A COMMISSION REPORT

STATE-LOCAL RELATIONS IN THE CRIMINAL JUSTICE SYSTEM

ACIR

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
January 22, 1971

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ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
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Preface

The Advisory Commission on Intergovernmental Relations was established by Public Law 380, passed by the first session of the 86th Congress and approved by the President September 24, 1959. Section 2 of the act sets forth the following declaration of purpose and specific responsibilities for the Commission:

> "Sec. 2. Because the complexity of modern life intensifies the need in a federal form of government for the fullest cooperation and coordination of activities between the levels of government, and because population growth and scientific developments portend an increasingly complex society in future years, it is essential that an appropriate agency be established to give continuing attention to intergovernmental problems.
>
> "It is intended that the Commission, in the performance of its duties, will–
>
> "(1) bring together representatives of the Federal, State, and local governments for the consideration of common problems;
>
> "(2) provide a forum for discussing the administration and coordination of Federal grant and other programs requiring intergovernmental cooperation;
>
> "(3) give critical attention to the conditions and controls involved in the administration of Federal grant programs;
>
> "(4) make available technical assistance to the executive and legislative branches of the Federal Government in the review of proposed legislation to determine its overall effect on the Federal system;
>
> "(5) encourage discussion and study at an early stage of emerging public problems that are likely to require intergovernmental cooperation;
>
> "(6) recommend, within the framework of the Constitution, the most desirable allocation of governmental functions, responsibilities, and revenues among the several levels of government; and
>
> "(7) recommend methods of coordinating and simplifying tax laws and administrative practices to achieve a more orderly and less competitive fiscal relationship between the levels of government and to reduce the burden of compliance for taxpayers."

Pursuant to its statutory responsibilities, the Commission from time to time singles out for study and recommendation particular problems the amelioration of which, in the Commission's view, would enhance cooperation among the different levels of government and thereby improve the effectiveness of the Federal system. One subject so identified by the Commission concerns State-local relations in the criminal justice system.

In the following report, the Commission examines the operations and problems of the country's fifty State-local criminal justice systems with special reference to the need for a more expeditious and coordinated criminal justice process.

The report was approved at meetings of the Commission on September 11, 1970 and January 22, 1971.

Robert E. Merriam
Chair

Acknowledgments

This Report represents the shared responsibility of the staff of the Governmental Structure and Function Section. Major responsibility for staff work was shared by David B. Walker, Albert J. Richter, John J. Callahan, Carl W. Stenberg, Rodney P. Lane, and James H. Pickford. Marie Furjanic, John Jeffreys, and Gary Jones, Commission interns, also assisted in the preparation of various parts of the Report. L. Richard Gabler assisted in the preparation of Appendix B. The clerical assistance of Betty Waugh, Vicki Watts, Carolyn LeVere, Linda McNally, and Inna Winn was, of course, indispensable.

The Commission and its staff profited from a review of its work by a number of individuals including Don Alexander, Frank Bane, John Bebout, George Bell, Edward Callahan, William N. Cassella, James C. Charlesworth, Richard S. Childs, John T. Corrigan, Reed Cozart, Edwin Deckard, William Frederick, Douglas Gill, John Gunther, Douglas Harmon, George Howe, James Johnson, Arthur Kallen, Delmar Karlen, Ellis Katz, I. M. Labovitz, Judith Leader, Tim Murphy, Sherwood Norman, Mark Richmond, Margaret Seeley, Preston Sharp, Quinn Tam, H. A. Thompson*, George Trubow, Truman Walrod, Bob Walter, and Joseph F. Zimmerman.

Special mention should be made of the contributions of the following individuals. Mr. Peter Bloch, The Urban Institute; Commissioner Patrick Murphy, New York City Police Department; Mr. David Norrgard, Minnesota League of Municipalities; and Mr. William Franey, International Association of Chiefs of Police made extensive contributions to the police portion of the Report. Mr. James James, National Conference on Court Administrators, and Mr. Alan Sokolow, Council of State Governments, gave their cooperation in the drafting and dissemination of the ACIR-NCCAO questionnaire to State court administrators. Mr. Glenn Winters, American Judicature Society; Mrs. Fannie Klein, Institute of Judicial Administration, and Mr. James McCafferty, Administrative Office of U.S. Courts, supplied invaluable comments on the operation and problems of State-local court systems. Hon. John B. Breckenridge and Mrs. Patton Wheeler of the National Association of Attorneys General, and Mr. Patrick Healy, National District Attorneys Association supplied much of the data and other information on the prosecutor. Mr. Frederick Ward, National Council on Crime and Delinquency, made substantial comments on the corrections portion of the Report. Other special mention goes to Daniel Skoler, LEAA, for cooperation in supplying LEAA assistance on all parts of the Report, and Mr. Daniel Pflum, U.S. Bureau of the Census, for supplying much of the fiscal and employment data on State-local criminal justice systems.

The Commission records its appreciation for the contribution of all the above individuals and organizations. Full responsibility for content and accuracy rests, of course, with the Commission and its staff.

*Deceased

William R. MacDougall
Executive Director

David B. Walker
Assistant Director
(Governmental Structure and Functions)

The Commission and Its Working Procedures

This statement of the procedures followed by the Advisory Commission on Intergovernmental Relations is intended to assist the reader's consideration of this report. The Commission, made up of busy public officials and private persons occupying positions of major responsibility, must deal with diverse and specialized subjects. It is important, therefore, in evaluating reports and recommendations of the Commission to know the processes of consultation, criticism, and review to which particular reports are subjected.

The duty of the Advisory Commission, under Public Law 86–380, is to give continuing attention to intergovernmental problems in Federal-State, Federal-local, and State-local, as well as interstate and interlocal relations. The Commission's approach to this broad area of responsibility is to select specific intergovernmental problems for analysis and policy recommendation. In some cases, matters proposed for study are introduced by individual members of the Commission; in other cases, public officials, professional organizations, or scholars propose projects. In still others, possible subjects are suggested by the staff. Frequently, two or more subjects compete for a single "slot" on the Commission's work program. In such instances selection is by majority vote.

Once a subject is placed on the work program, staff is assigned to it. In limited instances the study is contracted for with an expert in the field or a research organization. The Staff's job is to assemble and analyze the facts, identify the differing points of view involved, and develop a range of possible, frequently alternative, policy considerations and recommendations which the Commission might wish to consider. This is all developed and set forth in a preliminary draft report containing (a) historical and factual background, (b) analysis of the issues, and (c) alternative solutions.

The preliminary draft is reviewed within the staff of the Commission and after revision is placed before an informal group of "critics" for searching review and criticism. In assembling these reviewers, care is taken to provide (a) expert knowledge and (b) a diversity of substantive and philosophical viewpoints. Additionally, representatives of the Council of State Governments, International City Management Association, National Association of Counties, National Governors' Conference, National League of Cities-U.S. Conference of Mayors, U.S. Office of Management and Budget, and any Federal agencies directly concerned with the subject matter participate, along with the other "critics" in reviewing the draft. It should be emphasized that participation by an individual or organization in the review process does not imply in any way endorsement of the draft report. Criticisms and suggestions are presented; some may be adopted, others rejected by the Commission staff.

The draft report is then revised by the staff in light of criticisms and comments received and transmitted to the members of the Commission at least three weeks in advance of the meeting at which it is to be considered.

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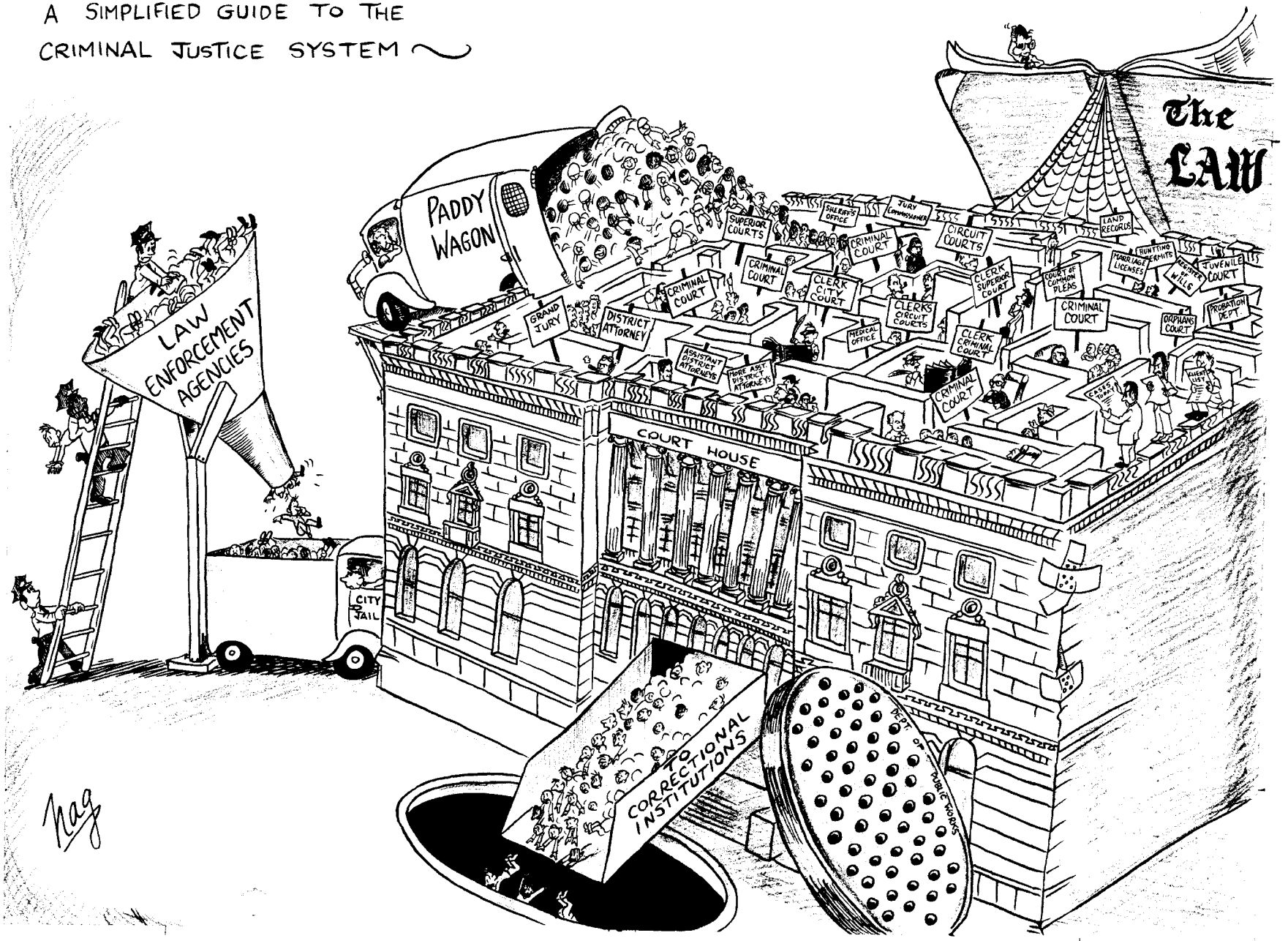
A SIMPLIFIED GUIDE TO THE CRIMINAL JUSTICE SYSTEM



Chapter 1.

THE CHALLENGE OF CRIME

Crime control is an enormous task for State and local government. State-local criminal justice expenditures came to 6.5 billion dollars in 1968-1969 and total personnel involved exceeded 660,000.[1] Put another way, about five percent of all State-local expenditures were used for criminal justice purposes and eight percent of their total employment occurred in this field. State-local criminal justice systems process approximately five million offenders a year;[2] their courts handle at least three million cases annually; and their average daily penal population exceeds the one million mark.

In more human terms, crime imposes significant social and economic costs on both victims and offenders. A reported 14,500 murders, 306,000 aggravated assaults, 36,000 forcible rapes, and at least 300,000 robberies occurred in 1969. Moreover, a tremendous amount of crime goes unreported, possibly twice that reported.[3] The preponderant majorty of these offenses, of course, are handled in State-local systems. Offenders also feel the economic and social impact of their criminal acts: many are destined to return again and again to prison.[4] The nation's annual crime bill, in terms of measurable costs, has probably passed the twenty billion dollar mark.[5] The social and psychic costs of crime are incalculable.

Aside from its effect on government and the individual offender or victim, contemporary crime is a major source of worry and fear to a broad sector of the American citizenry. All recent polls on the nation's top priority problems underscore this. Moreover, as the National Commission on the Causes and Prevention of Violence reported:[6]

> One-third of American householders keep guns in the hope that they will provide protection against intruders. In some urban neighborhoods, nearly one-third of the residents wish to move because of high rates of crime, and very large numbers have moved for that reason. In fear of crime, bus drivers in many cities do not carry change, cab drivers in some areas are in scarce supply, and some merchants are closing their businesses. Vigilante-like groups have sprung up in some areas. . . . .Fear of crime is destroying some of the basic human freedoms which any/society is supposed to safeguard - freedom of movement, freedom from harm, freedom from fear itself.

Clearly crime now is a painful and persistent problem affecting many aspects of American life. Crime and its effective control perplexes the individual and his government. Growing anxiety about safety to person and property, shaken public confidence in our institutions of criminal justice, as well as rising skepticism about the American promise of equal justice under the law are all symptomatic of the need to reappraise the efficacy of modern crime control systems. Indeed, lack of confidence in the criminal justice system can be one of the root causes of popular disillusionment with government in general. A reappraisal of the State-local criminal justice system, which is this study's basic objective, is much in order.

The American system of criminal justice is a complicated one. Its complexity demands strengthened patterns of relationships among all levels of government so that a unified attack on the crime problem can be undertaken. This report, then, focuses directly on the intergovernmental aspects of the crime control problem and suggests appropriate courses of action by which the existing system of criminal justice can be improved.

The Public Dimensions of the Crime Problem

The Incidence of Crime. Crime has been increasing faster than general population growth since 1960; as a result, reported serious crime rates are higher than ever before. On a national basis, serious property crimes have increased ten times faster than the population growth between 1960 and 1969 and serious crimes of violence eight times the rate of total population increase. (See Table 1)

While involving all members of our society, crime stands out as a major problem for nonwhites and the young. Overall the arrest rate for the general population was 29.4 per 1,000 in 1969. The comparable rate for nonwhites was 71.2 per 1,000 and for all persons in the eighteen to twenty-four age bracket 70.8 per 1,000.[7] Arrest rates for these population subgroups, then, were nearly two and one-half times the average for the general population.

Table 1
CRIME RATES AND POPULATION INCREASE 1960-1969

	1960	1969	Percent Increase 1960-1969
Total Crime Rate[1]	1123.4	2471.1	120.0%
Violent Crime Rate	159.0	324.4	104.0
Property Crime Rate	964.4	2146.7	122.6
Crime Rate For:			
Homicide	5.0	7.2	44.0
Forcible Rape	9.4	18.1	92.6
Robbery	59.9	147.7	146.1
Aggravated Assault	84.7	151.8	79.2
Burglary	500.5	965.6	92.9
Larcency	282.3	749.3	165.4
Auto Theft	181.6	431.8	137.8
Population (000)			
U.S. Total	177,472	199,685	12.5
Total Nonwhite	20,351	24,340	19.6
Total Under 25	78,828	92,093	16.8

[1] Reported serious criminal offenses known to police per 100,000 population.
Source: F.B.I. *Uniform Crime Reports—1969* (Washington, 1970), Table No. 2; U.S. Bureau of the Census. *Current Population Reports.* Series P-25, No. 441 (March 19, 1970). Figures refer to total civilian resident population.

For crimes of violence, the disproportionate arrest rates for the young and nonwhite are again evident. Data gathered by the National Commission on the Causes and Prevention of Violence indicated that between 1964 and 1967, arrest rates for four categories of violent crime increased by 20.6 percent for whites in the ten to seventeen age bracket; 15.4 percent for all whites over ten; 48.5 percent for all Negroes between ten and seventeen, and 23.0 percent for all Negroes over ten. On the basis of these figures, white juvenile arrests increased 34 percent more than total white arrests; Negro juvenile arrests increased 49 percent more than total white arrests, while Negro juvenile arrests were 135 percent greater than those of white juveniles.[8] Of course, these disproportionate arrest rates may reflect, in part, the fact that some crimes by whites and non-juveniles often go undisclosed or are handled by private institutions outside the criminal justice system.

Crime also represents a paramount problem for the young and the black from the standpoint of victimization. While Negroes represent about twelve percent of the total population and over twenty percent of total central city population, a seventeen city survey of victimization done in 1969 found that Negroes comprised 70 percent of all homicide victims, 60 percent of all rape victims, and 40 percent of all robbery victims. Those in the eighteen to twenty-five age group constitute about 12 percent of the population, but their victimization rates for homicide, rape, and robbery were 19 percent, 29 percent, and 13 percent respectively.[9] Other victimization studies have documented similar trends.[10] Clearly, then, the young and the black have a large stake in ameliorating the crime problem.

Crime also is an integral part of the "urban" crisis. Crime rates are consistently higher in cities of over 250,000 than in other jurisdictions (See Table 2). The 1969 total crime rates in these large cities were fifty to ninety percent greater than the rate for all jurisdictions, and over 100 percent greater than suburban rates. Violent crime rates were three to eight times greater in these central cities than in all suburban areas.

In 30 metropolitan areas with over 1,000,000 population in 1970, every central city crime rate exceeded that of its surrounding suburbs (See Table 3). The aggregate central city crime rate was nearly two and one half times greater than that of the suburban areas. In the Cleveland and Pittsburgh areas, reported crime rates were over five times greater in the central city; in Baltimore, Houston, Kansas City, Minneapolis-St. Paul, Newark, St. Louis, and Washington, D.C. central city crime rates were three times greater. Crime, then, has added a particularly vicious dimension to the nation's urban problem.

Not only is crime more concentrated in large cities, but also there are indications that the criminal is increasingly difficult to apprehend in these jurisdictions. While arrest rates[11] are consistently higher in large cities than elsewhere, they are not productive of commensurately higher clearance rates.[12] Thus, while clearance rates for all serious crimes were 21.1 percent in cities of over 250,000 population in 1969, they were 25.3 percent for rural police agencies. Clearance rates for violent crimes were 41.7 percent for these large cities, 52.8 percent in suburban areas, and 66.6 percent in rural areas. (See Table 4)

Admittedly, clearance rates can be misleading. But they may suggest an increasing inability of State-local law enforcement systems to control successfully criminal activity in areas with the greatest problems. Nationally, clearance rates for offenses known to the police declined from 25 to 20 percent between 1960 and 1969. Moreover, since, at any one time, about thirty five percent of reported clearance rates represent arrests that do not

Table 2
COMPARATIVE CRIME RATE STATISTICS BY SIZE OF PLACE
1960-1969

Area	Total Crime Rate[1]		Violent Crime Rate[1]		Property Crime Rate[1]	
	1960	1969	1960	1969	1960	1969
Total All Areas	N.A.	2648.8	N.A.	348.2	N.A.	2300.6
Total Cities	2353.1	3139.7	165.5	434.9	2187.6	2704.8
Cities of:						
1,000,000+	2840.5	5021.8	361.1	1020.2	2479.4	4001.7
500,000-1,000,000	N.A.	5069.3	N.A.	876.7	N.A.	4192.6
250,000-500,000	3217.0	4175.6	236.5	555.2	2980.5	3620.4
100,000-250,000	2808.4	3312.3	158.1	358.5	2650.3	2953.8
50,000-100,000	2270.0	2565.5	107.2	231.8	2162.8	2333.7
25,000-50,000	2000.1	2120.7	72.4	173.9	1927.7	1946.7
10,000-25,000	1642.9	1660.7	58.8	135.7	1584.1	1524.9
Under 10,000	1210.8	1346.6	49.0	108.6	1161.8	1237.9
Total Suburban	N.A.	1940.8	N.A.	162.6	N.A.	1778.2
Total Rural	N.A.	963.1	N.A.	102.9	N.A.	860.2

[1] All rates are offenses known to the police per 100,000 population.
Sources: F.B.I. *Uniform Crime Reports—1969.* Washington, 1970, Table No. 9.
F.B.I. *Uniform Crime Reports—1960.* Washington, 1961, Table No. 6.

lead to charges or charges that result in acquitals, effective clearance rates averaged about 13 to 16 percent during the sixties.

Crime, then, is increasing faster than population growth. It is involving greater and greater numbers of people, both as victims and offenders, and especially Negroes and juveniles. It also is being practiced with apparently greater chances of success and is persistently concentrated in large metropolitan areas adding still another forbidden feature to the nation's urban crisis.[13] In short, the mounting incidence of crime constitutes a major public policy issue raising fundamental questions concerning the effectiveness of and public confidence in State-local criminal justice systems. Finally, it stands out as a bleak commentary on the extent of social division and political disintegration in many of our largest urban areas.

The Public Perception of Crime. Crime has a strong emotional impact. It affects the confidence of the individual in the safety of his immediate surroundings. Fear of crime, partly attributable to its extensive coverage by the news media, has lead to near panic among some. An estimated fifty percent of the nation's population regard crime as one of the most important of our domestic problems.[14] In a survey on public anxiety over crime, the National Opinion Research Center found high levels of anxiety over crime regardless of whether a person had actually been victimized. This anxiety was strong enough to motivate people to move from their present neighborhood or to change their living habits in high-crime areas.[15]

While some have questioned whether public fear about crime is exaggerated, there is evidence that such anxiety may be justified in light of extensive underreporting of crime in certain areas. Albert Reiss, in a study of four selected police districts in Chicago and Boston, found that reported crime rates for index crimes were about forty to fifty percent that of total crime rates – crimes reported and unreported.[16] Regardless of whether much crime goes unreported, citizen concern about it may be, in fact, a fairly precise assessment of the extent of criminality in contemporary American society. In short, public anxiety over crime and its consequences is a key element in making crime control a major domestic issue.[17] Witness the fact that chief elected officials at local and State levels increasingly are being held politically accountable for crime control regardless of whether they actually are responsible for the operation of key sectors of the criminal justice system.

The Cost of Crime. Crime imposes enormous social and economic costs on the Nation. As was already noted, the President's Crime Commission has estimated the total annual crime bill to be in excess of $20 billion–a cost equal to about two percent of GNP in 1970. Moreover, crime has generated significant criminal justice expenditures for all levels of government. For instance, if half of all criminal justice expenditures could

Table 3
CENTRAL CITY & SUBURBAN CRIME RATES
30 METROPOLITAN AREAS OVER 1,000,000 POPULATION–1969[1]

SMSA	Total Index Crimes Per 100,000 Population		
	Central City (CC)	Suburban Area (OCC)	CC/OCC Ratio
Anaheim-Santa Ana-Garden Grove	3434	2960	116
Atlanta	4359	1814	240
Baltimore	6854	2106	325
Boston[2]	5635	2091	269
Buffalo	3665	1379	265
Chicago	3864	1593	242
Cincinnati	2933	1276	230
Cleveland	6715	1274	527
Dallas	5077	1899	267
Denver	5967	2217	269
Detroit	7343	2666	275
Houston	4772	1370	348
Kansas City	6449	2112	305
Los Angeles-Long Beach	5897	3935	150
Miami	6250	3796	164
Milwaukee	2709	1099	246
Minneapolis-St. Paul	5251	1636	320
New Orleans	4845	1673	290
New York	6133	2103	292
Newark	8061	2110	382
Patterson-Clifton-Passaic	3127	1607	194
Philadelphia	1922	1687	114
Pittsburgh	6262	1004	623
Saint Louis	7761	1984	392
San Bernardino-Riverside-Ontario	5167	3102	166
San Diego	2885	2199	132
San Jose	2906	2765	105
San Francisco-Oakland	7968	4030	198
Seattle-Everett	6514	2640	246
Washington, D. C.	8340	2405	347
Total (30 Areas)	5406	2252	240

[1] Indianapolis not included because of city-county consolidation in 1969.
[2] State Economic Area definition used–Essex, Middlesex, Norfolk, Suffolk counties.
Sources: F.B.I. *Uniform Crime Reports–1969.* (Washington, 1970), Tables No. 5 and 58. U.S. Bureau of the Census. *Preliminary Population Reports–Population of Standard Metropolitan Statistical Areas.* PC (P3)-3. (Washington, November 1970), Table No. 2.

have been diverted to other types of public purposes in 1969, housing and urban renewal expenditures would have increased by 130 percent, health expenditures by 89 percent, or local education expenditures by 10 percent.

Crime imposes other costs on the individual and his community. The more than 14,000 reported homicides, 36,000 forcible rapes, and 600,000 cases of reported robbery and aggravated assault resulting in over 250,000 cases of personal injury annually cause an inestimable amount of psychological damage, economic hardship, and family disruption. The incidence of crime reduces the use of cultural and recreational facilities, increases racial conflict and segregation, speeds the decay of urban neighborhoods, and stimulates the emergence of repressive social organizations.[18]

Crime also imposes penalties costly to the offender as well as to society. At any one time, nearly 1,100,000 persons are estimated to be confined in State and local institutions.[19] These confinements represent a loss to

Table 4
OFFENSES KNOWN CLEARED BY ARREST
BY SIZE OF PLACE
1969

Area	Percent Cleared by Arrest		
	Total Index Offenses	Violent Offenses	Property Offenses
Total All Cities	20.1%	46.5%	16.1%
Cities of:			
1,000,000+	24.9	41.1	18.9
500,000-1,000,000	20.7	39.5	16.8
250,000-500,000	19.4	47.0	15.2
100,000-250,000	20.1	53.3	16.1
50,000-100,000	17.8	51.0	14.5
25,000-50,000	18.3	51.3	15.3
10,000-25,000	19.5	60.0	15.9
Under 10,000	20.9	67.3	17.0
Suburban Agencies	18.8	52.8	15.9
Rural Agencies	25.3	66.6	21.0

Source: F.B.I. *Uniform Crime Reports–1969.* Washington: GPO, 1970, Table No. 12.

society of members who could be socially and economically productive. High recidivism rates compound and increase these losses. One study of federal offenders released in 1963 noted that 65 percent of such offenders were charged with a criminal act within six years after release. It is safe to say that at least 40 percent of all such offenders were convicted and began the cycle again.[20] Furthermore, rates of recidivism were higher among juvenile and nonwhite offenders.[21]

Crime, then, has become a pervasive feature of American life and shows no sign of being any less so in the future. It has heightened mistrust between black and white, black and black, rich and poor, central city and suburb. It has helped undermine public confidence in the nation's system of criminal justice. It has diverted billions of dollars of private and public funds from more constructive uses. Yet on a more positive note, it has dramatized the need for a more effective criminal justice system.

To focus on this need, as this report does, does not mean that reform in this area alone will solve the crime problem. Various other efforts–both private and public, political and economic, individual and collective–will be needed if the many causes of criminal behavior are to be checked. The broad questions of individual as well as society's emotional health, of personal liberty as well as legitimate authority, of equal protection as well as equal justice under the law–concern all sectors of our political, economic, and social systems, not merely the criminal justice component. Yet, this component is a focal point of many of these issues; hence, this probe of State-local criminal justice systems.

The Intergovernmental Dimensions of the Crime Problem.

Crime control requires effective intergovernmental relations. The geographic spread and mobility of crime as well as the sharing of criminal justice responsibilities among Federal, State, and local governments have a significant impact on the intergovernmental dimensions of effective crime control.

The Areawide Nature of Modern Crime. Criminal activity provides a natural incentive to mobility.[22] By frequent change of location, a criminal may successfully avoid detection by local police who otherwise might become familiar with his pattern of illegal activity. As the late Martin Grodzins observed:[23]

> The individual criminal has become mobile. He may flee or fly across state boundaries, and he can plan a robbery in one state, execute it in another, dispose of his loot in a third, and look for sanctuary in a fourth.

There is in fact a substantial amount of criminal mobility. Since 1965, the F.B.I. in its *Uniform Crime Reports* has noted that over sixty percent of federal offenders had arrest records in two or more States for serious index crimes. (See Table 5) Other data on criminal rearrests in the 1960's indicates that forty percent of these arrests were made in a State other than the one of original arrest.[24]

Organized crime exploits fragmentation in local government and thus requires significant intergovernment arrangements for its control. Such crime operates as a near cartel, creating a quasi-monopoly for its services; it . . .[25]

> becomes organized into larger units, "mobs" or "syndicates" dividing territories into quasi-monopolistic units for the provision of prostitution, bootlegging whiskey, gambling, narcotics, and stolen goods. Customers for such services exist everywhere, and the larger the population the greater the supply of consumption units. . . .Industrialized vice and industrialized racketeering readily and ordinarily cross State lines . . . .Operating members of mobs, including specialists in violence, are moved from place to place as a measure of efficiency. Stolen goods, prostitutes, or narcotics can be produced on order from widely scattered places.

Operating areas for organized crime, then, are as large as it is possible for the syndicate to control.[26] Such criminal activity seeks "crime-havens," knows no political boundaries and is frequently of an interstate

Table 5
PROFILE OF FEDERAL OFFENDERS ARRESTED BY TYPE OF CRIME
1965 & 1969

Year	Type of Crime	Number of Offenders	Offenders with Previous Arrests		
			in one state	in two states	in three or more states
1969	Murder	1520	37.3%	31.2%	31.5%
1965	Murder	900	47.0	31.0	22.0
1969	Aggravated Assault	8752	36.8	31.4	31.8
1965	Aggravated Assault	4330	41.0	35.0	24.0
1969	Robbery	9343	42.3	27.9	29.9
1965	Robbery	6028	38.0	29.0	32.0
1969	Burglary	13331	34.0	30.7	35.3
1965	Burglary	10260	34.0	32.0	34.0
1969	Auto Theft	13638	27.8	32.3	39.9
1965	Auto Theft	17310	33.0	32.0	35.0

Sources: F.B.I. *Uniform Crime Reports–1969.* (Washington, 1970), Table C.; F.B.I. *Uniform Crime Reports–1965.* (Washington, 1966), Table B.

nature.[27] The existence of organized crime then necessitates intergovernmental cooperation in its control, and the lack of such collaboration can be a factor in its continued operation and profitability.

Federalism and Crime Control. In the federal system, all levels of governments have legal and operational responsibilities. These are based on divided and concurrent powers, on the United States and State constitutions and respective statutes, on dual sets of criminal codes, and on differing State and local legal traditions. Yet, the greater burden of responsibilities for the system are State and local. After all, many legal rights, privileges, and protections accrue as a consequence of State citizenship, and the ordinary administration of criminal and civil justice is primarily a State and local function.

Both State and local governments usually perform police, prosecution, judicial, and corrections functions. (See Table 6) The general apportionment of State-local responsibilities is as follows. Municipalities bear the major responsibility for police, counties for lower courts and prosecution, and States for higher courts and a major share of corrections. A predominant State role in the system occurs in Alaska, Connecticut, Delaware, Rhode Island, and Vermont; local governments tend to predominate in California, Illinois, Massachusetts, Michigan, New Jersey, and New York.

In most cases, however, the apportionment of responsibilities between and among State and local governments has not been a matter of conscious design. Not all State and local governments have exhibited a complete ability to administer all or even some of their criminal justice duties. Many State police forces have concentrated primarily on matters of highway patrol, ignoring other more crucial areas of police work; sheriff's departments in some counties have not performed exemplary police work, and many smaller municipalities make do with "shadow" police forces. In the prosecution function, many counties do not have the fiscal resources to support a well trained staff of full-time prosecutors, and the offices of some Attorneys General may involve themselves in criminal matters only very infrequently. In many urban States, local jurisdictions still bear the major fiscal responsibility for the lower court system and court reorganization in these areas has lagged as a result. Finally, at both State and local levels, there is a woeful fragmentation of correctional responsibilities among different and sometimes independent agencies, a fragmentation that bars any coordinated offering of correctional services.

Greater intergovernmental cooperation has emerged, then, so that the deleterious effects of fragmentation will not stalemate the workings of the criminal justice process. Thus, in some cases, State police do assume patrol responsibilities for rural localities while large city departments offer crime laboratory assistance to those who request it. Attorneys General in several States will supply technical assistance to local prosecutors, while prosecutors in other States normally handle the appellate duties of Attorneys General offices. States sometimes support local court personnel, and numerous agreements have been concluded between and among

Table 6
STATE PROPORTION OF STATE-LOCAL CRIMINAL JUSTICE EMPLOYMENT
1968-1969

	State Share of State-local Full-time Criminal Justice Employment				
	All Personnel	Police	Prosecution	Courts	Corrections
United States	24.8%	12.5%	22.6%	19.6%	63.6%
Alabama	22.6	12.6	16.8	20.3	65.8
Alaska	65.0	35.8	72.0	87.0	86.5
Arizona	25.7	20.0	26.0	22.9	58.2
Arkansas	23.9	17.4	32.1	23.2	73.3
California	21.8	15.9	12.9	3.8	44.6
Colorado	26.1	15.9	7.3	12.4	48.8
Connecticut	42.9	15.0	42.2	99.3	100.0
Delaware	55.9	32.6	66.6	71.0	99.9
Dist. of Columbia	—	—	—	—	—
Florida	25.6	13.0	32.2	11.1	75.0
Georgia	26.7	15.4	18.9	13.5	65.5
Hawaii	32.7	—	41.3	99.8	82.9
Idaho	23.3	10.9	18.5	26.5	86.6
Illinois	18.5	7.3	23.7	22.3	69.0
Indiana	25.8	14.9	33.8	14.2	69.2
Iowa	30.0	18.8	13.1	11.1	79.0
Kansas	26.0	10.8	9.0	19.1	83.9
Kentucky	31.4	21.5	13.9	27.6	74.7
Louisiana	23.7	11.6	15.0	34.1	70.0
Maine	46.1	25.6	58.1	43.9	90.3
Maryland	32.1	14.8	14.8	20.6	86.0
Massachusetts	20.1	6.6	35.4	9.5	66.9
Michigan	21.4	12.7	15.3	10.5	63.1
Minnesota	22.6	10.3	12.9	9.5	66.9
Mississippi	27.7	23.1	25.0	14.3	79.1
Missouri	22.6	14.1	14.8	19.7	59.9
Montana	33.5	19.6	23.4	18.4	85.7
Nebraska	27.7	15.6	5.9	26.1	86.3
Nevada	19.9	6.5	14.7	12.7	64.1
New Hampshire	29.8	16.0	45.2	29.5	71.5
New Jersey	18.5	10.0	94.1	16.3	49.5
New Mexico	35.4	18.3	51.7	40.9	78.6
New York	16.8	6.9	22.9	14.4	51.8
North Carolina	50.0	19.2	64.9	92.2	89.3
North Dakota	25.0	13.8	17.1	16.7	82.9
Ohio	21.8	9.3	21.6	7.7	74.9
Oklahoma	36.3	18.1	72.6	40.0	94.1
Oregon	33.2	18.0	33.9	19.6	71.6
Pennsylvania	23.7	18.1	28.9	16.6	53.1
Rhode Island	34.1	10.7	61.6	99.6	100.0
South Carolina	31.4	21.3	36.7	8.9	73.9
South Dakota	28.7	21.5	8.5	11.8	82.9
Tennessee	28.5	11.7	50.0	22.6	73.5
Texas	18.1	6.6	14.4	11.3	69.7
Utah	33.0	17.3	46.6	43.1	79.2
Vermont	68.6	41.8	97.4	100.0	100.0
Virginia	34.0	21.6	NA	18.1	72.6
Washington	34.5	17.3	21.6	13.6	75.8
West Virginia	36.3	24.8	29.2	28.0	80.7
Wisconsin	23.7	7.4	15.8	21.9	83.3
Wyoming	31.1	19.2	10.1	25.0	83.4

Source: U.S. Department of Justice: Law Enforcement Assistance Administration & U.S. Bureau of the Census. *Expenditure and Employment Data for the Criminal Justice System. 1968-1969.* Table 7.

State and local governments on the reciprocal custody and handling of prisoners.

In short, crime is an intergovernmental problem due to the diverse methods of organizing and operating the criminal justice system and also to the fact that modern crime frequently spreads over a multiplicity of State and local jurisdictions. As is true of many other pressing policy issues, effective crime control demands the fashioning of a well-structured program of intergovernmental relations.

Intergovernmental Problems Within the Criminal Justice System. There are several types of intergovernmental problems within the State-local criminal justice systems. One set of problems is *jurisdictional* in nature. Jurisdictional difficulties are highly visible since they involve a determination of responsibility for initiating action in the system. Such problems involve legal disputes between and within levels of government about conflicting or ambiguous grants of criminal justice responsibility. Most frequently, they take place at the interlocal level and are usually of an intra-functional nature.

In the police function, jurisdictional disputes arise from the overlapping jurisdiction of county and municipal police forces in incorporated areas, and, in some States, the concurrent jurisdiction of State and county police in unincorporated areas. Jurisdictional ambiguity also may exist between a sheriff's department and an independent county police force or local police detectives and an independently elected coroner.

In the prosecution function, local prosecutors and Attorneys General exercise concurrent criminal jurisdiction in the majority of States. Though most Attorneys General leave major criminal responsibilities to local district attorneys, the ambiguities of concurrent jurisdiction can sometimes hinder effective prosecution of difficult criminal cases. In the case of courts, the proliferation of local courts of limited jurisdiction has led to amply documented disorganization in the judicial process. Dual State-local responsibility for adult correctional institutions may confuse the sentencing process.

Jurisdictional overlap need not always weaken a criminal justice system. Sometimes this feature will allow the system to mold itself to the treatment of the individual offender. The shared jurisdiction of a local prosecutor and Attorney General under certain circumstances might result in a more professional use of existing resources. The multiplicity of State and local courts within which a felony or misdemeanor can be tried may allow the district attorney to attain a better chance of conviction or permit more sophisticated plea-bargaining on his part. The existence of State and local adult correctional institutions may allow a judge to tailor sentencing so as to provide the best possible chance of rehabilitating the offender.

Yet, ambiguity or duplication of jurisdictional responsibilities generally cause severe problems in the system. Small local police departments may languish if it is known that State and county forces will patrol local areas. Counties can abdicate their police duties in incorporated areas by not wanting to "interfere" with municipal police activities. Concurrent prosecutorial jurisdiction may result in decreased accountability in the prosecution of important criminal cases. The multiplicity of lower courts may create substantial confusion about the proper jurisdiction for a criminal case and also result in poor management of local court systems. The existence of a dual system of State and local correctional institutions may result in needless duplication of penal services and a squandering of what few funds are allotted for this neglected function.

Administrative problems represent the most serious ones for State-local criminal justice systems. These difficulties occur due to an unevenness in the operational capabilities of various State-local criminal justice agencies. Disparities in the quality of personnel, the lack of uniformity of procedures, and wide variations in organizational patterns combine to produce a malfunctioning system. While these problems generally exist within one level of government, efforts to overcome them often involve the requisite leadership and policies at other levels. Administrative problems can be of an intra-functional or interfunctional nature.

In the police function, administrative problems include the inability of many local forces to provide comprehensive training for their recruits, to provide full-time patrol and investigative services, and to offer adequate police supportive services. In the courts function, the organizational confusion of lower court systems and the lack of training for minor judicial personnel, most prominently the justice of the peace, are serious problems. In corrections, the dearth of adequately trained personnel and specialized correctional programs are pressing administrative difficulties. Frequently, these problems can be resolved only by concerted State-local or interlocal action.

Fiscal problems often underlie those of an administrative nature. They relate to the size of a jurisdiction, the distribution of fiscal capacity among different jurisdictions, and the assignment of functions within a State-local system. Moreover, the uneven distribution of resources produces fiscal disparities that reduce the equity and efficiency of a State-local system.[28]

Many smaller and rural communities cannot provide supportive police services and require State support in this area. Rural counties frequently cannot afford the

services of a full-time prosecutor, and district attorneys' offices in some urban areas do not pay sufficiently high salaries to attract a permanent corps of experienced prosecutors. Minor local court personnel often need to have their salaries supplemented from State funds, as is the case with some local probation officers. In several cases, State governments have also financed Statewide defender services, assuming what would otherwise be a local burden. States also face fiscal problems as evidenced when they enter into interstate corrections and police compacts to provide criminal justice services they could not fully finance themselves.

Finally, *interfunctional problems* of a jurisdictional, administrative, or fiscal nature may occur within or between the levels of government with criminal justice responsibilities. Past conceptions of the criminal justice system have tended to view it as a loose clustering of functions needing only minimal interaction with one another. Independently elected law enforcement officers, the legal separation of the judicial branch, the political qualities of the local prosecutor's office, and the virtual isolation of the corrections function from other elements in the process are all reflective of the disjointed manner in which the criminal justice system hitherto has been organized.

Resolution of the various interfunctional problems in the system will create a more efficient criminal justice process. Full cooperation among disparate criminal justice agencies, however, is essential. Policemen need to have prosecutorial advice on the propriety of investigative techniques, the rights of the accused, information required for prosecution, and the scope of legitimate police activity in various situations. In turn, prosecutors and judges are aided by police information about the legal difficulties of certain law enforcement operations. Judges and correctional personnel benefit from interfunctional cooperation in sentencing institutes and joint efforts to design community-based correctional programs.

A second cluster of interfunctional problems stems from the misallocation of responsibilities among the branches of the system. Thus, police agencies may operate ill-equipped and understaffed jails or serve as officers of the local court. Such responsibilities, of course, render their police work ineffective. Judges may have complete discretion in the sentencing process and not choose to take the benefit of proper correctional advice. Lack of judicial-prosecution cooperation may lead to a shortcircuiting of the judicial process through excessive plea bargaining procedures.

Another basic interfunctional difficulty is the lack of overall accountability in most systems. The need for such accountability has been brought into focus with the emergence of State, regional, and local criminal justice planning agencies and coordinating councils. These agencies have sought to provide two types of accountability. First, they have provided a technical overview of the difficulties in the system and have attempted to apply fiscal and technical resources to neglected and misunderstood areas of the process. Secondly, they have generated greater public awareness of the need for State and local chief executives to assume a key role in making the systems more manageable. These various State, regional, and local agencies, moreover, have given these chief executives an organizational base for analyzing and, in some cases, implementing programs that lead to a more coordinated system.

Aside from the intergovernmental problems that are of an administrative, jurisdictional, fiscal, and interfunctional nature, there are also those that involve the impact of the system on the general public and the individual citizen. Such *public problems* relate to the need for public access to and involvement in the criminal justice process. The goal here is to insure greater public confidence in and understanding of the operation of all aspects of the State-local criminal justice system.

Demands for greater public access have taken the form of requests for police review boards, easily available public defender services, and more equitable methods of jury selection. Demands for greater public involvement in the system, on the other hand, have centered on community control of certain local police services, creation of citizen crime commissions, and public participation in the design of community-based correctional programs.

An Optimal Criminal Justice System: Some Analytical Qualities

Before turning to the empirical analysis of the intergovernmental problems of State-local criminal justice systems, a few analytical concepts about the "workability" of these systems should be explained. These precepts, most of which have previously been cited in the literature of public administration and public finance,[29] may be used to provide a normative framework for an optimal criminal justice process. They all relate to the basic objectives of administrative and fiscal adequacy.

Even a cursory examination of the evolution of the 50 State-local criminal justice systems indicates they were not designed as consciously integrated ones. At the same time, their operational traits suggest that their components must work in tandem if there is to be a comprehensive approach to the apprehension and treatment of the criminal offender. Presently criminal justice

functions are handled by different governmental agencies and different levels of governments.

Whatever the division of criminal justice responsibilities, the operation of the system should be administratively and fiscally sound. This means that the criminal justice system should have the requisite operational and fiscal ability to perform the task assigned to it—the greatest possible prevention of criminal activity. Hence, the system must be administratively manageable, accountable, responsive to the public it serves, and endowed with enough fiscal resources to perform its assignments.

The notion of *administrative adequacy* has at least four conditions. First, to be administratively adequate, a system must be *functionally complete.* This means State and local governments must have a full range of public responsibilities beyond those pertaining to criminal justice. This condition allows such governments to mount comprehensive crime prevention programs that have features extending beyond the criminal justice system. Most State and some local governments meet this requirement. A State or local government also should administer a range of criminal justice responsibilities so that it will better appreciate the systematic qualities of the process. Thus, many city governments with only police responsibilities may not realize the serious problems in the other components of the system. Similarly, State governments that have only limited police and prosecution duties often do not understand the problems of these functions at the local level. State and local governments need not have full-scale responsibility for all functions but both levels should recognize that their respective functional responsibilities have an impact on those performed by other governments, and both governments must coordinate such responsibilities for an efficient criminal justice process.

The State-local system must also be *geographically adequate.* It has already been demonstrated that many criminals are highly mobile. Therefore, if the system is to effectively apprehend and treat the offender, it must be adequate geographically. In more specific terms, this means that local governments may have to enter into interlocal agreements regarding the use of extraterritorial police powers or that State governments enter into interstate compacts to set up specialized police strike forces or to provide specialized correctional facilities. In essence, geographic adequacy means that a government must encompass a large enough area and population to insure that criminal justice functions will be performed with at least a modicum of technical expertise.[30]

The system also must have an element of *popular responsiveness* to implement successfully its policies. This means, in simple terms, that the system must be understandable and accessible to the general public. It also means that the operation of the system should not be entirely in administrative hands. The public through its elected representatives and sometimes through direct participation should have an element of control over the system. Its operation should be such that it achieves popular support by being a credible and changeable instrument of the popular will.

Finally, the system, to be administratively adequate, should be *structually sufficient.* This means that there should be requisite legal authority in the system so that governments, independently or in concert with one another, can implement a criminal justice program.[31] It also means that no single government or minority grouping of governments should be able to impede the constructive action of other units in the criminal justice function. Impediments to the transfer of functions, to the formation of interlocal and State-local agreements, or to any other reorganization of criminal justice responsibilities will occur in a criminal justice systems that is structurally insufficient.

The criminal justice system also must be one that is *fiscally adequate.* This signifies that the system must have adequate fiscal resources to perform its responsibilities, must be organized so as to achieve economies of scale where they are present, and must be organized so as to prevent economic externalities in the provision of criminal justice services.[32]

The notion of fiscal adequacy, of course, is intimately related to that of geographic adequacy. Basically, the system should be administered by governmental units that are neither too small or too large, so that economies of scale in the administration of criminal justice can be achieved and so that a stable set of fiscal resources will be available to finance these functions. Fiscal adequacy also implies that the benefits of the system accrue mainly to the jurisdiction providing such services.

Needless to say, a criminal justice system will never be organized to be completely fiscally and administratively adequate. Yet, where criminal justice systems, in a general way, do not meet the conditions of being administratively and fiscally sound, they will face increasingly problems of effectiveness, efficiency, and equity. Some of these difficulties can be resolved by sound intergovernmental programs. This report explores such programs with an eye toward the general goal of making State-local criminal justice systems more administratively and fiscally manageable.

To sum up, crime is a serious public problem and its effective control, in part, is dependent on a workable set of State-local and interlocal relations in the State-local

criminal justice system. Intergovernmental problems are of a jurisdictional, administrative, fiscal, and interfunctional nature and some have a public dimension. Effective crime control, defined to include eliminating root causes of crime, can never be the sole responsibility of the State-local criminal justice system. The broader problem of confronting social disorganization, of which crime is a prime symptom, involves nearly the whole gamut of our public and private institutions. Yet, an effective criminal justice operation with an attendant set of well-structured intergovernmental programs can ameliorate some of the more immediate crime problems facing all too many American communities today.

The Scope and Organization of the Report

This report probes the structure and operation of State-local criminal justice systems. Prime attention is given to the intergovernmental problems in their operation. The basic emphasis of the study is to examine, evaluate, and recommend changes designed to strengthen the intergovernmental relations which underpin the entire system.

Topics dealt with include:

- Interlocal cooperation in the provision of basic and supportive police services in metropolitan and nonmetropolitan areas.
- The use of extraterritorial police powers.
- State-local cooperation in the selection and training of local police officers.
- Unification of State-local court systems.
- Institution of central court administrators.
- Revised methods of judicial selection, tenure, and discipline.
- Attorney General local prosecutor relationships in instances of concurrent or overlapping criminal jurisdiction.
- State-local provision of public defender services.
- State-local reorganization of corrections administration.
- Interlocal cooperation in the development of regional penal facilities.
- Expanded paraprofessional involvement in correctional systems.
- Mechanisms for promoting greater interfunctional cooperation.
- New forms of citizen involvement in law enforcement efforts.

Time constraints, the existence of earlier reports on the subject, and the special need for a study with an intergovernmental focus prompted the adoption of this selective, topical approach. Given the intergovernmental emphasis, a number of subjects will not be treated in the course of the report. These include the root causes of crime; the substantive treatment of certain types of crime such as organized crime, juvenile delinquency, or consensual offenses; or criminal justice problems that are exclusively internal to one level of government, such as the manner in which a local police department is organized to carry out its assigned responsibilities. Additionally, certain general questions such as the need for more and better personnel in various parts of the system will be treated only insofar as they have an intergovernmental dimension.

Other reports, most notably those of the President's Crime Commission in 1967, the National Commission on the Causes and Prevention of Violence in 1969, and the Joint Commission on Correctional Manpower and Training in 1969, have explored various other criminal justice issues not covered here. The reader should turn to these studies for in-depth analysis of these topics.

This study is divided into four major parts. Chapters III and IV analyze the intergovernmental dimensions of the various State-local criminal justice systems and the intergovernmental policy issues suggested by the operations of these systems. Chapter V explores the public's role in the criminal justice system, and Chapter II sets forth policy recommendations designed to achieve a better-functioning system of intergovernmental relations in the State-local criminal justice process.

FOOTNOTES CHAPTER 1

[1] U.S. Bureau of the Census. *Expenditure and Employment Data for the Criminal Justice System 1968-1969.* Washington, 1971, Tables #1 & 2.

[2] F.B.I. *Uniform Crime Reports - 1969.* Washington, 1970, pp. 102, 108.

[3] Albert Reiss Jr. *Studies in Crime and Law Enforcement in Major Metropolitan Areas: Measurement of the Amount and Nature of Crime.* Consultant Report for the President's Crime Commission, 1967.

[4] Daniel Glaser & Vincent O'Leary. *Personal Characteristics and Parole Outcome.* U.S. Department of Health, Education and Welfare: Social Rehabilitation Service, 1968.

[5] President's Crime Commission. *Task Force Report: Crime and Its Impact: An Assessment.* Washington, 1967, p. 44.

[6] National Commission on the Causes and Prevention of Violence. *To Establish Justice, To Insure Domestic Tranquility.* Washington, 1969, p. 18.

[7]This data was derived from: F.B.I. *op. cit.*, Tables # 27, 31.; U.S. Bureau of the Census. *Current Population Reports.* Series P-25, March 19, 1970, Table #3.

[8]National Commission on the Causes and Prevention of Violence. *Crimes of Violence, Volume 11.* Washington 1969, pp. 181-182.

[9]*Ibid.*, pp. 210-215.

[10]President's Crime Commission. *The Challenge of Crime in a Free Society.* Washington, 1967, pp. 38-39,; Institute of Human Relations Press. *Crime and Race: Conceptions and Misconceptions.* New York, 1970, p. 51.

[11]Total arrests per 100,000 population.

[12]Clearances occur when the police identify an offender and have sufficient evidence to charge him and take him into custody. Clearances may also occur in selected instances where the offender is not actually charged and taken into custody. See F.B.I. *op. cit.*, p. 28.

[13]James Q. Wilson. "The Urban Unease: Community Vs. City", *The Public Interest.* Summer 1968, No. 12, pp. 25-39.

[14]George Gallup. "Crime, Pollution Top U.S. Problems", *The Washington Post,* May 14, 1970, p. F6.; See also Joint Commission on Correctional Manpower and Training. *The Public Looks at Crime and Corrections.* Washington, 1968.

[15]President's Crime Commission. *Task Force Report: Crime and Its Impact: An Assessment.* Washington, 1967, pp. 87-88.

[16]Albert Reiss Jr. *op. cit.*, pp. 159-160.

[17]Chamber of Commerce of the United States. *Marshalling Citizen Power Against Crime.* Washington, 1970, pp. 4-6.

[18]National Commission on the Causes and Prevention of Violence. *op. cit.*, pp. 405-411.

[19]Joint Commission on Correctional Manpower and Training. *A Time to Act: A Final Report.* Washington, D.C., 1969, p. 55.

[20]F.B.I. *op. cit.*, Table #15, p. 102.

[21]*Ibid.*, Table E, p. 40.

[22]On the other hand a large proportion of crimes against the person do not necessarily involve criminal mobility. See President's Crime Commission. *op. cit.*, pp. 80-81.

[23]Morton Grodzins. *The American System.* New York: Rand McNally, 1966, p. 93.

[24]F.B.I. *op. cit.*, Table B., p. 36.

[25]Morton Grodzins. *op. cit.*, pp. 93-94.

[26]For the economic rationale of why this should be true, see Thomas C. Schelling. "Economic Analysis and Organized Crime" in President's Crime Commission. *Task Force Report: Organized Crime.* Washington, 1967, pp. 114-126.

[27]*Ibid.*, p. 11.

[28]Advisory Commission on Intergovernmental Relations. *Fiscal Balance in the American Federal System. Vol. 2.* Washington, D.C., 1967.

[29]Advisory Commission on Intergovernmental Relations. *Performance of Urban Functions: Local and Areawide.* Washington, 1963.; Arthur Maas. ed. *Area and Power.*, New York: Free Press, 1959.; Roscoe Martin, *Grass Roots: Rural Democracy in America,* New York: Harper and Row, 1964.

[30]Roscoe Martin. *Ibid.*, p. 51.

[31]Arthur Maas. ed. *op. cit.*, pp. 39ff.

[32]See Appendix B of this report for a review of the economic literature on economies of scale and economic externalities.

Chapter 2.

FINDINGS AND RECOMMENDATIONS

Crime and its control are priority items on the agendas of governmental jurisdictions at all levels. The dimensions of the problem, as described in Chapter 1, make clear that the quality of life of the great majority of citizens is affected negatively by criminal activity and the absence of effective control systems.

Lawlessness and violence are not new to the American scene. Our outlaws and gangster mobs are recognized in fact and folklore, here and abroad. What is new is the pervasiveness of crime. The statistical incidence of crime is high—relatively and absolutely. It is too high for the comfort of the average citizen almost everywhere, but particularly in and around our urban centers. It is fitting, then, to take a hard look at the formal institutions of control, at the components of our criminal justice system.

The fundamental purpose of a criminal justice system in a democratic society is to preserve social order—hence the basis of individual liberty and social progress—through just laws, protective surveillance and apprehension, constructive and speedy adjudicatory processes, and responsive correctional programs designed to rehabilitate offenders.

Regardless of the different levels of government and varied jurisdictional responsibilities involved, the system should function as a continuum—from pre-apprehension surveillance to post-correctional programs—if success in terms of societal as well as individual needs is to be achieved.

This study finds that, generally, the collective operations of police, public prosecutors, public defense counsels, courts and corrections establishments do not constitute a well articulated system. These operations do not reflect clearly assigned responsibilities, supported by ample and strategic allocation of resources and affording—indeed, guaranteeing—protection for all citizens. While this report necessarily focuses on the intergovernmental relations problems impinging on the criminal justice system, no analysis of its institutional parts can, or should, avoid the basic judgment that much of it, in fact, is a non-system. Police, prosecution, courts and corrections function too frequently in isolation, or in ways that are counterproductive to each other.

An intergovernmental perspective underscores this general finding. The basic State-local problems in criminal justice after all involve jurisdictional, administrative, fiscal and interfunctional issues and policies. Moreover, the challenge of developing an effective system at these levels is uniquely an intergovernmental one, since it entails both a basic determination as to the assignment of various responsibilities among levels and branches of government, and the development of effective and responsive mechanisms and relationships that support and enhance day-to-day operations of all components of the system.

This stress on system should not be interpreted as an argument for a monolithic criminal justice structure in which all components are directed by a single operating head. Such a proposal is antithetical to democratic precepts and to the constitutional doctrine of separation of legislative, executive, and judicial powers. In addition, this focus should not be viewed as an ill-disguised effort to effect a massive shift in responsibilities and duties from local to State jurisdictions. Much of the system required to control criminal activity must operate at the community level, under local control, and with a high degree of community involvement and support.

The need for a more systematic approach does imply that a highly mobile and interdependent society no longer will tolerate standards of criminal justice that vary widely in terms of the protection afforded, the caliber of justice meted out, the success of rehabilitative efforts, and the costs incurred. It does imply that expenditure patterns and resource allocation for police services must be balanced against resource commitments for legal services, courts, and correctional activities regardless of the source of the expenditures. It does imply that criminal justice services must be available and accessible in all communities in accordance with their needs, not their fiscal capacities. Finally, a strong emphasis on system implies that the operating components—police, prosecution, courts, and corrections—should function in ways that are mutually supporting and harmonious. Police cannot provide protection if court dockets are clogged and if correctional services achieve only a greater alienation among

ex-offenders. Courts cannot render evenhanded, constructive justice if police fail to provide adequate evidence, and if judges are without adequate and readily available disposition resources. And corrections cannot correct offenders that are harassed or brutalized by police, held interminably in detention limbo, or processed by an insensitive court.

This normative view of a criminal justice system provides a vantage point from which to assess certain facts and findings regarding the existing systems at the State and local levels.

Difficulties in the areas of (1) organization and jurisdiction, (2) manpower selection, qualification and training, and (3) fiscal support patterns are summarized below. Findings showing progress toward improving the criminal justice system are also presented.

SUMMARY OF MAJOR FINDINGS

Organizational and Jurisdictional Problems

Police

- There are upwards of 30,000 separate, independent police forces in the country. Nearly 90 percent of all local governments have police forces of less than ten full-time personnel. These small police forces, in most instances, cannot provide full patrol and investigative services for their citizens. Essential police supporting services in these communities are virtually non-existent, or difficult to obtain. Interlocal agreements for cooperative police services exist in many communities, but usually are not geared to assuring full patrol and investigative services.
- Large cities representing less than ten percent of local governments have over 80 percent of the Nation's total local police manpower. In none of the 114 multi-county metropolitan areas is there a police agency that exercises general or special jurisdiction over areawide crime.
- Rural police protection is highly decentralized, makes excessive use of part-time personnel, and has little areawide capabilities. In 1967, the 29,000 non-metropolitan local governments employed about 30,000 full-time policemen—an average of one per locality. Another 21,000 policemen in these jurisdictions were part-time. In the same year, 65 percent of county police forces had less than 11 men. County police services are provided mostly to unincorporated areas, not countywide.
- Most local police forces are largely jurisdiction bound while much of the criminal activity is mobile. As of 1966, 41 States had agreed to the Uniform Law on Interstate Fresh Pursuit. However, not all States have enacted legislation granting intrastate extraterritorial police powers.
- The "independence" of elected law enforcement officers makes modernization and interlocal coordination of police activities difficult. Sheriffs are elected in 47 States; constables in 29 States; and coroners in 26 States.
- Many State police forces operate under excessive functional and geographic restrictions and thereby are unable to provide supplementary and coordinative services to local police departments. As of 1970, 26 State police agencies are assigned highway patrol duties as their main responsibilities. Only 28 of all State forces have statewide investigative power and only 28 provide crime laboratory assistance to localities.

Courts

- Only 18 States have substantially unified their court systems. State-local court systems in the remaining States frequently lack clear patterns of court jurisdiction, central administrative control including assignment of judges within the system, and a single set of rules governing judicial practice and procedure.
- Judges are elected in 25 States, and in 22 States there is no provision for removing for just cause judges of general trial courts other than by the cumbersome procedures of impeachment, address, or recall.
- Justice of the peace courts remain as a "universal, and universally condemned, American institution." In most of the 33 States which still have them, they are untrained, part-time, and paid by fees.
- The judicial function in 35 States is supported by an administrative office staffed by professionally trained personnel and headed by a chief administrative officer with full powers to manage the court workload. Such offices also exist in metropolitan areas of at least 13 States.

Prosecution

- The prosecutorial function is complicated in the majority of States vesting local prosecutors and attorneys general with overlapping or concurrent responsibilities. Three States lodge all criminal prosecution power in the office of attorney

general; seven allow the attorney general unrestricted power to initiate local prosecution; and ten permit his unrestricted supersession of local prosecutors.

- Local prosecutors are elected in 45 States. Attorneys general are elected in 42 States.
- Prosecution is a part-time endeavor in a large part of the country. In 1966, over one-half of the local prosecutors in at least 27 States were working no more than half-time on public business.

Defense Counsel for Indigents

- Despite U. S. Supreme Court rulings requiring defense counsel for indigents, only 11 States have a statewide public defender system; an additional 30 States have assigned counsel systems. All told there were 330 public and private defender organizations operating in 1969, most on a county-wide basis. Some form of assigned counsel system was in effect in another 2,900 counties, but many of these were " . . . without any real form of organization, control or direction."

Corrections

- All but four States have highly fragmented correctional systems, vesting various correctional responsibilities in either independent boards or non-correctional agencies. In 41 States, an assortment of health, welfare, and youth agencies exercise certain correctional responsibilities, though their primary function is not corrections.
- In over 40 States, neither States nor local governments have full-scale responsibility for comprehensive correctional services. Some corrections services, particularly parole and adult and juvenile institutions, are administered by State agencies, while others, such as probation, local institutions and jails, and juvenile detention, are county or city responsibilities.
- More than half of the States provide no standard setting or inspection services to local jails and local adult correctional institutions.

Manpower: Selection, Qualifications, and Training

Police

- Eighteen percent of all municipalities over 10,000 population in 1968 did not have formal training programs for police recruits; 43 percent of all such municipalities provided formal training from within their own departments; and most cities below 100,000 have instructional staffs of less than five full-time personnel.
- Twenty-five States stipulate mandatory selection and training standards for local policemen. Such standards rarely call for more than five weeks of recruit training–a level half that recommended by the President's Crime Commission in 1967. Only 11 States have set minimum standards for in-service, advanced, or command personnel police training and many State surveys have found that local recruit training lasts only two or three weeks.
- Twenty-one States have restrictive personnel provisions which mandate veterans preference requirements in the selection of local police personnel.

Courts

- Thirty-six States require trial and appellate judges to be "learned in the law", but not in all instances are they required to be licensed to practice law; 25 States require a minimum period of legal experience for trial and appellate judges. The minimum period of legal experience in some States is ten years.
- A great majority of States having justices of the peace do not require that they have any legal training. Also, in most of these States, justices of the peace are compensated solely on a fee basis.

Defense Counsel for Indigents

- Assigned counsel systems in many areas lack local fiscal and public support. This condition has tended to hinder the entry of high-quality legal personnel into the public defender system.

Corrections

- Overall, less than 15 percent of State-local correctional personnel have any real opportunity for in-service training. Thirty-five percent of local probation officers in jurisdictions of less than 100,000 receive mid-career training and only 12 percent of 95 State-level probation and parole agencies have personnel exchange programs with other correctional agencies.
- Forty percent of adult correctional institutions have no staff training personnel and 49 percent of juvenile correctional institutions have no such training officers.

- Local law enforcement officers in many jurisdictions also are responsible for operating the local jail or correctional institution. Usually, these officers lack correctional training; at least 60 percent of sheriffs' jail personnel in 11 southern States had no such training as of 1967.

Fiscal Support Patterns

Police

- Overall, local governments accounted for 79 percent of total State-local police expenditures in 1969. Twenty-three States granted fiscal assistance to local police agencies which amounted to $49 million in 1967-68, $12 million of which was in the form of State contribution to local police retirement systems.

Courts

- Local governments bear about 75 percent of the total cost of State-local court expenditures. Only seven States finance 90 percent or more of the costs of lower courts. Forty-nine States assume full fiscal responsibility for the highest court; 17 of 20 States having intermediate appellate courts fully finance such courts; and about 20 States subsidize significant portions of the expenses of general trial courts. Judicial retirement systems are fully financed by State governments in 25 States.

Defense Counsel for Indigents

- Of 17 States that had statewide or partial public defender systems in 1969, eight were fully State-financed, and eight were wholly locally-financed. One of these States had joint State-local financing. Of the 30 States with assigned counsel systems, the costs were borne entirely by the State in 11, by local governments in 11 others, and by a combination of fiscal sharing in eight others.

Corrections

- State governments, as of 1969, accounted for about 67 percent of the total State-local correctional expenditures. The State share of these total expenditures ranged from 100 percent in Alaska, Rhode Island, and Connecticut down to 39 percent in Pennsylvania.

New Trends and Developments

While this summary of major difficulties is, and should be, disturbing, it is important to recognize that progress has been made in many States and jurisdictions. Public clamor and concern has affected policy-makers and legislators at all levels of government. Increased resources have been allocated. New legislation has been enacted. Innovative programs have been developed. The need for greater coordination among police, prosecution, courts and corrections has been recognized. Some of this occurred under the stimulus of the Omnibus Crime Control and Safe Streets Act. Findings indicating these improvements are summarized below.

Police

- Forty-three localities over 10,000 population contracted for "total" police services in 1967, while some 700 localities under 10,000 population had police service agreements with counties, other localities, or State police departments in 1968. Certain police services are provided on an areawide basis in the St. Louis, Kansas City, Atlanta, San Francisco, and Fort Worth metropolitan areas. Moreover, mutual aid pacts exist among localities in several metropolitan areas.
- Over 50 counties have formed "independent" police forces which replaced the county sheriff's office as the primary county police organization. Fourteen States have replaced the coroner with an appointed medical examiner and 15 States have allowed local option in this matter.
- At least eleven States render fiscal assistance for improved local police training. Seventeen State police departments provide localities with police training services and Connecticut has instituted a "resident trooper" program that places trained police personnel in many smaller localities on a full-time basis.
- More than half the country's State police departments now aid local police agencies with investigative, crime laboratory, and communications assistance.

Courts

- Eighteen States have instituted substantially unified court systems and 35 States have a central court administrator.
- Seventeen States, in whole or in part, use the Missouri Plan for the selection and appointment of judges. At least 35 States now provide for judicial

qualifications commissions, courts of the judiciary, or special commissions on involuntary retirement to scrutinize the performance of incumbent judicial personnel.

Corrections

- Three States have "unified" corrections systems, and another six are moving in this direction.
- Nine States have established regional juvenile detention facilities while regional jails and correctional institutions have been established in at least seven others.
- Over ten States provide inspections services for juvenile detention facilities, jails, and local correctional institutions and a comparable number of States have stipulated minimum standards for jails, local institutions, and juvenile and misdemeanant probation services.
- In four States, a single State department administers all juvenile activities; in three States, the same agency is responsible for administering both juvenile and adult correctional services.

System Planning and Coordination

- While there is no one single State or local agency that formally can coordinate the activities of all criminal justice agencies, each State now has a planning agency which is responsible for disbursing Federal aid under the Safe Streets Act. These agencies are charged with performing comprehensive criminal justice planning at the State level and may channel Federal crime control funds for the support of programs that strengthen and better coordinate the operation of criminal justice agencies.
- Forty-five States have created regional law enforcement planning agencies. Many of these agencies focus on problems of coordinating criminal justice activities on an areawide basis and, in some cases, they interrelate their planning efforts with Model Cities planning and with applications for Juvenile Delinquency and Highway Safety Act funds.
- At the local level, 137 cities in 1969 reported they had instituted some type of criminal justice coordinating council. These agencies attempt to provide the local chief executive with information and assistance for coordinating local criminal justice agencies.

A beginning has been made in improving and modernizing operations in the various sectors of the criminal justice field. Yet, much obviously remains to be done. The 44 recommendations which follow constitute an agenda for action.

RECOMMENDATIONS

A. POLICE

Recommendation 1: Provision of Basic Police Services (Patrol and Preliminary Investigation) in all Metropolitan Localities

The Commission recommends that all local governments in metropolitan areas assure the provision of full-time patrol and preliminary investigative services to their residents. Metropolitan localities should provide these services either directly, or through intergovernmental cooperation with States, counties, or other local governments, or some combination thereof. The Commission also recommends that overlying county governments should be empowered to assume the police function in any metropolitan locality which fails to provide patrol and preliminary investigative services, charging the costs of such assumed police service to the affected local government. The Commission further recommends that in cases where the county does not assume these police services, State legislation should mandate the consolidation of police services in metropolitan jurisdictions which do not provide basic police services directly or through interlocal agreements.*

Nearly 90 percent of the more than 38,000 units of local government in the country had a police force of fewer than ten men in 1967. At the other extreme, only about five percent, or 1800, of all such units had police forces with 25 or more men. These latter jurisdictions contained nearly 80 percent of all local policemen. In a 1967 sample of governmental units in 91 metropolitan areas, 26 percent of all local police forces had ten men or less and more than half had forces of 20 men or less.

Small local police departments, particularly those of ten or less men, are unable to provide a wide range of patrol and investigative services to local citizens. Moreover, the existence of these small agencies may work a hardship on nearby jurisdictions. Small police departments which do not have adequate full-time patrol and preliminary investigative services may require the aid of larger agencies in many facets of their police work. Moreover, lack of adequate basic police services in one locality can make it a haven for criminals and thus impose social and economic costs on the remainder of the metropolitan community.

* Governor Reagan dissented.

It is difficult to determine what standards for "adequate" police services should be. Yet jurisdictions that are not offering 24 hour patrol and investigative services–assignments that can barely be accomplished by forces of ten or less men–are not providing adequate basic police services to their residents. Observers also contend that many smaller, urbanizing communities sometimes forego full-time basic police services since they require significant tax levies.

Yet, many smaller jurisdictions have arranged for the provision of police services from larger units of government. At least 40 localities of 10,000 population or more contracted for total police services in 1967, and a 1968 International City Management Association survey found that 83 percent of 834 communities of less than 10,000 population (one-third of which were suburban communities) had police service agreements with either overlying county governments, State police agencies, or neighboring localities. The prevalence of these interlocal contracts and agreements, then, is an indication that some smaller metropolitan communities can provide full-time basic police services even if they are unable to do so directly.

Noting the limited capabilities of smaller police departments in the Nation's metropolitan areas, the Commission recommends that all metropolitan, local jurisdictions assure the provision of full-time patrol and preliminary investigative services either directly, or through intergovernmental cooperation with States, counties, other local governments, or some combination thereof.

The Commission further recognizes that some local governments in metropolitan areas either can not or will not participate in interlocal contracts or joint agreements for police services. Yet, the assurance of full-time basic police protection is clearly in the public interest. Therefore, localities which do not provide minimum police services either directly or through some form of intergovernmental cooperation should have such services assumed by overlying county governments, but with these localities bearing the cost.

Finally, the Commission proposes that in cases where counties fail to provide basic police services to localities lacking them, State legislation should mandate the merger of the police function in these jurisdictions with that of adjacent jurisdictions. By this mandated consolidation all residents of a metropolitan area will be assured of immediately accessible patrol and preliminary investigative services.

With this recommendation, the Commission endorses the principle that all residents of a metropolitan area should receive full-time basic police protection. An escalation of responsibility is established to provide the mechanism for achieving this goal. Stress is placed at the outset on having the localities involved assume this minimal function either directly or by interlocal contract, agreement, or similar device. If after a reasonable period, this approach proves nonproductive, the county would assume the police function in the defaulting localities with the fiscal burden being left to the latter. In some cases this would require additional State legislation and might well be covered by statutes geared to revamping county law enforcement capabilities. (See Recommendation 9) Finally, if the county involved fails to fill the service void, the State would mandate consolidation. This final "gun behind the door" emergency procedure might be detailed in a State's boundary commission statute or new legislation relating to local government viability.

The "carrot and the stick" procedures outlined in this proposal are somewhat complex. Given the jurisdictional and political maze they are caught up in, they are bound to be complicated. But the objective is quite simple: making patrol and preliminary investigative services immediately available to all residents of a metropolitan area.

This proposal seeks to encourage intergovernmental cooperation in the provision of these services so that there will be minimum levels of basic police protection throughout the metropolitan area. Only in cases where a local government refuses to provide these minimum services will county assumption or State mandated consolidation of local police forces occur.

The police function has always been a local responsibility. Local governments everywhere regard adequate performance in this area as a basic indication of effective local home rule. The viability of governments that do not assure adequate basic police services can be brought into question.

County assumption of local police services would occur only after localities refused to provide minimum basic police services directly or through intergovernmental cooperation. This assumption would still keep provision of police services local; residents of the affected jurisdiction would still have some say in the performance of this function in their area. State-mandated consolidation is a more forceful approach, yet it would only be relied on if a county failed to assume police service in a given locality. The State, of course, has ample authority to do so. A State can assure its citizens of a minimum level of any public service. Hence, when the provision of police protection is nonexistent or inadequate, the State may choose to reorganize local forces. Substantial gains in school services have resulted from consolidation; there is no reason to believe that this

same result could not occur if States had to consolidate local police forces.

Some critics of this three-tiered proposal feel that it is unrealistic to require all metropolitan local governments to provide full-time basic police services. Many of the smaller metropolitan jurisdictions are almost semi-rural in character and consequently have limited crime problems. They do not need and frequently can not afford these services, some contend. Moreover, in emergency situations they can rely on police assistance from neighboring localities, the county, or the State. In short, these critics believe that by demanding full-time basic police services in all metropolitan communities, unnecessary costs will be incurred by many jurisdictions.

It is also argued that county assumption of these services would become a prop for nonviable local governments. Critics claim that many smaller local governments in metropolitan areas should not receive this form of aid if they themselves are incapable of or unwilling to provide basic police protection. They reason that if such governments can incorporate themselves, they should also provide basic services to their residents. County assumption of police services in these areas would needlessly enlarge county agencies and force an unwarranted diversion of county police services.

Critics of State-mandated consolidation contend that it is too radical an approach to improving police services in smaller metropolitan localities. Basic police protection is a local function and as such should not be subject to State mandating. In short, such action by the State would interfere with local home rule. In addition, they maintain that consolidation would most likely encourage interlocal antagonisms in the metropolitan area, an occurrence that might hinder interlocal cooperation in other facets of the police function. Finally, other critics contend that consolidation should be more general, involving total mergers of smaller metropolitan jurisdictions, not just some of their police departments.

Notwithstanding these objections, the Commission endorses this recommendation as a necessary means of achieving a minimum level of police performance throughout the Nation's metropolitan areas. Its three-level strategy clearly strikes a balance between local discretion and initiative, on the one hand, and State mandating action, on the other. This strategy also has the merit of placing heavy emphasis on the local level, which is where change in this functional area should occur. Its last stage consolidation feature may look like "a gun in the ribs" to some, but the absence of full-time patrol and preliminary investigative services in certain jurisdictions looks like an even bigger "gun in the ribs" to still others. For all these reasons, the Commission urges States, counties, and localities to take action along the lines developed in this recommendation.

Recommendation 2: Provision of Supportive (Staff and Auxiliary) Police Services in Metropolitan Areas

The Commission recommends that counties be empowered and encouraged to perform specialized, supportive (staff and auxiliary) police services for constituent localities in single county metropolitan areas. These services should include communications, records, crime laboratory, and other related functions. The Commission further recommends that in multicounty or interstate metropolitan areas, States authorize and encourage appropriate areawide instrumentalities such as regional criminal justice planning agencies, councils of government, or multifunctional, multicounty agencies to perform these supportive police services.

Frequently local police departments in metropolitan areas do not have the capability to provide diverse specialized supportive services. Smaller departments, in particular, often forego the provision of various staff and auxiliary services. For example, 25 percent of all police departments in communities under 25,000 population in 1967 did not provide formal police training programs, while a 1970 International City Management Association survey found that 43 percent of all communities under 25,000 population did not have police-community relations training. Moreover, many smaller departments have limited auxiliary services. These forces have only rudimentary communications and records capabilities, and usually antiquated and undersized local jails, staffed by police personnel who often have no correctional training.

The Commission believes that centralization of supportive services is both desirable and possible in many metropolitan areas. Therefore, the Commission recommends that counties or appropriate areawide instrumentalities in multicounty areas be authorized to provide supportive police services. Centralization is possible since supportive services are basically technical facets of the police function. Moreover, such action need not infringe on the jurisdiction of local police agencies since there is still local control of basic police services and since many localities lack the supportive services, centralization would entail no loss of power for these jurisdictions. Centralization also is desirable because it provides economies of scale and avoids needless duplication of services. It could prevent supportive services from becoming so fragmented as to be ineffectual. Centralization of criminal records, for example, could broaden the number of such records available to the

individual department and better enable them to investigate the criminal who operates in the entire metropolitan area. Centralization of police communications would prevent communications systems from becoming so overcrowded with individual frequencies as to be ineffective. Centralization would spread the costs of affected services over a larger tax base. With increased fiscal support, more expert personnel would be attracted to the police supportive services field. Some localities could be relieved of the prohibitive costs they now bear in attempting to provide these services.

Some opponents of a system of centralized supportive services argue that a police department should be large enough to provide all of its services internally. They claim that separation of basic and supportive police services is an artificial one. A department's basic services are contingent on the quality of its supportive services, they argue; moreover, these services must be provided internally if they are to have a maximum impact on basic police functions. These critics also contend that if basic and supportive services were performed by different levels of government, there would be no incentive to seek a budgetary balance between and among them.

The Commission rejects those contentions. Basic police services obviously are highly decentralized and too labor-intensive to be subject to economies of scale. But, supportive services are amenable to economies of scale and can be centralized administratively at the areawide level. To demand that all local police agencies perform both basic and supportive services would necessitate consolidation of many departments. While the Commission has no quarrels with consolidation, centralization of supportive services at the county or multicounty level represents a less coercive and more feasible approach to this problem at this time.

In single county standard metropolitan areas, of which there are 117 in the country, the Commission believes that the county is the logical government to perform centralized supportive services. Some of these counties are, in effect, metropolitan governments and others, if properly empowered, could acquire the necessary fiscal and administrative support for such services. Moreover, as general units of government, they have an excellent overview of metropolitan crime problems, are accessible to the general public, and are in frequent contact with constituent local governments.

In multicounty and interstate metropolitan areas, there is no single unit of general local government that now provides centralized supportive services. Yet, the Commission believes that there are a number of appropriate areawide instrumentalities that could be used for such a purpose in these areas.

Regional criminal justice planning agencies are one mechanism for the provision of such services. These agencies already have an overview of police needs in many multicounty metropolitan areas. In 16 States, they also have program responsibilities that include among other things provision of such supportive services as training, crime records, and regional crime laboratories. In light of existing responsibilities, there is no reason to believe that these agencies could not provide supportive services throughout the multicounty metropolitan area.

Councils of government also could provide these centralized services. Such councils already exercise police responsibilities in some metropolitan areas, most notably in Fort Worth, Texas, and Atlanta, Georgia. In some States, they have been designated to perform criminal justice planning under the Safe Streets Act, giving these agencies greater understanding of metropolitan police needs. Councils of government may be preferable to other governmental mechanisms for supplying these police services since they are recognized vehicles for intergovernmental cooperation in many multicounty and a few interstate metropolitan areas. They are broadly representative of local governments and would provide public accessibility in questions involving the performance of centralized supportive services.

Multifunctional, multicounty agencies also might be empowered to perform centralized supportive services. Although such agencies are presently in use in only a few metropolitan areas, they are essentially a limited form of metropolitan government. Agencies such as the Metropolitan Council in Minneapolis-St. Paul have been vested with several types of operational responsibility; these agencies have a public "visibility" and legitimacy which would allow them to easily perform additional police duties. These agencies, moreover, are preferable to unifunctional agencies which would be less able to place police supportive needs in a proper administrative and budgetary perspective.

Councils of government and multifunctional, multicounty agencies probably would better perform police supportive services in interstate metropolitan areas. The former already are in existence in some of these areas and could be utilized to take on the provision of these services, especially since Federal advance consent legislation to interstate crime control agreements already exists. Regional criminal justice agencies, on the other hand, are more involved with intrastate coordination of criminal justice operations.

Critics of these multicounty instrumentalities argue that they do not have experience in performing police services. They also note that particularly in the case of

metropolitan councils and regional criminal justice planning agencies representational issues would preclude these agencies from effective provision of supportive services.

Recommendation 3: Special Police Task Forces in Multicounty Metropolitan Areas

The Commission recommends that States authorize or encourage the creation of specialized police task forces, under State or interlocal direction, to operate throughout multicounty and interstate metropolitan areas in order to deal with extralocal and organized crime. The Commission further recommends that under the interlocal option, any areawide agency performing two or more operating functions be given responsibility for the task force; if no such areawide agency exists, the force should be established by interlocal agreement among the participating local governments.

In the 114 multicounty metropolitan area, there is no single police agency that exercises jurisdiction over the entire metropolitan area. At present, only State police forces theoretically can operate throughout these areas without jurisdictional hindrances and even this does not apply in the 31 that are interstate.

Many criminals have an extraordinary degree of geographic mobility. Over half of the criminal offenders arraigned in Federal courts in 1968-1969 had previous criminal arrests in more than one State. Undoubtedly, criminals in multicounty metropolitan areas have similar patterns of geographic mobility and it is well known that organized crime operations are often spread out through entire multicounty and interstate metropolitan areas.

The Commission believes that most multicounty metropolitan areas are ill-equipped to deal with such problems as criminal mobility and organized crime and urges the creation of metropolitanwide special police forces to help cope with such problems. Some metropolitan areas have already established special police strike forces to help in combatting areawide crime. There are areawide investigative units in the St. Louis and Kansas City metropolitan areas, and Atlanta's METROPOL provides communications, training, and investigative services to its several metropolitan jurisdictions. This approach to dealing with areawide crime would be strengthened by State legislation authorizing the creation of task forces.

The Commission sanctions such State action and feels that these forces--especially if they are multidisciplinary units composed of police, lawyers, and accountants--would be ideally suited to control organized and extralocal crime problems that are beyond the jurisdiction or ability of the individual police department to solve. These forces could focus on the resolution of areawide crime problems which are presently being attacked by a diverse number of local police agencies, thereby permitting local departments to devote more attention and resources to local crime problems.

Critics of the special force note several potential difficulties in its operation. They claim that, in some States, it would duplicate the crime control operations of State police in metropolitan areas. They also note the potential conflict with local departments over what constitutes areawide and organized crime. Moreover, the novelty of the force alarms some along with the fact that its separation from any unit of general local government could reduce the cooperation it would receive from local departments. All these factors, critics maintain, point to the minimal success of police task forces.

The Commission, however, sees a continuing need for these agencies in multicounty metropolitan areas. It notes that at least half the States do not vest their State police agencies with full-scale police powers; in such areas, State police forces do not have metropolitanwide crime control operations. Moreover, the Commission notes that all existing special forces have been instituted by interlocal cooperation. Such cooperation would indicate that some local police agencies already see the utility of such a force and others would not object to its handling of organized and areawide crime problems.

The Commission commends this interlocal approach as one way of instituting a task force. Such interlocal forces insure a minimum of jurisdictional conflict with local police agencies and could easily coordinate their operations with local agencies. The Commission also believes that task force powers should be vested in multifunctional, multicounty agencies where they exist. Such agencies as the Metropolitan Council in Minneapolis-St. Paul and the Metropolitan District Commission in Boston are mechanisms that might be suitable for exercising such powers, although both still have representational problems. These areawide agencies already exercise multifunctional responsibilities. They also have an areawide perspective on metropolitan problems and work daily with local governments in their respective areas.

State creation of police task forces also could aid several divided multicounty metropolitan areas in dealing with areawide and organized crime. State units would be well suited to solve crime problems that are beyond the capability of individual police departments. They also could focus on areawide crime problems that are presently attacked by a variety of local agencies.

Moreover, they could make use of supportive services that some State police departments now have.

The Commission fully recognizes that these task forces are a novel approach to solving areawide and organized crime problems. There has never been widespread support, barring city-county consolidations, for restructuring metropolitan police responsibilities. Yet, the problems of criminal mobility and organized crime persist in many multicounty metropolitan areas. Jurisdictional fragmentation in these areas usually precludes a centralized focus in dealing with these problems. The multicounty task force, formed either by interlocal cooperation or direct State action, is a suitable device for an areawide effort to cope with these critical metropolitan dimensions of the challenge of crime.

Recommendation 4: Extraterritorial Police Powers

The Commission recommends that, where necessary, States enact legislation and enter into interstate compacts giving localities carefully circumscribed extraterritorial police powers relating to "close pursuit" of felonious criminal offenders and to geographically extended powers of criminal arrest. The Commission further recommends that States clarify governmental responsibility for liability insurance for police officers engaged in lawful extraterritorial police activity.

The powers of a municipal corporation legally do not extend beyond local boundaries without specific State authorization. This general principle of municipal law means that local police activity must ordinarily be confined within local borders. This confinement, however, may work a hardship on the local police department since criminals tend to be highly mobile and since a large number of departments exercise jurisdiction over very limited geographic areas. The decentralization of local police departments and mobility of criminals thus serve to limit the geographical reach of crime control in the many parts of the country that suffer from jurisdictional fragmentation.

To offset the confinement of local police powers in these areas, some States have granted extraterritorial police powers to local departments. These grants either enable a force to police a specified extralocal area or authorize a local policeman to engage in "close pursuit" of criminals beyond municipal borders. Some States have even permitted extraterritorial police action in interstate areas as evidenced by 41 States passing uniform legislation on interstate "fresh pursuit". The mutual aid agreements among the police departments in the Washington, D.C. metropolitan area represent additional examples of these types of extraterritorial police action.

Grants of extraterritorial power usually are accompanied by certain constraints. Those permitting any police action within a specified extralocal area can not deal with criminals fleeing beyond such areas. "Close pursuit" grants of extraterritorial power do not permit arrest of a criminal suspect when he resides outside of the jurisdiction in which the alleged crime was committed. They also bar extraterritorial arrest on the basis of probable cause or under circumstances other than "close pursuit." The first type of grant is severely limited in its geographical scope while the second is unduly restricted in its functional operation.

The Commission urges that all States enact broad "close pursuit" legislation and, where necessary, initiate comparable interstate compacts subject to proper limitations. Such action would allow localities limited powers to pursue criminals who cross municipal borders. Legitimate curbs include the conditions that the pursuing officer be in uniform, that it be "fresh pursuit," and that the law enforcement authorities of other jurisdictions be notified when feasible.

Recognizing the need to supplement the "close pursuit" grant, the Commission strongly urges States to grant localities extraterritorial arrest powers in both intrastate and interstate areas. Positive benefits will result if local departments are permitted to make extraterritorial arrests with a warrant or on the basis of probable cause. Such powers would permit localities to deal with the mobile criminal who lives in one jurisdiction and bases his operations in another. Moreover, they would enable local departments to keep their extralocal operations confidential and help assure swifter apprehension of fleet-footed criminal suspects. Not to be overlooked here is the possible incentive this grant of power might provide for greater interlocal collaboration in the handling of mobile criminals.

The Commission realizes that there are arguments against granting these extraterritorial police powers. Critics doubt their legality and contend these powers, in effect, undermine the integrity of home rule. They also fear that extensive use of such powers would lead to interjurisdictional conflicts and, as a result, undermine public confidence in local police agencies. Moreover, they note such antagonisms could forestall interlocal cooperation in other facets of the police function.

Any form of extraterritorial police power will be used infrequently unless there is clear governmental responsibility for insurance liability in such cases. Hence, the Commission recommends that States clarify the insurance liability of governmental jurisdictions in order to

reduce present disincentives to legitimate extraterritorial police action. At least 12 States by court decisions already have overturned the doctrine of sovereign immunity thus exposing municipalities to tort actions. Moreover, a growing number of States have permitted localities to waive their sovereign immunity. The Commission believes these trends underscore the need for all States to pinpoint jurisdictional responsibility for insurance liability in extraterritorial police activity.

To sum up, the Commission recognizes that local sensitivities about police jurisdiction might be adversely affected by the use of extraterritorial police powers. Yet, by granting "close pursuit" and expanded extraterritorial arrest powers, States will allow local police agencies to act more swiftly in apprehending those who cross local or State boundaries in the course of criminal activity. With such powers, localities will not have to rely solely on cumbersome interlocal cooperative procedures, or on the State to apprehend mobile criminals. Instead, they will be able to move directly against extralocal crime.

Recommendation 5: Financing County Police Services in Unincorporated Portions of Urban Areas

The Commission recommends that where counties provide police services to unincorporated portions of metropolitan areas, States should require the costs of such services to be borne entirely by such unincorporated areas.

Numerous county governments provide police services mainly to unincorporated areas. For example, sixty-nine percent of all counties over 100,000 population or more in 1962 only provided police services in incorporated areas. A 1968 survey of 11 southern States found that about half of the 558 counties in the area provided police services in incorporated areas only upon request. In many cases, then, county police service has not been areawide in nature.

The Commission underscores the fact that when metropolitan counties restrict services solely to unincorporated areas, they work a fiscal hardship on incorporated area taxpayers. These citizens are taxed for services they do not receive, while residents of unincorporated areas have county police services subsidized by taxes from incorporated areas. To correct this fiscal inequity, the Commission urges States to require metropolitan counties, that provide services only to unincorporated areas, to finance such services solely from these areas. Counties could achieve this by utilizing subordinate taxing districts; whereby the costs of county police protection would only be charged to persons receiving the service—in this case, the residents of unincorporated areas. At present 21 States authorize the use of county-subordinate taxing districts. The remaining States should authorize the creation of these and other similar devices and encourage their use when a metropolitan county follows policies which restrict its police services to unincorporated areas.

Critics of these subordinate districts and similar fiscal devices contend that their use could truncate the fiscal resources of metropolitan county police departments. They argue that the diminished tax base available to such counties would dangerously reduce the level of police services in unincorporated areas. Some maintain that the availability of these devices might also encourage counties mistakenly to evade the responsibility of supplying certain police services to incorporated areas.

The Commission reiterates its position that if metropolitan counties prove unwilling or unable to provide countywide police services, fiscal mechanisms should be adopted to prevent a situation where incorporated areas subsidize county police protection for unincorporated areas. If these counties choose only to provide protection for the latter, then such areas should bear the fiscal burden of paying for such services. Through subordinate service districts or other means of benefit financing, metropolitan counties would have a more equitable means of financing police services when they are not performed on a countywide basis.

Recommendation 6: Revitalizing Rural Police Protection

The Commission recommends that State governments improve the capabilities of rural* police systems by any or all of the following: (a) supplying, on a contractual basis, trained State police personnel to work in rural jurisdictions; (b) having State police departments, where possible, provide a full range of police services in rural areas, or (c) providing incentive grants to encourage consolidation of subcounty police forces into a single county police force in rural areas with a high incidence of crime.**

This report has noted serious deficiencies in the organization of nonmetropolitan police protection. In general, it has been found that rural police protection is highly decentralized, makes excessive use of part-time personnel, and has limited areawide capabilities. All these facts indicate a need for some restructuring of the rural police function.

*Rural means nonmetropolitan areas with the exception of "independent" cities of 25,000 or more.

**Governor Reagan and Mayor Maltester dissented.

The extreme decentralization of nonmetropolitan police protection is evident in the small size of rural police departments. In 1967, for example, the U.S. Census Bureau reported that there were at least 29,000 nonmetropolitan local governments; these localities employed an estimated 30,000 full-time policemen, or approximately one policeman per locality. Several police surveys by State criminal justice planning agencies have noted that rural police departments are very small, generally averaging between three to five full-time personnel. Other State surveys have noted that many rural localities forego having an organized police force at all.

This report also has found that many rural police departments make excessive use of part-time personnel. 1967 Census Bureau data indicated that at least half of the States have 20 percent or more of their rural police employment in part-time personnel. On a national basis, there are 21,000 nonmetropolitan part-time policemen.

A significant lack of areawide police protection in rural areas also has been documented; 96 percent of the 2,400 nonmetropolitan counties for which there was police data in 1967 had police forces of less than 25 personnel; and 78 percent of these nonmetropolitan counties had less than ten full-time personnel. Rural county police forces, then, are in a poor position to coordinate or strengthen police protection within their jurisdictions.

The consequences are only too apparent. Many rural departments are so small that they can provide only minimal basic services. Excessive use of part-time personnel, even lowers the quality of these minimal services. Moreover, the lack of adequate areawide police protection means that many have difficulty in controlling extralocal crime.

In light of these deficiencies, the Commission recommends State action to revitalize and reform rural police protection. The Commission believes that there are several ways to achieve this goal. One approach is to have State police departments supply trained personnel, on a contractual basis, to work for rural localities. A program of this nature is presently operating in the State of Connecticut. "Resident troopers" are placed in Connecticut's smaller localities on a shared cost basis to serve as full-time local police officers. As of 1969, 47 Connecticut localities had resident troopers. This plan has obvious benefits for rural jurisdictions. It provides them with a full-time, professional policeman who can be the nucleus of an organized department. It engenders greater cooperation between State police and rural localities and it can encourage more collaboration among rural police department.

The Commission believes that expansion of State police services in nonmetropolitan areas is another way of strengthening the rural police system and that it merits careful consideration. State police systems already have a pronounced impact on many rural areas. Forty-one State police departments have statewide patrol responsibilities; 17 train local police, and 33 provide laboratory services to local police. In addition, all 49 State police agencies have highway patrol duties which result in a State police "presence" in most rural areas. Given this degree of involvement in rural areas, it would be natural to have all State police departments formalize and, in some areas, expand their role here by making it a matter of explicit public policy that they are to provide a full range of basic and supportive police services in rural areas.

The benefits of this approach are obvious. Most State police agencies already are acquainted with rural crime problems and usually have cooperative relationships with nonmetropolitan police departments. They have some of the best-trained police personnel as well as a variety of established supportive services which can be brought to bear on resolving rural crime problems. These agencies also have a broader base of fiscal support than rural police agencies and could improve their police services on a continuing basis.

The Commission also believes that States should encourage consolidation of small departments through use of incentive grants as another basic means of revamping rural police protection. Most rural departments, particularly those at the sub-county level, do not have enough resources to provide quality, full-time basic police services. If these agencies were consolidated into a single rural county police force, nonmetropolitan areas would receive better basic police protection. Moreover, consolidation would keep the nonmetropolitan police function basically a local one even with the expansion of State services. In this sense, rural local control would be furthered and police services would remain responsive to rural citizens. Consolidation also would give rural counties a much needed boost. It would strengthen the county in the eyes of its residents, bolster its ties with localities, and probably indirectly trigger a reform of the sheriff's office.

Incentive grants would help reduce local resistance to consolidation and aid the consolidated force to further professionalize itself. In due time, such grants could be terminated when consolidated departments are fully operative.

The Commission realizes that consolidation may appear a radical approach to improving rural police protection. Yet, the States have reorganized certain local governments in the past so they could provide higher

quality services to their residents. Between 1942 and 1967, the number of school districts decreased from 108,000 to about 22,000—a consolidation of some 85,000 school districts. These consolidations were effectuated because of the growing realization that small school districts could not provide a full range of quality educational services. There is a precedent, then, for consolidation when local units are too small to provide adequate services.

In short, rural police systems can no longer continue in their present disorganized state. Such systems need the presence of more centralized, professional police services of a full-time, areawide nature. State police assistance, consolidated rural forces, trained State police personnel working with rural departments, either separately or in some combination, constitute valid approaches to reforming rural police systems. State and local circumstances should dictate which approaches should be used, but on the question of whether State action is needed the Commission is strongly affirmative.

Recommendation 7. Broadening State Police Authority and State Police Services to Local Police Agencies

The Commission recommends that, where lacking, States consider granting the appropriate State law enforcement agency a full range of statewide law enforcement powers and removing geographic limitations on the operations of such agency. The Commission further recommends that, where needed, an appropriate State agency be encouraged to provide centralized records and crime laboratory services to all local agencies within a State, that a uniform intrastate and interstate crime reporting system be established; and that all local agencies be required, on a periodic basis, to report directly or indirectly all felony arrest and identification records to the State agency.

Twenty-six State police agencies are assigned highway patrol duties as their main responsibility. These departments are restricted almost exclusively to the enforcement of traffic laws and regulations and the implementation of highway accident-prevention programs. The limited crime control responsibilities of these agencies is highlighted by the fact that only eight of them have statewide investigative powers and only eight provide crime laboratory assistance to localities. Clearly many highway patrol agencies lack authority to supplement effectively the crime control programs of local police departments.

Many State police agencies also have restrictions on the geographic scope of their activities. In most cases, the restrictive legislation generally sets forth the conditions under which State police may operate in incorporated areas. This type of legislative constraint is found in such States as Kentucky, Louisiana, and New York, to name only a few.

The Commission believes that these functional and geographic limitations on State police activities are detrimental to the operation of an efficient State-local police system. Functional limitations on the responsibilities of State police deprive localities of needed back-up supportive services and such assistance is generally available to local departments in jurisdictions where the State agency possesses full-scale crime control responsibilities. Restricting State police to highway patrol duties also seriously reduces the scope of basic police services that rural areas may require.

Geographic restrictions reduce the mobility of State agencies and may encourage indiscriminate extraterritorial police actions by local departments. These constraints, then, encumber the operation of State police agencies in incorporated areas and may serve as a reason for State avoidance of urban police problems.

The Commission recommends that States consider scrapping any remaining functional and geographic restrictions on their police departments. Such agencies should exist as the enforcement arm of State government. This was the paramount idea prompting the creation of nearly half the country's State police agencies. A full-fledged State department has excellent opportunities to supplement the crime control capabilities of local departments. With Statewide jurisdiction, it can exert leadership in mounting an attack on organized crime and mobile criminals. Moreover, removal of functional and geographic constraints would enhance State-local coordination of police activities and this is at the heart of the effort to achieve a more integrated police system.

Some critics of this proposal contend that the police function is basically a local one. By vesting State police agencies with full-scale police responsibilities and removing geographic limitations on the exercise of their powers, numerous interlevel jurisdictional conflicts probably would result. Opponents point out that the police capability in the Nation's largest cities is every bit as sophisticated as that of State agencies. If smaller localities were willing to forego some of their jurisdictional prerogatives, so the argument runs, they could consolidate smaller departments and achieve a level of police protection that would be comparable to that in the larger cities. Such capability would eliminate the need for additional State police protection and result in police service more responsive to local needs. Finally, some critics note that increased State police powers may produce too great a centralization of police responsibilities at the State level.

Despite these arguments, the Commission sees a general need for State police agencies with full-scale

police responsibilities and with authority to operate on a statewide basis. Agencies having such powers do not actively seek out jurisdictional conflicts with local forces. On the contrary, some have a record of extensive professional cooperation with local agencies. Moreover, these full-scale State police forces are in a better position than State Highway Patrols to supply localities with a variety of needed services and to see to it that every area of the State is under the jurisdiction of a police agency with comprehensive crime control powers. The merits of a full-scale State police agency, then, far outweigh any alleged disadvantages.

The Commission also recommends that appropriate State agencies provide centralized records and crime analysis services to their localities. The Commission believes that these two supportive services are of the utmost importance to local police departments. Criminal laboratory services help make the investigative arm of the local department function more efficiently while records services enlarge local criminal intelligence capabilities. An effective records system can enable the individual department to better organize its patrol and investigative services and thereby increase its crime control effectiveness.

The Commission urges that these services be performed by State agencies for still other reasons. Both of these facets of the police function are more capital-intensive than patrol and investigative services. Hence, they are more costly than other police services, but more amenable to economies of scale. By providing these at the State level, localities would save the expense of constructing less efficient and duplicative records and crime laboratory services. Moreover, since these are technical functions, there would be no reduction in local police powers if they were provided by a State department. When these services are administered and financed at the State level, they benefit from having a more stable basis of fiscal support which might attract more highly skilled personnel into these critical fields. To facilitate the performance of this function, a uniform reporting system should also be instituted. The Commission recommends that localities should be required, on a regular basis, to report directly or indirectly all felony arrests and identification data to the central records agency.

Recommendation 8: Legal Status of the Sheriff

The Commission recommends that, where needed, the office of sheriff be placed on a statutory rather than on a constitutional basis.

At present, the sheriff is a constitutional officer in 33 States. His constitutional status derives from both historical and political factors. Historically, he was regarded as the chief law enforcement officer in the county, having the power of *posse comitatus;* hence, he was the only police officer who could legally coordinate the activities of all other local police agencies. Politically, he is part of the county's plural executive. His political status and the visibility of the police function make him a key local political figure. Historically, his constitutional status has been retained due to a traditional desire to protect the independence of the office. Politically, the office has retained this status because of its pivotal place in local party politics.

The Commission feels that the value of the sheriff's constitutional status has been diminished with modernization of county government in many urban and some rural areas. Therefore, the Commission recommends that, where necessary, the office of sheriff be placed on a statutory rather than on a constitutional basis. County reform efforts are replacing the plural executive with a centralized county administration centered in a county chief executive or county board of commissioners. This sort of county reorganization can increase the accountability of the law enforcement function, but it cannot do so fully if the sheriff retains his constitutional status.

If the sheriff's constitutional status were rescinded, there would be less likelihood of jurisdictional conflict between sheriffs' departments and independent county police forces that are found in over 50 counties. Presently, the sheriff's constitutional position has produced jurisdictional ambiguities in these areas with county police services sometimes suffering as a result. His constitutional status prevents independent police forces from being vested with full powers and frequently it deters drives to revamp the sheriff's office.

Opponents of this action note that such a proposal is not likely to meet with widespread public support. They note that few State constitutions have been revised to make the office a statutory one. They also underscore the fact that only three urban counties have abolished the elective sheriff. On the basis of such evidence, they contend that the public prefers to have the sheriff as a constitutionally independent officer. Moreover, reforms in the office, many sheriffs point out, can be achieved without putting the office on a statutory basis.

Notwithstanding these objections, the Commission prefers the statutory option. Revising the office's constitutional status would not prevent county residents from keeping the office an elected one if they so chose. A statutory basis merely provides more options for police organization available to a county's citizenry. It would help resolve the problem, faced in many areas, whether

to revamp the sheriff's office or to establish an independent county police force. In effect, it gives more substance to the structural home rule doctrine.

Recommendation 9: Independent County Police Forces and Modernized Sheriffs' Departments

The Commission recommends that States give metropolitan counties the option of assigning basic responsibility for countywide police services to an "independent" county police force under the control of the county chief executives or county board of commissioners. The Commission further recommends that States enact legislation which requires county law enforcement agency personnel to be compensated solely on a salary basis, covered by civil service tenure provisions, and provided with adequate retirement benefits. Where counties choose not to exercise the option of creating an independent county police force, States should authorize the assignment of responsibility for countywide police service to the sheriff's department, the reassignment of the sheriff's court and jail* duties to appropriate court and correctional agencies, and the enactment of legislation which removes tenure limitations on the sheriff's office.

Sheriffs' departments exist in virtually all parts of the country. With the exception of some 50 counties with independent county police departments and those few counties that have abolished the office of sheriff, sheriffs' departments are responsible legally for countywide police duties. They are vested with the power of *posse comitatus* and can legally coordinate the police activities of all other local police agencies in the county.

While the sheriff's department has the legal authority to provide countywide police services, many do not do so. Several surveys of sheriffs' departments, particularly in the South, have found that many devote less than half their time to police duties. Considerable attention, on the other hand, is given to court and jail duties and, in at least eight States, to tax collection responsibilities. These latter duties are traditional ones for many of these departments, and some have assumed great import since they frequently involve fee-paid assignments which supplement the income of the sheriff and his deputies.

Other factors also explain the disinterest of the sheriff in exercising countywide police responsibilities. The process by which sheriffs hold office is usually highly political. As a result, the office is often less professional than many other local departments. This fact has tended to reduce popular support for expanding the department and had the practical effect of hindering its countywide police responsibilities. Furthermore, the partisan nature of the department has tended to lower the attractiveness of employment, while the lack of civil service tenure and other personnel benefits has further retarded the development of a professional ethic in many instances.

In light of these various deficiencies, the Commission recommends that metropolitan counties be given the option of assigning basic responsibility for countywide police services to an "independent" county police force under the control of the county chief executive or county board of commissioners. The Commission also recommends that States enact legislation for all county law enforcement personnel—whether under the sheriff or in an "independent" department—requiring compensation solely on a salary basis, coverage under a merit system, and the provision of adequate retirement benefits.

As of 1966, there were at least 50 independent county police forces in operation in 12 States, many of them being operated in larger metropolitan areas such as Baltimore, Washington, D. C., New York, and St. Louis. The popularity of these agencies in metropolitan areas suggests that, in some instances, sheriffs' departments are not suited to properly exercising urban police responsibilities. The institution of these departments, then, has removed partisan influences from county police work, professionalized the agencies, and centralized accountability for the function in the county chief executive or board of commissioners.

Critics of the independent county police force feel that it prevents needed modernization of the sheriff's department. They also point out that if the sheriff's office is a constitutional one, a juxtaposition of an independent county police force and a sheriff's agency results even though the former has countywide responsibilities. Legally, the sheriff could still exercise police powers which would result in jurisdictional conflicts damaging to public confidence in county police work. Critics also note that there has been traditional popular support for the independence of the sheriff's department and that the partisan nature of the office has not prevented the development of professional sheriffs' departments in many parts of the country. Establishment of an independent county police force, thus, short-circuits the potential regeneration of the sheriff's department.

The Commission refuses to join in this debate. Instead, it focuses on the need to modernize police work at the county level through whatever basic route appears to be most suitable in varying situations. This means, at

*The term "jail" refers to a short-term correctional institution other than a local holding "over-night lock-up" facility.

a minimum, that metropolitan counties should be given the option of being able to create an independent county police force, if they so desire. The dictates of county home rule, as it relates to structural concerns, makes State action on this permissive legislative front mandatory.

Where counties choose not to exercise the option of creating an independent county police force, the Commission recommends that States authorize the assignment of responsibility for countywide police services to the sheriff's department, the reassignment of the sheriff's court and jail duties to appropriate court and correctional agencies, and the enactment of legislation which removes tenure limitations on the sheriff's office. Despite the deficiencies that have been found in the operation of many sheriffs' departments, the Commission believes that, with these reforms, sheriffs could exercise countywide police responsibilities.

The office of sheriff is a traditional feature of county government and this advantage should never be ignored. Moreover, the presence of highly professionalized sheriffs' departments in such States as California, New York, Florida, and Texas attests to the fact that urban police responsibilities can be handled by such agencies. Moreover, if sheriffs' departments are divested of their court and jail responsibilities, and if their personnel are placed under civil service with adequate salaries and retirement benefits, these agencies could concentrate on and be in a better position to perform countywide police services. Most of these departments do not have the proper personnel to handle the jail function, which should be administered by appropriate correctional agencies. Many court-related responsibilities could be better handled by full-time court personnel. In short, divesting the sheriff's department of court and jail responsibilities would improve the performance of these services and permit the department to up-grade and expand their police responsibilities. In this connection, the limit on sheriffs' tenure in seven States should be eliminated if the goal of modernization is to be achieved. An able sheriff administering a professional department should not be penalized by a rule better suited for the days of one-party and old style police. With these reforms, the sheriffs' departments would be equipped to face the hurdles of the seventies.

Recommendation 10: Abolition of the Office of Constable

The Commission recommends that States abolish the office of constable and transfer its duties to appropriate lower court systems.

Theoretically, the constable is the sub-county counterpart of the sheriff and he is supposed to function as a chief local peace officer. Actually, the constable is the chief court officer for the justice of the peace and devotes almost exclusive attention to those duties.

This report has found that the constable is of minor importance in the present system of organized local police protection. His duties are mainly judicial in nature. Indeed, in some States he is even prohibited from being a member of a local police force. Moreover, he has limited powers of deputation and is not likely to be the nucleus of an organized local police force.

The constable is almost universally a fee-paid officer and most of his support is derived from his court duties; this system of compensation has resulted in his devoting little attention to his police duties. Moreover, the meager income derived from their duties generally makes the office a part-time one. As such, the constable has minimal impact on local police operations.

In light of these facts, the Commission recommends that the position of constable be abolished and that its duties be transferred to appropriate lower court systems. For too long, the constable has been a minor court official, and the general public does not view him as sufficiently professional to handle local police duties. Moreover, the partisan nature of the office is in sharp contrast to the fact that practically all other sub-county police officers are appointed rather than elected. The office, after all, does not have the partisan significance of that of the sheriff and hence does not play a really key part in local party politics.

Any attempts to revive the office seem doomed. Vacancy rates for the office are high in many States. Only 103 (8 percent) out of a total of more than 1,300 authorized constables, for example, were elected in Alabama in 1967. Similarly, high vacancy rates also were found in such diverse States as Arkansas, Iowa, and Montana. Moreover, at least three States since the 1940's have either abolished the office altogether or authorized local option in abolishing the office. A number of other States have abolished the justice of the peace and thereby eliminated the need for a constable.

Supporters of the constable claim that he is an invaluable part of lower court systems in many States. As the chief enforcement officer for the justice of the peace, he insures the enforcement powers of these courts. His presence also frees other police officers from having to perform his duties. The abolition of the office would only create more work for local police departments.

On balance, the Commission believes that the constable is of minor importance as a local police officer. His limited police capabilities and his almost

exclusive attention to court duties warrant the abolition of his office.

Recommendation 11: Abolition of the Coroner's Office

The Commission recommends that States abolish the office of coroner. The Commission also recommends that States enact legislation requiring that the medical functions of the coroner be exercised by an appointed local medical examiner and the judicial functions of the coroner position be exercised by the local prosecuting attorney. The Commission further recommends that such legislation should stipulate that official records regarding certification of death be a matter of public record, and a grand jury or specified number of citizens, by petition, may call for an inquest.

The coroner is an elected officer in 26 States, and, in 19 of these, he is a constitutional officer. This report has documented the fact that the coroner plays an anomalous part in the criminal justice system. The "independence" of his office derives from a historical tradition that the investigation of "suspicious" death is best handled when free from political influences that may affect the local police and prosecutor. In effect, his "independence" was designed to insure impartiality of his office.

Yet, over time, a number of changes have occurred in the office largely in recognition of its poor administration. These changes have been of two basic kinds. Some coroners have been supplied with professional medical assistance, and in some States, the coroner's judicial functions have been revised so as to modernize inquest proceedings. Both types of changes have occurred because the medical and legal skills required of the coroner often were found lacking.

Revamping of the coroner's medical duties has been the most prevalent type of reform. Fifteen States have abolished the office and replaced it with a Statewide medical examiner system. Several others have retained the post but have set up a parallel medical examiner system which handles the medical phase of his work. Moreover, at least 15 other States have allowed local option in the abolition of the position and its replacement with an appointed medical examiner. Louisiana and Ohio take a different approach and require that coroners be licensed physicians. All told, only about 15 States have no restrictions on the coroner's medical functions, though even most of these require that coroners appoint a qualified physician to determine cause of death.

The coroner's judicial functions have also been circumscribed in many States. Four provide that the justice of the peace serve as *ex-officio* coroner. Coroners must be county attorneys in Connecticut, Nebraska, and parts of Washington. Seven States place certain restrictions on the coroner's power to call an inquest and five of these give the power solely to the county district attorney.

In light of these various developments, the Commission recommends that the office be abolished and its duties transferred to appointed medical examiners and to local prosecuting attorneys, respectively. The Commission also proposes that official records regarding certification of death be a matter of public record, and that a grand jury, on petition by a specified number of citizens, may call for an inquest. These last recommendations are to guard against possible abuse of coroner powers when they are transferred to these other officials.

The Commission makes these recommendations in the belief that the post of coroner has outlived its usefulness. The many legal and medical skills required of the office simply cannot be exercised by one person. Moreover, the Commission has noted that the "independence" of the coroner can impede the workings of the criminal justice system in determining the cause of a questionable death. The coroner, in several States, still has full legal power to take possession of the deceased and to conduct or not conduct an inquest as to the cause of death. If the coroner is untrained in the medical and legal fields, he can seriously hamper proper investigation of a suspicious death. Also any assisting physician who is not a trained pathologist can diminish the value of the medical investigation. Lack of investigative skills and knowledge of the rules of evidence can also confuse the inquest. In short, in the Commission's judgment, the need for swift and accurate medical and legal investigation of a death make it imperative that these matters be handled by a qualified medical examiner and local prosecuting attorney.

Recommendation 12: Improving Police Selection, Training, and Education

The Commission recommends that, where needed, States create Councils on Police Standards, composed of appropriate State, local and public members, to develop and recommend minimum standards for police selection and basic training. The Commission also recommends that States enact legislation promulgating mandatory minimum standards in these areas and assigning the administration of these standards to such councils. States should meet 100 percent of the cost of local training programs meeting mandatory State standards. The Commission further recommends that States encourage private and public institutions of higher education to

offer appropriate programs for police training and that local governments establish incentive pay plans or other fiscal aids designed to help local policemen in furthering their professional training by participating in such programs.

This report has found that many localities do not have adequate selection and basic training standards for their policemen. In the matter of selection standards, some smaller units do not even require written tests of their applicants and even fewer police departments have instituted psychological testing to screen out applicants emotionally unsuited for police work. Moreover, a number of local departments have unduly restrictive age requirements for police employment and only 11 percent of over 1100 localities surveyed in 1967 by the International City Management Association had police cadet programs which allowed young persons to pursue a police career. Finally, preservice residence is a prerequisite for police employment in many localities and this can curtail unnecessarily the geographic scope of recruitment.

In the area of police training, other difficulties have been identified. A 1968 International City Management Association survey found that as much as 18 percent of all municipalities over 10,000 population had no formal training programs for their policemen. Forty-three percent of all departments having training programs provided them through their own staffs and the instructional staff for most of these programs tended to be small, generally involving only one or two men. Only the very largest police departments had enough training personnel to offer their recruits a varied program.

Many localities also do not require sufficient training of their recruits. The 1968 ICMA survey found that most localities of over 10,000 population required a six-week training course for their recruits—a level a little more than half that recommended as a minimum program by the President's Crime Commission. Several individual State surveys have noted that many localities stipulate only two to five weeks of basic training for their recruits. Moreover, only a few departments have advanced or supervisory training for their employees.

These deficiencies in police selection and training, in turn, create other problems. Police costs are very labor-intensive and comprise a significant proportion of many city budgets. Thus, high-quality police selection and training are essential to efficient police expenditures. Moreover, many local police departments are understaffed or subject to rapid turnover of personnel; quality training programs could help alleviate some of these problems. For these reasons, many localities are in need of more productive recruiting and training programs.

In light of these various findings, the Commission recommends that, where necessary, States establish councils on police standards with State and local officials as well as public representatives serving as members. Such councils should develop and administer minimum selection and training standards for local police personnel. The Commission also believes State legislatures should consider the recommendations of these councils and enact basic standards in this area. A total of 33 States already have established police standards councils. Moreover, 11 pay either part or all of the cost of having local policemen meet minimum selection and training standards. Several other States have provided central training programs through their State police departments. Concern for local police selection and training, then, is not novel for a number of State governments and the Commission here is building on their experience.

The Commission sees a number of benefits in this proposal. The institution of minimum basic training and selection standards would help assure the general public of the professional character of its police, especially if training curricula are varied and comprehensive in nature. Such standards would make police performance more uniform and possibly encourage greater interlocal cooperation among these more professional police departments.

Critics of this proposal state that it does not meet the central local police problem—that of insufficient pay for police work. They contend that States could better aid the local police function by subsidizing the pay of policemen rather than by raising the qualifications for selection and training. They also see little value in establishing minimum selection and training standards since police work is so different among localities; minimum qualifications would be too low for some localities and unreasonably high for others.

The Commission maintains, however, that minimum selection and training standards are necessary so that the general public will be assured that all local police officers are properly selected and trained for any type of police work they might have to perform. The Commission further recommends that minimum selection and training standards be of a mandatory nature and that States should meet 100 percent of the cost of local training programs meeting these mandatory standards. While cognizant of its position against State mandating of the terms and conditions of local public employment taken in its 1969 report, *Labor Management Policies for State and Local Government*, the Commission recognizes that certain State mandated programs—certification and licensing of certain professional personnel and training programs—are both necessary and desirable. The

mandatory standards advanced here are of this nature and do not constitute improper State involvement in local personnel practices. State reimbursement of 100 percent of the costs of local training programs meeting mandatory State standards would effect a *quid pro quo* between States and localities on the issue of minimum selection and training standards. Localities would implement minimum standards while States would aid them in meeting the financial burdens imposed by such measures. Moreover, these training costs would be substantially less of a burden to a State than for various individual local governments, many of which are hard-pressed to finance quality selection and training programs.

Critics of mandatory measures feel that selection and training standards should be voluntary and serve mainly as a guide to localities concerning their handling of local police recruits. They also note that localities are in the best position to understand their police personnel needs and that State mandating would constitute as assault on local home rule. Some feel that State subsidies in no way recompense for State infringement on local personnel practices. Some also argue that higher selection and training standards may result in higher police salaries which will not be met by additional State subsidies.

The Commission notes these arguments, but still emphasizes the need for mandatory standards and 100 percent State support for local training programs meeting such standards. Mandatory measures now in effect in twenty-five States do not aim for unattainable selection and training goals. Rather they are used to insure statewide minimum qualifications for local policemen. Through such standards, States can certify to the general public that a local policeman has the aptitude and training for his work. Moreover, the costs of selecting and training these better qualified applicants are, in some measure, attributable to the institution of these standards. Therefore, it is only a matter of equity that States bear the fiscal burden of these increased costs.

Finally, the Commission recommends that State and local governments increase higher education opportunities for local policemen. States should encourage private and public universities to develop programs for police training geared to increasing a policeman's educational and professional capabilities. At the same time, local governments should stimulate participation in such programs by formulating incentive pay plans and other fiscal aids designed to help local policemen participate in such programs.

Some progress along these lines is already being made. As of 1970, there were 444 advanced police science degree programs in the United States, an increase of over 200 percent since 1966. Federal aid under the Law Enforcement Education Program (L.E.E.P.) will have enabled upwards of 175,000 policemen to further their education as of 1971. A number of local police departments either defray tuition costs or offer incentive pay plans to encourage participation in these programs.

The Commission stresses that these efforts must be expanded. The need for greater State and local participation in higher education police training programs is still all too apparent. Through such participation, local agencies can attract better educated personnel and retain highly motivated recruits who will use their education to increase their professional skills. Moreover, through such programs, local police forces can base their promotional policies on some criterion other than seniority. In short, these increased opportunities for educational advancement are needed so that policemen will better understand the complexity of their job and its overall place in the criminal justice system.

Recommendation 13: State Criminal Code Revision

The Commission recommends that State legislatures revise their criminal code to better define the scope of discretionary police activities. More specifically, State criminal codes should stipulate the bounds of legitimate police activity in the exercise of arrest powers, search procedures, and interrogation practices. The Commission further recommends that, where lacking, States enact comprehensive governmental tort liability statutes to protect State and local police employees from tort actions arising out of legitimate use of discretionary police powers.

State governments are responsible for drafting the criminal code and for delimiting the scope of legitimate police activities. Some States carefully prescribe the conditions under which a policeman may make an arrest, make a search, and properly interrogate a criminal suspect. Legislation describing the scope of these activities enables the policeman to be aware of the extent of his discretionary powers and the general public to understand their rights when involved in an arrest, search, or interrogation situation.

Some States also have enacted comprehensive tort liability statutes which shield State and local police employees from tort actions arising out of legitimate use of their discretionary powers. Moreover, at least 12 States have overturned the doctrine of municipal immunity from tort actions, thereby making local governments responsible in tort actions against municipal personnel, including police.

Both of these issues are fundamental State legislative responsibilities, in the opinion of the Commission. The

Commission recognizes that police work regularly hinges on the use of discretionary powers. In the daily course of their work, police personnel must often make the decision to arrest, to make a search, or to detain and interrogate a criminal suspect. To effectively use these discretionary powers, the policeman must be fully knowledgeable of their bounds and also realize that he will not be penalized if he uses such powers legitimately. When State governments detail the conditions under which discretionary powers may be used and enact comprehensive tort liability legislation, they help assure the policeman and general public of their safety in the use of such powers.

When legislatures set forth discretionary police powers in ambiguous or conflicting fashion in the criminal code, they inject uncertainty and sometimes unnecessary litigation into law enforcement activity. When they fail to provide tort liability protection, they heighten the uncertainty in police work.

Both types of State legislation benefit the general public. Detailing the scope of police discretionary powers helps to educate the public as to what constitutes legitimate police activities. It also informs the public of its rights when involved with police in such activities. Comprehensive tort liability statutes enable the citizen to collect for damages to person and property that may arise from the use of police discretionary powers. This sort of legislation helps to raise public confidence in the law enforcement process and, in the long run, should help generate greater cooperation with the police.

Critics of detailing the bounds of discretionary police authority in the criminal code indicate that there is no possible way in which the code can adequately describe all the conditions under which such powers may be used. Moreover, these critics note that discretionary police activities are already subject to State and Federal court rulings and these rulings are the main vehicle for control of any abuses of police authority. They also point out that policemen cannot be expected to know all the legal prescriptions affecting the use of their discretionary powers and that with detailed prescriptions policemen are less likely to act promptly in discretionary matters, thereby reducing police initiative.

Critics of comprehensive tort liability legislation contend that it reduces the policeman's prudence in the use of discretionary powers. A few point out that damage suits arising from some tort actions are likely to be a fiscal burden for some localities. Others argue that if municipalities were liable for such costs, some might restrict unduly the discretionary powers of their policemen.

While noting these objections, the Commission believes that both the police and the public are served by State legislation that describes the bounds of legitimate police power and protects policemen from tort actions in the use of their discretionary powers. Policemen are aided by clear guides as to the scope of their discretionary powers. Such guides are preferable to statutory uncertainties, for the latter can lend to abuse of these necessary powers. Moreover, the legislature as a representative body has an inherent duty to express publicly what the general populace expects of its policemen when they perform their duties. Such legislation also may prevent State and Federal courts from having continually to resolve legal issues involving utilization of discretionary powers.

Tort liability legislation also retains public confidence in the integrity of the police function. Such legislation assures the public that it will be compensated for damages that might arise out of use of discretionary police powers. It also may increase the effectiveness of police use of discretionary powers—a fact that should insure a more efficient and responsive State-local police system. The Commission hastens to add that policemen, of course, still would be liable for intentional abuse of their discretionary powers. Properly drafted tort liability legislation would see to that.

Recommendation 14: Modifying Personnel Practices

The Commission recommends modification of State laws which restrict local chief executives from appointing local police chiefs from the ranks of any qualified applicants and which restrict local police chiefs from appointing division heads and assistants reporting directly to them. The Commission further recommends that, where necessary, States modify veterans' preference and other State civil service regulations which serve to limit unduly or otherwise restrict the selection, appointment, and promotion of qualified local policemen.

Restrictive personnel policies sometimes produce local police departments that are not effectively controlled by the local chief executive. In a few instances, the police chief is still elected, as in West Palm Beach, Florida. In other cases, the police chief is appointed by a police board, as in Chicago, Honolulu, Kansas City, and St. Louis. In St. Louis, moreover, members of the police board are appointed by the governor, thereby further curbing local chief executive control over the department.

The President's Crime Commission and other studies have found that restrictive State laws and regulations governing local police personnel practices can lower the

morale of local police forces and impede selection and retention of qualified personnel. For example, laws and regulations basing promotion on seniority alone can result in a shortage of needed technical personnel in a department. Moreover, recruitment for certain positions solely from within a department can curtail needed lateral mobility. Restrictive civil service provisions governing the appointment of a police chief and his top staff can weaken the command structure of a local police force.

The Commission believes that only local chief executives should have appointment power of the police chief, and that selection should be from the ranks of any qualified applicants. In turn, police chiefs should be empowered to appoint division heads and deputy assistants reporting directly to him from the ranks of any qualified applicants. Such measures would insure local executive responsibility for the law enforcement process and strengthen command responsibility within a police department.

Critics of such proposals feel that alteration of present personnel practices would downgrade the professionalism of local police forces. They suggest that direct political appointment of the police chief by the local top executive would subject that office to undue pressures. This pressure could be intensified if the chiefs had appointment power over all key command personnel. Moreover, it is contended that partisan influence may result in an uneven and selective law enforcement policy by the department.

The Commission is cognizant of the potential risks in the proposed revisions of personnel practices. Yet, it believes that the local chief executive must be accountable to the local populace for the effectiveness of local law enforcement. This accountability can not be maintained when the chief executive and police chief do not have full administrative control over the police department. Indeed, lacking such control, law enforcement policy could be made by the department without effective public scrutiny. Public confidence in the fairness and impartiality of the police function thereby could be damaged. To avoid this source of public discontent with local police, the Commission recommends a "visible" system of accountability for law enforcement policy. Such accountability requires executive appointment of the police chief and police chief appointment of key command personnel.

The Commission further recommends that where necessary States modify veterans' preference and certain State civil service regulations which serve to limit unduly or otherwise restrict the selection, appointment, and promotion of qualified local policemen. The Commission notes that while most States leave police personnel management matters to local governments, some State laws do interfere with local personnel practices, including police. In at least 21 States, local police forces must consider veterans' preference requirements in their selection process. Indeed, at least three States mandate veterans' preference in both appointment and promotion. In all or portions of four other States—New York, Ohio, Massachusetts, and Louisiana—local governments experience even more wholesale State mandating of civil service practices.

The Commission is already on record that States should keep to a minimum the mandating of terms and conditions of local public employment. These after all are more properly subject to discussion between local employees and employers. Clearly many State veterans' preference laws and other mandated civil service regulations are unnecessary intrusions of State government in local personnel matters. This recommendation, of course, does not prevent State mandating of reasonable qualifications standards for local policemen as is being done by Police Standards Councils in at least 25 States. Such mandating assists in raising the professional caliber of local policemen throughout a State.

Certainly such restrictions as veterans' preference need not obstruct necessarily the workings of a local police personnel system. Many former servicemen can bring needed experience to the police profession. Veterans' preference provisions are one means of attracting such people into police work. Yet, when such provisions are made overly restrictive—as when they apply to promotion as well as appointment or when they require absolute preference—they can damage the effectiveness of a police personnel system. Restrictive civil services practices also have been adopted and implemented voluntarily at the local level. Yet, when such restrictions are instituted by local government, they are subject to easier modification than when legislated at the State level. For these reasons, States should refrain from mandating regulations that unduly restrict the operations of local police personnel programs.

Recommendation 15. Police-Community Relations

The Commission concludes that a workable partnership between police and community residents is necessary to effectively prevent crime. Hence,

The Commission recommends that local governments substantially increase their efforts to involve citizens in the law enforcement and criminal justice process through the establishment of police-community relations machinery and programs.

To be effective, law enforcement must involve the citizenry. The adequacy of the role of the police in

detecting and apprehending suspects is largely dependent on the willingness of the public to cooperate in reporting crime and in identifying suspected offenders. The fact that about half of all crimes are not reported underscores the need to develop closer ties between the police and the community.

For this reason, among others, the Commission believes that it is essential for more police departments to establish police-community relations machinery and programs. Such efforts should not be confined only to large cities or to those with a history of civil disorders; the public's role in law enforcement applies to small as well as large and to rural as well as urban jurisdictions. Moreover, police-community relations deserve higher fiscal priority on local law enforcement agendas; only 5.4 percent of Federal funds under the Safe Streets Act, for example, were awarded to States and localities for this purpose as of February 1970.

The Commission rejects the argument of some observers that police-community relations programs are luxury items in the law enforcement area and consequently should have lower fiscal and personnel rank than basic detection and apprehension activities. These public-oriented programs are fundamental to the prevention as well as to the control of crime, and hence should not continue to receive second-rate attention. Likewise, the Commission takes issue with those who view police-community relations solely in terms of the recruitment of manpower from ghetto areas and minority neighborhoods. While the employment of minority group members in responsible positions in the police force is quite important, it is but one of several components of an adequate police-community relations effort.

In the Commission's judgment, the concept of police-community relations should not be limited to a public relations program designed solely to improve the image of the police in the community. Instead, it should include the actual involvement of the police in the life of the community which they serve as well as the enlistment of public support for their efforts. Community relations, then, means developing new channels of communications between the police and the public by increasing police contacts with all of the people of the community, and especially minority groups, rather than with only those who come in conflict with the law. It assumes the need for mutual understanding and the willingness to change attitudes and stereotypes. These programs are directed to the reestablishment of police involvement and respectability in their community, and they place a heavy responsibility on police departments for achieving this goal.

The Commission does not feel that it is appropriate to specify the types of police-community relations programs that should be established. At the outset, however, it is important for police departments to hold meetings in neighborhood areas to discuss the residents' law enforcement needs and problems, police policies and practices, the citizens' responsibility in crime prevention and control, and other matters of concern to each party. Citizens and police are then in a position to formulate programs that will be workable and relevant in terms of developing a productive partnership to combat crime, not merely promoting a public relations campaign for the police department. The types of police-community relations programs that are set up will vary in accordance with local conditions.

Regardless of the approach, or combination of approaches, the Commission believes that major steps must be taken to avoid a crisis of confidence in the police in many cities. If a basic trust and mutual understanding between police and community do not exist, the effectiveness of law enforcement will be seriously reduced. In other words, it makes little sense to pour more and more funds into police hardware and manpower without allocating an adequate portion of available resources for programs designed to build and maintain solid ties between police departments and the communities they serve.

B. COURTS

Recommendation 16. A Unified, Simplified State Court System

The Commission recommends that each State establish a simplified and unified court system, consisting of a supreme court, an intermediate court of appeals if necessary, a general trial court and special subdivisions of the general trial court performing the duties of courts of limited jurisdiction. The Commission also recommends that the States abolish justice of the peace courts, or overhaul them by placing them under State supervision, direction and administration; by compensating justices by salary rather than by fees; and by requiring them to be licensed to practice law in the State or pass an appropriate qualifying examination. The Commission further recommends that all courts be subject to administrative supervision and direction by the supreme court or the chief justice; to uniform rules of practice and procedure promulgated by the supreme court subject to change by the legislature; and to the flexible assignment by the supreme court or chief justice of judges from court to court within and between levels.*

*Governor Hearnes dissents from that portion of Recommendation 16 dealing with the reform of the justice of the peace courts and states: "I believe that full-scale court unification can be best accomplished through the abolition of the post of justice of the peace rather than its overhaul."

Examination of State criminal court systems reveals that a number of their basic problems stem from organizational and administrative weaknesses. These have a particularly serious effect on the lower courts–where the most critical problems are found–but they also hamper the rest of the system.

In most States at the present time, constitutions and statutes disperse responsibility for court operations widely among the individual courts at the general trial and lower court levels. One State reported to the Federal Law Enforcement Assistance Administration, for example, that each of its general trial courts is a judicial "kingdom" with its own jealously guarded prerogatives. For the lower courts, the lack of pinpointed statewide responsibility for the judiciary is an underlying cause of the neglected conditions in which many find themselves.

Present constitutional and statutory provisions also frequently vest individual courts at the same or different levels (i.e., general trial and lower courts) with concurrent jurisdiction over certain kinds of criminal cases. Thus, in a number of cities an offender may be charged with petit larceny in any one of three or more courts–a city or municipal police court, a county court, or a State trial court of general jurisdiction. Each of these courts may have different rules and policies resulting from differences in judges, prosecutors, and traditions. While one court may be swamped with cases, the docket of another is current. In one set of courts the judges may be nonlawyers, cases may be prosecuted by police officers, and probation services may be nonexistent. In contrast, other courts may have judges trained in the law, professional prosecutors, and probation officers. Judicial and prosecutorial salaries and the budgets for probation services in the same city also may differ.

Thus, proliferation of lower courts and overlapping of jurisdictions leads to an uneven administration of justice. The treatment an offender receives depends in large part on which of the several available courts he is tried in. Moreover, the taxpayer has to pay for maintaining two or more parallel sets of courts.

What is needed is a simplification and unification of court structure and a clear fixing of overall responsibility for seeing to it that the courts function as a system in a reasonably coordinated and consistent manner. Considering the separation of powers, this overall responsibility must be placed within the judiciary branch itself and the obvious place to put it is in the supreme court or its chief justice.

To exercise this responsibility in a manner calculated to achieve the ends of fair, swift, and efficient justice, the supreme court needs certain minimum powers: the authority to promulgate rules of practice and procedure, subject to legislative review; the power to prescribe and monitor statistical reporting system, and to examine and recommend administrative practices, all designed to assure the equitable and expeditious handling of individual cases; and the power to assign and reassign judges to avoid the buildup of case backlogs in one court while in other courts judges enjoy light schedules. Only with the effective exercise of these basic powers can justice be administered throughout a State court system in a fair, effective manner.

The President's Commission on Law Enforcement and the Administration of Justice found that the lower ccourts–those which dispose of cases that are typically called misdemeanors and that process the first stages of felony cases– are the principal focus of difficulties in State court systems. Their finding was not unique: it was made by many other study groups at the national, State and local levels prior to the President's Crime Commission and has been reiterated in this report. Certainly the causes of lower court difficulties involve more than their place in the overall State system. The quality and quantity of judicial and nonjudicial personnel, and the source of financing also are critically involved. We direct our attention to these matters in subsequent recommendations. While acknowledging these matters, it is the Commission's firm conviction that the reduction in numbers and kinds of lower courts, the clarification of jurisdiction, and the clear pinpointing of overall administrative responsibility in the supreme court–with the instrumental powers referred to–are essential elements of any program of reform of these courts.

The President's Crime Commission concluded that an underlying cause of the problems of the lower courts is the neglectful and negative attitude toward them on the part of the public, the bar, and even the judiciary, summed up in the word "inferior" which is often applied to them. Many noted authorities, however, have emphasized that it is a mistake to use this term of reference, for these are the courts that handle the great bulk of criminal cases; the only courts to which most people are exposed; and the courts which are most influential in determining whether an accused continues on a career of crime or becomes a law-observing citizen. Yet, deserving the name or not, the lower courts have it, and will continue to have it unless drastic measures are taken to end their position of neglect.

The President's Crime Commission recommended that the basic structural solution to the problem of lower courts in urban areas was to merge them with the general trial courts. The present system of separate urban lower courts, its members contended, has produced lower standards of judicial, prosecutorial, and defense performance in the misdemeanor and petty offense courts. Procedural regularity has been a casualty.

Both the community and the offender suffer when the offender is processed through these courts, for he often receives a lighter sentence than is appropriate, and is unable to benefit from rehabilitative facilities more frequently utilized by the higher courts.

By consolidating the lower courts with the general trial courts, in accord with the Crime Commission's proposal, all criminal prosecutions would be conducted in a single court manned by judges who are authorized to try all offenses, and all trial judges would be of equal status. Such unification would not change the grading of offenses, the punishment, or the rights to indictment by grand jury and trial by jury. But all criminal cases would be processed under generally comparable procedures, with stress on procedural regularity and careful consideration of dispositions. The Crime Commission noted, however, that the precise form of unification would have to reflect local conditions.

Some feel that merger of the misdemeanor and petty offense courts with courts of broader jurisdiction may be ideal from a psychological point of view but that it is not practical. There is an essential difference between the two types of cases and they will inevitably be given different kinds of treatment, these observers contend. They cite the court unification accomplished in the State of Illinois by constitutional amendment in 1962, whereby all lower courts were abolished. Yet in recognition of the practical differences in types of cases, the amendment authorized the general trial (circuit) court to appoint magistrates to handle cases formerly handled by the separate courts. While the magistrates are parts of the circuit courts, they are clearly not of equal status with the circuit judges.

It is also worth noting that consolidation of all lower courts with general trial courts may run into the problem of municipal courts authorized by separate constitutional provision, as happened in Colorado. To avoid disturbing a sensitive home rule article in this type of case, it can be urged that it is wiser to accept continuance of the separate municipal courts.

The National Municipal League's model State constitution offers an alternative approach to cleaning up the structural problems of the lower courts. It limits courts to those that can be established uniformly throughout the State. This approach would at least avoid the cheapening effect of proliferation of minor courts as well as assuring the avoidance of overlapping jurisdictions. Municipal courts authorized under home rule charters would seem to fit the uniformity provision.

In our judgment, special subdivisions of the general trial court should assume the duties of courts of limited jurisdictions. This approach would make the most significant improvement in the structure of the State trial courts. It would eliminate the problem of proliferation, enhance the goal of more uniform procedures, and generally provide a more even administration of justice.

Turning to nonurban lower courts, this Commission believes that unification and simplification of the court system should include abolition or substantial overhauling of the justice of the peace courts. These courts are a "universal and universally condemned, American institution." The JP is paid by fees in most of the 33 States which still have them. In these States, the JP collects only when he convicts, so that he has come to be called "justice for the plaintiff." His adjudication of traffic violations within a small unit—frequently his major task—interferes with uniform traffic law enforcement, and tempts him to discriminate against the "outsider" and in favor of the local offender. This parochial loyalty is fortified by his lack of legal training. Most of the 33 States require no legal training for the office. Finally, poor court facilities and lack of decorum in JP proceedings tends to undermine public confidence in the entire judicial system.

The justice of the peace, in many respects, is a relic of earlier and simpler days and, as presently constituted, is not capable of meeting the demands of contemporary justice. A key indicator is the high rate of inactivity in the office in some States. As long ago as 1955, only 167 of Kentucky's 678 justices were active, and not more than half of them tried many cases. In 1967, Kentucky JPs were active in criminal cases in only 37 of the State's 120 counties, and only 101 of the 626 JPs were performing judicial duties.

The Commission notes that if justice of the peace courts are abolished, their functions could be taken over by courts of general jurisdiction as was done in Illinois in the early 1960s; or their place could be taken by a consolidated magistrate or county court, as was done in Missouri in 1945, in Tennessee in 1959, in Maine in 1961, and in South Dakota in 1966.

If retained, the JPs, in our judgment, should be required to be compensated by salary so as to avoid the temptation of having their judgments turn on the source of compensation rather than the merits of the case and the law. Many jurisdictions have taken this step, including Delaware in 1965; and North Carolina starting in 1970. To make the office worthwhile and attractive, and yet within the financial resources of localities, this would probably mean a reduction in the number of justices.

A second condition for retention of JPs is that they be required to be lawyers or to have completed rigorous judicial training prior to assuming office. Several states have such requirements. All New Jersey judicial offers entering office since 1947 have been required to be

trained in the law; judicial officers in Washington's three largest counties must be attorneys; and in New York, Mississippi, and Iowa, justices are required to complete training courses.

Finally, JPs should be made administratively accountable to and placed under supervision of the state court system. The trend is toward vesting this overall supervisory responsibility in the supreme court, or its chief justice, aided by full-time professional administrators. Such supervision should require that JPs keep records, prescribe the kinds of records to be kept, and provide guidance in keeping them. Delaware has been a leader among the states in providing supervision of JPs. In 1964, the legislature of that State provided the supreme court with a deputy administrator to render such supervision. Later, in an overhaul of the JP system in 1965 and 1966, the legislature gave the deputy administrator additional authority to assign justices to hold court where needed.

The overall reorganization the Commission proposes is not new—in theory or in practical adoption by many states. The merits of unification and simplification of state court systems have generated the support of many groups and individuals concerned with the improvement of the administration of justice, from Dean Roscoe Pound in 1906—who is credited with originating the idea—to such groups as the American Judicature Society, the American Bar Association, the National Municipal League, and the President's Crime Commission. The Conference of Chief Justices in 1953 resolved that all trial courts of first instance in the state should be fully integrated into the judicial system of the state and wherever necessary a reorganization of the statewide system of courts should be undertaken to accomplish this objective.

Whether through the influence of the views of these authorities or the sheer force of the proposed system's merits, States have shown an increasing tendency to move toward the unified, simplified system of court organization. A total of 18 States can be considered as having unified or substantially unified court systems. As detailed in Chapter 4, at least 20 additional States have made notable structural reforms in their court systems in recent years, many of them in the direction of a unified, simplified system. Yet, Maryland and New York, have had constitutional revision proposals before their voters encompassing unification and simplification reform, only to see them defeated because of opposition generated by other parts of and overall draft. Maryland subsequently approved a judicial reform article in 1970. In Georgia and Florida, the legislature in 1968 failed to approve submission to the voters of court reform proposals made by a legislative or other study committee.

Voter and legislative hostility to court modernization bring us to the criticisms of these reform proposals. Apart from the kind of situation cited in Maryland and New York, the obstacles of tradition and standpattism loom large, as they usually do on issues of major institutional alteration. Apprehension about changes in the status quo almost always explain a sizeable proportion of an "anti"-vote. In addition, the simplification and restructuring of courts at the general trial and lower court level, including the abolition of justices of the peace, raises the specter of possible abolition of other judicial offices. This threat nearly always arouses the opposition of those whose jobs are involved. Similarly, judges of general trial courts may resist the idea of elevating the status of lower courts, which they would regard as diluting their own power and prestige. Some members of the bar tend to oppose certain court reorganizations because they require an accommodation to new institutional arrangements. Moreover, they naturally may feel a reluctance to support a proposal which threatens the position of a judge whose office may be abolished by such a reform.

These more temperamental objections to a unified, simplified court system come under the general heading of "resistance of any major change." Others concern substantive policy issues and focus on the drawbacks of the change. Some argue against unification and centralization of authority in the supreme court as going too far in the direction of "bureaucratization" of the judiciary. Most of these critics, in effect, prefer the present system of decentralized judicial authority, perhaps with some attempt at fixing overall supervisory responsibility within each level: lower courts, general trial courts, appellate tribunals and the highest court. With respect to the JP courts, some fear that their abolition would do away with the "common man's court" where small cases can be heard informally. Old style home rule advocates, of course, oppose amalgamation of county- or municipal-level courts with a State system. And a few judges fear the role that court administrators would gradually assume with a major reorganization.

Some of these reservations about unification and simplification have merit, but the Commission believes on balance that the advantages to be gained in terms of establishing a structural pattern of responsibility for continuing surveillance and improvement of the entire state judiciary far outweigh any disadvantages. Regarding "bureaucratization", this charge can always be leveled against an organizational structure needed to deal

with the inevitable problems of large scale administration of a program over a large area—whether it is the administration of justice, health, education, or whatever. The alternative, unfortunately, is what currently prevails in many states: a dispersion of authority among individual courts or levels of courts, producing an unevenness of treatment that is inconsistent with a fair administration of justice. Against the claim that the JP court is easily available and the court of the average citizen, it can be argued that a new magistrate's court system or a subdivision of a general trial court can be administered in a manner to continue to assure accessibility and the atmosphere of a small man's court. By "riding a circuit," judges of such courts can assure availability in all sparsely settled areas that do not warrant a full-time magistrate.

With respect to the provision authorizing the legislature to change rules of practice and procedure proposed by the supreme court, we generally tend to agree with the National Municipal League that such a provision is necessary to guard against untrammeled judicial rulemaking, threatening an invasion of the area of substantive law. At the same time and unlike the National Municipal League, we do not feel that an extraordinary majority is needed to protect against the threat of legislative interference in strictly procedural matters. In our judgment, the regular legislative process in the States provides adequate safeguards against this possible abuse.

To sum up, the Commission believes that the time has come to end the feudalism in a majority of the judicial systems at the State and local levels. Witness the overlapping jurisdictions, varying procedures, uneven dockets, administrative autonomy and jurisdictional proliferation that still are characteristic of half of these so-called systems at the present time. The prestige, purpose, and proper role of the judiciary are all brought into question as a result of the failure to achieve basic structural reforms, reforms that have been recommended for more than three score years. A simplified and unified system, reform or abolition of the justice of the peace courts, centralized administrative supervision, uniform rules of practice and procedure, and the flexible assignment of judges—these are essential measures of constructive change and basic features of this Commission recommendation.

Recommendation 17. State Court Administrative Office

The Commission recommends that all States provide an administrative office of the State courts, headed by a professional administrator, to assist in the administrative supervision and direction of the State court system.

State court systems are large-scale operations. Expenditures on judicial activities in fiscal year 1968-69 amounted to approximately $900 million. State governments alone employed 15,576 people in the courts, and cities and counties employed over 63,000 such personnel in the same year.

Any enterprise of this magnitude must be concerned with getting the most output for the dollar, to put the matter in cold fiscal terms. Moreover, in terms of its paramount purpose—fair and swift administration of justice—the court system must be concerned that the administration of its affairs avoids backlogs and delays. Those, after all, are a principal shortcoming of many courts, particularly at the lower and general trial levels. For purposes of justice as well as sheer economics then, State and local courts must modernize their management policies and practices.

Administrative modernization involves making continual studies of work processes, so as to improve court procedures affecting the flow of court work. It means the installation of new procedures and modern techniques employing computer technology and hardware as well as microfilming. On the important personnel side, it means up-to-date recruiting, testing, and training techniques.

In fiscal administration, it involves revamped budgeting, purchasing, auditing, and payroll preparation methods. Finally, in the matter which most intimately concerns the movement of cases through the courts, it means modern systems of statistical recording and reporting, because with these management aids, those responsible for seeing that delays are kept to a minimum will know how the caseload is flowing and where and when to intervene if necessary.

Individual judges or groups of judges are responsible for administration of individual courts. Where states have chosen to vest overall supervisory responsibility for the entire system in one point,, they have placed it in the supreme court or its chief justice. Thus, technically, a judicial officer must be held ultimately responsible for the administrative affairs of the court systems. Yet, the knowledge, skills, and interests required to handle effectively the administrative operations of a court system are not necessarily associated with the qualifications or inclinations of a judge. This explains the growing recognition that state court systems need to be equipped with a professionally manned administrative office. This development has worked to the point now where 35 States are served by court administrative offices. Moreover, 1970 saw the initiation of a new Institute for Court Management, the purposes of which is to develop court executive officers for the State and Federal courts.

Where the State has vested administrative responsibility for the entire State judiciary in the supreme court or the chief justice, it is, of course, logical to place the administrative office directly under the court or official. In States which have not done this, the administrative office might well be placed under the general direction of the judicial council or conference which, as of 1968, existed in all but one State. In several cases, councils or conferences appoint existing administrative officers, which is a reasonable arrangement considering these bodies long have been responsible for the conduct of administrative studies and the submission of recommendations for improvements in this area. In a sense, administrative officers are inheriting these functions of judicial councils and conferences.

The scope of duties assigned to the administrative office naturally will depend upon the administrative powers and responsibilities of the body or official to whom it reports. In a State with a highly unified, simplified court system, the powers will be broad, covering the full gamut of expediting court business, performing fiscal duties, adopting standards of practice for nonjudicial personnel and perhaps hiring and training employees. They will also include studying and making recommendations for improvement of administrative organization and procedures, as well as serving as the secretariat to the judicial council and other statewide judicial bodies. Equally significant, the powers exercised in these regards will extend not only to the highest court, the intermediate appellate court, and the general trial courts, but also down to the lower trial courts. The effective direction and supervision of a unified State judiciary require that the powers extend that broadly and that deeply.

The probability that a court administrative office in a state with a unified court system would exercise broader powers than its counterpart in other States was confirmed by the survey conducted jointly by the Advisory Commission and the National Conference of Court Administrative Officers. The survey found that the adminstrators of 15 unified State systems reported a higher degree of involvement with general trial and lower courts than the other 16 reporting administrators. It found that these officers were more intensively engaged in supervising or providing services to these lower courts, and employed noticeably more resources in discharging their duties.

Court administrative offices can not exceed the authority to supervise or serve that is bestowed upon the individual or body to which they are responsible. Thus, unless and until a State adopts a unified court structure, the scope of the authority of such offices will be limited. The Commission urges, however, that such States develop those offices to exploit to the fullest their opportunities for administrative assistance and supervision. The same, of course, applies to the States with unified systems. The ACIR-NCCAO survey indicated that the participating State administrative offices were least involved with assisting in the dispatch of judicial business (such matters as helping in the assignment and reassignment of judges and implementing standards and policies on hours of court) and with supervision of nonjudicial personnel. Further efforts by these offices to attain and implement more substantive administrative responsibility is therefore indicated.

In his August 10th, 1970 address to the American Bar Association, Chief Justice Burger declared: "The management of busy courts calls for careful planning, and definite systems and organization with supervision by trained administrator-managers . . . We need them to serve as "traffic managers," in a sense as hospitals have used administrators to relieve doctors and nurses of managerial duties. We are almost a century behind the medical profession in this respect." Quite clearly, the State judiciary has as much need of this form of assistance as the Federal, perhaps more so; hence the Commission's support for a State court administrative office.

Recommendation 18. Trial Court Administrative Offices

The Commission recommends that States authorize and encourage establishment of administrative offices for the general trial courts of large urban areas. The Commission further recommends that such offices be headed by professional administrators and be under the general supervision of the State court administrator where one exists.

Fifty-five counties over 500,000 population spent in excess of $223 million each on judicial activities in fiscal year 1968-69. Forty-three cities over 300,000 population spent more than $131 million each for courts in the same year. These figures suggest the magnitude of court operations in large urban areas. The size of their court operations, plus the significance of the general trial courts in the administration of criminal justice, convince the Commission that the general trial courts in urban areas would do well to have professional administrative assistance. The reasons basically are the same as those supporting administrative assistance for the entire State system, although the range of the latter's responsibilities is inherently wider.

As with the office of State court administrator, the office of trial court administrator is not new. In fact, there are enough of them to have organized their own

association—the National Association of Trial Court Administrators (NATCA)—which has approximately 60 members. Moreover, their number can be expected to increase with the recent establishment of the Institute for Court Management.

A survey conducted by NATCA in early 1970 provides information on these offices. The 29 offices that responded are located in 13 States, and all but one function in general trial courts. The number of judicial personnel manning these offices ranges from two in Contra Costa County, California to 253 in Cook County, Illinois, with a median of 18. The number of nonjudicial personnel in the 26 offices reporting on this item vary from 20 in Las Vegas, Nevada and Ramsey County, Minnesota to 1600 in Philadelphia, with a median of 48. All but a few of the offices reporting on personnel and fiscal duties indicated that they are responsible for hiring, discharging, demoting, and reassigning employees; preparing budgets; accounting; and administering payrolls.

Among other duties considered basic for trial court administrative offices are budget execution, management of physical court facilities, information services, intergovernmental relations assistance, jury administrative services, statistical management, analysis of administrative systems and procedures, and case calendar management. Important tools for performance of the latter three functions are computers and microfilming. Most of the offices responding to the NATCO 1970 survey indicated that they used these two aids.

The Commission believes that the State, as the jurisdiction which is basically responsible for the general trial courts, should authorize and encourage the creation of the administrative office at that court level. The Commission believes that a good case can be made for requiring these courts to create their own office of administration. Yet, recognizing that States vary in the degree to which they have achieved an effective unification of their court systems, the Commission believes each State at this point in time must decide for itself whether it can in fairness mandate such establishment.

An additional factor relating to a State's imposition of such a requirement is that of financial responsibility. To the extent that States finance all or a substantial part of the trial courts' operations—as this Commission urges in this report—it is justified in imposing such a mandate. On the other hand, if a State contributes little or nothing to the cost of such operations, the Commission feels that it would be unjustified in making such a demand. If a State decides that the administrative office is a critical need, and if it is willing to foot a substantial part of the bill for such an office, the Commission believes such an office should be mandated.

In those States with a State court administrator, it appears logical that the trial court administrators should be under the general supervision of that State official. This is particularly necessary where the State judiciary is unified with strong central direction from the highest court.

The Commission thus views trial court administrative offices as a vital adjunct of the broader effort to modernize the management of the judiciary in urban areas. Where an overall unified court system has been established and financed largely by the State, then such offices should be required. In States that are moving more slowly on the road to judicial reform, then the authorization and encouragement constitute the proper approach. In the long run, however, the Commission believes that general trial courts in the Nation's metropolitan areas cannot function effectively, if this management tool is ignored.

Recommendation 19. Method of Selecting Judges—The "Merit Plan"

The Commission recommends that State and local governments, where needed, adopt the "Merit Plan" of selecting judges, whereby commissions consisting of representatives of the bar, the judiciary, and the public screen and nominate qualified candidates for appointment by the chief executive. The Commission further recommends that judges so appointed be required to submit themselves to voter approval or disapproval at an election at the end of each term.

Many elements go to make up a good court system, but none is more significant than the judge. A competent judge may succeed, despite organizational, procedural, and fiscal shortcomings of the courts. Without these handicaps, such a judge would probably succeed handsomely. But without an able judge, the court will not be competent; it will not dispense justice fairly and efficiently. Thus, the provisions for selection and tenure of judges are critical for the upgrading of our criminal courts. And the Commission believes that the so-called "Merit Plan," of which one version is the "Missouri Plan," is the best of the various methods of selecting and retaining judges.

Our study has found that despite continuous efforts at reform, election still is the dominant selection method in 25 States, with 15 of these having partisan elections and 10 nonpartisan. This method first came into popular favor with the advent of Jacksonian democracy and gained renewed strength with the Populists in the nineties and the Progressives a decade later. It grew out of the belief that it meant more democracy and more

sensitivity to public opinion. Yet, in our judgment, it for the most part has failed to realize this promise. It has produced neither greater responsiveness to the citizenry, nor has it notably improved the quality of justice.

The elective process tends to place a premium on a candidate's ability to appeal to the largest number of voters, which we consider hardly an appropriate subject for meaningful campaign debate nor a valid index of the candiate's judicial qualifications and temperament. The capacity to leave the bench and mount the rostrum is scarcely a test of judicial capacity. Moreover, in some urban jurisdictions, the election process provides no real contest. Where the strength of the political parties is about equal, selection of a candidate is frequently negotiated by the parties. In "one-party" jurisdictions, the contest is meaningless. The process is further compromised by the fact that in States where judges are elected they usually go first to the bench by appointment to fill a vacancy. Partisan elections have the further handicap of immersing the judicial candidate in party politics and tend to put a premium on party loyalty rather than fitness for the job. Nonpartisan elections, on the other hand, tend to reduce popular interest and participation in the election and undercut one of the positive features of partisan elections, namely, the influence of responsible party organizations in putting up able judicial candidates.

Experience at the Federal and State levels has demonstrated the merits of judicial appointment by the chief executive. Doubtless, this stems from the pinpointing of responsibility on the chief executive and his superior opportunity for obtaining information and making intelligent appraisals of judicial candidates. The principal drawback to this method—and one which we consider critical—is that the chief executive has neither the time nor the personal knowledge to do the job alone. He usually is compelled to rely on the advice of others, in which party or patronage considerations can carry too much weight. Experience in many States with varying political climates indicates that party politics, and all that the term implies, plays far too great a role in the straight executive appointment system for selection of judges.

The Commission believes that the Merit Plan improves the system of appointment by the chief executive by using a formal screening panel which, in its nominations to the chief executive, assures that objective qualifications for the job are kept paramount. This assurance is provided by the makeup of the nominating panel with members drawn from the bar, the judiciary, and the public-at-large.

The Commission also believes that judges appointed under this system should submit themselves to voter approval or disapproval at the end of a term. This type of election process avoids the shortcomings described earlier. The incumbent runs on his record rather than against an opponent, hence, the opportunity for the usual campaign jousting is minimized. Equally significant, this procedure affords the electorate an opportunity to pass judgment periodically on the manner in which the appointment system is working. And this need should not be minimized in a period of disaffection and alienation. From a practical viewpoint, moreover, this procedure provides a balancing factor in the system—one that tends to make it more palatable in States with strong direct democracy traditions.

The Merit Plan of judicial selection is not without its shortcomings, of course. For one thing, it could require setting up separate nominating commissions for each appellate division, trial district, and when extended to local courts, to each municipality. Thus, a considerable organizational effort would be required. On the other hand, the establishment of these separate bodies would assure wide geographic representation in the screening. This is important since critics sometimes challenge the representativeness of the process.

On the question of representation, we are impressed by the finding of a Missouri study, cited in Chapter 4, that the spectrum of community interests is being reflected in the screening process via the tapping of members of the bar who represent various interest groups. This practice refutes the charge of malrepresentation expressed by many critics.

The increasing adoption of the Merit Plan, in our opinion, testifies to its soundness. Seventeen States have adopted the plan for one or more courts. In most cases, it applies statewide, but in a few it covers only certain jurisdictions. Ten of the States installed the system during the past decade, and six since 1966. Efforts to adopt the plan are continually being made in many other states. We are further convinced of the value of the Merit Plan approach by the endorsements it has received. These include the American Bar Association, the American Judicative Society, the National Municipal League, the President's Commission on Law Enforcement, and Criminal Justice, and The American Assembly.

To summarize, the Commission sanctions the Merit Plan approach to judicial selection because it gives balanced consideration to executive direction, professional judgment, and direct popular control. By combining these diverse and sometimes conflicting strands of the American political tradition, the procedure constitutes a delicate compromise, a compromise that experience and the judgment of a number of authoritative groups suggests is a good method in most

instances of selecting good judges. Experience under the Merit Plan, as used in Missouri, indicates that sitting judges are almost certain to be retained in office by subsequent elections. While this system, in effect, produces life tenure, this Commission has no quarrel with that result so long as the safeguards described above are maintained. For these basic reasons, the Commission strongly endorses this approach and urges more States to adopt it.

Recommendation 20. Judicial Discipline and Removal: The California-Type Commission on Judicial Qualifications

The Commission recommends that, where lacking, States establish machinery for the discipline and removal of incapacitated or unfit judges, patterned after California's Commission on Judicial Qualifications.

Like the question of selection, discipline and removal procedures have a direct bearing on the quality of judges which are attracted to and retained in the court system. No selection method can guarantee that all judges selected under it will remain mentally, physically, and ethically competent during their entire term.

States by and large still rely on impeachment, legislative address, and recall for removing judges who are guilty of misconduct or are physically or mentally incapacitated. Most observers regard these methods as inadequate, because they are cumbersome and unsuitable for disciplinary actions short of removal. Of the several alternative methods proposed or used for discipline for removal, we believe the judicial qualifications commission created by constitutional amendment in California and, by the end of 1970, used with some modifications in 17 other States, is most desirable.

These commissions are usually composed of judges, lawyers, and laymen appointed respectively by the Supreme Court, the State Bar Association, and the Governor. Their chief function is to receive and investigate complaints against judges, which may be filed by any citizen. The commission evaluates complaints, rejects those it considers unfounded, and cautions the accused on those not very serious or orders a formal hearing on serious ones. On the basis of the hearing, the commission may dismiss the charges or recommend to the Supreme Court that it impose involuntary retirement or undertake removal or some lesser disciplinary action.

We believe that this system meets criteria for an effective, fair removal and disciplinary procedure. It uses removal for misconduct only as a last resort, relying principally on less drastic disciplinary measures. It assures thorough investigation of complaints before they are presented as a formal charge. It protects the rights of all persons involved, by providing for the conduct of hearings in private unless the accused requests otherwise. It involves nonjudicial personnel in the proceedings, while leaving the final decision to the Supreme Court. Finally, it applies to all judges in the state-local judiciary.

Unlike other removal and disciplinary mechanisms—including New Jersey's commission for involuntary retirement, New York's court on the judiciary, and the "model" proposals of the American Bar Association and the National Municipal League—membership on the mechanism here proposed is not limited to judges. We concur in the criticism of the President's Crime Commission of systems that restrict the membership in this fashion. We share its views that "a disciplinary system employing procedures entirely hidden from public view may be discredited by the suspicion that the supreme court is not diligent in correcting judicial misconduct."

The ABA model provides for removal of supreme court justices by the governor after certification by the judicial nominating commission that the justice is incapable of performing his duties. It further provides for the supreme court to remove and discipline judges below the highest court. The NML model makes a similar provision for the courts down through the general trial court level, leaving to the legislature the establishment of procedures and mechanisms for disciplining lower court judges. In both cases, reliance on action by the supreme court exclusively can be defended as necessary for its supervision of the total judiciary. We do not believe that the judicial qualifications commission approach is inconsistent with this objective. The supreme court still retains the final decision, and the system has the additional advantage, already cited, of opening up the investigatory and recommendatory process to nonjudicial personnel, which we consider critical.

One criticism voiced against the California Plan is that for smaller states it may involve too much machinery for the job to be done. In rebuttal, it may be noted that, Nebraska—among the smaller one-third of the states in population—uses the California approach.

All things considered, including the strong endorsements of the President's Crime Commission and the 1964 American Assembly, we believe other States would do well to follow the California method of disciplining and removing judges.

Recommendation 21. Judicial Qualifications

The Commission recommends that States require all judges to be licensed to practice law in the State.

The Commission is convinced that a judge can not be competent unless he is licensed to practice law. We therefore recommend that all States establish such a requirement for selection to judicial posts at all levels.

Various arguments have been and can be raised against the requirement that an attorney's license is a prerequisite to serving in a judicial post. Some critics argue that judges, in effect, translate into law elements of their own social philosophy in many of their decisions, as in interpreting contracts, property rights, or due process. Given their common training, lawyers as a group, so the argument runs, can be expected to represent a much narrower spectrum of social attitudes than the population as a whole. To assure a reflection of political and social philosophies of the broadest range, these opponents contend that membership on the bench should not be limited to licensed lawyers. To assure basic competence of nonlawyers so chosen, such critics maintain that pre- and in-service training can be required of them—as now is the case in some jurisdictions. Such training could provide instruction in substantive law and the rules of evidence and procedure.

In opposition to this argument, those who insist on legal training point out that nonlegal, political and social aspects of judging are present in every human institution. The important thing they stress is that judges have legal training to recognize precedent and know the restrictions imposed by the collective judgment of the profession over the years. Only within these limits, so the argument runs, can a judge effectively curb his natural inclination to apply his own social and economic predilections to a case. Moreover, defenders of the requirement point out that legal training does not exclude judges of broad and differing philosophies. Some also maintain that the vast majority of questions coming before judges of the State and local courts are little affected by social and economic attitudes; they mainly require the application of rules of conduct, about which there is little dispute, to a range of factual situations. Legal training, they argue, is vital to assure that the right rule of conduct is applied. Finally, some argue that proper professional training is vital to revamping the public image of the judiciary. Untrained or informally trained judges, they contend, do little to enhance the prestige of the judicial branch. With neither the sword nor the power of the purse and only the power of judgment, to paraphrase Alexander Hamilton, only an effectively trained judiciary can sustain popular esteem for this branch of government.

The issue of legal training and experience comes up mainly in the lower courts, and particularly those in sparsely settled areas, where fiscal resources and caseload are insufficient to warrant a full-time judge and lawyer candidates for judicial positions are in short supply. In answer to these arguments, it is asserted that this is a problem of court organization. Consolidation and unification of trial courts and appropriate drawing of jurisdictional boundaries to embrace an adequate supply of lawyer candidates, can remedy these difficulties. Even without changes in jurisdictional boundaries, moreover, the removal of residence requirements would make it possible to select lawyers from other parts of the State to serve in rural jurisdictions.

We see merit to arguments on both sides. Overall, however, we believe that lawyers as a group more and more represent the broad spectrum of political and social attitudes, particularly with the increasing emphasis in the legal profession on protection of consumer and minority group interests. Also, we feel that court unification and simplification, which we earlier endorsed for the state-local judiciary, will do much to remedy the problem of the availability of legally trained judicial candidates in all parts of a State. We therefore urge States to require legal training and experience as a condition for service on the bench.

If we are serious about judicial reform, and this Commission believes that effective criminal justice will not be achieved unless we are very serious about this facet of the broader problem, then a qualified judiciary from top to bottom is indispensable. Fourteen States still do not require their appellate or trial judges to be learned in the law, and three more do not require it of their appellate judges. Half the States do not stipulate a minimum period of legal training for judges of both classes of courts. Most of the 33 States having justice of the peace courts provide no legal training requirement for their personnel.

All this suggests that there is still ample room for vigorous action on the qualifications front. And at this point in time, the Commission holds to the opinion that legal training is a fundamental prerequisite for a truly qualified judiciary. Organizational changes will not live up to their promise, if this issue is overlooked. The argument against assigning removal and disciplining power to a commission on judicial qualifications may be lightened if this issue is confronted squarely. But above all, this Commission believes this reform is essential if the public's respect for courts in the State system is to be revitalized and sustained. For all these reasons, we support this recommendation and urge States that have not done so to move on this front.

Recommendation 22. Mandatory Retirement

The Commission recommends that, where lacking, State laws require mandatory retirement of State and local judges upon reaching age seventy.

Mandatory retirement is a topic that can always generate heated debate. Those favoring it usually contend that it is the only sure way to cope with the problem of old, tired, and out-of-touch judges. They cite the growing pressures of heavy dockets, of the many changes in the law, of rapidly changing social and governmental conditions as key reasons for initiating compulsory retirement. Energy, a fine sense of equity, and an eagerness to grapple with new legal and statutory developments, some maintain, are the necessary traits of a good judge in our times and these are likely to be characteristic of a younger—rather than an older—man.

Opponents of the requirement maintain that there is no foolproof way of assuring these traits in any judge. They note that age has little to do with whether a judge is judicially fit or intellectually equipped. Mandatory retirement at any of the ages generally cited would have compelled Brandeis, Holmes, and Black to step down at a time when they were still creative, capable, and conscientious. The more sensible and sensitive way to handle the problem is to rely on commissions on judicial qualification, so the argument runs. Such commissions after all, already are charged with handling cases involving alleged incapacity or incompetence.

Turning to State experience, 23 now make provision for compulsory retirement usually at the age of 70. In five of these, the limit is extended to the end of the term in which the limit is reached. One State fixes the age at 71, two at 72, and four at 75.

On balance, the Commission believes that the arguments favoring mandatory retirement have merit. We concur with the opinion that a judge's most productive years are likely to fall before he reaches the age of 70. At the same time, we see some merit in the New York provision which establishes a retirement ceiling at seventy, but permits extension in individual cases. Overall, however, the Commission supports the basic contention that retirement should not be left wholly to chance and that seventy is an appropriate year for retirement.

Recommendation 23. Full-Time Judges

The Commission recommends that States require all judges to devote full-time to their judicial duties.

In all 37 States with the justice of the peace system as of 1965, the justices were permitted to engage in outside work. In other words, the office did not demand full-time work of the justice. Similarly, according to the latest information from the American Judicature Society, in at least 14 States in 1968 the judges of lower courts—other than JP courts—similarly were not required to render full-time service. These included mainly city, municipal, and county courts.

In the Commission's opinion, if State and local governments are to attract and hold in judicial posts persons of necessary skills and dedication, they will have to make the job full-time. To make it less than this tends to downgrade the importance of the job. In addition, it opens up the possibilities of conflict of interest between the judge's official duties and his private interests.

In its canons of Judicial Ethics, the American Bar Association points out that a judge who is allowed to practice law "is in a position of great delicacy and must be scrupulously careful to avoid conduct in his practice whereby he utilizes or seems to utilize his judicial position to further his professional success." We think that allowing outside employment, whether or not it is the practice of law, needlessly invites a possible conflict of interest.

Some contend that municipalities or counties may be too small to pay the salary of a full-time judge, or the workload of his court may be too little to warrant his full-time attention. In our judgment, this problem should be solved by a restructuring of the court system along the lines recommended earlier, rather than jeopardizing the quality of judicial officers through the part-time nature of the job. Specifically, the geographic base of the court should be enlarged until it encompasses enough fiscal resources and a caseload to support a full-time judge, as has been done in Hennepin County, Minnesota, where the municipal court of Minneapolis and the surrounding suburbs were supplanted by a Hennepin County court. In more rural areas, judges might travel the circuit holding court in different population centers at periodic intervals. The preferred organizational basis for achieving this would be the abolition of all inferior courts and transfer of their duties to the general trial courts or a subdivision thereof. This basic reform coupled with the power of the Supreme Court or its chief justice to assign judges from court to court within and between levels ought to go far toward assuring that all judges within the system will devote full time to their official duties.

Certain improvements in the criminal justice system proposed in other recommendations of this report, if implemented, will tend to reduce the burden of non-judicial duties now carried by some local judges. Such improvements include recommendations to strengthen the State role in the administration of the corrections program, especially the increased State responsibility in the assignment and transfer of convicted prisoners, the reassignment of responsibility for administration of adult probation services from local courts to a State department of corrections, and the reassignment of responsibility for any locally controlled juvenile correctional

institutions to the appropriate State agency. As these recommended changes are implemented, judges will be able to devote more time to judicial duties and their work docket can be more efficiently structured.

The recommendation advanced here thus complements the other judicial reforms the Commission has sanctioned. It serves them by being an operating guide for the system. Court administrative officers and supreme court judges responsible for assigning general trial court personnel should all be mindful of this basic functional goal. A full day for full pay is after all as pertinent a maxim for this body of public servants as it is for any other. The prestige and, at this point in time, the overall performance of the judiciary, is brought seriously into question if less stringent procedures are permitted for the judiciary.

Recommendation 24. Full State Assumption of Court Costs

The Commission recommends that States assume full responsibility for financing State and local courts.

In all but a few States, the expenses of the court system are shared by the State and its local governments, with the local governments picking up more of the tab at the lower levels of the judicial hierarchy. In the aggregate, the States provide approximately one-fourth of the total State-local count costs. Yet, there appears to be a gradual but steady movement in the direction of greater assumption of court expenses by State government, with nine States now picking up 61% or more of court costs. The Commission believes that this tendency is based on sound reasons and that they point logically toward full State assumption of court financing. The Commission's earlier recommendation calling for establishment of a simplified and unified court system only strengthens our belief that this is the proper course to pursue on the fiscal front.

Even where a fragmented system exists, the State government has a fundamental responsibility for seeing to it that all State and local courts administer justice fairly, consistently, and effectively. This holds true even for local courts that may be exclusively concerned with trying violations of local ordinances. Those ordinances after all are, in effect, an extension of State criminal laws since the State would have to provide for comparable local regulations if such ordinances did not exist. To put it another way, all judicial personnel directly or indirectly are part of a State system, no matter how disjointed it may be, and this fact argues strongly for full State financing.

It is difficult if not impossible for the State to discharge its responsibility for assuring statewide consistency of court operations, if it relies heavily on local funding. Variations in local levels of financing produce wide disparities in the performance of the courts. In addition, as a Maryland study pointed out, reassignment of judges from court to court to meet shifting workloads and thus to avoid delays throughout the system is made difficult if varying local financing patterns produce disparities in salaries for judges of the same type of court.

The State, it can be argued, can overcome this problem by prescribing salary levels, the numbers of judges, and other cost items for general trial courts or courts of the lower level. Prescription of salaries and numbers of courts would take care of the judges, but much discretion would be left in the hands of the local governments with respect to other important objects of court financing: physical facilities and nonjudicial personnel, to name only two. This situation was criticized in the California legislative study cited in Chapter 4.

Moreover, State prescription of expenditures—whether applicable only to judicial salaries and the number of judges or to the whole sweep of court expenses—is open to the familiar objection that a State should not mandate expenditures on local governments when it is not prepared to foot the bill or at least a substantial part of it. This raises the basic issue then of the State's ducking its financial responsibility. In our judgment, the only defensible way for the State to secure a consistent level of court performance is to assume the total financing for this function.

Still another fundamental argument can be made for this fiscal recommendation. The logical result of effective State assumption of overall responsibility for the State-local judiciary is a unified, simplified system with the supreme court or chief justice responsible for seeing that the system operates properly. This is why we have urged State adoption of a unified system. It seems clear to us that the powers vested in the highest court or its chief justice for administration or a unified system—administrative supervision, rule-making, and assignment of judges—can be of little consequence if local governments have to be relied on to provide the money for the trial courts.

A number of objections, of course, are raised against full State absorption of court expenses. It is asserted that such action would reduce, if not eliminate, local responsiveness in the general trial and lower courts. We are not prepared to accept a high degree of responsiveness to local needs, if it means uneven and inequitable application of the law between jurisdictions. Moreover,

we do not concede that State financing will mean necessarily that the judiciary acting at the local level will automatically be insensitive to local conditions within the range of reasonable consistency. For one thing, judges are likely to continue to be selected locally.

Local governments that now derive a "surplus" above and beyond their judiciary costs from fines and fees (mainly traffic fines) will object to surrendering this fiscal advantage. This objection was answered satisfactorily, we believe, by the Idaho Legislative Council when it stated that the operation of any court as a revenue-raising device should not be condoned. The violations for which the fines are assessed are after all violations of State law or—when ordinances are involved—at least the extension of the State law within the city or county.

In some local jurisdictions, court fines go into general revenue of the city or county so that they become available for financing other local activities. Sometimes in practice, if not in law, they are earmarked for police operations. In that case, localities could argue that removing the revenues from their coffers will tend to diminish the zeal of the police in enforcing State law. The answer to that argument is that the police, just as the courts, should not use their powers of enforcing the law as a revenue-raising measure.

For their part, some States might object to taking on the additional fiscal burden involved in placing full financial responsibility in their laps. The goal of a consistent, even-handed, and competent court system is, after all, what is at stake here. While we do not believe that the shift in funding should be made simply on the basis of relative fiscal capabilities and burdens, at the same time, it is true that the States generally have greater fiscal resources than their local governments.

Balancing all the pros and cons, we are firmly of the opinion that the State court system should be fully financed by the State governments. Without it, the two above goals of judicial reform—a simplified, unified system and a more efficient and even-handed administration of justice—are not likely to be fully realized.

Recommendation 25. Improved Federal-State Court Relations

The Commission urges State and Federal district judges, judicial officers and Bar Associations to initiate and support the development of State-Federal Judicial Councils composed of chief judges of State and appropriate Federal district courts to cooperatively explore problems of joint concern, including procedures for review of post-conviction petitions.

The Commission is convinced that there is an increasing need for a closer relationship between the State and federal court systems and that this could be accomplished—at least in part—by the creation in each State of an informal State-Federal Judicial Council. Membership of the Council could include a member of the highest State court, the chief judges of the larger State trial courts, and the chief judges of the Federal District Courts serving the State. The State-Federal Council could establish relationships with, or be an adjunct of, the State judicial councils which now exist in 49 States.

The idea of establishing a joint judicial council in each State is fairly new. Chief Justice Burger, however, championed their establishment in his August 10, 1970 speech to the American Bar Association.

Some State court, Federal District Courts, and individual judges have developed effective relationships, screening devices and innovative procedures to deal with the increasing problem of post-conviction petitions. Moreover, improved legislation relating to the problem of post-conviction review has been enacted in a few States and by the Congress, and some may feel these efforts will prove adequate. While the Commission supports the further development of such measures by States and individual judges, we believe that the general problem of developing more effective Federal-State relations in the judicial field is of sufficient magnitude to warrant establishment of joint judicial councils in all States. The Commission feels this can best be done on an informal basis with the full cooperation of the judges.

An immediate goal of a Council might be the development of expeditious procedures for handling prisoner petitions. This would include recognition and adherence to Federal constitutional standards in the processing and adjudication of criminal offenses, and, where appropriate, the development in each State of post-conviction procedures which meet recognized standards, such as those developed by the American Bar Association.

The number of petitions filed by State prisoners seeking habeas corpus relief in the Federal Courts has increased from 89 in 1940 to approximately 12,000 in 1970. The continuing increase in these cases threatens to engulf the Federal District Courts and has placed a great strain on Federal-State judicial relationships.

As the President's Commission on Law Enforcement and Administration of Justice pointed out, the ready availability of habeas corpus and similar procedures for convicted offenders must be reconciled with the desire to achieve finality in criminal judgments as well as the concern for fairness of the criminal process. The increase in prisoner petitions is the result of many factors including: improved statistical reporting; the increase in criminal trials; broader, more liberal interpretations of consti-

tutional protections by State and Federal Courts; disparities in criminal procedures among State courts and between State and Federal court systems, and lack of adequate and uniform procedures among the States in dealing with post-conviction claims.

The increase in such petitions, of course, has been felt at the State court level, but, because of the constitutional questions raised, the impact has been far greater on Federal District Courts. Moreover, there is concern that the Federal courts are involving themselves too intimately in State criminal justice processes, although recent Supreme Court decisions may signal a shift on this front.

Expeditious processing of prisoners' petitions and related post-convictions remedies are important aspects of the criminal justice system, even though experience indicates that only a small fraction of such claims are valid. The Commission finds, however, that the problem raised by these petitions is more important as a symptom of the need to improve communications and working relationships between the State and Federal court system. The need then is to provide in each State a mechanism which, through consultation, advice and interchange of information and experience, will help Federal and State jurists to reduce disparities and inequities throughout the criminal justice system.

The related long range goal for such Councils might be a program stimulating and assisting in the development of more uniform criminal codes, sentencing procedures and judicial rules. The Council mechanism might also provide continuing benefits in exchange of ideas and experience on administrative matters related to such things as analyses, classification and assignment of case loads, management of case loads, relationships with lawyers and the Bar Association, and similar matters.

C. PROSECUTION

Recommendation 26. Strengthening State Responsibility for Prosecution

The Commission recommends that States strengthen State responsibility for prosecution by enhancing the attorney general's authority to oversee the work of local prosecutors; by establishing a State council of prosecutors composed of all local district attorneys and under the leadership of the attorney general; and by giving the attorney general the power to consult with and advise local prosecutors in matters relating to the duties of their office; and when, in his judgment, the interest of the people of the State requires it, to attend the trial of any party accused of a crime and assist in the prosecution; and to intervene in any investigation, criminal action, or proceedings instituted by prosecuting attorneys in certain specified instances. The Commission further recommends that States empower the supreme court to remove a prosecuting attorney pursuant to prescribed procedures and safeguards.

Like the police and the courts, the prosecutorial function is fragmented among many districts, counties, and cities, from which local prosecutors are elected or appointed. In addition and particularly in urban areas, the district or State's attorney sometimes is responsible for felony cases while another officer, perhaps the corporation or city attorney, handles less serious offenses and the preliminary stages of felony cases.

This fragmented handling of the prosecution function has certain advantages. As a product of his community or constituency, the local prosecutor is likely to be sensitive to the needs and desires of his immediate public and is in a position to adjust prosecutorial policy flexibly to local conditions. Moreover, with a division of responsibility between the Attorney General and local prosecutors, a system of checks and balances emerges which many feel to be salutory to the function.

Yet, the system of fragmented jurisdictions and many independently chosen, locally responsible prosecutors has serious shortcomings. Local responsiveness may mean that one community establishes a strict enforcement policy that simply diverts criminal activity into adjoining areas, or it may mean that a community which tolerates criminals becomes a haven for them to conduct "hit and run" forays into adjoining areas attempting to maintain a strict enforcement policy. In large metropolitan areas particularly, prostitution, gambling, and drug traffic become exceedingly difficult to suppress when they are operated from a protected sanctuary.

Fragmentation of the prosecution function weakens the traditional concept that criminal law—which has statewide application—will be applied throughout the State with a reasonable degree of consistency. Prosecutors exercise enormous discretionary authority within their jurisdictions. They decide whether to prosecute and for what offense, and under what conditions "plea bargaining" will be conducted. Application of the law will inevitably be inconsistent from place to place when such broad discretion is left in the hands of individual prosecutors responsible essentially only to their local communities.

Considering the problems of inconsistency and the difficulties of controlling modern criminal activity, some have argued that the only solution is centralization of the prosecution authority in a statewide official. They cite the examples of Alaska, Delaware, and Rhode Island

as precedents. Yet, Alaska is a sparsely settled State and Delaware and Rhode Island are small in territory, so that in our judgment their experience is not all that relevant to the problems of most other States.

The example of the Federal Department of Justice is also cited. It functions through nearly 100 appointed district attorneys in more than 50 States and territories with central direction in the Attorney General in Washington. In our opinion, this example also does not meet the preference of most States for flexibility and responsiveness to local needs. Moreover, there are formidable political obstacles to achieving a centralized statewide prosecutorial function. The local prosecutor is usually an elected official in a post that has often been used as a stepping-stone to higher political office. Thus, he often is immersed deeply in local politics. The attorney general usually is involved similarly at the State level. Any movement to increase his power at the expense of local prosecutors, however motivated, is bound to be interpreted as a political move, with resultant exacerbation of State-local relations and probable political defeat for such a move.

What is needed, we believe, is a system which achieves an acceptable balance between local responsiveness and flexibility, on one hand, and consistent statewide application of criminal law, on the other. In our judgment, this requires a system of State coordination of local prosecution through closer cooperation between the attorney general and local prosecutors. It also requires, in many instances, a strengthening of the powers of the attorney general to monitor the work of the local prosecutor and to step in when the latter's misfeasance or nonfeasance necessitates such action.

With respect to improved State coordination, the attorney general needs to become more involved in providing technical and statistical services, producing procedure manuals, engaging in training operations, and developing rules of general applicability for the various kinds of discretionary decisions prosecutors make. He might assist local prosecutors with curriculum development; provide training materials, specialized instructors, and other forms of technical assistance. He might also inspect and review local operations to ensure compliance with basic State standards. With respect to certain policy matters, the attorney general might formulate guidelines to cover circumstances under which prosecutors should routinely make certain information and evidence available to defense counsel before trial. Or he might make rules requiring local prosecutors to reveal in open court the negotiations leading up to the offer of a guilty plea. Much of this might be included in a prosecutor's manual.

In addition to these measures, and to help develop more uniform prosecutorial policy, the Courts Task Force of the President's Crime Commission proposed the use of a council comprised of the attorney general and all the local prosecutors. We support establishment of such a council. It would help to achieve acceptance and adherence to policy guidelines from independently elected local prosecutors. It would also allay their fears that a powerful State office was making inroads on their prerogatives.

States might adopt milder forms of policy coordination among local prosecutors, such as the attorney general's performing a purely advisory or consultative function, or merely requiring that local prosecutors develop policies covering a given subject, without making any effort to ensure that those policies meet minimum standards or are consistent from jurisdiction to jurisdiction. Such limited coordination might diminish the effects of prosecutorial fragmentation in some States. But in our opinion, it would not strike the appropriate balance between centralized monitoring and decentralized administration that would be achieved by vesting clear responsibility in the attorney general's office for providing positive technical assistance, issuing policy guidelines, and helping establish and operate a council of local prosecutors on a full-time basis.

The attorney general then should be formally empowered to consult with and advise local attorneys on matters relating to their official duties. A council, along the lines of that established in Texas, also could be used for this purpose. Informal monthly meetings of the attorney general and district attorneys, as is the practice in California, might be another vehicle. Use of the attorney general of prosecutor newsletters following the examples of Florida, Georgia, Idaho, Minnesota, and Wisconsin might also be appropriate. The development of manuals could be still another device for advising local attorneys on their various responsibilities.

Equally important, a means should be provided for insuring that district and local attorneys apply an established statewide policy in a consistent and cooperative fashion. This question, of course, is one of the most critical in the entire set of relationships between attorney general and local prosecutors. The Commission believes that the best balancing of local discretion and responsibility, on the one hand, and centralized coordination of the prosecutor function, on the other, is achieved when the attorney general is authorized at his discretion to attend a criminal trial and to assist in the prosecution. Apparently 21 of the 47 States that have a non-centralized system give their attorneys general this discretionary authority. This formula falls short of complete intervention with its attendant interpersonal, political, and jurisdictional problems, while at the same time it protects the State's interest. It also avoids supersession, ex-

cept as provided in specified instances by State law, yet, it affords the attorney general opportunity to see to it that an effective prosecution effort is developed. Not to be overlooked here is the fact that this approach tends to minimize conflict between attorneys general and local prosecutors and it places a maximum emphasis on collaborative efforts between them. For these various reasons, the Commission favors the advise, consult, and assisting-in-prosecution approach. A vigorous, collaboration-minded attorney general can use these powers to achieve an even-handed, state-wide approach to the prosecution function.

There may be times, however, when a local prosecutor refuses to apply a statewide policy or applies it in a way that distorts its purposes. In those instances, however rare, the attorney general should be empowered to intervene in the proceedings or supersede the local prosecutor. Such powers are bestowed on this official in the model law proposed by the American Bar Association Commission on Organized Crime and promulgated in 1952 by the National Conference of Commissioners on Uniform State Laws. That model, according to the Council of State Governments in 1953, is intended to. . ."restore what has been lacking in local criminal prosecution in this country for a long time, namely ultimate responsibility to a single coordinating official and some measure of administrative responsibility for acts of discretion."

The powers of intervention, supersession, and removal are not new to State government. A number of States authorize one or more of these powers. Thus, in 20 States, the attorney general may intervene on his own initiative and 13 give him authority to intervene at the direction of the governor, the legislature, or some other third party or at the request of the local prosecutor. Thirteen States allow the attorney general to supersede the local prosecutor on his own initiative, and seven allow it only with the approval of or at the direction of the governor or legislature.

We believe that if the roles of State officials—and particularly the attorney general—are strengthened as proposed here, the effective and consistent prosecution of the law will be facilitated and encouraged, while preserving the traditional system of basic reliance on locally-chosen prosecutors.

Finally, the Commission urges more States to provide additional, more effective ways of removing local prosecutors for proper cause. Most States rely on the cumbersome device of recall or impeachment. We feel that other means should be provided. The State supreme court should be authorized, at its discretion, to receive a petition showing cause for a prosecuting attorney's removal and to effect removal. This technique for disciplining local prosecutors would afford a more expeditious and equitable means of handling those rare cases where such action is required, than those now generally available.

Recommendation 27. Consolidation of Local Prosecution Functions in Certain Areas

To achieve more efficient use of manpower and a higher level of prosecution, the Commission recommends that States, when necessary, centralize the local prosecution function in a single office, responsible for all criminal prosecutions.

The problem of coordination among local prosecutors is not exclusively a matter of the State's division into too many prosecution districts. It is also a question of several kinds of prosecutors operating within the same geographic jurisdiction, partly because of the fractionalization of the court structure and partly because of the practice of relying on police prosecutors.

In many urban areas, one prosecutor—typically the district attorney—has charge of felony prosecutions while another independent officer, perhaps the corporation counsel or city attorney, handles less serious offenses and sometimes the preliminary stages of felony cases. Such division of responsibility is found in Kentucky, Mississippi, North Carolina, South Carolina, Texas, and Utah. Each of the various prosecutors is practically autonomous, and apart from informal communication, there frequently is little coordination among them.

Serious problems arise in those situations where the local or county attorney has responsibility for framing the initial complaint and conducting the case at the preliminary hearing and where the district attorney with a larger staff and more adequate facilities takes full responsibility once the defendant has been held for trial. The American Bar Association's Advisory Committee on the Prosecution and Defense Functions has complained that this division of responsibility hampers consistent and evenhanded exercise of prosecutorial discretion and involves a real duplication of work. Usually, it means that the district attorney will be forced to start his investigation from scratch and at times so distant from the date of the alleged crime that witnesses may have forgotten its details or simply disappeared. Such systems of concurrent jurisdiction and the resulting division of responsibility for the conduct of particular cases would be abolished under the recommendation proposed here.

In most states, where the district attorney has more than one county in his district, there is also a county prosecutor in each of the counties of the district. Usually, the former prosecutes felonies and the latter is

responsible for misdemeanors. This system may reflect the legislature's belief that centering total prosecutorial responsibility in the district attorney in such multicounty districts would inconvenience citizens, particularly in traffic and other minor cases. In our judgment, this objection can be met and the required improvement of coordination achieved by the simple expedient of requiring the district attorney to establish at least one assistant in each county.

This consolidation of responsibility for prosecuting crimes under state laws and for handling all stages of felony proceedings, would not require that this official also be charged with enforcing local ordinances. These could continue to be prosecuted by the city or other local municipal attorney.

In our opinion, consolidation of the prosecution functions would be furthered by unification of the State court system since unification would simplify the court structure and eliminate overlapping and duplication. Regardless of what happens to the court structure, however, we believe that consolidation of the prosecution function in urban areas should be undertaken as an essential step toward enhancing its effectiveness. This, in turn, would directly strengthen a weakness in our contemporary criminal justice system.

Recommendation 28. Prosecutorial Districts and the Part-Time Prosecutor

The Commission recommends that States require prosecuting attorneys to be full-time officials and that their jurisdictions be redrawn so that each is large enough to require the full-time attention of such an official and to provide the financial resources to support his office.

Reports from various sources, including the ABA's Advisory Committee on the Prosecution and Defense Functions and the Pennsylvania Crime Commission, indicate that many prosecutorial jurisdictions are too lightly-populated to support a full-time prosecutory office. The effects on efficient prosecution are serious: insufficient investigative resources; inability to accumulate skill and experience and the variety of personnel desirable for optimum functioning; and a lack of opportunities for developing a range of special skills and internal checks and balances within the prosecutorial office. Attorneys giving only part time to the prosecution office, moreover, are open to the suspicion of conflict of interest between their public duties and private practice. Moreover, there is an underlying questioning of whether an official who is involved much of his time in private practice is giving the taxpayers their money's worth—even for the part time spent on his public job.

As long as the system of local prosecutors is retained, about the only solution to the problem of part-time prosecutors is to increase the size of the prosecutorial districts. We agree with the ABA Advisory Committee that the unit of prosecution should be designed on the basis of population, caseload, and other relevant factors so as to warrant at least one full-time prosecutor and the supporting staff necessary for effective prosecution. With sufficient financial resources, there will be no way to plead poverty as the reason for employing only a part-time attorney. With sufficient caseload, the taxpayers will have no reason to complain that they are paying a full-time salary for a part-time job. The type of change proposed here was adopted in Oklahoma in 1965 when a county prosecutorial system was replaced with a system of prosecutorial districts corresponding to the State's judicial districts.

A prime reason for retaining local prosecutors is to maintain responsiveness to the local populace and to assure that the prosecutor maintains law enforcement policies which are sensitive to local attitudes toward society and crime. Enlarging the prosecutorial district may seem inconsistent with such local responsiveness. Yet, in Oklahoma an accommodation was reached by requiring the district attorney serving a multicounty district to select one assistant from each of the counties in his district.

In any case, local responsiveness must be balanced against other essential elements of the prosecution function, especially the need for a capable, well-staffed prosecutorial office. Moreover, enlargement of the prosecutorial district does not change the essentially local character of the system. It in no way resembles the system of prosecution by the attorney general utilized in Alaska, Delaware, and Rhode Island. In our judgment, it is a good bargain to accept a little less "localness" for assurance of competent prosecution, as long as the essential system of decentralized prosecution is retained. The proposal advanced here strikes this bargain.

Recommendation 29. Financing Prosecution

The Commission recommends that States pay at least 50 percent of the costs of local prosecuting attorneys' offices.

According to available fragmentary data, the costs of the prosecution function are largely borne by county governments throughout the country, although there are many variations among the States. In at least 18, counties pay the entire cost of the prosecutor's salary. In five, the State government pays the salary and, in three more, the State pays it, but counties may provide a supplement. In five States, the prosecutor's salary is paid

jointly by the State and county or parish, and in one the county prosecutorial district shares the cost.

As long as local government pays a substantial, if not the entire, cost of local prosecution, States should not be surprised if they find it difficult to achieve statewide consistency in prosecution policies and practices. "He who pays the piper, calls the tune," and if local government pays the piper it will feel less constrained to dance to the tune of the State. The State, of course, can bring sanctions to bear, but considering the political sensitivities involved, these are not likely to be invoked readily. It seems to us, therefore, that if the State really wants to achieve a high and consistent statewide standard of prosecution, it must be willing to finance a major share of the cost of local prosecutions.

The Commission is of the opinion that the need for interjurisdictional consistency in prosecutorial policies and a strong surveillance role for the attorney general call for the State to contribute at least one-half the cost of the local prosecutor's budget. We note that a number of States have already gone essentially along this route, sometimes with the State paying the prosecutor's salary and the county offering a supplement. Sharing of the cost in this manner will acknowledge in concrete dollar terms that conduct of the prosecution function must reflect an intergovernmental responsiveness: to the local community, so that there is flexible recognition of varying attitudes towards crime and punishment; and to the State, so that there is recognition of statewide consistency in prosecution policies and of the State government's basic responsibility for seeing to it that State laws are enforced fairly, effectively, and with reasonable consistency.

Recommendation 30. Flexible Grand Jury Procedures

The Commission recommends that, where necessary, States enact legislation authorizing prosecutors to bring indictments through either grand jury or information procedures. The Commission further recommends that prosecutors utilize grand juries primarily in cases of alleged official corruption or extraordinary public concern. When used, grand juries should be empaneled on a frequent enough basis to prevent unnecessary court delay. The Commission stresses that nothing in this recommendation is intended to modify the traditional investigative powers of grand juries.

In at least twenty-one States, the prosecutor is required to initiate felony prosecutions by means of a grand jury indictment. Critics of this requirement note that it duplicates other pre-trial investigative procedures, causes unnecessary expense to the State and grand jurors, and results in needless court delay Critics also note that, in some cases, grand jury proceedings may reduce the plea-bargaining powers of the prosecutor and act as an impediment to effective use of his personnel.

In light of these faults of the grand jury system, the Commission recommends that prosecutors be allowed discretion to bring indictment through either grand jury or information procedures. This discretion is already allowed as a general matter in 21 States, and in certain types of proceedings in eight others. Use of prosecutorial discretion regarding the manner of bringing indictments would reduce pre-trial delay while still allowing the prosecutor to use the grand jury system when he deems it in the public interest.

While tending to prolong the prosecutors' work, the grand jury can be an effective aid when used in the investigation of complex criminal matters. By its subpoena powers and its ability to compel criminal testimony, the grand jury can broaden markedly the investigative capabilities of the prosecutor. Moreover, in cases of extraordinary public concern, grand jury proceedings assure some degree of public participation in the indictment process. Such participation is especially important when investigating matters of alleged official corruption. For these reasons, the Commission urges that district attorneys use the grand jury system when bringing indictments in cases of alleged official corruption or other extraordinary public concern.

The Commission also recognizes the utility of the general investigative work of the grand jury. In many States such bodies are empaneled on a periodic basis to investigate and report on the operations of various public institutions. This function of the grand jury, which is apart from the prosecution process, assures more effective public scrutiny of State and local government, and it is the Commission's opinion that these general investigative powers should continue unaltered.

Grand juries, then, should be used on a discretionary basis by the prosecutor in the normal course of his duties. Yet, he generally should rely on such juries when prosecuting cases of alleged official corruption or matters of extraordinary public concern. Also grand juries should continue to exercise their traditional investigative powers over the operations of various public institutions.

Effective use of a grand jury, of course, lies in its prompt use in the criminal justice process. To that end, the Commission recommends that grand juries be empaneled when needed by the prosecutor so as to prevent unnecessary court delay.

D. DEFENSE COUNSEL FOR THE INDIGENT

Recommendation 31. State Responsibility for Providing Defense Counsel for the Indigent

The Commission recommends that each State establish and finance a statewide system for defense of the indigent, making either a public defender or coordinated assigned counsel service readily available to every area of the State.

In a series of decisions beginning with *Gideon* v. *Wainwright* in 1965, the U.S. Supreme Court has made it clear that States have an obligation to ensure that defendants in criminal cases are provided with defense counsel, regardless of their economic means. Yet latest information, cited in this report, indicates that many States have been slow to respond to this mandate, or have responded in an uneven, inadequate manner. As a consequence of this patchwork response, indigent defendants in some States enjoy representation by skilled, full-time defense counsel, financed by the State or local governments or by a private defender organization, whereas indigents in other parts of the country may be represented, if at all, by an attorney with little experience and interest in his client, assigned at random by the court. Clearly, such conditions do not meet the letter nor the spirit of the Supreme Court decisions.

A succession of distinguished groups, including the President's Crime Commission, the American Bar Association's Project on Minimum Standards for Criminal Justice, the National Association of Attorneys General, the National Conference of Commissioners on Uniform State Laws, the National Legal Aid and Defender Association, and the U.S. Civil Rights Commission, have urged States in unmistakable terms to take steps necessary to meet the Court's mandate. Moreover, the concern here of some of these organizations predated the 1965 case. Most of them agree that every community should be served by the defense counsel system best suited to its needs—either a full-time public defender office or a coordinated assigned counsel system—provided that minimum standards of performance are observed. These standards include such requirements as the following:

> Legal representation for every person who is without financial means to secure competent counsel when charged with a felony, misdemeanor or other charge where there is a possibility of a jail sentence.
>
> Standards of eligibility that effectively screen out those with sufficient funds to procure competent private counsel, but, at the same time, not so stringent as to create a class of unrepresented accused.
>
> Representation available immediately after the taking into custody or arrest, at the first and every subsequent court appearance and at every stage in the proceeding. Representation should be available at appeal or other post-conviction proceedings to remedy error or injustice, including parole and probation-violation proceedings, extradition proceedings, and proceedings involving possible detention or commitment of minors or alleged mentally ill persons.

A basic question in State-local relations is whether the State should leave it up to local communities to provide defense counsel, or whether it should provide the service directly. Among the groups cited above, the ABA and the National Conference of Commissioners on Uniform State Laws recommended giving local units the option of providing the service, so long as they comply with State-established standards. The President's Crime Commission, the U.S. Civil Rights Commission, the National Association of Attorneys General, and the National Legal Aid and Defender Association indicated no preference for local or State administration. The ABA, however, did caution that "local tradition has sometimes served as an excuse for failure to establish an adequate system for providing counsel."

A principal cause of the poor response to the Supreme Court's mandate in many States, in our opinion, is the fact that States have left it up to local communities to act. We believe that the States should take a more direct responsibility, either by mandating local performance or assuming direct State administration. In our judgment, the latter course is preferable.

A critical element in the provision of indigent defense counsel is the assurance of financial support. Local option, in our opinion, is deficient on this score. Local governments are less capable fiscally, or they are less willing to provide funds because of their greater susceptibility to citizens' insensitivity to the rights of the accused, as expressed in reluctance to support officials who would provide adequate funding for protecting those rights.

Even if local governments are willing and able to put up the money for defender services, there is no guarantee that such services will meet minimum standards of adequacy and consistency, unless the State maintains close surveillance over the localities. Yet, there is always a serious question whether a State can assure as good a performance under a system of standards and inspection as it could under a system of direct State provision of services. The former, of course, is more consistent with decentralization of decision-making—a hallmark of federalism—but it is not necessarily most conducive to amicable State-local relations if it produces

resentment on the part of local government at the potential or actual intervention of State administrators.

In support of local option, some contend that it provides greater flexibility of choice between the use of a full-time defender office and the use of coordinated assigned counsel. A statewide administered and financed system, however, is not inconsistent with such a varied arrangement. In the larger urban areas where the caseload warrants, the State could establish full-time defender offices, while in the rest of the State either a coordinated assigned counsel system could be administered through the courts, or the State could assign full-time defenders to operate throughout circuits or districts. Thus, flexibility could be as available to a State-administered system as to a local option one.

On balance, then, and in light of the need to provide adequate protection of the rights of the indigent accused and to foster harmonious State-local relations, the Commission favors direct State provision and financing of defense counsel services statewide. This is the system now in use in Alaska, Connecticut, Delaware, Massachusetts, New Jersey, North Carolina, and Rhode Island. All things considered, we deem it a good one.

E. CORRECTIONS

State-local correctional activities are integral parts of the criminal justice system. Efforts to restore and rehabilitate criminal offenders are essential to the reduction of crime. Corrections must provide realistic and relevant measures to prevent offenders, especially those brought into the system for the first time, from becoming trapped in careers of crime.

The Commission finds, however, that most corrections programs are *not* accomplishing their mission because of two major weaknesses: (1) the corrections components of the criminal justice process—including detention, probation, incarceration, and parole—are organizationally fragmented and lack adequate functional relationships with other parts of the system and frequently with each other; and (2) correctional policies and programs are too heavily oriented toward incarceration and surveillance oriented custody, resulting in insufficient investment of time and resources in rehabilitation. Most custodial institutions fail to equip an offender for successful reentry into society. Too often, the corrections system serves to strengthen criminal tendencies and to foster a crime-incarceration-crime cycle.

The Commission believes that these fundamental shortcomings of State and local correctional processes are largely a result of their low visibility. Corrections is the part of the criminal justice system that the public sees the least and knows the least about. Citizens and their elected representatives have been reluctant to grapple with or support improvements in corrections for reasons that can be understood:

—This issue, after all, involves some of the most troublesome members of society;

—Investment in rehabilitative resources strikes at the traditional "eye-for-an-eye" belief that incarceration and punishment are the proper ways to treat offenders;

—Reform involves obtaining new money as well as redirecting funds now being used to support the present, mostly ineffective system; and

—Programs for institutional modernization, effective probation and parole, and adequate personnel compensation and training do not command as much public support as health and hospitals, education, highways, and other programs benefiting groups or constituencies of law-abiding members of our society.

Recommendation 32. Reordering Priorities

The Commission concludes that corrections is the step-child of the criminal justice system, and that it is essential that greater public attention, funds, and policy focus be directed to this field and that basic reforms be undertaken.

The Commission recommends, as a matter of general public policy, that State and local officials give a high priority to upgrading correctional institutions and rehabilitation services in order to help reduce crime rates.

Correctional reform ranks low on the agenda of public priorities. In fiscal 1968-69, corrections accounted for only 20 percent of total intergovernmental criminal justice expenditures, in contrast to 60 percent for police. Moreover, the results of a Harris poll conducted in 1967 revealed that five other areas (schools, juvenile delinquency, law enforcement, poverty, and defense) were considered to be more in need of additional Federal spending than adult corrections.

These findings reflect an attitude on the part of some political leaders, bureaucrats, and citizens that corrections programs have been only partially effective at best in rehabilitating offenders, and that more vigorous

enforcement of the law and more prompt action by the courts would have a more powerful deterrent effect than institutional confinement and care or community-based treatment. Hence, many argue that the bulk of available funds should be allocated for police and court improvements. Still others feel that the current state of prison life is precisely what offenders deserve, that rehabilitation is an exercise in futility, and that the growing emphasis on such forms of community-based treatment as probation, work-release, and half-way houses indicates that correctional agencies are too "soft" on criminals. Consequently, they oppose efforts to expand such programs, to provide professional counseling, and to develop other types of rehabilitative and restorative services for offenders.

Chief Justice Warren E. Burger recently differed with this view by stating that we must stop being "Sunday Christians" with respect to corrections, and that the correctional components of the criminal justice system are at least as important as police and the courts. Yet, burgeoning crime and recidivism rates provide compelling evidence of the need to reorder priorities so that meaningful reform and revitalization of correctional facilities and services can be undertaken. The traditional isolation and fragmentation of corrections underscores the need for building more and better linkages between corrections and other components of the criminal justice process. If an interlocking law enforcement and criminal justice system is not developed and offenders continue to be shunted from the police to the courts to correctional agencies with little if any concern being given to their social and psychological background, criminal history, aptitudes, rehabilitative needs, and the quality and utility of treatment, then there can be scant hope that the vicious crime-incarceration-crime cycle can be broken.

In other words, in the Commission's view, pouring large amounts of funds into police programs in the final analysis will have an insignificant effect upon reducing recidivism unless correctional agencies also are treated as "first class citizens." Indeed, increasing law enforcement capabilities alone will only contribute further to the already overcrowded conditions in corrections facilities, without improving the effectiveness of rehabilitation efforts. Therefore, the Commission rejects the argument of some observers that fighting crime in the streets always should receive top fiscal priority. While this activity is obviously important, earmarking the lion's share of available dollars for this purpose ignores the basic fact that detection and apprehension are but two phases of a multi-faceted, interrelated criminal justice process. To maintain such a narrow and simplistic view of crime prevention and control, in this Commission's opinion, is to invite mounting lawlessness, civil disorder, and ultimately social decay.

Recommendation 33. Strengthening Community-Based Treatment

The Commission concludes that adequately financed, staffed, and supervised community-based treatment programs—including probation, work release, youth service bureaus, half-way houses, parole, and aftercare—can be more effective than institutional custody in rehabilitating most offenders and in facilitating their readjustment to society.

The contemporary corrections "system" is really a "non-system," both organizationally and philosophically. The wide diversity of institutions, programs, and services and the uneven nature of their quality and relevance to correctional needs as well as the demands of modern society reflect a basic philosophical difference between and among professionals, public officials, and citizens.

Some observers contend that institutional confinement and care are the best ways to achieve the dual purpose of protecting society and rehabilitating the offender. They believe that institutionalization has a more powerful deterrent impact than non-institutional approaches. At the same time, it is argued, prison and training school based programs are just as effective as community-oriented programs in rehabilitating offenders.

On the other hand, a growing number of authorities assert that the corrections process should be geared toward rehabilitating and restoring offenders through community-based treatment. After all, they point out, 98 percent of all offenders are at one time or another released into society and if they have not developed solid ties with the community, fear and frustration will eventually drive the ex-offender to commit additional crimes. He then will be returned to the same corrections system that failed to adequately equip him for successful re-entry into society in the first place. These experts contend that institutional care, because it isolates the offender from the community and often fails to provide him with relevant education and training, hinders rather than helps his adjustment and thereby encourages recidivism.

The Commission recognizes the importance of institutional confinement as a means of controlling and deterring certain types of offender, especially the estimated 15 to 20 percent who are so-called "hardened" criminals. Nevertheless, it believes that too much money, personnel, and other resources are presently

being targeted on too small a portion of the offender population. Witness the fact that over four-fifths of the total amount spent for correctional facilities and services in 1965 went for institutions and their custodial and maintenance personnel even though they dealt with only one-third of the offenders under the jurisdiction of the correctional system.

If the major goal of corrections is to rehabilitate and restore criminals as productive and law-abiding members of society then, in the Commission's judgment, institutional confinement is undesirable for the bulk of the offender population. The isolating effects of prisons and training schools often seriously impede the inmate's transition to community life. Moreover, for many offenders, institutional confinement can be more harmful than helpful since it can aggravate their anti-social and destructive tendencies. This is particularly the case when first and minor offenders are mixed with felons, repeaters, and more hardened types. In other words, instead of reforming offenders, institutions frequently reinforce criminal behavior. Recent research findings in California, New York, Wisconsin, and other States indicate that participants in probation, parole, work-release and other community-based programs are less likely to become recidivists than those who receive only institutional care.

In addition to being more effective, community-based treatment is more economical than institutionalization. Probation, for example, costs an average of about one-sixth as much as institutional care, while parole costs roughly one-fourteenth as much. One significant result of such economies can be the freeing up of scarce corrections funds for use in upgrading personnel, formulating innovative programs, and constructing new or modernizing existing facilities.

In supporting the community-based treatment approach, the Commission by no means is recommending termination of institutional confinement and care. Incarceration is clearly necessary for certain criminals who are dangerous risks to society and cannot be handled successfully on probation, work-release, halfway houses, parole, or similar types of community-oriented programs. But if more offenders are to be adequately prepared socially, psychologically, and vocationally to re-enter society, and if society, in turn, is to facilitate their readjustment, closer ties must be developed between the two. In the majority of cases, institutional care simply cannot build or sustain these linkages. Community-based programs, then, can be effective and economical alternatives to institutional confinement, and they should receive a substantially greater share of the available resources in the correctional system.

Recommendation 34. Refocusing State-Local Correctional Responsibilities

The Commission concludes that while State governments have an overriding responsibility to ensure the provision of certain correctional services on a statewide basis, including responsibility for assignment and transfer of convicted prisoners, other correctional activities can be more appropriately handled by local governments. Hence—

The Commission recommends that the States assume full financial, administrative, and operational responsibility for juvenile and long-term adult correctional institutions, parole, juvenile aftercare, and adult probation. The Commission further recommends that local governments retain operational and a share of the fiscal responsibility for short-term adult institutions and jails, adult and juvenile detention, and misdemeanant and juvenile probation, and that the States establish and monitor minimum standards of service, furnish planning and technical assistance, and provide a reasonable share of the costs of such activities.*

The organization of State and local correctional facilities and services resembles a "crazy quilt" pattern. Wide variations exist in the extent to which financial, administrative, and operational responsibility for some or all of the nine correctional activities (juvenile detention, juvenile probation, juvenile institutions, juvenile aftercare, misdemeanant probation, adult probation, local adult institutions and jails, adult institutions, and parole) is centralized at the State level, is shared on a State-local basis, or is decentralized to counties and cities. Moreover, at the State level, there is little nation-wide consistency in the number and types of agencies involved in administering correctional programs. The disparities in goals, standards, techniques, and services resulting from this inter- and intra-governmental confusion underscore the critical need for State action to achieve greater uniformity and equity here.

For several good reasons, State governments have a major share of the responsibility for the quality and effectiveness of the correctional system. Over all, the

*Governor Hearnes dissents from the portion of the recommendation dealing with State assumption of certain juvenile corrections activities and states: "Juvenile corrections activities, such as institutions and aftercare, are most effectively administered at the local level. Decentralization of these functions is necessary to meet diverse local conditions. Moreover, this approach recognizes the need for juveniles to maintain close ties with their community which might not be as possible with State assumption of these activities."

States already account for about two-thirds of all non-Federal correctional expenditures and personnel. Furthermore, in some instances, statewide minimum performance standards and certification requirements for professional personnel already are helping ensure greater competence and consistency of services on the part of those who provide them, and this underscores a growing State leadership in this field. The States' superior geographic base, power position, and fiscal resources enable them to furnish planning, technical, and financial assistance to county and city correctional efforts, to serve as a catalyst in achieving interlocal cooperation in the operation of facilities or the performance of services on an areawide basis, or to step in and operate correctional programs themselves. Because the court system is largely State controlled, a comparable State role in the field would facilitate better coordination of the activities of these two components of the criminal justice process. Moreover, the pivotal position of State law enforcement planning agencies established pursuant to Title I of the Omnibus Crime Control and Safe Streets Act of 1968 provides a basis for the State to spearhead the planning, financing, and operation of an interlocking criminal justice system. Not to be overlooked is the recent amendment to the Act in which Congress earmarked 25 percent of the action funds for corrections improvements.

The Commission believes, therefore, that States should assume a greater leadership role in streamlining the delivery of correctional services. The present patchwork approach has failed to effectively prevent and control crime. It has wasted human and financial resources and has diffused responsibility. What is needed is a consolidation of programs, a restructuring of interlevel roles, and a focusing of accountability.

In the Commission's view, the above objectives can be realized best through State assumption of responsibility for certain correctional activities, while leaving others in local hands. Specifically, the Commission believes that juvenile and long term adult institutions, parole, juvenile aftercare, and adult probation can be administered, financed, and operated more effectively at the State level. All States have assumed responsibility for administering the first three correctional services while, in the past five years, more and more States have shifted the last two activities from a local or State-local to a State basis.

This selective approach has the advantages of fostering regional and statewide uniformity of services and increasing the effectiveness of their delivery. It would produce greater accountability for the performance of these functions by respective State and local jurisdictions. Duplication of effort would be reduced, and some economies of scale would be possible. State fiscal take-over of certain correctional activities would free up local funds for use in other corrections or police related programs.

At the same time, partial take-over recognizes the need to adapt certain activities – such as local institutions and jails, detention, and juvenile probation – to meet diverse local conditions. Since these functions usually deal with minor and first-time offenders who will not be in the correctional system for long periods of time, it is both desirable and necessary to attempt to preserve their ties with the community rather than to send them to State facilities. This approach also avoids many of the difficulties involved in attempting full State assumption of corrections, especially in connection with trying to mesh State probation activities with those of a fragmented court system.

The Commission feels that even when localities retain responsibility for certain correctional functions, the States have a basic responsibility to provide appropriate assistance in order to ensure the quality of services. In particular, planning and such technical help as information and advice should be made available to local agencies. The States also should establish and actually monitor minimum service standards, and they should supervise and coordinate the assignment and transfer of all convicted prisoners on a statewide basis. Finally, the severe restraints on local fiscal capacity coupled with the fact that States account for over two-thirds of all State and local correctional expenditures and personnel underscore the need for State governments to underwrite a substantial portion of the costs of local correctional activities.

Recommendation 35. Consolidating State Administrative Responsibilities

The Commission recommends that the State's responsibility for correctional activities, excluding the adjudicatory functions of granting paroles or pardons, be vested in one State department or agency directly accountable to the Governor.

Virtually all observers agree that corrections represents a highly fragmented governmental function. This applies to the manner in which corrections activities are carried out by State, county, and municipal jurisdictions, as well as pattern of administration at the State level. Usually two, three, or more State departments or agencies are charged with some responsibility for the corrections function–ranging from direct operation of penal institutions to a supervisory, standard-setting role. Parole determination and supervision, for example, in

most States is the responsibility of an independent board or commission appointed by the Governor. Juvenile corrections functions, including institutional operation and supervision of local training schools, are quite frequently the responsibility of a State department of social welfare.

Many of these diverse patterns are rooted in history and are difficult to change. Even where reorganization has occurred, administrative responsibility for juvenile and adult programs and institutions has been separated in a number of States. Tradition coupled with a desire to achieve greater visibility, especially in the case of juveniles, contribute to the maintenance of this organizational division.

Many observers contend that, ideally, corrections should be viewed as a continuum—beginning with the detention process and ending with parole, aftercare, and successful reintegration of offenders into the community. Implementation of the continuum concept is essential in order to achieve effective and dynamic utilization of a full variety of correctional resources. It becomes even more essential as new community-based correctional programs are developed and as punitive incarceration is rejected.

The thrust of the continuum argument, in the view of most of its proponents, supports the general need for consolidation of the State's various corrections responsibilities. State programs in this area should be combined into the smallest number of agencies possible, they contend. Without this consolidation, so the argument runs, overlapping of functions will continue and purposeful direction will not be brought to the many diverse, but interrelated, activities which make up the corrections field. Reducing the number of agencies and focusing responsibility also tend to generate more gubernatorial and legislative involvement, and hereby to facilitate the development of more concerted State leadership in a field which badly needs it.

No one argues the case of fragmentation *per se,* but there are those who support the need for maintaining basic organizational distinctions in State level operations. Some fear that if developmental control of community-based treatment programs, for example, is vested in a State agency which has incarceration and penal institution operations as its basic orientation purpose, there will be a dilution of efforts to find new and to expand existing alternatives to institution-based programs. Other critics contend that decisions concerning parole policies and eligibility should not be placed in the same administrative agency that is responsible for corrections, since the former are adjudicatory functions which can best be administered by independent boards or commissions. Some who advocate a separate or independent parole board for the adjudicatory function however, concede that supervision of parole is basically an administrative task that can be assigned to the State corrections agency. They note that parole supervision is closely related to probation and to other correctional activities and that it could benefit from being combined organizationally with these related programs. Yet, other observers prefer to see parole supervision remain with a separate board.

Perhaps a more serious dispute – one of long standing – stems from whether juvenile and adult correctional responsibilities should be combined in a single department at the State level. At present, in the great majority of the States' institutional services for juvenile delinquents are the responsibility of units other than the corrections agency, such as the department of public welfare. This organizational pattern reflects the view that there are distinctive features in the legal approach to juvenile delinquency as well as the handling of juvenile offenders which render them different from adult offenders. In the case of youthful offenders, for example, it is argued that the child-family relationship must be maintained and strengthened and that this requires a different orientation and skills than those needed for dealing with adult criminals.

Other experts advocate integration of juvenile and adult correctional programs administration. They see the different judicial status of these offenders, based on arbitrary age distinctions, as being neither valid nor meaningful in the correctional process. They support the development of a wide variety of correctional programs and services for juveniles, young adults, and adults, and they feel that these can best be achieved and managed in the context of a single department.

Still others downgrade the adult-juvenile dispute by stating that consolidation of responsibilities can be attained by either a single correctional agency for both age groups or one for adults and another for juveniles. They contend that the particular configuration of each State's correctional services and the level of their development are the most important varients in making this decision. The question of organizational form, in their view, is secondary to a pronounced commitment by a State to effectuate broad reforms and improvements in the correctional field as a whole.

On balance, the Commission supports the general view that the maximum possible organizational consolidation is essential to correct the excessive fragmentation that now exists in most States. The Commission concludes, however, that there is good and sufficient reason to maintain a separate board or boards for the adjudicatory determinations involved in paroles and pardons. But the administrative aspects of parole,

especially supervision, should be performed by the State corrections department.

With respect to combining adult and juvenile correctional functions within a single Stage agency, the Commission concludes that the advantage of greater visibility of a single agency in the eyes of the public and its elected representatives merits prime consideration. Moreover, the resulting integration of services and flexible utilization of staff outweigh the advantages of having a separate organization for juvenile correctional services. Within the corrections department, of course, a unit specializing in juvenile problems still could be established. Accordingly, the Commission believes that States should take action to consolidate adult and juvenile and all related correctional services in a single State agency directly responsible to the governor.

Recommendation 36. Upgrading the Detention Function

To ease the critical problem of commingling untried persons with convicted offenders, and to expedite the trial of such persons, the Commission recommends that States and local governments jointly plan and develop adequate adult and juvenile detention services and facilities which relate to the processes of the court system.

The basic purpose of detention in the American system of jurisprudence is to keep safely for court hearing and adjudication those juveniles and adults alleged to have committed offenses. The conditions and practices related to the use of detention vary widely. But in all cases, the rights and presumed innocence of the alleged offender are honored in principle, if not always in practice.

The availability of adequate detention programs for those suspects who are subsequently convicted is critical to insuring that the detention experience is not totally negative or damaging. The effects of inadequate detention services for these offenders usually must be overcome later through the use of expensive rehabilitation programs. On the other hand, for those proven innocent, detention represents a societal imposition. To the greatest extent possible, then, it should be free of punitive or negative intent and impact.

The problems of detention, as it is generally practiced, are multiple. In most jurisdictions, it is used excessively, the detention period is usually too long, and its facilities, usually the county jail, are woefully inadequate. Detainees and convicted prisoners—young and old, suspects and offenders, misdemeanants and felons—often share the same facilities, frequently the same or adjacent cells.

Reduction in the number and types of persons detained and elimination of delays and ponderous procedures in the court process are basic to any efforts designed to upgrade detention. Even with such improvements, however, adequate detention facilities to serve the court adjudicatory processes are still necessary. Because courts are geographically decentralized, many jurisdictions can not afford to construct and maintain separate facilities for the small number of detainees they may have. Hence, there is a need for statewide planning and for State-local and interlocal procedures and agreements to effectuate a shared use of adequate detention facilities for those jurisdictions in which the operation and maintenance of a separate facility is not economically feasible. Particularly urgent is the development of regional juvenile detention centers to serve the many juveniles now being held in county jails or other adult penal institutions.

The Commission believes that the appropriate agency in each State should undertake a statewide detention planning operation designed to serve adult and juvenile detention needs in the court processing operations. The cooperation of courts in achieving the proper use of detention is essential. Leadership and direction in the planning operation should rest with the State, but where local jurisdictions continue to operate detention facilities, planning should be conducted on a joint State-local basis.

Some observers might object that the development of a statewide plan for detention services would lead to the construction of expensive, regionally located detention facilities which would be beyond the immediate control of local courts. Further, because of distances involved, some might contend that this approach would needlessly increase the length of the detention period. While these are valid concerns, the Commission believes they can be overcome, if detention is used in accordance with standards such as those promulgated by the National Council on Crime and Delinquency.

The Commission concludes that adequate, strategically-located detention facilities would better serve the needs of the criminal justice system than the present arrangement and notes that funds for capital construction available under LEAA could be used to help alleviate the local financial burden.

Recommendation 37. Programs and Facilities for Work-Release

The Commission recommends that State and local governments enact legislation, where necessary, authorizing work-release programs and establishing administrative and fiscal procedures to enable the State correctional agency to utilize approved regional or community

institutions and jails for the placement of those prisoners who might benefit from this or similar programs.

Work release programs and study-release programs for inmates in correctional institutions are not new developments in this country. Prototype legislation was enacted in Wisconsin in 1913, and by 1969, 29 other States had passed laws authorizing work release.

While there may be some latent resistance to the utilization of work release, there is wide agreement among correctional experts that the controlled use of such programs provides an economically sound tool which is viable in terms of achieving rehabilitation objectives. Moreover, there is growing empirical evidence that this approach is an effective way to reduce recidivism.

Central to the notion of work and study release programs is the need for a geographic distribution of adequate institutional facilities so that programs can be operated on a decentralized basis. Convicted prisoners thus can work in their home communities or where work and study facilities are available and return to the correctional institution without extended travel. While the development and use of release programs has been oriented toward short-term prisoners usually housed in the county jail, the Commission believes that such programs increasingly should be established between State and local jurisdictions and their correctional agencies to facilitate the easy transfer of State prisoners to approved regional and community facilities for this purpose. Financial arrangements under which local correctional agencies would be reimbursed by the State for the costs of the institutional services provided should also be established.

Recommendation 38. Expanding Academic and Vocational Training

The Commission concludes that the educational and vocational programs of most State and local institutions have failed to equip adequately offenders with the skills and experience necessary for successful reintegration into society, and that this, in turn, has contributed to the high rate of recidivism. Therefore,

The Commission recommends that State and local governments initiate or revamp their academic and vocational training offerings for inmates of juvenile and adult institutions.

The education and vocational programs of most State and local correctional institutions are insufficient, inadequate, and irrelevant. Instead of preparing the offender for employment after release, many programs do not overcome rejection or under-utilization of the offender by the community. The resulting frustration often causes the ex-offender to renew his old habits. In a very real sense, then, mounting recidivism rates can be traced back to systemic as well as to individual causes.

With respect to offender education, the President's Crime Commission found that over four-fifths of the offenders from 25 to 64 years of age confined in correctional institutions lacked a high school degree. The rising educational standards in our society have posed a severe challenge to correctional agencies to develop meaningful academic programs to help prepare the offender for successful re-entry in society. Unfortunately, many adult and juvenile agencies have failed to meet this test. Teachers are often in short supply and of inferior professional competence. As a result, inmates who may or may not be qualified are given teaching assignments. Course materials usually are limited. In light of these factors, it is small wonder that many offenders exhibit little interest in participating in such programs.

Several approaches could be taken to improve academic offerings. Compensation rates could be raised to attract qualified teachers from the outside. Universities could be encouraged to offer extension courses within correctional institutions, and non-college self-improvement courses could be made available. Professional counselors could be employed to help inmates set up programs that would prepare them for return to community life. Programmed learning machines and texts also could be used.

Turning to vocational programs, juvenile and adult offenders often are assigned menial tasks and are provided with antiquated procedures and equipment to use in carrying them out. Consequently, many simply prefer to remain idle. Little real incentive and opportunity are provided, then, for these inmates to develop skills which could be marketable later in the community. Indeed, very few ex-offenders obtain jobs that are in any way related to their prison work experience.

Inadequate vocational programs are partly a reflection of statutory restrictions on the sale of prison-made goods which still exist in several States. In addition, some State agencies—such as universities and hospitals—purchase goods from private industry which could be manufactured in prisons. Construction firms and labor organizations sometimes are able to prevent the use of inmate labor in building and maintaining prison facilities. In addition, poor management of some prison industries and lack of incentives for inmates to maximize their production sometimes have resulted in

the manufacture of inferior products and delays in their delivery.

Modern work methods, sound management techniques, and productivity incentives could substantially improve prison industries. Repeal of laws forbidding the sale of prison-made goods could not only open new markets for such products but, in doing so, would help prepare the offender vocationally for his return to community life. Furthermore, private industry could be encouraged to operate branch plants in or near correctional institutions to provide training for inmates and to pay them prevailing wages.

The Commission can find little justification for arguments against improvement of the educational and vocational programs offered by correctional institutions. Prison industries do not seriously threaten organized labor. Furthermore, the argument that upgrading such programs would be too costly is difficult to comprehend. Ineffective and inefficient programs are not only expensive in themselves, but they contribute to recidivist tendencies which, in the final analysis, further increase overall criminal justice costs. If the goal of these programs is to do more than just reduce prisoner idleness, if it really involved providing meaningful work and academic opportunities which would enable the ex-offender to become a productive member of society, then substantial upgrading is essential.

Recommendation 39. Promoting Regional Correctional Facilities

The Commission recommends that States authorize and encourage local governments through financial incentives and technical assistance to contract with larger local units for the custody of their prisoners, or enter into agreements with other local units for the joint establishment and operation of regional jails and local institutions to handle such offenders.

Virtually no observer of the corrections scene would undertake a defense of the present status or efficacy of jails and local short-term correctional institutions confining persons for more than two days. Typically, they contain a mixture of untried detainees, sentenced prisoners, juveniles, destitute alcoholics, and addicts. Generally, half of those confined have not been convicted of a crime. Facilities are often grossly substandard and meaningful rehabilitation programs are almost non-existent. Yet, these have been the most enduring of our correctional institutions.

Their continued existence is attributable to the fact that in many jurisdictions there is a need for a jail or a correctional institution located nearby in addition to the local police lock-up. Also, having a jail may be viewed as an asset which enhances the power and status of local law enforcement personnel, who frequently control its operation. Realistically, it is certain that an adequate, properly equipped and staffed local correctional institution that can meet modern program standards is beyond the financial means of most local governments, except urban counties and large cities.

The Commission concludes that a workable approach to this problem is the development of regional correctional facilities designed to serve two or more jurisdictions, in accordance with a statewide plan. State action would be required in those relatively few instances where interlocal contracting authority is now lacking and where the joint exercise of powers is not authorized. In addition, special State legislation would be needed to provide incentives to encourage and assist local jurisdictions joining in the establishment of a regional facility. Strong State leadership to stimulate localities to undertake this activity is essential and statewide strategic planning for correctional facilities development and technical assistance would be required in most instances. With the development of modern regional facilities, substandard local jails and other short-term institutions could be phased out.

Some contend that a locally controlled jail serves a community law enforcement need—one which would not be met as fully by a more distant regional facility. Furthermore, some jurisdictions might prefer to spend money to renovate a local jail which they operate rather than to contribute toward an expensive new facility for which operating responsibility would be shared. It can be argued that, even with new LEAA funds earmarked for correctional purposes, it would be unrealistic to expect replacement of all substandard local jails in the near future.

In the Commission's judgment, however, most counties and cities cannot afford to cover the costs of upgrading their jails and short-term institutions to meet modern standards. And society cannot afford to further delay the reform of such institutions. If we are really serious about the goals of rehabilitation and restoration of offenders into society and if we are truly concerned about the prevention of crime and the elimination of recidivist tendencies, then the time for action is late. Because of indifference, paucity of funds, and inadequate personnel, many local jails have become in a very real sense the breeding grounds for crime. Physically inadequate facilities, insufficient and irrelevant rehabilitative programs, and commingling of prisoners of varying ages, offenses, and attitudes do little to break the crime-incarceration-crime cycle. Since they offer such advantages as economies of scale, better utilization

of personnel, and improved treatment of offenders, the Commission believes that the use of regional correctional facilities can go a long way in helping to realize the rehabilitative objectives of the correctional system.

Recommendation 40. Management of Short-Term Penal Institutions

The Commission recommends that short-term penal institutions be administered by appropriately trained correctional personnel.

In some counties and cities where law enforcement officials are responsible for the management and operation of jails* and other local short-term institutions, the rehabilitative and restorative objectives of the corrections process are severely curbed. Most county sheriffs, for example, have neither the time nor the training to deal with inmate rehabilitation. As a result, short-term offenders are often merely incarcerated until their sentence expires; counseling and similar services are not made available to them.

The Commission believes that local law enforcement officials should be divested of their role in managing and operating jails, excluding temporary lock-ups and similar facilities holding persons for less than 48 hours, and that this responsibility should be turned over to corrections professionals. From both a philosophical and a practical standpoint, there is little justification for merging responsibilities for detection and apprehension with those for the care and rehabilitation of offenders. After all, the task of law enforcement officials is difficult enough without adding to it the burden of prisoner care. Moreover, to put it bluntly, some law enforcement officials lack attitudes which are conducive to offender rehabilitation. Their involvement can undermine rehabilitative efforts, not strengthen them.

Some observers oppose transfer of local jail management responsibilities to corrections officers on the grounds that it unnecessarily would increase costs. They argue that since jails and institutions are usually short-term holding facilities, it is not necessary to hire special corrections professionals to operate them. Instead, it is contended, such personnel should be deployed to longer-term facilities where they would have sufficient time to work with offenders on rehabilitation programs.

In the Commission's view, however, putting correctional officials in charge of local jails and institutions should be one part of an overall effort to upgrade the quality and quantity of corrections personnel. While this would be expensive, the alternative is continuing inadequate attention to prisoner needs. In this sense, the costs of increased recidivism resulting from the failure of offender rehabilitative efforts could well exceed those accompanying the professionalization of jail management.

Recommendation 41. Quantity and Quality of Personnel

The Commission concludes that many State and local correctional agencies have insufficient and inadequate professional staff due to low pay, long hours, a custodial rather than rehabilitative orientation, lack of exposure to research and development advances, and other impediments to job satisfaction. Hence—

The Commission recommends that State and appropriate local governments improve recruitment, compensation, training, and promotion practices to attract sufficient numbers of high quality personnel to the corrections system. The Commission further recommends that States establish minimum qualifications standards for correctional personnel.

The failure of the corrections system to successfully "correct" offenders is largely a product of the attitudes, competence, and numbers of correctional personnel. Wide variations in their philosophy, training, and experience have been reflected in the differing goals, policies, and procedures of corrections programs. As a result, in the contemporary corrections system sharp contrasts between traditional and modern theory and practice—such as between confinement and rehabilitation and between institutional care and community-based treatment—can be found to exist at the same level of government and even in the same administrative agency.

The Commission believes that substantial changes are necessary to upgrade the quantity and quality of corrections professionals, including custodial officers, group supervisors, case managers, specialists, and administrators. Salary levels and fringe benefits must be increased and working conditions must be improved in order to make corrections employment competitive with other fields. Higher education and training opportunities must also be made available to these personnel so they can meet professional standards and stay abreast of developments in the field.

In line with the States' overriding responsibility for corrections programs, the Commission believes that jurisdictions should establish minimum qualifications standards for correctional personnel and, where appropriate,

*Jails are considered facilities in which persons are confined for two days or more.

require their certification. This approach could result in marked improvements in the competence of such employees as well as foster greater consensus on the objectives and techniques of correctional programs.

The Commission rejects the argument of some observers that increasing the size and improving the quality of corrections professional staff is not as important as a similar upgrading of police personnel. While manpower improvements in the latter area are certainly needed, detecting and apprehending offenders alone will have little effect on reducing crime rates since this will not necessarily deter them from recidivism. And reducing recidivism is the central purpose of the corrections process.

Various problems in contemporary correctional systems are directly or indirectly related to the personnel issue. If this system is to be made more effective, the proper place to begin is with ensuring the availability of a sufficient number of qualified professionals. As the Task Force on Corrections of the President's Crime Commission stated: "In corrections, the main ingredient for changing people is other people." We concur in this judgment.

Recommendation 42. Use of Paraprofessional and Volunteer Aides

The Commission recommends that, where necessary, State and local legislative bodies, personnel agencies and/or correctional agencies take action to create new personnel classification positions so that paraprofessionals and other qualified workers, including ex-offenders except former police officers, can be used in correctional programs. The Commission further recommends that States and localities make available training and educational opportunities to such personnel to enable them to meet appropriate standards.

All of the efforts to elevate and increase the effectiveness of both community-based and institutional correctional programs are doomed to failure unless an adequate supply of trained manpower is available. The present outlook on this score is extremely bleak. The great majority of adult misdemeanant and felony offenders placed on probation are supervised by officers with individual caseloads exceeding 100, more than twice the accepted norm. And all probation officers are by no means adequately trained or fully qualified.

On the institutional side, the picture is no rosier. There is gross understaffing at all levels, but particularly in the professional and specialist categories. Personnel requirements projected for 1975 call for more than double the present manpower in the field. In all sectors of corrections, staff development programs, and in-service training programs are grossly inadequate to upgrade personnel competence and performance.

The situation clearly is critical. Many experts believe that massive amounts of Federal and State funds will be required to beef-up both pre-service and in-service training. Some have proposed a national academy for correctional workers and regional teaching centers to help meet projected manpower requirements.

The Commission believes these efforts should be supported. Yet, the needs are so immediate and so great that it is essential to find ways to increase the manpower supply now. One approach is to train and utilize in all parts of the corrections system persons who lack full professional qualifications. This proposal offers perhaps the greatest hope of obtaining, in a relatively short period of time, the numbers of trained personnel required. Use of trained sub-professionals and volunteers has long been accepted as sound personnel policy in many fields, particularly social welfare, case work, and medicine. Not to be overlooked is the use of ex-offenders as a manpower resource for corrections. Such persons have the special advantage of having been intimate observers of correctional activities and who are keenly aware of the relevance of various rehabilitative programs. With careful selection and adequate training, this group can produce many valuable workers.

Training and appropriate job redesign are essential concommitants in utilizing non-professional personnel. Intensive training programs can enable such workers to perform at a high level of competence.

There are those who may doubt both the wisdom and the need for the expanded use of sub-professionals. Some argue that the use of professionals in the field to date has not had a pronounced effect on reducing recidivism, and that splitting-off or sub-dividing their responsibilities and duties will add personnel costs without raising the success level. Further, some contend that the dilution of personnel standards to expedite the recruitment of significant members of nonprofessional persons would menace the civil service system in many jurisdictions and would add greatly to training costs. It also can be argued that, given the uneven quality of the selection and training process and the general lack of experience with this approach, use of ex-offenders as sub-professional staff could be risky—even dangerous—to the entire penal system.

Despite these objections, the Commission feels that State and local legislative bodies should authorize appropriate personnel agencies to establish new personnel classification positions for non-professional correction workers, with appropriate qualifications requirements and pay grades. Correctional agencies at all levels,

including the probation departments of the courts, should be encouraged to obtain and utilize non-professional personnel in such positions. These agencies, with the assistance of personnel departments, professional associations, and universities, should develop and make available to such workers the requisite training programs to enable them to perform successfully their tasks.

F., INTERFUNCTIONAL COOPERATION

Recommendation 43. Establishment of Local Criminal Justice Coordinating Councils

The Commission recommends that local criminal justice coordinating councils under the leadership of local chief executives be established in jurisdictions having substantial administrative responsibility for at least two of the major components of the criminal justice system. The Commission further recommends that LEAA require regional criminal justice planning agencies to coordinate their work with these local councils where they exist.

A major problem of criminal justice administration occurs in coordinating the activities of the various components of the criminal justice process. Effective coordination requires an appropriate instrumentality for promoting interfunctional cooperation. There is a special need for coordination of criminal justice activities at the local jurisdictional level where the bulk of the criminal justice system actually operates, and where local chief executives are in a position to coordinate two or more components of the criminal justice process.

At present, there are only a few effective local criminal justice coordinating councils in the country. Moreover, there are comparatively few regional criminal justice planning agencies which are organized solely on a city or county basis. Delaware, Hawaii, Iowa, New Hampshire, New Jersey, North Dakota and a few other States have designated counties as regional criminal justice planning districts under the Safe Streets Act. Moreover, Connecticut, Massachusetts, Missouri, New York, Oklahoma, Pennsylvania, Rhode Island, Utah, and Wisconsin have designated certain of their larger cities for this purpose.

Despite these developments, the Commission urges the creation of more criminal justice coordinating councils in more of the larger urban jurisdictions. We urge this even though some cities do not have fully comprehensive criminal justice responsibilities. Of the 43 largest city governments, 12 do not have responsibility for corrections, seven have no judicial responsibilities, and four cities – Long Beach, Los Angeles, Oakland, and San Diego–have neither judicial or correctional duties. On the other hand, all 43 cities had police and prosecution assignments and most of the 55 largest counties in the nation have responsibility for three components of the criminal justice system. Increasingly, however, local chief executives are being held accountable for criminal justice activities, regardless of the extent of their administrative control.

There is evidence that coordinating councils can be effective when they are organized under the leadership of the local chief executive. New York City's council, now some three years old, has encouraged such innovative practices as instituting greater use of summonses and citations for minor felonies, improving procedures for police court appearances, and arranging a more rapid arraignment process. Local planning agencies in Washington and Philadelphia have aided coordination through development of a comprehensive criminal justice data system.

Critics of these councils doubt their usefulness in improving criminal justice administration. They note that such councils can not require interfunctional cooperation and that their leadership by local chief executives might, in fact, reduce cooperation from those elements in the system that are not under his direct supervision or even part of the executive branch. Thus, it is argued that creation of these councils might well retard rather than promote interfunctional cooperation. Some critics also contend that such councils might work at cross purposes with regional criminal justice planning agencies which, through their administration or review of LEAA grants, are in a better position to assess where interfunctional coordination in the criminal justice system is most needed. Creation of local criminal justice coordinating councils would result in further confusion about whose responsibility it is to promote interfunctional cooperation, so another argument runs. Finally, some contend that any real effort in this field must come from the State level, where the basic responsibility for the whole system ultimately rests and where the proper coordinating vehicle, the State law enforcement planning agency, is located.

The Commission recommends, however, that local criminal justice coordinating councils be established in counties and cities having major criminal justice responsibilities. The Commission further believes that such councils can supplement the work of regional criminal justice planning agencies. Given the fragmentation of crime control activities, there is a profound need for more linkages in the system, especially at the local level. Coordinating councils could serve in this important role.

These councils, when composed of criminal justice specialists and generalists, could provide a forum for candidly analyzing the interfunctional problems in a local criminal justice system. Moreover, when sponsored by the local chief executive, they would gain greater recognition and support from the public as well as cooperation from local agencies under his control which have related crime control and prevention responsibilities. There is no reason to suppose that effectively operating councils would not gain the support of existing regional planning agencies which have a major stake in improving interfunctional cooperation.

The Commission further recommends that LEAA insure regional planning cooperation with local coordinating councils where they exist. Coordinating councils, after all, represent a local willingness to structure a more integrated local criminal justice system. Interfunctional cooperation would be augmented by having regional criminal justice planning districts recognize and relate to these efforts. LEAA should make it clear to regional planning districts that they are to coordinate their work with that of local coordinating councils where they exist.

Recommendation 44. Improving Interfunctional Linkages in the State-Local Criminal Justice System

The Commission recommends that State and regional criminal justice planning agencies and local criminal justice coordinating councils take primary responsibility for improving interfunctional cooperation in the State-local criminal justice system. These agencies should encourage, among other things, the development of such coordinating mechanisms as seminars on sentencing practices for judicial and correctional personnel, police legal advisors, and a comprehensive criminal justice data system. They should also encourage the coordinating efforts of the existing professional law enforcement organizations. The Commission further recommends that State legislatures establish a joint standing committee or take other appropriate means to provide for continuing study and review of the progress in achieving a better coordinated State-local criminal justice system.

Lack of interfunctional cooperation among various functional components is a problem inherent in the structure of a State-local criminal justice system. The division of responsibilities among State, county, and city government; the tradition of judicial "independence"; the isolation of corrections agencies; and the decentralization of police forces are factors that have combined to make interfunctional cooperation a priority consideration. Since most criminal justice agencies see only the part of the law enforcement process they deal with, they do not appreciate the problems facing other agencies nor are they able to recognize problems common to the process as a whole.

The ill effects of too little interfunctional cooperation are all too apparent. Poor criminal investigation by some police departments, congested court dockets in urban areas, and marked disparities in sentencing procedures all stem, in part, from a lack of concern about the interrelationships in the criminal justice process. Policemen unfamiliar with the plea-bargaining process, prosecutors and judges unacquainted with correctional alternatives, and correctional personnel unaware of the complexities of arrest procedures are characteristic of a fragmented and uncoordinated criminal justice system.

The need for greater interfunctional cooperation, in the Commission's judgement, is imperative. Such cooperation will make the criminal justice process more truly systematic; it will help overcome bottlenecks in the existing process and allow more effective and innovative ways of allocating fiscal and personnel resources in the system.

There are some indications that cooperation among these agencies is increasing. Local criminal justice coordinating councils exist in some of the country's larger cities, and in 1970 four of these received $625,000 to improve coordination in their criminal justice systems. Also some Safe Streets aid has enabled professional law enforcement organizations to maintain full-time offices which, on occasion, promote programs of interfunctional cooperation. LEAA aid to prosecutor organizations in several States is of this nature.

At the State level, some judicial councils have broadened their membership to include prosecutors; sentencing seminars in some areas have created greater judicial-correctional cooperation. Moreover, in California and Texas, to name two States, the Attorney General is playing a role in bringing together the participants in the criminal justice process to discuss comprehensive crime control programs. Some police training councils and pardons and parole boards provide for membership from all parts of the criminal justice process. All of these occurrences are cooperative efforts to put more "system" into the State-local law enforcement process.

In light of the need for greater interfunctional cooperation, the Commission recommends that State and regional criminal justice planning agencies and local criminal justice coordinating councils take primary responsibility for increasing such cooperation. These mechanisms are well-suited for promoting collaboration. They presently have criminal justice planning responsibilities and are in an excellent position, through their administration of Safe Streets aid, to help criminal

justice agencies improve their working relationships with one another. Moreover, since most of these bodies do not have operational responsibilities, they are not so apt to inject bias into their promotion of coordinating measures.

Critics of these organizations contend that they do not have enough operational experience in crime control matters to effectively coordinate criminal justice operations. Hence, they would not have enough expertise to encourage truly fundamental interfunctional linkages in the system. Also, many critics doubt that interfunctional cooperation will occur until more resources are made available to strengthen and expand the operations of the various agencies within the system. Prosecutors, for instance, will not act as police advisors until there are enough resources for them to handle their present responsibilities on a full-time basis; judicial personnel can not take the lead in promoting sentencing seminars until they have enough personnel to spare for such efforts. Thus, it is maintained that until the separate components of the criminal justice process overcome their own pressing internal problems, they will not be inclined to look outward and focus on these problems of needed linkages.

The Commission recommends, nonetheless, that these planning agencies and coordinating councils must strive to promote interfunctional cooperation. These mechanisms have the time and expertise to mount a systems analysis of the criminal justice process. They do not have or at least should not have a preoccupation with intrafunctional problems and can better identify the interfunctional needs of the process. With a staff of criminal justice generalists, they are more likely to develop an overview of the system and its needs. Moreover, these agencies should gain the support of those criminal justice personnel who have a stake in promoting interfunctional cooperation. In effect, then, these State, regional, and local agencies could be "think tanks" devoted to finding methods of putting more "system" into the criminal justice process.

Finally, the Commission recommends that State legislatures establish joint standing committees or take other appropriate measures to analyze the progress that is being made in achieving a more coordinated criminal justice system. State legislation has a profound effect on the State-local criminal justice system. The State criminal code, regulations affecting court organization and procedures, and legislation dealing with correctional alternatives are but a few instances of legislative impact on the process. Given this degree of control over criminal justice operations, it is time that State legislatures take a continuing, comprehensive look at the operation of the system. Indeed, with the recent amendments to the Safe Streets Act relating to State "buying in," State legislatures, more than ever before, will need to insure that State funds and Federal aid are creating a more coordinated criminal justice system. For these reasons, States need continually to be apprised of the operation of their crime control programs through a joint standing committee or some other comparable device.

Chapter 3

STATE AND LOCAL LAW ENFORCEMENT AND THE CRIMINAL JUSTICE SYSTEM: A BRIEF DESCRIPTION

As background for identifying and analyzing the principal intergovernmental issues affecting State-local criminal justice systems, this chapter briefly describes the major features of existing systems, with special emphasis on intergovernmental sharing of criminal justice responsibilities. The focus is on State-local, inter-local, and interstate relations.

The criminal justice system usually is considered under three broad headings: police, courts, and corrections, with prosecutors and defense counsel covered under the courts. This study treats the prosecution function separately, but with due recognition of the prosecutor's role as a court official. This separation is made to bring into clear perspective the prosecutor's role as an executive officer – including the effect this has on his relationship to State officials – and his central function in coordinating police, courts, and corrections. The same considerations do not apply to defense counsel. This post is grouped with the prosecutor because of its functional relationship with him in the adversary process.

Before examining each of these major components of the American system of criminal justice, it may be useful to highlight its underlying theory and the manner in which it operates. The following overview is based on the final report of the President's Commission on Law Enforcement and Administration of Justice.[1]

AMERICA'S SYSTEM OF CRIMINAL JUSTICE

The system of criminal justice that America uses to deal with those crimes it cannot prevent and those criminals it cannot deter is not monolithic, or even consistent. It was not designed or built at one time. Upon the basic philosophic principle that a person may be punished by the government if, and only if, an impartial and deliberate process proves that he has violated a specific law, layers upon layers of institutions and procedures have accumulated. Some have been carefully constructed and others improvised. Some have been inspired by principle and others by expediency. The entire system represents an adaptation of the English common law to America's peculiar structure of government, which allows each State and, to a certain extent, each local community to construct institutions that fill its special needs. Every village, town, county, city, and State, in effect, has its own criminal justice system, and there is a Federal one as well. All of them operate somewhat alike, but no two of them operate precisely alike.

In a constitutional democracy, a criminal justice system involves a process whereby society seeks to enforce the standards of conduct necessary to protect individuals and the community. It operates by apprehending, prosecuting, convicting, and sentencing those members of the community who violate the basic rules of group existence as determined by duly sanctioned constitutional and statutory processes. Action taken against lawbreakers is designed to serve three purposes beyond the immediately punitive one: remove dangerous people from the community; deter others from criminal behavior; and give society an opportunity to attempt to transform lawbreakers into law-abiding citizens. What most significantly distinguishes this system from an authoritarian or arbitrary one is the form and extent of protections afforded individuals in the process of determining guilt and imposing punishment. Our system of justice deliberately sacrifices much in efficiency, simplicity, and even effectiveness to preserve local autonomy and to protect the individual.

The criminal justice system has three separately organized parts – the police, the courts, and corrections – and each has distinct tasks. Yet, these parts are by no means independent of each other. What each one does and how it does it directly affects the work of the others. The courts must deal, and can only deal, with those whom the police arrest. The corrections component involves those delivered to it by the courts. How successfully corrections reforms offenders determines whether they will once again become police business and influences future judicial sentencing. Police activities are subject to court scrutiny; some are determined by court decisions. Hence reform or reorganization in any part or procedure of the system changes other parts or procedures.

The criminal process, the method by which the system deals with individual cases, is not a hodge-podge of random actions, but a progression of events. Some of them, like arrest and trial, are highly visible and some, though of great importance, occur out of public view.

How the System Works: A Simplified View

Figure 1 illustrates in simplified form the process of criminal administration and shows the many decision points along its course. Felonies, misdemeanors, petty offenses, and juvenile cases generally follow quite different paths, and are therefore shown separately.

When an infraction of the law occurs, a policeman finds, if he can, the probable offender, arrests him and brings him promptly before a magistrate. If the offense is minor, the magistrate disposes of it forthwith; if it is serious, he holds the defendant for further action and admits him to bail. The case then is turned over to a prosecuting attorney who charges the defendant with a specific statutory crime. This charge is subject to review by a judge at a preliminary hearing of the evidence and in many places – if the offense charged is a felony – by a grand jury that can dismiss the charge or affirm it by delivering it to a judge in the form of an indictment. If the defendant pleads "not guilty" to the charge he comes to trial; the facts of his case are marshaled by prosecuting and defense attorneys and presented, under the supervision of a judge, through witnesses, to a jury. If the jury finds the defendant guilty, he is sentenced by the judge to a term of probation, under which he is permitted to live in the community as long as he behaves himself or to a term in prison, where a systematic attempt to convert him into a law-abiding citizen is made.

Some Differences in Theory and Practice

Some cases do proceed normally through the criminal justice process, especially those involving major offenses: serious acts of violence or thefts of large amounts of property. However, the bulk of the criminal justice system's daily business consists of dealing with "minor" offenses – such as breaches of the peace, vice crimes, petty thefts, and assaults arising from domestic, street-corner or barroom disputes. These and most other minor criminal cases generally are disposed of in much less formal and deliberate ways.

To a considerable degree, the individual policeman makes law enforcement policy because his duties constantly compel him to exercise personal discretion – in deciding what kind of conduct constitutes a crime, whether an offense is serious enough to provide the statutory or constitutional basis for arrest, and what specific crime it is. Moreover, every policeman, in effect, is an "arbiter of social values," deciding whether invoking criminal sanctions is the best way to deal with a situation from the standpoint of both society and the individual. Finally, the manner in which a policeman works is influenced by practical matters, such as the legal strength of the available evidence, the willingness of victims to press charges and of witnesses to testify, the temper and social values of the community, and the time and information at the policeman's disposal.

In contrast to the policeman, the magistrate before whom a suspect is first brought usually exercises less discretion than the law allows him – in inquiring into the facts of the case, in setting the amount of bail, and in appointing defense counsel. Congested court calendars are a major reason for insufficient inquiry into the facts of an arrest. Insensitivity to the rights of the accused may account for a judge's being too little concerned about the appointment of counsel; and the belief that requiring money bail is the best way to keep a defendant from committing more crimes before trial may induce him to set high bail as a routine matter.

The prosecutor – the key figure in processing cases – exercises wide discretion. He wields almost undisputed sway over the pretrial progress of most cases. He decides whether to press a charge or drop it; determines the precise charge against a defendant; and, when the charge is reduced – as happens in as many as two-thirds of the cases – he is usually the official who reduces it. When he reduces a charge it is usually because he has undertaken "plea bargaining" with the defense attorney. The issue at stake is how much the prosecutor will reduce his original charge or how lenient a sentence he will recommend, in return for a plea of guilty. It is impossible to know how many bargains reflect the prosecutor's belief that a lesser charge or sentence is justified and how many such bargains simply result from the pressures of congested dockets.

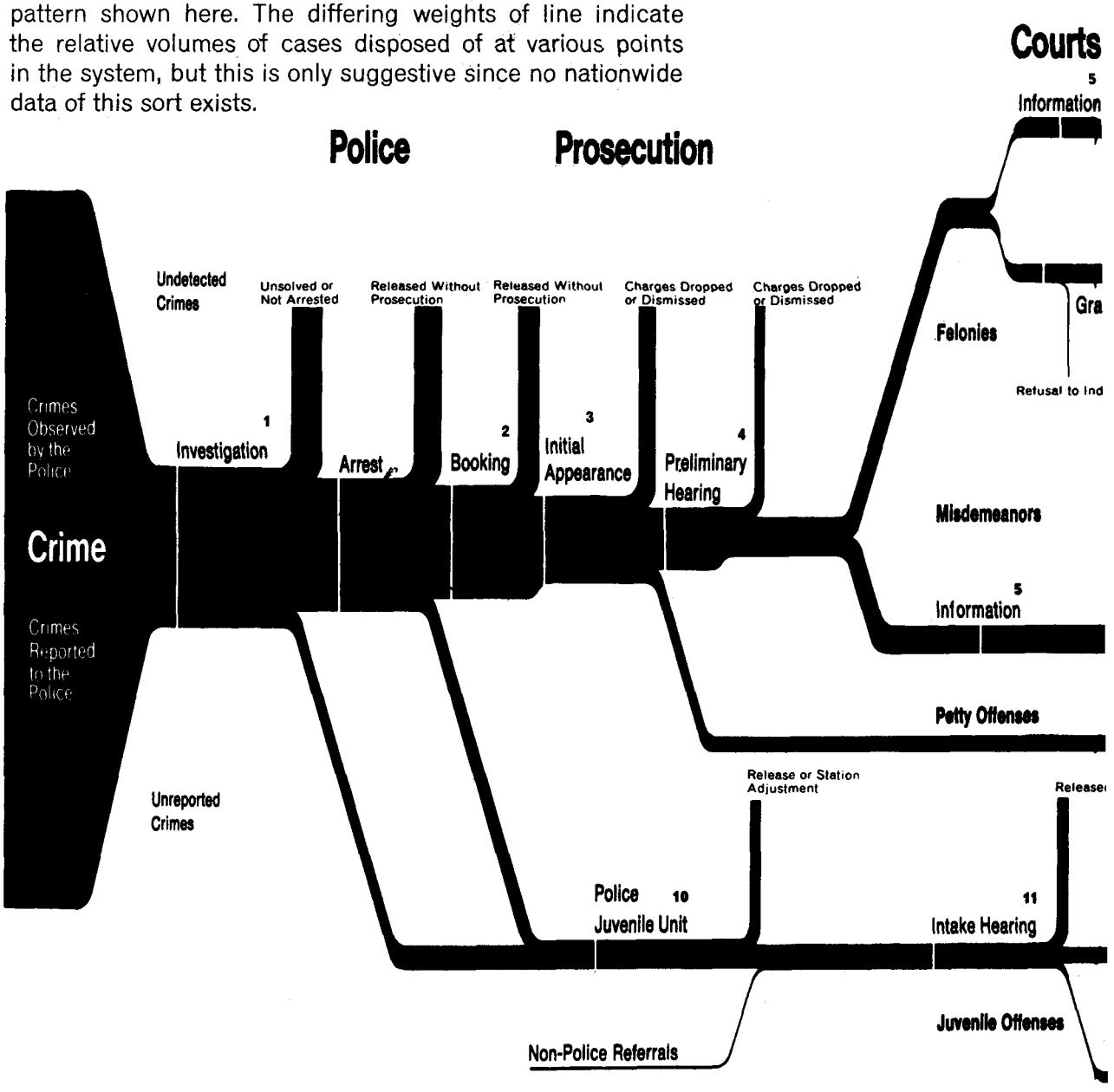
Another critical point in the criminal justice process that depends on the exercise of official discretion is the pronouncement of sentence by the judge. Judges usually are given broad latitude to fit the sentence to the individual defendant. The skill with which they act is heavily influenced by the time available, access to probation information on the defendant's character, background, and problems, and the correctional alternatives.

Finally, theory and practice are widely apart in the corrections systems, largely because the correctional apparatus is the most isolated part of the criminal justice system. Not only is it isolated physically, but also its officials do not have everyday working relationships with police, prosecutors and court officials. Its practices are seldom governed by any but the most broadly written statutes, and are almost never examined by

FIGURE 1

A general view of The Criminal Justice Systen

This chart seeks to present a simple yet comprehensive view of the movement of cases through the criminal justice system. Procedures in individual jurisdictions may vary from the pattern shown here. The differing weights of line indicate the relative volumes of cases disposed of at various points in the system, but this is only suggestive since no nationwide data of this sort exists.



1 May continue until trial.

2 Administrative record of arrest. First step at which temporary release on bail may be available.

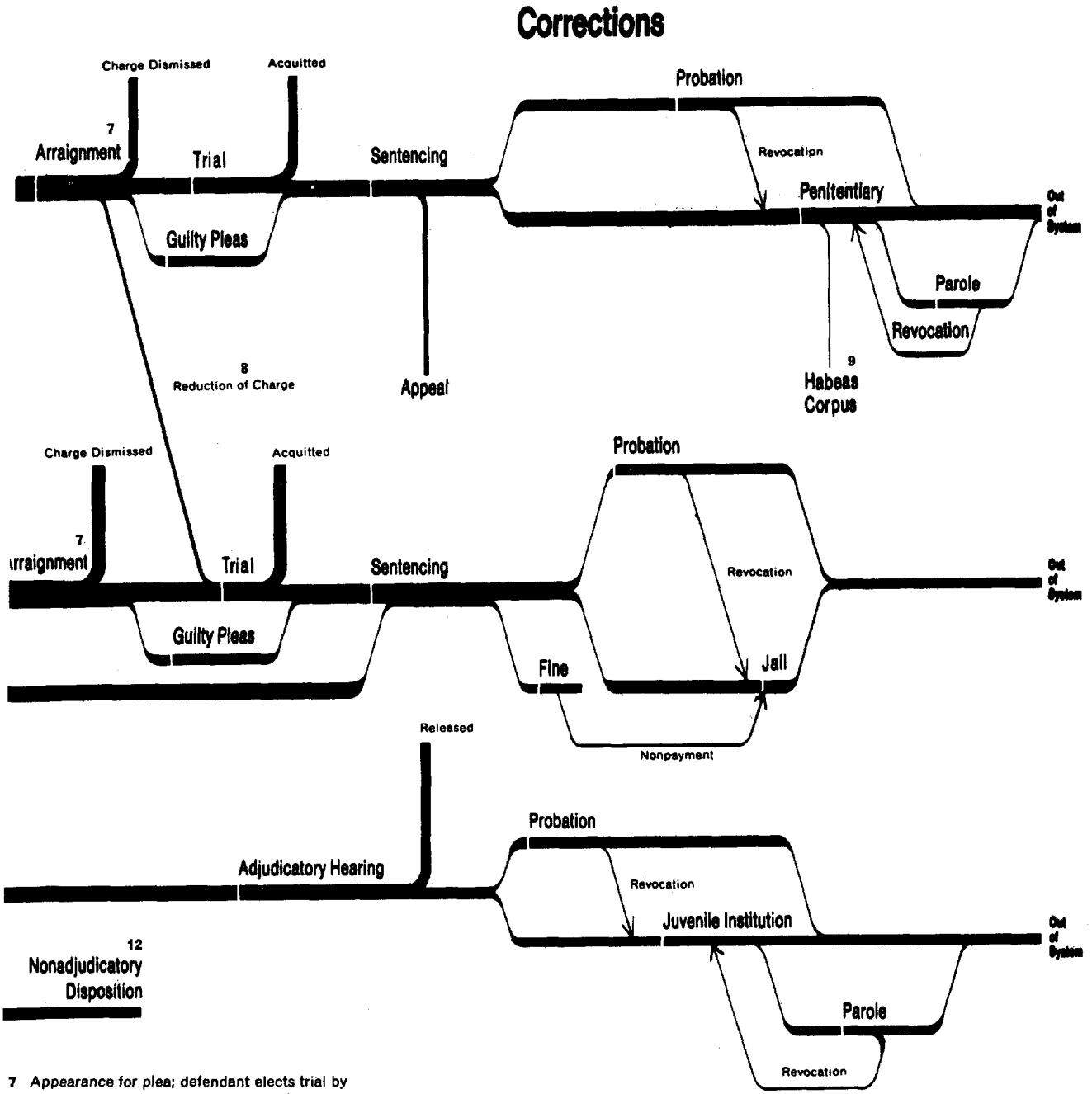
3 Before magistrate, commissioner, or justice of peace. Formal notice of charge, advice of rights. Bail set. Summary trials for petty offenses usually conducted here without further processing.

4 Preliminary testing of evidence against defendant. Charge may be reduced. No separate preliminary hearing for misdemeanors in some systems.

5 Charge filed by prosecutor on basis of information submitted by police or citizens. Alternative to grand jury indictment; often used in felonies, almost always in misdemeanors.

6 Reviews whether Government evidence sufficient to justify trial. Some States have grand jury system; others seldom use it.

ırce: The President's Commission on Law Enforcement and the Administration of Justice, *The Challenge of Crime in a Free Society* ıshington, D.C.: U.S. Government Printing Office, 1967), pp. 8-9.



7 Appearance for plea; defendant elects trial by judge or jury (if available); counsel for indigent usually appointed here in felonies. Often not at all in other cases.

8 Charge may be reduced at any time prior to trial in return for plea of guilty or for other reasons.

9 Challenge on constitutional grounds to legality of detention. May be sought at any point in process.

10 Police often hold informal hearings, dismiss or adjust many cases without further processing.

11 Probation officer decides desirability of further court action.

12 Welfare agency, social services, counselling, medical care, etc., for cases where adjudicatory handling not needed.

appellate courts. It is often used as a rug under which disturbing problems and people can be swept.

Rehabilitation is presumably the major purpose of the correctional apparatus, but the custody of criminals is actually its major task. While two-thirds of the people being "corrected" on a given day are on probation or parole, the one-third in prisons or jails consume four-fifths of correctional money and the attention of nine-tenths of correctional personnel. The result is that the enormous potential of the correctional apparatus for making creative decisions about its treatment of convicts is largely unfulfilled.

One creative decision is the question of parole – how much of his maximum sentence must a prisoner serve. This is an invisible determination that is seldom open to attack or subject to review. Often it is made in haste, without sufficient information, without adequate parole machinery that can provide good supervision, and without appeal. These factors tend to make paroles a matter of arbitrary or discriminatory judgments.

In the handling of juveniles, as in the handling of adults, there is a considerable difference between theory and practice in the criminal justice system. The theory of the juvenile court is that it is a "helping" social agency, designed to prescribe carefully individualized treatment for youth in trouble, and that its procedures are therefore nonadversary. Yet, many juvenile proceedings are no more individualized or therapeutic than adult ones.

In short, invisible, administrative procedures have tended to supplant visible, traditional ones in the actual working of the criminal justice system. The transformation of America from a relatively relaxed rural society into a tumultuous urban one has presented the State-local criminal justice system with a variety and volume of cases too difficult to handle according to traditional methods. In this milieu of turmoil, the American criminal justice system has come apart. Yet, in the words of one scholar:

> . . . this turmoil is not surprising. Each participant [in the criminal justice system] sees the commission of crime and the procedures of justice from a different perspective. His daily experience and his set of values as to what effectiveness requires and what fairness requires are therefore likely to be different. As a result, the mission and priorities of a system of criminal justice will in all likelihood be defined differently by a policeman, a trial judge, a prosecutor, a defense attorney, a correctional administrator, an appellate tribunal, a slum dweller and a resident of the suburbs.[2]

In conclusion, the lack of "system" – the paucity of coordination among the institutional components of the criminal justice system – has rendered it unable to cope with modern crime problems. In some measure, the fragmentation of the criminal justice process is due to poor intergovernmental cooperation in the system. Closing the gap between the theory and reality of the administration of criminal justice may be possible to some extent through restructuring of intergovernmental relationships in the system. However, such revisions in the system must be based on an understanding of present day intergovernmental relationships in the criminal justice process.

A. POLICE

The structure and scope of the police function differ among State-local systems of government in various parts of the country. The performance of the function also differs in its scope, quality, and cost within State-local systems. Several broad variations in police protection affect its quantity and quality throughout the nation. These variations occur with respect to the State-local division of police responsibility, quantity of police services in metropolitan and nonmetropolitan areas, and structure of police services in large and small local governments.

Division of State-local Responsibility

Local governments have the major fiscal and personnel responsibility for police. They accounted for about 90 percent of all police personnel and expenditures in 1957 and 85 percent in 1969. Yet, the rate of increase in police employment was 70 percent greater for States than for localities between 1957 and 1969; during that same period, the rate of increase for police costs was 58 percent greater for States than localities.

The division of police strength among State, county, and "other local" governments also has been changing. In 34 states, the state police made up a greater proportion of the total force in 1967 than in 1957; in 31 States, the proportion of county policemen had increased in those ten years; while only 13 States showed an increase in the proportion of "other local" policemen during this decade.[3] Moreover, 17 States had over 40% of their police strength in State and county police forces as of 1967. Thus, between 1957 and 1967 there was a slight upward "drift" of police responsibility from municipal to county and State governments. The police function is still a local one, but there is a shift to police services on a more areawide basis, and away from exclusive reliance on municipal protection.

The Urban-Nonurban Distribution of Police Services and Costs

Police manpower and costs reach their highest levels in large urban counties and metropolitan areas. Thus, police strength was 27.1 per 10,000 population in

counties of over 1,000,000 and only 10.6 per 10,000 population in counties of under 10,000 in 1967. Police expenditures were $24.05 per capita in the former group of counties and $5.68 per capita in the latter group that year. Police protection, as measured by number of police per 10,000 population, was 100 per cent greater and police expenditures were nearly 150 per cent greater in metropolitan areas than in non-metropolitan areas.[4]

Police protection comes at a higher price in the country's large metropolitan areas. Police costs rise faster than police strength as county size increases. More police personnel can be bought per dollar of police expenditure in rural than in urban areas. This is no doubt attributable to several factors–the higher personnel costs of urban areas, the greater scope of police protection, and possibly a more capital-intensive police function in urban than rural areas.

Decentralized local police protection. Local police protection in the country is highly decentralized. There are upwards of 30,000 separate police departments in the United States. Most of these are very small, with fewer than ten full-time personnel. This fact is in sharp contrast to the size of many large-city police forces, 116 of which account for 160,000 policemen–forty-seven percent of total local police employment (see Table 7).

Within the nation's metropolitan areas, local police personnel are apportioned equally among police forces of 1-10 men, 11-20 men, 21-50 men, and larger than fifty men (see Table 42).

Within a metropolitan area, police responsibility usually is divided among a number of small, medium, and large local police forces. Thus, a wide range in the quality and quantity of police services is found in most metropolitan areas as well as between metropolitan and non-metropolitan areas.

To sum up, the main structural characteristics of the police function in the United States include:

- Local governments have the greatest responsibility for police protection. Yet State and county governments have assumed relatively greater shares of the police function in recent years.
- Police services and police costs are highest in the large metropolitan areas of the country. Yet, the number of public personnel per dollar of police expenditure is higher in rural rather than urban areas.
- The police function is decentralized. There are upwards of 30,000 police departments in the country. Most local police departments are small and 30 percent of all police personnel are in departments with less than 50 full-time personnel.
- The decentralization of police services means that there will be a variety in the scope and

Table 7
SIZE OF POLICE DEPARTMENT BY UNIT OF GENERAL LOCAL GOVERNMENT, 1967

General units of governments having	No. of Governmental Units	Percent of Total	Number of police personnel	Percent of Total
0-4 full-time equivalent policemen	31,422	82.3	14,884	4.4%
5-9 full-time equivalent policemen	2,504	6.5	16,579	4.9
10-24 full-time equivalent policemen	2,463	6.4	37,387	11.0
25-49 full-time equivalent policemen	942	2.5	31,752	9.4
50-99 full-time equivalent policemen	481	1.3	33,378	9.8
100-199 full-time equivalent policemen	203	.5	28,081	8.3
200-299 full-time equivalent policemen	71	.2	16,977	5.0
300+ full-time equivalent policemen	116	.3	160,302	47.2
Total	38,202	100.0	339,340	100.0

Source: U.S. Bureau of the Census. *Compendium of Public Employment.* 1967 Census of Governments, Vol. 3, No. 2, Table No. 29.

quality of police protection between metropolitan and non-metropolitan areas as well as within a given metropolitan area.

The Tradition and Scope of The Local Police Function

The police function has traditionally been a local one. Original police systems, both in America and England, were based on resistance to a national police force and reliance on local community responsibility for apprehending law-breakers. Community groups of "hundreds"[5] were accorded responsibility for the control of criminal activity. These groups eventually came to be supervised by constables and sheriffs. Professional police, however, were unheard of until the nineteenth century.

The "hundreds" system of law enforcement with its reliance on voluntary participation began to deteriorate as people found various ways to evade their police responsibilities. Constables became paid officers as did members of the "night-watch" in American communities. Voluntary participation gradually tapered off.[6]

The concentration of the function in the hands of paid law enforcement officials, however, did not guarantee improved police work. The police function was still highly decentralized. In many communities, the function was organized along ward lines with no unified control over daytime and nighttime protection. This confused state of administration rendered local police ineffective in handling the mass violence and organized crime that plagued some American cities in the early and middle nineteenth century.[7]

As public toleration of such crime and violence decreased, citizen support mounted for organized police departments. New York City organized a unified department in 1844, Chicago in 1851, New Orleans and Cincinnati in 1852, and Boston and Philadelphia in 1854. By the turn of the twentieth century, all major cities had organized forces.

In America's rural areas, there were fewer organized police departments. The police function was still handled under the elective sheriff-constable system. Although having readily documented inefficiencies, this system was a matter of local preference.[8]

There has been a natural division of labor between State and local governments with regard to the police function. State governments drew up criminal codes which determined the basic structure of the police function whereas local governments were entrusted with the responsibility of enforcing the code. Given the more limited range of criminal mobility in earlier times, crime control undoubtedly was more a purely local problem than it is now.

The police function remained localized for political reasons as well. Law enforcement officials—sheriffs and constables—were traditionally elected officials. They and their deputies often served as part-time political lieutenants, providing considerable political pressure for keeping the police function as it was—local. For all these historical reasons the police function has remained largely local in nature, even though there has been increased State involvement in the more specialized facets of police work.

Elements of the Local Police Function

Both State and local police departments normally provide a "package of activities" in police work. These activities fall into three main categories: (1) *field services or line operations,* which include general patrol, traffic supervision, criminal investigation, juvenile work, and criminal intelligence activities; (2) *staff services,* which include police recruitment and training, internal control, planning and research, and public information activities; and (3) *auxiliary services,* which include such operations as records and communications activities, jail management, and crime laboratory services or "criminalistics." A police department is said to be self-sufficient if it performs all these activities.

The size of a police department, the extent and type of criminal activities it must deal with, and whether it is in a central city, suburb, or rural area all affect the department's ability to perform the various facets of its police work. To illustrate, a small police force must often combine its investigative and intelligence activities in one division or forego such activities altogether.[9] A larger police department, on the other hand, may have separate divisions for investigative and intelligence operations and be able to employ various types of skilled personnel, such as evidence technicians.[10] Police work is also affected by location. A community bisected by large arterial roads will have a greater traffic responsibility than another community which is more "off the beaten path." Finally, the amount and type of crime a police force must deal with will affect its police work. Communities having racial disturbances more frequently will have sophisticated community relations programs than racially homogeneous communities.[11]

Field Services. Local police departments usually perform several distinct types of line operations or field services. These include general patrol, traffic supervision, criminal investigation, juvenile delinquency control, and undercover criminal intelligence work. The size of the police department usually determines whether various line operations have a distinct identity within the municipal police department. Smaller departments, usually those under 25 full-time personnel, often do not

have separate divisions for various line operations. These departments, moreover, may over-assign personnel to particular line operations, neglecting the personnel needs of other line functions.[12] In general, larger departments perform their line operations in a more specialized fashion. Thus, annual reports of the International City Management Association indicate that larger police departments more often are able to delegate traffic supervision to civilian personnel,[13] employ a greater number of specialized vehicles in their police work,[14] and provide more in-service training to their policemen in handling mass violence.[15]

The scope of field services which police departments perform also may differ among localities. General patrol in a resort community may consist of protecting unoccupied property and discouraging vagrancy. General patrol in a large city is more dynamic, involving the prevention of such serious crimes as robbery, assault, or grand larcency. Traffic control in a smaller locality may consist of a local "speed trap," while a larger department may have mobile traffic control units as well as a separate force to direct rush-hour traffic.

In like manner, criminal investigation may not have a separate status in smaller departments. Sophisticated criminal investigation can demand a full-time officer who is trained in the basic principles of criminal detection and who has working relationships with the local prosecutor. Specialization in criminal investigation may also be necessary to determine the *modus operandi* of certain types of crime. Therefore, investigation may be a separate line function in a police department, though this is not an altogether healthy development in the local police function as it can create an artificial division between the patrol and investigative function.[16]

Juvenile work and criminal intelligence operations are only provided by larger police departments in any systematic fashion. With the greater availability of resources and specially trained personnel, larger police forces can accord the above line operations separate status. Smaller communities lack the funds and personnel for juvenile work,[17] and often obtain criminal intelligence from either large city, State, or Federal agencies.

Staff Services. Staff services include such activities as police recruitment and training, internal controls and inspection, planning and research, public information, and community relations activities. These operations support the field services of the municipal police department. Again, the scope of these services often depends on the size of the police department. Smaller departments generally do not have the money or manpower to invest in these services nor are such services always essential to such departments (e.g., internal control might be handled by the police chief in smaller departments).

While most departments have recruitment and training programs, it was estimated that 18 per cent of all municipal police forces in 1968 had no established program of recruit training.[18] In communities of under 25,000 population this proportion rose to 25 per cent. Furthermore, in 1968 only 31 per cent of all communities under 50,000 population had training facilities for police recruits while only 20 per cent of all communities under 50,000 population had a full-time training officer for police recruitment.[19]

In like fashion, smaller departments often have only ad hoc internal control or planning and research capability. Larger police departments will have separate internal control divisions and may have planning and research activities which can provide a police department with alternative programs for combating crime.[20] Another staff service is in the area of community relations. Here again data indicates that larger departments are more apt to implement full-scale community relations programs.[21]

Auxiliary Services. A police department provides another set of specialized services which further aid its line operations. These auxiliary services include record-keeping and communication, jail management and criminal laboratory services.

Almost all departments have at least rudimentary record-keeping capacity. Over 5,700 police agencies maintain liaison with the FBI in annual reporting on criminal offenses and arrests. These reporting jurisdictions accounted for 88 per cent of the country's total population in 1967. Thus, while there have been continuing proposals for a more sophisticated system of crime reporting,[22] most of the local police systems do have a basic record-keeping capability which could be worked into a national crime reporting system.

Jail management is another auxiliary function of municipal and county police. Local jails are used for such purposes as (1) short-term confinement of criminals and misdemeanants serving sentences of less than one year, (2) preventive detention of persons awaiting trial, and (3) "lock ups" for minor offenders, mainly public drunkards. There are over 3,000 county jails,[23] and the last reliable estimate put the total number of local jails at around 10,000.[24] Most local jails are small. Of more than 600 local jails inspected by Federal officials in 1966, it was estimated that more than 40 per cent were constructed before 1921.[25] (For more detailed treatment of jails see later section on corrections.)

The jail function has been a traditional task of the local police though police administrators often have expressed the desire to move it to the correctional system. Many police administrators state that only

minimal detention facilities should be maintained by the police and, that they should not be required to perform short-term correctional work.

Police departments also perform criminal laboratory services which aid in the evidence-gathering activities inherent in the police function. Laboratory services, however, are more centralized than most other police functions. Quite often many local departments receive their laboratory services from State or Federal sources, though some of the larger local departments have renowned criminalistic laboratories.[26]

The Objectives of the "Police Function"

Police forces also vary in the emphasis they place on the different elements of the police mission, because of differences in community attitudes on the extent and nature of the "police function." These attitudes condition the style in which police work is performed in a locality.[27]

James Q. Wilson has pointed out two basic concepts of what police work should entail.[28] The first holds that police should *maintain order* within the community. In this role, police act to prevent situations which may induce criminal actions. Resolving family quarrels, preventing juvenile disputes, softening interracial crises are the policeman's functions under this concept. Rather than only enforce the law, the policeman insures the law is not violated. The second concept stresses the *law enforcement* duties of the policeman, that the prime duty of the officer is to apprehend the criminal and begin to process him through the criminal justice system. This concept emphasizes the legalistic style of police work.

Some contend that these two basic functions should not be the responsibility of a single policeman. Rather, there might be specialized personnel to deal solely with peace-keeping activities, while other police officers would assume the law-enforcement function.[29] This division of labor would reduce the ambiguity of the policeman's role and place his law-enforcement responsibilities in clearer perspective.

Others note the complexity of a policeman's task makes him a "... craftsman rather than a legal actor, ... a skilled worker rather than ... a civil servant obliged to subscribe to the rule of law."[30] Being such a skilled worker, the policeman may perceive attempts to professionalize or bureaucratize his duties as a failure of public and governmental confidence in his ability to perform his responsibilities, however complex they may be.[31] In light of the intricate nature of police work, attempts should be made to respect the discretionary powers of the individual policeman. To that end, an "all-purpose" rather than specialized policeman is called for.

The debate about the "essential" nature of police work may never be satisfactorily resolved. Yet, this debate remains a pivotal element affecting the quality of local police protection. Where there is community agreement with or understanding of the demands of modern police work, there is greater likelihood of a more proficient police force.

Police Relations with Courts, Prosecution and Corrections

The police are but one element of the criminal justice system. Major decisions affecting the system can be made by any of its several main components and can affect the performance of the other divisions. Thus, a lenient parole policy by a correctional system may increase or lessen police work due to recidivism or the lack of it among parolees. Prosecutors may set demanding standards for police arrest and collection of evidence and thereby increase the general patrol and investigative demands of local police work.

Alternatively, the police department may affect the activities of other parts of the criminal justice system. Aggressive arrest policies may increase the workloads of both prosecutors and judicial personnel. On the other hand, "station-house adjudication" may lighten the work-load of criminal prosecutors, yet increase court work if criminal charges are brought against the police for such practices.

The main interrelationships between the police and other elements of the criminal justice system may be summarized as:

- **Police-Prosecution**: The police affect prosecutor workloads by their arrest policies. The investigative arm of the police department aids the prosecutor in collecting evidence in criminal prosecution and police officers frequently furnish testimony in criminal cases.
- The prosecutor affects the police when he sets standards for the collection of evidence or indicates the criteria whereby he will bring arrest cases to court. Prosecutors may interpret the applicability of judicial decisions to ongoing police work. They also may affect police arrest policies since they use bargaining procedures with criminal defendants in order to prosecute successfully a wide variety of criminal cases.[32]
- **Police-Court**: Police also affect judicial workloads by their arrest policies. Moreover, the skill of police work in various situations (i.e. handling mass violence) affects the frequency with which judges have to make

rulings about the propriety of police activities.

- Judicial-police relationships condition police attitudes about arrest and prosecution policies. Setting standards in such matters as admissibility of evidence, bail policy, and sentencing are factors which influence the law enforcement activities of police. Since the judge is often held to be the chief administrator of the criminal justice system, he often exerts administrative control which affects the work of police, prosecution, and corrections agencies. Furthermore, judicial rulings not only condition the way in which orthodox police practices operate, but they also bear on the acceptability of more unusual police practices (i.e. electronic surveillance, harassment of known criminals, etc.).[33]
- **Police-Corrections**: Police-corrections relationships are relatively indirect. The police may operate short-term detention facilities, but they do not attempt to provide for treatment or rehabilitation of the individual offender. However, police affect correctional practices insofar as they offer support or opposition to correctional programs that affect recidivism.
- Correctional-police relationships center around police assistance in monitoring the activities of probationers or parolees. Correctional agencies also have working arrangements with police departments in the transportation of prisoners from police to correctional facilities.

The police function is the frontal part of the criminal justice system. Its operation often determines the extent and scope of involvement of an individual with the criminal justice system. Much of the police function turns on the discretionary authority of the police. They may arrest or not arrest. They may arrest and practice "station-house adjudication," or they may formally book a criminal offender. In short, the police often have a wide range of discretion in which to perform their peace-keeping and law-enforcement responsibilities.

The police function is made difficult in modern society due to the wide discretion which must be used when enforcement is exercised. The discretionary role of the police is affected by community attitudes and the actions of the other elements of the criminal justice system. Also, police attitudes towards their power often determine whether police will devote more attention to peace-keeping or to law-enforcement activities. In short, the police function is the most visible as well as most volatile part of the criminal justice system. Yet, its operation is conditioned strongly by external factors which account for the wide variety of police practices in the United States.

The Decentralization of the Local Police Function

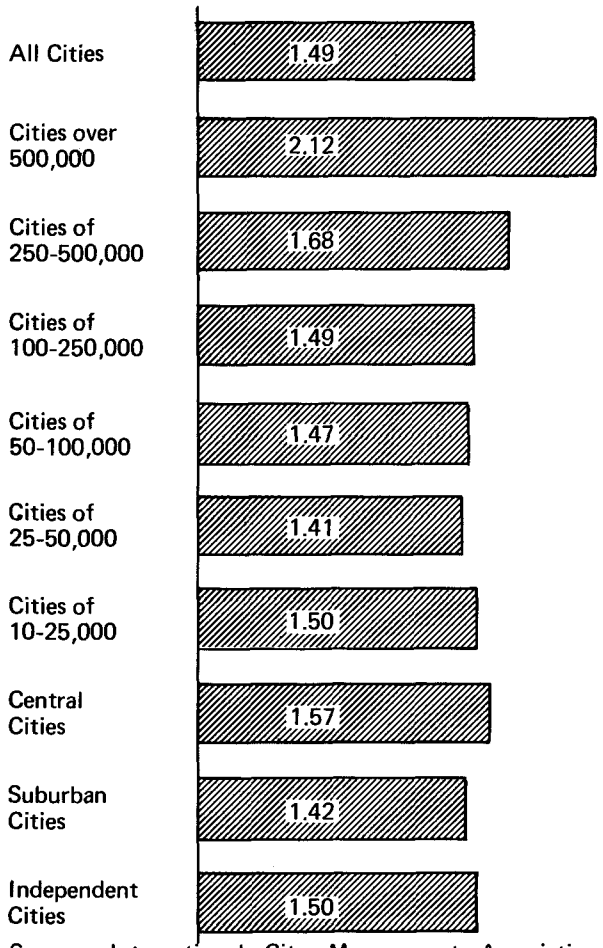
America's local governmental system is largely a decentralized and fragmented one. The fact and tradition of this pluralistic local pattern has profoundly affected the local police function. Governmental fragmentation has resulted in a proliferation of small, medium, and large-sized police forces. Many of them exercise jurisdiction in close proximity to one another. A tradition of autonomy in police protection has often isolated forces from the general workings of local government. Both the proliferation and autonomy of local police forces have made interlocal cooperation imperative, and there are indications that such cooperation is being practiced in many localities to overcome some of the deleterious effects of the decentralization of local police authority.

Variations in the Size of Local Departments

Most local police departments in the United States are very small, but most local police are concentrated in a few large police departments. More than 80 percent of the units of general local governments have police forces of under ten full-time equivalent policemen as of 1967 (see Table 7). Of a total of over 38,000 local governmental units in 1967, only 390 had police forces with more than 100 full-time equivalent personnel. These 390 forces, however, accounted for more than 60 percent of total local police employment.

The variation in the size of local police forces, however, does not markedly affect relative police employment-population ratios except in the very largest of cities. Data for 1970[34] indicate that police strength declined from a level of 2.12 uniformed police personnel per 1,000 population in cities of more than 500,000 to 1.5 uniformed personnel per 1,000 population in cities of between 10,000-25,000 (see Figure 2). Yet, these small cities had a level of protection (i.e. police per 1,000 population) that was roughly comparable (89 percent) to that of cities in the 250,000-500,000 class. However, in larger cities pay is higher for police personnel and higher proportions of local budgets are devoted to personnel costs. Thus, larger cities are buying fewer policemen at higher cost than smaller cities.

FIGURE 2
MEDIAN LEVELS OF POLICE PROTECTION UNIFORMED PERSONNEL PER 1,000 POPULATION 1970



Source: International City Management Association, *1970 Municipal Year Book* (Washington: ICMA, 1970), p. 447.

Data for police protection by size of county area indicate that it is substantially lower in smaller county areas than in the larger and more urbanized county areas, though this trend is not uniform from State to State (see Table 8). It runs from 27.1 full-time equivalent police per 10,000 population in county areas of more than 1,000,000 population to 10.6 in county areas of under 10,000 people. Protection tapers off considerably in those rural counties where there are smaller county police forces and fewer organized municipal police departments.

County police forces generally are fairly small. Eighty three percent of all counties have police forces that are under 25 full time equivalent personnel (see Table 9). Only 354 of the 3,049 county governments have police forces with more than 25 full-time personnel. Only 87 counties have more than 100 full-time personnel. Twelve States have no individual county police force with more than 50 full-time personnel.

The vast majority of county police forces consist of a sheriff assisted by either a few deputies or a set of elected constables. Since the sheriff and constables are usually elected, these forces may be subject to frequent turnover. The small size of these forces and their preoccupation with civil matters frequently hinders their effectiveness as law enforcement units, as evidenced by the rise of the independent county police department. There were 52 of these departments in 12 States as of May 1967.[35]

Local police forces vary widely in size throughout the country, ranging from the large-city, large-county police forces of the major metropolitan areas to the small, part-time departments of many rural and suburban areas.[36] Most local police departments have fewer than 25 full-time personnel. Most county police forces are also small, with only 12 percent having more than 25 full-time personnel.

The Elective Status of Local Law Enforcement Officials

There are three major locally elected law enforcement officials: the county sheriff, who is legally regarded as the chief law enforcement officer within a county; the constable, who most often is the law enforcement officer entrusted with enforcement duties of the local justice of the peace; and the county coroner, who has legal charge of all inquests regarding cases of suspicious death within a county. Sheriffs are elected in 47 States and are constitutionally established in 33 States. Constables are elective officials in 38 States and are constitutionally provided for in 12 States. Coroners are elected in 26 states, having constitutional status in 19 (see Tables A-2, A-3, A-4). The prevalence of these elected officials is attested to by the fact that there are approximately 3,000 elected sheriffs, 2,100 elected coroners and possibly as many as 25,000 elected constables in the United States.[37]

Elective status for law enforcement officials creates problems for the workings of organized police forces. Where there are many elected law enforcement officials, it may prove impossible to bind such personnel into the workings of an organized police department. Thus, constables who are popularly elected may resist direction of an elected sheriff and thereby make the sheriff more dependent on part-time deputies. Elected coroners may also prove a hindrance to the law enforcement process, since they can have complete control over the investigation of criminal deaths and are

Table 8

FULL-TIME EQUIVALENT POLICE EMPLOYMENT PER 10,000 INHABITANTS BY SIZE OF COUNTY AREA BY STATE 1967

State	Full-Time Police Employment per 10,000 Population								
	COUNTIES OF:								
	Total State	1,000,000+	500,000-999,999	250,000-499,999	100,000-249,999	50,000-99,999	25,000-49,999	10,000-24,999	-10,000
U.S. Total	17.1	27.1	19.9	17.6	13.6	11.6	10.3	9.6	10.6
Alabama	12.1	–	15.1	18.1	14.2	10.4	9.7	7.5	–
Alaska	9.5	–	–	–	–	7.8	10.6	–	13.8
Arizona	17.1	–	18.3	17.1	–	16.9	10.5	19.6	–
Arkansas	11.3	–	–	21.1	–	11.0	8.2	10.7	4.5
California	18.8	20.1	19.3	16.7	15.5	16.9	18.7	18.7	25.0
Colorado	14.4	–	–	20.8	11.3	11.9	–	13.0	17.3
Connecticut	17.1	–	19.0	–	11.6	7.2	–	–	–
Delaware	11.0	–	–	12.3	–	8.1	–	–	–
D.C.	39.2	–	39.2	–	–	–	–	–	–
Florida	19.7	24.0	–	20.8	16.5	16.1	16.1	17.7	17.5
Georgia	12.7	–	18.7	12.0	14.8	12.9	10.9	9.7	8.7
Hawaii	19.5	–	17.7	–	–	25.7	28.2	–	–
Idaho	14.2	–	–	–	–	15.0	13.4	13.4	15.0
Illinois	21.0	30.8	–	12.5	12.4	10.2	10.1	9.2	7.4
Indiana	13.1	–	17.8	14.1	15.0	11.6	9.1	8.4	8.3
Iowa	10.7	–	–	14.4	13.2	11.4	10.6	8.6	8.4
Kansas	13.8	–	–	15.5	16.1	11.1	12.8	12.5	12.8
Kentucky	10.4	–	17.6	–	15.8	9.8	7.9	6.5	5.3
Louisiana	17.6	–	24.5	20.5	17.1	15.2	14.4	12.4	16.7
Maine	10.5	–	–	–	11.6	11.4	7.6	7.9	–
Maryland	20.8	–	28.1	14.9	7.7	8.2	9.2	7.5	–
Massachusetts	21.5	19.0	24.5	19.2	14.5	21.2	–	–	25.5
Michigan	16.3	24.8	14.0	13.5	12.7	10.7	9.3	11.1	10.0
Minnesota	11.9	–	14.9	16.4	11.8	10.8	10.4	7.9	8.3
Mississippi	10.5	–	–	–	17.5	13.3	9.5	6.8	5.5
Missouri	17.4	–	26.4	–	12.1	9.9	9.4	8.0	6.8
Montana	13.6	–	–	–	–	14.1	13.1	12.5	14.8
Nebraska	12.5	–	–	16.5	13.6	7.6	13.6	10.0	9.5
Nevada	30.2	–	–	–	31.0	–	–	12.6	34.1
New Hampshire	12.9	–	–	–	13.4	10.6	14.3	14.5	–
New Jersey	22.5	–	26.3	19.0	17.7	16.4	–	–	–
New Mexico	14.2	–	–	16.0	–	14.9	10.8	15.1	17.2
New York	28.0	36.4	21.8	17.3	13.3	11.3	9.7	8.2	8.5
North Carolina	10.5	–	–	16.6	11.6	10.2	8.8	5.9	6.1
North Dakota	10.5	–	–	–	–	12.2	13.0	10.6	8.4
Ohio	14.5	23.8	14.4	15.7	11.4	9.4	9.2	7.1	4.1
Oklahoma	13.2	–	–	15.6	10.9	11.9	12.8	10.7	12.2
Oregon	15.0	–	21.7	–	11.3	14.5	13.1	12.4	10.9
Pennsylvania	16.9	32.0	13.8	10.1	10.9	6.4	5.5	4.2	3.5
Rhode Island	19.1	–	20.6	–	17.1	16.4	15.6	–	–
South Carolina	10.0	–	–	11.4	10.5	9.7	9.1	9.6	9.2
South Dakota	10.2	–	–	–	–	12.6	11.8	9.8	8.8
Tennessee	12.1	–	19.0	15.1	13.1	11.2	8.6	7.1	5.3
Texas	14.3	18.2	15.3	15.4	13.6	13.1	10.6	11.1	12.1
Utah	12.9	–	–	16.1	11.8	8.1	7.7	9.9	11.8
Vermont	7.6	–	–	–	–	13.4	7.0	4.4	–
Virginia	11.9	–	–	13.4	15.3	11.1	8.3	10.8	9.5
Washington	13.4	15.7	–	12.5	11.2	12.3	12.6	12.0	13.5
West Virginia	8.7	–	–	–	12.3	8.7	7.2	7.2	5.5
Wisconsin	18.2	27.7	–	17.5	17.5	15.1	12.8	11.2	14.7
Wyoming	16.4	–	–	–	–	15.0	15.6	16.3	18.5

Source: U.S. Bureau of the Census. *Compendium of Public Employment.* 1967 Census of Governments Vol. 3, No. 2, Table No. 19.

Table 9
COUNTY POLICE DEPARTMENTS BY SIZE OF FORCE BY STATE, 1967

State	Total Counties	Counties Having Police Forces of: 0-9	10-24	25-49	50-99	100-299	300+	NA[a]
		Full-Time Equivalent Employment						
Alabama	67	49	12	1	-	2	-	3
Alaska	9	9	-	-	-	-	-	-
Arizona	14	2	4	5	1	1	1	-
Arkansas	75	60	9	1	1	0	0	4
California	57[b]	4	12	9	13	10	9	-
Colorado	62[c]	49	7	1	3	-	-	2
Connecticut				No County Government				
Delaware	3	2	-	-	1	-	-	-
Florida	67	16	20	11	6	8	2	4
Georgia	159	110	11	6	3	3	0	26
Hawaii	3[d]	-	-	-	1	2	-	-
Idaho	44	34	7	2	-	-	-	1
Illinois	102	64	19	7	6	-	1	5
Indiana	92	77	11	2	2	1	-	-
Iowa	99	89	9	-	1	-	-	-
Kansas	105	85	9	1	2	1	-	17
Kentucky	120	106	2	1	1	-	1	9
Louisiana	62[e]	8	23	13	10	2	1	5
Maine	16	14	1	-	-	-	-	1
Maryland	23[f]	12	5	1	1	-	4	-
Massachusetts	12	9	2	-	-	-	-	1
Michigan	83	39	21	9	6	2	1	5
Minnesota	87	60	12	2	1	2	-	11
Mississippi	82	68	12	2	-	-	-	-
Missouri	114[g]	97	7	2	1	1	1	5
Montana	56	45	6	3	-	-	-	2
Nebraska	93	85	1	1	1	-	-	5
Nevada	17	8	6	1	1	-	1	-
New Hampshire	10	10	-	-	-	-	-	-
New Jersey	21	7	3	5	3	3	-	-
New Mexico	32	23	5	1	1	-	-	2
New York	57[h]	11	25	11	4	2	3	1
North Carolina	100	55	27	6	4	-	-	8
North Dakota	53	50	3	-	-	-	-	-
Ohio	88	35	34	10	3	5	-	1
Oklahoma	77	53	5	-	2	-	-	17
Oregon	36	16	9	4	4	1	-	2
Pennsylvania	66[i]	46	11	7	-	-	1	1
Rhode Island				No County Government				
South Carolina	46	14	22	4	2	1	-	3
South Dakota	64	62	2	-	-	-	-	-
Tennessee	94[j]	75	13	1	2	1	-	2
Texas	254	160	62	15	4	2	2	9
Utah	29	24	2	1	-	1	-	1
Vermont	14	14	-	-	-	-	-	-
Virginia	96[k]	39	27	3	1	2	1	13
Washington	39	11	16	3	3	2	-	4
West Virginia	55	36	17	2	-	-	-	-
Wisconsin	72	28	20	13	5	3	-	3
Wyoming	23	20	3	-	-	-	-	-
Total U.S.	3049	1988	534	167	100	58	29	173
% Distribution	100.0%	65.2	17.5	5.5	3.3	1.9	.9	5.7

[a]Indicates number of counties for which information was not available (NA).
Does not include: [b]San Francisco; [c]Denver; [d]Honolulu; [e]Baton Rouge or New Orleans; [f]Baltimore; [g]St. Louis; [h]New York City; [i]Philadelphia; [j]Nashville-Davidson and [k]Independent Cities.

Source: U.S. Bureau of the Census. *Employment of Major Local Governments.* 1967 Census of Governments, Vol. 3, No. 1, Table No. 1.

not always bound to cooperate with the investigative branches of organized police departments.

Some developments, however, point to a gradual decline of the number of elected law enforcement officials. Between 1957 and 1967, five States (Iowa, Oregon, Kansas, New Mexico, and New Jersey) abolished the elective position of coroner. During that time the office of sheriff was made appointive in Nassau County, New York; Dade County, Florida; and Multnomah County, Oregon. Also between 1957 and 1967, Colorado and Illinois abolished the elective position of constable.

Not to be overlooked is the fact that many elective law enforcement positions often go unfilled due to lack of public interest in the office. Thus, data for 1968 indicate that there was a 37 percent vacancy rate in the office of constable in West Virginia's 55 counties, with 27 of these counties having over 50 percent vacancy rates in the office.[38] Similarly, in Alabama there were only 126 elected constables to fill 1,379 authorized constable positions.[39] (For a fuller discussion of the offices of sheriff, constable, and coroner, see below, "State Prescription of Various Aspects of the Police Function.")

Interlocal Cooperation in the Police Function

Interlocal cooperation in the police function takes several different forms.[40] First, local governments may enter into contracts with one another whereby one provides all or selected aspects of the police function for the other government or governments. As of 1967, according to the International City Management Association, 43 localities of more than 10,000 population contracted with another local government for the provision of "total" police services, as shown in Table 10. Most of these localities were either in Los Angeles County, California, or Nassau and Suffolk Counties, New York. In the bulk of these interlocal contracts a locality contracted with an established county police force for the provision of police services within the locality.

A second form of interlocal cooperation is the formal agreement between localities to undertake jointly any functions and responsibilities which each of the agreeing governments could undertake singly. These agreements usually result in one locality providing one particular facet of the police function for all and other localities providing other functions. The provision of services may be on a continuing or "as needed" basis. There are an undetermined number of such police agreements in existence.

Finally, local governments cooperate in the police function through informal agreements. These occur in such areas as police communications, criminal investigation, jail and traffic services. They are probably the most common, though least binding, forms of interlocal cooperation, and their utility should not be underestimated in the performance of daily local police work.

Though beneficial to those who use them, programs of interlocal cooperation have not radically changed the structure of police protection in the United States. Most interlocal cooperation occurs in staff and auxiliary aspects of the police function. Only in the case of interlocal contracts for "total" police services and joint police protection agreements has the fragmentation of the police function been overcome.

Too frequently, pooling of local resources has not extended to the basic facets of police work. A desire for local autonomy in the patrol and investigative functions has reduced the attractiveness of service contracts and joint agreements in these areas. As a result of this lack of basic intergovernmental cooperation, rural areas may have uniformly low levels of protection while metropolitan areas may exhibit unusually divergent levels of protection between neighboring localities. While interlocal cooperation would be one way of providing more adequate police protection in many metropolitan and nonmetropolitan areas, it has not been implemented on a large enough scale to provide greater uniformity in local police capabilities.

Local Government and the Police Function: Some Final Comments

- Local governments provide the bulk of police protection in the United States. They employed 90 percent of all police personnel in 1957 and 87 percent of all police personnel in 1969. Local police forces range in size, however, from New York City's 32,000-man police force to Rangley, Maine's one-man police department.
- Most local police departments are small. Over 90 percent of all general units of local governments had police forces of under 25 full-time police personnel in 1967. This, in turn, meant that 47.2 percent of all full-time police personnel were in 116 local police departments that had more than 300 full-time policemen.
- The police function remains a "common function" of local government for a variety of reasons, including historical traditions of local control, and involvement of some law enforcement personnel in local politics.
- Interlocal cooperation has not markedly affected the structure of the police function in the United States. Few police departments fully cooperate with other agencies in the performance of daily police work. A small number of localities contract with larger units of

government for the provision of all or some specialized police services. More often localities enter into formal joint agreements or informal agreements concerning the cooperative provision of selected police services. In short, interlocal cooperation has not led to any marked centralization of the police function.

Table 10
MUNICIPALITIES OVER 10,000 CONTRACTING FOR POLICE SERVICES BY METROPOLITAN AREA—1967

Area	SMSA
Bellflower, California	Los Angeles
Lakewood, California	Los Angeles
Norwalk, California	Los Angeles
Pico Rivera, California	Los Angeles
Bell Gardens, California	Los Angeles
Hempfield Township, Pa.	Pittsburgh
Lawndale, California	Los Angeles
Lindenhurst, New York	New York
New Hanover Township, New Jersey	Philadelphia
Oak Park, Michigan	Detroit
Paramount, California	Los Angeles
Temple City, California	Los Angeles
Artesia, California	Los Angeles
Babylon, New York	New York
Belmar, New Jersey	Philadelphia
Bowie, Maryland	Washington
Burnsville Village, Minnesota	Minneapolis-St. Paul
Camarillo, California	Non-SMSA
College Park, Maryland	Washington
Commerce, California	Los Angeles
Cudahy, California	Los Angeles
Cupertino, California	San Jose
Duarte, California	Los Angeles
East Rockaway, New York	New York
Great Neck, New York	New York
Gross Point Woods, Michigan	Detroit
Killingly Town, Connecticut	Non-SMSA
Lomita, California	Los Angeles
Massapequa Park, New York	New York
Middleton Township, Pennsylvania	Harrisburg
Mineola, New York	New York
New Hyde Park, New York	New York
Norco, California	San Bernardino
Oakwood, Ohio	Columbus
Pleasant Hill, California	San Francisco
Rosemead, California	Los Angeles
San-Dimas, California	Los Angeles
Santa Fe Springs, California	Los Angeles
Saratoga, California	San Jose
South Whitehall Township, Pennsylvania	Allentown-Easton
Thousand Oaks, California	Oxnard-Ventura
Victorville, California	San Bernardino
Vista, California	San Diego

Source: Unpublished data, ICMA.

Table 11
INTERLOCAL COOPERATION IN THE POLICE FUNCTION
SELECTED STATE COMPREHENSIVE CRIME CONTROL PLANS, 1969-1970

State	Type of Interlocal Cooperation
Arizona	Cooperative crime laboratory arrangements in Phoenix and Tuscon metropolitan areas Combined training and detention facilities - Pima County and South Tuscon City
California	Interlocal contracting in Los Angeles County
Colorado	Mutual aid agreements in El Paso County Joint police protection in Mofatt County and Craig City
Georgia	Cooperative police communications system in Atlanta metropolitan area
Idaho	City-county jail agreements in several rural counties Joint communications agreements among numerous municipalities and counties
Illinois	Provision of crime laboratory and police training assistance to surrounding departments by Chicago police department
Kansas	Cooperative training arrangements between Kansas City, Wichita, Topeka, and Salina police forces and their surrounding localities Crime laboratory assistance by Wichita police agency to surrounding localities
Kentucky	48 police agencies on mutual intercity radio band Mutual aid agreements and mutual monitoring of radio dispatches in Louisville-Jefferson County and Lexington-Fayette County
Michigan	City-county contracting for police services in Ingham County Joint police protection among four municipalities in Lewanee County
Minnesota	Interlocal contracting between municipalities in Ramsey and Hennepin counties
Missouri	Interlocal cooperation in the formation of an areawide investigation force
New Jersey	Mutual aid agreements among several rural municipalities Assignment of local policemen to work with the County prosecutor in investigation and undercover work
Oregon	City-county jail contracting in a majority of counties Intermunicipal cooperation in police training Crime laboratory assistance given to other localities by the cities of Portland and Eugene City-county cooperation in the investigation function
Pennsylvania	Police training and crime laboratory assistance to neighboring localities by Philadelphia police department Intercounty cooperation in the use of juvenile detention facilities Mutual aid agreements in the Allentown-Bethlehem-Easton area Joint police protection by fourteen townships in York and Adams counties
South Dakota	Training assistance offered by Sioux Falls city Intercounty contracts for the handling of juvenile offenders City-county jail contracting
Utah	City-county cooperation in investigations—Salt Lake County Combined records system for Carbon County and Price City

- Areawide consolidation of local police forces has only occurred in those few instances of city-county consolidation.
- Fragmentation of the police function is a keynote of American police protection. It may prove troublesome when there is need for coordinated interlocal action against organized crime or incidental crime that spills over municipal borders. Fragmentation also may reduce the average capacity of an individual police department to deal with the more technical aspects of police work.
- Local police departments are under constant pressure to define what is "essential" police work. Both the community and the police department itself are continually evaluating police performance and debating the means of achieving adequate levels of police protection within the community. The most crucial part of this evaluation often lies in determining the essential law enforcement duties a policeman must perform.

The State Police Function

The State has several distinct roles in the performance of the police function. At the outset, States structure the performance of the police function through statutory or constitutional provisions regarding the election of various types of law enforcement officials, the mandating of police personnel and pension requirements and minimum standards for police recruitment, and strictures on the local powers of police in such matters as arrest and search and seizure.[41]

The State also provides direct police services such as highway patrol, general patrol in rural areas, and statewide criminal investigative and laboratory services. States, moreover, have been assigned a central role under the Safe Streets Act in criminal justice planning, taking responsibility for preparing and coordinating police activities which relate to criminal justice master planning at the regional and State level.[42]

States also may offer a wide variety of technical assistance to local police agencies. For instance, 17 States authorize their police agencies to conduct training courses for local policemen.[43] Thirty-three States have voluntary or mandatory minimum standards for local police recruitment and training which guide localities in the professionalization of their personnel.[44] A variety of other technical services is also provided—ranging from criminal laboratory assistance in at least 33 States to communications aid in eight. Moreover, 11 states permit State police investigation of corruption in local agencies.[45]

As of 1969, data from the U.S. Bureau of the Census and other selected sources indicated that at least 44 States provided some form of fiscal assistance to their local agencies. Nine were recorded as making State contributions to local police retirement systems; another 21 provided partial or full reimbursement for local police officer training; 23 States "bought into" the Safe Streets Act in 1969; and 19 other States provided State aid for other purposes (see Table 13).[46]

State Prescription of Various Aspects of the Police Function

Forty-eight States[47] regulate the election of various law enforcement officers, though several States allow optional provision of election or appointment under various forms of home-rule charters.

Forty-seven States have elective sheriffs. All of them are elected as county officers, except in Connecticut where sheriffs are elected on a county basis but as State officers. In Rhode Island the governor appoints sheriffs from the State's five counties. Alaska and Hawaii do not have sheriffs. Sheriffs are appointed in New York City and Nassau, Dade, and Multnomah Counties either by the chief executive or county commissioners. Not to be ignored is the fact that at least 52 counties have independent police forces separate from the sheriff's department.

Seven of the 47 States impose restrictions on the number of terms a sheriff may serve.[48] Sheriffs serve two-year terms in 11 States, three-year terms in New York and New Jersey, four-year terms in 33 States. and a six-year term in Massachusetts (see Table A-2). Between 1957 and 1967, five States lengthened the sheriff's term from two to four years.

Sheriffs have collateral duties as tax collectors or ex officio treasurers in nine States, mainly Southern and Border States. Only Mississippi and North Carolina did not compensate their sheriffs by salary as of 1967. They were paid by fees and expenses. Only New Hampshire required mandatory retirement of sheriffs at the age of 70.

As of 1967, constables were elected in 38 States (see Table A-3). They were solely financed on a fee or expense basis in 23 States, on a salary basis in seven States, and from some combination of fees and salary in seven others.[49] Three States allow for optional abolition of this office. However, the post still is a constitutional office in 12 States.

Coroners were elected in 26 States as of 1967. In 19 of these States, they were constitutional officers (see Table A-4). Fifteen States have abolished the elective coroner system in favor of a statewide system of medical examiners. Six other States have a medical examiner system working in tandem with an elected or appointed coroner. Several States have permitted optional abolition of the coroner's office at the county level.

States not only prescribe election requirements for law enforcement officials, but many also impose requirements regulating the wages, hours, fringe benefits, and working conditions of local police. As of 1969, 11 States mandated policies on salaries and wages of local police; nine on hours of work; another nine on fringe benefits for local police; and nine more on working conditions.[50]

Some States have also stipulated that local police meet mandatory employee qualifications before they receive permanent appointment. As of 1970, 25 States had enacted legislation providing that all policemen within a State had to receive minimum education and training to be certified as eligible for permanent appointment by a local government.[51]

Finally, the State places restrictions on the exercise of the local police power through its criminal code. Thus, only a State may provide for powers of extraterritorial arrest and pursuit.[52] And only a State may make statutory provisions regarding the scope of police powers in the matter of arrest and search and seizure.[53]

States then markedly affect the conduct of the local police function. They set statutory or constitutional provisions regarding the election or appointment of various law enforcement officials. They mandate local police practices in the area of police recruitment and training. Even more significantly, State governments affect the normal conduct of police work through the criminal code.

State Provision of Police Services

States not only prescribe conditions under which the local police function is exercised, they also provide direct police services in all the States except Hawaii. State police forces range from North Dakota's 112 man unit to California's 8,000 man force. On the average, State forces account for 10-15 percent of total police employment within a State. However, eleven States had 20 percent or more of their police strength in a State force in 1969, and Vermont had 42 percent of its police strength at the State level that year.

The 49 State police forces exhibit a wide variety of assigned tasks (see Table 12). Thus, State forces in Alabama, Oklahoma, and North Carolina devoted more than 90 percent of their time to general highway patrol duty while those in New York and Delaware spent 40 percent of their time in statewide criminal investigation. Another indication of the different scope of police work in the various State forces is reflected in the fact that 23 such agencies do not have statewide crime control responsibilities but are mainly highway patrol agencies. Moreover, seven States restrict State police patrol solely to unincorporated areas, and only 26 States give their police forces statewide investigative responsibilities.[54]

Of course, the limited character of many State police departments is due to the manner in which States organize their public safety responsibilities. Certain States have not chosen to vest their police agencies with a full range of police responsibilities. Some separate their police and investigative agencies and have both report to a common public safety director (e.g. Idaho, Illinois, Oklahoma, and Utah). Others vest criminal identification, criminalistics, and investigation responsibilities in "special" police agencies, apart from the State police (e.g. Colorado, South Carolina, South Dakota, and Wyoming).[55] Overall, it appears that only a relatively small number of State police agencies have a full range of police responsibilities (e.g. Alaska, Delaware, Michigan, New Jersey, New York, Pennsylvania, and Vermont).

State Technical and Financial Assistance

States also may provide a range of technical and financial assistance to local police departments. Several State police and State investigation bureaus provide investigative services to localities on request. Seventeen States offer State police-sponsored training services to local governments, while 33 have central criminalistic laboratories that often provide technical assistance to local agencies.[56] Moreover, at least 11 State police agencies may investigate complaints of local police corruption, while almost all the 50 States authorize their State agencies to provide supportive communications services to localities on request.

The provision of technical aid may enhance the quality of local police work. Such aid allows local agencies to use the expertise of State agencies and thereby avoid incurring extra costs in the provision of specialized services. Thirty-three States, for example, have police standards commissions which administer statewide training programs. Twenty-five of these agencies determine mandatory training standards for local policemen. Sixteen commissions offer their programs at no cost to the participating localities, while ten States provide partial reimbursement to localities for the officer's salary while he is in training.[57] Moreover, even when local agencies must reimburse the State for the provision of these services, they have at least avoided the necessity of constructing training facilities and hiring training personnel who might be under-utilized. States also broaden the capability of individual local agencies in the provision of other technical aids. Thus, for example, the California Department of Justice provides extensive criminal identification and investigative services to its local police departments.[58] This sort of aid helps local

Table 12
SELECTED CHARACTERISTICS OF STATE POLICE DEPARTMENTS
1968

State	Time Spent on		Particular Types of State Police Responsibilities				
	Traffic Services	Criminal Investig.	Statewide Crime	General State Patrol	Unincorporated Area Patrol	Statewide Investig.	Investig. Upon Request
Alabama	90.0%	6.4%		x			x
Alaska	25.0	35.0	x	x		x	
Arizona	45.0	.2		x			
Arkansas	60.0	10.0	x	x		x	
California	88.0	1.0		x	x		
Colorado	80.0	—		x			
Connecticut	30.0	19.0	x	x		x	
Delaware	47.3	41.8	x	x		x	
Florida	86.0	1.0		x		x	
Georgia	50.0	10.0	x	x		x	
Hawaii	No State Police Force						
Idaho	53.0	2.0	x	x			x
Illinois	76.4	6.8	x	x		x	
Indiana	55.0	11.0	x	x	x	x	
Iowa	80.0	5.0		x			
Kansas	62.0	10.0		x			
Kentucky	82.0	10.0	x	x		x	
Louisiana	86.5	—	x	x			
Maine	80.0	15.0	x	x		x	
Maryland	80.0	15.0	x	x	x		
Massachusetts	NA	NA	x	x		x	
Michigan	30.0	29.0	x	x		x	
Minnesota	72.0	—		x			x
Mississippi	70.0	20.0			x		x
Missouri	67.9	4.2		x		x	
Montana	75.0	3.0		x			x
Nebraska	68.7	8.2	x	x		x	
Nevada	70.0	—			x		
New Hampshire	69.0	11.0	x	x		x	
New Jersey	41.5	23.3	x	x		x	
New Mexico	68.8	8.1	x	x		x	
New York	46.2	39.7	x	x		x	
North Carolina	95.0	.5			x		
North Dakota	81.3	1.0		x		x	
Ohio	80.0	2.0		x	x	x	
Oklahoma	93.0	2.0			x		x
Oregon	70.2	8.4	x	x		x	
Pennsylvania	59.8	22.6	x	x		x	
Rhode Island	NA	NA	x	x		x	
South Carolina	90.0	—			x		
South Dakota	60.0	5.0		x			
Tennessee	85.0	5.0			x		x
Texas	62.0	28.0	x	x		x	
Utah	66.7	3.8		x			
Vermont	60.0	30.0	x		x		
Virginia	81.9	10.8	x	x		x	
Washington	87.0	9.0		x			
West Virginia	51.6	14.6	x	x		x	
Wisconsin	87.0	—					
Wyoming	73.7	—		x			
Total States			26	41	11	26	7

Source: International Association of Chiefs of Police. *Comparative Data Report—1968.* Washington: IACP, 1969, pp. 12-21.

Table 12
SELECTED CHARACTERISTICS OF STATE POLICE DEPARTMENTS
1968 (Continued)

State	Particular Types of State Police Responsibilities						
	Training Local Police	Statewide Criminal Laboratory	Laboratory Services for Local Police	Investigate Complaints about Local Police	Provide for Local Radio-Comm.	Radio-Comm. with Local Police	Provision of Teletypewriter System
Alabama	x	x					x
Alaska			x	x			
Arizona					x	x	x
Arkansas	x	x	x				x
California		x	x				
Colorado	x						x
Connecticut	x	x	x				x
Delaware	x	x					x
Florida		x	x				x
Georgia	x		x	x	x		x
Hawaii	No State Police Force						
Idaho							x
Illinois		x	x	x			x
Indiana		x	x				
Iowa		x	x				x
Kansas		x	x				x
Kentucky		x	x				x
Louisiana		x	x				
Maine	x	x	x	x			x
Maryland	x	x	x	x		x	x
Massachusetts	x	x	x		x		x
Michigan		x	x	x			x
Minnesota	x	x					x
Mississippi		x	x				
Missouri	x	x	x			x	x
Montana				x			x
Nebraska		x	x	x	x		x
Nevada						x	x
New Hampshire	x	x	x		x	x	x
New Jersey	x	x	x				x
New Mexico	x			x			x
New York		x	x	x			x
North Carolina		x	x				
North Dakota						x	x
Ohio							x
Oklahoma		x	x				x
Oregon	x	x	x				x
Pennsylvania		x	x				x
Rhode Island	x		x			x	x
South Carolina		x	x				x
South Dakota		x					
Tennessee		x	x				
Texas	x	x	x	x	x		x
Utah					x		x
Vermont			x				
Virginia						x	x
Washington							x
West Virginia		x	x				x
Wisconsin		x	x				x
Wyoming					x		x
Total States	17	33	33	11	8	8	40

Source: International Association of Chiefs of Police (IACP). *Comparative Data Report—1968.* Washington: 1969, pp. 12-21.

Table 13
STATE AID TO LOCAL POLICE—1968-1970
(thousands of dollars)

State	State Aid For: Safe Streets Act	Police Training	Retirement Purpose	Other Aid	Total Aid
Alabama	15				15
Alaska					
Arizona	94	X			94
Arkansas	13				13
California		X		2717	2717
Colorado	7		258	43	308
Connecticut					
Delaware		X		630	630
Florida	15	X			15
Georgia					
Hawaii	45				45
Idaho		X			NA
Illinois	88	X		4	92
Indiana		X		68	68
Iowa		X			NA
Kansas	NA		337	53	390
Kentucky	74			1422	1496
Louisiana			152		152
Maine	48				48
Maryland				21246	21246
Massachusetts		X			NA
Michigan		X		364	364
Minnesota	51				51
Mississippi	34				34
Missouri	60			27	87
Montana				45	45
Nebraska	10				10
Nevada		X			NA
New Hampshire			368		368
New Jersey	42		6822		6864
New Mexico				35	35
New York				823	823
North Carolina	25		1967		1992
North Dakota		X			NA
Ohio			1200		1200
Oklahoma	NA	X		198	198
Oregon					
Pennsylvania	NA		819	767	1586
Rhode Island		X			NA
South Carolina		X	888		888
South Dakota		X			NA
Tennessee					
Texas					
Utah	19	X		34	53
Vermont		X			NA
Virginia	11	X		7091	7102
Washington		X		118	118
West Virginia	15				15
Wisconsin	98	X		220	318
Wyoming	8				8
Total U.S.	772	NA	12811	35905	49488
Number of States	(23)	(21)	(9)	(19)	(44)

Sources: Thomas, John. *op. cit.;* ACIR. *Making the Safe Streets Act Work. op. cit.,* U.S. Census Bureau. *op. cit.;* unpublished Census data.

police apprehend mobile criminals and keep abreast of organized crime operations in their jurisdiction.

In addition to these technical services, 44 States provided some form of fiscal aid for local police operations between 1968 and 1970 (see Table 13). Nine States contributed aid to local police retirement systems in 1968-69; 23 States "bought into" the Safe Streets Act program, supplementing federal aid to local agencies; and 21 States had some form of police training aid available to local departments. Moreover, 19 other States had other aid programs which affected local police work. Yet, the prevalence of police aid programs in the States did not markedly affect local police finances. Only two States—Virginia and Maryland—had aid programs that constituted more than five percent of total State-local police expenditures. Thus, in at least half the States, localities bore over 80 percent of total State-local police costs. In most cases, States have not assumed a substantial proportion of State-local police expenditures.

States and Interstate Cooperation

States are the prime actors in agreeing to interstate compacts and uniform laws in the area of crime control.[59] These compacts and uniform laws increase the effectiveness of police work, especially in interstate situations.

In the case of interstate compacts, there are several which relate to police work. The Interstate Compact for the Supervision of Parolees and Probationers—among other things—allows for interstate supervision of parolees or probationers who commit a crime in one State, but who are placed on probation or parole in another State where the person might have a family or steady employment. As of 1969, ten States had approved this portion of the interstate compact. Forty-seven States had agreed to the Interstate Compact on Juveniles, which provides for the return of escaped juvenile delinquents. In parallel actions, 45 States have adopted the Uniform Law on Criminal Extradition and 40 States have adopted uniform laws on interstate pursuit of criminals.

The more limited interstate compacts in the police function include (1) the Arkansas-Mississippi and Arkansas-Tennessee Boundary Compacts which affect matters of criminal jurisdiction on the Mississippi River, (2) the New England State Police Compact which provides for central criminal records and emergency assistance among the six State police forces, and (3) the Waterfront Commission Compact enacted in 1953 between New Jersey and New York to coordinate better State efforts at checking organized crime in the New York Port area.

The State Role in the Police Function: A Final Note

- The State plays an important role in the police function. By its legal powers, it structures the operation of the local police function. By its direct provision of services, a State makes available centralized services and performs tasks (e.g., general highway patrol) that smaller local departments might find difficult to perform. States also may provide protection in areas where local departments are unusually small and not capable of a full-time law enforcement capability.
- By rendering technical and financial assistance, States may enhance the law enforcement capabilities of local departments. States also may provide specialized police expertise that often cannot be obtained in smaller local departments. Moreover, State aid, in the case of retirement systems may relieve localities of an onerous fiscal burden as well as create a more viable police recruitment system at the State level.
- The State is the prime factor in assuring effective interstate and intrastate crime control when it agrees to interstate compacts or uniform laws which increase the extraterritorial powers of local police departments.
- The State plays an important supporting role in the police function when it sets Statewide minimum standards for police selection. The State assumes even greater importance when it provides Statewide training facilities and shares in the cost of implementing training programs which insure minimum qualifications of local policemen.
- State involvement in the police function is especially significant for smaller local departments that are not wholly "self-sufficient" and are unable to carry out a full range of policy functions. State assistance to such departments may often upgrade the performance of the police function at the local level.
- The bulk of police personnel and expenditures still are provided at the local level, and some of the country's most sophisticated police forces are local forces. These often represent the "front line" of police protection in the State-local police system.

B. COURTS

In each of the 50 States, a single State court system administers both criminal and civil law, although at lower levels criminal courts are sometimes separate. The following description of the criminal court system therefore necessarily includes some reference to courts that handle civil as well as criminal cases. Primary emphasis, however, is on the latter.

The Three- or Four-Tiered System[60]

Despite considerable variation among individual systems, the general organization of State courts follows a three- or four-tiered hierarchical pattern, as shown in summary in Figure 3 and in detail in Table 14.

Court of last resort. All State constitutions, except New Hampshire's, provide for one court of last resort or ultimate review (usually known as the supreme court). In New Hampshire, the highest court was established by the legislature pursuant to the constitution. The courts of last resort hear appeals from designated State courts, either the lower State trial courts or courts of intermediate appeal. Being at the apex of a State's court system, the highest court generally has ultimate jurisdiction over controversies involving the interpretation of the State constitution and State statutes.

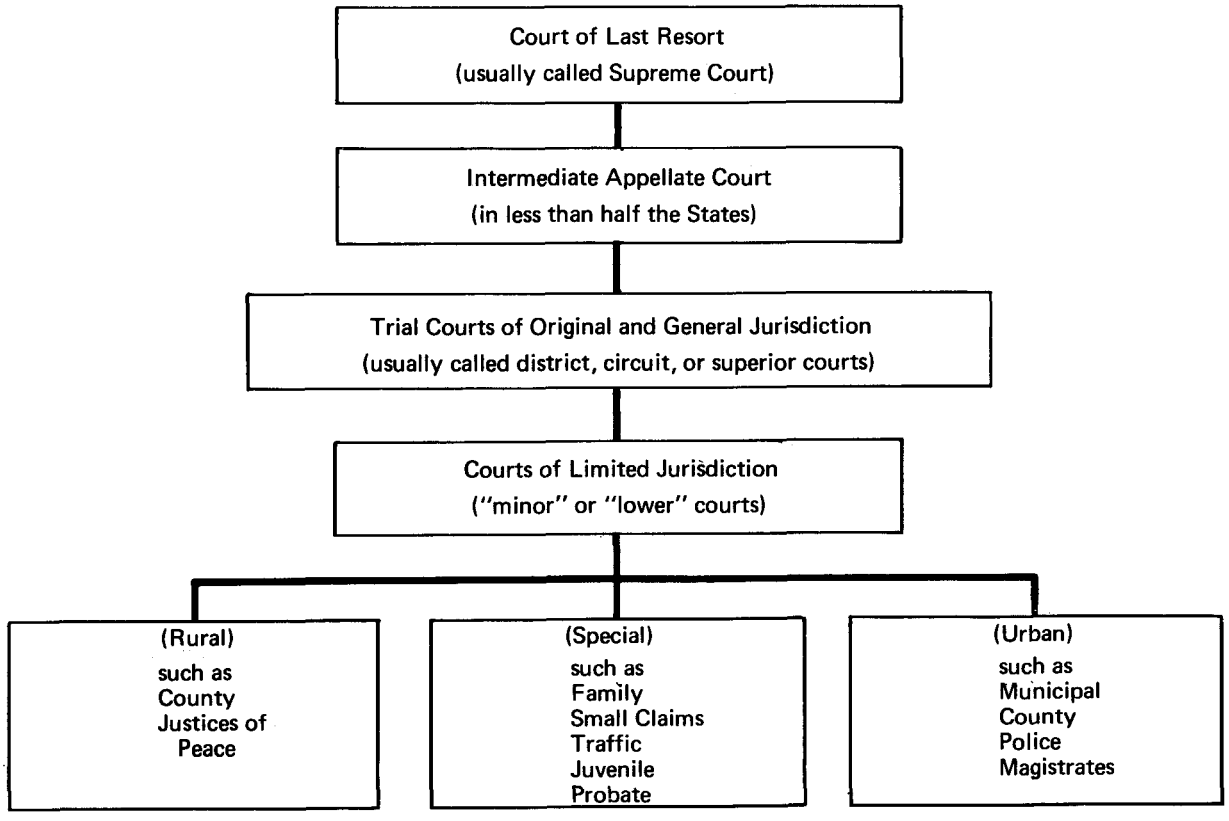
The number of justices in the highest State court varies from three to nine, including a chief or presiding justice and associate justices.

Intermediate appellate courts. Economic development, urbanization, rising crime rates, and the resulting volume of litigation have substantially increased the caseloads of some of the highest State courts. To lighten this load, 20 States use intermediate appellate courts, generally called courts of appeal.

These courts vary widely in jurisdiction. Although some are given original jurisdiction in special cases, generally they exercise appellate jurisdiction. In civil cases, this may be limited to cases involving a certain maximum monetary amount. Some States define the jurisdiction of the intermediate appellate courts in terms of the types of cases they may hear (e.g., only civil cases may be appealed to the Court of Appeals of Texas). All States having intermediate appellate courts provide for some permissive means of review by the highest State court. In some cases the litigant is given this right of appeal without permission of the intermediate appellate court. The appeal may lie directly from the trial court or from a decision by the intermediate appellate court.

Trial courts of original and general jurisdiction. Trial courts of general jurisdiction are called upon to handle civil litigation, criminal prosecutions, equity suits and probate matters. The extent of jurisdiction exercised over these classes of litigation varies in each State, depending upon the existence of separate courts for one

FIGURE 3
STATE COURT ORGANIZATION



Source: ACIR staff.

or more of these four types of litigation. In a few States, separate equity or chancery courts still exist. In States where separate criminal courts exist, they usually try most of the criminal prosecutions. Within a State, the same court may exercise civil or criminal jurisdictions, or both, depending upon the existence of other courts in the area in which it sits. The jurisdiction of some of the major trial courts is concurrent with that exercised by some courts of limited jurisdiction. The constitutions and statutes of each State must be examined to determine exactly the jurisdiction of a particular trial court of general jurisdiction.

In large metropolitan areas, in addition to separate probate and criminal courts, there also may be separate courts to hear domestic relations cases. In some States, jurisdiction may be so fragmented among the different courts that a litigant may have to go to more than one court to obtain a final decision on all aspects of what he considers a single case. Many court systems are extraordinarily complex at the general trial and limited jurisdiction court levels. Yet no matter how constituted, these courts handle the bulk of major litigation under State law. All important civil litigation originates here and persons accused of all but petty offenses are tried in these courts. They are usually authorized to hear appeals from minor courts, such as magistrates and justice of the peace courts.

As indicated in Table 14, the number of judges in the trial courts of general jurisdiction varies in the different States. In a few States, the constitution limits the number of judges per judicial area. In the majority, however, the legislature is authorized to increase and has increased the number of judges as population and litigation have increased. In California, there are 123 superior court judges for Los Angeles serving a population over 6.5 million. Florida has an unusual constitutional provision which automatically requires an increase in the number of circuit court judgeships as population increases (one judge per 50,000 population or fraction thereof).

Courts of limited jurisdiction.[61] The greatest variation among State court systems is in the lower courts, or courts of limited jurisdiction. These courts mainly dispose of "petty" civil litigation, or "small causes," and on the criminal side, conduct preliminary hearings in felony cases and try and sentence offenders charged with less serious offenses—such as disorderly conduct, vagrancy, or traffic violations—often including all misdemeanors.[62] Normally they exercise jurisdiction only over crimes committed within their territorial boundaries.

In the colonial period, the lower courts were justice of the peace courts. By the 19th century, there was an increasing tendency to replace the JPs with magistrates or local inferior courts with somewhat increased or specialized jurisdiction. In some cases, the county courts were given jurisdiction concurrent with the justices of the peace. In others, especially in the larger cities, municipal courts were established to handle most minor civil cases by a relatively simple procedure. Currently, JPs have been abolished statewide in 17 States[63] and have been replaced in selected cities in at least four more.[64] Where the justices of the peace have not yet been supplanted by district or county courts in rural areas, or by municipal courts in larger cities, they continue to exercise petty criminal jurisdiction and petty civil jurisdiction.

Since no official transcript is made of the proceedings of the lower courts, they are not courts of record. Accordingly, appeals from these courts are usually for a trial *de novo* (a completely new trial) in a court of original jurisdiction, followed by appellate review of the trial court's judgment in a court of intermediate appeal or court of ultimate review.

Violation of traffic ordinances or other local ordinances will usually result in payment of a fine to the justice of the peace, or the police justice as he is known in some towns and villages. Larger cities have created special traffic courts or special parts of the magistrates courts to deal with the increasing volume of traffic violations. Justice of the peace courts are financed entirely from fines and fees in at least 13 States.

Among courts of limited jurisdiction in some States are the separate domestic relations or family courts, although in many jurisdictions their cases are handled by the trial courts of general jurisdiction. Separate juvenile or children's courts also exist in many States. In others, authority to act as a juvenile court, or through a juvenile division, is vested in the trial court of general jurisdiction or in a probate court (whose chief concern is the disposition of decedents' estate matters). When a court acts as a juvenile court, the procedures are usually informal, and extensive use is made of auxiliary services such as social welfare workers and probation workers.

Thus there are wide differences among the States with respect to their civil and criminal courts of limited jurisdiction, stemming from the demands for new and specialized courts, separations between criminal and civil jurisdictions, division along monetary lines, case stratification by subject matter, and retention of outmoded court structures.

In commenting on the lower criminal courts, the Courts Task Force of the President's Crime Commission stated:

> A general description of the lower criminal court system in the United States is complicated by the fact that there is no single system. Within each State, courts and procedures vary from city to city and from rural area to urban area. In most States the lower courts are separate entities having different

judges, court personnel, and procedures from other criminal courts, but in some places an integrated criminal court handles all phases of all criminal cases, with an administrative subdivision or branch for petty offenses. Generally the lower courts process felony cases up to the point of preliminary hearing and misdemeanor and petty offense cases through trial and ultimate disposition. But the categories of offenses classified as misdemeanors and felonies vary, and an offense which is a felony in one State may be a misdemeanor in another.[65]

Special Significance of Lower Criminal Courts

From many points of view, the administration of justice in the lower criminal courts has prime influence on the quality of justice produced by the entire criminal court system. The offenses that are the business of the lower courts may be "petty" in terms of the damage they do and the fear they arouse, but their work has wide ramifications. These are the courts before which arrested persons are first brought, either for trial of misdemeanors or petty offenses, or for preliminary hearing on felony charges. Ninety percent of the Nation's criminal cases are heard in these courts, although public attention may focus on sensational felony cases and on the trials conducted in the prestigious felony courts. Also, to the extent that the citizen becomes involved with the criminal courts, the lower court is usually the court of last resort.

The American Judicature Society has pointed out that:

> . . . the decisions made in these courts can be of significant social consequences when considered *en masse*. Cases handled by the courts of limited jurisdiction, for example, include traffic violations, liquor cases, bill collections, petty thefts, fish and game violations and a variety of other minor civil and criminal offenses and misdemeanors of significance to the individual and local community as a whole.[66]

One legal researcher in evaluating the kinds of cases that come before the lower courts suggested that it is as if: ". . . our ability to solve society's problems is tested daily."[67]

The Courts Task Force of the President's Crime Commission emphasized:

> the significance of these courts to the administration of criminal justice lies not only in sheer numbers of defendants who pass through them but also in their jurisdiction over many of the offenses that are most visible to the public. Most convicted felons have prior misdemeanor convictions, and although the likelihood of diverting an offender from a career of crime is greatest at the time of his first brush with the law, the lower courts do not deal effectively with those who have come before them . . .[68]

Organizational and Administrative Features

A simple hierarchy or pyramid generally characterizes State court systems from the standpoint of the superior-subordinate *jurisdictional* relationship of the various courts. It does not accurately typify the location and exercise of *administrative authority* within many of the State court systems.

Administrative authority in the courts includes the power to assign and reassign judges to make maximum use of judicial manpower, to determine calendar procedures for expediting the handling of cases, to arrange hours of court and vacation time for judges, gather and compile statistical data about the courts, prepare budgets, supervise court personnel and facilities, examine the operation of the system to determine how it may be improved, and to take care of the multitude of other tasks involved in keeping operations running smoothly. These are distinguished from judicial powers: hearing testimony, weighing evidence, determining questions of fact and law, and imposing sentences in criminal cases.

A 1966 study of Tennessee's judicial system commented on the lack of coordinated administrative control:

> The predominant characteristics of the administration of Tennessee courts are the absence of centralized controls and the resulting lack of coherence and uniformity. Each court is generally administered separately and independently from all other courts. There is little centralization even within individual counties . . . .
>
> The administrative affairs of the municipal courts are handled altogether on the municipal level. Few, if any, meaningful generalizations can be drawn with respect to their administrative practices, other than to say they vary widely.
>
> The general sessions, county and similar courts of limited trial jurisdiction are . . . generally . . . administered on a county-by-county basis. The circuit, chancery and criminal courts, while they are State courts, are dependent upon county governments for many of their administrative functions or affairs.
>
> There is, accordingly, a diffusion of responsibility and resulting divergency in administrative practices across the state . . . .[69]

Similarly, among the comments contained in 1969 State plans submitted to the Department of Justice for LEAA assistance grants were the following:

> **Georgia:** The laws of Georgia prescribe no uniform regulations or procedures for the supervision and coordination of the superior court judges (trial courts of general jurisdiction). With few exceptions, each circuit is administered independently. Each circuit is a judicial "kingdom" with its own jealously guarded prerogatives. In circuits where there is more than one Superior Court Judge, there are separate "kingdoms."[70]
>
> **Kentucky:** This is not a unified court system in the sense that a Chief Justice can distribute the State's felony and misdemeanor cases among the lower court judges, and there is no single administrative office for these elected constitutional officers.[71]
>
> **Montana:** In addition to this appellate jurisdiction, the supreme court also has some limited original jurisdiction. The powers of this original jurisdiction lie mainly in the issuance of some extraordinary writs and the exercise of general supervision over the lower courts of the State. This power of supervision of the inferior courts is limited, ordinarily, to the prevention of abuses of discretion by the lower court.[72]

The diffusion of administrative authority prevails in some States even though the constitution or statutes place this authority in the supreme court, as indicated in a 1963 South Dakota study:

At nearly every level of the court structure there was an apparent lack of overall administrative responsibility. While the constitution had conferred upon the supreme court a general superintending control over all inferior courts, no effective means for implementing its authority had been devised in South Dakota. The business of the courts is a big one and the seriousness of its responsibility cannot be minimized. No government agency of any size could operate if everyone were in charge. A business firm could not be imagined in which every officer is manager. Yet this is substantially what we have in the judicial branch of South Dakota's government.[73]

A considerable portion of the problem of scattered administrative authority relates to the proliferation of lower courts, and the duplication and overlapping of jurisdictions among such courts serving the same area, or as between them and trial courts of general jurisdiction. The multitude of separate types of lower criminal courts in Alabama and Florida is apparent from Table 14. With respect to Iowa, a 1965 study commission pointed out that:

Below the courts of general jurisdiction we have a plethora of separate courts which have grown up like Topsy without an overall view of the court system: municipal courts, superior courts, justice of the peace courts, mayors courts, and police courts. Largely they are founded on the town and township. Those were the governmental units generally employed in 1846.[74]

Concerning the problem of overlapping jurisdictions, the Courts Task Force of the President's Crime Commission stated:

In a number of cities an offender may be charged, for example, with petit larceny in any one of three or more courts: a city or municipal police court, a county court, or a State trial court of general jurisdiction.[75]

The Georgia State law enforcement plan noted:

All of the above (general trial and lower) courts are independent of each other, often being dependent on local financial resources and, therefore, unable to afford the necessary facilities and personnel for effective operation. Many have their own separate rules of practice. Their jurisdictions are conflicting and overlapping. There are various methods of multiple appeals, all of which produce confusion and delays.[76]

The State of New Jersey was a leader in court reform when it adopted a new constitutional article on the judiciary in 1947. Even that "model" document did not go so far as to remove all duplication of court jurisdictions. In 1969 the Administrative Director of the Courts of New Jersey proposed abolishing the county courts and incorporating their jurisdiction and personnel into the Superior Court. In making his proposal, he said:

Every lawyer knows that the jurisdiction of the County Court is duplicative of that of the Superior Court, that the judges of the two courts try cases off the same calendars, and that no substantial reason, other than home rule, exists to justify their separate existence.[77]

Unified court systems. In contrast to the pattern of diffused administration authority, an increasing number of States have achieved or are moving toward simplified court structures with clearly assigned administrative responsibility headed up in the highest court or its chief justice.

A 1960 constitutional amendment in Arizona established an integrated judicial department, in which the supreme court was given complete administrative control and the authority to establish rules of procedure. To simplify administration and control at the general trial court level in counties with more than one superior court division, administrative authority was vested in a presiding judge appointed by the superior court.[78] Alaska's simple court system authorized by the 1959 constitution, unifies administration under the chief justice of the supreme court. His authority includes the power to supply judicial officers for hearing violations of municipal ordinances. In most States, such matters are heard by locally-established courts.[79] North Carolina's 1962 constitutional amendment provided for a unified judicial system consisting of a supreme court, superior court and district court. The supreme court was granted exclusive authority to make rules of procedure and practice subject to legislative veto and to exercise general administrative authority over the court system.[80] All courts in Vermont are integrated into a unified system operated and funded by the State and under the supervision of a court administrator.[81]

The chief justice of Connecticut's supreme court heads the judicial department, which operates the superior, circuit and juvenile courts. There are no municipal, town, county, justice of the peace, magistrate or similar lower courts in Connecticut. All court officials involved in the administration of criminal justice, including prosecutors and public defenders, are employees of the judicial department. In operating the department, the chief justice is aided by the chief court administrator—also a justice of the supreme court—who is appointed by the general assembly upon nomination of the governor for a term of four years. He has, among others, the power to select the chief judges of the courts and to assign and reassign judges and prosecutors in the several criminal courts.[82]

The Courts Task Force of the President's Crime Commission described the situations in New Jersey and Michigan as follows:

In 1947 the judicial power of New Jersey was vested in a supreme court, a superior court, 21 county courts, and courts of limited jurisdiction. A dozen or more courts, including justice of the peace courts, were abolished. The highest court was empowered to make rules governing the administration, practice, and procedure in the State courts. According to one authority, 'though county and municipal courts were not consolidated into the main trial court, the experience of that State has demonstrated how much may be accomplished by effective provision for administrative authority coupled with a reasonable degree of unification of the court system . . . .'

. . . Michigan has provided for a fully unified court system, including one statewide court of general jurisdiction and statewide courts of limited jurisdiction to be established in place of justice of the peace courts by 1968. The Supreme Court was given rulemaking and administrative power over the entire State judicial system.[83]

Table 14
NAMES OF COURTS IN THE STATES[a] AND NUMBERS OF JUDGES, 1970

State	Appellate Courts	No. of Judges	Trial Courts of General Jurisdiction	No. of Judges	Courts of Limited Criminal Jurisdiction	No. of Judges
Alabama	Supreme Court	9	Circuit	80	County	NA
	Court of Appeals	3			Justice	NA
	Court of Criminal Appeals	3			Recorders	NA
Alaska	Supreme	5	Superior	11	District	16
					Magistrate	45
Arizona	Supreme Court	5	Superior	50	Justice	91
	Court of Appeals	9			City and town or police	63
					Magistrate	NA
Arkansas	Supreme Court	7	Chancery and Probate	23	County	73
			Circuit	24	Municipal	60
					Justice	300
California	Supreme Court	7	Superior	416	Municipal	289
	Courts of Appeal	48			Justice	262
Colorado	Supreme Court	7	District	72	County	83
	Court of Appeals	6			Municipal	35
					Police Magistrate	115
Connecticut	Supreme Court	6	Superior Court	35	Common Pleas	16
					Circuit	45
Delaware	Supreme Court	3	Chancery	3	Common Pleas	4
			Superior	9	Municipal (Wilmington)	3
					Justice	52
Florida	Supreme Court	7	Circuit	126	Criminal courts of record	18
	District courts of Appeal	20			Courts of record	14
					County	20
					Justice	68
					Magistrate	2
					Municipal	NA
					Metropolitan Court of Dade Co.	NA
					Felony court of record	1
Georgia	Supreme Court	7	Superior	52	Courts of ordinary	NA
	Court of Appeals	9			City	NA
					Special civil and criminal	NA
					Municipal	NA
					Justice	NA
					Magistrates	NA
Hawaii	Supreme Court	5	Circuit	17	District magistrate	26
Idaho	Supreme Court	5	District	24	Justice	96
					Police	NA
Illinois	Supreme Court	7	Circuit Court (approx) and 200 Magistrates	360		
	Appellate Court	24				
Indiana	Supreme Court	5	Circuit	84	Municipal	8
	Appellate Court	8	Superior	48	City	60 (est)
			Criminal	3	Magistrates	4
					Town	NA
					Justice	402
Iowa	Supreme Court	9	District	76	Superior	NA
					Municipal	23
					Police	30
					Justice	530
					Mayor's	900
Kansas	Supreme Court	7	District	60	Common Pleas	NA
					City	NA
					County	NA
					Justice	NA
Kentucky	Court of Appeals	7	Circuit Court	73	County and Quarterly	240
					Justice	626
					Police	200

Table 14
NAMES OF COURTS IN THE STATES[a] AND NUMBERS OF JUDGES, 1970 (cont'd)

State	Appellate Courts	No. of Judges	Trial Courts of General Jurisdiction	Judges	Courts of Limited Criminal Jurisdiction	No. of Judges
Louisiana	Supreme Court	7	District	107	Special legislative	NA
	Courts of Appeals	24			Mayors'	NA
					Justice	NA
					Traffic	NA
					Municipal	4
Maine	Supreme Judicial Court	6	Superior	11	District	18
Maryland	Court of Appeals	7	Circuit	57	People's	11
	Court of Special Appeals	5	Courts of Baltimore City	21	Municipal (Baltimore City)	16
					Trial magistrates	92
					Committing magistrates	NA
Massachusetts	Supreme Judicial Court	7	Superior	46	Municipal (Boston)	9
					District	61
					Juvenile (Boston)	1
Michigan	Supreme Court	7	Circuit	116	Municipal	NA
	Court of Appeals	12	Recorder's (Detroit)	13	District	NA
					Magistrate	NA
Minnesota	Supreme Court	7	District	70	Municipal	112
					Justice	474
Mississippi	Supreme Court	9	Chancery	25	County	16
					City police	NA
			Circuit	24	Justice	approx 500
Missouri	Supreme Court	7	Circuit	103	Court of Criminal Correction (St. Louis)	NA
	Courts of Appeals	9			Magistrate	NA
					Municipal	NA
Montana	Supreme Court	5	District	28	Municipal	NA
					Justice	184
					Police magistrates	107
Nebraska	Supreme Court	7	District	38	Municipal	10
					Juvenile	2
					Justice	NA
					Police Magistrate	NA
Nevada	Supreme Court	5	District	18	Municipal	20
					Justice	56
New Hampshire	Supreme Court	5	Superior	10	District	37
New Jersey	Supreme Court	7	Superior	66	County District	32
	Appellate Division of Superior Court	12	County	88	Municipal courts	393
New Mexico	Supreme Court	5	District	24	Municipal	2
	Court of Appeals	4			Magistrate	60
New York	Court of Appeals	7	Supreme	221	County	33
	Appellate Divisions of Supreme Court	28			Criminal Court (NY City)	78
					District	87
					City	
					Town & village justice	2,320
North Carolina	Supreme Court	7	Superior	49	District	17
	Court of Appeals	9				
North Dakota	Supreme Court	5	District	19	County	12
					County justice	41
					Police magistrates	NA
Ohio	Supreme Court	7	Common pleas	289	Municipal	156
	Courts of appeals	38			County	78
Oklahoma	Supreme Court	9	District	138	Municipal criminal	NA
	Court of Criminal Appeals	3				
	Court of Appeals	6				

Table 14

NAMES OF COURTS IN THE STATES[a] AND NUMBERS OF JUDGES, 1970 (cont'd)

State	Appellate Courts	No. of Judges	Trial Courts of General Jurisdiction	No. of Judges	Courts of Limited Criminal Jurisdiction	No. of Judges[b]
Oregon	Supreme Court	7	Circuit	59	District	29
					Justice	71
					County	17
Pennsylvania	Supreme Court	7	Common pleas	234	County	26
	Superior Court	7			Juvenile (Allegheny County)	2
					Magistrates'	28
Rhode Island	Supreme Court	5	Superior	13	City	NA
					District	13
South Carolina	Supreme Court	5	Circuit	16	County	NA
					City recorders	NA
					Juvenile and domestic relations	NA
South Dakota	Supreme Court	5	Circuit	21	District county	22
					Municipal	NA
					Justice	NA
					Police Magistrate	NA
Tennessee	Supreme Court	5	Chancery	23	County	NA
	Court of Appeals	9	Circuit	44	General sessions	NA
	Court of Criminal Appeals	7	Criminal	20	Municipal	NA
			Law Equity	5	Juvenile	NA
Texas	Supreme Court	9	District	211	Criminal district	NA
	Court of Criminal Appeals	5			Juvenile	NA
					County	NA
	Courts of Civil Appeals	42			County criminal	NA
Utah	Supreme Court	5	District	22	Juvenile	6
					City	19
					Justice	NA
Vermont	Supreme Court	5	County	6	District	10
					Justice	NA
Virginia	Supreme Court of Appeals	7	Circuit	63	County	96
			Corporation & hustings	24	Municipal	35
			Chancery, law and chancery, and law and equity	9		
Washington	Supreme Court	9	Superior	88	Justice	187
	Appellate Court	12			Municipal	3
					Police	232
West Virginia	Supreme Court of Appeals	5	Circuit	32	Juvenile	1
					Justice	119
					Municipal	NA
Wisconsin	Supreme Court	7	Circuit	51	Municipal	NA
			County courts	123		
Wyoming	Supreme Court	4	District	11	Justice courts	NA
					Municipal courts	NA

NA - not available.

[a]When the same judges preside over two or more classes of courts, only one of the classes is shown. Also, certain types of specialized courts, such as tax courts or industrial relations courts, have been omitted from this compilation.

[b]From American Judicature Society, *Judicial Salaries and Retirement Plans in the United States: 1968 Survey,* (Chicago, 1968).

SOURCE: The Council of State Governments, *The Book of the States* 1970-71 (Lexington, Kentucky, 1970), p. 121; of limited criminal jurisdiction from American Judicature Society, *An Assessment of the Courts of Limited Jurisdiction,* Report No. 23 (Sept 1968), and *Judicial Salaries and Retirement Plans in the United States: 1968 Survey* (1968); Law Enforcement Assistance Administration.

The Illinois Law Enforcement Commission described the modernized Illinois judicial system as follows:

> The new judicial Article of the Constitution abolished the variety of inferior courts that long had characterized Illinois and substituted, instead, a unified court system under the executive control of the Supreme Court of the State of Illinois. The Supreme Court has taken an aggressive approach to making centralized executive control a reality, and has, in consultation with the Bar, issued rules of practice in civil and criminal proceedings and rules governing the adjudication of traffic offenses.[84]

Court administrators. One feature of court administration in recent years has been the trend toward relieving judges from unnecessary chores by providing them with administrative help in performing their nonjudicial duties. At present 35 States have established an office for this purpose.

Table 15 shows selected data about the director, staffing and budget of the individual State offices, based on constitutional and statutory provisions and a questionnaire survey conducted jointly by the Advisory Commission on Intergovernmental Relations and the National Conference of Court Administrative Officers (NCCAO) in May-June 1970.

The administrators bear various titles, such as administrative director and court administrator. Twenty-one are appointed by the highest court of the State, nine by the chief justice, three by the judicial conference or council (described below), and one each by a judicial study commission and an administrative board. All but a few serve at the pleasure of the appointing authority. Sixteen of the 31 responding to the survey indicated that the administrator is required to be a member of the bar, which in most of these cases is the only prescribed qualification. In three States (Alaska, Michigan, and New Mexico) administrative training or experience is also required. Staff size varies from two persons in Arkansas, Iowa, Massachusetts, Minnesota, Oregon and Virginia, to 139 in New York (nine professionals, 130 nonprofessionals). The current appropriation was not always separable from the appropriation for the supreme court, of which the administrator's office is often a part.[85] In the 25 cases where it was separable, it ranged from $25,250 in Iowa to $624,028 in California, with a median of about $109,000.

The duties prescribed for court administrative offices by constitution or statute are usually quite extensive. The more active offices are commonly charged with expediting the business of the courts; performing certain fiscal duties, such as budgeting and purchasing; adopting standards of practice for nonjudicial personnel; serving as secretariat of the judicial council, judicial conference, or judicial qualifications commission; and recommending improvements in the court system. The ACIR-NCCAO survey sought to ascertain what duties the office actually performed, as distinguished from those it was mandated to perform. The survey also inquired about the specific courts to which the work of the administrators applied, to evaluate the effectiveness of the office as a tool of central control over the entire State judiciary. The summary results of responses from 31 of the 35 offices are presented in Table 16. The figures are shown as percentages of the 31 responding offices.

The most frequent activity performed for *all courts*—supreme, intermediate appellate, general trial, and limited jurisdiction—is the collection and compilation of data, followed in descending order by the requiring of reports from the courts; the examination and design of statistical systems; formulation of recommendations on the structure, organization, and functioning of the court system; and the investigation of complaints about court operations.

On the other hand, the activities least frequently reported are assistance to judges in preparing assignment calendars; making reports concerning the performance of duties by special trial court judges; and implementing standards and policies on court hours and assignments.

While smaller administrative offices tend to concentrate their efforts on the supreme and intermediate appellate courts, a substantial number are involved in administration of the general trial courts. The most common of their activities in this regard are: collecting and compiling statistics (all the respondents); obtaining reports from these courts (97 percent); examining their statistical systems (90 percent); and making recommendations to the chief justice or the supreme court regarding the assignment of trial court judges (81 percent).

Relatively few court administrators report participation in the following activities related to the trial courts: assistance in preparing assignment calendars (6 percent); equipment and accommodations (23 percent); and supervision of nonjudicial personnel (33 percent).

The percentage of administrators reporting activities affecting the courts of limited jurisdiction is smaller than that involved in the general trial courts, but the proportion is still substantial. The most common activities involved, in descending order, are: requiring necessary reports from these courts (71 percent); examining their statistical systems and recommending uniform systems (71 percent); collecting and compiling data (71 percent); investigating complaints (71 percent); and designing or contracting for the design of statistical systems (68 percent).

Trial court administrators. The need for competent assistance in the management of court business is felt at the trial court level, particularly in urban trial courts with many judges and heavy caseloads. As a consequence, the position of trial court administrator

Table 15

SELECTED DATA ON STATE COURT ADMINISTRATIVE OFFICES, 1970

State	Title of Officer	Appointed by	No. of employees		1970 approp.
			Prof.	Nonprof.	
Alaska	Administrative Director	Chief Justice	5	14	$393,027
Arizona	Administrative Director	Supreme Court			
Arkansas	Executive Secretary, Judicial Department	Chief Justice	1	1	34,725
California	Administrative Director	Judicial Council	18	13	624,028
Colorado	State Court Administrator	Supreme Court	10	5	291,827
Connecticut	Executive Secretary, Judicial Department	Chief Court Administrator	10	21	357,400
Hawaii	Administrative Director	Supreme Court	3	7	236,691
Idaho	Administrative Assistant of the Courts	Supreme Court	2	2	41,000
Illinois	Director, Administrative Office	Supreme Court	7	14	379,065
Indiana	Executive Secretary	Judicial Study Commission			
Iowa	Judicial Department Statistician	Supreme Court	1	1	25,250
Kansas	Judicial Administrator	Supreme Court	1	3.5	Part of Supreme Court Budget
Kentucky	Administrative Director	Court of Appeals	–	6	–
Louisiana	Judicial Administrator	Supreme Court	1	3	74,677
Maine	Administrative Assistant	Chief Justice	1	2	31,500
Maryland	Director, Administrative Office of the Courts	Chief Justice	3	4	121,343
Massachusetts	Executive Secy, Supreme Judicial Court	Supreme Judicial Court	1	1	67,970
Michigan	State Court Administrator	Supreme Court	4	7	416,522
Minnesota	Administrative Asst to Supreme Court	Supreme Court	1	1	34,300
Missouri	Executive Secretary, Judicial Conference	Supreme Court			
New Jersey	Administrative Director of Courts	Chief Justice	17	23	544,090(est)
New Mexico	Director, Administrative Office of the Courts	Supreme Court	1	9	108,500
New York	State Administrator for the Courts	Admin Bd of Jud. Conference	9	130	–
North Carolina	Director, Administrative Office of the Courts	Chief Justice	6	37	425,577
Ohio	Administrative Director	Supreme Court	2	2.5	–
Oklahoma	Administrative Director	Supreme Court	2	4	–
Oregon	Administrative Assistant to Chief Justice	Chief Justice	1	1	27,000
Pennsylvania	State Court Administrator	Supreme Court	3	4	400,000
Rhode Island	Court Administrator	Chief Justice	4	3	–
Tennessee	Executive Secretary to Supreme Court	Supreme Court	2	4	125,000
Utah	Administrator of District Courts	Supreme Court	–	–	–
Vermont	Court Administrator	Supreme Court	1	3	47,000
Virginia	Executive Secretary, Supreme Court of Appeals	Supreme Court of Appeals	–	2	37,680
Washington	Administrator for the Courts	Supreme Court			
Wisconsin	Administrative Director	Supreme Court	2	5	84,100

Source: American Judicature Society, *Court Administrators, Their Functions, Qualifications, and Salaries,* Report No. 17 (July 1966) and *Supplement* (June 1969); questionnaire survey of Advisory Commission on Intergovernmental Relations-National Conference of Court Administrative Officers (May-June 1970).

Table 16

ACTIVITIES PERFORMED BY 31 STATE COURT ADMINISTRATIVE OFFICES,[1] 1970

Activities performed	Percentage of States Performing Activities in following Courts:			
	Supreme	General Trial	Limited Jurisd.	Intermed. Appellate[2]
A. **Evaluating Organization, Practices, Procedures**				
1. Examine administrative methods and systems used in offices of clerks, probations officers, etc., make recommendations for improvement.	71%	81%	61%	67%
2. Investigate complaints on court operations.	68	90	71	73
3. Formulate recommendations on structure of court system, organization, functions which should be performed by various courts.	74	81	64	93
4. Assist in preparing recommendations to Governor, Legislature regarding court organization, practices, procedures.	68	74	55	93
B. **Statistics and Records**				
1. Examine statistical system and make recommendations for uniform systems.	71	90	71	80
2. Design (or contract for design) of statistical systems.	71	84	68	73
3. Collect and compile data on court business transacted.	87	100	71	86
4. Require all necessary reports from the courts on rules, dockets, business dispatched or pending.	77	97	71	80
5. Maintain records of assignment and disposition of matters submitted to supreme court and of opinions and orders.	42	NA	NA	NA
6. Prepare annual report and other reports as directed by the court.	84	NA	NA	NA
C. **Dispatch of Judicial Business**				
1. Make recommendations to chief justice or supreme court relating to assignment of judges where courts need assistance and carry out direction of chief justice or supreme court as to assignments.	39	81	48	53
2. Report to chief justice or supreme court concerning cases pending which can not be tried because of accumulation of business.	26	52	32	33
3. Assist in preparing assignment calendars of judges, handle printing, distribution thereof.	6	6	10	0
4. Make reports concerning performance of duties by special trial judges.	10	32	13	13
5. Implement standards and policies on hours of court, assignment of term parts, judges and justices, publication of judicial opinions.	19	19	19	13
D. **Fiscal Procedures**				
1. Prepare and submit courts' budget request.	81	68	42	86
2. Maintain accounting and budgetary records for appropriations.	74	64	42	67
3. Audit bills.	64	55	39	60
4. Approve requisitions.	61	48	32	47
5. Disburse monies from court appropriation.	61	55	35	53

Table 16

ACTIVITIES PERFORMED BY 31 STATE COURT ADMINISTRATIVE OFFICES[1] (Cont'd)

Activities performed	Percentage of States Performing Activities in following Courts: Supreme	General Trial	Limited Jurisd.	Intermed. Appellate[2]
D. **Fiscal Procedures (Cont'd)**				
6. Collect statistics on expenditures of State, county, municipal funds for courts and related offices.	48	45	39	33
7. Serve as payroll officer.	61	55	35	53
8. Exercise other assigned fiscal duties.	42	26	16	33
E. **Supervision of Non-Judicial Personnel**				
1. Responsible for supervising administration of offices of clerks and other court clerical and administrative personnel.	52	42	39	33
2. Fix compensation of clerks, deputies, stenographers, other employees whose compensation is not fixed by law.	42	35	23	47
3. Exercise other duties with respect to personnel practices.	58	35	29	60
4. Appoint clerical assistants.	35	19	19	20
5. Supervise assignment of court reporters.	23	32	19	7
F. **Equipment and Accommodations**				
1. In charge of arrangements for accommodations for use of courts and clerical personnel.	48	23	23	27
2. Exercise duties with respect to care and maintenance of law libraries.	35	23	16	27
G. **Secretariat**				
1. Act as executive secretary of:				
Judicial council— 45%				
Judicial conference— 26				
Judicial qualifications commission— 39				
Other— 42				

[1] The 31 States are: Alaska, Arkansas, California, Colorado, Connecticut, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Utah, Vermont, Virginia, Idaho, Maryland, New Jersey, and Wisconsin.

[2] These are percentages of the 15 States that have intermediate appellate courts.

Source: Questionnaire survey of ACIR-NCAAO, May-June 1970.

has become increasingly common, to the point where the administrators have formed the National Association of Trial Court Administrators (NATCA). The organization has about 60 members.

In conjunction with a joint survey with the Institute of Judicial Administration in 1966, NATCA set forth basic standards for the office of trial court administrator.[86] These include service in a trial court, regardless of the number of judges in the court; direction by a chief administrator; and provision of services in most of the following areas: personnel management, financial management including budget preparation and execution, management of physical court facilities, information services, intergovernmental relations assistance, jury administrative services, statistical management services, analysis of administrative systems and procedures, and case calendar management.

In early 1970, NATCA compiled information on trial court administrative offices throughout the country. Selected data on 30 offices responding to the survey are summarized in Table 17.

The 30 offices are located in 13 States: Arizona, California (seven offices), Colorado, Illinois, Maryland (three), Massachusetts, Minnesota (three), Missouri

Table 17

SELECTED DATA ON TRIAL COURT ADMINISTRATIVE OFFICES, 1970

Location	Name of court	Year off estab.	No. of jud. pers.*	No. of empl.	Budget 69-70 (000)	Duties of Admin Office								Use comptr	Use micro
						Personnel				Fiscal					
						Hire	Dischge	Demote	Reassign	Prepare budget	Acctg	Purchsg	Payroll		
Maricopa Co., Ariz.	Superior	1960	32	154	$ 3,450	Yes[1]	Yes[1]	NA	NA	Yes	Yes	Yes	Yes	No	Yes
Contra Costa Co., Calif.	Superior	1966	2	24	617	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	No
Los Angeles Co., Calif.	Superior	1959	186	400	13,419	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Orange Co., Calif.	Superior	1962	30	44	998	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
San Bernardino Co., Calif.	Superior	1956	14	47	1,324	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	No
San Francisco, Calif.	Superior	1968	33	50	1,400	Yes	Yes	NA	Yes	Yes	NA	Yes	Yes	Yes	No
San Mateo Co., Calif.	Superior	1964	13	29	720	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
Denver, Colo.	District	1970	18	125	1,000	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes
Cook Co., Ill.	Circuit	1964	253	60	12,000	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Baltimore City, Md.	Supr Bch	1966	29	300	4,000	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No
Baltimore Co., Md.	Circuit	1967	11	38	915	Yes	NA	NA	NA	Yes	NA	Yes	Yes	Yes	Yes
Prince Georges Co., Md.	Circuit	1967	17	56	777	Yes	Yes	Yes	Yes	Yes	Yes	Yes	[2]	Yes	Yes
Boston, Mass.	Superior	1924[3]	46	24	NA	Yes	Yes	Yes	Yes	[4]	NA	NA	No	No	No
Hennepin Co., Minn.	District	1966	26	73	1,155	Yes	Yes	NA	Yes	Yes	NA	Yes	Yes	No	Yes
Hennepin Co., Minn.	Municipal	1969	16	105	NA	Yes	Yes	Yes	Yes	Yes	NA	NA	Yes	Yes	No
Ramsey Co., Minn.	District	1967	16	20	825	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	No
Kansas City, Mo.	Circuit	1968	18	NA	926	NA	NA	NA	NA	Yes	Yes	Yes	No	Yes	Yes
St. Louis City, Mo.	Circuit	1968	20	NA	NA	Yes	NA	NA	NA	Yes	NA	Yes	Yes	Yes	Yes
St. Louis Co., Mo.	Circuit	1968	16	45	315[5]	Yes	Yes	Yes	Yes	Yes[6]	NA	NA	No	Yes	No
Las Vegas, Nev.	District	1968	7	20	481	NA	NA	NA	NA	Yes	Yes	Yes	Yes	Yes	Yes
Union Co., N.J.	Sup-Co-Dist	1967	18	26	505	No	No	No	Yes	Yes	No	Yes	Yes	Yes	Yes
Cleveland, Ohio	Common Pl.	1957	35	184	3,240	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Stark Co., Ohio	Com. Pleas	1964	8	94	311	Yes	NA	NA	Yes	[7]	Yes	Yes	Yes	No	Yes
Summit Co., Ohio	Com. Pleas	1968	12	30	NA	Yes	NA	NA	Yes[8]	No	Yes	Yes	No	No	Yes
Portland, Ore.	Circuit	1965	18	63	954	Yes	Yes	Yes[8]	Yes[8]	Yes	Yes	Yes	Yes	Yes	Yes
Allegheny Co., Pa.	Com. Pleas	1963	31	530	6,700	Yes	No	NA	Yes	Yes	NA	Yes	Yes	No	No
Delaware Co., Pa.	Com. Pleas	1954	9	NA	NA	No	No	No	No	[9]	[9]	[9]		Yes	No
Norristown, Pa.	Com. Pleas	1958	9	NA	NA	Yes[10]	Yes[10]	Yes	Yes	[11]	[11]	[11]	No	No	Yes
Philadelphia, Pa.	Com. Pleas	1962	56	1,600	15,000	Yes	Yes	Yes	Yes	Yes	NA	NA	Yes	Yes	Yes

NA — No answer.
* — Judges, commissioners, referees.

[1]Maricopa Co., Ariz. Some personnel. [2]Prince Georges Co., Md. Time and attendance. [3]Boston, Mass. Executive clerk to chief judge. [4]Boston, Mass. Budget prepared and supervised by administrative assistant to chief justice. [5]St. Louis Co., Mo. Partial. [6]St. Louis Co., Mo. Collaborate. [7]Stark Co., Ohio. By court administrator and presiding judge. [8]Portland, Ore. Limited. [9]Delaware Co., Pa. Handled by administrative assistant to president judge and county budget department. [10]Norristown, Pa., For personnel assigned in court administrative office only. [11]Norristown, Pa. One judge assigned to this task.

Source: Table prepared by National Association of Trial Court Administrators from questionnaire replies, Spring 1970.

(three), Nevada, New Jersey, Ohio (three), Oregon, and Pennsylvania (four). Except for the office of the municipal court of Hennepin County, Minnesota, all of them administer the affairs of general trial courts. Eight were established in 1960 or earlier, seven from 1961 through 1965, and 15 from 1966 through early 1970. The number of judicial personnel (judges, commissioners, referees) in the courts affected varies from two in Contra Costa, California to 253 in Cook County, Illinois, with a median of 18; the number of nonjudicial personnel in the 26 offices reporting on the item ranges from 20 in Las Vegas, Nevada and Ramsey County, Minnesota to 1600 in Philadelphia, with a median of 48.

All but a few of the offices reporting on personnel and fiscal duties indicated that they are responsible for hiring, discharging, demoting, and reassigning employees; preparing the budget; accounting and preparing the payroll. All those responding on the issue of purchasing duties said they are responsible for that task.

With regard to use of computers and microfilm--two processes considered valuable for court administration--21 of the 30 said they had computers and 18 said they use microfilming.

Judicial councils and conferences. All but one State (South Dakota) had a judicial conference or council in operation in early 1968 at the time of an American Judicature Society survey.[87] Judicial conferences and councils study the administration of justice with a view towards improving court organization, practice, and procedure. Their interest is similar to that of State court administrators. Judicial councils and conferences in several cases appoint the court administrator. In 11 States, he serves as the secretariat of the council or conference. These bodies are set up by constitution, statute, court order, or informal agreement.

Table A-5 presents data on the type of membership, powers and duties of statutorily based judicial councils and conferences, from an analysis of the governing statutes. Nine of the 36 listed have membership from all four groups shown: judges, lawyers, legislators, and "others." The latter includes laymen, heads of law schools, and State executive officials such as attorneys general, and court administrators. Fourteen of the 36 include representation from the legislature, frequently the chairman of the judiciary committees, presumably to promote liaison with the legislature.

Almost all the statutes charge the council or conference with conducting a continual study of the administration and practice of the entire court system. Fifteen of the bodies are directed actively to seek out and investigate criticisms from various sources. Eighteen are charged with recommending changes in rules of practice and procedure.

In general, it seems that the importance of the judicial council as an institution for improving court administration has declined as the office of full-time State court administrator has taken hold.

Elected court officials. Even in those States which have a statutorily established court administrator with broad powers and the backing of the highest court, the exercise of controls over the administration of courts at the lower levels may be hampered by an elected clerk of the court (the traditional title for the court administrator). Experience has shown that election bestows independence upon an administrative official and inclines him to resist cooperation and coordination. In 33 States, clerks of the trial courts of general jurisdiction are elected officials. Fifteen of these States have a State court administrative office.

Sheriffs also are involved in court administration at the general trial court level, serving process, having custody of the accused, and maintaining order. Forty-seven States have sheriffs, all elected.[88]

Rules of Practice and Procedure

Along with administrative authority, the power to make rules of practice and procedure is critical in determining how the court system operates. These are the rules governing the mechanics of litigation--how a lawsuit is started, how the issues are formulated, how the trial is conducted, and how an appeal is taken.

This power is exercised exclusively in some States by the highest court, which has complete supervisory rule-making authority. In others, the authority is shared with the legislature to varying degrees.

In a 1967 study,[89] the American Judicature Society found that 18 States gave full or substantive authority to the supreme court: Arizona (except probate), Colorado (criminal only), Florida, Hawaii, Idaho, Indiana, Kentucky (civil only), Maine, Michigan, Nevada (civil only), New Jersey, New Mexico, North Dakota, Utah, Virginia, Washington, West Virginia, and Wyoming. Pennsylvania's 1968 constitutional revision subsequently put the State in this class too.

In nine additional States, according to the survey, the court initiated rules subject to some kind of legislative action. Thus, court-initiated rules were subject to legislative veto in seven States:[90] Alaska, Connecticut, Iowa, Maryland, Minnesota, Missouri, and Texas; they required affirmative legislative approval in Georgia; and were subject to legislative repeal in North Carolina.

In 17 States, the legislature made rules by statute: Alabama, Arkansas, California, Illinois, Kansas, Louisiana, Massachusetts, Montana, Nebraska, New Hampshire, New York, Ohio, Oklahoma, Oregon, South Carolina, Tennessee, and Vermont. In about half these

States, the supreme court exercised supervisory authority supplementary to the statutory rules; in the other half, there was little or no court supervision.

In three States, Delaware, Mississippi, and Rhode Island, supervisory rule-making power was centralized in neither the court nor the legislature. And in South Dakota and Wisconsin, the constitution and statutes were unclear as to where the authority lay. At present, however, Wisconsin rules are made by the Supreme Court subject to legislative modification.

Judges: Selection, Tenure, Discipline and Removal, Filling Vacancies, Qualifications

The quality of justice dispensed by State judicial systems depends more than anything else on the caliber of the judges. Constitutional and statutory provisions governing judicial selection, tenure, discipline and removal, filling of vacancies, and qualifications are factors generally considered to bear upon the quality of the judges who are attracted to and retained in the court system.

Selection. Judges are elected or appointed. Election is by partisan or nonpartisan ballot. Appointment is by the governor, the legislature, local governing bodies or mayors, or higher courts. In recent years a number of States have adopted the "Missouri plan." Under this plan, the governor appoints judges from a list of candidates nominated by an impartial commission, and after a probationary service, the judges stand for election on their records rather than in contests against other candidates.

Table 18 summarizes by State the manner of selection of judges of appellate (A), general trial (G), and limited jurisdiction (L) courts. In the appointive category, a distinction is drawn between those appointed without prior screening by an impartial commission and those subjected to screening.

While the 50-State picture is complicated by the use within the same State of different methods of selection, certain generalizations may be drawn:

- Election continues to be the dominant method of judicial selection, accounting for all, or virtually all, judicial offices in 25 States.
- Elections are partisan in 15 of these States. They are predominantly in the South, Southwest, or border areas—Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, New Mexico, North Carolina, Tennessee, Texas, and West Virginia—as well as Illinois, Indiana, New York, and Pennsylvania.
- In ten States, the elections are nonpartisan, reflecting the impact of the progressive movement of the first two decades of this century. These are mainly Midwestern, Plains, Mountain, and Far West States: Michigan, Minnesota, Montana, Nevada, North Dakota, Ohio, Oregon, South Dakota, Washington, and Wisconsin.
- Nine States, as of 1968, employed recommendations by an outside body as a screening device before appointment of judges at one or more of the judicial levels: Alaska, Colorado, Iowa, Kansas, Missouri, Nebraska, Oklahoma, Utah, and Vermont. In California, on the other hand, the governor's appointments to the Supreme Court and Court of Appeals are subject to approval by a Commission on Judicial Appointments. Since 1968, four States have adopted this screening device: Idaho, Illinois, Indiana and Pennsylvania.

Table 18
FINAL SELECTION OF JUDGES[a] [b]
1968

State	Elected		Appointed Without Screening			Appointed After Screening	
	Partisan	Non-Partisan	Governor Appoints	Legislature Appoints	Other	Governor Appoints	Legislature Appoints
Alabama	AGL		L[1]	L[1]	L[1]		
Alaska					L[2]	AG	
Arizona	L	AG			L[3]		
Arkansas	AGL						
California		GL	A				
Colorado					L[4]	AGL	
Connecticut	L[5]			AGL			
Delaware			AGL				
Florida	AGL						
Georgia	AGL		L[6]				
Hawaii			AG		L[7]		
Idaho	L[8]	AG			L[8]		
Illinois	AGL				L[9]		
Indiana	AGL		L[10]				
Iowa	L[11]	L[12]			L[13]	AG	
Kansas	GL					A	
Kentucky	L	AG					
Louisiana	AGL						
Maine	L[14]		AGL				

Table 18
FINAL SELECTION OF JUDGES[a] [b] (Continued)

State	Partisan	Non-Partisan	Appointed Without Screening: Governor Appoints	Appointed Without Screening: Legislature Appoints	Appointed Without Screening: Other	Appointed After Screening: Governor Appoints	Appointed After Screening: Legislature Appoints
Maryland		L[15]	AGL		L[16]		
Massachusetts			AGL				
Michigan		AGL					
Minnesota		AGL					
Mississippi	AGL				L[17]		
Missouri	GL					AG[18] L[19]	
Montana		AGL			L[20]		
Nebraska	L[21]	L				AGL[22]	
Nevada		AGL					
New Hampshire			AGL				
New Jersey			AGL		L[23]		
New Mexico	AGL						
New York	AGL		A[24] L[25]		L[26]		
North Carolina	AGL		L[27]	L[28]	L[29]		
North Dakota		AGL					
Ohio		AGL					
Oklahoma			G[30]		L[31]	A[32]	
Oregon		AGL			L[33]		
Pennsylvania	AGL						
Rhode Island			GL[34]	A	L[35]		
South Carolina	L[36]		L[37]	AG			
South Dakota		AGL			L[38]		
Tennessee	AGL						
Texas	AGL						
Utah					L[39]	AGL[40]	
Vermont	GL[41]			A		L[42]	G[43]
Virginia				AG	L[44]		
Washington		AGL			L[45]		
West Virginia	AGL						
Wisconsin		AGL					
Wyoming	L	AG					

[a] A—judges of courts of last resort and appellate courts; G—judges of trial courts of general jurisdiction; L—judges of courts of limited jurisdiction.

[b] Where a State shows a type of court both with and without a footnote, the footnoted item is the exception.

Source: The Council of State Governments, *State Court Systems* (Revised, 1968), July 1968, Table II.

[1] Alabama. Some juvenile court judges appointed by Governor, legislature, or county commissioner; [2] Alaska. Appointed by judges of superior court; [3] Arizona. City and town magistrates selected as provided by charter or ordinance, usually appointed by mayor and council; [4] Colorado. Municipal judges appointed by city councils or town boards; [5] Connecticut. Probate judges; [6] Georgia. County and some city court judges appointed by Governor with consent of Senate; [7] Hawaii. District magistrates appointed by Chief Justice; [8] Idaho. Probate judges elected on partisan ballot; JPs appointed by county board. Municipal judges appointed by city council; in case of villages, by board of trustees; [9] Illinois. Magistrates appointed by circuit judges; [10] Indiana. Municipal and magistrates' judges; [11] Iowa. JPs; [12] Iowa. Municipal court judges; [13] Iowa. Police court judges appointed by city council, or ordinance may provide for election by entire city electorate; [14] Maine. Probate judges; [15] Maryland. Judges of municipal court of Baltimore; [16] Maryland. People's court judges of Montgomery county appointed by county council; [17] Mississippi. City police court justices appointed by governing body; [18] Missouri. Circuit courts in St. Louis and Jackson County; [19] Missouri. St. Louis court of Criminal Correction; [20] Montana. Some judges of police courts appointed by city councils or commissioners; [21] Nebraska. JPs; [22] Nebraska. Juvenile and municipal courts in Omaha and Lincoln; [23] New Jersey. Magistrates of municipal courts serving one municipality only are appointed by governing bodies; [24] New York. Governor designates members of appellate division of supreme court; [25] New York. Governor appoints judges of court of claims; [26] New York. Mayor of New York appoints judges of some local courts; [27] North Carolina. Governor appoints a few county court judges and some magistrates; [28] North Carolina. General Assembly appoints some magistrates; [29] North Carolina. County commissioners appoint a few county court judges and juvenile court judges; city boards appoint some juvenile court judges; [30] Oklahoma. Governor may appoint to Court of Appeals and district courts from list submitted by Nominating Commission; [31] Oklahoma. Municipal judges appointed by municipal governing body; [32] Oklahoma. To appoint judges of supreme court and court of criminal appeals, Governor must appoint from list of three submitted by Judicial Nominating Commission; [33] Oregon. Municipal judges appointed by city councils; [34] Rhode Island. Governor appoints family and district court judges and JPs; [35] Rhode Island. Probate judges appointed by city or town councils; [36] South Carolina. Probate judges and some county judges; [37] South Carolina. City judges, magistrates and some county judges; [38] South Dakota. County JPs appointed by senior circuit judges of their judicial circuit; [39] Utah. Town justices appointed by town trustees; [40] Utah. Juvenile court judges initially appointed by Governors from list nominated by Juvenile Court Commission; [41] Vermont. Assistant judges of county courts originally elected by legislature from panel submitted by Judicial Selection Board; [42] Vermont. District court judges appointed by Governor from panel designated as qualified by Judicial Selection Board; [43] Vermont. Presiding judges of county courts originally elected by legislature from panel submitted by Judicial Selection Board; [44] Virginia. Practically all judges of courts of limited jurisdiction appointed by judges of major trial courts, but some elected by Legislature and some by city councils; [45] Washington. Municipal judges in first, third, and fourth class cities are appointed by mayor.

- Governors appoint all, or virtually all, judges without prior screening in six States, all of them in the East: Delaware, Maine, Maryland, Massachusetts, New Hampshire, and New Jersey. In every one, except Maryland, the appointment is subject to consent of the Senate or Executive Council.
- Judges of the lower courts generally follow the overall pattern of designation by election or gubernatorial appointment. But in at least 16 of the States, judges of one or more lower courts are appointed by mayors, city councils, or county boards.

Terms of judges. Table 19 summarizes the terms of office of judges in the 50 States by the three major types of courts. Judges of appellate courts generally serve the longest term and judges of the minor courts serve the shortest. All judges serve for life in Massachusetts; judges of appellate and major trial courts serve for life in Rhode Island; and in New Jersey, judges of the appellate and major trial courts serve for seven years and then are eligible for reappointment for life.

The length of term is less significant in those States employing the "Missouri Plan" for selection of judges, in which judges "run against their own record," that is, voters are given the choice of voting the incumbent in or out, rather than the choice of two or more candidates. The experience in Missouri indicates that judges running for retention of office in such non-competitive elections are seldom voted out.[91]

Judicial discipline and removal. No method of selection can assure that all judges will remain physically, mentally, and morally competent over their entire term. Consequently, States have developed a variety of methods for dealing with judges who display unfitness to discharge their responsibilities. Table 20 summarizes State constitutional and statutory provisions for discipline and removal of judges, using the same symbols as in Table 18 for the levels of courts (A) (G) (L).

Impeachment is the traditional means for removing unsatisfactory judges. It usually involves indictment by the lower house of the legislature and trial by the Senate. Only four State constitutions (Delaware, Hawaii, Indiana, and Oregon) do not authorize this method. A judge convicted under impeachment proceedings is removed from the bench and barred from holding any other public office, but he may still have to face criminal charges.

Legislative address is another form of removal. It is usually a formal request by vote of two-thirds of the members of both houses of the legislature asking the governor to remove a judge. The governor is then required to carry out the request and effect the removal. In a few States, the governor does not participate; the legislature's action is sufficient for removal.

Address is available in 28 States: Arkansas, Connecticut, Delaware, Hawaii, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, and Wisconsin.

In seven Midwestern and Western States, judges are subject to recall by the voters: Arizona, California, Kansas, Nevada, North Dakota, Oregon, and Wisconsin. If a specified percentage of voters sign a recall petition, the judge must run in a special election. In some States, he runs unopposed and must win a majority of votes to retain office. In others, opponents may run and the candidate receiving the highest number of votes serves the remainder of the term.

Thirty-one States employed special boards, tribunals or commissions for disciplining and removing judges, as of 1968. There are three general types: courts of the judiciary, judicial qualifications commissions, and special boards for involuntary retirement.

Courts of the judiciary were authorized in 13 States: Alabama, Delaware, Hawaii, Illinois, Indiana, Iowa, Louisiana, New Jersey,[92] New York, North Carolina, Oklahoma, Texas and Virginia. In five of these States (Illinois, Iowa, Louisiana, New York and Oklahoma) the court is a specially constituted tribunal of selected judges from the appellate and trial court levels. In the others, the charges are heard before an existing court, usually the supreme court, in the manner of a bench trial. The court may either order dismissal of the complaint or removal or retirement of the judge.

Judicial qualifications commissions are normally composed of judges, lawyers and lay persons. They receive and investigate complaints about judges; hold formal hearings if they regard a complaint as serious and supported by factual evidence; recommend retirement, removal or some other form of disciplinary action; or dismiss the charges. Recommendations are reviewed by the supreme court, which makes the final disposition.

Judicial qualifications commissions existed in 14 States as of 1968: Alaska, California, Colorado, Florida, Hawaii, Idaho, Louisiana, Maryland, Michigan, Nebraska, New Mexico, Ohio, Pennsylvania and Texas. Vermont has a variation of this kind of commission.

Alaska, Connecticut, Hawaii, Missouri, New Jersey, and Oregon had *special boards* dealing exclusively with the involuntary retirement of disabled judges. These boards have some characteristics of both the courts on the judiciary and the judicial qualifications commission.

In a favorable referenda vote in November 1970, three additional States–Arizona, Indiana, and Missouri–adopted the judicial commission device.

In 22 States, there was no provision for disciplining or removing judges of the general trial courts other than by impeachment, address or recall. In 25 States, there are no such provisions applicable to the lower courts. In four of these States not even impeachment, address, and recall apply to the lower courts.

Filling vacancies. Governors have a potent role in filling interim vacancies in judicial offices. As Table A-6 indicates, in about two-thirds of the States, governors fill vacancies in all or substantially all judicial posts by appointment without prior screening by a special nominating body and without confirmation by the Senate or an executive council. In another one-sixth of the States, governors make such appointments from panels of nominees or with subsequent confirmation by the Senate. In the remainder, generally county boards of commissioners or municipal councils make appointments to courts of limited jurisdiction; the supreme court or the legislature also fill vacancies.

The real significance of governors' power to fill vacancies is that, as studies have shown,[93] persons appointed to fill vacant elective offices usually have a strong edge in subsequently running for election for that office as they carry many of the advantages of incumbency. In effect, officials often reach their elective post by appointment in the first instance.

In 20 of the 25 States that select judges by election, vacancies in all or substantially all judicial offices are filled by gubernatorial appointment without prior screening or subsequent approval. In two others, the governor's choice is subject to Senate ratification. Only in Arkansas is the interim appointee prohibited from seeking election to the office at the next scheduled election. It appears, therefore, that because of their key role in filling interim vacancies, governors have considerably more influence over the quality of judicial personnel than the pattern of initial selection for office would indicate.

Qualifications of judges. States prescribe qualifications for selection to most of their judicial offices, regardless of the method of selection. Table A-7 summarizes the requirements for judges of appellate and trial courts of general jurisdiction reported to the Council of State Governments.

In ten States, judges do not need to be United States citizens and in Ohio this requirement is waived for the appellate courts. All but 11 States have a residency requirement for judges. In three additional States, this requirement applies to appellate judges but not trial judges, and in two, just the opposite. A few more than half the States require trial judges to have a minimum period of residence in the district from which selected. In ten States, a similar requirement applies to intermediate appellate court judges.

All but a handful of States establish a minimum age for appellate and trial judges, which ranges from 21 to 35 years.

Thirty-six States require that judges of both classes of courts be learned in the law; three additional States have this requirement for trial judges, but not for appellate judges.

Twenty-five States require a minimum period of legal experience for both appellate and trial court judges. Three additional States require such experience for trial judges, but not appellate judges. Maximum experience required in any State is ten years.

The President's Crime Commission's Task Force on the Courts commented on judges of lower criminal courts that:

> In almost every city judges in courts of general jurisdiction are better paid, are more prominent members of the community, and are better qualified than their lower court counterparts. In some cities lower court judges are not required to be lawyers.[94]

Of the 37 States that had justice of the peace courts in 1965, 28 had no requirement for legal training for the office, 18 had no requirement for citizenship or residence, and 33 established no minimum age.[95]

In general, the minor courts in rural areas have less stringent qualifications for their judges than those in the urban areas. As Winters and Allard point out:

> Stringent residence requirements, if coupled with a requirement that all judges be lawyers, may leave some rural courts without judges. In at least two States, legislatures have recognized this problem by providing that in the absence of qualified personnel a judge may be chosen from non-lawyers or from lawyers in another part of the state . . . .
>
> There is a sharp contrast between the qualifications of minor-court judges in metropolitan areas and those in rural areas. A 1964 survey of the minor courts in the one hundred largest metropolitan areas in the United States showed very few in which judges were not required to be lawyers. In several cities judges could be chosen only from members of the bar who had practiced a prescribed period of years. The terms of office of judges in these courts were usually longer than those of the judges of courts in rural areas.[96]

An examination of 1969 State plans submitted to the Law Enforcement Assistance Administration yielded incomplete data on required qualifications for judges of the lower criminal courts. Where information was provided, it tended to confirm the lack of qualification requirements for these judicial offices. For example, Alaska (with a "model" court structure) stated that magistrates need not be attorneys; Arizona stated that police or magistrate judges' qualifications are set by charter and are usually non-existent; Idaho noted that there are no prescribed statutory qualifications for police judges; and Kentucky reported that county and quarterly court judges need to meet only age and residency requirements, and only 12 of the 120 incumbent judges were members of the bar.

Table 19
TERMS OF JUDGES, 1968
(In Years)

State	Appellate Courts		Major Trial Courts					Courts of Limited Jurisdiction				
	Of Last Resort	Intermediate Appellate	Chancery	Circuit	District	Superior	Other	Probate	County	Municipal	Justice, Magistrate or Police	Other
Alabama	6	6		6				6	6		4	
Alaska	10					6					(a)	
Arizona	6	6				4					4[b]	
Arkansas	8		6	4					2	2-4	2	2[c]
California	12	12				6				6	6	
Colorado	10				6			6	4	(d)		6[e,f]
Connecticut	8					8		4				4[c,e]
Delaware	12		12			12				12	4	12[c,h]
Florida	6	6		6					4	2-4	4	4[e,i]
Georgia	6	6				4-8		4			4	1-4[k]
Hawaii	7			6								4[l]
Idaho	6				4			2		(a)	2	
Illinois	10	10		6								6[m]
Indiana	6	4		6		4	4[n]	4		4	4	4[e]
Iowa	8				6					4	(a)2[b]	
Kansas	6				4			2	2	2	2	
Kentucky	8			6					4		4	
Louisiana	14	12			6[o]					4-6[p]	4	6-8[e]
Maine	7					7		4				7[l]
Maryland	15	15		15			15[q]	4		4-10[r]	2	
Massachusetts	Life					Life		Life		Life		Life[e,l]
Michigan	8	6		6			6[t]	6		6	4	6[c]
Minnesota	6				6			6		4	2	
Mississippi	8		4	4					4	4	4	
Missouri	12	12		6				4		2-4	4	4[c,u]
Montana	6				4					2	2	
Nebraska	6				6				4	4	2	6[e]
Nevada	6				4					4	2	
New Hampshire	To age 70					To age 70		To age 70		To age 70		To age 70[l]
New Jersey	7 with reappointment for life					7 with reappointment for life	5[v]			3		5[e,w]

Table 19
TERMS OF JUDGES 1968
(In Years) (Continued)

State	Appellate Courts		Major Trial Courts					Courts of Limited Jurisdiction				
	Of Last Resort	Intermediate Appellate	Chancery	Circuit	District	Superior	Other	Probate	County	Municipal	Justice, Magistrate or Police	Other
New Mexico	8	8			6			2		2[d]	2	2[j]
New York	14	5[x]					14[y]	10[z]	10	(aa)	4	10[h],6[l],9[m]
North Carolina	8	8				8			2-4	2	2-6	2[e,ab]
North Dakota	10				6				2		2-4	
Ohio	6	6					6[c]	6	4	6	4	6[e]
Oklahoma	6	6			4	4				2		
Oregon	6			6					6	(a)	6	6[l]
Pennsylvania	21	10					10[c]	10	10		6	
Rhode Island	Life					Life		1[d]			2	(h)3[l]
South Carolina	10			4				4	4		(ac)	
South Dakota	6			4					2	4	2-4	
Tennessee	8	8	8	8			8[n]		(ae)	(af)		8[ag]
Texas	6	6			4			4	4		4	4[e,n]
Utah	10				6					6	4	6[e]
Vermont	2						6[v]	2			2	4[l]
Virginia	12		8	8			8[ah]		4	4		4-6[e]
Washington	6					4				4	4	
West Virginia	12			8					6	(ai)	(ai)	6-8[aj]
Wisconsin	10			6			6[v]				2	
Wyoming	8				6					(ak)	4	

Source: The Council of State Governments, *State Court Systems* (Revised 1968), July 1968, Table IV.

[a]Magistrates in Alaska, police court judges in Iowa and municipal judges in Idaho and Oregon at pleasure of appointing authority. [b]For justices of the peace. Terms of city and town magistrates provided by charter or ordinance. [c]Courts of common pleas. In Arkansas, presided over by county judges; in Missouri, by circuit judges. [d]Dependent on municipal charters and ordinances; in New Mexico usually two years; in Rhode Island usually one year. [e]Juvenile courts; in New Jersey and Virginia, juvenile and domestic relations courts; in Texas, also domestic relations courts. [f]Superior courts. [g]Circuit court. [h]Family courts. In Rhode Island, judges serve during "good behavior." [i]Courts of record. [j]Small claims courts. [k]Civil and criminal courts. [l]District courts. [m]Courts of claims. [n]Criminal courts; in Tennessee also law-equity courts. [o]Judges in New Orleans serve 12 years. [p]Judges in Baton Rouge serve four years. [q]Supreme Bench of Baltimore City. [r]Also People's Courts. [s]Land Court of Massachusetts. [t]Recorder's Court of Detroit. [u]St. Louis Court of Criminal Correction. [v]County courts. In Vermont, 6 years for superior judges; 2 years for assistant judges. In New Jersey, judges have tenure on third reappointment, i.e., after 10 years. [w]County district courts. [x]Justices are designated for five-year terms while retaining status as elected Supreme Court Justices. [y]Supreme Court, to age 70; judges may be certified thereafter for two-year terms, up to age 76. [z]In New York City, 14. [aa]In New York City, 10; outside New York City, determined by each city. [ab]Domestic relations and recorders' courts. [ac]Terms not uniform; fixed by General Assembly. [ad]Township justices and police magistrates, two years; county justices of the peace, four years. [ae]Six years for county chairmen; terms of county judges fixed by private acts. [af]Varies according to legislative act creating the court. [ag]Courts of general sessions, domestic relations and juvenile courts. if juvenile judge is designated by county court rather than elected, six years. [ah]Corporation, husting, law and equity courts, law and chancery courts. [ai]Municipal and police courts variable. [aj]Common pleas, domestic relations, criminal, intermediate and juvenile courts. [ak]Police justice's term the same as that of other appointive officers of the municipality.

Table 20
METHODS OF DISCIPLINE AND REMOVAL OF JUDGES[a b]
1968

State	Impeachment	Address	Recall	Courts on the Judiciary	Judicial Qualifications Commission	Special Commission for Involuntary Retirement
Alabama	A			G(L)[1]		
Alaska	AGL				AGL	AGL
Arizona	AG(L)[2]		AGL			
Arkansas	AG	AG				
California	AG		AGL		AGL	
Colorado	AG(L)[3]		[4]		AG(L)[5]	
Connecticut	AGL	AG				AGL
Delaware		AGL		AGL		
Florida	AG				AG	
Georgia	AG					
Hawaii		AG		G	AGL	AG
Idaho	AGL				AGL	
Illinois	AG			AGL		
Indiana				AGL		
Iowa	AG(L)[6]			AG		
Kansas	AGL	AG	AGL			
Kentucky	AGL	AG				
Louisiana	AG	AGL		AGL		
Maine	AGL	AGL				
Maryland	AGL	AGL			(AGL)[7]	
Massachusetts	AGL	AGL				
Michigan	AGL	AGL				
Minnesota	AG					
Mississippi	AGL	AGL				
Missouri	AG					AGL
Montana	AG(L)[8]					
Nebraska	AGL				AGL	
Nevada	AG(L)[9]	AG	AGL			
New Hampshire	AGL	AGL				
New Jersey	AG			G[10]		AG
New Mexico	AG				AGL	
New York	AGL	AG(L)[11]		AG(L)[12]		
North Carolina	AG	AG		L		
North Dakota	AG		AGL			
Ohio	AGL	AGL			AGL	
Oklahoma	A[13]			AGL		
Oregon		A	AGL			AG(L)[14]
Pennsylvania	AGL	(A)[15]GL			AGL	
Rhode Island	AGL	A				
South Carolina	AGL	AGL				
South Dakota	AG					
Tennessee	AGL	AGL				
Texas	AG	AG		G	AGL	
Utah	AG(L)[17]	AGL			AGL	
Vermont	AGL				AGL	
Virginia	AGL	AGL		AG(L)[18]		
Washington	AG(L)[19]	AG(L)[20]				
West Virginia	AGL	AGL				
Wisconsin	AGL	A(G)[21]	AGL			
Wyoming	AGL					

[a] A—judges of appellate courts; G—judges of trial courts of general jurisdiction; L—judges of courts of limited jurisdiction.

[b] Where letters are in parenthesis, footnote applies to courts represented by letters within the parenthesis.

Source: American Judicature Society, *Judicial Discipline and Removal*, Report No. 5 (April, 1968). Also see Council of State Governments, *State Court Systems* (Revised, 1968), Table IX.

[1] Alabama. Judges of courts from which appeals may be taken directly to the Supreme Court; [2] Arizona. Only judges of courts of record; [3] Colorado. Except county judges; [4] Colorado. Has constitutional recall provision, but American Judicature Society assumes that it is not applicable to judges selected under Colorado's 1966 Merit Selection Plan; [5] Colorado. Courts of record only; [6] Iowa. Superior court only; [7] Maryland. All judges who are elected, subject to election or appointed to a term of 4 or more years; [8] Montana. Except justices of the peace; [9] Nevada. Except justices of the peace; [10] New Jersey. Constitutional authority has not been implemented by legislature; [11] New York. Court of Claims, County Courts, Surrogate Court, Family Court, Courts for the City of New York, Districts Courts; [12] New York. Court of Claims, County Court, Surrogates Court, or Family Court; [13] Oklahoma. Supreme Court only; [14] Oregon. District and Tax Courts only; [15] Pennsylvania. Except Supreme Court judges; [17] Utah. Except justices of the peace; [18] Virginia. Only courts of record; [19] Washington. Only judges of courts of record; [20] Washington. Only courts of record; [21] Wisconsin. Circuit Courts.

State-Local Sharing of Court Expenses

A critical intergovernmental issue in the operation of State court systems is the location of responsibility for financing the courts. A special Census Bureau study for the fiscal year ending June 30, 1969 estimated States' criminal court expenditures at $236 million and local court expenditures at $670 million.[97] Thus, in the aggregate, States accounted for about 26 percent of all State-local court expenditures and localities accounted for nearly three-fourths of all such costs. State-local intergovernmental aid in the judicial area amounted to only about $8 million in 1968-69, indicating that localities did not receive substantial subsidies from the State for their court costs.[98]

There was wide variety in the relative State-local sharing of court costs across the Nation. At least four States—Connecticut, Hawaii, Rhode Island, and Vermont—picked up the total cost of courts while three States—Arizona, California, and Ohio—picked up less than 15 percent of State-local court costs. In 1968-69, 14 States shared 20 percent or less of State-local court expenditures; 19 shared between 21 and 40 percent of such expenditures; 11 shared at a 41-80 percent level; and six States accounted for over 80 percent of these costs (see Table 21). In 1970, the State of Colorado assumed 100 percent state financing of court expenditures.

While the bulk of court expenditures are at the local level, counties rather than cities exercise primary responsibility for the local judicial system. Table 22 indicates per capita court expenditures for 18 States having county governments over 500,000 and city governments over 300,000 population. The table indicates that county governments spent about three times as much per capita on courts as city governments. Thus, the principal locus of fiscal responsibility for the local court system rests with the county—most probably due to the county financing of the major trial courts.

Census data and other information about the sharing of State-local court expenditures confirm the wide variation in such practices among the 50 States. However, data from a 1969 survey conducted by the Institute of Judicial Administration[99] permits some generalizations about the nature of State-local sharing of court expenses. Table 23 summarizes the various forms

Table 21
STATE-LOCAL SHARING OF COURT EXPENDITURES
1968-1969

STATE SHARE OF TOTAL STATE-LOCAL COURT EXPENDITURES[a]				
0-20%	21-40%	41-60%	61-80%	81-100%
Arizona (12)	Alabama (23)	Arkansas (47)	Delaware (68)	Alaska (93)
California (13)	Illinois (33)	Idaho (57)	Kentucky (72)	Connecticut (99)
Colorado (17)[b]	Iowa (24)	Maine (56)		Hawaii (99)
Florida (18)	Kansas (29)	New Hampshire (51)		North Carolina (91)
Georgia (17)	Louisiana (35)	New Mexico (47)		Rhode Island (99)
Indiana (19)	Maryland (40)	Oklahoma (44)		Vermont (100)
Michigan (17)	Massachusetts (22)	Utah (57)		
Nevada (17)	Minnesota (21)	Virginia (47)		
New York (20)	Mississippi (27)	West Virginia (42)		
Ohio (13)	Missouri (34)			
Pennsylvania (16)	Montana (29)			
South Carolina (18)	Nebraska (40)			
Texas (19)	New Jersey (34)			
Washington (17)	North Dakota (25)			
	Oregon (27)			
	South Dakota (25)			
	Tennessee (26)			
	Wisconsin (31)			
	Wyoming (36)			
14 States	19 States	9 States	2 States	6 States

[a]Numbers in parentheses indicate state percent of State-local court expenditures.

[b]Colorado assumed full State financing of its court system in 1970.

Source: U.S. Law Enforcement Assistance Administration & U.S. Bureau of the Census. *Expenditure and Employment Data for the Criminal Justice System 1968-1969.* Washington, 1971, Table No. 5.

of fiscal sharing. The basic characteristics of State-local fiscal responsibility for courts were:

- All but one of the States financed the entire cost of the highest court; in Virginia there was some local sharing.
- Seventeen of the 20 States with intermediate appellate courts also financed their entire cost. In Kentucky, New York, and Ohio, there was some local contribution.
- State-local sharing varied among four categories of expenditures in the trial courts of general jurisdiction: (1) Judicial salaries were entirely State-financed in 21 of the 33 States responding to this item; they were State-locally financed in 17;[100] and locally financed in one State. (2) Out of 39 respondents, non-judicial salaries were entirely State-financed in 20; State-locally financed in 14; and locally financed in five. (3) Among the 39, travel expenses were totally State-financed in 21 States; State-locally financed in 13; and wholly locally financed in five. (4) Other expenses were entirely State-financed in 19 of the 39 responding States; State-locally financed in 12; and totally locally financed in eight States.
- In the lower courts of 38 respondents, State governments put up all the money in six and shared the expense with local units in ten. In at least 22 States, local governments provided full financing.

With respect to other items of common expenditure:

- Judicial retirement systems in the 34 States responding to this item were entirely supported by State funds in 25 cases; by State-local sharing in eight States; and by local funds entirely in one.

Table 22
NON-CAPITAL EXPENDITURE PER CAPITA FOR JUDICIAL ACTIVITIES BY STATE GOVERNMENTS, COUNTIES OVER 500,000 POPULATION, AND CITIES OVER 300,000 POPULATION, BY STATE: FISCAL YEAR 1968-1969

State	State govt.	County govts. over 500,000 population[e]	City govts. over 300,000 population[e]
Alabama	$0.72	$3.09	$0.54
Arizona	0.64	3.79	0.87
California	0.75	4.58	0.00[a]
Georgia	0.66	5.76	1.53
Illinois	1.53	4.49	0.02
Kentucky	1.86	1.11	0.57
Michigan	0.84	3.78	2.09
Minnesota	0.72	3.67	1.18
Missouri	1.30	2.47	0.88[b]
New Jersey	1.21	3.51	1.37
New York	1.46	3.66	1.76[c]
Ohio	0.61	2.75	2.32
Oregon	1.15	3.49	1.42
Pennsylvania	0.68	3.00	0.61[d]
Tennessee	0.67	2.56	0.43
Texas	0.64	2.50	0.64
Washington	0.50	2.27	1.71
Wisconsin	1.27	4.40	0.12
Median	0.72	3.29	0.88

[a]Does not include San Francisco.

[b]Does not include Saint Louis.

[c]Does not include New York City.

[d]Does not include Philadelphia.

[e]All population figures are 1970 Census preliminary estimates.

Source: U.S. Law Enforcement Assistance Administration & U.S. Bureau of the Census. *Expenditure and Employment Data for the Criminal Justice System 1968-1969.* Washington, 1971, Tables No. 11, 21, 27.

Table 23

STATE (S) AND LOCAL (L) SHARING OF COURT EXPENSES, 1969

	Highest Court	Intermediate Appellate Courts[1]	Trial Courts of General Jurisdiction: Judicial Salaries	Non-Judicial Salaries	Travel Expenses	Other Expenses	Lower Courts	Judicial Retirement	Judicial Council	Judicial Conference	State Court Administrators	Local Trial Court Administrators	Construction of Court Buildings	Maintenance of Court Buildings
Alabama	S	S	S	S	S	S								
Alaska	S		S	S	S	S	S	S	S	S	S	S	S	
Arizona	S	S									S			
Arkansas	S		S	S	S	S	L	S			S		L	L
California	S	S	SL	L	L	L	SL	S	S		S	L	SL	S
Colorado[4]	S							SL		S	S	L	SL	S
Connecticut	S	S	S	S	S	S	L	S	S		S		S	S
Delaware	S		SL	SL	SL	SL	S	S	S	S		L	SL	S
Florida	S	S	S	S	S	S	S	S	S				S	S
Georgia	S	S	L	L	L	L	L	S	S					S
Hawaii	S		S	S	S	S	S	S			S	S	S	S
Idaho	S		S	S	S	L	L		S	S	S		SL	S
Illinois	S	S								S	S			
Indiana	S	S					L	S		S	S		L	S
Iowa	S						L	SL	S		S		L	L
Kansas	S		SL	SL	S	L	L	S	S	S	S		L	L
Kentucky	S	SL						S	S	S	S		L	S
Louisiana	S	S	SL	SL	SL	SL	SL	SL	S	S	S			L
Maine	S		SL	SL	SL	SL	SL		S	S			L	L
Maryland	S	S	SL	L	L	L	L	SL		S	S	L	L	L
Massachusetts	S		SL	SL	SL	SL	L	SL	S	S	S	S	L	L
Michigan	S	S	SL	SL	SL	SL	L	S		S	S	L	SL	S
Minnesota	S		SL	SL	SL	SL	L		S		S	L	L	L
Mississippi	S		SL	SL	SL	SL	SL			S				
Missouri	S	S	S	S	S	S			S				S	
Montana	S		S	S	S	S	L	S		S				S
Nebraska	S		SL	SL	SL	L	L	S	[2]	[2]			L	L
Nevada	S							S					S	
New Hampshire	S		S	S	S	S	L	S	S		S		SL	S
New Jersey	S	S					SL	SL		S	S		L	S
New Mexico	S	S	SL	SL	SL	SL	SL				S			S
New York	S	SL	SL	SL	SL	SL	SL	SL		S	S		L[3]	L[3]
North Carolina	S	S	S	S	S	S		S	S		S		L	L
North Dakota	S		S	S	S	S		L					L	L
Ohio	S	SL	SL	SL	SL	SL	L	SL			S	L	SL	S
Oklahoma	S		S	S	S	S	S	S		S	S		L	L
Oregon	S		S	L	L	L	SL	S	S	S	S	L	SL	S
Pennsylvania	S										S			
Rhode Island	S		S	S	S	S	SL		S	S				S
South Carolina	S						L						S	
South Dakota	S		S	S	S	S	L	S		S			L	S
Tennessee	S	S	S	S	S	S	L	S	S	S	S		SL	S
Texas	S	S												
Utah	S		S	S	S	S	L							
Vermont	S		S	S	S	S	S	S	S		S		SL	S
Virginia	SL		S	S	S	S	SL		S	S	S		L	L
Washington	S		SL	L	L	L	L	S		S	S	L	L	L
West Virginia	S		SL	SL	SL	SL	L	SL					L	L
Wisconsin	S		SL	SL	SL	SL	L	S		S	S			
Wyoming	S		S	S	S	S		S		S			SL	S

[1] Twenty States have intermediate appellate courts.
[2] Bar Association.
[3] Except court of appeals.
[4] Colorado assumed full state financing of its court system in 1970.

Source: The Institute of Judicial Administration, *State and Local Financing of the Courts,* (Tentative Report) (New York, April 1969), "State Court Survey," pp. 26-36.

- At least 21 judicial councils and 26 judicial conferences were wholly State-supported; in Nebraska each of these bodies was financed by the bar association.
- Of the 35 having State court administrators, funds in all 32 States reporting came entirely from the State government.
- In 12 States reporting local trial court administrators, three provided State funding exclusively, and nine provided exclusive local funding.
- Of the 35 States responding to this item, seven States paid the full cost to construct court buildings; there was State-local sharing in 11 instances, and wholly local funding in 17. In New York construction was financed entirely by local funds except for the highest court.
- Maintenance of court buildings was a State funding responsibility in 22 of the 37 States responding to this question, and a local responsibility in the remaining 15. In New York maintenance was financed entirely from local funds except for the highest court.

Overall, the IJA study found that in almost every responding State, the per capita local judicial expense exceeded the per capita State judicial expense, and often was two or three times as much. This confirmed Census Bureau data cited earlier. In view of the fact that the broad base of the judiciary's pyramidal structure is at the lower court level, the heavy local fiscal responsibility is not surprising.

The IJA study also sought data on the authority for determining State court budgets. Of the 46 States that answered this item, 31 reported that their executive budget review agency was authorized to revise judicial budget requests before transmittal to the legislature, 15 were not. In the great majority of cases the legislature treated the judicial budget like all other budgets, with full freedom to raise or lower budget requests. The governor was reported to have an item veto over the judicial budget in 29 of the 46 States.

Summary of State and Local Roles in Court Systems

State constitution and statute determines the structure of court systems, but responsibility for controlling their operations is shared in varying degrees among the judicial, legislative, and executive branches of State government. Local government influence on the court system is limited yet significant, generally restricted to the lower courts where 90 percent of the Nation's criminal cases are heard. Local governments, particularly counties, generally supply the bulk of the revenue for the overall State court system.

In more specific terms:

- The organization, structure, and jurisdiction of the courts are determined by State constitution and statute. The major exception is authority for local governments, invariably urban, to establish courts with jurisdiction over cases arising from violations of local ordinances, or to abolish local courts, such as justice of the peace courts.
- The power to make rules of court practice and procedure is exercised by the State through the legislature or the judiciary, or some combination of the two. This authority extends to the locally-established courts.
- For all but a few locally-created courts, the location of administrative authority—the assignment of judges, the control of dockets, control of nonjudicial personnel and general management of court business—is determined by constitution or statute. There is a growing tendency for centralizing this authority in the highest court of the chief justice, but in many States it is still diffused among the individual courts or among the separate levels. The administration of justice by lower courts may reflect a local or district rather than statewide interest and influence because most judges and clerks at the district and local levels continue to be elected from district or local constituencies and financing of their courts is derived largely from local sources. In the case of courts established by cities and villages under discretionary authority and for the prime purpose of dealing with violations of local ordinances, administration is a matter of local determination.
- The manner of selection of judges is primarily determined by State law. Half the States choose their judges by election. Where the appointment method is used, it is usually by the governor, with an increasing tendency toward subjecting his choice to advance screening or subsequent ratification. In at least 16 States, judges of one or more lower courts are appointed locally—by mayors, city councils, or county boards.
- Discipline and removal of judges in about half the States is left to the cumbersome techniques of impeachment, address or recall, which are rarely used. State constitutions or statutes in 32 States provide for special boards or commissions for discipline and removal, usually representing the judiciary and the public. These techniques for discipline and removal apply mainly to appellate and trial tribunals rather than the lower courts.
- Interim vacancies in judicial offices are largely filled by the governor. This gives him great responsibility in determining the calibre of the

judiciary, in view of the tendency for interim appointees to be subsequently elected. In a handful of States, county boards, mayors, and city councils make appointments to lower courts.

- Judicial qualifications, where they exist, are set by State law. While data are scarce, indications are that for locally-established courts, such as municipal tribunals, charter provisions prescribe these qualifications.
- Terms of judges are set almost entirely by statute. In a few States, some lower court judges serve at the pleasure of the local appointing authority, and in a few others, the local charter or an ordinance is determining.
- The State's share of court financing tends to recede as one moves down the judicial hierarchy. Virtually all the costs of the highest courts are State-financed. Intermediate appellate courts get all their money from the State in all but a few States, and in those few the local share appears to be minor. For trial courts of general jurisdiction, State-local sharing seems about evenly divided for judicial salaries, and tipped toward the State side on non-judicial salaries and other court expenses. Counties, rather than cities, bear the local share of the trial courts' expenditures. The lower courts are mostly locally financed. Retirement systems and judicial councils and conferences are mostly State-financed, while support for construction and maintenance of court buildings is either shared evenly or draws more from local units.
- Given the number and financing pattern of lower courts, however, counties, cities, and towns–particularly counties–finance the largest portion of total judicial expenses. In all but a handful of States, the per capita local judicial expense exceeds the per capita State expense, sometimes by as much as two or three times.

C. PROSECUTION

The prosecutor acts in behalf of the State in conducting the proceedings against persons suspected of crimes. He has authority to determine whether an alleged offender should be charged and what the charge should be, and to obtain convictions through guilty plea negotiations. He influences and often determines the disposition of all cases brought to him by the police and often works closely with them on important investigations. His decisions significantly affect the arrest practices of the police, the volume of cases in the courts, and the number of offenders referred to the correctional system. The prosecutor, therefore, is potentially a key figure in coordinating the various enforcement and correctional agencies in the criminal justice system.

The historical traditions of the demand for decentralized administration of criminal justice have led to the almost universal practice of electing local prosecutors, largely independent of the attorney general who may, in some instances, have only circumscribed responsibilities in the criminal justice process.[101]

The prosecutor is a local official in all but three States. The office's elective status is determined by constitution in 36 States and by statute in nine others. The prevalence of the office of local prosecutor is due, in part, to the historical fact that it "... has been carved out of that of attorney-general and virtually made an independent office."[102] Many States, in addition to delegating the bulk of the judicial system to local control, have made the prosecution function a local one. In most cases, the attorney general only participates in appellate cases or when legislation specifically charges him with initial prosecution responsibilities.

Prosecution Systems in the United States

Prosecution systems vary among the 50 States: whether the local prosecutor is elected or appointed, whether the office is constitutional or statutory, the scope of the prosecutor's criminal duties and the size of his jurisdiction. The 50 systems range from centralized, appointive ones in Alaska, Delaware, and Rhode Island where the attorney general has charge of all local prosecutions to the multi-tiered systems of Florida, Kentucky, Mississippi, and Utah where local prosecutors are elected by county and judicial district.

The local prosecutor is elected in 45 States and appointed in five–Alaska, Connecticut, Delaware, New Jersey, and Rhode Island. The constitutions of Colorado, California, New York, and Washington permit appointment, but in New York and Washington only where there is a charter form of county government. The local prosecutor's office is a constitutional one in 36 States, though the constitutions of Idaho, Kentucky, Nevada, and North Carolina provide that the office may be abolished or the number of prosecutors be reduced by action of the legislature.

The prosecutor is elected by county in 29 States and by judicial district in another 12. Most of their districts are multi-county in nature. In four States prosecutors are elected both from counties and judicial districts. In these States, county prosecutors usually handle misdemeanors and preliminary felony work, while the district prosecutors handle all other criminal matters.

Most local prosecutors have both civil and criminal justice responsibilities. Only 12 States assign the prosecutor solely criminal duties. In at least four others—California, Hawaii, Kansas, and Michigan—prosecutors in urban areas are divested of civil responsibilities which become the province of county or city corporation counsels. Nineteen States—including the five States with appointive local prosecutors or centralized offices under the attorney general—permit local prosecutors to handle appellate work. The other 31 States vest appellate work in the attorney general's office. Local prosecutors still handle appellate work in some of them as a matter of practice.[103]

A simple typology of State prosecutorial systems, then, reveals nine distinct ways of organizing the local prosecution function:

1. State prosecutor systems: Alaska, Delaware, and Rhode Island
2. State-appointed local prosecutors: Connecticut, and New Jersey
3. Local (judicial district) prosecutors with criminal and appeals responsibilities: Georgia, and Massachusetts
4. Local (judicial district) prosecutors with solely criminal responsibilities: Arkansas, Colorado, Indiana, New Mexico, North Carolina, and Tennessee
5. Local (judicial district) prosecutors with civil and criminal justice responsibilities, but no appeals duties: Alabama, Louisiana, Oklahoma, and South Carolina
6. Local (county) prosecutor with criminal and appellate responsibilities: Hawaii, Illinois, Kansas, Michigan, Minnesota, New York, North Dakota, Ohio, Oregon, Pennsylvania, Vermont, and Washington
7. Local (county) prosecutors with solely criminal responsibilities: Missouri and Texas
8. Local (county) prosecutors with criminal and civil, but not appellate responsibilities: Arizona, California, Idaho, Iowa, Maine, Maryland, Montana, Nevada, Nebraska, New Hampshire, South Dakota, Virginia, West Virginia, Wisconsin, and Wyoming
9. Overlapping county-judicial district prosecutors: Florida, Kentucky, Mississippi, and Utah

Table 24 summarizes the institutional characteristics of the local district attorney.

Relationship of Local Prosecutors to Attorney General

Except where otherwise indicated, all of the following data and interpretive material relating to the office of local prosecutor and its relationship with the attorney general are based on preliminary reports of research by the Committee on the Office of Attorney General of the National Association of Attorneys General, under the direction of the Attorney General of Kentucky, John B. Breckenridge.

Table 24
LOCAL PROSECUTORS – SELECTED DATA
1970

State	Title	Jurisdiction	Area	Selected by	Term	Removed by
Alabama	District Attny.	criminal and civil	Judic. Dis.	elected	4	Impeached
Alaska	District Attny.*	criminal, civil, appeals	Jud. Dis.*	Attorney Gen.*		NA
Arizona	County Attny.	criminal and civil	County*	elected*	4*	NA
Arkansas	Dist. Pros. Attny.	criminal only	Judic. Dis.	elected	2	Impeached
California	District Attny.	criminal and civil	County	elected	4	Impeached
Colorado	District Attny.	criminal only	Judic, Dis.	elected	4	Impeached
Conn.	States Attny.	felonies	County	Circuit Ct.*	2	NA
	Chief Pros.	misdemeanors	Circuit*	Circuit Ct.*	NA	NA
Delaware	(no local pros.)	—	—	—	—	—
Florida	State Attny.	[1]	Judic. Ct.	Governor	4	Governor
Goergia	District Attny.	criminal, St. civil appeals	Judic. Dis.	elected	4	Impeached
Hawaii	Co. or City Attny.	criminal and appeals	County	elect. or appt.	NA	NA
Idaho	Prosecuting Attny.	criminal and civil	County	elected	2	NA
Illinois	States Attny.	civil, criminal, appeals	County	elected	4	NA
Indiana	Prosecuting Attny.	criminal only	Judic. Dis.	elected	4	Supreme Court
Iowa	County Attny.	criminal and civil	County	elected	4	recall, impeached
Kansas	County Attny.	civil, criminal, appeals[2]	County	elected	2	NA

Table 24

LOCAL PROSECUTORS—SELECTED DATA (Continued)
1970

State	Title	Jurisdiction	Area	Selected by	Term	Removed by
Kentucky	County Attny.	misdemeanors	County	elected	4	NA
	Comm. Attny.	felonies, State civil	District	elected	6	Impeached
Louisiana	District Attny.	criminal, State civil	Judic, Dis.	elected	6	NA
Maine	County Attny.	criminal and civil	County	elected	2	Gov. and Council
Maryland	State's Attny.	criminal and civil	Co. or City	elected	4	Impeached or AG
Massachusetts	District Attny.	criminal, State civil, appeals	Jud. Dist.	elected	4	Impeached or AG
Michigan	Prosecuting Attny.	civil, criminal, appeals[3]	County	elected	4	Governor
Minnesota	County Attny.	civil, criminal, appeals	County	elected	4	Governor
Mississippi	District Attny.*	felony only[4]	Judic. Dis.*	elected	4	NA
Missouri	Prosecuting Attny.;	criminal[5]	County	elected	2	Suit, Quo Warranto
	County Attny.	misdemeanor	County	elected	4	NA
Montana	County Attny.	criminal and civil	County	elected	4	NA
Nebraska	County Attny.	criminal and civil	County	elected	4	Governor
Nevada	District Attny.	criminal and civil	County	elected	4	recall, suit
New Hampshire	County Attny.	civil and criminal[6]	County	elected	2	Superior Court
New Jersey	Co. Prosecutor	criminal only	County	Gov. with consent of Senate	5	NA
New Mexico	District Attny.	criminal only	Judic. Dis.*	elected	4	NA
New York	District Attny.	criminal, civil, appeals	County	elected	3	Governor
North Carolina	Solicitors[7]	criminal only	Solic. Dis.	elected	4	NA
North Dakota	State's Attny.	criminal, civil, appeals	County	elected	2	Governor
Ohio	Prosecuting Attny.	civil, criminal, appeals	County	elected	4	NA
Oklahoma	District Attny.	civil and criminal	District	elected	4	Impeached, suit
Oregon	District Attny.	civil, criminal, appeals	County	elected	4	Recall, suit
Pennsylvania	District Attny.	civil, criminal, appeals	County	elected	4	Impeached
Rhode Island	(no local pros.)	—	—	—	—	—
South Carolina	Solicitor[8]	criminal, State, civil	Judic. Dis.	elected	4	NA
South Dakota	State's Attny.	civil and criminal	County	elected	2	Governor
Tennessee	District A.G.	criminal only	Judic. Dis.	elected	8	Impeached
Texas	County Attny.	misdemeanor, felonies[9]	County*	elected	4	NA
	Crim. Dist. Attny.*	felony only	County	elected	4	NA
	District Attny.	felony only	County	elected	4	NA
Utah	District Attny.	felonies only	Dist.	elected	4	NA
	Co. Attny.	misd., civil	County	elected	4	NA
Vermont	State's Attny.	civil, criminal, appeals	County	elected	2	Impeached
Virginia	Comm. Attny.	civil and criminal	County or City	elected	4	cir. & corp. Courts
Washington	Prosecuting Attny.	civil, criminal, appeals	County	elected	4	Recall, suit
West Virginia	Prosecuting Attny.	civil and criminal	County	elected	4	Impeached
Wisconsin	District Attny.	civil and criminal	County	elected	2*	Governor
Wyoming	County and Prosecuting Attny.	civil and criminal	County	elected	4	Governor

[1] Florida. Felonies except in eight counties which have county solicitors, then only felonies punishable by death and in Dade County and Hillsborough County, which are responsible for prosecution of all crimes, misdemeanors, and felonies; State civil.
[2] Kansas. Exception in Sedgwick, Wyandotte, and Shawnee Counties—civil in hands of county counselors.
[3] Michigan. Exception in some larger counties which have corporation counsel for civil.
[4] Mississippi. Discretionary as to misdemeanors. County attorneys handle misdemeanors, assist on felonies.
[5] Missouri. Except City of St. Louis—misdemeanors only. One Circuit Attorney—City of St. Louis—Felony only.
[6] New Hampshire. Except felonies involving sentences of death or imprisonment for more than 25 years, which are AG's responsibility, although he may delegate them to county attorney.
[7] District Court Prosecutors in some are selected by presiding judge for minor criminal duties.
[8] County Solicitors are selected in certain instances to have original jurisdiction over misdemeanors and concurrent jurisdiction over some felonies.
[9] Texas. If no district attorney, county attorney has jurisdiction over all criminal cases, otherwise only misdemeanors and district attorney prosecutes felonies. If by local and special bill of the legislature a criminal district attorney's office is established, offices of district attorney (if any) and county attorney are eliminated with new officer responsible for all crimes.

Source: NAAG, "Study of the Office of Attorney General," (revised draft) Dec., 1970; *NDAA*, Journal of the National District Attorneys Association Foundation, July-August, 1966; State law enforcement plans submitted to Law Enforcement Assistance Administration of the U.S. Department of Justice.

Alaska, Delaware, and Rhode Island have no local prosecutors as such; all criminal prosecutions are handled by the attorney general and his staff. On the other hand, in Connecticut the attorney general has no power or duties in the administration of criminal justice, and thus has no official relationship with local prosecutors. In Idaho, Tennessee and Wyoming, the attorneys general appear to exercise no control over the activities of local prosecutors although they do handle criminal prosecutions at the appellate level. In the remaining 43 States, there are definite relationships between local prosecutors and the attorney general.

These relationships may be classified as follows: they have mutually exclusive areas of authority; they have overlapping or concurrent areas of responsibility; attorney general assists local prosecutors; attorney general supervises activities of local prosecutors; attorney general may intervene in activities of local prosecutors; attorney general may supersede local prosecutors; and attorney general exercises direct control over local prosecutors.

Under the first three patterns, the attorney general has limited powers over local prosecutors; under the last four he has extensive power. In any one State, the relationship may be represented by more than one of the patterns.

Local Prosecutors and Attorneys General with Mutually Exclusive Areas of Authority. This group includes States where the attorney general has some responsibility for enforcing the criminal laws but never initiates actions within the province of the local prosecutor. It covers two basic situations: when the attorney general is required to prosecute criminal cases in the appellate courts (true in most States); and when a statute specifically names the attorney general as the State's agent for prosecuting violations. The legislature rarely expressly prohibits the local prosecutor from taking action if he wants to.

Local Prosecutors and Attorneys General with Overlapping or Concurrent Areas of Responsibility. The great majority of statutes which give the attorney general responsibility for prosecutions allow the local prosecutor to act concurrently. In many States, the attorney general may initiate prosecutions at the local level in all types of cases, certain kinds of cases, or all cases under specified circumstances:

- Thirteen States allow the attorney general unrestricted power to initiate local prosecutions—Alabama, California, Georgia, Hawaii, Iowa, Maine, Michigan, Montana, Nebraska, New Hampshire, North Dakota, South Carolina, and South Dakota.
- Seven prohibit any initiation of local prosecution by the attorney general—Connecticut, Idaho, Illinois, Missouri, Tennessee, Virginia, and West Virginia.
- The other States all allow the attorney general to initiate local prosecutions in some circumstances. For example, 10 States allow the attorney general to initiate local prosecutions at the request or direction of the governor—Arizona, Colorado, Maryland, Minnesota, Mississippi, New York, Ohio, Oklahoma, Oregon, and Wisconsin.

Overlapping may also extend to prosecution of criminal appeals. Although by law the attorney general must prosecute on appeal, the local prosecutor who initiated the case may actually appear for the State and the attorney general may assist or merely put in an appearance to satisfy the formal requirements of the statute. This practice is followed in several States, including Hawaii, Michigan, Nevada, and North Dakota.

In other States, the attorney general retains his statutory control over prosecution of the appeal, but calls upon the local prosecutor for assistance, pursuant to law or custom. Indiana, Kansas, Louisiana, Ohio, and Nebraska, for example, adhere to this practice.

In addition to the actual trial of cases, concurrent authority may be exercised in the institution of grand jury investigations, as in Pennsylvania. New Jersey permits the attorney general to convene grand juries with jurisdiction beyond the boundaries of any single county, when he considers it desirable. The attorney general presents evidence to such grand juries.

Attorneys General Who Assist Local Prosecutors. In several States local prosecutors may call upon the attorney general for direct assistance in preparing a case or for written opinions on questions of law. This is true in Idaho, Kansas, Nebraska, North Carolina, and Pennsylvania. In 21 States, the attorney general may give assistance in prosecution of cases even without a request by the local prosecutor.

Attorneys General Who Supervise Activities of Local Prosecutors. Many States require the local prosecutor to make some type of report to the attorney general to give him enough information to exercise effectively his supervisory powers over the local prosecutor.

- Reports are required on request of the attorney general in California, Iowa, Michigan, Montana, Nevada, New Jersey, Texas, Utah, and Wisconsin.
- Periodic reports are mandated in Florida (quarterly), Idaho (from time to time), Louisiana (monthly), New Jersey (annual), Ohio (annual), and Utah (annual).

- Wisconsin prosecutors must file reports "only in certain instances."

Other devices are used by attorneys general to supervise local prosecutors. A 1934 California constitutional amendment gave the attorney general direct supervision over every district attorney and sheriff, and other law enforcement officials specified by statute. It authorized him to prosecute at the trial court level when any State law is not being adequately enforced in any county and to assist any district attorney in discharging his duties. One of the primary tools of the attorney general to carry out this supervisory mandate is a monthly meeting of district attorneys and other law enforcement officials presided over by representatives of his office. In Minnesota, the attorney general has initiated a series of newsletters directed to local prosecutors to point out new developments in pertinent areas of law and otherwise to help in coordinating the activities of local prosecutors.

Attorneys General Who May Intervene in Activities of Local Prosecutors. "In practice," states the National Association of Attorneys General, "Attorneys General have more often usurped the powers and prerogatives of local prosecutors in isolated cases by intervention or supersession than they have attempted to exercise continuing control over the day-to-day conduct of the affairs of the office."[104]

- In 20 States, the attorney general may intervene on his own initiative–Alabama, California, Hawaii, Illinois, Iowa, Maine, Massachusetts, Michigan, Mississippi, Montana, Nebraska, New Hampshire, Nevada, New Jersey, North Dakota, Pennsylvania, South Carolina, South Dakota, Vermont and Washington.
- Thirteen States give him authority to intervene only at the direction of the governor, the legislature or some other third party or at the request of the local prosecutor–Colorado, Florida, Kansas, Kentucky, Louisiana, Minnesota, Missouri, New Mexico, New York, Oregon, Virginia, West Virginia, and Wisconsin.
- Only 13 States reported that intervention was not permitted: Arizona, Georgia, Arkansas, Idaho, Indiana, Maryland, North Carolina (no statute or case law in point), Ohio, Oklahoma, Tennessee, Texas, Utah, and Wyoming.

Where authorized, intervention might be limited to entering a *nole prosequi* or might involve virtual conduct of the proceedings. At all times, the local prosecutor remains an active party in the proceedings.

Attorneys General Who May Supersede Local Prosecutors. When the attorney general intervenes, the local prosecutor remains a participant in the proceedings. But when the attorney general supersedes the prosecutor, he completely displaces the prosecutor for the duration of the proceedings concerned. The following provides an analysis of the supersession authority of attorneys general. For several States, however, it is not clear whether the attorney general can supersede proceedings initiated by local prosecutors.

- Thirteen reporting States allow the attorney general to supersede on his own initiative: California, Illinois, Maine, Massachusetts, Montana, Nevada, New Hampshire, New Jersey, North Dakota, Ohlahoma, Pennsylvania, South Carolina, and Vermont.
- Four allow supersession only with the approval of or at the discretion of the governor or legislature: Missouri, New York, Oregon, and West Virginia.
- In at least nine jurisdictions, supersession is not allowed: Georgia, Idaho, Iowa, Kansas, Louisiana, South Dakota, Tennessee, Texas, and Wyoming.

The power to supersede may rest in statute or in case law. "At common law the power to supersede was recognized in the Attorney General; hence it might be argued that in all jurisdictions which have not deprived the Attorney General of this power through constitutional or statutory provisions or by case law, the Attorney General still holds such power."[105]

Attorneys General Who Exercise Direct Control Over Local Prosecutors. In Alaska, Delaware, and Rhode Island, local prosecutions are handled by the attorney general and his assistants. In all other jurisdictions except California and Louisiana, the attorney general has no authority to direct the normal, day-to-day activities of their local prosecutors. Statutory provisions in both California and Louisiana require the attorney general to supervise the local prosecutors in the performance of their duties.

The power to remove from office is probably the most effective control over another official. Only Maryland and Massachusetts give this power to the attorney general, but nine assign it to the governor (Florida, Michigan, Minnesota, Nebraska, New York, North Dakota, South Dakota, Wisconsin and Wyoming) and Maine gives it to the governor and executive council. In the great majority of States, the local prosecutor may be removed from office only through the cumbersome methods of impeachment or recall.

State-Local Sharing of Prosecution Costs

Prosecution expenditures, similar to court costs, are largely local in nature. Only 13 States, as of 1968-69, bore more than 50 percent of total State-local prosecution costs; aggregate national data indicates that only one-quarter of all prosecution expenditures are

Table 25
SELECTED FISCAL CHARACTERISTICS STATE-LOCAL PROSECUTION EXPENDITURES
1968-1969

	Per Capita State-Local Prosecution Expenditure	State Share of Total Prosecution Expenditure	Prosecution as % of Total Criminal Justice Expenditures
United States	$1.38	25.4%	4.2%
Alabama	.63	48.7	3.8
Alaska	5.72	77.1	10.2
Arizona	1.70	16.5	5.1
Arkansas	2.10	22.9	3.9
California	2.80	18.9	5.4
Colorado	.60	8.5	5.5
Connecticut	.58	42.4	1.8
Delaware	.96	58.1	2.5
District of Columbia			
Florida	1.39	29.9	4.8
Georgia	.66	23.5	3.1
Hawaii	2.37	41.7	6.6
Idaho	1.31	22.4	5.6
Illinois	1.30	22.8	3.9
Indiana	.90	43.0	4.5
Iowa	.99	23.0	4.5
Kansas	.91	16.1	4.5
Kentucky	.70	37.4	3.5
Louisiana	.96	38.1	3.9
Maine	.59	81.4	2.7
Maryland	1.22	3.0	2.5
Massachusetts	.81	19.2	2.2
Michigan	1.25	23.4	3.8
Minnesota	1.11	14.2	4.6
Mississippi	.40	53.4	2.6
Missouri	.89	19.0	3.2
Montana	1.57	36.1	6.9
Nebraska	1.23	15.3	5.2
Nevada	3.71	16.4	6.2
New Hampshire	.59	55.8	3.0
New Jersey	1.64	21.8	4.3
New Mexico	1.71	58.0	6.3
New York	2.34	26.2	4.3
North Carolina	.23	79.1	1.1
North Dakota	1.47	24.4	8.1
Ohio	.99	20.9	3.5
Oklahoma	1.60	72.9	8.0
Oregon	1.65	30.3	5.4
Pennsylvania	1.18	7.3	4.2
Rhode Island	.73	53.3	2.5
South Carolina	.39	59.3	2.3
South Dakota	1.40	16.5	7.0
Tennessee	.91	69.8	4.7
Texas	1.35	16.5	6.0
Utah	1.05	41.3	5.2
Vermont	.81	95.8	3.1
Virginia	.95	57.4	4.3
Washington	1.25	14.0	4.0
West Virginia	.71	28.0	5.1
Wisconsin	1.13	30.3	3.4
Wyoming	1.76	19.6	6.3

Source: U.S. Bureau of the Census. Expenditure and Employment Data for the Criminal Justice System, 1968-69. Washington, D.C., 1971, Tables No. 4-6.

accounted for by State governments (see Table 25). Low State expenditures probably reflect the fact that localities handle the prosecution function at the general trial level and most State work takes place at the appellate stage. Among local governments, counties bear the major proportion of prosecution expenses although many larger cities may have high expenditures due to prosecution responsibilities in courts of limited jurisdiction.

While States leave the bulk of prosecution finances to localities, some do have fiscal sharing arrangements for prosecutor's salary. Data indicate the following:[106]

- Fourteen States assume the full cost of the local prosecutor's salary: Alabama, Arkansas, Florida, Georgia, Idaho, Illinois, Maine, New Mexico, North Carolina, Oregon, South Carolina, Tennessee, Utah and Vermont. Alabama, Georgia, Oregon, and Tennessee allow county supplements to this aid.
- Seven States share the cost of the local prosecutor's salary: Colorado, Indiana, Louisiana, Mississippi, Montana, Oklahoma, and Virginia. Twenty-five States require county governments to pay costs of the local prosecutor's salary.

Summary

In summary, the following are the basic structural characteristics of the prosecutor's office:

- The prosecutor is a locally elected official in 45 States. It is a constitutionally elective office in 36 States.
- State-local prosecution systems range from centralized ones in Alaska, Delaware, and Rhode Island to the multi-tiered, decentralized ones of Florida, Kentucky, Mississippi, and Utah. The centralized systems vest the prosecution power exclusively in the office of the Attorney General. Several of the more decentralized systems–especially those in Alabama, Hawaii, Illinois, Kansas, Louisiana, Michigan, Minnesota, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Vermont and Washington–allow little attorney general supervision over local district attorneys.
- While most States vest the bulk of prosecution responsibilities with local district attorneys, a number of States have broadened the criminal justice powers of their attorney general:
  - thirteen States allow the attorney general unrestricted power to initiate local prosecutions;
  - twenty-one States allow the attorney general to give assistance in local prosecutions even without a local request;
  - nine States require local prosecutors to make reports on request of the attorney general; six other States mandate periodic reports; and
  - twenty States allow the attorney general to intervene on his own initiative in local prosecutions; 13 States allow supersession of local prosecutors in the same manner.
- Localities generally bear between 60 and 75 percent of the costs of the prosecution function. Only 13 States, as of 1969, paid more than 50 percent of State-local prosecution expenditures. At least 21 States, however, do share in financing some of the costs of the local prosecutor's office.

D. COUNSEL FOR THE INDIGENT DEFENDANT

Recent court decisions have imposed increased obligations on State and local governments to provide counsel for the indigent defendant.[107] Such representation is essential in our system of criminal justice for two basic reasons: an individual forced to answer a criminal charge needs the help of a lawyer to protect his legal rights and assist him in understanding the nature and possible consequences of the proceedings against him; and the adversary system of criminal justice depends for its vitality upon vigorous and proper challenges to assertions of governmental authority and accusations of crime.

The number of cases that reach trial involve only a small fraction of the total defendants prosecuted, but the significance of adequate representation by counsel in these cases is critical, because an unfair trial "casts a broad shadow of doubt upon the disposition of the far more numerous cases resolved without a trial."[108] In cases disposed of without a trial, the presence of defense counsel encourages sound decisions. The advice, advocacy, and knowledge of defense counsel also help maximize the rehabilitation potential in sentencing.

The Basic Methods

State and local governments use two basic methods to provide indigent defendants with counsel: the assigned counsel system and the defender system.

Under the assigned counsel system, lawyers in private practice are appointed by the court, case-by-case, to represent defendants who cannot afford an attorney. The attorney may be compensated by funds available from the State or locality, or he may be expected to serve without fee. The lawyers assigned vary from place to place. Some communities assign counsel from the younger members of the bar. In some places, as in Houston, the entire active bar takes a turn. In others, such as Detroit, veteran attorneys are appointed. In most places, there is little effort to organize or coordinate the

efforts of the individual lawyers assigned. Hence, it is termed an "informal" system.

Under the public defender system—the most common form of the office—salaried lawyers devote all or a substantial part of their time to the specialized practice of defending indigents. They are paid by government, usually the county, and are either appointed or elected. Their terms may be specific or at the pleasure of the appointing body.

The private defender system is a variation of the public defender system. The organization of defenders is paid by a private organization, generally the legal aid society or another nonprofit corporation. Appointment of the private defender is normally handled by the organization financing the office.

A third type of defender is the public-private defender office, in which the office is supported by contributions from both private agencies and the State or locality. This system is usually run relatively free of government control—ordinarily by the board of trustees of a non-profit corporation.

Some cities that have defender offices rely on assigned counsel as a supplement. In California, for example, in virtually all cases on appeal, assigned counsel is appointed, even though a public defender handled the original trial.

The Systems Compared

The Courts Task Force of the President's Crime Commission summarized the respective merits of the two basic systems as follows:

> A high volume of criminal cases . . . argues strongly in favor of the establishment of a defender office. Defender systems, through the use of permanent criminal specialists, make more efficient use of available legal manpower. Moreover, defender offices are much better suited to provide representation in early stages of the criminal process that is particularly needed in areas having a large number of arrests.
>
> On the other hand, in sparsely populated areas where crime is occasional, a local defender office is generally impractical. Under such conditions an organized assigned counsel system or a circuit defender would seem preferable.[109]

Table A-8 shows the system of defense counsel for the indigent provided in each State in 1969.

The National Legal Aid and Defender Association (NLADA) reported that as of January 1970, there were 330 known defender organizations, including 239 public, ten private, 44 private-public, 33 assigned counsel programs, and four clinics.[110] In 11 States, the entire State was covered by defender offices—Alaska, Colorado, Connecticut, Delaware, Florida, Massachusetts, Minnesota, New Jersey, New Mexico, Pennsylvania, and Rhode Island. Such offices were also located in parts of 23 other States, chiefly in larger cities. The States were: Arizona, California, Georgia, Hawaii, Idaho, Illinois, Indiana, Maryland, Michigan, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, Ohio, Oklahoma, South Carolina, Tennessee, Utah, Washington, West Virginia, and Wisconsin. In these States the areas outside the localities served by public defenders were aided by assigned counsel. The remaining 16 States had statewide assigned counsel systems: Alabama, Arkansas, Iowa, Kansas, Kentucky, Louisiana, Maine, Mississippi, New Hampshire, North Dakota, Oregon, South Dakota, Texas, Vermont, Virginia, and Wyoming. In practically all cases, assigned counsel operated under an informal system.

In 1964, some form of assigned counsel system was used in about 2,900 of the 3,051 counties in the country, but virtually all lacked "... any real form of organization, control, or direction."[111] Assigned counsel systems handled about 65 percent of indigent felony defendants in 1964. At the same time, the number of defender offices has been growing, particularly in urbanized States like Illinois, Massachusetts, and Pennsylvania. The NLADA has found that there were only 136 defender organizations as of April 30, 1964 as compared with a total of 330 in 1969.

The Institute of Judicial Administration's tentative report on its 1969 survey of court financing found that support of public defender offices was about evenly divided between State and local governments (see Table A-9). The office was exclusively State-funded in eight States and exclusively locally funded in another eight, and by a combination of State-local financing in California. The expense of assigned counsel was borne by 11 States, by local government in 11 States, and shared by both levels in eight States.

Summary

In conclusion, the main characteristics of systems of defense counsel for the indigent are:

- Most systems provide assigned counsel for indigent defendants. Yet, in many areas, this approach has been too informal and loosely organized to provide full-time, quality services.
- Eleven States have statewide defender offices, and 23 other States have defender offices in major urban areas. Public defender organizations increased from 136 to 330 between 1964 and 1969.
- States and localities have varying degrees of fiscal responsibility for defense counsel services. Nineteen States fully finance such services. Localities in another 19 States bear the full cost of providing such services while States and localities share costs in nine States.

E. CORRECTIONS

The corrections system is the least visible aspect of the criminal justice process because of the nature of its

function and its clientele. Corrections today is characterized by a wide range of programs, practices, and institutions, and by considerable diversity in the approaches to administering and financing this component of the criminal justice system.

In 1967-68, State and local correctional systems handled 1.1 million adult and juvenile offenders, with approximately half under State jurisdiction and half under local jurisdiction. Twenty-five percent of the correctional population at that time was confined in institutions, and 75 percent was subject to community-based treatment in probation and parole programs. Sixty percent of the offenders were adult males, 26 percent were juvenile males, six percent were adult females and eight percent were juvenile females.[112]

State and Local Roles in Corrections: An Overview

Corrections systems follow no common pattern among the States. The responsibility for these services is shared differently between State and local governments, and a variety of organizational arrangements are used for administering correctional programs at the State level.

The wide variation in interlevel correctional responsibilities is underscored by the distribution of personnel and expenditures between State and local governments as shown in Tables 26 and 27. These data indicate, for example, that as of October 1969 over 133,000 persons were employed in State and local correctional institutions and agencies. Sixty-four percent of them were State employees, while 36 percent were local employees. The States' share of total State-local correctional personnel ranged from 100 percent in Connecticut, Rhode Island, and Vermont to 44 percent in California.[113]

In fiscal year 1969, State funds accounted for 67 percent of the total $1,364 million in correctional expenditures; outlays by local governments accounted for 33 percent. The States' share ranged from 100 percent in Alaska, Connecticut, and Rhode Island to 39 percent in Pennsylvania.[114]

Appendix Table A-10 gives a summary view of the intergovernmental and the intragovernmental division of administrative responsibility for each of the nine corrections activities: juvenile detention, juvenile probation, juvenile institutions, juvenile aftercare, misdemeanant probation, local adult institutions and jails, adult probation, adult institutions, and parole. It shows that the State handled adult institutions, parole, and juvenile institutions in every case; juvenile aftercare was primarily a State responsibility; but juvenile detention and local adult institutions and jails were predominantly county and city functions. Juvenile, misdemeanant, and adult probation were not clearly either a State or local function, but frequently were a shared responsibility, with a somewhat greater tendency for localities to furnish juvenile probation and the States to handle adult probation.

Only three States—Alaska, Rhode Island, and Vermont—had organized all nine correctional activities into a single department as of April 1970. In Delaware and Maine, seven and six functions, respectively, were administered by a single State agency. In three others—Oregon, Tennessee, and Virginia—five corrections activities were administered by one State department. In four States—Alaska, Maryland, Rhode Island, and Vermont—one State agency administered all juvenile programs, while in 13 the same agency administered adult probation and adult institutions. In three States—Alaska, Rhode Island, and Vermont—a single State department was responsible for administering both juvenile and adult correctional activities.

State governments differed in the degree to which they set performance standards or offered financial or technical assistance for correctional services where local governments were the main providers of the services. As shown in Table 28, in 1965 only 12 States were involved in the area of local adult institutions, 18 in juvenile detention, 23 in jails, 31 in misdemeanant probation, and 32 in juvenile probation. Many States neither provided direct assistance nor set local service standards. Where State help was provided, there was some question as to its quality.

Table 29 shows five types of State services to improve local corrections activities in 1965. Other than standard-setting, States most often provided consultation, although less than two-thirds offered even that assistance. With respect to subsidies, at one extreme, only four percent of the States allocated funds for local institutions, while at the other, 46 percent made financial contributions for juvenile probation. The only licensing provided was for juvenile detention facilities, and then in only a few States. State inspection services were furnished for three categories of corrections: jails, juvenile detention, and local institutions.

Intergovernmental and Intragovernmental Responsibilities for Corrections Functions

Prior to the study made by the President's Commission on Law Enforcement and the Administration of Justice, the invisibility of the correctional system was reflected in the paucity of information available concerning its operation. In order to obtain a more complete description of the Nation's correctional structure, the President's Crime Commission arranged with the National Council on Crime and Delinquency

Table 26
STATE AND LOCAL CORRECTIONS PERSONNEL–1969

State	State Totals	Local	Local as a percent of State + Local	Non County Local as a percent of Total Substate (1967)
Alabama	868	452	34.2	85.2
Alaska	283	44	13.5	0
Arizona	532	382	41.8	98.4
Arkansas	269	98	26.7	98.5
California	9,822	12,420	55.8	95.6
Colorado	1,072	549	51.2	39.2
Connecticut	1,723	–	0.0	100.0
Delaware	406	3	0.1	100.0
District of Columbia	–	1,397	100.0	0
Florida	3,344	1,116	25.0	81.7
Georgia	1,885	992	34.5	92.3
Hawaii	329	68	17.1	20.0
Idaho	227	35	13.4	89.2
Illinois	4,122	1,853	31.0	71.3
Indiana	1,648	733	30.8	99.8
Iowa	1,114	297	21.0	100.0
Kansas	978	187	16.1	92.3
Kentucky	938	318	25.3	87.8
Louisiana	1,263	541	30.0	12.8
Maine	570	61	9.7	98.1
Maryland	3,168	516	14.0	48.5
Massachusetts	2,671	1,319	33.1	81.4
Michigan	3,003	1,758	36.9	86.4
Minnesota	1,357	906	40.0	89.8
Mississippi	355	94	20.9	78.5
Missouri	1,458	977	40.1	40.0
Montana	401	67	14.3	90.0
Nebraska	512	81	13.7	96.1
Nevada	377	211	35.9	100.0
New Hampshire	238	95	28.5	87.3
New Jersey	2,483	2,524	50.4	99.9
New Mexico	493	134	21.4	81.2
New York	9,217	8,441	48.2	44.5
North Carolina	3,109	373	10.7	96.7
North Dakota	179	37	17.1	92.6
Ohio	4,325	1,446	25.1	75.7
Oklahoma	925	55	5.6	94.4
Oregon	1,314	520	28.4	94.7
Pennsylvania	3,099	2,738	46.9	68.3
Rhode Island	433	–	0.0	100.0
South Carolina	865	305	26.1	96.5
South Dakota	217	45	17.1	100.0
Tennessee	1,656	595	26.5	40.2
Texas	3,278	1,425	30.3	91.5
Utah	385	101	20.8	100.0
Vermont	379	–	0.0	100.0
Virginia	2,265	857	27.4	27.8
Washington	2,274	727	24.2	88.7
West Virginia	521	125	19.3	88.3
Wisconsin	2,121	425	16.7	97.2
Wyoming	176	35	16.6	100.0
Total	84,640	48,478	36.4	74.1

Source: U.S. Bureau of the Census, *Compendium of Public Employment, 1967 Census of Governments,* Vol. III, No. 2, (Washington, D.C.: U.S. Government Printing Office, 1967), Table No. 15. U.S. Bureau of the Census, *Expenditure and Employment Data for the Criminal Justice System: 1968-1969.* Washington, 1971, Table 7.

Table 27
STATE SHARE OF STATE-LOCAL CORRECTIONS EXPENDITURES–1969

State	Total State-Local Corrections Expenditures (000)	Percent State Share	Average Share*
Alabama	11,338	88.8	133
Alaska	4,474	100.0	150
Arizona	8,626	71.1	107
Arkansas	4,033	77.1	116
California	256,213	51.7	78
Colorado	16,275	77.5	116
Connecticut	17,927	100.0	150
Delaware	7,457	99.2	149
Florida	28,966	82.2	123
Georgia	24,765	80.9	121
Hawaii	4,291	86.9	130
Idaho	2,671	91.5	137
Illinois	59,869	76.8	120
Indiana	21,952	84.5	127
Iowa	14,963	90.1	135
Kansas	10,720	86.7	130
Kentucky	13,822	77.2	116
Louisiana	15,687	78.9	118
Maine	6,174	89.5	134
Maryland	41,797	82.1	123
Massachusetts	44,800	69.0	103
Michigan	55,537	62.3	93
Minnesota	24,291	64.3	96
Mississippi	6,696	76.8	115
Missouri	23,922	58.7	88
Montana	4,251	84.6	127
Nebraska	6,197	83.1	125
Nevada	5,557	74.1	111
New Hampshire	2,524	79.6	119
New Jersey	46,796	55.4	83
New Mexico	5,545	86.3	129
New York	183,945	57.3	86
North Carolina	35,802	86.7	130
North Dakota	1,757	87.7	131
Ohio	69,598	77.8	117
Oklahoma	9,267	87.5	131
Oregon	16,860	72.0	108
Pennsylvania	68,310	38.7	58
Rhode Island	5,315	100.0	150
South Carolina	9,773	76.4	115
South Dakota	2,626	77.6	116
Tennessee	18,269	85.9	129
Texas	40,503	73.0	109
Utah	4,628	85.8	129
Vermont	3,982	99.2	149
Virginia	17,788	95.6	143
Washington	33,853	84.6	127
West Virginia	6,777	70.1	105
Wisconsin	35,171	78.2	117
Wyoming	1,818	93.6	140
Total	1,364,178	66.7	100

*The average "total" State share in the police and corrections function is an unweighted average of the 50 State areas. The index number (average share) is the State share/total State share.

Source: U.S. Law Enforcement Assistance Administration & U.S. Bureau of the Census, *Expenditure and Employment Data for the Criminal Justice System: 1968-1969.* Washington, 1971, Table 5.

Table 28
ROLE OF STATES IN PROVIDING DIRECT SERVICE OR SETTING STANDARDS FOR COMMUNITY-BASED CORRECTIONS PROGRAMS, 1965

System	States Providing Direct Service		States Setting Standards for Local Service		Total		States Providing Neither	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Juvenile Detention	8	15.7	10	19.6	18	35.3	33	64.7
Juvenile Probation	19	37.3	13	25.4	32	62.7	19	37.3
Aftercare	40	78.4	—	—	40	78.4	11	21.6
Misdemeanant Probation	22	43.1	9	17.7	31	60.8	20	39.2
Adult Probation	37	72.5	8	15.7	45	88.2	6	11.8
Jails	4	7.8	.19	37.2	23	45.0	28	55.0
Local Adult Institutions	—	—	12	23.6	12	23.6	39	76.4

Source: President's Crime Commission, *Task Force Report: Corrections,* p. 199.

Table 29
PERCENTAGE OF STATES OFFERING ASSISTANCE OTHER THAN DIRECT SERVICE, 1965*

Agencies Providing Direct Service	Services Rendered by States to Improve Local Services				
	Standards	Inspection	License	Subsidies	Consultation
Juvenile Detention	23.8	33.3	9.5	14.3	47.6
Jails	40.4	40.4	—	12.8	34.0
Local Institutions	27.3	25.0	—	4.3	27.7
Juvenile Probation	40.6	—	—	45.5	60.6
Misdemeanant Probation	40.9	—	—	4.5	31.8
Adult Probation	57.1	—	—	21.4	57.1

*Excludes States providing the given service at the State level.
Source: President's Crime Commission, *Task Force Report: Corrections,* p. 199.

(NCCD), through the Office of Law Enforcement Assistance, to conduct a survey of corrections in the United States.[115]

This section briefly describes the nine major corrections activities and the manner in which States and local governments share administrative and fiscal responsibility for their performance. It is based principally on the results of the 1965 NCCD survey, supplemented with data from State comprehensive law enforcement plans submitted to the Law Enforcement Assistance Administration (LEAA) of the Department of Justice and from reports prepared by governmental agencies, professional associations, private consultants, and academicians.

Juvenile Detention

Juvenile detention involves holding delinquent children of juvenile court age in secure temporary custody pending court disposition or transfer to another jurisdiction or agency. A unique feature of juvenile court law is the authorization for a child to be taken into custody in order to protect his health and welfare.[116]

Two different types of temporary care can serve this purpose: detention and shelter. Detention is providing care for a child who has committed a delinquent act and requires secure custody. Shelter is providing care for dependent and neglected children or those apprehended for delinquency whose homes are unfit for their return. It is provided in a physically unrestricting facility such as boarding or group homes or temporary care institutions, pending the child's return to his own home or placement for longer term care.[117] Detention serves the juvenile court exclusively, while shelter serves both the court and child and family welfare agencies. Detention, however, is sometimes used punitively or resorted to because of the lack of other community services and facilities. In some jurisdictions, it is routine to detain all arrested children whether or not they are subsequently referred to court. In addition, detention may be extended following court disposition when space in a juvenile institution is not available.

Use of Detention. The use of detention differs widely from jurisdiction to jurisdiction. Whether and under what conditions a child will be detained is really a matter of geographic accident, primarily because of variances in the availability of juvenile detention facilities and in juvenile court statutes among the States.

The juvenile court is a specialized unit in city or county judicial systems, assigned certain administrative responsibilities, including operation of detention homes. The State legislature defines the basic mandate of the juvenile court, and higher courts may review and supervise its proceedings. Moreover, juvenile court operations are conditioned by the fiscal and administrative actions of such agencies as State welfare departments.[118]

Juvenile court jurisdiction is quite broad in most States. Acts or conditions listed in these statutes under the heading of delinquency range from "violating any law or ordinance" to "being habitually truant from school," "refusing to obey parents or guardians," or "smoking cigarettes around public places."[119] Since legal definitions often blur the distinction between delinquency and child neglect, little if any statutory guidance is available to determine whether a child should be detained or given shelter care. The statutory definition of juvenile court jurisdiction also varies widely. In some States, the court has exclusive original jurisdiction over offenders up to age 16; in others, the age is 18, with concurrent jurisdiction with the criminal courts to age 21.[120]

The juvenile court judge is responsible for deciding whether a petition for court hearing will be granted and whether detention is required pending a hearing. Usually, a court intake officer or a probation officer makes the preliminary detention decision, which then may be reviewed by a judge. Because the police ordinarily apprehend a youngster suspect of delinquency, they may make the first decision to detain or release. If they decide to detain him, they may hold the child overnight in the station house or cell block, and a probation officer may or may not release him the following day. If the police decide to refer the case to juvenile court, the child is usually physically transported to the intake department of the court. A court intake officer then may decide whether he should be held for court in detention or whether he should be returned to the custody of parents or guardians subject to a court hearing scheduled for a later date. If the youth is held in detention, he may not be released by the court until after a hearing a week or more later.[121]

Only a few States have legislation requiring a judge to review a detention decision made by a probation officer. Furthermore, in over two-fifths of the States, filing of a petition with the juvenile court is not necessary to detain children. Probation and police personnel in these jurisdictions, then, are able to exercise what is otherwise a prerogative of the court.[122] A few places—Lane County (Eugene), Oregon; Harris County (Houston), Texas; Summit County (Akron), Ohio; and New York City—have provided a court intake service on a round-the-clock basis to make the detention determination and thereby avoid the possibility of police officers making this decision when a judge is not available.

As a result of these factors, NCCD's prescribed detention rate—10 percent of juvenile arrests—has been substantially surpassed by several jurisdictions, while others have fallen well below this standard. High intake rates have been accompanied by long detention stays, averaging 18 days nationally in 1965. Many juveniles are held for weeks, and even months pending adjudication and disposition. Both of these trends have created serious problems in providing proper care for children.

Detention Facilities. The 1965 NCCD survey indicated that, on the average, the daily population of delinquent juveniles in detention facilities exceeded 13,000. It estimated that over 409,000 juveniles had been admitted to detention homes, jails, or other institutions, excluding police lockups—approximately two-thirds of all juveniles apprehended that year. The survey showed further that 93 percent of the juvenile court jurisdictions lacked any detention facilities for juveniles other than a county jail or police lockup, probably because not enough children were detained in these local jurisdictions to warrant setting up a detention home. It was estimated that more than 100,000 children of juvenile court age were admitted to county and city jails and jail-like facilities, including police lockups, across the Nation.[123]

Although a prohibition against placing children in jail was found in nine States, it was not always enforced. Only three States claimed that jails were not used for juveniles. In 19 States, the law permitted juveniles to be jailed if they were segregated from adult prisoners, but this proviso was not strictly followed.

Forty-eight percent of the 242 juvenile detention homes identified by NCCD in 1965 had been constructed especially for this purpose, and the remainder had been adapted for detention from other types of facilities. Yet, nearly half of the former were over 20 years old, and many of the latter were found to be of poor quality. Detention homes were generally located in urban areas, and they served more than half the Nation's detained juvenile population.[124] One State had as many as 39 homes and three had from 17 to 24, while 11 States had none (see Table 30).

Table 30
DISTRIBUTION OF DETENTION HOMES, 1965

Number of Detention Homes	Number of States[1]
39	1
17 to 24	3
9 to 12	3
5 to 8	7
3 or 4	10
1 or 2	17
None	11

[1] Includes Puerto Rico and Washington, D.C.
Source: President's Crime Commission, *Task Force Report: Corrections,* p. 122.

State Role. The administration of juvenile detention services is primarily a local responsibility. As indicated in Appendix Table A-10, in 40 States detention is handled by counties and cities, while in two others it is performed on a State-local basis.

At the same time, however, eight States have assumed administrative responsibility for juvenile detention. Even where this activity remains in local hands, some States have been involved. In 1965, for example, 20 States provided consultation services to county governments. Such assistance was usually furnished by the department of welfare or some other State agency But an examination of the nature and extent of those services revealed that not much consultation was really provided and that not many States had staff qualified to furnish them.[125]

County operating costs for detention facilities were shared by only two States–Michigan and New York. These States reimbursed counties for half the cost of detention care, in return for counties reimbursing the State for half the cost of training school care. Both States employed consultants for inspection and advisory functions, and could withhold funds if State standards were not met by local agencies. In two other States–Virginia and Utah–the cost of building county detention facilities was shared on a State-county basis.[126]

Several States have assumed a substantial amount of operational, regulatory, and supervisory responsibility for juvenile detention. The following NCCD findings in 10 States as of 1965 highlight some of the ways in which State governments played major roles in the juvenile detention area.[127]

- **Alaska**: The State Department of Health and Welfare had jurisdiction over all juvenile programs, including jails which were used to detain children, but standards had not been developed.
- **Connecticut**: State juvenile court was responsible for a statewide system of detention homes; jails were not used.
- **Maryland**: Two State-operated regional detention and diagnostic facilities were available to all counties; county jails and State training schools were also used to detain juveniles.
- **Massachusetts**: The State constructed and operated four regional detention centers serving local juvenile courts; juvenile quarters in police lockups were used for detaining children up to two days, pending release or transfer. These facilities were inspected by the State.
- **Michigan and New York**: Both States did not operate detention homes, but had a part-time consultant on detention care. They established standards and reimbursed counties for 50 percent of the cost of care. Michigan sponsored an annual workshop on detention for judges, probation officers, and detention facility administrators.
- **New Hampshire and Rhode Island**: State training schools were used to detain juveniles on local court order; jails were used as seldom as possible for the overnight detention of juveniles.
- **Utah and Virginia**: Both States set standards for regional detention and reimbursed counties meeting these standards. Utah paid half the cost when one county contracted with another for detention care.

Other States reporting some coordination of State-local juvenile detention activities in their 1969 and 1970 comprehensive law enforcement plans submitted to LEAA included:

- **California**: The Department of Youth Authority inspects juvenile halls and jails where minors are confined for more than 24 hours.
- **Georgia**: Seven urban counties operate their own juvenile detention facilities. These centers are supported by county and State allocations, with free detention services provided to nearby counties. The Coastal Area Planning and Development District will construct and operate the Nation's first rural regional detention center, which will serve at least eight counties. The State's Division of Children and Youth operates four State and six regional Youth Development Centers.
- **Texas**: A statutory Youth Council is responsible for the State's correctional facilities and for parole supervision. All children referred to the Youth Council are processed at a statewide reception and classification center.

Regional Facilities. The establishment of regional detention facilities for juveniles has marked the beginning of attempts by a few States to achieve more uniform statewide handling of the detention function. In 1965, Connecticut's State juvenile court system was served by four regional detention facilities. Facilities of this type were provided as a service to county juvenile courts by Delaware, Maryland, and Massachusetts.[128] State training schools were used for predisposition holding in New Hampshire, Rhode Island, and Vermont. Although this practice was considered unsatisfactory by both the NCCD and the participating States, it underscored the feasibility of a State-operated regional facility serving county courts.[129]

Two States—Virginia and Utah—subsidized regional detention facilities in 1965. In Virginia, juvenile court and detention planning districts were established, eight of which had regional detention homes. If a county met the State's regional detention standards, it would be reimbursed for up to $50,000 of the construction costs and all operating expenses of such facilities, and for two-thirds of staff salaries. The State also provided consultation services—including planning assistance, review and approval of plans, and staff training workshops—through four full-time consultants and a probation and detention supervisor.[130]

Utah used three county-run regional detention homes and two holdover facilities to reduce detention of children in jails. It reimbursed counties up to 40 percent of construction and operating costs, if they met certain standards for: overnight facilities separate from jails, facilities lacking psychiatric services, and those having program and clinical services. Consultation assistance similar to Virginia's also was provided, but only on a part-time basis.[131]

Juvenile Probation

Juvenile probation is a legal status bestowed by a juvenile court which permits a juvenile to remain in the community under the supervision of a probation officer. Probation for juveniles, as well as for misdemeanants and felons, seeks to rehabilitate the offender and to prevent future delinquent or criminal behavior utilizing community social institutions. Certain conditions are placed on his continued freedom, and means are provided for helping him to meet them.[132]

The modern probation department usually performs three central services: (1) intake and screening of children, and frequently deciding whether the child should be admitted to detention or, if he is already in such a facility, whether he should continue being held or be released pending court disposition of his case; (2) study and diagnosis of the child's attitudes, problems, motivation, general life situation and other factors affecting the type of disposition the juvenile court will select; and (3) supervision and treatment of the child following disposition, including maintaining surveillance to ensure that the probation plan is being properly followed and to prevent future offenses, making community services available to the child and his family, and providing counseling. Large probation agencies usually have additional facilities, including mental health clinics, foster and group homes, forestry camps, and community planning and organization programs for youth.[133]

Juvenile probation is authorized by statute in each State. Yet, the extent to which probation services are actually available in counties and cities is not uniform, and some areas entirely lack them. The 1965 NCCD survey data reveal that in theory, 74 percent of all the counties in the Nation had juvenile probation staff services. In practice, however, in some of these jurisdictions they were only token. In 27 States, each county had such services.[134] Of the 23 States that lacked full-time, paid probation staff in all counties, some services were available to courts from volunteers in six States, child welfare departments in five States, and a combination of child welfare, sheriff, and other agencies in five States.[135]

From the standpoint of State-local responsibility, in 1965, juvenile probation services were organized in one of three ways:[136] a centralized, statewide system (11 States);[137] a centralized county or city system supported by State supervision, consultation, standard-setting, recruitment, in-service training and staff development assistance, and by a partial State subsidy of local agencies (28 States);[138] or a combination of these, with the larger and wealthier local jurisdictions operating their own departments and the State providing services in other areas (11 States).[139]

In nearly half of the States, juvenile probation services are administered locally because they are the juvenile court's special function. At the same time, administration of juvenile probation is a joint State-local responsibility in two-fifths of the States. One-sixth of the States have assumed full responsibility for this function.

County and city probation systems are administered by the court itself, by a combination of courts, or by an administrative agency such as a probation department. The diverse administrative agency structures, as of 1965, are shown in Table 31.

In States where some or all juvenile courts are served by local probation departments, a State agency sets performance standards, including practices, staff qualifications, and salaries. In 1965, at least 17

Table 31
TYPE OF ADMINISTRATIVE AGENCY FOR JUVENILE PROBATION, 1965

Administrative Agency	Number of States[1]
Courts	32
State correctional agencies	5
State departments of public welfare	7
Other State agencies	4
Other agencies or combination of agencies	3

[1] Including Puerto Rico.
Source: President's Crime Commission, *Task Force Report: Corrections,* p. 133.

States[140] provided subsidies for personnel and operational costs and similar purposes, with State funds covering from less than 50 percent of the local department's budget in six States to 100 percent in three States.[141] A State Agency provided consultation services to local juvenile courts in 19 States. Other types of State aid occasionally offered to local probation departments included collection of statistics on juvenile delinquency, juvenile probation, and other problems in 38 States, analysis of such data in ten States, staff training programs in six States, and direct probation services to some counties in two States.[142]

More recent examples of the kinds of financial and technical assistance given by States to localities in the juvenile probation area, as indicated in the 1969 and 1970 comprehensive law enforcement plans submitted to LEAA, include the following:

- **California:** The Department of Youth Authority subsidizes 41 special supervision programs in county probation departments; it also provides training for probation officers and handles cases of delinquents for which counties lack treatment services. Since 1968, the State has reimbursed counties up to $4,000 annually for each juvenile and adult offender placed under local probation rather than sent to State correctional institutions. Nearly all of California's 58 counties are now participating in the Probation Subsidy Program, covering 95 percent of the State's population. In the first two years of the program's operation, the number of commitments to State correctional institutions was reduced by more than 1,600, representing a net savings to the State of $4.3 million. Counties receiving subsidies, however, were required to make substantial and innovative improvements in the services offered to probationers, not merely to reduce the size of their existing caseloads.
- **Colorado:** The State reimburses each judicial district which hires qualified juvenile probation counselors, paying half their salaries or $300 per month.
- **Michigan:** Juvenile probation services are administered through the probate court at the county level; each county appoints juvenile probation officers whose salary is paid by the State, and some counties augment State-subsidized staff with county-paid personnel.
- **Minnesota:** All juvenile courts are required to have probation and parole services. Counties may either provide their own agents, subsidized by State funds and supervised by the Department of Corrections, or use agents supplied by the department.
- **North Carolina:** Juvenile probation services are State-supported in certain urban counties.
- **Pennsylvania:** Juvenile probation is a county function that is assisted by State grants-in-aid.
- **Tennessee:** The State provides juvenile probation and aftercare services to most counties, and furnishes aftercare services in the Chattanooga, Memphis, and Nashville metropolitan areas.

Juvenile Training Schools

Juvenile training schools—including reformatories, schools of industry, camps, and reception centers—provide specialized programs for children from eight to 21 years of age who are found to be relatively hardened in delinquency, who are unstable, and who require institutional treatment. Yet, training schools are also used for detention or shelter purposes when foster home care or probation services are not readily available, and for psychiatric, maternity, and other types of care when institutional facilities or treatment programs are unavailable. Hence, many juvenile training schools can hardly be considered as being specialized in operation.

A recent trend toward diversification in juvenile institutions has given rise to the establishment of small camps for boys and reception centers for screening prior to final placement in a juvenile institution. By 1965, 49 camps had been established in 20 States. Ten of them were operated in Illinois. Fourteen separate reception programs had been set up in ten States.[143] Table 32 shows the kinds of institutions available at that time.

On the average, the length of a stay for a youngster committed to a training school was six months in 1965, with a range of from four to 24 months. A child's stay in a reception center ranged from 28 to 45 days.[144]

The NCCD survey found that, theoretically, the majority of State-operated juvenile institutions offered

Table 32
STATE-OPERATED JUVENILE TRAINING SCHOOLS, 1965

Type	Number
Boys Institution	82
Girls Institution	56
Co-ed Institution	13
Camp	49
Reception Center	14
Residential Center	4
Vocational Center	1
Day Treatment Center	1
Total	220

Source: President's Crime Commission, *Task Force Report: Corrections,* p. 144.

medical (96%), recreational (95%), dental (94%), educational (88%), casework (86%), social work (79%), psychological (75%), and psychiatric (71%) services to their inmates. Yet, in practice, NCCD indicated having serious reservations concerning the quality of such services and observed that, possibly with the exception of education, there was considerable room for improvement in virtually all other areas.[145]

Training schools are usually State-administered. In over one-third of the States, however, they are organizationally separate from other State and local juvenile correctional services, particularly detention and probation.

Table 33 indicate the variation in the number of training schools in any one State, with six States having nine or more schools and eight having just one. These 220 facilities, with a total average daily population of 42,389, constituted 86 percent of the juvenile training school capacity in the Nation in 1965. The average per capita outlay was $3,411. The remaining 14 percent was accounted for by 83 locally operated programs in 16 States; these supplemented the State-operated facilities.[146]

Table 33
NUMBER OF TRAINING SCHOOLS PER STATE, 1965

Number of Facilities	Number of States[1]	Total Facilities
9 or more	6	69
5 to 8	18	97
3	6	18
2	14	28
1	8	8
	52	220

[1] Including Puerto Rico and Washington, D.C.
Source: President's Crime Commission, *Task Force Report: Corrections,* p. 144.

In many States, private facilities were used to augment public institutions. In some cases, they received State subsidies but nevertheless retained program control. Thirty-one States used private facilities in 1965, and 23 of these indicated they had placed 6,307 children in such facilities.[147]

In the mid-1960's, administrative direction of training facility programs increasingly was being centralized in a parent agency at the State level in order to achieve closer coordination with related agencies and greater specialized use of facilities, particularly where several types of programs were available. Presently, juvenile institutions are the agencies responsible for separately administering training programs in only one State – Alabama – while in the remainder, juvenile facilities operate under the auspices of some type of parent agency. In half of the States, the parent agency has only correctional responsibilities. In one-third, the parent agency is the department of public welfare, and in one-eighth, it is a State board of institutions.

Of the 16 States which had locally-run facilities in 1965,[148] four set standards on personnel qualifications in local institutions, and two of these also established program content and construction standards. Six States – California, Kansas, Michigan, Missouri, Oregon, and Tennessee – subsidized locally-operated programs by assuming a part of the operating costs, providing construction subsidies, or rendering consultation and training services.[149]

Juvenile Aftercare

Juvenile aftercare, the counterpart of adult parole, refers to the release of a child from an institution and his return to the community under the supervision of a counselor. Ideally, the child is released at the earliest time that he can be reintegrated into the home environment and can benefit from community-based programs and services, rather than institutional care. Such programs should be individually tailored to meet his needs.[150]

Based on 1965 data from the 40 States which operated juvenile aftercare programs, covering a total of 48,000 of the estimated 59,000 youths then under aftercare supervision in the Nation, NCCD concluded that aftercare was the most underdeveloped area of corrections. The ten States lacking a centralized State-operated

juvenile aftercare program were: Alabama, Arkansas, Kansas, Maryland, Mississippi, New Mexico, North Carolina, North Dakota, Pennsylvania, and Virginia. Twelve of the States kept juveniles under aftercare supervision for less than one year, while 25 kept them in such programs for one year or more. Although it was found that aftercare cost only one-tenth as much as institutional care, the survey team observed that this reflected more the inadequacy of service levels than any economies involved in using this approach. The types of aftercare supervision provided ranged from merely filing a monthly report to such activities as foster home placement, group counseling, family services, and employment programs.[151]

Organizational arrangements for the administration of juvenile aftercare services vary widely. In 1970, 43 States had assumed responsibility for aftercare administration, while in five others this was a joint State-local function. In only two States were cities and counties responsible for administering these services.

As shown by Appendix Table A-10, in 1965 aftercare administration was fragmented in 17 States as, contrary to NCCD's standard, juvenile institutions were not handled by the same agency that furnished aftercare services for children released from such facilities. In five States, for example, local probation departments were responsible for aftercare even though they were not formally related to the State agency that administered training schools (see Table 34).[152]

Table 34
ORGANIZATIONAL ARRANGEMENTS FOR ADMINISTRATION OF JUVENILE AFTERCARE, 1965

Type of Agency	Number of States[1]
State Department of Public Welfare	13
State Youth Correctional Agency	12
State Department of Correction	10
State Training School Board	4
State Department of Health	1
Institution Board	6
Other [local]	5
Total	51

[1] Including Puerto Rico.
Source: President's Crime Commission, *Task Force Report: Corrections,* p. 151.

With respect to juvenile paroling authorities, in nine States the committing judge was required to approve the decision to release juveniles from institutions. In most of these, however, information concerning the child's institutional record and behavior was unavailable to him. A central authority for the release of juveniles from State training schools was used in 17 States, among which patterns of organization varied, as revealed in Table 35. Usually members of these authorities were appointed by the governor. Only seven States had full-time board members. The members were not paid in more than half the States that had aftercare boards, and usually they received no special training in this area. Partly as a result of these weaknesses, there has been growing interest in the juvenile institution making release recommendations to the parent agency, with the latter then authorizing release.[153]

Table 35
TYPE OF CENTRAL PAROLING AUTHORITIES FOR RELEASE OF JUVENILES FROM STATE TRAINING SCHOOLS, 1965

Type	Number of States
Youth Authority	4
State Training School Board	3
State Institutions Board	2
Department of Correction	2
Department of Public Welfare	2
Parole Board	2
Board of Control	1
Ex Officio Board (Members: Governor, Secretary of State, State Treasurer, State Auditor, State Superintendent of Public Instruction)	1
Total	17

Source: President's Crime Commission, *Task Force Report: Corrections,* p. 152.

Misdemeanant Probation

While no definition of misdemeanant crime fits neatly throughout the country, most experts understand "misdemeanant" to mean "minor or petty offender." According to the President's Crime Commission, 92 percent of the persons arraigned for non-traffic offenses are charged with misdemeanors.

The Corrections Task Force of the President's Crime Commission was unable to obtain nationwide data on the extent to which each of the methods of disposition—including commitment, fines, probation, and suspended sentence—was used for misdemeanants. In a study of three American cities, however, it found that probation was used least frequently.[154]

Statutory restrictions on the use of misdemeanant probation were found in nine States.[155] In three of

these States, misdemeanants were ineligible for probation; in two, probation could not be used for certain types of misdemeanant offense; and in one, a variety of qualifications had to be met before probation could be authorized–such as no previous felony convictions and no imprisonment within five years before the present offense.[156]

Not unlike other aspects of the correctional process, organizational arrangements and responsibilities for providing misdemeanant probation services vary widely among the States. As of 1965, 21 States had statewide misdemeanant probation systems; 19 States had systems organized on a city, city-county, county, or court district basis. Eleven States, including the three which had laws excluding misdemeanants from probation eligibility, lacked services for this type of offender.[157] Table 36 shows the organization of probationary functions in the 51 jurisdictions covered in the NCCD survey.

Table 36
ORGANIZATION OF PROBATION SERVICE FOR MISDEMEANANTS, 1965

Agency Providing Service	Number of States[1]	
No service	11	
State systems:	21	
Correctional agency		14
Court agency		3
Department of public welfare		3
Combined State and local system	6	
Local systems:	13	
County		9
City		4
Total	51	

[1] Includes Puerto Rico.
Source: President's Crime Commission, *Task Force Report: Corrections,* p. 158. Revised by ACIR staff.

The 21 statewide probation systems[158] were authorized to serve misdemeanant courts, but a number of these furnished only minimal services at the local level. Fourteen provided misdemeanant probation through a State correctional agency, but services were given only "occasionally" or "as the caseload permits" or "if asked." Several of these States did not distinguish between felons or misdemeanants. In three States, statewide coverage was organized and administered through the court system and, in three others, through the State welfare agency.[159]

Six States had a combined State-local probation system.[160] Statewide coverage was provided by a State correctional agency, while supplementary probation services were furnished either in selected counties or in large cities.[161]

In the 13 States having a local system, most probation services were made available by counties located in metropolitan areas.[162] In only two States–Indiana and Ohio–were they provided by cities. Few or no services were offered in nonmetropolitan areas of these States.[163]

Six of the 19 States where local jurisdictions operated all or part of the probation system provided consultative services to local departments.[164] Eight States set standards on personnel, staff qualifications, and salaries, and two of these also set standards on caseload size and other aspects of probation services.[165] Ten States set no standards at all. Only one State subsidized local probation services for misdemeanant offenders.[166]

In a 1965 sample of 250 counties in the Nation, NCCD found that one-third lacked any misdemeanant probation services. A proliferation of courts was discovered, with 3,000 non-traffic courts existing in 175 of these jurisdictions, ranging from one in 55 counties to over 100 in six counties. The commitment-probation ratio in 75 units was 4:1, with a presentence investigation having been made in only 19 percent of the cases. Relatively long periods of stay on misdemeanant probation also were evident; the range here was from six months to three years, with a median of 12 months. The NCCD concluded that the probation departments in 62 percent of the counties sampled did not appear to have any creative or unusual rehabilitative programs to offer misdemeanants. In the remainder, innovations included: alcoholic therapy; short-term hostel care; use of volunteers in counseling and performing subprofessional tasks; screening, counseling, and referral programs designed to avoid criminal proceedings wherever desirable; and halfway houses.[167]

To sum up, despite the absence of uniform interstate or intrastate systems for handling misdemeanants, certain patterns were evident in 1965 and, in view of the continued "stepchild" treatment given to the corrections component of the criminal justice system, probably exist today. These include: (1) a heavy volume of cases in lower courts; (2) inadequate staffing of court diagnostic assistance in determining the disposition of offenders; (3) insufficient and inferior treatment of probationers; and (4) absence of reliable statistical data and thorough evaluations of the effectiveness of disposition alternatives.[168]

Local Adult Correctional Institutions and Jails

Twentieth century penological thinking has shown a dominant trend toward use of constructive treatment programs as an alternative to mere custody. Yet, local jails and short-term institutions in the United States, for the most part, still run contrary to this trend. They can be classified as holding facilities with little emphasis on rehabilitation. Generally, work programs are underdeveloped or non-existent; institutional personnel are inadequate in quantity and quality; and facilities are insufficient and antiquated. In addition, the diversity in the types of offenders committed to these institutions—whose "crimes" range from motor vehicle law violations and drunkenness to assault, burglary, or theft—makes effective planning and programming difficult. Another obstacle is the relatively short sentences of many inmates, which hinders development of long range rehabilitative programs.

Historically, misdemeanant corrections were the responsibility of local law enforcement personnel, mainly because minor offenders usually were not sentenced to long terms and the responsibility for arresting and holding them rested with local officials. Sheriffs administered most county jails, in addition to performing law enforcement and other functions external to, and often considered more important than, corrections.[169]

The term "jail" is characteristic of county institutions, while "correctional institutions," "camps," "workhouses," and "farms" refer generally to those in large cities and to State-operated short-term facilities. Three-quarters of the 215 local institutions in the 1965 NCCD county sample were the former.[170] Table 37 shows the type of local institutions covered in the survey. A national estimate of the number of local correctional institutions and jails in 1966 is shown in Table 38.

Table 37
NUMBER OF LOCAL INSTITUTIONS AND JAILS IN NCCD SAMPLE SURVEY, BY TYPE, 1965

Type of Institution	Number	Percent
Jail	158	73.5
Correctional Institution	26	12.1
Camp	18	8.4
Farm	9	4.0
Combination or Other	4	2.0
Total	215	100.0

Source: President's Crime Commission, *Task Force Report: Corrections,* p. 163.

Jails and institutions are intended to hold convicted offenders serving a minimum term of 30 days or longer. Yet, in most of the counties surveyed, NCCD found that they also held prisoners serving less than 30 days and persons awaiting trial. In many cases, unconvicted offenders were housed in facilities where the primary concern was maximum security. Little attention was paid to rehabilitative programs. The popular view that only misdemeanants are sent to local institutions and that felons are committed to State prisons was contradicted by the finding that nearly half of the 215 county jails and short-term facilities admitted felony cases for the serving of sentences.[171]

Table 38
ESTIMATED NUMBER OF LOCAL INSTITUTIONS AND JAILS IN THE UNITED STATES, 1966

Type of Jurisdiction	Number	Percent
County Institutions	2,547	73.3
City Institutions	762	22.0
City-County Combined	149	4.3
Other	15	.4
Total	3,473	100.0

Source: President's Crime Commission, *Task Force Report: Corrections,* p. 163.

The ages of offenders sentenced to jail and the maximum length of their sentences are regulated by statute. In most States, the maximum sentence is 12 months; in others, it ranges from six months or less to life. Of course, maximum sentencing provisions can be circumvented by use of consecutive sentences. Statutory limitations on terms to be served in local institutions other than jails are similar. In most States, commitment of persons less than 16 years of age is illegal. In 1965, such commitments were authorized in 14 States, however, and in 11, offenders under 16 were confined in jails or local adult institutions. In four States, a minimum commitment age was not set; in one, it was seven years and, in the remainder, it ranged from 12 through 15 years of age.[172]

Rehabilitation Developments. One correctional program coming into wider use in short-term institutions is work-release, which originated in 1913 with a Wisconsin statute that authorized judges and magistrates, in collaboration with sheriffs who operated local jails, to permit misdemeanant offenders to work outside the jail while serving short sentences. In 1957, North Carolina applied the principles of the Wisconsin law to felony

offenders, and authorized work-release under limited conditions. Maryland and Michigan subsequently adopted similar legislation. By 1969, at least 29 States had work-release statutes and, for the most part, they were administered by corrections departments.

Prisoners participating in these programs generally use their earnings to pay for transportation to and from work and, in some cases, they reimburse the institution for room and board, make restitution, or pay debts. Sometimes they can help support their families and save funds for use upon release. Work-release is not only beneficial to the offender in terms of his applying skills developed in institutional vocational and educational programs to community life; this approach also gives paroling authorities a clear indication of his readiness for release and facilitates community acceptance of the ex-offender.[173]

Several programs of this type were noted by the President's Crime Commission.[174] The programs in St. Paul, Minnesota and Multnomah County (Portland), Oregon were typical.

- All inmates in the St. Paul, Minnesota workhouse (mainly misdemeanants) were assigned to either school or work programs. Inmates on the work-release program receiving standard wages and not attending school paid three dollars a day for room and board and furnished their own transportation. The institution received an average of $25,000 annually from work releasees. The Office of Economic Opportunity allotted funds for interviewing, counseling, and testing of participants over 21 years of age. Professional and lay volunteers from the community provided assistance. As of 1965, more than 93 percent of the prisoners selected by the institution for work or school release had not been returned to the institution because of a subsequent offense.
- Multnomah County, Oregon had established special facilities as an adjunct to the county jails. Offenders from State and Federal penitentiaries could be transferred to the work-release program, which included counseling and tutoring. The County Correctional Institution, rather than the courts, selected inmates suitable for participation. Recidivism of released inmates was estimated at less than 20 percent after two years of operation.

Work furloughs have been used by some States in long-term as well as short-term institutions. Since 1966, for example, the Parole and Community Services Division of the California Department of Corrections has contracted with counties for the provision of work and training furlough programs. In 1969, seven counties had entered into contractual arrangements with the State, while 22 others conducted their own programs of this type. The Division also administers two work/training furlough programs through its Community Correctional Centers. In addition, the Director of Corrections has established Community Correctional Centers in four State institutions to develop work/training furlough programs for inmates. During fiscal 1968-69, the 679 participants in these programs earned over $500,000. The division concluded that work furlough/training has proven to be more effective than conventional release programs. A 12-month follow-up revealed that 14 percent of the furloughees on parole had been returned to prison, compared with 18 percent of the non-furloughees. The return rate based on a 24-month follow-up was 19 percent for furloughees and 32.8 percent for non-furloughees.[175]

More recently, as a result of a 1968 amendment to the State's Penal Code, inmates in California's prison system are eligible for 72-hour unescorted work furloughs 90 days prior to their release. Inmates may use these furloughs to take job interviews, college entrance examinations, and tests for a drivers license, and to make housing arrangements. Procedures established by the Department of Corrections restrict inmates to no more than two furloughs. In contrast with furlough programs in many other States, no statutory restrictions are placed on the types of prisoners who may participate. During the first six months of 1969, 795 inmates were furloughed. In an evaluation of this program in one institution, the Southern Conservation Center, caseworkers rated the work furlough experience favorably.[176]

A similar type of program—which permits certain inmates to be granted ten-day furloughs to attend funerals or to seek employment or engage in other rehabilitative activities—has been established under 1969 Maine legislation.

The State Role. In 1970, administration of short-term institutions and jails was a local responsibility in 43 States. Only six States had assumed this role, and in one other it was performed on a State-local basis. At the same time, however, some States set standards and provided financial and technical assistance to cities and counties in this corrections activity.

Connecticut, Delaware and Rhode Island had taken over operation of local jails by 1965. In Connecticut, for example, the Department of Corrections administers all adult correctional facilities and programs, operating 12 correctional institutions, including seven community correctional centers (formerly jails) for prisoners awaiting disposition and for those serving short terms.[177] Since then, a number of States have assumed full or partial responsibility for operating local jails and short-term institutions. The Vermont Department of Corrections took control of county jails in April 1969,

and replaced them with four community correctional centers.[178] In other States—including Maine, Massachusetts, and North Carolina—short-term misdemeanant offenders are now committed to correction institutions, farms, and road camps, while county jails are used only for detention.

State supervision and assistance to jails and other local institutions took the form of standard-setting or inspection of facilities. Some type of standards covering local institutions or jails were set in 29 States where misdemeanant corrections was still locally administered. But they focused almost exclusively on construction and health matters, while personnel, salaries, and programs were rarely considered. Jail inspection by State authorities occurred in 19 States, with 11 inspecting local institutions.[179] However, the President's Crime Commission commented, "... even in those States that authorize and even legislate inspection and consultation services, the calibre and efficacy of the services are questionable."[180] In only six States was standard-setting or inspection accompanied by State subsidies for needed improvements.[181]

Case studies of State-local and inter-local cooperative and non-cooperative arrangements for local adult correctional institutions were found in the States' 1969 and 1970 applications for LEAA funds. The following examples have been taken from selected State comprehensive law enforcement plans.

- **Alaska**: The State Division of Corrections has contracts with city jails, non-profit rehabilitation agencies, and the Federal Bureau of Prisons for the placement of convicted adults and juveniles.
- **Georgia**: Each level of government acts independently. Counties and cities have complete authority over their local jails and set their own regulations and standards. In most counties, no effort has been made toward joint utilization of jail facilities between the county and its municipalities.
- **Kansas**: The Topeka Police Department makes use of the county female jail facilities.
- **Kentucky**: Cities are not required to maintain jails; 299 of the 350 municipalities in the State pay their counties for the use of their jails.
- **Minnesota**: State and Federal work release inmates in Ramsey County (St. Paul) are housed in the county workhouse through a cooperative agreement with the sheriff. Joint city-county and county-city jail arrangements and sharing of probation and parole services also are used.
- **Nebraska**: The State Penal and Correctional complex makes its facilities available to other State and local law enforcement agencies to provide safekeeping of offenders who are not formal inmates of the penitentiary.
- **New Mexico**: Cooperative arrangements exist throughout the State for the use of county jails. The counties provide jail space for Federal prisoners. In most counties, prisoners charged with a felony by city officers are, upon arraignment, transferred to the county jails.
- **North Dakota**: Many smaller counties have contracted their prisoners to jails in larger counties.
- **Oregon**: The State Corrections Work-Release Unit has formal agreements with 17 counties and, in 1970, 13 had custody of work-release prisoners. In the majority of counties, the sheriff's office maintains a county jail which houses prisoners for the city police department, usually on a contract basis. Several less populous counties do not maintain a county jail, but board their prisoners with the sheriff of another county. Larger cities have their own jails and board with the county on an overflow basis.
- **Pennsylvania**: Legislation was passed in 1965 establishing regional correctional facilities administered by the Bureau of Corrections as part of the State system, establishing standards for county jails, and providing for inspection and classification of county jails and for commitment to State correctional facilities and county jails.
- **Texas**: There is a growing movement for city police agencies to use the county jail for an agreed-upon fee. An example is the Bexar County Jail, which also is used by the San Antonio Police Department.
- **Washington**: Local jails throughout the State are, for the most part, inadequate, outdated, and overcrowded. To help alleviate this problem, some police departments have contracted with other law enforcement agencies having adequate facilities to provide for the detention of their prisoners.

Adult Probation

In 1965, over 144,000 adult defendants convicted in felony cases were placed on probation by the courts, bringing the total number of such offenders under probation supervision to more than 230,000 by early 1966. At that time, the average length of stay on probation was 29 months. The median caseload per probation staff member was 92, nearly twice the prescribed standard.[182]

Adult probation is regulated by statute, and restrictions on its use as a disposition by courts having felony jurisdiction were found in 35 States. The offenses for which it was most frequently excluded were murder,

rape and other capital crimes. Adult probation practices in regard to other offenses varied considerably among the States, as indicated by Table 39.

The NCCD surveyed the administrative and organizational structures of probation departments in the 50 States and the District of Columbia and selected counties. Each State authorized probation by statute, and some type of probation services were found in 91 percent of the counties and districts in these States. Counties operated probation in 14 jurisdictions,[183] including Delaware where pre-sentence investigations were made by county probation officers but probationers were supervised by a State agency.[184] Generally, the courts administered county probation systems.

Table 39
TYPES OF LEGAL RESTRICTIONS ON THE USE OF PROBATION, 1965

Statutory Exclusion	Number of States[1]
By—	
Type of offense	28
Previous convictions	9[2]
Armed at crime	4
Maximum sentence	8[3]
No restrictions	15

[1] Some States restrict in two or more categories.
[2] Varies for these States by number of prior convictions for specific offenses such as sale or possession of narcotics.
[3] Five years or more in one State; 10 years or more in three States; five in four States.
Source: President's Crime Commission, *Task Force Report: Corrections,* p. 170.

In 37 of the 51 jurisdictions, adult probation was a statewide system operated by a State agency. These included 17 States in which there was some combination of county and State services such as: the State agency furnished basic services on request to the courts (three States); or certain counties handled services in their area and the State agency provided them in the remaining counties (14 States).[185] The types of agencies involved in the 37 State-operated systems are shown in Table 40.

State standard-setting occurred in eight States where local systems existed alongside a State-operated system. The standards related to staff qualifications, salaries, practices, or work load (Table 41). Standard-setting was usually a function of executive rather than judicial agencies.[186]

Five States subsidized the local probation agency.[187] One State paid the salaries of officers appointed by judges from a State-certified list. A second State hired probation officers, assigned them to the court upon request, and administered probation services. In another, counties meeting certain State standards were subsidized in accordance with their ability to use probation to reduce commitments to State institutions. A fourth State reimbursed counties or municipalities for

Table 40
ADMINISTRATIVE PATTERN OF STATE ADULT PROBATION AGENCIES, 1965

Pattern	Number of States
Probation combined with Parole	
Board, Commission or Department (Independent of Correction Department)	18
Division within Correctional Department	12
	30
Probation Separate from Parole	
Commission	2
Board	1
Department	1
Bureau in a Department	1
Court Administrator	2
	7
Total	37

Source: President's Crime Commission, *Task Force Report: Corrections,* p. 172.

Table 41
ROLE OF THE STATE IN LOCAL ADULT PROBATION PROGRAMS, 1965

Function		Number of States
Sets standards		8
Re:	Staff qualifications	7
	Salaries	4
	Practices	3
	Staff ratios (caseload size), officers-supervisor, etc.)	5
Subsidy for:		5
	All probation officer personnel	1
	Direct service grant	1
	New probation officer personnel only	1
	50 percent of total costs except capital outlay	1
	Increased use of probation	1
Consultation, etc.		8
Central statistical accounting		38

Source: President's Crime Commission, *Task Force Report: Corrections,* p. 173.

half of their total probation costs, except capital expenditures. And a fifth subsidized the cost of greater local pre-sentence investigations and probation disposition.[188]

Turning to non-financial assistance, eight States provided consultation services to counties. Other types of State help included inservice staff training, regional seminars, and scholarships to probation officers to attend graduate schools of social work.[189]

Illustrative of some of the ways States and localities divide responsibility for adult probation services are the following examples cited in the 1969 and 1970 State comprehensive law enforcement plans submitted to LEAA.

- **Colorado**: Probation departments are administered locally by judicial districts, and the State contributes toward the salaries of qualified personnel. Three metropolitan judicial districts, comprising seven counties, have combined adult probation services into one large division.
- **Connecticut**: The State Commission on Adult Probation provides pre-sentence investigatory and post-sentence supervisory probation services to the circuit and superior courts.
- **Georgia**: In addition to the State probation system, there are five county-operated systems.
- **Kansas**: Probation is a State responsibility except for counties over 115,000 population, which are permitted to use the court bailiff as a parole and probation officer.
- **Massachusetts**: Services are partially State-financed and staffed. Counties bear the cost of district and municipal court probation staff.
- **Michigan**: Adult probation is basically a responsibility of local circuit, recorder's, district, and municipal courts, but the State Department of Corrections assigns a probation officer to every circuit court and each county, except Wayne.
- **Minnesota**: A statewide probation and parole system is operated by the Department of Corrections. Approximately 100 agents serve 84 of the State's 87 counties, either as State employees or as court employees under State supervision. Hennepin, Ramsey, and St. Louis counties—the three largest in the State—employ their own probation officers.
- **New York**: The State supervises and pays half of the operating costs of local probation services, provided that minimum standards are met. The State also offers scholarships to county probation officers for graduate social work training and conducts training programs.

Interstate cooperation in adult probation is accomplished through the Interstate Compact for Supervision of Probationers and Parolees. Under this compact—which has been signed by all the States—the States agree to permit probationers and parolees to return to their home State for supervision when they have been adjudicated or found delinquent elsewhere.

State Correctional Institutions for Adults

The term "adult correctional institution" covers a wide variety of facilities and programs, including prisons, penitentiaries, reformatories, industrial institutions, prison farms, conservation camps, forestry camps, and the like. They are State-operated facilities which receive felons sentenced by the criminal courts for imprisonment in excess of one year. However, felonies are defined differently in various criminal codes and, consequently, some institutions covered here receive persons who in other jurisdictions might be regarded as misdemeanants. Because some States use the same facility for both adults and juveniles, the minimum age of offenders may vary from 15 to 21 years. Further inconsistencies appear because in some States the lines separating State and county jurisdictions are vaguely drawn.[190] NCCD found that in one State, for example, over 2,000 prisoners were serving sentences exceeding two years in county jails and local institutions.[191]

According to the NCCD survey, in 1965 there were 358 State correctional institutions for adults in the jurisdictions examined. These had an average daily population of 201,220, and the average length of stay was less than 18 months in 12 States and more than 30 months in 15 States. Thirty-five of these institutions housed only women, 41 received only youthful offenders, and 34 handled only misdemeanants. Fifty-five of the institutions were maximum-security, and 103 were minimum security. Over half of all correctional institutions were penitentiaries, prisons, or other major facilities; almost one-eighth were reformatories, industrial schools, or vocational institutions; and nearly one-fifth were ranches, camps, or farms.[192]

Organizational arrangements for State institutions are considerably less varied than those for other correctional functions. As of 1965, in 34 States adult institutions were administered by an agency having additional correctional responsibilities. In 13, unifunctional State boards were assigned this task. In three States, each adult institution was separately administered.[193]

Attempts to develop interstate arrangements for the confinement, treatment, and rehabilitation of offenders have led to the ratification of interstate compacts in three sections of the country.[194] The New England

Corrections Compact permits the member States to confine male or female offenders in each other's institutions. By 1962, all of the New England States had ratified this compact. A similar agreement, the Western Interstate Corrections Compact, has been adopted by Alaska, California, Colorado, Hawaii, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming. Use of the Western compact, however, has not been as extensive as the New England agreement. The South Central Interstate Corrections Compact was drafted in 1955, and provides for incarceration and related services for women prisoners. But, to date only Arkansas and Tennessee have ratified this compact. Though it is officially in effect between these States, it apparently is not being used.

The President's Crime Commission found major "peaks and valleys" in the quantity and quality of programs offered in State correctional institutions. Custody and control were the predominant orientations of the programs and professional staff. Basic medical, nutrition, and classification services were provided by virtually all institutions, and some type of vocational and academic training and inmate counseling was usually made available. The relevance of the latter to the demands of modern society, however, was subject to question.

Adult Parole

A growing number of adult felons, now more than 60 percent, are being paroled from penal institutions across the country. In other words, they are released into the community after part of their sentences have been served, under State supervision and conditions which, if violated, result in their return to prison.[195] A parole officer supervises the parolee and attempts to ease his re-entry into community life and simultaneously to oversee his activities.[196]

The decision to grant parole to adult offenders may depend on statutes, on the sentence imposed by the court, or on the determination of correctional authorities or an independent parole board. Sentencing is not standardized, and laws on eligibility for parole also vary. The legislature prescribes the boundaries of court and parole board action. The courts in turn render judgments which frequently circumscribe parole board discretion. Nevertheless, in some cases the parole board may be relatively free to determine the conditions of parole and to administer the agency in charge of parole supervision.[197]

The diverse practices among the States' parole systems were highlighted by the 1965 NCCD findings. In 42 States, statutes determined the minimum period of time to be served before parole could be granted. The laws of 27 States excluded more serious offenders from consideration for parole. In 18, the parole board lacked power to release a parolee before the maximum term had expired. And in 38 jurisdictions, inmates were forbidden to participate in work-release prior to parole.[198]

The parole–unconditional discharge ratio was 2:1 in 1965, with wide State-by-State variations in practices reported. In many States, heavy use of parole corresponded with long periods of imprisonment. The NCCD found that States where parole accounted for a relatively greater percentage of releases were the same ones that released a smaller percentage of the total prison population, and consequently were holding offenders in institutions for longer periods. Throughout the country, States making comparatively heavy use of parole were the ones whose courts imposed long sentences.[199]

The decision to release offenders on parole was centralized in 47 jurisdictions in a parole board, which was an independent agency in 41 States. In 43 States, the board had full and exclusive power to authorize and revoke paroles. In the remaining eight, the board played an advisory or otherwise limited role. Parole boards in 45 States were also responsible for other functions–such as holding clemency hearings, commuting sentences, appointing parole supervision staff, or administering parole services.[200]

Parole board members were appointed by the Governor in 39 States. In a few States, certain public officials held board membership ex-officio. There was a part-time parole board in 25 States, a full-time board in 23, and three had a combination of the two. Usually, part-time parole boards were found in the smaller States. Among the ten largest States, only Illinois had a part-time body. A few States had minimum membership qualifications. Michigan and Wisconsin, for example, required appointees to have a college degree in one of the behavioral sciences and experience in correctional work. California used professional parole examiners to conduct hearings and interviews for the parole board. The examiners had the power to make certain kinds of decisions within the policies fixed by the board, permitting the parole board to concern itself with broad policy matters, and reducing the need to increase the size of boards which have growing workloads.[201]

Two types of structures administered the day-to-day operation of parole services. In the first, found in 20 States, the parole executive was responsible to the department that had general administrative responsibility for the corrections system; in the second, found in 31 States, he was responsible to the parole board.[202]

Probation and parole were administered jointly by one State agency in 30 States. In 21 States–mainly

those with large populations—parole was operated as a separate service.

Summing Up

Despite the wide diversity in the division of intergovernmental and intragovernmental responsibilities for correctional programs, certain general patterns are evident in the ways in which State, county, and city agencies have handled the various corrections functions and the effectiveness of their performance.

Statutory imprecision and inconsistencies concerning juvenile court jurisdiction have contributed to serious inequities in the use of juvenile detention. Most laws fail to make adequate distinction between the conditions under which shelter care rather than detention should be provided and to indicate clearly the responsibilities of courts, police and probation officers in making decisions to detain or release juveniles. These disparities are compounded by a serious shortage in county and city juvenile detention facilities and, as a result, juveniles are often detained in jails or police lockups. Most States have no prohibition against placing children in jail, and even the few that have such restrictions frequently fail to enforce them. Although two-fifths of the States provide consultation service to counties, the quantity and quality of such assistance is uneven. Only a handful of States make their funds available to cover part of the cost of detention facilities and services. Yet, several State governments have assumed substantial operational, regulatory, and supervisory responsibilities for juvenile detention.

In over half of the States, juvenile probation services are a county or city responsibility, supported by State standards, supervision, and technical assistance. Only 12 States have a centralized statewide system. In two-thirds of the States, probation services are administered by the courts. About one-third subsidize part of the costs of local probation departments serving juvenile courts, while two-fifths provide consultation services to local courts. Although counties in over half the States have juvenile probation staff, the services provided by some are only token.

For the most part, juvenile training schools are State-administered. In half of the States, the parent agency has only correctional responsibilities, while in one-third it is the public welfare agency. Only a half dozen States subsidize certain components of locally-operated programs.

Forty States have centralized State-operated juvenile aftercare systems. In a few, local probation departments are responsible for aftercare, even though they lack any official relationship to the State agency that administers juvenile training schools. In some States that require the committing judge to approve the decision to release a juvenile offender, adequate information regarding the child's institutional record and behavior are unavailable to him.

Although courts with jurisdiction limited to misdemeanants handle the bulk of offenders, they are seriously handicapped by a lack of adequate probation services. Nine States have restrictions on the use of misdemeanant probation. Two-fifths have some type of statewide probation system serving misdemeanant courts, while another two-fifths organize such services on a city, city-county, county, or court district basis. Usually, only minimal probationary services are provided at the local level, particularly in nonmetropolitan areas, and performance at the State level is not much better. In States having a local system, counties in metropolitan areas furnish most services. About one-eighth of the States provide consultative assistance to or set standards for locally-operated programs.

Most jails and short-term institutions have grossly inadequate physical facilities, programs, and staff. Many reflect a custodial rather than a rehabilitative orientation. Several jurisdictions fail to provide separate institutions for felons and misdemeanants and for juvenile and older offenders. An encouraging development is the use of work-release or programs in more than half the States. Most States have refrained from assuming full responsibility for operating local jails and short-term institutions, although a few have done so and have replaced local jails with community correctional centers. Sixty percent of the States have set standards for construction and health conditions in local jails and institutions, but many of these neglected to deal with personnel, salaries, or programs. Most States offer jail inspection services, although only one-eighth accompany standard-setting or inspection with financial aid.

Most States and counties have adult probation programs, and in three-fourths of the States, probation is a statewide system operated by a State agency. Only five States offer subsidies to local probation agencies.

In many States, heavy use of adult parole correlates with relatively long terms of imprisonment. In practically all States, the decision to release offenders is made by an independent parole board, which also is responsible for performing certain other functions—such as holding clemency hearings, commuting sentences, appointing parole supervision staff, or administering parole services.

Structurally, corrections is the most fragmented component of the criminal justice system. Fiscally, the nine major correctional activities have been weak competitors with law enforcement agencies for scarce budget dollars,

particularly at the city and county levels. Publicly, concern with the quantity and quality of correctional services has not been great and, in some cases, it has bordered on indifference. The impact of these and other factors upon the problems and issues confronting the delivery of correctional services will be examined in the next chapter.

F. STATE AND LOCAL LAW ENFORCEMENT AND CRIMINAL JUSTICE COORDINATING MECHANISMS

The major components of the law enforcement and criminal justice system do not comprise a system in the sense of a smoothly functioning, internally consistent organization. Not only is there fragmentation and lack of coherence within each element, there is also a serious lack of coordination among the elements even though the operation of each component has a direct bearing on the functioning of the others. The reasons are obvious: constitutional separation of powers between the judicial and executive branches; variations among the police, courts, and corrections in the State-local sharing of responsibility for supervising, performing, and financing the function; different vocational or professional training and experience of policemen, prosecutors, judges, and correctional workers; unwillingness or inability of law enforcement and criminal justice administration personnel to share views of their respective missions and problems with one another, and different political environments or civil service systems under which the functionaries of each component are selected, hold their jobs, and operate.

Within each function, certain organizations, both private and public, have sought to provide a statewide forum for exchange of views, advancement of professional goals, and promotion of interlevel and sometimes interfunctional cooperation. The 29 State judicial councils, conferences or associations which open their membership to all judges attempt to perform these functions.[203] In addition, the 96 other judicial boards and councils in 42 States that limit their membership by size, jurisdiction or level assume some of these vital roles. Professional organizations for police chiefs and officers,[204] district attorneys, and correctional personnel exist in nearly all the States, and serve as mechanisms for promoting vocational standards and goals for their respective membership.

In many States, there are criminal justice mechanisms, other than those set up pursuant to the Safe Streets Act, which provide a forum for some interfunctional coordination. At least 19 judicial councils open their membership to prosecuting attorneys, and the Attorney General is a statutory member of such councils in 11 States.[205] These bodies thus provide a means for some interfunctional coordination between judicial and prosecution personnel. In 27 States, the attorney general or his delegate serve as members of statewide police training councils.[206] In another ten States, the attorney general has statutory responsibilities in the penal system, generally serving as a member of the State board of pardons and parole.[207] These roles of the attorney general may foster cooperation among police, prosecution, and correctional personnel.

State-Planning Agencies

Attention has been increasingly directed, in recent years, toward providing at the State, areawide, and local levels some kind of mechanism to help the segments of the criminal justice system work together more harmoniously and effectively. In view of the difficulties of achieving a unified, centralized, comprehensive structure—because of the separation of powers, if nothing else—practical interest has centered on providing a framework for assessment of problems and planning of programs embracing all areas of criminal justice activity.[208] A significant culmination of this interest came in March 1966 when President Johnson suggested that governors establish State planning committees to maintain contact with the President's Commission on Law Enforcement and Administration of Justice and other interested Federal agencies, to appraise the needs of their State criminal systems, and to put into effect proposals of the Commission that they found to be worthwhile.[209] Subsequently, under the Law Enforcement Assistance Act of 1965, matching funds up to $25,000 were made available by the Justice Department's Office of Law Enforcement Assistance (OLEA) to encourage each State to set up such a planning committee. When the Omnibus Crime Control and Safe Streets Act of 1968 supplanted the 1965 act, each State was required to set up a State law enforcement planning agency (State planning agency or SPA) as a permanent decision-making and administrative body to receive block grant awards from the Law Enforcement Assistance Administration (LEAA) and to disburse subgrants to local governments. Federal planning funds were available for up to 90 percent of the cost of establishing and operating this agency. By December 1968, all States had created a law enforcement planning agency.

The composition and functioning of the SPAs as of February 28, 1970 are described and appraised in detail in this Commission's earlier report on the Safe Streets Act.[210] In brief, the planning agency usually has a full-time professional staff and is required to have a

supervisory or policy board. ACIR found in early 1970 that the professional staffs averaged less than ten people and some had suffered from a high turnover rate among executive directors. The supervisory boards were required to be "broadly representative" by LEAA guidelines, but some lacked adequate representation of local elective policy-making officials and the citizenry-at-large.

Overall, however, public members constituted one-sixth of the membership of the typical SPA in 1969, and locally elected policy or executive officials one-tenth. State and local police accounted for almost one-quarter and corrections and juvenile delinquency officials for one-sixth. State legislators, on the other hand, provided, on the average, less than four percent of the board members, and 29 of the 46 SPAs providing data had no legislative spokesmen. While judicial and prosecution personnel combined, nearly equalled the proportion for police, judges from the States' highest tribunals made up a meager one percent of the total and 34 of the 46 States had no representation from this source of judicial leadership. Not to be overlooked is the fact that in 1969 attorneys general were not members of their respective SPAs in at least six States and deputies, not the attorney general, were members in four others. These various findings have succeeded in generating considerable controversy in many quarters as to what "balanced representation" on SPAs really means, both as to the proper state-local-public member division as well as to the best mix of criminal justice functionaries.

State plans are supposed to include an analysis of law enforcement needs, problems, and priorities; an examination of existing law enforcement agencies and available resources; a multi-year projection of financial and budgetary plans and program results; a detailing of the annual action program; a description of SPA organization, operation, and procedures and the fund availability plan for local governments; a review of related law enforcement plans and systems; and a statement of compliance with statutory requirements. Many of the 1969 plans were not comprehensive and put most of their stress on police needs with programs in this sector ultimately receiving 75 percent of the 1969 action funds. Often the plans were quite rudimentary, but this was understandable in view of the relatively brief period in which they had to be prepared. Analysis of the 1970 plans, however, suggests a somewhat broader concern with other components of the criminal justice system, with corrections overall being slated for 27 percent and courts for 7 percent of the action funds. Balanced consideration of all the criminal justice components is a continuing concern of those desiring success for the program.

Regional Planning

The Safe Streets Act and LEAA guidelines also encourage States to initiate criminal justice planning on a metropolitan, regional, or other "combined interest" basis. Forty-five States had established regions for this purpose in early 1970, and 41 had created regional boards modeled largely on the SPA supervisory board. In at least 30 States, organizations were used which had been established for other regional purposes.

Analysis of the membership of the regional law enforcement planning districts in 31 States providing the necessary infromation reveals a somewhat different composition than that of the typical SPA (see Figure 4). Local policy-makers and executives constituted 16 percent of the membership of the typical district board and public members 27 percent. Judicial and prosecution personnel together accounted for a little over 16 percent, corrections people for over six percent, and police for about 35 percent of the membership of the average regional planning agency. The average regional policy board in 1970 had six percent more local executives, over ten percent more public members, ten percent more police officials, four percent fewer judicial and prosecution representatives, and ten percent fewer corrections personnel than the typical SPA. The regional boards in the 31 States analyzed had a total of 5,048 members in 1970 and the size of the average individual board was 17.

Nearly all the regional bodies performed planning. Three-quarters coordinated the planning efforts of localities within their jurisdictions, and reviewed applications from localities for action subgrants. Thirty-six of the 43 districted States providing information on the subject indicated that their regional planning agencies had full-time professional staffs.

These regional planning districts received the lion's share of the 40 percent pass-through planning funds in 1969. In 29 of the 45 districted States, these units were the only eligible receipients of these funds. Overall 70 percent of the 1969 planning subgrants actually awarded went to these districts.

Local Coordinating Councils

The need for some type of planning and coordinating mechanism in the criminal justice field is also felt keenly at the local level, where the impact of crime is registered and most of the elements of the law enforcement and criminal justice system function. The President's crime Commission stated:

> . . . much of the planning will have to be done at the municipal level. The problems of the police, and to a certain extent, of the jails, and the lower courts are typically city

FIGURE 4
COMPOSITION OF THE AVERAGE LEAA SUBSTATE POLICY BOARD
BY FUNCTIONAL BACKGROUND
1970*

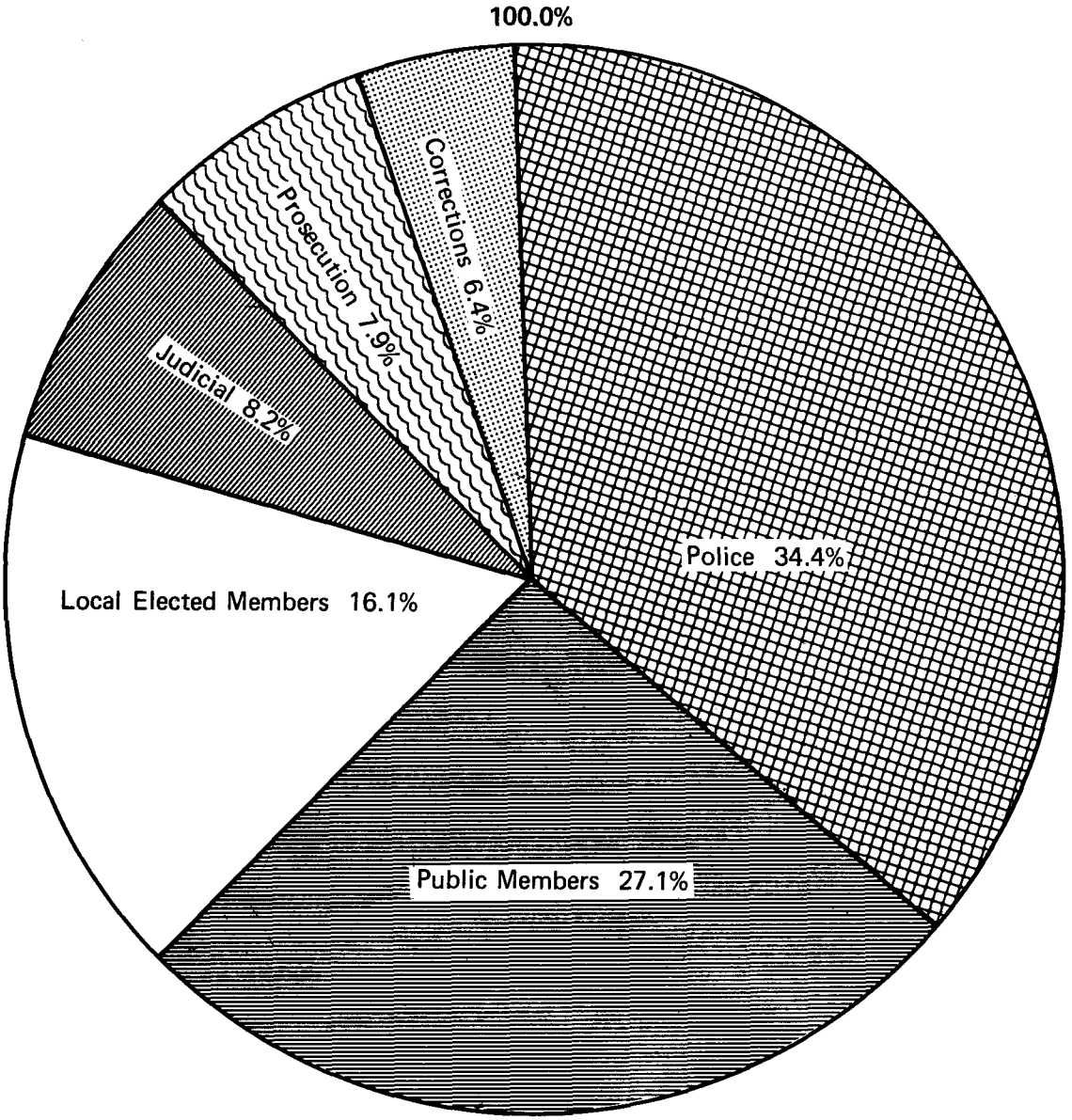


*Figure based on survey of 291 substate regions listed in 1970 LEAA plans for 31 States.

problems. Welfare, education, housing, fire prevention, recreation, sanitation, urban renewal, and a multitude of other functions that are closely connected with crime and criminal justice are also the responsibility of the cities. In some cities members of the mayor's or the city manager's staff, or advisory or interdepartmental committees, coordinate the city's anticrime activities; in most cities there is as yet little planning or coordination.[211]

In a September 1969 report, the International City Management Association reported that 137 of 637 cities surveyed claimed to have criminal justice coordinating councils.[212] No details were provided on the composition, functions, and results of these councils' operations, but the report stated that 58 percent of city officials

reported difficulty in achieving close cooperation and joint planning among the various elements of the criminal justice system.

Possibly best known of the local coordinating councils is the Criminal Justice Coordinating Council of New York City, created by Mayor Lindsay in response to the recommendation by the President's Crime Commission. In April 1969, the date of its first two-year report,[213] the Council had about 60 members, half from public agencies and half from private citizens. All city agencies were represented. Also serving were the president, majority, and minority leaders of the city council, the city comptroller, members representing various private interest groups, and a private citizen designated by each of the five borough presidents.

The Council's 1969 report indicated that it emphasizes action rather than studies. "Its committees work to implement specific reforms in the criminal justice system through experimentation and pilot projects."[214] The Vera Institute of Justice was its overall consultant and, with Ford Foundation assistance, was helping the Council to design a series of pilot projects and develop a comprehensive plan for the administration of criminal justice.

The mayor designated the Council as the official city planning agency under the Safe Streets Act, and in this role it works closely with the State planning agency in developing a city comprehensive criminal justice plan. In addition, the Council served as one of 13 regional agencies designated by the State to perform the regional planning functions mentioned above.

LEAA Stimulation through Discretionary Grant Funds. The Safe Streets Act sets aside certain action monies which may be allocated at the discretion of LEAA. These amounted to $32.25 million in fiscal year 1970. LEAA views the funds "as the means by which the Law Enforcement Assistance Administration can advance national priorities, draw attention to programs not emphasized in State plans, and provide special impetus for reform and experimentation within the total law enforcement improvement structure created by the Act."[215]

One of the areas targeted for discretionary funds, according to the guidelines, are large cities, in order to offer supplemental support for the places of highest crime incidence. One of the specified eligible projects for such grants are special city-wide coordinating or planning councils or commissions. These units are normally to be located in the mayor's office, public safety department, or some other department of city government with broad law enforcement or criminal justice jurisdiction. Their purpose is "to develop, coordinate, and monitor concerted efforts among police, court, prosecution and correctional agencies to improve criminal justice capabilities in the target city."[216]

In 1970, four cities received $625,000 from the LEAA discretionary fund to promote the activities of local criminal justice coordinating councils. Reading, Pennsylvania used its grant to finance several pilot projects for improved crime control; Akron, Ohio funded an information interchange among the over 40 criminal justice agencies operating in the city; Philadelphia and Washington, D.C. used their grants to develop a coordinated criminal justice statistical system.[217]

In summation, criminal justice coordinating mechanisms have taken the following form:

- Judicial councils and statewide police training councils have opened their membership to other elements of the criminal justice system, particularly prosecution personnel. In a number of States, the attorney general is a member of these boards, and he also serves on a number of State boards of pardons and parole, thereby exercising some supervision over the penal system.
- State criminal justice planning agencies set up pursuant to the Safe Streets Act provide a significant forum for interfunctional coordination in the criminal justice system. Most such boards have representatives from all the components of the system, yet some State planning agencies have not included top criminal justice officials such as the attorney general or members of the State supreme court. Additionally, some agencies have limited membership from elected policy-making officials and the general public.
- The regional law enforcement districts in the 45 States having them provide another potentially significant means of furthering interfunctional coordination. Practically all of them have planning responsibilities and in about three-quarters of the districted States, they coordinate local planning efforts, review local action subgrant proposals, and possess a regular staff to perform these functions. The typical regional board has more local officials and more public members than the average SPA. But it also has more police and fewer corrections, judicial, and prosecution representatives than the average SPA and this raises a basic question of interfunctional balance at least with the regional distircts in the 31 States analyzed.
- Local criminal justice coordinating councils existed in 137 cities as of September 1969. In some cities these councils have given the mayor a better overview of the local criminal justice process,

resulted in demonstration projects for innovative and coordinated crime control and promoted a greater awareness of the integral nature of the criminal justice system.

FOOTNOTES CHAPTER 3

[1] *The Challenge of Crime in a Free Society* (Washington: U.S. Government Printing Office, 1967), pp. 7-10.

[2] Daniel J. Freed, "The Nonsystem of Criminal Justice," in National Commission on the Causes and Prevention of Violence, *Law and Order Reconsidered* (Washington, 1970), p. 267.

[3] "Proportion" refers to the relative distribution of total police strength among State, county, and "other local" governments.

[4] U.S. Bureau of the Census. *Local Government in Metropolitan Areas.* 1967 Census of Governments, Volume 5, Tables No. 5, 9.

[5] "Hundreds" were groups of local families, 100 in number, which were the base of the voluntary local police force. The President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: *The Police* (Washington: U.S. Government Printing Office, 1967), p. 3.

[6] Bridenbaugh, Carl, *Cities in Revolt* (New York: Capricorn Books, 1964), pp. 107-110.

[7] Brown, Richard Maxwell, "Historical Patterns of Violence in America," in National Commission on Causes and Prevention of Violence, *Violence in America: Historical and Comparative Perspectives* (Washington: U.S. Government Printing Office, 1969), pp. 40-41.

[8] Smith, Bruce, *Rural Crime Control* (New York: Institute of Public Administration, 1933).

[9] Investigative activities are related to the solution of a specific criminal act. Intelligence activities are broader in scope, often taking the form of general surveillance of known criminals. These facets of police work may be separate functions in the largest police department.

[10] International City Management Association, *Municipal Police Administration,* (Washington: ICMA, 1969), p. 136.

[11] Public Administration Service, *Police Services in Saint Louis County* (Chicago: Public Administration Service, 1967).

[12] *Ibid.* p. 37.

[13] International City Management Association, *Municipal Year Book - 1963* (Washington: ICMA, 1963), p. 416.

[14] _____, *Municipal Year Book - 1964* (Washington: ICMA, 1964), p. 412.

[15] _____, *Municipal Year Book - 1966* (Washington: ICMA, 1966), p. 468.

[16] Thus, the Massachusetts State Planning Agency proposed that "... experimentation begin to abolish the traditional split in the police function and to attempt new divisions of the police function, such as the testing of the concept of *team policing,* which would place the patrol force and investigative personnel under common supervision." See Massachusetts Committee on Law Enforcement and the Administration of Criminal Justice, "A Summary of the Comprehensive Criminal Justice Plan for Crime Prevention and Control" (Boston: 1969), p. 14.

[17] International City Management Association. *Municipal Police Administration.* (Washington: ICMA, 1969), pp. 152-153.

[18] _____, *Municipal Yearbook - 1968* (Washington: ICMA, 1968), pp. 339-350.

[19] *Ibid,* pp. 342-343.

[20] The "police-lawyer" is one example of an innovative police practice which has come about as police must deal with new legal dimensions of their work.

[21] International City Management Association, "Recent Trends in Police-Community Relations," *Urban Data Service,* March 1970, Vol. 2, No. 3.

[22] U.S. Bureau of the Census, *Report on the National Need for Criminal Justice Statistics* (Washington: U.S. Bureau of the Census, 1968).

[23] Joint Economic Committee, *State and Local Public Facility Needs and Financing,* Vol. I (Washington: U.S. Government Printing Office, 1966), p. 653.

[24] Casey, Roy, "Catchall Jails," *The Annals,* May 1954, Vol. 293, p. 28.

[25] Joint Economic Committee, *op. cit.,* p. 653.

[26] The President's Commission on Law Enforcement and the Administration of Justice, *op. cit.,* pp. 90-92.

[27] James Q. Wilson, *Varieties of Police Behavior: The Management of Law and Order in Eight Communities* (Cambridge: Harvard University Press, 1968).

[28] James Q. Wilson, "Dilemmas of Police Administration," *Public Administration Review,* September-October 1968, Vol. XXVIII, No. 5, pp. 407-416.

[29] President's Commission on Law Enforcement and The Administration of Justice, *op. cit.,* Chapter 5.

[30] Jerome H. Skolnick, *Justice Without Trial: Law Enforcement in a Democratic Society* (New York: John Wiley, 1967), p. 231.

[31] James Q. Wilson, *Varieties of Police Behavior: The Management of Law and Order in Eight Communities* (Cambridge: Harvard University Press, 1968), p. 283.

[32] See James D. Mills, *The Prosecutor* (New York: Farrar, Straus, & Giroux, 1969).

[33] The President's Commission on Law Enforcement and the Administration of Justice, *op. cit.,* p. 31.

[34] International City Management Association, *1970 Municipal Year Book* (Washington, 1970), p. 447.

[35] Russell J. Arends, "Independent County Police Agencies," *American County Government,* May 1967, pp. 38-40.

[36] U.S. Bureau of the Census notes that part-time police constituted 16 percent of total U.S. local police employment; 13.6 percent of metropolitan police employment; and 24 percent of nonmetropolitan police employment. (See *Compendium of Public Employment, 1967 Census of Governments, Vol. 3, No. 2, Table 8.)*

[37] From analysis of 24 States (Alabama, Arkansas, California, Connecticut, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Michigan, Minnesota, Montana, Nebraska, Nevada, New Hampshire, North Carolina, North Dakota, Oregon, Rhode Island, South Dakota, Texas, Vermont, West Virginia, and Wisconsin) it was determined that over 25,000 constables were authorized to be elected as of 1967.

[38] *West Virginia Blue Book - 1968* (Charleston, West Virginia: Jarrett Printing Co., 1969), pp. 584-726.

[39] Correspondence with Dr. Robert B. Higshaw, Director, Bureau of Public Administration, University of Alabama, March 6, 1970.

[40] Advisory Commission on Intergovernmental Relations, *A Handbook for Interlocal Agreements and Contracts* (Washington, D.C.: Government Printing Office, 1967), p. 2.

[41] Ernst W. Puttkammer, *Administration of Criminal Law* (Chicago: University of Chicago Press, 1953), pp. 59-86.

[42] International City Management Association, *The Safe Streets Act: The Cities' Evaluation* (Washington, 1969); Advisory Commission on Intergovernmental Relations, *Making the Safe Streets Act Work: An Intergovernmental Challenge* (Washington: U.S. Government Printing Office, 1970).

[43] International Association of Chiefs of Police, *Comparative Data Report - 1968* (Washington, 1969), p. 21.

[44] John Thomas, "The State of the Art - 1970," *The Police Chief,* August 1970, pp. 64-65.

[45] International Association of Chiefs of Police, *op. cit.*

[46] Data sources are: U.S. Bureau of the Census, *Finances of Employee-Retirement Systems of State and Local Governments in 1968-69,* GF69 No. 2, Table No. 3 (March 1970); Thomas, John, *op. cit.;* Advisory Commission on Intergovernmental Relations. *op. cit.;* U.S. Bureau of the Census, unpublished data on State finances.

[47] Alaska and Hawaii do not have any elected law enforcement officials.

[48] These States were: Delaware, Indiana, Illinois, Kentucky, New Mexico, Tennessee, and West Virginia.

[49] Combinations of salaries and fees are often used in States where salaries are paid to constables in urban areas and fees for constables in rural areas where their work is apt to be part-time in nature.

[50] Advisory Commission on Intergovernmental Relations, *Labor-Management Policies for State and Local Government* (Washington: U.S. Government Printing Office, 1969), pp. 260-263.

[51] John Thomas. *op. cit.*

[52] W. David Curtiss, "Extraterritorial Law Enforcement in New York," *Cornell Law Quarterly,* Vol. L, No. 1, pp. 34-48.

[53] The President's Crime Commission, *Task Force Report: The Police* (Washington: U.S. Government Printing Office, 1967), pp. 38-41.

[54] Frank D. Day, "State Police and Highway Patrols," *The Book of the States 1964-65* (Chicago: Council of State Governments, 1964), pp. 461-466.

[55] The aforementioned data was gathered from various state plans on comprehensive criminal justice planning.

[56] Office of Law Enforcement Assistance, *Crime Laboratories - Three Study Reports* (Washington, 1968), p. 20.

[57] John Thomas. *op cit.*

[58] The President's Crime Commission, *op cit.,* pp. 84-45.

[59] Council of State Governments, *The Handbook on Interstate Crime Control* (Chicago: Council of State Governments, 1966).

[60] Major portions of this description are excerpted from Institute of Judicial Administration, *A Guide to Court Systems* (New York, 1966), pp. 16-20.

[61] Description of State court systems is handicapped by gaps in information, particularly about the lower courts, despite the work of such organizations as the American Judicature Society, the Judicial Section of the American Bar Association and the Institute of Judicial Administration. As one witness before the Tydings Subcommittee on Improvements in Judicial Machinery stated: "There is a serious lack of information about the courts . . . we do not even know how many judges there are in the United States." U.S. Congress, Senate, *Deficiencies in Judicial Administration,* Hearings before the Subcommittee on Improvements in Judicial Machinery, Committee on Judiciary, 90th Cong., 1st Sess., pp. 184-5. Another witness, representing the North American Judges Association, listed as the primary research project for funding under the proposed National Court Assistance Act, "A survey of the lower courts to determine who, where, what they are–selection and tenure of judges, salaries, jurisdiction, etc.–as this basic information essential to any program for improvement is not now available anywhere." *Ibid.,* p. 157.

[62] Statutes usually divide crimes into two classes: felony and misdemeanor. Felonies include the most serious offenses–typically those for which the penalty may exceed imprisonment for a year or in which the penalty may be imprisonment in a State prison. All other crimes are referred to as misdemeanors.

[63] Alaska, California, Colorado, Connecticut, Idaho, Illinois, Maine, Massachusetts, Missouri, New Hampshire, New Jersey, North Carolina, North Dakota, Ohio, Rhode Island, and Wisconsin.

[64] Louisiana, Oregon, Virginia, and Washington.

[65] Task Force Report: *The Courts,* p. 30.

[66] American Judicature Society, *An Assessment of the Courts of Limited Jurisdiction,* Report No. 23 (September 1968), p. 2.

[67] Allen Levinthal, *Judicature,* Vol. 48 (February 1965), p. 186.

[68] Task Force Report: *The Courts,* op. cit., p. 29.

[69] Tennessee Law Revision Commission, *The Judicial System of Tennessee–A Background Survey* (March 1966, Mimeo), pp. 31-33.

[70] *Georgia's Law Enforcement Plan, Initial Plan 1969, p. 5.*

[71] Kentucky Commission on Law Enforcement and Crime Prevention, *Comprehensive Criminal Justice Plan* (June 19, 1969, processed), p. B-14.

[72] State of Montana, Governor's Crime Control Commission, *Action Grant Application* (May 22, 1969, processed), p. 39. Comparable conditions are reported in other recent studies of State court systems. See for example A. James Barnes, Ann R. Horowitz, Malcolm L. Morris, *An Analysis of the Indiana Trial Court System* (Bloomington, Ind.: Bureau of Business Research, 1968), p. 3; The Institute of Judicial Administration, *Survey of the Judicial System of Maryland* (New York, 1967), p. 47; (Nevada) Legislative Commission of the Legislative Counsel Bureau, *Nevada's Court Structure, Bulletin No. 74 (December 1968), p. 27.*

[73] Court Study Commission, *Report to the 1963 South Dakota Legislature* (January 1963, processed), p. 4.

[74] Iowa Court Study Commission, *Report to the 61st General Assembly of Iowa* (Jan. 4, 1965, mimeo.), Pt. 1, p. 3.

[75] Task Force Report, *The Courts, op. cit.,* p. 82.

[76] *Georgia's Law Enforcement Plan,* Initial Plan 1969, p. 14.

[77] Edward B. McConnell, "A Blueprint for the Development of the New Jersey Judicial System" (Chicago: American Judicature Society, 1969), p. 6.

[78]State of Arizona, *First Year Plan for Law Enforcement* (April 1969, processed), p. 27.

[79]Governor's Planning Council on the Administration of Criminal Justice, *Initial One-Year Criminal Justice Plan for the State of Alaska* (May 1969, processed), p. 23.

[80]American Judicature Society, *A Selected Chronology and Bibliography of Court Organization Reform* (Chicago, July 1967), p. 14.

[81]State of Vermont, Governor's Commission on Crime Control and Prevention, *Application for Planning Grant under the Omnibus Crime Control and Safe Streets Act of 1968* (processed), p. 14.

[82]Connecticut Planning Committee on Criminal Administration, *The Administration of Criminal Justice in Connecticut.* Initial Plan and Action Program, May 1969, pp. 108-112.

[83]Courts Task Force: *The Courts,* p. 83. The quotation in the New Jersey reference is from Trumbull, "The State Court Systems," *The Annals,* March 1960, p. 139.

[84]State of Illinois, *A Beginning Blueprint for Crime and Delinquency Prevention and Control in Illinois* (June 1969), pp. 20-21.

[85]New York's appropriation was probably larger but it was lumped with appropriations for the Supreme Court, conciliation and mental health information services for a total of $3,793,693.

[86]National Association of Trial Court Administrators, "Survey on the Position of the Trial Court Administrator in the States" (processed) (undated).

[87]American Judicature Society, *Judicial Councils, Conferences, and Organizations,* Report No. 11 (February 1968).

[88]U.S. Department of Commerce, Bureau of the Census, *Popularly Elected Officials of State and Local Governments,* Topical Studies Number 1, 1967 Census of Governments, Vol. 6 (Washington: U.S. Government Printing Office, 1967), Table 15.

[89]American Judicature Society, *The Judicial Rule-Making Power in State Court Systems,* Report No. 13, October 1967.

[90]Civil only in Iowa, Minnesota, Texas, and Georgia; legislature prescribes rules of criminal procedure.

[91]Richard A. Watson and Randal G. Downing, *The Politics of the Bench and the Bar* (New York: John Wiley and Sons, Inc., 1969), p. 225.

[92]The American Judicature Society found that the New Jersey legislature has not enacted legislation implementing the Supreme Court's removal powers. American Judicature Society, *Judicial Discipline and Removal,* Report No. 5 (April 1968), p. 30.

[93]The following figures from the Nevada court study for two overlapping periods illustrate the point:

State of Nevada
Summary of the Number of Judges Initially Appointed to the Bench as Compared to Those Initially Elected

	1864-1967	*1928-1967*
District Courts		
Appointed	54	34
Elected	70	14
Supreme Court		
Appointed	16	11
Elected	21	2

Legislative Commission of the Legislative Counsel Bureau, *Nevada's Court Structure,* Bulletin No. 74 (December 1968), p. 83.

[94]*Task Force Report: The Courts,* p. 32.

[95]The Institute of Judicial Administration, *The Justice of the Peace Today* (New York, 1965).

[96]Glenn R. Winters and Robert E. Allard, "Judicial Selection and Tenure in the United States," in The American Assembly, *The Courts, The Public, and the Law Explosion,* ed. Harry W. Jones (Englewood Cliffs, New Jersey: Prentice-Hall, Inc., 1965), pp. 170-171. Also see Maxine Boord Virtue, *Survey of Metropolitan Courts: Final Report* (Ann Arbor: The University of Michigan Press, 1962), p. 203.

[97]U.S. Bureau of the Census. *Criminal Justice Expenditure and Employment for Selected Large Governmental Units 1968-1969.* Washington, 1970 (forthcoming).

[98]Total State-local intergovernmental aid flows in 1968-1969 amounted to only $17.6 million. Of this total, $7.8 million went from State to local governments while $9.8 million went from local governments to State governments or other local governments.

[99]The Institute of Judicial Administration, *State and Local Financing of the Courts* (Tentative report), New York, April 1969.

[100]For a State-by-State tabulation of provisions for local supplementation of judicial salaries in State-established trial courts of general jurisdiction, see The Council of State Governments, *State Court Systems* (Revised, 1968) (processed), Table V.

[101]See NAAG, "Former Attorneys General Analyze the Office" (tentative draft), September 1970, p. 8 for attorney general opinion as to the desirability of having a system of local prosecutors.

[102]National Association of Attorneys General, "Common Law Powers of the Attorney General" (tentative draft), September 1970, p. 36.

[103]NAAG, "Study of the Office of Attorney General" (Preliminary Draft) June 1970, Section 2.3, p. 4.

[104]National Association of Attorneys General, *op. cit,* Section 2.4, p. 4.

[105]National Association of Attorneys' General, *op. cit.,* see 2.4, p. 5.

[106]See National Association of Attorneys General, *op. cit.,* Sec. 2.1; Institute of Judicial Administration, *State and Local Financing of the Courts* (Tentative Report, April 1969), New York; U.S. Bureau of the Census, *Criminal Justice Expenditures for Selected Large Governmental Units 1968-1969.* Washington, 1970.

[107]In *Gideon v. Wainwright* (372 U.S. 335 (1963)) the U.S. Supreme Court held that the right to counsel set forth in the Sixth Amendment required that State courts inform the defendant who could not afford to hire a lawyer of his right to appointed counsel and to appoint counsel, unless waived by the defendant. In subsequent decisions it ruled that a defendant has the right to counsel prior to police interrogation (*Miranda v. Arizona,* 384 U.S. 436 (1966)), if a minor in delinquency proceedings (*In re Gault,* 387 U.S. 1 (1967)), at post-indictment lineups (*U.S. v. Wade,* 388 U.S. 218; *Gilbert v. California,* 388 U.S. 263 (1967)), at probation revocations (*Mempa v. Rhay,* 389 U.S. 128 (1967)), at preliminary hearings (*Hamilton v. Alabama,* 368 U.S. 62 (1962)), and on appeal (*Douglas v. California,* 372 U.S. 353 (1963)).

[108]President's Crime Commission, Courts Task Force, *The Courts,* (Wash.: U.S. Government Printing Office, 1967), p. 52.

[109]Courts Task Force, *The Courts,* p. 59.

[110]Patrick J. Hughes, Jr., "A National View of Defender Services" (Chicago: National Legal Aid and Defender Association, 1969, processed), p. 1.

[111]*Ibid.*, p. 3.

[112]Joint Commission on Correctional Manpower and Training, *A Time to Act: Final Report* (Washington, D.C.: The Joint Commission, October 1969).

[113]U.S. Law Enforcement Assistance Administration and U.S. Bureau of the Census, Expenditure and Employment *Data For The Criminal Justice System:* 1968-69 (Washington, D.C.: U.S. Government Printing Office, 1970), Table 2.

[114]*Ibid.*, Table 6.

[115]The survey team covered all 50 States and Puerto Rico to obtain information on State services and the State role with regard to local services. In addition, a representative sample of 250 counties was chosen to obtain data regarding local services. For convenience, Puerto Rico was considered as a State, making a total of 51 jurisdictions covered in the survey. Washington D.C. was included in the county sample totals, but in a few cases it was included in the State totals, making a total of 52 States or jurisdictions in those cases.

[116]President's Crime Commission, *Task Force Report: Corrections,* p. 119.

[117]*Ibid.*

[118]*Ibid.*, p. 126.

[119]U.S. President's Commission on Law Enforcement and the Administration of Justice, *Task Force Report: Juvenile Delinquency* (Washington, D.C.: U.S. Government Printing Office, 1967), p. 86.

[120]President's Crime Commission, *Task Force Report: Corrections,* pp. 126-7.

[121]*Ibid.*, p. 127.

[122]*Ibid.*, p. 121.

[123]*Ibid.*

[124]*Ibid.*, pp. 121-22.

[125]*Ibid.*, p. 125.

[126]*Ibid.*

[127]*Ibid.*, p. 124.

[128]*Ibid.*

[129]*Ibid.*

[130]*Ibid.*, p. 125.

[131]*Ibid.*

[132]*Ibid.*, p. 130.

[133]*Ibid.*, 131-33.

[134]Alabama, Arizona, California, Connecticut, Delaware, Hawaii, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Rhode Island, Tennessee, Vermont, Wisconsin, and Wyoming.

[135]President's Crime Commission, *Task Force Report: Corrections,* p. 134.

[136]*Ibid.*

[137]Alaska, Connecticut, Maine, New Hampshire, Puerto Rico, Rhode Island, Tennessee, Utah, Vermont, West Virginia, and Wyoming.

[138]Alabama, Arizona, Arkansas, California, Colorado, Delaware, Florida, Illinois, Indiana, Kansas, Kentucky, Michigan, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Texas, Virginia, and Washington.

[139]Georgia, Idaho, Iowa, Louisiana, Maryland, Massachusetts, Minnesota, Mississippi, North Carolina, and Wisconsin. Montana has a multi-county probation system.

[140]Alabama, California, Colorado, Hawaii, Idaho, Illinois, Maryland, Michigan, Minnesota, Missouri, New York, North Carolina, Ohio, Pennsylvania, Virginia, Washington, and West Virginia.

[141]President's Crime Commission, *Task Force Report: Corrections,* p. 136.

[142]*Ibid.*

[143]*Ibid.*, p. 144.

[144]*Ibid.*

[145]*Ibid.*

[146]*Ibid.*

[147]*Ibid.*, p. 143.

[148]California, Florida, Kansas, Kentucky, Louisiana, Massachusetts, Michigan Minnesota, Missouri, Nevada, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, and Texas.

[149]President's Crime Commission, *Task Force Report: Corrections,* p. 149.

[150]*Ibid.*

[151]*Ibid.*, pp. 149-152.

[152]*Ibid.*, p. 151.

[153]*Ibid.*, pp. 151-52.

[154]*Ibid.*, pp. 156-57.

[155]Alaska, California, Colorado, Massachusetts, Nevada, North Carolina, Texas, and Washington.

[156]President's Crime Commission, *Task Force Report: Corrections,* p. 157.

[157]*Ibid.*, p. 158.

[158]Alaska, Connecticut, Delaware, Florida, Kentucky, Maine, Maryland, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Virginia, West Virginia, Wisconsin, and Wyoming.

[159]President's Crime Commission, *Task Force Report: Corrections,* p. 158.

[160]Alabama, Georgia, Kansas, Massachusetts, Michigan, and Oregon.

[161]President's Crime Commission: *Task Force Report: Corrections,* p. 158.

[162]California, Colorado, Hawaii, Minnesota, Missouri, Nebraska, New Jersey, New York, Texas, and Washington. In Illinois, probation services were provided on a multi-county basis.

[163]President's Crime Commission, *Task Force Report: Corrections,* p. 158.

[164]California, Indiana, Massachusetts, New Jersey, New York, and Ohio.

[165]California, Georgia, Indiana, Massachusetts, Michigan, New Jersey, New York, and Texas.

[166]President's Crime Commission, *Task Force Report: Corrections,* p. 159.

[167]*Ibid.*, pp. 159-61.

[168] *Ibid.*, p. 156.

[169] *Ibid.*, p. 164.

[170] *Ibid.*, p. 163.

[171] *Ibid.*

[172] *Ibid.*, p. 164.

[173] H. G. Moeller, "The Continuum of Corrections," *The Annals of the American Academy of Political and Social Science* Vol. 381 (Philadelphia: The Academy, 1969), pp. 85-86.

[174] President's Crime Commission, *Task Force Report: Corrections,* p. 167.

[175] State of California, *The Work & Training Furlough Program: 1969,* (Sacramento: Department of Corrections, Parole and Community Services Division, December 1969).

[176] State of California, "California's Prerelease Furlough Program for State Prisoners: An Evaluation" (Sacramento: Department of Corrections, December 1969).

[177] Connecticut Planning Committee on Criminal Administration, *The Administration of Criminal Justice in Connecticut: Initial Plan and Action Program,* May 1969, p. 148.

[178] Vermont Governor's Commission on Crime Control and Prevention, "Application for Planning Grant Under the Omnibus Crime Control and Safe Streets Act of 1968," p. 25.

[179] President's Crime Commission, *Task Force Report: Corrections,* p. 166.

[180] *Ibid.*

[181] Maryland and Virginia subsidize local institutions, while Hawaii, Maryland, and Vermont subsidize local jails.

[182] President's Crime Commission, *Task Force Report: Corrections,* pp. 173-74.

[183] Arizona, California, Colorado, Delaware, Hawaii, Illinois, Indiana, Massachusetts, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, and Texas.

[184] President's Crime Commission, *Task Force Report: Corrections,* p. 171.

[185] *Ibid.*

[186] *Ibid.*, p. 182.

[187] California, Georgia, Michigan, Pennsylvania, and New York.

[188] President's Crime Commission, *Task Force Report: Corrections,* p. 172.

[189] *Ibid.*, pp. 172-73.

[190] *Ibid.*, pp. 177-78.

[191] *Ibid.*, p. 178.

[192] *Ibid.*, pp. 179-80.

[193] *Ibid.*, p. 179.

[194] Council of State Governments, *The Handbook on Interstate Crime Control* (Chicago: The Council, 1966), p. 49.

[195] Misdemeanor parole is not considered in this section. Available information indicated that the use of parole for misdemeanants was very limited and in some jurisdictions it was not provided by law.

[196] President's Crime Commission, *Task Force Report: Corrections,* p. 184.

[197] *Ibid.*, p. 186.

[198] *Ibid.*, p. 187.

[199] *Ibid.*, pp. 186-87.

[200] *Ibid.*, p. 187.

[201] *Ibid.*, p. 188.

[202] *Ibid.*, p. 189.

[203] American Judicature Society. *Judicial Councils, Conferences, and Organizations.* Chicago, 1968.

[204] See *The Police Chief,* (October 1965), pp. 179-181.

[205] NAAG. "Tabulation of Questionnaire Data" (June 1970), Table 6.8.

[206] *Ibid.;* John J. Thomas, "The State of the Art–1970," *The Police Chief.* August 1970, p. 64.

[207] NAAG. *op. cit.*

[208] U.S. Department of Justice, *Annual Report* to the President and the Congress on Activities Under the Law Enforcement Assistance Act of 1965 (April 1, 1968), Report No. 16-175, p. 21.

[209] President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in A Free Society* (Washington: U.S. Government Printing Office, 1967), p. 280.

[210] *Making the Safe Streets Act Work: An Intergovernmental Challenge* (Washington: U.S. Government Printing Office, September 1970).

[211] President's Crime Commission, *op. cit.*, p. 280.

[212] International City Management Association, *The Safe Streets Act: The Cities' Evaluation,* (Washington: ICMA, 1969), pp. 6-7.

[213] Criminal Justice Coordinating Council, *Two-Year Report,* April 1969.

[214] *Ibid.*, p. 1.

[215] U.S. Department of Justice, Office of Law Enforcement Programs, Law Enforcement Assistance Administration, *Guide for Discretionary Grant Programs, Fiscal Year 1970* (January, 1970, Processed), p. 1.

[216] *Ibid.*, p. 27.

[217] Law Enforcement Assistance Administration. *2nd Annual Report.* Washington, 1970, p. 68.

Chapter 4

MAJOR INTERGOVERNMENTAL ISSUES

The description in Chapter 3 revealed the complex character of state and local involvement in law enforcement and criminal justice. The complexity is a product of several structural conditions:

- the division of the "system" into several fairly discrete functions (police, courts, prosecution, indigent defense counsel, and corrections);
- the variable pattern of state-local responsibility for organizing, performing and financing each of these functions, and the further division of responsibility among major segments of each of these functions (dramatically in the case of corrections); and
- the existence of the constitutional separation of powers which makes normally difficult interfunctional, interlevel coordination even more difficult.

A final dimension of the complexity, of course, is the fact that each of the 50 states has evolved its own "system" of criminal justice in response to its particular needs, resources, and preferences over the years.

This chapter examines the major intergovernmental obstacles to improving the performance of these state-local systems. The focus is on barriers which must be overcome to achieve horizontal coordination – among governments at the same level, and those which obstruct vertical coordination – between state, regional and local units. The analysis follows the same subject sequence as Chapter 3, police, courts, prosecution, indigent defense counsel, and corrections. A final section is devoted to specific consideration of the problems of achieving more effective overall interlinkages between functions, governmental levels, and the executive, legislative, and judicial branches.

A. POLICE

The police function is a shared responsibility of state and local government. In very broad terms, local governments handle the bulk of police work while State governments have more limited, specialized police duties. Local governments generally perform patrol and criminal investigation duties, whereas State governments, in addition to enacting a criminal code affecting all aspects of the criminal justice system perform highway patrol and, in some cases, render centralized supportive services (i.e., central crime laboratories and criminal records centers) to local agencies. Even with this broad division of labor, there is considerable state-local cooperation in the police function. State police agencies sometimes offer training, crime laboratory, and communications assistance to local police departments, while local governments cooperate with State agencies in matters of criminal records, criminal investigation, and organized crime control.

The shared nature of the police function together with the proliferation of at least 30,000 State and local law enforcement agencies makes intergovernmental coordination of police activities imperative. The need for such cooperation arises from the basic fact that, "Crime is not confined within artificially created political boundaries but, rather, extends throughout the larger community."[1] While the need to control extralocal crime does not necessarily mean that the existing structure of law enforcement is faulty or inappropriate,[2] it does mean that there will be conflicts and inadequacies in police services if intergovernmental cooperation in the State-local police system is lacking or deficient.

No single State or local police agency has sufficient resources to cope with modern crime problems. Instead, police resources must be mobilized from a number of State and local police agencies to insure that each individual department can provide directly, or indirectly, a full range of basic and supportive police services. Formal intergovernmental cooperation, then, creates a police system that can more effectively mobilize its resources to handle those aspects of the crime problems that are beyond the capability of the individual police department.

Intergovernmental issues affecting police occur in three main areas. Some issues are matters of interlocal concern; others are of joint State-local interest; and still others are primarily State concerns.

Interlocal police issues focus on overcoming ". . . fragmented crime repression efforts resulting from the large number of uncoordinated local governments and law enforcement agencies."[3] These issues involve, for example,

interlocal determination of the territorial scope of municipal police powers, the relationships between county and municipal police, the need for reorganizing rural police systems, and the place of the elected law enforcement official in an organized system of local police protection. All such issues involve the balancing of diverse police powers and responsibilities among local governments. Resolution of these interlocal issues may remove many of the jurisdictional and organizational deficiencies in the local police system.

Intergovernmental police issues of a joint State-local concern include such matters as the need for minimum police training standards for local policemen, defining the relationships of State police departments to local agencies, and determining the extent of State-local participation in the financing of police retirement systems.

Of primarily State concern are such intergovernmental matters as the drafting of a criminal code which clearly delineates the scope of legitimate police activities, the modification of State civil service and other regulations that affect local police employment practices, and the development of interstate crime control agreements. These issues are solely within the legal purview of State government, but their resolution has a profound impact on local police systems.

All these intergovernmental issues involve efforts to better define the governmental responsibilities in the State-local police system. They sometimes involve reallocating and frequently clarifying responsibilities so that all police agencies will have access to sufficient resources for comprehensive police services.

Interlocal Police Issues

Several pressing intergovernmental police issues are of an interlocal nature. There is debate over the efficacy of locally elected law enforcement officials and the nature of their relationship to organized police agencies. In nonmetropolitan areas, there is concern as to the adequacy of organized police protection at the sub-county level and the role of the rural county in providing full-time police protection. In metropolitan areas, there is special concern about the need for extraterritorial local police powers, about the nature of city-county police relations, and about the necessity for multicounty organizations that can coordinate police services throughout the entire urban area. These intergovernmental issues, for the most part, may be resolved when appropriate interlocal action is taken.

Issues in Metropolitan Police Protection

The Nation's metropolitan areas are the site of the bulk of the country's criminal activity. Crime rates in metropolitan areas have exceeded those of nonmetropolitan areas by at least 160 percent every year since 1960. Moreover, central city rates surpass nonmetropolitan rates by 300 percent in some cases. Some may doubt the magnitude of these rate differences, given the questionable accuracy of some crime statistics; yet quite clearly, crime control needs are greatest in our metropolitan areas.

To some extent, these areas have faced up to their crime control needs by developing substantial police protection systems. But, the average metropolitan area has a fragmented system of police protection[4] (See Table 42). Some contend that the resulting variety of police forces represents a kind of "consumers choice"[5] wherein inhabitants of the metropolitan area are given the option of deciding the quality and quantity of police services they desire. Thus, the variety of police services reflects a reasonable exercise of local home rule.

Others maintain, however, that problems occur in insuring that metropolitan system of police protection can be mobilized to meet areawide needs. They contend that metropolitan police systems are faced with serious jurisdictional and organizational problems. Jurisdictional problems include the use of extraterritorial police powers, the status of city-county police relations, and the exercise of local police jurisdiction over an entire multi-county or interstate metropolitan area. A second set of problems involves the organizational capabilities of metropolitan police systems and includes the need for all metropolitan localities to provide basic police services to their residents, for adequate supportive police services to be furnished to all departments in a metropolitan area, and for metropolitan police activities to be coordinated so as to meet problems of criminal mobility and specialized crime.

Some of these difficulties have been overcome through various forms of intergovernmental cooperation in many metropolitan areas.[6] This has led to an increasing awareness that such cooperation is vital for mobilizing the resources of all departments in order to effectively deal with areawide crime.

Jurisdictional problems. One jurisdictional issue that affects metropolitan police protection is the extent to which extraterritorial police powers are authorized. Several states have granted their localities the exercise of extraterritorial police powers.[7] Others have conceded that "close pursuit" of a criminal across municipal borders is a valid exercise of the municipal police power.[8] Indeed, under " . . . varying circumstances and for varying purposes it has been held that a policeman is a public officer, holding his office as a trust from the State and not as a matter of contract between himself and the

city . . . ."[9] Such judicial interpretations indicate tolerance for extraterritorial police work in some instances. Nonetheless, most local governments do not normally practice extraterritorial police activities, except in the case of "close pursuit", preferring instead to seek State authorization if extraterritorial powers are desired.[10] Yet, observers still contend that extraterritorial police powers are essential to the apprehension of the mobile criminal and that lack of such powers unduly restricts the geographical scope of local police work.

Critics of such powers contend they are founded on an unconstitutional grant of power which results in "government without representation" and which can undermine local home rule.[11] They point to the public sensitivity regarding the use of extraterritorial powers in cases not involving "close pursuit". They also note that many communities restrict extraterritorial police activities to avoid legal questions involving insurance liability for such actions.[12] Given these sensitive legal and political issues in the use of extraterritorial powers, critics urge that such powers be used sparingly by local governments in metropolitan areas.

A second jurisdictional problem involves the exercise of police powers by county governments within incorporated areas. While the county has full legal prerogative to perform the police function in a constituent locality, there often exists a tacit agreement that the county police will not "interfere" with municipal police efforts. Thus, a 1962 International City Management Association (ICMA) survey indicated that nearly 69 percent of all counties over 100,000 in population did not provide police services throughout the entire county.[13] A recent study of the office of sheriff in eleven Southern States noted that in half of the 558 southern counties surveyed, sheriffs' departments provided police services to municipalities only on request.[14] The same service arrangement was found in 38 of the 50 counties of over 100,000 population in the eleven State area. Moreover, in fifteen California counties law enforcement and traffic services are provided to incorporated areas solely on a contract basis since it has been held that, "The Sheriff is not required to duplicate city police services in enforcing State law within cities and may assume that proper police protection is being provided, unless it comes to his attention from reliable sources that such duty is being neglected or that the forces available to such city or cities are inadequate to handle the emergent situation, in which event the Sheriff must take remedial action."[15]

Proponents of these tacit agreements to have counties provide police services to incorporated areas only on request contend that such arrangements solve the problem of conflicting police jurisdictions. Such practices prevent "invasions" of municipal police jurisdiction and in no way circumscribe local home rule. They also help insure a higher degree of mutual cooperation between county and subcounty police forces in the course of their daily activities.

On the other hand, some critics of the practice call it an evasion of the problems of city-county police relations. They point out that there are ordinarily no legal restrictions prohibiting county police activity in a constituent locality. They claim it is only apprehension of political conflict and fear of higher police budgets that prompt counties to restrict police services to unincorporated areas. They further assert this limited police service represents an abdication of areawide police responsibilities by county governments.

Since county police services are financed from a countywide tax, critics further contend that taxpayers in incorporated areas subsidize police services in unincorporated areas when counties do not provide regular police service to municipalities.[16] Also, when counties limit police activities to unincorporated areas, they may not develop specialized capabilities to supplement large city police services. Thus, residents of incorporated areas receive few if any benefits from counties that maintain this practice.

Another jurisdictional problem involves areawide police jurisdiction in multi-county or interstate metropolitan areas. In such areas, there is no single overlying unit of government, and in most there rarely are any metropolitan organizations with even limited police responsibilities. Notable exceptions, however, are councils of governments in such metropolitan areas as Washington, D.C., Baltimore, and Fort Worth, Texas.[17] In addition, cooperative efforts have occurred among governments in the interstate metropolitan areas of Kansas City and St. Louis, Missouri.[18] Moreover, at least 16 States have authorized their regional criminal justice planning agencies, created pursuant to the Omnibus Crime Control Act of 1968, to exercise various police responsibilities in multicounty metropolitan areas.[19] Oklahoma permits its regional agencies to conduct police training programs; Missouri allows its agencies to institute regional crime information systems; and Virginia authorizes its agencies to operate regional crime laboratories.

In most of the Nation's 100 multicounty metropolitan areas and 31 interstate metropolitan areas there is no agency which has an overview of the police function in the entire metropolitan area. This jurisdictional problem is difficult for most such metropolitan areas to solve.

Popular approval of having the police function centralized at the regional level is not likely. A somewhat more palatable form of reorganization might involve intercounty cooperation in these metropolitan areas, as

now occurs in some facets of the police function in the Atlanta, Georgia metropolitan area.[20]

One problem that appears to be somewhat exaggerated is the charge that policemen are perplexed and hindered by "boundary" problems in the course of their work. A recent survey of Michigan local police departments found that only 6 percent of the 583 local departments surveyed felt that jurisdictional boundaries were a serious problem in determining police responsibility for crime control.[21] Evidently most police departments, at least in this survey, are aware of the territorial scope of their police activities.

In summary, the main jurisdictional problems affecting police work in metropolitan areas are the granting of extraterritorial police powers to local departments for combatting crime that "spills over" municipal borders, the fashioning of city-county police relations which enable the county to supplement the police activities of constituent local governments, and the structuring of areawide mechanisms which provide an effective overview of police problems in multicounty or interstate metropolitan areas.

Organizational problems. The major organizational problems affecting most metropolitan police work are three-fold. There is the problem of organizing local police forces to have sufficient capability to provide full-time basic patrol services. There is the problem of providing local departments in metropolitan areas with easy access to a full range of supportive police services. Finally, there is the issue of securing coordination among police departments in a metropolitan area to provide certain areawide crime control services.

The question of assuring that each local police department can provide basic patrol services is a fundamental one in a number of metropolitan areas. Comparative data on police organization in 91 sample metropolitan areas indicates that a considerable number of local departments have ten or less full-time personnel (See Table 42). Of the 1858 police departments in these metropolitan areas, 26.1 percent (485) fell in this category. Another 24.3 percent (451) had between 11 and 20 full-time personnel. Put another way, half of the surveyed forces in these metropolitan areas had twenty or less full-time personnel.

The existence of these small departments is not necessarily indicative of police inefficiencies within the metropolitan area.[22] At the same time, these police forces usually are unable to mount a comprehensive crime control effort. This, in turn, can produce an areawide problem. As this Commission in an earlier report stated, "Ironically, spillover of benefits of police service from one community to another is not as great as the spillover of social costs from inadequate police protection. Rigorous law enforcement in one town, in fact, forces violators to establish themselves among more hospitable neighbors . . . . Although the accepted doctrine of "hot pursuit" allows police officials to follow the trail of a law breaker through the maze of local governments, the less efficient efforts at crime prevention in one community impose heavy costs on the others."[23]

Table 42
POLICE FORCE ORGANIZATION IN SELECTED METROPOLITAN AREAS BY SIZE OF METROPOLITAN AREA, 1967

Size Class of Metropolitan Area (Population)	Number of SMSA's	Number of Local Govts	Number of Organized Police Forces	Size of Police Force				
				1-10	11-20	21-50	51-150	Over 150
1,000,000 and over	30	3,415	1,403	352	351	391	216	93
			(100.0%)	(25.1)	(25.0)	(27.9)	(15.4)	(6.6)
500-999,999	18	849	229	66	56	50	26	31
			(100.0%)	(28.8)	(24.5)	(21.8)	(11.4)	(13.5)
250-499,999	19	511	134	46	24	25	18	21
			(100.0%)	(34.3)	(17.9)	(18.7)	(13.4)	(15.7)
50-249,999	24	428	92	21	20	23	22	6
			(100.0%)	(22.8)	(21.8)	(25.0)	(23.9)	(6.5)
Total Metropolitan	91	5,203	1,858	485	451	489	282	151
			(100.0%)	(26.1)	(24.3)	(26.3)	(15.2)	(8.1)

Source: Advisory Commission on Intergovernmental Relations Compilation from the following sources: U.S. Bureau of the Census, *Employment of Major Local Governments,* 1967 Census of Governments, Vol. 3, No. 1; F.B.I. *Uniform Crime Reports—1967,* Tables 55-56; International City Management Association, *Municipal Year Book—1968,* Table IV.

Even critics of metropolitan reorganization have agreed that jurisdictional fragmentation can cause problems if public service offerings among local governments do not meet " . . . certain minimum standards."[24] While a uniform definition of minimum police services is difficult to establish, in most instances full-time patrol services with a minimum range of supportive services probably cannot be maintained by police departments of ten or fewer men.[25]

Comments from various State comprehensive criminal justice plans and other studies of local police systems indicate that the small urban police department is a definite problem in metropolitan police protection.

- **Florida**: "Police departments in this situation (a small department in an urban area) have to rely on other police agencies for communications assistance, jail and detention facilities, felony investigations, recruit training . . . and specialized training when it appears necessary. Moreover, such departments have to utilize volunteers, institute long work weeks and pay their officers less than policemen employed by nearby departments."[26]
- **Georgia**: "The limited budgets available to these small departments preclude the employment of specialists of any kind. To this end, many small police departments are, in essence, self-defeating."[27]
- **Minnesota**: Over 80% of the Minnesota police departments are not large enough to have someone on duty 24 hours per day, let alone large enough to have around-the-clock patrol. Almost 90% are not capable of maintaining a 24 hour patrol with some form of dispatcher or emergency contact with the public. . . . The important point is that the very small communities are paying dearly for a very low level of service (in terms of the capacities of very small organizations) . . . "[28]
- **Rhode Island**: The Western Rhode Island region provides a good example of Rhode Island's law enforcement problems. In an area of roughly 500 square miles, some 140,000 citizens are protected by some 125 full-time policemen. In neighboring Providence, slightly more people are protected by nearly 500 officers in an area of only fifteen square miles. However, because of the existing fragmentation of police services, only sixty-five of the officers in the Western Rhode Island area are actually available to provide police field services because some sixty officers are involved in various administrative and support functions. The situation can be summarized as wasteful.[29]

The existence of a very small police force, then, may create police service problems in a metropolitan area. Citizens of those localities having such "shadow" police forces will often have to depend on the goodwill of neighboring governments for their basic patrol services. If governmental fragmentation results in a substantial number of these small police forces, the metropolitan area will face the problem of insuring that all localities receive adequate patrol services.

A second organizational problem focuses on the provision of supportive police services to all police departments in a metropolitan area. In order to have sound patrol services, a police department must have a full range of "back-up" services. (i.e., records, communications, and crime laboratory services). Smaller departments, especially those under ten men, do not have the manpower to provide such specialized services from internal resources.

The dilemma facing many departments is whether to forego the provision of supportive services or to provide a modicum of such services at the risk of weakening patrol capabilities. This problem is well-nigh insoluble. A police survey of St. Louis County (Missouri) found:

> Most of the police departments studied are not organized properly to effectively perform adequate police service. Many of the police departments separate organizationally compatible functions, such as records and communications, and inappropriately combine other functions, such as the placing of juvenile duties under the direction of detective elements when, in fact, the method of dealing with juveniles is quite unique from that of dealing with criminal offenders. . . . The degree to which many police departments have specialized varies substantially, but apparently not in relation to the size of the department; it is most noticeable, in fact, in the smaller departments. Personnel involved in specialization are usually taken from basic patrol service complements and this often results in lessening the overall quality of police service . . . . Smaller police departments are seldom in a position to undertake specialization because of the consequent disruption and depletion of basic police service.[30]

The smaller department, then, is often faced with the undesirable options of either providing inadequate specialized supportive services or having to depend on the provision of such services by overlying governments who might be unwilling or unable to provide them.

Ironically, the over-provision of specialized services by large numbers of separate police agencies may reduce the quality of such services. Overcrowding radio frequencies, for example, while satisfying local autonomy for the individual police department, may reach a level that will downgrade the overall capacity of an areawide communications system. The Public Administration Service confirmed this in its St. Louis County study; "In short, the variations and diversifications of the [communications] systems found throughout the County result in

excessive costs, fragmentation of valuable information, and delayed dissemination to appropriate line elements."[31]

The need for adequate supportive services for many metropolitan police agencies is borne out by data from several State comprehensive criminal justice plans.

- **Georgia**: Only 30 of the 550 agencies in Georgia regularly contribute to the criminal files of the Georgia Bureau of Investigation.
- **Illinois**: "Two of every three departments consider their present crime scene search procedures to be inadequate although 49% have their own facilities; 55% feel that their present arrangements for identification of evidence are inadequate. . . . The majority of survey participants are in favor of the creation of modern centralized communications centers."[32]
- **Massachusetts**: "In order to improve the efficiency and economy of the law enforcement system in Massachusetts, it is essential that all police departments pool and share critically needed personnel and resources with other law enforcement agencies. On their own very few departments can afford to hire the experts and purchase the technical equipment desperately needed to run a modern police department."[33]
- **New Jersey**: " . . . the great majority of New Jersey police departments are small, serving municipalities under 25,000. . . . Such small departments often lack the specialized personnel, communications and records systems, and laboratory services necessary for performing their basic police responsibilities."[34]
- **Rhode Island**: "One of the significant reasons for the limitations of these local police departments is the failure to coordinate or consolidate activities through some formal means. Too many of these police departments deplete manpower by attempting to provide a full range of police field and support activities by themselves without mounting adequate regional programs."[35]

Aside, then, from the general question of what level of government should provide supportive services, it is apparent that many small police departments in metropolitan areas can not provide a full range of supportive services on their own. Methods of supplying these governments with supportive services have to be found if these small departments are to continue to provide at least basic, full-time patrol services to their residents.

A final organizational problem is the need for an overview of general metropolitan crime problems. A centralized crime control agency in the metropolitan area could provide such an overview; it could encompass such functions as crime analysis, communications, and records. These activities would not have to be carried out necessarily by an areawide government. Witness the interstate cooperation in areawide investigation in the St. Louis and Kansas City metropolitan areas; the Fort Worth Council of Governments' programs of centralized police training, and the centralized communications facilities operated by Atlanta's METROPOL. These instances of intergovernmental cooperation underscore the fact that some police functions are more effectively conducted when centralized at the metropolitan level. Economies of scale, of course, are one reason for assigning certain specialized police functions to this level (i.e., regional crime laboratories). The extreme impracticality of duplicating some services at the local level (i.e., maintaining separate local records) constitutes another argument for such action. Also assignment of various facets of the police function to a metropolitan unit could insure an areawide overview in the provision of various police services.

Metropolitan intergovernmental cooperation in the police function. Many of the organizational and jurisdictional problems affecting the police function in metropolitan areas have been resolved through various forms of intergovernmental cooperation though city-county consolidation has provided an attractive alternative in a few well-publicized cases. A brief survey of such instances of intergovernmental cooperation indicates that some have resolved jurisdictional problems while others have surmounted organizational difficulties.

In the case of extraterritorial police powers, many States have enacted legislation that grants limited extraterritorial authority in the case of "close pursuit". Some States also have passed legislation authorizing local police departments to enter into mutual aid pacts which permit the officer of one locality to act as a sworn officer in another municipality when the necessity arises. Such aid pacts are now operative in the Washington, D.C. metropolitan area and between the cities of Allentown, Easton, and Bethlehem, Pennsylvania.[36] Extraterritorial jurisdictional problems also can be solved when joint agreements are entered into by several localities.[37]

The jurisdictional problem of city-county police cooperation has been resolved in several ways. The county may provide basic police protection in all of its constituent localities and this has been done in a number of smaller counties, especially in the South.[38] The county may provide police services only in those jurisdictions that choose to pay for them; this arrangement occurs through a subordinate service district in several cases,

most notably in Nassau and Suffolk counties.[39] Interlocal service contracts between cities and counties are another means of resolving this problem, the most publicized being the Lakewood Plan in Los Angeles County. The most complete solution to city-county police problems, needless to say, is by city-county consolidation of which there have been ten since 1947.

No formal intergovernmental arrangements have been established to set up a single law enforcement agency with jurisdiction over a multicounty or interstate metropolitan area. State police patrols presently constitute the chief means of resolving the problem of jurisdictional fragmentation in these areas.

Two basic types of intergovernmental cooperation have been utilized in metropolitan areas to assure that all localities will be able to provide basic patrol services to their residents. The most popular form of cooperation is the interlocal contract. As typified by the Lakewood Plan, Los Angeles County provides various full-time services, including police, to several contracting municipalities.[40]

The interlocal contract permits the locality to receive the level of police service it desires without having to incur the fixed costs of financing a police infrastructure (i.e., the construction of a police station, retaining a fixed inventory of police equipment, etc.). In the Los Angeles case, the County does charge contracting localities for some overhead in their service contract, but it has been found that these localities still benefit financially under the arrangement.[41]

Proponents of the interlocal contract contend that it allows for the achievement of economies of scale in the police function particularly when the county is the contractor government. This sort of interlocal contract allows larger, more economically viable governments to provide services while at the same time permitting smaller, more politically responsive governments to control the form in which such services are provided.[42] In such a manner, economic and political objectives associated with the optimal provision of public services are met.

Critics of the interlocal contract contend that it causes participating governments to ignore the quality of police services provided under contract.[43] They claim that contractor governments only provide these services so they can build up their own public service bureaucracies. Contractee governments, on the other hand, are in no position to insist upon high-quality police services. Some also argue that these contracting arrangements help to prop up non-viable local governments.

A variant of the interlocal contract is county provision of basic police services through a subordinate taxing district. This procedure is followed in Nassau and Suffolk Counties, New York. The subordinate district arrangement is less flexible than the more usual forms of interlocal contracting where a locality can often choose from a variety of police service packages. Also, as is the case in Suffolk County, some subordinate district arrangements have no provision for local withdrawal.

The second major form of intergovernmental cooperation for the provision of basic police services involves the formal joint agreement. Under this arrangement, participating governments agree to share police responsibilities, with one government often providing capital facilities and the other police personnel. Joint police protection has the additional benefit of allowing police officers of a joint department to act as sworn personnel in all participating localities. Such agreements exist, for example, in Pennsylvania and Minnesota.[44]

Interlocal cooperation also takes place in supportive services. A number of formal and informal service agreements exist in various metropolitan areas to enable local police agencies to have access to supportive services that they cannot provide from their own resources. This sort of cooperation strengthens the law enforcement capabilities of individual police departments.

Interlocal cooperation is especially prevalent in the communications and training facets of the police function. For instance, Lake County, Illinois performs communications services for twenty localities within its borders; Dade County, Florida provides for all radio communications on four separate frequencies to all its localities, and there are several city-county arrangements in Kentucky for mutual radio monitoring and interjurisdictional emergency dispatching assistance.

In police training, a number of collaborative arrangements exist between large city police departments and their surrounding suburbs. Thus, police training programs are offered by the cities of Des Moines, Chicago, Philadelphia, Wichita, and Milwaukee to their surrounding suburbs on a regular basis. In the case of other supportive services, Chicago and Philadelphia, to name two cases, offer crime laboratory services to neighboring governments.

Intergovernmental cooperation in supportive services is more prevalent, since it is basically a less controversial form of collaboration. It usually is welcomed by smaller police departments who can not provide such services themselves. Moreover, cooperation in the field of supportive services usually is encouraged by larger governments who see it as a means of expanding their own supportive services capability.

Only infrequent success has occurred in establishing limited, areawide police responsibilities in multicounty

or interstate metropolitan areas. Yet, intercounty cooperation in police records in the San Francisco metropolitan area and intercounty investigation and communications cooperation in the Kansas City, St. Louis, and Atlanta metropolitan areas offer examples of some regional centralization of selected facets of the police function.

Yet, various authorities have suggested that specialized "task forces" or "strike forces" are a vital device for meeting the crime control needs of large urban areas.[45] These special task forces could be an outgrowth of areawide communications and records agencies, and they would be ideally suited for handling mass civil disturbances or problems of organized crime in such areas. These strike forces could range over the entire metropolitan area to cope with selected crime problems. If such a force were created through interlocal cooperation, it could handle specialized crime control problems beyond the competency of individual police agencies. Freed from such responsibilities, local police departments could deal with more routine crime problems.

On the other hand, critics feel that areawide police agencies might be unresponsive to the general public. They also claim such units would be constantly embroiled in jurisdictional disputes with local departments, ultimately reducing their own effectiveness and lowering public confidence in the local police system.

Summary. A number of serious jurisdictional and organizational difficulties face police units in most metropolitan areas. Limited extraterritorial police powers, strained city-county police relations, and the lack of areawide police jurisdiction in multicounty and interstate metropolitan areas are some of the jurisdictional issues affecting metropolitan police protection. Organizational problems include the need for smaller police departments to assure provision of full-time, basic patrol services, the need for all local departments to have easy access to supportive police services, and the need for areawide crime control agencies to handle specialized crime control problems of a multi-jurisdictional nature.

The resolution of these organizational and jurisdictional questions requires both greater cooperation among local governments and possibly partial centralization of some of the more supportive police functions. Among some of the more pressing policy issues raised by these emerging needs are:

- Whether State legislation should be enacted to grant all localities broader extraterritorial police powers within a metropolitan area?
- Whether better relations between city and county police departments will be advanced if the county provides greater services to incorporated areas. Failing that arrangement, whether counties should provide for the financing of law enforcement services in unincorporated areas through subordinate taxing districts?
- Whether States should establish standards that would insure that each local government in the metropolitan area would provide full-time basic patrol services from its own resources or through those of an overlying government? Whether State incentives for increased interlocal contracting or use of county subordinate service districts might be essential?
- Whether there should be partial centralization of supportive police services in county or multicounty agencies? Whether State governments should establish incentives to have supportive police services provided by larger urban governments? Alternatively, whether State police departments should expand their supportive services to localities in metropolitan areas?
- Whether State legislation should be enacted that would allow the creation of specialized interlocal police agencies which would have jurisdiction over a multicounty or interstate metropolitan area? Alternatively, whether joint police protection agreements between metropolitan counties might be authorized?

Issues in Nonmetropolitan Police Protection

Nonmetropolitan police protection is about half the level of that in metropolitan areas.[46] At the same time, nonmetropolitan crime rates are only 38 percent of those for metropolitan areas. Thus, most nonmetropolitan areas have a more than proportionate share of police protection and a less than proportionate share of index crime. (See Table 43) Nonmetropolitan areas, however, face serious problems in the organization of their police protection. Basically these difficulties involve: (1) the average size of nonmetropolitan police departments, (2) the use of part-time personnel in nonmetropolitan police departments, and (3) the lack of adequate areawide police protection in many nonmetropolitan areas.

Most nonmetropolitan police departments are small in size. The average size of local police departments in the nonmetropolitan portions of Pennsylvania was 3.4 men in 1967,[47] in nonmetropolitan Illinois, 4.8 men in 1970,[48] and in nonmetropolitan New Jersey, 12.0 men in 1967.[49] A number of State comprehensive criminal justice plans[50] under the Safe Streets Act indicate that many rural communities lack full-time, organized police protection, and a 1968 survey by the ICMA noted that there were at least 102 communities of under 10,000 which had no full-time police departments.[51] Most nonmetropolitan police departments, then, are too small to

Table 43
NONMETROPOLITAN AND METROPOLITAN CRIME RATES AND RATES OF POLICE PROTECTION, 1967

State	Crime Rates			Police Protection per 10,000 Population		
	Non-SMSA	SMSA	Non-SMSA/SMSA Ratio	Non-SMSA	SMSA	Non-SMSA/SMSA Ratio
Alabama	788.6	1771.2	45%	9.4	14.4	65%
Alaska	1809.9	—	—	9.5	—	—
Arizona	1498.3	3053.5	49	14.9	17.9	83
Arkansas	596.3	1903.0	31	9.1	16.4	55
California	1980.8	3332.5	59	15.9	19.3	98
Colorado	1138.6	2208.6	52	13.8	14.6	95
Connecticut	961.0	1682.2	57	9.1	18.4	49
Delaware	923.4	2034.9	45	8.0	12.3	65
Florida	1824.9	2919.0	63	17.1	20.9	82
Georgia	869.4	1875.1	46	10.4	15.0	69
Hawaii	864.0	2523.5	34	27.0	17.6	153
Idaho	958.8	1141.1	84	13.8	16.0	86
Illinois	754.9	2130.1	35	9.9	24.0	41
Indiana	780.4	2047.7	38	10.0	15.0	67
Iowa	743.3	1509.4	49	9.3	13.3	70
Kansas	875.7	2973.3	44	12.5	15.7	80
Kentucky	532.4	2632.0	20	7.0	16.3	43
Louisiana	657.4	2568.3	26	14.1	20.4	69
Maine	688.6	2080.3	64	9.0	13.8	65
Maryland	781.8	3034.4	26	9.0	23.1	39
Massachusetts	2063.7	1857.8	111	21.4	21.5	100
Michigan	1294.8	2896.9	45	10.6	18.0	59
Minnesota	652.4	2399.0	27	9.3	14.1	66
Mississippi	505.6	1122.4	45	10.3	11.7	88
Missouri	774.7	2535.0	31	8.8	22.8	39
Montana	1098.1	1939.0	57	13.2	14.7	90
Nebraska	577.4	1751.0	33	10.7	14.9	72
Nevada	2371.4	2811.6	84	26.6	30.7	87
New Hampshire	758.8	585.4	130	12.6	13.4	94
New Jersey	1621.8	2104.0	77	19.2	22.8	84
New Mexico	1463.3	3016.9	49	13.4	15.9	84
New York	911.7	3217.0	28	11.2	30.6	37
North Carolina	938.4	1807.6	52	8.9	13.4	66
North Dakota	541.3	1041.4	52	9.9	16.0	62
Ohio	740.3	1724.9	43	9.3	15.9	58
Oklahoma	831.0	1934.2	43	12.3	14.2	87
Oregon	1237.3	2466.0	50	13.5	16.0	84
Pennsylvania	694.6	1193.7	58	7.1	19.4	37
Rhode Island	1772.4	2185.8	81	16.4	19.7	83
South Carolina	986.8	1779.6	55	9.7	10.1	96
South Dakota	794.9	917.0	87	9.8	12.5	78
Tennessee	772.7	2295.5	34	8.4	15.9	53
Texas	1231.6	2168.5	57	11.7	15.4	76
Utah	812.6	1857.5	44	9.8	13.7	72
Vermont	834.5	—	—	7.6	—	—
Virginia	596.0	2041.5	29	9.2	13.8	67
Washington	1426.6	2237.6	64	12.3	13.7	90
West Virginia	455.3	1082.5	42	7.2	11.9	61
Wisconsin	706.2	1522.1	46	13.8	22.7	61
Wyoming	1268.2	—	—	16.4	—	—

Sources: F.B.I., *Uniform Crime Reports—1967,* Table #4; U.S. Bureau of the Census, *Compendium of Public Employment,* 1967 Census of Governments, Vol. 3, No. 2, Table 15.

have enough personnel to provide more than basic patrol services. In some rural areas, even basic patrol services are lacking, causing communities to depend on the patrol activities of county and state police departments.

Nonmetropolitan police departments rely heavily on part-time police employment. 1967 data indicate that such personnel comprised over 20 percent of total police employment in the nonmetropolitan areas of 17 states.[52] Only six states had less than 10 percent of total nonmetropolitan police employment accounted for by part-time police personnel. (See Table 44)

Excessive use of part-time police in many nonmetropolitan localities can undermine seriously the quality of rural police work. As the Connecticut Planning Committee on Criminal Administration recently stated regarding the quality of part-time police in the state's nonmetropolitan areas: "Supernumerary training is practically nil because of the unavailability of these men when courses are conducted. Usually a supervisory officer conducts nothing more than briefing sessions once or twice a week over a short period. . . . The bulk of training is left to supervised field experience; however, the shortage of manpower usually results in the supernumerary being assigned on his own too soon."[53] The part-time character of many nonmetropolitan police forces tends to compromise their ability to handle the complex aspects of crime control. This trait can cause severe difficulties if the rural area has a substantial crime problem.

Save for state police patrol in nonmetropolitan areas, most rural communities do not have substantial amounts of county-wide police protection. Of the more than 2400 nonmetropolitan counties for which there was police employment data for 1967, nearly 96 percent had county police forces of under 25 full time personnel, and 78 percent of all nonmetropolitan counties had police forces of less than ten men. (See Table A-11). This lack of organized areawide police protection forces many sub-county police departments to engage in extra-territorial police activities if they wish to combat crime effectively. Furthermore, the lack of organized county police protection often leaves unincorporated areas with little or no regular police protection.

Even though nonmetropolitan police forces are small, rely heavily on part-time personnel, and generally can not provide areawide protection, a number of intergovernmental arrangements have been constructed to bolster rural police protection. Probably the most prevalent form of police cooperation in these areas is the

Table 44
PART-TIME PERSONNEL AS A PERCENT OF FULL-TIME EQUIVALENT POLICE EMPLOYMENT NONMETROPOLITAN AREAS BY STATE, 1967

States With				
0-10%	11-20%	21-30%	31-50%	51% and over
Part-Time Personnal as a Percent of Full-Time Police Employment				
Alaska	Alabama	Colorado	Louisiana	Connecticut
Arkansas	California	Delaware	Michigan	Illinois
Hawaii	Florida	Indiana	Minnesota	Maine
New Mexico	Georgia	Iowa	Missouri	Massachusetts
Oklahoma	Idaho	Kansas	Ohio	New Hampshire
Wyoming	Mississippi	Kentucky	Utah	New Jersey
	Montana	Maryland	Wisconsin	New York
	Nebraska	Nevada		Pennsylvania
	North Carolina	South Dakota		Rhode Island
	North Dakota	Washington		Vermont
	Oregon			
	South Carolina			
	Tennessee			
	Texas			
	Virginia			
	West Virginia			
	Arizona			

Source: U.S. Bureau of the Census, *Compendium of Public Employment,* 1967 Census of Governments Vol. 3, No. 2, Table 15.

informal service agreement. Nonmetropolitan areas because of their sparse population are apt to use such arrangements extensively. Most often such agreements are reached with overlying county governments, less often with state police, and least often with neighboring police departments. A 1968 ICMA survey found that 83 percent of 834 cities of under 10,000 in population received police services from overlying county governments; 69 percent received law enforcement assistance from state police agencies, and 15 percent received aid from other local governments.[54]

Informal service agreements, in part, are a product of the hard-pressed fiscal position of many small rural communities. They also reflect a basic awareness that these rural communities do not need the regular police service required in larger, more urbanized localities.

Formal joint agreements are another instance of intergovernmental cooperation in the police function in nonmetropolitan areas. These agreements provide for shared local responsibility for various facets of the police function.

In five Oregon rural counties, for example, the sheriffs' departments supply cooperating localities with a deputy and backup detective services, while those localities pay part of the deputy's salary and provide him with a police vehicle.[55] In Michigan, a joint agreement among four municipalities in one rural county provides that local police officers, trained under private contract, will serve in any of the four rural jurisdictions.[56] Most often joint agreements between rural localities and counties occur in the provision of jail services; usually a county will maintain a central jail and cooperating municipalities will provide some of the jail personnel and take charge of prisoner transportation duties. The joint agreement, then, is a helpful mechanism for enlarging the meager fiscal and manpower resources of nonmetropolitan localities if they wish to provide certain full-time, professional police services.

Formal service contracts are less prevalent than other forms of intergovernmental cooperation in nonmetropolitan areas. However, there are two forms of contracting which have provided greater police capabilities for nonmetropolitan police departments. The first type of contract involves the rural county and, in its most common form, a municipal police department contracts for jail services from a county government. The 1969 state comprehensive criminal justice plans for Idaho, Oregon and North Dakota, for instance, indicate that there is extensive jail contracting among cities and counties and among counties in their rural areas. This form of contracting benefits rural police departments in that they do not have to finance extensive jail facilities and can apply their limited fiscal resources to other police services—mainly general patrol activities.

A more novel form of contracting involves state and nonmetropolitan local governments. This type of contract is presently in use only in the State of Connecticut where the state police department may agree to supply a "resident trooper" to a locality on a shared-cost basis for a two-year period.[57] As of 1969, forty-seven Connecticut localities had such troopers.

The "resident trooper" plan has two main virtues for the nonmetropolitan locality. It provides the locality with a full-time, professional police service. It also may assist an urbanizing community in forming the nucleus of a full-time, organized local police department. Speaking of the latter benefit, one commentator explains, "This program can also be of assistance in the formation and development of a local police department. Six Connecticut towns have some local, full-time police personnel working under the direction of the resident state policeman. In other towns, he usually trains and supervises constables and other special police. Thus, when a town grows too large for participation in the resident system, this trained personnel provides a ready-made police department."[58]

Although contract law enforcement can enlarge local police capabilities, its applicability in nonmetropolitan areas may be of a limited nature. Many rural local governments are too poor to be contractors for the provision of police services. And too often county sheriff's departments are so small and so involved in civil matters that they can only contract for the provision of jail services. Barring the creation of an expanded, "independent" county police force in many rural areas, localities usually must turn to the State police department for required services. Since most States do not have enabling legislation permitting State-local police contracts, many rural localities can not contract for State police services.

The only other notable form of intergovernmental action affecting nonmetropolitan law enforcement is consolidation of police services in an areawide government—the nonmetropolitan county. Consolidating subcounty law enforcement units into a single county police department has occurred in only a few nonmetropolitan areas. One of the more notable examples is Roseau County, Minnesota where all local police services have been consolidated in the Sheriff's department.[59]

Summary. Nonmetropolitan police systems have relatively limited police capabilities because of their extremely small size. Moreover, the nonmetropolitan county, with few exceptions, has not provided enough police protection to compensate for the limited police services in many rural localities. Thus, many rural communities must depend on the infrequent patrol activities of State police agencies for their basic police protection.

This pattern of intermittent police protection, to some degree, does not present overly pressing problems for most rural localities, since rural crime rates are not of the magnitude of those in urban areas. Yet, when there is need for police service in rural areas, its possible absence is of great import to rural citizens. The security of having regular police patrol is a strong argument for larger units of government providing full-time police services to nonmetropolitan areas. By furnishing regular patrol services and basic regional supportive services, larger units of government can enhance the police capabilities of rural America.

Redefining the Role of Locally Elected Law Enforcement Officials

Continuing controversy has centered on the place of the elected law enforcement official in the system of local police protection. One basic question is whether law enforcement officials should be "independent" from the control of the chief executives of local government. A more significant question focuses on whether the "independent" law enforcement official has the capacity to participate effectively in a modern, highly organized police system. The main locally elected police officials include the sheriff, the constable, and the coroner.

The office of sheriff. The sheriff long has played a pivotal role in the police system of the United States. From the historical beginnings of the office in England until the present, the sheriff has occupied a preeminent position in the local law enforcement system. Yet, all too often this preeminence has been of a static rather than dynamic quality. The sheriff's ability to enforce the law adequately has not matched his legal status. As one scholar put it: "The slightest observation, however, is enough to convince anyone that the office is poorly organized for police work. In reality we have retained a medieval functionary with almost unchanged status and powers to cope with a criminal class which has completely mechanized itself and taken full advantage of every improvement in transportation and communication."[60]

The traditional reasons for the importance of the sheriff include: (1) the historical fact that the sheriff was the chief police functionary in the American and English system of local government, (2) the legal ability of the sheriff to deputize all law enforcement officials (i.e., *posse comitatus*) and citizens in a locality to help him in his law enforcement duties—thus making the sheriff the only police official who could coordinate local police, and (3) the partisan importance of the office which has made the sheriff one of the more "visible" officials in the county form of government.

Historically the sheriff was regarded as the chief law enforcement officer of the king in the English system. There the sheriff " ... came to be looked on as the king's direct representative in the locality, discharging a great variety of functions pertaining to financial, judicial, and military affairs. Thus, he was active in the collection of taxes, in summoning and equipping troops, in serving various legal writs, in providing for quarters for the royal court, in summoning jurors, in executing orders of the court, and in maintenance of the jail and care of prisoners."[61]

In time, both in England and colonial America, many of the sheriff's duties passed to other judicial and law enforcement officers such as the justice of the peace, the bailiff, and the coroner. Yet, in American local government, the sheriff remained the chief local law enforcement official, the chief law officer attending the county court, and the keeper of the county jail. In some states, he also performed important fiscal duties, serving either as ex officio treasurer or tax collector for the county.

As the chief law enforcement officer in a county, the sheriff possesses the power of *posse comitatus* which allows him to deputize other police officers and ordinary citizens alike in the repression of criminal activity. While this power is not used extensively today largely due to the increased activities of State and municipal police, it still is vested solely in the person of the sheriff and assures him a kind of legal superiority in the local police system. Also the sheriff generally has been recognized as a singularly important law enforcement official due to his place in the local political system. Due to the tradition of the plural executive in American county government, the sheriff was accorded elective status and became one of the key political functionaries at this level. His political significance, moreover, bolstered his role in the local law enforcement system, since he was the only police official with a basis of popular support. For all these historical, legal, and political reasons, the sheriff has been accorded substantial preeminence as a local police officer.

Still other reasons explain the continued importance of the post. The county still serves as a pivotal unit of government in many of the country's metropolitan areas. Moreover, the county, in many cases, is the logical form of a revamped areawide government. As more and more counties reorganize themselves to deal with urban problems, the sheriff's office becomes a natural repository for areawide police responsibilities. In rural areas, the sheriff assumes even greater importance as the county may be the only practicable level of government for adequate local law enforcement. Also, the county often employs one of the largest police forces in some urban areas. In the metropolitan areas of such States as California, Florida, Maryland, New York, and Texas, county

police forces are extremely well-organized and bring a sophistication to police work that is probably only exceeded by the largest cities of the state.

Yet, if there are reasons why the sheriff has been long considered important in local law enforcement and why he may still continue to be significant in the future, there are many who see the office of sheriff as an anachronism in a modernized system of law enforcement. There have been a variety of criticisms of the office most of which have centered around: (1) the elective status of the sheriff, (2) the extraneous duties a sheriff must perform, and (3) the poor personnel practices of the office which reduce the professionalism of the sheriff's department. All these criticisms question the wisdom of revitalizing the office.

The elective status of the sheriff. The elective status of the sheriff is in marked contrast to the fact that almost all other chief law enforcement officials are appointive. The sheriff's elective status is constitutionally determined in thirty-three states, reflecting a traditional desire not to centralize political power at the county level and to achieve popular control over county law enforcement.

Election of the sheriff has been criticized as hindering his law-enforcement capabilities, diluting accountability in the police function, and hindering the professionalization of the sheriff's department.

Election of the sheriff may seriously compromise his law-enforcement capabilities. Local political pressures can lead to non-enforcement of unpopular laws. This pattern of non-enforcement or selective enforcement may reduce his ability to enforce impartially other laws. Moreover, the amount of time that a sheriff must devote to partisan political activity may hinder his law enforcement capabilities. His partisan position may also preclude him from agreeing to law enforcement policies suggested by a member of the opposition party, or a potential opponent in his own.

Accountability for law enforcement is also diluted with the popular election of the sheriff. The tradition of the plural executive reduces overall political responsibility in dealing with the problem of crime control. An elected sheriff may note that certain policies are determined outside of his sphere of control and plead that these policies hamper his law-enforcement programs. Such "passing of the buck", both in the plural executive form of county government or in the more centralized forms of county government which still retain an elected sheriff, decreases accountability in the police function.

Finally, election of the sheriff may account for the lack of professionalization of some county police forces. As a partisan official, the sheriff is apt to use his appointment powers for patronage purposes.

Also the short electoral term of sheriffs in many states and restrictions on their tenure of office tend to short-circuit professionalism in the office.[62] Defenders of the elected sheriff argue that greater popular control over local law enforcement policy is more vital now than ever before. Some maintain that election proves an incentive to aggressive law enforcement since the sheriff is immediately accountable to the electorate for the quality of his law-enforcement. Some contend that election also makes his department more accessible to the general public than police agencies not under direct popular control.

Civil responsibilities of the sheriff. Most sheriffs perform a range of duties unrelated to their police responsibilities. In some Southern states, for example, the sheriff may be either tax collector for the county or ex officio treasurer. In addition to these duties, the sheriff serves as county jailer and chief law-enforcement officer of the county court in most States.

These additional duties tend to reduce the sheriff's capacity to be a full-time police officer. They divert his attention from police work. And since many of his additional, non-police duties are the basis for generous compensation,[63] there is often no incentive for him to be a vigilant police officer. Recent reports on the office of sheriff indicate that quite often he spends less than fifty percent of his time on law enforcement duties.[64]

Not only have these non-police duties diverted the sheriff from his peace-keeping function, but there also is evidence that he often does not have adequate personnel to perform properly these other functions. The survey of eleven Southern States found that most sheriffs had relatively small jail staffs, the average being three jail personnel per sheriff. Moreover, 64.1 percent of all sheriffs' jail personnel in the States surveyed had not had correctional training as of 1967.[65] Since most county jails are small, antiquated, and do not meet minimal operating standards, it would seem that many sheriffs' departments inadequately perform the jail function.[66]

The use of the sheriff and his deputies as county court officers, in the opinion of some, is an expensive way to conduct the business of these courts. It has been found in some States that there could be substantial savings by the use of alternative methods of serving warrants or subpoenas.[67]

With the sheriff's time being occupied by his court, jail, and other miscellaneous duties, it is not surprising that independent county police forces have been organized to perform the police function in over fifty, mostly urban, counties. These forces are separate from the county sheriff and their existence substantially replaces the law enforcement role of the elected sheriff. In counties with such agencies, the sheriff may only retain his court functions as in Montgomery County, Maryland

no system of records, no established procedure, no traditions regarding standards of performance. Their income from official activities is usually so small and irregular that it would rarely attract men of ability."[77]

The various weaknesses of the constable as a local peace officer have contributed to substantial vacancy rates for the office in many States. A survey of nine States in 1967 found that vacancy rates averaged 71 percent and ran as high as 90 percent in Alabama and Iowa. These figures indicate that the position is not a significantly attractive elective office in many areas (See Table 45).

Table 45
NUMBER OF CONSTABLES AUTHORIZED AND ELECTED, 1967

State	Authorized	Elected	Vacancy Rate
Alabama[1]	1,379	103	92.5%
Arkansas	1,462	353	75.9
California	263	243	7.6
Iowa	3,338	241	92.8
Kentucky	625	377	39.7
Louisiana[2]	421	460	0.0
Montana	154	53	65.6
Nevada	70	41	41.5
West Virginia[3]	858	622	27.5
Total (9 States)	8,571	2,493	70.9

[1]Based on correspondence with Bureau of Government Research, University of Alabama.
[2]Based on correspondence with Institute of Government Research, Louisiana State University.
[3]Figures based on *1968 West Virginia Blue Book.*

Source: All other figures are from unpublished data, U.S. Bureau of the Census, Governments Division.

Overall, then, the constable is of minor importance to local police protection. Most localities rely on organized municipal police forces rather than the constable for full-time, professional police protection. A constable, however, does have some usefulness as an officer of justice of the peace courts where they exist. Abolition of these courts, however, would leave little place for the constable in a modern local criminal justice system.

The office of the coroner. The coroner occupies a somewhat anomalous position in the criminal justice system. He functions as a specialized law enforcement officer who has neither police or prosecution responsibilities. Instead, he operates only in the advent of criminal homicides or in cases of "suspicious" death. In such instances, the coroner must certify the cause of death and determine whether criminal charges should be brought as a result of such deaths. To that end, the coroner must usually conduct an inquest, the findings of which may be the basis for further action on the part of the public prosecutor or a grand jury.[78] During the course of such an inquest, the coroner has discretionary power, in most states, to order an autopsy. After certification or after an inquest, the coroner conveys the body of the deceased to the next of kin or, if there are no known relatives, sees to it that the body of the deceased is interred properly.

While the verdict of the coroner's jury ". . . is merely advisory to law enforcement officials and has no legal effect at law",[79] the corner's function may have significant impact on the operations of the criminal justice system. For ". . . (if) the coroner erroneously decides that the death was natural, accidental, or suicidal, the investigation may stop at that point, and the killer will remain free. On the other hand, a natural death labelled a homicide may result in many useless hours of investigation by law enforcement officials, or perhaps the eventual indictment of an innocent person."[80]

Despite his critical role, many commentators have noted lack of professionalism in the coroner's office. The function requires both extensive medical and legal training. Yet, often the coroner lacks sufficient expertise in either area to fulfill adequately his legal responsibilities. Consequently, he often exercises his various legal prerogatives without sufficient regard for their impact on other components of the criminal justice system.

The history of the office helps to explain its contemporary weaknesses. After investigating the reasons for the creation of the coroner's office in England, one authority found that the coroner served a variety of functions at the local level and acted as a counterbalance to the prodigious powers of the sheriff. Given the variety of functions which he had to perform, ". . . (there) apparently was no very clear concept of what the relation of the coroner to the general scheme of criminal justice was to be."[81]

With the passage of time, the coroner in both Britain and America was divested of most of his duties except those concerned with the investigation of "suspicious" deaths which might be the basis for criminal justice proceedings. In America, the coroner's function was entrusted to elected county officials, who generally had no legal or medical training but who did have substantial discretionary power in the exercise of their assigned duties.

The first revision in the selection of coroners occurred in Massachusetts in 1877. In that year, the Governor was vested with the power of appointing in each county qualified medical examiners who would substantiate the cause of death in cases where there might be need for

or only his court and jail functions as in Nashville-Davidson, Tennessee. In either case, the sheriff is divested of full-time responsibility for areawide law enforcement.

Personnel policies in sheriffs' departments. A number of commentators have noted the lack of full-scale professionalism in sheriffs' departments. One defective personnel practice is that sheriffs' department personnel are too often chosen on a nonprofessional basis. Moreover, their tenure often lasts only as long as that of sheriff and the resulting frequent rotation in office further prevents professional development in the department.

A second defect in some States is the fee system of compensation of the sheriff and his staff. This system has been held to "... bear no necessary relationship to the responsibilities of his [the sheriff's] task or to the taxable wealth or population of the county which he serves."[68] It also has been held responsible for the sheriff's lack of attention to police duties for which there is no fee compensation. At least 35 States now compensate their sheriffs solely on a salary basis indicating that many States have found the fee system an inadequate means of paying county law enforcement personnel.

Finally, many sheriffs' departments often are not in a civil service system, or included in any substantial retirement system. These factors reduce the attractiveness of county police employment and result in sheriffs' departments relying heavily on part-time personnel or voluntary police reserves.[69]

Defenders of the system explain that inadequate personnel practices usually arise in the more rural counties which simply do not have the fiscal capacity for a professional sheriff's department. Some also point out that rural areas frequently only need part-time police protection, and emergency assistance can usually be provided by the State if the occasion arises. Some underscore the fact that some State courts have ruled that the sheriff's office is immune from "... the encroachment by the civil service laws."[70] A different defense of the system is found in the practical political argument that the partisan nature of the sheriff's office and staff is a significant factor in strengthening the political process at the county level. Finally, it can be argued that professionalism in this day of specialists and impersonal government is not necessarily the most effective way of running a department that operates at the grassroots.

Summary of sheriff's role. The sheriff still retains a significant legal position in the local law enforcement system. His role in this area, however, has been diminished by performing functions unrelated to his law enforcement activities. His concern with court, jail, and in some cases, tax collection activities has tended to reduce the police capabilities of his department. Moreover, the partisan political influences that pervade many sheriffs' departments do not encourage development of modern personnel practices. Lack of civil service, low salaries, and inadequate retirement benefits further reduce the professional caliber of many sheriffs' offices.

Yet some expanded sheriffs' departments have been able to provide quality police protection. Thus, many of the structural inadequacies in these departments can be overcome with appropriate changes in personnel practices. By reemphasizing its police duties, the office could play a revitalized role in areawide police protection. Without modern personnel practices and a strong stress on police responsibilities, this post will be relegated to an insignificant role in modern law enforcement. But even in this reduced role, the office could still perform a valuable political function at the county level.

The office of constable. In legal theory, the constable is considered the counterpart of the sheriff in townships and in other minor civil divisions of a county.[71] In this capacity, he has two main duties. As the chief peace officer he preserves order within the township or justice district he serves, and as an officer of the justice of the peace court, he serves summonses, warrants, and other judgments of the court.[72]

As with the sheriff, the constable spends considerable time in the performance of court duties. Past studies of the constable have indicated that he often spends well over 50 percent of his time attending to court business, thus having a minor role in local law enforcement.[73] As a result of his comparative inactivity in local police work, the post has been abolished in several States.[74]

Another basic weakness of the constable is that he generally is a fee-paid officer. The constable is compensated solely by fee or expenses in 23 of the 38 States where he is elected. These fees are paid for the performance of court and other miscellaneous duties, providing no incentive for him to perform full-time police work.[75]

As an elected peace officer, a constable may encounter difficulties in serving as a member of a local police force. For example, several classes of Pennsylvania localities have legal restrictions against a constable serving as a member of a local police force.[76] In the others, he rarely is the focal point of an organized force.

Finally, the part-time character of the constable and his reliance on fees for compensation make the office unattractive to those seeking to make a profession of police work. As Edson Sunderland commented over twenty years ago, "Individual constables, other than those serving in cities large enough to sustain a municipal court, do so little business that they acquire only the smallest amount of knowledge or skill as a result of their experience. They have no organization, no central office

legal action. Later, wholesale revision of the coroner function occurred as various states replaced the elected coroner with a state-wide system of appointed medical examiners. Such changes occurred in Maryland in 1939, Virginia in 1946, Iowa in 1959, Oregon in 1961, Kansas in 1963, New Mexico in 1966, New Jersey in 1967, and Oklahoma in 1968.[82] By 1969, 15 States had replaced the coroner with a system of appointed medical examiners. In addition, 15 States have allowed local abolition of the coroner in various parts of the State.[83] Generally, the urban counties of such States have substituted a qualified medical examiner for the coroner.

Other States retain the office of coroner and provide for a parallel medical examiner system which certifies cause of death, thus removing this function from the coroner's purview. In several of these States (i.e. Arkansas, Delaware, Illinois, North Carolina, Utah, and West Virginia), an office of chief medical examiner may perform autopsies to determine cause of death. Moreover, these offices provide a central repository for records concerning certification of death.

Seven States place restrictions on the inquest powers of the coroner. Only a circuit court or district attorney may order an inquest in Florida. Only the county district attorney may order an inquest in Nebraska and Wisconsin, while the district attorney has permission to call for one in Michigan and must be notified of the cause of criminal death in Nevada. Louisiana has abolished the coroner's jury, and prosecuting attorneys are ex officio coroners in Connecticut and parts of Washington. (See Table 46)

In all or parts of the remaining seventeen States, the coroner retains discretionary power as to certifying cause of death and deciding on whether to hold an inquest. Here the discretionary power of the coroner is paramount and offers the greatest potential for conflict between the coroner, prosecutor, and police.

When the coroner exercises full discretionary power in both his medical and legal roles, he may hinder the normal investigative powers of both the police and prosecutor. As one authority described it over thirty years ago, "The statutes commonly accord to him [the coroner] full control over the corpse of the victim. He may, if he chooses, exclude prosecutor and police alike from the premises where the body is discovered; may remove the body at such time as he sees fit to a place of his own choosing; may perform such post-mortem examination as his judgment dictates or none at all; and then, acting upon his own responsibility, may sign the order for the corpse to be inhumed or cremated, thus disposing of the best source of evidence, and severely limiting the possibility of further investigation along this line."[84]

Not only is it possible for the coroner to hinder the investigative efforts of both police and prosecutor, but also there is some doubt as to the usefulness of the coroner's inquest. Since he frequently does not have any professional legal training, he sometimes cannot explain adequately the rules of evidence to an inquest jury. Thus, the inquest jury might call for an arrest warrant on the basis of faulty or inadmissible evidence, or it might not issue an arrest warrant when the evidence would clearly indicate that such a warrant would be needed. In any case, the grand jury can set aside the findings of an inquest on the question of whether or nor an indictment should be sought. Thus, the inquest is legally inferior to other legal processes in the criminal justice system.

More pronounced criticism, however, is directed at the coroner's lack of medical qualifications. In States where there is no restriction on the medical function of the coroner, determination of the cause of death is often a haphazard affair. While two States, Louisiana and Ohio, require that coroners be certified physicians, most popularly elected coroners do not have the proper medical credentials to determine cause of death. This lack of medical qualifications puts the forensic competence of coroners in doubt.[85] Even when an autopsy is performed by a physician under contract, the physician may not have pathological training to determine cause of death. These circumstances can compromise the quality of medical evidence that is presented at a coroner's inquest.[86] Furthermore, lack of proper medical assistance in determining the cause of death can often foreclose further investigation of a case of "mysterious" death.

The numerous arguments for adequate medical and legal qualifications for the coroner offer substantial reasons for the transfer of his medical and legal responsibilities to other parts of the system. Given the lengthy training required in both medicine and the law, it is somewhat unrealistic to expect that a substantial number of medico-legal experts would be available to fill the coroner's office. Most reformers, therefore, urge transfer of the coroner's medical functions to a medical examiner system and a shift of his legal functions to the prosecutor's office.

Only the "independence" of the coroner's position argues for retention of his office. Yet, suitable procedures relating to the transferred functions could be established to insure against abuses of the inquest procedure.[87] With the institution of such controls, there seems little reason for the retention of the office of coroner.

Summary. Locally elected law enforcement officials can hinder the operation of an organized local police

Table 46
CHARACTERISTICS OF THE CORONER'S OFFICE IN THE FIFTY STATES, 1969

Unlimited Discretion By Coroner	Restrictions on Inquest Function	Restrictions on Medical Function	States Having No Coroners
Alabama	Florida[1]	Arizona[3]	Alaska
California[1]	Louisiana[2]	Arkansas	Iowa
Idaho	Michigan[1]	Colorado[1,4]	Kansas
Indiana	Nebraska	Connecticut	Maine
Kentucky	Nevada[1]	Delaware	Maryland
Minnesota[1]	Wisconsin[1]	Florida[4]	Massachusetts
Mississippi	Hawaii	Georgia[1]	New Hampshire
Missouri		Illinois[3]	New Jersey
Montana		North Carolina[1]	New Mexico
New York[1]		Tennessee	Oklahoma
North Dakota[1]		Texas[1]	Oregon
Ohio[2]		West Virginia	Rhode Island
Pennsylvania[1]			Utah
South Carolina			Vermont
South Dakota			Virginia
Washington[1]			
Wyoming			

[1] Appointed medical examiner has replaced coroner in part of the state.
[2] Coroners must be licensed physician.
[3] Supervisory power exercised over medical functions of coroner by state or county medical examiner.
[4] Autopsy can only be performed on request of coroner's jury.
Source: National Municipal League, *Coroners: Legal Bases and Actual Practice—1969* (New York: National Municipal League, 1969).

system. Quite frequently sheriffs, constables, and coroners are ill-prepared for modern police responsibilities. Many sheriff's departments have small, poorly trained staff and consequently only provide part-time police services. Constables almost invariably perform judicial responsibilities, and coroners have often hampered effective police work by their lack of professional qualifications in investigating cases of "suspicious" death.

The difficulty these officials have in attempting to perform modern police work has led to numerous changes in their offices. In at least fifty counties, independent police forces have been created to provide countywide police services. In other States, the sheriff's office has been reformed by placing its personnel under a merit system and divesting the office of some of its non-police responsibilities. Fifteen States have abolished the office of coroner in favor of a system of medical examiners and several other States have created a parallel medical examiner system to perform the medical aspects of the coroner's duties. Finally, a few States have abolished the office of constable, and in States with unified court systems, the constable has usually ceased to have any responsibilities in the criminal justice system.

There is almost universal agreement on the need to modernize, or in some cases abolish, the above offices so that they or their functions will operate effectively within organized local police systems. Sheriff's departments have been urged to assume full-time police responsibilities and coordinate their activities with other local police departments. The office of coroner, when retained, has been revised to make more effective use of police investigative resources and skilled medical examiners.

Constables have either been abolished or made full-time judicial personnel under the supervision of an appropriate lower court official.

In short, the "independence" of the locally elected law enforcement official is more a thing of the past and efforts are being made to utilize such officials as full-time, professional members of modernized local police systems.

Intergovernmental Police Issues of Joint State-Local Concern.

Some police issues are of State-local concern. This arises from the shared nature of certain facets of the police function. Thus, both States and localities

participate in Police Standards Commissions which set norms for the selection and training of local police. Both levels of government frequently participate in the financing and administration of local police retirement systems. Both also are concerned about the interaction of their respective police agencies.

States are actively involved in these interlevel issues. Many mandate police training standards, sometimes offer police training programs, and, in some cases, provide aid to localities participating in such training. States also define the relationships of their police agencies with local governments, either offering police services to localities or restricting such agencies to matters of solely State concern. They may also affect the financing and administration of police retirement systems. Obviously, such issues also involve local governments. Localities may opt for training personnel according to State police standards in some States. They may indicate desired relationships with state police as well as negotiate the form of State involvement in local police finances.

Effective handling of these State-local issues can affect markedly the quality of police protection. Cooperation in training personnel, collaboration between local and State police forces, and State assistance for local police retirement systems can strengthen a State-local police system. Neglect of such issues can reduce the quality of this joint endeavor.

Police Recruitment and Training

Police recruitment and training is central to the effective performance of the police function. High quality police work is contingent upon the selection and training of a large number of qualified police candidates. Of all the functions performed by state and local government, police services are most labor-intensive (See Table 47). If the quality of police personnel is low-grade, little can be done to improve the function. Since the police function is so labor-intensive, it is imperative that police personnel be effectively selected and trained for their demanding duties.

Police costs are a significant portion of local government expenditures; hence high-quality police selection and training can be a factor in achieving more efficient local expenditures. Analysis of the 37 U.S. cities between 300,000 and 1,000,000 population revealed that police costs accounted for 10.8 percent of city general expenditures in 1968-1969 as well as about 26 percent of total city employment in the same year.[88] In these same cities, police salaries accounted for 81 percent of police budgets in 1969.[89]

Table 47
PERSONNEL COSTS AS A PERCENT OF TOTAL EXPENDITURE, SELECTED FUNCTIONS OF LOCAL GOVERNMENT, 1967

Function	General Expenditure	Percent Expenditure which is Personnel Costs
Total General Expenditures	93,350	54.2
Police	3,049	89.7
Fire	1,499	87.8
Financial Administration	1,468	79.8
General Control	1,845	77.4
Sanitation	888	71.3
Corrections	1,139	71.0
Education	37,919	71.0
Hospitals	5,559	67.6
Health	1,081	62.9
Local Parks & Recreation	1,291	44.8
Natural Resources	2,344	39.3
Water Terminals & Transport	319	34.2
Highways	13,932	23.6
Sewage	1,635	20.4
Housing and Urban Renewal	1,469	18.7
Airports	466	16.2
Public Welfare	8,218	14.5

Note: October 1967 payrolls were multiplied by 12 to determine the annual costs for personnel in a given function.

Sources: U.S. Bureau of the Census, *Compendium of Government Finances,* 1967 Census of Governments, Vol. 4., No. 5., Table 10; U.S. Bureau of the Census, *Compendium of Public Employment,* 1967 Census of Governments, Vol. 3, No. 2, Table 8.

Effective police selection and training also might help reduce the persistent understaffing and high rate of turnover of police personnel in many local police departments. A 1966 National League of Cities (NLC) survey of police personnel in 284 cities indicated that their police departments were operating at an average of five percent below authorized strength and ten percent below preferred police strength.[90] A 1967 International City Management Association survey of 615 localities of above 10,000 population in size found that these police departments were operating 3.2 percent below authorized strength. Those between 10-25,000 population were operating at 6.8 percent below authorized levels[91] (See Table 48). Another survey of the 37 cities between 300,000 and 1,000,000 population found that twelve of these cities were operating five percent or more below

Table 48
POLICE PERSONNEL NEEDED TO REACH AUTHORIZED STRENGTH
CITIES OF OVER 10,000, 1967

Population Group Size of Cities	Number of Cities Reporting	Total Authorized Police Strength	Personnel Needed to Reach Authorized Strength	Percent Understaffed
Over 500,000	17	95,384	1,632	1.7
250,000-500,000	24	18,261	696	3.8
100,000-250,000	80	23,736	1,239	5.2
50,000-100,000	128	22,831	908	4.0
25,000-50,000	155	15,445	744	4.8
10,000-25,000	211	9,230	631	6.8
Total	615	184,887	5,850	3.2

Note: Total authorized strength is derived from the summing of personnel needed to reach authorized strength and actual police strength for the reporting police departments. The figure for authorized police strength, however, does not appear in the ICMA tabulation.

Source: ICMA, *Municipal Year Book—1967* (Washington: ICMA, 1968), p. 442.

authorized police strength.[92] A recent study of local police selection in Maine discovered that, overall, local police strength in the State was 10 percent below authorized levels and 28 percent below "desired personnel strength".[93] Part of this understaffing problem can be blamed on the lack of regular recruitment and training programs.

Such programs are also necessary to offset high turnover rates in many smaller police departments. A 1967 ICMA survey indicated that localities in the 10-25,000 size class had turnover rates of 14.0 percent.[94] A 1969 study noted local police turnover rates of between 27-33 percent in 1964-66,[95] in Maine, while a Georgia study found police turnover rates of between 10-20 percent between 1963 and 1967.[96] These high turnover rates suggest the need for continuous recruiting and training on the part of many local governments. (See Table 49)

Local police selection and training capabilities. The regulations regarding police selection are left largely in the hands of local government. While 25 States, as of 1970, had mandatory certification of police training programs, only four had mandated other police qualifications as of that date. Michigan requires a minimum of a high-school education for all policemen, while Pennsylvania mandates residency requirements for local policemen.

Most local police departments have selection requirements covering such subjects as height and weight, maximum and minimum age, residency requirements, mental and physical condition, citizenship, character and, in some cases, psychological aptitude.[97] However, the selection process in some departments does not often go beyond minimal qualifications relating to age, physical condition, and character. Thus, only 36 of the 99 local police departments surveyed in Maine required written examinations of police applicants; only 13 of those surveyed in Georgia required written or oral tests of police candidates. In addition, a 1961 International Association of Chiefs of Police poll indicated that only 50 of the responding 300 municipal police departments used psychological testing to screen police applicants for emotional disorders. Only the largest local police departments use a battery of attitudinal and psychological tests to measure the ability and aptitude of their candidates for police work.

At the same time, certain selection requirements may restrict unduly the availability of qualified policemen. Many police departments set the minimun age of police recruits at 21, an age at which many persons are well on their way towards pursuing another career. Only 11 percent of the 1100 municipal police departments surveyed by the ICMA had police cadet programs as of 1967,[98] thereby reducing further the capabilities of police departments to attract high-school graduates. Unduly restrictive height and weight qualifications also effectively bar many potential recruits—sometimes from specific minority groups—from police service. As of 1967, 36 percent of 1100 municipalities of over 10,000 population had preservice residence requirements which may curtail the availability of police applicants.[99] Most of these kinds of requirements have little to do with providing potentially high-caliber police personnel.

The minimal demands of present police selection standards probably shortcircuit the training program

Table 49
POLICE TURNOVER RATES
CITIES OF OVER 10,000, 1967

Population Group Size of Cities	Number of Cities Reporting	Total Police Personnel	Total Loss of Police Personnel	Turnover Rate	Percent of Police Loss Due to Resignation
Over 500,000	17	93,752	1,914	2.0%	51.8
250,000-500,000	24	17,565	731	4.1	66.3
100,000-250,000	80	22,497	1,044	4.6	77.2
50,000-100,000	128	21,923	1,137	5.1	76.5
25,000-50,000	155	14,701	989	6.7	81.4
10,000-25,000	211	8,599	1,205	14.0	86.4
Total Cities	615	179,037	7,020	3.9	70.8

Note: Total Police Personnel is a figure that does not appear in the tabulation in the ICMA presentation.

Source: ICMA, *Municipal Year Book—1967* (Washington: ICMA, 1968), p. 443.

objectives of many local departments. More stringent police selection requirements, with greater emphasis on intelligence and psychological testing, would allow localities to reject applicants patently unfit for police work.[100] Unduly low selection standards can harm local police forces in other ways. Since many localities cannot dismiss recruits except on the basis of probable cause during their short probationary period and since there are exceedingly rigorous procedures in many jurisdictions for dismissal following probation, some have urged that police standards be made sufficiently comprehensive to screen out those who intellectually and psychologically are unsuited for police work.

A survey of police recruit training programs by the ICMA in 1968 indicated that 18 percent of all municipalities of over 10,000 did not have formal recruit training programs.[101] Moreover, of the police departments having such programs, only 43 percent provided training from within their own department. The other 57 percent contracted with such agencies as the F.B.I., state police, local universities, the U.S. Army, a neighboring police department, or some combination of these external agencies. Only the largest municipalities, mostly those over 100,000, conducted their own training programs.

Even when local police agencies do offer police training, however, it is apt to be conducted by a small staff and to be of relatively short duration. While the President's Crime Commission recommended that all police recruits have at least 400 hours of training before performing regular police duties, several national and State surveys indicate that few local police departments require such extensive training. The 1968 ICMA police recruitment survey found that most municipalities of over 10,000 population required their recruits to fulfill only a six-week training course.[102] A recent study of local law enforcement training in Georgia noted that only 26 of some 200 Georgia local police agencies had more than a two-week training requirement for their recruits.[103] Maine's local police forces averaged a two-week training period for their recruits as of 1967.[104] In the case of Connecticut, many of its local police departments are only able to offer their police officers a basic three-week training course given by the State Municipal Police Council.[105]

Not only do many local departments have minimal training requirements, but many also conduct departmental training with only a small instructional staff. A 1965 survey of police-administered training programs showed that only those cities in the over 500,000 population category had staffs of more than ten full-time employees. Cities in the 100,000-500,000 bracket had an average of six personnel, while cities in the 25,000-100,000 population group averaged about one and one-half full-time instructional personnel.[106] Clearly, only the largest municipal police departments have enough staff to offer their recruits an extensive and varied police training curricula.

State involvement in police training. Given the relative paucity of departmental training programs and the light training requirements of many local police departments, a number of States have created police standards councils which set minimum criteria for police training. As of 1970, 33 States have enacted legislation relating to minimum standards for such training. Twenty-five certified local police training programs; and eight others opted for voluntary compliance with such standards. Additionally, 21 States either assumed the program cost for providing such minimum training or reimbursed localities for 50 percent of the cost incurred in giving

their police recruits minimum training programs (See Table 50).

These councils reflect a joint State-local concern for more professionalism in local police forces. Yet, the minimum standards legislation still has not resulted in extensive training requirements for local police candidates. Of the thirty-one specifying the minimum length of basic police training, only twelve require over 200 hours of recruit training–a level half the minimum recommended by the President's Crime Commission. Furthermore, only 11 States have set minimum hourly training requirements for in-service, advanced, or supervisory police training.

Some recent proposals. Given the rather minimal selection and training requirements of many local police departments, a number of proposals have been advanced relative to mandatory standards for police selection and training. As early as 1952, the American Bar Association developed a Model Police Council Act. The Council of State Governments suggested a Municipal Police Training Act in 1961,[107] and the International Association of Chiefs of Police (IACP) formulated a Model Police Standards Council Act in 1966.[108] All these proposals recommend that a police standards council be set up in a State government, with adequate local representation. This council would prescribe a set of minimum selection and training standards that all localities would meet before their policemen could be certified as police officers.

In addition to standard setting, some police councils have been structured to provide centralized training for local police recruits, to certify training instructors, to offer specialized training for command and supervisory personnel, or to render some combination of the three. Such councils then can provide full-time recruitment and training services for basic, command, and supervisory police personnel.[109] Since only the largest local departments maintain quality training programs, the police standards council could provide much-needed training facilities for the hard-pressed, smaller police departments.

The advantages of police standards councils then may be summed up as follows:

- The public will be guaranteed that all police personnel will have completed a certified course of training which duly "professionalizes" the police officer. The development of minimum police selection standards will insure that applicants who are not psychologically suited for police work will not be hired by local departments.
- Centralized recruitment and training will allow smaller localities to participate in an adequate police selection and training process.
- Such councils could conduct year-round recruiting and training; recruitment could be conducted over a wider geographical area than that covered by individual departments; and specialized recruiting and training programs as well as lateral entry procedures could be developed.

While there is relatively minor opposition to the idea of minimum police selection and training standards, certain practical obstacles hinder the implementation of such programs. These hindrances include:

- Smaller police departments do not have the money or personnel to carry out minimum police selection and training programs. Unless aided by the State, these localities could not cover the cost of meeting minimum police standards.
- The routine quality of police work in many smaller jurisdictions does not warrant minimum police requirements. In such jurisdictions, more serious police matters are handled by state and county police.
- Minimum police selection and training procedures are often exceeded by larger local police departments. These departments can structure training programs to meet local conditions. Standardized State training programs would not meet the needs of these larger departments.
- Structuring a State training program would siphon away monies needed for enlarging local training capabilities. Instead, some feel that States should subsidize joint recruitment and training efforts of smaller localities and use other funds to upgrade training programs of larger municipalities.

Increased educational opportunities for local policemen. The President's Crime Commission recommended that all police departments eventually require that all police personnel with general enforcement powers have baccalaureate degrees.[110] The Commission defended such upgraded educational requirements on the basis that, "Sworn personnel, who, in various unpredictable situations, are required to make difficult judgments, should possess a sound knowledge of society and human behavior. This can be best attained through advanced education."[111] Moreover, within the police profession itself, these higher educational qualifications have met with some acceptance in that some officers have come to believe that college educated police are often more stable and mature in the performance of their duties. As one police chief noted,". . . college graduates do not feel as threatened by abusive citizens. They seem better able to rise above the insults and other common challenges an officer faces each day. Men who have obtained a college education tend not to overreact as much as do those who have not had college training and discipline."[112]

Table 50

STATE LAWS CONCERNING POLICE STANDARDS, 1970

State	Year Law Passed	Type of Law	Funding Arrangements	Hours of Minimum Instruction for Basic Training	Minimum Standards for Specialized Training
Arizona	1968	Mandatory	50% State	200 Hours	No
California	1959	Voluntary	50% State	200 Hours	Yes
Connecticut	1965	Mandatory	100% Local	200 Hours	No
Delaware	1969	Mandatory	100% State	280 Hours	No
Florida	1967	Mandatory	100% State	200 Hours	Yes
Georgia	1970	Mandatory	100% Local	114 Hours	No
Idaho	1969	Voluntary	50% State	220 Hours	No
Illinois	1965	Voluntary	50% State	240 Hours	Yes
Indiana	1967	Mandatory	100% State	240 Hours	No
Iowa	1967	Mandatory	100% State	160 Hours	Yes
Kansas	1969	Mandatory	100% Local	120 Hours	Yes
Kentucky	1968	Voluntary	100% Local	160 Hours	Yes
Maryland	1966	Mandatory	100% Local	245 Hours	No
Massachusetts	1964	Mandatory	100% State	210 Hours	No
Michigan	1966	Voluntary	50% State	130 Hours	No
Minnesota	1967	Mandatory	100% Local	210 Hours	No
Nebraska	1972	Mandatory	100% Local	192 Hours	No
Nevada	1969	Mandatory	100% State	72 Hours	No
New Jersey	1961	Mandatory	100% Local	240 Hours	Yes
New York	1959	Mandatory	100% Local	240 Hours	Yes
North Dakota	1969	Voluntary	100% State	200 Hours	Yes
Ohio	1965	Mandatory	100% Local	120 Hours	No
Oklahoma	1968	Mandatory	50% State	120 Hours	Yes
Oregon	1961	Mandatory	100% Local	250 Hours	Yes
Rhode Island	1969	Mandatory	100% State	N.A.	No
South Carolina	1970	Mandatory	100% State	200 Hours	No
South Dakota	1970	Mandatory	100% State	106 Hours	No
Texas	1965	Mandatory	100% Local	140 Hours	No
Utah	1967	Mandatory	100% State	240 Hours	Yes
Vermont	1967	Mandatory	100% State	150 Hours	No
Virginia	1968	Mandatory	100% State	240 Hours	No
Washington	1965	Voluntary	Part State	400 Hours	No
Wisconsin	1970	Voluntary	Part State	160 Hours	No

Source: John J. Thomas, "The State of the Art—1970," *The Police Chief* (August 1970), pp. 64-65; John M. Nickerson, *Municipal Police in Maine* (Bureau of Public Administration: University of Maine, Bangor), 1969, pp. 307-316.

While the goal of having higher educational requirements has met with general acceptance, there have been serious difficulties in implementing it. First, there is the problem of available programs. The President's Crime Commission identified 134 degree programs which were of a law enforcement nature in 1966, about 75 percent of which led to an associate degree in police science.[113] By August, 1970 there were 444 law enforcement degree programs, 350 of which were associate degree offerings. Yet, even with this over 200 percent increase in degree programs, four States - Arkansas, Maine, South Dakota, and Vermont had no higher education law enforcement programs, and ten others - Alabama, Alaska, Hawaii, Kansas, Minnesota, Montana, New Hampshire, New Jersey, North Carolina, and South Carolina offered no police science degrees beyond the associate level. Only California, Florida, Michigan, Texas, and New York offered law enforcement degrees through the doctorate level.[114] However, the L.E.E.P. (Law Enforcement Education Program) being offered through LEAA is slated to encourage upwards of 175,000 law enforcement officers to further their education by 1971. With such continuing emphasis from the Federal Government, it is possible that a greater number of four-year and post-graduate programs will be available in the near future.[115]

A second difficulty relates to the content of these advanced programs. On the one hand, a policeman's higher education is expected to have some direct, immediate impact on his police work. To that end, many associate degree programs have technical course offerings. Yet, the requirements for educational accreditation make it imperative that these degree programs have a pronounced general education component. In short, the educational and training goals of a law enforcement degree program are frequently hard to reconcile. If a degree program is too general, it loses its applicability to police work; if it is too technical, the program might be better performed by the police agency itself. Furthermore, controversy also arises in connection with the question of whether a law enforcement degree should be specifically police-related or whether it should seek to inform the police officer of his broader role in the total criminal justice system.

One means of combining these objectives has been attempted in California. There the California Commission on Peace Officers Standards and Training has required that all police personnel attain six college credits in law enforcement or other related courses. Eventually, the Commission intends to have every training academy in the State "...operated directly or indirectly under the auspices of an institution of higher education."[116] Such an institutional arrangement may well encourage greater understanding of both the educational and police work goals of an advanced degree program. Also, as of 1967, there were at least eleven university-connected crime and delinquency centers across the country that offered degree programs to police officers.[117] These centers specifically structured their offerings so that the total workings of the criminal justice system, rather than its police component alone, would be covered.

A final problem involves the issue of whether financial incentives should be offered to a policeman to advance his education. Incentive proponents note that the low salary of most policemen prohibits much, if any, of an outlay for advanced education. They also point out the beneficial effects of such incentives on police morale. Opponents of incentives stress their additional cost to local government. Moreover, they feel that such incentives might be abused if well-educated policemen transfer into other areas of public or private employment.

As of 1968, 278 of 738 surveyed cities paid 50-100 percent of tuition costs for policemen in higher education courses. Another 68 cities had formulated incentive-pay plans which increased a policeman's salary upon his successful completion of such course work.[118] Some educational incentive pay plans also have been designed to increase the pay of senior policemen who may not choose to advance their education. Such provisions have tended to reduce opposition to incentive pay plans. Many police agencies also are using such incentives as an attraction to college-educated personnel and for the purposes of filling technical and administrative positions on some basis other than seniority.[119]

Most police departments see positive benefits in advancing the education of their personnel. The increase in law enforcement degree programs and fiscal incentives for participation in them attests to police demands for expanded educational opportunities. However, local agencies still face the problem of influencing the content of and exercising any supervision over these degree programs. They also are faced with the headache of financing incentives which will stimulate policemen to further their education yet retain such personnel in the police force. Furthermore, such incentives must be structured so as not to discriminate against the skilled officer who does not choose to further his education. In short, these fiscal and organizational problems still need to be surmounted if local police are to be better educated.

Relationship of State Police to Local Law Enforcement Agencies.

State police departments are relatively new organizations. The first "true" State police agency was formed in Pennsylvania in 1905; at present such agencies exist in 49 States. However, there are significant differences among these forces as to the extent of their police responsibilities. Basic differences occur between the 23 State police forces and 26 highway patrol agencies in the country. Frank Day has explained the fundamental contrast between these two types of forces in this manner:

> Generally speaking, the state police exercise broad police powers, whereas most of the state highway patrols have limited powers. Enforcement activities of the former, for the most part, are far more extensive than those of patrols. . . . The duties of most state highway patrols, important though they are, are restricted almost entirely to enforcement of traffic laws and regulations and to carrying out highway accident-prevention programs.[120]

The limited scope of the 26 highway patrol agencies is highlighted by the fact that 12 of them are part of State highway or motor vehicle departments; only eight have statewide investigative powers, and only eight provide crime laboratory assistance to localities.[121] Most highway patrols, then, have rather limited involvement with local police agencies.

State legislation also circumscribes the geographical scope of State police activities. Thus, legislation in Kentucky, Louisiana, and New York prescribes the conditions under which State police may operate in incorporated areas.[122] Other States also restrict the activity of such forces in incorporated areas.[123] Very few emulate West Virginia which gives ". . . police unrestricted authority to act anywhere in the State."[124]

Restraints on State police activity in incorporated areas are ". . .probably enacted to allay any local fears of State control and to prevent opposition to State police. . . .In normal circumstances, the State Police probably operate more successfully in a city because they are there by invitation, which presupposes a cooperative situation."[125] A positive benefit of these limitations is that they enable State police to provide more basic patrol services to rural areas or to expand their investigative and other supportive services to all localities. A negative result of these limitations is the lack of additional State police "presence" in urban areas where there is the greatest incidence of crime.

Even though State police agencies face various functional and geographical restrictions on their activity, many supply localities with a number of supportive services, most commonly those relating to records and crime analysis. Several have state-wide criminal records systems which are made available to local police agencies. The best known exist in New York and California. More recently, such systems have been developed in Michigan, New Jersey, Kentucky, and the latter two areas require localities to report all crimes to the records divisions of their respective State police forces.[126]

Thirty-three States have central crime laboratory facilities which are made available to local jurisdictions. Indeed, in 11 the only crime laboratory available to local police forces is operated at the State level.[127] Texas and Wisconsin, moreover, have embarked on programs to provide a system of regional crime laboratories in order to give local police easier access to such facilities. The provision of these records and crime analysis services usually removes a fiscal burden from local departments. But there are other benefits as well. By making these services available to localities, States aid local police while at the same time gathering additional information and expertise for their own crime labs and central records facilities.

State-local cooperative arrangements also occur in other supportive services. Centralized communications exist for both emergency and routine use in Illinois and Utah, for example. In Utah, "(Throughout) most of the State, the law enforcement communications system consists of Highway Patrol Radio facilities. . . .As a matter of practice, the Patrol base stations provide dispatching for all law enforcement agencies [except two counties and six cities in the state]."[128] In addition, all States have teletype networks which operate through the LETS system which links ". . . most law enforcement agencies in the State with one another."[129]

In short, there are numerous examples of State-local police cooperation as indicated by the following information from 1969 comprehensive criminal justice plans:

- **Alabama**: Department of Public Safety supplies investigators to smaller police departments.
- **Alaska**: State police contract with some localities for their basic police services.
- **Colorado**: Bureau of Investigation provides criminal records and laboratory services to local governments. State patrol aids local governments in purchasing and communications matters.
- **Delaware**: State Bureau of Criminal Identification supplies centralized records to local forces. State police provide communications services on occasion.
- **Georgia**:, Bureau of Investigation sends weekly crime information bulletins to all local agencies; the State operates the only two crime laboratories which service all local agencies.

- **Idaho**: Department of Law Enforcement provides investigation aid. State police provide communications and records services to local police forces.
- **Kentucky**: State Police operate only crime laboratory in the State.
- **Illinois**: State Bureau of Criminal Identification and Investigation makes criminal records available to localities on request. State Police operate emergency radio facilities on a statewide basis and also centralized crime data system available to all localities.
- **New York**: State police provide investigative services to localities on request, a centralized crime laboratory service, and computerized information services concerning stolen automobiles.
- **Pennsylvania**: State police provide investigative and criminalistic services to localities on request; they also supply expert testimony in court cases and coordinate major investigations involving more than one jurisdiction.
- **South Dakota**: State Highway Patrol provides a centralized communications system.
- **Tennessee**: Bureau of Criminal Identification aids local investigations when requested by district attorney.
- **Virginia**: State police maintain a statewide radio and teletype system.
- **Wyoming**: State Highway Patrol aids in investigations and in emergency situations.

State police agencies, then, do provide a number of services which aid local units. Yet, frequently these aids are only utilized when requested and often cooperation occurs chiefly in the more specialized services. Moreover, in many jurisdictions, police services are provided to local forces by a number of State agencies rather than a centralized State police department.[130] This fragmentation of police services necessitates local agencies having to maintain several contacts at the State level to receive services they desire. Also this fragmentation may prevent coordination among the agencies offering police services to the local government. In this manner the various functional and geographic restrictions on State police activities have deprived local departments of an even higher and more coordinated level of police services from such agencies.

Police Finances: State-Local Responsibility for Retirement Costs

Police pension systems are among the oldest public retirement systems in the United States. They were developed in order to enhance the attractiveness of police service and to compensate for the hazardous nature of the profession.

While there has been an expansion in the number of general coverage employee retirement systems and also some reduction in limited coverage systems, locally administered police retirement systems still comprised about 30 percent of all retirement systems in 1967. These systems covered 1.1 percent of all public employees and held 2.2 percent of all the cash and security holdings of all retirement systems. They usually are characterized by lower rates of employee contributions than other systems, and larger police retirement systems have earnings ratios on their cash and security holdings that are comparable with more comprehensive state and local retirement systems.

Nonetheless, a recurrent problem has been the fiscal viability of many police retirement systems. Most tend to have small membership and several studies have identified management difficulties in such small systems.[131] A recent Colorado study found that police pension funds were underfunded by about $32 million in 1967.[132] The potential insolvency of these funds created a practical hardship for Colorado law enforcement personnel. In the words of the study's authors,

> The law [Colorado statutes] prescribes a maximum benefit schedule for both policemen and firemen and then states that if funds are insufficient to cover the benefits recommended, proportional shares should be granted each claimant until the fund becomes solvent. . . .active police officers and firemen in the smaller cities and towns have no guarantee that any pension benefit will be forthcoming when they retire, for if the resources are not available, the local board has the authority to reduce or even eliminate the benefit payments.[133]

The small size of many police pension funds almost invariably guarantees that they will not be fiscally sound. In such a situation, both employees and the public suffer. Employees have no assurance of the long-term solvency of their pension funds and localities financing retirement systems on a pay-as-you-go basis can ". . .only look forward to increasing demands on the general fund with little hope for relief."[134]

Various approaches have been taken to make the small pension fund more viable. One involves State contributions. This approach has been adopted in Colorado, Oklahoma, and Pennsylvania. Other States such as Georgia, New Jersey, and New Hampshire have State-administered, limited coverage retirement systems for local police with varying degrees of state support. Finally, others have centralized all retirement systems into one or a few State-administered systems with State fiscal support. This approach occurs in Alaska, Hawaii, and Nevada. These last two forms of State support provide police pension funds with greater fiscal security.

Such support reduces the risk of temporary insolvency of small police pension funds, provides the fund with more experienced management, and often creates a larger fiscal return for the fund due to its increased assets.[135]

Some critics, however, fear that consolidation of police pension funds would result in increased contributions from police and firemen and in pressures to reduce the higher benefits available in decentralized police pension funds. Moreover, there is worry that consolidation of pension funds could result in too great a concentration of power in the management of such a fund.[136] Many fear the reduced political accountability of consolidated pension funds.

Small police retirement systems persist in a number of States (See Table A-13). In 1967, there were 628 locally-administered police retirement systems which had a total membership of 78,240 or an average of 124 members per system. In 1957, there were 747 such systems with 80,595 members for an average of 108 members per system. Thus, between 1957 and 1967 there was little change in the organization of police retirement systems with the exception of centralized systems being instituted in New Jersey and Ohio.

Another problem affecting police pension funds is their heavy reliance on local governmental contributions. While greater governmental contributions to these systems seems justified in light of the hazardous nature of police work, such outlays represent a sizeable burden for many localities. Local government retirement contributions averaged 11 percent of local police expenditures in 19 of the 43 largest cities in 1967. Such contributions ranged from 3.9 percent of police outlays in Atlanta to 33.4 percent in New York City (See Table 51). Increased state support would remove a fiscal burden from affected localities and allow them to channel more local money into other parts of the criminal justice system.

Table 51
POLICE RETIREMENT COSTS AS A PERCENT OF TOTAL LOCAL POLICE EXPENDITURES SELECTED LARGE CITIES, 1967

City	Local Contributions to Retirement System as a Percent of Total Local Police Costs
Atlanta	3.9
Baltimore	15.1
Chicago	8.0
Denver	11.8
Houston	6.0
Indianapolis	13.8
Kansas City	5.9
Louisville	11.4
Milwaukee	9.6
Minneapolis	16.7
New Orleans	8.1
New York	33.4
Oklahoma City	4.0
Philadelphia	10.7
Phoenix	13.1
Pittsburgh	14.0
St. Louis	8.1
St. Paul	11.5
Seattle	7.7
Average (19 cities)	20.8
Unweighted Average (19 cities)	11.2

Source: U.S. Bureau of the Census, *City Government Finances in 1966-67.* Table 6; U.S. Bureau of the Census, *Employee-Retirement Systems of State and Local Governments,* 1967 Census of Governments Vol. 6, No. 2, Table 8.

Summary. State-local issues have emerged in matters relating to professional upgrading of the police function. State-local concern about uniform minimum selection and training requirements, about formalized State police services to local agencies, and about the construction of viable police pension systems reflect the desire of these governments to have a uniform, if only a minimum, degree of professionalism in the police function. Minimum selection and training requirements, therefore, are designed to reduce reliance on part-time and poorly qualified policemen. Formalized programs of State technical assistance are intended to reduce "gaps" in the capabilities of some local police departments as well as to coordinate better police activities of all such agencies. The creation of larger, better-managed police pension programs is undertaken to improve the attractiveness of the police profession.

State involvement in these issues occurs because of its superior legal, organizational, and fiscal resources for effectuating changes in these areas. Thus, State mandating of uniform selection and training standards is sometimes the only way to provide a thorough upgrading of police qualifications. In some instances, only State agencies have the breadth of technical resources with which to supply specialized, supportive services throughout the State. Frequently, only the State has sufficient fiscal and management capabilities to help effectively administer local police pension systems.

At the same time, some have questioned the effectiveness of State action in these areas. Minimum selection and training standards in some States are far below those in effect in many large cities. Moreover, where such mandated standards have not been accompanied with

State fiscal support, many local agencies have been hard-pressed to meet the requirements. Indeed, some question the utility of even trying to define "minimum" qualifications in an area as variable and changing as the police function.

In the matter of State technical services to local police agencies, some argue that States should encourage local governments to perform these services on a regional basis. Others point to the fragmentation of the police function at the State level and doubt the State's ability to provide a coordinated set of technical services to local police forces. Furthermore, since many State police agencies have no general crime control responsibilities, some critics find it hard to believe that they can develop productive working relationships with local departments. State involvement in local police retirement finances can often serve to prevent the integration of smaller local systems with other larger ones or to remove control from local hands altogether.

Both State and local governments see the need for more intergovernmental cooperation in these issues. Yet, arguments still focus on the ability of State police agencies to adequately aid local forces, on the need for and method of standardizing police selection and training requirements, and on the manner of State involvement in local police retirement finances.

States have less experience with the police function than do many larger local governments. In many cases, local police forces surpass minimum selection and training requirements, have no continuing need for State technical services, and have a sound police pension system. Yet, it is all too apparent that some local police agencies have need of such State aid. In these agencies, State support can raise the capabilities of local policemen. Moreover, the State often is the only government which can fully coordinate the operations of local police departments in such functional areas as records and communications—to mention only a few. The State, then, can improve the workings of the local police system. Yet, it must be ever watchful of attending to the needs of more well-developed local police agencies which now bear the brunt of daily police operations. These agencies are still the key element in a State-local police system, and their cooperation in these issues is pivotal to a more professional and well-coordinated police function.

Intergovernmental Police Issues of a State Dimension

Several intergovernmental police issues involve State responsibilities primarily. Such issues as participation in interstate crime control compacts, regulation of local police personnel practices through civil service laws, and formulation of the criminal code which affects the bounds of legitimate police activity are intergovernmental matters which primarily are of State concern.

State action in these fields can do much to clarify the nature and extent of police powers. It can allow flexibility in local police personnel practices and make the police function more effective in a multi-state context. Criminal code reform can give the general public a better understanding of the nature of the police function and the scope of individual rights in police-public relationships. Revision of civil service laws can permit better police personnel management practices. Finally, the public is also served by the greater effectiveness of the police function in an interstate context when there is State participation in multi-state crime control efforts.

Legal Restrictions on Police Practices

The State criminal code places bounds on such police powers as arrest, search and seizure, and police interrogation. These restrictions on police practices stem from the traditional belief that there are individual freedoms that must not be abridged by indiscriminate use of police authority.

While most people would agree, in principle, that there should be certain constitutional limitations on police work, some express concern that recent Supreme Court decisions have unduly reduced the scope of legitimate police activity. They feel that this has produced a ". . .grievous imbalance in the administration of criminal justice" whereby individual rights have been stressed to the point where ". . .public safety has been relegated to the back row of the court room."[137]

In short, there is a serious debate about the proper balance between the rights of the accused and the societal right of having an effective criminal justice system. As one scholar put it: "Everyone would agree, I suppose, that the criminal process should be rational - that its goals should be the conviction of the guilty and the prompt acquittal of the innocent, with as little disruption of other human values as possible."[138] The attainment of such a "rational" criminal justice system can be accepted in theory, but current controversy indicates that the balancing of values which this overall goal requires is not easy to achieve.

Powers of arrest and the use of deadly force. Common law permits several grounds for legitimate police arrest. First an officer may make an arrest with a warrant, either validly issued or "fair on its face"; second, he may effect an arrest if a felony or misdemeanor has been committed in his presence; and finally, he may arrest if he has "reasonable grounds" or

"probable cause" to believe that a person has committed a felony.[139]

The problem of defining legitimate police arrest occurs in the last area—that of arrest with "probable cause." To insure a policeman's safety in these circumstances, many States have adopted "stop and frisk" laws. Such laws specify grounds on which policemen may make an arrest for "probable cause."[140] These laws educate policemen as to when they may make an arrest for "probable cause" and thereby help them to better apprehend possible criminal suspects.

Critics of "stop and frisk" legislation contend that these laws serve as ". . .camouflage for actual and intentional evasion of the probable cause standard required for arrests. . . .Certain elements have also insisted that police will misuse this authority by harassing minority group members. Others claim that the standard is so flexible that suspicion becomes a subjective standard of each individual police officer."[141]

At a minimum, "stop and frisk" legislation usually enumerates the situations in which a police officer may arrest for "probable cause." To the degree that such legislation is widely publicized, it also educates the citizen as to his prerogatives when he is encountered by police in a "stop and frisk" situation.

In the process of arrest, a policeman may have to use force to subdue a person. The State criminal code often details the conditions under which he may use force, and the extent of force he may use in arrest.[142] Basically, a policeman may use force in effecting a lawful arrest, in preventing a major crime, or in self-defense. With reference to any use of force beyond these limitations, the officer usually must respond for resulting damages, both to the individual arrested and to the person and property of innocent bystanders.[143] Here again, the officer faces a dilemma when he uses force in a gray situation where it is not entirely clear as to what constitutes reasonable necessity in the use of force to effect an arrest.

Most States have judicial precedents permitting the use of deadly force in the arrest of a felon. Two States, New Hampshire and Rhode Island, have adopted the Uniform Arrest Act which requires that ". . .a reasonable necessity to use deadly force exist."[144] Four others, moreover, have judicial precedents that permit the use of deadly force in the apprehension of a felon only as an "absolute necessity."[145]

Eleven States permit the use of deadly force to arrest a misdemeanant, but only in a case of self-defense. Seven others permit the use of deadly force to arrest a misdemeanant even ". . .though the arrester is in no great danger."[146] Justifiable homicide is ruled in the use of deadly force on a misdemeanant when he offers actual resistance to arrest in at least 19 states.[147] One State, New Hampshire, makes it a citizen's duty to submit to any arrest, even an illegal one.[148]

Police use of force, particularly deadly force, in effecting an arrest obviously is a highly controversial issue. When the legislature circumscribes the conditions under which such force may be used and describes the extent of permissible force in arrests in State law, both police and public are served by a better understanding of the arrest power.

Search and seizure. Police searches are legal on four grounds: when they are conducted under a valid search warrant, when they are incidental to a lawful arrest, when they are based on probable cause, and when they are consented to by the searched. Constitutional and statutory restrictions involving police searchers are designed to protect the individual from "unreasonable searches" made by the police.

The controversy affecting police searches emanates from the "exclusionary" rule which prohibits improperly seized evidence from being used in criminal prosecutions. This rule has been held necessary to prevent police from ". . .taking a calculated risk that a particular search might turn out to be reasonable, depending on what it does or does not produce."[149]

Proponents of the rule have stated that the use of illegally obtained evidence is and should be ". . .denied in order to maintain respect for law; in order to promote confidence in the administration of justice; in order to preserve the judicial process from contamination."[150] They claim the exclusionary rule makes the police more attentive to individual rights while at the same time obligating them to search for criminal evidence in a far more professional manner than if the rule were not in use.

On the other hand, critics of the rule see it as unduly hampering the work of the criminal justice system. They claim ". . .the exclusionary rule is really the poorest of techniques to meet the problem of police misconduct. . . .When an exclusionary rule is established which has as its goal the reformation of police practice, the impact on the trial is that the court is withholding evidence from the triers of fact and, hence, theoretically is making it even more difficult for the jury to determine the truth. . . .The exclusionary rule is largely ineffective because it does not strike directly at the abuse [illegal searches] but only at the consequence of the abuse."[151] In effect, critics feel that evidence which could be used for criminal convictions is being sacrificed by the workings of the exclusionary rule and that it hampers the workings of the criminal justice system. They contend that illegal police searches could be penalized under

other existing laws and the evidence still used to secure criminal convictions.

Police interrogation. The exclusionary rule is also prominent in its effects on police interrogation practices. *Miranda vs. Arizona* held that an arrested person has a right to counsel while being interrogated and that confessions obtained without the presence of counsel which were involuntarily made are inadmissible in a court of law. Individual rights then are protected by the Constitutional privilege against self-incrimination. The Supreme Court adjudged that government should not play an "ignoble part" in the criminal justice system by securing convictions with unconstitutionally procured evidence.

Most would agree that the constitutional privilege against self-incrimination has a valid purpose in protecting the accused from the intolerable burden of facing the "cruel trilemma" of contempt, perjury, or conviction.[152] Yet, some feel that the privilege against self-incrimination must be a protection of the innocent "...in a way that ...does not protect the guilty."[153] While agreeing with the principle of the privilege, critics feel that there has been misplaced judicial emphasis on the extent and ramifications of the privilege. They contend that it should be permissible, in a court of law, to comment on the fact that the privilege was invoked during the course of police interrogation. They believe that this fact should be duly noted by the jury in the course of its deliberations. Some also contend that the police should not have to inform the accused of the privilege during police interrogation, since there is no obligation for the accused to answer police interrogation, nor is there any penalty if the accused lies while being questioned.[154] In effect, they feel that the privilege is not inextricably linked to the issue of the fairness of police interrogation practices. Other administrative procedures, they feel, can be instituted to insure that the accused is treated properly during the course of these interrogations.[155]

Proponents of the exclusionary rule in police interrogation, on the other hand, believe that the privilege insures that the criminal justice system will be inherently fair in its operation. They contend that the privilege will insure that the criminal justice system will remain "accusatorial" in nature and that it assures a process wherein the "...State must establish guilt by evidence independently and freely secured and may not use coercion to prove its charge against the accused out of his own mouth."[156]

In effect, proponents feel that the extension of the privilege to the interrogation process will encourage sounder investigative techniques by the police, while critics maintain that the extension of the privilege has unnecessarily curtailed many of the best means of securing criminal convictions.

The criminal code and exercise of police discretion. State criminal codes have specified the scope of various discretionary police procedures. Such legislation has indicated both to police and general public the manner in which legitimate police authority may be used. Especially when supplemented by a lucid set of departmental general orders, the criminal code can educate the individual policeman as to the proper use of his discretionary powers. Indeed, as in the case of "stop and frisk" legislation, the criminal code can result in increased discretionary authority.

It is all too apparent that legislative and administrative explication of the use of discretionary police powers will not result in uniformly standardized police procedures. Noting this fact as it pertained to the use of force in an arrest situation, one study found,

> The force that must be used is the force that the officer feels he is compelled to use under the circumstances then present. It can't be weighed with any degree of nicety or accuracy....Force used at two o'clock in the morning might be different than force used at two o'clock in the afternoon. The force used in some outlying district can be different than the force used in a downtown area. All of these things are considerations.[157]

The discretionary aspects of police authority, then, can never be fully clarified or standardized, yet constant attention must be given to criminal code revision so that police departments, individual officers, and the public are in substantial agreement about general guidelines concerning the use of police authority. Moreover, such revision should be of a continuing nature for a "...decision as to what constitutes proper guidelines for the police must ...be subject to frequent review to assure that adequate room is allowed for the exercise of an officer's judgement, but to assure as well that the guidelines are not so broad as to encourage or allow for the making of arbitrary decisions."[158]

Continuing criminal code revision need not be construed as "handcuffing" the police: Rather it can be a means of setting standards and guidelines about the nature and extent of legitimate police authority. A well-drafted criminal code should help the policeman better understand the nature of his discretionary powers as well as increase public confidence that such police practices are not capricious or arbitrary in nature.

A unifying thread: liability for improper police action. As the foregoing suggests, police work is quite often a matter of discretion. The decision to arrest, to make a search, and to interrogate a suspect are everyday occurrences. Constitutional and statutory definitions of such practices exist so that among other things there will be less probability of abuse of police authority.

At the same time, these restrictions often place an added burden upon the individual police officer - his liability for false arrest and false detention. The possibility of tortious liability may affect a policeman's decision to invoke honestly his discretionary powers. Moreover, complete individual liability for tortious conduct might discourage police recruitment and severely constrain the vigor with which policemen perform their duties.[159]

Several States have enacted governmental tort liability statutes which provide that ". . .as a general rule, the public entity - not its employee - is ultimately financially responsible for tort damages under the statute. Of course, the entity has a right of indemnification where the employee is guilty of actual fraud, corruption, or malice. . ."[160] Moreover, at least 12 States recently have overturned the doctrine of municipal immunity from governmental torts.[161] Due to the relative infrequency of successful tort actions against individual policemen, some contend the public interest is served best when the employing government assumes tort liability.

Proponents of governmental tort liability also maintain that such increased responsibility would result in more effective internal controls over the action of disruptive police officers. One scholar contends, for instance, that governmental liability would be a key factor in upgrading the training of local policemen.[162]

Critics of governmental tort liability often stress the fiscal inability of smaller governments, in particular, to meet the cost of tortious judgments. Moreover, some assert that governments should not be liable, even with the right of indemnification, for the tortious acts of their employees who should know the proper bounds of their authority. Also some contend that increased governmental tort liability might have the incidental effect of creating more police irresponsibility.

On balance, however, governmental tort liability is a vital indication of public employer responsiveness to the plight of the individual police officer in performing his daily duties. Without effective tort liability, police may encroach on the rights of individuals and the latter would not have effective recourse for such illegal action. With tort liability, on the other hand, the average citizen is assured that government will compensate him for incidental as well as intentional infringements on his personal rights. At the same time, the policeman is protected from tort actions arising out of the use of his discretionary powers.

State Civil Service Regulations Affecting Local Police.

Most larger local police forces are covered by a merit system.[163] Such systems were developed to end the deleterious effects of political patronage in the appointment and promotion of local policemen. While reducing the disruptive consequences of patronage, many civil service regulations have unduly rigidified personnel practices in local police agencies, particularly with regard to promotion and lateral entry.[164] Recent data obtained by the National Civil Service League indicates that a substantial number of counties and cities still have such restrictive personnel practices as absolute veterans' preference and requiring promotion only from within an agency.[165]

Reform in this area is still largely a matter of local governmental action. In only a few States are local jurisdictions completely blanketed by State civil service regulations–as is the case in New York, Ohio, Massachusetts, and parts of Louisiana, Maryland, and New Jersey.[166] Thus, in most cases, State governments have permitted localities a fair amount of flexibility in designing their local police personnel systems.

At the same time, at least 21 States mandate veterans' preference provisions in the operation of local civil service systems. Of these 21, eight stipulate a general form of veterans' preference in local employment, leaving the locality to determine the form of preference. Seven mandate point bonuses, usually ranging from five to ten points, on civil service appointment examinations. Five others mandate veterans' preference in both appointment and promotions, and one State–Minnesota–requires absolute veterans' preference in public employment.[167]

Preferential personnel regulations, whether based on seniority or service in the military, can stultify sound police personnel management. While some measure of preference may be warranted, such practices should not obstruct the appointment or promotion of otherwise qualified individuals. Moreover, if such preferences are to be adopted, they should be formulated by local, not State government. When under local control, such practices can be reviewed and modified periodically so as to insure that they are not detrimental to police personnel management. When such regulations are mandated by the State government, they frequently become entrenched and less subject to constructive modification.

Various arguments can be raised against change in this area. Some contend that the State must assume a leadership role in police and other personnel matters and that any grant of greater discretion to local governments would further fragment the standards of the system and the effectiveness of the police function. Others argue

that preference requirements are merely a formal technique of giving societal recognition to categories of people who, because of their service to the nation or long service in their profession, merit special consideration. Still others point to the dangers of weakening local merit systems and suggest that politics, not professionalism, is the guiding motive of those ostensibly seeking reform. Finally, some make the point that civil service and other personnel and other personnel regulations are not the real deterrents to mobility, good recruitment, and professional advancement within a force; instead they maintain that the whole cluster of personnel practices affecting police, the unit administering them, the leadership of both the chief and the elected executive in these matters, as well as the involvement of police unions and associations are vital to any basic changes in this area.

Civil service reform, no doubt, is a key element in modernizing local police agencies. In many cases, local agencies have shown the capacity to modernize their personnel systems and remove restrictive civil service regulations. Such personnel reforms, however, are less likely to occur if local governments first have to change restrictive State regulations.

Interstate Cooperation in the Police Function.

Interstate cooperation in the police function is significant for two basic reasons. First, it allows governmental action in the interstitial parts of American federalism - interstate areas. Without interstate cooperation, police activities would be hindered due to State boundaries. Various forms of interstate cooperation, in effect, waive State sovereignty so that the police function can be performed adequately on an interstate basis. A second significant reason for interstate cooperation is the existence of a large number of interstate metropolitan areas in the nation. There are presently 31 interstate metropolitan areas which contain approximately one-third of the country's metropolitan population. In these areas, some form of interstate cooperation is absolutely necessary in many aspects of police work.[168]

Types of interstate cooperation. There are basically three forms of interstate cooperation in the police function. They range, for example, from informal administrative agreements for the sharing of criminal records to adoption of uniform laws on criminal extradition, and formal compacts for the return of runaway juvenile delinquents. Administrative agreements between states, the joint passage of uniform laws or model acts, and interstate compacts are the three major forms of interstate cooperation. All of these have been used in the police field.

In the case of administrative agreements, several States with the assistance of the Federal Government, have agreed to set up computerized, criminal records systems which ultimately may be utilized by all the States.[169] Administrative cooperation was the impetus behind the creation of the New England State Police Staff College.[170]

At present, there are several uniform laws which affect police activities. The Uniform Law on Interstate Fresh Pursuit provides that policemen in one State may engage in "close pursuit" of criminals who cross State lines. This Act has been agreed to by 41 States. The Uniform Law on Criminal Extradition has been agreed to by 45 States,[171] and uniform laws on rendition of out-of-state witnesses and prisoners as witnesses have been approved by forty-eight and nine States respectively.[172] All these uniform laws are an aid to the apprehension of the criminal who moves across State lines.

A number of interstate compacts also affect the police function. The Probation and Parole Compact allows for out-of-State incarceration of persons who have violated the terms of their probation or parole. All 50 States have ratified it. The Interstate Compact on Juveniles authorizes cooperation in the return of escaped juvenile delinquents. This compact has been ratified by all the States, except Georgia, New Mexico, and South Carolina. The Interstate Compact on Clearing Detainers permits the speedy disposition of criminal charges against criminals imprisoned in one state but being sought for criminal action in another. This compact had been ratified by 25 States, as of 1969.

Examples of more limited interstate crime control compacts include the New England Police Compact and the Waterfront Commission Compact between New Jersey and New York. The first provides for a central repository for records on organized crime in the region and for the several State police forces to cooperate in emergencies. The second compact was designed, in part, to help clean up waterfront crime in the New York metropolitan area.

In addition to the above instances of interstate cooperation, some States have authorized interlocal cooperation in the police function in interstate metropolitan areas. Thus, Kansas and Missouri have authorized the creation of the Kansas City Metro Squad which performs investigative duties in that metropolitan area. Missouri and Illinois have authorized the Major Case Squad to perform areawide investigative duties in the St. Louis metropolitan area.[173] The states of Maryland, Virginia, and the District of Columbia have authorized "mutual aid agreements" among local governments in

the Washington D.C. metropolitan area.[174] These latter instances of interstate cooperation are variants on administrative agreements and uniform laws applied at the interlocal level.

Each of the three basic forms of interstate cooperation has its own particular rationale. Administrative agreements are the most informal type of interstate cooperation and are not as binding as either uniform laws or interstate compacts. Instead, they serve as a convenient device for intermittent cooperation among states in the police field. This type of cooperation is likely in instances where fixed legal procedures are not needed.

Uniform laws are an example of more formal interstate cooperation. Here States pass parallel laws which institute uniform procedures in a given field. This sort of cooperation reduces the differences in specific State legislation. It also provides cooperating States with a common basis of understanding as to a given statute. This form of cooperation is less binding than an interstate compact.

The advantage of the compact over the other forms is that it is formal and contractual in nature, is liable to enforcement by the U.S. Supreme Court if necessary, and takes precedence over an ordinary State statute.[175] Moreover, in recent years, there has been increased federal and local participation in the interstate compacts, leading one scholar to state:

> Potentially the characteristics of the interstate compact combine to make it the most versatile and effective legal instrument of American intergovernmental relations. It is the only multi-jurisdictional means of creating a joint intergovernmental agency. Its contractual character assures both uniformity and enforceability. It is the only method of establishing mutual interstate extraterritoriality. It alone can unite federal and state powers through an instrument which can also incorporate local representation and a vehicle for local functions across all jurisdictional boundaries.[176]

The chief value of the compact is that it can provide truly "regional" action in a given functional field.[177] Such regional action is important in both interstate metropolitan areas and interstate regions of fairly sparse population.

Federal involvement in interstate cooperation. The Federal government formally becomes involved in interstate cooperation only in the case of interstate compacts. In the case of crime control, Congress passed "consent-in-advance" legislation in 1934 that allowed ". . .two or more States to enter into agreements or compacts for cooperative effort and mutual assistance in the prevention of crime and in enforcement of their respective criminal laws and policies. . ."[178] Thus, Congress cleared any federal barriers to interstate cooperation in crime control over 35 years ago.

Yet, while the Federal government has given this advance consent to interstate compacts, it has not formally participated in existing interstate compacts in the crime control field, as it has, for example, in the water resources area.[179] The Federal government still has not given financial subsidies to crime control compacts, though it has aided interstate administrative agreements in the field of criminal records under the Safe Streets Act.

Future prospects. The future form of interstate cooperation in the police function is difficult to forecast. While there has been an impressive amount of interstate cooperation in such instances as Uniform Laws on Criminal Extradition and the Interstate Compact on Probation and Parole, the lack of regional interstate cooperation along the lines of the New England State Police Compact is somewhat disappointing.[180] The same holds true with regard to efforts to encourage mutual aid agreements in interstate metropolitan areas. The lack of this type of interstate cooperation can be detrimental to metropolitan and regional aspects of the police function.

The difficulties in achieving regional and metropolitan interstate compacts are not easy to overcome. There is always some reluctance in allowing extraterritorial police work under an interstate compact due to sensitivity about jurisdictional prerogatives of individual police departments. Also regional interstate compacts may be difficult to enact due to the inability of States to agree on a formula of funding the joint operations of the compact.[181] In spite of these difficulties, these compacts are often the most sensible form of intergovernmental cooperation in regional and metropolitan interstate areas. They could provide for ongoing police services in interstate metropolitan areas and allow combinations of States to develop specialized police services they might not be able to assume alone.

To conclude, there is already a considerable amount of interstate cooperation in the police function. National crime control compacts are in effect in a majority of States, as are various uniform laws which affect the police function. However, extensive regional and metropolitan interstate cooperation is lacking. The Federal Government has given prior "advance consent" to these latter forms of interstate cooperation, but local and State sensitivity about jurisdictional prerogatives as well as their inability to work out the necessary administrative and fiscal formulae for such compacts has prevented more interstate cooperation of this type in the police function.

Summary. States directly affect the local police function in a number of ways. They are the prime actors in the enactment of interstate police compacts, revision

of criminal codes, and legislation of mandatory personnel regulations for local governments. State action in these matters can widen the jurisdictional scope of local police work, clarify the discretionary powers of local policemen, as well as curb or permit greater flexibility in police personnel management.

Interstate police compacts can resolve pressing jurisdictional problems in interstate metropolitan areas as well as provide for more coordinated police work in urban and rural interstate areas. Revision of the State criminal code permits clearer knowledge of the scope of legitimate police authority, and modification of restrictive State civil service regulations can provide the flexibility of police personnel management.

State inaction in these matters can hinder local police work, yet it must be remembered that local police agencies are not always inclined to favor positive State action in these matters. Thus, local sensitivity about police jurisdiction can impede the formation of interstate police compacts and mutual aid agreements. Localities may resist criminal code revision that too clearly sets the bounds of police discretion, preferring to have a very wide measure of latitude for their policemen. Finally, localities may not encourage revision of State civil service regulations if local police merit systems are themselves encumbered with restrictive regulations about appointment and promotion. Under these conditions, State government may not have the proper incentive for movement on these various fronts.

State action in these matters, however, can always be potentially beneficial to local police forces. Interstate compacts could be the instrument for extraterritorial police activity; criminal code revision could be the basis for redrafting a force's general orders; and restructured State civil service regulations could stimulate local police personnel reforms. In all these cases, local governments would have the option of taking action only when deemed necessary. Without State action, localities would not always be permitted this option. Thus State leadership in these issues may be a prerequisite to local policy changes.

B. THE COURTS

The courts are the pivot on which the criminal justice system turns. Two decisions the courts make are crucial to the criminal process: whether a person is to be convicted of a crime and what is to be done with him if he is. The courts have great power over the lives of the people brought before them. At the same time the limits of this power are carefully laid out by the Constitution, by statute, and by elaborate procedural rules, for the courts are charged not only with convicting the guilty but with protecting the innocent. Maintaining a proper balance between effectiveness and fairness has always been a challenge to the courts. In a time of increasing crime, increasing social unrest, and increasing public sensitivity to both, it is a particularly difficult challenge.[182]

The principal characteristics of a criminal court system that balances efficacy and fairness have been set forth in many studies over the years since Dean Roscoe Pound's historic speech of 1906 on "The Causes of Popular Dissatisfaction with the Administration of Justice". The latest of these studies is that of the President's Commission on Law Enforcement and Administration of Justice in 1967. These studies seem generally agreed that what is needed is sound organization and administration; selection and retention of competent personnel, both judicial and nonjudicial; adequate financing; and procedures that assure sensitivity to the need for maintaining a proper balance between effectiveness and fairness.

This section analyzes the major problems that obstruct achievement of these attributes of a good court system, and the means of overcoming them. The analysis is premised, furthermore, on the desirability of the court system's fostering the attainment of two "external" objectives: improved coordination of the courts with other elements of the law enforcement and criminal justice system: police, prosecution, and corrections; and strengthening rather than weakening of intergovernmental relations.

Attention is first directed briefly to the specific problems of the lower courts, which by general consensus seem to constitute the principal sore spot in the criminal courts. The Courts Task Force of the President's Crime Commission stated that none of its findings were more disquieting than those relating to the condition of these courts.[183] They carry the largest load of criminal cases—about 90 percent; there are many more of them than there are courts of general jurisdiction; they are the ordinary citizen's most frequent point of contact with the criminal justice system. Only a few cases initiated in a lower court pass to a higher jurisdiction, so that these courts usually have both the first and last judgment over the citizen's future. As the point of first exposure of most offenders they can have a profound effect in determining whether individuals will be steered into or away from a career of crime. Moreover, they labor under the most critical deficiencies. On top of all this, the minor courts have been most neglected by the public and by the legal profession.

The initial focus is on the lower courts in urban areas, where the problems are most intense; then it shifts to the justice of the peace courts, the rural counterparts of the urban lower criminal courts.

The Lower Courts: Focus of Difficulties

Study committees and commissions have criticized the urban lower courts for many years, but many of their inequities and indignities, and much of their ineffectiveness persist.[184] In fact, they are aggravated by burgeoning population and increasing urbanization.

Urban Lower Courts: Shortcomings and Problems

The myriad shortcomings of the lower urban courts are observable at every step of the judicial process. At the point of initial presentment to the court, the defendant, in many cities, may not be advised of his right to remain silent or to have counsel assigned, or he may be one of a large group herded before the bench, and no effort is made by the judge or clerk to inform them of their rights or the nature of the proceedings. In many jurisdictions, counsel are not assigned in misdemeanor cases. Even when provided, the defendant sometimes is not informed that if he is penniless he is entitled to free representation. Under the press of business, judges have little time to consider the question of bail, so that bail is based on the charge rather than the circumstances of each case.

Defendants who can afford to retain counsel are released on bail to prepare for later trial or to negotiate a disposition, but the majority pleads guilty immediately, often without advice of counsel. Pleas are entered so rapidly that they are given little consideration. If the defendant seeks more time, he may often be told that his case will be adjourned for a week or more and he will be returned to jail.

The trial itself is a far cry from one conducted in accord with the safeguards of due process. No court reporter is present unless the defendant offers to pay for one, informality prevails, and rules of evidence frequently are ignored. In some cities a police officer is the prosecutor and the accused defends himself; neither side is represented by trained counsel. The overall emphasis then tends to be on speed and dispatch. Yet, there is still the possibility of lengthy imprisonment or a heavy fine.

Most defendants convicted in the lower courts are sentenced promptly without benefit of probation services or presentence investigation. Sentence may be based on the charge, the defendant's appearance, or his response to questions that the judge may ask him in the few minutes he has for every case. The sentencing procedure resembles an assembly line, with sentences of one, two, or three months being imposed without consideration for the individual defendant.

All these conditions, from initial presentment through sentencing, occur in aggravated form in those lower courts which handle petty offenses—drunkenness, disorderly conduct, vagrancy, petty gambling, prostitution. Judges sometimes seem annoyed to have to serve in these courts. Defendants often are ridiculed, treated with contempt, scolded, embarrassed, and are sentenced to serve time or work off fines. Sometimes it is difficult to determine what offense is being tried in a given case.

The roots of the problems. The problems of the lower courts in urban areas stem from at least four basic causes: the sheer volume of cases in relation to personnel, the poor quality of judicial and nonjudicial personnel, weak administration, and the fragmentation of jurisdiction.

Volume of cases in relation to personnel. In 1962 over 4 million misdemeanor cases were brought to the lower courts. Until 1966 legislation increased the number of judges, for example, the District of Columbia Court of General Sessions had four judges to process the preliminary stages of more than 1,500 felony cases, and to hear and dispose of 7,500 serious misdemeanor cases, 38,000 petty offenses and an equal number of traffic violations per year. In 1965, a single judge for the Detroit Early Sessions Division had to handle over 20,000 misdemeanor and nontraffic petty offenses cases. The typical judge in an adult lower court plows through 300 or more cases a day.

Not only are judges in short supply, but the same holds true for prosecutors, defense counsel, and probation officers. The consequences of heavy workload are seen in overcrowded corridors and long calendars that allow only cursory consideration of individual cases. The crush of the court caseload tends to make docket-clearing the primary objective of the lower court process, to the detriment of the defendant's rights, careful sifting of facts, and judicious determination of appropriate sentence. Moreover, the greater the volume, the longer the delay between arrest and disposition for many defendants. Delay erodes the deterrent effect of the criminal process, sometimes causing collapse of the prosecutor's case as witnesses' fail to appear and memories fade, needlessly wasting witnesses' time, and prolonging pretrial detention of defendants who cannot afford bail.

The quality of personnel. The lower courts in general are manned by less competent personnel than the trial courts of general jurisdiction. In almost every city, judges in the latter courts are better paid, are more prominent members of the community, and are better qualified than their lower court counterparts. In some cities lower courts judges are not required to be lawyers.

As noted in Chapter 3, the State comprehensive law enforcement plans submitted by Alaska, Arizona, Idaho and Kentucky in 1969 indicated that these States require little or no statutory qualifications for their lower court judges.

Cases often are appealed from inferior courts for lack of judicial competence at the lower level. The waste of time for litigants, witnesses, jurors and judges in repeating an entire performance usually is compounded by the lack of a record from the lower court.[185]

In jurisdictions where the State is represented by a district attorney, the least experienced members of the staff generally are assigned to the lower courts. As they gain experience, they are promoted to the felony courts. Moreover, the lower courts usually are given less favorable treatment in the assignment of defense counsel. Where counsel are assigned, often they are not paid and their performance is poor. Finally, probation services are frequently not available in the lower courts. The Corrections Task Force of the President's Crime Commission found that over a third of the counties in its sample survey had no probation services for misdemeanants, and where services were available, they were inferior to those in felony courts.[186]

Weak administration. The lower courts usually are separate from courts of general jurisdiction in budgeting and in the management of personnel, budgets, and supplies and equipment. Yet, they suffer from the same administrative deficiencies, only more so because of the larger caseloads. The work of judges operating in the same court is not coordinated and the judges are often burdened with administrative chores. Because of the relative neglect of the lower courts by the public and reform groups, such efforts as are made to overhaul court administration tend to focus on the higher courts. The absence of public defenders or assigned defense counsel also removes a source of initiative for reform. Finally, while the lack of meaningful statistics plagues many courts at all levels, the deficiency is most acute among the inferior courts. Hence, a case for reform at this level is more difficult to document.

Effect of fragmented jurisdiction. A final cause of lower court problems in many States is the fragmentation of jurisdiction among such courts serving the same urban area and sometimes between them and general trial courts for certain types of cases.

With specific reference to metropolitan areas, a comprehensive study for the American Bar Association in 1962 stated:

> All studies of metropolitan court systems have shared the conclusion that a multiplicity of separate courts, with great overlap, duplication, waste, and jurisdiction, is the basic structural problem. This multiplicity includes not only the plethora of special purpose courts in Metropolis, but also the scatter of one-man justice and other "inferior" courts dotted throughout the satellite region on the fringes of Metropolis' legal boundaries, though within the real geographic community.[187]

This jurisdictional maze hampers the flow of case law and statutory changes down to the lower courts, and may produce confusion and illegal practices. Regarding the latter, the Courts Task Force of the President's Crime Commission cited the situation in Tennessee where:

> . . .all but three of the more than 200 city courts have no jurisdiction to imprison offenders; their power is limited to levying fines. Yet a recent survey revealed that 48 of 99 city court judges thought themselves able to imprison for violations of city ordinances; nine of 90 judges thought that they could imprison defendants for violations of State statutes. Although judges of the State courts are precluded from practicing law, in one lower court the city attorney was also the city judge.[188]

Of great significance is the impact on the offender. In some cities, an offender may be charged with petit larceny in any one of three or more courts: police, county, or State trial court of general jurisdiction. Which court he is taken to by the arresting officer may have profound effect on his final disposition, the treatment he receives, and his chances for eventual reintegration into the community. Each of the courts may have different rules and policies resulting from differences in judges, prosecutors, and tradition. They also may vary widely in their backlog of cases, thus affecting the time the judge can spend on a case. In one set of courts, the judges may be nonlawyers, police officers may prosecute the cases, and probation services may be unavailable. In other courts, however, they may be experienced professionals trained for their jobs. Moreover, disparities may exist within the same city for similar positions in different courts.

Fragmentation of the lower courts opens up the opportunity for litigating the question of whether the case was tried or reviewed in the proper court. Such questions are bound to arise, no matter how well the relevant constitutional and statutory provisions are drafted. As long as there are many separate courts each with its distinct and limited jurisdiction, this difficulty is bound to arise. Time spent litigating such issues merely creates expense and postpones final disposition of the case on its merits.

The problem of delay. Deficiencies in the quantity and quality of manpower, weak administration, and a rise in volume of cases may have one of two immediate consequences: either a constantly expanding backlog of cases emerge along with a lengthening period for disposing of them, or a short-circuiting of the careful deliberative judicial process occurs. As the Courts Task Force of the President's Crime Commission summed up the dilemma:

> In those courts in which high volume interferes with the orderly movement of cases and creates tremendous pressure to

dispose of business, one may observe concomitant delay in the disposition of cases and hasty consideration when these cases come to be heard.[189]

One statistical comparison tells the story of delay in the State criminal courts. In Great Britain, the period from arrest to final appeal frequently is only four months; in many States the interval is one and one-half years.

The consequences for the quality of justice are serious, as already illustrated in the description of the criminal justice process in the lower courts. Prosecutors often press for dismissal in order to keep their caseloads down to a manageable size. Defendants may manipulate the system to obtain sentencing concessions in return for guilty pleas. Others, unable to secure pretrial release on bail, are under heavy pressure to plead guilty and begin serving their sentences promptly. The overall result is that most criminal cases are disposed of by dismissal or plea of guilty.

As the backlog of cases rises, delay increases and with it the pressure to dispose of cases, so that reducing the dockets tends to become an end in itself. Disposition by dismissal or guilty plea is often marked by hasty decision and insufficient attention to penal and correctional considerations.

In addition to the period prior to trial, much delay also occurs after trial and sentence, at the stage of appellate review. Ten to 18 months may elapse between sentence and disposition of a final appeal. This often prolongs the release on bail of potentially dangerous convicted offenders and may mean the deferment of correctional treatment.

Delay may diminish the deterrent effect of the criminal justice system in the eyes of the potential offender as well as undermine public confidence. Delay also creates other social and economic costs. The public after all pays when crimes are committed by offenders released pending consideration of their cases, or by persons released prematurely because of caseload pressures that the court is unable to handle. Participants in a trial suffer losses, in time and dollars; police officers must await the calling of cases in which they are to testify; other witnesses and jurors must wait for their cases to be called, sometimes from one day to the next and often at a considerable financial sacrifice. The offender, too, is affected economically, whether or not he is ultimately found guilty. When days pass while his status remains uncertain, he may lose his job, accumulate bills, and his family may start to disintegrate or become dependent upon public assistance.[190]

Justices of the Peace

The justice of the peace—the rural counterpart of the urban lower courts—has drawn the fire of a considerable army of reformers and other critics over the years.[191] The latter have sought either outright abolition of the office or fundamental change in its traditional features.

The President's Crime Commission, for example, recommended that the States "enact legislation to abolish or overhaul the justice of the peace. . .system." As long ago as 1934, one critic observed:

> The justice of the peace is a universal and universally condemned, American institution. It is doubtful if a more striking example of cultural lag can be found in the political field than the attempt which is made in most of our 48 States to serve the ends of justice in the 20th century by a medieval English instrument. The system has no defenders and few apologists. The only persons actively desiring its continuation are those who profit from its operation in some way. And yet, though there are sporadic waves of reform, in most States the system goes along substantially unchanged.[192]

While 17 States now have abolished JP courts,[193] they still are explicitly established by name in many State constitutions and are controlled by constitutional and statutory provisions separate from those applicable to other lower courts.[194] They were originally set up to try small civil and criminal cases and generally to keep the peace. Other lower courts—police, village, mayor's, municipal, recorder's, city and similar courts—are usually distinguished from JP courts, having been created to supplement the JPs by exercising jurisdiction over ordinance violations within the limits of urbanized communities.[195] Yet, as the territorial and judicial authority of the urban courts has been increased, they have acquired countywide jurisdiction equal to or greater than the power of the JPs, thus blurring the distinction between them and the JPs.

Problems of the JP system. The Institute of Judicial Administration states that "Dean Pound, Judge Vanderbilt and many others have publicized the inadequacies of the JP so that today they are notorious. A recapitulation suffices to remind us of the reasons: lack of legal training, part-time training, compensation by fee, inadequate supervision, archaic procedures, makeshift facilities."[196] Another critic ascribes the decline of the JP to his lack of legal training, the absence of judicial decorum in the JP court, and compensation by the fee system.[197]

The JP is outmoded because conditions of life have changed. When the office came over from England in colonial times, he could provide readily available and inexpensive justice in the small community which he served. He was usually a leader of that community in character and wealth and enjoyed public confidence and respect, despite the fact that he was usually not a trained

lawyer. During the early years of the Republic he was the principal guardian of county government.

Today, on the other hand, because of various abusive practices associated with his court, the JP has become an object of ridicule and disparagement. Often he is paid by fees, collectible only when he convicts, so he has come to be known as "justice for the plaintiff." His selection from a small jurisdiction colors his judicial behavior. His adjudication of traffic violations within a small unit—often his major task—hampers uniform traffic law enforcement. Frequently he discriminates against the "outsider" and in favor of the local offender.

A significant index of the anachronistic character of the JP is the high rate of inactivity in the office in some States. As long ago as 1955, only 167 of Kentucky's 678 justices were active, and not more than half of them tried many cases. Kentucky's 1969 State law enforcement plan reported that in 1967 JPs were active in criminal cases in only 37 of the State's 120 counties, and 101 of the 626 JPs were performing judicial duties. Vermont's 1969 State plan stated:

> Vermont has justices of the peace, with jurisdiction to try offenses punishable by fines of $100 or less, but no one knows how many. The best estimate is several hundred. After the District Courts were created in 1967, the justices of the peace became almost defunct. In fiscal 1968, total fees received by all justices for hearing cases was only $732.[198]

In West Virginia, 625 justices of the peace are provided by law, but only 325 actually serve "Because of the lack of need or small amount of business for a justice in some of the magisterial districts, the office does not attract anyone."[199]

Fortifying his parochial loyalties as a cause of his unjudicial attitude is the JP's lack of legal training. In 1965 of the 37 States that then had justice of the peace courts, 28 had no requirement for legal training for the office. Often, therefore, the justice is ignorant of proper judicial procedure. Sometimes lawyers may take advantage of him, but more serious is the harm which his lack of knowledge of judicial procedure may do to defendants.

A study of the courts in New Mexico quoted the following from testimony given by JPs in various communities in the State:

> A statement was discussed concerning the functioning of the JP system. A JP felt that what is wrong with the justice of the peace system 'is ignorance, and ignorance of the law, and through that ignorance.'
>
> A JP, the head of a county association of JPs, stated that what is wrong with JPs is that 'a lot of them either don't know or just don't want to follow the statutes.'[200]

The lack of decorum in JP courts is often alleged to undermine public confidence in the entire judicial system, since many people, particularly those outside urban centers, have their only contact with the system in those courts. Again quoting the New Mexico study:

> When a person is hailed into JP court, he looks at his surroundings at about the same time he identifies the justice of the peace. In a few rare instances, he sees a well-appointed courtroom. In most other instances, unless he is familiar at first hand with JP courts, he is shocked.
>
> Probably the majority of JP courtrooms in New Mexico are the living rooms of JP's homes. When JPs were asked where they held court, such replies as the following were common:
>
> 'in our living room'
> 'my house, but I got my office separate'
> 'I have an office in my home'
> 'in my lving room'. . .[201]

In more than a few instances, the JP courtrooms are a disgrace. Consistent administration of justice by the JPs is hampered by irregular sessions and inadequate and sometimes inaccurate records. Lacking supervision, proper record keeping methods are not enforced; even minimal auditing may be uncommon. Compliance with basic directives governing rules of practice and procedure is difficult to achieve because of inadequate supervision.

The worst feature of the justice of the peace system, according to many critics, is the fee system of compensation. In 1965, 32 of the 37 States then having JPs compensated them through payment of fees, and in 18 of these States, these were the exclusive source.[202] This system of compensation raises serious questions about the JP's fairness. As stated in a dissenting opinion of the Washington Supreme Court:

> The income of the fee justice of the peace depends directly upon the volume of cases filed. If no cases are filed, he receives nothing. Vice inheres in the system. That under this system there is a very real likelihood of bias is demonstrated by the published studies of the law's scholars both here and in England.[203]

In a 1927 case, the United States Supreme Court ruled that a judge in a misdemeanor case is disqualified when his compensation for conducting it depends upon his verdict.[204] Despite this ruling, however, a number of States have not abolished the fee system, on the grounds that circumstances in the Tumey case were different from those prevailing in their jurisdiction.

The United States Supreme Court has not had occasion to rule on the constitutionality of the system wherein the justice is paid by defendant fee upon conviction and by the State or county upon acquittal. A number of States defend this system as not influencing a justice to convict in order to be paid.[205] Yet when a limit is placed on the amount that the State or county will pay, as in Mississippi, the system still is skewed in favor of conviction. It is similarly prejudiced when a justice can not collect costs from the county on an acquittal unless the county attorney approves initiation of the case. If the county attorney is understaffed and has difficulty initiating all the cases that come before

the justices, the latter will be tempted to convict rather than acquit.

In some States, as Minnesota and Washington, defendants may remove their cases to a salaried judge, and in every State they may appeal to a higher court. Yet such actions take money, thus eliminating a recognized attribute of the "common man's court," that is, easy access.

Strengthening Court Organization and Management: Two Approaches

States have used two approaches to correct the structural and administrative deficiencies in their lower courts. They have undertaken comprehensive overhaul of all or a major part of the total State-local judicial structure, including the lower courts, or they have confined their action to consolidation or other improvements of one or more of the lower courts. The latter include such measures as abolishing or displacing the JPs, and merging or otherwise rationalizing the structure of lower courts in metropolitan areas.

From the point of view of a State's basic responsibility for the overall administration of justice, the comprehensive course is preferable. The State's concern for the judicial function extends beyond the lower courts. Structural changes in the lower courts after all affect the others. In addition, to really achieve basic improvement in the lower courts, alterations must be made in other parts of the system. For example, proper rules of practice and procedure in the lower courts should be consistent statewide, but this requires the fixing of responsibility for promulgating and policing the use of such rules in some higher State body. The same holds true for administrative oversight, as well as for the most effective use of judges throughout the system.

Comprehensive approaches to court reform have been conceived and a number of States have followed this path. Other States have made specific structural improvements, in either the upper or lower courts, short of overall reform.

The Comprehensive Approach: Unification and Simplification

A basic difficulty with the lower courts, as well as higher echelons of the State-local judiciary, is that the State and local courts in a majority of the States constitute something less than a real system. The several levels of courts have an established jurisdictional relationship to one another, and they adjudicate the same body of law (except that municipal courts usually try violations of local ordinances as well). Yet they do not operate as a coordinated, smoothly functioning organization.

In many States, trial courts of general jurisdiction function under no uniform regulations or procedures so that, as one State reported to the Law Enforcement Assistance Administration, each of the courts is a judicial "kingdom" with its own jealously guarded prerogatives. The same generally holds true for the lower courts, and this explains some of the problems outlined earlier. No one person or body exercises administrative and rule-making authority over all these courts. In addition, the proliferation of lower courts often produces overlapping and duplication among such courts serving the same area and sometimes between them and general trial courts for certain types of cases. The atomization of courts is abetted by the local or district election of most judges, inclining them to feel primarily answerable to their local or district constituencies rather than to the State as a whole. Moreover, even when administrative and rule-making authority is vested by constitution or statute in the chief justice or supreme court, a fragmented court structure hampers the effective exercise of those powers.

This systemic and structural disorganization for many years has drawn the criticism of court reformers as interfering with expeditious administration. What is needed, they contend, is a well-structured and efficiently managed system. They urge the adoption of a simplified, unified court system, with administrative and rule-making responsibility clearly assigned and heading up in the highest court or its chief justice, as the major corrective for the organizational and structural ills of the State judiciary. Their proposal has its roots in Dean Pound's 1906 speech, cited earlier. Pound set forth the details of his proposal in a 1940 article in the Journal of the American Judicature Society.[206]

The controlling ideas governing the organization of our courts, he said, should be unification, flexibility, conservation of judicial power, and responsibility. Unification is called for in order to concentrate the machinery of justice upon its tasks. Flexibility is needed in order to enable the judiciary to meet speedily and efficiently the changing demands made upon it. Responsibility is vital in that some one should always be held to account if the judicial organization is not functioning as efficiently as the law and the nature of its tasks permit. Conservation of judicial power is basic because efficiency is lost without it.

With respect to flexibility, Pound said, instead of setting up a new court for every new task the organization should be flexible enough to take care of new tasks as they arise and turn its resources to new tasks when the old ones no longer require them. The principle must be not specialized courts but specialized judges, dealing

with their special subjects when the work of the courts permits, but available for other work when necessary.

Concurrent jurisdictions, confusing jurisdictional lines between various courts—with consequent litigation over the forms and venue at the expense of the merits of cases, judges who can do but one thing—no matter how little of that is to be done or how much of something else, these are not the way to promote efficient specialization. In a unified court system, judges can be assigned to the work for which they prove most fit without being withdrawn permanently from the judicial force so that they cannot be used elsewhere when needed.

Pound summed up the case for structural unification as follows:

> . . .unification would result in a real judicial department as a department of government. . . .In the states there are courts but there is no true judicial department. Again, unification of the judicial system would do away with the waste of judicial power involved in the organization of separate courts with constitutionally or legislatively defined jurisdictions and fixed personnel. Moreover, it would make it the business of a responsible official to see to it that such waste did not recur and that judges were at hand whenever and wherever work was at hand to be done. It would greatly simplify appeals to the great saving not only of the time and energy of appellate courts, but to the saving of time and money of litigants as well. An appeal could be merely a motion for a trial, or a modification or vacation of the judgment, before another branch of the one court, and would call for no greater formality of procedure than any other motion. It would obviate conflicts between judges and courts of coordinate jurisdiction such as unhappily have too often taken place in many localities under a completely decentralized system which depends upon the good taste and sense of propriety of individual judges, or appeal after some final order, when as like as not the mischief has been done, to prevent such occurrences. It would allow judges to become specialists in the disposition of particular classes of litigation without requiring the setting up for them of special courts.[207]

Model systems. Groups interested in reforming judicial administration have developed model State judiciary systems, based in general on the principles enunciated by Pound. Chief among these are the models of the American Judicature Society, the American Bar Association, and the National Municipal League. The ABA's model incorporated the principles of the Statewide Judicature Act published by the AJS in 1914 and was approved by the House of Delegates of the ABA in 1962.[208] It vests the judicial power of the State exclusively in one court of justice which is divided into one supreme court, one court of appeals, one trial court of general jurisdiction, known as the district court, and one trial court of limited jurisdiction known as the magistrate's court. The supreme court has no original jurisdiction. Appeals from a judgment of the district court imposing a sentence of death or life imprisonment, or imprisonment for a term of 25 years or more, are taken directly to the supreme court. It determines by rule what other appellate jurisdiction it will exercise.

The court of appeals consists of as many divisions as the supreme court decides are needed. It exercises no original jurisdiction and such appellate jurisdiction as the supreme court determines by rule.

The supreme court determines the number of divisions of the district court, and the number of district and magistrate's court judges. Each district must be a geographic unit fixed by the supreme court and have at least one judge and every district and magistrate's court judge is eligible to sit in any district. The district court has original general jurisdiction in all cases, except where a supreme court ruling assigns exclusive jurisdiction to the magistrate's court. The magistrate's court is a court of limited jurisdiction, which jurisdiction is determined by supreme court rule.

The chief justice of the State is designated the executive head of the judicial system and appoints an administrator of the courts who performs such duties as the chief justice requires, including preparation and submission of annual budget requests to the legislature. The chief justice has the power to assign any judge or magistrate to sit in any court when necessary for the prompt disposition of judicial business. The supreme court itself exercises power to prescribe rules governing practice, procedure and evidence.

The National Municipal League's model is Article VI of its *Model State Constitution.* It vests all judicial power in "a unified judicial system, which shall include a supreme court, an appellate court and a general court, and which shall also include such inferior courts of limited jurisdiction as may from time to time be established by law."[209] All courts except the supreme court may be divided into districts as provided by law and into functional divisions and subdivisions as provided by law or judicial rule not inconsistent with law. Unlike the ABA model, the NML model gives the supreme court original jurisdiction in certain cases affecting legislative redistricting and questions affecting vacancies in and succession to the office of Governor, and "in all other cases as provided by law." All other courts have jurisdiction as provided by law, but the jurisdiction must be uniform in all districts of the same court.

The provisions with respect to responsibility for administration and rule-making are similar to those in the ABA model with two exceptions: under the NML model the chief justice's appointment of the administrative director is subject to the approval of the supreme court; and rules adopted by the court may be changed by a two-thirds vote of the legislature.

The major structural difference between the two models is that inferior courts may be established by the Supreme Court in the former and by the legislature in the latter. The League defends its version with the contention that "a brake is placed on the haphazard establishment of a multitude of ill-coordinated lower courts by the requirement that all State courts must be uniform throughout the State. The lower courts, particularly when created by the constitution, have been especially troublesome in the reorganization of judicial systems."[210]

A two-layer system. Both systems provide for a four level court structure, although the lowest level in the NML model is optional with the legislature. One authority on court reform, Glenn Winters of the American Judicature Society, has suggested that –following the contention of Roscoe Pound – what is needed is not specialized courts but specialized judges and the logical result of unification is the establishment of a two-level judiciary.[211] He predicts that one day the ABA's Model Judicial Article will be revised to provide for such a structure–a single State-wide court of justice with a unified trial division, and a unified appellate division, possibly known as the appellate division of the court of justice.

Under this two-layer court, the appellate division would be divided into as many three-judge panels as the volume of appellate work demands, and these would sit at such times and places as convenience and efficiency dictate. In like manner, the trial division would be divided by administrative rule into as many separate trial units as convenience and efficiency require. All cases filed for trial would be assigned to the one trial division and subdivided administratively to the most appropriate trial units. All appeals would be filed in the one appellate division and similarly be administratively assigned to the individual appellate panel which could most advantageously handle them. Conflicts in decisions among different panels would be prevented or resolved by administrative rules. In no case would any litigant have a right to a hearing before more than three judges, nor to a second appeal.

Effect on lower courts. In view of the critical importance of the lower courts, it is pertinent to make special note of how the three models deal with them. All three provide for abolishing the multitude of lower courts– both urban and rural–and replacing them with either a new uniform level of courts of limited jurisdiction (required by ABA, and optional with NML) or a special subdivision of the general trial court performing the duties of a court of limited jurisdiction (Winters). With all three, the courts handling cases now processed by lower courts would be thoroughly integrated into the State court system by being made subject to central, statewide administrative supervision, by the use of centrally-promulgated rules of practice and procedure, and by the flexible assignment of judges from court to court, within and between levels.

The three prototypes do differ on whether the constitution should specifically provide for lower courts as such, and how it should make such provision. The ABA model creates "one Trial Court of Limited Jurisdiction known as the Magistrate's Court." The number of magistrate court judges is determined by the supreme court, which also determines the court's jurisdiction by rule. The ABA felt that cases involving minor matters should be delegated to these courts in order to avoid an unreasonably large number of district judges with general original jurisdiction. It also thought that where the districts covered a large geographic area or temporary congestion occurred in any district, magistrates could be used to relieve the district courts.

The NML model constitution authorizes the legislature to establish inferior courts of limited jurisdiction, whose jurisdiction must be uniform in all geographical areas of the State. As a consequence of the uniformity requirement, the NML feels that is it unlikely that more than one or two statewide inferior courts would be created. The authorization for the general court to be divided into geographical departments or districts and into functional divisions and subdivisions would make it possible for the State to forego establishment of the inferior courts, since it could delegate the handling of minor cases to a subdivision of the general court.

Winter's two-layer model would not establish inferior courts, nor would it authorize their creation by the legislature. If any need were found for providing separate treatment of typically lower courts cases, it could be done by designating special trial units as a subdivision of the general trial division. This would be similar to the situation under the NML model where the legislature under that plan chose not to create inferior courts of limited jurisdiction.

Not to be overlooked here is the position of the Courts Task Force of the President's Crime Commission which essentially endorsed the Winters' proposal as the best arrangement for the lower courts. Its reasoning was that fragmentation of the criminal courts has produced lower standards of judicial, prosecutorial, and defense performance in the misdemeanor and petty offense courts. When community resources are committed to criminal justice, the lower courts, because of their lack of forceful spokesmen, are usually ignored.

> The result has been the development of two separate court systems of strikingly disparate quality. . .The problems of the lower courts can best be met (the Task Force contends) by unification of the criminal courts and abolition of the lower courts as presently constituted. . . .All criminal prosecutions should be conducted in a single court manned by judges who are authorized to try all offenses. Unification of the courts will not change the grading of offenses, the punishment, or the rights to indictment by grand jury and trial by jury. But all criminal cases should be processed under generally comparable procedures, with stress on procedural regularity and careful consideration of dispositions.[212]

The Task Force goes on to say that the precise form unification should take in each jurisdiction will have to be considered in light of local conditions. In support of its preference, however, it cites Detroit as having an integrated court which handles all phases of criminal cases with a special branch that deals with petty offenses.

Action by the States

As Chapter 3 indicated, there has been notable movement toward unifying and simplifying the structure and administration of the State judiciary. This trend is amply documented–among others–in publications of the American Judicature Society, the Council of State Governments, the National Municipal League, and in a yearly article in the New York University School of Law's *Annual Survey of American Law,* prepared by the staff of the Institute of Judicial Administration.

Measuring the precise degree of adoption of a unified system is rendered uncertain, however, by the lack of consensus of what constitutes unification. The purists are probably typified by the authors of the commentary on the National Municipal League's *Model State Constitution.* They include within the concept of a unified court system: uniformity of jurisdiction of each court in all geographic districts of the same court, a single administrative head and organization for the entire system, freedom of assignment of judges at each level, and a single set of rules governing practice and procedure. According to this definition, only a handful of State judicial systems qualify as unified: Alaska, Colorado, Hawaii and Oklahoma. Certain other States lack just one of the four prescribed criteria: Michigan does not vest authority to assign judges in the highest court; Illinois does not give the highest court power to promulgate rules of practice and procedure and North Carolina gives this power to the supreme court but subject to legislative repeal; and New Jersey has not fully consolidated its courts of limited jurisdiction, though efforts are under way right now to do this. All these States, however, have a single administrative head and organization for the entire system, which suggests that this is the key to unification in the minds of many authorities. Other States having most of the elements of a unified system include Arizona,[213] Connecticut, North Dakota, Ohio, Pennsylvania and Wisconsin.[214]

The Associate Director of the American Judicature Society emphasizes the importance of achieving "the unification of a multitude of trial courts into a single, well-administered strata within the state judicial system," even though the court system may not be unified from top to bottom.[215] Adding this criterion produces a list of 18 States that he considers good examples, in varying degrees, of the unified court concept. The 18 include, in addition to the 14 above, Idaho,[216] New Mexico, New York and Vermont.

In other States the recommendations of recent legislative study commissions and constitutional conventions and revision commissions have pointed in the direction of wholesale or partial court unification and simplification, but with mixed success. The court revisions proposed in Maryland (1968), and New York (1967), went down with rejection of the broad constitutional revisions in those States; Maryland voters did approve certain basic judicial changes in 1970, however. A sweeping proposal of the Indiana Judicial Study Commission was emasculated by the 1967 legislature (though less broad judicial amendments were approved by the electorate last year). Similarly, Georgia's General Assembly failed to pass a judicial article offered by a joint legislative committee, which would have created a three-tiered court system. A revised judicial article in Florida was removed by the legislature from the comprehensive constitutional revision which the voters approved in 1968, and another such title was defeated by the voters in 1970. Finally, a broad overhauling of Idaho's judicial system was rejected by the voters on November 3, 1970 when the proposed new constitution was defeated.

Making centralized administration effective. In addition to the 18 States named above, Arkansas, Rhode Island, and Washington also provide by constitution or statute for vesting of central administrative authority in the highest court or its chief justice. The vesting and effective exercise of the authority are not necessarily identical, however. Judicial officers may not have talent for administration and even if they do, the press of strictly judicial duties may preempt their time and attention. For this reason, States have come increasingly to the appointment of full-time, nonjudicial administrative personnel to assist the supreme court or the chief justice in the discharge of administrative supervisory functions. Thirty-five States have established such an office.

The effectiveness of these offices depends on their authority and resources and the skill with which they are used. A critical question with regard to scope of their authority is whether it extends only to the supreme court or also includes the intermediate appellate, general trial, and lower courts. A further important point is the exact nature of the authority exercised over these various courts. In light of the problems of workload and delay, particularly significant is the duty of reviewing judicial assignments and recommending to the chief justice or the supreme court the assignment or reassignment of judges to posts where they are most needed. Other important duties in this regard are those of appointment of nonjudicial personnel, the conduct of administrative and procedural studies, the preparation and submission of budgets, and the prescription and design of statistical systems.

Information received from the 31 State court administrators who responded to the questionnaire survey conducted by this Commission and the National Conference of Court Administrative Officers (NCCAO) throws some light on the scope of activities of States' offices of court administration. Table 16 in Chapter 3 indicated the percentages of administrators who reported that their offices were involved in each of 30 specified activities at each of the four court levels. In Table 52, these percentages are averaged by major category of activity.

The most significant figures from the standpoint of influence over the entire court system relate to the general trial and lower courts, since they are the most numerous courts, handle the bulk of court business, and generally are most in need of guidance and coordination from the top. With regard to the general trial courts, a high percentage of the State administrative offices report that they are involved with these courts in gathering and compiling statistics and designing statistical systems (93 percent) and on organization and procedural studies (83 percent). About one-half are involved with fiscal procedures (52 percent); over one-third with matters affecting the dispatch of judicial business (such activities as monitoring case loads and recommending assignment of judges to reduce delays and avoid peaks and valleys of workload) (38 percent); one-third with supervision of nonjudicial personnel (33 percent); and about one-fifth with equipment and accommodations matters (23 percent).

With regard to the lower courts, the proportion of State administrative offices reporting involvement in various activities affecting these courts is generally less than the proportion for the general trial courts. The proportions for each of the major categories of activity, however, seem to follow the same pattern of ranking as in the trial courts: involvement with the lower courts in statistical and organizational activities is highest (70 percent and 60 percent), followed by fiscal procedures (35 percent), supervision of nonjudicial personnel (28 percent), dispatch of judicial business (24 percent), and equipment and accommodations (20 percent).

The data shown in Table 52 for all 31 State offices are shown in Table 53 on the following page for the 15 of these offices that are among the 18 court systems considered "unified."

The percentage of these 15 State offices reporting activities involving the general trial and lower courts is uniformly higher than that for all 31 offices. This is particularly true with regard to the State offices' involvement with the lower courts.

One would expect that the court administrative offices of the States with unified judiciary systems would show a higher degree of involvement with the general trial and lower courts than the offices of nonunified States. In a sense, it proves the validity of their

Table 52
31 STATE COURT ADMINISTRATIVE OFFICES RESPONDING TO ACIR-NCCAO 1970 SURVEY: PERCENTAGE OF SUCH OFFICES ENGAGED IN SPECIFIED CATEGORIES OF ACTIVITY AT VARIOUS COURT LEVELS

Category of activity	Supreme Court	Intermediate Appellate	General Trial	Limited Jurisdiction
Evaluating organization, practices, and procedures	70%	83%	83%	60%
Statistics and records	72	80	93	70
Dispatch of judicial business	20	22	38	24
Fiscal procedures	62	54	52	35
Supervision of nonjudicial personnel	42	33	33	28
Equipment and accommodations	42	27	23	20

Source: ACIR-NCCAO questionnaire survey, May-June 1970.

Table 53

STATE COURT ADMINISTRATIVE OFFICES OF 16 "UNIFIED" COURT SYSTEMS RESPONDING TO ACIR-NCCAO 1970 SURVEY: PERCENTAGE OF SUCH OFFICES ENGAGED IN SPECIFIED CATEGORIES OF ACTIVITY AT VARIOUS COURT LEVELS

Category of activity	Supreme Court	Intermediate Appellate	General Trial	Limited Jurisdiction
Evaluating organization, practices, and procedures	88%	85%	91%	82%
Statistics and records	82	85	98	91
Dispatch of judicial business	23	24	43	38
Fiscal procedures	74	61	71	58
Supervision of nonjudicial personnel	52	38	53	47
Equipment and accommodations	60	25	37	34

Source: ACIR-NCCAO questionnaire survey, May-June 1970.

being classified as unified. Further confirming this distinction are the figures on staffing and budget reported in the questionnaire survey. These are compared in Table 54 for the 30 States that reported staffing (16 unified, 14 nonunified) and the 24 States that reported the current fiscal year's appropriation (13 unified, 11 nonunified).

Counting one professional employee as equal to two nonprofessionals, the weighted average of manpower per capita in the administrative offices of the 16 unified States was three times that of the 14 nonunified States. Using the unweighted average – giving equal weight to each State – the ratio was about five to one. Similarly, the weighted average appropriation per capita for the offices of the 13 unified States was three times that of the 11 nonunified States; the unweighted average was over 9 times as much.

Some conclusions. The questionnaire replies were not verified by field visits or other types of cross-checking. In addition, no effort was made to evaluate the quality of the State administrators' activities reported. These figures must therefore be used with caution. Nevertheless, it seems reasonable to draw certain conclusions.

For the 31 State court administrative offices as a group:

– the percentage of these offices whose activities extend to the general trial courts is substantially higher than the percentage that are involved with the courts of limited jurisdiction.

– from the standpoint of types of activities performed, these 31 offices are serving more fully in the areas of statistical reporting, compilation and design and organization and procedural studies than they are in the areas of fiscal and personnel administration and the dispatch of judicial business. Thus they appear to be used more as information and evaluative mechanisms than as mechanisms of direct supervision, direction and control.

For the State court administrative offices of the 16 unified court systems:

– they have a higher degree of involvement with the general trial and lower courts than do the 31 offices as a whole.

– they tend to provide the same pattern of activities for the general trial and lower courts as the entire 31 but the percentage of the 16 engaging in such activities is uniformly higher than the percentage of all 31.

– they employ noticeably more resources in discharging their duties than do the 31 offices as a group.

Control Over Rules of Practice and Procedure.

For the effective functioning of a unified State court system, many reformers contend that it is also necessary that the highest court play a leading role in the promulgation of rules of practice and procedure–the rules governing the mechanics of litigation. As indicated in Chapter 3, States vary in the extent to which this authority is exclusively given to the highest court, is exercised by that court but subject to legislative veto, approval, or repeal; or is exercised entirely by the legislature. The ABA model vested the power exclusively in the supreme court; the NML model vested it in that court but subject to change by vote of two-thirds of the legislature.

In support of giving the rule-making power exclusively to the supreme court, it is argued that this is an essential instrument for control of the entire system. When given to the legislature, the rules are largely formulated in advance by a body which is removed from the scene, presumably concerned with questions of wider public import, and often subject to political pressures. These latter conditions, it has been asserted, tend to produce an inflexible procedure and subsequent

Table 54
COMPARISON OF STAFFING AND 1970 APPROPRIATION FOR STATE COURT ADMINISTRATIVE OFFICES OF STATES WITH UNIFIED AND NON-UNIFIED JUDICIAL SYSTEMS

Unified States			Non-Unified States		
	No. of Employees* per 100,000 Population**	1970 Appropr. Per Cap.**		No. of Employees* per 100,000 Population**	1970 Appropr. Per Cap.**
Alaska	8.51	$1.39	Arkansas	.15	$ .02
Colorado	1.19	.14	California	.25	.03
Connecticut	1.37	.12	Iowa	.11	.01
Hawaii	1.64	.30	Kansas	.24	NA
Idaho	.83	.06	Kentucky	.19	NA
Illinois	.25	.03	Louisiana	.13	.02
Michigan	.17	.05	Maine	.41	.03
New Jersey	.94	.08	Maryland	.27	.03
New Mexico	1.11	.11	Massachusetts	.05	.01
New York	.81	NA	Minnesota	.08	.01
North Carolina	.94	.08	Oregon	.15	.01
Ohio	.06	NA	Rhode Island	1.21	NA
Oklahoma	.31	NA	Tennessee	.20	.03
Pennsylvania	.08	.03	Virginia	.04	.01
Vermont	1.14	.11	Weighted Average	.19	.02
Wisconsin	.21	.02	Unweighted Average	.25	.02
Weighted Average	.60	.06			
Unweighted Average	1.22	.19			

* One professional employee counted as equal to two nonprofessionals.

** Population estimate from U.S. Department of Commerce, Bureau of the Census, *Estimates of the Population of States, July 1, 1968 and 1969* (Advance report), Series P-25, No. 430, August 29, 1969.

NA – Figures not available from questionnaire responses.

Source: Questionnaire survey of ACIR-NCCAO, May-June 1970.

haphazard tinkering resulting in detailed, complex, cumbersome machinery.[217]

The ABA noted that in only eight States does the supreme court have control over the rules of evidence, as distinguished from rules of practice and procedure. These are more controversial, the ABA states, but it believes that they belong under the domain of the supreme court, since this arrangement is "most consistent with the proper concept of rules of evidence as procedural and most conducive to the effective administration of justice in the court system."[218]

In support of its position that court-promulgated rules should be subject to change by an extraordinary majority of the legislature, the National Municipal League states: "To guard against untrammeled judicial rule-making, such as any possible tendency of rules to invade the area of substantive law, the legislature is granted authority to change them by special majority."[219] This was the system adopted by Congress for the Federal courts in 1938.

As indicated in Chapter 3, 19 States give full or substantially full rule-making authority to the supreme court, nine make court-initiated rules subject to some kind of legislative action, 17 give the power to the legislature, and five either do not authorize the authority or leave it unclear. Of the 18 unified or substantially unified State court systems, nine vest this power in the supreme court; four in the court subject to legislative approval or veto; and five give it to the legislature exclusively.

Some observers feel that if the rule-making power is given to the supreme court, assistance in developing the rules should be provided by a judicial conference or council.[220] Eighteen of 36 councils or conferences established by constitution or statute have this responsibility. Four of the 18 unified States are among the 18.

Effect of Unification on Lower Courts

Table 55 is an effort to pull together the preceding analysis of the comprehensive approach to management and organization improvement and apply it specifically to the lower courts. It shows how the lower courts are affected by unification and simplification in the 18 State court systems identified as totally or substantially unified. Data are presented to indicate the degree to which these lower courts measure up to three major characteristics of a unified system: (1) the simplification of the lower court structure; (2) the centralization in the highest court or its chief justice of the authority for promulgating rules of practice and procedure; and (3) the centralization of administrative authority in the highest court or its chief justice and the establishment of a central office to help perform administrative duties.

Illinois is the only State that has abolished the separate layer of inferior courts. Yet, even in Illinois, magistrates may be appointed by the general trial courts (circuit courts) to serve as subdivisions of such courts for minor civil and criminal cases. In the remaining 17 States, there is just one set of lower courts, or where there is more than one set, careful provision is made for avoiding overlapping of concurrent jurisdictions.

With regard to administrative centralization, two indices are used: first, the authority of the supreme court to assign and reassign judges of lower courts, and second, the authority of the State administrative office (which customarily works directly for the highest court or its chief justice) to engage in certain activities affecting the lower courts. In 14 States the supreme court or chief justice is given the power of assignment and reassignment of lower court judges, in one (Illinois), it is not needed since there are no lower courts, and, in three, the authority apparently is not centralized. Finally the table shows, with regard to court administrative office activity affecting the lower courts, that the extent of these activities varies all the way from Alaska where the administrative office engages in all six categories of activity for the lower courts, to Pennsylvania where it performs two categories of activity completely, and one in part, and Ohio where it performs three in part.

Structural and Management Improvements in Other States: the Piecemeal Approach

At least 20 additional States have made notable structural reforms in their court systems in recent years, but short of achieving a unified system. The following is a summary of these developments, by State, listing first those improvements affecting more than the lower courts, and then those limited largely to the lower courts.[221]

Affecting More than Lower Courts

- **Arkansas**: 1965—Statute made chief justice the administrative director of entire State judiciary, with general responsibility for its efficient operation and authority to assign judges and require from all courts reports and records prescribed by supreme court rules.
- **Florida**: 1956—Intermediate appellate court was created to lighten supreme court caseload. Supreme court was empowered to adopt rules governing practice and procedure in all courts.

Table 55
SELECTED DATA ON LOWER COURTS IN 18 STATES CONSIDERED TOTALLY OR SUBSTANTIALLY UNIFIED, 1970

State	Lower courts	Jurisdiction	Rule-making power exercised by:	Administrative Authority[1]						
				Supreme Court can assign, reassign lower court judges	Court Administrator conducts following activities in lower courts[1]					
					A	B	C	D	E	F
Alaska	District	Misdemeanors only	Supreme court, subject to legislative veto	Yes	x	x	x	x	x	x
	Magistrate[2]	Misdemeanors only								
Arizona	JPs[3]	Minor misdemeanors	Supreme Court (except probate)	Yes						
	Police or magistrate	Concurrent with JPs on misdemeanors within city; city ordinance violations								
Colorado	County	Concurrent original jurisdiction with general trial court over misdemeanors	Supreme Court (criminal only)	Yes	x	x	x	x	x	x
	Municipal	Municipal ordinance violations								
Connecticut	Circuit	All cases with maximum penalty not more than 1 yr. prison	Supreme Court, subject to legislative veto	Yes	x	x	x[4]	x	–	x
Hawaii	District	Concurrent misdemeanor and traffic jurisdiction with general trial ct.	Supreme Court	Yes	x	x	x[4]	x	x	x
Idaho	Magistrate		Supreme Court	Yes	x	x	–	x[4]	–	–
Illinois[5]	–	–	Legislature	No lower courts						
Michigan	Recorder's (Detroit)	All crimes within Detroit	Supreme Court	No	x	x	x	x[4]	x[4]	–
	District	Misdemeanors except in Detroit and cities keeping municipal courts								
	Municipal	Similar to district court, but limited to cities other than Detroit								
New Jersey	Municipal	Municipal ordinances, violations of specific state laws less than misdemeanors, other State laws	Supreme Court	No	x	x	x[4]	x	x	x
	County District	Similar to municipal courts, but seldom exercised								
New Mexico	Magistrate	Misdemeanors with maximum penalty of $100, 6 months prison	Supreme Court	No	x	x	–	x	x	x[4]
	Municipal	Violations of ordinances								
New York	Criminal Court (NYC)	Misdemeanors and petty violations in New York City	Legislature	Yes	x	x	x[4]	x[4]	x[4]	–
	County	Felonies, misdemeanors prosecuted by indictment outside New York City								
	District, city, town JPs, village police justices	Generally magistrate functions, misdemeanors, petty violations								
North Carolina	District	Criminal cases below felony	Supreme Court, subject to legislative repeal	Yes	x	x	x	x	x	–
North Dakota	County	Criminal cases below felony	Supreme Court	Yes	NA	NA	NA	NA	NA	NA
	JPs & Police Courts	Minor criminal cases and municipal ordinance violations								
Ohio	Municipal	Original jurisdiction of minor crimes within city boundaries	Legislature	Yes	x[4]	x[4]	x[4]	–	–	–
	County	Same as municipal but outside city								
Oklahoma	Municipal	Violations of town and city ordinances only	Legislature	Yes	x	x	x[4]	x[4]	x[4]	x
Pennsylvania	Municipal (Philadelphia)	Minor civil and criminal cases	Supreme Court	Yes	x	x	–	–	x[4]	–
	Magistrates (Pittsburgh)	Minor civil and criminal cases								
	JPs	Minor civil and criminal cases								
Vermont	District[6]	Hear practically all criminal cases	Legislature	Yes	x	x	x[4]	x	x	x[4]
Wisconsin	JPs	Misdemeanors with maximum penalty of $200 or 6 mo. in jail	Supreme Court subject to Legislative modification	Yes	x[4]	x	x[4]	x	–	–

[1] A—evaluating organization, practices, procedures. B—Statistics and records. C—Dispatch of judicial business. D—fiscal procedures. E—Supervision of non-judicial personnel. F—Equipment and accommodations.
[2] Part-time in small villages, rural areas.
[3] In precincts established by county boards.
[4] In part.
[5] No lower courts, except circuit court appoints magistrates to handle lesser cases specified by law.
[6] JP courts still exist in name but are practically defunct.
Sources: 1969 and 1970 comprehensive law enforcement plans submitted by States to Law Enforcement Assistance Administration, U.S. Department of Justice, supplemented by data from State constitutions, questionnaire survey of ACIR-NCCAO (May-June 1970), and American Judicature Society, *An Assessment of the Courts of Limited Jurisdiction*, Report No. 23 (Chicago, 1968).

- **Indiana**: 1966–By court order, chief justice was appointed court administrator.
  1970–Constitutional amendment established a high court system composed of a Supreme Court and Court of Appeals. The "Missouri Plea" was adopted as the mode of selection of judges to these courts.
- **Kansas**: 1965–Judicial Reform Act and implementing rules provided for supervision by supreme court justices of all district courts. Position of judicial administrator was created, and he was given task of collecting data on districts to enable supreme court to transfer or assign judges. Supreme court was given various rule making powers and authority to require reports from district courts.
- **Louisiana**: 1966–Office of judicial administrator was made a constitutional office under direction of supreme court.
- **Maryland**: 1966–Constitutional amendments gave the legislature the power to establish intermediate courts of appeals, and the legislature created the court of special appeals.
- **Minnesota**: 1956–Supreme court was empowered to temporarily assign district judges as needed.
- **Missouri**: 1945–Supreme court was given responsibility for operation of the court system. Empowered to transfer trial judges temporarily to other trial courts or to appellate courts, to create temporary divisions of appellate courts manned by additional judges and to make rules of procedure.
  1970–Voters approved several changes in the State court system including provision for additional appeals courts, gradual elimination of court commissioners, mandatory retirement of judges at age 70, a court administrator, and a commission on judicial discipline.
- **South Dakota**: 1966–Supreme court was permitted to divide the State into county court districts, each district having one county court. Number of circuit court districts was reduced from 12 to 10 and districts were realigned to more evenly distribute the workload. The presiding judge of the supreme court was authorized to supervise the work of the circuit courts; given the power to reassign judges between circuits.
- **Tennessee**: 1965–Office of executive secretary of the supreme court was created by statute to aid in the court's administrative work.
- **Washington**: 1968–Constitutional amendment was approved creating an intermediate appellate court.

Affecting Mainly the Lower Courts

- **California**: 1950–A uniform system of municipal and justice courts was created to replace the old system of minor courts including six types of city courts and two classes of township courts, with districts more nearly reflecting equal caseloads. Legislature created districts each having a single court: a municipal tribunal in districts with population of 40,000 or more, a justice court in other districts.
- **Delaware**: 1964–Legislature provided supreme court with a deputy administrator to supervise the JP courts.
  1965, 1966–Legislature completely overhauled its JP system. JPs were placed under supervision of the chief justice of the supreme court and governed by rules of that court. Deputy administrator was given authority to assign justices to hold court where needed and JPs were given statewide authority.
- **Louisiana**: 1956–JPs in wards within cities over 5,000 population were abolished and replaced by city judges.
- **Maine**: 1961–A unified statewide system of district courts replaced the old JP and municipal courts. District court system is administered by the chief judge of the district court and finances are controlled by state treasurer.
- **Maryland**: 1970–A uniform District Courts system was adopted by a favorable vote on a constitutional amendment in the November 3rd election; Justice of the Peace and Magistrate courts will be abolished and replaced by the new system on July 5, 1971.
- **Minnesota**: 1956, 1963–1956 reform removed all constitutional references to JPs. 1963 reform created a unified municipal court of Hennepin County, replacing 36 part-time JPs and 15 municipal court judges.
- **Missouri**: 1945–JP system was replaced by magistrate courts, fee system of judicial compensation was abolished.
- **Nebraska**: 1970–all reference to JP's were removed from the constitution.
- **New Hampshire**: 1957, 1963–Under 1957 reform, the civil and criminal jurisdiction which JPs had exercised concurrently with other State courts was removed, leaving justices only ministerial functions. Under 1963 reform, 37 of the existing municipal courts were made district courts; the remaining municipal courts were abolished.

- **Oregon**: 1965–Created a district court for county of Multnomah and abolished JPs in that district.
- **Tennessee**: 1959–Legislature created uniform system of general sessions courts in all but six counties to take over functions of the JPs who retained non-judicial functions, such as performing marriages.
- **Virginia**: 1936–Salaried trial justices replaced JPs in certain cities and towns and in all counties not already having such justices by virtue of special legislation.

  1956–Retained essential provisions of the earlier reform but enhanced the uniformity of the system, designating all trial justices as municipal or county court judges.
- **Washington**: 1961–Legislation replaced JP and other minor courts in King, Pierce and Spokane counties with a justice court, which has municipal division and over which supreme court has rule making power. Plan may be extended to all other counties by local option.

  1963–New procedural rules adopted for civil and criminal cases in courts of inferior jurisdiction.
- **Wyoming**: 1966–All references to JP were removed from the constitution.

Resistance to Reform

Despite the powerful forces of reform, only 36 percent of the States have achieved a substantially unified court system, and another 40 percent have made varying degrees of progress toward unification and simplification. The remaining 24 percent of the States have scored few successes in the direction of what the reformers consider indispensable modernization of their State and local judiciaries.

Considerable effort has been expended in many States by legislative and other study commissions in examining the problems of the courts, as is evident from the annual reports on State activities.[222] Since 1963, at least half of the 32 "non-unified" States have had major studies by legislative commissions or committees or official groups working on constitutional revision. In ten States during this period, however, reform proposals have been turned down by legislatures, constitutional revision commissions, or the voters. Thus, in 1963, legislation to abolish JPs in Texas was defeated; in 1964, a proposed constitutional amendment to provide for appointment of JPs was defeated in Delaware; in 1965, the California Legislature failed to pass a bill which would have consolidated 23 municipal court districts with three justice court districts into one district for Los Angeles County; in 1967, legislation was introduced in the Rhode Island legislature providing for a single district court and an integrated court system, but it was allowed to die; in 1970, new constitutions containing unified judiciary articles were rejected by the voters in Idaho and Arkansas, but for reasons having little to do with the judiciary; in 1968, the Georgia General Assembly failed to approve for constitutional vote a judicial article offered by a joint legislative committee, and in the same year the Florida legislature removed the judiciary article from the constitutional revision it submitted to the voters. In 1970, Florida voters rejected a revised judiciary article for their new constitution; and the Iowa Legislature voted down a proposed amendment to revamp the lower court systems.

The reasons for failure to initiate reform proposals or, once initiated, to achieve approval, involve political considerations that affect many kinds of proposals for institutional change, as well as the particular factors affecting the merits of specific proposed improvements.

In the former grouping, obstacles of tradition and standpattism loom large. As one authority put it: "If for 50 years a State has had general trial courts, and justice of the peace and municipal courts, citizens seem to find change of this court structure hard to visualize."[223] Early State experience determined patterns of organization and procedure which, preserved by inherent inertia and resistance to change, tend to persist. A document prepared for the delegates to the Pennsylvania Constitutional Convention of 1967-68 reflects this strength of tradition in its summary of the contentions of those who opposed radical change in the existing judicial structure.[224]

> The courts worked well under the present Constitution.
>
> A departure from the established order would require an adjustment to a new order and result in unnecessary confusion, uncertainty and inconvenience.
>
> There is no assurance that a different order would be an improvement on the old; there is a chance that it might be worse.

Another general obstacle is the perennial difficulty of reducing the number of office holders.

> Inferior court officialdom–judges, clerks, constables, and other functionaries–naturally resist abolition of their offices. It is difficult to abolish any public office and these particular offices are especially hard to eliminate, for the incumbents are often close to their legislators.[225]

In addition, the typical municipal or other inferior court in the city has several judges, and the clerk and constable have helpers and deputies. Where these officials are elected they have their own political organization, and usually claim a strong family, friends, and neighbors vote.

Among judges, resistance to change may not be limited to the lower courts. Some general trial court judges may not relish the prospect of taking on some of the business handled by the inferior courts, for they

prefer the prestige of occupying a high court insulated from the myriad problems of petty offenses.

Some members of the bar, from whom leadership for judicial reform might naturally be expected, are deterred by several considerations. First, they are the single group in society who have most of the adjustments to make if a new court organization is instituted. Any group that has learned to work within a certain institutional arrangement, regardless of how well they recognize its shortcomings, will be reluctant to have to change patterns of behavior to adjust to a new system. Possibly more important—

> Many inferior court judges and their lawyer friends are members of bar associations, and of course such associations do not want to have internal dissensions which might endanger the association itself. Individual lawyers can hardly be expected to relish the prospect of speaking out publicly against an inferior court one day, and then appearing before the very court the next day for a client or for allowance of a probate fee.[226]

With respect to the specific policy differences over court unification and simplification, the arguments against centralizing rule-making in the supreme court have already been given. Yet the idea of a unified system itself raises certain fears. The committee preparing analyses of issues for the 1967-68 Pennsylvania Constitutional Convention considered as an alternative to a unified system, one composed of several layers of courts. Each layer would be administered separately and horizontally but with channels of appeal from lower layers to the upper ones. In presenting arguments for this alternative, the document stated that, unlike a unified court system which creates a "huge and unmanageable bureaucracy of judges and court officers," the "breaking up of a system into levels centers responsibility for failures in a concentrated area and divides manpower into reasonable and manageable segments."[227]

As indicated earlier, reformers of the lower courts center much of their attention on the JP courts, so that much resistance could and can be expected from that quarter. JPs interviewed in one study expressed the fear that consolidation of the lower courts would make it necessary for litigants or criminal defendants to travel excessive distances in minor cases. This, they claimed, would tend to reduce the accessibility of the courts or increase the expense and inconvenience of participating in court cases.[228] A similar argument is that unification overlooks the need for a "common man's court" where the small cases may be heard informally.[229]

The 1963 Court Study Commission of the South Dakota Legislature summed up its support of the JP system as follows:

> The faults and shortcomings of the (JP) system are many. But, as stated by one of South Dakota's Circuit Judges, it is a part of our legal system which the average citizen feels unconsciously is part of the "warp and woof" of his life. Any statistical evaluation cannot measure the value of this element. Certainly, where distances are great, and the population is small, availability, in a geographic sense, becomes important. And in urban areas a court of limited jurisdiction can furnish not only an expeditious means of disposing of a multitude of minor matters, but it provides a familiar forum for the settlement of small claims. Thus, despite the many criticisms of this court, the Court Study Commission recognizes the need for a continuance of it in a more closely supervised form,[230]

Countering these two arguments are the contention that accessibility in a consolidated court can be assured by requiring a consolidated county or magistrates court to travel a circuit, and that there is no reason why a "common man's court" could not be operated as a specialized division of the general trial court. In a paper prepared for the Michigan Constitutional Convention Preparatory Commission, the positive advantages of a unified system in bringing justices in civil cases to remote areas was emphasized:

> At the present time because probate work is handled by one court, the civil work is handled by another court, the small claims work handled by still a third court, each with a different judge, it is impossible because of the small amount of business in each of these courts to provide in each county a competent lawyer-judge. If all of the business was combined in one court, it would not be impossible, in each of the counties in the State, to have a sufficient amount of business to justify having a sound lawyer-judge. This could reduce the size of the circuits in the circuit court and bring the judges closer to the people.[231]

Another argument raised against the consolidation of lower courts, and the related proposal for abolishing JP courts, is the expense of providing big court "trappings," such as a record of proceedings, for the court hearing such minor matters as traffic violations and breaches of the peace. Responding to this argument, one observer questions the magnitude of the expense involved when electronic recording equipment might be perfectly adequate for record purposes; and points out that appeals for trials *de novo* are themselves expensive, involving as they do a repeat of the original trial from scratch.[232]

The administrative director of the courts of the State of New Jersey questioned the theory of justices assigned from a pool of all general trial court judges, rather than specialized courts with specific judges selected for them. He proposed establishment of a full-fledged family court with comprehensive jurisdiction over the wide variety of civil and criminal actions affecting the welfare of the family unit.

> It is my observation that lawyers appointed to serve on a trial court of general jurisdiction have little aptitude or appetite for the type of work that service on a family court necessarily entails. At least judges specially appointed to serve on a family court are fully aware when they ascend the bench of the type of work they will be doing day in and day out and hopefully the appointing authority will select for such positions those who are not only learned in the law but also have an acquaintance with the social science disciplines relevant to the human problems with which such a court is concerned.[233]

1969 State Law Enforcement Plans and Court Reform

As a final note on the States' approach to court reorganization, it is appropriate to examine how they weighed court improvement in relation to the overall law enforcement and criminal justice needs in applying for action grants from the Federal Law Assistance Administration in 1969. In terms of the total amount of funds requested for the courts, in comparison with the other law enforcement functions, relatively little 1969 Federal funds were applied to the area of court reform.[234] With reference to specific groups of States, of the 18 States with unified court systems, ten sought action grants for organizational or procedure reform, involving $747,000 of Federal funds. Of the 19 States that made structural court changes short of unification over the past two decades, 14 applied for action grants for a total Federal funding of $408,000. And of the remaining 13 States, seven sought action grants of $126,000. Overall, a little over four percent of the Federal action funds as of February 1970, had gone for courts or court related projects and the 1970 State plans indicate that 7% of this year's action total is slated for this area. Twelve States, however, will allocate less than 3% of their block grant funds to such programs. In Federal dollar terms, the total came to $1,382,179 in FY 1969, as contrasted to $13,034,004 for FY 1970.

The Selection and Tenure of Judges

The judge is at the center of the criminal justice system. The relevant questions then are: What manner of selecting judicial candidates is best calculated to produce the most qualified judges? What tenure provisions are most desirable?

At present, election is the dominant method of selection in 25 States, with 15 of these having predominantly partisan elections and 10 nonpartisan. In nine States, judges are appointed from lists of candidates nominated by special groups; in one, the Governor's appointments to supreme and appellate courts are subject to approval by a special commission. In six States, Governors appoint virtually all judges without prior screening.

Judges of the lower courts fit the overall pattern of being chosen mostly by election or gubernatorial appointment, but in at least 16 States, the mayor, city council, or county board appoints the judges of the lower courts.

With respect to tenure, practice varies widely, with judges of appellate courts generally serving the longest terms and minor court judges the shortest. All judges serve for life in Massachusetts; judges of appellate and major trial courts serve for life in Rhode Island; and in New Jersey, appellate and major trial court judges serve for seven years and then are eligible for reappointment for life. "Life" in effect, means as long as a judge serves on good behavior, that is, complies with prescribed rules of judicial conduct. Chapter 3 provides further detail on the variation in judicial selection practice and tenure among the 50 States.

The elective system of choosing judges began to attain dominance in the third and fourth decades of the last century as a consequence of the influence of the Jacksonian belief that more elective officials meant more democracy and more sensitivity to the desires of the public. The Progressive movement at the end of the century and first decade of this one tended to strengthen this influence in mid-and far western States. Many—particularly members of the bench and bar—have come to feel that in practice elected judges do not show a greater responsiveness to the public nor have they noticeably improved the quality of justice. Some also believe that election weakens the constitutional independence of the judiciary. The elective process, whether partisan or nonpartisan, these critics contend, tends to place a premium on a candidate's capacity to appeal to the largest number of voters, hardly a valid test of his judicial qualifications and temperament. These attributes, some contend, are scarcely appropriate subjects for meaningful public debate or for a considered vote. Partisan elections, moreover, can immerse judges in party politics. Also, when partisan judicial contents are held at the same time as other elections, some voters, faced with the task of voting intelligently on many offices, are almost bound to accept uncritically the guidance of their party.

Chief Justice Stone perhaps put this overall argument best some 55 years ago, when as Dean of the Columbia University Law School, he stated:

> There can be little doubt that the substitution of the elective for the appointive system has, on the whole, had an evil effect upon both the American bench and bar. Too often its practical operation has been to substitute for the choice of the responsible executive the choice of the irresponsible political boss or wire-puller. . . .The whole tendency is to substitute political availability for proved probity and skill as a test of qualification for judicial office. . . .

Nonpartisan elections were introduced in an effort to avoid political domination in judicial selection, but they have shortcomings of their own. They nullify whatever responsibility political parties feel to provide competent candidates and thereby close one of the avenues which may be open to voter pressure for good judicial candidates. Nonpartisan election also deprives the judicial candidate of any campaign support his party might provide, requiring him to rely on his own means

and efforts or to become obligated to his friends for contribution. In some cases, the contest is only fictionally nonpartisan, in that the political background of the candidate is well known. An incumbent judge must take time away from his judicial duties to conduct his campaign. Finally, the nonpartisan ballot tends to reduce popular interest and participation in the election itself.[235] Yet as Arthur T. Vanderbilt once pointed out: "Measures to eliminate politics such as the non-partisan ballot are in themselves insufficient without effective public support and participation.[236]

Selection of judges by the chief executive, usually with legislative confirmation, is defended as superior to election on the grounds of satisfactory experience at the Federal and State levels and the greater visibility of the process. Moreover, responsibility is clearly pinpointed on the one person elected statewide or citywide. The chief executive is in a better position, so this argument runs, to obtain information and make intelligent appraisals of judicial candidates than can the electorate-at-large in popular elections. Yet, he usually has neither the time nor the personal knowledge to do the job alone. He must depend on individual advisers, and party or patronage considerations may carry too much weight in his choices.

The Missouri Plan

Largely to meet these criticisms, increasing attention has been focused on the proposal advanced by the American Bar Association in 1937 and adopted in Missouri in 1940. It is usually cited as the "Missouri plan" of judicial selection, but is also called the Merit Plan or the non-partisan appointive election plan. Essentially this approach provides for initial appointment by the governor (or mayor or county executive at the local level) from a panel of nominees submitted by a nominating commission consisting of representatives of the bar, the judiciary, and the public. After service for a specified period, the appointee is asked to run on his record rather than against another candidate. The ballot presented to the voters says, in effect, "Shall Judge X be retained in office?" If the voters approve, he serves to the end of his term and may seek reelection as often as he wishes. If defeated, the whole process starts over.

This screening process has the advantage of minimizing party considerations and increasing the opportunity for investigating nominees' qualifications in a more objective manner than if left to the executive, the legislature, or electorate alone. The judge is thus more likely to meet minimum qualifications. Also, he does not need to conduct an exhaustive campaign to attain office or retain it.

One of the disadvantages of the Missouri plan is that, when extended to all State courts, including intermediate appellate and general trial courts, it may require setting up a separate nominating commission for each appellate division and trial district. In the plan as proposed by the ABA the chief justice is required to serve as chairman of each such nominating commission. His task thus may become onerous. Another disadvantage is that, particularly for district or local courts, the limited public involvement may make it possible for control to pass to a narrow self-seeking clique. Specifically, it is charged that the process gives too much influence to the members of the bar. In partial rebuttal to this charge, however, two careful observers of the Missouri plan have concluded that the members of the bar in that State have increasingly come to represent the total spectrum of community interests, thus preventing dominance of a particular social or economic point of view.[237] A final criticism is that the chief executive usually can find a way of suggesting names to be considered by the nominating commission for screening, and such names have a way of turning up in the final slate of nominees presented to him.[238]

A recent comprehensive study of the operation of the Missouri plan for over a quarter century arrived at these conclusions as to the plan's consequences:[239]

> —Contrary to expectations, there is a greater tendency for graduates of night law schools—not of prestigious institutions—to ascend to the bench than under the preceding elective system.
>
> —Appointees are essentially "locals" rather than "cosmopolitans."
>
> —The majority are affiliated with the majority party.
>
> —They are older, more mature than judges previously selected by election.
>
> —Appellate judges selected have had more service at the lower levels than previously.
>
> —Appointees tend to have prior experience in law enforcement, particularly as prosecutors.
>
> —They are not more conservative than those chosen by election.
>
> —They are better judges than their predecessors in terms of knowledge of the law, open-mindedness, common sense, courtesy, and hard work.

The authors found that for the 179 separate ballots on which Missouri plan judges "ran against their record," only in one case was a judge turned out by the voters.

Overall they concluded that the plan seemed more suitable for appellate court judges, elected statewide, than for the circuit court judges. They felt that the popular election of trial judges, such as the circuit court judges, is more likely to reflect the public sentiment of

the immediate locality, a desirable goal, in this opinion, whereas appellate work is more in the nature of "pure law," and thus is more suitable to the greater degree of insulation provided by the Missouri plan.

Table 56 is a summary, prepared by the American Judicature Society in June 1969, of the extent of adoption of the Missouri plan.[240] The table shows, for each jurisdiction listed, which of the plan's three basic elements are present: (1) nomination of slates of judicial candidates by non-partisan lay-professional nominating commissions; (2) appointment of judges by the governors or other appointing authority from panel of nominees; and (3) voter review of appointments in succeeding elections in which judges who have been appointed run unopposed solely on the question of whether their records merit retention in office. Also shown are the courts to which the judicial selection provisions apply: highest court, intermediate court, general trial court, and courts of limited and special jurisdiction.

Interest in the Missouri Plan has heightened in recent years, as indicated by the fact that ten of the jurisdictions shown initiated the plan or adopted major modifications in the past decade, and five since 1966 [Kansas City and Vermont–1966, Oklahoma and Utah–1967, and Idaho and Vermont (broadening of application) –1967]. The Executive Director of the American Judicature Society, a leading champion of the Missouri Plan, stated in 1968 that "prospects seem good that by the end of the next decade the Merit Plan will have supplanted popular election as the dominant mode of judicial selection in this country. . ."[241]

Interest and effort have not always produced success, however. From 1963-1969, abortive attempts to achieve legislative or constitutional changes incorporating or improving the merit judicial selection plan were reported in at least 16 States–Arizona, Arkansas, California (twice), Hawaii, Illinois, Indiana, Maryland, Minnesota, Nevada, New York, North Dakota, Ohio (twice), Oklahoma (twice), Pennsylvania, Utah, and Vermont. Active in pushing for the measures were bar associations and citizen groups.[242]

Provisions of Model Plans

As would be expected, the *ABA's model State judicial article* incorporates the Missouri plan of judicial selection. It provides that vacancies in all judicial offices except that of magistrate–the lower court judge–shall be filled by the Governor's appointment from a list of three nominees submitted to him by the Judicial Nominating Commission. If the Governor fails to act within 60 days, the chief justice makes the appointment from the same list of nominees. Judges so appointed are subject to approval or rejection by the voters at the next general election following expiration of three years from

Table 56–STATES AND LOCALITIES WITH NON-PARTISAN APPOINTIVE-ELECTIVE PLAN (MISSOURI PLAN) FOR SELECTION OF JUDGES, JUNE 1969

States	Nominating Committee	Gubernatorial or Other Appointment	Non-Competitive Election	High Court	Intermediate Appellate Court	Trial Court	Courts of Limited & Special Jurisdiction
Alabama (Jefferson Co.)	X	X				X	
Alaska	X	X	X	X		X	
California		X	X	X	X		
Colorado (Denver Co.)	X	X				X	X
Colorado	X	X	X	X	X	X	X
Florida (Dade Co.)	X	X	X				X
Idaho	X	X		X		X	X
Illinois			X	X	X	X	
Iowa	X	X	X	X		X	
Kansas	X	X	X	X			
Missouri (Kansas City)	X	X	X				X
Missouri	X	X	X	X	X	X	X
Nebraska	X	X	X	X		X	X
New York (City)	X	X					X
Oklahoma	X	X	X	X			
Pennsylvania			X	X	X	X	
Utah	X	X	X	X		X	X
Vermont	X	X	X	X		X	X

*Indiana voters approved a referendum on November 3, 1970 establishing a merit plan approach to selecting justices and judges of the supreme court and the courts of appeal.

Source: American Judicature Society, *The Extent of Adoption of the Non-Partisan Appointive-Elective Plan for the Selection of Judges,* Report No. 18 (Chicago, June 1969, processed), p. 1.

the date of appointment and every 10 years thereafter. The justices of the supreme court are subjected to vote of the State electorate; judges of the appellate and district courts stand for election within the appropriate geographic area they serve. Magistrates are chosen by the chief justice for terms of three years.

A Judicial Nominating Commission is established for the supreme court as well as counterpart commissions for each division of the court of appeals and the district court. Each commission has seven members, one of whom is the chief justice who acts as chairman. Three members are lawyers chosen by members of the bar and three are laymen appointed by the governor. No member may be an officeholder or officer in a political party.

ABA says that the backup role for the chief justice in cases where the Governor does not act is designed to prevent a stalemate between the nominating commission and the Governor. The separate method of selecting magistrates is geared to providing the flexibility needed to meet sudden fluctuations in lower court calendars. This is reflected in the possibility of rapid appointment and relatively short tenure.

With respect to the general thrust of this selection system, the ABA states that "the importance of removing the process of judicial nomination from the political arena is probably the most essential element in any scheme for adequate judicial reform."[243]

The judiciary article of the National Municipal League's *Model State Constitution* offers two alternatives for the selection and tenure of judges. In the first, the governor, with the advice and consent of the legislature, appoints all except the lower courts judges. The second selection method is the same as the ABA's. Under both NML methods, however—unlike the ABA plan—judges hold office for an initial term of seven years, then are subject to reappointment and achieve permanent tenure subject to good behavior. Judges of lower courts are appointed and have tenure as provided by statute.

NML comments that its judicial tenure provisions follow the New Jersey system, which it believes enhances judicial independence even more than the provision for initial appointment with subsequent election. Judge Samuel I. Rosenman, a former co-chairman of the Mayor's Committee on the Judiciary of New York City (which has the Missouri plan), essentially endorsed the NML position. He recommended eradicating any form of popular election from judicial selection and substituting a reappraisal of the judge's performance, after a substantial period, but by the nominating commission rather than the appointing authority.[244]

Other Model Plans on Selection and Tenure of Judges

The President's Commission on Law Enforcement and the Administration of Justice made no recommendation as such on the issue of judicial selection, but there was little doubt as to where its preferences lay. It stated that in general it favored the appointive method, although it recognized that "in some special situations the elective method presents advantages, especially in diverse urban communities where the election of judges may insure that all groups in the community are represented in the judiciary."[245] The Commission felt that far more important than the choice between elective and appointive systems is the existence in the selection system of an effective procedure for screening candidates on the basis of their professional and personal qualifications for the office. It concluded:

> The Commission believes that the best selection system for judges is a merit selection plan generally of the type used successfully in Missouri for some 25 years, and long supported in principle by the American Bar Association and the American Judicature Society.[246]

The President's Crime Commission did take a position on judicial tenure. Contending that lengthy tenure is essential to remove judges from undue political influence and to increase their independence, it recommended that judicial tenure in major trial courts be a term of 10 years or more, with appropriate provisions to facilitate retirement at a predetermined age. Dignified retirement of judges at a fixed age, it stated, is necessary to ensure the continuing vitality of the judiciary.[247]

The American Assembly's 1965 program on "The Courts, the Public, and the Law Explosion," made the following recommendation on merit selection and tenure of judges:

> A plan of merit judicial selection and tenure should be adopted in every State and made applicable to the selection of all judges, from judges of courts of last resort down to and including the magistrates in lower criminal courts, small claims courts and the like. We commend the practicable and proved method of merit judicial selection now embodied in the Model Judicial Article of the American Bar Association.
>
> Pending the enactment of merit judicial selection, State and municipal executives should, on a voluntary basis, follow the procedures of the merit selection plan in exercising their appointing powers. Governors and mayors who take this step are to be commended.[248]

Judicial Discipline and Removal

No matter how well a judicial selection system works, there will always be a need to discipline or remove misbehaving judges and to provide for involuntary retirement of those who are physically or mentally incapacitated. What is the best arrangement for doing this with fairness to both the individual judge and the

judiciary as an institution? Involved are such questions as standards of judicial conduct, and who shall establish them; the causes for discipline or removal and whether they should be different for each type of action; who should have the right to bring a complaint against a judge; what kinds of investigations should be made, and who should make them; what kind of disciplinary actions should be used, if any, and who should administer them; and what methods should be used for removal.

Criteria on Discipline and Removal Methods

A number of criteria for appraising States' existing machinery and procedures are suggested by a consensus statement developed by the National Conference on Judicial Selection and Court Administration in 1959,[249] modified by some observations of the Courts Task Force of the President's Crime Commission:

> —The system should require removal for misconduct only as a last resort; less drastic disciplinary measures should be available.
>
> —Complaints should be investigated before being presented as a formal charge.
>
> —The rights of all persons involved should be protected.
>
> —Hearings should be private unless the accused requests otherwise.
>
> —The procedure should not be exclusively handled by judges.
>
> —For the sake of the independence of the judicial branch, the process should be kept as much as possible within the judiciary and the supreme court should have the final decision.
>
> —The system should apply to all judges in the State-local judiciary.[250]

Existing Methods for Discipline and Removal

As indicated in Chapter 3, the three traditional methods—impeachment, legislative address, and recall—have proved inadequate as techniques of removal, and do not offer the less drastic step of discipline. Impeachment—the traditional means for removing unsatisfactory judges—is authorized in 46 States. Yet, it is suitable only for the most serious types of judicial misconduct and constitutes a "blunderbuss" approach that is too cumbersome and expensive to be practical in less serious cases. Moreover, it does not apply to the ill or elderly judges who are unfit to carry their judicial burdens. Legislative address, requiring the governor to carry out a removal upon formal request of the legislature, is available in 28 States. It also is a heavy-handed approach, and infrequently used. The same in general applies to recall by the voters, which is authorized in seven States.

Less cumbersome methods than these are needed, many experts contend, methods which will permit disciplinary actions short of removal. The three that have been developed are the special commission for involuntary retirement, the court of the judiciary, and the judicial qualifications commission.

Special commissions for involuntary retirement are appointed in five States. Their purpose is to deal with the compulsory retirement of judges who are so incapacitated as to be substantially prevented from performing their judicial duties. These commissions can be adapted to a disciplinary and removal function as well, as is the case in New Jersey. They usually consist of a three man panel, appointed by the Governor. Upon certification to the governor by the supreme court, by the judicial council, or by other parties specified in the law or constitution, the commission investigates, holds a hearing and may recommend retirement to the Governor. The Governor then may order the judge's retirement.

Courts of the judiciary, authorized in 12 States, are either specially constituted tribunals of selected judges from the appellate trial court levels, or from an existing tribunal, usually the highest court. The court is convened upon the filing of a complaint against a judge by certain specified individuals. The court handles the matter in the manner of a bench trial, and may either order dismissal of the complaint or removal or retirement of the judge. In one State, Illinois, suspension is a third alternative action.

Judicial qualifications commissions are the third type of special body, and as of November 3, 1970, 15 States had such commissions. On this date, the voters of three additional States—Arizona, Indiana, and Missouri—approved referenda establishing such bodies. Normally composed of judges, lawyers, and laymen, their chief function is to receive and investigate complaints against judges, which may be filed by any citizen. The commission exercises discretion in evaluating complaints, rejecting those that are unfounded, cautioning the judge on those not very serious, or, on a serious charge, ordering a formal hearing. On the basis of the hearing, the commission may dismiss the charges or recommend to the supreme court that it impose involuntary retirement, or undertake removal or some lesser form of discipline. Usually the proceedings prior to filing of recommendations must be kept confidential, and the

filing of charges and giving of testimony are privileged against defamation charges.

State Action on Discipline and Removal Mechanisms

Improvement of State mechanisms for discipline and removal of judges seems to be high on the agenda of court reformers. Since 1964 some 25 States have been reported as having developed constitutional or legislative proposals for adopting a new removal and disciplinary system or for improving the existing one. In 20 of these States, moreover, victories were scored: Arizona, Alaska, California, Colorado, Florida, Hawaii, Idaho, Indiana, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Mexico, Ohio, Oklahoma, Oregon, Pennsylvania, Texas, and Utah.[251]

Still, many States continued to be ill-equipped with removal and disciplinary provisions. In 22 States, there was no provision in 1969 for disciplining or removing judges of the general trial courts other than by impeachment, address or recall. In 25 States, there were no such provisions applicable to the lower courts; in four of these States, furthermore, not even impeachment, address, and recall applied to judges of the lower courts. As one recent report stated:

> ...there is a need in the lower courts for an established mechanism for discipline of offending judges and for removal of incompetent and bad judges. With rare exceptions there is no provision for discipline and removal of lower court judges. Of course, some are removed. But there are no standards, no uniformity of procedure.[252]

Strength and Weakness of the Three Types of Mechanisms

Leading examples of the three special mechanisms indicate the strength and weakness of each and how well they conform to the criteria suggested earlier.

The three-man commission for involuntary retirement in New Jersey is appointed by the Governor when the supreme court certifies that a judge is incapacitated. Upon recommendation by the commission, the Governor may retire the judge. The supreme court's ability to correct judicial misconduct–short of involuntary retirement–under the New Jersey system rests most importantly on its position as head of the entire State court system, with its authority to issue administrative orders to lower courts and to exercise the contempt power. Working through the State court administrator, the court is able to conduct informal investigations to ascertain the truth about complaints, and it can remedy misconduct short of recommending formal action by the Governor. The major difficulty with the system is that judges may be reluctant to begin disciplinary action against other judges, and a "disciplinary system employing procedures entirely hidden from public view may be discredited by the suspicion that the supreme court is not diligent in correcting j licial misconduct."[253]

New York's court on the judiciary is convened on an ad hoc basis to try specific complaints involving the court of appeals and the courts of general jurisdiction. This procedure does not offer a way to make a prompt, confidential investigation to eliminate groundless complaints, nor to persuade judges informally to correct their ways. Moreover, lawyers and litigants sometimes hesitate to register legitimate grievances because these must be declared publicly, without benefit of confidential investigation. Finally, making charges a matter of public record runs the risk of damaging the reputation of an innocent judge. The court was convened only three times from 1948 to 1967, suggesting that this procedure is useful only for the most serious types of misconduct.

California instituted its permanent Commission on Judicial Qualifications in 1960. The California Commission consists of five judges, two lawyers, and two nonlawyers, assisted by a full-time staff. It receives complaints of judicial misconduct on which the staff makes a preliminary investigation. Where the investigation appears to support the complaint, the matter is referred to the commission, which may close the case after communicating with the judge concerned. If the commission is not satisfied with the judge's response, it may hold a hearing on the charges or request the supreme court to appoint three masters to hold a hearing. If the hearing convinces the commission that the judge should not remain in office, it may recommend to the court that he be removed or involuntarily retired. All inquiries and correspondence are confidential until the record is filed with the supreme court.

During the commission's first four years of operation, 26 judges voluntarily resigned or retired while under investigation; only one judge requested review by the supreme court.

The Courts Task Force found that one shortcomings of the California system is that the vast majority of lawyers in the State were unaware of or misinformed about the Commission, many believing that it was concerned with approving judicial appointments by the Governor. The Task Force concluded, however, that:

> The California procedure meets most of the objections that can be raised against other disciplinary systems. The significance of the commission plan is the existence of a permanent organization acting on a confidential basis to receive and investigate complaints and to take informal action when it is desirable. Confidentiality is maintained until a recommendation for removal or retirement is made to the supreme court. Since four of the nine members are not judges, the problem of judges' reluctance to initiate action against other judges is alleviated.[254]

The Task Force stressed the importance of having a permanent agency to receive, process, and present charges to the court. Some States, it concluded, might find the California system too cumbersome and expensive and might prefer to use a court administrator or special officer to perform these functions.[255]

Model Provisions for Discipline and Removal

The American Bar Association and National Municipal League model constitutional provisions on the judiciary take quite similar approaches to judicial discipline, removal, and forced retirement.

The ABA Plan separates supreme court justices from all other judges. A supreme court justice may be retired after appropriate hearing, upon certification to the Governor, by the Judicial Nominating Commission for the Supreme Court that the justice is so incapacitated as to be unable to carry on his duties. The ABA notes that this follows the Alaska plan and avoids difficulties that arise when the compulsory retirement power is put in the hands of fellow judges. Supreme court justices are otherwise removable by the impeachment process.

All other judges and magistrates (thus reaching to the lower courts) are made subject to retirement for incapacity and removal for cause by the supreme court after appropriate hearing. This procedure, rather than impeachment, is suggested by the ABA because in its view the supreme court, in its supervisory capacity over the judicial system, is better qualified and the more logical body to determine the issues than the legislature.

The NML model judiciary article makes the judges of the supreme, appellate, and general trial courts subject to impeachment, and also authorizes the supreme court to remove judges of the latter two courts for such cause and in such manner as may be provided by law. NML expects that the impeachment route would not normally be used for the appellate and general trial court judges in view of the supreme court's removal power.

The judges of such lower courts as may be established are made subject to retirement and removal as prescribed by law.

The President's Crime Commission recommended that:

> States should establish commissions on judicial conduct taking the approach used in California and Texas. States should review their statutes governing the retirement of physically or mentally incapacitated judges to insure that the judiciary can require the retirement with dignity of judges unable to bear the burdens of office.[256]

The American Assembly on The Courts, the Public and The Law Explosion made a similar recommendation:

> Cumbersome procedures, e.g., impeachment, should be supplemented by effective machinery for the investigation of complaints against judges and for the removal of those found unfit or guilty of misconduct in office. The commission plan of judicial removal adopted by constitutional amendment in California seems admirably designed for these purposes and is worthy of adoption in other States.[257]

Other Issues in Improving the Caliber of Judges

Improvements in the selection, tenure, discipline and removal of judges are needed for the assurance of a high caliber of judicial personnel. Provisions for qualifications, compensation, retirement, and training of judges, however, are of no little consequence.

Qualifications. About two-thirds of the States establish citizenship, State residence, and minimum age qualifications for appellate and general trial court judges, and about one-half the States also have a district residence requirement for general trial judges. Thirty-six States require both appellate and general trial judges to be learned in the law, and three additional States apply this requirement to trial judges, but not appellate judges. Twenty-five States require a minimum period of legal experience for both appellate and trial court judges, and three more require such experience for trial, but not appellate judges.

Information on State prescription of qualifications for lower court judges is fragmentary. What is available, however, indicates that training and experience qualifications are less prevalent in these courts than in the appellate and general trial tribunals. Thus, in 1965, of the 37 States that still had JP courts, 28 had no requirement for legal training for the office. Examination of 1969 State law enforcement plans submitted to the Law Enforcement Assistance Administration–cited in Chapter 3–indicates that educational or training qualifications are sometimes not required in lower courts of either urban or rural areas. In general, however, the minor courts in rural areas have less stringent qualifications for their judges than those in the urban jurisdictions. A 1964 survey of the minor courts in the 100 largest metropolitan areas in the United States showed very few in which judges were not required to be lawyers.

Considering the lower courts' share of the overall criminal justice burden and their pivotal position within the existing system, a strong case can be made for establishment of minimum training and experience qualifications for judges of these courts. Nonurban areas, however, have a problem with establishing qualifications that urban areas do not have. Stringent residence requirements, if coupled with a requirement that all judges be lawyers, may well leave some courts in these areas without judges. In at least two States, legislatures have recognized this problem by providing that in the absence

of qualified personnel a judge may be chosen from nonlawyers or from lawyers in another part of the State.[258]

Thus, the issue of qualifications is related to the structure of the court system. It may be necessary, as suggested above, to structure the lower courts in the nonurban and rural areas in such a way as to assure the availability of a pool of potential candidates for the judicial office for which qualifications are to be established.

Legal training and experience. Legal training and experience seem an obvious prerequisite for judicial office. Yet this proposition has not and does not meet with complete acceptance. Some contend that character, integrity, and independence are the prime traits of a good judge and these are not the inevitable byproducts of a career in law. Some argue that a formal requirement only enhances the aloof, status-quo and unresponsive propensities of the judiciary, since, so the argument runs, legal training tends to be narrow, quasi-mechanistic, and tradition-bound. Some also raise the question: What kind of legal experience is best? And by way of an answer, they point out that many of our best judges have never had prior judicial experience, that some have never even practiced law or pled a case; and that some with a solid background in the law have proven to be mediocre. These critics conclude that nonlawyers as well as lawyers should be on the bench, particularly at the high appellate level where final decisions on controversial matters of social, economic, and constitutional importance are made.

On the other hand, supporters of the requirements of legal experience point out that the nonlegal, political aspects of judicial decision-making are inescapable in a human institution. The significant thing, they maintain, is that judges have legal training to recognize precedent and know the restrictions established over the years by the collective judgment of the bench. Only within these constraints of precedent and tradition can the judge effectively exercise his "freedom" of choice. Only within these limits, can a judge effectively curb the natural tendency to apply his own social and economic predilections to a case. Also, the legal training requirement does not preclude judges from being broad-visioned and sensitive to current social and economic conditions. Witness such giants as Hand, Harlan, Holmes, Brandeis and Cardozo. Finally, the bulk of the questions that State and local judges rule on are not susceptible of being treated as political, but mainly require the applications of rules of conduct about which there is little dispute to a range of factual situations. Legal training is essential in these cases to insure that the right rule of conduct is applied.[259]

It would seem less essential to provide by constitution or statute for minimum educational and experience requirements in States with the Missouri plan of judicial selection, since presumably a central mission of the nominating panels is the development of appropriate criteria to guide their nominations. In nine such States in 1969, however, four required training and experience for both appellate and trial courts judges, one required both qualifications for trial judges only, two required experience for both types of court, and two stipulated minimun training for both types of court. California, with its Judicial Qualifications Commission, requires both training and experience minima for appellate and general trial court judges.

Residence in district. Some might question the validity of residence in a district as a prerequisite for office. As noted earlier, about half the States have such a requirement for general trial court judges, and it is very common qualification for municipal, county and other lower courts. One aspect of local courts, still cherished, is their "closeness" to the people. Thus, there may be more justification for establishing local residency qualifications for these courts than there is for trial court or appellate court judges. On the other hand, the qualities of a judicial temperament and intellect and knowledge of the law and legal procedure seem to have little relationship to the place of one's residence, or how long one has resided there. Training in the law and experience in legal practice seem to be most relevant to these attributes.

ABA, NML model provisions on judicial qualifications. The American Bar Association Model State Judicial article prescribes identical qualifications for judges of the courts of all levels, including the lower courts. These cover residence within the State (no time requirement), United States citizenship, and a license to practice law in the courts of the State. It states that "the selection procedure will provide all other necessary safeguards, at the same time allowing the nominating commission the broadest opportunity to secure nominees of the highest calibre." The ABA selection procedure generally follows the Missouri plan.

The National Municipal League Model State Constitution establishes but one qualification for judges of the appellate and general trial courts—admission to practice law before the supreme court for a specified minimum number of years. The league leaves open the number of years for each State to determine, but suggests that any number between five and ten years would be a reasonable eligibility requirement. The Model Constitution directs the legislature to provide by law for the qualifications for judges of the inferior

courts, just as it leaves to the legislature the determination of whether there should be such courts, what they should be, how their judges should be appointed, and what conditions of tenure, retirement and removal should apply.

Compensation. Adequate salaries are an obvious *sine qua non* for attracting and keeping qualified full-time judges. The major problem in salaries, as with other court conditions, is in the lower courts. The Executive Director of the American Judicature Society (AJS) noted in the foreword to that organization's most recent survey of judicial salaries and retirement plans that the "greatest current weakness in the judicial compensation picture" is the "deplorable neglect of the courts of limited and special jurisdiction. One judge in a letter to the Society recently complained that all attention and efforts of bar committees in his state are centered on the higher court judges, and county level courts are ignored as if they were not in fact a part of the judicial system.[260]

If the dignity and prestige of the lower courts are to be raised to somewhere near those of the general trial and appellate courts, the salaries of their judges cannot be permitted to lag far behind. Yet the AJS 1968 survey found that the average maximum salary for lower courts in April 1968 was $17,205, and the average salary paid to the judges in the 40 largest cities was $19,741. These minor court averages were respectively $3,825 and $5,760 less than the counterparts for the general trial courts nationally and those in the largest cities.

The lower courts with the highest salaries in this group tend to be the well organized metropolitan or statewide minor court systems. Their salaries generally are only $2,000 to $5,000 less than those of general trial courts in their jurisdiction. On the other hand, the lowest salaries are found among the inferior courts in the less well integrated and structured systems. The AJS survey found more than 400 judges in 14 courts of limited jurisdiction who were paid less than $15,000 and countless more in such courts receive only nominal salaries. The Society's recommended minimum trial court salary of $17,000 was yet to be reached for all judges in 11 States at the general trial court level. Even more dramatic is the fact that but 29 of the 56 courts of limited jurisdiction in the 43 States surveyed did not meet this minimum for any of their judges. AJS concluded:

> Constant surveillance and action to improve judicial salaries is important at all levels. If, however, judicial salaries are to make a contribution towards ending what the National Crime Commission has recently called the "inequity, indignity and ineffectiveness in lower courts around the nation," the need for progress in this area is the most urgent.[261]

The effect of inadequate salaries on the quality of justice was pointed out in the study of the Maryland court system conducted by the Institute of Judicial Administration. The report stated:

> The prime evil of allowing local communities to determine how much will be spent for judicial salaries and other court expenses is that the quality of justice may vary from community to community. If a particular county pays unreasonably low salaries to its judges, it may be able to attract only mediocre men to judicial office. A neighboring county, paying higher salaries, may be able to find more competent judges. The result, of course, is a different quality of justice as between the two counties.[262]

Two intergovernmental issues are involved in the establishment of adequate salaries. The first is the question of whether the State should mandate minimum salaries for those lower courts for which it does not now establish salaries. The second involves the matter of how much the States should aid localities in financing judicial salaries. Regarding the former, while no comprehensive data are available on the identity of these courts, they would usually include courts established at local governmental discretion, such as municipal, police, city or mayor's courts. The argument for State mandating is that it represents an exercise of State responsibility for seeing that the office is attractive enough to qualified persons and that a minimum standard of judicial performance is achieved statewide. The major argument against it is that the State should not mandate a requirement on local government unless it is prepared to help localities meet the concomitant cost. State mandating of local expenditures without State financial assistance long has been one of the sorest points in State-local relations.

This leads to the second intergovernmental issue: To what extent should the State legislature assist the localities in meeting the salary costs of local judges? The Institute for Judicial Administration found that in at least 23 States, lower courts were financed entirely by local funds. In at least nine more States, the cost was shared by State and local governments.[263]

The State of New York provides one example of State financial assistance to local units of government in meeting the costs of a mandatory requirement on the courts. A 1961 constitutional amendment mandated full-time service by judges of a court for the City of New York, of the family court, the surrogate's court and county court, as well as of the higher courts, elected or appointed after September 1, 1962.[264] A 1962 statute provided minimum salaries for judges of the surrogate's, county, and family courts if they were full-time judges by virtue of the constitutional provision. The same statute made State aid available to counties with such full-time judges and to the City of New York to be

administered by the Administrative Board of the Judicial Conference.[265]

The statute offers State aid to counties of 300,000 or more population and the City of New York at the rate of $10,000 per year for each full-time judge of the county court, surrogate's court, family court and civil and criminal court of New York City. In counties of less than 40,000 population, the maximum State aid is $10,000 per year, in counties of 40,000 to 100,000 population the maximum is $20,000 per year, and in counties of 100,000 to 300,000 population the ceiling is $30,000 per annum. In no case can State aid exceed $10,000 per year for each full-time judge of the county court, surrogate's court and family court.

For fiscal year 1967-68, a total of $3,421,779 was paid, of which $2,099,287 went to New York City, $98,027 to Nassau County, and lesser amounts down to a minimum of $10,000 to other counties.[266]

Another issue concerns both the adequacy and method of compensation. This involves the fee basis of compensating justices of the peace. The issue was discussed earlier in this chapter in the general analysis of the problem of the justices of the peace. Some critics have called the fee system the worst feature of the JP courts. They claim that it is unfair to the accused, providing an incentive for the JP to find him guilty and that it is also unfair to the official who is asked to conscientiously fill an official post without certainty of compensation for his time and trouble.

Much of the piecemeal reform noted earlier has included measures for improvement or abolition of the JP system. In most cases, moreover, the fee basis of compensation has been a particular target.

Retirement and other fringe benefits. The points raised regarding compensation for judges also can be raised about other perquisites of judicial office, such as retirement plans, hospitalization, medical-surgical insurance, vacation, sick leave, expense allowances and travel reimbursement. These should be adequate, as a package, to make the judiciary at all levels attractive to persons of high quality. Retirement plans, in addition, should provide sufficient benefits to encourage judges to retire when they can no longer work at full capacity. As with salaries, substantial variations in these benefits among political jurisdictions may produce an unevenness in the quality of justice.

Although it may be generally assumed that judges of the lower courts are less likely than the other judges to be treated according to these precepts, comprehensive data are not readily available to support or disprove such an assumption. The American Judicature Society has compiled data on the major fringe benefits but, except for retirement plans, these are limited to the appellate and general trial courts.[267] Regarding retirement plans, the latest AJS survey is not complete, but it does provide a fairly good picture of the general coverage of retirement plans in the lower courts throughout the country.

The survey indicates that most of the retirement plans are applicable to judges of courts down to the trial court of general jurisdiction. Yet, of the 22 States in this category, many are Western States with small judiciaries and few minor courts, such as Arizona and Wyoming. Moreover, some of these States, like Florida, have two or three concurrent plans, where simple statutory provisions or public employees' plans cover judges of inferior courts. In a few States—notably Mississippi, New York, Ohio, Pennsylvania, and Vermont—the public employees' retirement systems apply to all judges whose salaries are paid by the State. In most of the other States, major courts of record are covered under one plan and separate provision is made for judges of inferior courts.[268] Thus the extent to which the lower court judiciary is covered by retirement programs is not clear, let alone the extent to which the specific benefits are proportionate to those enjoyed by the judges of higher courts.

As in the case of compensation for judges, the intergovernmental issues with respect to fringe benefits center around the State's responsibility. To the extent that the entire judiciary is considered strictly a State rather than a State-local system, it seems reasonable that the State should provide an adequate level of those benefits for courts of all jurisdictions. Even if a particular State regards certain lower courts as vested with a strong local flavor, it still can be argued that the State is obligated, as part of its responsibility for assuring a minimum standard of criminal justice for all its citizens, to see that the judges of these courts are adequately provided with such fringe benefits. As in the case of compensation, the associated issues are whether the State should merely prescribe minimum standards to be met by local government, or should be required to put up a substantial share of the cost of meeting those standards.

Complicating the issue in the retirement field is the existence of various kinds of retirement plans. Frequently judges of the supreme, intermediate appellate, and general trial courts are covered under a separate plan, or they may be part of the general plan for State officials and employees. Local judges, on the other hand, may be under a separate local plan, a Statewide employee plan, or a plan which includes other local (city or county) officials and employees.

It may be noted, in concluding this discussion of compensation and other benefits, that movements

toward unification of State court systems usually result in more adequate compensation and retirement benefits, along with higher qualifications and longer terms of office.

The mandatory retirement issue. Closely related to the question of retirement and other benefits is the issue of mandatory retirement at a certain age. The National Conference on Judicial Selection and Court Administration, held over a decade ago, sanctioned automatic retirement at 70. The President's Commission on Law Enforcement and Administration of Justice endorsed the principle of "retirement of judges at a predetermined age."[269] The basic problem here, of course, is somehow balancing the need for removal from the bench aged and ineffective judges with the need to retain the services of men still productive, alert, and healthy.

At least 23 States rely on the mandatory requirement device—usually at age 70—to cope with this problem. The most recent addition to this list occured on November 3, 1970 when Missouri voters favored a referendum on mandatory retirement of judges at the age of 70. In five of the 23, the limit extends to the end of the term in which the age limit is reached. Seven use a year other than 70; one fixes it at 71, two at 72, and four at 75.[270] Minnesota, in effect, sets it at 73 for its Supreme Court judges, since they forfeit a portion of their allowance if they fail to retire before this birthday is reached. New York stipulates retirement at 70, but permits service to the age of 80 in individual cases. Other States allow retired judges to serve, if they meet certain requirements. The voters of South Dakota, and Nebraska, on November 3, 1970, favored referenda authorizing such extended service.

Opponents of mandatory requirement provisions for judges stress the difficulty of developing a foolproof test of whether a man is still competent and creative. They argue that there is no necessary relationship between these characteristics and the mere fact that a man has reached his 70th, 72nd, or even 75th birthday. They point to active, able, if not brilliant jurists who passed these points. Some call attention to the fact that more and more States having mandatory retirement provisions are circumventing them on a selective basis by permitting certain retired judges to serve. Many of these critics feel that commissions on judicial qualifications and discipline are the proper vehicle for handling questions of judicial incapacity or incompetence without any invidious reference to the age factor.

Proponents of the mandatory requirement believe that an age limit should be set by law and that this approach in the long run is a more humane and effective way of handling the problem than relying on qualifications commissions or the individual judgment of the judges involved. They note that the increasing pressure of court business, the many and marked recent changes in the law, and the generally more complex nature of most judicial posts all argue strongly in favor of a fixed retirement date. Finally, some contend that vigorous judicial leadership in court reform and the criminal justice system generally is less likely to come from men in their seventies.

OTHER COURT ISSUES

Responsibility for Financing State and Local Courts

States vary widely in the sharing of responsibility between State and local governments for financing courts. Seven States—Alaska, Connecticut, Hawaii, North Carolina, Rhode Island, Vermont, and, as of January 1970, Colorado—bear all or practically all (upwards of 90%) of the cost. In the others, varying patterns of sharing exist among the State, county, and other local units of government. In general, the State's share of court financing tends to recede as one moves down the judicial hierarchy, and counties shoulder the largest fiscal load because they are generally assigned the major trial courts and at least a portion of the lower courts. More detail on State-local sharing of fiscal support for the courts is presented in Chapter 3.

Trend toward State financing. There has been a rising interest in transferring more, and sometimes all, of judicial costs to the State government. For example:

Illinois' new judicial article, adopted in 1961, provided for State payment of the salary of all judges, a large part of which had previously been borne by counties or cities. The legislature provided for State assumption of a part of the salaries of other court personnel. Of the $8,000,000 additional cost to the State, $6,500,000 represented direct savings to the counties and municipalities.[271]

In 1966 the Committee on Court Study of the Idaho Legislative Council proposed that all functions of the court system, with the exception of physical facilities, be funded by the State.[272] This proposal, however, has not been accepted.

As was noted in the discussion of judicial salaries, New York State in 1962 made State aid available to counties as an incentive to their making certain judgeships full-time positions. In addition, in 1967 the Chief Judge of New York's court of appeals asked the State constitutional convention to recommend a statewide judicial budget to include all expenses of the court. The convention adopted a proposal which would have eventually achieved this result but it went down to defeat with the entire proposed constitution.

Similar proposals have been introduced into the New York legislature in subsequent years.[273]

A package of six bills to shift a major part of the cost of State courts from the counties to the States was offered, unsuccessfully, in the 1968 session of the New Jersey legislature.[274] In a 1969 address, the New Jersey State court administrator came out forcefully for State assumption contending that "such a move would be in keeping with the trend in other progressive states throughout the country."[275]

In December 1968 a Subcommittee for the study of the Nevada Court Structure recommended to the Nevada Legislative Commission "that the administration of justice be recognized as a legitimate state expense and paid entirely from the state treasury."[276]

Effective January 1, 1970, the State of Colorado assumed the full responsibility for funding all courts of record other than the Denver County Court and Municipal Courts.[277]

In a 1970 report on allocation of public service responsibilities by the California Council on Intergovernmental Relations, a series of recommendations relating to the functioning and financing of the State's court system were advanced.[278] The State was assigned the basic responsibility for making policy regarding financing and administering criminal adult and chronic juvenile delinquency court cases. Users charges were recommended to cover full court costs of personal civil actions—probate and guardianship, domestic relations, personal and property damage, and the like. Court activities relating to traffic safety violations were deemed as basically within the province of the State court system, but with fines being used to cover part of the court costs involved in judging and punishing traffic safety violations. The cost of governmental civil actions, it was proposed, should be borne by the jurisdiction bringing the action. The overall effect of these various shifts would be to expand the State's fiscal role and to rely more systematically on user fees or fines for violations as a source of court finances. Localities would be relieved of many of their court-related fiscal burdens were these proposals fully implemented.

Relationship to court unification. Full State assumption of court expenses is a logical concomitant of a unified and simplified State-local judicial system. Such a system is designed to achieve greater uniformity in the administration of justice through simplified structure and State prescription and policing of standards of performance. Included in the latter are the vesting in the highest court of responsibility for promulgation of rules and practice and procedure, exercise of administrative oversight through an administrative office, and assignment and reassignment of judges to meet fluctuations in workloads. It is argued that these objectives of unification and simplification are more likely to be achieved if the State supplies the necessary funds instead of relying on county or city governments to provide any substantial portion.

Two close observers of the judiciary scene make the case for State financing as follows:

> A state constitutional provision for a unified court system administered by the chief justice or the supreme court permits the judges to control the system of justice. But when the courts must go hat in hand to various local departments of government for the wherewithal to support their needs, the judgment of the financier may be substituted for that of the judge. Conflicts between courts and branches of local government respecting personnel often arise.[279]

Concluding his review of developments in State judicial systems in the years 1968-69, William L. Frederick stated:

> It is increasingly clear that reliance upon local financing of the courts makes it difficult to operate a statewide court system and hampers the effective operation of the judicial branch.[280]

The judiciary article of the National Municipal League's Model State Constitution provides for State financing to go along with its unified court system.[281] In addition, however, it permits the legislature to provide by law for political subdivisions to reimburse the State for "appropriate portions of such cost." The NML explains its position in this way:

> For improved management made possible by a unified judicial system, the state is to pay for the costs, thus doing away with the widespread practice of having separate local courts maintained and paid for locally. Since burdens may be greater in some parts of the state than in others, and in view of the fact that local sharing of costs may be part of a state's financial structure, the Model allows the legislature to provide for reimbursement to the state by political subdivisions of portions of the cost.[282]

The American Bar Association's model State judicial article makes no provision for overall financing, but provides that the State legislature is to set salaries of judges and magistrates and provide pensions for them.

Among the 18 States classified as having a unified or substantially unified judiciary, Alaska, Connecticut, Hawaii, North Carolina, and Vermont have full or practically full State financing. Colorado in 1970 initiated full State funding for all courts of record except the Denver County Court and Municipal courts, which continue to be supported locally. In the remainder of these States for which information is available, all have some degree of local financing of the general trial or local courts or both.

The Colorado story. As already noted, on January 1, 1970 the State of Colorado assumed complete responsibility for financing courts except for the Denver

County Court and the Municipal Courts. The Colorado story illustrates some of the major considerations affecting the issue of financial responsibility.[283]

For calendar year 1965 $1.7 million, or 18 percent, of Colorado's gross judicial system costs were financed from the State's general fund. State appropriations covered the entire cost of the supreme court and the judicial administrator's office, the salaries and travel expenses of the 69 district judges and the State's share of their retirement coverage, $1,200 per year of the salary of each of the State's 22 district attorneys, and up to $2,400 per year of the salary of each full-time juvenile probation officer who met statutory qualifications.

About $2.5 million (26 percent) of the total $9.6 million was derived from fines and fees, and the remaining 55 percent was financed from the general fund in each county. The property tax was the only tax source of county general fund revenue, and it was subject to a village limit that varied among the counties.

Two specific events led up to Colorado's consideration of a change in State-local financing responsibilities for the courts. The first was a 1963 Colorado Supreme Court opinion concerning judicial expenses and the salaries of judicial employees. The second was reorganization of the State court system following voter approval in 1962 of a new judicial article in the constitution.

In the Colorado Supreme Court case, Smith V. Miller,[284] the court held that necessary and reasonable judicial expenses must be paid by the county unless they were so unreasonable as to indicate arbitrary and capricious action on the part of the court. The court held further that the district court had the power to set employees' salaries, which salaries must be approved by the county commissioners, again unless the court's action was arbitrary and capricious and the salaries unreasonable and unjustified. The court placed on the county commissioners the burden of proving arbitrary and capricious action. It based its decision on the principle that courts have inherent power to carry on their functions, so that they may operate independently according to the doctrine of separation of powers and the resulting coordinate and equal status of the executive, legislative, and judicial branches of government.

The court system was reorganized in January 1965 as a result of the 1962 constitutional revision. The reorganization increased the number of district judges from 41 to 69, and made a proportionate increase in other court expenses. These increases were caused mainly by transfer to the district court of jurisdiction formerly exercised by the county court, which in turn was required because of the growth in judicial business in the State's urban centers. In addition, a new county court was created to replace the JP system.

The combination of the court decision and judicial reorganization resulted in 10 to 20 percent increases in county appropriations for judicial purposes. County officials in some counties complained that other necessary county functions had to be curtailed because they no longer controlled court budgets. By 1966, 23 counties were at the general fund mill levy limit, and 15 were over the limit.

The Governor's Local Affairs Study Commission considered several alternatives to the then existing method of financing courts: an increase in county general fund levy limits; creation of a separate county judicial levy; establishment of separate levies for other county functions; additional State support; and State assumption of the entire cost of the judicial system.

Two reasons were advanced for full State assumption. It was argued that the State should have the entire financial responsibility in order to relieve county commissioners of their control over judicial budgets. The second reason was concern over the property tax burden.

The Governor's Commission concluded that full State financial support would require the State to assure that the level of judicial services was adequate throughout the State, and that the best possible use was made of the funds allocated. Some degree of State control would be required over court administration, judicial personnel, probation services, counsel for indigent defendants, and court facilities. "Without some degree of control, the State in effect would be signing a blank check, because it would be underwriting the expenses of a judicial system whose needs and adequacy of service would be determined at the district and county levels where there would no longer be any fiscal responsibility."[285]

The Commission said the major questions concerning State control over the judicial system were:[286]

(1) Who should have the responsibility and authority?

(2) To what extent and in what ways should control be exercised?

(3) What balance is needed between State control and local judicial authority to avoid infringement on the independence of the judiciary and to allow for circumstances peculiar to a particular area of judicial district?

The Commission decided that "the way to resolve these issues is to place State responsibility for court system operation and budget control in the supreme court to be exercised by it through the judicial administrator. Any other choice would conflict with the equal and independent status of the executive, legislative, and judicial branches."[287]

Subsequent to the Governor's Commission report, the State court administrator was asked to examine the several ways in which the State might assume more financial responsibility for the court system. Eventually the legislature enacted a measure calling for almost complete State assumption of the judiciary's expenses.[288] Excluded were the expenses of the Denver County Court and municipal courts, which were under control of the respective local units by authority of other provisions of the Constitution. While removing court appropriations from the county commissioners solves the separation of powers problem at the local level, this problem, of course, still remains at the State level unless the courts are totally fiscally independent of the executive and legislative branches.

Other examples of the effects of local financing. A number of recent State court studies in addition to Colorado's have given graphic illustrations of some of the effects on the equitable administration of justice flowing from a reliance on local governments for all or a major part of general trial court costs. In a 1968 study, the Nevada Legislative Commission found that the legislature was compelled by the inadequate fiscal capacity of many counties to classify as mere misdemeanors certain offenses which the Commission felt should be designated as gross misdemeanors. The Commission explained that:

> . . .whereas a symmetrical structure of criminal penalties would sometimes dictate that an offense be classed as a gross misdemeanor, the practical effect of such a classification would be greatly to increase the financial burden upon the counties by reason of the fact, first, that a trial in the district court is inherently more expensive and, second, that an indigent defendant would be entitled to demand counsel to be paid from the county treasury.[289]

The Commission concluded:

> Neither the administration of justice nor the punishment of crime should depend upon the irrelevant circumstance that prosecution would be too expensive for certain counties of the State. The ideal solution clearly would be to make all the expenses of the administration of justice. . .a State expense to be borne out of the State treasury from the tax revenues collected throughout the State. This would spread the load, preventing sudden and disproportionate burdens upon small counties while, at the same time, permitting future legislatures to legislate in the area of crimes and punishment without having to consider county budgets.[290]

In a 1967 survey of the Maryland court system, the Institute of Judicial Administration recommended that the State pay the salaries of judges and make them uniform. These steps, it contended, would help insure equal justice throughout the State and also greatly facilitate the transfer of judges from area to area as their services were needed. IJA stated that logic also dictated that all other expenses of the judicial system be paid by the State, including the cost of auxiliary services by probation workers and the provision of court rooms and other physical facilities. It acknowledged, however, that this might be too radical a change to make at one stroke. The survey report, therefore, recommended that judicial salaries and pensions be paid wholly by the State, and that the legislature provide for gradual State absorption of other costs, with the ultimate objective of complete State assumption of court expenses.[291]

A 1969 study commissioned by the Committee on Judiciary of the California Assembly found that the State prescribed the numbers of courts, judges, and certain categories of court employees, and that the counties were required to pay for these personnel according to standards prescribed by the State. Beyond salaries, however, counties were not required to provide even a minimum level of support; they supplied physical facilities and many categories of essential personnel according to their own, separately developed standards. Such a system, the study noted—

> . . .is typical of most of the court systems in the country. It has many potential vulnerabilities which should be of paramount concern to the State legislature. Even with statewide standards of qualifications for court employees, a uniformity of court rules and procedures and provision by the legislature for the number of judges, there is no assurance that there will not be a wide disparity in the performance of the courts in different counties because of differences in the support of the courts by the county governments.
>
> Each court must negotiate separately with its own county government for every item in its budget, no matter how trivial or vital. In fact, there is a wide disparity in fiscal support of the courts among different counties in the State.[292]

The study concluded that: "As long as the State does not provide substantial subsidies to the county court systems, it will be difficult for the legislature to enforce uniform requirements."[293] One possibility, it suggested, was for the legislature to hold hearings on a county's provision of essential categories of court staff and facilities when the county requests additional judgeships. If the necessary support was not being provided, the legislature might then deny the request for new judgeships.

In its survey of State judicial officials for the report on State and local court financing, the Institute of Judicial Administration asked chief justices, court administrators and clerks if they thought there was a trend towards shifting the expenses of the judiciary to the State. Eighteen saw such a trend and 19 did not.

Generally the responding officials seemed to think that uniformity, overall economy, less executive control, and higher standards would result from State assumption of the entire costs of the judicial system. They also saw shortcomings, however: a loss of local control, the diminution of court responsiveness to local needs, and more susceptibility to arbitrary budget limitations.[294]

Others have similarly pointed out possible difficulties in the complete State take-over of court financing. David J. Saari, a former State court administrator and currently a consultant on court management, pointed out that along with State dollars comes State control–and who is to exercise it on such matters as hiring and firing, the number of court personnel, salaries, and remodeling or new construction of facilities.[295]

Shifts of local revenues from traffic fines to the State level, and shifts of expenses from local levels to the States would be practical and political problems of the first order.[296]

The supporters of a unified court system probably would reply that decisions would tend to move to the top of the system–the supreme court and its administrative office–and this, they would contend, is the way it should be.

The problem of traffic fines, cited by Saari, becomes clear from Table 57, which compares judicial expenditures and revenues from fines and forfeits in the 43 largest cities and 50 States for selected years. The bulk of the fines and forfeits represent traffic fines. This explains the existence of a surplus for the cities, in which traffic courts are usually located.

Table 57
JUDICIAL EXPENDITURES AND RESOURCES: 50 STATES AND 43 LARGEST CITIES, SELECTED YEARS – 1963-64, 1967-68

	Judicial Expenditures	Fines & Forfeits	Surplus or Deficit
43 Largest Cities			
1967-68 . . .	121,053	130,111	+ 9,058
1963-64 . . .	100,678	111,850	+ 11,172
50 States			
1968	208,692	77,905	-130,787
1963	127,482	45,075	- 81,777

Source: U.S. Bureau of the Census, *City Government Finances in 1967-68; City Government Finances in 1963-64; State Government Finances in 1968; State Government Finances in 1963.*

The Idaho Legislative Council struggled with the problem of local court revenue in its 1966 report on the courts, which stated:

It is apparent that some local governments, especially cities, depend very heavily on the revenue generated from operation of the courts. While one of the guiding concepts held by the committee is that administration of justice should not depend on the amount of revenue generated by operation of the courts, still the committee is cognizant that certain local governments are financing a considerable share of their expenditures from revenues generated by the courts. The committee does not wish to disrupt established practices needlessly, but at the same time cannot condone the operation of any court as a revenue raising device.[297]

The Committee recommended that local governments retain responsibility for financing physical facilities of the courts and that they be allowed to receive as much revenue from court operations as they spend in providing those facilities.

In further amplification of the problems of full State assumption of court expenses, Saari states:

(Questions about) control of personnel standards and appointments would be raised. Among many other questions, the central issue would be: Who could do the best job of administration? The unit of government which could provide the most widespread condition of equality and uniformity in the administration of justice, and yet provide flexibility, would appear to be the State.[298]

Saari points out that in some inter-state metropolitan areas the State may not be large enough. Also, whether to use local units would depend upon local units' tax power and physical territory. On the latter point, he notes that metropolitan regions may be splintered among a dozen or more counties, which affects local units' capacity to finance justice effectively. "Diffused financing systems for justice," he concludes, "have shaken public confidence in some cases. Too much centralization, however, is fraught with difficulties just as is too little centralization."[299]

Summary. While States display a variety of patterns of State-local financing of court systems, there is a growing interest in more State responsibility, if not complete State assumption of costs. Those who favor unification of the State court system feel that complete State assumption is vital to unified control and a simplified structure. Moreover, if the Colorado experience can be taken as a guide, the doctrine of separation of powers is another force in the direction of both State financing and court unification. Under that doctrine, at least as construed by the Colorado supreme court, local governments which provide the funds (usually for general trial courts) cannot object to reasonable requests from the courts for appropriations. Such requests can lead to a local budget crisis and thence to an urgent plea for relief from the State. In line with the concept that responsibility for controlling spending should go along with responsibility for raising money, the State's provision of money leads to the State's exercise of control, which can be best achieved through a unified system.

Resistance to extension of State assumption of court financing is based on fear of diminution of court responsiveness to local needs and susceptibility to arbitrary budgetary limitations imposed from the top. It also may stem in some areas of some States from the practical consideration that courts now financed locally–particularly traffic courts–take in more money from

fines than the expenses they incur and there is reluctance to surrender this fiscal advantage.

Federal-State Working Relations: Postconviction Remedies

While this report has not focused on Federal-State-local judicial relationships, we would be remiss if we ignored the problem of inadequate mechanisms for interlevel consultation and collaboration as well as the specific problem of post-conviction petitions. It is commonplace to note that the American system of law and administration of justice is probably the most complicated in the world. In the criminal justice field, complexity arises because of the quite separate, yet interdependent jurisdictional roles played by the Federal and State court systems. Their interdependence is reflected specifically in the increasing number of post-conviction petitions filed in Federal District Courts by State prisoners seeking protection of their constitutional rights. Protection from criminal acts for all the Nation's citizens as well as consistent, equitable judicial administration at both levels requires cooperative working relationships between the two court systems.

The increase in *habeas corpus* petitions, and petitions of similar scope, from State prisoners has been staggering. As shown in Table 58 the number of such petitions ranges from little more than 1,000 in the 1961 fiscal year to almost 12,000 in 1970. Chief Justice Burger, in calling attention to this problem in his 1970 American Bar Association speech, stated the number of these petitions in 1940 was only 89.[300]

Table 58
STATE PRISONER PETITIONS FILED IN THE UNITED STATES DISTRICT COURTS, FISCAL YEARS 1961 THROUGH 1970

Fiscal Years	State Prisoner Petitions	Percent Change
1961	1,020	
1962	1,452	+42%
1963	2,624	+81%
1964	4,142	+58%
1965	5,329	+29%
1966	6,248	+17%
1967	7,804	+25%
1968	8,301	+ 6%
1969	9,312	+12%
1970	11,812	+27%

Source: Annual Report of the Director, Administrative Office of the United States Courts, 1970, Table 14A.

The President's Commission on Law Enforcement and the Administration of Justice called attention to this problem, based on 1965 data. Since 1965, as Table 58 indicates, the number of State prisoner petitions has more than doubled. As the Commission pointed out in its report, the consequence has been a great public and official concern about the administration of justice, and increasing friction between the State and Federal courts.

The writ of *habeas corpus* is available to all as a remedy for those who can demonstrate that they are unjustly held. In effect, the writ is a petition grievance to a judicial body based on alleged deprivation of a fundamental right in the trial process or during custody. Many are frivolous or unwarranted, but all must be judicially evaluated. "The function and scope given the writ of habeas corpus is the result of a balance between our desire to assume a sense of finality in criminal judgments and our concern for the fairness of the criminal process."[301] The report of the President's Crime Commission called for:

(1) improvement of trials not only to insure that constitutional rights are safeguarded, but that trial decisions relating to such questions are made a matter of record;

(2) improvement of State procedures for dealing with postconviction claims; and

(3) provision of legal counsel to prisoners seeking release on habeas corpus to facilitate the process for valid claims and to discourage clearly worthless petitions.[302]

Other competent observers have called attention to the magnitude and seriousness of the problem of prisoner petitions. Professor Charles Wright, writing in the August 1966 Journal of the American Bar Association, predicted the number of petitions would continue to rise and called for better methods to handle the applications. Mr. Will Shafroth, consultant to the Administrative Office of the U. S. Courts, in 1967 hearings on the bills to establish a Federal Judicial Center cited Professor Wright's observations and outlined some of the new screening methods employed in the Federal Courts.[303] The American Bar Association Project on Minimum Standards for Criminal Justice has developed standards relating postconviction remedies as a guide for State Court systems. Chief Justice Burger has called for an early response and solution to this problem.

The increase in post-conviction petitions are the result of better reporting of such cases, the increase in criminal trials, and broader, more liberal interpretations of constitutional rights in recent years by State and Federal Courts. A basic cause, however, lies in the judicial and administrative inadequacies of criminal trial court procedures, the failure of many State courts to

adopt and implement full constitutional standards in the conduct of criminal trials, and the lack of adequate post-conviction review procedures at the State court level. Only a very few States have established postconviction review procedures which meet minimum standards.

These developments have produced tension and conflict between the two court systems. What is needed, in the opinion of many, is a mechanism in each State for communication and a continuous sharing of information, judgment, and experience gained by State and Federal court judges in dealing with general problems common to both systems, of which the prisoner petition problem is symptomatic. Such a mechanism could provide a forum for joint discussion and a mutual sharing of possible responses to such matters as caseload management problems; the need for a common information system, including computerized information service, to help plan and monitor case calendars in both court systems; the development of effective working relationships with State and local bar associations; and related issues.

In recognition of this need, Chief Justice Burger, in his August 1970 address to the American Bar Association, called for establishment in each State of a State-Federal Judicial Council. Such a Council could include a member of the highest State court, the chief judges of State courts serving the larger urban areas, and the chief judges of the Federal District Courts serving in the State. An immediate goal of the Council would be to provide for expeditious processing of prisoner petitions. This would include efforts to recognize Federal constitutional standards in the processing and adjudication of criminal offenses and to facilitate the development in each State of postconviction procedures which meet recognized standards such as those developed by the American Bar Association. A longer range goal of such a Council might be to assist in the development of more uniform criminal codes and sentencing procedures in the State and Federal court systems.

This mechanism is not intended as a substitute for the efforts of individual States, judges, and court administrators in developing new and innovative solutions to problems affecting State and Federal court systems. Rather, the existence of the Council is designed to supplement, focus, and stimulate the efforts of all judicial officers and staff in the resolution of these problems.

Three Categories of Cases that Clog the System: New Procedures

In analyzing the processes used in dealing with three quite disparate offenses—traffic accidents, drunkenness, and drug abuse—some observers find that most existing criminal justice systems are grossly deficient. They warn that drunks and drug pushers and users clog up the system far more than felony first offenders. These categories of cases, they point out, also are placing heavy demands on police and prosecutors. Moreover, they argue that the sanctions and remedies, which the criminal justice system provides for these cases, are frequently inappropriate, ineffective, and, to some degree, counterproductive.

The primary fault, according to these observers, lies with criminal codes and related statutes which tend to define criminal acts in rigid and identical terms, which do not provide sufficient gradation and discretionary processing of such offenses, and which inflexibly require criminal procedures and sanctions to the exclusion of other more appropriate remedies.

The President's Commission on Law Enforcement and Administration of Justice, in examining this problem, reported that, as of 1967, about 30 States and the Federal Government were reviewing their substantive criminal codes. The Commission urged as a part of these efforts that careful consideration be given to the kinds of behavior which should be defined as criminal and that provisions be included to allow more flexible judicial handling and sentencing procedures.[304] The 1969 National Governors' Conference Report also pressed for revision and modernization of State criminal codes to help strengthen the various criminal justice systems.[305]

Traffic violations. Such cases may involve criminal or civil court procedures, but primarily the latter. Cases arising out of traffic accidents which involve no alleged criminal-liability monopolize the dockets of many courts. Some contend that these cases could be avoided under revised auto insurance plans, thus freeing civil court judges for reassignment to over-burdened criminal courts. A recent study in New York State found that about 50 percent of that State's pending 221,000 civil court cases arose from auto accidents. In the minds of many, the question is raised as to whether so much of the energy and resources of the courts—as well as other segments of the system—should be expended on this one activity when more pressing issues require the attention and time of increasing numbers of judicial and law enforcement personnel.[306]

The New York study, and other inquiries, make clear that the basic problem which requires this heavy utilization of judicial and legal resources is adherence to the "fault insurance system." This system, commonly referred to as auto liability insurance and used nationwide, is designed to shift accident costs to the "wrongdoer." Liability insurance, in theory, protects "wrong doers" both by defense and by indemnity. The New York State inquiry concludes: "The two original

purposes are in fundamental conflict. Liability insurance has stripped fault law of its purpose, but society is left to pay for and endure all the complexities of fault law decision-making."[307] Thus, much of our court resources and legal talent are expended in the arduous and sometimes impossible task of determining precisely who was at fault in an auto accident in order to determine who shall assume the cost. The social goal, so the argument runs, is not served by this exercise; it is served only when *all* victims of an auto accident are compensated for the economic loss they may suffer, regardless of who is at fault. The State of New York Insurance Department Report to Governor Rockefeller urged the establishment of a compensatory insurance system which would reimburse all auto-accident victims for their economic loss without the necessity of proving who was at fault. This type of auto insurance plan, it is contended, not only serves more adequately a valid social purpose, but it also eliminates the clogging of our courts by fault determining cases and makes possible a reassignment of scarce judicial and legal personnel.

The proposal is controversial. Yet, there is increasing demand for legislative action. The American Bar Association issued a report in 1969, which supported continued use of the present fault insurance system, but which also recommended many changes to expedite the present auto accident reparation process. New York State's Legislature held hearings in May and June 1970 on a non-fault insurance proposal. No action was taken, but the bill is expected to be reintroduced. Massachusetts enacted a limited no-fault plan in 1970, which will be operative in 1971. Puerto Rico enacted in mid-1968 an Automobile Accident Social Protection Act which features no fault protection within certain monetary limits. Legal changes which apply comparative negligence principles have been enacted in some States, including Georgia, New Hampshire, and Wisconsin.[308] Other States are actively considering the matter.

Efforts to check the drain on judicial and legal manpower in handling traffic violation cases are also emerging in some States. In May, 1969, New York State enacted a bill providing for administrative processing of traffic infraction cases. New York City established a Parking Violations Bureau which, it is reported, will remove 4 million cases annually from the criminal court docket and free 16 judges for more serious criminal cases.[309] "California has initiated a simplified procedure for the trial of minor traffic violations."[310] Other States are making studies to expedite the handling of traffic cases.

Drunkenness. In 1969, 1.4 million arrests for public drunkenness occurred—nearly one out of every four arrests.[311] Many were repeaters. These cases represent a tremendous burden on courts as well as prosecutors and correctional agencies. Moreover, as the President's Commission on Law Enforcement and Administration of Justice made clear, repeated arrests and incarcerations, more frequently than not, simply compound the problem without dealing with the chronic alcoholism that may be involved in many cases.[312]

Thus, in most jurisdictions, the present method of handling drunkenness as a criminal offense is usually burdensome and quite unsuccessful. Moreover, it is on shaky legal grounds. In 1966, two landmark decisions by the United States Court of Appeals in the Fourth Circuit and in the District of Columbia established that chronic alcoholism is a legal defense against the charge of public intoxication. These decisions, which affect five States and the District of Columbia, affirm that repeated intoxication cases must be handled medically and socially, not criminally.[313]

Over five years ago, the then Attorney General Nicholas deB. Katzenbach summarized the severe impact of drunkenness offenses on the criminal justice system:

> We presently burden our entire law enforcement system with activities which quite possibly should be handled in other ways. For example, of the approximately six million arrests in the United States in 1964, fully one-third were for drunkenness. The resulting crowding in courts and prisons affects the efficiency of the entire criminal process. Better ways to handle drunks than tossing them in jail should be considered. Some foreign countries now use "sobering-up stations" instead of jails to handle drunks. Related social agencies might be used to keep them separate from the criminal process.[314]

The model program proposed by the President's Commission suggests innovative measures for dealing with drunkenness offenses. It includes a call for repeal of statutes which make drunkenness, in the absence of disorderly conduct, a criminal offense. It also urges medical evaluation of persons taken into custody for intoxication as well as police training and establishment of detoxification stations. Community referral systems and other community resources for treating alcoholism were other features of the Commission's recommended program.

Developments have been significant in this field and, in the face of an increasingly recognized need, continue apace. An alcoholism diagnosis and treatment program under the supervision of the St. Louis Police Department has existed since 1933. Under the stimulus of the Easter decision, the District of Columbia established a referral program screening alcoholic cases from the docket of the General Sessions Court. In 1968, the Congress repealed the District of Columbia statute which made drunkenness a criminal offense. Thus, the District Court has been relieved of handling a significant number of such cases and a more humane treatment response has been provided. A 1964 decision of the Minnesota Court also

will lead to non-judicial processing and treatment of chronic alcoholism cases. Similar programs, without court mandate, have been established in New York, Atlanta, Philadelphia, Houston, and other jurisdictions. In some instances LEAA funds have been made available to financially assist the development of such programs.

At the Federal level, the Comprehensive Alcohol Abuse and Alcoholism Prevention Treatment and Rehabilitation Act of 1970 was approved by the President December 31, 1970. The bill establishes a National Institute of Alcohol Abuse and Alcoholism, mounts a broad intergovernmental attack on the problem and provides $300 million over a three year period to assist States, localities, and private organizations in implementing control programs. Finally, the Conference of the Commissioners on Uniform State Laws is currently working on a model State statute dealing with alcoholism and intoxication treatment.

Narcotics and drug abuse. There is a widespread concern over the increase in drug abuse and in the ability of the criminal justice system to deal effectively with the range of problems associated with it. The FBI's Uniform Crime Report cites an almost 500 percent increase in arrests on narcotics charges between 1960 and 1969 in reporting jurisdictions.[315] The increase in drug charge arrests of the under 18 year olds is almost 2500 percent! Estimates of the number of drug users are difficult to make and to validate, but the numbers are quite high. Three years ago, Dr. James Goddard, then U.S. Commissioner of Food and Drugs reported estimates of marijuana users that ranged from 400,000 to 3 million persons.[316] Later estimates made by Senator Harold Hughes in 1970, stated a range of marijuana users of between 8 and 12 million persons.[317] A current assessment places the number of heroin users in New York alone at 100,000 persons.[318] The impact on police, courts and correctional programs of efforts to enforce existing drug laws have now achieved major proportions.

Some of the problem relates to the legal basis for developing effective programs in this field. As the President's Crime Commission Task Force Report pointed out:

> Since early in the century, we have built our drug control policies around the twin judgments that drug abuse was an evil to be suppressed and that this could most effectively be done by the application of criminal enforcement and penal sanctions.[319]

Typically, this view has led to mandatory minimum sentences which increase in severity with repeated offenses, and limitations on the use of probation and parole.

Much controversy obviously surrounds the issue of drug usage in our society and how the problem should be dealt with. But there is widespread agreement that present methods are inadequate. Moreover, there is a growing consensus that present criminal code statutes on narcotics should be revised to eliminate fixed, rigid procedures and sentences, and to allow more discretion to the courts and correctional agencies in dealing with drug offenders. The President's Commission recommended:

> State and Federal drug laws should give a large enough measure of discretion to the courts and correctional authorities to enable them to deal flexibly with violators, taking account of the nature and seriousness of the offense, the prior record of the offender and other relevant circumstances.[320]

New innovative types of medical and rehabilitative treatment rather than penal confinement are also recommended. The National Governors' Conference of 1969 affirmed the need for "a more flexible judicial response to the drug-abuser", and called for revision of State criminal codes and new drug control legislation to "grant courts and correctional authorities sufficient flexibility with user to permit individualized sentencing and treatment.[321] Attorney General Mitchell testified in July, 1970 before the House Ways and Means Committee in support of a bill revising Federal drug laws which included a limitation on the use of mandatory minimum sentences, and a down-grading of simple posession of drugs to a misdemeanor offense.[322]

As with the problem of alcoholism, new Federal drug abuse legislation was recently passed by the Congress and approved by the President. The Comprehensive Drug Abuse Prevention and Control Act of 1970 was signed into law October 27, 1970. The measure calls for coordination of all Federal programs in this field, and authorizes $189 million over three years for a comprehensive national program including assistance to State and local governments for effective treatment and rehabilitation of drug addicts.

To conclude, the increasing volume and particular characteristics of these three categories of offenses are placing great strain on the criminal justice system. Perhaps the most apparent point of this impact is the burden and delay they produce in the judicial process. But the strain on police, prosecution and correctional procedures is equally marked. Efforts to develop remedies are beginning to appear and they should continue. A primary focus of these efforts, which will aid all components of the criminal justice system, is the revision and modernization of criminal codes and related statutes.

C. THE PROSECUTING ATTORNEY

The Relationship of the Attorney General to the Local Prosecutor

The attorney general potentially has a dual role in relation to the local prosecutor: to help coordinate the activities of the many prosecutors at the local level, to offer assistance, and where necessary, step in to fill the prosecutor's role when an individual prosecutor is unable or unwilling to do so. The precise nature of this relationship is a key issue in State-local relations in law enforcement and criminal justice.

Legal basis. Only a few State constitutions specifically bestow duties of criminal justice on the attorney general–Georgia, Louisiana, and Maryland. The extent of these duties or powers can be determined only by reference to statutes and case law, however, to which one must also refer for the entire scope of criminal justice powers of the attorneys general in the other 47 States. These are secondary to his civil duties, for his major function is ". . .to be attorney for the State in its capacity as a public corporation and for its officers in the exercise of their official duties."[323] Exceptions are Alaska, Delaware, and Rhode Island, where the attorney general is entirely responsible for prosecuting violators of State criminal laws.

About half of the State constitutions provide that the duties of the attorney general shall be prescribed by law. These provisions have been interpreted to mean one of three things: the legislature may lessen the common law duties but may not add new ones; the legislature cannot diminish common law duties but may increase them; or all common law duties are negated, and the attorney general may exercise only those powers prescribed by the legislature. The basic fact of the relationship between the attorney general and the prosecuting attorney is that the office of the former originates in common law while the latter is created strictly by statute. In a few States the courts have ruled that when the legislature delegates duties to a prosecutor, which were the attorney general's under common law, such duties vest exclusively in the local prosecutor. Yet, in other States the courts have held that the attorney general and local prosecutor have concurrent powers in such situations. The National Association of Attorneys General concludes that: "In those jurisdictions without any constitutional, statutory or decisional law in point, the courts might reasonably be expected to concede at least concurrent powers to the Attorney General in like situations were the issue properly presented to them for decision."[324]

Variations in prosecutor attorney-general relationship. As described in detail in Chapter 3, the formal relationship between the attorney general and the local prosecutor occurs in a number of different patterns: In brief:

In three States – Alaska, Delaware, and Rhode Island – there are no local prosecutors as such; the attorney general conducts criminal prosecutions.

In one State – Connecticut – the attorney general has no powers in administering criminal justice.

In three States – Idaho, Tennessee, and Wyoming – the attorney general appears to have no control over local prosecutors but does handle prosecutions at the appellate level.

In all of the 43 other States, there are definite relationships between the two offices, which may be grouped as follows:

–Local prosecutors and attorneys have mutually exclusive areas of authority.

–The two offices have overlapping or concurrent areas of responsibility.

–Attorneys general assist local prosecutors.

–Attorneys general supervise activities of prosecutors.

–Attorneys general may intervene in the prosecutors' activities.

–Attorneys general may supersede local prosecutors.

–Attorneys general exercise direct control over the local prosecutors.

Under the first three patterns, the attorney general exercises limited powers over local prosecutors; under the last four he has broad power. More than one relationship may prevail in a particular State–they are not mutually exclusive. In States which give the attorney general extensive power to direct local prosecutors, he seldom uses such powers, according to the National Association of Attorneys General.[325] The Association observes that, "In practice, Attorneys General have more often usurped the powers and prerogatives of local prosecutors in isolated cases by intervention or supersession than they have attempted to exercise continuing control over the day-to-day conduct of the affairs of the office."[326] The Courts Task Force of the President's Crime Commission reached a similar conclusion.

The prevailing pattern then is that most of the State attorneys general do possess formal authority to coordinate local law enforcement activity; that in most States this authority has not been exercised; and that even in those States where some coordination is attempted, much more could be done.[327]

Proposals for Change in the Prosecution Function

From the famed Wickersham Commission Report of the 1930s to the present, major studies of the prosecution function in the United States have proposed a restructuring of the local prosecutor-attorney general relationship aimed at enlarged statewide coordination. Such coordination is urged as necessary to overcome the shortcomings of the system of basically independent local prosecutors, particularly in their efforts to combat organized crime; to achieve more uniform application and enforcement of the criminal laws; to provide for better qualified and compensated local prosecutors; and generally to upgrade the administration of criminal justice. Among the groups making these proposals are the National Conference of Commissioners on Uniform State laws, the President's Crime Commission, the American Bar Association's Project on Standards for Criminal Justice, and the National Association of Attorneys General.

The National Conference of Commissioners on Uniform State Laws model. The National Conference of Commissioners on Uniform State Laws promulgated the Model Department of Justice Act in 1952. The model was drafted by the American Bar Association Commission on Organized Crime in an effort to ". . .provide a solid statutory basis for the exercise of supervisory powers at the State level over local law enforcement and local criminal prosecutions.[328] Fundamentally, the model act ". . .intended to restore what has been lacking in local criminal prosecution in this country for a long time, namely ultimate accountability to a single coordinating official and some measure of administrative responsibility for acts of discretion."[329] The coordinating State official would usually be the attorney general, but since some States may restrict the attorney general to civil duties, the model act offers the alternative of a Department of Criminal Justice, headed by a Director appointed by the Governor.

The attorney general (director) is required to consult with and advise prosecuting attorneys and maintain a general supervision over them ". .,.with a view to obtaining effective and uniform enforcement of the criminal laws throughout the State."[330] Prosecuting attorneys are authorized to request assistance from the attorney general (director) in conducting any criminal investigation or proceeding. When requested in writing by the governor, the attorney general (director) must, and when requested by a county grand jury he may, supersede and relieve the prosecuting attorney and intervene in any investigation, criminal action, or proceeding initiated by the prosecuting attorney. If the attorney general refuses to supersede the local prosecutor or intervene in any proceeding, the governor may appoint a special assistant attorney general to carry on such investigations or intervene as requested by the governor. On his own initiative, the attorney general (director) may supersede the local attorney or intervene or participate in any pending criminal action or proceeding to promote or safeguard the public interest and enforce laws of the State.

The model act also provides methods of removing local prosecutors, supplemental to those otherwise provided, such as impeachment. The governor may remove him for cause after notice and a public hearing, or the highest court may remove him for cause on submission of a petition.

Finally, prosecuting attorneys are required to submit an annual report to the attorney general (director) covering such matters as the latter prescribes. They also may be required to submit special reports from time to time at the discretion of the attorney general (director).

In reviewing progress since 1952 on acceptance of the model statute, the National Association of Attorneys General comments:

> The powers conferred by the Model Act are available to Attorneys General in many states through statute, common or case law, but they do not now exist in anything approaching completeness in any Attorney General. . . .The authority centralized at State level by the provisions of the Model Act would unquestionably facilitate and improve the administration of criminal justice in this country. . . .This Act has been available to legislative bodies for seventeen years. Not one has incorporated it, either directly or in modified form, into their statutes.[331]

Proposal of President's Crime Commission. The Courts Task Force of the President's Crime Commission considered the possibilities of centralizing prosecutions in the attorney general as one approach to improved coordination of local prosecution. They concluded that, while the approach is in use in three States, in most places it would present unacceptable disadvantages: inefficiency, too large an investment of manpower at the State level, decisions by persons remote from the scene, and loss of the advantages of local responsiveness.

The Task Force acknowledged the need for the attorney general to have the powers of supersession and intervention in cases of incompetence or corruption. Yet, it pointed out that in situations short of outright misfeasance attorneys general may be unwilling to use such drastic measures, and ". . .in the absence of continuing contacts with local prosecutors the State officers may find themselves without a remedy."[332] Thus, in recommending that States strengthen the coordination of local prosecution by enhancing the authority of the State attorney general or some other appropriate statewide officer, the Crime Commission stopped short of urging all those powers as are included in the

model statute. Instead, in a less sweeping proposal, the Commission urged coordination of local prosecutors by a State council of prosecutors comprising all local prosecutors under the leadership of the attorney general.[333]

The Crime Commission saw the council primarily as one which would meet periodically to exchange views, although the group also might exercise a real policy-making function. The Commission cited the advantages of the council: its ability to elicit cooperation of independently elected officials whose collaboration is crucial for effective coordination; its tendency to calm the fears of local prosecutors that their authority was being undetermined by a central, powerful State officer; and its proficiency in setting statewide standards that would have an impact on local operating conditions. To provide continuity for the work of such a council, the Commission suggested that the attorney general's office furnish staffing and research assistance, and propose areas in which statewide standards, programs and policies are needed.

ABA Project on Standards for Criminal Justice

In drafting standards relating to the prosecution function, the American Bar Association's Advisory Committee on the Prosecution and Defense Functions considered the statewide systems of prosecution in use in Alaska, Delaware, and Rhode Island. It found that these systems have considerable appeal because criminal law is largely a creation of State government. The Committee suggested, therefore, that States not disregard the statewide prosecutorial system, and cited the precedent established in the Federal Department of Justice, which functions through nearly 100 appointed district attorneys in more than 50 States and territories with central direction in the Attorney General in Washington. It concluded, however, that "...each State will need to examine its own geography, transportation and government structure with a view to adoption of the most desirable system."[334]

Where the system of local prosecution is retained, the ABA committee concluded that increased State coordination may be the only means to overcome the problems inherent in local autonomy. It made a recommendation very similar to that of the President's Crime Commission:

> In all States there should be coordination of the prosecution policies of local prosecution offices to improve the administration of justice and assure the maximum practicable uniformity in the enforcement of the criminal law throughout the States. A State council of prosecutors should be established in each State.[335]

The committee also recommended that where questions of law of statewide concern arise which may establish important precedents, the prosecutor should consult and advise with the attorney general. This consultation approach was suggested as an alternative to the model act's grant of power to the attorney general to appear in criminal prosecutions on questions of law because the latter proposal would be incompatible with the existing systems in many States and would generate avoidable controversies.

The ABA committee recommended, in addition, that the State government maintain, and make available to all local prosecutors, a central pool of supporting resources and manpower, including laboratories, investigators, accountants, special counsel and other experts. Few local prosecution offices, the committee noted, can support the full complement of technical and professional experts needed for effective investigation and prosecution. It cited the parallel arrangement at the Federal level, whereby such services are made available to United States Attorneys through the Department of Justice, the Treasury Department, and other professionally staffed agencies.[336]

A common objective of many studies of this relationship has been the strengthening of statewide coordination of prosecutorial activity. Those concerned with the full scope of criminal prosecution uniformly propose strengthening the supervisory role of the attorney general but disagree on how far they would go in enhancing his power over local prosecutors. The more rrecent proposals (President's Crime Commission and ABA's Project on Standards for Criminal Justice) have tended to emphasize leadership, assistance, and consultation by the attorney general and reliance on voluntary cooperation among local prosecutors.

The Board of Directors of the National District Attorneys Association, however, opposes centralization of the prosecutorial authority in the attorney general. They point out that the attorney general's responsibility is "...usually civil in nature, concerned mostly with the application of the law to the administration of various State boards and agencies. He is generally not involved in the application of the criminal law and for that...reason is ill-equipped to advise a local prosecuting attorney.[337]

Finally, in the special area of organized crime, some States, such as New York, have established a special prosecutorial office at the State level empowered to prosecute organized criminal activities conducted in multi-county areas.[338]

Selection of the Prosecutor.

Controversy surrounds the method of selecting the local prosecutor though he is presently elected in 45 States. Should the prosecutor be an elective or appointive official? If the prosecutor is to be appointed, should it be by a local or State official? If the prosecutor is to be elected should it be in a partisan or nonpartisan manner?

Opinions conflict on whether the prosecutor should be an elective or appointive official. Earlier studies of the prosecutor's office, such as that of the Wickersham Commission, have indicated that election was a key factor in its weakness due to the incentive it sometimes offered for lax or uneven enforcement of the law. More recent studies, noting the part-time and low salary traits of the office, might also be interpreted as an indication that the professionalism of the office has been diluted by its involvement in politics.[339]

Against these views, however, some have noted that the election of the prosecutor assures his "independence", his freedom from outside influence in the exercise of his responsibilities. Hence, we have the description that the ". . .office of prosecuting attorney has been carved out of that of attorney-general and virtually made an independent office."[340] This feature has been pointed to as indicative of the popular desire for decentralization of the office. Moreover, the constitutionally elective status of the prosecutor in 36 States is said to attest to the popular desire to keep the office under direct public control. From still another vantage point, some have stressed the fact that a number of local prosecutors in large urban areas have succeeded in placing themselves above politics and in developing professional offices which have exemplary records in prosecuting local crime. It has been said that these ". . .examples show that the elective system can provide competent, professional prosecutors if those who control the process of selection strive for these qualities."[341]

Theoretically, either election or appointment could strengthen the effectiveness of the prosecutor. Election, while involving the prosecutor in partisan or factional politics, can assure that he will possess ". . .a degree of political independence that is desirable in an officer charged with the investigation and prosecution of charges of bribery and corruption."[342] It may also assure that he will ". . .come to the office without a comfortable acceptance of the status quo. . .".[343] Moreover since he is a highly "visible" official, public apathy is not likely to occur in the selection of a prosecutor. Public concern, especially at this point in time, will force local political parties to recruit able candidates for the office.

On the other hand, appointment to the office can bring about strict accountability for a comprehensive and rigorous prosecutions policy. State and local chief executives will be held responsible for the effective administration of a broader proportion of the criminal justice process, so the argument runs, and hence in a better position to coordinate prosecution policies with other components of the system. In addition, some contend that appointment engenders greater professionalism in the office, especially if the length of appointment is sufficiently long to attract qualified personnel. Appointment also might reduce public antipathy to paying the prosecutor an adequate salary.[344]

Another controversy centers on whether the prosecutor should be appointed by local or State officials. Local appointment is favored on the basis that many localities have administrative responsibilities for lower courts as well as almost exclusive responsibility for the police function. To coordinate police, prosecution, and court policies then, some argue that local appointment of the prosecutor is needed. City attorneys, many of whom already have minor criminal justice responsibilities, are almost invariably appointed.[345]

Others feel that the local prosecutor should be appointed by a State official—either the governor or attorney general.[346] Such a method of selection is held to have a number of benefits. State appointment of local prosecutors could result in more effective enforcement of laws due to greater prosecutorial involvement in the drafting of the criminal code. Appointment by the governor or attorney general also would permit greater statewide coordination of prosecutorial policy and prevent the local prosecutor from independently setting law enforcement priorities. Moreover, appointment at the State level could result in more effective utilization of prosecutorial personnel since it would more easily permit transfer of prosecutors from low to high crime areas.

Treading the middle way in the election-appointment controversy are the National Association of Attorneys General and the ABA. The former group feels there is no single best method since what is appropriate for one State is not necessarily appropriate for another. The ABA, however, believes that the prosecutor should be elected on a non-partisan basis, using the "merit" plan similar to the Missouri plan for selection of judges.[347] Those who advocate this method of selection see it as a means of removing the office from politics. Such

advocates feel that nonpartisan, "merit" selection would have the benefits of increasing public confidence in the office's enforcement policies, of reducing the amount of time a prosecutor has to spend in partisan political matters, and of attracting more qualified candidates to the office. These changes, so the case runs, would raise markedly the professional status of the office.

Critics of the "merit" selection plan note that the prosecutor if he is to be an elective official, needs the organizational and financial support of an established party. The "merit" plan of selection provides no necessary incentive for selection of candidates of a higher caliber, and the nonpartisan election tends to reduce voter interest in the prosecutor's election. Both of these factors, some feel, cause the prosecutor to devote disproportionate time to building an independent base of public support as well as to prevent less established lawyers from campaigning for the office.[348]

In summary, the prosecutor has long been an elected local official. His office was created as a result of the need for a more decentralized administration of justice, and over time the local prosecutor was delegated criminal justice powers that formerly had been within the province of the Attorney General. Accompanying this delegation of power was the growing popularity of direct election of the prosecutor; this was in keeping with Jacksonian and later Progressive principles regarding popular control of public officials, strict accountability on their part to the electorate, and keeping the system honest.

Of late, election of the prosecutor has been criticized on the basis that it lowers the professionalism of the office. Critics contend that this method of selection is responsible for the part-time and underpaid character of the office in many areas. Only by the process of appointment or at least nonpartisan election will more qualified personnel be attracted to the profession and prosecutorial policies be better coordinated with other parts of the criminal justice system. Appointment advocates underscore the need to strengthen the position of chief executives in the system, noting that real coordination is rarely produced by a number of elected officials with separate constituencies and separately assigned responsibilities.

On the other hand, defenders of local election of the prosecutor point out that it is instrumental in keeping the office "independent" and responsive to popular demands. They contend that election generates greater public interest in the function and allows the public a sense of participation in the criminal justice system. Moreover, some maintain the existence of an "independent" prosecutor may be necessary for effective implementation of prosecutorial policy without which the whole system suffers. His independence, after all, means he will be less subject to conflicting political pressures in the administration of prosecution policy than would be the case with a State or local chief executive. Proponents of local election almost always contend that appointment by a State official would involve the local prosecutor in more not less politics, and, in any event, excessive bureaucratization of the prosecution function necessarily would result.

Finally, the present system in the 45 States relying basically on local election is defended by some on the very practical grounds that the bulk of the local district attorneys would oppose a major change in the mode of selection and too much political currency would be expended on an effort that in no way necessarily assures a more effective prosecutorial component of the criminal justice system.

The controversy over the method of selection, then, centers on whether election or appointment will ultimately inject greater professionalism into what is now an undermanned and underpaid function in too many areas. Both methods of selection can result in the selection of able prosecutors. Both methods of selection can result in better coordination of prosecution policies with other parts of the criminal justice system. Conclusive proof, then is still lacking as to whether the method of selection will make a wholesale difference in the quality of prosecution in many areas. Quite possibly an improved prosecution function will come about as a result of other reforms.

The Problem of Part-Time Prosecutors

Prosecution is only a part-time job in a large part of the country. The National District Attorneys' Association found in a 1965 survey that in 27 States over one-half the prosecutors responding were devoting no more than half their working time to public business. Of the total of 1,016 prosecutors replying (out of a total then of over 2,700), only 171 were putting in full time on their public duties.[349]

Part-time devotion to prosecution has a number of undesirable consequences. The Courts Task Force of the President's Crime Commission stated that ". . .the attorneys he deals with as a public officer are the same ones with whom he is expected to maintain a less formal and more accommodating relationship as counsel to private clients. Similar problems may arise in the prosecutor's dealing with his private clients whose activities

may come to his official attention."[350] In addition to this conflict of interest, the part-time prosecutor may give insufficient time and energy to his official duties. "Since his salary is a fixed amount, and his total earnings depend on what he can derive from his private practice, there is a continuing temptation to give priority to private clients."[351]

The Courts Task Force concluded that part-time employment is related to low pay and the workload of the office. Regarding low pay, the Task Force observed that high quality attorneys will not seek prosecutorial offices unless the economic rewards are high enough. "Full-time devotion to duty cannot be demanded unless the pay is raised and salary scales are based on the assumption that the prosecutor will not have a second income from outside law practice."[352]

The Task Force contended most cities cannot justify continuation of part-time prosecutors. They have heavy workloads that demand the fullest attention without distractions by other obligations and interests. Yet the National District Attorneys Association found that in 1969 a number of prosecutors' offices in urban areas permitted their attorneys to pursue the private practice of law. Included were Harris County, (Houston), Texas; Cuyahoga County (Cleveland), Ohio; Baltimore, Maryland; Hartford County, Connecticut; Passaic County, New Jersey; Pulaski County (Little Rock), Arkansas; Lancaster County (Lincoln), Nebraska; and Covington, Kentucky.[353] Of 37 prosecutorial districts with a population of 100,000 or more, 15 permitted such outside employment.

The problem of a small workload as a cause of part-time employment is found mainly in lightly-populated jurisdictions. As the ABA's Advisory Committee on the Prosecution and Defense Functions noted:

> Many territorial units are too small in terms of population to support more than a part-time office. Offices of such small size cannot provide the investigative resources, the accumulated skill and experience and the variety of personnel desirable for the optimum functioning of an efficient prosecution office. Neither can they provide opportunities for developing a range of special skills and internal checks and balances within the office.[354]

The Pennsylvania law enforcement planning agency observed that:

> Prosecutory officers in Pennsylvania face the same problems as those found in all other States. Scarce resources make the full-time adequately staffed district attorneys office a rarity. Only in the very largest cities where salaries are relatively adequate do we have full-time staffs. The vast majority of Pennsylvania's counties must settle for part-time law enforcement.[355]

The Courts Task Force noted that some States have moved in the direction of creating district attorneys' offices covering judicial districts larger than one county. In Oklahoma, for example, the county system was revised in 1965 in favor of a system of prosecutorial districts corresponding to the State's judicial districts. The inadequate fiscal resources of counties had prevented payment of fair compensation to the attorneys, a situation which reached crisis proportions in 1964 when no attorneys sought election as a county attorney in 55 of the State's 77 counties.[356]

In 1967, Minnesota was given Federal grant support by the Office of Law Enforcement Assistance to test the effectiveness of full-time prosecutors in rural areas then served only by part-time prosecutors. Under joint sponsorship of the State Judicial Council and the attorney general, two districts were established, one encompassing 15 counties and the other 17 counties. The counties would not accept abolition of the county prosecutor's office, so the full-time district prosecutors were imposed on the existing part-time county prosecutor system, providing assistance in some cases and relief from trial burdens in others. According to two LEAA officials, the "halfway" arrangement demonstrated sufficient value to help secure continuation of the program with local support after the Federal grant was terminated.[357]

The ABA Advisory Committee recommended that "Wherever possible, a unit of prosecution should be designed on the basis of population, caseload and other relevant factors sufficient to warrant at least one full-time prosecutor and the supporting staff necessary to effective prosecution."[358] The National Association of Attorneys General and the Board of Directors of the National District Attorneys Association favor similar action.[359]

A major concern in expanding the territory of prosecutorial districts is the fear of losing responsiveness to local conditions. The prosecutor's familiarity with the community helps him in gathering evidence, allocating resources to the various activities of his office, and appraising the disposition appropriate to particular offenses and offenders. The same fears, of course, may be expressed in opposition to any move toward statewide coordination of the prosecution function aimed at promoting reasonable uniformity of policies and practices. As the Courts Task Force pointed out, sensitivity to local conditions may be retained by following the Oklahoma pattern whereby the district attorney serving a multi-county district is required to select one assistant from each of the counties in his district. The difficulty with that solution is that a county's workload may not warrant the full-time attention of one attorney.

The Grand Jury and the Prosecutor

In a number of States the district attorney is required to initiate prosecutions in felony cases through a grand jury indictment. The existence of this two phase system of prosecution has generated debate on the relationship between the prosecutor and the grand jury, much of it focusing on the role of the latter. Critics of the grand jury see it as an unnecessary and outmoded part of the criminal justice process that tends to impede swift prosecution of criminal cases. Its defenders view it as an invaluable mechanism for public participation in and scrutiny of the criminal justice process.

All fifty states permit the grand jury to be used for indictments in felony cases. However, twenty-one states permit the use of "information" in such offenses, which permits the prosecutor to bring the accused to trial after a preliminary court hearing.[360] Three more states – Connecticut, Florida, and Indiana – permit the information process in cases not involving death or life imprisonment penalties. Five others – Delaware, Maryland, Massachusetts, Oregon, and Virginia – permit the use of information when the accused waives his right to a grand jury proceeding. The grand jury has constitutional status in forty-three states, while six have constitutional provisions permitting abolition or modification of the grand jury system.

Historically, the grand jury had "...the entire burden of investigating crimes and initiating prosecutions."[361] Yet, with the development of professional police and prosecutorial personnel, the grand jury now is used "...chiefly as an accusatory instrument; its indictment carries no presumption of guilt, but is merely a means of informing the accused of the crime for which he is charged."[362] Aside from this task of screening felony charges, grand juries also can be used to compel testimony in criminal investigations and make reports and inspections on conditions in local institutions.[363] In effect, then, the role of the grand jury has shifted from being primarily an instrument of prosecution to being more of a screening and investigative body.

Those who see little use for the grand jury note that its members usually are not versed in law and that it duplicates other criminal prosecution procedures. They argue further that the grand jury is expensive for both the State and grand jurors, is frequently unrepresentative of minority groups, and is susceptible to manipulation by the prosecutor. Those who value the grand jury note that it safeguards the accused against unwarranted charges, aids the prosecutor by its subpoena powers, and opens the way for greater citizen participation in the criminal justice process.

More specifically, the debate about the interrelationships between the grand jury and the prosecutor centers primarily on whether the grand jury adversely affects the flexibility of the prosecutor, prolongs the prosecution process, and acts as an unnecessary protection for the accused.

Some feel the grand jury is an encumbrance on the prosecutor. In several States when the prosecutor holds a case for grand jury action, he cannot reduce or dismiss the case on his own action; hence, the grand jury can reduce his plea bargaining powers.[364] Moreover, some charge that the grand jury encourages lax investigative work by the prosecutor, since he only has to establish a *prima facie* case against the accused.[365] Others point out that opening of grand jury minutes to the defense results in further problems for the prosecutor, since defense counsel often attempts to impeach prosecution witnesses on minor discrepancies between their grand jury and full trial testimony.

On the other hand, defenders see the grand jury as an instrument that can enhance the prosecutor's powers. In most States, prosecuting attorneys are not granted the subpoena power and the grand jury can be an invaluable aid in compelling testimony under its contempt power.[366] If this power is used properly, and effective cooperation prevails, then the prosecutor can widen his investigative powers through the grand jury. The grand jury is also said to be an excellent means for the prosecutor to investigate cases of alleged public corruption.

Besides reducing the flexibility of the prosecutor, critics of the grand jury also claim that it results in needless delays in the prosecution system. In many areas, grand juries are empaneled only once a year thereby resulting in the holding over of many criminal cases until such juries convene. In urban areas, grand juries usually are empaneled on a more frequent basis; yet these proceedings can result in a drain on prosecutorial time and personnel. Moreover, prosecutors point out that grand jury delay may result in unjustifiably long detention of criminal suspects.

Defenders of the system argue that grand juries in and of themselves do not delay the criminal justice process. Rather the fragmentation of the courts and the undermanning of the prosecutor's office are key elements in criminal justice delays. More effective scheduling of grand juries by trial court administrators as well as more effective legal assistance in its proceedings would insure

a speedier grand jury process. With these changes, proponents contend that grand juries would not be an impediment to the prosecution process.

Finally the grand jury has been scored as being an illusory protection for the accused. Critics claim that the accused, under either the grand jury or information system, already is guaranteed the right to a preliminary court hearing to determine whether "probable cause" exists to bring prosecution. This preliminary hearing, then, acts as an adequate protection against unjust prosecution, thereby making the grand jury an unncessary safeguard. Moreover, the accused has the benefit of counsel and cross-examination of witnesses in these hearings—rights he does not have in the grand jury process. Critics also note that the grand jury may be manipulated by the prosecutor insofar as it defers to his professional judgements in its proceedings. Involved here, of course, is the dilemma of how to keep the prosecutor from unduly influencing those grand jury deliberations which are inherently semi-prosecutorial in nature.

Defenders of the grand jury contend it is a valuable protection to the accused since it represents a most democratic way of handling criminal prosecution. In the words of one report, ". . .participation of laymen in the process of determining when criminal charges are to be lodged reflects the democratic way of life. It is the antithesis of the police state, and provides an active role for the private citizen in the front lines of government.[367] Other proponents cite the secrecy it affords the prosecution process—a protection for the reputation of the accused—and the upholding of the principle that the public should ultimately control the character of criminal justice proceedings. Finally, defenders point out that grand juries often overturn prosecutors—a fact which gives "integrity" to the whole grand jury system.[368]

D. COUNSEL FOR THE INDIGENT DEFENDANT

Two basic methods are used to provide defense counsel for the indigent. Under the assigned counsel system the court selects an individual attorney to represent a particular defendant. In the defender system all indigents requiring counsel are represented either by a public official, usually known as the public defender, or by a private agency such as a legal aid society. In both the assigned counsel and public defender system, the cost of the defense attorney is charged to State or local government.

As of January 1970, there were 330 known defense counsel organizations of some type. Of these, 239 were public defender agencies; 10, private defender agencies; 44, private-public; 33, assigned counsel programs; and four were law school clinics. In 11 States, the entire State was covered by defender offices; while in 23 States, such offices were operating in selected areas—usually larger cities—and the remainder of the State was served by assigned counsel. The remaining 16 States had statewide assigned counsel systems. In practically all cases assigned counsel operated under an informal system rather than a coordinated, formal system.

The patchwork of full-time defender offices and assigned counsel systems indicates that States have made an uneven response to the constitutional requirement—recently affirmed by the Supreme Court—that the indigent defendant be assured the right to counsel.[369] This right raises the question of what the State government should do to assure that counsel is provided for the indigent accused in State and local courts.

Recognized Criteria for a Defense Counsel System

The President's Commission on Law Enforcement and the Administration of Justice recommended:

> The objective to be met as quickly as possible is to provide counsel to every criminal defendant who faces a significant penalty, if he cannot afford to provide counsel himself.
>
> All jurisdictions that have not already done so should move from random assignment of defense counsel by judges to a coordinated assigned counsel or a defender system.[370]
>
> Each State should finance assigned counsel and defender systems on a regular and statewide basis.

The Courts Task Force of the Crime Commission found that both the assigned counsel and defender systems have elements of strength, ". . .and the appropriateness of one plan as opposed to another depends ultimately upon such circumstances as the volume of criminal cases, the geographic area to be covered, and the size and skills of the practicing bar which prevail in a given locality."[371] A high volume of criminal cases, the Task Force said, favors the creation of a defender office because such an office makes more efficient use of available legal manpower and is well suited to provide representation in early stages of the criminal process that especially is needed in high crime areas. In lightly populated areas, on the other hand, a full-time defender office is impractical. Under such conditions, the Task Force argued, a coordinated assigned counsel system or a circuit defender would seem preferable. Under coordinated assigned counsel systems, counsel is selected by an agency using a systematic approach to insure the even and broad use of all available competent counsel.

The American Bar Association Project on Minimum Standards for Criminal Justice in its report *Standards*

Relating to Providing Defense Services, recommends that:

> Counsel should be provided in a systematic manner in accordance with a widely publicized plan employing a defender or assigned counsel system or a combination of these.[372]

Taking note of the several systems used, the ABA points out that both the Attorney General's Committee and the American Bar Foundation Survey concluded that there is no reason to prefer any one of these systems as the most effective or to deny the worth of any of them when properly organized and administered. Following up on this position, the ABA proposes that the States take a permissive attitude with regard to local action:

> By statute each jurisdiction should require the appropriate local subdivision to adopt a plan for the provision of counsel. The statute should permit the local subdivision to choose from the full range of systems a method of providing counsel which is suited to its needs and consistent with these standards and should allow local subdivisions to act jointly in establishing such a plan.[373]

With regard to the identification of the "appropriate local jurisdiction," the ABA draft notes that usually it may be expected that the prosecutorial jurisdiction will be appropriate, but local needs or traditions may suggest a departure from that pattern. The prosecutorial jurisdiction is generally the county or judicial district.

With respect to allowing each community to choose the defender system best suited to its own peculiar needs and resources, the ABA draft cautions that ". . .local tradition has sometimes served as an excuse for failure to establish an adequate system for providing counsel. To avoid any implication that the continuation of this practice is tolerable, the standard requires that any system chosen satisfy the detailed standards stated in the remainder of this report."[374]

Regarding joint interlocal action, the ABA urges that the defense counsel system should not be unnecessarily fragmented solely because of the historical fact of political subdivision boundaries. It therefore recommends that the governing statute explicitly authorize political subdivisions to combine in establishing a joint defense counsel program.

In 1966, the National Conference of Commissioners on Uniform State Laws drafted a "Model Defense of Needy Persons Act."[375] The act gives localities four alternatives for providing representation to needy persons: an office of public defender; an arrangement with a non-profit organization to provide attorneys; an arrangement with the courts of criminal jurisdiction to assign attorneys on an equitable basis through a systematic, coordinated plan and, if the locality has a specified minimum population (the act suggests 400,000), under the guidance of an administrator; or a combination of the first three. Joint action with other jurisdictions is authorized in the case of the public defender and non-profit organization options.

The U.S. Civil Rights Commission included in its study of the criminal justice process in the Southwest an examination of the provision of counsel for indigent Mexican Americans. It recommended that ". . .the State should establish statewide systems of legal representation for defendants in all criminal cases."[376] It went on to say that initial responsibility for establishing programs of legal representation rests with the States. Finally, the National Association of Attorneys General have urged their membership to work for establishment of a State public defender system or assigned counsel system where one does not exist.[377]

The Issue of Local Option on Defense Counsel Systems

The position taken by most of the organizations cited above emphasizes the need for each State to adopt the defense counsel system suited to its needs, provided that minimum standards are observed. This flexible approach is echoed by leading State and local officials responsible for the administration or supervision of counsel services. The Chief Justice of the Supreme Court of Minnesota, which has a statewide defender system, has declared that, "There is probably no single system that can be devised that is ideal for every State in this country. Our States differ in population, in congestion, in size and in many other respects and, obviously, what is best for Minnesota (if we have the best) may not be the best for New York or California."[378] Similarly, the head of the National Advisory Council of the National Defender Project has said, in summarizing the Project's 1969 Conference, that "The system adopted by a particular jurisdiction should be designed to fit the geography, demography and development of the area. . ."[379]

Finally, the Director of Defender Services of the National Legal Aid and Defender Association has said that "Experience has demonstrated quite clearly that there is no one type of defender system which is suitable for every jurisdiction. However, the results of the experience of the National Defender Project of NLADA and the analysis of various types of defender systems as compared with the random assigned counsel systems lead inevitably to the conclusion that an organized defender system in some form affords the best method of providing counsel to those charged with crime who are financially unable to employ their own."[380]

Despite the common emphasis on a flexible State-by-State approach in choosing the most suitable counsel system, these groups and individuals divide on the role of the State in assuring the provision of adequate counsel for the indigent defendant. The ABA and the National Conference of Commissioners on Uniform State Laws recommend that States give their localities the option of choosing the method best suited to their own needs, so long as the jurisdiction satisfies the minimum standards set by the State. The President's Crime Commission emphasizes the importance of either a public defender system or a coordinated assigned counsel plan, but does not insist on local option. In fact, it specifies that each State should finance assigned counsel and defender systems "...on a regular and statewide basis," which can be construed as leaving open the option of a State-administered system. The U.S. Civil Rights Commission's position can be interpreted as either proposing a State-administered program or State establishment of minimum standards for local option. Finally, the National Legal Aid and Defender Association does not take a rigid stand for local option so long as there is an organized system in some form.

The Question of Financing

Accepting the position that States might leave the provision of defense services for the indigent to their local jurisdictions, some question is raised about the State's obligation to assist, or completely cover, the financing of the program. The ABA Project made no reference to financial responsibility. The Model Defense of Needy Persons Act requires the local jurisdiction to provide funding but only up to a point: if in any fiscal year the payments by the local jurisdiction are greater than a certain percent of its annual budget, the State is required to reimburse the locality for the difference from the State general fund. The President's Crime Commission stated that each State should finance an acceptable defender system on a regular and statewide basis, but neither the Commission report nor the Courts Task Force report specifies whether a State, local, or State-local financing provision is preferred. Neither the NLADA nor the Civil Rights Commission makes any reference to financing.

Thirty-six States responding to the Institute of Judicial Administration questionnaire indicated the source of financing of their indigent counsel programs. Of these, eight indicated that a public defender system was funded by the State government and 11 indicated that an assigned counsel system was so funded. In one additional defender State and eight additional assigned counsel States, the State shared the funding with local jurisdictions.

Even among the 11 States with statewide defender systems there is no unanimity as to governmental sharing of responsibility. Thus, Massachusetts and Wisconsin provide for full State funding while Oregon provides for State financing of its public defender offices and local financing of its assigned counsel system.

One major reason for State financing of the defender system is the reluctance of local communities to put up the necessary money. The director of the Office of Circuit Defender for the 13th Judicial District of Missouri, which includes both Boone and Calloway counties, told of the financing problems in his circuit:

> Reception and support of the program by the public has been strong in Boone County. Callaway County has provided much moral support. The attitude of those controlling the purse strings in Callaway County simply is that they will not provide any assistance to criminals unless ordered to do so by the State legislature.[381]

Callaway County's reluctance could be overcome, according to the above statement, by State mandating of such a service rather than State takeover of the full cost. The political question remains whether the legislature would mandate the program. Certainly mandating would meet with more acceptance if the State shared in the cost of the required program.

The Attorney General of Nebraska in 1969 expressed the opinion that his State's responsibility for defender services would have to extend to full financing and that mere mandating of local services would not be enough. His reasoning probably applies to other States as well:

> At the present time, the entire cost of providing defense services in our State falls upon the counties...(and) the counties today need help. They are faced with financial problems, not all of which are of their own making. Legislatures have been known to foist financial responsibilities on counties without providing them with adequate means for raising the necessary money...
>
> We cannot look to the cities to provide the money for defender services. Most of them have greater financial problems than do the counties. In addition, their geographic limitations make it impractical for them to assume this responsibility.[382]

The Nebraska official went on to favor direct State provision of defense counsel services. He believed that the alternative—state provision of the money for local administration—would involve State prescription of standards of performance and auditing of expenditures to see that the standards are met. "Such a system," he concluded, "tends to promote the very inequities which we now seek to eliminate."[383] The Nebraska legislature in 1969 enacted a statute authorizing establishment of a judicial district public defender in any district upon

certification to the Governor by the district judges, but financing is still local.

Summary. The choice between a local option system and one which gives a wider choice of alternative methods of providing defense counsel services, including direct State administration, probably boils down to a variation of the familiar issue of home rule vs. program considerations. Those who favor the home rule approach can argue that their position is not inconsistent with program effectiveness if they accept the need as the ABA does for local systems to meet State minimum performance standards. The argument against this position is the one voiced by the Nebraska attorney general: that a local system operated pursuant to State minimum standards may be more cumbersome and less workable than a system directly administered by the State.

Those who put more emphasis on program needs can cite the lesser financial capability of local governments compared to State government. Some would also echo the point made by the Missouri observer cited above that local units are more reluctant than State legislatures to provide money for programs associated with helping criminals. The Model Defense of Needy Persons Act meets these arguments by providing for State supplementation of local financing when the local contribution reaches a certain percentage of the total local budget.

E. CORRECTIONS

High recidivism rates attest to the failure of most State and local correctional programs to successfully rehabilitate offenders. Witness the overall estimate that 85 percent of all crimes are committed by repeaters who ostensibly were "corrected" by this system. This failure, in turn, may be attributed to the fact that corrections is the most isolated, fragmented, and underfinanced component of the criminal justice system.

The very nature of the existing corrections function generates the image, if not the fact of isolation, with prisoners hidden from public view, many facilities located in remote areas, and institutional personnel having limited contact with the outside world. Consequently, correctional needs and problems often are not visible to either the general public or its elected representatives. A November 1967 survey conducted by Louis Harris and Associates for the Joint Commission on Correctional Manpower and Training, for example, revealed that 47 percent of the 1,200 adults and teenagers polled thought that correctional institutions had been "somewhat" or "very successful" in rehabilitating offenders. Yet, 43 percent opposed spending more on prisons and rehabilitation programs, and an additional 17 percent were uncertain as to whether this should be done. A much larger proportion—59 percent—indicated they would not be willing to have their taxes raised in order to pay for better correctional programs.[384]

Fragmentation of the correctional function is reinforced by its isolation and invisibility. The contemporary corrections "system" consists of a diversity of institutions, programs, and services of uneven quality and uncertain relevance. Its unplanned development has evolved, in part, from contradictory goals and widely varying expectations. As the Joint Commission concluded:

> Corrections today is characterized by an overlapping of jurisdictions, a diversity of philosophies, and a hodge-podge of organizational structures which have little contact with one another. It has grown piecemeal—sometimes out of expedience, sometimes out of necessity. Seldom has growth been based on systematic planning. Lacking consistent guidelines and the means to test program effectiveness, legislators continue to pass laws, executives mandate policies, and both cause large sums of money to be spent on ineffective corrective methods.[385]

In general, however, corrections programs fare less well fiscally than most other components of the criminal justice system. In fiscal 1968-69, corrections accounted for 19.9 percent of all criminal justice expenditures by the Federal, State, and local governments, in contrast with 60.3 percent for police and 19.7 percent for courts.[386]

The fundamental basis for the relatively low funding status of adult corrections is highlighted in the responses by participants in the Harris poll to a question asking them which of 10 areas of spending they would most like to see increased. Correctional rehabilitation ranked sixth behind aid to schools, juvenile delinquency, law enforcement, poverty programs, and defense.

The funding pattern under the Safe Streets Act provides another illustration of the inferior position of corrections in the competition for funds. As of February 28, 1970, only 11.2 percent of a total $27,857,369 in Federal funds had been allocated by 48 States for correction and rehabilitation programs, including probation and parole, and a mere 8.8 percent had been earmarked for juvenile delinquency prevention and control, while 45 percent went for police-related purposes.[387] According to the second-year State comprehensive law enforcement plans submitted to the Law Enforcement Assistance Administration (LEAA), 27 percent of the 1970 action grants will be used for corrections activities.[388]

In light of the foregoing, it is clear that if an interlocking system of law enforcement and criminal justice is to be developed, major improvements must be made in corrections, since this function has a direct bearing on the effectiveness of the system as a whole. Whether an offender is committed to the correctional process, what route he takes to get there, and how and when he is released are all elements of an overall crime prevention and control effort. The business of corrections is to help the courts screen and decide sentencing alternatives for individuals arrested by the police and found guilty of committing an offense, to rehabilitate those placed on probation and confined in institutions, to release and supervise offenders on parole or aftercare, and to assist their reintegration into the community. Completing the cycle, the success or failure of corrections to reform and deter offenders remanded to its care determines whether or not such persons will become police or court business in the future. Hence, as shown in Figure 5, corrections should be viewed in terms of its place in the total criminal justice system, and linkages must be developed with the other components of this system.

Correctional programs must be seen as part of an overall process designed to enforce the standards of conduct necessary for the protection of society. This process involves apprehending, prosecuting, convicting, sentencing, institutionalizing, rehabilitating, and restoring those members of the community who violate its rules.

Thus, attempts to overhaul the correctional system require an examination of the critical intergovernmental, interagency, and intrafunctional difficulties which hinder its operation. Inherent to the corrections function is a demand for highly qualified and trained personnel. It is uniquely true with respect to corrections, that streamlining administration, coordinating services, modernizing facilities, and achieving other institutional and programmatic reforms will have only limited impact unless the number and caliber of corrections personnel are increased. Manpower, then, is one of the top priority items on the agenda for corrections improvement.

Correctional Personnel

As part of a three-year study, the Joint Commission on Correctional Manpower and Training conducted a national survey during 1967-68 of adult and juvenile, Federal and State correctional institutions, State probation and parole agencies, and local probation departments. State employees comprised 73 percent of all correctional personnel, while local governments employed 20 percent. The findings with respect to the status of personnel practices in recruitment, in staffing, and training raise serious questions as to the effectiveness of present programs and their capacity to meet projected manpower needs in this field.

The Joint Commission reported that correctional administrators had trouble in recruiting personnel, particularly recent graduates from higher educational institutions, and in retaining their professional staff members. Young people, minorities, and women were especially underrepresented on the employment rolls of corrections agencies. These findings reflect several drawbacks of corrections as a vocation, including low pay, heavy workload, and insufficient training. Few will quarrel with the need for substantial upgrading on these fronts.

Salary and Workload

On the average, the salaries of correctional employees were found to be lower than those paid to personnel in the private sector or in other government agencies who held positions with similar responsibilities and educational requirements. The national profile of salaries revealed that in 1968 a large proportion of corrections workers received $10,000 or less annually. These included:

—Administrators: adult institutions, 20%; juvenile institutions, 31%; adult field, 20%; juvenile field, 23%.

—Supervisors: adult institutions, 73%; juvenile institutions, 74%; adult field, 28%; juvenile field, 45%.

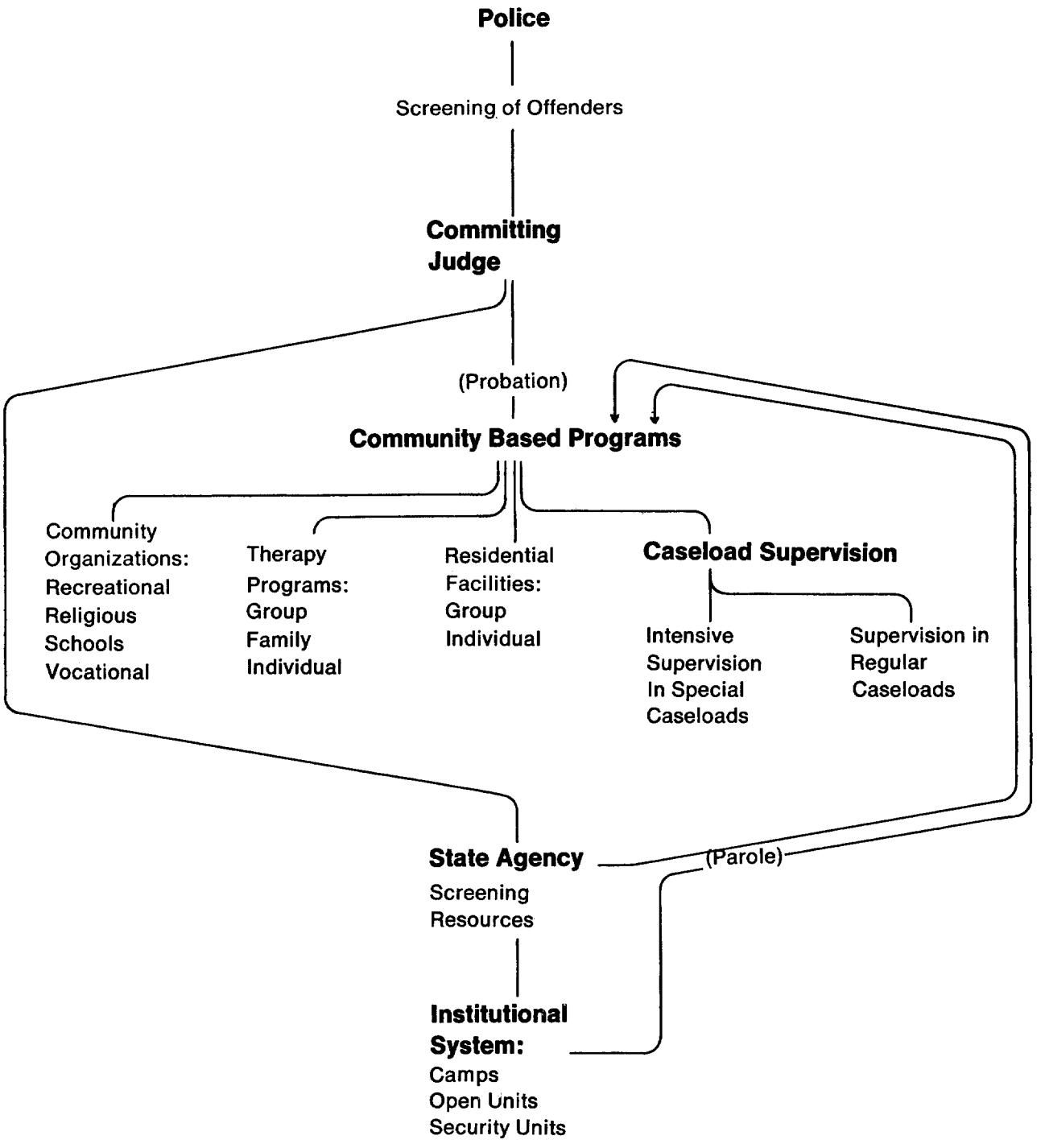
—Line workers: adult institutions, 95%; juvenile institutions. 98%.[389]

Turning to workload standards, these serve as important indicators of present manpower utilization and future needs in the corrections field. Many of the guidelines promulgated by professional organizations for use by State and local agencies are not reflected in actual experience. Probation and parole officers and other individual-treatment personnel, for example, generally are expected to supervise 50 cases apiece. And court investigation officers, in addition to their supervisory responsibilities, are expected to handle ten investigations per month. But most probation departments and parole services surveyed by the Joint Commission surpassed these norms.[390]

Staff Development

With respect to staff development programs, the Joint Commission observed that overall their status was "primitive," and that their improvement had attracted

Elements of a Modern Correctional System Figure 5



Source: U.S., President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington, D.C.: U.S. Government Printing Office, February 1967), p. 182.

neither interest nor funds. Only a handful of the respondents were involved in in-service training. Program participants included: administrators, seven percent; supervisors, nine percent; functional specialists, 10 percent; and institutional line workers, 14 percent. Moreover, merely 16 percent of the academic and vocational teachers, psychologists, and social workers were enrolled in such programs.[391]

Seventy-eight percent of the local jurisdictions over 100,000 population surveyed provided in-service training programs for new probation officers, while 64 percent had on-going training opportunities for more experienced officers. Less than half of the local probation departments made in-service training available to their administrative and supervisory staffs. Over one-third of the agencies in localities under 100,000 furnished mid-career training for probation officers, while only 16 percent had such programs for supervisors and administrators.[392]

These figures merely reveal the number of training programs, not their quality. Site visits by Joint Commission staff found that very few correctional agencies had staff development programs which were well planned, manned, and funded. For example, while 85 percent of the 95 State probation and parole agencies reported having on-the-job training programs, only half gave their employees time off to attend classes at colleges and universities, one-third offered a tuition subsidy for college or university course work, one-fifth provided a few educational leaves on full salary, and one-eighth had personnel exchange programs with other departments. Eight percent of these agencies had no staff development programs at all.[393]

The replies from adult and juvenile correctional institutions also revealed inadequate attention to staff development. With respect to the former, 40 percent did not have any training personnel. Nineteen percent employed a full-time training officer, while 32 percent relied upon part-time personnel to perform such functions. The situation in juvenile institutions was even worse 49 percent had no training staff. Only four percent had a full-time training unit, and in 41 percent training activities were handled on a part-time basis.[394]

Many experts believe that sizable amounts of Federal and State funds will be required to support improvements in the training capabilities of State and local correctional agencies. Both agency and university based trainers will be needed, they argue, if innovative and relevant staff development programs are to be put into practice.

Use of Volunteers, Paraprofessionals, and Ex-Offenders

One of the more controversial aspects of the personnel problem is the use of volunteers, paraprofessionals, and ex-offenders in programs that were formerly handled by professionals or, in some cases, were not provided at all. Use of citizen volunteers is a way to reduce workload pressures on professionals and to link the community with offenders. Surveys conducted by the Joint Commission found that 41 percent of the adult correctional institutions and 55 percent of the juvenile institutions used volunteers. In the field, such personnel were used by 24 percent of the adult agencies and 50 percent of the juvenile units.

Volunteers were viewed with mixed emotions by responding correctional professionals. Where volunteers were being used, it was felt that they made a significant contribution, and that greater use should be made of their talents. But where volunteers were not involved, correctional functionaries were far from enthusiastic about them.[395]

Site visits revealed that more than half of the volunteers were college graduates with advanced training or professional degrees. They were often used in work commensurate with their training and abilities. While the Joint Commission did not believe that unpaid workers should be considered as replacements for full-time staff, it felt that they could function well in a team under supervision.[396]

Supporters of this approach contend that because of their middle class status, volunteers can shape positive community attitudes regarding correctional programs.

The use of paraprofessionals and ex-offenders to offset shortages in professional personnel would require the creation of new non-professional positions or the restructuring of existing professional functions. Moreover, training and educational programs would be needed to equip them with the skills to carry out successfully their assignments. Training and educational opportunities also could be made available to enable these workers to meet semi-professional or professional standards.

The involvement of paraprofessionals and ex-offenders is subject to some of the same obstacles that have impeded the use of volunteers. In particular, many corrections professionals view paraprofessionals and ex-offenders as threats to their authority and to their professional goals and standards, and consequently resist their participation in correctional programs. Changes in position classification systems would require authorization from the State legislature in some instances and implementing action by the civil service commission in

nearly all, and this could be time-consuming and difficult, especially in light of the restrictive procedures of many merit systems.

In sum, the foregoing provides compelling evidence that upgrading personnel should be a top priority item on the agenda of corrections improvement. And this seems to be the case whether one adheres to an "institutional" or "community based" approach to offender treatment. To date, however, most corrections and the bulk of the public have shown little real interest in facing the implications of this fundamental problem.

Overall Responsibility for Correctional Programs

The correctional process in the United States today can be summarized by two words–diversity and disparity. The basis of the resulting coordination problem was pointed out by the corrections task force of the President's Crime Commission: "The American correctional system is an extremely diverse amalgam of facilities, theories, techniques and programs."[398]

The Coordination Problem

The administration of State and local correctional programs is greatly fragmented. For the most part, each level of government operates its own correctional facilities and provides services independently of the others. With respect to the functional division of correctional activities, the States usually are responsible for adult and juvenile institutions and parole. Yet, juvenile, misdemeanant, and adult probation are often handled by counties or cities or on a joint State-local basis, since this function is an adjunct of court procedure, and most of the courts involved here are located at the local level. Historically, the tripartite division of the criminal treatment process–probation, incarceration, and parole–reflected the attitudes that incarceration was a means of punishment, probation was a method of avoiding punishment, and parole was a way of relieving punishment. Consequently, probation developed outside the punishment process, and parole was integrated with punishment and incarceration. This explains the usual attachment of probation to the courts and local administration, and the relationship of parole to State prisons.

Chapter 3 identified nine activities, ranging from pretrial detention to release on parole and aftercare services, as comprising the juvenile and adult corrections system. The fact that in many States several of these activities are administered by separate departments highlights the unsystematic way offenders are handled. Each agency performs a limited number of specific functions, with little or no vertical or horizontal coordination with other agencies which presumably are working toward the same basic objective – protection of the public through the control and treatment of criminal offenders. As a result, it is possible in some States for offenders to be shunted through the various stages of the correctional process with little continuity in rehabilitation efforts, since no one agency has overall responsibility.

Compartmentalization of responsibility presents a major obstacle to efforts to plan and implement a comprehensive, unified correctional system capable of effectively handling offenders in a systematic and coordinated manner. If the correctional system is not working smoothly, then a large part of the blame is attributable to the organizational quandary in which its institutions and services operate.

Adding to this administrative confusion are the processes of change which gradually have entered the corrections field. Post World War I trends have been toward specializing facilities, diversifying services, centralizing authority, and developing alternatives to institutional confinement. Many States now have special facilities for handling different types of offenders, such as drug addicts, alcoholics, sex deviants, and the mentally ill. A wide variety of programs fall under the corrections "umbrella," including academic and vocational training, employment, case work, medical care, drug treatment, and group counseling. Some States are attempting to consolidate responsibility for corrections at the State level, although decentralization is reinforced by the location of facilities and offenders, the power of courts at the county and municipal levels, and the increasing emphasis on community based treatment.[399]

With this diversity of correctional programs, however, there also has come administrative fragmentation and disparities of service. Hence, many offenders do not receive equal treatment. This has been shown to be the case within many States, and the interstate variations are even more dramatic.

Non-uniformity characterizes mainly programs administered by more than one level of government, including: local institutions and jails; misdemeanant probation; juvenile detention, probation, and aftercare; and adult probation. With few exceptions, these services are generally divided between States and counties, with some larger cities also involved. The administration of long term facilities – felony institutions and juvenile training schools – as well as parole services for offenders released from these places, is for the most part under the direct control of a State agency.

As indicated in Chapter 3, organizational responsibility for corrections has been widely dispersed in most States. Only three – Alaska, Rhode Island, and Vermont–have a "unified" system, with responsibility for

administering all of the nine correctional activities assigned to a single State level agency. Another six--Delaware, Iowa, Maine, Oregon, Tennessee, and Virginia --are moving in this direction, with one State department administering five or more correctional activities. In many of the remaining States, however, the agency organization is hydra-headed. Some--including Alabama, Arkansas, Connecticut, Georgia, Kansas, Maryland, Massachussetts, Mississippi, North Carolina, and North Dakota--have State level responsibility divided among independent boards and commissions for juveniles, probation, or parole, juvenile courts, and several line agencies such as departments of health and welfare, corrections, juveniles and youth services, institutions, and training schools. Others--including Georgia, Minnesota, New Hampshire, Pennsylvania, West Virginia, and Wisconsin --share administrative responsibility for at least three corrections activities with localities. Still others -- including California, Hawaii, Illinois, New Jersey, Ohio, and Texas--have centralized at the State level responsibility for less than five corrections activities (See Appendix Table A-10).

The growing use of institutional work release programs, halfway houses, and other community-based programs has introduced new dimensions into correctional practice and has dramatized the need for organizational change. Providing the means of maintaining or reestablishing an offender's community ties involves a "continuum" approach to corrections, and this has considerable administrative implications. Jurisdictional lines between functional services are becoming increasingly blurred, requiring better integration of administrative structures.[400]

The following case studies underscore some of the basic organizational changes needed to administer effectively an interlocking correctional system. They provide a framework for the discussion of the intergovernmental and interagency responsibilities in various correctional activities contained in the following sections.

President's Crime Commission. The Commission's Corrections Task Force recommended that the present "fragmented array of correctional services be organized into coherent systems that include diversified resources, ranging from hand-picked screening at arrest to parole supervision."[401] It felt that, in general, the States were best equipped to manage such integrated programs. Some large and urbanized counties and cities, the Commission believed, also might find it advantageous to develop and operate a complete range of correctional services. It was noted, however, that most local jurisdictions would do better to cooperate with State authorities in efforts to rehabilitate and restore offenders, since this would avoid duplication with State administered programs and localities could draw upon a variety of specialized State staff services.

American Correctional Association. In a 1966 report, the American Correctional Association recommended fundamental changes in the organizational structure of the District of Columbia corrections system.[402] The suggested modifications were based on its finding that significant problems were involved in the way the protective, supervisory, and rehabilitative components functioned in achieving the basic objective of the total system. The ACA proposed creation of a unified or consolidated correctional department to administer probation, parole, and institutional programs. The reorganization plan preserved the authority of court judges and the Parole Board by freeing them of operational functions and providing them with more comprehensive information about offenders. The new Department of Correctional Services, in addition to the operation of institutions, would be responsible for the administration of field services for probation and parole, relieving the Court of its probation function and the Parole Board of its line responsibilities. These activities would be consolidated into one division, a proposal made possible by the size and compactness of the District of Columbia and by its relative freedom from the multiple jurisdictional complexities found in most State systems. The ACA felt a unified, integrated division of parole and probation would offer more effective staff services. Staff development and training would be more diversified, integrated services would result in better utilization of staff, and a larger department would make possible more varied personnel experience and flexibility in terms of geographical and differential caseload assignments. Most of the ACA's recommendations, particularly those dealing with probation, have not yet been implemented.

National Council on Crime and Delinquency. Based on its surveys of the organization of corrections activities in Oregon (1966), Indiana (1967), Oklahoma (1967), Delaware (1969), and Hawaii (1969), NCCD has recommended in each case that one State department be assigned responsibility for administering correctional services, and that this department have separate adult and juvenile divisions. The "Standard Act for State Correctional Services" was promulgated by NCCD and ACA in 1966 as a guide for State reorganization along these lines.

New York. Recent legislation in New York demonstrates that State level consolidation of responsibility for the administration of correctional services is not necessarily limited to relatively small and compact jurisdictions, as the experience of Delaware, Rhode Island, and Vermont suggests. The legislation, signed by Governor Rockefeller on May 8, 1970, was a direct result of the

work of the Governor's Special Committee on Criminal Offenders. Five major organizational changes were made:

–A new State Department of Correctional Services was established, combining the responsibilities of the Department of Correction with those of the Division of Parole, and thereby merging responsibility for institutional and field supervision of convicted offenders in one department with unified leadership and direction. A strong and independent Board of Parole was retained with decisional responsibility for the release of inmates on parole.

–In order to increase the flexibility of the correctional system, "artificial" distinctions among types of State institutions–designations such as "prisons" and "reformatories"–were abolished, and all institutions are now known simply as correctional facilities and are graded and classified administratively in accordance with rules promulgated.

–The courts were provided with an additional option to impose sentences of intermittent imprisonment for offenses punishable by up to one year in jail. Intermittent sentences allow some offenders to hold a job, remain with their family, and benefit from other community contacts while serving their sentences on weekends, evenings, or specified days of the week. This technique maintains the integrity and deterrent value of the Penal Law while embracing its rehabilitative potential.

–The Correction Law was amended to authorize the State to enter into agreements with counties or the City of New York to provide custody in State institutions, at State expense, for local prisoners sentenced to terms of more than 90 days, and to arrange for custody in local jails of persons sentenced to State correctional institutions where local institutions can be appropriately used as work release facilities. Provision was also made for the transfer of locally sentenced prisoners to State correctional facilities during times of extraordinary emergencies, such as civil disturbances, when unusual pressures are placed upon local institutions. This amendment was aimed at eliminating arbitrary barriers existing between local and State correctional facilities so that in the future they could be used on the basis of need rather than jurisdiction.

–In a measure designed to strengthen probation services throughout the State, an independent Division of Probation was created in the Executive Department. In addition to assuming the functions and duties carried out by the Division of Probation formerly within the Department of Correction, the new Division was authorized to provide complete probation services at State expense upon the request of any county having up to five probation officers. At least 25 counties qualify for State-operated services under this provision. It was believed that the independent status of the Division and its power to provide probation services directly would enhance the establishment and maintenance of uniform, high standards for probation services throughout the State.

Administration of Corrections Activities: The Traditional Approach

For many years, concerned social scientists, penologists, experts in related fields, and various Presidential commissions, have cast a critical eye at existing corrections facilities and services. They have pointed to the mass handling of prisoners, the mixing of adult and juvenile offenders and of felons and misdemeanants, the idleness and isolation of inmates in large institutions, the fortress-like architecture of many prisons, the lack of adequate treatment and training for offenders, and other distressing conditions.

Whether or not needed changes will evolve, obviously, is a question to be answered by the public and its elected representatives. Yet, much of the problem is rooted in the inertia existing within present State and local correctional systems. Even without widespread popular support for total corrections reform, a more efficient and effective allocation of responsibility between States, counties, and cities would do much to improve the handling of offenders with the resources available, and this, in turn, could help reduce recidivism.

The President's Crime Commission's exhaustive study of the entire criminal justice field represented a real assault on the status quo in corrections. Unfortunately, little has changed in the four years since publication of the Commission's final report. The nature and clientele of corrections still force it to the "end of the line" when funds are being distributed. As a result, resources with which to deal with offenders are insufficient and offenders still are handled, to a great extent, in a manner that gives little consideration to the fact that 98 percent of them will be released at one time or another. One authority has assessed the current "state of the art" as follows:

> Today, the half million or so persons behind bars are caged and counted, denied normal relationships, sometimes brutally treated by staff who usually have no training or interest in rehabilitation, and then put out on the streets and expected to behave normally–whereupon the hapless policemen must go about catching a large percentage of them again to put them through the same meaningless justice process. Much the same thing occurs, though more humanely, with many offenders under probation or parole supervision. Probation and parole officers are underpaid, undertrained, and generally have huge caseloads (a hundred or more) and few facilities for treatment or other training to prepare offenders for rejoining society. Correctional officials, for the most part, deserve as much sympathy as blame, and it is a credit to them that the recidivism rate is not higher.[403]

A major factor responsible for the glacial pace of reform in the corrections field is the lack of a solid consensus among professional administrators and caseworkers, elected officials, and the general public concerning the proper goals of the corrections process and the most desirable and feasible ways to achieve them. Only recently has a genuine commitment to rehabilitation, as opposed to custody, of offenders emerged from this group. But debate still continues as to the best means to achieve this end. Two schools of thought exist; the older one supports a heavy reliance on the care of offenders in institutions, while the newer one places emphasis on community-based treatment. Both stress

offender rehabilitation; the major bone of contention is the extent to which each approach should be used for various types of offenders.

Despite a growing acceptance of community-based treatment, American correctional practice is still largely dominated by the older institutionalization and custody school of thought. Approximately 80 percent of the total amount spent for correctional services in 1965, for example, was allocated for institutions and for personnel engaged in custody or maintenance activities. Yet, such institutions contained only one-third of the offenders under the jurisdiction of the correctional system.[404]

Allocation of personnel resources indicates that in 1967-68, about 68 percent were employed in institutions, excluding jails; twenty-three percent were assigned to probation and parole; and seven percent worked with juvenile detention programs.[405]

Juvenile Detention and Training Schools

While the theory underlying the juvenile justice process holds the welfare of the child as its primary consideration, this idea is seldom translated into reality. The intent of most juvenile court laws regarding juvenile detention or shelter care may be summed up as follows:

> Each child coming within the jurisdiction of the court shall receive, preferably in his own home, the care, guidance, and control that will conduce to his welfare and the best interests of the State, and . . . when he is removed from the control of his parents the court shall secure for him care as nearly as possible equivalent to that which they should have given him.[406]

The President's Crime Commission found that in 41 States such statements of purpose were contravened by other statutory provisions including the offender's age, the judge's discretion, or the lack of proper facilities. As a result, children are held in jails despite indications of legislative intent to the contrary.

Another need frequently disregarded in practice is the provision of adequate juvenile detention services. Relatively few jurisdictions have sufficient juvenile detention needs to warrant a separate facility. In many cases, this leads to evasion of the law and of good practice, as children are placed under detention in local jails and police lock-ups. In 1965, the NCCD survey team estimated the total number of children of juvenile court age admitted to jails and jail-like facilities at about 100,000. Only two States–Connecticut and Vermont–claimed that jails were never used for children. The practice of detaining youths also varies between jurisdictions, so that whether a juvenile is held, as well as where, and for how long become matters of geographic accident.[407]

Inconsistencies in the rates, places, and length of time in detention can have an adverse effect on other phases of the juvenile corrections process. Some judges, in an effort to avoid prolonged detention and delays in the disposition of offenders, commit delinquent children to training schools for longer-term confinement. Also, use of inadequate detention facilities, where juveniles are housed with hardened, adult convicted offenders for long periods loads the dice against successful rehabilitation.

One response to the problem of providing adequate detention facilities for juveniles has been the establishment of regional detention centers either by the States themselves or by interlocal agreement with State financial assistance:

– Massachusetts, Maryland, and Delaware operate regional detention facilities as a service to county juvenile courts.

– Connecticut's statewide juvenile court system is served by four regional detention homes, with exclusive original jurisdiction to age 16; the State claims it has never kept children in jails or police lockups in the more than 20 years since the system was set up.

– Virginia has established juvenile court and detention districts for planning purposes; in 1965, eight of these districts had regional detention homes, and the State reimbursed counties meeting its regional detention standards.[408]

– In Utah, while each county is charged with responsibility for providing detention care, the State Department of Social Services furnishes financial assistance to counties in the construction and operation of approved facilities. The State also assists by establishing minimum standards of care and by suggesting desirable plans for detention centers. To promote the regional concept, the State pays 50 percent of the cost when counties enter into interlocal contracts for the detention care of children. In 1969, there were four approved detention facilities, and four counties had received State assistance in construction but did not qualify for State aid in operation.[409]

The above approaches and others described in Chapter 3 provide clear evidence that alternatives to methods of detention prevailing in most areas are not pipe-dreams, but courses of action capable of being implemented. In every case, this has meant collaboration between States and localities. This is not to suggest, however, that local initiative should be discouraged. Interlocal cooperation among counties or between counties and cities could accomplish similar ends. Interlocal contracts or service-purchase agreements could be used by local jurisdictions to provide new facilities, to prevent duplication, and to eliminate substandard facilities.

While recognizing these objectives, some observers point out certain practical problems involved in upgrading juvenile detention programs. Not the least of these, they contend, is scarcity of money. Many cities and counties simply cannot afford to build and maintain separate juvenile facilities without substantial State financial assistance which, in many cases, has not been forthcoming. Fiscal restraints also are raised in discussions of the desirability and feasibility of State assumption of full responsibility for juvenile detention programs. Coupled with money problems are the difficulties of recruiting and paying for sufficient well-trained personnel to operate these facilities. Moreover, it is argued that soon after their establishment, regional detention centers will become overcrowded and unable to provide the level of services for which they were intended. In addition, where interlocal contracts and agreements are to be relied upon, difficulties in the parties arriving at mutually acceptable terms are cited by some skeptics as another basic obstacle.

Local Institutions and Jails

Jails constitute nearly three-fourths of all local adult correctional institutions, and they hold the bulk of the petty criminals. For most offenders, jails are where initial and often lasting impressions toward law enforcement and the correctional system are formed. These institutions still are to a large extent the embodiment of the traditional security and custody approach to corrections.

As the President's Crime Commission put it: "In the vast majority of city and county jails and local short term institutions, no significant progress has been made in the past 50 years."[410] Jails, then, remain an important part of the overall corrections process, and they serve as a major point of controversy in the continuing debate over its goals.

Most jails still reflect the ethic of an earlier era—a time when communications were limited, transportation was slow and difficult, and the penal philosophy of the day could be summed up as: "The prisoner deserves whatever happens to him." Yet, technological advances and a growing realization that the goal of the judicial and correctional systems is to rehabilitate persons in their charge and restore them as responsible members of the community have served to make storage-type facilities obsolete.

Little by way of rehabilitative and community treatment programs, however, are available to misdemeanant offenders, particularly misdemeanants. For example, the average yearly expenditure per misdemeanant was only $142 for community treatment in 1965, compared with $198 for felons and $328 for juveniles. Moreover, misdemeanant institutions in that year spent on the average of $1,046 per offender, felony institutions spent $1,966, and juvenile institutions spent $3,613.[411]

The damaging nature of this "cloacal region of corrections,"[412] as two authorities have described it, is fairly well documented. Several States recently have made studies of their local jails and institutions, and the findings underscore the deficiencies suggested by the statistics cited above:

- A recent study by the Institute of Government, University of North Carolina at Chapel Hill, concluded that North Carolina's county jails "are, for the most part, old, inadequately financed, and under staffed." It found a "uniformly low per capita cost for operating jails throughout the State."[413]
- Kentucky jail facilities are on the whole "outdated and unfit for use," according to a 1968 survey of the State's probation and parole officers. Less than one-half of the local facilities offered any work programs for their inmates in 1969 and these involved only unskilled labor; only nine of the jails provided recreation; and only ten furnished library services.[414]
- A citizens' committee in Missouri evaluated 39 of the jails in the State, including three city jails used for county prisoners. It concluded that these institutions did not meet minimum standards of physical adequacy and segregation of inmates. Moreover, they failed to provide meaningful inmate employment or activities, and lacked sufficient trained personnel.[415]
- After reviewing general local correctional programs and operational practices, surveying five county jails, and inspecting one such institution, a New Jersey staff team found a basic administrative emphasis on security; lesser concern with physical repair, sanitation, and medical services; and little or no attention given to social, educational, vocational, or rehabilitative services.[416]
- According to a recent Pennsylvania report, 18 of the State's county jails were built between 1814 and 1865, and 37 were constructed between 1866 and 1900. The study noted that solely because of antiquated structure, many of these facilities were unable to meet reasonable living or treatment standards. Most county jails had no space for group activities. Little uniformity existed in personnel practices, and the majority of jails had no specific educational or professional standards for their personnel.[417]

- A 1969 survey by the Idaho Law Enforcement Planning Commission which covered 44 county and 37 city jails in the State revealed that: 65 percent were built prior to 1941, and one-third were constructed before 1920; because of their age, most jails were "lacking satisfactory physical plants, sanitary facilities and security arrangements;" 44 percent had no facilities besides cells; 30 percent had no jailer on day duty, 40 percent had no jailer on night duty, and 44 percent had no matron regularly on duty; 55 percent had not been inspected during the previous year; 65 percent had no education, employment, or other programs for prisoners, and 42 percent had never used work furlough; 60 percent did not segregate sentenced prisoners from other prisoners, including those awaiting trial; and 40 percent of the jails holding juveniles had no special facilities for them.[418]

Correctional administrators themselves report that despite a steadily increasing number of exceptions, the average jail is still characterized by ineffective administration, inadequate sanitation facilities, prisoner idleness, insufficient attention to screening and segregation of inmates, rudimentary work programs, poor food and medical care, and untrained and apathetic personnel.[419] They point out that underlying all of these conditions are certain basic problems which inhere in the total framework of the criminal justice system of which these local institutions are but a part. These include: (1) the "catch-all" function which jails serve, housing both sentenced offenders and those awaiting trials; (2) administration of most local correctional institutions by law enforcement officials rather than by qualified professional correctional personnel; (3) infrequent use of alternatives to imprisonment, such as probation, bail, release on recognizance, halfway houses, and work release; and (4) expense of maintaining short-term, local facilities.

As was noted in Chapter 3, the President's Crime Commission found that local jails and correctional institutions not only house convicted offenders whose crime ranges from motor vehicle law violations, narcotics, and drunkenness to assault, burglary, or theft, but also persons awaiting trial, the homeless, and the mentally disturbed. According to a recent national jail census conducted by LEAA, as of March 1970, the 4,037 locally administered jails with authority to retain persons for at least two days held a total of 153,063 adults and 7,800 juveniles. Fifty-two percent had not been convicted of a crime; 35 percent were arraigned and awaiting trial; and 17 percent were being held for other authorities and had not been arraigned.[420] The unconvicted often are kept in the same facilities as those serving sentences. The handling of such diverse types of convicted offenders, detainees, and derelicts obviously creates severe problems for correctional officers. Although some jurisdictions have relieved jails of their "social" functions through the establishment of separate detention and foster care facilities, detoxification centers, and narcotics treatment units, or the transfer of cases to the welfare department, many others still operate institutions serving correctional, social, health, welfare, and other purposes.

A second basic difficulty stems from the administration of local jails and short term institutions by law enforcement functionaries or by elected local officials, most notably sheriffs. Because the fundamental mission of the police is the difficult and time-consuming task of detecting and apprehending offenders, little time, commitment, or expertise can be made available for law enforcement agencies to develop and operate rehabilitative programs. Placing jail management in the hands of elected officials presents an additional problem, since the continuity and effectiveness of administration may be interrupted by the uncertainties of reelection. These factors underscore the contention of several authorities that a better administrative framework must be established if local jails and institutions are to support rather than subvert the rehabilitative and restorative goals of the modern correctional system. One approach that has been advocated by many law enforcement officials, particularly those administering large, professional forces, is the transfer of jails to correctional agencies, with the exception of police lock-ups holding persons for less than 48 hours.

A third area of concern involves the use of certain alternatives to jailing individuals. Through this approach, and with proper personnel making the decisions, the numbers of detainees and convicted offenders committed to jails and short-term institutions could be reduced, and more individualized rehabilitation services could be offered. Three possible alternatives to reduce confinement in these institutions include:

- Setting bail at levels calculated to provide reasonable assurance of the accused's presence at his trial and not simply to force his retention in custody.
- Releasing accused persons on their own recognizance pending trial. At a 1969 meeting sponsored by the American Correctional Association, it was pointed out that some of New York's short term institutions had long been operating at more than 200 percent of capacity. A major reason cited for the over-crowding in these and many other short term facilities was the significant change in the composition of their populations. A generation

ago, it was estimated that two-thirds of those confined in these facilities were sentenced offenders, while recent reports indicate that about two-thirds of those confined now are unsentenced offenders. A large increase in the number of persons held pending trial, then, has substantially contributed to the problem of overcrowding in the short term facilities. Consequently, the ACA observed that a pressing need exists for more extensive use of "release on recognizance," as well as for speedier trials.[421] The demonstration Manhattan Bail Project, for example, was based on the assumption that the courts would be willing to grant the release of an accused person if they were given verified information about his reliability and ties in the community. Ninety-nine percent of the defendants released during the project's first 30 months returned to court as required.

Relying more heavily on probation and parole for misdemeanors. Although most States have misdemeanant probation, this alternative is only used occasionally and in 10 States not at all. The need for misdemeanant probation is illustrated in the experience of one State—Missouri—where a narrow demarcation between felony and misdemeanor determines the offender's chance of being given a probationary sentence. As a result of the State's determination that stealing $51 constitutes a felony and stealing $49 or less a misdemeanor, an offender in the former category has a million dollar board of probation and parole to meet his rehabilitative needs, while a petty offender has no rehabilitative opportunity at all in 110 of Missouri's 114 counties.[422]

State take-over of jails. The problems created by the autonomy and the financial and personnel inadequacies of existing local facilities for dealing with misdemeanants have prompted critics to advance several alternatives for the provision of improved services to this type of offender. According to one view, the State should completely take-over the administration of local responsibilities in this area. Proponents deem this desirable because of the "opportunity it offers to integrate the jails with the total corrections network, to upgrade them and to use them in close coordination with both institutional and community based correctional services."[423] They also point to the fact that same States already have acted on this front. A State level jail administration controls all misdemeanant institutions in Connecticut, for example, while in Alaska, not only misdemeanant corrections but all phases of the correctional process are administered through the Division of Youth and Adult Authority in the Department of Health and Welfare. A single State agency also administers all correctional activities in Rhode Island and Vermont. Delaware, Kentucky, Maine, Tennessee, and Wisconsin are moving in this general direction.

While State administration has the theoretical advantages of drawing upon greater financial and manpower resources, of standardizing operating procedures, and of consolidating supportive services, skeptics note that there is as yet no empirical evidence that greater effectiveness has been achieved with this approach. Opponents also point out that the size of those States which have completely taken over these corrections programs is relatively small, and that the practicality of State assumption in the larger States may not be as great. Moreover, they assert, many States are now in as tight a fiscal bind as their localities, and consequently their legislatures may be reluctant to appropriate sufficient funds to operate an effective consolidated jail system. Finally, some observers reject State take-over on the grounds that jails and short term institutions for misdemeanants are properly a concern and responsibility of local governments, given the implications of home rule, the easy geographic access of such facilities, and the type of petty offender usually detained.

State standards and financial assistance. An alternative to complete State assumption of local responsibility is the development of collaborative relationships between States, counties, and cities along the lines suggested by the President's Crime Commission Task Force on Corrections:

> Though parts of the correctional system may be operated by local jurisdictions, the State government should be responsible for the quality of all correctional systems and programs within the State. If local jurisdictions operate parts of the correctional program, the State should clearly designate a parent agency responsible for consultation, standard setting, research, training, and financing of or subsidy to local programs.[424]

The Task Force indicated that, where full integration of State and local services is not feasible, the States at least should set minimum performance standards and provide local units with financial assistance. Furthermore, it stressed that both the quantity and quality of State inspection of local institutions to enforce these standards should be strengthened. In 1965, 11 States conducted such inspections, but only six furnished any funds to help localities make needed improvements.[425]

The American Correctional Association has also suported the use of State standards. It has concluded that since "jails are an integral part of the total correctional process and have a direct impact on all offenders, . . . a State correctional authority could be empowered to exercise supervision over the jails within the State by means of standard setting."[426]

Some States have begun to act on this front:

> In a 1969 study, the Kentucky Commission on Law Enforcement and Crime Prevention suggested that development of a collaborative relationship between the State Department of Corrections and its local misdemeanant institutions was the most feasible alternative. The report recommended creation of the Office of Jail Consultant in the State's Department of Corrections. The duties of this consultant and his staff would consist of providing needed technical assistance and training, examining the condition of jails and recommending needed improvements, and encouraging greater use of available public and private resources in surrounding communities. A manual of operational standards for jailers, to be used as a training device and as an evaluative tool by jail consultants, should also be developed, the Commission stated, along with a directory of community services which would serve as a reference guide to local social service agencies and facilities. Although other recommendations were made, the Commission felt that this cooperative approach would be the "most promising for Kentucky at the present time."[427]
>
> On May 8, 1970, Governor Nelson A. Rockefeller signed several bills based on the work of the Governor's Special Committee on Criminal Offenders. One of the bills has special significance for State-local relations in this area, since it amends the corrections law to authorize the State to enter into agreements with counties or the City of New York to provide custody in State institutions at State expense for local prisoners sentenced to terms for more than 90 days, and to arrange for custody in local jails of persons sentenced to State correctional institutions where local institutions can be appropriately used as work relief facilities. In a press release issued on May 11, the Governor's Office declared that, "the bill will eliminate arbitrary barriers that now exist between local and State correctional facilities. Facilities will be used on the basis of need rather than jurisdiction, thereby expediting the rehabilitation process. It is also hoped that increased space will become available within the State correctional system for locally sentenced prisoners upon implementation of the bill together with the other measures in [the Governor's] correctional service program."[428]

Opponents of this alternative argue that while it may be all well and good for the State to set standards, most State governments are not willing to provide cities and counties with the funds to make necessary improvements in their jails and other correctional institutions. As a result, the State standard may become an ideal which cannot be attained, and this possibility, in turn, raises questions as to whether standard-setting and inspection activities are exercises in futility. After all, these critics contend, if local jails are to be upgraded, State dollars must be targeted on the greatest needs here rather than used to build a bureaucracy just to set and enforce guidelines. Other opponents point to the irregular and ineffective monitoring of standards in some of the States that have adopted this approach. Finally, some note that uniform standards are not always applicable or relevant in all sections of a State, especially one with both major rural and urban areas.

State support for regional jail facilities. A third approach that has been instituted in some States is the use of areawide correctional facilities. The President's Crime Commission supported the establishment of regional jails. It pointed out that short term institutions in most rural counties are unable to afford adequate personnel, facilities, and services. As a result, it recommended that "small jurisdictions . . . arrange to contract with nearby metropolitan areas for all the needs they cannot meet effectively themselves."[429]

More recently, the American Correctional Association advocated use of the regional device, as indicated in the following statement contained in its manual of correctional standards:

> Much has been said and written for and against the regional jail. The facts indicate that it is difficult, if not impossible, for many of the smaller counties to provide the physical facilities and the personnel necessary to maintain secure custody and affect the rehabilitation of the individuals committed to their care. It would seem practical therefore, for several contiguous counties in less populated States or sections of States to pool their resources and establish a central unit where a well planned program could be directed by trained and alert personnel. Objections to distance could be met by using present facilities or a smaller unit for temporary detention pending transfer to the central facility. The State of Virginia for instance, has on several occasions used one jail for confinement of prisoners from several adjacent counties. The principle is the same as that under which the use of a regional jail is recommended.[430]

A series of meetings in 1969 sponsored by ACA dealt with the concept of regionalization. A majority of the participants felt that this approach was necessary in order to upgrade and standardize the programs of short term institutions. At the same time, they were aware of the difficulties involved in implementing regionalization of local jails and institutions, particularly the political opposition that usually emerges when this proposition is raised. It was noted that the National Sheriffs' Association had just gone on record against regional jails. Despite these obstacles, the ACA panels generally agreed

that regionalization would be a significant step in the direction of standardizing the practices of short term facilities.[431]

A recent report issued by the U.S. Bureau of Prisons also indicated support for the regional concept. It suggested that the administrative functions of city and county jail operations could be merged under a single authority. The report also noted that resistance to this idea could be expected in view of its affront to the concepts of home rule and local control of institutions.[432]

Several States—including Massachusetts, Maine, North Carolina, and Pennsylvania—now administer regional facilities which are used for the incarceration and treatment of adjudicated misdemeanants; locally controlled jails, however, usually are retained for pretrial and presentence detention purposes. In the case of Pennsylvania, the Legislature in 1965 established regional correctional facilities to be administered by the Bureau of Corrections as part of the State's correctional system; the Legislature also prescribed standards for county jails, and provided for inspection and classification of such institutions and for commitment of offenders to State correctional facilities and county jails.[433]

Supporters of regional jails clearly are well aware of the opposition this proposal will encounter because of its challenge to local authority. Yet, the disadvantage of some loss of local control and freedom of action with consolidation or coordination, they argue, must be viewed in the overall context of improving the quality and level of services. Some concede that economy in performing services should not be considered a primary objective, because in most cases, the savings in administrative cost would very likely be utilized in other efforts to raise the overall service level.[434]

State Adult Correctional Institutions

Although their offender population differs, many of the basic problems that confront local jails and short-term institutions also apply to State adult correctional institutions. For example, some State prisons for felons are old and deteriorating, the quantity and quality of their professional personnel frequently are inadequate, and inmates of different ages, attitudes, and severity of offense are mixed. State level administration of such long-term institutions varies; a corrections department, welfare agency, or a board of public institutions may be assigned responsibility for this function. Its activities may or may not be well coordinated with the corrections-related programs of other State agencies. But perhaps the most pressing problem facing State adult institutions is the fact that these facilities generally lack meaningful rehabilitation programs geared to the vocational and educational demands of modern society.

While treating the offender in the community under probation and parole or under various halfway and work release programs appears to be of great value, institutional-based measures should not be discounted. There is growing evidence that the availability of relevant training for job opportunities and subsequent employment for offenders significantly affect the outcome of correctional programs.

According to a 1960 Department of Labor analysis of recidivism among Federal offenders, slightly over one-eighth of adult offenders in these institutions had previously held white-collar positions, while another one-third had been unskilled laborers. A 1964 study of Federal offenders found that during the first month after release, only 23 percent were able to obtain full-time employment. By the end of three months, this figure had risen to 40 percent.[435]

The 1964 study also revealed that employment was strongly associated with post-release success. In other words, a significant proportion of the recidivists had experienced difficulty in obtaining and holding jobs. Moreover, it was found that institutional employment training was inadequate. Less than one-fifth of the offenders who were successful on parole were making use of training they had received in prison for related jobs. There is little reason to question the applicability of these findings to State and local offenders.[436]

In light of the foregoing, some observers contend that even where the corrections system does provide rehabilitative services, they are not having the intended result of preparing released offenders for a successful return to community life. Consequently, it is argued that greater attention should be given to the role of vocational training in the correctional process through the allocation of more funds and personnel for job training within State adult institutions as well as for employment for prisoners on work-release programs, for those in halfway houses, and for probationers and parolees. These charges, it is argued, should be accompanied by repeal of State laws restricting the sale of prison-made goods, improvement of the management of prison industry programs, and encouragement of such State agencies as universities and hospitals to purchase products manufactured in penitentiaries. Regarding this vocational void, the President's Task Force on Prisoner Rehabilitation recently observed:

> A common characteristic of offenders is a poor work record; indeed it is fair to conjecture that a considerable number of them took to crime in the first place for lack of the ability or the opportunity—or both—to earn a legal living. Therefore, satisfying work experiences for institutionalized offenders, including

vocational and pre-vocational training when needed, and the assurance of decent jobs for released offenders, should be at the heart of the correctional process.[437]

Some experts point out that private industry should assume a greater role in prisoner rehabilitation. One approach would be for businesses to establish and operate branch plants in or adjacent to penal institutions, and to provide for the training and employment of inmates in these plants.

With respect to academic offerings, the fact that the bulk of the adult inmates of State correctional institutions lack a high school education attests to the need for more and better programs designed to help prepare offenders to meet the rising academic standards of our society. Yet, competent teachers are often in short supply. As a result, sometimes inmates who may or may not be fully qualified are given teaching assignments. Course materials are also of inferior quality or are even unavailable.

In light of this problem, several authorities have contended that compensation levels should be raised to attract qualified teachers from the outside, and that funds should be provided for programmed machines and texts and other learning aids. Furthermore, it has been suggested that universities offer extension courses within prison walls, and that non-college self-improvement programs be conducted. At the same time, some contend, more professional counselors should be hired to give offenders guidance in preparing themselves for their return to community life.

Critics of institutional vocational and academic programs assert that it is useless to train prisoners when prospective employers frequently refuse to hire ex-convicts or discriminate against them by offering only poor paying and low prestige jobs. This is particularly the case for white-collar positions and for those in government service. Apparently, a number of employers remain unconvinced as to the effectiveness of present rehabilitative programs. As a result, some observers contend, money and manpower should be targeted on the most immediate needs—such as more special treatment programs, greater intensive care and counseling, reduced caseloads, improved staff education and training, and increased personnel—rather than on expanding job training and educational programs which, in the final analysis, are dependent directly upon public acceptance. Beefing up correctional programs along the former lines, so the argument runs, is a necessary precondition to both relevant vocational and academic training and genuine public support.

Community-Based Corrections: A New Emphasis

Recent studies have documented the need to place a new emphasis on developing community-based correctional programs as an alternative to institutionalization for many convicted offenders. Advocates of this view contend that correctional programs should include efforts geared toward building or rebuilding solid ties between the offender and the community, but without completely sacrificing the control and deterrent effect of punishment. Rehabilitation through community-based treatment programs, then, rather than incarceration and isolation, are deemed by many experts to be a more effective way to help reduce the incidence of crime. The major instruments of this corrections philosophy are probation and parole; two-thirds of the offender population are now handled in these ways. Other types of community-based programs include work release, halfway houses, juvenile aftercare, and youth service bureaus.

Probation

Probation's place in the corrections process is complicated by its special relationship to the courts and to sentencing laws. Judges rely on probation as an alternative to imprisonment for some offenders. In a broad sense, however, probation is more than a mere legal disposition for juvenile, misdemeanant, or adult offenders. It should also be viewed in terms of its role in rehabilitating convicted offenders by permitting them to retain their freedom in the community, subject to court control and under the supervision of a probation officer, thereby avoiding the stigma and possible damaging effects of imprisonment. Moreover, probation sustains the offenders' ability to continue working and to protect his family's welfare, and it offers a means of providing individualized treatment in the home and community setting.

Typically, probation departments of the criminal courts conduct presentence investigations and supervise defendants retaining their freedom on probation, subject to conditions imposed by the court. Yet, the quality of these investigatory and supervisory functions varies widely. A well prepared pre-sentence investigation report can both help the judge arrive at a constructive sentence and guide subsequent work with the offender in the institution or on probation. With respect to the former, the report can help avoid the incarceration of offenders for whom probation would be more suitable as well as and the placement of dangerous criminal risks on probation. It also can serve as a basis for providing special treatment or services to help the offender make a successful adjustment to society.

Offenders can be supervised under probation at much less cost than they can be kept in institutions. Yet, a large portion of the offender population still does not participate in such programs. The NCCD survey found, for example, that in 1965 the average State spent about $3,400 per year, excluding capital costs, to keep a youth in a State training school, while probation cost only about one-tenth that amount. It should be noted, however, that many probation services are substandard and their budgets are low. Although the relative smallness of the probation expenditures might raise questions concerning the validity of comparisons, the 1:10 cost ratio means that probation outlays could increase substantially but still be less than the cost of institutional care. If such factors as institutional construction costs, the price tag for welfare assistance for inmates' families, and the loss in potential taxable income are considered, the differential could be even greater.[438]

An examination of the number of persons on probation and the cost of providing these services suggests that the juvenile probation system has relatively greater resources than the adult one (see Table 59). The juvenile totals, however, include outlays for several foster homes, some private and public institutional costs, and care for orphaned or other non-delinquent children in certain jurisdictions.

Misdemeanants. As is the case with misdemeanant institutions, probation of misdemeanants is a neglected part of the correctional system. Ten States lack probation services for any kind for misdemeanants. In at least 20, the State probation system is permitted to serve misdemeanant courts, but in only a few States is a substantial amount of service rendered to misdemeanants. In light of these facts, NCCD concluded: "Clearly, misdemeanant probation is the stepchild of State correctional systems."[439]

Table 59
USE OF PROBATION FOR FELONS AND JUVENILES ANNUAL COSTS OF SERVICES FOR EACH GROUP, 1965

Type of Probation	Number of Probation	Annual Costs
Felony	257,755	$ 37,937,808
Juvenile	224,948	75,019,441
Total	482,703	$112,957,249

Source: President's Crime Commission, *Task Force Report: Corrections,* p. 27.

The disuse of probation for misdemeanants is underscored by the finding that in 1965, the commitment-probation ratio was almost 4:1. Yet, two-thirds of the total population handled in the entire corrections system were under community-based supervision. In other words, heavier reliance was placed on the provision of probation services for convicted felons than for those convicted of lesser crimes. Because of the lack of probation facilities for misdemeanants, many minor and first-time offenders, who could be handled in the community, are institutionalized. This approach, in turn, often makes rehabilitation more difficult and less effective in the long run.

State vs. local administration. Responsibility for administering probation services varies widely from State to State. Adult probation is for the most part a State function, operating statewide in 26 jurisdictions. Sixteen of the States with misdemeanant probation have assigned responsibility for such programs to a State agency. Only six States handle all juvenile probation. In the remaining jurisdictions, the various types of probation services are administered by localities alone or on a joint State-local basis. This organizational diversity reflects the existence of two schools of thought regarding the proper level for probation administration.

Some authorities contend that local programs, regardless of whether they are administered by judges or by city or county probation agencies, receive better support from citizens, other local agencies, and elected officials. Turning a criminal or delinquent over to a State agency, they point out, is usually followed by a withdrawal of important local services. City and county probation agencies, as well as judges, are part of a network of administrative and informal ties that do not extend to other levels. Moreover, local probation employees have better knowledge of and contacts in their communities, and hence have greater access to local resources. Locally-based programs, some maintain, tend to be more innovative and less bound by bureaucratic

red tape and inflexibility. Good leadership and the community support, then, can make these programs more efficient and effective than larger, more cumbersome State ones.[440]

On the other hand, some observers assert that administration by a single State agency has advantages which outweigh the "local autonomy" approach. Statewide programs offer greater possibility that a uniform level of services will be provided to offenders in all political subdivisions, resulting in greater equity. Regional operation of detention and diagnostic services and statewide consolidation of probation and parole services with certain institutional programs can result in substantial cost savings and in more effective rehabilitative efforts. Others argue that the leadership role of some States in developing innovative probation programs and undertaking research and development projects demonstrates their desire and ability to assume full administrative responsibility.[441] They also point out that in recent years, the general trend has been State assumption of juvenile and adult probation.

Adult Parole

Over 60 percent of all adult felons are released on parole before the expiration of their maximum sentences. These offenders then are supervised in the community by professional parole officers for the balance of their term. Several problems, however, have hindered the effectiveness and equity of parole. Two of the most critical are personnel and organization.[442]

Shortages of professional manpower which confront the corrections field generally hit especially hard the parole function. The lack of sufficient institutional caseworkers, clinical personnel, and other specialists to compile and analyze data regarding individual offenders can limit the information bases upon which parole board members make decisions. As a result, those most qualified are not necessarily those who are granted parole.

Fragmented State level administration is a second impediment to a fair and workable parole system. In about four-fifths of the States, the adult parole board is an independent authority; hence, decision-making here is separated from the central correctional agency. Moreover, parole board members usually serve on a part-time basis, do not receive training, and are poorly compensated. In the juvenile field, it should be noted, this kind of parole problem is not as widespread, because in over two-thirds of the States institutional staff make release decisions directly or through the courts.

Proponents of consolidating adult parole and penal institution administration contend that prison staff are more familiar with an offender's background, and consequently are in a better position to decide whether and when a prisoner should be released than are members of an autonomous "unprofessional" board who generally are not as familiar with individual case backgrounds. Furthermore, they argue, an independent board needlessly complicates correctional program administration, and can generate confusion in decision-making as to the eligibility of an inmate for work, study, or other partial release programs. These authorities support integration of the parole function with the central correctional agency, which would appoint members to the board. Another approach is for the head of the State corrections department to serve as chairman of the parole board or to appoint the chairman.

On the other hand, supporters of the present dual arrangement contend that professional staff tend to overemphasize the offender's adjustment to institutional conditions rather than any real rehabilitation that might have occurred during his confinement. They question the objectivity and fairness of such personnel, and point out that decisions by an autonomous, quasi-judicial board provides a vital check against arbitrary or capricious action on the part of the central correctional agency.

Halfway Houses and Work Release

The use of halfway houses is becoming fairly widespread for both adult and juvenile offenders. The purpose of so-called "halfway out" programs is to ease the offender's transition between institutional and community life through transfer to a halfway house, or prerelease guidance center as it is sometimes called, away from the correctional institution several months before his scheduled release. Large single-family homes or sections of YMCA's typically serve as halfway houses, and usually only a few offenders reside in them at any one time. Individualized counseling and group sessions are conducted at the house by a small professional staff. Offenders use these facilities as bases of operation for work release or study release activities. The former, now authorized by at least 29 States, enables an offender to develop contacts, obtain valuable job experience, and even save some funds, all which can facilitate his readjustment to society. Furloughs for recreation and family visits are also permitted and, after a period of treatment, an individual may be allowed to move out of the halfway house provided he returns for counseling.[443]

A more recent development is the use of "halfway in" houses, which has been attempted as an alternative to institutionalization. Under this approach, after having been screened in a central reception center or other

facility, certain offenders are sent directly to a halfway house instead of to a prison or training school. At the facility, the individual receives counseling, tutoring, and intensive treatment programs. The objective here, of course, is to avoid the harmful effects institutionalization can have on offenders who need and can benefit from more individualized and decentralized rehabilitative programs.

Juvenile Aftercare

Although aftercare services for juveniles can be traced to the 19th Century, until recently in most States they were the most underdeveloped corrections activity. In the opinion of some observers, they were less adequate than their counterpart, adult parole.[444] Although some progress has been made, the aftercare programs of many States may be described as rudimentary at best.

According to standards developed by the President's Crime Commission, and now being adopted by some States, aftercare should be handled by a State agency that also is responsible for the administration of institutional and related services for delinquent juveniles. In contrast to other juvenile programs, however, aftercare has no consistent organizational pattern, and administration may be vested in an adult corrections or social services department, a youth authority, a lay board, or the training school. In 11 States, aftercare administration is handicapped by the fact that the State's juvenile institutions are operated by a different agency than that which provides juvenile aftercare services. Two States rely wholly on local public and private agencies for juvenile aftercare, and five others provide these services on a State-local basis.

This diversity reflects the uneven development of aftercare services. Traditionally, juveniles released from training schools were supervised by local probation agencies. But when probation services were inadequate or unavailable, aftercare was provided to youths by the State welfare department. Where such departments were unwilling or unable to establish special divisions to give proper attention to this need, a separate organizational arrangement was developed usually under the auspices of the agency operating juvenile training schools.

Although presently aftercare has higher personnel standards, lower caseloads, and proportionately greater funding levels than most other corrections activities, administrative fragmentation has hindered the effectiveness of the delivery of services to juveniles and coordination with other correctional activities.

Youth Service Bureaus

A recent development in the juvenile corrections field is the establishment of Youth Service Bureaus (YSB) in high delinquency neighborhoods under the auspices of State, county, or city governments. The idea of the YSB first received national attention in a recommendation of the President's Crime Commission; subsequently, it was promoted by the National Council on Crime and Delinquency and other corrections professional associations. The basic purpose of the YSB is largely preventive–to keep children out of the criminal justice system before they get locked into a pattern of crime and delinquency. At the same time, a Bureau may serve, in effect, as an arm of the system when it handles referrals from police, schools, or other authorities. To accomplish these objectives, the Bureau performs such functions as: referring youths to appropriate health, welfare, corrections, law enforcement, and other agencies; accepting referrals from such agencies; acting as the advocate for children and following through on the provision of services to them; contracting for needed services; encouraging agencies to strengthen and expand their disadvantaged youth programs; and educating citizens, their elected representatives, schools, churches, the business community, and affected agencies as to juvenile problems, the relevance of available programs, and the responsiveness of various agencies. Although staffed by professionals, youths, parents, and other volunteers from the community are involved in Bureau policy-making and program operation.[445]

Prospects for Community-Based Treatment

Proponents assert that greater fiscal attention should be given to the development of community-based treatment facilities and services aimed at removing the isolating effect of institutionalization and easing the transition back into the community of offenders who have been confined in prisons or training schools. While recognizing the need to incarcerate the estimated 15 to 20 percent of the criminals who are dangerous risks to society and who are considered unreformable, they contend that for many offenders, particularly juveniles and first-offenders, institutional confinement can be more harmful than helpful. Many institutions, they claim, aggravate the anti-social and destructive propensities of the inmates, and retard their ability to adjust to community life following release.

Supporters of community-based treatment also argue that a disproportionate amount of funds has been allotted to institutions to their custodial or maintenance

personnel. They point out that custodial staffs in institutions average about one officer for every seven inmates. Yet, offenders on probation or parole often number more than 100 per officer; this means that on the average about 15 minutes per month are available for supervising each probationer or parolee.[446]

Some experts point to significant economies which could be realized through greater use of community-based instead of institutional handling of offenders. As shown in Table 60, in 1965 it cost the States about 14 times more to place an offender in an institution than on probation. The relatively low cost of probation is partially due to heavy workloads and low salaries for caseworkers. Yet, even if costs increased as a result of lowering caseloads, the level of expenditure here would still fall well below that of institutional care.

Table 60
AVERAGE DAILY COSTS PER CASE, 1965

Type of Service of Institution	Juvenile	Adult
Detention	$11.15	—
State Institutions	9.35	5.24
Local (including jails)	10.66	2.86
Probation	.92	.38
Parole or Aftercare	.84	.88

Source: President's Crime Commission, *Task Force Report: Corrections,* p. 194.

Supporters of the community-based approach point to certain research findings in California, New York, and Wisconsin which indicate that offenders who participate in probation, parole, and work-release programs are less likely to recidivate than those who are exposed to only institutional care. The paucity of nationwide data on experience under these approaches and the inadequate attention given to the length of crime-free time, the nature of the return offense, and other factors in the reporting of recidivism rates, however, make it difficult to reach firm conclusions concerning the relative effectiveness of community-based programs in rehabilitating offenders.

In light of the foregoing, any major shift from the present fiscal and manpower emphasis on custody and institutions to a "new corrections" philosophy focusing on community-based rehabilitative programs will depend to a great degree on the support the latter receive from elected officials, corrections professionals, and the general public. Recent evidence indicates the existence of some ambivalence towards such programs among the professionals, and considerable skepticism from the public.

More than half of the 1,870 employees in institutions and probation and parole agencies participating in a 1968 Gallup poll saw custody, control, and containment as helpful in the corrections process.[447] At the same time, over two-thirds considered rehabilitation to be the number one goal of the system. Two-fifths of those interviewed felt that rehabilitation should be the objective most emphasized in adult institutions, while three-fourths saw this as a top priority item in juvenile probation and parole. Punishment was considered the major goal by no more than a very small percentage, except in adult institutions where one-fifth rated punishment as basic. Nearly one-half of the interviewees believed greater use should be made of probation and parole, while more than four-fifths looked favorably on increasing the number of such community-oriented programs as halfway houses, work release, and work furloughs. Less than three out of every 10 professionals surveyed, however, felt that current programs of this type had been very successful. The major reason cited for the somewhat less than satisfactory results here was community hostility. Another problem confronting community-based corrections pointed up by the survey was lack of trained personnel.

Public skepticism of the value of community-based treatment was revealed by the earlier Harris survey. Only one-fifth of the participants favored increased use of probation and parole, while one-eighth supported decreased use of these approaches and one-half thought the extent of present usage was about right. This sentiment is partially explained by the finding that over one-half felt that it was almost impossible for authorities to keep track of released prisoners. It must be recognized, however, that the respondent's views were probably influenced by the extent to which probation and parole were used in their States, and that this varied widely on a nationwide basis.

A 1971 Gallup poll done for *Newsweek* (March 8, 1971), however, indicates that the public may becoming more concerned and more compassionate about corrections. A strong majority agreed that most penal institutions are in a deplorable condition and a comparable proportion supported more humane treatment of prisoners and the need for better offender rehabilitation. More than two-thirds felt that prison rioters have justifiable complaints. Only a small minority enunciated a belief in the effectiveness of punitive approaches. An overwhelming 83 percent indicated they would support the channeling of more money into corrections, and 55 percent focused on prior counseling and job training as the rehabilitative programs most deserving of more

funds. At the same time and somewhat in contradiction to the foregoing, only a minority were willing to pay for more probation and parole officers. All this would suggest some significant attitudinal changes compared with the earlier survey results. But ambivalence has not disappeared.

The 1969 and 1970 State comprehensive law enforcement plans indicate growing support among public officials and corrections professionals for community-based treatment of offenders as an alternative to institutionalization. LEAA reports that in 1969, 27 States proposed projects of this type amounting to $750,000, or 22 percent of the $3,400,000 in action dollars awarded for corrections programs in that year. These projects included approximately:

—$440,000 for halfway houses and group homes (12 States);

—$200,000 for work release (nine States); and

—$110,000 for programs involving volunteers and paraprofessionals (six States).

Moreover, 15 States allotted $590,000 for probation, while six applied for a total of $85,000 for parole improvement. These outlays accounted for nearly 20 percent of all 1969 corrections action grants.

At the same time, 13 States allocated $150,000 for institutional programs and 12 committed $340,000 for jails. Expenditures for these traditional corrections functions amounted to 14 percent of the overall 1969 figure.[448]

With respect to the attention given to community-based corrections by the States in their 1970 comprehensive plans, of the $49,188,220 in block grant programs for adult and juvenile corrections, 34 percent was slated for programs of this type, and almost 11 percent went for probation and parole. These contrast with a 22 percent figure for jail and prison improvement programs (See Appendix Table A-12). In addition, LEAA has awarded $5,954,972, or nearly 74 percent of its $8,097,541 correctional total in 1970 discretionary grants, to support community-based projects.[449]

In summary, it is clear that many experts as well as some sections of the general public favor reordering correctional priorities to give greater attention to community-based treatment. Yet, the results of the Gallup polls indicate that a widespread general consensus does not exist concerning the extent to which these new programs will be successful in reducing recidivism. Apparently, the public has some doubts concerning the effectiveness of community-based treatment in rehabilitating offenders, particularly adults, and in discouraging them from committing further crimes. Although they strongly support rehabilitation, at least in theory, as the proper emphasis of corrections, "...the total public seems more willing to attack the problem of crime through increased funds for the application of force than through increased funds for rooting out the social causes of crime through the poverty program or for attempting to rehabilitate criminals."[450] Moreover, much of the public and many corrections professionals have serious reservations regarding the availability of sufficient numbers of trained personnel to administer more community-oriented programs.

Summary

Proposed reforms in corrections institutions and services have clear implications for State and local policy-makers. With respect to the basic approach to correctional programs, the debate between the community treatment and the institutional care advocates is not as irresolvable as some would have it. There is a general understanding that more and better personnel are needed. There is a common agreement that overcrowding is a basic problem in many State and local correctional institutions, and that there is a need to differentiate among the types and ages of offenders. There is a growing consensus that law enforcement officials do not have the time, the staff, or the training to manage such facilities. There is widespread agreement that traditional approaches to treating offenders have failed to reduce recidivism and are inhumane. And there is an awareness that not all community-based treatment programs are suitable in every locale and for all types of offenders.

If basic changes are to occur merely in these areas of growing agreement, substantial amounts of funds will be required. Yet, the fiscal capacity of several cities and counties precludes them from launching a comprehensive restructuring and redirecting of their corrections efforts. Even if the funds were available, however, the problem of interlocal disparities in goals, standards, services, and treatment still remains, and this brings into focus the possible roles the State can play in achieving greater uniformity.

The variegated pattern that emerges from an examination of existing corrections services and facilities, of itself, is a critical comment on their standing in the list of program priorities. Even in those cases where improvements have been attempted, lack of planning and coordination has undermined their effectiveness. Where programs are operated independently of related services and where different levels of government have limited resources at their command to handle multiple responsibilities, there are bound to be repercussions on the rest of the system. The interdependence of correctional services and the need for uniform statewide coverage clearly indicate a major State share in the

administrative and fiscal responsibility for the quality of corrections at every level. In practice, however, the extent of the State's role varies widely.

One possible direction of State action in the future, of course, is to centralize responsibility for all correctional services in one State department. As indicated previously, three States have established such a unified system, and another six have a semi-unified one. Although this approach appears to be an ideal way to promote administrative efficiency, provide uniform services, and achieve equitable handling of offenders, the prospect for achieving total integration in many States is dim. Some authorities contend that State operation of all correctional programs would not necessarily be beneficial in every instance. Administering a total system in certain States would require bureaucratic rearrangements and financial outlays that could nullify the objective of integration. The desire to maintain local control also could impede consolidation efforts.

Nevertheless, if full State take-over is not feasible, there are corrections functions now being performed by many counties and cities that might be better handled by the States, such as juvenile aftercare and adult probation.

A third type of State action is the provision of assistance to local correctional agencies, such as planning, consultation, standard-setting, inspection, personnel recruitment and training, and cost-sharing. The subsidy programs pioneered by California and Virginia, under which local governments are subsidized for treating offenders in their own facilities rather than sending them to State institutions, constitute good examples of responsible decentralization. While having a less far-reaching impact than transfer of various correctional activities or complete State assumption, the State assistance approach is probably the easiest to implement.

To sum up, the correctional field is a major area for redefining State-local relationships, for asserting State leadership, and for achieving a more rational organization of responsibilities at the State level. How far and in what direction reform goes depends mainly on the degree of commitment on the part of the public and its elected representatives to no longer treat corrections as the "step-child" of the criminal justice system.

F. INTERFUNCTIONAL COORDINATING MECHANISMS IN THE CRIMINAL JUSTICE SYSTEM

State and local governments probably can never hope to achieve the degree of coordinated effort in pursuing the goals of criminal justice that they can in pursuing most other governmental objectives. Certain basic characteristics of the system virtually defy attempts at coordination: the adversary system of adjudication, the constitutional separation of powers, the division of the system into several fairly discrete functions—police, courts, prosecution, corrections—and the complex and varying patterns of State-local relations within each of these component functions.

While conceding these basic limitations, two pivotal questions still remain: what improvements can be made to achieve a greater measure of coordination in this very critical field, and how can this be done so as to strengthen rather than weaken State-local relations?

The foregoing discussion of issues in each of the functional sections included an examination of the problems and possibilities of intrafunctional coordination. Thus, the section on police probed measures for better State-local and interstate police coordination as well as the issue of more extensive use of interlocal cooperative arrangements among local governmental units; the section on courts described the movement toward court unification, including the growing use of professionally-trained court administrators; the section on the prosecutor considered the possibilities of improving the prosecution function by emphasizing more leadership in supervision and coordination by the State attorneys general; and the discussion of corrections focused on ways of making the nine correctional facilities and services function together more smoothly. This section, then, will consider the possibilities of better overall interfunctional coordination.

It is not suggested, of course, that the criminal justice process as it now operates in the 50 States is completely lacking in interfunctional coordination. Even in the most disjointed system, police, prosecution, courts, and corrections function in a roughly interdependent fashion, linked as they are as parts of a single process. As the President's Crime Commission observed: "the criminal process, the method by which the system deals with individual cases, is not a hodgepodge of random actions. It is rather a continuum—an orderly progression of events—some of which, like arrest and trial, are highly visible and some of which, though of great importance, occur out of public view."[451]

The "progression of events" is based on countless arrangements and accomodations, that have been established pursuant to constitution, statute, court decisions, ordinances and administrative orders, and some that have been worked out informally among the parties involved. Doubtless much can be done to improve these working linkages among the autonomous and semi-autonomous actors involved in the process. The concern here, however, is with the development of organizational

mechanisms which can help overcome the basic interfunctional gaps caused by the structural characteristics cited earlier.

The State government possesses obvious advantages in pulling together the parts of the criminal justice system, since it has the basic constitutional authority and geographic scope to embrace all the separate functions of the State-local system. Interfunctional coordination at the State level is therefore considered first; then the problem within substate regions; and finally those at the local level.

Coordination at the State Level: The State Planning Agencies (SPAs) under the Federal Safe Streets Act

In recent years, States have moved to set up interfunctional, intergovernmental coordinating agencies under the impetus of the Law Enforcement Assistance Act of 1965 and the Omnibus Crime Control and Safe Streets Act of 1968. These are the State planning agencies (SPAs), described in Chapter 3 and analyzed in detail in an earlier report of this Commission.[452] Their essential purpose is to serve as permanent decision-making and administrative bodies to receive block grant awards from the Federal Law Enforcement Assistance Administration (LEAA) and to disburse subgrants to local governments.

The SPA's responsibilities include the preparation, development and revision of comprehensive plans based on an evaluation of law enforcement problems within the State; defining, developing and coordinating action projects and programs under such plans; setting priorities for law enforcement improvements; encouraging grant proposals from localities and State law enforcement agencies; encouraging regional and metropolitan area planning efforts, action projects and cooperative arrangements; integrating the State's law enforcement plan with other federally supported programs relating to law enforcement; and evaluating the total State effort in plan implementation and law enforcement improvement.

A State planning agency may be a new unit of State government or a division of an existing State crime commission, planning agency, or other appropriate unit of State government. While "details of organization and structure are matters of State discretion",[453] the SPA must be a definable agency in the executive branch with powers to carry out the responsibilities imposed by the Law Enforcement Assistance Act. It must have a supervisory board responsible for reviewing, approving and maintaining general oversight of the State plan and its implementation; it must also have a full-time administrator and staff. Significant to the coordination role of the SPAs is this statement in the LEAA guidelines:[454]

> While responsibilities for State plan development, implementation, and correlation must ultimately reside in the State planning agency, subject to the jurisdiction of the State chief executive, this does not preclude important roles by State law enforcement, correctional, judicial and prosecutive agencies in plan development relating to their respective areas of competence, nor by local units of government and their law enforcement agencies, nor utilization of staff of other State agencies to assist with State planning agency functions.

The SPA must be created or designated by the governor and be subject to his jurisdiction; four out of every five existing SPAs are in the governor's office. Its supervisory board, which oversees the agency's staff, must be representative of law enforcement agencies of the State and of the units of general local government. To meet the balanced representation requirement of the Act and LEAA's implementing guidelines, the agency must include representation from State law enforcement agencies; elected policy-making or executive officials of units of general local government; law enforcement officials or administrators from local units of government; each major law enforcement function—police, corrections, and court systems, plus, where appropriate, representation identified with the Act's special emphasis areas, such as organized crime and riots and civil disorders; the juvenile delinquency and adult crime control fields; and community or citizen interests. Such representation must offer reasonable geographical and urban-rural balance and recognize the incidence of crime and the distribution and concentration of law enforcement services in the State. Finally, it should approximate the proportionate representation of State and local interests. LEAA determines compliance with the representation requirement on a case-by-case basis due to the existing diversity of State-local criminal justice systems.

In the prescription of the organization and responsibilities of State planning agencies, the Safe Streets Act and guidelines emphasize cooperation and coordination of the entire State-local criminal justice system, interlevel as well as interfunctional. How well the SPAs will perform as State-level coordinators in the long run, only time will tell. On the basis of 16 months operations, however, the ACIR reached the general conclusion in its September 1970 report that thus far the SPAs and the system of block grant funding of which they are an integral part are performing fairly satisfactorily.[455] The Commission recommended retention of the block grant system as a preferred device for achieving greater cooperation and coordination between the States and their localities, and at the same time, urged the States and their SPAs to strive for improvements in their operations under it. The Commission endorsed the manner in which subgrants are being distributed to counties, cities and

areawide bodies but urged that no State plan be approved unless LEAA finds that it provides an adequate allocation of funds to areas of high crime incidence. It emphasized that State plans should give more attention to all components of the criminal justice system; and it also endorsed the manner in which the representation requirements for SPAs have been implemented. In short, the Commission generally placed a great deal of confidence in the capacity of the SPAs to meld the various interlevel and interfunctional interests in the criminal justice field and at the same time pointed the way to certain improvements.

Clearly the focus of the Safe Streets Act, and therefore of the coordinating role of the SPAs under the legislation, is the distribution of Federal matching funds in such a way as to achieve the greatest impact on anticrime efforts. Some SPAs could extend their coordination efforts to include week-to-week or even day-to-day meshing of criminal justice activities, as through exchange of ideas and experiences, discussion of common problems, encouragement of joint studies and ventures by the several components of the system and between State, regional, and local agencies, and development of new systems and procedures for better interfunctional and interjurisdictional cooperation. Ideally, all such activities should be focused on achieving better coordination of criminal justice policies, plans, and programs for greater effectiveness with a minimum expenditure of resources. Yet, no real analysis of this more comprehensive coordinating role of the SPAs has been undertaken, and it may be too early to do so. Analysis of the 1969 and 1970 State plans, however, highlights the capacity of SPAs to interrelate the goals of the various criminal justice components in a planning context, and the record suggests that many have yet to achieve a balanced perspective in their plans.

In this connection, it can be argued that much of the success of the SPA as a planning and fund allocation agency as well as a day-to-day coordinating mechanism will depend on the interest and support displayed by the governor. He is given clear responsibility for establishing the agency and it is placed under his jurisdiction. These provisions recognize that the governor is the logical official in the State to provide the leadership and prestige necessary to make the agency and its operations function effectively. Of the three branches of government involved, the executive is certainly the most influential in law enforcement. He is the preeminent executive officer within the State and he is held responsible for law and order. His actual powers vary from State to State, of course, but he has some influence in all segments of the criminal justice and law enforcement process: overall, through his budget powers; in police, through highway patrol or State police, and the national guard; in corrections, through appointments and perhaps administrative supervision and responsibility for adult correctional institutions and services; in the courts of many States, through appointments to some judicial posts; and in prosecutions, through his power in some States to remove local prosecutors.

In delineating the governor's role, the position of the State's attorney general is not being overlooked. The latter plays a key role in prosecution in most States, and his cooperation in this as well as in related law enforcement matters is a critical dimension of the coordinating problem. Some difficulties are reflected in the fact that in 1970 the attorney general was not even a member of the SPA in at least ten States; in four of these States, however, a member of his staff was on the SPA. Five of the ten involved cases of a governor of one party and an attorney general of another. Quite clearly, the separately elected position of the attorney general in a majority of the States raises delicate political and policy questions for governors, as well as for the SPA's, in developing coordinating mechanisms.

The roles of two other officials are also critical—the chairman of the SPA and the staff director. Not much is known about the types of person chosen for the chairmanship and how they have performed. It seems obvious, however, that the chairman must be a person of prestige and outstanding ability and dedication who possesses the confidence of the governor and has ready access to him when necessary to enlist his support on specific problems. Governors who ignore the critical role of the board chairman and appoint less than distinguished men to the post undermine their own position and that of their State in this critical program.

As the operating head, the staff director's importance is also self-evident. Yet experience through March 1970, as revealed in the ACIR study,[456] indicated serious problems of turnover in this key position. As of that month, only 20 of 48 SPAs responding were operating with their original executive director. High turnover in some degree is a reflection of the newness of the role and the lack of persons with appropriate experience and background; therefore, turnover should become less of a problem as the field of criminal justice planning develops.

While leadership in the administration of a criminal justice system needs to come from the governor, the SPA chairman, and the executive director, it is apparent that the SPA as a coordinating mechanism must contain within itself the means of bridging the interlevel, interfunctional and interbranch gaps. These are the gaps which create many of the coordination problems in the first place. On this score, some doubts have arisen

concerning the Safe Streets Act and its implementing guidelines.

The Act stipulates that SPAs must be representative "of law enforcement agencies of State and of the units of General local government within the State." The guidelines further require "representation of State law enforcement agencies" and "representation of each major law enforcement function–police, corrections, and court system . . ." While these requirements cover representation of the courts, they do not clearly assure representation from the State's highest court. In some cases, such appointments have been made, but as of February 1970, 34 of the 46 SPA's providing the necessary data had no members from this sector. Those who believe that unification is essential for court improvement–with all that it implies for the supervisory role of the highest court–argue that effective representation of the court system necessitates the involvement of a spokesman for the highest court on all SPA's. Such representation, of course, need not require a member of the supreme court to serve–that court may feel that it can be best represented by a member of the intermediate appellate body, or by the State court administrative officer. The important objective is to evoke the active interest of the body chiefly concerned with the overall functioning of the court system.

A second and perhaps more serious shortcoming of the SPAs as mechanisms for modifying the effects of the separation of powers doctrine is the failure of most governors to give any representation to the State legislature. Twenty-six of the 46 SPA's analyzed had no legislative members. This omission is damaging to the agency's role as fund-allocator in view of the legislature's control of the purse strings. Certainly, if there is any inclination to seek more State participation in the non-Federal matching share of LEAA-funded projects, legislative representation would be a help toward that objective. Moreover, the legislature's role obviously is not limited merely to the fiscal aspects of the Safe Streets Act. It is responsible for the criminal code. In many States, it also has a role in the promulgation of court rules of practice and procedure. Through its law-making power, it conditions the entire State-local criminal justice system in many ways–the review and revision of criminal codes; the determination of State-local responsibilities for the various corrections activities; the organization of State corrections agencies; the organization of lower courts; the delineation of the roles of the coroner, sheriff, and justice of the peace and the provision of financial assistance to local governments for various law enforcement purposes, to name a few. Finally, for those criminal justice reforms that require constitutional amendments, the legislative role, of course, is critically significant.

In short, the legislature constitutes the ultimate forum for achieving judicial reform, for strengthening the prosecution function, for cleaning up the chaos in the corrections field and for better coordinating State-local police efforts. Yet, it is a body of officials that has less than 4% of the membership on the typical SPA.

Against the inclusion of legislative members in the SPA, some contend that since many legislatures still have limited sessions their members would not be very active participants. That argument fails to recognize that legislatures are increasingly meeting on an annual basis; interim legislative committees and commissions are becoming more common and individual legislative members would probably find it as convenient and compelling to attend as many other officials now included, such as city council members and some mayors. Finally, legislators might find it appropriate to designate staff directors of key committees to represent them.

Coordination at the Sub-State Regional Level

The Safe Streets Act also exerts influence in the coordination of criminal justice activities at the substate regional level. LEAA guidelines encourage planning efforts on a regional, metropolitan area, or other "combined interest" basis. They urge States and localities to consider planning regions that are common or consistent with other federally supported programs or with existing State planning districts, as well as utilization, where feasible, of the planning efforts of community development agencies operating under the Model Cities program of the Department of Housing and Urban Development. They further indicate that "regional combinations must be more than State imposed geographic units and need to enjoy a base of local unit acceptability and representation."[457]

45 States had established regions for law enforcement and criminal justice planning by 1970. Forty-one of these had regional policy boards or advisory councils modeled generally on the SPA supervisory board. In at least 30 of the 43 districted States that responded to the ACIR's survey, the regional criminal justice planning function was performed by existing multijurisdictional bodies–such as State planning districts, councils of government, regional planning commissions, and local development districts and economic development districts. In seven other States, new regions were established by the SPA supervisory board after consultation with affected groups, including local governments. In

five others, the State planning agency requested local jurisdictions to form districts.

The ACIR found that the regional planning districts in nearly all of the 43 districted States surveyed performed planning for their areas of jurisdictions, more than four-fifths coordinated planning efforts of localities within their area, and three-fourths reviewed local action subgrant applications before submission to the SPA. Two-fifths of these regional agencies also screened law enforcement related project proposals for funds under the Model Cities program and the Juvenile Delinquency Prevention and Control Act.

It was also found that the regional planning bodies had aroused considerable opposition, particularly from cities and counties. These critics alleged that Federal funds were used to build another level of bureaucracy between the Federal government and local governments; that the regional bodies' operations were being subsidized out of money that should go to localities; that lacking the power to implement program objectives, the regional groups could never carry on effective criminal justice planning, and that pressing urban priorities were not being met because of under-representation of urban jurisdictions on the regional bodies.

Regarding the issue of representation, Chapter 3 of this report indicated that local chief executives and key policy-makers accounted for only 16% of the membership on the typical regional planning district in the 31 States providing the necessary information. Functional specialists made up 57% of the total; but within this sector, police and related officials enjoyed a commanding position constituting more than three fifths of this group (and over a third of the total membership). For the States covered by this analysis then, serious representational questions arise concerning the extent of balance between the generalists and the specialists and among the various functional components of the system.

In its Safe Streets report, the Commission concluded that regional criminal justice planning bodies performed important planning and coordination functions and played a significant supervisory role over local action plans and programs. Some made subgrant awards to constituent local governments. As a group, the districts received most of the local share of planning grants. Most of them appeared to be coterminous or at least consistent with other multijurisdictional entities set up under Federal or State programs.

In the final analysis, however, the evaluation of the regional planning agencies' role in the functioning of the Safe Streets Act depends largely upon one's philosophy of government and administration. In general, a preference for reliance on existing units of local government and home rule concepts leads one to object to the regional bodies. On the other hand, as the earlier Safe Streets report stated, ". . .if one believes in channeling local programs having an areawide impact through higher levels of government in order to achieve greater coordination of effort, if one feels that problems with cost "spillovers" demand concerted action, or if one believes that to be effective the components of the criminal justice system must be treated on an interlocking rather than fractionated basis, then the areawide device may be part of the answer."[458]

As with the State planning agency, questions can be raised about the role of these regional agencies with respect to coordinating activities not directly related to the Safe Streets Act. These bodies have certain shortcomings as coordinators in comparison with the SPAs. As indicated in the localities' criticisms, areawide bodies with comprehensive powers to implement areawide law enforcement activities are rare; the principal places they exist are in single county metropolitan areas with strong county governments, and even here the separation of powers intervenes. In any case, there are no regional units with the prestige and informal, if not formal, influence comparable to that of the governor at the State level. Also, while the guidelines emphasize the need for achieving consistency with the jurisdictions of existing regional bodies under Federal and State programs, achievement of such consistency is not easy. In addition, the Federal and State regional bodies referred to operate largely in the field of physical development, whereas two of the elements in the criminal justice complex—courts and prosecution—are districted on a regional basis without much specific regard to physical development concerns. In other words, the problem of achieving jurisdictional harmony is complicated by court districting. This is not to say that the problem is insuperable, however. States are constantly in the process of redrawing court district boundaries and to the extent that the regional criminal justice planning bodies become viable agencies, it can be hoped that the redistricting programs will take account of the existence of these other regional units.

The problem of the lack of focused leadership at the regional level—comparable to that of the governor at the State level—continues, however, and will remain pending the evolution of regional bodies with operating and fiscal responsibilities of a multi-functional character. In many urban areas, however, regional efforts are being fragmented with separate units being set up for comprehensive health planning, manpower efforts, poverty, transportation, law enforcement, and comprehensive planning and the A-95 review and comment function. Meaningful regional leadership in the criminal justice or any other field as well as the position of general units of local

government are only undermined by this type of balkanized approach to doing business at the regional level

The question of leadership also arises in connection with the composition of the regional enforcement districts. Effective leadership by these bodies is after all largely contingent on their capacity to achieve significant interlocal collaboration among affected jurisdictions. The data for the 31 States examined suggest that the chief executives of these jurisdictions are not in a good position to play a major role in this vital area, given their meager representational base on most regional boards. A counter-argument could be made that the kind of interlocal collaboration called for here is on matters relating to one or more of the functional areas composing the system and that the relevant program specialists on the board are in a better position to push for such cooperation than anyone else. Yet, even if this argument were accepted, the weak representation of courts, corrections, and local prosecution on the typical regional board tends to reduce the amount of average interfunctional cooperation that could be achieved. Moreover, many would debate the merit of having criminal justice specialists and planners in a controlling position on these boards, even if there were a good interfunctional representational mix. Meaningful interjurisdictional collaboration is more likely to occur if the chief elected officials of the general units of local government are involved. An effective balancing of the needs of all the various elements of the criminal justice system is more apt to occur if key local policy-makers and executives are in a strong enough position to exercise a moderating role. Any real curbing of the functional fragmentation that plagues the criminal justice system at the local and areawide levels must rely in large measure on the collaboration of these key local spokesmen. The regional districts have a role in all these areas, yet spokesmen for local jurisdictions as a whole are in a poor representational position on most boards to exercise leadership in these and other matters of critical concern to the success of these regional undertakings.

In its Safe Streets report, the Commission urged that States "retain and strengthen their regional law enforcement planning districts."[459] One way of strengthening them would be a SPA or gubernatorial review of the composition of their districts in light of LEAA guidelines that such bodies should "enjoy a base of local unit acceptability and representation." Where units of general local government lack adequate representation, corrective action could and should be taken. Moreover, where little to no balance exists among the various criminal justice specialists, the SPA might move on this front as well.

Coordination at the Local Level

The International City Management Association reported in a 1969 study that 137 of 637 cities surveyed claimed to have criminal justice coordinating councils, although no hard data exists regarding the councils' composition, functions, and impact. Fifty-eight percent of these city officials did state, however, that they were having difficulty in achieving close cooperation and joint planning among the various elements of the criminal justice system.

The separation of powers, of course, is a problem at every level. Unlike the State and to some extent the region, moreover, coordination at the local level runs into the added problem of differences in geographic jurisdiction and legal powers. The police function is principally a city function, but counties also are involved. Courts may operate at several local levels: city, county, and multicounty district for general trial courts. The prosecution function follows the jurisdiction of the courts. Corrections follow the jurisdiction of both the police function (jails) and the courts (probation, detention). It is perhaps significant that New York City, which has reported some success with its Criminal Justice Coordinating Council is an amalgam of five counties and does not have to contend with jurisdictional differences among the several functions. Faced with a somewhat similar problem, authors of the Federal Economic Opportunity Act concluded that the only way to achieve coordination of the various functional components involved in the war on poverty in many States was to authorize and encourage the creation of nonprofit community action agencies, separate from jurisdictional entities, but drawing representation from city and county officials as well as other community interest groups.[460]

The Commission on the Causes and Prevention of Violence strongly urged the Law Enforcement Assistance Administration and the SPAs to "take the lead in initiating plans for the creation and staffing of offices of criminal justice in the nation's major metropolitan areas."[1] The Commission conceded, however, that development of such full-time criminal justice offices would not be easy. "Especially troublesome is the fact that the criminal justice process does not operate within neat political boundaries."[461] It suggested three alternative organizational arrangements: (1) a criminal justice assistant to the mayor or county executive, with staff relationships to executive agencies, and liaison with the courts and the community; (2) a ministry of justice with line authority under the direction of a high ranking official of local government (e.g., Director of Public Safety or Criminal Justice Administrator), to whom

local police, prosecutor, defender and correctional agencies would be responsive; or (3) a well-staffed secretariat to a council composed of heads of public agencies, courts and private interests concerned with crime. The first of these fails to overcome the problems of different boundaries; the second is unclear as to the organizational location and powers of the "ministry of justice"; and the third appears to be similar to the New York City coordinating council or, in another field, the local private community action agencies.

It is significant that large cities have been chosen as the special targets of discretionary funds administered by LEAA in 1970, and that one of the specified eligible projects for such grants are special city-wide coordinating or planning councils or commissions. Thus far, four large cities have been recipients of such grants in 1970, and Dallas is seeking funds for a council. Moreover, the criminal justice planning agencies of at least 14 cities, in addition to that of New York City, have been designated as regional districts under the Safe Streets Act and these agencies, of course, have received "pass through" planning funds to carry on their functions. These cities include, among others, Chicago, Philadelphia, Milwaukee, Salt Lake City, Honolulu, Hartford, Providence, and Manchester (N.H.). Finally, an undetermined number of other cities and counties in FY 1969 were direct recipients of a total of $1,219,158 in planning funds in 27 States. Five States allotted all such pass through monies to localities and none to regional districts. Six distributed 80 percent of these funds to their local governments–four allocated 50-79 percent; and 12 awarded from 2 percent to 49 percent.[462] Presumably, some of these funds were used in some of these local jurisdictions for criminal justice coordinating efforts.

It can be argued, in view of the jurisdictional problems of local units within metropolitan areas especially, that the best approach to a coordinating council might be the regional planning body set up under the Safe Streets Act to plan on an areawide basis and in half the districted States to review the expenditure of LEAA funds in the metropolitan area. Those bodies are required to be acceptable to the local governments concerned, which should assure that local officials would agree to lend their support and cooperation if such bodies are, in fact, representative of their constituent jurisdictions. Since councils of government are coming into increasing acceptance as regional bodies and are voluntary groupings of officials representing existing localities, they might well serve as the coordinating council. In some metropolitan areas, they have already been designated as the regional body under the Safe Streets Act.

The Role of the Elected Chief Executive

Meanwhile, however, there can be no doubt that the diffusion of responsibility for law enforcement and criminal justice at the local level places the mayor or county executive in a difficult position. As the chief local elected official, he is usually held responsible by local citizens for whatever goes wrong within his bailiwick. If the police commit brutalities or, on the other hand, enforce the law laxly or unevenly, the mayor probably will be blamed, regardless of whether he can even appoint the head of the police department or whether his appointive power is circumscribed by a civil service "rule of three" or other restraints. A rising crime rate may be traced to an ineffective prosecutor's office headed by an independently elected prosecutor, perhaps of a rival party, who may not be loathe to embarrass the mayor. General trial courts probably are on a county or multicounty basis and thus beyond the reach of a mayor's appointive, removal, and budgetary powers and generally beyond those of most county executives. The local court may be a city tribunal administered by a judge owing his position to the mayor, but the separation of powers usually places it beyond the mayor's effective influence even if he is inclined to try to exert pressure to reduce the court's procedural delays and raise the quality of its operations. The same situation frequently applies to the county executive vis-a-vis a county court. A mayor or county executive probably has little to do with corrections, since in many cases the county sheriff has jurisdiction over the local jail, and probation, parole, and half-way release activities are under the direction of State offices or the general trial courts. Finally, however extensive or limited his influence on police, courts, prosecution, and corrections may be, he may have no direct means of influencing related governmental or nongovernmental activities that have an indirect but significant effect on law enforcement, such as health programs dealing with drug addiction and alcoholism and the various activities of voluntary health and welfare groups.

These various constraints on local chief executives' role in the criminal justice system further underscores the need for more effective representation and involvement of such officials on regional planning boards. They also point to a need for vigorous and direct leadership on his part where criminal coordinating councils are contemplated or have been set up. Some of these limits, however, suggest that local councils will not amount to much if more than half of the criminal justice components fall outside the jurisdiction of the local government.

At the State level, the Governor similarly is looked to for the solutions to the problems of crime and justice, although somewhat less so than the mayor or county executive in view of the more local impact of crime and law enforcement. The Governor, probably no less than the mayor, is often not in a position to respond to public expectations because so much of law enforcement is handled locally, and because of the dispersion of State responsibility among the attorney general—usually separately elected—the courts, and the legislature. Even such basically executive functions as are found in corrections and State police or highway patrol may not always be under the Governor's effective control because of constitutional or statutory provisions. It is almost redundant to note that these constraints make it almost mandatory for Governors to play a personal and persistent role in the activities of their SPAs.

In short, the Governor, the county executive, and particularly the mayor are in the difficult dilemma of being held politically responsible for conditions that constitutionally and statutorily are beyond their control. Among all the officials in State and local government, these chief executives have the greatest stake in the development of some effective mechanisms for coordinating the law enforcement and criminal justice programs of their constituencies.

Summary

Coordination problems are built into the American system of criminal justice by virtue of the doctrine of separation of powers, the adversary system of adjudication, the functional separation of police, prosecution, courts, and corrections, and the varying patterns of State-local responsibilities for each of these functions. Slow but sure movement toward intrafunctional coordination is beginning taking place. Witness efforts toward court unification, the establishment of professional administrative offices, support for a more positive role by the attorney general in assisting and coordinating the work of local prosecutors, greater interlocal cooperation in police work and more State-local police cooperation, and a gradual increase of State activity establishing and monitoring minimum standards for correctional facilities and services.

The Safe Streets Act has provided new mechanisms at the State and regional levels to achieve interfunctional coordination and they are beginning to have a salutary impact. The long run effectiveness of the State planning agencies will depend to a critical extent on the caliber of the chairman and the staff and the backing and leadership of the governor as well as the legislature. Failure to give SPA representation to the State legislature appears to be a serious shortcoming. Moreover, the regional agencies have received criticism from local governments, who regard them as unrepresentative and competitors for scarce funds. Yet, they seem to be performing a needed coordinating function and probably would do a better job if the representational issue were settled.

The fragmentation of local governments in metropolitan areas, when added to the separation of powers, makes most coordination of criminal justice activities particularly difficult in those areas. Some larger cities are focusing on coordinating councils similar to New York City's, and LEAA is aiding these efforts through the channeling of discretionary funds to large cities for the purpose of creating such bodies. At the same time, serious doubts are expressed concerning the utility of such councils as interfunctional coordinating services in jurisdictions having power in only one or two components of the criminal justice system.

The continuing interest in general government reorganization at the local level, particularly city-county consolidation; the establishment of viable multifunctional, multi-jurisdictional units in metropolitan areas; the strengthening of councils of government with a trend toward performing operating functions, and the greater use of annexation and extraterritorial powers—obviously relates to this basic issue of interfuctional and interjurisdictional coordination. To the extent that these continue, such coordination at the local level should improve. For the immediate future, the local coordination problem in metropolitan areas might best be attacked by strengthening and making better use of the regional coordinating bodies established in those areas under the Safe Streets Act.

The Governor, county executive, and mayor—and especially the latter in large cities—are usually held responsible for the quality of law enforcement and the administration of justice, even though components of the criminal justice system may be beyond their control. They suffer most from the failures of interfunctional coordination and thus, of all public officials, have most to gain from the development of effective coordinating bodies.

Footnotes Chapter IV

[1]President's Crime Commission. *Task Force Report: The Police*, Washington, 1967, p. 68.

[2]For a contrary view see Arthur C. Millspaugh. *Local Democracy and Crime Control*. Washington: The Brookings Institution, 1936; also Gordon Misner. "Recent Developments in Metropolitan Law Enforcement", *Journal of Criminal Law, Criminology, and Police Science*. Vol. 50, 1959-60, p. 497-508.

[3]President's Crime Commission. *op. cit.*

[4]Notable exceptions occur in such metropolitan areas as Jacksonville, Florida; Indianapolis, Indiana; and Nashville, Tennessee.

[5]Charles Tiebout. "A Pure Theory of Local Expenditures", *Journal of Political Economy*, LXIV (October 1956), pp. 416-424.

[6]David L. Norrgard. *Regional Law Enforcement: A Study of Intergovernmental Cooperation and Coordination*. Chicago: Public Administration Service, 1969.

[7]Frank S. Sengstock. *Extraterritorial Powers in the Metropolitan Area*. Ann Arbor: University of Michigan Law School, 1962, pp. 52-54.

[8]W. David Curtiss. "Extraterritorial Law Enforcement in New York", *Cornell Law Quarterly*, Vol. 50., No. 1 (Fall 1964), p. 38.

[9]62 *Corpis Juris Secundum* (C.J.S.) Sec. 568.

[10]News release from New York State Association of Chiefs of Police, Minneola, New York (December 2, 1969).

[11]Frank S. Sengstock. *op. cit.*, p. 50; "Government without representation has always proven distasteful to the American people; yet, the exercise of extraterritorial police powers constitutes precisely that."

[12]Gordon Misner. *op. cit.*, p. 508.

[13]International City Management Association. *Municipal Year Book – 1962*. Washington, 1962, p. 64.

[14]Dana Brammer and James Hurley. *Office of the Sheriff in the United States: Southern Region – 1967*. University of Mississippi, Bureau of Governmental Research, 1968, p. 185.

[15]Office of the Executive of Santa Clara County. *Contract Law Enforcement: A Survey of California Counties*. June 1970, p. 4-1.

[16]An excellent study of such subsidies is: Donald C. Shoup and Arthur Rossett. *Fiscal Exploitation of Central Cities by Overlapping Governments: A Case Study of Law Enforcement in Los Angeles County*. UCLA: Institute of Government and Public Affairs, 1969.

[17]David L. Norrgard. *op. cit.*, pp. 53-54.

[18]President's Crime Commission. *op. cit.*, p. 95.

[19]Advisory Commission on Intergovernmental Relations. *Making The Safe Streets Act Work: An Intergovernmental Challenge*. Washington, 1970, p. 24.

[20]David L. Norrgard. *op. cit.* p. 54.

[21]Bruce T. Olson. *Selected Interagency Relationships Among Michigan Police Departments*. Michigan State University: Institute for Community Development, 1969, p. 24.

[22]Edward Banfield and Morton Grodzins. *Government and Housing in Metropolitan Areas*. New York: McGraw-Hill, 1958, Chapter II.

[23]Advisory Commission on Intergovernmental Relations. *Performance of Urban Functions: Local and Areawide*. Washington, 1963, p. 128.

[24]Edward Banfield and Morton Grodzins. *op. cit.*, p. 37.

[25]A police force of ten full-time personnel could only provide 2 man, 24 hour patrol with one to two supportive personnel for such patrolmen. See also Public Administration Service. *Police Services in St. Louis County: A Plan for Improvement*. Chicago, 1967, p. 10.

[26]Roland J. Chilton & James R. Jorgenson. *Municipal Police Departments in Florida: Problems and Prospects*. Florida State University: Institute for Social Research, 1969, p. 30.

[27]Georgia Law Enforcement Planning Agency. *Georgia's Comprehensive Law Enforcement Plan – 1970*. p. A-46.

[28]Governor's Commission on Crime Prevention and Control. *The Minnesota Plan – 1969*. pp. 35, 65.

[29]Governor's Committee on Crime, Delinquency, and Criminal Administration. *Rhode Island Comprehensive Law Enforcement Plan – 1969*. p. II-10.

[30]Public Administration Service. *op. cit.*, p. 37.

[31]*Ibid* p. 40.

[32]Illinois Law Enforcement Commission. *A Beginning Blueprint for Crime and Delinquency Prevention and Control in Illinois*. May 1969, pp. 27-28.

[33]Committee on Law Enforcement and Administration of Criminal Justice. *A Summary of the Comprehensive Criminal Justice Plan for Crime Prevention and Control*. 1969, p. 13.

[34]State Law Enforcement Planning Agency. *A Plan for Law Enforcement and the Administration of Justice in New Jersey*. 1969, p. 162.

[35]Governor's Committee on Crime, Delinquency, and Criminal Administration. *op. cit.*, p. II-10.

[36]President's Crime Commission. *op. cit.*, p. 114.

[37]"Joint Police Protection," *Pennsylvanian*. (March 1970), p. 18.

[38]Dana Brammer and James Hurley. *op. cit.* p. 185.

[39]U.S. Bureau of the Census. *Governmental Organization*. 1967 Census of Governments. Vol. I., p. 13.

[40]For an updated description of the mechanics of these contract arrangements see Office of the Executive of Santa Clara County. *op. cit.*

[41]Donald C. Shoup and Arthur Rossett. *op. cit.*

[42]Vincent Ostrom et. al. "In Defense of the Polycentric Metropolis" in Michael Danielson ed. *Metropolitan Politics*. Boston: Little Brown, 1966, p. 284.

[43]Richard Cion. "The Lakewood Plan: Accommodation Par Excellence", in Michael Danielson. ed. *Ibid.*, pp. 272-280.

[44]"Joint Police Protection," *op. cit.* Office of Local and Urban Affairs. *A Manual for Interlocal Cooperation in Minnesota*. St. Paul, 1969.

[45]David L. Norrgard. *op. cit.*, pp. 37-39.

[46]Police protection as measured by full-time equivalent police employment per 10,000 population.

[47]Pennsylvania Crime Commission. *Comprehensive Plan – 1969*. Harrisburg, 1969.

[48]Illinois Local Governmental Law Enforcement Officers Training Board. *Local Law Enforcement Officers Census – January 1970*. Springfield, 1970.

[49]New Jersey State Law Enforcement Planning Agency. *Dissemination Document No. 1.*, Trenton, 1969, pp. 134-142.

[50]Office of Planning Coordination. *Michigan Law Enforcement Directory*. Lansing, 1968, for example.

[51]International City Management Association. (ICMA). *Municipal Year Book – 1968*. Washington, 1968, p. 143.

[52]Data refer to governmental employment statistics which measure the ratio of part-time police employment to full-time equivalent police employment in nonmetropolitan areas.

[53]Connecticut Planning Committee on Criminal Administration. *The Administration of Criminal Justice in Connecticut.* Hartford, 1969, p. 59.

[54]ICMA. *op. cit.,* p. 145. This survey of small cities was predominantly nonmetropolitan in character. Nearly two-thirds of the small cities surveyed were "independent" cities; the remainder were "suburban" cities.

[55]Office of the Governor. *Priorities for Law Enforcement.* Salem, Oregon, 1969, p. B-14.

[56]Michigan Commission on Law Enforcement and Criminal Justice. *First Comprehensive Plan.* Lansing, 1969, p. II-7.

[57]By 1970 Alaska, Louisiana, and Maryland were also authorized to operate resident trooper programs. IACP. Comparative Data Report-1970. Washington, 1970, p. 74.

[58]William M. Ely. "Connecticut's Resident State Police Program", *New Hampshire Town and City.* (December 1967), p. 7/223.

[59]Governor's Commission on Crime Prevention and Control. *op. cit.* p. 82.

[60]Lane W. Lancaster. *Government in Rural America.* New York: D. Van Nostrand, 1957, p. 166.

[61]*Ibid.*, pp. 163-164.

[62]Dana Brammer and James Hurley. *op. cit.,* pp. 35-39.

[63]Kentucky Legislative Research Commission. *Duties of Elected County Officials.* Frankfort, Kentucky, 1966, pp. 55-57.

[64]Bureau of Governmental Research. *op. cit.,* p. 128; also see "Law Enforcement in Kentucky." *Kentucky Law Journal.* LII. (1963-1964), p. 16.

[65]Dana Brammer and James Hurley. *op. cit.,* p. 117.

[66]*Ibid.*, p. 119. The report notes that 70% of southern sheriffs still receive per-diem or per-meal allowances for the care of prisoners.

[67]National Municipal League. "How to Save a Million in Massachusetts", *National Civic Review.* LVII, No. 2, p. 107.

[68]Bruce Smith. *Police Systems in the United States.* New York: Harper Brothers Inc., 1940, p. 73.

[69]Dana Brammer and James Hurley. *op. cit.*, pp. 156-159.

[70]National Civic Service League. *Scope of Civil Service Laws.* Washington, D.C., 1969, p. 80.

[71]Clyde Snyder. *Local Government in Rural America.* New York: Appleton-Century-Crofts Inc., 1957, pp. 327-328.

[72]"Constables must attend the courts of justices of the peace within their precincts whenever required to do so, and they must execute, serve, and return all processes and notices directed or delivered to them by a justice of the peace, or by any other competent authority of the county in which they serve." Duncombe, Herbert S. & Katherine D. Pell. *Handbook for County Officials in Idaho.* Bureau of Public Affairs Research: University of Idaho, 1966, p. 77.

[73]Bruce Smith. *Rural Crime Control.* New York: Columbia University, 1933, pp. 84-92.

[74]Missouri and Virginia abolished the office in the 1940's. Washington allowed local option in the abolition of the office in 1953.

[75]Kathleen A. Loos. "Constables in Pennsylvania: Their Powers and Duties," *Internal Affairs.* Vol. 33, No. 5, (March 1965).

[76]*Ibid.*, p. 11.

[77]Clyde Snyder. *op. cit.*

[78]One state handbook for county officials states the function of the inquest in this manner: "If the coroner decides that an inquest is to be held, six persons who are qualified by law to serve as jurors are summoned. They are sworn in by the coroner to inquire into the cause and circumstance of death.... After inspecting the body and hearing the testimony of the witnesses, the coroner's jury must render its verdict as to who was killed and when, where, and by what means. The coroner's jury must also state its verdict whether the deceased was killed by criminal means, and who appears guilty. If the jury finds that the deceased was killed by another person under circumstances not justifiable by law, or that the death was the result of an act of a person by criminal means, the coroner must issue a warrant of arrest unless the accused is already in custody. The testimony of the witnesses examined before the coroner's jury must be reduced to writing by the coroner or transcribed under his direction. This transcription is filed in the office of the clerk of the district court." See Duncombe, Sydney and Katherine Pell. *Handbook for County Officials in Idaho.* University of Idaho: Bureau of Public Affairs Research, 1966, p. 76.

[79]Kentucky Legislative Research Commission. *op. cit.,* p. 67.

[80]Kentucky Department of Law. "Law Enforcement in Kentucky," *Kentucky Law Journal.* Vol. 52, (1963-64), p. 54.

[81]Bruce Smith. *op. cit.,* p. 181.

[82]National Municipal League. *Coroners: A Symposium of Legal Bases and Actual Practices.* New York, 1969.

[83]"Best States for Murder Now Down to Ten," *National Civic Review.* (January, 1970), p. 37.

[84]Bruce Smith. *op. cit.,* p. 198.

[85]Kentucky Department of Law. *op. cit.,* pp. 52-56.

[86]National Conference of Commissioners on Uniform State Laws. *Model Post-Mortem Examinations Act.* Chicago, 1954, p. 8.

[87]Such controls would include giving the grand jury or a specified number of citizens power to call for an inquest and providing that all records of certification of death be a matter of public information.

[88]U.S. Department of Justice, Law Enforcement Assistance Administration & U.S. Bureau of the Census. *Expenditure and Employment Data for the Criminal Justice System.* Washington, 1971, Tables 27, 30.

[89]Kansas City Police Department. "1970 Survey of Municipal Police Departments," 1970.

[90]Raymond L. Bancroft. "Municipal Law Enforcement – 1966," *Nation's Cities,* February 1966, p. 16.

[91]ICMA. *Municipal Year Book – 1967.* Washington: ICMA, p. 442.

[92]Kansas City Police Department. *op. cit.*

[93]John M. Nickerson. *Municipal Police in Maine.* Bureau of Public Administration: University of Maine, 1969, pp. 25-27.

[94]ICMA. *op. cit.,* p. 442. Police turnover rates = total men leaving police force divided by total police force strength.

[95]John M. Nickerson. *op. cit.*, p. 29.

[96]Governor's Commission on Crime and Justice. *A Report.* Atlanta, 1968, pp. 43-47.

[97]Richard Blum, ed. *Police Selection.* Springfield, Illinois: Charles C. Thomas Inc., 1964, pp. 44-70.

[98]ICMA. *op. cit.*, p. 448.

[99]*Ibid.*, p. 447.

[100]See Richard Blum, ed. *op. cit.,* pp. 89-135 for an extensive critique of the utility of psychological testing of police applicants.

[101]ICMA. "Police Recruit Training," *Municipal Year Book – 1968.* Washington, 1969, pp. 339-350.

[102]*Ibid.*, p. 344.

[103]Governor's Commission on Crime and Justice. *op. cit.*, p. 51.

[104]John M. Nickerson. *op. cit.*, p. 201.

[105]Connecticut Planning Committee on Criminal Administration. *op. cit.*, pp. 68-69.

[106]Patrick V. Murphy. "Police-Administered Training in the United States: A Current Survey." 1965. (Speech given at the 1965 Annual Meeting of International Association of Police Professors.)

[107]Council of State Governments. *Suggested State Legislation – 1961.* Chicago, 1960, pp. 89-93.

[108]President's Crime Commission. *Task Force Report: The Police.* Washington, 1967, pp. 219-220.

[109]Karl A. Van Asselt. "Training Local Police Officers: A Field for State Leadership," *State Government.* (Autumn 1967), pp. 241-242.

[110]The President's Crime Commission. *op. cit.*, p. 126.

[111]*Ibid.*

[112]Patrick David Geary. "College-Educated Cops – Three Years Later," *The Police Chief*, (August 1970), p. 61.

[113]The President's Crime Commission, *op. cit.*, p. 127.

[114]*The Police Chief*, (August 1970), p. 68.

[115]William E. Caldwell. "L.E.E.P. – Its Development and Potential," *The Police Chief.* (August, 1970), p. 30.

[116]C.A. Pantaleoni, "Law Enforcement Academia: Crossroad for Concern," *The Police Chief*, (August, 1970), p. 47.

[117]Office of Juvenile Delinquency and Youth Development, *Education and Training for Criminal Justice: A Directory of Programs in Universities and Agencies*, Washington, pp. 57-64.

[118]*The Police Chief*, (August, 1969), p. 52.

[119]International City Management Association, "Police Educational Incentive Pay Plans," *Management Information Service*, (May 1970), p. 7.

[120]Frank Day, "State Police and Highway Patrols" *The Book of the States 1964-1965.* Chicago: Council of State Governments, 1964, p. 462.

[121]International Association of Chiefs of Police. *Comparative Data Report - 1970.* Washington, 1970.

[122]"Law Enforcement in Kentucky," *op. cit.*, p. 133.

[123]The New Hampshire criminal justice plan states that its state police agency may not act within the limits of a city or town over 3,000 population except when in ' fresh pursuit" of an offender or unless requested to act by local authorities or the governor.

[124]*"Law Enforcement in Kentucky," op cit.*, p. 133.

[125]*Ibid.*, p. 132.

[126]*Ibid.*, p. 140; "State Services and Assistance to Local Police Departments," *New Jersey Municipalities*, February 1968, p. 9.

[127]U.S. Department of Justice. *Crime Laboratories – Three Study Reports.* Washington: Office of Law Enforcement Assistance, 1968.

[128]Utah Law Enforcement Planning Agency, *A New Plan for Criminal Justice – 1970.* Salt Lake City, 1970, p. 7.

[129]President's Crime Commission, *Task Force Report: The Police.* Washington, 1967, p. 87; The LETS system is a teletype network linking various state and local police agencies with computerized records centers in many cases. The system is operative throughout the country.

[130]Alabama, Colorado, Georgia, Idaho, Illinois, Oklahoma, South Carolina, Tennessee, Utah, and Wyoming, to name a few states, do not vest all police services in a single agency.

[131]John P. Coleman, "Statewide Police-Fire Pension Fund Created," *Ohio Cities and Villages.* (February 1966), pp. 5-8.; University of Colorado Graduate School of Business Administration. *A Comprehensive Study of Policemen's and Firemen's Pensions Funds in the State of Colorado.* Boulder, 1967.

[132]University of Colorado Graduate School of Business Administration. *op. cit.*, p. 196.

[133]*Ibid.*, p. 207.

[134]John P. Coleman. *op. cit.*, p. 6.

[135]*Ibid.*, p. 8.

[136]Tax Foundation Inc. *State and Local Employee Pension Systems.* New York, 1969, p. 11.

[137]National Commission on the Causes and Prevention of Violence. *Law and Order Reconsidered.* Washington, 1969, p. 479.

[138]Walter V. Schaefer. *The Suspect and Society.* Evanston, Illinois: Northwestern University Press, 1967, p. 5.

[139]Edwin S. Newman. *Police, the Law, and Personal Freedom.* Dobbs Ferry: Oceana Publications, 1964.

[140]President's Crime Commission. *op. cit.*, pp. 38-40 [gives text of New York's "stop and frisk" legislation.]

[141]Clarence D. Rogers Jr. "Stop and Frisk," *Ohio Cities and Villages.* June 1969, p. 8.

[142]Edwin S. Newman. *op. cit.*, pp. 24-34.

[143]President's Commission on the Causes and Prevention of Violence. *op. cit.*, p. 373.

[144]Edwin S. Newman. *op. cit.*, p. 28.

[145]*Ibid.*

[146]*Ibid.*, p. 30.

[147]*Ibid.*

[148]*Ibid.*, p. 32.

[149]*Ibid.*, p. 44.

[150]National Commission on the Causes and Prevention of Violence. *op. cit.*, p. 367.

[151]Wayland D. Pilcher. "Police Abuse of Authority: Judicial or Administrative Solution." *Nebraska Municipal Review*, January 1970, p. 35.

[152]National Commission on the Causes and Prevention of Violence. *op. cit.*, p. 488.

[153]Walter V. Schaefer. *op. cit.*, p. 64.

[154]*Ibid.*, p. 18.

[155]*Ibid.*, pp. 31-81.

[156]National Commission on the Causes and Prevention of Violence. *op. cit.*, p. 474.

[157]Donald M. McIntyre. (ed.). *Law Enforcement in the Metropolis.* Chicago: American Bar Foundation, 1967, p. 61.

[158]President's Crime Commission. *op. cit.*, p. 27.

[159]*Ibid.*, p. 373.

[160]James A. Cobey. "The New California Governmental Tort Liability Statutes," *Harvard Journal of Legislation.* Vol. 1., No. 1., (January 1964), p. 21.

[161]James Murphy. *Is the Municipality Liable for Insufficiently Trained Police?* Bureau of Public Administration: University of Maine at Orono, 1968, p. 6.

[162]*Ibid.*

[163]See International City Management Association. *The Municipal Year Book-1967.* Washington, 1967, p. 161.

[164]The President's Crime Commission, *op. cit.*, pp. 140-141.

[165]Unpublished data from the National Civil Service League.

[166]National Civil Service League. *The Development of the Civil Service System.* Washington, 1969, p. 26.

[167]House Committee on Veterans' Affairs. *State Veterans' Laws.* Washington, 1969.

[168]See President's Crime Commission. *Task Force Report: Organized Crime.* Washington, 1967, p. 11.

[169]Law Enforcement Assistance Administration. *1st Annual Report.* Washington, 1969, p. 17.

[170]Irving Beck. "The New England State Police Staff College" *State Government.* XL, No. 3, (Summer 1967), pp. 176-181.

[171]The Council of State Governments. *The Handbook of Interstate Crime Control.* Chicago, 1966, p. vii.

[172]Council of State Governments. *Book of the States 1970-1971.* pp. 103-108.

[173]President's Crime Commission. *Task Force Report: The Police.* Washington, 1967, p. 95.

[174]"Metropolitan Washington COG Urges Police Aid Pacts," *National Civic Review.* LVII, No. 9, p. 425.

[175]Frederick L. Zimmerman and Mitchell Wendell, *The Interstate Compact Since 1925.* Chicago: Council of State Governments, 1951, p. 42.

[176]Frederick L. Zimmerman. "A Working Agreement," *National Civic Review,* LVIII, No. 5 (May 1969), pp. 205-232.

[177]Frederick L. Zimmerman. "Intergovernmental Commissions: The Interstate-Federal Approach," *State Government.* XLII, No. 2., (Spring 1969), pp. 120-130.

[178]4 U.S.C.A. 112.

[179]Frederick L. Zimmerman, *op. cit.,* pp. 124-129.

[180]In contrast there are a number of regional corrections compacts which have as their aim the provision of specialized services among the member states.

[181]The New England State Police Compact apportions costs in three ways: (a) one-third equal apportionment among the member states, (b) one-third apportionment on the basis of crime incidence, and (c) one-third apportionment on the basis of population.

[182]Courts Task Force, President's Crime Commission, *The Courts,* p. 1.

[183]Courts Task Force, President's Crime Commission, *op. cit.,* p. 29.

[184]See various studies cited in Courts Task Force, op. cit. Also see U.S. Congress, Senate, Committee on the Judiciary, *Deficiencies in Judicial Administration,* Hearings before the Subcommittee on Improvements in Judicial Machinery, April, June, July 1967, especially pp. 272-359; Michigan Legal Studies, *Survey of Metropolitan Courts, Final Report,* (Ann Arbor: University of Michigan Press, 1962); William W. Litke, "The Modernization of the Minor Courts," *Judicature,* Vol. 50, No. 2, August-September 1966; American Judicature Society, *An Assessment of the Courts of Limited Jurisdiction,* Report No. 23, (September 1968); Judicial Research Foundation, Inc., *Struggle for Equal Justice,* (Washington, D.C., 1969); Allen Levinthal, "Minor Courts–Major Problems" *Judicature,* Volume 48, No. 7, (February 1965); Harvey Uhlenhopp, "Some Plain Talk About Courts of Special and Limited Jurisdiction," *Judicature,* Volume 49, No. 9 (April 1966).

[185]William M. Trumbull, "The State Court System," *The Annals,* March 1960, pp. 138-139.

[186]Corrections Task Force, President's Crime Commission, *Report,* p. 158.

[187]Maxine Boord Virtue, *Survey of Metropolitan Courts,* Final Report (Ann Arbor: University of Michigan Press, 1962), p. 136.

[188]Courts Task Force. *op. cit.,* p. 82.

[189]Courts Task Force, *op. cit.,* p. 80. ". . .mention is made in almost every statistical report made by statewide court administrators that the numbers of criminal cases are sharply increasing and may cause backlog problems." Fannie J. Klein and Allen Harris, "Judicial Administration," *1965 Annual Survey of American Law,* New York University School of Law.

[190]For yearly appraisal of the problems of delay and efforts to overcome them, see *Annual Survey of American Law,* "Judicial Administration," published by New York University School of Law. Also see Harry Kalven, Jr., "A General Delay," in U.S. Congress, Senate, *Deficiencies in Judicial Administration,* Hearing before the Subcommittee on Improvements in Judicial Machinery, 90th Cong. 1st Sess., pp. 371-374; and Maurice Rosenberg, "Court Congestion: Status, Causes, and Proposed Remedies," *Ibid.,* pp. 374-391.

[191]See the Institute of Judicial Administration, *The Justice of the Peace Today* (New York, August 1965), with its extensive bibliography on the subject; Kenneth E. Vanlandingham, "The Decline of the Justice of the Peace," *Kansas Law Review,* Vol. 12 (1964), pp. 389-403; American Judicature Society, *An Assessment of the Courts of Limited Jurisdiction,* Report No. 23 (Chicago: September 1968); Courts Task Force, President's Crime Commission, *op. cit.,* pp. 34-35; "JPs Under Fire," *Wall Street Journal,* December 15, 1969.

[192]T. L. Howard, "The Justice of the Peace System in Tennessee," *Tennessee Law Review,* Vol. 13 (1934), p. 19.

[193]Maryland abolished its system of justices of the peace and trial magistrates with the favorable voter action on November 3, 1970 on a constitutional amendment establishing a uniform District Court set-up.

[194]Nebraska voters put the JP on a statutory basis in a favorable referendum action on November 3, 1970.

[195]"It is notable that in most large metropolitan cities, however, the problem of the unreconstructed one-man lay justice court has not persisted. In that area, court reform has been at least nominally successful: in general, the municipal court as such has superseded the original justice courts, within the mother city itself." Maxine Boord Virtue, *op. cit.,* pp. 156-157.

[196]Institute of Judicial Administration, *op. cit.,* p. 2.

[197]Kenneth E. Vanlandingham, *op. cit.,* pp. 390-395.

[198]State of Vermont, Governor's Commission on Crime Control and Prevention, *Application for Planning Grant under the Omnibus Crime Control and Safe Streets Act of 1968* (1968) (mimeo.), p. 15.

[199]Governor's Committee on Crime Delinquency and Correction, *West Virginia Comprehensive Criminal Justice Plan for FY 1969,* p. B-12.

[200]The State Judicial System Study Committee, *The Courts in New Mexico,* (Santa Fe, N. M., January 1961), p. 2.

[201]*Ibid.,* pp. 7-8.

[202]Institute of Judicial Administration, *op. cit.*

[203]Application of Borchert, 57 Wash. 719, 731, 359 P. 2d 789, 799 (1961).

[204]*Tumey* v. *Ohio,* 273 U.S. 510 (1927).

[205]See Vanlandingham, *op. cit.,* p. 393.

[206]"Principles and Outlines of a Modern Unified Court System," 23 *Journal American Judicature Society,* 226, (1940).

[207]Roscoe Pound, *op. cit.*

[208]Glenn R. Winters, *The National Movement to Improve the Administration of Justice,* The American Judicature Society, 1964, p. 12.

[209]National Municipal League, *Model State Constitution,* New York, 1963.

[210]*Ibid.,* p. 78.

[211]Glenn B. Winters, "The Case for a Two-Level State Court System," 50 *Judicature* 185 (February, 1967). 4-148.

[212]Courts Task Force, *op. cit.,* p. 33.

[213]Arizona's Modern Courts Amendment of 1960 established an integrated judicial department composed of five levels

of courts. It retained the justice courts and permitted the legislature to establish other inferior courts. It could be argued that this number of layers of courts is not consistent with the simplicity of a unified system as usually understood. It is significant, however, that the supreme court was given complete administrative control of the new judicial department and established rules of procedure. State of Arizona, *First Year Plan for Law Enforcement* (April 30, 1969), pp. 27-28.

[214]H. Stanley Lowe, "Court Modernization in America and the Citizens' Rome," Address before the Second Minnesota Citizens' *Conference on Courts,* Bloomington, Minnesota, May 1, 1970.

[215]Glenn R. Winters, "Structure and Administrators of a Unified Court System," address before the Conference of Chief Justices, St. Louis, Mo., August 6, 1970.

[216]In November 1970 Idaho voters rejected a proposed new constitution including a judicial article establishing a unified and integrated judicial system administered and supervised by the Supreme Court, but the 1967 reforms still warrant its inclusion here.

[217]Herbert Peterfreund, "The Essentials of Modern Reform in the Litigative Process," *Annals,* Vol. 287 (May 1953), p. 155.

[218]Quoted in Courts Task Force, *op. cit.,* p. 95.

[219]National Municipal League, *op. cit.,* p. 91.

[220]See John H. Romani, "The Courts," in National Municipal League, *Salient Issues of Constitutional Revision* (New York, 1961).

[221]See American Judicature Society, *Selected Chronology and Bibliography of Court Organization Reform,* Report No. 12, July 1967 and supplements, and article on "Judicial Administration," *Annual Survey of American Law,* New York University School of Law.

[222]See "Judicial Administration," *Annual Survey of American Law, op. cit.* for years 1963-1969; and yearly article in *State Government,* the quarterly journal of the Council of State Governments.

[223]Harvey Uhlenhopp, "Some Plain Talk About Courts of Special and Limited Jurisdiction," *Judicature,* Vol. 49 (April 1966), p. 212.

[224]The Pennsylvania Constitutional Convention 1967-1968, *The Judiciary,* Reference Manual No. 5, p. 54.

[225]Uhlenhopp, *op. cit.* With particular reference to the reactions of JPs to proposed abolition of their offices, see Forrest Talbott, *Intergovernmental Relations and the Courts* (Minneapolis, Minn.: University of Minnesota Press, 1950), pp. 140-141.

[226]Uhlenhopp, *op. cit.*

[227]The Pennsylvania Constitutional Convention 1967-1968, *op. cit.,* p. 54.

[228]Talbott, *op. cit.,* pp. 140-141.

[229]William H. Burnett, "Toward the Ideal Court," address delivered before Citizens' Conference on Arizona Courts, Scottsdale, Arizona, November 17, 1967, printed in *Arizona Weekly Gazette.*

[230]Court Study Commission, *Report to the 1963 South Dakota Legislature,* (January 8, 1963), p. 25.

[231]Charles W. Joiner, *The Michigan Constitution and the Judiciary,* Michigan Constitutional Convention Studies, September 1961, p. 11.

[232]Burnett, *op. cit.,* p. 125.

[233]Edward B. McConnell, *A Blueprint for the Development of the New Jersey Judicial System* (Chicago: American Judicature Society, 1969), p. 6.

[234]Harry I. Subin, "Court-Related Action Grant Programs in 1969 State Law Enforcement Plans," U.S. Department of Justice, Law Enforcement Assistance Administration, August 15, 1969, p. 7.

[235]Glenn R. Winters and Robert E. Allard, "Judicial Selection and Tenure in the United States," *The Courts, The Public and the Law Explosion,* ed. Harry W. Jones, (New York: The American Assembly, 1965), pp. 158-159.

[236]Vanderbilt, A. T., *Judges and Jurors: Their Functions, Qualifications and Selection,* Boston, Boston University Press, 1958, p. 45.

[237]Richard A. Watson, Randal G. Downing, and Frederick C. Spiegel, "Bar Politics, Judicial Selection and the Representation of Social Interests," *The American Political Science Review,* Vol. 61, No. 1 (March 1967), p. 70. They acknowledged that more needs to be done to provide legal services sources for the lower-income groups, but saw considerable promise in current developments in Federal court decisions, the OEO legal services program, and changes in modes of legal practice.

[238]Edward Costikyan, *Behind Closed Doors* (New York: Harcourt, Brace, and World, 1966), p. 197.

[239]Richard A. Watson, Randal G. Downing, *The Politics of the Bench and the Bar* (New York: John Wiley & Sons, Inc., 1969), pp. 343-348.

[240]The plan, however, has been adopted in Kansas City, St. Louis, and St. Louis County.

[241]Glenn R. Winters, "The Merit Plan for Judicial Selection and Tenure–Its Historical Development," 15 *Duquesnue Law Review* 176 (Fall, 1968).

[242]See section on "Judicial Administration," *Annual Survey of American Law,* New York University School of Law, for years 1963 through 1969.

[243]See Courts Task Force, *op. cit.,* p. 93.

[244]Samuel I. Rosenman, "A Better Way to Select Judges," *Judicature,* American Judicature Society, Vol. 48, No. 3C October 1964).

[245]President's Crime Commission. *The Challenge of Crime in a Free Society,* (Washington: Government Printing Office, 1967), p. 146.

[246]*Ibid.*

[247]*Ibid.,* p. 147.

[248]*Journal,* American Judicature Society, Vol. 49, No. 1 (June-July 1965), p. 18.

[249]The Conference was sponsored by the American Bar Association, the Institute of Judicial Administration, and the American Judicature Society.

[250]Courts Task Force. *op. cit.* pp. 70-71.

[251]See *Annual Survey of American Law,* New York University School of Law, for years 1964 through 1969.

[252]The Judicial Research Foundation, Inc., *Struggle for Equal Justice: A Report on Neglect and Crisis in the Lower Courts.* (Washington, D.C., March 1969), p. 45.

[253]Courts Task Force, *op. cit.,* p. 70.

[254]*Ibid.,* p. 71.

[255]For more on the California commission, see Louis H. Burke, "The California Story," *Judicature,* American Judicature Society, Vol. 48 (February 1965), p. 167 ff.

[256]President's Crime Commission. *op. cit.,* p. 147.

[257]*Journal,* American Judicature Society, Vol. 49, No. 1 (June-July 1965), p. 18.

[258]Glenn R. Winters and Robert E. Allard, "Judicial Selection and Tenure in the United States," in the American Assembly, *The Courts, the Public, and the Law Explosion,* ed. Harry W. Jones (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1965) p.

170.

[259]University of Hawaii, Legislative Reference Bureau, *Hawaii Constitutional Convention Studies, Article V: The Judiciary* (July 1968), pp. 27-28.

[260]The American Judicature Society, *Judicial Salaries and Retirement Plans in the United States, 1968 Survey,* (Chicago: 1969) p. v.

[261]*Ibid.*, p. 3.

[262]Institute of Judicial Administration, *Survey of the Judicial System of Maryland,* (New York, N.Y., 1967), p. 63.

[263]Institute for Judicial Administration, *State and Local Financing of the Courts* (Tentative Report) (New York: 1969), p. 30.

[264]Section 20 (b), Article 6, as amended 1961.

[265]Laws of New York, 1962, Chapter 699.

[266]State of New York, *Report of the Administrative Board of the Judicial Conference of the State of New York, for Judicial Year July 1, 1967 through June 30, 1968,* (Legislative Document (1969) No. 90), p. 17-18.

[267]American Judicature Society, *op. cit.*

[268]*Ibid.*, Appendix, p. 86.

[269]President's Crime Commission, *op. cit.*, p. 147.

[270]See The American Judicature Society, *op. cit.*, p. 86.

[271]The Institute of Judicial Administration, *op. cit.*, p. 24.

[272]Idaho Legislative Council, *Court Modernization in Idaho,* Research Publication Number 10 (November 1966), p. 91.

[273]Fannie J. Klein, "Judicial Administration–1967," reprinted from *1967 Annual Survey of American Law* (New York: The Institute of Judicial Administration, 1967) p. 696.

[274]*Ibid.*, p. 696.

[275]Edward B. McConnell, *A Blueprint for the Development of the New Jersey Judicial System,* (Chicago: American Judicature Society, 1969), p. 21.

[276]Legislative Commission of the Legislative Counsel Bureau, *Nevada's Court Structure,* Bulletin No. 74 (December 1968), p. 37.

[277]State of Colorado, Governor's Council on Crime Control, *1970 State Comprehensive Plan,* Vol. I, p. 133.

[278]See California Council on Intergovernmental Relations, *Allocation of Public Service Responsibilities in California,* Part I, June 1970, pp. 12-13.

[279]Fannie J. Klein and Allen Harris, "Judicial Administration–1966," reprinted from *1966 Annual Survey of American Law,* The Institute of Judicial Administration (New York, 1967), p. 750.

[280]"State Judicial Systems," *The Book of the States, 1968-69* (Chicago, Ill.: The Council of State Governments, 1968), p. 106.

[281]National Municipal League, *op. cit.*, p. 90.

[282]*Ibid.*

[283]The following account is based largely on Governor's Local Affairs Study Commission, *Local Government in Colorado* (Denver, Colo., 1966), pp. 91-95; and Office of the State Court Administrator, "Financing State Courts," (Denver, Col., 1968) (processed).

[284]384 P2d 738 (1963)

[285]Governor's Local Affairs Study Commission, *op. cit.*, p. 93.

[286]*Ibid.*, p. 93-94.

[287]*Ibid.*, p. 94.

[288]Office of the State Court Administrator, "Financing State Courts" (November, 1968) (processed); and "Judicial System Finance and Administration," (October, 1966) (processed).

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Chapter 5.

THE PUBLIC'S ROLE IN LAW ENFORCEMENT

The emergence of the "law and order" issue as a focal point of national concern beginning in the mid 1960's reflects the growing politicization of the crime issue. Linked with this is the popular belief that law enforcement is primarily the responsibility of elected public officials as well as policemen, judges, prosecutors, and corrections officers. Successful law enforcement obviously depends heavily upon the actions of these professionals and on the support they receive from political leaders. Yet, centering attention on the efforts of only these groups obscures and downgrades the role of the ordinary citizen in crime prevention and control.

The purpose of this chapter is to explore the ways in which the public can participate in crime reduction. This involves the various types of action that can be taken by individuals or citizens' groups on their own. Moreover, the discussion includes steps that cities and counties can take to stimulate greater citizen involvement in anti-crime efforts and develop better relationships between law enforcement agencies and the communities they serve.

THE ROLES OF CITIZENS IN LAW ENFORCEMENT

In order to be effective, law enforcement must be a joint effort. In other words, the entry and movement of an offender through the criminal justice process, his return to society, and his inclination to recidivate are dependent on not only law enforcement agencies and professionals, but also on the general public. The capacity of police to detect and apprehend suspected offenders, for example, is conditioned by the extent citizens cooperate by reporting violations of the law and suspicious incidents or persons. The prosecution of an alleged offender depends on the willingness of persons to provide information, to testify in court, and to serve on jury duty. And the rehabilitation of offenders and their successful re-entry into society are closely linked to the community's acceptance of ex-convicts.

Clearly, then, "law enforcement is not a game of cops and robbers in which the citizens play the trees."[1] Instead, citizens have a basic responsibility to assist law enforcement agencies in preventing as well as controlling crime. Moreover, the public's role here extends well beyond facilitating crime reduction through informing, testifying, and other cooperative approaches. Citizens can and should play an action role in reforming and revitalizing the components of our criminal justice system.

Organizing Citizens for Crime Prevention

Citizens often serve on the policy-making boards of voluntary community organizations poviding services designed to prevent crime and delinquency. These include: boys clubs, family and child welfare, mental health, education, prisoner aid, labor, and religious groups; and national organizations such as the National Council on Crime and Delinquency (NCCD). Not to be overlooked, of course, is the financial support these groups receive from the public. It is estimated that more than 100,000 non-governmental agencies currently exist, each of which, to varying degrees, is involved in preventing crime.[2]

Another type of organized public involvement in crime reduction is service on the policy boards of State and regional law enforcement planning agencies described in Chapter 4. Public members of such boards sit as co-equals with State and local police, court, corrections, and prosecution professionals and with elected public officials. They participate in decision-making in connection with the contents of comprehensive law enforcement plans and action projects to help prevent crime. ACIR staff surveys indicate that as of the end of 1969, 17 percent of the members of the 50 SPA supervisory boards were public representatives.[3] With respect to the regional policy boards, of 291 substate regions listed in the 1970 comprehensive plans of 31 States, 27 percent of the membership were citizens.

A third approach is through membership on criminal justice committees or task forces of local chambers of commerce, leagues of women voters, urban coalitions, and other "good government" organizations. These groups are usually funded by the business community, private foundations, or individual contributions. They

conduct a wide range of crime prevention activities, including fact-finding, information dissemination, promotion of improved street lighting, operation of programs such as court watching and corrections volunteers, and development of improved legislation. Often, public officials serve on these bodies in an advisory capacity.[4] A problem identification checklist developed by the U.S. Chamber of Commerce for use by citizens' committees and task forces in determining law enforcement and criminal justice administration needs and problems appears in Appendix A-14.

Types of Citizen Action

In several cities in the nation, citizen-sponsored crime reduction programs have been operating successfully. The types of agencies vary widely in accordance with such factors as the personnel and financial resources of the group, the severity of the crime problem, and the responsiveness of law enforcement agencies and public officials. Listed below are a number of typical citizen-initiated efforts in the police, courts, and correctional areas.[5]

Police-Related Activities. Some citizens' groups have set up programs to educate citizens concerning the importance of and procedures for reporting information to the police in connection with suspected criminal activity and the ways to better protect themselves from crime. Many are tied in with the establishment of a special fast-response police telephone number. These programs –called "crime check," "crime alert," "crime stop," or the like–rely heavily on the public media, billboards, window decals, bumper stickers, and bulletin boards to convey their message.

Closely related to crime check programs are citizen preventive patrols. One such effort is community radio watch in which business firms equip their vehicles with two-way radios to be used to report crimes or other emergencies to their dispatchers, who in turn report the incident to the police. Operators of these vehicles do not make arrests or perform other police responsibilities. Another approach is civilian police reserve units which, in cooperation with regular police officers, patrol recreation areas, assist in handling crowds during special events, direct traffic, and help in search and rescue missions.[6] Youth patrols also have been formed to serve as a watch-dog for crime in neighborhood areas.

Several cities have provided better lighting of streets and buildings at the urging of citizen groups. Often these groups assist in identifying suitable locations or in generating support for increased funds for this purpose. The U.S. Chamber of Commerce reports that improved illumination has resulted in a 60 to 90 percent decrease in certain categories of crime.

Many citizens' organizations have prepared and distributed booklets dealing with the prevention of shoplifting and some have set up chain-call warning systems for merchants to use in alerting one another about shoplifters and bad check passers. Another common information service is the dissemination of facts regarding drug abuse and addiction, particularly in the schools.

Finally, some citizens' groups have assisted in police recruitment, such as setting up police cadet and minority officer programs. A few also have provided financial and technical support for in-service training and educational programs for policemen or have worked with colleges and universities to set up such programs. Citizen organizations often campaign on behalf of pay raises for police.

Court-Related Activities. Many citizens' groups conduct court watcher efforts, where individuals sit in courts daily and identify weaknesses in the judicial process. Data sheets are often used to record such information as the names of the judge, defendant, and prosecuting and defense attorneys, the race and age of the offender, and the charge, plea, finding, and sentence. The U.S. Chamber of Commerce study found that court watching in Indianapolis resulted in the following improvements "... nonappearance of arresting officers is less frequent; most judges appear in court on time; fewer pro tem judges; fewer delays; absence of police witnesses occurs less often; prosecutors prepare cases more thoroughly."[7]

Some citizens' groups have provided financial support for court reorganization studies and analyses of case-scheduling problems. Another common activity involves improvement of the administration of jury service.

Several groups and individual citizens provide volunteer services to the courts. It has been estimated that in 1969 volunteers contributed three million hours of service to the 1,000 courts where they were at work.[8] Between 15 and 25 percent of the juvenile courts make use of this manpower source. The availability of trained volunteers is particularly helpful in the probation area and the types of tasks they perform range from record-keeping to actual casework.

Corrections-Related Activities. Several citizens' organizations have sponsored volunteer efforts in the corrections field, including counseling inmates, involvement in work-release programs, aiding with educational and vocational training, and performing clerical tasks. Other types of citizen action include support for reform legislation, promotion of detention and foster homes, financial aid for academic and vocational courses for institutional personnel, advice to corrections officials concerning the

relevance of prison education and training programs, and provision of job opportunities for released offenders. For example, California's 70 Management-Labor Advisory Committees, which perform most of the above functions, consist of over 1,000 citizens.[9]

In some States, citizens still serve on the boards of directors of State correctional institutions and local jails. In recent years, however, the administrative responsibilities of these boards have been assumed by State correctional agencies.[10]

Finally, some national organizations have attempted to mobilize citizen support for new legislation, increased appropriations, better administration, higher personnel standards, and other correctional improvements. NCCD, for example, has set up Citizen Councils in 21 States composed of representatives from business, labor, news media, religion, agriculture, civic associations, and the general public to spearhead this movement. It also has created Citizen Action Committees in 130 cities to undertake special crime and delinquency prevention projects.[11]

THE RESPONSIBILITIES OF STATE AND LOCAL GOVERNMENTS

The willingness of citizens to become involved in crime prevention and control efforts, as well as the extent and effectiveness of their participation, depend a great deal on the status of law enforcement and criminal justice agencies in the community's eyes. If they are viewed as being corrupt, as a means of minority suppression, or as tools of a political machine, then many citizens will not become involved. Yet, the fact that many times such views are based on hearsay rather than on fact underscores the information gap that often exists between law enforcement agencies and the communities they serve. The task of developing closer ties between these parties should be a top priority item if public participation in this area is to be meaningful. The alternative may be continued distrust, alienation, and apathy on the part of key sectors of the citizenry.

Police-Community Relations

Friction between police and segments of the public hinders the citizen cooperation and involvement so necessary for both curbing crime before it begins and apprehending those suspected of committing offenses. Most law enforcement officials readily concede they cannot do the job alone. Not only is crime prevention rendered ineffective by the absence of cooperative citizen action, but bad community feeling toward the police actually stimulates crime for a number of reasons:[12]

- Violations of the law and suspicious incidents or persons are not reported;
- Witnesses refuse to testify or provide information;
- Actions against police occur which, in turn, may result in an improper police response that sets off widespread rioting;
- Fearing citizen charges against them, police may become reluctant to enforce the law in hostile neighborhoods or against certain individuals.

These factors underscore the conclusion of the President's Crime Commission that, "No lasting improvement in law enforcement is likely in this country unless police-community relations are substantially improved."[13]

Basic Problems. The police-community relations problem is not an entirely new phenomenon in this country. Historically, many Americans have been distrustful of the police.[14] Prior to the 1840's, there was no police organization as we know it today. And the establishment of organized forces in larger cities was not an easy matter. The typical police officer was paid very little and usually was not highly respected.

The fairly low status of the police in the community in the mid-nineteenth century is highlighted by their reaction to a suggestion made in 1865 that police wear uniforms. They objected to the idea for fear that if they could be recognized they might become objects of attack.[15]

Moreover, in 19th century New England, members of the force were often viewed as agents of an unfamiliar governmental system and of ascendant economic and Yankee interests. At the same time, however, the heavy reliance on the recently arrived in these forces did much to bridge attitudinal, ethnic, and other barriers in municipalities caught in the great tide of immigration beginning in the 1840's.

Much has changed during the course of the last 130 years—new immigrants replacing old, civil service reformers battling spoilism, professionalism contending with amateurism, declining political machines and ward organizations, and growing reliance on personality and mass communications techniques. In light of these developments, police departments face new pressures and problems, as well as some old ones that in many respects resemble those they confronted at their inception: distrust on the part of some of the municipal citizenry, lack of widespread consensus on social and institutional goals, and assumption by the police of roles outside the strictly law enforcement area.

It should come as no surprise, then, to learn that attitudes regarding police vary from jurisdiction to jurisdiction and within jurisdictions. Opinion studies reveal

that, overall, a majority of citizens have a high regard for police work. Yet, a survey conducted by Louis Harris Associates in 1969 found that nearly one-fifth of the white and four-fifths of the black respondents believed there were discriminatory patterns in police-minority group relations.[16] Some lower income whites, some "liberals," and some of the young also have similar complaints against the police. Some studies, for example, indicate that adolescents from both lower and middle class families tend to be extremely hostile toward police, possibly in part because of the belief that police are preservers of the status quo.[17] Moreover, the recent surge in demands for the establishment of civilian review boards to handle citizens' complaints against the police or for the creation of citizens' crime commissions to investigate the operation of police departments also highlights the mutual distrust existing between police and some sectors of the community.

A Harris poll published in the March 8, 1971 edition of *Newsweek* supports some of the earlier survey findings. Almost two-thirds of the white respondents indicated skepticism about danger of police brutality, but over half of the blacks believed that such allegations are more times than not likely to be true. Whites, unlike blacks, tend to accept the notion of a conspiracy to kill policemen. Seventy-two percent of the whites approved preventive detention, but no more than 44% of the blacks concurred.

Community opposition to the police, however, is only one side of the coin. The police also hold attitudes toward the community which adversely affect their relationship with citizens. The roots of these feelings were revealed by William V. Turner in his book, *The Police Establishment:*

> I know of no period in recent history when the police has been the subject of so many unjustified charges of brutality, harrassment, and ineptness.
>
> It almost seems that the better we do our job of enforcing the law the more we are attacked. The more professional we become and the more effective we are, the more we impinge upon the misbehavior of society.[18]

In a 1969 opinion poll, the International Association of Chiefs of Police (IACP) probed the attitudes of policemen in 286 State and local departments across the country.[19]

Eighty-three percent of the experienced policemen felt that many people looked upon a policeman as an impersonal cog in the governmental machinery rather than as a fellow human being. Only half of the officers indicated that public support for the police was improving, while approximately three-fifths of the administrators stated it was getting better. At the same time, nearly three-fourths of the experienced police officers polled thought that they were not receiving enough support from the political power structure in their city.

IACP's survey also showed that a substantial majority of policemen usually are in agreement on questions concerning civil disobedience, civilian review boards, and community relations efforts. With respect to the first issue, nine out of ten respondents disagreed with the proposition that laws should be deliberately disobeyed if they were considered unjust. A comparable proportion indicated that persons who violate an "unjust" law to attract attention to their cause should be handled as any other violator; 93 percent of the white officers concurred here, while 83 percent of the black officers agreed.

Turning to the public role in law enforcement generally and to civilian review boards in particular, almost two-thirds of the police officers agreed with the following statement: "Since ours is a government 'of the people, by the people, and for the people,' the public has a right to pass judgment on the way the police are doing their jobs." Sixty-nine percent of the white respondents and 74 percent of the blacks concurred. Nevertheless, 62 percent of the policemen still opposed the idea of civilian review boards.

In the area of community relations, 69 percent of the officers felt that programs of this type were important ways for their department to open lines of communication, build respect, and gain citizen cooperation. Sixty-eight percent of the whites and 82 percent of the blacks adhered to this favorable position.

Nature, Extent, and Objectives. The major goal of a police-community relations program is to foster better relationships between the policeman and the public, especially residents of high crime neighborhoods. The police and citizen representatives together should develop programs for involving all segments of the community in meaningful activity that will produce as a byproduct mutual trust, greater confidence, and better understanding. Possible approaches include junior police or safe driving clubs, neighborhood "rap" sessions, and similar types of programs geared to involving more citizens in a crime prevention and control partnership.

St. Louis, Missouri, set up one of the first police-community relations programs in the United States and several other efforts have been modeled after it. The program is organized around a district committee composed of both police officers and citizens representatives located in every police district. Each committee has eight subcommittees, which are assigned certain continuing functions as well as special projects involving specific local problems. Responsibilities of these committees include juvenile delinquency, public relations, automobile

theft, traffic, sanitation, and voluntary citizen action. They do not formulate policy, but instead polices are decided by an independent body of private citizens. Thus, although the police department provides the manpower, the committee is not its tool. Most of the major segments of the community are involved in the action-oriented programs sponsored by the committee to not only improve police-community relations but also to upgrade certain neighborhood areas.[20]

Prior to the 1960's, little effort was made to formulate programs to achieve better communication between police and the community. But the last decade witnessed the growth of a "new breed" of law breakers who were not the traditional "criminal types." These persons were protesting the social ills of our society and they had to be dealt with somewhat differently, such as civil disorders strike forces. After a number of failures, several cities followed the lead of St. Louis and established a division in their police department to handle relationships with the community. At the same time, many changed their basic departmental orientation from the control to the prevention of crime. As part of this new approach, these departments developed innovative police training and education programs, broadened their recruitment base, formulated standards and procedures, improved testing and screening of applicants, and tightened internal and external control over individual officers.

The following case studies illustrate some of the types of programs that have been attempted recently. Their effectiveness in terms of building a close police-citizen relationship, however, has varied considerably.[21]

- Chicago's police community relations program found major problems in the areas of police training and communication with minorities, youth, and non-English speaking residents of the city. As a result, an intensive effort was launched to retrain many officers in new techniques for handling riots and methods for preventing riotous situations. A number of community-wide programs were created to close the communications gap, including "ride in" programs, youth-police workshops, and school visitation.[22]
- In Berkeley, California, policemen meet with residents on a door-to-door basis to increase community support for their department.
- In Pittsburgh, the Commission on Human Relations handles each citizen complaint; due to its excellent relationship with the police department, it has been effective in acting on the citizen's behalf.
- In Grand Rapids, Michigan, the police department initiated a sensitivity training program geared toward developing a more workable relationship between citizens and police. Small groups of citizens and policemen meet for 15 day periods to help break down racial barriers, establish greater rapport, and consider reform in police-community relations problem areas.
- In Detroit, a sensitivity training program brings police and citizens together for purposes of mutual understanding. The police department cites this program as a major contributing factor to the absence of major disturbances in the city in recent years.
- In Riverside County, California, policemen are required to know and become known by the citizens in their patrol area. In-service training is conducted informally during off-duty hours at a resident's home or a local church.

Despite recent progress, many cities still have not established police-community relations programs. In a 1967 survey, the International City Management Association (ICMA) found that 20 percent of the responding cities had a police-community relations program. A survey conducted three years later, however, still revealed that only 44 percent of 650 reporting cities had such a program.[23]

As might be expected, police-community relations programs were more frequently found in the larger cities. All but one of the cities over 250,000 population reporting to the 1970 poll, for example, indicated they had such a program. This contrasts with the 22 percent in the 10,000 to 25,000 population group that were making an effort on this front (See Figure 6).

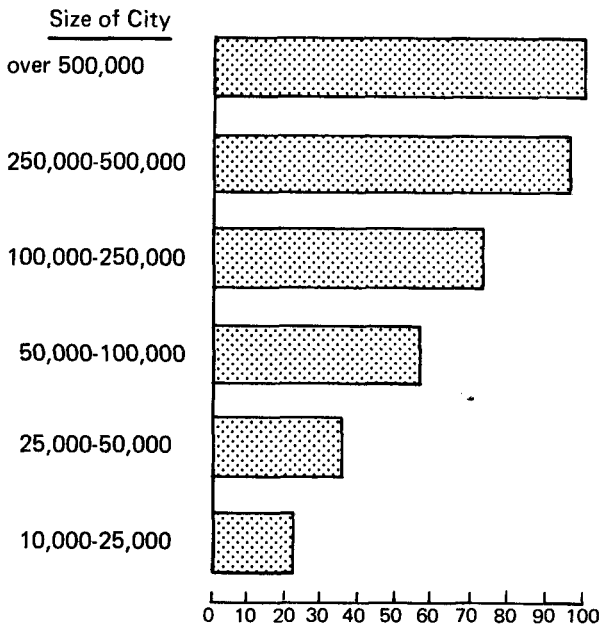
Seventy-one percent of the central cities but only 24 percent of those in the smaller independent categories had a program. More western cities were involved than those in other regions. Northeastern municipalities were least likely to have police-community relations programs.

With respect to police community-relations training, this was provided by 475 of 654 respondents to a 1969 ICMA survey of the nation's police departments. Half of the participating cities with no such training had less than 25,000 population. The findings indicate that the larger cities' "box score" was much better, with 90 percent of the central city policemen receiving community relations training.

The content of police-community relations training varied in different localities, but generally the larger cities had more comprehensive programs. The teaching methods also were more diversified in these municipalities.

Use of Federal Funds. Despite the fairly large number of participating cities, relatively little Federal money has

Figure 6
POLICE DEPARTMENTS HAVING A POLICE-COMMUNITY RELATIONS PROGRAM—1970



Source: International City Management Association, *Recent Trends in Police-Community Relations*, pp. 1, 11.

been used for police-community relations purposes. Only 17 percent of the cities reporting to ICMA's survey received Federal funds to support any of their police-community relations plans or programs.

Moreover, ACIR's report *Making the Safe Streets Act Work: An Intergovernmental Challenge* indicated that a meager $1,518,001, or 5.4 percent of the $27,857,319 allocated as subgrants to State and local jurisdictions by February 28, 1970, was used for community relations purposes.[24]

According to ICMA, larger central cities received the bulk of the Federal funds that have been allotted for police-community relations. Although Western municipalities are most often involved in such programs, only six percent relied on Federal financial support.

Guidelines for Special Units. Typically, cities have set up special units to deal with police-community relations, although this is not necessarily the case in smaller municipalities. Criteria of effectiveness for these community relations units include:

- **Proper Objectives.** Focusing on the actual improvement of relations between police and citizens, not merely presenting a good police image.
- **Proper Scope of Activity.** Providing services to the police as well as to the people with whom it works.
- **Proper Work Load.** Varying the unit's activities in accordance with specific local problems and the unit's capacity to do its job well.
- **Adequate Authority.** Involving the unit in department policy-making and establishing direct communications channels with the chief of police.
- **Adequate Prestige.** Giving the unit relatively high status, as reflected in the size, pay, and rank of its personnel.
- **Adequate Facilities.** Furnishing the unit with adequate office space and equipment, competent secretaries and other office personnel, a systematic filing and reporting system, and sufficient vehicles.
- **Proper Intradepartmental Relationships.** Informing the rest of the department of the unit's operations and accomplishments through regular intradepartmental communications, and encouraging the unit to perform as many services for the rest of the department as possible[25]

Ombudsmen and Community Service Officers

Some authorities have contended that formal "outside" procedures are needed to ensure equity and impartiality in the handling of complaints concerning police activities. They assert that internal procedures for monitoring compliance with departmental policies and for investigating alleged misconduct often fail to convince many citizens, particularly low-income and minority groups, that the police "system" is handling their grievances fairly. Two major proposals that have been advanced are the ombudsman and the community service officer.

The Ombudsman. The Scandinavian Ombudsman concept has been suggested as a model for investigating complaints against law enforcement and criminal justice agencies in this country. In Sweden, Finland, Denmark, and Norway, the Ombudsman, or "citizen's defender" as he is often called, receives written complaints, regardless of whether the complainant first contacted the appropriate administrative agency. He then requests relevant information and an explanation from the agency. If more data are needed, he may ask the police to investigate. The Ombudsman may initiate investigations or hold hearings on his own, even if a complaint has not been filed. He is assisted in performing his responsibilities by a professional staff who are usually lawyers. The Ombudsman is not authorized to order administrative officials to take action, although he may order prosecutions or issue public reprimands or criticisms. He also helps individuals obtain compensation for damages.[26]

To date, the Ombudsman idea has not been well received in the United States. Several State and local governments, as well as the U. S. Congress, have considered this approach. But resistance from the legislative body and bureaucracy, cost considerations, existence of complaint handling machinery, and other political and economic factors have prevented the adoption of the true Scandinavian variety of Ombudsman. Currently, two counties have set up Ombudsman-type systems – King County (Washington) has an Office of Citizens Complaints that investigates complaints, subpoenas witnesses, and makes recommendations; and the Montgomery County (Maryland) School Board Ombudsman who looks into complaints independent of action by school administrators.

Some American cities and counties have established citizen complaint machinery that partially incorporates the Ombudsman concept. The Nassau County (New York) Commissioner of Accounts, the Buffalo Citizens Administrative Service, and the Savannah (Georgia) Community Service Officer, for example, investigate complaints in connection with police as well as other public services. As a result of their efforts, administrative errors have been corrected, interagency communications

channels have been improved, and coordination has been increased.[27]

The Community Service Officer. Some experts have proposed creation of the position of community service officer (CSO) as a means of better sensitizing police departments to ghetto problems, of ensuring the provision of adequate police services in high crime and low income areas, and of increasing the number of minority police personnel. In its task force report on the police, the President's Crime Commission recommended that CSO's be employed by urban police departments. They would be young, minority group persons recruited from neighborhoods like those in which they would be assigned.

The CSO in effect would serve as an apprentice policeman; he would not carry a gun, nor have full law enforcement powers. His prime responsibilities would be to assist precinct line officers in their patrol and investigative work and to improve communication channels between the police department and neighborhood areas. Typical CSO functions would include working with juvenile delinquents, referring citizen complaints to administrative agencies, investigating minor crimes, aiding families with domestic problems, organizing community meetings, handling service calls, and working with police-community relations units.

The President's Crime Commission also suggested that to offset the isolating effects of precinct consolidation, small neighborhood offices be established in deprived communities from which CSO's would operate.[28] It indicated the importance of the CSO's work in terms of police-community understanding:

The very presence of the CSO in the neighborhood would symbolize a closer relationship between the police and the community. . . .They would help to inform the officers with whom they work of the culture and attitudes of the community and, conversely, would help to inform the community of the officer's concerns.[29]

Civilian Review Boards and Citizens' Advisory Committees

Popular demands for greater scrutiny of police affairs have resulted in the establishment of civilian review boards and citizens' advisory committees to police departments. Proponents of these approaches point out that a patent need exists to ensure the equitable and impartial treatment of the individual by law enforcement agencies. Safeguarding individual rights and guaranteeing that suspected offenders will receive a "fair shake," they contend, will generate more citizen respect and confidence in police departments and greater public knowledge of and support for their operations.

Civilian Review Boards. In response to the dissatisfaction voiced by some citizen groups – particularly civil rights organizations – concerning police internal review procedures, a few cities have set up civilian review boards. These include Chicago, Washington, D. C., Philadelphia, Minneapolis, Rochester (New York) and New York City. Boards of this type have been abolished or rendered inoperative in Rochester, Philadelphia, Minneapolis, and New York City.

Although the civilian review boards vary in organization and procedures, they share certain basic features. Their members are non-uniformed employees of the police department, and consequently they are by no means truly independent. All boards are purely advisory in nature with no authority to make decisions in connection with cases that come before them. Most have the power to investigate complaints, usually in cooperation with the police department. The most common types of charges that come before them are brutality, illegal entry and search, harassment, and false arrest. After receiving a complaint, the board may provide for an informal settlement, conduct hearings, and recommend either the convening of a police trial board or punishment.[30]

Several problems have hindered the operation of civilian review boards. The President's Crime Commission reports that many citizens have been unfamiliar with board procedures and that complaint forms have been difficult to obtain. Moreover, typically several months have been required for the boards to make a determination, mainly because they lack adequate staff support and often do not receive full cooperation from police departments. Some critics also contend that the boards should be completely independent of the police department.[31]

Despite these problems, some successes have been achieved. While often not enthusiastic in their assessment of review board operations, minority group leaders State that some improvements in police-community relationships have resulted from the establishment of this machinery. The boards also have caused some police departments to re-evaluate their own internal review procedures and make necessary changes on them. Although rank-and-file officers generally oppose boards, top echelon officials tend to have a more positive view and work closely with the board to settle complaints quickly and informally, often without a hearing.[32]

Citizen Advisory Committees. Some cities have organized neighborhood, precinct, or city-wide advisory committees as a means of maintaining open communication channels with citizens, particularly minority groups. A 1964 survey sponsored by the International Association of Chiefs of Police and the U. S. Conference of Mayors found that of the 165 reporting municipalities

(all over 100,000 population, or between 30,000 and 100,000 with more than five percent non-white population), only eight percent had precinct committees and 19 percent had a city-wide committee.[33] Since that time, a number of cities have adopted this approach.

Generally, the former type of committee is formed under the auspices of the police department. It is composed of citizen representatives who meet periodically to discuss police policies and practices and the complaints and needs of neighborhood residents. Precinct committees serve only in an advisory capacity vis-a-vis department officials. City-wide committees bring the heads of the police department together with civic leaders to discuss police policy issues of importance to the community as a whole and to coordinate the activities of precinct committees. Often, neighborhood committees are represented on the city-wide body.[34]

A 1966 survey by Michigan State University showed serious deficiencies in the operation of these committes. Several were not adequately representative of neighborhood residents; business, civic, and religious leaders tended to dominate the membership rolls while minorities and residents of high crime areas were underrepresented. Low-income individuals and those who were hostile to the police usually did not belong, a matter that suggested board members would have difficulty understanding citizen grievances. As a result of these factors, according to the study's committee deliberations were dominated by the police and controversial matters – including use of discretion and such enforcement practices as the use of dogs, stop-and-frisk procedures, and saturation patrols – were usually not considered. At the same time, the survey revealed lack of support for the committees on the part of district and precinct commanders, failure of lower-ranking officers to participate, and poor police staff assistance.[35]

In light of these deficiencies, it is not surprising that many of these committees have not materially improved police departments relationships with residents of high crime areas, minorities, and low-income groups. If such bodies are to realize their potential, they should be representative and willing to tackle tough, controversial issues. They also need full and continuing police support.

Decentralization of Services

One reason for public non-involvement in crime reduction efforts is the geographic and political remoteness of law enforcement and criminal justice agencies from the areas in which services are delivered. Especially in larger jurisdictions, the distance between city hall or county court house and neighborhoods is often considerable. As a result, the delivery of services may be slow, communication channels may be cumbersome, and policy-makers may be unaware of the real needs of neighborhood areas. Moreover, highly centralized decision-making may deter citizens from participating in crime prevention efforts.

In response to this situation, some authorities have urged that the delivery of municipal and county services should be decentralized to neighborhoods and that citizen involvement in policy-making in connection with these services should be encouraged. They argue that existing complaint handling machinery – such as special bureaus, mayor's assistants, and telephone numbers – do not go far enough in bringing services "closer to the people." Decentralization, they contend, would promote efficiency and responsiveness, and would facilitate public support for anti-crime programs.

Others advocate "community control" of decentralized services. An April 6, 1971 referendum in Berkeley, California, for instance, will decide whether the city will be divided into "black," "white," and "campus" communities, each having a police council under citizen control responsible for all police activities within its jurisdiction.

The devices, which have been proposed to implement these administrative decentralization and citizen participation objectives, vary widely in terms of the numbers of citizens involved, the extent of their "control," and the types of services affected. Most observers agree, however, that in order to increase efficiency and effectiveness in delivering services and to encourage citizen participation, formal decentralization machinery should be established.

"Little City Halls" and Multi-Service Centers. "Little city halls" and multi-service centers, some assert, are the most feasible ways to expedite the administration of public services in neighborhood areas.[36] A recent survey conducted by the Center for Governmental Studies, Washington, D.C. and the International City Management Association sheds light on the purposes and extent of use of these devices. Of the 106 urban counties and cities over 50,000 population reporting some decentralization of services, 21 had "little city halls" and 50 had multi-service centers. The principal distinction between the two is that the former serve mainly as branch offices for the chief executive officer and provide services similar to those available at the main city hall or county court house, while the latter serve mainly as branch offices for a public or private agency and provide two or more government-type services. Many of these units have full-time professional staff and some have advisory boards composed of area residents. Most "little city halls" and multi-service centers are located in

economically depressed neighborhoods or in minority neighborhoods. Their major services include furnishing information, providing referrals, receiving and acting on complaints, helping cut "red-tape," acting as an advocate for citizens, and providing interagency coordination.

With respect to law enforcement, over half of the respondents had decentralized police services. Twelve cities and three counties reported police affairs as a function dealt with at "little city halls," and in 17 cities and five counties multi-service centers handled police matters. None of the respondents, however, indicated that corrections, prosecution, or court related services had been decentralized to neighborhoods through these devices.

Neighborhood Sub-Units of Government. In its 1967 report *Fiscal Balance in the American Federal System,* ACIR recommended that States authorize large cities and counties to establish, on the petition of affected residents, neighborhood sub-units of government with elected neighborhood councils. These sub-units would be responsible for providing supplemental public services in neighborhood areas and would have authority to levy taxes – such as a fractional millage on the local property tax or a per capita tax – in order to finance these special services. Neighborhood sub-units could be dissolved unilaterally by the city or county if they became non-viable.[37]

This approach offers several advantages not found in "little city halls" and multi-service centers. Neighborhood sub-units seek to achieve political as well as administrative decentralization. They could help revitalize political life in the neighborhood. They would have advisory or delegated substantive authority in connection with crime and juvenile delinquency prevention and control programs, as well as other local services. Instead of further fragmenting local governmental structure, the election of neighborhood councils would help ensure both responsiveness and accountability. Moreover, their representative nature would help overcome the distrust and apathy with which "little city halls" and multi-service centers sometimes have been viewed. Neighborhood sub-units would not be creatures of the "system" which minority and low-income groups frequently believe has been unmindful of pressing community needs. Rather, they offer real political and economic power to disadvantaged groups and a basis for both healthy competition and cooperation with city officials. Adoption of this approach, then, could go a long way in making city and county governments more responsive and responsible and in curbing citizens disillusionment and alienation.

To date, only a few local governments have considered adopting the sub-unit device. A July 1969 proposal by the Los Angeles City Charter Commission to create sub-units of government was not approved by the city council for inclusion in the ballot.[38]

Crime Compensation Boards

A few States have responded to the urging of some observers that government should recognize that it has a financial obligation to the innocent victim of crime stemming from its failure to protect him. Since 1967, five States–California, Hawaii, Maryland, Massachusetts, and New York–have established crime compensation boards modeled after those which have been used in Sweden, England, New Zealand, and some Canadian Provinces. A sixth State–Delaware–collects fines from criminal offenders and remits them to their victims.

For the most part, existing compensation boards are small, independent units. The members are appointed by the Governor and typically have a legal background. Board staff investigate claims and if the victim can demonstrate financial hardship, except in Hawaii where no such "need" factor is called for, he is eligible to receive an award up to a specific amount. In each State with a board except Hawaii, compensation is available for personal injury but not for property loss. Apprehension of the offender is not a condition for receipt of an award, and criminals or their relatives are ineligible for compensation.[39]

Proponents claim that this approach recognizes that the victim deserves as much attention as the offender. Compensation can cover the costs of medical treatment for injuries sustained during the crime, and to help pay the bills if the victim is temporarily unable to return to work. This financial assistance is particularly important in light of the difficulty in obtaining civil remedies, and the fact that disadvantaged people generally have limited or no medical insurance or workmen's compensation coverage. Although opponents of compensation boards are concerned about high costs, some suggest that the expense of compensation awards could stimulate greater public cooperation in law enforcement efforts. Moreover, spreading the costs of crime throughout the population of a State would be more equitable than concentrating them in high crime areas, usually low-income or minority neighborhoods.

Conclusions

Thus, there are a variety of devices and methods which can be used by citizens to become more involved in crime reduction; and there are actions that State and local governments can take to develop a working partnership with the community in the criminal justice

effort. It is important to recognize, however, that there is no "one best way" as far as the public's role in law enforcement is concerned. Instead, the nature and extent of citizen involvement will depend upon such factors as the severity of the crime problem, the adequacy of law enforcement and criminal justice agencies, the activism of "good government" and similar types of citizen groups, and the history of police-community relationships. For many jurisdictions, "trial and error" experimentation might be the best way to achieve meaningful public participation.

At the same time, the critical importance of public involvement in law enforcement cannot be overemphasized. The stakes in crime prevention and control in terms of the quality of life and the viability of the federal system are too high to make this matter solely the responsibility of public officials. Crime reduction is everybody's responsibility. As Chief Justice Warren E. Burger has stated: "If we do not solve what you call the problems of criminal justice, will anything else matter very much?"[40]

FOOTNOTES CHAPTER V

[1]U. S. Chamber of Commerce, *Marshaling Citizen Power against Crime* (Washington, D. C.: The Chamber, 1970), p. 11.

[2]United Nations, *Administration of Justice in a Changing Society: A Report on Developments in the United States – 1965 to 1970.* Prepared for the Fourth United Nations Congress on the Prevention of Crime and Treatment of Offenders, (Kyoto, Japan: August 1970), pp. 78-9.

[3]Advisory Commission on Intergovernmental Relations, *Making the Safe Streets Act Work: An Intergovernmental Challenge* (Washington, D.C.: U.S. Government Printing Office, September 1970), p. 25.

[4]U. S. Chamber of Commerce, *op. cit.*, pp. 78-81.

[5]Except where otherwise noted, this description relies heavily on Chapter VIII of the U. S. Chamber of Commerce report, *Marshaling Citizen Power Against Crime.*

[6]President's Crime Commission, *Task Force Report: Police* (Washington, D. C.: U. S. Government Printing Office, 1967), p. 223.

[7]U.S. Chamber of Commerce, *op. cit.;* p. 113.

[8]United Nations, *op. cit.*, p. 79.

[9]*Ibid.*, p. 81.

[10]*Ibid.*, p. 80.

[11]*Ibid.*, p. 82.

[12]President's Crime Commission, *op. cit.*, p. 144.

[13]*Ibid.*

[14]See Oscar Handlin, "Community Organization as a Solution to Police-Community Problem," In *Police and the Changing Community: Selected Readings,* Nelson A. Watson, ed. (Washington, D.C.: International Association of Chiefs of Police, 1965), p. 107.

[15]Alan A. Altschuler, *Community Control: The Black Demand for Participation in Large American Cities* (New York: Pegasus, 1970), p. 17.

[16]National Council on Crime and Delinquency, "Problems in Police-Community Relations," *Information Review on Crime and Delinquency,* Vol. 1, No. 5 (February 1969), p. 4.

[17]U. S. Commission on Law Enforcement and Administration of Justice, *A National Survey on Police and Community Relations* (Washington, D. C.: U. S. Government Printing Office, 1967) p. 14.

[18]William V. Turner, *The Police Establishment* (New York: G. P. Putnam's Son, 1968), p. 44.

[19]Nelson A. Watson and James W. Sterling, *Police and Their Opinions* (Washington, D. C.: International Association of Chiefs of Police, 1969), p. 55.

[20]Handlin, *op. cit.*, p. 115.

[21]With the exception of Chicago, the other case studies are cited in: District of Columbia, *Report of the City Council Public Safety Committee on Police-Community Relations,* (Washington, D. C.: The Committee, August 20, 1968), p. 19.

[22]City of Chicago, Citizens' Committee to Study Police-Community Relations, *Police and Public–A Critique and a Program: Final Report* (Chicago: The Committee, May 22, 1967).

[23]International City Management Association, "Recent Trends in Police-Community Relations," *Urban Data Service,* Vol. 2, No. 3, March, 1970, pp. 10-11.

[24]U. S. Advisory Commission on Intergovernmental Relations, *op. cit.*, p. 53.

[25]ICMA, *op. cit.*, pp. 4-5.

[26]President's Crime Commission, *op. cit.*, p. 202.

See also The American Assembly, *Ombudsmen For American Government?* Stanley V. Anderson, ed. (Englewood Cliffs, N. J.: Prentice-Hall, Inc., 1968); Walter Gellhorn, *When Americans Complain: Governmental Grievance Procedures* (Cambridge: Harvard University Press, 1966); Institute of Governmental Studies, *Buffalo Citizens Administrative Service: An Ombudsman Demonstration Project* (Berkeley: the Institute, 1970).

[27]International City Management Association, "The Ombudsman: The Citizens' Advocate, *Management Information Service,* Volume 1, No. 1-10, October 1969, pp. 6-14.

[28]President's Crime Commission, *op. cit.*, pp. 123-4, 166-7.

[29]*Ibid.*, p. 166.

[30]*Ibid.*, pp. 200-01.

[31]*Ibid.*, p. 201.

[32]*Ibid.*, p. 202.

[33]*Ibid.*, p. 156.

[34]*Ibid.*, pp. 157-8.

[35]*Ibid.*

[36]Joseph F. Zimmerman, "Heading Off City-Hall Neighborhood Wars," *Nation's Cities,* (November 1970), pp. 18-21, 39.

[37]Advisory Commission on Intergovernmental Relations, *Fiscal Balance in the American Federal System: Vol. 2, Metropolitan Fiscal Disparities* (Washington, D. C.: U. S. Government Printing Office, October 1967), pp. 16-17.

[38]Zimmerman, *op. cit.*, p. 20.

[39]Gilbert Geis and Herbert Sigurdson, "State Aid to Victims of Violent Crime," *State Government,* LVIII, No. 1, Winter 1970, pp. 16-20.

[40]Chamber of Commerce, *op. cit.*, p. 2.

Appendix A

Table A-1
NUMBER OF AUTHORIZED INDEPENDENTLY ELECTED LAW ENFORCEMENT OFFICIALS, PER JURISDICTION
By State—1967

State	No. of Sheriffs	No. of Constables	No. of Coroners	Other Elected Law Enforcement Officials
Alabama	1/County	1/Precinct	1/County[a]	
Alaska	No Elected Law Enforcement Officials in State			
Arizona	1/County	1/Precinct	None	
Arkansas	1/County	1/Township	1/County	Marshall/2d Class Cities
California	1/County	1-2/JP District	1/County[b]	3 Commissioners/Police Protection District
Colorado	1/County	None	1/County	
Connecticut	1/County	1-7/Township	None	
Delaware	1/County	None	1/County	
Florida	1/County[c]	1/JP District	None	1/Marshall Municipality
Georgia	1/County	2/Militia District	1/County[d]	
Hawaii	No Elected Law Enforcement Officials in State			
Idaho	1/County	1/Precinct	1/County	
Illinois	1/County	None	1/County	
Indiana	1/County	1/Township	1/County	
Iowa	1/County	2/Township	None	
Kansas	1/County	1/Township	None	1 City Court Marshal/ 1st and 2d Class Cities
Kentucky	1/County	1/JP District	1/County	
Louisiana	1/County	3-6/JP Ward	1/County	
Maine	1/County	None	None	
Massachusetts	1/County	1+/Town	None	
Michigan	1/County	4/Township	2/County[e]	1 Constable per Ward/4th Class Cities
Minnesota	1/County	2/Township	2/County[f]	2 Constables/Village
Mississippi	1/County	5/Supervisory District	1/County	1 Marshal/Municipality
Missouri	1/County	1/Magistrate District	1/County	1 Marshal/10-30,000 municipality in Class I county 1 Marshal/Mayor-Council 3rd Class Cities 1 Marshal/4th Class Cities
Montana	1/County	2/Township	1/County	
Nebraska	1/County	1/Township	None	
Nevada	1/County	1/Township	None	
New Hampshire	1/County	1+/Town	None	
New Jersey	1/County	None	None	
New Mexico	1/County	1/Precinct	None	
New York	1/County[g]	None	1-4/County[h]	
North Carolina	1/County	1/Township	1/County	
North Dakota	1/County	2/Township	1/Counties under 8,000	
Ohio	1/County	None	1/County	
Oklahoma	1/County	1/JP District	None	
Oregon	1/County[i]	1/Cities of 50,000+	None	1 Marshal/Municipality
Pennsylvania	1/County	1/District or Ward	1/County[j]	

Table A-1
NUMBER OF AUTHORIZED INDEPENDENTLY ELECTED LAW ENFORCEMENT OFFICIALS, PER JURISDICTION
By State—1967 (Continued)

State	No. of Sheriffs	No. of Constables	No. of Coroners	Other Elected Law Enforcement Officials
Rhode Island	Apt. by Gov.	1/Town	None	
South Carolina	1/County	None	1/County[k]	
South Dakota	1/County	4/County	1/County	
Tennessee	1/County	2/Civil District	None	
Texas	1/County	4-8 Precinct	1/County[l]	1 Marshal/Cities, Towns, Village
Utah	1/County	1/Precinct	None	
Vermont	1/County	1/Town	None	
Virginia	1/County,City	None	None	1 Sargent/Town
Washington	1/County	1+/Precinct	1/County[m]	1/Township[n]
West Virginia	1/County	1+/Magisterial District	None	
Wisconsin	1/County	1-3/Township	1/County[o]	1 Constable/Village
Wyoming	1/County	1/JP District	1/County	

[a]Coroner appointed in Jefferson County.

[b]Coroner appointed in five counties.

[c]Sheriff appointed in Dade County.

[d]Coroner appointed in three counties.

[e]35 counties appoint coroners.

[f]Henepin County appoints coroner.

[g]Sheriff appointed in Nassau and New York City.

[h]17 counties appoint coroner.

[i]Sheriff appointed in Multnomah County.

[j]Coroner appointed in Philadelphia County.

[k]Coroner appointed in Greenville County.

[l]Coroner appointed in three counties.

[m]Coroners are district attorneys in counties of under 40,000.

[n]Only applies to Spokane and Whatcom Counties.

[o]Coroner appointed in Milwaukee County.

Source: U.S. Bureau of the Census, *Popularly Elected Officials of State and Local Governments,* 1967 Census of Governments Vol. 6., No. 1., Table No. 15.

Table A-2
CHARACTERISTICS OF SHERIFF'S OFFICE
by State
1967

State	Term of Office	Tenure	Method of Compensation	Other
Alabama	4 yrs.	Unlimited	Fees, Salary	
Alaska		No Office of Sheriff in State		
Arizona	4 yrs.	Unlimited	Salary	
Arkansas	2 yrs.	Unlimited	Fees, Salary, Expenses	Serves as Tax Collector
California	4 yrs.	Unlimited	Salary	
Colorado	4 yrs.	Unlimited	Salary	
Connecticut	4 yrs.	Unlimited	Salary	Runs as State Officer
Delaware	2 yrs.	1 Term	Salary	
Florida	4 yrs.	Unlimited	Salary	Dade Co. appts. sheriff
Georgia	4 yrs.	Unlimited	Salary	
Hawaii		No Office of Sheriff in State		
Idaho	4 yrs.	Unlimited	Salary	
Illinois	4 yrs.	1 Term	Salary	Serves as ex-officio Treasurer
Indiana	4 yrs.	2 Terms	Salary	
Iowa	4 yrs.	Unlimited	Salary	
Kansas	2 yrs.	Unlimited	Salary	
Kentucky	4 yrs.	1 Term	Fees, Salary	Serves as Tax Collector
Louisiana	4 yrs.	Unlimited	Salary	Serves as Tax Collector
Maine	2 yrs.	Unlimited	Salary	
Maryland	4 yrs.	Unlimited	Salary	
Massachusetts	6 yrs.	Unlimited	Salary	
Michigan	4 yrs.	Unlimited	Salary	
Minnesota	4 yrs.	Unlimited	Fees, Salary	
Mississippi	4 yrs.	Unlimited	Fees, Expenses	Serves as Tax Collector
Missouri	4 yrs.	Unlimited	Fees, Salary, Expenses	
Montana	4 yrs	Unlimited	Salary	
Nebraska	4 yrs.	Unlimited	Salary	
Nevada	4 yrs.	Unlimited	Salary, Expenses	
New Hampshire	2 yrs.	Unlimited	Salary	70 Mandatory Retirement
New Jersey	3 yrs.	Unlimited	Salary	
New York	3 yrs.	Unlimited	Salary	Sheriff appt. in N.Y.C and Nassau County
North Carolina	4 yrs.	Unlimited	Fees, Expenses	Serves as Tax Collector
New Mexico	2 yrs.	2 Terms	Salary	
North Dakota	4 yrs.	Unlimited	Salary	
Ohio	4 yrs.	Unlimited	Salary	
Oklahoma	2 yrs.	Unlimited	Fees, Salary	
Oregon	4 yrs.	Unlimited	Salary	Appt. in Multnomah County; may serve as tax collector
Pennsylvania	4 yrs.	Unlimited	Salary	
Rhode Island		Sheriffs serve at pleasure of Governor		
South Carolina	4 yrs.	Unlimited	Fees, Salary	
South Dakota	2 yrs.	Unlimited	Salary	
Tennessee	2 yrs.	3 Terms	Salary	
Texas	4 yrs.	Unlimited	Salary	Serves as Tax Collector
Utah	4 yrs.	Unlimited	Salary	
Vermont	2 yrs.	Unlimited	Salary	
Washington	4 yrs.	Unlimited	Salary	
West Virginia	4 yrs.	1 Term	Salary	May serve as county treasurer
Wisconsin	2 yrs.	Unlimited	Salary	
Wyoming	4 yrs.	Unlimited	Fees, Salary	

Source: U.S. Bureau of the Census. *Popularly Elected Officials of State and Local Governments.* 1967 Census of Governments, Vol. 6., No. 1, Table No. 15.; National Sheriffs' Association. *1969 Directory of Sheriffs.* Washington: National Association of Sheriffs, 1969.

Table A-3
CHARACTERISTICS OF CONSTABLE'S OFFICE
by State
1967

State	Status of Office	Term of Office	Method of Compensation	Other
Alabama	Constitutional	4 yrs.	Fees	
Alaska		No Office of Constable in State		
Arizona	Statutory	4 yrs.	Salary	
Arkansas	Constitutional	2 yrs.	Fees	
California	Statutory	6 yrs.	Fees	
Colorado		No Office of Constable in State		
Connecticut	Statutory	1-2 yrs.	Salary	
Delaware		No Office of Constable in State		
Florida	Constitutional	4 yrs.	Fees	May be abolished by County action
Georgia	Statutory	4 yrs.	Fees	
Hawaii		No Office of Constable in State		
Idaho	Statutory	2 yrs.	Fees	
Illinois		No Office of Constable in State		
Indiana	Statutory	4 yrs.	Fees, Expenses	
Iowa	Statutory	2 yrs.	Fees, Salary	
Kansas	Statutory	2 yrs.	Fees	
Kentucky	Constitutional	4 yrs.	Fees, Salary	
Louisiana	Constitutional	4 yrs.	Fees, Salary	May be abolished by County action
Maine		No Office of Constable in State		
Maryland	Constitutional			Appt. by County Comm.
Massachusetts	Statutory	1-3 yrs.	Salary	
Michigan	Statutory	2 yrs.	Fees	
Minnesota	Statutory	2 yrs.	Fees, Expenses	
Mississippi	Constitutional	4 yrs.	Fees	
Missouri	Statutory	4 yrs.	Salary	
Montana	Statutory	2 yrs.	Fees, Expenses	
Nebraska	Statutory	2 yrs.	Fees, Expenses	
Nevada	Statutory	2 yrs.	Salary, Expenses	
New Hampshire	Statutory	Indeterminate	NA	
New Jersey		No Office of Constable in State		
New Mexico	Constitutional	2 yrs.	Fees, Expenses	
New York		No Office of Constable in State		
North Carolina	Statutory	4 yrs.	Fees	
North Dakota	Statutory	2 yrs.	Fees	
Ohio		No Office of Constable in State		
Oklahoma	Statutory	2 yrs.	Fees	
Oregon	Statutory	4 yrs.	Salary	Only in cities over 50,000
Pennsylvania	Statutory	5-6 yrs.	Fees, Expenses	
Rhode Island	Statutory	2 yrs.	NA	
South Carolina	Constitutional	NA	NA	County may appt.
South Dakota	Statutory	2 yrs.	Fees	
Tennessee	Constitutional	2 yrs.	Fees	
Texas	Constitutional	4 yrs.	Salary	
Utah	Statutory	4 yrs.	Fees	
Vermont	Statutory	1 yr.	Salary	
Virginia		No Office of Constable in State		
Washington	Statutory	4 yrs.	Fees, Salary	County may abolish office
West Virginia	Constitutional	4 yrs.	Fees	
Wisconsin	Statutory	2 yrs.	Salary, Fees, Expenses	
Wyoming	Statutory	4 yrs.	Salary, Fees	

Source: U.S. Bureau of the Census, *Popularly Elected Officials of State and Local Governments,* 1967 Census of Governments, Vol. 6, No. 1, Table No. 15.; Legislative Drafting Research Fund, *Index Digest of State Constitutions,* (New York: Columbia University, 1959), pp. 104-106 (with various updating).

Table A-4
CHARACTERISTICS OF CORONER'S OFFICE BY STATES–1970

State	Status of Office	Term of Office	Method of Compensation	Other
Alabama	Statutory	4 yrs.	Fees	Appointed in Jefferson County
Alaska	State Serviced by Medical Examiner System			
Arizona	Statutory	4 yrs.	N.A.	J.P. is ex officio coroner. Appointed in Maricopa County
Arkansas	Constitutional	2 yrs.	Fees	Paralell medical examiner system
California	Statutory	4 yrs.	Salary	Appointed in seven counties; Coroners may be consolidated with other county officers
Colorado	Constitutional	4 yrs.	Fees	
Connecticut	Statutory	3 yrs.	N.A.	Coroners are attorneys appointed by judges of superior court; coroners appt. medical examiners
Delaware	Constitutional	2 yrs.	Salary	Paralell medical examiners
Florida	Statutory	4 yrs.	N.A.	J.P. is ex officio coroner; coroners are appointed in Dade, Duval, Broward, and Pinneallas County; parallel medical examiner system in remaining counties
Georgia	Statutory	4 yrs.	Fees/Salary	Fulton, Clayton, Cobb appointed medical examiner
Hawaii	Medical examiner appointed in Honolulu County			
Idaho	Constitutional	2 yrs.	Salary	
Illinois	Constitutional	4 yrs.	Fees	
Indiana	Constitutional	4 yrs.	Fees/Salary	
Iowa	State Serviced by Medical Examiner System			
Kansas	State Serviced by Medical Examiner System			
Kentucky	Constitutional	4 yrs.	Salary	Paralell medical examiner system
Louisiana	Constitutional	4 yrs.	Fees/Salary	Coroner must be M.D.
Maine[a]	Constitutional	State Serviced by Medical Examiner System		
Maryland[a]	Constitutional	State Serviced by Medical Examiner System		
Massachusetts[a]	Constitutional	State Serviced by Medical Examiner System		
Michigan	Statutory	4 yrs.	Fees	38 of 83 counties appoint medical examiners or health officers; all counties will have medical examiners by 1972
Minnesota	Statutory	4 yrs.	Fees/Salary	Counties may appoint medical examiner
Mississippi	Constitutional	4 yrs.	Fees	
Missouri	Statutory	4 yrs.	Salary	
Montana	Constitutional	4 yrs.	Fees/Salary	
Nebraska	Statutory	4 yrs.	N.A.	County attorney ex officio coroner
Nevada	Statutory	2 yrs.	N.A.	J.P. is ex officio coroner; medical examiner appointed in Clark County
New Hampshire[a]	Constitutional	State Serviced by Medical Examiner System		
New Jersey	State Serviced by Medical Examiner System			
New Mexico	State Serviced by Medical Examiner System			
New York	Statutory	3 yrs.	Salary	16 counties appoint medical examiner
North Carolina	Statutory	4 yrs.	Fees	Paralell medical examiner system
North Dakota	Statutory	2 yrs.	Fees	Counties of over 8,000 may appoint coroner
Ohio	Statutory	4 yrs.	Salary	Coroner must be M.D.
Oklahoma	State Serviced by Medical Examiner System			
Oregon	State Serviced by Medical Examiner System			
Pennsylvania	Statutory	4 yrs.	Salary	Philadelphia appoints medical examiner
Rhode Island	State Serviced by Medical Examiner System			
South Carolina	Constitutional	4 yrs.	Fees	Greenville County appts. medical examiner
South Dakota	Constitutional	2 yrs.	Fees	
Tennessee	Constitutional	2 yrs.	N.A.	Coroners appointed by county court; paralell medical examiner system
Texas	Statutory	4 yrs.	N.A.	3 counties appoint medical examiner. J.P. is ex officio coroner; counties have option of appointing medical examiner system
Utah	State Serviced by Medical Examiner System			
Vermont	State Serviced by Medical Examiner System			
Virginia	State Serviced by Medical Examiner System			
Washington	Statutory	2-4 yrs.	Fees/Salary	Attorneys are coroners in counties over 40,000
West Virginia	Constitutional	N.A.	Fees	Coroners appt. by county court; paralell medical examiner system
Wisconsin	Constitutional	2 yrs.	Salary	Milwaukee County appoints medical examiner
Wyoming	Statutory	4 yrs.	Fees	J.P. may act as coroner in certain instances

[a]Constitutional status of coroner remains though there are none in the state.

Source: U.S. Bureau of the Census. *Popularly Elected Officials of State and Local Governments.* 1967 Census of Governments, Vol. 6., No. 1. Table No. 15.; National Municipal League, *Coroners: A Symposium of Legal Bases and Actual Practices.* New York: National Municipal League, 1970.

Table A-5

TYPE OF MEMBERSHIP AND POWERS AND DUTIES OF STATUTORIALLY-ESTABLISHED STATE JUDICIAL COUNCILS AND CONFERENCES

1968

State	Name of Unit	Membership includes:				Powers and Duties													
		Judges	Lawyers	Legisltrs	Others	Study Admn of Courts	Investigate Criticisms	Recommd Ct Imprvmts	Adopt Rules of Procdre	Recommd Rules Changes	Appt Court Adminstrtr	Assign Judges	Collect Statistics	Require Reports of Courts	Prepare Ct Budgets	Nominate Judicial Candidates to Governor	Recommend Removals, Discipline, Retirement	
Alabama	Jud. Conference	x	x			x	x	x		x									
Alaska	Jud. Council	x	x		x	x		x	x										
California	Jud. Council	x	x	x		x		x	x		x	x		x					x[1]
Conn.	Jud. Conference	x			x														x[2]
Conn.	Jud. Council	x	x		x	x		x		x				x					
Del.	Council on Adm. of Justice	x	x	x	x	x	x	x	x				x						
Florida	Jud. Adm. Comm.	x			x						x				x				x[3]
Florida	Jud. Council	x	x		x	x	x	x		x			x						
Georgia	Jud. Council	x	x	x	x	x	x						x						x[4]
Hawaii	Jud. Council	x	x		x	x													
Idaho	Jud. Council	x	x		x	x		x								x	x		x[5]
Illinois	Jud. Adv. Council		x	x		x		x											
Illinois	Jud. Conference	x				x													
Iowa	Jud. Study Comm.		x	x	x	x	x	x					x						
Kansas	Jud. Council	x	x	x		x	x	x		x									
Kentucky	Jud. Council	x	x	x		x	x	x		x									
Maine	Jud. Council	x	x		x	x		x		x									
Mass.	Jud. Council	x	x			x		x		x									
Mich.	Jud. Conference	x				x		x		x									
Minn.	Jud. Council	x	x		x	x		x		x									
Mo.	Jud. Conference	x				x		x		x				x					
N. H.	Jud. Council	x	x		x	x	x	x		x			x						
N. Y.	Jud. Conference	x				x	x	x	x[6]	x									x[7]
N. D.	Jud. Council	x	x		x	x		x		x			x	x					x[8]
Ohio	Jud. Council	x	x	x	x	x		x		x									
Ore.	Jud. Conference	x				x		x											
Ore.	Jud. Council	x	x	x	x	x	x	x		x									x[9]
R. I.	Jud. Council		x			x		x											
S. C.	Jud. Council	x	x	x	x	x	x	x		x			x						
Tenn.	Jud. Council	x	x	x	x	x	x	x					x						
Texas	Adv. Jud. Coun.	x	x	x	x	x	x	x					x						
Vt.	Jud. Council	x	x		x	x		x											
Va.	Jud. Council	x	x			x		x											
Wash.	Jud. Council	x	x	x	x	x	x	x		x									
W. Va.	Jud. Council	x	x		x	x		x					x						
Wisc.	Jud. Council	x	x	x	x	x	x	x		x			x						

Source: American Judicature Society, *Judicial Councils, Conferences, and Organizations,* Report No. 11 (Chicago, Ill., 1968); and State statutes.

[1]California. Adopts rules for administration. Appoints court administrator. [2]Connecticut. Insures effective administration of judicial department. [3]Florida. Maintains central State office for administrative services for supreme, district, and circuit courts, states attorney, public defenders, court reporters. [4]Georgia. Makes suggestions regarding admission to the bar and conduct of lawyers. [5]Idaho. Such other duties as assigned by law. [6]New York. Civil practice only. [7]New York. Advises and assists administrative board. [8]North Dakota. Appoints executive secretary. [9]Oregon. May employ executive secretary and research personnel.

Table A-6
HOW VACANCIES ARE FILLED IN JUDICIAL OFFICES * **
1968

States	Appointment by Governor: Without Prior Screening or Later Approval	Appointment by Governor: With Prior Screening or Later Approval	Other
Alabama	AGL		
Alaska		(AGL)[1]	
Arizona	AGL		
Arkansas	AGL		
California	GL	A[2]	L[3]
Colorado		AGL[4]	
Connecticut	AGL		
Delaware		(AGL)[5]	
Florida	AGL		
Georgia	AGL		
Hawaii		(AG)[6]	L[7]
Idaho	AGL		L[8]
Illinois			(AGL)[9]
Indiana	AGL		
Iowa	L[10]	(AG)[11]	L[12]
Kansas	G	A[13]	
Kentucky	AGL		
Louisiana	G		A[14]
Maine		(AGL)[15]	
Maryland	AGL		
Massachusetts		(AGL)[16]	
Michigan			(AGL)[17]
Minnesota	AGL[18]		
Mississippi		(AGL)[19]	
Missouri	L	(AGL)[20]	
Montana	AG		L[21]
Nebraska	AGL		
Nevada	AGL		
New Hampshire		(AGL)[22]	
New Jersey		(AGL)[23]	
New Mexico	AGL		
New York		(AGL)[24]	
North Carolina	AGL		
North Dakota	AG		
Ohio	AGL		
Oklahoma	GL	A[25]	L[26]
Oregon	AGL		
Pennsylvania	AGL		
Rhode Island		(GL)[27]	A[28]
South Carolina	(AGL)[29]		
South Dakota	AGL		
Tennessee	AGL		L[30]
Texas	AGL		L[31]
Utah	AGL		
Vermont			
Virginia			AGL[32]
Washington	AGL		
West Virginia	AGL		
Wisconsin	AGL		
Wyoming	AGL		

*A—judges of appeallate courts; G—judges of trial courts of general jurisdiction; L—judges of courts of limited jurisdiction.

**Where letters are in parenthesis, footnote applies to all courts represented by letters within the parentheses.

Source: Council of State Governments, *State Court Systems,* (Revised, 1968), (Chicago, 1968), Table IX.

[1] Alaska. Nominations by judicial council. [2] California. With approval of Commission on Judicial Appointments. [3] California. Justice court judges vacancies filled by county board of supervisors. [4] Colorado. Lists submitted by judicial nominating commissions. [5] Delaware. With consent of Senate. [6] Hawaii. With advice and consent of Senate. [7] Hawaii. District court vacancies filled by chief justice. [8] Idaho. By county commissioners in the case of a probate judge. By county commissioners and probate judge with the approval of senior district judge in the case of a JP. [9] Illinois. By election at the next general election. [10] Iowa. Municipal courts. [11] Iowa. From lists submitted by non-partisan nominating commissions. [12] Iowa. JP vacancies filled by county board of supervisors. [13] Kansas. From list submitted by nominating commission. [14] Louisiana. Supreme court vacancy filled by one of the courts of appeals from a supreme court district other than that in which the vacancy occurs. If two or more years of unexpired term remain, filled by special election. Courts of appeals vacancies filled by supreme court by selection of a district judge. [15] Maine. With advice and consent of Council. [16] Massachusetts. With advice and consent of Executive Council. [17] Michigan. Supreme court makes appointments to fill vacancies on supreme, circuit and probate courts from among retired judges. [18] Minnesota. Except JP courts. [19] Mississippi. With Senate confirmation. [20] Missouri. Vacancies in supreme court, courts of appeals, circuit and probate courts of city of St. Louis and Jackson County and St. Louis Court of Criminal Correction are filled by Governor from nominations by a non-partisan commission. [21] Montana. JPs by boards of county commissioners. [22] New Hampshire. With consent of council. [23] New Jersey. With advice and consent of Senate. [24] New York. Filled at next general election for full term; until the election the Governor makes the appointment with concurrence of Senate if it is in session. [25] Oklahoma. From list of three submitted by Judicial Nominating Commission. [26] Oklahoma. Municipal judge vacancies filled by municipal governing body. [27] Rhode Island. With advice and consent of Senate. [28] Rhode Island. By grand committee of legislature. [29] South Carolina. By Governor if unexpired term does not exceed one year, otherwise by general assembly. [30] Tennessee. County judge vacancy filled by county court, but Governor may fill vacancy if they do not act. [31] Texas. County judges by commissioner's court. [32] Virginia. By general assembly. If general assembly not in session, Governor makes appointment, to expire 30 days after start of next session.

Table A-7
QUALIFICATIONS OF JUDGES OF STATE APPELLATE COURTS AND TRIAL COURTS OF GENERAL JURISDICTION
1968

State	U.S. Citizenship		Years of Minimum Residence: In State		Years of Minimum Residence: In District		Minimum Age		Learned In the Law		Years of Legal Experience		Other	
	A.*	G.*	A.*	G.*	A.*	G.*	A.*	G.*	A.*	G.*	A.*	G.*	A.*	G.*
Alabama	x	x	5	5		x	25	25	x	x				
Alaska	x	x	3	3					x	x	8	5	x[a]	x[a]
Arizona	x	x	10[b]	5	x[c]		30[c]	30	x	x	10[b]	5	x[a, b, d]	x[d]
Arkansas	x	x	2	2			30	28	x	x	8	6		x[d]
California	x	x					31	31	x	x	10	10	x[a]	x[a]
Colorado	x	x	1	1		x					5	5		
Connecticut	No legal qualifications													
Delaware	x	x							x	x				
Florida	x	x	(e)				31	25	x	x			x[a, e]	x[a]
Georgia	x	x	3	3			30	30		x	7	7		
Hawaii	x	x	1	1					x	x	10	10	x[a]	x[a]
Idaho	x	x		2		x		30	x	x			x[f, g]	x[f, g]
Illinois	x	x			x	x			x	x			x[a, e]	x[a, e]
Indiana	x		5[h]		x[i]	x	30[h]	21			x[h]	x	x[d, f, j]	x[d, f, j]
Iowa	x	x					21	21	x	x			x[a, g]	x[a, g]
Kansas	x	x		x		x	30	30	x	x	4	4		
Kentucky			5	2	2	2	35	35	x	x	8	8	x[e]	x[e]
Louisiana			2	2	2	2	35		x	x	10[k]	5	x[a, f]	x[a, f]
Maine	x	x							x	x			x[l]	x[l]
Maryland	x	x	5	5	x	x	30	30	x	x			x[a, d]	x[a, d]
Massachusetts	No legal qualifications													
Michigan									x	x			x[a, g]	x[a, g]
Minnesota						x		21	x	x	x	x		x[f]
Mississippi			5	5			30	26	x	x	x	5		x[f]
Missouri	x	x	9[m]	3[m]	x	x	30	30	x	x			x[f]	x[f]
Montana	x	x	2	1		x	30	25	x	x			x[a]	x[a]
Nebraska	x	x	3	3	x	x	30	30		x		x		x[a]
Nevada	x	x	5	5		x	25	25	x	x		x		x[f]
New Hampshire	No legal qualifications													
New Jersey	x	x	10	10			31	31	x	x	10	10	x[a]	x[a]
New Mexico	x	x	3	3		x	30	30	x	x	x	3		
New York	x	x	x			x	21	21	x	x		x		
North Carolina	x	x	1	1		x	21	21					x[n, f]	x[n, f]
North Dakota	x	x	3	2		x	30	25	x	x				
Ohio		x	1			1			x	x	6	6	(a)	(a)
Oklahoma	x	x		1	1	6 Mos.	30	21[p]	x	x	5	4[p]	(o)	(o)[p]
Oregon	x	x	3	3		x	21	21	x	x			x[a]	x[a]
Pennsylvania	x	x	1	1		x	21	21	x	x				
Rhode Island	x	x	2	2			21	21						
South Carolina	x	x	5	5		x	26	26		x	5	5		
South Dakota	x	x	2	1	x	x	30	25	x	x				
Tennessee			5	5		x	35[q]	30	x	x				
Texas	x	x	x	x		2	35	25			10	4		
Utah			5	3		x	30	25	x	x	x	x		
Vermont	x	x	x	x							x	5[r]		
Virginia	x	x					21	21			5	5		
Washington	x	x	1	1			21	21	x	x				
West Virginia	x	x	5	5			30	30					x[f]	x[f]
Wisconsin	x	x	1	1		x	25	25	x	x	5	5	x[a, f]	x[a, f]
Wyoming	x	x	3	2			30	28	x	x	9	5	x[s]	x[s]

*Explanation of symbols: A – Judges of courts of last resort and intermediate appellate courts. G – Judges of trial courts of general jurisdiction. x – Indicates requirement exists.

Source: The Council of State Governments, *State Court Systems* (Revised, 1968) July 1968, Table III.

[a]Member of, or admitted to, bar. [b]For Court of Appeals, 5 years. [c]For Court of Appeals. [d]Good character; in Maryland, integrity, wisdom. [e]State citizenship. [f]Qualified voter. [g]In Idaho and Michigan, judges must be under 70 at time of election or appointment; in Iowa, must be of such age as to be able to serve an initial and one regular term of office before reaching 72. [h]Specified requirement for Appellate Court only. [i]Specified requirement for Supreme Court only. [j]Admitted to practice at the bar of the Supreme court of Indiana or having acted as judicial officer of the State or any municipality therein. These requirements do not apply to Supreme Court judges. [k]Supreme Court, 10; Courts of Appeals, 6. [l]Sobriety of manner. [m]Required number of years as qualified voters. [n]Belief in God. [o]Shall continue to be licensed attorney while holding office. [p]Associate district judges required to be licensed to practice in the State; number of years of practice and age not specified. Footnote (o) not applicable. [q]Thirty years for judges of Court of Appeals [r]Five out of 10 years preceding appointment or election. [s]Shall have practiced law in the state at least one year immediately preceding election or appointment.

Table A-8
STATES' USE OF INDIGENT DEFENSE COUNSEL
1969

State	Type of Counsel
Alabama	Statewide informal assigned counsel system
Alaska	Statewide public defender agency
Arizona	County public defender in two cities; otherwise informal assigned counsel system
Arkansas	Informal assigned counsel system
California	Optional county defender system. 32 counties have public defender systems, remainder have assigned counsel systems.
Colorado	Statewide public defender
Connecticut	Statewide public defender, but only part-time
Delaware	Statewide public defender
Florida	Mandatory public defender system in all 19 judicial circuits
Georgia	Optional county public defenders. Fulton County has one.
Hawaii	One county has public defender
Idaho	Several localities have public defender; otherwise assigned counsel
Illinois	38 counties have optional public defender; otherwise assigned counsel
Indiana	Public defenders in 9 counties, part-time. State public defender handles post-conviction matters. Otherwise informal assigned counsel system
Iowa	Informal assigned counsel statewide
Kansas	Informal assigned counsel statewide
Kentucky	Informal assigned counsel statewide
Louisiana	Each judicial district establishes assigned counsel panel for selection of counsel
Maine	Informal assigned counsel system
Maryland	Three counties have public defender; otherwise informal assigned counsel
Massachusetts	Statewide defender system
Michigan	Nonprofit public defender in Detroit, assigned counsel elsewhere
Minnesota	Statewide defender system
Mississippi	Assigned counsel system in capital cases
Missouri	Four counties and city of St. Louis have public defender; 110 counties have assigned counsel
Montana	Informal assigned counsel system; public defender in Helena
Nebraska	Three counties have public defender. Public defender may be established in each judicial district upon request of district judges to Governor
Nevada	Two local public defenders; otherwise and assigned counsel
New Hampshire	Assigned counsel system
New Jersey	Statewide defender system
New Mexico	Public-private defender system
New York	By law, each county must have some kind of organized defender system—public defender, private defender, or assigned counsel under an administrator
North Carolina	Public defender in 2 districts, assigned counsel elsewhere
North Dakota	Assigned counsel system
Ohio	Major counties have private or private-public public defender; otherwise assigned counsel
Oklahoma	Four local public defenders; otherwise informal appointed counsel
Oregon	Statewide defender limited to appellate matters; otherwise appointed counsel
Pennsylvania	Every county must have public defender or court-assigned counsel
Rhode Island	Statewide public defender
South Carolina	Counties required to appoint counsel, but may establish public defender instead
South Dakota	Assigned counsel system
Tennessee	Public defender system in two large counties, assigned counsel elsewhere
Texas	Assigned counsel system
Utah	Assigned counsel systems except for public-private defender in Salt Lake County
Vermont	Assigned counsel system
Virginia	Assigned counsel system
Washington	Nonprofit public defender in Spokane, municipal public defender in Seattle, public defenders in two small counties; otherwise assigned counsel
West Virginia	Informal assigned counsel, except small public defender office in Charleston
Wisconsin	Private defender office in Madison and Milwaukee for trial level. Statewide defender system at appellate level
Wyoming	Assigned counsel system

Source: Patrick J. Hughes, Jr., "A National View of Defender Services," (National Legal Aid and Defender Association, 1969) (processed); National Defender Project, National Legal Aid and Defender Association, *Report to the National Defender Conference,* May 14-16, 1969, pp. 77-96.

Table A-9
SOURCES OF FUNDING FOR PUBLIC DEFENDER AND ASSIGNED COUNSEL SYSTEMS
1969

S-State L-Local government SL-State-local

State	Public Defender	Assigned Counsel
Alaska	—	S
Arkansas	—	SL
California	SL	SL
Colorado	L	L
Connecticut	S	S
Delaware	S	SL
Florida	S	—
Georgia	L	—
Hawaii	—	S
Idaho	L	SL
Indiana	S	SL
Iowa	—	L
Kansas	—	L
Maine	L	—
Maryland	—	L
Massachusetts	S	—
Michigan	—	L
Minnesota	L	L
Nebraska	L	L
New Hampshire	—	S
New Jersey	—	S
New York	L	SL
North Carolina	—	S
North Dakota	—	L
Ohio	—	SL
Oklahoma	—	L
Oregon	S	L
Rhode Island	S	S
South Carolina	L	—
South Dakota	—	L
Tennessee	—	S
Vermont	—	S
Virginia	—	S
Washington	—	SL
West Virginia	—	S
Wisconsin	S	—
Total		
S	8	11
L	8	11
SL	1	8
	17	30

Source: The Institute of Judicial Administration, *State and Local Financing of the Courts* (Tentative Report), April 1969, pp. 39-43.

Table A-10
PARENT AGENCY RESPONSIBILITY FOR ADMINISTERING CORRECTIONAL SERVICES, BY STATE[1]
January 1971

State	Juvenile Detention	Juvenile Probation	Juvenile Institutions	Juvenile Aftercare	Misdemeanant Probation	Adult Probation	Local Adult Institutions and Jails	Adult Institutions	Parole
Alabama	Local	Local	3 Separate & Independent Boards	Dept. of Pensions & Security & Local	Board of Pardons & Paroles	Board of Pardons & Paroles	Local	Board of Corrections	Board of Pardons & Paroles
Alaska	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Health & Welfare
Arizona	Local	Local	Dept. of Corrections	Dept. of Corrections	None	Local	Local	Dept. of Corrections	Dept. of Corrections
Arkansas	Local	Dept. of Welfare & Local	Juvenile Training School Dept.	Juvenile Training School Dept.	None	Local	Local	Dept. of Corrections	Board of Pardons & Parole
California	Local	Local	Dept. of Youth Authority	Dept. of Youth Authority	Local	Local	Local	Dept. of Corrections	Dept. of Corrections
Colorado	Local	Local & District	Dept. of Institutions	Dept. of Institutions	Local	Local	Local	Dept. of Institutions	Dept. of Institutions
Connecticut	Juvenile Court Districts	Juvenile Court Districts	Dept. of Youth Services	Dept. of Youth Services	Dept. of Adult Probation	Dept. of Adult Probation	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections
Delaware	Dept. of Health & Soc. Servs.	Local	Dept. of Health & Soc. Servs.	Dept. of Health & Soc. Servs.	Dept. of Health & Soc. Servs.	Dept. of Health & Soc. Servs. & Local	Dept. of Health & Soc. Servs.	Dept. of Health & Soc. Servs.	Dept. of Health & Soc. Servs.
Florida	Local	Local	Dept. of Health & Rehabilitative Services	Dept. of Health & Rehabilitative Services	Local & Probation & Parole Commission	Local & Probation & Parole Commission	Local	Dept. of Health & Rehabilitative Services	Probation & Parole Commission
Georgia	Division of Children & Youth & Loc.	Division of Children & Youth & Loc.	Division of Children & Youth	Division of Children & Youth	Dept. of Probation & Local	Dept. of Probation & Local	Local	Dept. of Corrections	Board of Pardons & Parole

Table A-10
PARENT AGENCY RESPONSIBILITY FOR ADMINISTERING CORRECTIONAL SERVICES, BY STATE[1] (Continued)

State	Juvenile Detention	Juvenile Probation	Juvenile Institutions	Juvenile Aftercare	Misdemeanant Probation	Adult Probation	Local Adult Institutions and Jails	Adult Institutions	Parole
Hawaii	Local	Local	Dept. of Social Service	Dept. of Social Service	Local	Local	Local	Dept. of Social Service	Board of Parole & Pardons
Idaho	State Board of Health & Local	State Board of Health & Local	State Board of Health	State Board of Health	None	Board of Correction	Local	Board of Correction	Commission for Pardons & Parole
Illinois	Local	Local	Dept. of Corrections	Dept. of Corrections	Local	Local	Local	Dept. of Corrections	Dept. of Corrections
Indiana	Local	Dept. of Welfare & Local	Dept. of Corrections	Dept. of Corrections	Local	Local	Local	Dept. of Corrections	Dept. of Corrections
Iowa	Local	Local	Dept. of Social Services	Dept. of Social Services	None	Dept. of Social Services	Local	Dept. of Social Services	Dept. of Social Services
Kansas	Local	Local	Dept. of Social Welfare	Dept. of Social Welfare	Local	Loc. & Board of Probation & Parole	Local	Director of Penal Institutions	Board of Probation & Parole
Kentucky	Local	Dept. of Child Welfare & Loc.	Dept. of Child Welfare	Dept. of Child Welfare	Dept. of Corrections	Dept. of Corrections	Local	Dept. of Corrections	Dept. of Corrections
Louisiana	Local	Dept. of Public Welfare & Local	Dept. of Corrections	Dept. of Public Welfare & Local	None	Dept. of Corrections	Local	Dept. of Corrections	Dept. of Corrections
Maine	Local	Dept. of Mental Health & Corrections & Loc.	Dept. of Mental Health & Corrections	Dept. of Mental Health & Corrections	Dept. of Mental Health & Corrections	Dept. of Mental Health & Corrections	Local	Dept. of Mental Health & Corrections	Dept. of Mental Health & Corrections

Table A-10

PARENT AGENCY RESPONSIBILITY FOR ADMINISTERING CORRECTIONAL SERVICES, BY STATE[1] (Continued)

State	Juvenile Detention	Juvenile Probation	Juvenile Institutions	Juvenile Aftercare	Misdemeanant Probation	Adult Probation	Local Adult Institutions and Jails	Adult Institutions	Parole
Maryland	Dept. of Juvenile Services	Dept. of Juvenile Services	Dept. of Juvenile Services	Dept. of Juvenile Services	Dept. of Parole & Probation & Local	Dept. of Parole & Probation & Local	Local	Dept. of Correctional Services	Dept. of Parole & Probation
Massachusetts	Youth Service Board	Local	Youth Service Board	Dept. of Youth Services	Local	Local	Local	Dept. of Correction	Parole Board
Michigan	Local	Local	Dept. of Social Services	Dept. of Social Services	Dept. of Corrections & Local	Dept. of Corrections & Local	Local	Dept. of Corrections	Dept. of Corrections
Minnesota	Local	Dept. of Corrections & Local	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections & Local	Dept. of Corrections & Local	Local	Dept. of Corrections	Dept. of Corrections
Mississippi	Local	Local	Board of Trustees	State DPW and Local	None	Board of Probation & Parole	Local	Dept. of Correction	Board of Probation & Parole
Missouri	Local	Local	Board of Training Schools	Board of Training Schools	Local	Board of Probation & Parole	Local	Dept. of Correction	Board of Probation & Parole
Montana	Local	Local	Dept. of Institutions	Dept. of Institutions	None	Board of Pardons	Local	Dept. of Institutions	Board of Pardons
Nebraska	Local	District Courts & Local	Dept. of Public Institutions	Dept. of Public Institutions	District Courts & Local	District Courts	Local	Dept. of Public Institutions	Board of Parole
Nevada	Local	Local	Dept. of Health & Welfare	Dept. of Health & Welfare	Dept. of Parole & Probation	Dept. of Parole & Probation	Local	Board Prison Commissioners	Dept. of Parole & Probation
New Hampshire	Board of Parole	Dept. of Probation & Local	Board of Parole	State Industrial School	Dept. of Probation & Local	Dept. of Probation & Local	Local	Board of Parole	Board of Parole

Table A-10

PARENT AGENCY RESPONSIBILITY FOR ADMINISTERING CORRECTIONAL SERVICES, BY STATE[1] (Continued)

State	Juvenile Detention	Juvenile Probation	Juvenile Institutions	Juvenile Aftercare	Misdemeanant Probation	Adult Probation	Local Adult Institutions and Jails	Adult Institutions	Parole
New Jersey	Local	Local	Dept. of Institutions & Agencies	Dept. of Institutions & Agencies	Local	Local	Local	Dept. of Institutions & Agencies	Dept. of Institutions & Agencies
New Mexico	Local	Local	Dept. of Corrections	Local	Dept. of Corrections	Dept. of Corrections	Local	Dept. of Corrections	Parole Board
New York	Local	Local	Dept. of Social Services	Dept. of Social Services	Division of Probation & Local	Division of Probation & Local	Local	Dept. of Correctional Services	Dept. of Correctional Services
North Carolina	Local	District & Local	Board of Juvenile Correction	Local	Probation Commission	Probation Commission	Dept. of Corrections	Dept. of Corrections	Board of Parole
North Dakota	Local	DPW & Local	Dept. of Institutions	Public Welfare Board	None	Board of Pardons	Local	Dept. of Institutions	Board of Pardons
Ohio	Local	Local	Youth Commission	Youth Commission	Local	Local	Local	Dept. Mental Hygiene & Correction	Dept. Mental Hygiene & Correction
Oklahoma	Local	Loc. & Dept. of Welfare & Institutions	Dept. of Welfare & Institutions	Dept. of Welfare & Institutions	None	Local & Dept. of Corrections	Local	Dept. of Corrections	Pardon & Parole Board
Oregon	Local	Corrections Division & Local	Corrections Division	Corrections Division	Corrections Division	Corrections Division	Local	Corrections Division	Parole Board
Pennsylvania	Local	Local	Board of Training Schools	Board of Training Schools & Local	Board of Probations & Parole & Local	Board of Probations & Parole & Local	Dept. of Justice & Local	Dept. of Justice	Board of Probations & Parole
Rhode Island	Dept. of Social Welfare	Dept. of Social Welfare	Dept. of Social Welfare	Dept. of Social Welfare	Dept. of Social Welfare	Dept. of Social Welfare	Dept. of Social Welfare	Dept. of Social Welfare	Dept. of Social Welfare
South Carolina	Local	Local	Dept. of Juvenile Corrections	Dept. of Juvenile Corrections	Probation, Parole & Pardon Board	Probation, Parole & Pardon Board	Local	Dept. of Corrections	Probation, Parole & Pardon Board

Table A-10

PARENT AGENCY RESPONSIBILITY FOR ADMINISTERING CORRECTIONAL SERVICES, BY STATE[1] (Concluded)

State	Juvenile Detention	Juvenile Probation	Juvenile Institutions	Juvenile Aftercare	Misdemeanant Probation	Adult Probation	Local Adult Institutions and Jails	Adult Institutions	Parole
South Dakota	Local	Local	Board of Charities & Corrections	Board of Pardons & Parole	None	Board of Pardons & Parole	Local	Board of Charities & Corrections	Board of Pardons & Parole
Tennessee	Local	Dept. of Corrections & Local	Dept. of Corections	Dept. of Corrections	Local	Dept. of Corrections	Local	Dept. of Corrections	Dept. of Corrections
Texas	Local	Local	Youth Council	Youth Council	Local	Local	Local	Dept. of Corrections	Board of Pardons & Paroles
Utah	Local	Juvenile Court Districts	Dept. of Social Services	Juvenile Court Districts	Division of Corrections	Division of Corrections	Local	Division of Corrections	Division of Corrections
Vermont	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections	Dept. of Corrections
Virginia	Local	Dept. of Welfare & Institutions & Local	Dept. of Welfare & Institutions	Dept. of Welfare & Institutions & Local	Dept. of Welfare & Institutions	Dept. of Welfare & Institutions	Local	Dept. of Welfare & Institutions	Dept. of Welfare & Institutions
Washington	Local	Local	Dept. of Social & Health Services	Dept. of Social & Health Services	Local	Dept. of Social & Health Services	Local	Dept. of Institutions	Board of Prison Terms & Paroles
West Virginia	Local	Dept. of Welfare & Local	Commissioner of Public Institutions	Commissioner of Public Institutions	Local & Div. of Probation & Parole	Local & Div. of Probation & Parole	Local	Commissioner of Public Institutions	Div. of Probation & Parole
Wisconsin	Local	Dept. of Health & Soc. Services & Local	Dept. of Health & Social Services	Dept. of Health & Social Services	Dept. of Health & Soc. Services & Local	Dept. of Health & Soc. Services & Local	Local	Dept. of Health & Social Services	Dept. of Health & Social Services
Wyoming	Local	Dept. of Probation & Parole & Local	Board of Charities & Reform	Dept. of Probation & Parole	Dept. of Probation & Parole	Dept. of Probation & Parole	Local	Board of Charities & Reform	Dept. of Probation & Parole
Local	40	24	0	2	13	11	43	0	0
State-Local	2	20	0	5	11	13	1	0	0
State	8	6	50	43	16	26	6	50	50

Source: President's Crime Commission, *Task Force Report: Corrections,* pp. 200-201; Updated by ACIR and NCCD staff using 1970 State Comprehensive Law Enforcement Plans submitted to the Law Enforcement Assistance Administration, Department of Justice.

[1] Some States also have some local services in addition to State services.

Table A-11
NONMETROPOLITAN COUNTY POLICE FORCES BY SIZE, 1967

State	Number of Nonmetropolitan Counties	Nonmetropolitan County Police Forces of					
		0-9	10-24	25-49 Personnel	50-99	100 or More	Data Not Available
Alabama	55	45	7				3
Alaska	10	10					
Arizona	12	2	4	5	1		
Arkansas	68	59	5				4
California	36	4	12	5	13	2	
Colorado	56	49	5				2
Connecticut	No County Government						
Delaware	2	2					
Florida	56	16	20	8	6	2	4
Georgia	147	108	10	3			26
Hawaii	3	3					
Idaho	43	34	7	1			1
Illinois	84	61	16		1		6
Indiana	67	62	5				
Iowa	92	89	3				
Kansas	100	74	9				17
Kentucky	113	103		1			9
Louisiana	54	8	23	12	6		5
Maine	14	12	1				1
Maryland	15	11	4				
Massachusetts	4	1	1				2
Michigan	66	38	17	5	1		5
Minnesota	80	59	10				11
Mississippi	79	67	12				
Missouri	104	95	4				5
Montana	54	45	6	1			2
Nebraska	89	84					5
Nevada	15	8	6	1			
New Hampshire	9	9					
New Jersey	5	2	2		1		
New Mexico	31	23	5	1			2
New York	36	9	21	5	1		
North Carolina	87	51	25	2	1		8
North Dakota	52	50	2				
Ohio	57	31	25	1			
Oklahoma	68	50	3				15
Oregon	30	16	8	3	1		2
Pennsylvania	42	38	3				1
Rhode Island	No County Government						
South Carolina	38	14	18	2	1		3
South Dakota	63	62	1				
Tennessee	87	74	10	1			2
Texas	215	155	50	1			9
Utah	25	24	1				
Vermont	14	14					
Virginia	85	48	24				13
Washington	31	11	16				4
West Virginia	48	34	13	1			
Wisconsin	62	27	19	11	2		3
Wyoming	23	20	3				
Total	2,626	1,911	436	70	35	4	170

Source: U.S. Bureau of the Census, *Employment of Major Local Governments,* 1967 Census of Governments, Vol. 3, No. 1, Table 1.

Table A-12
DISTRIBUTION OF BLOCK GRANT FUNDS ALLOCATED TO CORRECTIONS, BY MAJOR PROGRAM CATEGORY
1970

State State	Total Corrections	Personnel Improvement	Probation & Parole	Community-Based	Jails	Prisons	Construction	Research	Miscellaneous
Alabama	$ 620,000	$ 180,000	$ 130,000	$ 70,000	- 0 -	- 0 -	$ 230,000	$ 10,000	- 0 -
Alaska	128,280	30,000	47,280	51,000	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
Arizona	577,000	25,000	110,000	107,000	- 0 -	$ 155,000	180,000	- 0 -	- 0 -
Arkansas	441,940	72,000	44,050	90,000	$ 75,000	80,000	- 0 -	80,890	- 0 -
California	4,234,530	509,385	250,000	345,740	- 0 -	691,480	1,296,525	1,091,400	$ 50,000
Colorado	501,152	- 0 -	- 0 -	243,520	116,856	140,776	- 0 -	- 0 -	- 0 -
Connecticut	743,647	68,000	142,950	386,197	- 0 -	16,500	130,000	- 0 -	- 0 -
Delaware	89,296	41,832	- 0 -	47,464	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
Florida	1,516,385	233,374	93,422	1,010,173	32,443	45,000	- 0 -	9,400	92,573
Georgia	1,406,457	156,149	147,697	175,530	150,400	450,912	212,500	113,269	- 0 -
Hawaii	317,975	125,975	54,600	45,000	- 0 -	- 0 -	- 0 -	92,400	- 0 -
Idaho	200,951	- 0 -	56,331	67,827	76,793	- 0 -	- 0 -	- 0 -	- 0 -
Illinois	1,862,859	198,000	205,000	473,359	61,500	60,000	780,000	85,000	- 0 -
Indiana	1,294,250	187,000	272,250	750,000	- 0 -	- 0 -	- 0 -	- 0 -	85,000
Iowa	543,454	92,000	80,000	238,962	21,593	- 0 -	110,899	- 0 -	- 0 -
Kansas	624,000	204,000	16,000	273,500	- 0 -	130,500	- 0 -	- 0 -	- 0 -
Kentucky	863,918	18,379	108,926	451,265	45,058	204,000	- 0 -	36,290	- 0 -
Louisiana	1,479,816	418,000	217,012	679,539	141,265	- 0 -	- 0 -	9,000	15,000
Maine	173,000	41,000	- 0 -	55,000	30,000	32,000	- 0 -	- 0 -	15,000
Maryland	1,393,777	328,077	107,949	728,646	127,193	- 0 -	32,000	17,490	52,422
Massachusetts	1,830,000	90,000	175,000	1,135,000	- 0 -	275,000	- 0 -	20,000	135,000
Michigan	1,912,000	37,000	644,000	871,000	112,000	248,000	- 0 -	- 0 -	- 0 -
Minnesota	716,300	193,150	25,000	192,400	50,000	- 0 -	108,000	37,800	109,950
Mississippi	434,801	166,575	129,726	- 0 -	20,000	118,500	- 0 -	- 0 -	- 0 -
Missouri	1,237,792	257,736	84,464	480,806	15,000	125,400	19,195	57,572	197,619
Montana	136,500	88,500	- 0 -	48,000	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
Nebraska	165,520	50,000	85,520	30,000	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -
Nevada	127,500	29,000	13,000	- 0 -	42,800	34,200	- 0 -	8,500	- 0 -
New Hampshire	139,400	36,000	36,000	- 0 -	- 0 -	50,400	- 0 -	- 0 -	17,000
New Jersey	4,930,000	245,000	300,000	990,000	- 0 -	300,000	- 0 -	95,000	- 0 -
New Mexico	163,755	3,000	66,550	73,980	10,725	6,000	- 0 -	- 0 -	3,500
New York	4,045,000	410,000	- 0 -	1,110,000	- 0 -	2,175,000	- 0 -	360,000	- 0 -
North Carolina	1,140,540	126,080	- 0 -	359,978	194,250	171,219	- 0 -	27,912	261,101
North Dakota	121,000	- 0 -	18,000	30,000	8,000	20,000	10,000	25,000	10,000
Ohio	2,913,000	630,000	825,000	330,000	- 0 -	1,025,000	- 0 -	103,000	- 0 -
Oklahoma	752,200	70,800	55,000	526,400	- 0 -	90,000	- 0 -	- 0 -	10,000
Oregon	458,923	67,800	- 0 -	378,623	- 0 -	12,500	- 0 -	- 0 -	- 0 -
Pennsylvania	2,926,307	1,212,637	- 0 -	1,013,770	- 0 -	500,000	- 0 -	50,000	150,000
Rhode Island	101,064	5,850	- 0 -	- 0 -	- 0 -	62,474	- 0 -	- 0 -	- 0 -
South Carolina	508,500	128,100	- 0 -	100,000	- 0 -	255,400	- 0 -	- 0 -	55,000
South Dakota	16,500	10,000	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	- 0 -	6,500
Tennessee	1,115,800	132,000	351,000	56,000	- 0 -	546,800	- 0 -	- 0 -	30,000
Texas	2,499,000	331,000	95,000	255,000	- 0 -	745,000	951,000	80,000	42,000
Utah	425,000	35,000	- 0 -	240,000	- 0 -	- 0 -	128,000	10,000	12,000
Vermont	90,437	20,000	- 0 -	68,937	- 0 -	- 0 -	- 0 -	- 0 -	1,500
Virginia	940,000	25,000	- 0 -	525,000	- 0 -	- 0 -	275,000	30,000	85,000
Washington	770,003	75,000	- 0 -	402,803	- 0 -	202,203	- 0 -	- 0 -	90,000
West Virginia	456,985	45,985	70,000	87,500	- 0 -	253,500	- 0 -	- 0 -	- 0 -
Wisconsin	740,000	- 0 -	200,000	480,000	20,000	- 0 -	- 0 -	40,000	- 0 -
Wyoming	113,917	4,020	4,500	- 0 -	55,397	- 0 -	50,000	- 0 -	- 0 -
D. C.	349,089	24,000	20,651	127,569	- 0 -	176,869	- 0 -	- 0 -	- 0 -
American Samoa	17,000	1,000	6,000	- 0 -	- 0 -	9,000	- 0 -	- 0 -	1,000
Guam	42,022	24,167	- 0 -	11,855	- 0 -	6,000	- 0 -	- 0 -	- 0 -
Puerto Rico	859,000	70,000	145,000	405,000	- 0 -	130,000	- 0 -	109,000	- 0 -
Virgin Islands	80,000	10,000	- 0 -	50,000	- 0 -	20,000	- 0 -	- 0 -	- 0 -
Grant Totals	$49,188,220	$7,582,571	$5,302,878	$16,691,980	$1,406,276	$9,534,633	$4,513,119	$2,628,923	$1,527,843

Source: U.S. Department of Justice, Law Enforcement Assistance Administration. *Preliminary Program Division Analysis: 1970 State Law Enforcement Plans.* Washington, 1970, pp. 28-29.

Table A-13

AVERAGE MEMBERSHIP OF LOCALLY-ADMINISTERED POLICE RETIREMENT SYSTEMS, 1967

State	Number of Systems	Total Membership	Average Membership Per System
Alabama	2	23	12
Alaska		None in State	
Arizona	4	1053	263
Arkansas	10	441	44
California	1	32	32
Colorado	11	1292	117
Connecticut	21	1750	83
Delaware	2	267	134
Florida	31	1033	33
Georgia	3	1097	366
Hawaii		None in State	
Idaho	4	134	34
Illinois	152	14742	97
Indiana	57	3550	62
Iowa	30	1120	37
Kansas	11	535	49
Kentucky	2	579	290
Louisiana	11	1923	175
Maine	1	14	14
Maryland	3	359	120
Massachusetts		None in State	
Michigan	2	14	7
Minnesota	20	1690	85
Mississippi		None in State	
Missouri	5	3067	613
Montana	10	327	33
Nebraska	5	76	15
Nevada		None in State	
New Hampshire		None in State	
New Jersey		None in State	
New Mexico		None in State	
New York	30	27765	926
North Carolina	3	268	89
North Dakota	3	148	49
Ohio		None in State	
Oklahoma	26	1395	54
Oregon		None in State	
Pennsylvania	97	7630	79
Rhode Island	8	546	68
South Carolina	1	145	145
South Dakota		None in State	
Tennessee		None in State	
Texas	1	1680	1680
Utah	2	123	62
Vermont		None in State	
Virginia	1	285	285
Washington	8	1779	222
West Virginia	16	471	29
Wisconsin	29	774	27
Wyoming	5	113	23
Total U.S.	630	78234	124

Note: Table refers only to police retirement systems which are locally administered and which offer coverage solely to local police. Local systems which combine police and firemen or which cover police in a general-coverage system are not included in this tabulation.

Source: U.S. Bureau of the Census, *Employee-Retirement Systems of State and Local Governments,* 1967 Census of Governments, Vol. 6., No. 2, Tables 1 and 5.

Appendix A—14

Criminal Justice Problem Identification Checklists for Citizens' Groups*

THE POLICE
Problem Identification Checklist

ADMINISTRATION AND OPERATION

A. ORGANIZATION, MANAGEMENT, AND POLICIES

1. Have official policies pertaining to all areas of police responsibility been adopted and documented?
2. Have procedures for implementing police policies been documented and made available to those responsible for carrying them out?
3. Is the job structure of the department differentiated so that there are appropriate entry levels for those with different backgrounds and educational attainment?
4. Are there so many specialties with independent command structures that there is difficulty in bringing the full resources of the department to bear on a problem?
5. Do personnel assume responsibility commensurate with their rank?
6. Is the number of command personnel excessive?
7. Is the span of control too broad?
8. Is authority commensurate with responsibility?
9. Are there too many precincts?
10. When a juvenile is apprehended by an officer, what are the subsequent steps in the process? Detention? Release in care of parents? Arrested? Served with summons? Referred to juvenile court? Referred to a community agency?
11. Is report preparation by field personnel streamlined? Are records centralized or are they fragmented among the precincts?
12. Is there an organization chart of the department? Does it correspond to the way the department actually operates?
13. Are responsibilities and their assignment clearcut?
14. Would the department benefit from a legal advisor?
15. What is the policy governing use of firearms?
16. What management or administrative skills does the department most need?
17. Is the chief given sufficient decision-making latitude?

B. COORDINATION AND CONSOLIDATION OF SERVICES AND FACILITIES

1. What pooling or coordination of police resources exists within the region?
2. Could record keeping, recruitment, purchasing, detention facilities, criminal intelligence be consolidated or better coordinated among the departments in the area?
3. Can intercommunity cooperation result in a shared-by-all crimi-

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*Source: Chamber of Commerce of the United States, *Marshalling Citizen Power Against Crime* (Washington, D.C.: The Chamber, 1970), pp. 87-100. There are certain steps that citizens should take before making use of these questions. See Chapter VII of the Chamber's report.

nal laboratory, training facility, more efficient communication network?
4. What is the relationship of municipal police to county and state police? Are there conflicts, duplications?
5. Is there a regionwide computer-based police information network the department should plug into? Should the department avail itself of the FBI's computerized National Crime Information Center, which supplies information on wanted persons, stolen vehicles, and stolen property?

C. CRIME PREVENTION AND CONTROL

1. Is adequate credit given to the crime prevention efforts of patrolmen?
2. Are patrolmen responsible for all aspects of law enforcement—from traffic to vice?
3. Is the number of men assigned to a shift in proportion to the amount of crime and calls for service that can be expected to occur during the shift?
4. Of all reported crimes, how many are cleared by arrests or summons? How can the clearance rate be improved?
5. Are there contingency plans for emergencies, such as riots, natural disasters, etc.?
6. Has the matter of organized crime been investigated in depth?
7. To what extent would faster response time deter crime or increase arrests?
8. How might the department participate in community planning regarding crime prevention measures, security codes, etc.?

D. CORRUPTION

1. Should the department have an internal investigation unit to probe breaches of police integrity and to determine the validity of civilian complaints?
2. Are ethical standards enforced to minimize corruption?
3. Are citizens pressured into purchasing Christmas club or policeman's ball tickets?
4. Do businessmen offer free meals or other goods and services to police in return for relaxed enforcement of certain laws such as double parking?

E. COMMUNITY RELATIONS

1. In what way does the department believe citizen involvement can be most helpful?
2. Is there a police-community relations program? In addition to a special unit for this purpose, are all personnel aware of their role?
3. Is police-community relations nothing more than superficial public relations?
4. Do segments of the community exhibit animosity toward police?
5. Are the rights of citizens respected before, during, and after arrest?
6. Are certain activities of patrolmen adversely affecting what should be the neutral political image of police?
7. Are juveniles included within the scope of the community-relations program?
8. What is the policy for processing a civilian complaint?

F. RESEARCH AND STATISTICS

1. Are sufficient data available to indicate how patrol officers should be distributed according to the actual need for their presence?
2. Are criminal statistics maintained and analyzed?
3. Are all crimes that are reported to police reflected in official statistics?

4. What type of crime is considered most serious in the city?
5. Are statistics available regarding types of offenses, their volume, their place and time of occurrence, the victim and offender (youths, adult, man, woman), the motive?

G. PERSONNEL UTILIZATION AND PERFORMANCE

1. Is civilian manpower used whenever feasible?
2. Are police utilized for trivial duties?
3. Is the force up to authorized strength?
4. How many more men are needed? Why? How would they be used?
5. How many men ride in a patrol car? Are foot patrolmen assigned singly or in pairs to a given beat?
6. Do officers use police cars while off duty?
7. Should foot patrol receive more emphasis, given its community-relations and criminal intelligence advantages over motor patrol?
8. Has the state developed minimum standards for police performance?
9. Do patrol cars operate through the night?

MANPOWER AND MANAGEMENT

A. RECRUITMENT

1. Are recruitment standards sufficiently flexible and realistic?
2. Has an effort been made to recruit college graduates? High school graduates? Ghetto dwellers?
3. Can a qualified patrolman or detective from another city be hired by the department?

B. TRAINING

1. Is adequate training given to recruits?
2. Are there periodic sessions of in-service training?
3. Are educational improvement and training given appropriate emphasis by promotion policy?
4. Are there officers specially trained to handle juvenile problems?

C. SALARIES AND PROMOTION

1. Are salaries competitive?
2. Are salaries tied to those of other municipal agencies?

EQUIPMENT AND FACILITIES

A. EQUIPMENT

1. Are more patrol cars or scooters required?
2. Is communication equipment badly needed? Other types of equipment?

GENERAL

1. What does the department consider as its biggest problem?
2. Is high personnel turnover a problem?
3. Does the department need citizen support for its proposed budget?
4. What court-related problems are faced by police? What corrections problems?
5. What offenses do police officials consider in need of "decriminalization"?
6. What new legislation would assist police?
7. What seems to be the major complaints of patrolmen? Of administrative personnel? Of command officers?

THE COURTS
Problem Identification Checklist

A. CASE BACKLOG AND DELAY

1. What is the case backlog in the lower criminal courts? In the felony courts?
2. How long is the delay between arrest and sentencing? Between arrest and trial?
3. How long must police wait in court before testifying?
4. To what extent are continuances granted and for what reasons?
5. Do poor case-scheduling procedures contribute to delay?
6. How closely does the judicial process conform to the model timetable for felony cases developed by the President's Commission?
7. How many alleged offenders are in pretrial detention facilities?
8. On the average, how long are defendants confined while awaiting trial?
9. To what extent are courts dealing with cases that could be better handled outside the criminal justice system?

B. SENTENCES AND DISMISSAL OR REDUCTION OF CHARGES

1. To what extent are charges dismissed or reduced? Why?
2. What percentage of cases are disposed of through a plea of guilty? How many of those pleas are negotiated?
3. What are the most common sentences for a given offense?
4. To what extent are sentences of imprisonment avoided because of substandard correctional facilities?
5. Are legislature-mandated sentences consistent with one another —are sentences relating to serious crimes less severe than those pertaining to less serious offenses?
6. Are there sentencing disparities among judges?
7. Are judges informed about sentence alternatives? Do they receive presentence reports?
8. Is appropriate use made of probation?
9. What is the relationship between the economic and ethnic status of defendants charged with similar offenses and their sentences?

C. THE PROSECUTOR AND DEFENSE COUNSEL

1. Is the prosecutor's position a full-time job or is he permitted to work on the side?
2. Are salary and other working conditions adequate to attract high caliber individuals to seek the office of prosecutor?
3. Does the prosecutor have enough assistants in relation to the workload?
4. Does the prosecutor attend prosecutor training institutes?
5. How efficient is the system in the provision of legal services to the poor? Is it overworked, understaffed?
6. To what extent does the local bar discipline unscrupulous counsel?
7. What method is used to provide defense service to the poor—assign counsel, public defender, combination?
8. What is the provision of the defense services—donations, taxes, both? How much does this cost? Are more funds required?

D. COURT ORGANIZATION, MANAGEMENT AND PROCEDURES

1. Does the court have a court administrator? To what degree are judges involved in day-to-day administrative matters?
2. Is there a multiplicity of trial courts without coherent and centralized management?
3. Is each judge accountable to someone for his performance and conduct?

4. How could the criminal courts in the state benefit from unification?
5. Is there a justice-of-the-peace system?
6. Is probation administered by the courts, by corrections, or by both?
7. How long are judicial vacations? Are they staggered?
8. How effectively does the court coordinate the appearances of all parties to a case?
9. Has judicial independence been extended to matters of administration, with the result that each judge is his own boss?
10. Are fines collected within reasonable periods?
11. Are calendar calls staggered?
12. Are the most serious cases adjudicated first?
13. Are court procedures about to be computerized without prior analysis of the worth or effectiveness of those procedures?
14. Is there a mechanism assuring equalized caseloads?
15. Are omnibus motions and pretrial discovery part of criminal court procedure?
16. Are the ABA standards relating to criminal appeals and post-convictions remedies being seriously studied by the court?
17. What are the most important management or administrative deficiencies?
18. Is there a plan available for the administration of justice under emergency conditions?
19. To what extent do police and corrections create problems for the court?
20. Are there now enough judges, facilities, and support personnel to handle the current workload *if* management and administrative techniques were upgraded?

E. PERSONNEL SELECTION, UTILIZATION, AND PERFORMANCE

1. What are the daily hours of judges?
2. How are judges selected for appointment? How is their performance reviewed?
3. Is there a practical procedure by which judges can be removed from the bench?
4. Are judicial vacancies filled quickly?
5. To what extent is the judicial process suffering from failure of personnel on the one hand and from failures of procedure and policy on the other?
6. Are law school students being appropriately utilized?
7. On what basis are applicant's selected to fill court vacancies?
8. What are the minimum qualifications for judges and prosecutors?
9. Are there training opportunities for judges and prosecutors—both before and after election or appointment?
10. Do court personnel receive adequate training?
11. What do court personnel consider as their most important problem?
12. In what ways do court personnel feel that citizen involvement can be most beneficial?

F. FACILITIES AND EQUIPMENT

1. Have court facilities and procedures kept pace with factors affecting the court's workload, such as increased police effectiveness, rising population, new laws, etc.?
2. Are treatment of and facilities for jurors and witnesses adequate?
3. Are court facilities conducive to justice?
4. What can businessmen do to help alleviate the lack of court facilities?

5. What correctional facilities are available to the lower courts? To the felony courts?
6. Are adequate statistics maintained by the court to facilitate problem identification and solution?

G. JUVENILE COURT

1. Is there a juvenile court system? How well qualified are the judges?
2. Are youths subject to formal juvenile court action for offenses that would not be considered criminal for adults?
3. Are juvenile court judges exclusively or excessively preoccupied with rehabilitation, with too little concern about public protection?
4. Is there adequate due process in the juvenile court?

H. BAIL

1. Is bail applied too stringently or extensively?
2. What is the quality of bondsmen?
3. Have alternatives to bail been explored?
4. Is bail really a cloak with which to cover preventive detention instead of dealing with the latter on its merits?
5. To what extent are dangerous offenders released on bail and those charged with lesser offenses detained because they could not raise sufficient money?
6. Are "credit bonds" outlawed?
7. Is the number of bonds that a bondsman is permitted to supply related to the assets backing up the bonds?
8. Do bondsmen pay forfeitures promptly?

CORRECTIONS
Problem Identification Checklist

A. CORRECTIONAL FACILITIES, THEIR UTILIZATION AND EFFECTIVENESS

1. Is there an adequate range of correctional facilities or services to which offenders may be sentenced?
2. Are correctional alternatives studies from a cost/benefit standpoint?
3. How many of those now in maximum security institutions really need that type of confinement?
4. Are statistically valid evaluations made of the effectiveness of various correctional methods, and are the criteria realistic in terms of public expectations?
5. What are the conditions in correctional institutions, particularly in short-term facilities? What about sanitation, the rights of prisoners, overcrowding, appropriate segregation of types of offenders, etc?
6. What correctional options are available for misdemeanants, who represent 93.5 percent of those arraigned for nontraffic offenses? Particularly, are probation services available, and if so, are they sufficient to meet caseload problems and levels?
7. Do correctional facilities and services plan to avail themselves of the accreditation procedure of the American Correctional Association?

8. What is the recidivist rate of those released from each correctional facility in the region? How does each facility define recidivism? Are there built-in "success" factors which compromise the validity of the data?
9. Have referral and commitment practices been thoroughly evaluated to minimize the use of detention and confinement?
10. Do the physical facilities make adequate provision for correctional programs, and if not, are plans under way to modify or replace them?

B. ORGANIZATION, MANAGEMENT, AND POLICIES

1. Is the goal of these facilities and services rehabilitation and reintegration as well as public protection?
2. Is the correctional system unreasonably fragmented? Is there a need for better pooling or coordination of services, facilities, and management?
3. Are correctional methods tailored to the offender? If he is without a skill, is he trained until he develops one? If he is undereducated, are educational programs available? If he is an alcoholic or is mentally retarded, are appropriate medical and social services available?
4. What managerial or administrative skills do correctional administrators require the most? Do the correctional administrators really have the capacity for leadership and innovation?
5. Are administrators taking appropriate note of the union movement among correctional employees?
6. Are administrators making provision for the use of female employees, minority group members, ex-offenders and paraprofessionals?
7. Is there statewide coordination of corrections?
8. Are the administrators taking full advantage of the many different Federal funding and technical assistance programs which are now being made available through several Departments of the government?
9. Are the administrators familiar with the contents and recommendations of the many studies and surveys in corrections that have been made in recent years—among others, the President's Commission Report on Law Enforcement and Administration of Justice, the President's policy directive on corrections dated November 13, 1969, the report "A Time To Act" of the Joint Commission on Correctional Manpower and Training, and the 1970 report of the White House Task Force on Prisoner Rehabilitation.
10. Do the administrators have the information resources and systems which enable them to make intelligent decisions and do intelligent planning?

C. OVERCROWDING AND OTHER PENAL CONDITIONS

1. To what extent is corrections overburdened with those awaiting trial? Are they separated from prisoners serving their sentences? Are juveniles separated from adults?
2. Is there an excessive use of sentences to confinement?
3. How does the average inmate population of correctional institutions compare with the capacity for which they were originally designed?
4. Do the cells hold in excess of the number of prisoners for which they were designed?
5. Have any riots or disturbances occurred during the last three years at each facility?
6. Do the facilities have emergency fire and disorders prevention and control plans?
7. Is there sufficient provision made, both in physical provisions and by regulation, for family visiting?

8. Are custodial provisions, both physical and by practice, overly stringent? Or insufficiently secure?
9. Are the physical conditions of the facilities, and associated practices, so bad that as in several other localities an inmate lawsuit may be successful in obtaining a court judgment that they represent cruel and unusual punishment prohibited by the Constitution?
10. Are the rights of prisoners, as reflected in many recent court decisions, fully observed?

D. PROBATION AND PAROLE

1. Does the state, or the county, or the locality even have a probation system?
2. Where probation and parole do exist, do they have sufficient manpower and resources to provide any really meaningful rehabilitative treatment?
3. Are the type and extent of supervision geared to the individual needs of probationers and parolees?
4. Do the judges make adequate and intelligent use of probation, and do the parole boards use realistic criteria in making decisions for the release of prisoners?
5. Are parole and probation revocations arbitrary?
6. Are parolees and probationees informed in writing of conditions to which they must adhere?
7. Are probation and parole officers aware of the community resources available to the treatment of their clients, and do they make sufficient use of these?
8. Do the probation and parole officers have access to funds for the purchase of services—educational, training, employment placement, guidance, medical and psychological, etc.—for their clients?
9. Do the probation and parole officers really supervise their clients, or do they depend on a monthly checklist or letter?
10. Would an increased use of probation and parole, consistent with the public safety, reduce or eliminate the need for further institutional construction?

E. PERSONNEL SELECTION, TRAINING, AND PERFORMANCE

1. To what extent are correctional appointments influenced by political considerations?
2. Do the correctional agencies observe nationally recognized standards for the education and training of personnel?
3. Are administrators required to acquire management skills?
4. What is the turnover rate among corrections personnel?
5. Are personnel pay standards adequate?
6. Are the personnel encouraged to take advantage of state and Federal grant and loan programs for their education?
7. Do the correctional agencies have qualified and especially trained personnel to develop and conduct in-service training programs?
8. Are the personnel encouraged, and their expenses underwritten, to permit them to maintain active associations with national and regional professional organizations?
9. Are the personnel encouraged, or are they actively discouraged, from developing attitudes receptive to innovations in the correctional treatment of offenders?
10. Are the suggestions of employees for the improvement of programs and policies given full consideration and recognition?

F. COMMUNITY-BASED CORRECTIONS

1. Are the many potentially supportive medical, guidance, educational, employment, and other resources of the community sufficiently developed and coordinated with the correctional process?
2. Is the public uninformed or misinformed about the promise of community-based corrections—in terms of costs and benefits?
3. Has sufficient attention been directed toward applying community-based corrections to adults as well as to youths?
4. Are there really any community-based programs—work release, halfway houses, group homes, court diversion projects, manpower programs, etc?
5. Are any reasonable standards observed in the operation of community-based programs, or are they really much better than the jails and institutions for which they are used to substitute?
6. Are the community-based programs equipped with sufficient supportive services—service purchase funds, counselling, training, etc?
7. Have the correctional administrators applied for grants from any of the many Federal funding sources for various types of community-based programs?
8. Is there realistic follow-up and evaluation of community-based programs to ascertain if they are really more effective in the rehabilitation of offenders?
9. Do the police, prosecutors, and courts actively support the development of community-based programs?
10. Is the selection of offenders for placement in community-based programs too stringent and intended only to make them look good, or is selection primarily in terms of offenders needing this type of program, consistent with the public safety?

G. RECRUITMENT AND SALARIES

1. How many more correctional personnel are needed—and for what jobs?
2. Is there an excessive number of security personnel in comparison to so-called treatment personnel?
3. Are ex-offenders and paraprofessionals hired as full-time correctional employees?
4. Are salary levels and working conditions sufficiently high to attract fully qualified personnel?
5. Are recruitment requirements too arbitrary? Could recruitment practices be strengthened?
6. Is lateral entry permitted into the system?
7. Are new personnel who demonstrate their unfitness for correctional work weeded out?
8. Do promotion policies reflect records of performance or political or other considerations?
9. Are employees occasionally exchanged on a temporary basis with other correctional systems?
10. To what extent do the personnel standards reflect the recommendations of the Joint Commission on Correctional Manpower and Training?

H. GENERAL

1. In the opinion of correctional officials, what are the most important problems they face?
2. How might citizen involvement best help them, and do they encourage citizen involvement?
3. Are correctional problems created or intensified by the police and courts to any extent?
4. What are the budgetary needs of correctional facilities and services, and is anything being done to meet them?
5. What legislation is required to help bring about a more effective correctional system?

6. What is being done to avoid an excessive dependence upon and use of institutions?
7. Are there efforts being made to treat certain types of inmates—alcoholics, addicts, social misfits, etc.—outside the correctional system?
8. Is the power structure of the community aware of the problems of corrections, and are these problems being given sufficient priority?
9. Are the respective jurisdictions receptive to pooling facilities and programs for the care and treatment of offenders where geographically feasible?
10. Are outside experts sought where necessary in developing solutions to correctional problems?

I. THE EX-OFFENDER AND JOBS

1. Are employers willing to hire ex-offenders for meaningful jobs?
2. Is there an effective liaison between correctional institutions and potential employers of ex-offenders.
3. Are institutional training programs geared to the actual employment requirements and skills needed by the community?
4. Do the institutions have work-release programs, permitting the community employment of prisoners during the latter part of their terms?
5. Do the institutions take advantage of the manpower training program grants offered by the Department of Labor?
6. Are supporting services offered to ex-offenders when they return to communities and begin employment?
7. Do the state laws or municipal ordinances have to be changed to permit the licensing of ex-offenders for certain occupations, as for example barbering?
8. Are the correctional agencies making use of the bonding program for ex-offenders administered by the U. S. Employment Service?
9. Where programs for the employment placement of offenders exist, do they place them in meaningful jobs, or to occupations in restaurants, dry cleaning establishments, car washes, etc., where they are unlikely to remain?
10. Are funds and resources made available to probation departments for the training and employment of their clients by the private sector?

J. VOLUNTEERS

1. Is any use made of corrections volunteers?
2. How many volunteers are now being used in probation, parole, and institutions? Are more required?
3. Are there any standards being observed in the selection, training and supervision of volunteers?
4. What are the kinds of services for which volunteers are found to be most useful?
5. Are ex-offenders and minority group members included in the volunteer rolls?
6. Are the correctional agencies taking advantage of the several Federal funding sources for the initiation of volunteer programs?
7. Where volunteer programs are being started, is outside technical assistance sought to make sure that the prospects of success are enhanced?
8. Are volunteers being used to substitute for, or to supplement, the services of professional workers?
9. Are the volunteers being used on a one-to-one basis, or are they assigned excessive numbers of offenders with which to work?
10. Are those volunteers weeded out whose services do not prove productive or whose motivation may be suspect?

Appendix B

The Economics of Urban Police Protection
A Research Note

Introduction

Serious debate has been generated by the question of whether the structure of local governments in most metropolitan areas is an efficient one for the provision of urban police services. On the one hand, Gordon Misner has contended that it is doubtful whether adequate police protection can be provided in communities of less than 50,000 population and has stated that the "total police resources of our metropolitan area are disipated by the very nature of their organization."[1] In contrast, Werner Hirsch sees little need for reorganization of the police function, stating that it is essentially a local service, having minor benefit spillovers and little impact as an income-redistributive service.[2] Occupying a middle ground has been the Advisory Commission on Intergovernmental Relations, the President's Crime Commission, and such scholars as Break and Norrgard.[3] They have argued that certain aspects of the police function, mainly supportive services, could be reorganized at the areawide level while basic police services would still be provided by existing local governments.

Whether the structure of local governments is an efficient one for the provision of various public services turns on a number of economic and political criteria, many of which have been identified in the public finance and public administration literature.[4] As one might expect, greater progress has been made in testing the economic factors affecting the provision of urban services than has been the case with political considerations which are hard to reduce to quantitative form. Since the following is a quantitative treatment of the determinants of the per capita costs and employment levels (i.e., personnel per 10,000 population) of the urban police function, only economic factors affecting police protection will be analyzed.

Previous Research on the Economics of the Police Function

Economies of scale and economic externalities are two main economic factors affecting the provision of urban services. The former refers to the relationship between unit cost of a service and the size of its production unit, in this case a local government. Economies of scale occur when the per capita costs of a service decline with increasing population size; diseconomies occur when per capita costs increase with increasing population size. This, then, defines the typical "U" shaped curve thought to describe the overall relationship between per capita costs of a given function and population size.[5] When either economies or diseconomies of scale exist in a system of local finance, jurisdictional fragmentation or the lack of it may prevent local governments from being of an optimal size to provide efficient public services.

Economic externalities refer to the costs or benefits of a public service that are not part of the economic transaction in the purchase of a public good.[6] Some claim that externalities have the effect of causing the public to ". . . undersupport the program in question, thereby impairing economic performance by distorting the allocation of resources."[7] Externalities may diminish fiscal support for a particular public service since they accrue to persons who do not have to pay for the service. Thus, externalities are additional fiscal costs imposed on the taxpayer who receives no direct benefit from such 'extra' expenditures. A taxpayer will reduce his support for a function if he perceives externalities are

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[1] Misner, Gordon. "Recent Developments in Metropolitan Law Enforcement", *Journal of Criminal Law, Criminology, and Police Science,* Vol. 50, p. 500.

[2] Hirsch, Werner. "Local Versus Areawide Urban Government Services", *National Tax Journal.* XVII (December 1964), pp. 331-339.

[3] *ACIR, Performance of Urban Functions: Local and Areawide,* Washington, 1963; President's Crime Commission, *Task Force Report: The Police,* Washington, 1967.; Break, George, *Intergovernmental Fiscal Relations in the United States,* Washington, 1967.; Norrgard, David L. *Regional Law Enforcement,* Chicago: Public Administration Service, 1969.

[4] ACIR,*Ibid.,* pp. 41-60.

[5] ACIR, *Urban and Rural America: Policies for Future Growth,* Washington, 1968, p.45.

[6] McKean, Roland, *Public Spending,* New York: McGraw-Hill, 1968, p. 64ff.

[7] Break, George *op. cit.,* p. 64.

present. However, if he does not perceive such externalities when they are present, he may "oversupport" the function in proportion to the benefits he receives. Therefore, externalities may be significant in determining whether the fragmentation of a system of local government results in under or overprovision of a particular service.[8]

While various studies have indicated some of the determinants of police expenditures,[9] most scholars have found no evidence of economies of scale in the police function. Hirsch, in 1959, [10] in a study in the Saint Louis Metropolitan area found no significant relationship between police expenditures and community size nor did Schmandt and Stephens discover economies of scale in the police function in the Milwaukee metropolitan area in 1960.[11] More contemporary research on the determinants of police expenditures also failed to uncover evidence of economies of scale.[12] Yet, a most recent piece of research did indicate that diseconomies of scale occurred in the provision of police services particularly in very large cities.[13]

Hawley and Brazer's early research on municipal finances noted that central city police expenditures were increased as a result of the "contact" or commuter population a central city might serve.[14] Thus, in that case, economic externalities, according to their measure, [15] were positively associated with urban police expenditures. Later research in other functions, however, indicated that externalities did, in fact, cause diminished fiscal support for other public services.[16] Yet, a study this year by Hawkins and Dye noted that governmental fragmentation, often a proxy for the existence of externalities, ". . . did not appear to increase or decrease government spending for municipal services."[17]

A variety of different studies encompassing a number of different governmental structures and/or different sets of economic determinants has produced disagreement on whether economies of scale or economic externalities affect the police function. Past studies found no significant relationship between police expenditures and population size though a more recent investigation found evidence of diseconomies of scale in the police function. Early municipal finance research suggested that economic externalities increased central city police expenditures. However, more recent work has noted no significant association between police expenditures and governmental fragmentation. These conflicting findings suggest the need for another examination of the effects of economies of scale and economic externalities on urban police finances.

The Structure of American Police Protection

As of 1967 there were over 38,000 units of general local government in the country. Over ninety percent of these units had less than twenty-five full-time police personnel. In fact, less than four percent of all units of general local government accounted for nearly eighty percent of total local police personnel in the nation. (See Table B-1) Police forces in a random sample of over ninety metropolitan areas were of a somewhat larger size. At the same time seventy-five percent of all forces in these areas were of less than fifty men; fifty percent were of twenty or less full-time personnel, and about twenty-six percent were of ten or less full-time policemen. Moreover, most local police departments, at least as of 1960, served relatively small populations. Over sixty percent of all counties had populations of less than 25,000 as did over ninety percent of all municipalities and nearly all townships.[18]

The extreme decentralization of the police function enables empirical testing of whether economies or

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[8] Overprovision of services should not have a negative connotation. Witness the value of central city police services to suburban commuters.

[9] Bahl, Roy, "Studies on Determinants of Public Expenditures: A Review" in Selma Mushkin, *Functional Federalism: Grants-in-Aid and PPB Systems,* Washington, 1968, pp. 184-207.

[10] Hirsch, Werner, "Expenditure Implications of Metropolitan Growth and Consolidation. *Review of Economics and Statistics.* August 1959, pp. 232-241.

[11] Schmandt, Henry J. & Ross Stephens, "Measuring Municipal Output", *National Tax Journal,* December 1960, pp. 369-375.

[12] Bahl, Roy, *Metropolitan City Expenditures,* University of Kentucky Press, 1968.

[13] Gabler, L. R. "Economies and Diseconomies of Scale in Urban Public Sectors, "*Land Economics,* XLV' No. 4., November 1969, pp. 425-434.

[14] Brazer, Harvey, *City Expenditures in the United States,* New York: Bureau of Economic Research, 1959. (Hawley's work is cited therein)

[15] Their measure was percent of the metropolitan population in the central city.

[16] Weisbrod, Burton, "Geographic Spillover Effects and the Allocation of Resources to Education," in Julius Margolis ed. *The Public Economy of Urban Communities,* Washington: Resources for the Future, 1964.

[17] Hawkins, Brett and Thomas Dye, "Metropolitan Fragmentation: A Research Note, "*Midwestern Review of Public Administration,* Vol. 4, No. 1., February 1970, p. 23.

[18] U. S. Bureau of the Census, *Governmental Organization,* 1967 Census of Governments, Vol.I., Tables 7,9,11.

diseconomies of scale exist in the function. Moreover, the differing degrees of governmental fragmentation[19] in the nation's metropolitan areas should permit investigation of whether economic externalities affect the local police function.

Economic Externalities and the Urban Police Function

Data was gathered on the number and size of organized local police departments, from a stratified random sample[20] of over ninety metropolitan areas in 1966-67. (See Table B-2) Using a multivariable model to measure the determinants of metropolitan police expenditures and levels of personnel strength (i.e., full-time equivalent police employment per 10,000 population), it was found that the number of organized police forces was positively, though not significantly, related to both per capita police expenditures and level of police protection. Moreover, in a simplified determinants model, number of police forces was significantly and positively related to the level of metropolitan police strength. (See Tables B3 and B-6.)

The full-scale multivariable model used to test the effects of economic externalities on the police function found that population density, crime rate, per capita income, and population change between 1960-1967 were significantly and positively related to per capita police expenditures. These four variables accounted for sixty-eight percent of the variation in metropolitan police costs in the metropolitan areas under study. When the model was used to explain variations in the personnel variable, per capita income, population density, and crime rate were found positively and significantly associated with the dependent variable.

Stepwise regression techniques[21] were used to simplify the ten variable model. Using such techniques, it was found that population density, crime rate, and the number of organized police forces were significantly associated with levels of police protection. This simplified three-variable model explained forty-seven percent of the variation in the level of police protection in the areas under study.

The multiple regression findings are in accord with past research on police expenditures. Density and per capita income are positively and significantly related to police expenditures as Brazer, Williams, and Bahl have found.[22] There is also a negative, though not significant, relationship between percent of metropolitan population in the central city and per capita police expenditures, possibly reconfirming the Hawley-Brazer "exploitation" thesis about central city finances in a fragmented metropolitan area.

Of additional interest are the relationships between percent of households under $3,000 and over $10,000 and per capita police expenditures. Those relationships may indicate that the police function is more poverty-related than previously thought and that high-income populations have relatively less preference for police protection. The positive relationship between the educational assignment variable (i.e., percent educational expenditures financed from local sources) may indicate that metropolitan areas with highly developed local fiscal systems can support high levels of police expenditures.

The model findings indicate that governmental fragmentation does not lead to significantly higher police costs though it may increase the level of metropolitan police strength. This relationship is plausible if fragmentation increases the number of smaller, low-cost police departments in a metropolitan area. The proliferation of such departments would raise the level, but not the aggregate costs, of metropolitan police protection since such departments generally do not pay high salaries for the personnel nor do they finance extensive supportive police services.[23]

The lack of a significant negative relationship between per capita police expenditures and number or organized police forces is a finding that is at variance with the notion that economic externalities tend to diminish fiscal support for public services. However, it may be that the police function is still affected by externalities. Since the police function relates to personal and property security, it may not be susceptible to the negative effects of externalities. Having a more immediate impact on local citizenry, there might be greater tolerance for "overprovision" of police services. Also externalities might result in overprovision of police services if there are increasing "exploitation" effects among the more industralized localities in a metropolitan area. In short, as the

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19 The number of organized police departments was used as a proxy measure for economic externalities in the police function. This measure parallels the degree of governmental fragmentation in a metropolitan area. Greater fragmentation, by definition, leads to smaller governmental units and greater social and economic interaction between local jurisdictions, hence the greater possibility of economic externalities.

20 Blalock, Hubert, *Social Statistics,* New York: McGraw-Hill, 1960, Chapter 22.

21 The techniques referred to indicate the sequence in which independent variables best explain variation in the dependent variable. The model is simplified on the basis of using sequential or partial "F" tests to exclude independent variables not significantly related to the dependent variable.

22 Brazer, Harvey *op. cit.,*; Bahl, Roy. *op. cit.,*; and Williams, Oliver et.al. *Suburban Differences and Metropolitan Policies,* Philadelphia: University of Pennsylvania Press, 1965.

23 Moreover, these smaller departments make heavy use of part-time personnel which further reduces police costs in these departments.

metropolitan area becomes more and more specialized and there is greater separation between jurisdictions of residence, work, or entertainment, the central-city exploitation effect noted by Hawley and Brazer becomes extended to more and more localities.

In conclusion, economic externalities do have a positive effect on the police funtion in the metropolitan areas studied.[24] They tend to increase the level, but not necessarily the costs, of metropolitan police protection. This means that economic externalities need not diminish support for the provision of a public service. Indeed, certain services such as police protection might well be increased to counteract "cost spill-ins" (i.e., increased traffic, incidence of areawide or organized crime) present in a fragmented metropolitan area. This is in contradistinction to decreased support for other public services that have extensive "cost spill-outs" such as education. Yet, these two types of responses to the provision of public services in a fragmented metropolitan area are consistent with a rational economic desire to minimize external costs. This could be one basis for explaining the positive nature of externalities in the urban police function.

Economies of Scale in the Police Function

To assess the influence of population size on the provision of police services, city size was related to per capita police expenditures and employment by means of a multiple regression analysis. The regressions were run first for cities of 25,000 to 250,000 population as of 1960 and then for all cities over 25,000 within selected States. The reasons for first excluding and then including cities over 250,000 population was to isolate the effect of the larger cities. In selecting States to analyze, the critical consideration was the number of cities within each for which data was available. Using thirty cities as the criterion, California, Illinois, Massachusetts, Michigan, New Jersey, New York, Ohio, and Texas were chosen. By running the regressions among the cities of each selected State, it was possible to minimize differences in State-city fiscal responsibilities.

The results of these procedures indicate that inclusion of the larger cities does lead to diseconomies of scale. In fact, the relationships between population size and per capita police expenditures was direct in all eight States and statistically significant with the exception of California, where it was nearly so. By way of contrast, excluding the cities over 250,000 yielded only one instance where population size was directly and statistically significant to per capita expenditures - among cities of Illinois. Thus, it appears with the exception of Illinois cities, population size from 25,000 to 250,000 does not result in any economies or diseconomies of scale in per capita police expenditures. Inclusion of the cities above 250,000 population, however, strongly supports the view that larger cities are forced to spend more for police services, at least in part because of their size. (See Tables B-7, B-8)

The relationships between population size and police employment were less dramatic but lead to the same general conclusions that the diseconomies of scale which emerge are mainly the result of the influence of the large cities. When the cities above 250,000 are included in the analysis, there is a direct and statistically significant relationship between employment per capita and population size among the cities of four States–Illinois, Massachusetts, Ohio and Texas. The fact that the remaining States do not evidence diseconomies of scale in police employment but do when per capita police expenditures are analyzed can be explained by the fact that the larger cities within these States–California, Michigan, New Jersey, and New York–while not employing larger numbers of police, nevertheless pay more for those that they actually employ. These higher salaries, in return, reflect the greater productivity of these police and/or the use of more capital-intensive equipment in the larger cities. When the analysis was restricted to cities 25,000 to 250,000 in the selected States, there was no evidence of either economies or diseconomies of scale with regard to per capita police employment.

In addition to population size several other socioeconomic variables were used in the economies - diseconomies of scale model. More specifically, median family income (1960),population density (1960), population change (1950-1960), proportion nonwhite (1960), population sixty-five and over (1960),, and median school years completed by those twenty-five and over (1960) were used. The inclusion of these additional variables serves to prevent the population size factor from standing as an all-encompassing measure for some other key socio-economic characteristics. While still other factors such as the age or land-use composition of an area might also have been included, the purpose of the model was to assess the influence of population size on variations in per capita police employment and expenditures–not to provide as complete as possible an explanation of these variations *per se.* For these reasons, inclusion of these other socio-economic

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24 There is also the possibility that the measure for economic externalities is an improper one and that another measure might show different results. Or there is the possibility that police costs should be measured on other than a per capita basis in performing this analysis. On this last point see Sacks, Seymour. "Spatial and Locational Aspects of Local Government Expenditures." in Howard Schaller. *Public Expenditure Decisions in the Urban Community*. Washington: Resources for the Future, 1963, pp. 180-198.

variables would add relatively little to the purpose of this investigation.

The results for the selected socio-economic factors are presented in Tables B-7 and B-8.[25] Regarding police employment per capita, the influence of these variables was rather sparodic with no single factor found statistically significant in more than three States, other than population size. The proportion of the police employment variations "explained" by the several variables taken together ranged from a low of .131 in California to a high of .619 in Ohio.

Turning to police expenditures, median family income was directly and statistically significant in half the selected States–Illinois, Michigan, Ohio and Texas. The proportion of population that is nonwhite led to increased spending in Illinois, Michigan, New Jersey, and New York, though the results for Illinois and New Jersey were just short of being statistically significant. None of the remaining socio-economic variables, aside from population size, were closely related to per capita police expenditures in more than two States. Taken together the R^2, the proportion of the variation of the dependent variable explained by the independent variables, for these variables and per capita police expenditures ranged from a low of .091 in California to a high of .672 in Michigan.

Conclusion

The results of this research indicate that the structure of urban police protection tends to increase per capita police costs and employment. More specifically, large-city police systems are characterized by diseconomies of scale of police expenditures and employment. Also fragmented police systems increase the aggregate level of metropolitan police strength.

These findings suggest a reassessment of the efficiency of existing metropolitan police systems in order to determine the optimal size of an efficient police operation. The findings on externalities indicate that a fragmented police system increases aggregate metropolitan police employment but not police costs. This may point up the existence of smaller, low-cost, labor-intensive, suburban police departments. While this research cannot make judgements about the quality of police services in these areas, the externalities findings may indicate that these departments are too labor-intensive, make too great a use of part-time employment, and are not large enough to attract high-paid, professional police personnel or utilize capital-intensive, supportive police services.

If the above conclusion is true, consolidation of these smaller units is in order. However, the diseconomies of scale research clearly indicates a definite point of decreasing returns in any full-scale consolidation program. Large-city police systems, aside from considerations about the quality of police services, are characterized by diseconomies of scale in police costs and employment. Clearly, police jurisdictions should not be as large as some of the central city forces now in existence.

In conclusion, these research findings point to the need for renewed investigation of the economic efficiency of metropolitan police systems. Presently, too large and too small police systems combine to retard the overall efficiency of metropolitan police protection. Some restructuring of this system then is in order to provide high-quality basic and supportive police services to all residents of metropolitan areas. Avoidance of the delicate question of an efficient police structure may only lead to greater economic inefficiency and public disaffection with the present system of urban police protection.

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25 These results are for the regressions including all cities 25,000 and over. They are quite similar – though not identical – to the results when the larger cities are excluded.

Table B-1
SIZE OF POLICE DEPARTMENT BY UNIT OF GENERAL LOCAL GOVERNMENT—1967

General units of government having	Number of Governmental Units	Percent of Total	Number of police personnel	Percent of Total
0-4 full-time equivalent policemen	31,422	82.3	14,884	4.4
5-9 full-time equivalent policemen	2,504	6.6	16,579	4.9
10-24 full-time equivalent policemen	2,463	6.4	37,387	11.0
25-49 full-time equivalent policemen	942	2.5	31,752	9.4
50-99 full-time equivalent policemen	481	1.3	33,378	9.8
100-199 full-time equivalent policemen	203	.5	28,081	8.3
200-299 full-time equivalent policemen	71	.2	16,977	5.0
300+ full-time equivalent policemen	116	.3	160,302	47.2
Total	38,202	100.0	333,790	100.0

Source: U.S. Bureau of the Census. *Compendium of Public Employment.* 1967 Census of Governments, Vol. 3, No. 2, Table No. 29.

Table B-2
POLICE FORCE ORGANIZATION IN SELECTED METROPOLITAN AREAS BY SIZE OF METROPOLITAN AREA
1967

Size Class of Metropolitan Area	Number of SMSA's	Number of Local Govts	Number of Organized Police Forces	Size of Police Force				
				1-10	11-20	21-50	51-150	150-
1,000,000+ Population	30	3,415	1,403	352	351	391	216	93
			(100.0%)	(25.1)	(25.0)	(27.9)	(15.4)	(6.6)
500-999,999 Population	18	849	229	66	56	50	26	31
			(100.0%)	(28.8)	(24.5)	(21.8)	(11.4)	(13.5)
250-499,999 Population	19	511	134	46	24	25	18	21
			(100.0%)	(34.3)	(17.9)	(18.7)	(13.4)	(15.7)
50-249,999 Population	24	428	92	21	20	23	22	6
			(100.0%)	(22.8)	(21.7)	(25.0)	(23.9)	(6.5)
Total Metropolitan	91	5,203	1,858	485	451	489	282	151
			(100.0%)	(26.1)	(24.3)	(26.3)	(15.2)	(8.1)

Source: Advisory Commission of Intergovernmental Relations Compilation from the following sources: U.S. Bureau of the Census. *Employment of Major Local Governments.* 1967 Census of Governments, Vol. 3, No. 1; F.B.I. *Uniform Crime Reports—1967,* Tables 55-56; International City Management Association, *Municipal Year Book—1968.* Table 4.

Table B-3
FULL-SCALE (TEN VARIABLE) MULTIPLE REGRESSION MODEL
REGRESSION COEFFICIENTS, "t" VALUES, & BETA COEFFICIENTS
PER CAPITA POLICE EXPENDITURES
84 METROPOLITAN AREA SAMPLE

	Regression Coefficient	"Computed t"	Beta Coefficient	Multiple R
Dependent Variable				
Per Capita Police Expenditures				
Independent Variables				
Population Size (000)	.04058	.924	.132	
% Population in Central City	−.06847	−.300	−.022	
Crime Rate (Per 100,000 Pop.)	.19848	3.452	.288	
Per Capita Income	.51105	2.842	.427	
% Households Under $3,000	.75067	.508	.079	.836
% Households Over $10,000	−1.01449	−.647	−.122	
Population Density	.19388	2.352	.288	
% Population Change 1960-67	.67847	2.067	.154	
% Education Expenditures Financed from Local Sources	.11238	.418	.033	
Number of Police Forces	.26410	.134	.015	

"t-values" of 1.96 or more are statistically significant at the .05 level.
– indicates an inverse relationship with the dependent variable.

Table B-4
SIMPLIFIED (FOUR VARIABLE) MULTIPLE REGRESSION MODEL
REGRESSION COEFFICIENTS, "t" VALUES, & BETA COEFFICIENTS
PER CAPITA POLICE EXPENDITURES
84 METROPOLITAN AREA SAMPLE

	Regression Coefficient	"Computed t"	Beta Coefficient	Multiple R
Dependent Variable				
Per Capita Police Expenditures				
Independent Variable				
Population Density	.26315	4.772	.391	
Crime Rate (Per 100,000)	.23273	4.722	.338	
Per Capita Income	.34331	3.577	.287	.825
% Population Change–1960-1967	.55913	1.906	.127	

"t-values" of 1.96 or more are statistically significant at the .05 level.
– indicates an inverse relationship with the dependent variable.

Table B-5
FULL-SCALE (TEN VARIABLE) MULTIPLE REGRESSION MODEL
REGRESSION COEFFICIENTS, "t" VALUES, & BETA COEFFICIENTS
POLICE EMPLOYMENT PER 10,000 POPULATION
84 METROPOLITAN AREA SAMPLE

	Regression Coefficient	"Computed t"	Beta Coefficient	Multiple R
Dependent Variable				
Police Employment Per 10,000 Population				
Independent Variables				
Population Size (000)	−.00168	−.313	−.057	
% Population in Central City	.00508	.182	.017	
Crime Rate (Per 100,000 Population)	.01542	2.200	.233	
Per Capita Income	.04439	2.025	.385	
% Households Under $3,000	.19811	1.100	.217	.719
% Households Over $10,000	−.08947	−.468	−.112	
Population Density	.02068	2.058	.319	
% Population Change 1960-67	.03083	.771	.073	
% Education Expenditures Financed from Local Sources	−.00103	−.031	−.003	
Number of Police Forces	.43834	1.829	.259	

"t-values" of 1.96 or more are statistically significant at the .05 level.
− indicates an inverse relationship with the dependent variable.

Table B-6
SIMPLIFIED (THREE VARIABLE) MULTIPLE REGRESSION MODEL
REGRESSION COEFFICIENTS, "t" VALUES, & BETA COEFFICIENTS
POLICE EMPLOYMENT PER 10,000 POPULATION
84 METROPOLITAN AREA SAMPLE

	Regression Coefficient	"Computed t"	Beta Coefficient	Multiple R
Dependent Variable				
Police Per 10,000 Population				
Independent Variable				
Population Density	.02138	2.873	.330	
Crime Rate (Per 100,000)	.02120	3.639	.320	.689
Number of Police Forces	.42080	2.300	.248	

"t-values of 1.96 or more are statistically significant at the .05 level.
− indicates an inverse relationship with the dependent variable.

Table B-7
"T" VALUES AND MULTIPLE R^2
ECONOMIES OF SCALE MULTIPLE REGRESSION MODEL
PER CAPITA POLICE EMPLOYMENT[1]

	Dependent Variables							
State	Population	Median Family Income	Population Density	Population Change	Population Nonwhite	Population 65 and over	Median School Yrs. Compl.	R^2
California			−2.91		1.75		1.89	.131
Illinois	4.81							.487
Massachusetts	3.68							.501
Michigan				2.18		4.06		.434
New Jersey			−2.39	3.05				.558
New York					2.32	1.71		.321
Ohio	2.03	2.44					1.71	.619
Texas	1.98	2.64			2.01	2.17		.379

Figures indicate "t-value"; a "t" of 1 96 or more is statistically significant at the .05 level.
− indicates an inverse relationship with the dependent variable.
[1] Model includes all cities of over 25,000 population.

Table B-8
"T" VALUES AND MULTIPLE R^2
ECONOMIES OF SCALE MULTIPLE REGRESSION MODEL
PER CAPITA POLICE EXPENDITURES[1]

	Dependent Variables							
State	Population	Median Family Income	Population Density	Population Change	Population Nonwhite	Population 65 and over	Median School Yrs. Compl.	R^2
California	1.76		−1.92					.091
Illinois	4.08	2.11			1.86			.526
Massachusetts	2.44							.546
Michigan	2.15	2.27	2.54	4.85	2.21	4.78		.672
New Jersey	2.50			−2.87	1.88			.596
New York	3.02				3.99	1.79		.616
Ohio	3.13	3.62					−2.36	.585
Texas	4.16	3.11						.615

Figures indicate "t-value"; a "t" of 1.96 or more is statistically significant at the .05 level.
− indicates an inverse relationship with the dependent variable.
[1] Model includes all cities over 25,000 population.

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