

Chapter 11

Implementation and Future Planning

THIS plan is but a first step in preparing for the challenges ahead. It addresses the fundamentals of federal court jurisdiction, adjudicative structure, governance, and resource allocation as a foundation for developing future initiatives. In many respects, the plan charts only a general course for the federal courts, leaving most details and implementation strategies to those with day-to-day responsibility for such matters. The plan should be implemented through a process that is as broadly participatory as the one through which it was developed.

Although this plan recommends goals that should prove useful to judicial policy makers in the near term, the real value of this effort is the foundation it lays for future planning. The purpose of the plan is to chart a course for the judicial branch as an institution. It therefore assumes, and builds upon, the planning already taking place in Judicial Conference committees, at the circuit level, in individual courts or offices, and in the context of specific programs.

The first planning cycle has proceeded because of a substantial commitment of time and effort by Judicial Conference committees and others. The result has been beneficial to the federal court system—affording it a rare opportunity to reaffirm its core values and mission, to consider the future implications of present actions and to

determine what future conditions it would like to see.

The Plan as a Guide

Planning is an integral component of effective policy making—as demonstrated by the experience of numerous successful governmental and business organizations. Under a long range plan, the Judicial Conference and other governance authorities can discharge their responsibilities aware of how their actions accord with generally accepted values. A plan also gives direction to the legislative program, allowing the judiciary’s representatives to respond more quickly and effectively to new developments. This proactive engagement of the future adds a healthy context to everyday decisions.

Although this plan sets forth goals for the federal courts in a number of important areas, it does not purport to cover all topics on which planning decisions should be made. Due to time constraints, lack of consensus, a need for further study, or work being conducted elsewhere, some subjects are not addressed—or not addressed fully—in this document. It is anticipated that continued examination of those matters, as well as other studies being conducted within the federal court system (including experimentation under the Civil Justice Reform Act),

will produce additional recommendations to be incorporated in future editions of the plan.

In its draft form this plan was circulated for public comment. Many commentors made beneficial suggestions about new topics that should be included or additional refinements for issues that are treated in the plan. Although the Long Range Planning Committee considered and accepted many comments and suggestions, many others are deferred as topics for the next planning cycle. Certain items need to be referred to the appropriate Judicial Conference committee for initial consideration and planning.

Among the many topics suggested for further refinement or new consideration are:

- pro se litigation
- mass torts
- habeas corpus procedures
- docket management techniques
- proliferation of local rules
- continued study of Sentencing Guidelines
- juries
- governance relationship between judicial circuits and districts
- local court administration (including the method for selecting chief judges)
- court library system
- impact of multi-national dispute resolution mechanisms established by international agreement
- recording/reporting of judicial proceedings
- court user fees
- relationship to Native American courts

In one sense, this plan is a snapshot outlining the goals of the federal courts at a particular time. And further, to make continuing use of the plan as a guide, the judiciary must not only consider the impact

of subsequent events on the specific contents of the plan, but must also revisit the plan's basic premises in view of evolving conditions. In short, there is a continuing need for planning at the national, as well as other, levels in the judicial branch.

Coordinated Planning

While a national plan is essential, it will not be the only long range planning instrument developed by the judiciary. It is neither the first nor the only ongoing planning effort in the federal courts. Other planning bodies may have already begun looking into the appropriateness of specific proposals, and their continued efforts should be encouraged and integrated into the larger planning framework. Such work is critical, as is maintaining partnerships with external constituencies such as bar organizations, state courts, and research foundations.

Some of the other planning work now under way in the federal courts includes the following.

Judicial Conference Committee Planning

Judicial Conference committee planning efforts are referenced and discussed at various places in the body of this document. The Committee on Automation and Technology, which oversees the judiciary automation program and the Committee on Security, Space and Facilities, particularly in the space and facilities program, have produced long range plans for some time. In response to the Long Range Planning Committee's encouragement, additional committees—for example, the Committee on the Administration of the Bankruptcy System and the Committee on Administration of the Magistrate Judges

System—have begun to produce long range plans in their areas of jurisdiction.

Judicial Council Planning

The Federal Courts Study Committee Report stated that long range planning in circuit councils is of increasing importance because of "trends toward decentralization of budgeting, administration, and space and facilities." Indeed, many see the circuit judicial councils as having a legitimate responsibility for planning, since the councils' charge, given by Congress, is to "make all necessary and appropriate orders for the effective and expeditious administration of justice within its circuit" (28 U.S.C. § 332(d)(1)).

The Ninth Circuit Judicial Council began its long range planning process by seeking consensus about its core purpose and primary objectives. The next stage in the council's process will include searching for consensus on major circuit-wide issues, and establishing long range goals.

Court Planning

The Ninth Circuit Court of Appeals has also begun a long range planning process. Its first plan was completed in the summer of 1992, and its Long Range Planning Committee is coordinating the annual implementation efforts.

District courts and other local units have for the last several years been encouraged by the Judicial Conference to develop long range space and facilities plans, and such planning has been carried out by about half of all districts. Newly established local planning committees, both in district courts and sometimes separately in bankruptcy courts, have begun court long range plan-

ning. Operational planning, including automation, has been initiated through the clerks' offices as issues or needs have arisen. Civil Justice Reform Act (CJRA) advisory groups have also engaged in planning.

Implementing this Plan

The essence of planning involves making choices. While this is not a time for radical changes, significant effort will be required if the federal courts hope to preserve their distinctive characteristics and sustain their historic role. The intent of this plan has been to outline some of those choices.

First, the approved plan should be brought to the attention of all judges and other key judicial branch personnel. Also, the governance apparatus (*e.g.*, the Judicial Conference, circuit judicial councils, and courts) should begin to examine agendas and ongoing activities with the plan as a guide.

In the course of this review, the judiciary's policy makers can determine what new initiatives or changes in administrative policies or practices are needed. If action is required, they should estimate the probable costs (if any), determine relative priorities of implementation, and assess whether the necessary legislative authority and resources are available. More specific action plans can then be developed by those with direct responsibility for that area.

Not all the recommendations in the preceding chapters are a call to action. Some are already being put into effect, and others (*e.g.*, the alternatives described in Chapter 10) should be considered only if certain circumstances come to pass. Still others need more research and assessment before workable strategies can be developed.

Continuing Nature of Planning

The value of participative planning lies in part in its ongoing nature. This plan is neither a one-time effort nor a one-time document. That is not to say there must be annual editions of the plan, but only that the plan should be kept updated.

Important issues arising in the future that are not addressed in the plan should of course receive the immediate attention they deserve. Their more systematic consideration can be reserved to the next planning cycle. And if, in the routine process of governance, a decision that runs contrary to the plan seems advisable, it may signal a fundamental but appropriate policy shift. Such shifts, too, can be addressed in subsequent editions of the plan.

Feedback to the Long Range Planning Committee during the public comment period was invaluable for the completion of the plan. Written and oral comments were received from state and federal judges, the bar, academics, public interest groups, and members of the general public. As noted elsewhere in this text, many comments were directly relevant to the proposed draft and others surfaced issues worthy of future consideration.

The open commentary process in drafting this plan has underscored the idea that planning is never finished. Although plans are published, there are necessarily new topics and issues that come to the forefront, either through deferral or spontaneity. While a plan may be a snapshot, issue resolution is a continuous process. Even issues treated in this plan may be characterized as being in varying states of investigation, research, and resolution.

In Chapter 7 this plan recommends that the judicial branch maintain continuing long range planning mechanisms. By continuing, increasing, and strengthening the scope of the discussions about present and future issues, both within and without the judicial branch, the federal courts will reap the benefits of the planning process that has begun.

Future Editions of the Plan

To ensure that the plan remains current, the planning process should continue on a cyclical basis. The best approach would permit both incremental adjustments and periodic reevaluation. The plan should be revised periodically—perhaps every three to five years—to reflect any new or different goals identified through the customary policy making process. Revisions need not be extensive and might be based on experience gained through plan implementation, as well as, for example, the experiments, innovations and studies developed by Conference committees.

Periodic revisions will not be sufficient to realize planning's full benefits. To sustain the plan's relevance as a policy guide, the process should begin afresh every decade. Instead of merely amending the existing document, the Judicial Conference should undertake to examine *de novo* the role and mission of the federal courts as well as the goals that will carry them into the future. Such a "fresh start" renewal ensures that the federal courts are neither trapped by the choices of earlier planners nor oblivious to new forces—and new voices—within and outside the judicial branch that shape their role in government and society.