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San Francisco Criminal Justice Project

by Richard B. Morris and Gordon Van Kessel

Lawyers involved in *pro bono publico* work have discovered that co-operation, negotiation and persuasion are as important to reform as the furnishing of legal services. The San Francisco Lawyers' Committee for Urban Affairs participated in a project aimed at reform of the criminal justice system that put this hypothesis to a test.

LAWYERS DOING THE legal profession's public interest work have found that the *pro bono publico* movement can obtain reform not only by furnishing legal services, but also through co-operation, negotiation and persuasion. This approach is particularly suitable when the organized Bar seeks fundamental improvement of the legal system and its institutions, for example, the judicial process, the criminal justice system, even the provision of legal services. Recently the San Francisco Lawyers' Committee for Urban Affairs participated in an effort aimed at reform of the criminal justice system that put this hypothesis to a test.

Following issuance in 1968 of the findings and recommendations of the National Advisory Commission on Civil Disorders, local committees of the National Lawyers' Committee for Civil Rights Under Law were formed in fourteen cities with Ford Foundation help in an attempt to bring the skills of the legal profession to bear on the "urban crisis problem" pointed out by the commission. The San Francisco Lawyers' Committee for Urban Affairs was established in late 1968 under the chairmanship of Richard C. Dinkelspiel, then President of the Bar Association of San Francisco, and Robert H. Fabian, Senior Vice President and General Counsel of the Bank of America.

From its inception, the San Francisco committee found several reasons for putting problems in the administration of criminal justice as a major priority:

1. The client groups the committee was established to serve complained that they were subjected to too great a share of the burdens and inequities of the criminal justice system and re-

ceived too small a share of its benefits.

2. Few residents of the city seemed satisfied with the city's approach to crime control and prevention. In addition, as in most large American cities, polarization of community attitudes about criminal justice was so serious that escalation of the division seemed likely, and meaningful improvement through the "system" seemed hopeless.

3. Of all the social, economic and political problems associated with the urban crisis, those related to crime and criminal justice are of most interest to lawyers. They recognize special responsibilities regarding failures within the administration of criminal justice, especially in the big cities, and display willingness to seek improvement through collective action.

Following considerable study, the San Francisco committee became convinced that a "system-wide" approach to criminal justice was a prerequisite to significant improvement in criminal justice institutions in the city. Our experience paralleled that of other major cities: the fact that criminal justice is administered by many subagencies without co-ordination has made its operation as a fair and efficient system all but impossible. The government's responsibility to prevent and control crime has been atomized through dispersal to numerous competing and often conflicting bureaus.

The committee also discovered serious divisions among private citizens. Those working to improve opportunities for poverty-stricken communities are interested only in criminal justice goals related to their particular frame of reference, protection and rehabilitation of disadvantaged youth and uneducated and unemployed young adults, for example. Taxpayer groups similarly adopt a narrow view, believing

simplistically that more police is the answer to the crime problem. Lawyers' groups often favor either the prosecution or the defense and generally concentrate on the judicial process to the exclusion of other elements of the system.

Committee Found the System Paralyzed

So the committee found the system paralyzed from lack of planning, central administration and intelligent resource allocation and a political constituency hopelessly confused and divided. Prospects for significant reform were not promising. The implicit message of these facts was that the organized Bar might well be the only voice with a claim of objectivity and with sufficient potential strength to bring about comprehensive reform.

In the spring of 1970, the San Francisco committee applied for and received funds to staff a criminal justice project calling for a mobilization of the local bar to assist criminal justice agencies and interested citizen groups in undertaking a system-wide approach to improve criminal justice. The project contemplated the planning and creation of a criminal justice council in San Francisco whereby the city would gain (1) the capacity to plan and coordinate the general direction of the several criminal justice agencies, (2) money to carry through the planning, experimentation and implementation of the improvements and (3) the opportunity for independent citizen involvement in these activities. The first had been recommended not only by the Commission on Civil Disorders, but also by the President's Commission on Law Enforcement and Administration of Justice and the National Commission on Causes and Prevention of Violence, and it was in experimental stages of development in several cities. The second recently has become available through numerous federal programs aimed at crime control and prevention. The third is essential to the first and frequently necessary to get the second. Moreover, it was important to expand the voice of the San Francisco committee's particular client

tele with reference to the city's administration of criminal justice.

The criminal justice project was a new approach. The role of the legal profession would be that of a spokesman for performance assessment and fundamental improvement of the law and its institutions, rather than a supplier of legal services for specific clients. The reasons for the committee's adoption of this role have long been recognized by lawyers in *pro bono publico* activities; even the best lawyer can accomplish little if the legal system is not working. Therefore, lawyers must do what they can collectively to overcome limitations the legal system itself imposes on its normal services.

The committee began by doing some spade work. Lawyers, particularly leaders of bar organizations, were educated as to the problems of the criminal justice system and the benefits a criminal justice council might provide for San Francisco. Next, the issues were discussed with the numerous private groups and agencies involved in criminal justice activities. The committee's staff conferred with major city officials, including heads of criminal justice agencies, to determine how interagency planning and co-ordination could best contribute to the administration of criminal justice.

Criminal Justice Project Received Unexpected Stimulus

In the fall of 1970 the criminal justice project received an unexpected stimulus. The National League of Cities received a grant from the Department of Justice to encourage its members to plan and create criminal justice councils. Responding to the league's encouragement to examine the council idea, Joseph L. Alioto, the Mayor of San Francisco, organized a task force whose members included representatives of criminal justice agencies and the committee. Through the committee's staff, the task force first prepared a description of existing co-ordinating councils. Eventually a "position paper" was prepared for the task force by the committee's staff to present the "why, what and how" of a co-ordinating

council and forms of enabling documents.

Following a task force conference with the mayor in early October, final and more detailed drafts of the position paper and enabling documents were prepared by the staff. The committee, with the consent of the chairman of the task force, also distributed the position paper to its steering committee and the boards of directors of The Bar Association of San Francisco and the Barristers' Club.

These lawyers, especially bar organization officials, were then asked to participate in individual conferences with such key city officials as the chief administrative officer, the director of public health, each of the eleven members of the board of supervisors (the city's legislative body), as well as several chief officials of criminal justice agencies. Each of these meetings was arranged after careful planning, especially to ensure the participation of a lawyer who held the confidence of the particular city official.

Attempts to inform private citizens were made through (1) two presentations to the San Francisco Committee on Crime, a committee of private citizens appointed by Mayor Alioto in 1968, (2) several discussions with representatives of the San Francisco Chamber of Commerce and (3) meetings with representatives of various citizen groups connected with programs related to criminal justice in the poverty areas of San Francisco.

The last group quickly grasped the council's significance. However, perhaps because of the despair of influencing government that has accumulated because of futile past efforts, they reacted negatively. They generally discounted heavily the claim of its promoters that the council would give them a voice at city hall. The lawyers' committee attempted to break through this vicious circle by pointing out the interest of the private bar in seeing that their priorities were to be protected in the ultimate form of the council.

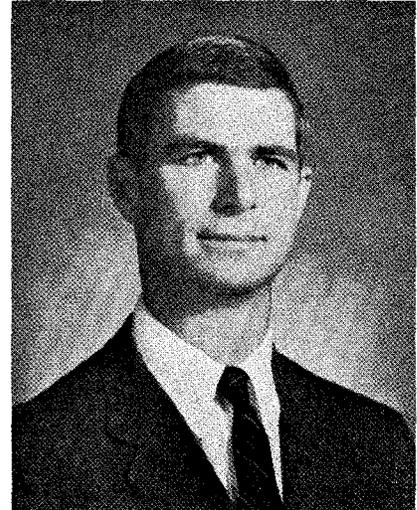
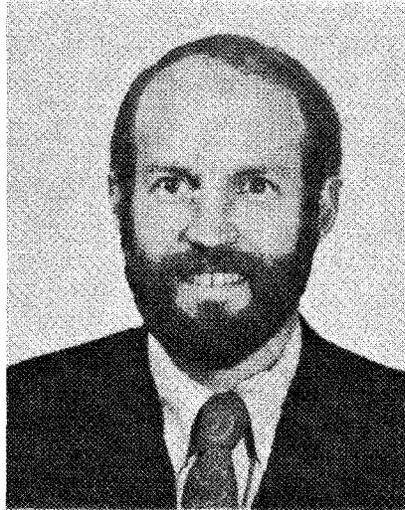
To a great extent because of these efforts, a fragile community consensus emerged in support of a criminal jus-

tice council, with the following ingredients accepted as necessary: (1) leadership of the mayor; (2) a membership representing heads of criminal justice agencies, the board of supervisors and key private citizens, including those involved in criminal justice at the neighborhood level; and (3) staff sufficient to provide the necessary planning and drive. However, as prospects for establishing the council as an effective tool for reform became more certain with the mayor's introduction to the board of supervisors of a resolution authorizing its creation, opposition began to form. Even though these same "indispensable ingredients" also had been supported by the staff of the National League of Cities, a variety of unconnected complaints were heard.

Liberal Reform Organizations Criticized the Proposal

Liberal reform organizations criticized the proposal as an attempt by the city establishment to control private (*i.e.*, their) activities relating to criminal justice, as an undue concentration of power in the mayor and as an unwanted extension of the criminal justice bureaucracy. The Chamber of Commerce staff charged that the council amounted to a "citizens review board" that would diminish the police commission's power over the police department. Even more ominous than these voices were largely independent, vested interests within government, which now acted to protect themselves from the institutional reform implicit in the council's powers to prescribe system-wide criminal justice priorities. They understood that these powers would alter the allocation of the city's available resources and determine the allocation of new federal or other outside assistance.

At issue were fundamental questions. What would be the proportion of private citizen and official membership on the council? Who would choose the members? What powers would the council have? How would the council exercise its power? Most important was the question whether the council would be concerned exclusively with obtaining federal grants or also have



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authority to plan long-term criminal justice activities and priorities with regard to the city's own resources. These were precisely the questions the lawyers' committee had dealt with in preparing the mayor's task force position paper.

Since the political climate had evolved from passive curiosity to varying degrees of active opposition, the lawyers' committee, now with the full support and participation of organized Bar leadership, adopted a mediating role. Its goal, however, remained the creation of a council representing all interests and authorized to plan improvements through the use of all resources. One of the committee's co-chairmen met with officials of the chamber of commerce. He convinced them that their fears were unfounded and converted the chamber's opposition to support. Presidents of the bar association and the Barristers' Club argued persuasively at public hearings in behalf of broad representation and comprehensive planning powers for the council. The lawyers' committee staff initiated several meetings with representatives of neighborhood organizations to attempt to dispel their concerns.

But the major opposition was coming from officials of certain criminal justice agencies. Here the Bar by itself was at its weakest. However, the consistent efforts of the lawyers' committee staff and bar leadership had produced many supporters in the mayor's office, among the board of supervisors and among neighborhood groups. With their help, even this attempt to weaken or defeat the council was overcome.

When on February 16, 1971, the board of supervisors unanimously passed the resolution creating the council, nearly all opposing interests had been reconciled through compromise, yet the elements deemed essential by the lawyers' committee had been preserved. Mayor Alioto signed the resolution, appointed the council, and obtained funds for a staff from the California Council on Criminal Justice, California's agency to administer funds granted under the Omnibus Crime Control and Safe Streets Act of 1968 and related programs.

The contribution of San Francisco's private Bar was material and important to creation of the criminal justice council, and the council's potential to induce change is considerable. Its staff

of four to five persons will assist public officials—now actually “forced” together—to assess the system’s performance, plan needed changes and evaluate improvements. San Francisco now has the mechanism to plan centrally and to coordinate the allocation of crime control resources and still allow for due consideration of the principle of separation of governmental powers. A corollary consequence of getting city leadership together should be greater unity among private groups interested in criminal justice.

Project Helped Create a New Government Structure

However, a caveat is needed. The criminal justice project helped create a new governmental structure but did not guarantee that the structure would attain its intended potential for causing needed changes. At a minimum, the council is a “target” that lawyers and other citizens can watch and from which they can demand accountability for the criminal justice system.

The project stands for the proposition that the organized Bar can bring about basic improvements in the legal system. Through this project lawyers educated themselves and moved public and private leadership to implement their recommendations. To the extent the project provides proof of another method in addition to its legal services contributions, whereby the private Bar can promote a sound legal system, its success goes far beyond the criminal justice system of San Francisco.

Given today’s high rate of social and economic change, the limitations of other branches of government in responding to these changes and the dramatic growth of the poverty law bar, the courts have become a most important forum for deciding controversial political issues. We who applaud the positive benefits contributed by the Bar in litigating these issues must candidly acknowledge a danger implicit in

these successes. As more and more public policy controversies are taken to court, the risk increases that the judicial system will lose that independence it needs to maintain its authoritative power over the disputants, including public bodies and other large interests.

The rhetoric of the crime issue is a case in point. According to much popular sentiment, the judiciary contributes to the crime problem because, the critics say, many decisions in recent years have reversed convictions of otherwise guilty criminals on “technical” grounds. That convictions are set aside because of unlawful—sometimes even criminal—action by state officials does not seem to bother the critics. As the criticism mounts, the power of the judge to protect the rights of the accused is inevitably tested to the breaking point. Similarly, too frequent use of the judicial system as the last resort against the inequities borne by the poor and disadvantaged—a minority constituency at the polls—may sooner or later endanger the independence of the judiciary.

In the light of this built-in weakness facing lawyers doing *pro bono publico* work, the San Francisco criminal justice project merits special attention from those who support the expansion of public interest work by lawyers. Instead of litigating the political issues of criminal justice, the Bar organized itself and became an advocate before the legislative and executive branches. Bar leaders stimulated private groups to join them in taking the case for change to the public officials chiefly accountable for the system.

While our project has shown that this form of action can get results, it also has demonstrated that lawyers must develop new skills when seeking to change the legal system by means other than litigation. For this work, bar leaders must develop greater familiarity with public administrators and elected officials, especially within the

political structure of local government. To ensure sufficient public support, leaders of the Bar must be willing to communicate and collaborate with private organizations, both those traditionally operating in their own downtown environment and those in inner city neighborhoods.

Bar Needs New Resources To Pursue Change

The Bar also needs new resources to pursue change through political action of this nature. The criminal justice project convinced our leadership that the obstacles to improving the legal system are often too tough for their volunteer committees unless they are supported by professional staff. This point cannot be overemphasized. The Bar’s success in this case hinged on its preparation, its ability to communicate with many differing interests and above all its willingness and ability to keep coming back. The most influential lawyers are those already overworked by the demands of private practice. A staff is essential.

To maximize the potential of this form of organized Bar action, lawyers must pay for or raise the costs of supporting a staff. They must take the time needed to become acquainted with all officials responsible for the legal system and the politicians and private groups who have so much say about the amount and use of its resources. There is evidence that these lessons have been learned, at least in San Francisco. The Bar Association of San Francisco has recently created a special committee of prestigious and experienced lawyers to spur improvements in the administration of justice in the local courts. A former president has been appointed chairman, and professional staff has been provided for the committee at bar association expense. Representatives of the bench and other bar organizations have been asked and have agreed to join in its work.