Successful studies require initial involvement of all of the significant decision makers. In addition, the study should have high visibility, i.e. the bench, bar, and public should know what is happening on an ongoing basis during the course of the study. Ultimately, citizen involvement and support is needed. The study staff should work closely with, and have the confidence of, the body responsible for conducting the study.

Success (meaning change) is made less likely if there is insufficient initial involvement and commitment by policy makers, and only outside consultants are used to do that staff work. This is not meant to disparage outside consultants, but to point to a pattern that has become all too familiar. Consultants collect a lot of data, compile and analyze and write a report with findings and recommendations. They present it at a final summary meeting of the study body, and off they go to the next assignment. What you have is another report that is likely to join the others on the shelf.

It may be an excellent report. Success does not necessarily depend on report quality. It has to do, I repeat, primarily with the involvement of the people making the study. It is important that the recommendations are sound and have a reasonable chance of being politically acceptable. Obviously, the study should be well done, but the best quality study may be one that is placed in the library, and its main uses are

by those of us in the field who teach or who use each other's studies for reference material in the course of making other studies, which in turn will also become teaching and reference material.

Without being too provincial, I hope, let me use Colorado as an example of a study that went "right."

Fifteen years ago in Colorado, there was enough concern about JP courts, and about some of the other problems of the court system, that there was legislative involvement from the beginning. In fact, the Colorado General Assembly initiated the study to find out what ought to be done in reorganizing the state court system. Considerable public support can be assumed, because Legislative Council studies of this magnitude usually come about only when there is sufficient public concern to justify a substantial investment of time and money. One of the major factors in our ultimate success was the composition of the study committee. It was a blue ribbon committee, rather than sort of an ad hoc group of legislators picked at random. Committee members were selected because of their positions in the legislative power structure, their legislative competence, and their knowledge of the study matter and included both the majority and minority parties. The study was also successful because of the

involvement of lay people, and the involvement of a strong advisory committee of the bench and bar, and because of the great visibility that the committee had.

Parenthetically, I would like to reiterate that one of the worst things that can happen on a study of this magnitude is that a group of outside researchers put a report together and come up with a package and hand it to the supreme court or other sponsoring bodies. This happened in one state I know of, and there wasn't any legislative involvement, although a great deal of legislation was recommended. There was also no involvement of the public to any degree until this state had a citizen's conference after the fact.

The citizens' conferences sponsored by the American Judicature Society have been very successful in stimulating citizen support for court reform, and state after state has benefited from these conferences, and the citizens' organizations which are the outgrowth of these conferences. But in this particular case, there was little citizen prior awareness of court problems, or even that a study had been made proposing substantial court reorganization. So when the citizens' conference was held to discuss the study recommendations, it was found that these recommendations were not what the people attending wanted to discuss. While a permanent citizens' organization was formed, support of the study

recommendations was not one of its prime objectives, so follow through on adopting and implementing the study has been minimal.

In Colorado, the study committee spent two or three years holding hearings all over the state, and listening to everybody about court problems and recommended solutions, not just the bench and the bar, but also from organizations and any individuals who attended. At the same time, the staff was gathering data so the committee had some information on what was going on in a particular area and could see what the problems appeared to be, in contrast with what people perceived the problems to be. This was a long and time-consuming effort.

The study group had a great deal of confidence in its staff. Why? Because it was an in-house staff who knew the state situation, and who worked for the study group, and didn't make policy decisions. The staff kept the committee involved in what it was doing and received its direction from committee decisions. It is extremely important that the staff keep the study committee informed, because it is not the staff which will be casting the votes on the floor of the house and senate. It doesn't make any difference how knowledgeable the staff is, if the policy makers don't share this knowledge.

In conducting the Colorado study, there was a field staff of three who visited every court in the state and collected case flow data, because, at that time, there was no statewide

information system of any kind. The night before a hearing, the staff compiled a report on the courts in the area to be covered by the meeting. Copies were distributed to the committee prior to the hearing, and the staff briefed the committee for a half an hour or 45 minutes on the significance of the data, who would appear at the hearing, and what the staff saw as problems in the area covered by the meeting.

After holding an all-day hearing, the committee often returned in the evening to hold a work session. This was especially true when the reorganization plan and the new judicial article were being developed. This was the most dedicated group I ever saw, including legislators, and the bench and bar advisory committee.

From the outside, things seemed to fall in place in this study, including public support, but it was all hard work and careful planning. There was recognition that people like to feel they've been consulted. This includes judges, court staff, lawyers, legislators, and lay citizens. This was accomplished by staff visits, interviews, and public hearings. As a result, there wasn't the feeling that someone was sitting in the Capitol, in Denver, designing a court system in a vacuum. This kind of visibility is necessary if any statewide court system study is to be accepted.

Another factor is the leapfrog effect: I don't know whether Ernie Friesen coined this phrase, or whether Ed McConnell did, but what it means is that reform in each state seems to go further than that accomplished by the last state to do it. The last state that had done very much by the time Colorado go started in the late 1950's and early 1960's was New Jersey, and Colorado went beyond New Jersey in some respects. Other states now have leapfroged over Colorado in certain areas. The Colorado reorganization was not as extensive as it might have been, because we had to recognize political realities. The minor court system was not changed as much as it might have been, but the time may come when further change will be considered. Now, this is what I meant earlier about not proposing a study until its time has come.

You may think that I have placed too much stress on legislative involvement, but I feel that it is the key to success in making state court studies. Let me cite another example.

A year ago, Wisconsin completed an excellent two-year state court study. This study was conducted by a citizens' committee appointed by the governor, but it is my understanding that the legislature wasn't directly involved, even though many of the study recommendations require both constitutional and statutory implementation. In fact, there was an interim legislative council committee on court reorganization in operation at the same time

as the governor's citizens' committee, but I don't know that the two ever got together. Whether this lack of direct legislative involvement will delay action on the report's recommendations is still not know, although two constitutional proposals were placed before the legislature, one from each group, and neither has yet been adopted. Please remember, that if the legislature has to be involved at the end, it had better be involved at the beginning. If not, it will either lay the study aside and disregard it, or decide to make another one of its own. This does not mean, however, that the involvement of others in making state studies should be considered of secondary importance. To illustrate this point, as well as try to define more generally what should be involved in a state system study to have some assurance of success, I would like to cite a report made by Ernie Friesen, Ed McConnell, and me, to the chief justice and judicial administrator of Kansas.

Kansas has a new judicial article, and they wanted to know how they should put a study together to implement the judicial article, with special emphasis on minor courts. As you might expect, they didn't adopt all of our recommendations, but I think they are very good anyway (maybe they thought they should be wary of anything the three of us could agree on).

There is a direct tie in between our recommendations, and Professor Gardner's comments on the need for constant recycling.

We dealt with study phases, overall study responsibilities, study scope and content, and study staffing requirements. We said that the study should be conducted in three phases. The first phase should be a limited technical study, i.e. a review of existing statutes and rules to determine whether any amending or repealing action is necessary to conform to the new judicial article. This study should be conducted by a legislative-judicial study commission, either as part of the overall study, or separate from it. As many required changes as possible should be presented to the legislature for the 1973 session, with the remainder in 1974. This approach emphasizes early success, because something tangible is accomplished.

The second phase should involve identification of those areas of fundamental change upon which there is general agreement, and which may be accomplished while the overall study is still in progress. One example is the court rules and legislation necessary to define supreme court administrative authority under the new judicial article.

The third phase is a long-range study. This phase includes the study of judicial system organization, including an inventory and analysis of the existing system, and recommendations for change and implementation, as well as planning and development of future needs. This study phase would be considered ongoing thus, the recycling effect.

Overall study responsibility should be placed in a body designated as the judicial development commission. The chief justice should play an active role in the commission; its membership should be broad-based; and there should be regional committees in addition to the statewide commission. Membership should include representatives from the legislature, the bench and bar, prosecutors and defense counsel, represenatives of public agencies involved with the courts, local government officials, representatives of minority groups, representatives of the press, and others active in public affairs. The statewide and regional commissions should cooperate with the judicial council and staff, the judicial administrator, the legislature, and the state bar association, in carrying out the study.

It should be an ongoing, semi-permanent body, continually reviewing and studying the judicial system, so that improvement and change can take place on a continuing basis, and in an orderly way.

The first task of the commission should be to establish a list of priorities and set up task forces.

Our recommendations on study scope and content included the following:

1. Lower and Special Courts
   a) Inventory of present organizations and operation
   b) Determination of problem areas, such as case backlog, inadequate personnel, etc.
   c) Alternate plans for improvement
2. Budgeting and Fiscal Administration
   a) Cost of operating system
   b) Fiscal procedures, budgeting practices, accounting, etc.
   c) Financial needs of system, priorities
3. Record Management
   a) Types and variety of records
   b) Inventory of equipment and use (microfilm, etc.)
   c) Record-keeping systems
   d) Record storage and destruction
   e) Feasibility of uniformity
4. Case Flow
   a) Movement of cases through court
   b) Judge-caseload ratios
   c) Development of performance standards
5. Information System Administration & Development
   a) Data needed

b) Feasibility and limitation of automation

c) Inter-relationship with case flow, fiscal management, etc.

d) System design

6. Court Facilities

a) Inventory

b) Adequacy and needs

c) Long-range capital plan

7. Court Personnel (non-judicial)

a) Number, salaries, qualifications, fringe benefits

b) Development of a personnel plan and program

We recommended that the study be conducted primarily by in-house staff. This staff could be drawn from numerous sources: law school professors; persons with legislative council or governmental research experience; and political science, economics, and public administration professors and their staff. The primary reliance on in-house staff would require less time to become familiar with the Kansas system, its needs, problems, and acceptable solutions. And that, we thought, was extremely important.

Second, the staff would have more credibility with the study commission, again repeating what happened in Colorado, instead of outside experts who could spend only a limited time in Kansas, make their recommendations, and leave.

Third, the use of in-house researchers would be an excellent way of training staff for the judicial administrator's office, which will be expanded considerably during the next few years, as a result of the enlarged administrative responsibilities of the supreme court.

Finally, the commission could exercise better policy control over the study with in-house staff. As I indicated before, this is very important. It is sometimes difficult to keep outside consultants within the policy scope and direction established for a study. Despite a heavy reliance on in-house staff, however, there would still be a need for consultants in specific technical areas, such as automation and systems design, records management, and personnel administration. Such consultation would be primarily limited to technical observation and recommendations, and would be extremely helpful to the in-house staff and the commission.

I could cite other examples, but these are sufficient

to demonstrate the ingredients required in a state study to provide the most favorable environment for change. I regret that time precludes a discussion of studies confined to individual courts, but most of the same factors apply as well to those studies.

HARRY O. LAWSON

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SPECIAL FEATURES OF STUDIES INVOLVING THE APPLICATION OF COMPUTER TECHNOLOGY TO COURT ADMINISTRATION

by

Einar Bohlin

Introduction

The purpose of this paper is to provide the reader with general advice about computer systems projects in courts based on the author's personal, court, and industry experience. The paper has also been revised as a result of the Institute for Court Management Court Study Conference held in Denver in May, 1973.

Other sections of the conference proceedings apply to the conduct of studies involving the application of computer technology to court administration. As the title of this paper would indicate, the author is convinced that the particular type of court study involving the use of computer technology carries with it a certain set of special features which tend to make the computer study deserving of special management attention. Underlying all of the considerations of this paper is the following assertion: court managers should remember that computers are but one of the tools that may be used to collect and analyze data. While computers are diminishing in size and cost, they are still more expensive than properly designed and executed manual systems. To computerize or not is a complex question that must examine

the variables of volume, need for flexibility, need for quick response, cost, expected level of employee cooperation and/or competence, condition of the present methods of accomplishing tasks proposed for the computer, and many others.

This paper attempts to share the author's experiences (and slants on the subject) in order to provide a point of departure for the court manager who contemplates a computer system project. The reader will notice a heavy concentration on similarities between computer projects in the courts and computer projects anywhere else. The author leans toward the observation that court computer projects should be handled (managed) as computer projects are anywhere else, although the differences between the court management environment and other management environments discourage that observation somewhat.

One final note: If the experience outside the world of courts is to be used as a model, it would be well to examine successful outside computer projects. How can computer projects be evaluated? Rate user satisfaction. Find out who depends on computer output in the given organization, and ask that person about the computer department, the flexibility of the systems he depends on, the cost, the

accuracy, the relevancy of the output, and any other question you, as a propsective computer user, would like to have answered.

SIMILARITIES BETWEEN COURT COMPUTER PROJECTS AND COMPUTER PROJECTS ELSEWHERE

Organization

The intent of this section is to make several observations about the structure of the set of people who are primarily concerned with computer projects. This structure is one which is intertwined with the overall structure of the organization itself. Starting with the top manager, who in some cases in industry is a member of the Board of Directors, we have the person who is charged with the overall responsibility for computer projects. Depending on the size of the organization, this person will generally have a staff of project managers, managers of specialized activities in data processing, and specialists in finance, public relations and training. Below these positions are systems analysts, programmers, machine operators, and data control clerks. Respectively, these individuals are responsible for the architecture of new systems, translating the architects' design into sets of instructions that the computer performs (called programs), actual operation of machinery, and on-going clerical tasks associated with the input and output of data to computer.

In most instances, it is advisable for each department (that uses a computer system) to have at least one person in-house who can articulate problems in data processing terms.

The trend in industry is to establish a Steering Committee consisting of the heads of the user departments. The Steering Committee meets regularly to examine the progress of on-going projects, set priorities, establish policies, assist in the development phase of new projects, and provide general review and guidance for the work of the computer people. The top person in the computer department, assisted by his department heads and project managers, prepares reports and presentations for the Steering Committee.

Through the medium of the Steering Committee, the organization can avoid the problems of over-reliance on the computer in which individuals who are taken with the computer and its capabilities tend to feel that the computer is the answer to all of the organization's problems. The problem of lack of ownership on the part of users who are not involved in systems can also be avoided. Some persons are so threatened by the advent of a computer project they simply turn over the reigns to technicians and hope for the best. The result can be a system which is technically sound but does not meet user requirements. If the Steering Committee is properly convened and informed, such problems should be minimized.

The Steering Committee approach also allows for formalization of the phenomenon in computer projects which causes wide-scale cutting-across of organizational lines. In many instances, it may be found that department heads are, for the first time, meeting on a regular basis to solve common problems when they work on the Steering Committee.

Quantity and Quality of Staff

Many organizations try to use a mix of in-house and outside assistance for computer projects. An organization that has several computer applications in operation might have a small but highly competent staff for operation and maintenance of existing systems, and an even smaller staff for development of new systems, while relying on outside help to augment the staff for development projects if necessary. If outside help is used for development, it is generally desirable to insure that the outside help is also available for training and implementation.

Wise selection of outside help is probably no easier than wise selection of in-house staff. The most solid variables to consider when evaluating outside help are the relevant experience of the company, relevant experience of the individuals proposed for the work, financial stability

of the company, and written and oral proposals. Price is a factor, but it is suggested that the quality and experience of the people involved is of utmost importance.

Hardware, Software and Other Technical Problems

The selection of software (the programs that are written to make the computer perform a certain series of tasks) and hardware (the actual machinery) involves more and more choices every day. The selection should be made by competent technicians and reviewed by the Steering Committee.

Court computer projects hold no promise for unique technical problems. Practically everything that this author is aware of in court computer projects has been handled in some form by a system in another environment.

The "Systems Approach"

It is suggested that the outline below (or one similar) is used (consciously or subconsciously) in most projects. The degree to which a project holds to a disciplined series of discrete steps may determine the success of the project.

At each of the following steps, it is essential that the Steering Committee understand and approve the completed work, and approve proceeding to the next step.

1. Planning Phase (3 - 12 months)

   a) Initial Investigation: broad-brush, written report identifying problem areas, needs, solution alternatives; timing schedules.

   b)* Preliminary Systems Study: detailed, written report of the above; the Initial Investigation might be said to be a summary of the Preliminary Systems Study; thoroughly describes present system; catalogs benefits and objectives of the solution alternatives; identifies what will be used, not only what people say they need; defines tasks to be performed.**

   c)* Systems Planning Study: after the solution alternative has been selected, this written report defines the new system in detail; each new form, procedure, code, etc. is fully described; cost is estimated and tied into budget cycle.

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* Throughout these phases, it may be beneficial to identify and implement a short-range improvement. Operation of such a small project has the desirable effects of acquainting analysts with daily operations and the court personnel who perform them. This approach emphasizes the evolutionary nature of systems work.

** A document, called a "Work Plan" or "Task List", should be prepared and up-dated on a regular basis.

2. Development Phase (3 - 18 months)

   a) Technical Requirements are defined: what types of hardware and programming are necessary (may cause a change in the solution alternative); costs are projected.

   b) Implementation Planning: how many and what kinds of people are needed; is space needed for people or machinery; what training must be undertaken.

   c) Programming: the writing of computer programs (cause the computer to perform the designed tasks).

   d) System Test: the test data is assembled so as to force the new system to handle as many routine and not so routine matters as possible; modifications are made as necessary.

   e) User Training: persons who will provide input to, process with, and analyze output from the system are afforded orientation and training sessions; instruction may be formal or informal, preferably combining actual system observation and "hands-on" experience.

3. Implementation Phase (3 - 12 months & beyond)

   a) Conversion: parallel operations, wherein the old and new systems operate side by side until the new system performs satisfactorily; converting pending and/or historical case data to new system; modifying documentation, operating instructions as necessary.

   b) Post-Implementation Review: does the new system meet planned requirements?

   c) On-going Maintenance: changes in requirements caused by new laws, new court rules, new procedures, etc., and changes which increase overall speed and efficiency of the system require a maintenance crew.

Please note that in all of the above steps, extensive documentation should be demanded by the data processing management personnel and by the Steering Committee. Documentation should be expected from both in-house personnel and outside help. Documentation should be so extensive that work could progress from any one of the above points on, using different personnel who would study the existing

documentation without having to repeat tasks associated with each step.

Training

There are four general categories for training. First, there is the orientation that top management needs to understand concepts and to obtain a feel for the complexity of level of detail which must be addressed by a computer project. Such orientation may be conducted in informal seminars.

Second, there is a formal classroom training which is necessary at some point to thoroughly acquaint managers with the detail of system design, proposed new procedures and forms, expected costs, probable benefits, etc. Formal training is also necessary for technicians to up-date their skills in new hardware and software techniques. Formal training should be accomplished with discussion outlines, visual aids, etc.

Third, there is on-the-job training for those who are operating a new machine or implementing a new procedure and have little or no need to understand the total system.

Last, there is a great deal of training associated with undertaking visits to on-going systems that perform similar functions. Ideally, these systems would be observed in organizations whose general nature is similar to the organization developing the new system.

DIFFERENCES BETWEEN COURT COMPUTER PROJECTS AND COMPUTER PROJECTS ELSEWHERE

Status of the Court Management Profession

Court administration is a relatively new field. Industry and other sections of government have long since recognized certain management principles and the value of using the computer. It may be asking too much to expect any given court to accept the advent of court administration and a computer project simultaneously, although some courts view their proposed court administrator as a "computer man."

Complexities of Court Management Underrated

This author has noticed a tendency of persons who have not been close to courts to underrate the complexity of court business. For example, there appears to be little understanding of the funding problems of courts. Specifically, the undesirability of a judge's appearing before a legislative body, some of whose members are lawyers who practice in that particular judge's court, is not often recognized.

Funding

Further, in order to augment the meager, regular appropriations that are generally available for innovative

court programs, the court manager must deal with federal and private grant programs to secure development funding. If the court manager enters into a grant process, another set of people, forms, procedures, etc. are introduced into his management environment.

An idea often discussed but seldom implemented is that of charging extra court costs to cover the costs of improving court operations. This, of course, raises legal questions concerning the role of the courts in modern society.

Personnel

Other complexities surround the courts' personnel sub-systems. Few persons recognize the difficulty, for example, caused by a situation in most courts wherein a separately elected official (called a City or County Clerk) maintains court records. In many instances, employees of this separately elected official are assigned to court-rooms for the collection of data to prepare courtroom journals (journals, dockets, minute books, etc.).

Organization

With respect to personnel organization, most courts make administrative decisions as a committee of the whole consisting of the judges of the court in question. Sorely

lacking is an administrative structure that displays clear-cut channels of communication and responsibility.

Internal Capability

Administrative matters having to do with the selection of outside contractors, the over-reliance on such contractors, and the complex tasks associated with competitive bid processes, add to the complexity of court business. Grant constraints seem to suggest that the use of outside contractors is preferable to the establishment of in-house capability to perform complex technical tasks. The executive branch, for example, accustomed to its own relatively high level of internal capability, finds the courts' extremely low level of internal capability hard to understand when administrative tasks are mishandled in connection with a competitive bid process. A contractor, managed well when internal capability exists, can function unchecked when such internal capability is absent.

It is strongly suggested that courts opt for highly skilled in-house staff to carry out the management of court computer projects.

Control of Computer Hardware

Many courts use a variety of outside assistance for their data processing needs. Outside assistance can range

from city or a county computer center assistance to contracting with a private firm for services. It is this author's opinion that courts should seriously consider acquiring their own hardware. Some might think this approach counter-productive to the centralization trend in the data processing industry, wherein data processing services are provided to a number of user departments by a single facility. However, this author feels that there is enough work for acceptable utilization of separate court hardware, and that the problems in relation to acceptable priorities for court work cannot be solved unless the court maintains its own hardware. In fact, smaller hardware installations in the courts themselves might be utilized as satellite or terminal operations to a central facility. In any event, courts are urged to seriously consider internal hardware capability for data processing tasks which cannot wait while paychecks are being produced, tax billing notices are sent, etc.

DO COURTS NEED COMPUTERS

The planning Phase described in the section, "Systems Approach," should answer the question of this section for each court individually. Certainly it is agreed that data processing is not the only question facing the court

administrator. It is suggested, however, that until courts utilize such modern management techniques as computerized data processing, the ideal of modern court management will not be realized. Exhibit A to this paper, titled "Solving Court Administrative Problems with the Computer," lists eleven (11) administrative problems and the probable aid that a computer system could provide. The computer aid is contrasted with the operation or potential of a manual system. The exhibit was prepared by the Michigan Supreme Court Systems Department, and while the examples were taken from the Michigan situation, it is felt that similar problems exist in other court jurisdictions.

General Guidelines By Court Size

The following table is suggested as a reference point only.

Court Size	Number of Judges and Referees	Types of Systems/ Products
Small	1 - 6	Telephones, index cards, case control cards, file systems, copying machines, manually produced periodical summaries
Medium	7 - 15	In addition to above, punched-card or "mini" computer systems, microfilming systems, periodical summaries, notices, listings produced automatically
Large	16 or more	In addition to the above, more sophisticated computer and microfilming systems, use of telephone lines to link many departments to a central computer programmed to respond to inquiries instantaneously, copy transmission devices

Although the data is somewhat old, a further breakdown of this type may be found in Task Force Report: the Courts, the President's Commission on Law Enforcement and the Administration of Justice, Appendix E, "Modernized Court Administration," Norbert A. Halloran, pg. 163. The table is titled "Systems Size in Court Caseload Range." The article referenced also contains useful information on the types of applications courts might consider installing on automatic data processing equipment.

COSTS OF COMPUTER PROJECTS

The costs of any innovative project vary in direct proportion to the scope of the tasks undertaken. Short of a program to finance courts through the state, court computer projects are probably the most expensive programs a court could undertake. In general, for courts which are beginning new computer programs, a court administrator can plan to spend at least $2 (possibly $3-$4) for every dollar spent for equipment. The additional funds would be spent for personnel, space, furniture, etc., the major portion of which would be spent for personnel. Conversion costs could increase that ratio to 7:1 or more.

General guidelines for use in evaluating projects (from Datamation, February 2, 1972, "Data Processing Budget

Survey") show how a sample of private firms spend their dollars on data processing:

NOTE: These figures relate to firms which operate existing data processing applications:

40.0%	Hardware
44.6%	Salaries
.9%	Software Packages
5.9%	Data Communications
5.9%	Supplies
.4%	Consulting Services
.4%	Training
.2%	Conference Attendance
.6%	Timesharing Services
.4%	Batch Services
.2%	Remote Batch Services
.6%	Contract Programming
100.1%	(Even Datamation isn't perfect!)

The "Systems Approach" section described earlier should provide cost breakdowns at major steps in the process.

WHAT TO DO IF THERE ARE MAJOR ROADBLOCKS TO A COURT COMPUTER PROJECT

The implementation of a new court computer project will probably never be easy. There may be a sum of factors in a given environment which would strongly suggest attempting only a small-scale project, or perhaps no project at all. For example, if the court itself does not support a computer project, and no judge or small group of judges can be found to help generate that support, a court administrator is advised to look elsewhere for improvement programs.

Earlier in this paper short-range payoffs were suggested; that is, a court computer project should attempt to deliver useable products early in the process. In some jurisdictions, a very simple system may be all a court needs or can assimilate, even over a period of several years. A short-range improvement should not be overlooked by court administration or the Steering Committee as possibly being the "ultimate" system for an extended period of time until other areas of court management catch up. Factors contributing to this decision would be availability of funding, work space available in the court, judicial and support personnel attitudes toward computer systems, capability of the court staff, number and scope of other projects underway to improve the court, and others.

In the case of a court which lacks in-house capability, outside resources such as local universities or industry representatives might be convinced to help get the court started.

SOLVING COURT ADMINISTRATIVE PROBLEMS WITH THE COMPUTER

1. PROBLEM:	COMPUTER AID:
The Justices of the Supreme Court and other judges need to know more information as to what central resources should be brought to bear to deal with the increasing workload of the courts. The traditional answer of more judges and more courtrooms may not be the only answer.	A reporting process which can be used to measure uniformly the growth of the courts' caseloads, the ages of cases, and judicial output.
	PRESENT SYSTEM:
	The current system does not usefully measure the growth of the court workload since it merely counts cases in a summary fashion. Little insight can be gained into the specific makeup of the workload.
2. PROBLEM:	COMPUTER AID:
Lack of complete, timely and accurate history records on defendants to allow judges to make better-informed bond and sentencing decisions.	Speed of processing will allow a history to be automatically obtained on every defendant prior to court appearance, and also allow immediate response on history requests for unscheduled defendants.*
	PRESENT SYSTEM:
	Addition of clerical personnel to improve this would be very costly. Histories for all defendants have not been justifiable in the past.

*The Computerized Criminal History (CCH) is a program of the Michigan State Police (MSP). The Judicial Data Center will provide CCH with court disposition and other information; CCH will provide history information. Whether and how the JDC would interface computer to computer with the MSP Data Center will be determined to the mutual agreement of the courts and MSP at a later date.

3. PROBLEM:

Cases are delayed because of scheduling conflicts with attornies, defendants, witnesses.

COMPUTER AID:

Once the inventory is known and that knowledge can be obtained quickly and accurately, scheduling conflicts can be highlighted by the computer system for action by court administration. When a judge wants a case, one can be provided.

PRESENT SYSTEM:

None, save an occasionaly friendly relationship between two assignment clerks with telephones.

4. PROBLEM:

Lack of timely, accurate information regarding other matters a defendant may have pending in the court.

COMPUTER AID:

Central, computerized records available to any judge at electronic speed.

PRESENT SYSTEM:

Lacks speed, accuracy, and sheer feasibility. Additional clerical personnel would further congest the process; more personnel would not change essential weaknesses of the multi-step, duplicative manual process.

5. PROBLEM:

Courts cannot respond quickly to questions posed by the media, the bar, etc.

COMPUTER AID:

The computer really shines in this area: if the data bank contains the lowest level of data* in any operation, any analysis of the data can be performed by the computer, given enough time to write a program(s) if the request requires new programming.

*Strictly speaking, "lowest level of data" means every collectable item of information on every document. For example, at first glance it may seem unnecessary to put in the computer whether or not an exam transcript is available, but later efforts to analyze the production of transcripts would be frustrated if the data were not stored in the computer.

6. PROBLEM:

Cases are "lost"; files for inactive cases are swallowed up by the volume of new cases; current case status is a question answerable only by searching out the file, and then the file may be out-dated by new information not yet in the file.

COMPUTER AID:

Filings, selected actions, and dispositions can be maintained and retrieved electronically (by computer). The computer can account for all cases assigned to each judge, and point out status problems; e.g., highlight a jail case 170 days old, or a civil case with no progress for 7 months.

PRESENT SYSTEM:

Each judge is on his own; court clerks make do as best they can; cases are "lost".

7. PROBLEM:

Increasing court needs for additional personnel vs. decreasing legislative enthusiasm for additional appropriations.

COMPUTER AID:

Computers do not eliminate jobs, but they do provide the capability to hold down personnel increases. Perhaps a more important side benefit is the opportunity afforded existing employees to learn computer technology.

8. PROBLEM:

Recordkeeping in the justice system is repetitive from agency to agency and from department within an agency.

COMPUTER AID:

Within the court, information need be recorded only once. Between agencies, while duplication will still exist, computers can produce needed information at electronic speeds and in electronic formats if each communicating agency has access to the computer.

9. PROBLEM:

Courtrooms and facilities are very congested, in general, often hampering the adjudication of cases, and complicating security of prisoners.

COMPUTER AID:

Machine processing will reduce the amount of space required for clerical personnel and manual records, leaving more room (for the public and others).

9.

PRESENT SYSTEM:

The addition of space will increase costs and make overall coordination between sections of the court more difficult.

10. PROBLEM:

Inability to locate files caught in some step of the administrative process slows adjudication causing adjournments.

COMPUTER AID:

Immediate availability of computer records to ascertain case status and other information will preclude these problems.

PRESENT SYSTEM:

Considering the volumes, there is no solution to this problem under the manual system.

11. PROBLEM:

Prisoners can be falsely arrested if warrants are not cancelled soon enough on settled matters, and prisoners cannot be held if files are lost in the system.

COMPUTER AID:

Faster and more automatic cancellation of warrants, and immediate availability of records.

PRESENT SYSTEM:

The clerical force and the present hardware units would have to be increased to improve the current system, at substantial additional cost.

EINAR BOHLIN

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THE COMPUTER IN THE COURTS

by

Ernest H. Short

Introduction

In less than two decades, the computer, with its multitude of staff, has emerged from obscurity, establishing its eminence in many private and public organizations. As one can readily discern from Einar Bohlin's remarks, the computer even has begun making significant incursions into the environment of state judicaries.

Originally, the rationale for installing a computer in most organizations was based primarily on an economics, or "savings to be realized" argument. However, in 1966, it was revealed at a Data Processing Management Association meeting that only forty percent of the data processing installations in the United States showed any modicum of profitability. In light of such negative findings, top management in both the private and public sector often has attempted to scuttle the profit rationale and base the installation of a computer on an abstruse "better fulfillment of organizational purposes" argument.

The Current Situation

Today, to the dismay of many bureaucrats, a number of state legislative bodies who control the local purse have

manifested a general reluctance to release revenue for the installation of a computer, except in cases where a reduction in costs to the state or municipality is clearly demonstrated. In fact, some local governments have refused to spend local monies on computers under any circumstances. Consequently, administrators and top management in local and state governments have sought alternative methods of financing the installation of computers. In the case of Michigan, generous sums of money and talent have been made available by the private sector for development of computer operations specifically designed for the courts. However, in many court operations the most generous contributions for computer projects are made by the federal government.

With the current abundance of LEAA money available, more and more key personnel in various courts are easily sold on the idea that they need a computer. They see the computer as 1) a panacea capable of remedying a myriad of personnel and management problems in the court, 2) a symbol of modernity, and 3) an opportunity to increase personnel and the budget of the organization. Although the computer may be a symbol of modernity and a useful mechanism for bureaucratic empire builders, the computer continues too often to prove that it is not always a cure-all for the various management and personnel problems that generally plague the courts. In too many cases, the introduction of

a computer has seriously aggravated and impaired operations in a previously efficient court. Moreover, computer projects have diverted and drained needed revenues of state and local governments. For, although the federal government and the apparent benefactors in the private sector may initially provide funds, these same benefactors tend to withdraw financial support once a computer program appears viable. Unfortunately, the withdrawal of financial support usually means the computer program will fold unless the state assumes the costs of perpetuating the operation. Often, if such a situation occurs, an administrator may find he has little or no support for any of his programs.

A Rational Approach to Computerization

Recognizing that potential problems can arise by attempting to integrate a computer into an organization, one is prompted to ask, "How can the courts be assured that the computer will be a valuable aid rather than a disabling parasite?"

To derive optimum benefits from computerization of court related activities, it is imperative that thorough planning, programming, and cost/benefit analysis be performed prior to adoption of any ADP program. If analysis is to be performed in-house, it is recommended that the court first designate a computer project manager to perform or participate intimately in the analysis. This person should have, at a

minimum, general knowledge of a computer and its applications. If the court wishes to employ a person who is inexperienced in computer operations as the manager of a prospective computer program, the court should be prepared to provide this person with an adequate level of ADP training. Otherwise, the court should not be disappointed if a desired computer program ultimately proves a failure. It might be noted that there are a number of excellent short-term training programs for computer management and operations. Often, an organization that might install a computer or make available computer time will provide courses in this area at little or no expense to the court. However, it should be realized that during the analysis phase, the project's manager is likely to receive more practical ADP education than he will receive in all his formal ADP course work.

The most reasonable approach (whether the court intends to purchase its own computer or buy computer time from another organization) is employing an outside consultant to perform the analysis. A competent outside consultant tends to be more objective in his analysis. Moreover, in programs that are potentially explosive in a political sense (e.g. a program which might result in the discharging of numerous employees performing inefficient or unnecessary tasks),

an outside consultant can take the brunt of criticism without serious damage to himself or his reputation. An in-house analyst is often a captive of his environment and could be rendered ineffective by alienated influential individuals in the court for recommending an unpopular but needed computer-aided court improvement.

In the preliminary planning phase of the program analysis, the analyst should become thoroughly familiar with a court's operation in order to determine areas that might be readily amendable to computerization. The analyst should understand work-flow, administrative procedures, personnel, space, and equipment requirements associated with the existing court related tasks.

Having familiarized himself with the court's operation the analyst should construct work-flow and process charts. He should conduct time studies to determine the productive output of existing personnel and equipment. This phase of the analysis represents the problem definition stage. Often, this stage of analysis will indicate whether personnel and equipment are being used efficiently. If diagnosis indicates inefficient use, often production or output rate related to a particular task can be greatly increased by reorganization of that particular portion of the court. Such reorganization may entail merely shifting and reassigning personnel and equipment. However, some problems associated with a given task may be remedied and output

increased only through installation of a computer, or development of a computer program to be processed on a private vendor's computer.

Before purchasing a computer or buying computer time, extensive written justification should be required from the project manager or private counsultant. The justification should show the degree of efficiency to be realized in the court's operation, increased production, elimination of bottlenecks, equipment and personnel cost reductions, improved accuracy of output, and reduction in space requirements. Costs of computer and associated equipment should be specifically stated, along with operation and maintenance costs. Any revisions in existing procedures that might result through computerization of a particular task should also be noted. In addition, the net savings consequent to integrating a computer into the court environment should be stated.

An essential element in any cost/benefit analysis should be the consideration of the transferability of similar ADP programs in other courts and non-court organizations. If similar programs do exist, the cost in time and dollars of designing a program for a particular court can be greatly reduced. A few telephone calls to the right people could locate the needed programs, and on-site visits could result in provision of specific information. Having considered the transferability of existing programs, a relatively realistic

estimate of the cost of designing a particular program can be made.

Having acquired tentative bids for equipment and justifying the need for a computer project, the project manager should commence the planning process. This phase of a project covers the development of detailed design for installation of equipment or purchasing time on a private vendor's computer, application of computer and specific design of programs, and the development of tests or experiments to discover the validity of any recommendations in the written justification that are either doubtful or of such large scope that tests are advisable before implementation of the actual program. In addition, procedures should be established to insure that the court's ADP program is periodically monitored. An effective tool in any monitoring plan should include the establishment of an ADP Committee comprised of both judges and administrative personnel. If committee believed alterations were needed in the court's computer operations, the Committee would convey these recommendations to the project manager.

Once a computer program has been reviewed by key personnel (especially the chief judge and his administrator) and they agree that benefits definitely out-weigh the costs, a decision should be made to proceed with implementation of the program. As Mr. Bohlin suggested, the remaining judges

and administrative personnel should be apprised of the program and their role in its implementation. As Mr. Bohlin indicates, their cooperation and support can be elicited through a number of ways. Undoubtedly, the chief administrative judge or justice and his court administrator can best appreciate and determine the appropriate approach for enlisting the necessary support for the program.

The implementation of a computer project should be under the general guidance of an outside, experienced consultant. The consultant would be responsible for training and orienting computer personnel, as well as those court personnel who will be submitting data relevant to the various specific computer programs.

It is important to emphasize, as Mr. Bohlin has indicated, that there should be a period of parallel operation. That is to say that although a computer assumes the performance of a particular court function, performance of that same court function should continue, as in the past, until the computer has proven its reliability in this particular area.

Conclusion

Mr. Bohlin generally depicts a condition wherein the introduction of a computer means solving and reducing a great many existing court problems. However, one should recognize that installation of a computer also means the

introduction of a new set of problems and needs. To minimize computer-related problems, it is essential that a foundation be established prior to adoption of an ADP program. That foundation should include thorough planning, programming, and cost/benefit analysis. In addition, personnel who will be supportive of a computer system in terms of gathering, data input, and utilization of computer information should receive thorough training and education regarding their role in the total project. After the computer is installed, its operations must be closely observed, monitored, and coordinated.

ERNEST H. SHORT

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NATIONAL STANDARDS AND COURT STUDIES

by

Paul Nejelski

The Institute of Judicial Administration has been identified over the years with at least three different standards projects. It was founded in 1952 by Arthur T. Vanderbilt, who organized the project which resulted in the Minimum Standards of Judicial Administration when he was president of the American Bar Association in 1937. The second major standards effort has been the Criminal Justice Standards Project for which the IJA served as Secretariat since its inception in 1964. The Institute started an even more ambitious project in 1971 which has become the IJA-ABA Juvenile Justice Standards Project: a study of pre- and non-court issues, court jurisdiction and procedures, and corrections and treatment for children in trouble.

But to limit the discussion to these three projects would be parochial indeed. A story about the inception of the Ten Commandments may be instructive. According to the story, God developed the commandments and went in search of a people to whom he could give them. First, he went to the

leader of the Egyptians and said, "I have some commandments I'd like to give you." Pharaoh said, "Could you give me an example?" God said, "Thou shalt not commit adultery." Pharaoh replied, "Such a rule might cause some problems. Some of our people have rather loose moral standards. Thank you, but no, we'd rather not take any commandments this year." Then God explained the commandments to the chief of the Syrians, who also wanted an example. God said, "Thou shalt not kill." The chief said, "We are a very warlike people. That commandment would be hard to enforce; we would rather not have any." God was getting a little desperate, and he went to Moses. He said, "Moses, I've got some commandments." Moses said, "How much are they?" God said, "They're free." Moses said, "I'll take ten."

Perhaps because standards have been free, there have been so many of them. In addition to the standards which I have just mentioned, there have been numerous other projects and commissions.

There have been a series of conferences about judicial structure and reform. Some examples of this form of standard setting include the National Congress of Judicial Selection and Court Administration, held in Chicago in 1959, sponsored by the American Bar Association, the American Judicature Society

and the Institute of Judicial Administration; the 27th American Assembly Meeting at Arden House in 1965; and the National Conference on the Judiciary at Williamsburg, Virginia, in 1971, which was co-sponsored by over 70 organizations.

In criminal justice, examples include the Wickersham Report of 1931, the President's Crime Commission in 1967, and the recent LEAA sponsored National Advisory Commission on Criminal Justice Standards and Goals.

In addition to the ad hoc standards projects, there have been several organizations besides the Institute of Judicial Administration which have been involved in writing standards on a continuing basis, generally through the promulgation of policy statements, or in the form of model statutes.

Perhaps the first such organization was the National Conference of Commissioners on Uniform State Laws, founded in 1889 by the American Bar Association as a special committee. Its model act to provide an administrator for state courts, adopted in 1948 and amended in 1960, has served as a basis for most of the 42 states which have a statewide administrator.

The origins of the present National Council on Crime and Delinquency go back to 1907. NCCD has issued such works as the Standard Juvenile Court Act, and Model Rules for Juvenile

Courts, as well as standards for probation and parole personnel, and a model sentencing act for adults.

The American Law Institute was created in 1923, with the intention of reducing uncertainty in the law through such devices as the Model Code of Evidence, Model Code for Pre-arraignment Procedures, and a study on the division of jurisdiction between state and federal courts.

Founded in 1913, the American Judicature Society has pioneered reform in such areas as selection of judges and unified court systems.

As previously mentioned, the American Bar Association issued the Minimum Standards of Judicial Administration in 1938 - standards which are currently being revised and re-thought by an ABA committee headed by Judge Carl McGowan of the United States Court of Appeals of the District of Columbia, with a staff headed by Yale Law Professor, Geoffrey Hazard.

What is a standard? Little more than a norm for behavior: an average endorsed by some group. Arthur T. Vanderbilt was proud to note that the standards of judicial administration were minimums and of practical effect.

> "Note well the words minimum and practical. The reports of the seven committees which produced the standards make no attempt to scale the heights of perfection or to reach out for the idealistic. They are essentially utilitarian in their objectives. They were prepared with the realistic consciousness of very genuine difficulties involved in inducing our judges and lawyers to change any of their working habits in the field of judicial procedure. Hence, the recommendations of the seven committees are limited in number to those matters which are absolutely essential if the administration of justice in America is to be responsive to the needs of our time. The recommendations are confined to matters of fundamental importance; I might almost say rudimentary importance. They are matters in which all who have taken the time to reflect are in substantial agreement. Some day, I hope in the not too distant future, a more enlightened generation will look back at these reports and wonder that it should have been necessary to write them."

Despite the emphasis on elementary standards which were the product of a consensus, Arthur T. Vanderbilt was to spend the next ten years compiling a monumental volume which described those states which had adopted the principles enunciated in those standards. Published in 1949, that volume surveyed the 48 states for all of the standards. Vanderbilt was to lament how few states had at that late time adopted even these minimum standards.

It is interesting to note that the Criminal Justice Standards project was to drop "minimum" from its name. That project was consciously looking beyond the least number of rights which should be granted. It preferred to think of itself as setting high goals which might not be the general practice in the states.

This discussion of terminology raises an interesting question: whether existing law and practices should be codified, or should standards reach beyond the standard and chart new heights. If they do reach beyond, what empirical evidence can be used to support them? How can they be merchandised or even enforced? Some of these same problems exist for court studies. Should they aim for the middle ground and what can be sold immediately, or should they give something to aim for the years to come?

* * *

Why have there been so many standards produced by so many projects and organizations? There may be several reasons. As a society we do some periodic re-thinking to meet changing conditions. Or perhaps it is our conceptions of the world and its priorities which change, as well as the world itself. The poor we have always had with us, but only recently has the provision for counsel for the indigent defendant or for the poor civil complainant become an important issue.

Then, too, we react so often only to a crisis: twenty years ago, the crisis was in the delay of civil litigation; now, criminal cases receive priority in procedure and resources.

Other changes come from the results of studies of courts and their related problems.

Perhaps the major reason that there have been so many standards is that they've failed so widely, or, at least, failed to be automatically adopted. Change comes hard for courts and those who work with them.

Courts are political institutions. They are born of a constitution, which, to cite James Madison in the Federalist Papers, preserves our liberties by pitting ambition against ambition. Legislator is pitted against the Executive, who in turn is pitted against the Judge. The federal government is pitted against the state government.

Judges are hopefully created independent, whether elected or appointed. Their mandate comes from the people, and not from some group of reformers. Too often, this necessary independence has been confused with an unnecessary lack of accountability and lack of responsibility.

Lawyers look to past cases, not future planning, for guidance. They are trained as litigants to fight out individual cases at issue, not as trend analysts. The anecdote is the common coin of intellectual exchange, not analysis of aggregate data.

Other sources of resistance to change are the grim political realities of party politics, of power and grass-roots support for local courts.

Finally, each jurisdiction is unique by tradition, geography, history, resources, politics, personalities. National standards may not be the answer for each jurisdiction. A uniform standard may actually lower a particularly innovative situation. The states are laboratories; there should be some grounds for experimentation. For example, in the area of juvenile justice, the Supreme Court a few years ago refused to adopt jury trials as a constitutional mandate for juvenile courts, but noted that ten states provide for jury trials for juveniles either by constitution or statute. We need to study those ten states to determine what effect a jury trial has on the juvenile proceeding, whether it does turn it into the adversary proceeding, the source of delay that the majority of the Supreme Court suggested, or whether it can be accomodated into the fabric of the juvenile court.

What standards are relevant to court studies? The ABA Standards of Judicial Administration are clearly relevant. However, several of the volumes of the ABA Criminal Justice Standards, such as the Urban Police Function, seem less immediately related to the traditional court study. But, one trend is an increasing understanding of the interdependency of the various organizations and parts of the system which

process civil litigation, and criminal defendants. Studies of criminal courts have increasingly looked not only to the judge and the trial of the case, but the role of the defense counsel, prosecutor, pre-negotiation, police practices, pre-trial diversion, and corrections. On the civil side, problems such as court delay, once seen as procedural, are not often put in a broader context by the growth of no-fault insurance, or arbitration of commercial disputes and labor relations.

One of the first tasks during the planning phase of the Juvenile Justice Standards Project, was the creation of a flow-chart which gave some sense to the different stages in processing and their relative importance. It emphasized, among other things, the role of police screening, the importance of pre-trial detention as an almost self-contained sub-system, and the various points which call for judicial review of administrative action. In the course of this flow-chart project, it soon became apparent that it was virtually impossible to compare systems in different jurisdictions, because of different processing variables, inadequate records and definitions, and other problems. Consideration of such problems as the lack of uniformity and inadequate data leads to the other side of my subject, the need and value of court studies and their relation to national standards.

* * *

What is a court study? There are at least two responses. One is the study done of a system for a particular client, generally with a mind toward specific recommendations and implementation. But they may be regarded as studies done in a court. These studies of different functions - a clerk's office, prosecutor, or defense counsel - are equally important.

Standards are not self-executing. There is a need to fit the general standards to the local condition. There is also a need to relate the standards in court studies, and to get this feedback to the groups and to the process that formulates the studies.

Other papers in this conference have detailed at length the court study process, but the extent to which a court study is a ritual should be emphasized. In some instances, the local people could have done the job, but they often lack the authority, or their solutions might seem self-seeking. Some outside body is asked for an independent appraisal and its seal of approval.

Also, there is a need to generate a momentum for reform, to involve the local officials before, during, and after the study. The court study is an educational process as well as a research process. Some of the criticism of court studies by academics fails to take into account the important educational process that is inherent in the court study process.

Also, many of the standards promulgated in the past have been irrelevant to the day-to-day problems of running a court. After the basic questions of structure and organization have been answered or avoided, there remain a series of administrative questions about paper-flow, information systems, workload, roles of non-judicial personnel, facilities planning, and a host of other problems which the courts are now for the first time beginning to realize that they have. In many of these areas, the word standard sounds rather formal; terms such as guidelines or suggestions might be more appropriate.

Since court studies are created for the limited objective of reforming a specific jurisdiction, it is not surprising that they have a limited utility.

Court studies unfortunately contribute little to a more general knowledge of courts and standards. They are extremely costly. The thousands of dollars that go into gaining the court's acceptance may be well spent in terms of implementation. But, judging from the end product, what it tells us about the system and as a contribution for the creation of standards, they seem questionable expenditures.

Some court studies are of uneven quality. They have been done by a variety of groups with a variety of results. They are done for a particular client, for a particular problem, at a particular time. Thus, court studies have a limited use for

generalization. Reading court studies is a little like reading Russian novels - they contain interesting points, but you have a feeling it has been said better, and in a briefer form, somewhere else.

Court studies are inappropriate for publication in scholarly journals. They quickly become a fugitive literature, available, if at all, in special collections such as the IJA library.

A related problem is that some clients consider them confidential, although produced by public funds.

Ideally, people doing court studies should occasionally take time to summarize and record in a more appropriate fashion what they have learned from their real world experience. But they rarely do, perhaps because of the press of time, or perhaps because of the lack of a scholarly orientation. Whatever the reason, it is a considerable loss.

* * *

This essay concludes with a discussion of recent trends in the creation of standards. In relation to court studies, it suggests that these studies and other empirical research play an increasing role in the formulation of standards, hopefully on a continuing basis.

Where do standards come from? Based upon what I have previously said, the answer could simply be that they come

from organizations and commissions. But, that is a bit like saying that the stork brought them: a convenient but unsatisfying response.

Standards are almost, by definition, a group product. They claim special power precisely because they are a statement of collective wisdom. The law professor's scholarly article, the chief justice's state of the judiciary message, the lawyer's brief - each may contain important summaries or new ideas. But they remain largely the thoughts of an individual, no matter how powerful or respected he may be.

The previous litany of standards is generally produced by variations on a common model. The tribal elders convene, deliberate, and decide on a policy. The scribe records and articulates the results of the proceedings. A report or consensus is issued. The elders disband. The tribe goes about its business as before.

The ritual and incantation of familiar phrases are necessary because social change is a relatively slow process. There is small comfort in the comment by the physicist Max Planck that new ideas are never accepted in science because they have been proven correct. Rather a new generation of scientists accepts these ideas because that generation has been trained to think in the new terms. If acceptance is

slow in science, where so many basics are demonstrable, what of court reform, where empirical proof is even more difficult to develop?

Thanks to the efforts of the Institute for Court Management and other organizations, a generation of administrators has been trained. Thanks to other prophets, the next generation of judges and lawyers are being trained to accept the administrators.

There has been a trend in developing standards to involve more people, to take more time in deliberation, to use more empirical data and reality testing to determine the validity of the standards, to emphasize implementation, and to suggest evaluation and feedback processes.

The increasing number and diversity of background of the people involved in the standards process can be demonstrated by looking at the three standard processes mentioned earlier. The 1937-38 Standards for Judicial Administration were produced by the Section of Judicial Administration of the ABA. When it came time to do the Criminal Justice Standards, it was thought wise not only to include the Judicial Administration, but also the Criminal Law Section, of the ABA.

In the Juvenile Justice Standards Project, representatives have come not only from Judicial Administration and

Criminal Law Sections, but also the Family Law, and Individual Rights and Responsibilities Sections. But even the ABA, despite its broad membership, was seen as being only partially representative. Many organizations and individuals with a diversity of backgrounds have been included. Indeed, half of the joint IJA-ABA Juvenile Justice Standards Commission, the governing body of the organization, is composed of non-lawyers. It also contains such backgrounds as educators, psychologists, sociologists, police administrators, and corrections officials.

By involving such a broad variety of people in the standard setting process, the standard's effort becomes a change agent itself. By involving persons who had formerly been practitioners, they have changed careers and helped create a generation of planners, researchers, and administrators.

The standard setting processes have been taking a longer time for gestation. Partly this is a corollary of broader participation. If it is going to involve more people, it takes a longer time. The Criminal Justice Standards gave a wide dissemination to tentative drafts. They were issued as each of the 17 volumes was produced, distributed, and could be criticized and commented on by

judge, bar, police, and corrections officials.

There has been an attempt to build in some kind of feedback process. If a standard is going to be authoritative, a fairly wide number of people should be consulted.

A standards project should have time for initial planning. Such a project needs to explore and build upon the past. There is a problem, however, in taking too long a time. The ALI pre-arraignment code and history might be noted at this point: the unlucky draftsmen of that code had gone through numerous drafts over the last decade. Just when the code seemed ready, the Supreme Court came down with another case which sent the draftsmen back to the drawing board.

Probably the most significant factor is the growing use of empirical data. We have only been making systematic studies of the justice process for the last 20 years. This reality testing has been very helpful. The Criminal Justice Standards Project was able to build on the almost 10 year effort that had gone on before in the American Bar Foundation's Criminal Justice Project, which did basic studies of the criminal justice process. For example, Professor Wayne LaFave, Dean of the University of Illinois Law School, did a classic study for the American Bar Association on arrest procedures,

and was able to serve as reporter for the Standards Project for several related volumes.

In the IJA-ABA Juvenile Justice Standards Project, we have been summarizing, to the best of our ability, what has gone on in the past in a variety of areas, particularly in social science and in the law. For example, Edwin Schur, Chairman of the Sociology Department at New York University, has just published a book under our sponsorship called Radical Non-Intervention: Re-thinking the Juvenile Delinquency Problem. Schur's book reviews the various theories of juvenile delinquency prevention and treatment, and explains, in terms for laymen, what the many studies in this area mean in terms of policy formulation. Similarly, another sociologist, Anne Mahoney, is writing a monograph for the project on labeling theory - the impact of court processing on the individual himself, on how society treats him, and on recidivism.

There is a danger in doing too much research. The tail may start to wag the dog, and you get lost in a morass of research projects without ever writing any standards.

The Vanderbilt study, published in 1949, reviewed the history of which states and jurisdictions had adopted, modified, or rejected the standards. The American Bar Association has mounted a massive implementation effort for the Criminal Justice Standards, and has been conducting some rudimentary

court studies by preparing comparative tables in approximately half the jurisdictions, comparing the standards with the law in the state to determine what needs to be done.

Finally, standards projects are beginning to build in evaluation or feedback. Most of the earlier studies and pronunciations of standards have been written on an ad hoc basis with little thought to follow-up. In the federal jurisdiction, the creation of the Federal Judicial Center and of the new Federal Circuit Court Executive positions provide the basis for a continuing evaluation. The Institute of Judicial Administration is undertaking an ambitious project to document and evaluate at least some of the principles contained in the Criminal Justice Standards.

Standards projects in the future may be an on-going process - a process which will benefit from court studies and from other empirical work on a systematic basis, instead of simply calling the elders together and reciting some of the traditional words.

PAUL NEJELSKI

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COURT STUDIES: THE JUDICIAL PERSPECTIVE

by

Justice John V. Corrigan

"Friends, conferees, lend me your ears." Why open a talk on Court Studies -- the Judicial Perspective in this manner? The Shakespearean-like introduction is used because as I thought of some remarks to make, a passage from Shakespeare comes to mind. It goes something like: "I am no orator, as Brutus is, but as you know me all, a plain blunt man." I don't intend to pontificate today, but as a plain blunt man simply "tell it like it is," and in the process invite your interruptions, questions, and comments. I am not going to stand behind judicial privilege. What will be said will not be new, but it does represent the views of one who has lived with court problems, has worked for change, and happily has witnessed the fruits of a more enlightened approach toward the improvement of the administration of justice.

The population explosion of recent years alone, not to mention the enlargement of individual rights concepts, has brought with it a litigation explosion, which is threatening to overwhelm existing legal institutions and cripple the business of the courts. Four specific fields of increased litigation are: 1) Criminal cases -- the

increase in felonies in the past fifteen years has at least tripled, if not quadrupled, the criminal caseload, with trials of serious crimes, particularly homicides, taking more and more time. 2) Motor vehicle cases -- a huge volume of litigation continues to rise out of the operation of motor vehicles. Highway deaths and accidents continue to increase, and the no-fault legislation offers no immediate relief. 3) Domestic Relations -- when we began keeping statistics in our court there was <u>one</u> divorce action filed for every <u>thirty-seven</u> marriage license applications. Last year, there were approximately 10,000 divorces filed while the number of marriage licenses processed was about 16,000. 4) Juvenile Court cases continue to mount ever upward.

In addition, litigation is proliferating in the field of taxation, of employment, of individual privacy, of environmental complaints, and of land appropriation, not to mention corresponding increases in other forms of lawsuits. To say that this engulfing tidal wave of new cases has swamped the system, not in the least respect geared to meet it, would be a gross understatement.

The results are sad to relate -- the unconscionable delays; the inhuman brutalization of young men in disgraceful jails; the frustrating efforts at court operation in totally inadequate facilities; the remaining horse-and-buggy management techniques; and, now, as the plight of the courts has

become obvious, the piecemeal attempts to make adjustments in court operations that require a total overhaul.

Our focus must be on finding ways and means to remove the administrative and procedural impediments that have created the increasing caseloads for the judiciary. I, for one, wholeheartedly agree with ABA President Robert Meserve when he characterized the problem of "slow-motion justice" as a national disgrace, and pointed out that the courts are undermanned and in trouble. He added, criminal justice is too slow and too erratic -- both creating a serious public credibility problem for the legal and judicial systems.

One need not dwell on descriptions of the overall problem before such a knowledgeable group. We all recognize the necessity for the development and publication of a monograph on court studies. I have been impressed with the discussions, and I will leave with a renewed faith in the basic system, and hope that our all too brief time here will result in a meaningful monograph to be drawn together by the staff of the Institute for Court Management.

Maybe it is because of a more leisurely pace I've been accustomed to on the bench for over twenty years, but ideas have been coming so fast these two days that the whole concept of the studies and standards remain fairly broad and general terms at this point.

The role of the conference and the studies we have been talking about are limited to the organization and operation of current court systems, rather than discussing genuine efforts to drastically revise the systems with bold changes.

To me, problems common to the multi-judge courts fall into three areas.

1. Jurisdictional defects and the need for court unification which we have not dealt with at all.
2. Organizational problems accompanying the heavy caseloads (e.g., devising or revising machinery for handling the docket and the assignment of cases, recruitment and supervision of personnel, jury utilization, control of funds and records, etc.)
3. The use of specialized personnel to relieve the judge's workload (e.g., the use of para-professionals, specialists in certain types of cases, bail bond investigators, citizen volunteers, etc.)

Across the country as judges, bar associations, lawyers, and aroused citizens have awakened to these needs, the real concern has been with the immediate welfare of local courts,

rather than with the pursuit of a long-range research problem, concern only with making local changes for the betterment of each local court system.

The climate is right-now!

The rapid development of research in judicial administration, led by people in this room who have blazed the trail, has gone in the direction of examining court statistics, particular court operations, and specific problems needing immediate remedial attention, and despite discussions about national standards, that is still the direction and basic concern of the organizations represented here. Courts need your assistance and guidance to handle current problems. Please note I use the words "assistance" and "guidance," rather than direction. Judges and personnel within the system, and each of the sub-systems, have their pride, and are turned off by outside direction. You must key on persons who evidence a real interest in improvement, and can, in turn, sell their co-workers. It is vital that the court personnel work with the study team because of the help they can offer, and in order to relieve their fears.

Studiously avoid the use of the word "study". Studies we don't need. In Cleveland, a pair of very capable men, Pound and Frankfurther, fifty years ago completed an excellent study which has never been implemented. Courts have been studied and

studied. We need action-oriented programs that identify the problems and needs and which are capable of implementation.

Essential to the success of any program is the knowledge of the local environment, because any changes proposed can only be achieved through political action. As was suggested earlier, don't overlook the effect of the change on all the court personnel, bearing in mind that even a low level employee can sabotage part of the program. I liked two expressions Joe Ebersole used -- "One of the techniques of change is to remember artists, not technicians, are needed," and "Court study -- is an exercise in the art of the feasible."

One point I would like to emphasize is the necessity for community involvement to insure the success of implementation. Let the public know of the efforts being made. This involvement, in a limited way, should be from the very outset of the study, and should include local law professors, lawyers, the clerk, the prosecutor.

The management team, the consultants, should not come on too strongly and try to overwhelm all within the sound of their voices of their expertise, brilliant track record, and complete knowledge of all that is to be known about the courts and the whole system.

Ted Rubin and Don Fuller, yesterday, used the analogy of the doctor-patient relationship. Some courts will have made a fairly accurate diagnosis of their condition, some

will reveal certain symptoms, and some may simply say they're sick and hurt all over. I think there must be a thorough examination of the patient before a diagnosis is made. The problems and needs must be identified before the prescription is written, and the patient must evidence some interest in following the doctor's orders and advice.

And remember my favorite quote by Justice Arthur T. Vanderbilt --- "Court reform is not for the short-winded."

JOHN V. CORRIGAN

Presently Justice Corrigan is a member of the Ohio Court of Appeals, 8th Appellate District. Previously, he served as presiding Judge and Administrative Judge of the General Division of the Cuyahoga County (Cleveland) Court of Common Pleas. Justice Corrigan received an A.B. degree from John Carroll University in 1943 and an LL.B. degree from Western Reserve University Law School in 1948.

COMPARATIVE COURT STUDIES

by

Ted Rubin

"Salt Lake City led in filing 47 percent of referred cases. Atlanta filed 20 percent. Seattle filed but 14 percent.

"Further data analysis reveals that Salt Lake City filed 58 percent of its law violations and 36 percent of juvenile only referrals. Atlanta filed 28 percent of all violations and 13 percent of juvenile only referrals. Seattle filed nine percent of law violations and 20 percent of juvenile only referrals. Eighteen of 19 ungovernable offenses were filed." [1]

"Denver, which screens early and significantly, has lower median times to disposition than Cleveland and Houston...

"While Denver expends substantial effort prior to the preliminary hearing, Houston and Cleveland expend most of their time in the upper court... The result is that guilty pleas are entered earlier in Denver, while both Houston and Cleveland experience a significant number of guilty pleas during the period, 9-12 months."[2]

"The findings concerning the differences in sentences among the various judges (of the Philadelphia Court of Quarter Sessions) are not clear in their implications. Although they reveal wide disparities, they show also an impressive degree of uniformity... Perhaps of even greater significance is the fact that the disparities do not occur uniformly in cases at all levels of seriousness but rather follow a distinctive pattern. The tendency toward consistency as cases approach the poles of pettiness or seriousness indicates that only in cases of intermediate gravity could individual differences in legal philosophy and other factors less susceptible to analysis be a prominent factor in producing the disparities. It also suggests that the judges need more background information on convicted offenders or supplemental standards for sentencing, particularly in cases that are clearly neither mild nor grave."[3]

"In a recent field study of two police forces -- one putting particularly great emphasis on education and training, merit promotions, centralized control; the second relying more heavily on organization by precinct, seniority, on-the-job experience -- significant differences were found between the two in handling delinquents. In the first city, the one with the more professionalized force, rates of both processing (police contact not amounting to arrest but requiring the police officer to make an official record) and arrest (formal police action against the juvenile either by ordering him to appear before a court official or by taking him in custody) were more than 50 percent higher than those in the second city. In other words, meetings between policemen and juveniles had formal, official recorded consequences much more frequently in the first city, with its more highly trained and impersonal police force, than in the second."[4]

Explanatory comment should be made at the outset of the author's participating in two comparative court studies conducted by the Institute for Court Management in recent years: 1) The three city felony processing study, responsible for the Cleveland unit; 2) the three city juvenile court study, as principal investigator.

It appears clear that assessment, if not research, will be an increasingly important factor to American organizations in forthcoming years. While the honeymoon of primitive assessment, based on myth, superstition, and success fantasy, is far from being fully and totally divorced from American public organizations, policy makers are moving toward more sophisticated questions like "how does this system and its components really function; what does objective measurement show as to its weaknesses and its strengths; how can its deficiencies be remedied; how can our money be better spent to meet our objectives?"

Our social institutions are in basic distress.

Along another track, American universities have been grinding out more professionals trained in research methodologies. Those who pay the public tax bill, and their representatives in the legislative, executive, and judicial branches of government, are pressuring or being pressured into demanding

or furnishing more probing evaluation of the state of the courts, and of the status of other public instruments.

From another direction, we have been developing standards, whether in an industry where an average worker is expected to produce "X" number of units per day, or in the correctional field where for many years there was an unassessed standard that 50 cases were as many as any probation officer ought to carry. While standards in the industrial field were often based on on-site analysis by industrial psychologists and other personnel, standards for justice system administration were often based on the somewhat parochial and only superficially examined insights of certain of our most highly recognized leaders.

For example, the San Francisco Project: A Study of Federal Probation and Parole, began, in 1964, a broad scale probation and parole assessment which, among other objectives, sought to measure the relative effectiveness of caseload units of 25 (intensive caseload), 50 (ideal caseload), 100 (normal caseload), and a still larger caseload (minimum supervision caseload which required no face-to-face reporting but only a written monthly report to the probation office). The research staff, in searching out the origin of the 50 caseload standard, traced this number to a conference presentation made by a correctional leader in 1922. Parenthetically, it should be stated that in terms of a measure of recidivism, the minimum

supervision caseload performed equally as well as the normal caseload and the ideal caseload, and that the smallest caseload (intensive) registered the highest revocation rate.

It would seem to be a safe generalization to suggest that the standards for judicial administration, correctional administration, criminal justice, and juvenile justice, which have been developing nationally during the past four or five years, are largely set forth without adequate research support.

At a recent meeting of the reporters for the Institute of Judicial Administration - American Bar Association, Joint Commission on Juvenile Justice Standards, reporter after reporter, in explicating the areas and issues on which he was about to develop standards, complained, "This is what I believe the standards should be, but I don't have any data to support it; if anyone has data, will they please send it to me."

It is also a safe generalization to suggest that any standard requires on-going evaluation and reassessment. Standards should not be set in concrete.

It is a further postulate that studies of court systems and related agencies largely measure a local practice against

national standards, or what might be more accurately termed national directions, or "the more progressive conventional wisdom."

Further, researchers are consciously or unconsciously making comparisons in any study they may perform: not only comparisons with their perception of national standards or directions, but also comparisons with related studies or knowledge they have performed or obtained in the past.

Comparative studies of justice system agencies, on the other hand, utilize these national standards or directions as measures, but hold the extra advantage of comparing practices or processes between systems.

Generally speaking, research conclusions are more valid when based upon more cases. We would prefer 500 cases to 100 cases, or 100 cases to 10 cases.

Similarly, a researcher would prefer to set forth his analysis and conclusions based on 500 cases in each of three courts, than on 500 cases in one court.

As an illustration, it had long been a guideline, if not a standard, that judges of juvenile jurisdiction should have long term assignment to this court, with minimum terms of four to six years. More recently, criticism of juvenile court shortcomings have included long term judge assignment as one of the problems... that juvenile courts have too often

become the personification of the judges who overly dominate their probation staffs, court policies, and decision-making. A considerable number of juvenile justice observers now suggest that the judge should be assigned for a renewable term of one year.

The King County Superior Court, Seattle, for the past several years, has assigned Superior Court judges to sit in its juvenile division for three month terms each year. This author sought to provide Seattle judges with one measure of a possible counter-effectiveness of this assignment system: how many different judges and referees did children in this court face during the course of a year, and did this number not compare disadvantageously with juvenile experiences in Atlanta or Salt Lake City. The first hundred youth appearing before these three courts during 1971, were traced for a year in relation to the judicial hearing officer who considered their case.

Analysis first showed that only 39 of 100 Seattle children experienced more than one hearing during the year, while 95 of 100 Atlanta children, and 90 of 100 Salt Lake City children experienced more than one hearing.

Of those children experiencing more than one hearing a year, the Seattle children experienced 1.74 different

judges or referees, the Atlanta children 1.95, and the Salt Lake City children 1.63.

Another research tool used in the study of these three courts revealed that among the three courts, Seattle most frequently relied upon an informal rather than a formal processing of complaints. What was occuring was that the bulk of the referred Seattle children experienced no formal hearing, while many experienced one hearing and were then dismissed or remanded back to informal processes. While this researcher was critical that the court entrusted too much of its perogative to probation staff, and that too few formal hearings were conducted, the author concluded, "This research study does not indicate that the present system of judicial assignment to this juvenile court should be discontinued."

If this had been a single court study, the judges could have been advised that approximately three out of five children experienced only one judge or referee during the course of a year, and that the remaining children experienced 1.74 different judges and referees per annum. We might have concluded that this does not sound excessive. But upon comparison against two other courts, the researcher's hypothesis that three month assignment of judges was too short, was not proven.

One still must search out other variables to more fully explain the differences between courts.

Another research measure, seeking, in part, to comparatively measure the extent to which youngsters were retained in the juvenile detention faciltiy (pre-trial), revealed that Atlanta accepted almost all police referrals into its detention center, but that Seattle and Salt Lake City, which utilized probation screening staff 18 or more hours a day, rejected a substantial percentage of police detention requests. Since Atlanta over-detained, and had only very limited screening, these children were brought the next day before a referee to determine whether they court be released to their parents. Further, youngsters were subsequently arraigned not before the referee, but before a judge, and the same judge would remain with the case during its life in the court. Accordingly, Atlanta children faced the largest number of different hearing officers.

A comparative study, like the study of a single court or single agency, is only as good as its research methods and skills, and the researcher's knowledge and perceptions. With either type study, it is desirable that officials of the organizations studied be permitted to respond to the data analysis, and offer their explanations of the findings

prior to the final report and recommendations.

Comparative research, even more than solo research, requires careful evaluation of findings. A court compared disadvantageously, upon only superficial assessment, might experience more serious public consequences even though it considers it can justify its practices.

Thus, in the three city juvenile court study, Atlanta experienced the lowest recidivism rate, and Salt Lake City the highest. In these days of serious public concern for crime and delinquency, low recidivism, generally, is considered good, high recidivism, bad.

Atlanta and Salt Lake City showed different dispositional patterns by judges. Most of Atlanta's recidivists were committed to state institutions upon first reoffense. Salt Lake City, with a strong commitment to community-based rehabilitation, and also with what may be termed an excessive concern for juvenile status offenses such as smoking, alcohol use, runaway, and incorrigibility, preferred, upon reoffense, to continue its rehabilitative responsibility to youth in the community. While the public might stand in severe judgment of Salt Lake City's continuously high recidivism, we should also be concerned that Atlanta may have been too harsh: there was an eight month median time between the first offense and

first reoffense, a very long period without subsequent apprehension, and yet most of its first recidivists were institutionalized.

Other results, however, may be more clearly good or more clearly bad. As to crimes, there is a consensus that it is good to speed up criminal processing, and to narrow the time space between apprehension and disposition. Thus, in the three city felony study, Denver disposed of cases far quicker than Houston or Cleveland. Among the critical variables were: Denver has a strong public defense system which appears early in the criminal process; Denver proceeds, generally, by information rather than by grand jury indictment. Denver uses a rather vigorous and early preliminary hearing.

By contrast, Cleveland and Houston, at the time of the study, lacked an adequate public defense system, and proceeded by a dilatory grand jury indictment approach which was structured to follow a brief and generally uncontested preliminary hearing, not infrequently waived. Denver, then, had more cases dismissed early, and more cases reduced to misdemeanor and processed quickly, thus reducing the deadtime in jail for those awaiting court disposition. Administrative judges and court administrators in Cleveland and Houston were urged to implement a number of elements from the Denver system to improve criminal case processing.

However, one system cannot simply adopt or even adapt another city's practices without a more critically addressed inquiry into the cultural and organizational differences between the cities and their justice systems.

The Cleveland court could not instantly and totally transpose the Denver system to the Midwest even if it wished to. To abolish routine grand jury indictments requires, for Ohio, a constitutional amendment. Another approach, not fully Denver's, would be necessary to improve caseflow processes until such a constitutional amendment might be approved.

Problems in the Performance of Comparative Court Studies

Certain comparative research is performed essentially as an aid to the acquisition of fundamental knowledge and understanding. The two city police organization and practices study was seemingly directed toward this objective.

Other comparative studies are motivated both by a quest to increase knowledge and understanding, but also to facilitate change and improvement in the individual agencies studied. The Institute for Court Management felony and juvenile studies aimed at this latter joint objective.

It is believed that one of the problems in securing implementation for these studies, particularly the felony study, was that, in essence, these courts were solicited for these studies. The courts did not initiate a request

for study. In reality, we asked friendly courts for the opportunity to study certain practices and processes in their court and to compare these with other courts, suggesting this could be helpful to them.

Court change through study probably occurs most successfully under the following circumstances: a court contracts for a study by an organization whose biases are rather similar to the court sponsor, and with the expectation that the study results can then be used by the administrative judge or court administrator to document and support the changes he wanted in the first place.

A court's own motivation for change is preferable to the solicitation from an outside group that it would be pleased to suggest changes to the court. A person with a drinking problem moves his self-perception from that of being a drunk to that of being an alcholic when he finally makes a voluntary decision to seek help, rather than when others try to impose change on him from the outside.

The three juvenile courts, though solicited, were receptive to change from the outset.

The Atlanta judge wrote, in evaluation of the study, that no changes had been effected which would not have occurred without the study, but many study recommendations (which tallied with court thinking) were being implemented.

He cited the primary benefit of the study as the "basis for informing the community of the needs and problems of the court from an objective and analytical source." The court's annual report featured the study recommendations and what had been done toward implementation of each of these.

The presiding judge in Salt Lake City also stated, that while numerous study recommendations were in the process of implementation, no changes were solely occasioned by the study.

This court did receive community criticism because it compared disadvantageously with Atlanta and Seattle on the recidivism study. "We in response have taken some contradiction with the study and have made further effort to explain the study as not being representative of the problem as we see it... (we were) somewhat defensive but nonetheless determined to find more suitable means of presenting recidivism data."

The study's comparisons found most useful to this court were "management comparisons... (which) prompted us to look even closer to our management styles and has encouraged the pursuit of more meaningful management in the court." Further, "the dispositional comparisons have given rise to a proposed study of dispositional techniques and the development of other dispositional resources."

A problem with the performance of a comparative study is the obvious one of logistics. Instead of one setting in which to understand the climate and processes and to examine the data, a comparative study utilizes more than one forum.

The felony study was performed by three different researchers who employed three different data collectors in the three cities. One researcher was not based in the city he researched. The team leader performed the research in one city, and coordinated the study through regular meetings, approximately each six weeks, of the primary researchers and consultants. But this was more a coordinated study than a directed study. Each researcher had his own agenda as well as the coordinated agenda. Each had his own perceptions and values. Each had a different system to comprehend. Each wrote a unitary report following his own table of contents. The team leader's added, brief treatise sought to provide linking, comparative commentary. But the study was really three studies rather than one study. The same processes were studied separately in three cities. No report organically compares the cities. Retrospectively, a better product would have occurred had there been a project director utilizing research associates under his direction, with the director writing or coordinating the writing of a single, integrated report.

On the other hand, the juvenile court study was performed by one person rather than three. A researcher, based in Denver, studied juvenile courts in Atlanta, Salt Lake City, and Seattle, by way of approximately eight visits to each city over a 9-10 month period. The lengthy report actively compares each process studied. It is one report, written by one person. It is a preferable model. It is the recommended model.

Further, the effectiveness of this comparative study would have been enhanced had funds permitted a conference of the three courts, as well as a supplementary phase to assist in the implementation of acceptable recommendations for change.

It is important to maintain a presence in the system being studied. Relatively frequent visits to the court are necessary for establishing credibility and maintaining the court's identity with the researcher, and this requires more than a quick in-and-out observation. And yet there are real personal pressures on the researcher in maintaining a presence in three cities while failing to maintain a sufficient presence with his own family.

Nonetheless, a single researcher, or, alternatively, a single project director, is strongly recommended as the preferable approach. To do this, however, may require some

narrowing of the scope of the study in order to alleviate his travel requirements.

But a presence in each court is also important for accurate observation and for testing and retesting one's observations, and one's insights into practices. For example, significant changes were made in the functions of the prosecution and public defense offices in Seattle during the course of the study. These could be discerned through the regular visits to Seattle and the regular meetings with the representatives of these offices during the course of the study. Other changes, not noted during visits, came to light when drafts of the reports were submitted to various offices for correction and comment prior to final publication.

A complexification, rather than a disadvantage to comparative studies, is that the nuts and bolts, and nuances of several or more systems must be understood along with the statutory references and differences, institutional and community differences, jurisdictional and cultural differences. Further, instead of one series of data, it is more than one, and the similarities and differences between systems must be calculated and explained.

Writing a comparative report involves extra requirements for accuracy and sensitivity. While follow-up inquiries to the three juvenile courts failed to reveal that unfavorable

comparisons had caused them severe difficulties with the public, nonetheless, the potential for that does exist. Yet when released by these courts to the press, the comparative analysis was largely ignored in favor of promulgating criticisms of the local court. The press largely summarized that final section of the study which related to recommendations for each local court.

One other difficulty in performing comparative studies requires emphasis. Not all courts, not all court related agencies, are willing to be compared. While this author did not experience difficulty in obtaining courts willing to participate, this is not always the case. This author is aware of judges in one Rocky Mountain state who refused to submit court statistics to state and federal juvenile justice agencies without an express agreement that comparisons between courts would not be published. Further, certain state parole agencies have been unwilling to submit data to one research program without a similar guaranty.

The Future of Comparative Studies

Comparative system studies can be far more valuable than the study of an individual system, and at this moment, in the formative period of court reform, where we know so little except that what we are doing is not really very good, administrative

judges and court administrators should be encouraged to participate in comparative studies, as well as research into their own systems. They need to know, not only much more about their own systems, and about other systems, but how their system compares with other systems. There are clear values to comparative studies of calendar, budget, personnel, and information management systems, of pretrial release and diversion programs, of court organization and administration, of sentencing practices and recidivism trends, as to the use of judge time, of prosecution and defense counsel functions and organization, of appellate court caseflow and organization, of judicial selection and retention systems, of a whole host of additional facets of the administration of justice.

The growth of state court systems and the increased number of state court administrators suggests that these organizations and personnel should be interested and encouraged to understand the value of comparative studies of courts within their own state system. And such studies should be more easily funded than those which cross state lines.

Practicably speaking, the study of an individual court will probably be the primary model for future court research. And yet it is vital for both national knowledge and local understanding that we cross system lines to develop comparative research.

A study model, with a limited comparative feature, should merit special consideration. It may be the most practical approach to improving our research. A court requests a study. It is dissatisfied with a certain practice. It is aware that a court in another state has a highly reputed alternative practice. The study proposal calls on the researcher to visit the other court, and to analyze and describe that practice. The administrative judge and/or court administrator may also visit the other court and help assess the transferability of that practice to their own court. The researcher also describes, in terms of the contractor court, the extent to which this approach may be applicable, and what changes would be needed to effectuate the transfer of this procedure.

The limited availability of LEAA discretionary funds, and the promise of law enforcement revenue sharing, would seem to reduce the likelihood of extended interstate court system studies. Further, the cost of a several systems study would seem to be more than two or three times the cost of single studies of two or three different courts, since there are additional transportation, subsistence and coordinating expenses. Since multi-system data is not, generally, inherently comparable, and not always reliable, data sampling methods should be undertaken in each system studied, and this increases

the study cost and lengthens the time required for the study. In time, improved information systems will alleviate, but not eliminate, this problem. Differences in processes and in what we are really comparing will continue to be real.

Foundations, national legal organizations, and other national agencies, governmental and private, will need to be looked to for future funding. Their interest will generally be that of greater knowledge and of the policy implications for the nation based on the findings of the comparative studies.

But at the local and state level, we have the difficult task of orienting and strengthening the perception of court administrative and planning agency officials that they can improve their systems better through comparison with others, and that they should initiate cross-systems studies with other states and communities, as well as within their state.

FOOTNOTES

1. Ted Rubin, Three Juvenile Courts: A Comparative Study, Institute for Court Management, 1972, p. 307.
2. Don Fuller, A Comparison of Felony Processing in Cleveland, Denver and Houston, Institute for Court Management, 1971, p. 14.
3. Edward Green, Sentencing Practices of Criminal Court Judges, The American Journal of Correction, July - August, 1960, p. 35.
4. James W. Wilson, as quoted in the Challenge of Crime in a Free Society, the President's Commission on Law Enforcement and Administration of Justice, 1967, p. 78.

TED RUBIN

Since 1971, Mr. Rubin has been the Director of Juvenile Justice for the Institute for Court Management. He also conducts a wide variety of court and justice agency studies. He was a judge of the Denver Juvenile Court from 1965-1971 and was a consultant to the President's Commission on Law Enforcement and Administration of Justice and the Joint Commission on Correctional Manpower and Training. He was a lawyer in private practice in Denver 1957-1965 and served as a member of the Colorado legislature. Mr. Rubin obtained his A.B. degree from Pennsylvania State University, his M.A. in Social Service Administration from Case Western Reserve University and his law degree from De Paul University.

APPENDIX

PROGRAM FOR THE CONFERENCE ON COURT STUDIES

AND

LIST OF PARTICIPANTS

CONFERENCE ON COURT STUDIES

Sponsored by

The Institute for Court Management

Under A Grant From The

Law Enforcement Assistance Administration

May 6-9, 1973

Sheraton Airport Inn
3535 Quebec Street
Denver, Colorado

P R O G R A M

NOTE: All meetings will be held in Arena 1; luncheons will be served in Arena 2.

Sunday, May 6, 1973

4:00 p.m. — Opening Session

Welcome and Outline of the Conference: Harvey Solomon

Introduction of Participants

6:00 p.m. — Cash Bar (Lugano Room)

Remainder of Evening Free

Monday, May 7, 1973

8:30 a.m. — Morning Session

THEME: Planning and Organizing a Court Study

Presentor: Joseph Ebersole, Federal Judicial Center

Commentator: Allan Ashman, American Judicature Society

Group Discussion

12:15 p.m. — Group Luncheon with Speaker

THEME: Court Studies: The Need For Standards and Guidelines

Presentor: Arne Schoeller, Law Enforcement Assistance Administration

1:45 p.m. — Afternoon Session

THEME: An Overview of the Court Study Process

Presentor: Ernest C. Friesen, Jr., Institute for Court Mngmt.

Discussion

Monday, May 7, 1973 - cont'd

3:30 p.m.

THEME: Management Consultants and the National Organizations: What Are Their Respective Roles In Conducting Court Studies?

Panel Discussion:

Nancy Elkind, National Center for State Courts

E. Hunter Hurst, National Council on Crime & Delinquency

Michael McKay, Arthur Young & Company

Peter Schwindt, Institute of Judicial Administration

6:00 p.m.

Group Dinner (Lugano Room)

7:30 p.m.

Evening Session

THEME: Court Studies and Evolving National Standards

Presentor: Paul Nejelski, Institute of Judicial Administration

Discussion

Tuesday, May 8, 1973

8:00 a.m.

Morning Session

THEME: Conducting a Court Study: Identifying Problems, Collecting Data, Developing Findings and Recommendations

Presentors: James Davey, U.S. District Court for the District of Columbia; Maureen Solomon, Court Consultant

Commentator: Bruce Oberlin, Westinghouse Public Systems Management Services

Group Discussion

11:45 a.m.

Group Luncheon

12:45 p.m.

Afternoon Session

THEME: Court Studies: The Judicial Perspective

Presentor: Justice John V. Corrigan Court of Appeals, Cleveland

2:00 p.m.

THEME: Special Features of Studies Involving the Application of Computer Technology To Courts

Presentor: Einar Bohlin, Office of Michigan State Court Administrator

Commentator: Ernest Short, National Center for State Courts

Group Discussion

4:15 p.m.

THEME: Comparative Court Studies

Presentor: Ted Rubin, Institute for Court Management

Discussion

Evening Unscheduled

Wednesday, May 9, 1973

8:30 a.m.

Morning Session

THEME: Implementation: Court Studies and the Process of Change

Presentor: Neely Gardner, University of Southern California

Commentator: Harry Lawson, Colorado State Court Administrator

Group Discussion

12:00 noon

Conference Adjournment

COURT STUDY CONFERENCE PARTICIPANTS

Mr. Allan Ashman
American Judicature Society
Chicago, Illinois

Mr. Einar Bohlin
State Court Administrator
Lansing, Michigan

Honorable John V. Corrigan
Court of Appeals of Ohio
Cleveland, Ohio

Mr. James Davey
U. S. District Court for
District of Columbia
Washington, DC

Mr. Joseph Ebersole
Federal Judicial Center
Washington, DC

Ms. Nancy Elkind
National Center for State
Courts
Denver, Colorado

Mr. Ernest C. Friesen
Institute for Court
Management
Denver, Colorado
(Now studying the English
Court System)

Mr. Donald Fuller
Denver Juvenile Court
Denver, Colorado
(Now a Court Management
Consultant)

Professor Neely Gardner
University of Southern
California
Los Angeles, California

Mr. Hunter Hurst
National Council on Crime
and Delinquency
Austin, Texas
(Now with National Center for
Juvenile Justice, Pittsburgh,
Pennsylvania)

Mr. Harry Lawson
State Court Administrator
Denver, Colorado

Mr. Michael McKay
Arthur Young & Company
Sacramento, California

Mr. Paul Nejelski
Institute of Judicial
Administration
New York, New York

Mr. Bruce Oberlin
Westinghouse Electric Corporation
Pittsburgh, Pennsylvania

Mr. Ellis Pettigrew
Institute for Court
Management
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Pierre, South Dakota)

Mr. Ted Rubin
Institute for Court
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Mr. Peter Schwindt
Institute of Judicial
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New York, New York

COURT STUDY CONFERENCE PARTICIPANTS (cont'd)

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Mr. Harvey E. Solomon
Institute for Court
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Denver, Colorado

Mrs. Maureen Solomon
Court Management Consultant
Denver, Colorado

Mr. Arne Schoeller
Law Enforcement Assistance
Administration
Washington, DC
(Now with National Center for
State Courts, Washington, DC)

Mr. John Woods
Institute for Court
Management
Denver, Colorado
(Now with Department of
Personnel, State of
Colorado)

END