

MAKING RESEARCH EFFECTIVE IN LEGISLATION

JOHN E. CONWAY*

I. INTRODUCTION

In the half century since Charles McCarthy established the Legislative Reference Library in Wisconsin, most American legislatures have become convinced that legislation based on research is better legislation. Such a realization does not mean, nor should it, that a legislature will blindly accept any measure which shows evidence of research in its preparation. The legislature must have the last word on policy, and must accordingly be free to modify research recommendations even if they come from an agency of the legislature such as a legislative council. But the situations dealt with here will basically not be those of the legislature, but rather those of a sponsor of legislation and a researcher, both of whom wish to produce a measure which from a scientific and policy standpoint is in the highest public interest; can they do the research in a way which will assure them, and later the legislature, that there is sound public support for the measure and that the measure itself is in the public interest?

The background for this analysis is the situation where someone or some group other than the legislature sees a lack of coordination between social conditions and the law and proposes that legislation be enacted to accord with, or to modify social conditions. Such a group may often be a state agency like a law revision commission or other state agency charged with protecting the public interest in a specific field.¹ Our concern is limited to situations in which the problem and its solution require a research effort beyond that which a single person can make in a comparatively short time; such an investment of time and money will not be made unless the problem is thought to be of great concern and there is a reasonable chance of securing the passage of legislation.

The specific inquiry is: Is there a way of organizing and administering a research project so that the likelihood of legislative adoption of a measure based on that research is enhanced? How shall the activities of the research unit, the sponsor of legislation, and the legislature be interrelated so that the research product is likely to result in legislation, while each participant retains the freedom it needs to discharge its own special obligations?

The thesis is that there are certain functions which must be organizationally located if the research is to be the best possible and

* Professor of Law, University of Wisconsin; Member, Wisconsin Judicial Council. B.A., 1931, LL.B., 1935, University of Wisconsin.

¹ The need for such research is constantly expressed. See Friendly, *The Gap in Lawmaking—Judges Who Can't and Legislators Who Won't*, 63 COLUM. L. REV. 787 (1963).

if, at the same time, the chances of adoption are to be maximized. The location of these functions depends on the size and complexity of the proposed organization. Advisory and executive committees are suggested as units useful in most situations for the carrying on of functions which now tend to be neglected.

II. A PROBLEM-STATING EXAMPLE

Suppose that in state X there is considerable dissatisfaction with the law as it relates to the adoption of minors. Suppose also the existence of a state welfare council; this is a loose confederation of interested individuals and groups—churches, private welfare agencies, and organizations of special interest groups like the X State Foster Home Operators' Association. There are several law schools in the state, and each contains persons who are interested in, and competent to do research on the problem. There are also available in the market lawyers, sociologists, and social workers who might be employed in or assigned to such research. The legislature has a permanent standing committee called the legislative council which is interested in interim research on major legislative projects. The usual sources of funds—public and private—are available.

The project must, of course, originate somewhere. With this phase we have no present concern, since the originator, as originator, does not secure organizational status. For a large project the research will undoubtedly be done by a unit composed of several persons. How this unit is paid and organized to do its technical job is also of no concern here.

From our standpoint, in point of chronology, the sponsoring organization comes first. The sponsor often serves as a possible source of funds; but whether it provides funds or not, it must be a group with some continuity in state affairs, sufficient interest in the problem, and an organizational structure which will enable it to stay with the project until an ameliorative measure is enacted by the legislature. In our example, the child welfare council could be a possible sponsor, but problems with this choice will be suggested later.

It is suggested that the researchers and the legislative council as sponsor together set up an advisory committee which will counsel the researchers both on policy and law. From the membership of this advisory committee and the membership of the sponsor there could be created an executive committee which would act as a board of directors of the project—maintaining liaison with the sponsor and the general public and, if necessary, securing new sources of funds for the research; but not, by fiat, controlling or limiting the research. The researched measure, created by the research unit, with the help of the advisory committee, would be reported by the research unit (and advisory committee) to the

sponsor which in turn, after making such changes in the recommendations as it deemed necessary and desirable, would recommend the measure to the legislature.

III. THEORETICAL BACKGROUND

What is proposed here is, from the standpoint of the research unit or the sponsor, what might be called environmental administration. The gap between a given organization and its environment is of varying width; so for example, a welfare department and its workers are quite clearly differentiated from their environment, even though the activities of the department are designed to affect the environment by changing the lives of the clientele of the department. Our proposal is that a temporary organization (the research unit) or a permanent organization (the sponsor) or both, create out of the environment, which they wish ultimately to affect by the legislative passage of a measure, some temporary organizations (the advisory committee and the executive committee) which will assist them in the accomplishment of their project. An analogy might be drawn with the activities of an American aid administrator in a foreign country who induces local citizens to set up an organization to help him in administering the aid.

Such environmental administration through the creation of temporary organizations is in one sense organization, but in another sense it is only a matter of administration. As administration it must, of course, be distinguished from the internal administration of the affairs of either the sponsor or the research unit (e.g., recruiting personnel and producing research).

Law is a device for regulating the degree and amount of social change; one of its major functions is to affect the environment. Just as the acceptability of this year's model of an automobile can be increased by modifying the model to accord with the desires of the buying public, so the acceptability of a proposal for legislative action and the quality of the product can be increased if a unit concerned with legislative acceptance feeds back to the research unit the feelings of the public (or interested portions thereof) about the product. With such information on acceptability, there can be product modification, which increases the chances of acceptability without harming the quality of the product in any major way.

A. *The Sponsoring Agency*

As stated previously, we are not concerned with the origination of the problem. The originator of the project may be the researcher, an interested individual (often a legislator), a private group, or an agency of government. Many originators, however, do make good sponsors. Discussion of the legislature as sponsor is deliberately excluded here, since one of our basic problems

is the relationship between sponsor and legislature. If the researcher is sought out by the sponsor, there is no further problem about a sponsor; but if the researcher is originator, he must find a sponsor, even if he is willing to do the work gratis.

Sponsoring and financing are sometimes joined, as where the government of the territory of Alaska employed the Public Administration Service to study the form of government most suitable for the new state.

The ideal sponsor is a group which is willing to: (1) originally limit the problem, but to change those limits when research shows that they have not been properly set; (2) finance the research itself or assist in getting financing; (3) give the researcher complete freedom within the limits set to determine research methods and results; (4) decide policy questions referred to it by the researcher or the advisory committee; and (5) make a determined effort to secure passage of the measure based on the research. The researcher ought carefully to analyze the nature of his proposed sponsor. In any such group, it may be assumed that there are individual members who will disagree with some or all of the recommendations, so the researcher must take care that the sponsoring group is cohesive enough and has a strong enough leadership to push for enactment of the measure finally agreed upon.

There is a conflict of interest between the researcher's desires for freedom and adoption of the measure without change and the sponsor's responsibility for recommending adoption of a measure to the legislature. It is important that the sponsor's right to the final word be recognized from the outset; if this is clear, there will be no pressure on the researcher by the sponsor to modify the product to include recommendations with which the researcher does not agree but which the sponsor can support.

The child welfare council, as previously described, with its interest in adoption law, would make an excellent sponsor if it was clear that all the component groups—especially the church groups—would permit the research to proceed to conclusion without trying to force specific recommendations. In the case of the welfare council, it may be reasonably clear that many of the members of the constituent groups will not accept the recommendations. Is the council, in such circumstances, cohesive enough to serve as a sponsor?

If the sponsoring group is a state department, such as a department of agriculture, which represents a large and well-defined class of the population and which is presently *en rapport* with its clientele; and if the research is in a field such as reduction of bovine tuberculosis, which is not of interest to people outside the group except in their interests as consumers and taxpayers; and if the expense is small, the department is an entirely adequate sponsor.

Special attention must be given to groups interested in law revision. In present American practice there are many substantive law revision groups: state law revision commissions such as those in New York and California, created by the legislature and authorized to study broad problems of their own selection; legislative councils which are agencies of the legislatures with interests as broad as legislation; procedurally oriented groups like judicial councils² and conferences; and advisory committees on rules. Revision commissions and legislative councils are generalist groups which have no well-defined clientele; judicial councils and rules committees are comparatively specialized and have a small lawyer clientele which is quite likely to divide on any proposal. Such commissions and councils, as to comparatively noncontroversial matters or matters of small impact, may act as sponsors and make suggestions directly to the legislature or to the court based on their research. But where the proposals are controversial and tend to affect large portions of the population, careful thought ought to be given to the desirability of a sponsor (which has a subject matter interest in the project) for any particular project. A legislature has too many interests to permit it to be an effective sponsor; it cannot make recommendations to itself in any meaningful sense. A legislative council may be an adequate sponsor if it gives the researcher the initial freedom he needs.

B. *Advisory Committee*

As stated previously, an important function of the sponsor is the selection of an advisory committee. Creation of such a group is not to be taken lightly, nor without much time spent on careful selection. If the group selected is representative only of certain interests, others may be antagonized; if it is representative of the citizens at large, it may be so lacking in focus as to prevent agreement on any plan even in the drafting stages. At least some members of the executive committee should be on the advisory committee. Careful thought should be given to the advisability of having members of the legislature, or of certain committees of the legislature (or committees of the legislative council, if there is one) serve on the advisory committee.

The use of advisory committees is exemplified in two projects of intermediate size undertaken recently by the Wisconsin Judicial Council. The council determined after the 1957 legislative session (1) to formulate a complete procedure for Wisconsin's unique non-criminal action of collecting forfeitures for violations of traffic statutes and ordinances, and (2) to expand the chapter of the statutes dealing with service of process so as to permit Wisconsin to take full advantage of the implications of the *International Shoe*

² Judicial councils are advisory to the court which created them; in Wisconsin the council may also present proposals to the legislature.

case.³

In each of these two cases the council, as sponsor, turned over the direction of the project to a committee of the council with the understanding that an advisory committee would be formed to discuss problems with the researchers. The chairman of the council suggested to eight organizations interested in traffic law enforcement that they appoint representatives to such a committee; all did. The representatives worked faithfully with the researcher for an eighteen month period. The council as sponsor, after receiving the report of the advisory committee, was free to modify the recommendations as it chose; it did, in fact, make several major changes in the plan. Note here the possibilities: The researcher can report directly to the sponsor, or the advisory committee can so report. From the political standpoint, it is undoubtedly wiser to have the committee, rather than the researcher report, as the researcher gets adequate credit in the research document.

Whereas research for the traffic project was provided by the secretary of the council, research for the jurisdiction project was undertaken by a professor at the University of Wisconsin Law School who began in the summer of 1955 while employed by the council and then continued the research on his own. In the jurisdiction project, the chairman of the council asked the president of the state bar⁴ to name an advisory committee. This committee, like that in the traffic project, worked long and hard and reported to the council. After the council made some changes in the plan, it reported to the legislature. The 1959 legislature passed the measure which completely revised chapter 262 of the statutes.⁵

Other examples of successful use of advisory committees can be given. When the legislative council decided before the 1951 legislative session to sponsor a revision of the corporation law, it secured the appointment of a state bar (advisory) committee whose members were well-informed about corporate problems. The researcher was a member of the University of Wisconsin law faculty. In 1951 the committee reported a bill to the legislative council and then worked to secure passage of the bill by the legislature.⁶ Several amendments were made while the bill was in committee, but there never was any effective opposition to the idea of the revision itself.

In the 1953 session a committee was appointed by the legislative council to advise on the preparation of a mechanical revision of the

³ *International Shoe Co. v. Washington*, 326 U.S. 310 (1945) established the doctrine of "minimal contact": A state does not deny a corporation due process of law by allowing service of process on it, though it maintains only minimal contact with the state.

⁴ Wisconsin has an integrated bar.

⁵ WIS. STAT. ch. 262 (1965) (Wis. laws 1959, ch. 226).

⁶ WIS. STAT. ch. 180 (1965) (Wis. laws 1951, ch. 731).

school laws; it was composed of both public and legislative members. Even though the revision was to be mechanical (including no changes in substantive law), representatives of one of the state's religious groups undertook to try to change the educational philosophy of the state by amendment to the bill. After the bill was reported to the legislative council and introduced by it, the committee, on its own initiative, held several conferences with legislators and representatives of various church groups to make clear the nature of the revision and the inadvisability of the proposed amendment to the revision. The conferences were successful, and the amendment was dropped. The incident is cited to show one of the many functions an advisory group can perform: the bringing to public attention undesirable features of late amendments to a revision measure. Such a committee can also secure from the legislature clarification of a vague command for revision.

The Wisconsin Legislative Council has tended since its organization to make use of an advisory committee, whereas the Judicial Council has only recently adopted the practice. Both need to give these committees more freedom and more authority to promote the passage of the legislation produced. As time goes on, more exact statements of relations between advisory committees, executive committees, and the sponsoring bodies can be worked out. It is this writer's feeling that it is highly essential that the functions listed for the executive committee and for the advisory committee be performed by some group or groups. The availability of a manual on functions of such committees would be helpful to stimulate constructive thinking by committee members.

C. The Research Staff

The project must have available to it enough funds to secure competent people for the time that is required to work out a good plan. From the standpoints stressed in this article, two factors should be considered more often: (1) the appointment of non-lawyer researchers; and (2) the appointment of competent researchers endorsed by allied groups whose support would be helpful in ultimately passing the legislation.

As to the first point, the recent practice of the American Law Institute in appointing specialists on sociology and English to assist in the drafting of the Model Penal Code must be noted with approval. The project of the American Bar Foundation in the field of criminal law administration is another example of such use of nonlawyers. The advantage of comparative law study should not be overlooked; in study of civil procedure, an expert on criminal procedure might provide fresh insight and vice versa. An expert on conflicts of law might be used with advantage in many projects.

The legal researcher must see that an advisory committee is available to advise him on technical and policy matters, to help in

keeping the ultimate consumer advised of the product, and to aid in getting the consumer's reaction as the product takes shape so that the selling job will be easier. If these activities will be extensive, a coordinating agency, or executive committee (whose actions will be discussed in the next section) must be provided.

As already pointed out, the exact organizational setup will vary with the nature of the project. For example, if it is felt that the general public of the state of X wants a certain law and this view is faithfully reflected in the current legislature, nothing more would be needed than technical assistance to the researcher in the subject matter field and some contact between the agency of the legislature sponsoring the project (e.g., a legislative council) and the researcher. This uncomplicated situation does not often appear.

D. The Executive Committee

Functions necessary to the successful completion of the total research project which have not yet been described are the overall direction of the project and the constant contact with public groups and individuals who through their legislators (and occasionally by referendum on constitutional amendment) must approve the research product. We have had occasion to mention that the entire project could be thought of best in terms of environmental administration. So the term used here—overall direction of the project—must not be thought of as covering research only, but rather as a term relating to the goal toward which the research, advisory committee work, and contacts with various groups and individuals has tended, i.e., the enactment of a measure.

Certainly one or more members of the research unit or of the advisory committee could be detailed to perform these functions, but it would seem more economical to limit these people to their major tasks and to furnish a different group to provide the overall direction. An additional reason for the specialization of the executive committee function has already been alluded to: despite careful selection of a sponsor, the sponsor because of its conglomerate nature in many cases, may, as the project proceeds, lose interest, demand limitations which the research unit cannot comply with, or even oppose the project. If the sponsor loses interest or actually opposes the project the researcher may be adrift; but, if the executive committee is largely independent of the sponsor, it can hold the sponsor to his financial commitment (if there was one) and continue to guide the project until the research report is made. The sponsor's function, it must be emphasized, is to see the problem and the solution it wishes to recommend to the legislature, but not to dictate the research solution. So the executive committee as agent of the sponsor is a better agency to work with the researcher until the research is finished, leaving the sponsor free to make up its mind on the advisability of the proposed solution.

Since the committee is the agency which maintains liaison between researchers, sponsor, legislature, and public, its job will be simplified if some members come from each of these groups. Drawing a member or members from the advisory committee is also useful.

If a legislative council or other agency of the legislature is sponsor, there is another reason for requiring the presence of an executive committee. Such councils perform an important function in sponsoring various research projects. By so doing they extend the scope of their influence far beyond that possible where all research projects in which they are interested are performed by their own staff. But they are agencies of the legislature and must, like legislatures, be free to recommend measures which depart from the research unit-advisory committee recommendations. Such an official sponsor is not in a position to actively promote public support for the project, while an executive committee can do so. Note, again, another alternative here. It was suggested in discussing the use of the legislative council as sponsor that it might be advisable to secure a different sponsor who had a subject matter interest in the proposed measure; if this is done, it might be expected that the sponsor would be willing to perform much of the function of advising the public and would relieve the executive committee to that extent.

The executive committee, in short, is set up for the purpose of handling administrative details. It is concerned with financing; coordinating sponsor, advisory committee, researcher, and public; and arranging publicity and hearings.

The executive committee should not attempt to influence findings. However, because of the backgrounds of the members and the normal contacts they make, members gather much information about reaction to the project and, at least in their individual capacities, can make comments on the research recommendations.

If the sponsoring group intends to put out the measure on a "take it or leave it" basis, as the Conference of Commissioners on Uniform State Laws does with its uniform and model acts and as the American Law Institute does with its model acts, the need for the executive committee largely disappears because the compelling reasons—marshaling support as the research proceeds and the possibility that the sponsor will lose interest—are not present.

If the advisory committee is not large, if it has members from the sponsor, and if it is given responsibility for the promotion of the plan and for so conducting its work as to keep interested groups informed of the progress of the work, it could serve as the executive committee heretofore mentioned; but the requirement that the committee think about citizen education along with its function of criticism will make difficult the selection of members of a committee competent and willing to undertake both functions.

The need for an executive committee is illustrated by recent revision of the Wisconsin substantive criminal law. The work began after the adjournment of the 1949 legislature. The sponsor of the project was the legislative council,⁷ which was then new on the Wisconsin scene. The council employed two recent graduates of the University of Wisconsin Law School to do the basic research and organized an advisory group consisting of two members of the law school faculty, the assistant attorney general in charge of criminal work, the revisor of statutes, and the secretary of the legislative council. The function of this group was limited to advising the researchers on specific legal problems as the researchers made their review of the entire substantive law; it was called "the technical advisory committee." The group held semi-monthly meetings until the spring of 1951 when a bill to enact chapters of a criminal code containing general provisions on crimes, on crimes against the person, and on crimes against property was introduced.⁸ The legislative council had unanimously approved the bill.⁹ The bill passed the senate but died in the assembly on adjournment.¹⁰

Until this point the legislative council was the sponsor; it was represented on the technical advisory committee by its executive secretary. There was no general advisory committee (as the term is used herein) nor executive committee. The council, through its judiciary committee, spent very little time in working with the technical committee as the research progressed. The support of neither the bar association, interested groups, nor individual citizens was solicited in any organized fashion. The failure of the bill may be attributed at least partially to the lack of a broad-based advisory committee and an executive committee.

Despite the first rebuff, the legislative council decided to continue the work. A new advisory committee composed of members of the state bar was appointed. The former technical advisory committee continued its work. Each chapter of the act, after it was reviewed by the two committees, was sent to the judiciary committee of the legislative council. With this expanded organization, involving many successive reviews, the need for an executive committee to coordinate internal operations and to advise outsiders of the progress being made was, with hindsight, very clear.

The technical advisory committee tried to fill the gaps; the members were all, however, state or university employees with little time to spend on outside contacts. No organized relationship with the legislature was provided; no outside agency was ready to as-

⁷ In October 1949, the legislative council directed its judiciary committee to prepare a revision of the substantive law. V REPORT OF WISCONSIN LEGISLATIVE COUNCIL at ii (1953).

⁸ Wis. Senate Bill 784 (1951).

⁹ Wisconsin State Journal (Madison, Wis.), May 13, 1951, § 1, p. 13, col. 1.

¹⁰ Wis. Legislature Bull., 1951, at 531-32.

sume leadership in the matter of public education. The bill¹¹ passed the 1953 legislature, but with a two year delayed effective date and an added provision¹² that a new advisory committee of seven members of the state bar association, three members of the legislative council, two criminal court judges, two district attorneys, a circuit judge, a county judge, a representative of the attorney general, and a representative of each of the state's two law schools should study the act and propose amendments to the 1955 legislature. This committee met monthly and proposed changes which were adopted by the 1955 legislature; the bill was passed and the act went into effect July 1, 1956.

Significant changes were made in the criminal code as a result of the review by the second advisory committee during 1953-1955. It is not argued here that the five-year delay (1951-1956) was bad or that the changes advocated by the second advisory committee were unwise, but simply that if some executive direction in getting the research product before interested groups had been attended to, the time of the researchers and of the advisory committee occupied in the second study could have been saved, and in addition, the code would have been a more integrated product. A permanent group—like a legislative or judicial council—is not set up to handle the extra work involved in preparing and consolidating support behind a large project; the researchers themselves cannot perform this task; it is usually enough for an advisory committee to concern itself with legal and policy matters.

IV. RELATIONS WITH CITIZENS

All persons involved, but particularly the researcher, are well advised to consider the legislative process in action and to reflect on the simple fact of political life that legislators are influenced by the views of their constituents—or at least by the views of some of them. Taking this fact into account is made doubly worthwhile because research—other than wholly library research—ordinarily requires contacts, in person or in writing, with many people. If the research group takes the little additional care required to make each contact the basis for possible future support of the plan from the individual reached, a base of support will be constructed as the research proceeds. In the devising of questionnaires, especially, it is necessary that the need for the information be simply explained and that the questions bear some relation to that need.

If a national group is interested in research which may result in a proposal to be considered by Congress, the problem of citizen contact is the same as with a state proposal except that the size of the operation is greatly increased. There is, in our federal system, another research possibility on the national scene—the model act,

¹¹ Wis. Assembly Bill 100 (1953).

¹² Wis. STAT. chs. 339-47 (1965) (Wis. laws 1953, ch. 623).

or the proposal for uniform state legislation. The desired effect of the latter—uniformity—is such that amendments of the act by state legislatures are not looked on favorably; it is necessary, therefore, that many people be consulted during research in the hope that ideally all the interested groups in all the states will have had a chance to express their opinion before the proposal is put into final form.

When the measure is close to final form, hearings will create much publicity. Hearings, too, must be carefully planned—*for* unless some method of informing the people in advance of the hearing of the problems involved is worked out and followed, they will only confuse the public as to the purpose and merits of a proposal.

V. REJECTION BY THE SPONSORING GROUP AND THE ADVISORY COMMITTEE AND SUCCESSIVE REVISIONS BY THE RESEARCHER

A problem, both technical and tactical, which confronts the research unit is how far to go in preparation of an entire plan before disclosing it to the advisory group and the sponsor. The answer depends on many variables including the nature of the project, the composition of the advisory group, and its relation to the sponsor and the legislature. It would seem, however, that statutes must be drafted in enough detail to show that a certain result is possible from a legal standpoint. The advisory group and the sponsor should always be informed how the part of the plan they are considering fits into the total scheme even though the total scheme is tentative. Too often groups are coerced into approval of part of a plan, with the vague assurance that the general plan into which the part fits will meet with the group's approval. It is much wiser to explain what seems to be the objective and to state that as the work proceeds it will be necessary to modify that objective on the basis of the research findings and because of the policy decisions of the advisory group. Such a method of procedure keeps the group always informed of goals, and yet keeps the goals flexible.

The rather complex organization advocated here requires that the researcher's proposal go through several stages of review. Stages are not imposed without paying a price; no scheme can pass through groups successively without being considerably changed in the process. Since the advisory committee is informed about—and sympathetic to—the project, its review is beneficial because the general pattern is not changed and minor errors can be corrected. If the executive committee makes a determined effort to keep the sponsoring group informed of progress, and if it asks for consultation on major policy decisions as they seem necessary, the sponsoring group can be educated as the research proceeds, and its final review of the project need not require a complete change of direction.

VI. REJECTION BY THE LEGISLATURE AND SUCCESSIVE REVISIONS

The basic theory propounded here—that institutional arrangements ought to be a matter of concern to all persons interested in large-scale legal research—can withstand all counterarguments regardless of the examples on which it is based. But the author's suggestions as to specific organizational structure and relations between the elements in such a structure are subject to modification in extreme cases. Perhaps the best example is the problem of whether research and the organization for conducting it can be continuous where major revision in policy is required because of legislative rejection of the first proposal.

If the advisory committee, executive committee, sponsor, or researchers become so committed at any stage to a specific proposal that they cannot in good faith consider other alternatives, they, or any of them, must be replaced, thereby sacrificing continuity. Judgment is of course involved; whether a change is of basic principle which cannot be compromised, or a shift among alternatives, is a choice which may be hard to make. The recent Wisconsin experience with a measure to effect court reorganization will illustrate some of the difficulties.

The judicial council asked its executive secretary to begin research on this project in April 1953. The council was sponsor and its executive secretary the researcher. There was no separate executive committee or advisory committee. In February 1955, the council introduced into the legislature a constitutional amendment to provide that after 1962 there should be only one kind of trial court in the state—a completely unified trial court. The council submitted no implementing legislation; it advised the legislature that by 1957 when, according to Wisconsin practice, the legislature would have to approve the proposed amendment a second time, it would submit a complete plan in bill form. The council, in the intervening two years, worked out the details of a court plan but did not put the plan into bill form. Public hearings on a summary of the plan were held by members of the council in November 1956 in five cities geographically dispersed. The state bar committee on the administration of justice was divided during this period in its attitude toward the measure and made no report to the state bar association. In the 1957 session the constitutional amendment failed of second passage and the council was directed to prepare a new plan for the 1959 legislature.¹³ Implicit in the rejection was disapproval of the one court plan. The council was directed to make the continuing study "in consultation with the boards of circuit judges, county judges and criminal court judges and the judiciary committee of the legislative council."¹⁴

¹³ Wis. Legislature Joint Resolution 112A (1957).

¹⁴ *Ibid.*

An interesting question had developed. The judicial council, a sixteen man body, composed of lawyers and judges, had been in favor of the one court plan by a majority of 14 to 2. Considerable heat had developed in the discussions during the 1953-1957 period. Was the council the best body to sponsor a new measure designed to put into effect a plan of which its members did not individually approve?

Functions, at this point had become confused; perhaps the legislature was now sponsor of the new measure; if so, perhaps the council was the researcher (none was specifically provided for). Important was the fact that there was no designated executive committee. Contact between judicial council and bar was maintained through holding open forums on court reorganization (and other major council bills) at the semi-annual meetings of the bar starting with the regular meeting in the summer of 1957. With changed membership, the state bar committee on the administration of justice voted in the fall of 1958 in favor of the council's new three-level trial court plan, and the board of governors of the bar approved it in February 1959. The 1959 legislature passed the bill effective January 1, 1962.¹⁵

The case illustrates, of course, the impact on any organization of events which make impossible its carrying out its function. If the function of the executive committee, as stated here, is to work for the best solution possible to the problem first given to the researchers, then it must be willing to continue the research effort even after one solution has been rejected. This the council did, even though its members individually were heavily committed to the solution first presented. If the executive committee stays flexible, the burden of deciding whether further operations are a violation of principle is passed down to the advisory committee and to the researcher. If a member of the advisory committee is so committed to a specific solution that he feels he cannot continue to advise, he should, of course, resign and be replaced. If the researcher is not interested in further research after what he considers the best proposal has been rejected, he too, ought to ask to be relieved.

In the specific situation—with hindsight, again—it would probably have been better for the council, after it had been relieved as sponsor of the court reorganization measure, to have declined to become, in effect, the combined executive committee and advisory committee, and for the legislature, instead, to have appointed a special group as new advisory committee with the legislative council acting as a new executive committee. With a new executive committee in charge of the direction, the council could have felt free to continue to express disapproval of the new plan, if it so desired, without feeling that disapproval would prevent work on

¹⁵ WIS. STAT. ch. 253 (1965) (Wis. laws 1959, ch. 315).

court reorganization from continuing.

VII. SUMMARY

In a law research project of any magnitude it is important to plan in advance the optimum pattern of internal organization and environmental organization to guide the project from initiation to adoption by the legislature or legislatures in question. Questions of relations between the researcher, sponsor, clientele, and the legislature can then be resolved in terms of an *ad hoc* organizational structure for promotion of the specific project. It is the thesis of this article that maximum results can be obtained only by (1) allocating to definite agencies the function of giving policy advice to the researcher and the function of promoting the project to the public and legislature; and (2) separating the executive direction of the project from the sponsoring group and the research unit.