

The Challenge: *reform the administration of justice, including the prison system, so that it is more affordable and effective.*

REFORMS NEEDED IN THE ADMINISTRATION OF JUSTICE IN TENNESSEE

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The administration of justice significantly affects the basic fabric of society. Respect for the law and confidence in the institutions that administer the law are fundamental to a well-ordered community. Justice, rightly defined and administered, enhances the quality of life for all current and future residents of the state and also gives Tennessee a competitive edge in all its endeavors. Although these comments focus on reforms needed in those institutions that are directly involved in the administration of justice, comprehensive and profound justice cannot be accomplished in the absence of reforms in other areas including taxation, education, and health care.

The Commission on the Future of the Tennessee Judicial System, appointed and commissioned by the Tennessee Supreme Court, concluded in its report issued in 1996 after a two-year study: "A troubled world is delivering more of its troubles to the judicial system But the [system] needs to change if it is to deal with those troubles. It must re-orient its duties and broaden its vision. It must be more efficient and more accountable." In the ensuing decade, the burden of societal problems placed on the system has become greater while the system has made little progress toward vision, efficiency, or accountability. It still is the sum of disjointed functions performed in isolation without a comprehensive purpose or a common rationale. There is no shared definition of justice and no consensus among judges, prosecutors, corrections officials and other state actors regarding the purpose or mission of the system.

The major components of the system of justice, civil litigation, criminal prosecutions, juvenile proceedings and state imposed punishment, need major reforms.

In the face of these obstacles, the central institution in the system, the Supreme Court, which has the power through its judicial decisions, administrative authority, and rule making power to implement reform, presently stands on the precipice of a political spoils system dominated by partisan politics, special interests financing and ideological litmus tests. If the state should abandon the merit based selection and retention of judges, the cause of justice in Tennessee will be irreparably harmed.

Civil Litigation

The last resort available for the resolution of civil disputes is litigation. However, for all citizens except the affluent, litigation is not a realistic means of protecting property or rights or resolving competing economic interests. Individual and corporate citizens of average financial means cannot afford an ordinary case in court. The cost of lawyers, court reporters, investigators, and experts together with other necessary expenses is prohibitive. The judicial system is self-centered. Each segment of the system—judges, prosecutors, lawyers, police, clerks—protects its own cozy corner of the bureaucracy. The system has subsumed rules designed to expedite proceedings as well as alternative mechanisms such as mediation, resulting in more costly and more protracted rather than more efficient dispute resolution. The result is something less than

the just and timely resolution of disputes and the winner is too often the party who can better afford the time and expense demanded by the process.

For the approximately one-fifth of the state's population who live near the subsistence level and who, consequently, are disproportionately victims of predatory business practices, intransigent bureaucracies and invidious discrimination, even rudimentary justice is a cruel illusion.

Reform of the court system will require a prophetic vision of justice as well as professional discipline and some personal sacrifice.

Criminal Justice

The prosecution and defense of persons charged with crimes in the criminal courts of Tennessee encounters most of the obstacles found in civil litigation plus a host of other problems caused by the nature of the proceedings the State is undertaking to punish one of its citizens. Current law requires that courts try cases as though the circumstances giving rise to the prosecution were committed in isolation, disassociated from the accused's life experiences. There are precursors to almost every serious crime, which often include parenting, school experiences, neighborhood conditions, and minor law violations. Yet the narrow issue litigated between the State and the accused is whether the accused is guilty of the particular criminal act charged. This narrow focus excludes consideration of known pertinent circumstances. This focus has no room for any sense of shared moral responsibility. Even the victim, despite recent legislation, is considered hardly relevant except as evidence of the crime. As the details of the process are considered, an unanswered question is continuously repeated: is this justice?

Perhaps fortunately, most criminal prosecutions are resolved through plea-bargaining between the district attorney general and the public defender. In that context, mitigating and aggravating circumstances beyond those allowed in specific cases probably are considered, as well as the very real fact that there may not be a vacant prison cell. Is it justice for one offender to be imprisoned while another who committed the same crime is not, based only on the availability of prison space? What part does retribution or restitution or rehabilitation or public safety play in justice? These and many more questions relevant to justice could and should be asked.

The Juvenile Justice System

The juvenile justice system, to the extent there is a system, is dysfunctional, despite the dedicated and sometimes heroic work of some of its professionals. It reflects the public's equivocal attitude about children; it loves children unless they are bad children or perhaps poor children. Children who in the absence of intervention are destined to become criminals can be identified at an early age with a high degree of probability. Yet the system, the public, the legislature, we allow and facilitate this tragedy to play out in the lives of these children at an inestimable cost in dollars as well as human personality.

Again, the system responds only to an act, by a child or against a child, but, again, it does not respond in a comprehensive, focused, disciplined manner. A charge of delinquency, neglect or abuse potentially creates an avalanche of issues, indicated by the many, often competing, interests asserted in determining the treatment of the child. They include the offender, the victim, the parents of the victim and/or the offender, the police, prosecutors, public defenders,

custodians, guardians, child-welfare agencies, probation officers and corrections officials. A case may be further complicated by issues of custody, support, parenting, and paternity pending in another court. What is justice when a child commits an offense? Who gets to define justice?

Punishment

The central need for determining the appropriate punishment to be imposed on criminal offenders is a clearly stated objective toward which the administration of criminal justice is directed. That objective will define justice. The next greatest need is for all segments of the system to focus their efforts and resources toward obtaining the stated objective. There are inconsistent concepts of justice within and without the system. Rehabilitation and retribution may not be consistent. Incarceration may not be consistent with restitution. Plea bargaining may not be consistent with the public's view of justice. Abolishing plea bargaining is not consistent with existing court resources. Neither is it consistent with available prison space. It may not be consistent with the public's willingness to pay for additional court resources and additional prisons. Incarceration is not consistent with some less expensive and perhaps more effective correctional programs. Obviously many factors will be considered in articulating the definition of justice.

Some compelling facts should be considered in determining the need for reforming the imposition of punishment. Perhaps one of the most dramatic facts is that the State spends approximately three times as much each year for housing an inmate as it spends for educating a child. Other important facts can be found in the Department of Corrections' annual report. The present felony inmate population in state and local prisons is in excess of 27,000. The prisons are operating at maximum capacity. The inmate population is projected to increase by approximately 2,000 in the next decade, requiring the construction of two additional prisons. The cost of a prison presently under construction will exceed 200 million dollars. The cost of the ongoing renovation of another prison will exceed 100 million dollars. The average age of inmates has significantly increased in the last decade. Twenty eight percent of the inmate population have been diagnosed with mental health disorders. The primary offense of 16 percent of the inmate population is drug related while it is estimated that 50 to 60 percent of the inmates had substance abuse problems prior to incarceration.

Many disturbing issues are raised by this information. Some are: does the State consider the incarceration of criminal offenders a higher priority than educating children? Why does the state continue to house geriatric inmates at huge cost when they may no longer pose a threat to public safety? Should the state reconsider its policies regarding drugs and mental health?

The need to reform the punishment component of justice seems clear beyond reasonable dispute.

Conclusion

The Futures Commission mentioned above, after stating: "A more troubled world is delivering more of its troubles to the judicial system," states further: "This is a burden, but it is also an opportunity." Before that opportunity can be realized, the judicial system must have the support and cooperation of the legislative and executive departments. The duty to define justice and then

implement the needed reforms in the administration of that justice is the shared responsibility of all three branches of government. Duty calls.