

1977

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### Recommended Citation

Ronald J. Bacigal, *The Criminal Justice Standards and Goals Process in Virginia*, 11 U. Rich. L. Rev. 529 (1977).  
Available at: <https://scholarship.richmond.edu/lawreview/vol11/iss3/5>

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# THE CRIMINAL JUSTICE STANDARDS AND GOALS PROCESS IN VIRGINIA

*Ronald J. Bacigal\**

Throughout its history, the criminal law has developed primarily through judicial interpretation of case law and legislative enactment of statutes. It is only in the recent past that an effort has been made to apply the planning process of standards and goals to the criminal justice system.<sup>1</sup> At the national level, the impetus has come primarily from the American Bar Association (ABA) Project on Standards for Criminal Justice, which has been in existence for over ten years and has been widely publicized,<sup>2</sup> and from the National Advisory Commission (NAC) on Criminal Justice Standards and Goals. In 1971, the NAC stated that the purpose of its standards and goals process was to "formulate for the first time national criminal justice standards and goals for crime reduction and prevention at the state and local levels."<sup>3</sup>

Virginia recently completed the initial phase of its first experience with the standards and goals process and will publish the results in the spring of 1977.<sup>4</sup> The purpose of this article is to briefly recount the organization and functioning of this process in Virginia, which was entrusted to two separate groups: the Joint Bar Study Committee and the Virginia Task Force on Criminal Justice Goals and Objectives.

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1. By virtue of the Crime Control Act of 1973, 87 Stat. 197 (1973), and the policies of the Law Enforcement Assistance Administration, every state is required to formulate statewide standards and goals for the operation of its criminal justice system.

2. Chief Justice Warren E. Burger referred to the ABA Project as "the single most comprehensive and probably the most monumental undertaking in the field of criminal justice ever attempted by the American legal profession in our national history." Burger, *Introduction: The ABA Standards for Criminal Justice*, 12 AM. CRIM. L. REV. 251 (1974).

3. NATIONAL ADVISORY COMM. ON CRIMINAL JUSTICE STANDARDS AND GOALS: A NATIONAL STRATEGY TO REDUCE CRIME, at v. (1973) [hereinafter cited as NAC REPORT].

4. GOALS FOR VIRGINIA'S CRIMINAL JUSTICE SYSTEM (Bacigal ed. 1977) [hereinafter cited as GOALS]. Copies may be obtained by writing to the Division of Justice and Crime Prevention, 8501 Mayland Drive, Richmond, Virginia 23229.

### THE JOINT BAR STUDY COMMITTEE

The Joint Bar Study Committee was composed of representatives of the Virginia State Bar, the Virginia Bar Association, the Old Dominion Bar Association, the Commonwealth Attorneys' Association, the Virginia Trial Lawyers Association, and the Richmond Criminal Bar Association. Prior to the formation of the Joint Bar Committee, a study sponsored by the Supreme Court of Virginia and funded by a grant from the Virginia Division of Justice and Crime Prevention (DJCP) was conducted to compare the existing Virginia criminal justice system with the Standards for Criminal Justice promulgated by the American Bar Association.<sup>5</sup> The Joint Bar Study Committee was then formed to study the Comparative Analysis and recommend which, if any, ABA Standards should be adopted in Virginia. The Joint Bar Study Committee completed its work in September of 1976 and submitted its final report to the Criminal Procedures Committee of the Judicial Council of Virginia. As of the date of this article, the Judicial Council is considering the report and has not indicated the use to which the report will be put, or the amount of publicity to be given the report. Accordingly, the specifics of the report will not be discussed at this time.<sup>6</sup>

### THE VIRGINIA TASK FORCE ON CRIMINAL JUSTICE GOALS AND OBJECTIVES

The Virginia Task Force on Criminal Justice Goals and Objectives was formed in the summer of 1975 to establish goals, objectives and priorities for Virginia's criminal justice system. The task force was a joint project of the Virginia State Crime Commission and the Council on Criminal Justice and was funded by a grant from the federal government's Law Enforcement Assistance Administration (LEAA), with matching funds from the Commonwealth.<sup>7</sup>

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5. For a copy of the results of the study, see R. WALCK, T. COLLINS & T. SULLIVAN, *COMPARATIVE ANALYSIS OF AMERICAN BAR ASSOCIATION STANDARDS FOR CRIMINAL JUSTICE WITH VIRGINIA LAWS, RULES, AND LEGAL PRACTICE* (1975) [hereinafter cited as WALCK].

6. The report of the Joint Bar Study Committee has been utilized by the Office of the Executive Secretary of the Supreme Court of Virginia in preparing the Comprehensive Judicial Plan for 1978.

7. The project was supported by grants from the Law Enforcement Assistance Administration of the U.S. Department of Justice.

The task force continued on the state and local level much of the work already performed at the national level by the National Advisory Commission on Criminal Justice Standards and Goals and the American Bar Association. These national standards and goals adopted by the ABA and NAC were never intended or expected to be accepted and implemented verbatim in all states and local communities. The purpose of the national standards was the prompt study and discussion which would lead to each jurisdiction adopting, amending or rejecting any specific standard. To emphasize the advisory nature of this study process and to dispel any misimpression that mandatory standards were being formulated, the Virginia Task Force deleted all references to the word "standards" and has used exclusively the terms "goals and objectives."

The study and discussion process began when the Virginia State Crime Commission and the Council on Criminal Justice formed a Joint Executive Committee to select Task Force members and set policy and procedure for the operation of the Task Force. It was apparent at that time<sup>8</sup> that the functioning (or malfunctioning) of the criminal justice system was of concern to all citizens, and was not solely within the domain of criminal justice professionals. Accordingly, the Joint Executive Committee attempted to reach beyond the traditional criminal justice fields and to involve all aspects of society in the work of the Task Force. While the Task Force roster<sup>9</sup> lists a number of prominent members of the Virginia criminal justice system,<sup>10</sup> the Task Force also included many local government officials and private citizens. An effort was also made to select Task Force members from all geographic areas of Virginia.

It was further recognized that the criminal justice system has become so complex and contains so many separate components (*e.g.*, state police, municipal police, sheriffs, corrections officials, judges, prosecutors, defense counsel, etc.) that frequently these sep-

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8. In June, 1975, the Virginia Council on Criminal Justice received a report which indicated that fifty-five percent of the Virginians interviewed listed crime and law enforcement as the most important problem facing their community. A SURVEY OF PUBLIC ATTITUDES TOWARD CRIME AND THE CRIMINAL JUSTICE SYSTEM IN THE STATE OF VIRGINIA (1975).

9. For a list of the task force members, see Appendix A.

10. The roster includes a justice of the Virginia Supreme Court, the Attorney General of Virginia, the President of the Virginia State Bar, the Superintendent of the Virginia State Police and the Director of the Virginia Department of Corrections.

arate components are unaware of the needs of the other elements of the criminal justice system. The Joint Executive Committee concluded that the diverse membership of the Task Force would encourage an interdisciplinary approach to the criminal justice system. A staff of criminal justice professionals was employed to assist the Task Force, but Task Force membership was not restricted to criminal justice professionals. The Joint Executive Committee designed the Task Force to bring together and promote interaction between criminal justice professionals and other elements of society.

After the Task Force and staff were selected, the Task Force began its work by studying a comparison of the national standards with existing Virginia law and practice. Under the direction of the Division of Justice and Crime Prevention, comparative analyses were prepared in the specific areas of the courts,<sup>11</sup> police<sup>12</sup> and corrections.<sup>13</sup> In addition, the Task Force utilized the ABA comparative analyses<sup>14</sup> prepared for the Joint Bar Study Committee. These four volumes of comparative analyses served as the basic working documents for the Task Force. For the most part, the comparative analyses did not make judgments but merely attempted to factually report any differences between the criminal justice system in Virginia and the national standards.

The Task Force was charged with making the judgments as to which national standards should be adopted in Virginia. The Task Force was instructed to give due deference to the NAC and ABA standards as reflecting the views of many distinguished experts, but it was cautioned to analyze the national standards from a Virginia perspective, and to adopt only those goals which were appropriate for the Virginia criminal justice system.

The Task Force was also instructed to select desirable goals for Virginia, assuming that the necessary financial resources were available. Thus the Task Force did not conduct a detailed financial analysis, nor did it necessarily spell out the specific methods of

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11. REDDEN, *JUDICIAL ADMINISTRATION OF CRIMINAL JUSTICE IN VIRGINIA: A COMPARATIVE ANALYSIS* (1975).

12. GALLAGHER, *LAW ENFORCEMENT: A COMPARATIVE ANALYSIS OF VIRGINIA PRACTICES AND PROCEDURES* (1974).

13. VOCINA, *CORRECTIONS IN VIRGINIA: A COMPARATIVE ANALYSIS* (1975).

14. See WALCK, *supra* note 5.

achieving every goal. Some goals are quite specific and recommend amendment of particular statutes and regulations. However, other goals merely set the general direction for the Virginia criminal justice system and leave the specifics to be resolved in the future.<sup>15</sup> The Task Force recognized that most criminal justice professionals are necessarily involved with day-to-day operations and frequently cannot afford the time to plan for the "long run." Freed from responsibility for the daily operation of the present criminal justice system, the Task Force endeavored to concern itself with the direction of the Virginia criminal justice system in the future and to design a blueprint for future action.

The actual formulation of goals for Virginia's criminal justice system began in the summer of 1975 when the Task Force was divided into three separate task forces concentrating on the areas of courts, police and corrections. Although there was communication between the three task forces, ultimately each task force functioned independently in that only members of each task force voted on its own goals. Thus, it is important to note that the goals adopted by one task force are not necessarily approved or disapproved by the other task forces. The only exception to the independent functioning of the task forces occurred when a goal of one task force was found to be in conflict with the goal of another task force. In such cases, the conflict was resolved by the vote of all task forces.

The independence of the task forces is also reflected in the scope and tenor of their reports. Each task force approached its subject from a slightly different perspective, and thus tailored its goals to reflect this perspective. While it is hoped that the report of the full Task Force<sup>16</sup> may be considered as a whole and can be seen as addressing the entire criminal justice system, an understanding of the courts, police and corrections goals can best be achieved by keeping in mind the basic approach of each group, as set out below.

### *Courts*

Upon examination of the functioning of Virginia courts, the courts task force concluded that Virginia was indeed fortunate in that it

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15. For a sample goal, see Appendix B.

16. See GOALS, *supra* note 4.

does not experience lengthy delays and the resulting crisis atmosphere that accompanies the trial and appellate process in many other states.<sup>17</sup> Since the Virginia courts were found to be functioning well, the task force found no need for major restructuring or broad innovative suggestions.<sup>18</sup> The Task Force contented itself with proposing minor adjustments and improvements in what was already a well-functioning system. This approach accounts for the small number and limited scope of the courts goals.<sup>19</sup>

### *Police*

The police task force was concerned with all aspects of law enforcement and the term "police" was used in a generic sense to encompass all law enforcement agencies having personnel with general peace-officer powers.<sup>20</sup> The term "police chief executive" was also used broadly to identify the key individual at the head of every law enforcement agency, such individual having administrative responsibility for the policies and performance of the agency. Thus, "police chief executive" includes those individuals who may have the official title of chief of police, sheriff, superintendent, colonel or commissioner.

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17. Two studies of the Virginia trial and appellate process had concluded: "The Virginia system is simple, uncomplicated, effectively suited to its caseload" and that "no problem appears to exist in obtaining a reasonably prompt hearing and decision in cases appealed to the Supreme Court of Virginia." NATIONAL CENTER FOR STATE COURTS, A REPORT OF THE APPELLATE JUSTICE PROJECT OF THE NATIONAL CENTER FOR STATE COURTS 1973-74, SECOND YEAR OF THE PROJECT 101 (1975); COMMISSION ON SPEEDY TRIALS IN CRIMINAL CASES, REPORT OF THE COMMISSION ON SPEEDY TRIALS TO THE GOVERNOR AND THE GENERAL ASSEMBLY, S. DOC. NO. 28 (1976).

18. For example, see chapter 6 of the NAC Report on Courts, where the NAC states:

The basic premise of this chapter is that there should be a single, unified review proceeding in which all arguable defects in the trial proceeding can be examined and settled finally, subject only to narrowly defined exceptional circumstances where there are compelling reasons to provide for a further review. . . . The Goals of this chapter seek to establish the concept of a single, unified review: an amalgamation into one proceeding of all issues that are now litigated on new trial motions, direct appeals, and post conviction proceedings. The new trial motion is abolished, and the traditional distinction between direct appeal and collateral attack is abandoned.

NAC REPORT, *supra* note 3, at 113. The NAC concedes that this proposal is "novel and controversial" and has not been put into practice in any jurisdiction. *Id.* at 112.

19. The courts task force adopted only thirty goals as compared to seventy-nine goals adopted by the police task force, and eighty-two goals by the corrections task force.

20. For a glossary of terms used by the Task Force, see WALCK, *supra* note 5.

In Virginia, law enforcement is primarily the responsibility of local government, thus there is not the same uniformity of procedure in law enforcement as exists in the state courts. The police task force was aware that many of the goals adopted were already existing in practice in some localities. The task force made no attempt to ascertain whether a goal was already the existing practice in a certain number of localities. The police task force's perspective was to propose goals that should be considered by all localities. The task force attempted to draft a report that could be examined by every police chief executive as the task force's view on how a law enforcement agency could best function. Thus, unlike the courts task force's approach of minor improvements to the existing system, the police goals are intended as a comprehensive "how to do it" manual.

### *Corrections*

The corrections task force did not confine itself to a limited examination of major institutions or the functions of the Virginia Department of Corrections. The task force was concerned with the broad range of the community's possible reactions (*e.g.*, parole, probation, confinement, etc.) to a convicted offender. Like the police task force, and unlike the courts task force, the corrections task force did not confine itself to minor adjustments to the existing system. Rather, the task force engaged in a broad examination of the concept of punishment and corrections. This broad approach is perhaps best typified by the initial goal of the corrections report which calls for "total system" planning.<sup>21</sup>

Working independently, each task force held meetings from October, 1975, to September, 1976. The interim goals adopted at these meetings were reported by the *Task Force Reporter*, a newsletter distributed to criminal justice professionals and interested citizens.

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21. There is no doubt that corrections receives criticism and advice from many corners. Among those who advise corrections are the Crime Commission, the Division of Justice and Crime Prevention, the Virginia Advisory Legislative Council Committee, the Courts and others. Clearly then, Virginia finds itself in the position in which it has no small number of agencies and entities which have some effect in the areas of corrections. While this can be good from the standpoint of generating ideas, when there is no coordination in implementing those ideas, the final effect may be divisive and negative. It is this inefficiency and inefficacy that Corrections Goal 1.1 addresses and seeks to correct.

GOALS, *supra* note 4, at 265.



Each task force met in September, 1976, for final consideration of its goals and to acquaint itself with the goals adopted by the other task forces. A final joint meeting of the three task forces was held in October, 1976, to resolve any conflict between the goals and to continue the educational process of acquainting each task force member with the work of the other task forces. The minutes of all task force meetings are available for examination by the public and will be published in a separate volume entitled *Working Papers of the Virginia Task Force on Criminal Justice Goals and Objectives*.<sup>22</sup>

Upon final adoption of the goals at the October meeting, the task force concerned itself with preparing minority reports and setting priorities for consideration of the goals. With the publication of the Task Force report, and its distribution to the Governor, Supreme Court of Virginia, General Assembly, local government officials and the general public, the work of the Task Force has been completed.

#### THE FUTURE OF THE STANDARDS AND GOALS PROCESS

The Task Force served in an advisory capacity and had no power to implement any of the goals adopted. If the Task Force has done its work well, then the weight of its reasoning should be force enough to convince those individuals with responsibility for the operation of Virginia's criminal justice system to put into practice the goals adopted by the Task Force. This of course assumes that the report will not "merely collect dust on a shelf with so many other studies and reports,"<sup>23</sup> but rather that Virginia criminal justice authorities will be aware of the goals and the reasons why the goals were thought desirable. Accordingly, the next phase of the "standards and goals" process in Virginia consists of an effort to acquaint the criminal justice authorities and the general public with the Task Force report. This phase will begin in the spring of 1977, when the goals will be presented in regional public forums to be held through-

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22. Copies will be available in the summer of 1977 through the Virginia Division of Justice and Crime Prevention, 8501 Mayland Drive, Richmond, Virginia 23229.

23. The American Bar Association has had some success in preventing the ABA Standards from "collecting dust." "Far from being ivory tower recommendations, the Standards have already been cited in more than 200 appellate court decisions, including 12 opinions of the United States Supreme Court." Nichols, *What the Standards Can Mean to the Criminal Lawyer*, CHI. DAILY L. BULL., April 25, 1975, at 1.

out the Commonwealth.<sup>24</sup> All interested individuals will be urged to attend the forums and discuss the substance of the goals. A summary of these forums will be published as a supplement to the Task Force report.

When the report, the working papers of the Task Force, and the results of the public forums are examined, it is the hope of all those associated with the "standards and goals" process that the work of the Task Force will serve as a catalyst for changes which will improve the Commonwealth's system of criminal justice.

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24. As of the date of this article, the tentative schedule for the public forums is:

May 2, 1977 .....	Roanoke
May 4, 1977 .....	Abingdon
May 9, 1977 .....	Fairfax City
May 11, 1977 .....	Staunton
May 13, 1977 .....	Danville
May 18, 1977 .....	Norfolk
May 20, 1977 .....	Richmond

## APPENDIX A

## COURTS TASK FORCE MEMBERS

*Chairman* — Joshua L. Robinson

*Vice Chairman* — Russell M. Carneal

George E. Allen, Jr.

Frederick P. Aucamp

Robert N. Baldwin

A. Christian Compton\*

Frederick T. Gray

Earl H. Henley

Marshall E. Honaker

Elizabeth W. Johnson

James R. McKenry

Andrew P. Miller

E. Carter Nettles, Jr.

William F. Parkerson, Jr.

Joseph E. Spruill, Jr.

W. Carrington Thompson

Edith R. White

\* Ex officio; did not participate in the approval or priority rating of goals.

## POLICE TASK FORCE MEMBERS

*Chairman* - Robert F. Horan, Jr.

*Vice Chairman* - G. Robert House

Harold W. Burgess

John H. Carey

Garry G. DeBruhl

Joseph V. Gartlan, Jr.

John B. Holihan

M. David Hooper

Lewis W. Hurst

Roy F. Jamison

Murray J. Janus

Susan S. Lawrence

William J. Leidinger

W. E. Osborne

Hugo A. Owens

Anne Dobie Peebles

W.L. Person, Jr.

Katherine Robinson

Earl D. Sasser

Robert L. Stern

William J. Vesey

## CORRECTIONS TASK FORCE MEMBERS

*Chairman* - Duncan C. Gibb

*Vice Chairman* - Walter B. Fidler

Richard M. Bagley

Edward A. Beck

Judith V. Burch

Jack F. Davis

Leonard Dobrin

Robert E. Gibson

James W. Gilkeson, Jr.

A. Ryland Hall

John N. Lampros

Vivian C. Mason

John R. Newhart

Wendell L. Seldon

Pleasant C. Shields

Erwin S. Solomon

Andrew J. Winston

## APPENDIX B

## GOAL 1.3 POLICE DISCRETION

Every police agency should acknowledge the existence of the broad range of administrative and operational discretion that is exercised by all police agencies and individual officers. That acknowledgement should take the form of comprehensive policy statements that establish the limits of discretion, that provide guidelines for its exercise within those limits and that eliminate discriminatory enforcement of the law.

1. Every police chief executive should have the authority to establish his agency's fundamental objectives and priorities and to implement them through discretionary allocation and control of agency resources. In the exercise of his authority every police chief executive:
  - a. Should review all existing criminal statutes, determine the ability of the agency to enforce these statutes effectively and advise the legislature of the statutes' practicality from an enforcement standpoint; and
  - b. Should advise the legislature of the practicality of each proposed criminal statute from an enforcement standpoint, and the impact of such proposed statutes on the ability of the agency to maintain the existing level of police services.
  
2. Every police chief executive should establish policy that guides the exercise of discretion by police personnel in using arrest alternatives. This policy:
  - a. Should establish criteria for the selection of appropriate enforcement alternatives;
  - b. Should require enforcement action to be taken in all situations where all elements of a crime are present and all policy criteria are satisfied;
  - c. Should be jurisdiction-wide in both scope and application; and
  - d. Specifically should exclude offender lack of cooperation, or disrespect toward police personnel, as a factor in arrest determination unless such conduct constitutes a separate crime.
  
3. Every police chief executive should establish policy that limits the exercise of discretion by police personnel in conducting investigations, and that provides guidelines for the exercise of discretion within those limits. This policy:

- a. Should be based on codified laws, judicial decisions, public policy and police experience in investigating criminal conduct;
  - b. Should identify situations where there can be no investigative discretion; and
  - c. Should establish guidelines for situations requiring the exercise of investigative discretion.
4. Every police chief executive should establish policy that governs the exercise of discretion by police personnel in providing routine peacekeeping and other police services that, because of their frequent recurrence, lend themselves to the development of a uniform agency response.
  5. Every police chief executive should formalize procedures for developing and implementing the foregoing written agency policy.
  6. Every police chief executive immediately should adopt inspections and control procedures to insure that officers exercise their discretion in a manner consistent with agency policy.

### *Commentary*

As was noted in the commentary to Goal 1.1, the task force does not approve of "selective enforcement," whereby the police chief executive makes a policy decision that certain laws are unenforceable and therefore no attempt will be made to enforce them in a given jurisdiction. Such decisions are beyond the proper authority of law enforcement agencies, and must be made by the legislature when determining whether to enact, amend or repeal any statute. The police agency's role is confined to advising the legislature of a statute's practicality from an enforcement standpoint.

Recognizing that every Virginia law enforcement officer is committed to a policy of enforcing all of the state's criminal laws, there is nonetheless room for police discretion in deciding when to investigate or arrest for suspected violations of the law in specific situations. Crime does not look the same on the street as it does in a legislative chamber, and it is impossible to draft a criminal code which sets out specific instructions covering the infinite variety of situations which confront the police. When a police officer is confronted with a specific factual situation he will always have to select from among a number of possible sources of action. For example, if an officer is confronted with a person making a public speech which may be fomenting violence in the audience, the officer must decide

whether to: (1) protect the first amendment rights of the speaker; (2) disperse the crowd; (3) arrest the speaker; or (4) do nothing.

In the absence of any guidelines from the police agency, the officer must select his course of action based on his personal evaluation of the situation. Such an evaluation may be based on a misunderstanding of the law, or based on improper factors such as race, religion, or political preferences. Even if the personal evaluation is based wholly on proper considerations, as a personal evaluation it remains essentially invisible, and leaves the public to speculate on what factors prompted the officer to select a certain course of action. The possible consideration of improper factors may be an inherent risk in the exercise of discretion, but consideration of such factors can be discouraged if the law enforcement agency guides the individual officer's decision by informing him of what factors can properly be considered and what factors should not properly affect his decision.

Until such time as society elects inflexibly to enforce all laws in all situations, the task force recognizes that it is inherent in our criminal justice system that police agencies and individual officers will exercise administrative and operational discretion. Written guidelines for the exercise of that discretion will: (1) eliminate the appearance of, and/or actual, discriminatory or arbitrary enforcement policies; and (2) assist the individual officer in handling the complex situations he confronts on a daily basis.

## References

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1. National Advisory Commission Report, *Police*, Standard 1.3, pp. 21-27.
  2. Burger, W., "Address to Graduates of the FBI National Academy," *FBI Law Enforcement Bulletin*, January, 1972.
  3. Davis, K., *Police Discretion*, St. Paul, Minn.: West Publishing Co., 1975.
  4. Eastman, G. and E., *Municipal Police Administration*, Washington, D.C.: International City Management Association, 1971.

