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THE CHIEF JUSTICE AND LAW
REFORM, 1921-1971

I. THE STATE OF THE JUDICIARY

In his first two and a half years in office, Warren E. Burger has introduced a new type of activism into the role of the Chief Justice: leader of law reform. A sense of urgency—to arouse the public and the legal profession to the advanced state of obsolescence of many parts of the judicial machinery—has colored a number of his pronouncements. A sense of the need for a refurbished image of the Supreme Court itself—down to details like livening the marble halls and inner courts of the building, or planning a series of exhibits on the personalities who have sat on the bench over the years—is related to this goal of revision and revitalization. A desire to encourage a dialogue with the man in the street on the issues of judicial business is also demonstrable. In his 1971 “State of the Judiciary” address to the American Bar Association, the Chief Justice declared that “the public is deeply aroused and disturbed about the state of justice and all its works” and urged the legal profession to “share the leadership for court improvement with all segments of the public.”¹

Warren Earl Burger, when he ascended the high bench in June 1969, found federal policy already headed in the direction in which he proposed to move, in matters of modernization, revision, and

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¹ Burger, *The State of the Federal Judiciary*, 57 A.B.A.J. 855, 858 (1971) (hereinafter cited as 1971 *State of Judiciary*).

reform.² Congress—and the Johnson administration—had prepared the way with the Omnibus Crime Control and Safe Streets Act of 1968.³ Its declared purpose is “to assist State and local governments in reducing the incidence of crime” and “to increase the effectiveness, fairness, and coordination of law enforcement and criminal justice systems at all levels of government.”⁴ Title I of this statute created the Law Enforcement Assistance Administration (LEAA), whose primary responsibility is to administer a concerted program of state-planned improvements in the systems of justice throughout the country. The billions of dollars in federal funds allocated annually by the LEAA to planning commissions in each of the states was an unprecedented role for the national legislative and executive branches with regard to what they unequivocally declared to be a local problem. As LEAA policy broadened, from an initial emphasis upon strengthened police programs to the whole spectrum of judicial administration, corrections, and rehabilitation, circumstances invited the third branch of the federal government to join in the activity.⁵

Chief Justice Burger’s own plan of action for the current crises in the courts has substantially complemented the LEAA program. And what is most significant is that in the process the Chief Justice of the United States has emerged as leader of the reform and modernization movement in state as well as federal courts.⁶ Thus,

² “The term, ‘law reform,’ has no exact, objective meaning.” Friedman, *Law Reform in Historical Perspective*, 13 *St.L.U.L.J.* 351 (1969). While there is no consensus of legal lexicography, in the context of the present study “modernization” is used to describe any simplification and streamlining of process; “revision” suggests a somewhat more elaborate (*e.g.*, legislative) form of the same thing; “reform,” properly used, would suggest the introduction of new concepts into existing law. Cf. Swindler, *Revision and Reform in the Common Law Countries*, 13 *WM. & MARY L. REV.* (in press) (1971).

³ 82 Stat. 197; 42 U.S.C. §§ 3701 *et seq.*

⁴ *Ibid.*

⁵ See the analysis of the LEAA program and objectives, in Velde, *External Relationships of the Courts: LEAA and the Administration of Justice*, 54 *J. AM. JUD. SOC.* 433 (1971); SWINDLER, *JUSTICE IN THE STATES* 52 (1971) (hereafter cited as *JUSTICE IN THE STATES*).

⁶ “I have felt an obligation to be concerned with the problems of state courts as well as the federal courts because the problems of justice are indivisible and if we do not have strong and effective courts in both the state and federal systems, we have a failure of justice.” 1971 *State of Judiciary*, at 856.

half a century after William Howard Taft initiated the first steps toward making his office into the head of the whole federal court structure, there has emerged the concept of the Chief Justice's leadership role in modernizing all components, state as well as federal, in a total administration of justice in the 1970s.

It is obvious that in an integrated economy, efforts to come to grips with problems of reform in the state or federal court systems will have reciprocal effects. It is equally obvious that improvements in the judicial process in many states, so long overdue, need to be coordinated if the country as a whole is to benefit to the fullest extent, and that this presupposes some sort of national direction. While coordinated national effort is to be distinguished from state reforms carried out under federal authority, the fact is that the office of the Chief Justice may be the only agency able to develop and maintain the needed momentum. This development may, indeed, be complementary to four other forces developed in the course of history to effect unification, simplification, and thus, presumably, modernization of both substantive law and procedure.

The most obvious force for revision and uniformity (if not necessarily reform) of legal doctrine is Supreme Court decisions, particularly in constitutional cases.⁷ Almost equally effective in the procedural area have been the federal rules of procedure. Certainly one of the most conspicuous results of the promulgation of the rules of civil and criminal procedure in the 1930s was their prompt and pervasive effect upon state procedure.⁸ The often herculean labors of farsighted state jurists—*e.g.*, Arthur T. Vanderbilt and Roger J. Traynor—have had significant impact upon both procedural and substantive law, but in the nature of the case their full influence has tended to be limited to their states of professional domicile. Finally, there have been the efforts of many professional organizations, led by the American Judicature Society, veteran of six decades of uphill battles for reform, including some of the studies of the National Conference of Commissioners on Uniform

⁷ See H.R. REP. NO. 864, 88th Cong., 1st Sess., 10 (1963); Criminal Justice Act of 1964, 78 Stat. 552, 18 U.S.C. § 3006A. State action in this instance had anticipated both Court and Congress. See the *amicus* brief of twenty-three states, filed in *Gideon v. Wainwright*, 372 U.S. 335 (1963).

⁸ See Clark, *The Federal Rules of Civil Procedure, 1938-1958: Two Decades of the Federal Civil Rules*, 58 COLUM. L. REV. 435 (1958); Holtzoff, *Judicial Procedure Reform: The Leadership of the Supreme Court*, 43 A.B.A.J. 215 (1957).

State Laws;⁹ certain projects of the American Law Institute;¹⁰ and such current undertakings as the American Bar Association's Standards for Criminal Justice.¹¹

The logic of the Chief Justice's leadership in this broadening panorama of judicial modernization and law reform is twofold. In the first place, if for no other reason than to alleviate the pressures on the federal courts, the federal interest would be best served by rendering the state systems more effective in order to equalize the judicial workload.¹² In the second place, however valid may be the philosophical appeal to a restored state-federal equilibrium in governmental affairs, the fact is that in the United States of the 1970s such an equilibrium can only be meaningful and effective if it is the product of coordinated effort. This may point to the approaching zenith of many of the programs of professional organizations referred to above, perhaps implemented through the new National Center for State Courts. But its ultimate psychological and practical impetus will still have to be provided by some universally acknowledged judicial leader. No state jurist, however inspirational, is likely to perform that function. Even the tireless efforts over the years of an individual like Justice Tom C. Clark can only have such continuity as is provided by his own personality.¹³ A long-range plan under an institutionalized leadership is required—formulating the complementary functions of the state

⁹ E.g., the uniform laws on securing out-of-state witnesses in criminal cases; judicial notice of foreign law; photographic records in evidence; proof of statutes; and simultaneous death. *HANDBOOK OF THE NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS* Table I 360 (1970).

¹⁰ E.g., A.L.I., *STUDY OF DIVISION OF JURISDICTION BETWEEN STATE AND FEDERAL COURTS* (1968).

¹¹ See 1965 ANNUAL REPORT OF THE AMERICAN BAR ASSOCIATION 229 (hereafter cited as A.B.A. REP.), and annual reports thereafter of the Special Committee on Minimum Standards for the Administration of Criminal Justice in succeeding volumes.

¹² This was the fundamental consideration in the study commissioned by the Federal Judicial Center and published as *State Post-Conviction Remedies and Federal Habeas Corpus*, 12 WM. & MARY L. REV. 147 (1970). See also Meador, *The Impact of Federal Habeas Corpus on State Trial Procedures*, 52 VA. L. REV. 286 (1966); Jacob & Sharma, *Justice after Trial: Prisoners' Need for Legal Services in the Criminal-Correctional Process*, 18 KAN. L. REV. 493 (1970).

¹³ John P. Frank has written an insightful tribute, in *Justice Tom Clark and Judicial Administration*, 46 TEX. L. REV. 5 (1967).

and federal courts,¹⁴ defining the points of priority and major emphasis in the agenda for reform and modernization, exhorting individuals and organizations to maintain the momentum of change.

The present Chief Justice has covered a broad spectrum of subjects during his first thirty months of administration. In 1969 he urged action to provide basic managerial training for selected personnel to handle the business of state and local courts, in a fashion analogous to the Administrative Office of the United States Courts, and the Institute for Court Management was forthwith established. In his first "State of the Judiciary" address to the American Bar Association in 1970, he enumerated a series of specific steps which he urged be taken at the earliest opportunity. In his keynote address to the National Conference on the Judiciary, held in Williamsburg, Virginia, in March 1971, he renewed a call for creation of a National Center for State Courts, a service and research agency complementing the work of the Federal Judicial Center.¹⁵

It is worth noting that this campaign for modernization has produced concrete results. The Institute for Court Management has now turned out three classes of trainees and placed them in nearly a hundred courts throughout the country. The suggestion for establishment of state-federal judicial councils, one of the items in the 1970 A.B.A. address, has been taken up by more than forty states. The National Center for State Courts was formally incorporated in June 1971 and is operational in several programs. All of these are traceable to the Chief Justice's affirmative proposals and they are all, essentially, aimed at improving the performance of state judicial offices. It is, indeed, the total judiciary in the United States with whose condition the Chief Justice is concerned.

The condition of the American judicial system is parlous, if the volume of commentary, alarmist but expressed by competent

¹⁴ And also the complementary functions of legislatures and courts. See Burger, C.J., in *Gordon v. Lance*, 403 U.S. 1, 6 (1971), commenting on the business which "is more properly left to the determination by the States and the people than to the courts operating under the broad mandate of the Fourteenth Amendment." Cf. also the general tenor of his opinion in *Harris v. New York*, 401 U.S. 222 (1971).

¹⁵ Burger, *Court Administrators—Where Will We Find Them?* 53 J. AM. JUD. Soc. 108 (1969); *The State of the Judiciary*, 56 A.B.A.J. 929 (1970) (hereafter cited as *1970 State of Judiciary*); JUSTICE IN THE STATES 10.

observers, is taken at face value. John P. Frank's lectures at the dedication of the Earl Warren Legal Center at the University of California in 1968 were an elaborate calendar of the cumbersome anachronisms that impede virtually every function of judicial administration.¹⁶ In 1969 two University of Chicago writers prepared a comparable indictment of the archaisms in the criminal law.¹⁷ In 1970 before the American Bar Association, and in 1971 before the National Conference on the Judiciary, Chief Justice Burger reiterated the problems.¹⁸ The major items may be epitomized:

Administratively, the judicial system is clogged with steadily increasing masses of papers and records that require the fullest utilization of modern management and technological processes. Most state courts, and many federal courts, have not begun to exploit such aids as the professional court administrator, data banks for rapid retrieval of relevant information, and closed-circuit television for routing of personnel and assignment of cases in a metropolitan trial court complex.

Procedurally, in both civil and criminal law, the courts still operate within the confines of a century-old formula that encourages trial delay, discourages thorough pretrial disposition of all but the most fundamental points of litigation, and mounts costs one upon another. Few courts have made the fullest use of non-judicial personnel to settle issues that could most satisfactorily be disposed of by specialists, *e.g.*, in litigation involving money settlements where claims adjusters or accountants representing the court as well as the parties could recommend the basis for the judgment.

Substantively, a long list of litigable rights has been added to the law on top of an already existing list reflecting values of an earlier social climate. In certain areas, with automobile accident claims being the most conspicuous example, administrative rather than judicial disposition of civil causes is an alternative waiting to be tried. In other areas, defined as criminal by statute but recog-

¹⁶ FRANK, *AMERICAN LAW: THE CASE FOR RADICAL REFORM* (1969).

¹⁷ MORRIS & HAWKINS, *THE HONEST POLITICIAN'S GUIDE TO CRIME CONTROL* (1970).

¹⁸ See note 15 *supra*.

nized as subjects for therapeutic institutionalization by modern science, the remedies await enlightened legislative action.

Against this broad background of needs, the Chief Justice in successive speeches and papers has enumerated specific remedies. State criminal cases in the federal courts, he told the National Association of Attorneys General in February 1970, may have arrived there by virtue of the holdings in the so-called "trilogy" of cases on post-conviction remedies,¹⁹ but they will return to their proper forum only when and as the states cure the defects in their own procedures that precipitated the constitutional questions involved.²⁰ The cycle of arrest-trial-conviction-sentence, producing steadily diminishing returns in crime control, requires that judges look beyond the courtroom in aid of the search for new concepts and more effective procedures for the correctional phase of criminal justice.²¹ Repeatedly, Chief Justice Burger has urged states to modernize their management systems and take fuller advantage of new technologies to break logjams of paperwork.²² All courts, both state and federal, in his view should take a fresh look at possible alternatives to adjudication of civil actions involving automobile litigation.²³ The classic problem of costly and time-consuming appellate review remains unsolved for virtually all judicial systems.²⁴

II. CHIEF JUSTICES AND LAW REFORM

His unique public career as both President and Chief Justice of the United States, coupled with his lifelong interest in substantive and procedural law reform, gave William Howard Taft a pioneering leadership role in judicial history that has only belatedly been recognized.²⁵ Even as a member of Theodore Roosevelt's cabinet,

¹⁹ *Fay v. Noia*, 372 U.S. 391; *Townsend v. Sain*, 372 U.S. 293; *Sanders v. United States*, 373 U.S. 1 (1963).

²⁰ Burger, *State Criminal Cases in Federal Courts: Some Proposals for Self-Help and Mutual Aid*, MS of remarks to National Association of Attorneys General, Washington, D.C., 6 February 1970.

²¹ See Burger, "No Man Is an Island," 56 A.B.A.J. 325 (1970).

²² Note 15 *supra*.

²³ 1970 *State of Judiciary*, 930.

²⁴ *Ibid*.

²⁵ See MASON, WILLIAM HOWARD TAFT, CHIEF JUSTICE chs. 4, 5 (1964); SWINDLER, THE OLD LEGALITY, 1889-1932, ch. 16 (1969).

Taft witnessed the statutory beginning of modernization, the enactment of the United States Criminal Code, which went into effect the day before his inauguration.²⁶ As President, Taft sponsored the Judicial Code of 1911, reorganizing the federal courts and trimming off masses of deadwood, reflecting many of the recommendations in Taft's public statements over the years.²⁷ A decade later, when he ascended the bench, Taft brought with him specific agenda for completing the work begun in 1909 and 1911. These were to be incorporated into a draft bill prepared in the Court itself, and indirectly floor-managed through Congress by a committee consisting of Justices Day, McReynolds, and Van Devanter.²⁸

The "Judges' Bill" originally embodied all three of Taft's basic reforms—authority in the Chief Justice to reassign lower court judges as docket requirements warranted; greatly enlarged discretionary (certiorari) jurisdiction in the Supreme Court and corresponding enlarged final jurisdiction in the intermediate courts; and power to create uniform rules of procedure throughout the federal system.²⁹ Enactment was piecemeal, over a period of years extending beyond Taft's lifetime. In September 1922 came the statute creating the Conference of Senior Circuit Court Judges, later the Judicial Conference of the United States, and providing for the transfer of federal judges.³⁰ The main portion of the "Judges' Bill" was enacted in February 1925, substantially redistributing the review processes between the circuit courts of appeal and the Supreme Court.³¹ It remained for Chief Justice Hughes's Court to witness the completion of the reforms, in legislation authorizing

²⁶ 35 Stat. 1088; 18 U.S.C. chs. 1-119, 201-37, 301-17, 401-03, as amended.

²⁷ 36 Stat. 1087; 28 U.S.C. chs. 1-21, as amended. See also Taft, *The Delays of the Law*, 18 YALE L.J. 28 (1908); *Inequalities in the Administration of Justice*, 20 GREEN BAG 441 (1908); *The Administration of Justice—Its Speeding and Cheapening*, 72 CENT. L.J. 191 (1911).

²⁸ SWINDLER, note 25 *supra*, at ch. 16.

²⁹ See FRANKFURTER & LANDIS, *THE BUSINESS OF THE SUPREME COURT* 295-98 (1927); Taft, *Adequate Machinery for Judicial Business*, 7 A.B.A.J. 453 (1921); *Three Needed Steps of Progress*, 8 A.B.A.J. 34 (1922).

³⁰ 42 Stat. 837, 838; 62 Stat. 902, and later amended; 28 U.S.C. §§ 291 *et seq.*, §§ 331 *et seq.*, as amended.

³¹ 43 Stat. 936; 62 Stat. 927, and later amended; *cf.* 28 U.S.C. §§ 1252 *et seq.*, §§ 1292 *et seq.*, as amended.

the drafting of uniform rules³² and the act creating the Administrative Office of the United States Courts in June 1939.³³

The legislation extending from 1922 to 1939 completed the basic structure of the federal judiciary for the twentieth century. Only the Omnibus Crime Control and Safe Streets Act of 1968,³⁴ with its machinery in Title I for a federal investment in state judicial reorganization, is of comparable magnitude, supplemented perhaps by the provisions of the Criminal Justice Act of 1964.³⁵ In any event, it was from the earlier period of legislation that the Chief Justices from Taft to Warren developed their roles as leaders of reform and modernization within the federal system, and it is in the context of the recent legislation, particularly the 1968 statute, that Chief Justice Burger is now shaping his own role.

In his presiding role at the periodic meetings of the Judicial Conference of the United States, the Chief Justice exercises the administrative leadership that Taft envisioned in his original program. In invited appearances before the major professional forums, like the American Law Institute and the American Bar Association, and in other public appearances and in published writings, the Chief Justice exercises an unofficial but occasionally more significant influence.³⁶ Two extraordinary instances of Chief Justices mounting the hustings inevitably come to mind: Charles Evans Hughes's famous letter to the Senate Judiciary Committee in the course of the "Court packing" bill of 1937,³⁷ and Earl Warren's warning of the surreptitious movement to rewrite the Constitution in the states' rights amendments proposed in 1963.³⁸

³² 47 Stat. 904, 18 U.S.C. § 3772; 48 Stat. 1064, 28 U.S.C. § 2072; 54 Stat. 688, 18 U.S.C. §§ 3288, 3289, 3141.

³³ 53 Stat. 1223, 28 U.S.C. §§ 601 *et seq.*

³⁴ 82 Stat. 197, 28 U.S.C. §§ 3701 *et seq.*

³⁵ 78 Stat. 552, 18 U.S.C. §§ 3001 *et seq.*

³⁶ Taft was the most voluble publicist for law reform until the present Chief Justice; *cf.* the citations in notes 27 and 29 *supra*. Stone's most prolific period was in his academic years. See MASON, HARLAN FISKE STONE: PILLAR OF THE LAW 888 (1956). Taft and Hughes appeared occasionally before the American Law Institute, but by the later 1950s Warren had established the practice of annual addresses to this group. Usually these addresses abstracted the reports of the Judicial Conference, but on at least one occasion they urged A.L.I. action. See note 64 *infra*.

³⁷ The most recent detailed treatment of this event is BAKER, BACK TO BACK: THE DUEL BETWEEN F.D.R. AND THE SUPREME COURT (1967).

³⁸ See 40TH ANNUAL PROCEEDINGS OF THE AMERICAN LAW INSTITUTE 36-37 (1963) (hereafter cited as A.L.I. PROC.).

Taft and Hughes of necessity focused their main efforts on the basic reorganization of the federal judicial process as implemented in the "organic" statutes of 1922, 1925, 1933, 1934, and 1939.³⁹ Taft, as the godfather of the legislative program, had high hopes for the Judicial Conference and for the circuit conferences or councils that he expected to implement the findings of the senior circuit judges.⁴⁰ At the first meeting of the Judicial Conference in December 1922,⁴¹ he dwelt upon the remaining provisions in the "Judges' Bill" still to be pushed through Congress, particularly the project to limit the Supreme Court's jurisdiction.⁴² Without the full scope of the reorganization, however, the Judicial Conference sessions during Taft's tenure tended to be relatively brief exchanges of information. The judges considered that the 1922 statute was too general and in 1930 they requested the Attorney General to seek clarifying amendments to the act.⁴³

Hughes sought to educate the legal profession generally to the

³⁹ See notes 30-32 *supra*.

⁴⁰ Strengthened circuit councils were urged by the Judicial Conference as early as 1932. Cf. 1932 ANNUAL REPORT OF THE ATTORNEY GENERAL 12 (hereafter cited as ATT'Y GEN. REP.). Chief Justice Stone envisioned the councils of the circuits as being of great practical importance because of their being closer to the public and the public's business in the courts. Stone, *Functions of the Circuit Conferences*, 28 A.B.A.J. 519 (1942); and see 1941 REPORT OF THE JUDICIAL CONFERENCE 4 (hereafter cited as JUD. CONF. REP.). But in 1964 Chief Justice Warren was to complain: "The judicial councils of the country, which are close to the bench and bar, have a great opportunity to regulate and improve the processing of legal business to the great benefit of all concerned. . . . I have the conviction that if these judicial councils did exercise their power to improve judicial administration as fully as they are authorized to do, the need for Congressional action would be minimized." A.L.I. PROC. 26 (1964). See also Fish, *The Circuit Councils: Rusty Hinges of Federal Judicial Administration*, 37 UNIV. OF CHI. L. REV. 203 (1970); and note 57 *infra*.

⁴¹ The first two meetings of the Conference of Senior Circuit Judges (now the Judicial Conference) were never officially reported. With Chief Justice Taft's acquiescence, an abstract of the proceedings appeared in *The Federal Judicial Council*, 2 TEX. L. REV. 458 (1924).

⁴² *Id.* at 459.

⁴³ Until 1940, the meetings of the Judicial Conference were abstracted in the annual reports of the Attorney General. For examples of the conference's reluctance to assert authority in matters of administration, see 1925 ATT'Y GEN. REP. 6 (the proper use of judicial discretion in denying bail to convicts pending review of their cases on appeal), and 1927 ATT'Y GEN. REP. 7 (urging the district courts to consider dismissal of year-old motions). For the conference recommendation that the Attorney General seek an amendment strengthening the 1922 statute, see 1930 ATT'Y GEN. REP. 8.

work of the conference, and in 1934 began submitting to the *American Bar Association Journal* the summary of the conference proceedings as it appeared in the annual reports of the Attorney General.⁴⁴ Stone continued this practice until the Second World War curtailed the annual meetings,⁴⁵ and Vinson later revived the practice briefly.⁴⁶ Later, as Chief Justice Warren made his annual appearances before the American Law Institute, a summary of conference business was usually incorporated into his report to that audience.

The typical agenda for the Judicial Conference sessions, in the early part of Hughes's administration, consisted of statistical reports on the condition of the calendars in the several circuits, and a summary of prospective legislation as submitted by the Attorney General, with the judges usually endorsing the bills recommended by that cabinet officer.⁴⁷ The Attorney General also submitted procedural problems in the district courts as these were reported to him by United States attorneys. In 1936, Attorney General Cummings urged that something be done about the "prevailing tendency" in a number of the federal trial courts to delay imposing sentences in criminal cases, "even when there is 'no impediment' operating against such imposition."⁴⁸ The conference thereupon adopted a resolution condemning the practice, citing the Criminal Appeals Rules to the contrary. The following year the Attorney General reported on the problem of hearing motions, many of his staff trial lawyers complaining that some courts heard motions only one day a month, and some only on the opening day of the Term. The sense of the conference was that the senior circuit judges should investigate the practice in their respective circuits.⁴⁹ Disparity in sentencing practices in different federal courts was the

⁴⁴ See Hughes, *Report of the Judicial Conference*, 20 A.B.A.J. 713 (1934); 21 A.B.A.J. 731 (1935); 22 A.B.A.J. 818 (1936).

⁴⁵ See Stone, *The Judicial Conference*, 28 A.B.A.J. 817 (1942); Sunderland, *Report of the Judicial Conference*, 30 A.B.A.J. 707 (1944).

⁴⁶ Vinson, *Chief Justice Reports September Proceedings*, 34 A.B.A.J. 132 (1948); 35 A.B.A.J. 118 (1949).

⁴⁷ 1932 ATT'Y GEN. REP. 11-12; 1933 ATT'Y GEN. REP. 5.

⁴⁸ 1936 ATT'Y GEN. REP. 7.

⁴⁹ 1937 ATT'Y GEN. REP. 14. In this same year the conference adopted a resolution urging appointment of a public defender or private counsel for indigent defendants in felony cases. *Id.* at 17.

subject of a Department of Justice study submitted to the conference by the Attorney General in 1938,⁵⁰ but there is no record of conference action.

The reliance of the Judicial Conference upon an officer of the executive department to discharge a major portion of its business was a fundamental limitation upon the conference's own effectiveness, and this was remedied in 1939 with the creation of the Administrative Office of the United States Courts. This statute, the product of a good deal of preliminary study, transferred to the Director of the Administrative Office various functions formerly handled by the Department of Justice.⁵¹ In 1948 the original 1922 statute was further strengthened by an amendment providing that conference proceedings and recommendations for legislation be directly reported to Congress by the Chief Justice.⁵² The 1948 revision also formally recognized the judicial conferences of the various circuits and detailed their specific functions.⁵³ In 1958 an amendment provided for a continuing study of the federal rules, and for the development of institutes or joint councils on sentencing practices.⁵⁴ Recent statutory developments of importance have included the 1967 act creating the Federal Judicial Center,⁵⁵ and the 1971 statute providing for court administrators in all circuits.⁵⁶

Harlan F. Stone, newly invested as Chief Justice, called a special session of the Judicial Conference in September 1941 and submitted lengthy agenda reflecting his eagerness to stimulate the agency to a wider range of activities. Among the topics on his list were the perennial matter of making the circuit councils more productive, consideration among other legislative matters of a proposal to abolish the statutory division of judicial districts, and

⁵⁰ 1938 ATT'Y GEN. REP. 24.

⁵¹ 53 Stat. 1223, 28 U.S.C. §§ 601 *et seq.* Since 1940, the annual reports of the Judicial Conference and the Director of the Administrative Office have been published together. See the (first) 1940 ANNUAL REPORT OF THE DIRECTOR, 17-22, describing the organization of his office.

⁵² 62 Stat. 902, 28 U.S.C. § 331; see H.R. REP. No. 308, 80th Cong., 1st Sess. (1947).

⁵³ 62 Stat. 902, 28 U.S.C. § 332.

⁵⁴ 72 Stat. 356, 845, 28 U.S.C. §§ 331, 334.

⁵⁵ 81 Stat. 664, 28 U.S.C. §§ 620-29.

⁵⁶ 84 Stat. 1907, 28 U.S.C. § 332(e), (f). Cf. also 1970 JUD. CONF. REP. 77.

improvement in the methods of selecting juries in federal trials.⁵⁷ Unfortunately, Stone's efforts to galvanize the conference were cut short by the Second World War, and the annual sessions were curtailed until 1945. Momentum was not regained, in the sense of seeking to break new ground, until midway in Vinson's Chief Justiceship, when a study of pretrial procedures was prepared.⁵⁸

The full potential of the Judicial Conference finally began to manifest itself in the sessions of 1954, the first over which Warren presided as Chief Justice.⁵⁹ Two studies begun in the last years of the Vinson administration—on procedural problems in protracted antitrust cases and on habeas corpus petitions by state prisoners—were reviewed in detail and specific recommendations made. District courts were admonished to be firmer in excluding irrelevant and repetitious evidence, which seemed characteristically to be offered in antitrust litigation. And a revision of the federal code provisions on habeas corpus petitions, which anticipated by ten years the amendment of 28 U.S.C. § 2254, was endorsed.⁶⁰ The conference strongly recommended congressional action to create a domestic relations court for the District of Columbia⁶¹ and debated (without action) a report on various bills to broaden the removal authority of the federal courts.⁶² A lengthy 1956 study of the administration of criminal justice included the matter of reviewing district court sentences by courts of appeal, and the right of the government to appeal adverse rulings on motions to suppress evidence.⁶³ Diversity jurisdiction was a special item on the agenda in 1956,⁶⁴ anticipating the amendment of the "diversity statute" and leading to the Chief Justice's recommendation to the American Law Institute that it undertake a study of the subject.⁶⁵

By the end of the decade, a systematic inventory of legislative

⁵⁷ 1941 JUD. CONF. REP. 4, 10–11.

⁵⁸ 1950 JUD. CONF. REP. 15; 1951 JUD. CONF. REP. 33; 1952 JUD. CONF. REP. 20.

⁵⁹ The September 1953 session, prior to Warren's appointment as Chief Justice in October, was presided over by the senior Associate Justice Hugo L. Black.

⁶⁰ See 80 Stat. 1105, 28 U.S.C. § 2254. Cf. 1954 JUD. CONF. REP. 23; 1956 JUD. CONF. REP. 34.

⁶¹ 1954 JUD. CONF. REP. 7. The Domestic Relations Branch of the Municipal Court for the District of Columbia was created in 1956. 70 Stat. 111, D.C. CODE § 11-758 (1961).

⁶² 1954 JUD. CONF. REP. 27.

⁶⁴ *Id.* at 15.

⁶³ 1956 JUD. CONF. REP. 33–36.

⁶⁵ 1959 A.L.I. PROC. 31–34.

subjects to be recommended to Congress was a regular feature of the conference reports, and the volume of business had made necessary the regular convening of semiannual sessions of the conference. The 1960s witnessed the full flowering of conference activity: studies of judicial workloads; multiple litigation in catastrophe cases; pretrial and trial seminars; implementation of circuit council recommendations;⁶⁶ venue; jurisdiction in cases involving pollution of interstate waterways; special problems of juveniles in federal courts;⁶⁷ establishment of legislative committees within the circuits; pre-sentence confinement of criminal defendants; training programs for judicial employees;⁶⁸ direct action statutes; narcotics and drug abuse; improved probationary processes; admissibility of confessions;⁶⁹ government contract disputes;⁷⁰ definitions of felonies;⁷¹ retirement of judges for disability; a unified correctional system; a federal bail reform act;⁷² the merger of admiralty and civil procedure; implementation of the Federal Magistrates Act;⁷³ prejudicial publicity in jury trials;⁷⁴ and computerizing of jury panels.⁷⁵ The 1969 conference held a special meeting in June to receive a report on recommended standards respecting outside compensation for federal judges, a response to the crisis precipitated by the Fortas *cause célèbre*.⁷⁶

Implementation of Judicial Conference studies and recommendations may take the form of rules or orders issued by the Supreme Court, *e.g.*, the Rules of Appellate Procedure and the amendments to the civil and criminal rules, approved by the conference and adopted by the Court on 4 December 1967.⁷⁷ In the matter of legislative recommendations, conference action may take one of four forms: approval of the proposed bill; suggestions of amendments to the bill as proposed; disapproval; or abstinence

⁶⁶ 1961 JUD. CONF. REP. 12, 24, 47, 51-53.

⁶⁷ *Id.* at 79, 80, 96-97.

⁶⁸ 1962 JUD. CONF. REP. 54, 69, 71.

⁶⁹ 1963 JUD. CONF. REP. 14, 40, 42, 90.

⁷⁰ 1964 JUD. CONF. REP. 66.

⁷¹ 1965 JUD. CONF. REP. 22.

⁷² 1966 JUD. CONF. REP. 6, 15, 35.

⁷³ 1967 JUD. CONF. REP. 18, 40.

⁷⁴ 1968 JUD. CONF. REP. 16, 66-67.

⁷⁵ 1969 JUD. CONF. REP. 14.

⁷⁶ *Id.* at 42.

⁷⁷ 389 U.S. 1063-1127 (1967); 1967 JUD. CONF. REP. 68-69. See also rules implementing the Federal Magistrates Act, 395 U.S. 989-99 (1969); 1969 JUD. CONF. REP. 34-35.

from comment on the ground that the subject matter is one of legislative policy on which a judicial position is inappropriate.

The closest rapport between the conference and Congress, via the Chief Justice, is obviously needed in matters most intimately connected with judicial administration. The enactment of the statute on the Federal Judicial Center⁷⁸ and on the court executives for the courts of appeal⁷⁹ manifestly depended on the authoritative position of the conference. In other legislative areas the cause-effect relationship is difficult, and usually impossible, to document, except in negative instances where Congress acts in disregard of the conference position.⁸⁰ Traditionally, Congress has been somewhat chary of inviting members of the higher courts to testify at hearings, particularly since the avid lobbying of Taft's day.⁸¹

With the establishment of the Federal Judicial Center, the Judicial Conference and various advisory committees of the circuits have looked to the center for projects involving research in depth and for scheduling of training conferences for various court officers.⁸² First under Associate Justice Clark and then under Judge Alfred P. Murrah of the Tenth Circuit, the center has developed a year-round program of studies, training sessions, and related services.⁸³

The history of procedural law reform in the past half-century may be divided into two distinct periods. The first falls between the years 1922 and 1939 and is documented in the judicial and congressional efforts to draft adjective law creating the machinery for efficient study and improvement of federal justice. The second perhaps dates from 1954 to the present; the interim was handicapped by the abnormalities of war and postwar government. Chief Justices Taft and Hughes in the first period, and Warren in the second, established records as administrators which are secure. If the

⁷⁸ See note 55 *supra*.

⁷⁹ See note 56 *supra*.

⁸⁰ See 1971 *State of the Judiciary*; 1970 JUD. CONF. REP. 77. For an example of conference response to legislation requiring implementation, see report of special meeting of 13 January 1965, which received a detailed report of its Committee to Implement the Criminal Justice Act of 1964. H.R. Doc. No. 62, 89th Cong., 1st Sess. (1965).

⁸¹ See SWINDLER, note 25 *supra*, ch. 16.

⁸² See Clark, *The Federal Judicial Center*, 53 JUD. 99 (1969).

⁸³ Activities of the center are reported periodically in the federal court bulletin, THE THIRD BRANCH.

activity of the Burger Court continues in the direction and at the pace which has characterized its opening years, a third and equally productive period may be anticipated.

III. STATE REFORMS AND FEDERAL ANALOGIES

If, as congressional policy and the Chief Justice's repeated public statements have it, the primary relief for the current judicial crisis must come from modernization of the state courts, and if this is indeed a continuing national concern, the fundamental problems in the state systems must occupy a permanent spot on the Chief Justice's agenda for law reform. As Chief Justice Burger put it in his address to the Williamsburg conference, both the criminal and civil justice functions are "suffering from a severe case of deferred maintenance."⁸⁴ Centralized administration, augmented by personnel trained in modern managerial practices and provided with a reasonable amount of high-speed and high-quality technological resources; a broad rule-making power vested in the judicial rather than the legislative branch; simplified trial court structure and a sound procedure for selecting and training qualified judges were the priorities the Chief Justice suggested for the program of modernization. The "much-needed reexamination of substantive legal institutions that are out of date," he conceded was "inevitably a long-range undertaking and it can wait."⁸⁵

From the National Conference on the Judiciary, which produced a "Consensus Statement" summarizing the findings of the sessions,⁸⁶ the LEAA proceeded to the organizing of regional conferences which, beginning in the winter of 1971-72, are expected to apply the general conclusions of the national meeting to the particular problems of states within a convenient and reasonably homogeneous area. The regional conferences are more or less coextensive with the LEAA regional divisions.

Not only this evidence of federal interest, but the analogy of the organization of the federal judiciary, is ever present—although not necessarily apposite or acceptable. The principle of a unified court

⁸⁴ Burger, *Deferred Maintenance of Judicial Machinery*, 54 J. AM. JUD. SOC. 410 (1971); JUSTICE IN THE STATES 10.

⁸⁵ Burger, note 84 *supra*, at 411.

⁸⁶ See *Consensus Statement of the National Conference on the Judiciary*, 55 J. AM. JUD. SOC. 29 (1971); JUSTICE IN THE STATES 265.

system, with the chief justice of the state as the head of the state's judiciary, readily suggests the prototype of the federal system. But this assumes that the state is a microcosm of the federal structure, which is valid only in a general sense and most often in predominantly urban states.⁸⁷ Political provincialities, both legislative and judicial; ingrained local practices which often have disconcerting plausibility and effectiveness in the dispensing of justice; the substantial cost of major overhauls of the existing system; these are the practical obstacles that grow larger as the reform proposals come closer to home.

The closest correlation between the unified court system and the federal judiciary is to be sought in the functions of the chief justice in each system. Specific functions may vary within jurisdictions, but the fundamental feature is the authority to oversee the total judicial process, *viz.*:⁸⁸ (1) A general power to require periodic statistical reports that delineate the business of each court; to conduct studies as to needs within the system to improve judicial performance; and to implement plans for these improvements.⁸⁹ This administrative program is normally carried out with the assistance of a peer group (judicial conference or council) empowered to formulate policy, and an administrative officer charged with the efficient management of records and schedules. (2) A broad power to draft and promulgate uniform rules for the whole system — “the best solution yet developed for sound procedural change,” as Chief Justice Burger has put it. A flexible and responsive rule-making authority, he went on, would “blunt the impact of the imposition of federal standards on the states,” *e.g.*, in such an area as post-conviction procedure.⁹⁰ (3) The authority to transfer trial judges from one court to another within the jurisdiction as docket loads may require. Correlative with this may also be the *ex officio* participation of the chief justice in judicial nominating or discipline/removal

⁸⁷ See the rationale of the majority in *Reynolds v. Sims*, 377 U.S. 533, 571–75 (1964).

⁸⁸ See Pringle, *The Role of the State Chief Justice*, in *JUSTICE IN THE STATES* 80; *INST. JUD. ADM., THE SUPREME COURT OF IOWA: A STUDY OF ITS PROCEDURE AND ADMINISTRATION* (1971).

⁸⁹ On the administrative duties of the Chief Justice of the United States, see 28 U.S.C. §§ 291–95, 331, 671, 2071; *cf.* NATIONAL MUNICIPAL LEAGUE, *MODEL STATE CONSTITUTION* 89–90 (rev. 6th ed., 1968).

⁹⁰ Burger, note 84 *supra*, at 415–16.

commissions,⁹¹ or the overseeing of trial courts charged with state-wide jurisdiction in some types of cases.⁹² (4) Where the rule-making power is jointly shared with the legislature, or where statutory control over procedure is fairly precise, a regular medium for communication with the legislature on these matters, and perhaps on legislation in general that creates new responsibilities for the judicial branch.⁹³

Thus defined, the administrative authority of the chief justice in any single judicial system (including the federal) may appear to be incomplete. The ultimate question, however, is whether the presiding judicial officer of the state's highest court has the practical power to develop and maintain consistent and uniform standards of justice throughout the jurisdiction. Except as the state system does in fact vest sufficient power for this purpose in this officer, there is little profit in studying the means by which court modernization in the states can contribute to the alleviation of the national burden.

Centralized administration, in the federal experience, attained its full potential for effectiveness with the creation of an administrative office to relieve the Chief Justice of nonjudicial managerial duties. The analogy applies to the states as well, and the administrative office is most effective in those systems that have a degree of centralized authority comparable to the federal. Although some states date their administrative offices from periods before the federal statute of 1939—e.g., North Dakota's office of executive secretary to the state judicial council in 1927,⁹⁴ Connecticut's executive secretary to the judicial department in 1937⁹⁵—the prototype of the modern office is that of New Jersey, created in 1948.⁹⁶

The work of the state court administrator⁹⁷ in the unified court

⁹¹ See Calif. Const. Art. VI, §§ 6, 7; Colo. Const. Art. VI, § 5, as amended 1966.

⁹² See Conn. Pub. Acts 1959, No. 28; and *cf.* N.C. Const. Art. IV, § 11, as amended 1962, 1968; Ohio Const. Art. IV, § 5, as amended 1968.

⁹³ Note 84 *supra*.

⁹⁴ N.D. Cent. Code 27-15-03 *et seq.*; *cf.* COURT ADMINISTRATORS, THEIR FUNCTIONS, QUALIFICATIONS AND SALARIES (Am. Jud. Soc. Res. Rep. No. 17, 1966).

⁹⁵ Conn. Gen. Stat. Ann. §§ 51-8 *et seq.*

⁹⁶ N.J. Stat. Ann. 2A:12-1 *et seq.*

⁹⁷ See McConnell, *The Role of the State Court Administrator*, in JUSTICE IN THE STATES 88. It is worth noting that in the matter of trial court administrators the states are substantially ahead of the federal judiciary. *Cf.* Klein, *The Position of the Trial Court Administrator in the States*, 50 J. AM. JUD. SOC. 278 (1967).

systems is quite similar to that of the Administrative Office of the United States Courts. The diminishing returns from the system are found in direct ratio to the decentralization of the courts in various states. Where neither the chief justice nor his administrative officer have authority to compel uniform reporting of requested information from independent and largely autonomous local courts, the benefits of the services of a state administrator are substantially curtailed.

A wider variance between state and federal systems develops in the matter of the appellate process. This is not merely a question of structure, *i.e.*, as a one-level or two-level appellate system, but is a question of philosophy as well.⁹⁸ Whether a given state requires an intermediate system of appeals courts presumably depends upon the volume of appellate business, or perhaps upon geographic conditions warranting the division of the state into appellate districts.⁹⁹ But the fact is that in the twenty or more states that have intermediate courts there are widely varying concepts of their jurisdictions and functions. Typically, final jurisdiction in the intermediate courts is limited to relatively minor civil matters; felonies—particularly capital felonies—and major civil questions consistently go on to the highest court. This may be as it should be in capital cases. The fact is, however, that the proper definition of the intermediate court function in the states is as conspicuously lacking as it was in the federal system prior to the Act of 1925.¹⁰⁰

This fact bolsters the argument that an intermediate appellate system merely increases litigation costs without decongesting the docket of the highest state court. Certainly, state modernization that takes the form of an intermediate court system is unlikely to contribute significantly to the general streamlining of justice in America unless and until there is a firm policy limiting appeals as of right.

At the trial court level, the divergence of state and federal systems is obviously the greatest. At the same time the greatest number of obstacles to modernization and simplification exist here. If there is

⁹⁸ Cf. Joiner, *The Function of the Appellate System*, in JUSTICE IN THE STATES 97; Lilly & Scalia, *Appellate Justice: A Crisis in Virginia?* 57 VA L. REV. 3 (1971).

⁹⁹ See AM. JUD. SOC., INTERMEDIATE APPELLATE COURTS 3 (Res. Rep. No. 20, 1968).

¹⁰⁰ *Id.* at App. I; cf. Traynor, *Some Open Questions on the Work of State Appellate Courts*, 24 UNIV. CHI. L. REV. 211 (1957); Editorial, *The Case for a Two-Level State Court System*, 50 J. AM. JUD. SOC. 185 (1967).

an analogy, it is between the dual system of trial courts in most states and the dual system as it existed in the federal structure prior to the Judicial Code of 1911.¹⁰¹ Unification, and the abolition of the part-time local court, are the top priorities among state reforms.¹⁰² But the almost universal practice of splitting the courts of first instance into those of general jurisdiction and those of limited, local, and special jurisdiction (accurately denominated in Virginia as "courts not of record") make the prospect for reform inauspicious. At best, the dual system breeds trial *de novo*; at worst, it perpetuates the practice of fee-paid lay judges or part-time judges.¹⁰³

Among nearly forty recommendations for judicial reform drawn up by the National Conference on the Judiciary under the leadership of the Chief Justice, two went to the heart of the matter:¹⁰⁴

There should be only one level of trial court, divided into districts of manageable size. It should possess general jurisdiction, but be organized into specialized departments for the handling of particular kinds of litigation. Separate specialized courts should be abolished.

Only one appeal as of right should be allowed. It should lie only from a final decision of the trial court and should not be a trial *de novo*, but an appeal based on the record, which should be kept in all cases, utilizing modern recording devices.

Quite accurately, the conferees discerned that it is the congeries of problems in the state trial and appellate court structure that is the most forbidding obstacle to uniform modernization.

Even more difficult and involved than procedural reform, as the Chief Justice pointed out at the Williamsburg conference, is "the much needed reexamination of substantive legal institutions that are out of date."¹⁰⁵ This would be, he conceded, "a long range undertaking." In addition to political considerations militating against action there will obviously be emotional and ethical objections. Although there is a gradually dawning public awareness of the distinction between drug traffic and drug addiction, for example, the movement of state legislatures to reform their statutes and separate

¹⁰¹ See note 27 *supra*.

¹⁰² See McKenzie, *Unification and Redistricting*, in JUSTICE IN THE STATES 116, Pomeroy, *Lingering Problem: Part-Time Courts*, *id.* at 130.

¹⁰³ See Truax, *Courts of Limited Jurisdiction Are Passé*, 53 J. AM. JUD. SOC. 326 (1970).

¹⁰⁴ Note 86 *supra*.

¹⁰⁵ Note 84 *supra*.

the criminal from the victim, the correctional problem from the institutional, is glacial.¹⁰⁶ On the civil side, after much debate and research by professional bodies, no state has yet taken a bold step toward diverting the endless traffic in automobile litigation from judicial to administrative channels; Massachusetts's experiment with "no fault" legislation ran a bruising gauntlet in the state house and has yet to face those in the courthouse.¹⁰⁷ It is safe to say, in fact, that a whole new theory of substantive as well as procedural law will need to be developed before state reform, tied to federal reform in a nationwide program, will accommodate practical new approaches in the face of often inapposite federal analogies.

IV. PROSPECTS FOR THE NEXT DECADE

A flurry of activity has marked the opening of the 1970s. The Institute for Court Management, the American Academy for Judicial Education, and the National College of District Attorneys all opened their doors within a few months of each other, complementing the work begun by the National College of State Trial Judges in the 1960s. The Federal Judicial Center, itself only three years old, was joined by the National Center for State Courts, which began initial operations in the summer of 1971. Regional conferences for the winter of 1971-72 were projected by the LEAA to stimulate local implementation of the broad objectives of the National Conference on the Judiciary.

In his second "State of the Judiciary" address, Chief Justice Burger continued his advocacy of further efforts at renewal. He noted the funding of an A.B.A. project to bring up to date the 1949 study on standards of judicial administration led by Justice Vanderbilt.¹⁰⁸ He reiterated his recommendation that Congress create a joint judiciary council to replace "the hit-or-miss process of expanding the burdens of federal courts, heedless of their capacity to meet the burdens and heedless of the overall soundness of particular legislation relating to the jurisdiction and operations of the federal courts."¹⁰⁹ He also endorsed a proposal of the Judicial Conference

¹⁰⁶ See the recent study by NIMMER, *TWO MILLION UNNECESSARY ARRESTS* (1971); MORRIS & HAWKINS, note 17 *supra*, at ch. 5.

¹⁰⁷ Mass. Acts 1970, c. 670, Mass. G. L. ch. 90, § 34M.

¹⁰⁸ VANDERBILT, *MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION* (1949).

¹⁰⁹ 1971 *State of Judiciary*, 856.

for creation of a special commission to restructure the judicial circuits of the federal system, and called anew for joint governmental and professional efforts to deal with the perennial issue of trial and appellate delays.¹¹⁰

The Court Executives Act, creating offices of administration in each of the circuits, is one of the most important recent legislative steps affecting judicial modernization. The final report of the National Commission on Reform of Federal Criminal Laws, filed with the President and both houses of Congress in January 1971, has prepared the way for the most comprehensive revision of the Criminal Code since 1909.¹¹¹ This project was complemented by the final approval of most of the A.B.A. Standards of Criminal Justice, and the recommendation that each state apply them as yardsticks against their own statutes, rules of court, and local practices.¹¹²

The Judicial Conference devoted a substantial part of its 1970 sessions to the recommendations of its Committee on the Administration of the Criminal Law. It admonished the judicial councils in each circuit to give "the highest priority" to the preparation of transcripts in criminal cases for the purposes of review and requested each circuit to file a draft of its plan for implementation of this directive.¹¹³ Although it disapproved a proposed bill setting deadlines of 60 to 120 days for commencement of trials of criminal cases, it did so because it was advised that the purpose of expedition would be better accomplished by a new administrative requirement that district courts review all such cases pending more than a year.¹¹⁴ The reports of its committees on improvements in the jury system and probationary processes also occupied a major part of its discussions.¹¹⁵

In November 1970 the Federal Judicial Center inaugurated the first state-federal appellate judges' conference, taking up problems of the proliferation of habeas corpus petitions, removal of cases

¹¹⁰ *Id.* at 858-59.

¹¹¹ See FINAL REPORT OF THE NATIONAL COMMISSION ON REFORM OF FEDERAL CRIMINAL LAWS (1971).

¹¹² See *Comparative Analysis of Nine Approved American Bar Association Standards for the Administration of Criminal Justice with Florida Statutory Law, Court Rules and Legal Practice* (1970), prepared for the A.B.A. Section of Criminal Law.

¹¹³ 1970 JUD. CONF. REP. 15.

¹¹⁴ *Id.* at 17.

¹¹⁵ *Id.* at 58, 65.

from state to federal courts, and improved techniques in opinion writing—the last a subject upon which the Chief Justice has expressed himself unequivocally.¹¹⁶ Together with the federal-state judicial councils recommended by Chief Justice Burger in his 1970 A.B.A. address, the center's conferences represented a tangible effort at promoting a dialogue between the state and federal systems. The anticipated close working arrangement between the Federal Judicial Center and the National Center for State Courts would augment the state-federal conferences and councils.

As the decade of the 1970s proceeds, there is every indication that communication between the state and federal judiciary and coordinated efforts at modernization are to be integral parts of the law reforms sought by the Chief Justice of the United States. The probable developments include these:

1. Exploitation of the professional training services of the several colleges, institutes, and academies now established, as well as others in prospect, to provide basic indoctrination in routines and crafts for recruits or appointees. While seminars for new judges, court clerks, probation officers, and others may not become a universal requisite, the favorable emphasis upon the availability of such preparation may effect a steady growth in reliance upon them. The consensus of the legal profession and the testimony of "alumni" of the programs attest to their value.

2. Joint conferences, regional and national, following the pattern of the National Conference on the Judiciary in 1971,¹¹⁷ and covering a wide variety of specialized subjects, already are supplementing the training programs of the centers for trial judges, court administrators, and district attorneys. Together with the growing number of sentencing institutes and similar judicial exchanges, these are expediting the pooling of experiences among professional groups that have long been isolated from each other. The state conferences of laymen, in which the American Judicature Society successfully pioneered in the past decade, are creating continuing "citizens' lobbies" for statutory reforms that otherwise tend to languish in committees of the state houses for want of public demand for action.

¹¹⁶ 1971 *State of Judiciary*, 858-59.

¹¹⁷ A National Conference on Corrections, "to be patterned after the First National Conference on the Judiciary," was recommended in a White House memorandum of 10 June 1971. See 1 LEAA NEWSLETTER 1 (July 1971).

3. The research centers now serving both federal and state courts hold out a promise of stimulating concerted studies of all phases of the administration of justice, from demonstrations of the adaptability of mechanical and technological discoveries to court management, through in-depth investigations in procedural and substantive law, to the ultimate possibility of empirical and theoretical research.

The movement for modernization and reform that Chief Justice Burger has undertaken to lead is broader than anything in the nation's judicial experience. One may hope that, as it develops, the centralizing of state court administration may become universal; that the beginnings of merit selection and dignified retirement and removal procedures (in which the more progressive states offer an analogy and example for the federal judiciary) may become more widespread; that some effective substitutes for the manifestly ineffective correctional processes may be devised. If these sound fanciful and illusory, it should be remembered that they are the ultimate goals toward which all the steps heretofore described are aimed. The alternatives are maintenance or exacerbation of the very conditions that have created the present judicial crisis.