

# Appendix B

## History of the Judicial Conference's Long Range Planning Process

**T**HE report of the Federal Courts Study Committee, issued in April 1990, recommended that the Judicial Conference of the United States and the circuit councils each engage in long range planning. "The volatility of change throughout our society requires the federal courts to have also a more systematic capacity to anticipate broader societal changes and plan for more distant horizons."<sup>1</sup>

### Role of the Long Range Planning Committee

Building on the recommendation of the Federal Courts Study Committee, the Judicial Conference in 1990 created the Committee on Long Range Planning, composed of four appellate judges, three district judges, a bankruptcy judge, and a magistrate judge. The membership includes six former chairs of Judicial Conference committees, two former members of the Executive Committee of the Conference, a former circuit chief judge, three former district chief judges, and a bankruptcy chief judge. The total combined years of judicial service of the committee exceeds 160 years. (See Appendix C *infra* for biographical profiles of the committee members.)

The charge of the Long Range Planning Committee is to:

- Coordinate the planning activities of the judiciary.
- Promote, encourage, and coordinate planning activities within the Judicial Branch.
- Advise and make recommendations regarding planning mechanisms and strategies, including the establishment of a coordinated judiciary planning process.
- Coordinate—in consultation with and participation by other committees, members of the judiciary, and other interested parties—the identification of emerging trends, the definition of broad issues confronting the judiciary, and the development of strategies and plans for addressing them.
- Evaluate and report on the planning efforts of the judiciary.
- Prepare and submit for Judicial Conference approval, a long range plan for the judiciary and periodic updates to that plan—after consultation with other Conference committees, judges, and interested parties.

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<sup>1</sup> REPORT OF THE FEDERAL COURTS STUDY COMMITTEE 146 (1990).

This plan represents the beginning of a judiciary-wide long range planning process. The Long Range Planning Committee had the cooperation of the other Judicial Conference committees, the circuit councils, individual courts, judges, legislators, members of the executive branch, lawyers, and many others who have an interest in the courts. Future versions of the plan will further refine the issues and strengthen the judiciary's planning process.

### Framework for Committee Action

To accomplish the directive of the Judicial Conference, the committee established four successive stages of development to produce a long range plan for the judiciary:

1. *An educational phase*—to acquaint committee members with long range planning concepts and formal methodology and to discern how best to promote and coordinate long range planning activities within the judicial branch.
2. *An informational gathering phase*—to enable the committee to target issues for long range consideration.
3. *A solution phase*—to recognize the target issues and problems facing the federal judiciary and to formulate long term recommendations to deal with those issues and problems.
4. *An implementation and coordination phase*—to work with other Judicial Conference committees in implementing all or part of this plan in continuance of the judiciary's long range planning process.

The Director of the Administrative Office, L. Ralph Mecham, established the

Long Range Planning Office to assist the committee in developing strategic planning for the judiciary. The committee also received substantial assistance from the Federal Judicial Center, primarily from the Planning and Technology and Research Divisions and the committee's consultants.

The committee's first three meetings were devoted to the educational phase. To discern how best to promote, encourage, and coordinate long range planning activities within the judicial branch, the committee consulted with the leadership of the Federal Courts Study Committee (Judges Weis and Campbell), the Administrative Office (Director Mecham) and the Federal Judicial Center (Judge Schwarzer). The committee also heard from people involved in planning for government, both state and federal,<sup>2</sup> the private sector,<sup>3</sup> and the academic community.<sup>4</sup>

At the Fall 1991 meeting of the Judicial Conference, the committee's chair, Judge Otto R. Skopil, Jr., met with all other Conference committee chairs to discuss the Long Range Planning Committee's initial activities. At that meeting Judge Skopil discussed the vital role he saw for Conference committees in plan development.

Completing the educational phase, the committee co-sponsored with the Federal Judicial Center and the Administrative Office an educational seminar on judicial

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<sup>2</sup> Executive branch: Solicitor General Kenneth Starr; Justice Research Institute: William K. Slate; Hudson Institute: Mark Blitz; National Academy of Public Administration: Don Wortman; State courts: Chief Justice Malcolm Lucas (Cal.), Robert D. Lipscher, State Court Administrator (N.J.), and Kathy Mays, Director of the Office of Planning, Supreme Court (Va.).

<sup>3</sup> IBM: Douglas Sweeney; Institute for the Future: Gregory Schmid; American Bar Association: Sandra Hughes.

<sup>4</sup> Professor Maurice Rosenberg (Columbia); Professor Arthur Hellman (University of Pittsburgh); and Professor Tom Baker (Texas Tech.).

planning for chief judges of the circuits and chairs of Conference committees.

The committee initiated its preparation of a long range plan by forming subcommittees to decide in the first instance what issues were appropriate for long range planning. To define broad issues confronting the judiciary, the committee requested the Federal Judicial Center to conduct a survey of federal judges on issues relating to planning.

The committee initially established three subcommittees to identify and analyze national long range issues and coordinate the development of the plan. The committee divided the universe of planning issues generally as follows:

- One subcommittee to examine judicial structure and governance.
- Another to look at jurisdiction issues and the role of the federal judiciary and its relationship to the other branches of government and state courts.
- The third to study judicial workload and output issues.

Additionally, the committee established a liaison network with 15 committees of the Judicial Conference. One member of the Planning Committee was designated to be the point of contact for each Conference committee and, in turn, each committee appointed a liaison member to work with the Planning Committee. On a number of occasions, the Planning Committee liaisons attended their respective committees' meetings.

Over time, the three subcommittees were reorganized into two: one to study structure, governance and workload-related issues, the other to study issues dealing with

jurisdiction and the size of the judiciary. Although the subcommittees worked separately, decisions on all matters for the national plan were made by the full Long Range Planning Committee.

## The National Planning Process

The first key question for the Long Range Planning Committee was posed by the Chief Justice in his 1991 year-end report: what should be the role of the federal courts? In response, one of the committee's first efforts was to develop a mission statement for the federal courts. This preliminary statement is included in the plan for discussion and further refinement.

Development of the federal court mission statement mirrored similar efforts by other planning bodies in the judicial branch. The Planning Committee kept informed about the pioneering strategic planning efforts of the Ninth Circuit Court of Appeals and the development of its long range plan. The *Ninth Circuit Long Range Plan, 1992*, was one of several plans considered by the committee in development of planning issues.

## Identifying Planning Issues

For development of the initial plan, the Long Range Planning Committee invested considerable effort identifying long range national and strategic issues that might be addressed. The committee used three criteria for issue selection:

- First, an issue is long range if dealing with it would require more than three years (or more than two budget cycles).

## ■ LONG RANGE PLAN FOR THE FEDERAL COURTS

- Second, an issue is national or system-wide in scope if it transcends district and circuit boundaries.
- Third, the committee looked for what might be called strategic issues, that is, those which affect (or have the potential of affecting) the core purposes of the judiciary.

The committee reviewed recommendations from committees or commissions in the last 25 years that have studied the federal judicial system:

- Study Group on the Caseload of the Supreme Court (Freund Commission)
- Commission on Revision of the Federal Court Appellate System (Hruska Commission)
- Department of Justice Committee on Revision of the Federal Justice System (Bork Committee)
- Ad Hoc Committee on Federal Habeas Corpus in Capital Cases
- ABA study groups
- Federal Courts Study Committee
- President's Council on Competitiveness
- National Commission on Judicial Discipline and Removal

Planning Committee members spoke personally with members of the Senate and House Judiciary Committees or their staff, soliciting their input. In addition, the committee analyzed hundreds of letters sent by judges and others to the Federal Courts Study Committee to build an initial list of potential planning issues. To ensure that issues and suggestions are current, the

chairman sent letters to circuit, district, bankruptcy, and magistrate judges and others within the judiciary, asking them to identify long range issues they believe are of greatest importance to the judiciary.

Using the insight gained from these informal efforts, the committee requested the Federal Judicial Center to conduct structured surveys of all federal judges, state judges, and a random sample of attorneys. The surveys were designed to collect information on opinions about a wide range of judicial, structural, administrative and procedural issues.

### Committee Goals and Recommendations

As a result of its research, the Planning Committee identified several dozen major topics and scores of individual issues that are long range in scope and national in character that could appropriately be included in the first national plan. The committee encouraged participation by other Judicial Conference committees in the planning process by transmitting to them lists of issues developed from earlier reports and the results of a request to all judges and groups of court officials. The Planning Committee acted on its commitment to the idea that the substance of the plan be developed by judges serving on the respective subject matter Judicial Conference committees. These individuals have the in-depth knowledge of the issues and the foresight to establish appropriate strategic goals for matters within their respective jurisdictions.

Conference committees then considered the extent to which they were already engaged in planning activities and whether they should begin new planning initiatives. The Planning Committee's responsibility to coordinate the planning process with other committees of the Judicial Conference was

advanced by the chairman's letter requesting other committees both to identify issues to be addressed and to make recommendations on how those issues should be treated in the plan. Many committees prepared a report to the Planning Committee. Some committee chairs attended Planning Committee meetings to advance their committees' recommendations. The results of these widespread efforts include:

- Report and Long Range Plan for Automation in the Federal Judiciary from the Committee on Automation and Technology (1994)
- Report of the Committee on the Administration of the Bankruptcy System (June 1993)
- Report of the Budget Committee (Feb. 1994)
- Report of the Court Administration and Case Management Committee on Size and Structure of the Federal Judiciary (February 1993)
- Report of the Court Administration and Case Management Committee on Pro Se Litigation (June 1994)
- Report of the Criminal Law Committee on Judicial Planning for the Future of Federal Sentencing Policy (May 1994)
- Report of the Committee on Defender Services (June 1994)
- Report of the Committee on Intercircuit Assignments (Jan. 1994)
- Report of the Judicial Branch Committee and its Subcommittees on Long Range Planning (Jan. 1994)
- Report of the Judicial Branch Committee on Court Governance (February 1994)
- Report of the Judicial Branch Committee on Size of the Judiciary (July 1993)
- Report and Supplements to the Long Range Plan for the Magistrate Judges System (June 1994)
- Report of the Security, Space and Facilities Committee (August 1994)

In addition to committee reports, the Planning Committee received numerous personal letters from judges with recommendations and suggestions about planning issues and topics.

### Special Report to the Judicial Conference

The committee worked to prepare a report, specifically added to its charge by the Judicial Conference in March 1993, addressing the appropriate size of the federal judiciary and whether there should be a "cap" on the number of Article III judges. The Conference decided to refer the question to the committee, in consultation with other committees, for report and recommendation.

To develop its recommendations, the Committee conducted retreats on federal court size and jurisdiction at which invited judges, lawyers, academics, and other citizens offered wide-ranging comments. One retreat was set aside for Judicial Conference committee chairs and chief judges; another for state judges, legal and other scholars, members of the private bar, and representatives of the legislative and executive branches; and a third was conducted with mixed judiciary-bar-academia participation. (The names of participants in all retreats appear in Appendix C.)

The committee held additional meetings to review the results of the study process and develop its recommendations to the Judicial Conference for the long term direction of the size of the federal judiciary. The report was adopted by the Judicial Conference in September 1993. The major elements of that report form the basis for this plan's chapter on size and jurisdiction (Chapter 4).

## Other Planning Committee Activity

### Ninth Circuit Judicial Council

The chairman of the committee and the Chief of the Long Range Planning Office addressed the Ninth Circuit Judicial Council at its May 1992 retreat to promote, encourage, and coordinate long range planning. The speech, "Framework for Long Range Planning in the Federal Judiciary" was published in *Long-Range Planning for Circuit Councils* (Federal Judicial Center 1992).

### District Chief Judge Conference

A member of the Planning Committee made a similar outreach for general information, participation, and coordination in a presentation at the Conference of District Chief Judges in May 1992.

### Seventh Circuit Conference

Members of the Planning Committee and a staff facilitator participated in a panel discussion entitled "Future of the Courts" at the Seventh Circuit Judicial Conference, also in May 1992. The panel included other judges and representatives of the Department of Justice and served to introduce goal setting in planning.

### Sixth Circuit Conference

Five members of the committee participated as members of a panel to promote, encourage, and coordinate long range planning activities at the 1993 judicial conference of the Sixth Circuit.

## Meetings and Conference Calls

To consult with other committees and members of the judiciary, the committee's subcommittees met with other Judicial Conference committees in person and through telephone conference calls:

- In September 1992, a conference call brought together the chairs of all committees concerned with issues of criminal case processing to define broad issues in this area with Subcommittee 3 of the committee.
- In October 1992, Subcommittee 2 of the committee met with the chair of the committee on Federal-State Jurisdiction to coordinate the identification of emerging trends and develop strategies and plans for addressing them.
- In December 1992, members of each of the committee's subcommittees met with the chair of the Committee on the Judicial Branch and with the chair of its long range planning subcommittee to coordinate the identification of emerging trends and define broad issues confronting the judiciary.
- In December 1993, Subcommittee B of the committee conducted two conference calls to consult with several chief district judges, other district judges, and court officials to prepare a section of the long range plan on alternative dispute resolution.
- In January 1994, several members of the Planning Committee conducted a conference call to the Committee on the Budget to discuss the plan's components about economic matters and congressional relations.

- In April 1994, the Planning Committee Chair and several members conducted two conference calls, one with Chief Justice Rehnquist and one with former Chief Justice Burger to discuss the governance issues that would be covered in the plan.

## Analyses and Research

Committees submitted their reports on long term issues and recommendations to the Planning Committee by January 1994. Several committees submitted detailed reports for inclusion in the plan.

In the meantime, the Planning Committee's subcommittees, supported by analyses produced by the Long Range Planning Office of the Administrative Office, continued their work synthesizing information and developing additional information for the development of long term goals for the plan. Additionally, throughout the process, the committee commissioned research efforts by legal scholars to provide conceptual linkages for the various planning issues being considered.

For major issues such as size, jurisdiction, and governance, the committee's retreats allowed for expansive interchange of ideas about the future directions of the judiciary. The retreats also gave Planning Committee members a sense of the needs of both internal and external stakeholders in these issues. Those meetings helped sharpen the committee's focus on practical solutions to structural problems.

In order effectively to coordinate the identification of emerging trends, the definition of broad issues confronting the judiciary, and the development of strategies and plans for addressing them, and to evaluate and report on the planning efforts of the

judiciary, the committee sponsored the following research projects:

- A staff study by the National Academy of Public Administration, *Long Range Planning in the State Courts: Selected Features for the Federal Judiciary* (June 1992).
- A report by the expert panel formed by the National Academy of Public Administration to recommend planning strategies, *Long Range Planning in the Federal Judiciary* (June 1992).
- Two papers exploring the appropriate range of federal jurisdiction were prepared by Dean Thomas M. Mengler of the University of Illinois College of Law, a consultant to the committee: *Federal Criminal Jurisdiction* (March 1993) and *Federal Civil Jurisdiction* (May 1993).
- A Federal Judicial Center survey of federal judges on issues relating to planning, *Planning for the Future: Results of a 1992 Federal Judicial Center Survey of United States Judges* (1994).
- Two research papers: *Judicial Vacancies: An Examination of the Problem and Possible Solutions* by Gordon Berman of the Federal Judicial Center, Jeffrey A. Hennemuth of the Administrative Office of the United States Courts, and A. Fletcher Mangum of the Federal Judicial Center (1994) and *Access (Draft #1)* by Professor Jeffrey Jackson of the Mississippi College of Law (1994).
- Several papers and manuscripts analyzing trends and future directions were prepared by Administrative Office staff, including:

- Two prepared by Dr. William T. Rule II, *Federal Court Caseloads Since 1950* (1993) and *Estimating the Impact of Eliminating Diversity Jurisdiction* (1993), were for the use of the committee and the Committee on Federal-State Jurisdiction.
- A study on judicial workforce trends, *Workforce Changes: Looking Ahead and Looking Back* (1993) by Dr. William M. Lucianovic.
- A treatise on the effects of increased caseloads, *Rethinking the Federal Court System: Thinking the Unthinkable* (1994) by Charles W. Nihan and Harvey Rishikof.
- An analysis of responses to a letter of inquiry on the role of senior judges sent by the committee, *Report on Responses of Senior Judges and Active Judges Eligible or Soon to be Eligible for Senior Status* (1994) by Richard B. Hoffman.
- A paper by David L. Cook and others of the AO Statistics Division, *The Criminal Caseload: Increasing Burden on the District Courts?* (1993).
- Three Federal Judicial Center studies were prepared for use by the committee and others: *Imposing a Moratorium on the Number of Federal Judges*, by Gordon Bermant, William W. Schwarzer, Edward Sussman, and Russell R. Wheeler (1993), *On the Federalization of the Administration of Civil and Criminal Justice* by William W. Schwarzer and Russell R. Wheeler (1994), and *Federal Court Governance* by Russell R. Wheeler and Gordon Bermant (1993).

- The Federal Judicial Center also prepared a report based on interviews with committee members to discuss the essential values of the courts: Gordon Bermant, *A Vision of Progress for the Federal Courts* (1992).

## Completing the First Planning Cycle

Beginning with a *Federal Register* announcement on November 8, 1994, the Long Range Planning Committee conducted an extensive communication and consensus-building effort by submitting the proposed draft plan to a public comment period and three public hearings held at central locations in the country.

Copies of the proposed plan were mailed to all federal judges and senior court staff; both houses of Congress; most agencies of the executive branch; national, regional, and local bar associations; state court chief judges and administrative officers; public interest groups, law school deans; and many individuals who have shown interest in the courts—over 6,700 copies in all. The public hearings, held in Phoenix, Chicago, and Washington, D.C. elicited comments from 74 speakers. (All those who offered comments at the hearings or by submitting written comments are listed in Appendix C.) Many thoughtful suggestions were received to assist the committee to refine recommendations and commentary.

Following the comment period, the Planning Committee met to review the contents of the plan in the light of public and judicial branch input. The result was both completion of the proposed plan and identification of a number of issues for analysis and discussion for the next planning cycle.

## Judicial Conference Action

At its March 1995 session, the Judicial Conference of the United States formally received the proposed plan, authorized its public distribution, and took the following initial actions with respect to the plan:

1. Individual members of the Conference were authorized to request, on or before April 11, 1995, that any specific recommendation in the proposed plan be referred to the appropriate Judicial Conference committee for further study and report to the September 1995 Judicial Conference.
2. All recommendations of the proposed plan not identified by a Conference member for further study and report were considered approved by the Conference as of April 12, 1995. Conference approval of the plan recommendations included the corresponding implementation strategies but not the commentary.

Based on the Conference's direction, the new version of the proposed plan was distributed in late March to all who had received the earlier public comment draft, as well as to those who provided written and oral comments on that draft—about 7,000 copies. In the following three weeks, individual judges, through their respective Conference members, plus Conference members themselves, discussed and considered action on the plan.

As of April 12, 1995, the Judicial Conference approved without change 52 of 101 recommendations and 47 of 77 implementation strategies in the proposed plan. Under the above-described procedure, the remaining 48 recommendations and 30 implementation strategies were referred to

appropriate committees for further study and report.

Because most of the deferred items presented policy issues, they were assigned to the following committees of the Conference for examination and discussion:

- Committee on the Administration of the Bankruptcy System
- Committee on the Budget
- Committee on Court Administration and Case Management
- Committee on Criminal Law
- Committee on Defender Services
- Executive Committee
- Committee on Federal-State Jurisdiction
- Committee on Intercircuit Assignments
- Committee on the Judicial Branch
- Committee on Judicial Resources
- Committee on Administration of the Magistrate Judges System

The Executive Committee was also assigned to consider the 11 recommendations and one implementation strategy on which purely technical questions were raised. The Executive Committee considered these 12 items in May 1995 and approved each of them (including their respective implementation strategies) on the Conference's behalf with minor technical corrections.

The recommendations and strategies referred to committees for substantive review fell into five main categories: federalism and jurisdiction; court structure and process; governance and administration; utilization of resources; and access to federal court proceedings.

The purpose of this step in the planning process was to ensure that the recommendations and strategies in the long range plan chart a direction in policy and administration on which there is general

agreement among members of the judiciary. Each reviewing committee was asked to propose changes where necessary to reflect the current level of consensus. The committees were, however, advised that a long range plan differs from the usual Conference decision making in that a plan does not consist of policy initiatives requiring immediate action.

In addressing the recommendations and implementation strategies referred for study, each Conference committee had available the following options:

1. Recommend Conference approval without change in either the language of the recommendation/strategy itself or the supporting commentary.
2. Recommend Conference approval of the recommendation or strategy with only minor word changes needed to avoid misinterpretation or unanticipated policy issues.
3. Recommend Conference approval of a substitute recommendation/strategy that better reflects, in the committee's opinion, the consensus existing in the judiciary on the topic in question.
4. Recommend deletion of the recommendation/strategy from the plan, with or without suggesting to the

Conference that the topic be reconsidered in a subsequent planning cycle.

The committees that received the recommendations devoted substantial time and effort to developing their reports. For the most part, the reviewing committees recommended approval of those items without any change or with only minor refinements. Substantial change was proposed for only a dozen or so items, with outright deletion from the plan for fewer than half of those. Indeed, the committees reviewing the plan generally accepted most of the Long Range Planning Committee's version of the plan verbatim.

The Judicial Conference met on September 19, 1995. Based on the reports of the reviewing committees, a follow-up report filed by the Long Range Planning Committee, and discussion on the Conference floor, all pending recommendations and implementation strategies in the proposed plan were addressed in a dispositive manner. Over the next two months, revisions were drafted to conform plan commentary and other supplementary text to the approved recommendations and implementation strategies. These revisions were reviewed by the Long Range Planning Committee and approved by the appropriate Conference committees for publication. The result of those actions is this plan.