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REPORTS OF THE COURT MANAGEMENT STUDY SUBMITTED TO THE DISTRICT OF COLUMBIA COURTS AND RELATED AGENCIES BY THE COMMITTEE ON THE ADMINISTRATION OF JUSTICE OF THE JUDICIAL COUNCIL

REPORT

FOR THE USE OF THE

COMMITTEE ON THE DISTRICT OF COLUMBIA UNITED STATES SENATE

PART 2

MAY

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NOTE

During the course of the Court Management Study numerous reports and proposals were submitted to the courts and related agencies. On the basis of those reports, a summary report (Part 1) setting forth the principal findings, conclusions, and recommendations of the Study was prepared. In order to enable the interested reader to obtain more detail on particular topics or courts, the major reports of the Court Management Study are reproduced herein (Part 2). In addition, this volume includes two reports prepared by special consultants to the Study.

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A STUDY OF THE CIVIL CALENDAR OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JUNE 1969

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A STUDY OF THE CIVIL CALENDAR OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

I. OBJECTIVES AND SCOPE OF STUDY

As part of the Court Management Study of the District of Columbia Court System we conducted a study of the civil calendar of the United States District Court for the District of Columbia. The Court's "federal" civil jurisdiction is the same as that of other United States District Courts. In addition to its federal jurisdiction the Court has "local" jurisdiction over all civil actions in excess of $10,000 where the defendant is subject to service within the District of Columbia, regardless of the presence or lack of a federal question or diversity of citizenship.

Our principal objectives were: (1) to appraise the efficiency and effectiveness of the existing system of organization, management and operation of the Court's civil calendar; and (2) to recommend appropriate reforms to simplify and—where possible and appropriate—to expedite the processing of civil cases. We had planned to work with the Court in implementing reform measures. Only a limited amount of implementation was accomplished, however, because during the period of our review the Court was concentrating its efforts on a series of programs designed to expedite the processing of criminal cases.

We gave primary emphasis to the following offices that were most directly involved in processing the Court's civil litigation: Civil Division, Office of the Clerk; Civil Branch, Office of the Assignment Commissioner; and the Office of the Pretrial Examiner.

Major study techniques utilized were interviews, direct observation of Court employees in action, analysis of forms, records, rules and reports, and analysis of statistical data. In addition to Court employees, we interviewed judges, lawyers and representatives of related organizations such as the Administrative Office of the United States Courts. We also visited other courts to observe how they processed their civil litigation.

We plan to release separate reports covering our studies of the Court's criminal calendar and the overall organization and management of the Court. The latter report will contain a recommendation that a Court Executive position be established to organize and administer all of the non-judicial activities and non-judicial personnel of the Court. We believe such a position is essential to ensure effective implementation of our recommendations. Some of our comments in this report presume the establishment of such a position.

II. SUMMARY OF FINDINGS AND CONCLUSIONS

Litigants in civil cases in the U.S. District Court are faced with a serious problem of delay in reaching trial. In Fiscal Year 1968 the

median time interval from issue to trial was 29 months for civil jury cases and 19 months for non-jury cases. We believe that if the Court made more efficient and effective use of its existing resources, it could substantially reduce the time interval from issue to trial.

Trial delay cannot be attributed to an increase in civil litigation. Each year since Fiscal Year (FY) 1962 there have been *fewer* civil cases filed. There were about 7,500 cases filed in FY 1962; only 4,500 cases were filed in FY 1968. While much of the reduction is due to a reduction in one category of cases—insanity cases—there has also been a decline in the categories of cases that account for about 75 percent of the Court's civil trial load—personal injury, contract and real property cases. In FY 1962 there were about 2,900 such cases filed; only 2,000 such cases were filed in FY 1968.

Neither can trial delay be attributed to a shift in judicial manpower from the trial of civil cases to the trial of criminal cases. Although most of the Court's regular judges have been engaged in the trial of criminal cases since October 1967, through the use of retired judges and visiting judges the Court was able to try as many civil cases in FY 1968 (371) as it averaged over the 5-year period 1964–68 (367), and the 10-year period 1959–68 (367).

Over the past ten years the Court terminated as many cases as were filed; however, it was not able to make any significant progress towards reducing its backlog of pending cases. There were 4,041 cases pending on June 30, 1958; there were 3,993 cases pending on June 30, 1968.

We believe the Court's inability to substantially reduce its backlog and thereby reduce trial delay has been due in large measure to its philosophy or approach to calendar control. Courts that have reduced trial delay have done so by providing early judicial supervision of cases. They have not allowed attorneys to obtain control of the calendar. They have firmly and consistently applied their rules and have adopted "tough" continuance policies. This Court has not provided early judicial supervision of cases—effective judicial supervision does not generally occur until the day of trial. Through adoption of a Certificate of Readiness procedure, by lax enforcement—and in some cases nonenforcement—of its rules, and by pursuing a "liberal" continuance policy, the Court has enabled the bar to obtain substantial control over the pace of civil litigation.

The adverse effects of lack of Court control of the calendar are well illustrated by an analysis of motor vehicle personal injury cases tried in FY 1968. Most of these were not large, complex cases. In 57 percent of the cases recoveries were $10,000 or less and in 74 percent of the cases recoveries were less than $15,000. Yet 87 percent of the cases were two years or older and 33 percent were three years or older by the time they reached trial. In FY 1967, 91 percent were two years or older and 40 percent were three years or older by the time they reached trial.

Discussions with judicial and non-judicial personnel revealed that a number of them had adopted a restricted view of the Court's responsibility to minimize trial delay. A common attitude was that attorneys were primarily responsible for delay because of their dilatory tactics; thus, if the attorneys were not interested in getting to trial the Court should not be held responsible. This view, however, overlooks or minimizes the interests of the litigants and the public in prompt disposi-

tion of litigation. In this connection, Chief Justice Warren has said: "Interminable and unjustifiable delays in our courts [are] compromising the basic legal rights of countless thousands of Americans and, imperceptibly, corroding the very foundations of constitutional government in the United States."

A number of Court personnel believed the Court should be charged with delay only after a Certificate of Readiness was filed. Even with this as a measure of effectiveness, the Court's performance was not good. The delay between filing a Certificate of Readiness and trial in FY 1968 motor vehicle personal injury trials was one year or more in 88 percent of the cases, 18 months or more in 70 percent of the cases, and two years or more in 32 percent of the cases. Although the Court's calendar status reports indicate the delay was shorter, those reports measured delay based on *scheduled* dates for pretrial and trial rather than *actual* dates. By filing motions, requests for continuances, etc., attorneys were able in many cases to defer going to pretrial and trial until some time after the scheduled dates.

The two major changes in civil calendar control methods made in the past 10 years were the adoption of a Certificate of Readiness procedure in April, 1958, and the use, beginning in December, 1959, of Examiners to conduct all pretrials. Neither has been effective in terms of reducing trial delay.

In evaluating the effectiveness of the Examiner system, the Court has stressed the fact that the Examiners have relieved the judges of the time-consuming burden of conducting pretrials, conducting the semiannual call of the calendar, and hearing certain motions. It is true that the Examiners have relieved the judges of a considerable amount of non-trial work but it does not automatically follow that the work of the Court has thereby been advanced. A more meaningful criteria for measuring the effectiveness of the Examiner system would be to measure the impact the system has had on trial delay, and despite a substantial reduction in civil litigation, trial delay has increased since establishment of the Examiner system in 1959. In FY 1959 the median time interval from issue to trial was 21 months in jury cases; it was 29 months in FY 1968. In non-jury cases this interval was 17 months in FY 1959; it was 19 months in FY 1968. It is, therefore, apparent that the Court's existing system of calendar control, of which the Examiner system is a major part, has not proved effective in reducing delay. Thus, we believe the Court needs to make substantial modifications in its existing system and needs to experiment with calendar control techniques successfully employed by other courts. Our detailed analysis of the Court's current calendar control system and our suggestions for improvement are contained in subsequent sections of this report.

SUMMARY

In summary, we believe that with its existing resources the Court could substantially reduce trial delay. To do so, the Court needs to: (1) Acknowledge and fulfill its responsibility to supervise and control its civil litigation at every stage of the proceedings; (2) Establish time standards to control the progress of its civil litigation; (3) Develop, through experimentation, a simplified system of calendar control; and (4) Develop an improved capacity to critically evaluate its own performance.

III. RECOMMENDATIONS

A. The Court should develop and publish in its local rules a policy statement of its responsibility for maintaining strict control of its calendar. (See Details IV–C–1.)

B. The Court should establish and publish in its local rules time standards governing the processing of its civil litigation. (See Details IV–C–2.)

C. The Court should experiment with a mandatory judge supervised settlement conference procedure. The system of Examiner supervised pretrial conferences should be phased out. (See Details IV–C–3.)

D. The Court should simplify its calendar control system. Specifically, the semi-annual call of the calendar and the Certificate of Readiness procedure should be discontinued. (See Details IV–C–4.)

E. The Court should firmly enforce its calendar control rules. Two principal rules that need enforcement are the rule designed to curb attorney congestion and the rule governing dismissals for failure to prosecute. (See Details IV–C–5.)

F. The Court should provide closer and stricter judicial supervision of the civil trial calendar. (See Details IV–C–6.)

G. An improved system of internal calendar status reports and evaluations should be developed and implemented. (See Details IV–C–7.)

H. The Court should adopt a revised system of calendar control. The bar should be given an opportunity to comment on the system before it goes into effect. (See Details IV–D.)

I. The Court should experiment with a special program to reduce its backlog. (See Details IV–E.)

IV. DETAILS

A. Highlights of the Civil Caseload

A detailed analysis of the civil caseload is presented in Appendix A and its accompanying tables which provide comprehensive data on filings, terminations, judicial manpower assigned to the civil calendar, and a detailed analysis of motor vehicle personal injury cases tried in FY 1968. Highlights of that data are:

—Each year since Fiscal Year (FY) 1962 there have been fewer civil cases filed. Filings dropped from 7,500 in FY 1962 to 4,500 in FY 1968. The two principal reasons for the drop were: (1) an increase in the Court's minimum jurisdictional amount from $3,000 to $10,000 in October 1962; and (2) a change in the statistical treatment of insanity cases beginning in September 1964.

—Personal injury, contract and real property cases account for about 75 percent of the Court's civil trial load. Filings of these cases have also been dropping since FY 1962. In FY 1962 there were about 2,900 such cases filed; only 2,000 such cases were filed in FY 1968.

—Despite the drop in civil filings the median time interval from issue to trial increased from 17 months in FY 1962 to 25 months in FY 1968.

—Over the past ten years the Court has been terminating as many cases as have been filed; however, it has constantly had a backlog of cases that it has been unable to reduce. There were 4,041 cases pending on June 30, 1958; there were 3,993 cases pending on June 30, 1968.

—During the five-year period FY 1964 to 1968 between 90 and 93 percent of all civil cases were terminated prior to trial.

—There has been a relatively constant number of judges assigned to the civil calendar for the past ten years, i.e., 2 in Motions Courts, 2 in Non-Jury Courts, and 4 to 6 in Jury Courts. A shift in regular judges to the criminal calendar in October 1967 was compensated for in FY 1968 by the use of retired and visiting judges.

—This Court is unique in the Federal system due to its jurisdiction over "local" District of Columbia civil matters in excess of $10,000. It has the same "federal" jurisdiction as other U.S. District Courts.

B. Description of Civil Calendar System

In this section we will merely describe this Court's system of calendaring its civil cases. In later sections we will evaluate how well the system actually works.

This Court utilizes a central or master calendar system as compared to an individual calendar system. The basic distinction between the two systems concerns the point in time when the trial judge becomes involved with the case. Under the individual system, a case is usually assigned to a particular judge immediately upon filing and the case remains under his control through all stages until it is finally terminated. Under the master calendar system employed by this Court a case is not assigned to a particular judge until the eve of trial. All preliminary motions, and other matters arising prior to trial are heard either by a judge assigned to one of the two Motions Courts or the Pretrial Examiner.

When the case is at issue, the case is placed on the General Calendar which is maintained by the Assignment Commissioner. The parties proceed with their discovery until the case is placed on the Ready Calendar. This is accomplished by all the parties filing a Certificate of Readiness which constitutes a representation that all discovery procedures have been completed and that the case is ready for trial.

All cases on the Ready Calendar are scheduled for pretrial in the order in which they are certified ready. Pretrials are conducted by a Pretrial Examiner and an Assistant Pretrial Examiner.

After Pretrial, a case is placed on the Ready for Trial Calendar. From this calendar the case is placed on the Daily Assignment Calendar. Thereafter, the Assignment Commissioner telephones counsel and alerts them for trial on a given date. This notice is given within 10 days of the date set and puts counsel, parties and witnesses on 30-minute telephone alert beginning on the morning of the date set for trial.

When a judge is assigned a case he usually enters into a settlement discussion with counsel. If the case is not settled, it then goes to trial.

Throughout the calendaring process, jury and non-jury cases are

segregated and there is a General Calendar, Ready Calendar, etc., for each.

The Pretrial Examiner hears a variety of contested motions primarily relating to discovery matters. (See Local Rule 9(a)(4).) The judge assigned to Motions Court No. 1 handles all uncontested motions submitted on points and authorities, *ex parte* matters, and motions involving short hearings (under 30 minutes). He also handles a variety of other matters including the appointment of conservators and mental health orders and trials. The judge assigned to Motions Court No. 2 handles all motions involving long hearings (over 30 minutes). He, too, handles a variety of other matters including probate matters and prisoner petitions.

Assignments of judges to the various Divisions, i.e., Motions Court No. 1, Motions Court No. 2, jury trials, and non-jury trials are rotated every three months by the Chief Judge.

Twice a year the Pretrial Examiner conducts a call of all civil cases placed on the General Calendar. A case is subject to dismissal for want of prosecution if it is not certified ready within 6 months after the call.

The only major changes in this system were the adoption of the Certificate of Readiness procedure in April 1958 and the use, beginning in December 1959, of Examiners to conduct all pretrials. The duties of conducting the semiannual call of the calendar and hearing contested discovery motions were subsequently delegated to the Examiners.

C. Evaluation of Civil Calendar Control System

1. NEED FOR JUDICIAL CONTROL

A basic premise that underlies our subsequent evaluation of the Court's system of calendar control is that a Court has the responsibility to actively control all the cases on its calendar at every stage of the proceedings. Our evaluation disclosed this Court had not fully and effectively discharged this responsibilty.

The following are representative views of some Federal District Court judges concerning judicial responsibility for calendar control:

> —The early and expeditious termination of a civil suit largely rests in judicial supervision of litigation. Judicial supervision must commence with the filing of the suit and each Court must determine how and in what manner it shall be done.
>
> —I cannot emphasize enough that if for one moment our calendars slip from our direct supervision and control, the result will be chaos. We have seen what happens when members of the bar controlled the Court's calendar.
>
> —Far more important than the system employed is the attitude and diligence of the individual judges and the manner in which they maintain strict control of the calendar.
>
> —While the case is in the hands of the lawyers before it has been filed in court it is their business, but after it reaches the Court it is the public's business, and it is the duty of all to see to it that it is moved along to final disposition.

We found that by delegating major pretrial steps to Examiners, by adoption of a Certificate of Readiness procedure, by lax enf

ment of its rules, and by pursuing a liberal continuance policy, the Court had allowed the bar to obtain substantial control over the pace of major civil litigation. The adverse effects of bar control of the calendar were pinpointed by Judge Carter of the U.S. District Court for the Southern District of California at a seminar for Federal judges held in 1961 when he said:

> We shall frankly face the fact that lawyers are prone to procrastinate and put off the necessary work on pending civil cases. Often this may be for good reason, such as the press of business.
>
> Accordingly, the characteristics of a system where the judge exercises no control of the calendar but instead the setting of cases is left up to the lawyers, are as follows:
>
> (*a*) Lawyers often will not work on or prepare a case where a trial calendar is congested and the prospects of trial are several years off;
>
> (*b*) Responsibility for getting a case on the calendar is left to lawyers, through use of a certificate of readiness, note of issue or motion to set for trial;
>
> (*c*) Cases that should be settled or disposed of therefore clog the docket;
>
> (*d*) It is a well known phenomenon that congestion breeds congestion, and the more the trial calendar becomes crowded or delayed the less activity there is by lawyers on pending cases, and this congestion leads to further congestion.

We thus emphasize, as a sound principle of judicial administration, calendar control by the court itself. We hold that the court has a responsibility, not only to try cases coming up on its calendar, but to press for the expeditious disposition of litigation. In the words of Chief Judge Alfred P. Murrah, the courts have a responsibility for litigation "from the cradle to the grave."

> We therefore recommend as a matter of principle, that calendar control by a court is far superior in the administration of justice, to a system which for all practical purposes, surrenders the control of the calendar to the attorneys who practice in the court.

While this Court did maintain some control over its calendar it had surrendered a substantial amount of control to the attorneys and we believe that until this Court obtains and exerts *complete* control over its civil calendar it will not be able to solve the problem of trial delay. Our detailed suggestions for obtaining and exercising such control are set forth in subsequent sections of this report. As a necessary first step, however, we recommend that the Court develop and publish in its local rules a policy statement of its responsibility for maintaining strict control of its calendar.

2. NEED FOR TIME STANDARDS

Currently, the Court has no effective time standards to govern the processing of its civil litigation. In the absence of such standards the Court has not taken positive action to minimize lengthy delays in the processing of cases.

Table No. 4 to Appendix A shows that the Court has not been promptly processing its civil cases. In Fiscal Year 1968 the median time interval from issue to trial was *25* months for all civil trials, *29* months for jury trials and *19* months for non-jury trials. These intervals were approximately double the national average for all U.S. District Courts.

There were also lengthy and widely fluctuating time intervals between major pretrial stages. For example, the time interval from the

date of filing a certificate of readiness to a *scheduled* pretrial date has in recent years fluctuated from 4½ months to 15 months. And the time interval from the date of pretrial to a *scheduled* trial date has varied from 2 weeks to 4 months. Our sampling disclosed that in many cases the *actual* time intervals were even greater. (See Details IV–C–4.)

Another example of the need for time standards concerns cases that have been pending three years or longer. Each year this Court has a large number of such cases—there were 274 such cases pending as of June 30, 1968 which represented about 7 percent of all cases pending. The Judicial Conference of the United States has declared it to be the policy of the judiciary that every case pending three years or more and appropriate for trial be regarded as a judicial emergency. Although the Conference has requested each U.S. District Court to deal with such cases in a regular programmed effort, this Court has not systematically attempted to identify and deal with such cases.

Although the mere establishment of a standard is not in and of itself a solution to a problem, it is a necessary first step. One of the most important benefits of establishing a standard is that it produces a yardstick or criterion for measuring and evaluating performance. Therefore, in order to improve its ability to evaluate its own performance and thereby enable it to better control its calendar, we believe the Court should establish and publish in its rules time standards to govern the processing of its civil litigation.

Suggested standards for the Court to consider are:

—Twelve months from issue to trial. This is the current national average. (It is pertinent to note that in requesting additional judgeships that were authorized in 1961 the Judicial Conference of the U.S. said the additional judges were "necessary to bring the dockets of the courts to a position where the ordinary civil case could be tried within six months of filing.")

—A maximum time interval of 30 days from a final settlement or pretrial conference to trial.

Once having established time standards, the Court's case control and calendar status reporting procedures should identify cases that exceed the standards so that appropriate action can be taken to deal with such cases. (See Details IV–C–7.) Although the Court has a rule providing for dismissal of cases that have been inactive for 6 months, the rule was not being effectively enforced. (See Details IV–C–5.)

3. NEED TO SUBSTANTIALLY MODIFY PRETRIAL AND SETTLEMENT PROCEDURES

Introduction

We preface our evaluation of the Court's pretrial and settlement procedures by stating that we believe that a prime objective of a Court's civil calendar control system should be to encourage—but not force—counsel to settle as many cases as possible as early as possible. Only a small percentage of civil cases reach trial. In Fiscal Year 1968 only 10 percent of the cases terminated by this Court were terminated by trial (insanity cases excluded). If a Court can encourage early settlement of cases it can reduce its backlog, it can make it possible for trial bound cases to go to trial sooner, and by minimizing eve of trial settlements it can bring greater certainty to the setting of trial dates.

This Court's pretrial and settlement procedures, as implemented, did not encourage early settlements and generally did not require

trial counsel to thoroughly prepare for trial until a trial date had been set. As a result, cases that eventually settled on the eve of trial remained unsettled for years and clogged the Court's calendar. One visiting judge who settled an unusually high number of cases, many of which were two years or older, told us that it appeared that in many cases the attorneys had not thoroughly reviewed and evaluated their cases until a trial date had been set.

The large number of late settlements made it extremely difficult to set and adhere to firm trial dates. Last-minute settlements forced the Court to move up other cases for trial, causing considerable uncertainty which in turn worked hardships on counsel, witnesses and litigants who could never be certain when they would be called for trial.

While eve of trial settlements will never be totally eliminated, we believe they could be significantly reduced if the Court substantially modified its existing pretrial and settlement procedures.

Pretrial Conferences

Pretrial is mandatory for all civil cases except Patent, Land Condemnation and Trade-Mark cases. The prime purpose of pretrial in this Court is to produce shorter, better trials by requiring counsel to simplify and clarify issues, to stipulate as much as possible in order to avoid unnecessary time-consuming proof at trial, etc. Although settlement of cases is a valuable by-product of pretrial in other jurisdictions, cases are rarely settled in this Court at pretrial conferences which, since December 1959, have been conducted by examiners.

In 1959 when this Court sought Congressional authority to establish the position of Pretrial Examiner it stressed that the Examiner could be of tremendous help in resolving the problem of the congested docket by settling many cases. (See the testimony of Judge Mathew F. McGuire on pages 76 through 90 of the Fiscal Year 1960 Hearings before a Subcommittee of the House Committee on Appropriations, John J. Rooney, Chairman.) Our study disclosed that between FY 1960 and FY 1968 trial delay in civil cases actually increased despite a significant reduction in the number of civil cases filed during this period. (See Details IV–A and Appendix A.) In addition, we found that only a very small percentage of cases were settled at pretrial conferences. According to reports of the Pretrial Examiner, there were a total of 4,024 pretrial hearings held during the period FY 1966 through FY 1968. During this period only 57 cases were settled "at or on pretrial".

We noted other weaknesses in the pretrial system, the cumulative effect of which was to seriously reduce the effectiveness of pretrial as a tool for calendar control. For example, the Pretrial Examiner advised us that in most cases counsel who attend pretrial are junior counsel who will not be the trial attorney and who do not have the authority to settle a case. Also, the Court's pretrial rules suggest but do not require that counsel confer prior to the conference to prepare a joint written statement. Since the rule is not mandatory, joint statements are rarely filed.

Another major weakness concerns the large number of pretrial hearings that are continued. According to the Pretrial Examiner's reports, there were 4,024 pretrial hearings held during the period FY 1966 to 1968 and there were 1,788 hearings continued. The high continuance

rate produces a considerable amount of extra work for the Court in rescheduling hearings, renotifying counsel, etc.

These, then, are the major weaknesses in the Court's pretrial procedure: pretrial conferences rarely produce settlements; trial counsel are not forced to prepare and evaluate their cases because they are not required to confer prior to the pretrial conference and junior counsel are allowed to attend the conference in lieu of trial counsel; and continuances are liberally granted. Because of these weaknesses the Court's system of pretrial does not effectively screen out "settleable" cases and has not relieved court congestion or trial delay.

Settlement Conferences

For a number of years the Court's local rules have provided for optional settlement conferences for jury cases which have been pretried but which have not been assigned a trial date. Counsel for all parties must agree to such a conference. Although statistics on such conferences are not maintained, we were advised by court personnel that the number of such conferences average no more than two or three per month.

In July 1967 a committee of the District of Columbia Bar Association made a number of suggestions to the Court designed to expedite the processing of civil litigation. One suggestion was that in lieu of the calendar call a settlement conference would be scheduled before a judge within six months after the case was at issue in an attempt to settle the case before too much expense of discovery had been incurred.

Acting on this suggestion the court adopted a local rule in July 1968 which provided, in part: "Each civil case placed on the Ready Calendar shall, as soon as practicable thereafter, be referred to the Settlement Judge." (A significant difference between the bar suggestion and the Court rule is that the rule provides for referral to a Settlement Judge *after* discovery has been completed whereas the suggestion provides for referral *before* discovery has been completed. For reasons discussed below, we believe settlement conferences *after* discovery has been completed are preferable.) As of May 1969 the Assignment Commissioner's Office was awaiting judicial instructions prior to implementing the rule adopted in July 1968.

While we agree with the bar and the Court that a program of mandatory settlement conferences before a judge should be implemented, we believe it is extremely important for the Court to establish and publish in its rules firm requirements dealing with the preparation for and conduct of such conferences. (An experimental settlement program in 1963 was abandoned when, according to the Pretrial Examiner, ". . . it was found that attorneys' trial schedules conflicted with assigned conference times and the junior attorneys who appeared thereat had only authority to say, 'No'.")

Based upon our discussions with judges of other courts and experts in the field of judicial administration, and based on our research of rules of other courts and literature in the field, we conclude that the following minimum requirements must be firmly adhered to if a Court expects to maximize the effectiveness of a settlement conference program:

(*a*) Counsel must be given adequate advance notice (generally 30 to 60 days) of the conference.

(*b*) Counsel must be required to confer prior to the conference to discuss settlement and prepare a proposed pretrial order to be submitted to the Court in advance of the conference. Discovery should be complete at this stage.

(*c*) Counsel attending the conference must either be the trial counsel or, in any event, have complete authority to settle the case. (Some courts require the litigants to be present, also.)

(*d*) The Settlement Judge should be "settlement oriented" in that he must agree that settlement conferences are a proper and necessary judicial function.

(*e*) If the conference does not produce a settlement, the Settlement Judge should pretry the case at the same conference and determine the case's readiness for trial. If it is ready, the case should be scheduled for trial no later than 30 days after the conference. If the case is not ready, the Settlement Judge should enter an appropriate pretrial order setting forth the nature and timing of further steps needed to prepare case for trial.

Conclusions

The system of Examiner supervised pretrial conferences has not produced the benefits anticipated and has not relieved congestion and delay. It should be phased out and replaced by judicially supervised settlement conference procedures. (If a conference does not produce a settlement, the case would immediately be pretried at the same conference.)

Since implementation of this program will require the assignment of one judge on a full-time basis, it is extremely important that complete and accurate data be obtained in order to permit a thorough evaluation of the results of the program. For example, during the period FY 1964 thru 1968 a range of 26 to 39 percent of motor vehicle personal injury suits were settled after a trial date was set. (Table No. 3 of Appendix A.) Data should be obtained to determine what impact the program has on this category of settlements. Data also needs to be obtained to determine the impact the program has on the time interval from issue to trial. (See Details IV–D for a more comprehensive discussion of a suggested alternative system of calendar control, of which a settlement program is a major part.)

4. NEED TO SIMPLIFY SYSTEM

The semiannual call of cases on the General Calendar and the Certificate of Readiness procedure are generating a large amount of work for the Court and the bar, while producing limited results. We believe these two calendar control devices should be eliminated and replaced with a rule requiring counsel to be prepared for trial within a specified time after issue.

Semiannual Call of the General Calendar

Prior to 1960 a judge conducted a semiannual call of cases on the General Calendar (cases at issue but not certified to the Ready Calendar). Since 1960 the call has been conducted by the Pretrial Examiner. As originally conceived, the primary purposes of the call were: (1) to discuss settlement possibilities; (2) to determine whether cases were ready to be placed on the Ready Calendar; and (3) to determine whether cases should be transferred to the Court of General Sessions.

As implemented, the call achieves only the second purpose to any meaningful extent. The actual results of the call during the period July 1, 1965 through October 31, 1968 were:

	Number	Percent of total called
Total called [1]	4,596	100
Settled	24	.5
Transferred to court of general sessions	199	4
Certified ready	560	12
Called only [2]	2,771	60
Dismissed or defaulted	231	5
Called in error [3]	746	16
Continued	94	2

[1] These statistics show that the call is an extremely ineffective settlement device and that only a relatively few cases are transferred to the court of general sessions.

[2] By local rule, cases in this category must be certified to the ready calendar within 6 months of the date of the call. In many cases, however, due to stays, continuances, and so forth, cases are not certified ready within 6 months.

[3] These cases generally represent breakdowns in the recordkeeping and coordination between the clerk's office and the assignment office. Of the 746 cases called in error, 389 were closed cases and 105 were cases already certified to the ready calendar.

Note: A few cases are counted in more than 1 category. For example, a case that was continued and then certified ready during the call would be counted in 2 categories.

The call's other principal objective, to place cases on the Ready Calendar, could be achieved simply by requiring that a case must be ready for trial within a given amount of time after the case is placed at issue. For example, the Prince Georges County Circuit Court in neighboring Prince Georges County, Maryland, sets trial dates as soon as civil cases are at issue. The Court does not conduct a call nor does it utilize a Certificate of Readiness procedure.

A tremendous amount of work is required of the Offices of the Clerk, the Assignment Commissioner, and the Pretrial Examiner in preparing for, conducting, and documenting the results of these calls which take about six weeks per year to conduct. Employees of the Assignment Commissioner prepare the calendar, notify attorneys, and document the disposition of each case in their records. Either the Pretrial Examiner or his assistant conducts the call; an employee of the Pretrial Examiner then prepares statistical reports summarizing the results of the call. Employees of the Clerk assist the Pretrial Examiner throughout the conduct of the call and document the disposition of each case in the Clerk's records. All told, we estimate that seven to nine different employees expend a combined total of at least six man-months of effort administering the call.

Certificate of Readiness Procedure

The Certificate of Readiness Procedure, adopted by the Court in 1958, has created a considerable amount of extra work for the Court and has not proven to be an effective calendar control device. It has not reduced trial delay and, in many cases, has been used by dilatory counsel to further delay the processing of their cases.

Under this procedure, after a case is at issue any party may file a Certificate of Readiness which constitutes a representation that all discovery has been completed and that the case is ready for trial. Unless another party objects within ten days, the case is placed on the Ready Calendar. If there is an objection, the matter is heard by the Pretrial Examiner.

It appears there were two principal reasons for adopting this procedure. One was due to the Court's desire to be charged with only that portion of the backlog of untried cases that was actually ready for trial. The other was based on the premise that ready cases could be moved more promptly to trial if they were segregated from the cases that were not ready for trial.

Statistics show that cases are not moving to trial quicker since adoption of the Certificate of Readiness requirement in June 1958. In Fiscal Year 1959, the median time interval from issue to trial was 20 months. This interval had increased to 25 months in Fiscal Year 1968. This increase cannot be attributed to an increase in the caseload, since there were fewer cases filed in 1968. In fact, the number of annual filings has decreased each year since 1962.

Recently, Chief Justice Warren had this to say about Certificate of Readiness procedures:

> A highly questionable practice of calendaring has grown in personal injury litigation which appears to stand in the way of even the most elementary solution. This practice, followed in some federal courts, of measuring the delay in a personal injury case only from the time lawyers certify they are ready for trial has serious consequences. First of all, it permits a hard core of untried cases to develop beneath the surface of the court dockets threatening to surface at any moment to further clog congested calendars. Second, the litigants usually do not know that the lawyers are the cause of delay and, therefore, blame the courts rather than their counsel for the delay. Third, and most important, the very process of delay, whether caused by court congestion or lawyer procrastination, reduces the chance that truth will be found at the trial since the memory of witnesses invariably diminishes with time as does their availability. Though I can understand the embarrassment the courts have experienced which has led to this "certificate of readiness" practice, it is no solution to the problem to avoid the responsibility which the court has to see that cases do not languish on the calendar for years at the behest of the lawyers. While the "certificate of readiness" can be made a useful tool in calendar control, it should never be used as a device by the court to give up control of the movement of cases on the calendar.

The Superior Court of Los Angeles County is a large metropolitan trial court that utilizes a Certificate of Readiness procedure. A very important distinction between that court's procedure and this court's procedure concerns the time lag between filing the certificate and pretrial or trial. Los Angeles' court rules state that:

> Insofar as feasible and the business of the court permits, the time assigned for the pretrial conference in any case will *not be more than sixty days* after the filing of the certificate of readiness. [Emphasis supplied.]

This court has no similar rule and the time lag is much greater. The average time lags between filing the certificate and *scheduled* pretrials were seven months and four months as of January 1969 for jury and nonjury cases, respectively. Furthermore, an analysis of 100 motor vehicle personal injury cases tried in FY 1968 showed that the *actual* time lag between filing a certificate and pretrial was one year or more in about 70 percent of the cases.

A long period between filing of the certificate and pretrial has a number of adverse consequences. For example, under this court's rule further discovery is precluded after a case is placed on the Ready Calendar except by order of a judge "upon showing of extraordinary circumstances arising subsequent to the filing of the Certificate."

When there is a lengthy period after filing the certificate, counsel have more justification for filing motions for further discovery based on changed circumstances. This is particularly true in negligence cases where it is necessary to have current medical reports of the plaintiff's condition, which may have changed substantially. Thus, the time lag produces more work for the court in handling motions.

The Certificate of Readiness procedure also generates a large number of motions which are heard and ruled upon by the Pretrial Examiner. As stated earlier, a party can object to another party's filing a Certificate of Readiness. According to the Pretrial Examiner's statistical reports, about one third of all the motions he hears relate to objections to Certificates of Readiness. For example, in Fiscal Year 1968 out of a total of 1,207 motions, 414 involved objections to Certificates of Readiness. The Pretrial Examiner rarely fully sustains these objections. He estimates that in 95 to 98 percent of the cases he either overrules the objection or enters a ruling that the case will be placed on the Ready Calendar within 30 to 60 days of the hearing.

The steps involved in implementing the Certificate of Readiness procedure are considerable and include: preparing and maintaining tickler files, docketing, filing, setting hearing dates on motions, notifying counsel of hearing dates, conducting hearings, etc. The process is further complicated when a continuance is granted or when counsel appeal to a judge from a ruling by the Pretrial Examiner. All of these steps would be eliminated by discontinuing the Certificate of Readiness procedure.

In summary, we believe the semiannual call of the General Calendar and the Certificate of Readiness procedure have produced a great amount of work for the court without producing effective results. In addition, the Certificate of Readiness procedure transfers partial control of the movement of cases from the court to the bar. Thus, we believe they should be discontinued. (See Details IV–D for discussion of alternative calendar controls.)

5. NEED TO ENFORCE CALENDAR CONTROL RULES

We found considerable evidence of lax enforcement of calendar control rules. Two examples that illustrate the adverse effects of lax enforcement of calendar control rules involve the rule governing attorney congestion and the rule governing dismissals for failure to prosecute. These two rules are discussed below.

Concentration of Defense Counsel in Civil Jury Cases

An analysis of the cases on the jury and non-jury Ready Calendars disclosed there was a concentration of defense counsel in civil jury cases. A similar problem did *not* exist in non-jury cases. The table on page 15 shows that almost one-half of the civil jury cases on the Ready Calendar as of February 13, 1969 were in the hands of six firms representing defendants. Even more significant is the fact that these six firms controlled 61 percent of the cases awaiting trial and the fact that one firm controlled 24 percent of the cases awaiting trial.

Court records were incomplete concerning individual attorney assignments; consequently, we were unable to make a more detailed analysis by attorney. (Although Local Rule 11(1) requires the trial attorney to be designated when the case is placed on the Ready Calendar, we were advised by court personnel that the Court usually learns

who the trial attorney will be when a firm is called to alert it for trial, usually ten days before trial.) However, we were able to determine that one attorney was the designated trial attorney in at least 19 cases *awaiting trial* as of February 13, 1969. Court records did not reflect how many additional cases this attorney had on the Ready Calendar awaiting pretrial or on the General Calendar. He was then engaged in a lengthy trial and, as a result, his other cases could not be set for trial thereby causing unnecessary and avoidable delay for this attorney's clients and the opposing attorneys and their clients.

In the absence of complete information on caseloads of trial attorneys, the court was not in a position to enforce its Local Rule 14(d), *Failure to Respond for Trial*, which provides that if an attorney is counsel of record in more than 25 cases, a scheduling conflict will not be grounds for postponing a trial date. Although this rule applies to cases not only on the Ready Calendar but also to cases on the General Calendar and has been in effect for a number of years, Court personnel could not recall it ever being enforced.

In order to obtain information needed to control concentration of defense counsel in civil jury cases, the court's case control system needs to be modified. One way to obtain the needed information would be to prepare a multi-copy case control card, with one copy filed by firm and by attorney within each firm. Firms could be required to designate trial attorneys either when they filed their first pleading or at the settlement conference stage.

The information on the cards should be periodically analyzed and reported to the Chief Judge in sufficient detail to inform him of the status of the cases and to enable him to follow-up with firms and attorneys who are causing scheduling problems for the court. Another metropolitan trial court, the Allegheny County Court of Common Pleas in Pittsburgh, Pennsylvania, used this type of statistical data to conquer a similar problem of attorney congestion. The details of that court's calendar control experiments are reported in the January, February and March 1968 issues of *Judicature* magazine.

CONCENTRATION OF DEFENSE COUNSEL (BY FIRM) ON CIVIL JURY READY CALENDAR AS OF FEB. 13, 1969

	Civil jury ready cases		
	Total cases	Awaiting pretrial	Awaiting trial
Grand total, all cases	646	427	219
Firm A	115	63	52
Firm B	56	30	26
Firm C	36	22	14
Firm D	36	21	15
Firm E	37	19	18
Firm F	37	29	8
Totals—Firms A to F: Number of cases	317	184	133
Percent of grand total	49	43	61

Source: Assignment Commissioner's Case Cards. The date of Feb. 13, 1969, was randomly selected.

Dismissals for Failure to Prosecute

The Court's local rule governing dismissals for failure to prosecute was not being firmly enforced and, as a result, a considerable amount

of judicial and non-judicial time was being wasted processing and routinely approving motions to suspend operation of the rule and motions and reinstate dismissed cases.

Local Rule 13, *Dismissal for Failure to Prosecute*, provides in effect for dismissal of a case without prejudice whenever a party fails to take positive action to prosecute his claim or avail himself of a right within a six-month period. Dismissals are made by the clerk after notice to the dilatory party.

Our analysis of cases dismissed under this rule in the first quarter of Fiscal Year 1969, and discussion with the clerk who administered this rule, indicated that the rule was most effective in disposing of cases within six to twelve months after filing. The clerk said many of these cases represented vexatious suits, suits that the parties settle quickly on their own, etc. To this extent the rule effectively screens out deadwood from the calendar.

The rule becomes ineffective, however, when for one reason or another the dilatory party wants to keep the case "open", although not "active". The clerk said that Rule 13 rarely operates to dispose of a case once it has been calendared and called. In support of this, we found that upon motion by counsel the Court routlinely extended the time for application of the rule or reinstated cases dismissed by the clerk. These motions are usually handled in chambers by the judge assigned to Motions Court No. 1. (Occasionally, such motions are contested in which case they are heard by the Pretrial Examiner.) Judge assignments to Motions Court are rotated and we found cases where from three to six different judges had approved motions relating to Rule 13 in a single case.

An example of the ineffectiveness of Rule 13 and the work involved in administering it involves a personal injury damage suit filed in October, 1964. Analysis of the docket entries for this case disclosed:

—There were seventeen separate docket entries between April 1965 and July 1968.

All related to Rule 13 and consisted of motions to reinstate, orders reinstating, etc.

—The case was dismissed four times by the Clerk. It was reinstated three times, each time by a different judge. As of February, 1969, the last dismissal and the last docket entry was in July 1968.

—The Court had to prepare and send 13 different notices to the dilatory counsel, all relating to Rule 13.

Another example involves a personal injury suit filed in August 1961. The last docket entry as of February 1969 was an order staying the application of Rule 13 until May 1, 1969. Between August 1961 and February 1969 eight different judges and the Pretrial Examiner ruled on motions dealing with Rule 13. There were 27 separate docket entries relating to Rule 13 notices, motions, orders, etc. This case has, therefore, consumed an extraordinary amount of judicial and non-judicial time and yet seven years after it was filed it still had not been placed on the Ready Calendar.

While we found a number of other cases where Rule 13 motion activity was creating much work for the Court without serving Rule 13's intended purpose, we do not believe it necessary to cite addi-

tional examples—especially since the Court itself recognized that Rule 13 was not operating effectively in those cases where counsel wanted the case to remain open. The Court was searching for a means of enforcement that would penalize dilatory counsel without adversely affecting litigants. On April 21, 1969 it amended Rule 13 to provide for referral of Rule 13 cases involving inexcusable neglect or other dereliction of counsel to the Court's Committee on Admissions and Grievances. Further possible courses of action for the Court and the Committee to consider are set forth below.

A noted authority in the field of judicial administration, Professor Maurice Rosenberg, Professor of Law, Columbia University, has suggested that effective sanctions might be for the court to: (1) send a "delinquency notice" to the litigant clearly setting forth the facts of the delinquency; or (2) assess a "delay fee" to repay the court for its trouble. The fee would not be recoverable as a taxable cost or as a charge against the client.

Another possible means of enforcement would be to limit counsel to one Rule 13 notice. Thereafter, any further delay in prosecuting the case would result in it being assigned to an individual judge. The case would remain under that judge's supervision and control until it was terminated. By assigning the case to a specific judge, that judge can become more familiar with the case—thus enabling him to better evaluate the reasons for counsel's delay in prosecuting the case. And since the case is his personal responsibility, the judge may be less lenient in granting counsel extensions of time to prosecute.

Rule 13 is presently administered by one clerk who periodically scans the docket sheets to identify cases subject to the rule. This is a complicated, time-consuming and somewhat haphazard method of control. (See Details IV–D for our suggestion for an alternative system of case control.)

6. NEED FOR CLOSER AND STRICTER JUDICIAL SUPERVISION OF TRIAL CALENDAR

Local Rule 11(j) provides that the calendaring and assignment of actions, civil and criminal, shall be under the direction of the Assignment Judge, who will determine all questions concerning such matters. In practice, the Assignment Judge's supervision of the civil trial calendar is generally limited to ruling on requests for continuances. A "liberal" continuance policy is pursued. (Since 1951 the Chief Judge has continuously served as Assignment Judge.)

The scheduling of cases for trial is handled by two clerks, one for jury cases and the other for non-jury cases. The civil jury clerk sets trial dates primarily on the basis of her knowledge of the availability of counsel rather than in a set sequence. We found, for example, that primarily due to non-availability of counsel, trial dates were deferred for at least 20 percent of the civil jury cases pretried in January 1969. (An additional 28 percent were assigned trial dates that were subsequently continued by the Assignment Judge.)

The following is a summary of the disposition *as of March 7, 1969* of the civil cases pretried in January:

	Jury	Nonjury
Total cases pretried in January 1969	79	44
Continued	28	16
Settled by judge	10	3
Settled by parties	15	10
Tried on initial trial date	2	2
Tried after initial trial date	4	8
Set for trial after February	5	
No trial date set as of Mar. 7, 1969	11	
Other [1]	5	8

[1] Includes cases involving objections to pretrial orders, motions for summary judgment, etc.

The summary shows that a large number of cases settled after they were placed on the trial calendar. (As of March 7, 1969, 69 of the 123 cases pretried in January had not been tried, settled or otherwise terminated. Thus many additional settlements will undoubtedly occur before all 123 cases are terminated.) While eve of trial settlements will always occur, we believe they could be substantially reduced if the Court more effectively screened cases by use of mandatory settlement conferences. (See Details IV–C–3.)

The large number of last minute settlements and continuances (82 cases out of 123) creates havoc with the trial calendar. In anticipation of many settlements and continuances, the clerks must considerably over-set the trial calendar to guard against trial breakdown. This, in turn, could account for some of the liberality in the continuance policy—i.e., the Assignment Judge knows other cases are stacked up to take the place of the continued case. This, then, makes the cycle complete—cases overset in anticipation of continuance and continuances granted because of cases overset. The persons seriously inconvenienced by the scrambled trial calendar are counsel, witnesses and litigants who cannot be sure until the last possible moment when their case will reach trial. (The above summary shows that of the 16 cases pretried in January that reached trial in February, only 4 were tried on the initial trial date.)

We were told, and we confirmed, that sometimes a retired judge would not accept a case sent to him for trial by the jury or non-jury clerk. This created significant scheduling problems. For example, the non-jury clerk recently had to defer scheduling a case for trial for an extended period because one of the two retired judges assigned to the non-jury calendar was busy with other cases and the other judge refused to accept the case.

We were also told that some judges would not accept a civil non-jury case when they were assigned to civil jury cases, and that some judges would start another trial while the jury was out deliberating, and thereby expedite the processing of cases, while other judges would always wait for a jury to return their verdict before starting another trial. We did not attempt to obtain any documentary evidence of these practices but, in any event, the Court had no stated policy to cover these situations.

We believe a number of steps need to be taken to obtain closer and stricter judicial control of the trial calendar:

—To minimize scheduling conflicts counsel should be given a firm trial date at least 30 days in advance. The Court should then adopt a tough continuance policy. Continuances should not be granted on stipulation of counsel alone and all requests for continuances should be required to be timely submitted in writing setting forth a full showing of the reasons why a continuance is requested.

—All cases not tried within 60 days of the settlement or pretrial conference should be brought to the attention of the Chief Judge for appropriate action, i.e., given a definite trial date, dismissed, etc.

—Policies should be developed to cover the situations described above involving the assignment of cases to judges for trial. These policies should be equally applicable to retired judges and regular judges.

7. NEED FOR IMPROVED INTERNAL REPORTS AND EVALUATIONS

The Chief Judge needs to be provided more comprehensive information as to the status of the calendar. He should also receive periodic reports monitoring the results of experimental programs. With improved reports the Court should be able to do a much better job of critically evaluating its performance.

Currently, the Chief Judge receives limited information as to the status of the civil calendar. Although the quarterly and annual reports of the Administrative Office of the U.S. Courts (AOC) are rich with statistical data on filings, pending cases, terminations, etc., they need to be analyzed and then summarized by staff personnel for the Chief Judge so that he can readily be informed of the highlights of such data. Examples of the type of data in the AOC reports that could be abstracted and compared with prior years and with national averages include:

—Commencements by Nature of Suit (Table C–3)

—Pending Cases by Nature of Suit and by Length of Time Pending (Tables C–3a and 6a)

—Terminations by Nature of Suit and Action Taken (Table C–4)

—Time Intervals from Issue to Trial (Table C–10)

—Data on Civil Trials (Table C–7)

This data needs to be supplemented by internal reports providing more meaningful data as to the status of the calendar. The only regular civil calendar status currently provided the Chief Judge are prepared by the Assignment Commissioner, monthly. These reports provide data, broken down between jury and non-jury cases, as follows:

—Total Cases on General Calendar

—Total Cases on Ready Calendar

—Total Cases on Ready Calendar Awaiting Pretrial

—Total Cases on Ready Calendar Pretried Awaiting Trial

—Cases Added to Ready Calendar During Month

—Cases Pretried During Month

—Cases Tried During Month

—Cases Settled During Month (After Pretrial)

—Average Time from Certificate of Readiness to Pretrial
—Average Time from Pretrial to Trial

An example of the incompleteness of the above data concerns the data on average times from Certificates of Readiness to Pretrial and from Pretrial to Trial. These averages are based on *scheduled* pretrial and trial dates rather than *actual* dates.[1] Our tests disclosed that due to continuances, *actual* pretrial and trial dates are often considerably later than *scheduled* dates. For example, the Assignment Commissioner's reports indicated that during FY 1968 the time interval from pretrial to trial in jury cases never exceeded 4 months. Yet, our review of 100 motor vehicle personal injury cases tried in FY 1968 disclosed that the *actual* time lag between pretrial and trial exceeded 6 months in 45 of the 100 cases and exceeded 12 months in 17 of the 100 cases.

We believe the Assignment Commissioner's reports could be made much more meaningful and useful if they provided information on *actual* time intervals and if they provided year-to-date data and comparable data from prior years. For the Chief Judge to be fully informed, however, these reports should be supplemented with additional types of statistical information and with narrative analytical comments. As a minimum, the Chief Judge should receive summary statistical data on: the number of continuances granted and the reasons therefor; the number of cases that have not been pretried or tried within the time standards established by the court with complete identifying data on cases that have not been terminated within 18 months after filing (See Details IV–C–2) ; concentration of defense counsel in civil jury cases (See Details IV–C–5) ; and the precise method of disposition of cases on the trial calendar, i.e., settled by parties, settled by a judge, terminated after trial started, terminated by trial, etc.

The calendar status reports should include narrative analytical comments identifying significant trends, problem areas, etc., so that the reports can be used not only for information purposes, but also for decisionmaking purposes.

Finally, part of the planning process of any experimental program should include the development of adequate data bases and periodic progress reports so that the results of such experiments can be timely and effectively evaluated. For example, if a settlement program is implemented, complete data should be compiled on the number and types of cases scheduled for settlement conferences; the judicial time involved; and methods of dispositions by type of disposition, by type of case, by age of case, and by judge. The data could then be used to determine if the settlement program was producing the expected results, and, if not, modifications could be made.

As another example, complete data should be compiled on cases assigned to individual judges so that periodic inventory status reports can be compiled showing numbers, types and ages of pending cases and numbers, types and ages of cases terminated by method of disposition. Such data could be used by the Chief Judge to monitor individual judge caseloads.

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[1] The Assignment Commissioner knows, for example, the time interval between pretrial and scheduled trial dates and he uses this interval for his reports. We obtained more complete and more meaningful data on actual trial dates by reviewing docket entries in the Clerk's Office.

The Chief of the Civil Division in the Clerk's Office should be given the responsibility to supervise the development and implementation of the recommended calendar status reporting system. (In a separate report we are recommending that the Offices of the Clerk and the Assignment Commissioner be consolidated and that current Assignment Office employees involved in calendaring civil cases be assigned to a Calendar Section in the Civil Division of the Clerk's Office.)

D. Suggested System of Calendar Control

INTRODUCTION

In the preceding sections of this report we have shown that the Court's existing system of calendar control over its civil cases is unsatisfactory in a number of major respects. Clearly, there is a need for fundamental changes in the Court's philosophy of calendar control and in the system utilized by the Court to achieve effective calendar control. The Committee on the Administration of Justice has recommended that the Court adopt an individual calendar system for both civil and criminal cases as being the best solution for the calendar problems of the Court. In June 1969 the Court appointed a committee of judges which is to develop a detailed plan for implementing an individual calendar system for criminal cases by October 1, 1969, and to study how civil cases may also be put on an individual assignment system.

There are a number of obvious advantages to an individual assignment system. Responsibility for expeditiously processing a case is clearly assigned to a specific judge. When meaningful reports on individual judge's productivity are compiled and circulated, an incentive is created to keep the individual calendars as current as possible. Since only one judge needs to familiarize himself with a case, the individual system avoids the waste of judicial time that can occur when more than one judge handles a complex case under the master calendar system. Judges of some courts that have switched from a master to an individual calendar system report that the volume of motions decreases considerably. The judge is in a position to exercise effective control over the case from beginning to end. This control, effectively exercised, should go far to solving many of the problems discussed in this report such as the processing of complex cases, dismissals for failure to prosecute and the handling of cases which exceed the Court's time standards.

It would be a serious mistake, however, to believe that improved calendar management will automatically be achieved merely by switching from one calendar system to another. A change will not produce effective control unless it is accompanied by a firm commitment by the judges to the concept of complete judicial control over the calendar, and by a comprehensive reporting system that will provide meaningful and current data on the status of the calendar. As we have discussed earlier in this report, significant improvements in the proceeding of cases can not reasonably be expected until the Court accepts the concept of complete judicial control over its calendars. (See Paragraph IV–C–1.)

There are a number of considerations supporting the course the Court is following in considering a two-step switch to the individual

calendar system, first for criminal cases and then for civil cases. The Court will gain experience with the individual calendar for criminal cases and "debug" that system before converting its civil calendar. Also, the results of experimental calendar control programs being conducted in some other U.S. District Courts should soon be available. These experiments are designed to provide some objective evidence concerning the relative efficiency and effectiveness of the individual versus the master calendar system. They should also produce some useful information on the mechanics of implementing an individual system.

Another consideration is the fact that senior judges are presently handling most of the civil workload. By statute, a senior judge is only required to perform such judicial duties ". . . as he is willing and able to undertake." It could prove difficult to achieve an equitable distribution of cases in view of the latitude the statute gives to senior judges concerning their caseloads.

With the above considerations in mind and pending effective implementation of an individual criminal calendar, we suggest that for its civil cases the Court adopt a hybrid calendar system which is designed to capitalize on the advantages of both the individual and the master system. It provides for individualized treatment of complex cases and cases which exceed the Court's time standards for processing. It provides for master calendar treatment of routine cases. As will be seen, all the principles and many of the mechanics are equally applicable to any type of calendaring system.

EFFECTIVE CALENDAR CONTROL—SOME ESSENTIALS

For a court to conquer calendar congestion and minimize trial delay we believe the following must be present:

1. The Court must accept that it has a responsibility to supervise litigation at every stage of the proceedings and to encourage the early settlement of cases.
2. The Court must adopt time standards to govern the progress of each case at each stage of the proceedings. The Court's case control system must identify those cases which substantially exceed the time standards so that appropriate action can be taken by the Court to resolve such cases.
3. The Court must adopt as simple a system as possible to minimize the judicial and non-judicial resources needed to administer it.
4. The Court must adopt an experimental attitude towards the mechanics of calendar control and must compile comprehensive data on the status of its calendar to enable it to evaluate its performance objectively.
5. The Court must remain firmly in control of its calendar at all times and should impose appropriate sanctions upon counsel who consistently evade or attempt to evade the purposes and spirit of the Court's rules.
6. The Court must give counsel adequate advance notice of hearings, conferences and trial dates and then must adopt a tough continuance policy.

PRINCIPAL STEPS IN SUGGESTED SYSTEM

In making suggestions for a system of calendar control we are mindful of the fact that there is no one "best" system. We are, however,

suggesting procedures which have been effectively utilized by other courts.

Step 1.—When issue is joined the file should be reviewed by a legally trained non-judicial person to determine (1) whether the nature of the case, the number of parties, or the nature or number of the factual or legal issues involved indicate the case will be complex or protracted, or (2) whether the case should be certified to the Court of General Sessions. Complex cases should be immediately assigned to a judge who would call for a preliminary pretrial conference within 30 to 60 days after issue to discuss the case and map out the discovery process. The judge would thereafter supervise the case until it was terminated.

Comment: Although existing Court rules provide for assigning complex cases to a single judge either upon motion by counsel or upon the initiative of the Assignment Commissioner or Clerk of Court, in practice this rarely occurs. We found one case, a suit to set aside restrictive covenants, that had not been assigned to a single judge even though it took from 1962 to 1968 to process and required ten pages of docket entries to document. Eleven different judges were involved at various stages of the proceedings.

Step 2.—Routine cases would be scheduled for settlement conferences before a judge within 6 to 9 months after issue. Counsel would be given at least 30 days notice of the conference and be required to confer prior to the conference to discuss settlement and prepare a proposed pretrial order to be submitted to the Court in advance of the conference. Counsel attending the conference would either be the trial counsel or, in any event, have complete authority to settle the case.

Comment: Discovery in most routine cases should be complete within six to nine months of issue. A 30-day notice should minimize attorney scheduling conflicts. Courts that require counsel to confer in advance report that many cases settle at this stage, especially when counsel know that a firm settlement conference date has been set which will be shortly followed by a firm trial date. (See Appendix B for an excerpt from the Local Rules of the U.S. District Court for the Southern District of Florida. The excerpt sets forth that Court's requirements for pretrial preparation by counsel. Such requirements would be equally appropriate for the settlement conference we propose.)

Step 3.—Cases not settled at the conference would be immediately pretried at the same conference and scheduled for trial within 30 days unless the settlement judge determined that more time was needed to properly prepare the case for trial. In the latter event, the settlement judge would issue an appropriate order governing the nature and timing of further proceedings. Attorneys would report to the Calendar Section of the Civil Division to have a trial date assigned. One day before trial date, the Calendar Section would contact attorneys to confirm trial date and determine whether case has been settled. The current one-half hour alert system would be in effect on the trial date.

Comment: A firm trial date needs to be assigned shortly after the settlement conference in order to keep the pressure on counsel to thoroughly evaluate their cases and consider settlement possibilities.

The above steps constitute a general plan or outline of a proposed system of calendar control that can be used by the Court until such time as it decides to convert all its civil cases to an individual calendar. To be fully understood and effectively implemented the steps

need to be coupled with suggestions we have made in prior sections of this report: i.e., the Court must exercise *complete* control over its calendar, time standards, need to be adopted, calendar control rules need to be enforced, scheduled dates for conferences and trials need to be firmly adhered to, a continuous process of critical self-evaluation needs to be implemented, etc.

We recognize that until the Court has eliminated its backlog it will not be able to schedule cases for settlement conferences within 6 to 9 months after issue. We, therefore, suggest that the Court implement the suggested system by initially selecting cases from the existing Ready Calendar. When those have been exhausted, cases could be selected from the General Calendar with the oldest being selected first.

SUGGESTED CASE CONTROL PROCEDURE

To effectively implement a revised calendar system, a revised case control system needs to be devised and implemented. The following is a general plan or outline of such a system.

—A multi-copy case control card would be prepared when a case is filed. All copies would initially be kept together and maintained by the counter clerks in the Civil Division of the Clerk's Office until issue was joined. These cards would become the prime information source for internal calendar status reports; therefore, the following minimum information would be recorded on them: case number; type of case; amounts sued for and recovered; names and addresses of attorneys; dates of all major occurrences such as date of filing, date of issue, dates of conferences, and termination dates; information on types of termination such as trials, settled on eve of trial, settled at settlement conference, terminated by parties without court action, etc.; and information on continuances, etc. In short, the information should provide a record of all significant events in the history of the case.

—When issue is joined, the case control card would be transferred from the counter clerks to the calendar clerks.

The counter clerks would periodically review the case control cards not at issue to determine which should be dismissed for want of for cases not at issue to determine which should be dismissed for want of prosecution.

—The calendar clerks would maintain the card from issue to termination. If a case were assigned to an individual judge, a copy of the card would be given to the judge's secretary for her files and another copy filed by judge's name by the calendar clerks. Since concentration of defense counsel in personal injury litigation is a problem, another copy could be filed by defense attorney's name to provide a complete record of defense attorneys' caseloads. (See Details IV–C–5).

E. Suggested Special Program To Reduce Backlog

We have seen that over the past ten years the Court has been terminating as many cases as are filed each year. (See Appendix A, Table No. 1.) It is therefore apparent that if the Court could find ways to reduce its backlog it could process current filings on a current basis, i.e., normally within 12 months. We have also seen that during this period the Court has made no progress towards reducing its backlog; there were about 4,000 cases pending in 1958 and the same number was also pending in 1968.

The largest backlogs exist in three major categories of cases: motor vehicle personal injury, other personal injury, and contract cases:

Category of case	Average annual terminations, fiscal year 1964–68	Number pending on June 30, 1968
Personal injury:		
Motor vehicle	783	1,219
Other	295	614
Contract	566	822
Total	1,644	2,655

Based on total annual terminations of these categories, the backlog represents a workload of about 18 months. This is admittedly an imprecise measurement, but it does illustrate that the backlog is not an insurmountable one. There are a number of ways of attacking the backlog: adding judges, continuing the visiting judge program, or by experimenting with special programs utilizing existing judicial resources. Our comments that follow concern a suggested special program utilizing existing judicial resources.

The Court usually has 8 to 10 judges assigned to the civil calendar: 2 in Motions; 2 in nonjury; and 4 to 6 in jury. These courts normally begin operation at 10:00 a.m. or later and it is rare that any of them are in operation after 4:00 p.m. Assuming a settlement conference would average one-half hour in length, and further assuming that an average of 5 of the 8 to 10 judges could devote one hour per day five days a week to settlement conferences, then 50 cases per week and 200 cases per month could be scheduled for settlement conferences. Thus, at a rate of 200 cases per month, it would take a little more than one year to schedule settlement conferences for the 2655 personal injury and contract cases pending on June 30, 1968.

Initially, cases would be selected from the existing Ready Calendar. Thus, discovery would be completed and counsel would need to be given only 30 days' notice of the scheduled conference. The requirements for preconference preparation, attendance at conferences, etc., would be the same as described in Details IV–D. There should be a minimum of conflicting scheduling problems for counsel in view of the 30-day notice and since the conferences would generally be scheduled at times when other courts are not in session, i.e., 9:00 to 10:00 a.m. or 4:00 p.m. and after.

Cases that are not settled would be given a firm trial date within 30 days. Based on past experience, however, the vast majority of these cases will be terminated without requiring trial. During the five-year period FY 1964 to 1968, only 9 to 15 percent of motor vehicle cases went to trial. Comparable percentages for other personal injury cases and contract cases were 12 to 14 percent and 12 to 16 percent, respectively.

If the program were fully and successfully implemented, it is conceivable that within about two years the Court could become completely current in the processing of its civil cases and litigants could be assured of "having their day in court" on a timely basis. Thus, we urge the Court to either experiment with a program along the lines

suggested above or devise alternative measures for effectively dealing with the backlog.

Appendix A. The Civil Caseload—An Overview

CONTENTS

JURISDICTION

The Court's "federal" civil jurisdiction is the same as that of other United States District Courts. This jurisdiction is defined in Sections 1331 through 1362 of Title 28 of the United States Code and includes, *inter alia*, cases involving federal questions, bankruptcy, federal interpleader, patents, etc. It also has jurisdiction over matters such as damage actions under the Federal Tort Claims Act and the Federal Employees Liability Act.

In addition to its federal jurisdiction which includes diversity jurisdiction, the Court has "local" jurisdiction over all civil actions in excess of $10,000 where the defendant is subject to service in the District regardless of the presence or lack of a federal question or diversity of citizenship. It is this "local" jurisdiction that makes this Court unique among the United States District Courts.

FILINGS

Table Number 1 reveals the steady decline in the number of civil cases filed annually since 1962. Table Number 2 provides a detailed breakdown of civil cases filed during the five year period 1964 to 1968. There was an overall reduction of 1,429 cases between Fiscal Years 1964 (5,958) and 1968 (4,529), which was principally due to a reduction of 1,478 in Insanity cases. (Since September, 1964, temporary commitments to mental institutions for observation and diagnosis are no longer docketed and reported in the Court's statistics on Insanity cases.) There were relatively minor changes in the number of filings for other types of cases except for motor vehicle cases which averaged 676 filings annually between FY 1964 and 1968. Filings rose to 793 in FY 1968.

Cases involving Prisoner Petitions, Insanity and Appointment of Conservators consistently constitute a large portion of the civil caseload. They comprised 43 percent of the 4,529 FY 1968 commencements as follows:

Nature of suit	Commencements, fiscal year 1968	Percent of total commencements
Prisoner petitions	861	19
Insanity	804	17
Appointment of conservators[1]	300	7
Total	1,965	43

[1] These are included in the All Other category of private cases in table No. 1. Conservators are appointed to care for the property of persons who are unable, due to advanced age, sickness, or mental illness, to properly care for their own property. (See 31 D.C. Code 1501.)

Practically all the cases in these three categories are handled by the judges assigned to Motions Courts. Based upon analysis of available statistical data and interviews with judges and non-judicial personnel, we estimate that from 40 percent to 60 percent of one judicial year is devoted annually to handling all aspects of these cases including hearings, trials, signing of orders, etc.

The balance of the civil caseload consists principally of Personal Injury Actions, Contract Actions and Real Property Actions. Table Number 5. shows these three categories of cases accounted for 75 percent of the civil trials during the five year period FY 1964 thru 1968.

One of the most significant bits of information provided by Table Number 1. is that for the past five years the Court has been terminating as many cases as have been filed not only on a total caseload basis, but also in terms of its three principal categories of contested litigation. For the FY 1964 thru 1968 period the Court averaged 5,296 terminations annually compared to average annual filings of 5,109 cases. During this same period an annual average of 2,011 personal injury, contract and real property cases were terminated compared to annual average filings of 1,987 cases.

Thus, if the Court were able to reduce its backlog it could keep up with new cases filed and dispose of them much sooner.

TERMINATIONS

Table Numbers 3, 4, and 5 provide comprehensive data on: (1) Terminations by type of disposition, (2) Number of trials by nature of suit, and (3) Statistics on trial delay. Highlights of this data are:

—Between 90 percent and 93 percent of all cases terminated during the period FY 1964 thru 1968 were terminated prior to trial. The percentages for the major categories of civil litigation were:

—85 percent to 91 percent of Motor Vehicle Personal Injury Cases
—76 percent to 88 percent of Other Personal Injury Cases
—84 percent to 89 percent of Contract Actions
—88 percent to 92 percent of Real Property Actions

—Between 33 percent and 42 percent of all cases terminated during the period FY 1964 thru 1968 were terminated by the parties without requiring any Court action. The percentages for the major categories of civil litigation were:

—36 percent to 49 percent of Motor Vehicle Personal Injury Cases
—32 percent to 39 percent of Other Personal Injury Cases
—46 percent to 58 percent of Contract Actions
—39 percent to 65 percent of Real Property Actions

—Between 78 percent and 81 percent of all cases terminated during the period FY 1964 and 1968 were terminated prior to pretrial. The percentages for the major categories of civil litigation were:

—Between 47 percent and 63 percent of Motor Vehicle Personal Injury Cases
—Between 45 percent and 54 percent of Other Personal Injury Cases
—Between 67 percent and 83 percent of Contract Actions
—Between 80 percent and 85 percent of Real Property Actions

—Between 11 percent and 14 percent of all cases terminated during the period FY 1964 thru 1968 were terminated at or after pretrial but prior to trial. The percentages for the major categories of civil litigation were:

—26 percent to 39 percent of Motor Vehicle Personal Injury Cases
—27 percent to 35 percent of Other Personal Injury Cases
—12 percent to 18 percent of Contract Actions
—6 percent to 10 percent of Real Property Actions

—During the ten year period FY 1959 to 1968 there was an average of 367 civil trials per year. The range was 299 (1960) to 432 (1961). During this period the median time interval from issue to trial ranged from a low of 17 months in 1962 to a high of 27 months in 1967, compared to a range of 10 to 12 months for all U.S. District Courts.

—The interval in jury cases ranged from a low of 18 months in 1960 to a high of 32 months in 1965, compared to a range of 11 to 15 months for all U.S. District Courts.

—The interval in non-jury cases ranged from a low of 13 months in 1962 to a high of 19 months in 1967 and 1968, compared to a range of 9 to 11 months for all U.S. District Courts.

—Motor Vehicle Personal Injury Cases (30 percent), Other Personal Injury Cases (17 percent), Contract Actions (17 percent), and Real Property Actions (11 percent) accounted for 75 percent of the total civil trials during the five year period FY 1964 thru 1968.

JUDICIAL MANPOWER ASSIGNED TO CIVIL

During the five year period 1964 thru 1968 the Court consistently assigned judges as follows:

	Number of judges
Jury Calendar	4–6
Non-jury Calendar	2
Motions Courts	2
Total	8–10

Although most of the regular judges have been assigned to the criminal calendar since October, 1967, the Court was able to try as many cases in FY 1968 as it had in prior years (See Table Number 4) because (1) eight senior judges were available for assignment in 1968; and (2) between August 1967 and August 1968, 15 visiting judges from other U.S. District Courts tried a total of 76 cases.

ANALYSIS OF MOTOR VEHICLE PERSONAL INJURY CASES TRIED IN FISCAL YEAR 1968

We have already seen that motor vehicle personal injury cases constitute a large part of the Court's workload—they represented about 30 percent of all civil cases pending on June 30, 1968 and they accounted for 30 percent of all trials during the period FY 1964 thru 1968. Because of their significance, we made a detailed analysis of the motor vehicle personal injury cases tried in Fiscal Year 1968.

Our analysis was based upon listings of terminated cases made available by the Administrative Office of the U.S. Courts and upon docket sheets on file in the Civil Division of the Office of the Clerk. According to the listings there were 107 trials of motor vehicle personal injury cases excluding trials of remanded or reopened cases; however, we were able to obtain complete information on only 100 cases. We do not believe this discrepancy significantly affects our analysis.

Our analysis of the 100 trials disclosed:

—The time interval from filing to trial was two years or more in 87 percent of the cases and three years or more in 33 percent of the cases. The same type of analysis of 118 motor vehicle cases tried in Fiscal Year 1967 disclosed that the interval was two years or more in 91 percent of the cases and three years or more in 40 percent of the cases.

—The interval between the filing of a certificate of readiness and trial was 18 months or more in 70 percent of the cases, 2 years or more in 32 percent of the cases, and 3 years or more in 13 percent of the cases.

—The majority of these cases were not large, complex suits. The amounts sued for were $50,000 or more in 70 percent of the cases and $25,000 or more in 98 percent of the cases. Actual recoveries were substantially less. Recoveries were $5,000 or less in 38 percent of the cases won by plaintiffs, $10,000 or less in 58 percent of the cases, and $15,000 or less in 74 percent of the cases.

SUMMARY

Despite a steady decline in the number of civil cases filed annually since 1962, the median time interval from issue to trial increased from 17 months to 25 months. In recent years, the Court has been able to terminate as many cases as were filed, however, it has not been able to reduce its backlog of pending cases. The trial delay problem can not be attributed to a shift of judicial manpower from civil to criminal trials. By utilizing retired judges and visiting judges the Court was able to try as many civil cases in FY 1968 as it had in prior years.

See the main body of the report for our analysis of why the Court has been unable to solve the trial delay problem.

TABLE 1.—FILINGS AND TERMINATIONS, TOTAL CIVIL, PERSONAL INJURY, CONTRACT, AND REAL PROPERTY CASES, FISCAL YEAR 1959 THROUGH FISCAL YEAR 1968

	Total civil cases		Personal injury cases [1]				Contract cases [1]		Real property cases [1]	
			Motor vehicle		Other					
	Filed	Terminated	Filed	Terminated	Filed	Terminated	Filed	Terminated	Filed	Terminated
1959	6,065	6,227	1,030	1,197	461	518	699	[2] 750	304	[2] 325
1960	6,990	6,614	1,140	920	640	451	726	[2] 750	343	[2] 325
1961 [3]	7,352	6,941	1,277	1,029	626	374	843	860	370	361
1962	7,498	7,180	1,185	963	555	373	776	797	364	340
1963 [4]	6,824	6,868	961	1,100	432	372	653	681	348	311
1964 [5]	5,958	6,429	660	824	371	310	522	591	336	363
1965	5,197	5,603	676	877	318	356	533	526	400	346
1966	5,035	4,983	598	702	334	280	659	537	484	372
1967	4,825	4,848	651	797	335	263	627	572	391	382
1968	4,529	4,628	793	713	301	265	599	604	344	374
10-year average, 1959–68	6,027	6,032	897	912	437	356	664	667	368	350
5-year average, 1964–68	5,109	5,296	676	783	332	295	588	566	391	367
Pending June 30, 1968		3,993		1,219		614		822		422

[1] Personal injury cases include only "private" cases. Contract and real property cases include both "United States" and "private."

[2] Estimated.

[3] Most of increase in 1960 and 1961 filings due to increases in insanity, prisoner petition, personal injury and contract cases.

[4] Minimum jurisdictional amount was raised from $3,000 to $10,000 in October 1962.

[5] Since September 1964 temporary commitments to mental institutions are no longer counted as civil filings. This accounts for almost all of the reduction in civil filings since fiscal year 1964. (See table No. 2.)

Source: Published and unpublished data of Administrative Office of the U.S. Courts.

TABLE 2.—CIVIL CASES COMMENCED DURING THE FISCAL YEARS 1964 TO 1968 AND CIVIL CASES PENDING ON JUNE 30, 1968, BY NATURE OF SUIT

Nature of suit	Commenced					Pending on June 30, 1968
	1964	1965	1966	1967	1968	
Civil cases (total)	5,958	5,197	5,035	4,825	4,529	3,993
U.S. cases [1] (total)	1,057	1,147	1,169	1,098	922	638
Contract	110	106	117	92	82	107
Tort actions	65	86	64	100	60	85
Prisoner petitions	608	671	721	662	519	140
All other	274	284	267	244	261	306
Private cases [2] (total)	4,901	4,050	3,866	3,727	3,607	3,355
Contract	412	427	542	535	517	715
Real property	326	384	472	387	334	408
Motor vehicle personal injury	660	676	598	651	793	1,219
Other personal injury	371	318	334	335	301	614
Prisoner petitions	321	321	296	431	342	75
Insanity	2,282	1,211	894	790	804	52
All other	529	713	730	598	516	272

[1] Includes cases where the U.S. Government is a party and cases involving a Federal question.
[2] Includes local cases and diversity-of-citizenship cases.

Source: Administrative Office of the U.S. Courts.

TABLE NO. 3—TERMINATIONS BY TYPE OF ACTION TAKEN—ALL CIVIL CASES, PERSONAL INJURY CASES, CONTRACT CASES, AND REAL PROPERTY CASES [1]

[Fiscal years 1964 through 1968]

Fiscal year	Total terminations	Percent					
		Court action				Type of trials	
		No court action	Before pretrial	At or after pretrial [2]	Trial	Nonjury	Jury
All civil cases:							
1964	4,144	42	37	11	8	55	45
1965	4,295	35	44	14	7	59	41
1966	4,097	33	48	12	7	53	47
1967	4,037	33	45	13	9	41	59
1968	3,845	39	40	13	10	56	44
Motor vehicle personal injury:							
1964	824	49	14	26	11	15	85
1965	877	38	16	37	9	14	86
1966	702	36	11	39	13	11	89
1967	797	41	10	34	15	12	88
1968	713	46	8	32	14	13	87
Other personal injury:							
1964	310	36	18	27	18	5	95
1965	365	32	20	35	12	7	93
1966	280	39	13	34	14	15	85
1967	263	35	10	32	24	2	98
1968	265	37	10	33	21	7	93
Contract actions:							
1964	314	46	21	18	14	89	11
1965	260	46	26	17	12	90	10
1966	281	58	20	12	11	70	30
1967	297	50	23	12	16	74	26
1968	350	53	17	16	14	84	16
Real property actions:							
1964	250	58	22	10	10	92	8
1965	248	47	38	8	8	95	5
1966	244	39	45	6	10	92	8
1967	248	48	37	6	9	96	4
1968	218	65	17	7	12	96	4

[1] Data on all civil cases excludes insanity cases. Data on personal injury, contract, and real property cases is for private cases. See table No. 2.
[2] Very few cases settle at pretrial; thus, almost all cases in this category settle only after a trial date has been set.

Note.—Due to rounding, percentages do not always add to precisely 100 percent.
Source: Administrative Office of U.S. Courts.

TABLE 4.—CIVIL TRIALS AND TRIAL DELAY, FISCAL YEARS 1959 THROUGH 1968

Fiscal year	Total trials, District of Columbia	Median time interval from issue to trial (months)					
		District of Columbia	All U.S. district courts	District of Columbia	All U.S. district courts	District of Columbia	All U.S district courts
1959	383	20	10	21	11	17	9
1960	299	18	11	18	12	18	11
1961	432	18	11	(1)	(1)	(1)	(1)
1962	330	17	10	21	12	13	9
1963	392	21	10	26	12	15	9
1964	408	21	11	29	12	18	11
1965	349	20	11	32	12	14	9
1966	324	24	11	29	13	17	10
1967	383	27	12	30	15	19	10
1968	371	25	12	29	15	19	10

Note: Average number of trials: 1959–68, 367; 1964–68, 367.
[1] Not available.

Source: Tables C–6 and C–10 of annual reports of Administrative Office of U.S. Courts. Excludes land condemnation and prisoner petition trials.

TABLE 5.—NUMBER OF TRIALS BY NATURE OF SUIT, FISCAL YEARS 1964 THROUGH 1968

Nature of suit	1964	1965	1966	1967	1968	1964–68 averages	
						Number of trials	Percent of total trials
Motor vehicle personal injury	95	83	92	128	107	101	30
Other personal injury	60	45	46	64	64	56	17
Contract actions	63	56	38	61	72	58	17
Real property actions	43	35	36	33	41	38	11
Prisoner petitions	7	8	24	5	49	18	5
Assault, libel and slander	12	3	2	9	8	7	2
Patent	37	47	30	24	15	30	9
All other	28	23	17	24	24	23	7
Total trials	345	300	285	348	380	332	

Source: Administrative Office of the U.S. Courts. Unpublished tables based on forms JS–6, termination cards. Excludes insanity cases. Includes both "United States" and "private" cases. (See table No. 2.).

APPENDIX B. EXCERPT FROM PRETRIAL RULES OF THE U.S. DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

RULE 16. PRETRIAL PROCEDURE

A. *Pretrial Conference Mandatory.* Pretrial conference pursuant to Rule 16, Fed. R. Civ. P., shall be held in every civil action, unless the Court specifically orders that no pretrial conference be held. Each party shall be represented at the pretrial conference and at meetings held pursuant to paragraph B hereof by the attorney who will conduct the trial, except for good cause a party may be represented by another attorney provided he has complete information about the action or proceeding and is authorized to bind the party.

B. *Counsel Must Meet.* No later than thirty days prior to the date of the pretrial conference, counsel shall meet at a mutually convenient time and place and:

1. Discuss settlement.
2. Prepare a pretrial stipulation in accordance with paragraph C of this rule.
3. Simplify the issues and stipulate to as many facts and issues as possible.
4. Examine all trial exhibits, except that impeachment exhibits need not be revealed.
5. Furnish opposing counsel names and addresses of trial witnesses, except that impeachment witnesses need not be revealed.
6. Exchange any additional information as may expedite the trial.

C. *Pretrial Stipulation Must Be Filed.* It shall be the duty of counsel for the plaintiff to see that the pretrial stipulation is drawn, executed by counsel for all parties, and filed with the Court no later than ten days prior to pretrial conference. The pretrial stipulation shall contain the following statements in separate numbered paragraphs as indicated:

1. The nature of the action or proceeding.
2. The basis of federal jurisdiction.
3. The pleadings raising the issues.
4. A list of all undisposed of motions or other matters requiring action by the Court.
5. A concise statement of stipulated facts which will require no proof at trial, with reservations, if any.
6. A concise statement of facts which, though not admitted, are not to be contested at trial.
7. A statement in reasonable detail of issues of fact which remain to be litigated at trial. By way of example, reasonable details of issues of fact would include: (a) As to negligence or contributory negligence, the specific acts or omissions relied upon; (b) As to damages, the precise nature and extent of damages claimed; (c) As to unseaworthiness or unsafe condition of a vessel or its equipment, the material facts and circumstances relied upon; (d) As to breach of contract, the specific acts or omissions relied upon.
8. A concise statement of issues of law on which there is agreement.
9. A concise statement of issues of law which remain for determination by the Court.
10. Each party's numbered list of trial exhibits, other than impeachment exhibits, with objections, if any, to each exhibit, including the basis of objections.
11. Each party's numbered list of trial witnesses, with their addresses. Impeachment witnesses need not be listed. Expert witnesses shall be so designated.
12. Estimated trial time.
13. Where attorney's fees may be awarded to the prevailing party, an estimate of each party as to the maximum amount properly allowable.

D. *Unilateral Filing of Pretrial Stipulation Where Counsel Do Not Agree.* If for any reason the pretrial stipulation is not executed by all counsel, each counsel shall file and serve separate proposed pretrial stipulations no later than seven days prior to the pretrial conference, with a statement of reasons no agreement was reached thereon.

A STUDY OF THE CRIMINAL CALENDAR OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

JULY 1969

CONTENTS

A STUDY OF THE CRIMINAL CALENDAR OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

I. OBJECTIVES AND SCOPE OF THE STUDY

The objectives of our study of the criminal caseflow in the United States District Court were: To develop an efficient system of managing the criminal calendar which will make it possible to schedule a case for trial on a particular day and have a high probability that the case will, in fact, go to trial on that day. Successful development of such a system should lead to the realization of the following corollary objectives:

1. To maximize the use of judges' bench time for the trial of cases;
2. To reduce the elapsed time between arrest and trial.

Most of our effort was devoted to analyzing the operation of the section in the Assignment Office which administers the criminal calendar. In a separate report we will evaluate the organization and administrative management of the staffs most directly concerned with the processing of criminal cases.

The study is based on personal observations, analysis of Court rules, procedures and data extracted from records and reports, and extensive interviews with Court personnel and judges. In addition, we interviewed a number of defense attorneys and Assistant U.S. Attorneys.

II. DESCRIPTION OF CURRENT SYSTEM OF PROCESSING CRIMINAL CASES

The District Court operates under a central or master calendaring system. In this system, a case is not assigned to a judge until the date of trial. The Assignment Office administers the calendar and assigns cases to the trial judges when they signify their availability. The tour of duty for judges on the criminal side is three months but, since October 1967, the Chief Judge has assigned an average of 10–12 judges (of the regular complement of 14) to hear criminal cases. Thus, there is little actual rotation; most of the regular judges have been trying criminal cases. The civil calendar is largely handled by senior and visiting judges.

Upon return of an indictment by the grand jury, the case is placed on the Court's Master Calendar. According to the Court's Rule 87, a defendant is to be arraigned on the second Friday following his indictment. In the past, all indictments were returned on Monday but the practice now is to return indictments on any day—usually a couple of times a week.

Rule 87 specifies that the U.S. Attorney assign the case to an Assistant U.S. Attorney for all purposes as soon as the indictment is returned. It is his responsibility to ready the case for trial and when it is ready, the Assistant U.S. Attorney certifies the case to the Ready Calendar. There is no limit as to the number of cases an Assistant U.S. Attorney can have on the Ready Calendar. Moving cases from the Master Calendar to the Ready Calendar for trial is thus entirely up to

the U.S. Attorney. Although the Chief Judge in his discretion can set cases on the Ready Calendar, there is no provision requiring a periodic review of the Master Calendar to determine the status of pending cases.

When a case is placed on the Ready Calendar, the Assignment Office fixes a specific date for trial (usually about three weeks away) and notifies the parties. According to Rule 87, the defense has six days in which to request that the case be removed from the Ready Calendar. Thereafter, continuances are to be granted only "for emergencies."

On the trial date, the case is placed on the daily trial list awaiting the availability of a judge. Depending on his place on the trial list, a defense lawyer is either required to be in the courthouse or he is placed on telephone alert. A defendant on bond must report to the Assignment Office every day, although he may be released if his case is sufficiently low on the trial list. A defendant in custody is brought up from jail (in some instances, Lorton Reformatory, which is 20 miles away) every day until his case in reached. Rule 87 specifies that cases be assigned for trial as nearly as practicable in the order in which they were put on the Ready Calendar, with a preference given to jail cases.

Except for certain specified motions, Rule 87 provides that motions be set for hearing the second Friday after filing. Motions are pooled and are assigned for hearing to available criminal judges by the Assignment Office. In practice, motions are set for hearing every other Friday. In addition, the Court has traditionally reserved Friday for the imposition of sentences on convicted defendants.

There is no Court rule relating to the appointment of counsel for indigent defendants. However, the Judicial Council Plan for the administration of the Criminal Justice Act in the District of Columbia (adopted August, 1966) provides that if counsel appointed at the preliminary hearing stage so desires, his appointment should continue until final disposition of the case. Nevertheless, the District Court will not automatically accept the lawyer appointed by the Court of General Sessions. As a result, each indicted indigent defendant has counsel appointed to represent him by the District Court. Since October, 1968, an effort has been made to reappoint the lawyer who handled the preliminary hearing. In addition, since that time the Court has endeavored to appoint counsel in the Grand Jury stage of the proceeding. The prior practice was to wait until the return of an indictment before appointing counsel.

Administratively, appointments are processed by a clerk in the Criminal Division of the Clerk's Office with the Chief Judge making the appointments. Notification of attorneys as to dates for arraignments, motions, and trials is handled by the Assignment Office.

In addition to the system just described for processing criminal cases, the Court currently employs two other systems for certain types of cases. The cases arising out of the April 1968 riot and a group of cases involving charges of felony murder, armed robbery, and bank robbery have been assigned to individual judges. The riot cases were divided among five judges while the other cases were divided among all the regular judges but the Chief Judge.

Under the latter two systems, except for arraignments and appointment of counsel, the judges have been given the responsibility of handling the cases from beginning to end; after consulting with the prosecution and defense, the judges schedule hearings and trial dates.

Administrative matters such as notifying counsel and arranging for the presence of the defendant remain the responsibility of the Assignment Office. The judges involved have not been relieved of their other trial responsibilities; they are also expected to be available, depending on their individual calendars, to try cases in the central pool.

III. FINDINGS AND CONCLUSIONS

Background

Unlike other federal district courts, the U.S. District Court for the District of Columbia has extensive criminal jurisdiction. In addition to Federal offenses, the Court has exclusive jurisdiction over all felonies committed by adults in the District of Columbia. The felony jurisdiction has been the source of continuing concern since at least 1965, when the D.C. Crime Commission was created. The Commission's Report, issued at the end of 1966, discussed in some detail and made a number of recommendations with regard to the problem of delay in the District Court (see pp. 245–270). Since then the situation has not improved. In fact, many of the factors evaluated by the Crime Commission have shown adverse trends.

Cases Filed.—The Commission found that the general trend in cases filed was downward. In the period FY 1950 to FY 1965, there was a 39 percent reduction in felony filings from 2,116 to 1,295. However, if the time frame is moved up to 1960, an entirely different picture emerges. In the period fiscal 1960 through 1968, filings rose from 1,063 to 1,756, an increase of about 65 percent.

Cases Terminated.—While filings have been going up, the rate of terminations has failed to keep pace. Since fiscal 1962, terminations have exceeded filings only twice. Fiscal years 1966 to 1967 were particularly disastrous. In 1966, 1,453 cases were filed and 1,150 were terminated while in 1967, 1,465 cases were docketed and only 969 were concluded. As a result, the backlog of pending cases has increased substantially, from 499 in fiscal 1964 to 1,374 in fiscal 1968.

Delay.—With a growing backlog, the median time from indictment to termination has lengthened considerably, from 3 months in fiscal 1962 to 9.5 months in fiscal 1968.

Guilty Pleas.—The Crime Commission observed that over the past 15 years the guilty plea rate remained fairly constant and always exceeded 50 percent of total dispositions (p. 243). The plea rate ranged from 51 to 59 percent and, as recently as fiscal 1964, the rate was 56.7 percent. That situation no longer exists. In fiscal 1967, the plea rate dropped to 43.9 percent from the 1966 level of 52 percent. In fiscal 1968, while the plea rate rose to 47.4 percent, it was still well below the Court's prior experience.[1]

Cases Tried.—Largely as a result of the fall in the plea rate there has been an increase in the number of trial terminations.[2] In fiscal

[1] The Report of the A.B.A. Project on Minimum Standards for Criminal Justice, *Standards Relating to Pleas of Guilty* 1–2 (1967) states, "The plea of guilty is probably the most frequent method of conviction in all jurisdictions; in some localities as many as 95 percent of the criminal cases are disposed of in this way." While the types of cases involved are somewhat different, the seriousness of the downward trend in the Court's plea rate is accentuated by the fact that in all other U.S. District Courts the rate was 69.5 percent in fiscal 1968.

[2] The dismissal rate has remained fairly constant, ranging around 15 percent for the past five years.

1966 only 31 percent of the felony terminations were by trial. By fiscal 1968, trial terminations, which, of course, are the most time-consuming, rose to 37.7 percent. In contrast, trial terminations approximated 15 percent of dispositions in all other U.S. District Courts in FY 1968.

Taken together, these factors indicate that the Court is facing a situation that is even more serious today than in 1966 when the D.C. Crime Commission was considering the Court's problems. The need for remedial action is thus more urgent than ever.

Summary of Findings and Conclusions

(Details are set forth in the next section of this report)

A. There is no effective judicial control over the operation of the criminal calendar. Centralized management and on-going supervision is thus lacking.

B. The Court has few clearly defined standards or policies to govern the processing of criminal cases. The policies that do exist are either unenforced or no longer appropriate. Because of the lack of standards and inadequate internal reports, the Court has no way to evaluate its performance.

C. The criminal trial calendar is constantly over-set. As a result, the calendar is marked by delay and uncertainty as to trial dates.

D. In attempting to solve its calendar problems, the Court has taken a piecemeal and uncoordinated approach. These efforts have not been productive and have made calendar management unduly complex.

E. By scheduling arraignments only on Fridays, the Court is causing an unnecessary strain on the system. In addition, there is no formal procedure for notifying defendants charged pursuant to an original indictment of the time of their arraignment.

Details

A. COURT CONTROL OF THE CALENDAR

There is no effective judicial control over the operation of the criminal calendar. Centralized management and on-going supervision are thus lacking. The Court's Rule 87, which governs the operation of the criminal calendar, splits the responsibility for the movement of cases between the U.S. Attorney and the Court. Cases cannot go to trial unless certified ready by the U.S. Attorney. In effect, as soon as an indictment is returned the case goes off calendar; it becomes active again only at the initiative of the U.S. Attorney. Yet, there are no standards specified to guide the prosecutor nor are there built-in controls to periodically check the status of the calendar and move cases to trial within a specified time period.

Because of this diffusion of control, the criminal calendar has not operated efficiently. For example, in September 1968, Chief Judge Curran held a special call of 500 cases on the Master Calendar, and, as a result, 38 percent of those cases were moved to the Ready Calendar. This call clearly revealed that cases were not being processed as expeditiously as possible.

The problems of the criminal calendar are illustrated further by a memorandum issued by the Chief Judge on October 29, 1968. In that memorandum, the Chief Judge pointed out that there was a paucity of cases on the Ready Calendar and a mal-distribution of cases among Assistant U.S. Attorneys. The shortage of ready cases existed despite the fact that the backlog of pending cases reached 1,707 by December 31, 1968.

This backlog is not due solely to the rising volume of cases. The Court itself must take some of the responsibility because it has failed to effectively monitor and supervise the criminal calendar. Case filings began their steady upward climb in Fiscal Year 1961. In that year the backlog was 439. By fiscal 1966, the backlog had more than doubled, with the biggest increase taking place between 1964 and 1966 when the number of pending cases jumped from 499 to 913.

Despite the adverse trends in filings and pending cases during this period, our analysis indicates that the Court was slow to respond. There was no shift of judicial manpower to criminal cases to match the increased workload. In 1965, on the average, 5.5 judges per month were trying criminal cases. In 1966, the monthly average rose slightly to 5.75 judges. It was not until October 1967, that a significant number of judges (11) began hearing criminal cases. By then, the backlog had jumped to 1,409 (as of June 30, 1967).

It should be noted that the Court's recent efforts have increased terminations significantly. After most of the regular judges were assigned to hear criminal cases, the number of criminal trials increased from 477 in fiscal 1967 to 977 in fiscal 1968. As a result, criminal terminations rose to 1,791 from the fiscal 1967 level of 969 and the backlog of pending cases was reduced from 1,409 to 1,374. In our view, if this type of effort had been made sooner, the situation now confronting the Court would be less serious.

The Court's slow response is accentuated by the fact that the D.C. Crime Commission Report was issued in December 1966. In that Report, the Commission recommended that the criminal calendar be given priority over the civil calendar by assigning "at least several additional judges to criminal trials" (at p. 269). While the Court did increase judicial manpower on the criminal side to an average of 7.5 judges per month for the first 9 months of 1967, it did not take the emergency measures that the situation required, *i.e.*, assigning most of the judges to criminal, until 10 months after the Crime Commission Report was issued.

The lack of continuing Court supervision of the criminal calendar is also demonstrated by the uneven distribution of cases among Assistant U.S. Attorneys. The problem became so severe that the Chief Judge's memorandum of October 29, 1968 called for the preparation of a new Ready Calendar with a more equal distribution of cases. The October 7, 1968 Calendar clearly illustrates the problems. Of the 27 prosecutors with cases on the Calendar, six (or 22 percent) were assigned 47 percent of the cases. The Chief Judge's memorandum declared that it was the policy of the Court that each Assistant have approximately 20 cases on the Ready Calendar at all times. While there has been some recent improvement, this policy declaration has not been enforced by the Court. An analysis of the March 3, 1969 Ready Calendar reveals that five of the 30 Assistants with cases on the Calendar (17

percent) had 31.4 percent of the cases. The individual caseloads of these Assistants ranged from 23 to 37. An even distribution of cases would have resulted in a caseload per prosecutor of about 15. Actually, only 2 Assistants had caseloads in that range; 16 had more and 12 had fewer than the average level.

As indicated in the Chief Judge's memorandum, the concentration of cases in too few Assistants has caused scheduling problems and contributed to trial delays and breakdowns. However, while the problem has been identified, the continuous Court supervision of the Calendar which is needed to deal with the situation is still lacking.

B. OPERATING STANDARDS AND GOALS

The Court has few clearly defined standards or policies to govern the processing of criminal cases. As indicated previously, the prosecutor is given no guidance as to the appropriate time span in which to conclude a criminal case. Without such standards, performance cannot be evaluated and thus an essential element in calendar management is lacking.

The need for time standards was recognized by the President's Commission on Law Enforcement and Administration of Justice (1967). Its Task Force Report on the Courts (pp. 84–88) included a model timetable for the processing of criminal cases. According to this timetable, defendants should be arraigned within 3 days of indictment, with the trial to follow within 9 weeks of arraignment. In contrast, it currently takes a minimum of 10 days to arraign a defendant,[3] while the median time from indictment to disposition in fiscal 1968 was 9.5 months.

To compound the problem of few clearly defined standards, many of the policies that do exist are either unenforced or no longer appropriate. For instance, Rule 87 specifies that continuances should be granted only for emergencies. As a control device it requires the Assignment Commissioner to submit a monthly list to the Chief Judge showing cases on the Ready Calendar with two or more continuances. However, the volume of continuances proved so great that preparation of the list became burdensome and it was discontinued by order of the Chief Judge. Thus, contrary to the Court's Rules, continuances are granted routinely. For example, during the period October 7 through December 20, 1968, approximately 26 percent of the cases alerted for trial each week were continued. This is in addition to the cases continued prior to the week of trial. The volume of these continuances is not readily ascertainable because, as indicated above, the Court no longer makes an effort to monitor the continuance rate.

The high volume of continuances is symptomatic of an inefficient criminal calendar and is particularly harmful because of the wasted time and increasing uncertainty for all parties. Continuances on the eve of trial can result in fruitless trips to court by counsel, defendants, and witnesses. The Assignment Office must reschedule and renotify the parties and a judge may well be left without a case. Unfortunately, this happens all too often in the District Court.

[3] On the basis of a sampling of cases which went to trial verdicts in the months of October 1968 through March 1969, the average time between indictment and arraignment was 17 days.

The Court's procedure as to arraignment is an example of a policy which is no longer appropriate. Rule 87 specifies that a defendant be arraigned on the second Friday after the return of an indictment. This means that there is a minimum wait of 10 days between indictment and arraignment. It appears that this period of delay was built into the Rules to allow for the ascertainment of counsel. However, since the Court's current practice is to appoint counsel, where needed, in the pre-indictment stage of the proceeding, the justification for delaying arraignment at least 10 days no longer exists. Nevertheless, the policy persists despite the change in procedures and the suggestion of the National Crime Commission's Task Force Report on the Court (p. 86) that arraignments take place within 3 days of indictment.

C. CASE SCHEDULING

The criminal trial calendar appears to be consistently overset. As a result, the criminal caseflow is marked by delay and uncertainty. For instance, during October and November 1968 nearly 700 cases were set for trial but only 373 cases were disposed of by trial, plea or dismissal. The remaining cases (approximately 47 percent) were continued or carried over waiting to go to trial. Setting cases in this way means that the trial calendar will have little precision. This is clearly illustrated by an analysis of the trial calendars from October 1968 through January 1969 (exclusive of the Christmas and New Year holiday weeks). Out of an average weekly trial calendar of 97 cases, 34 cases were carried over to the next week's trial calendar. In other words, 35 percent of the cases set for trial were carried from week-to-week before either disposition or a formal continuance (being carried on the trial list from day-to-day is not considered a continuance by the Court). Thus, despite the fact that cases are given definite trial dates, going to trial on the assigned date is the exception and not the rule. For example, on the basis of a sampling of cases disposed of by trial in the months October 1968 through March 1969, the average wait between the last assigned trial date and the actual date of trial was 4.9 days. A substantial number of cases (29 of the 59 cases sampled) waited from 1 to 8 days before going to trial, with other cases waiting as much as 29 days.

We believe that this type of casesetting policy is basically unsound. First of all, it makes a sham out of the date certain assignment system which the Court is supposed to be following. Certainty as to trial dates is clearly not being achieved. Secondly, because of the high number of cases awaiting trial each week, the Court is, of necessity, liberal as to continuances and, as shown above, this approach directly contravenes its stated policy.

It has been suggested that over-setting the calendar is necessary in order to ensure the availability of a case when one is called for by a judge. While we agree that the trial time of a judge should be used as fully as possible, the operation of a trial calendar should not be geared solely to this consideration. A case-setting policy should be balanced by taking into account the interests of the others involved in the system (*e.g.*, prosecution, defense, witnesses, juries).

By disregarding those interests, a feeling of cynicism about the operation of the criminal justice system is likely to be fostered. Such an attitude entails substantial costs. Whenever a case is delayed on the

trial calendar or is continued, it often involves lost time on the part of witnesses, attorneys, and defendants and eventually these time and money costs are probably translated into costs to the system of criminal justice. This proposition is illustrated by a recent study of the Cook County, Illinois criminal courts which found that the proportion of guilty dispositions decreased as the number of court appearances increased.[4]

Furthermore, gross over-setting of the trial calendar is actually self-defeating. Cases are over-set in anticipation of trial breakdowns and continuances which, in turn, are brought about by a jammed trial calendar. The cycle is thus complete with no progress made toward the goal of an efficient trial calendar.

D. LACK OF SYSTEMATIC PLANNING

In attempting to solve its calendar problems, the Court has taken a piecemeal and uncoordinated approach. At present, despite the absence of strong central control and planning, the Court is attempting to operate three different calendaring and assignment systems simultaneously. Alongside the Master Calendar system, there are two modified individual systems operating, one for riot cases and the other for certain types of crimes.

In the aftermath of the April 1968 riot, the Court decided, in an effort to expedite the process, to assign the cases arising out of the disturbances to five judges. Since 119 out of the 288 riot indictments were still pending as of April 1, 1969, expedition was not achieved. In addition, the Court has failed to systematically monitor this special calendar and, as a result, there has been no effort to evaluate or control the individual performance of the judges.

In February 1969, the Court adopted another modified individual calendar system for three categories of crimes: felony murder, armed robbery and bank robbery. The formulation of this policy and the assignment of cases to all the judges but the Chief Judge was done without consulting with the Assignment Office or checking the existing Ready Calendar. Afterward it was discovered that a substantial number of cases assigned to individual judges had previously been scheduled for trial under the Central Calendar. In order to avoid decimating the Central Calendar the order assigning cases to individual judges had to be revised as soon as it was issued. While this system is now in operation, no systematic effort is being made to monitor the caseflow. Thus, here too, evaluation and control will be difficult and the value of having this special calendar will be hard to ascertain.

Since all three systems are drawing upon the same personnel, coordination problems especially with regard to prosecutors and defense counsel are multiplied, not eased. Rather than solve problems, the Court's piecemeal and uncoordinated attempts to alleviate its calendar problems only serve to make the processing of criminal cases more complex and difficult to manage. An elaboration of systems is not the answer.

E. ARRAIGNMENTS

Aside from being no longer appropriate, the current procedure whereby a defendant is arraigned on the second Friday after the re-

[4] Banfield and Anderson, *Continuances in the Cook County Criminal Courts*, 35 U. of Chicago L. Rev. 259 (1968).

turn of an indictment puts an unnecessarily heavy strain on the system. This practice has involved arraigning as many as 60 defendants on one day. Not only does that result in a very uneven flow of paper work, the U.S. Marshal is hard-pressed to transport and house all the defendants that must be brought to court on Fridays. For instance, in addition to arraignments, on every other Friday, criminal motions are scheduled to be heard and to further compound the problem, many judges schedule sentencing hearings on Friday also. As a result, on many Fridays, well over 100 defendants have to be brought to court. The cell block becomes overcrowded, creating a security problem, and the transportation facilities are severely strained. The U.S. Marshal has only one bus and one van with a total capacity of 62 people. With this equipment, the Marshal must transport defendants to and from the Court of General Sessions as well as the District Court. Thus, even though some prisoners are awakened as early as 4 a.m. for a court appearance, on some occasions, they still do not arrive in court on time. This is especially true of General Sessions which is served last by the Marshal.

Furthermore, by concentrating arraignments, motions, and sentencing on Friday, the District Court has created scheduling problems for the Court of General Sessions. The defense bar in General Sessions is small. Since many of its members also practice in District Court, the Friday trial schedule in General Sessions often breaks down because counsel are tied up in District Court. Therefore, arraigning defendants only on Friday not only contributes to delay in processing a criminal case, it also causes an undue strain on the entire system of criminal justice in the District of Columbia.

At present, the Court does not notify a defendant charged pursuant to an original indictment of the date of his arraignment. If such a defendant fails to appear for arraignment, a bench warrant is issued for his arrest. Even though the number of original indictments is small, this procedure may well involve the unnecessary preparation and service of bench warrants. If notified of their arraignment date by letter, it is quite possible that a number of original indictment defendants will appear, thus obviating the need for at least some bench warrants.

IV. RECOMMENDATIONS FOR CALENDAR MANAGEMENT

Summary

Consistent with a recommendation of the Committee on the Administration of Justice, the Court has recently decided to adopt an individual calendaring system for criminal cases. In implementing this decision, we recommend that the Court develop an overall calendar management program which includes the following elements: Court control of the calendar, formulation and enforcement of operating standards and policies, critical evaluation of performance, collection and analysis of meaningful statistical data, and systematic planning for change. (Details are set forth on pp. 47–50, *infra*.)

In effectuating this program with regard to an individual calendaring system, we recommend that the Court:

Select a Coordinating Judge to generally supervise and coordinate the processing of criminal cases;

Assign cases to individual judges immediately after the return of indictments. Cases should be classified by category, with cases of each category divided equally among the judges, except for the Chief Judge and the Coordinating Judge who should get a lesser number of cases;

Require the U.S. Attorney to assign at least 2 Assistants to every judge hearing criminal cases. The rotation of Assistants should be slow but no Assistant should be assigned to the same judge for more than 6 months;

Develop a general case-setting policy on the basis of experience and the statistical reports we recommend the Court produce. At the outset, the administrative matters related to managing the individual trial calendars could continue to be performed in a central office. However, this function should eventually be shifted to the courtroom clerks after they have been upgraded in salary and ability;

Strengthen procedures to ensure the early appointment of counsel and maintain a statistical record of appointments by attorney; and

Provide in the individual calendar rules that each judge is responsible for arraigning defendants and deciding all motions in their assigned cases.

Introduction

The recommendations contained in this Report do not depend on the local felony jurisdiction remaining in the District Court. The Committee on the Administration of Justice, in its recommendations for court reorganization (Statement of March 18, 1969), has called for the transfer of some local felony jurisdiction to the Court of General Sessions. While such a transfer would reduce the District Court's criminal caseload, it would not eliminate the need to improve its method of processing criminal cases. Regardless of the volume of cases, we believe the Court should modify the present operation. Volume only serves to make the current problems more serious; thus, reducing the caseload is at best a crude or temporary solution.

In this connection we wish to note that our recommendations are not directed specifically at eliminating the Court's current backlog of criminal cases which, as of May 1, 1969, stood at 1,645. While the Court will be able to stay current and possibly reduce the backlog if our proposals are followed, in our view, a special effort will have to be mounted for the Court to become current. (Of course, if a total transfer of local felony jurisdiction is effectuated in the near future, such an effort may not be necessary since the volume of incoming cases will be sharply reduced). We have not attempted to draft such a program because our attention was focused primarily on the general flow of criminal cases and the overall management of the trial calendar.

Finally, while our recommendations do not specifically deal with the creation of a position of Court Executive, this is only because our proposals are directed at the Court's current system and organizational framework. As indicated in Recommendations for the Reorganization of Our Courts submitted by the Committee on the Administration

of Justice (March 18, 1969), we believe strongly that a Court Executive is needed. (In our separate report on the administrative management of the Court, we urge that the position of Court Executive be created.) It is our hope that such a position will be established soon, so that if the Court adopts our recommendations the Executive will be available to handle the many details of implementation and follow-up. However, these recommendations do not presuppose a Court Executive. His presence would make implementation easier and more certain but he is not essential to bringing about some change in the system.

General Discussion

In framing our recommendations, we have been guided by certain ideas which we believe have broad applicability and are independent of any particular calendar system. In our view, a good calendar management program should include the following elements: (1) Court control of the calendar; (2) formulation and enforcement of standards and policies; (3) critical evaluation of performance; (4) collection, preparation and analysis of meaningful statistical data; and (5) systematic planning for change. Thus, before any change is undertaken, we believe that it is essential that the Court commit itself to these ideas. Changing procedures and rules is not enough; the Court must be continually and actively concerned with the status of its calendar if the system, be it individual or master, is to function effectively. As Judge Alfonso J. Zirpoli of the U.S. District Court for the Northern District of California observed, ". . . far more important than the system employed is the attitude and diligence of the individual judges and the manner in which they maintain strict control of the calendar." [5]

Calendar Control

We believe that in order to successfully manage its calendar, the Court must establish and maintain constant control over the flow of cases. Judge William J. Campbell of the U.S. District Court for the Northern District of Illinois made this point succinctly when he stated: "I cannot emphasize enough that if for one moment our calendars slip from our direct supervision and control, the result will be chaos." [6]

As shown in our Findings and Conclusions, this imperative has not been followed in the District Court. We believe that the problems the Court is experiencing will continue to exist so long as there is no focus of control on the criminal calendar. In our view, judicial supervision should be applied to a case at the outset and it should be applied relentlessly until the case is finally disposed of by trial, plea or dismissal. As a first step this would mean the revision of Rule 87 with the abolition of Ready Calendar control by the U.S. Attorney.[7] (The details of judicial calendar control are set forth in later sections of this Report.)

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[5] "Organizing the Civil Business of the District Court," speech, December 1964, Seminar for Newly Appointed District Judges, Denver, Colorado.

[6] 28 F.R.D. 37 at 63 (1960).

[7] The Report of the ABA Project on Minimum Standards for Criminal Justice, *Standards Relating to Speedy Trial*, § 1.2 (1967) recommends that the court control its trial calendar with the prosecutor required to bring cases to trial within a specified period of time.

STANDARDS, GOALS AND EVALUATION

An essential ingredient in judicial calendar management is the adoption of standards of performance. Without such standards, it is difficult for a court to determine whether it is processing its business expeditiously. This is not to say that output (case terminations) is the sole test of a court's effectiveness. A court must always be concerned with the quality of its operations. But since the quality of justice dispensed is often adversely affected by delay and mismanagement, it is clear that a court must also be concerned about the efficiency of its operations. As the D.C. Crime Commission put it (p. 268 of its Report) : "Efficiency is not a matter of speed alone; it is a device for assuring that there is no denial of justice because of inordidnate delays." A good way to ascertain efficiency and effectiveness is to compare results with accepted operational norms and goals.

In developing operational guidelines, the Court should consult fully with key personnel to get the benefit of their knowledge and experience. The processing of criminal cases is necessarily a cooperative effort and thus managing such a system cannot be done in isolation. Everyone involved in the criminal justice process (especially the bar and court personnel) should be kept fully informed as to the court's policies, and, by the same token, their views should be sought and considered by the Court. Once established and adhered to, publicly declared policies and goals can be the basis for an improved pattern of cooperation within the criminal justice system.

Since the Court and its personnel are most familiar with the details of the Court's operations and can best assess its capabilities, we are not proposing specific standards. Developing guidelines should be a top priority item for the Court and those charged with managing the Criminal Calendar. As a good staring point, we suggest the Court consider the model timetable for processing felony cases included in the National Crime Commission's Task Force Report on the Courts (pp. 84–88). This timetable sets out certain minimum time standards which should be met at each significant point in the criminal process from arrest to appellate review. For example, according to the model timetable, arraignment should follow indictment by 1 to 3 days and the trial should take place within 9 weeks of arraignment.[8]

While the District Court is, at present, far from meeting these standards, this should not deter the Court from developing operational norms. As the Task Force Report points out (p. 84), a timetable can serve a number of ends:

> First, it can emphasize the potential of the process to deal with its business with alacrity, and it can suggest the kinds of steps necessary to dispose of cases within a reasonable time. Second, it can help to distinguish between the necessary and the needless delay. Third, it can help to eliminate the commonly observed passage of time during which nothing happens.

Therefore, in our view, successful judicial management of the calendar not only will be difficult to achieve without standards; the Court

[8] As to the period between preliminary hearing and indictment, the Report recommends that the lower court or prosecutor regularly prepare a list of all cases bound over to the felony court, showing the date of the action. The list is to alert the felony court to the pendency of specific cases, and the prosecutor is to be required to explain any delays that exceed the court's time norm. The suggested standard is 3 to 7 days. In contrast, a sampling of indictments returned in the early months of 1969 indicates that the period between preliminary hearing and indictment now averages 55 days.

will also be hard pressed to demonstrate that it is operating at its full effectiveness.

A key aspect of an effective calendar management program is a restrictive continuance policy. The National Crime Commission's Task Force Report on the Courts put it this way (at p. 86) :

> If courts are to exercise effective calendar control and to expedite the cases before them, they must reject consent of the parties as a basis for granting adjournments. The court must inquire into the reasons for the parties' request for adjournment and determmine the adequacy of the grounds upon which adjournment is sought. The question of allowable delay must be thought of in terms of broader interests than the convenience or desires of the primary participants in the proceedings.

To that statement, we add the recommendation that a record be kept of all continuances granted. Some continuances, of course, are necessary. The Court should, therefore, be in a position to know the reasons for and volume of continuances so that appropriate action can be taken where required.

A part of establishing goals and policies would be the assignment of priorities among cases. Thus, jail cases and cases involving violent crimes could be given priority treatment and put on an accelerated schedule. While this is more of a public policy issue than a management question, it should be noted that an obvious limitation to the priority technique is that for each case granted preference, another must be delayed. While priorities for some cases may be necessary, little would be accomplished by an approach that inevitably results in even greater delay for the routine case.

RECORDKEEPING AND REPORTS

In order to monitor and effectively manage its criminal calendar the Court must revise its recordkeeping and reporting system. The objective is to produce information which will permit assessment of the Court's workload and performance regularly and which can serve as a basis for reaching decisions with regard to policy changes that may be necessary.

Currently, the Assignment Office reports monthly to the Chief Judge as to the number of indictments filed and the number of dispositions by trial, plea or dismissal. This report is accompanied by a list of all of the cases disposed of showing the number of days from indictment to disposition. We suggest that the report be revised to delete the list and instead provide an analysis of statistical data which would indicate whether the Court's performance standards are being met. For example, the report would show the median age and age range of the cases disposed of, measured from indictment to arraignment and arraignment to trial, the average number of continuances per case and whether the continuances were granted at the request of the prosecution, the defense, or on the Court's own motion. This material could be made more meaningful by including comparable data from previous years, so that significant trends can be identified early. With this type of report, the Coordinating Judge could determine whether the Court's operational goals and policies are being achieved. If not, immediate action to solve the problem would be indicated.

In addition, a monthly report should be prepared showing the status of the Court's pending cases. This report should list the cases by age,

indicate trial dates, and identify those cases designated for priority treatment. For all cases pending longer than the Court's norm for disposition, the report should also specify the number of continuances and reasons, as well as other information to explain the delay.

Other information such as similar statistics for each separate category of crime, length of trials, concentration of cases in prosecutors and defense counsel should also be maintained. For example, at present there is no simple way to determine how many cases a defense attorney has been assigned in any given period. While the problem is not as severe as on the prosecutor's side, there is some concentration of cases in a group of defense counsel. This type of concentration exacerbates the already difficult case scheduling problems of the Court. With data as to the number of appointments each attorney is getting, the Court would be able to spread the caseload more evenly among the defense bar. To be useful, such a report would have to be current and thus is should be updated weekly to keep the Chief Judge fully advised as he appoints counsel.

In addition, since each judge is, in effect, part of a team, the flow of information among the judges about the operation of the system should also be expanded. The performance, not only of the Court but also of the individual judges, should be reported to each member of the bench (monthly or quarterly). In a joint endeavor, it is easy for an individual's contribution to be lost and, therefore, we believe it is important that each judge be kept fully advised of his individual performance in relation to the efforts of all.

SYSTEMATIC PLANNING

As a first step in adopting the individual system, the Court should develop a comprehensive "master plan" to guide implementation and monitor performance under the new system. Our recommendations are designed to serve as a guide and are not intended to cover all the details involved in the process of change. A Court staff member should be placed in charge of planning the details of any proposed change. He would be primarily responsible to the Coordinating Judge and the Criminal Calendar Committee. (The Court Executive would be the staff member in charge if that position is created.) Implementation should not begin until the plan is complete and foreseeable problems have been solved.

As indicated above, critical evaluation of performance is essential to the process of change. "Experiments" should be montored and controlled. As new techniques are tried, old techniques that do not work should be discarded. Coordination, planning and close supervision are extremely important in this approach.

As illustrated previously, this has not been the approach of the Court in the recent past. It has approached its calendar problems in an unplanned and uncoordinated fashion. By adding two modified individual systems to its central system, the Court has made the processing of criminal cases unduly complex. This type of approach should be avoided in the future. When modifications prove necessary, they should be made within the context of a particular system or a wholesale changeover to a new approach should take place.

Individual Calendaring System

While we have not approached our analysis with the view that any one calendaring and case assignment system is intrinsically superior to another, the recommendations set forth below relate only to an individual calendaring system. We have followed this approach for a number of reasons.

First of all, the central system has been in operation for a number of years and as our Findings demonstrate the results have not been very satisfactory to the public, the bar, or the Court. Change is clearly in order. Since the individual system involves each and every judge in supervising and controlling the flow of cases on his own calendar, changing to such a system would, of necessity, require the court to reevaluate its calendar management policies. Such a reassessment is essential and, in our view, it is more likely to take place if the Court adopts an individual calendaring system.

Secondly, consistent with a recommendation of the Committee on the Administration of Justice,[9] the Court has recently decided to try, as of October 1, 1969, an individual calendaring system for criminal cases. In view of the Court's decision, we do not believe it would be appropriate to include in this report a series of recommendations concerning modifications to the central system. As stated before, a change in approach is needed. Since we want to encourage the Court in its effort, our recommendations will pertain only to an individual calendaring system.

By doing so, however, we do not wish to imply that improved calendar management will automatically be achieved by changing calendaring systems. Unless the Court commits itself to actively managing and controlling the flow of cases, no system can function effectively. The various factors discussed previously with regard to a sound calendar management program are all based on this proposition, as are our more specific recommendations set out below.

Coordinating Judge

Under the individual system, cases are assigned to judges at the outset and each judge has the responsibility of expeditiously processing the cases through to conclusion. The key factor in this system is self-motivation—the desire of each judge to perform well. To encourage and reinforce this incentive, it is important that meaningful reports on each judge's productivity be compiled and circulated (see p. 50, *supra*). However, while individual responsibility is a prime consideration, it is equally important under an individual system to have uniformity as to the application of the policies and norms adopted by the Court. Adoption of an individual calendaring system should not lead to the balkanization of the Court. To lessen this possibility and to promote coordination among the judges hearing criminal cases, we recommend that one judge be designated as the Coordinating Judge of the Criminal Calendar.[10]

The Coordinating Judge should serve as the focus of control of the individual system and should be the link between the Court's staff

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[9] See letter of the Committee on the Administration of Justice to Judge George L. Hart, Jr., dated January 23, 1969.

[10] Because the Chief Judge has broad administrative responsibilities that require his attention, we believe that it would be best to give another judge the responsibility for supervising the criminal calendar.

and the various judges hearing criminal cases. Weekly and monthly reports showing the status of the criminal calendar (see pp. 49–50, *supra*) should be sent to the Coordinating Judge for his information and action where necessary. However, unlike the Assignment Judge in the current system, the Coordinating Judge should not be empowered to grant continuances or set trial dates except in emergency situations where a matter needs immediate attention and the judge to whom the case is assigned is unavailable.

In addition, the Coordinating Judge should maintain liaison with the U.S. Attorney. Even though each judge will be controlling his own trial calendar, there may be certain matters which should be handled on a court-wide basis (*i.e.*, assignment and rotation of prosecutors). Weekly or bimonthly meetings with the U.S. Attorney should be part of the normal procedure.

In order to ensure continuity and the development of the necessary expertise and commitment, the assignment as the Coordinating Judge should be for no less than a year. We suggest that the Court consider electing a judge to this position. An election will ensure accountability to the entire bench and should contribute to the selection of a judge with the inclination and talent for the position.

With regard to the development and revision of policies and plans, the Coordinating Judge should be aided by two other judges. Together these judges would form a Criminal Calendar Committee. The assignment to this Committee should be a long-term in order to foster a sense of stability, and changes in Committee membership should be made only one at a time.[11]

The first task of the Committee should be the formulation of a comprehensive plan to guide the conversion to an individual system. As stated in our recommendation concerning systematic planning (p. 50, *supra*), a member of the Court's staff should be put in charge of preparing a detailed plan for the Committee's approval.[12]

At the same time and as part of the process of change, the Committee should develop for the Court's approval, after full consultation with the bar, the U.S. Attorney, and Court staff, a set of operating policies to govern the processing of criminal cases. (A processing timetable and a tough continuance policy should be part of the Court's Rules.) As indicated previously, such standards are essential for evaluating performance and estimating what resources are needed to meet the goals of the system.

The Criminal Calendar Committee should also serve as an advisory body to the Coordinating Judge and should be involved in such tasks as redividing caseloads or recommending changes in the Court's calendar policies.

ASSIGNMENT OF CASES

Since early assignment of cases is one of the distinguishing features between the individual and central calendaring systems, the Criminal Calendar Committee will have to formulate a case assignment policy

[11] The Los Angeles Superior Court, which uses a form of the individual calendar for its criminal cases, has a similar policy-making committee in its criminal division.

[12] The formulation of this plan should involve consulting with the Administrative Office of the U.S. Courts, other district courts which utilize an individual calendar system, the bar, and the U.S. Attorney's Office.

for the Court. At first, this will involve deciding how to divide the pending caseload as well as devising a system for the assignment of new cases. The case assignment policy should ensure that each judge shares equitably in the Court's overall criminal caseload. Accordingly, we recommend that cases be classified by category, with cases of each category divided equally among the judges. (The Calendar Committee will also have to devise rules to cover the redivision of cases if there is a long illness, a judicial vacancy, or a new appointment to the bench.)

As to the assignment of new cases, the system should be fairly automatic but designed so that it effectively prevents "judge-shopping" by either the prosecution or defense. The assignment of cases to judges should take place immediately after indictments are returned. For example, one simple way of doing this is to have decks of cards printed for each category of case. The cards would be numbered consecutively with each judge's name printed on a proportionate number of cards but with each judge's cards arranged in random order throughout the deck. The decks of cards should be sealed, so that they can only be pulled off from the top. When a case is filed, the top card in that category is drawn, and the case is assigned to the judge whose name appears on the card. To safeguard the integrity of the process, the printing of the cards should not be done by the Court and the judge's name should appear on the reverse side of the card. The same process could be used to divide the pending caseload as well.

In view of the administrative responsibilities of the Chief Judge, we recommend that he be given a reduced caseload, possibly half the number of cases assigned to the other judges. In addition, to compensate for the time the Coordinating Judge will be devoting to administrative matters, his caseload should also be somewhat reduced—at the outset, by as much as 25 percent.

The Coordinating Judge should periodically review the status of each judge's docket. Because of illness, protracted cases or similar problems, an adjustment in the caseloads of individual judges may have to be made from time to time. The Coordinating Judge, in consultation with the Calendar Committee, should be authorized by the Court's Rules to make such adjustments, preferably by reducing for a given period of time the number of new cases assigned to the particular judge. In addition, provision should be made for the special assignment of cases that clearly appear to be complex and protracted. Such assignments should be made by the Coordinating Judge after consultation with the Chief Judge. While as a rule there should be an automatic, random assignment of cases, the system should have some flexibility to allow for a special assignment in the exceptional case.

ASSIGNMENT OF PROSECUTORS

As illustrated in the Findings and Conclusions section, a continuing problem in the current system is the uneven distribution of cases among Assistant U.S. Attorneys which makes the scheduling of trials difficult. In order to avoid this problem in an individual system, the Court should require the U.S. Attorney to assign at least 2 Assistants to every judge hearing criminal cases. The Assistants would thus handle the cases assigned to the judge and no others.

The rotation of these Assistants among the judges should be slow to keep coordination problems to a minimum. However, to avoid the development of too close a relationship between the judge and prosecutor, no Assistant should be assigned to the same judge for more than six months. In addition, so long as it does not disrupt the calendar, the U.S. Attorney should be given some leeway so that he can assign special prosecutors for certain cases. Arrangements for such assignments should be worked out with the Coordinating Judge and the trial judge involved.

ADMINISTRATION OF TRIAL CALENDARS

As indicated above, the Coordinating Judge should be the focal point of control for the Court's criminal calendar. He should monitor the caseflow continually, so that problems as to individual dockets can be identified early and solutions proposed promptly. Since each judge will be responsible for his own calendar, it will be the primary responsibility of each judge to see to it that the Court's time standards and continuance policy are enforced. The Coordinating Judge will provide guidance and overall coordination.

At the outset, managing the individual trial calendars will present some problems. Because the individual work habits of judges vary, a realistic and uniform case-setting policy would be difficult to develop, although as part of the conversion process, case-setting guidelines should be formulated. Some over-setting of the trial calendar will, of course, be necessary since most cases are disposed of without a trial. (In fiscal 1968, trial terminations were 37.7 percent of all dispositions.) Thus, each judge will have to experiment until he finds a case scheduling pattern which does not overload his calendar nor produce gaps. The statistical reports that we recommend the Court produce should be useful in this process. Those reports would show the median ages, by category of crime, of cases disposed of, the average length of trial for each type of case, and the number of weekly or monthly dispositions per judge.

With regard to maintaining control records of the cases assigned to each judge and notifying the parties of arraignment, motions, and trial dates, initially, at least, this function could continue to be performed by the Assignment Office or a calendar section in the Clerk's Office if the Assignment Office is consolidated into the Clerk's Office. (This question will be discussed in our separate report on the Court's administrative management.) In the long run, the calendaring function should be assumed by the courtroom clerk assigned to the judge. In federal district courts which use an individual calendar, it is the courtroom clerk who has the responsibility for preparing and supervising the calendar and maintaining control records. (See Judicial Salary Plan for personnel in the clerk's office of U.S. District Courts.) Therefore, we recommend that the Court work with the Administrative Office of the U.S. Courts in developing a program to upgrade the salary and ability of the courtroom clerks so that they can assume this additional responsibility.

While the calendaring function will eventually be decentralized, there still will be a need for a central office to compile the statistical data that is necessary for the smooth functioning of the system. Thus, the Assignment Office should evolve into a data gathering and plan-

ning operation. In effect, it should become a special staff for the Coordinating Judge.

APPOINTMENT OF COUNSEL

At present, the Chief Judge appoints counsel for indigent defendants and the practice is to make the appointment in the pre-indictment stage of the proceeding. (This policy should be formalized by Court rule.) We do not believe that this procedure should be changed under an individual calendaring system. However, after a case is assigned to a judge, any problems relating to the assignment of counsel should be resolved by that judge. In order to avoid confusion, the administrative details of any change in assigned counsel should be handled by the central staff which processes initial appointments.

Since most felony defendants enter the system through the Court of General Sessions, there is a strong need for more coordination between the District Court and General Sessions with regard to the appointment of counsel.[13] The best way to achieve greater coordination would be to establish a central agency to provide defense services in all the trial courts. To this end, the Committee on the Administration of Justice has recommended that the Legal Aid Agency be given the job of central coordinator.[14] Under this proposal, the Court would no longer have to compile and maintain its own list of attorneys available to represent indigents. That function would be performed by the Legal Aid Agency. However, until there is some central coordination, we recommend that the District Court personnel handling appointments maintain closer contact with the Court of General Sessions.

In addition, an internal check should be developed so that cases pending before the Grand Jury are screened to determine whether there is a need for counsel. Finally, as stated in our recommendation concerning the need for improved recordkeeping and reports (pp. 49–50, *supra*), the Court should maintain an up-to-date statistical record of appointments by attorney.

ARRAIGNMENTS

The arraignment procedure should change completely under an individual system. We recommend that each judge be responsible for arraigning the defendants in their assigned cases. In scheduling arraignments, the judges should be guided by the timetable established by the Court. All defendants, including those charged pursuant to an original indictment, should be notified of the time of arraignment. Thus, there should no longer be just one arraignment day per week and the problems caused by the current practice (see pp. 44–45, *supra*) should be eliminated.

MOTIONS

The current motions practice will also change completely. Each judge will be responsible for all the motions filed in the cases assigned to him. The Court's time standards for the filing and disposition of motions should determine the motions schedule for each judge and as a result, motions should no longer be heard only on Friday.

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[13] Greater coordination should result in more defendants appearing at arraignment with counsel. On the basis of a 10 week sample taken during the first six months of 1969, it appears that 30 percent of the defendants arraigned in District Court do not have counsel.

[14] Recommendations for the Reorganization of Our Courts, submitted by the Committee on the Administration of Justice, March 18, 1969, pp. 17–19.

In connection with motions, we strongly urge the Court to consider adopting an omnibus hearing procedure (see Appendix No. 1). The omnibus hearing is designed to accelerate the pretrial motions process by grouping all motions together, so that they are heard at one time rather than successively. Under this procedure, motions are made by way of a checklist, thus substantially simplifying the current practice. As indicated in the Appendix, the omnibus hearing approach has worked successfully in a number of courts. We recommend that the Administrative Office of the U.S. Courts be consulted about experimenting with this procedure in this Court.

APPENDIX No. 1. THE OMNIBUS HEARING

(Copy of a report prepared by U.S. Circuit Judge James M. Carter, dated March 5, 1969)

The concept of the Omnibus Hearing grew out of one of the subcommittees of the American Bar Committee on Minimum Standards of Criminal Justice, the Sub-Committee on Pretrial Procedures, chairmanned by the Honorable Alfred P. Murrah, Chief Judge of the Tenth Circuit.

The other members of the sub-committee, were:

Honorable Kingsley A. Taft, Supreme Court of Ohio.

Dean Edward J. Barrett of the University of California School of Law at Davis, California.

William G. Hundley, of the Department of Justice, at the time the committee was formed, and later counsel for the N.T. Football League.

Professor Fred E. Inbau, Northwestern School of Law.

Honorable Frank J. Murray, Judge of the Massachusetts Superior Court at Boston, at the time the committee was formed and later a U.S. District Judge in Boston.

Thomas M. Scanlon, of Barnes, Hickman, Pantzer and Boyd, Indianapolis, Indiana, who had had an extensive practice in civil and criminal antitrust cases.

Honorable George M. Scott, District Attorney of Hennepin County, Minneapolis, Minnesota, formerly President of the District Attorney's Association of the United States.

Harris B. Steinberg of New York City, an able and experienced trial lawyer with an extensive criminal practice.

William B. West, III, a former United States Attorney and a practicing lawyer in Dallas, Texas.

The writer, then Chief Judge, Southern District of California (San Diego, California).

One of the subjects assigned to the sub-committee was Discovery in criminal cases. Our proposed Standards and our report will be printed and released in the near future.

Our discussions covered the whole field of discovery, but, as particularly pertinent to what later became the Omnibus Hearing we discussed at length the various pretrial and discovery motions made by defense counsel; the use of successive motions on different subjects to delay the progress of the criminal trial; the limitations on discovery by the prosecutor; the increasing use of young lawyers under the Criminal Justice Act in the federal system, and as appointed counsel in state prosecutions, and their lack of familiarity with various tools for discovery available to them.

The writer as Chief Judge of the Southern District of California, had used a check sheet to be passed out to appointed counsel, calling their attention to the various tools available for discovery. There were also provisions on the check sheet for making a record of what transpired in the case, *e.g.*, why the defendant plead guilty, if he did, and why he did not appeal if no appeal was taken. This was done for the protection of the defense lawyer in the event of later post conviction proceedings.

Out of our discussions came the suggestion that we devise, as a means of implementing our Standards on Discovery, some sort of procedure which would supply the function of a check list, group all the motions together so that they would be

heard at one time and not successively; and provide a summary method of disposing of those that needed no evidentiary support; provide for discovery by the defendant without court intervention on a mandatory basis of the elements of the prosecutor's case; permit additional discretionary discovery; provide for the prosecutor's discovery within constitutional limits; and generally to expedite the processing of the criminal case.

Originally, for want of a better name, we called our concept the "Ball of Wax," later the "Cover-All Motion" and finally decided upon the term "Omnibus Hearing."

I. THE PROPOSED STANDARDS ON DISCOVERY

It is probably not out of place to state generally the scope of our proposed Standards for Discovery as they will be outlined in the forthcoming report of the sub-committee. In substance, the Standards will provide for:

A. Discovery by the Defense

(1) Mandatory disclosure by the presecution of the substance of the prosecutor's case, including statements of witnesses and their names.

(2) Additional discretionary discovery which may be obtained upon motion.

(3) In compliance with *Brady v. Maryland*, 373 U.S. 83, the prosecutor will be required, on motion and court order, to divulge other information in his possession.

(4) Upon request by the defendant, the prosecutor will secure and supply to defendants' attorney, information in the hands of related agencies, *e.g.*, in an FBI case, reports by the S.E.C. or by Customs which are material to the case.

(5) The prosecutor, on motion and order of the court, will be required to use his best efforts to secure information in the hands of any non-related agencies—*e.g.*, in a Customs case, report of a local police department, material to the case.

(6) Provision is made for matters which are not subject to discovery, as for instance, *work products*, the *names of informers* in certain cases and matters involving *national security*.

B. Discovery by the Prosecution

Discovery by the prosecution within constitutional limitations fixed by existing case law:

(1) Defendant to submit to withdrawal of a blood sample; *Schmerber v. California*, 384 U.S. 757 (1966).

(2) Defendant to provide exemplars of his handwriting; *Gilbert v. California*, 388 U.S. 263, 266 (1967).

(3) Defendant to appear in a line-up with counsel present; *U.S. v. Wade*, 388 U.S. 218 (1967).

(4) Defendant to submit to fingerprints; *People v. Jones*, 112 Cal. App. 68 (1931).

(5) Defendant to pose in court for identification; *People v. Clark*, 18 Cal. 2d 449 (1941).

(6) Defendant to produce records and documents kept in compliance with state or federal statutes; *Shapiro v. U.S.A.*, 335 U.S. 1, 5–36 (1948); *Stillman v. U.S.A.*, 177 F. 2d 607, 617 (9 Cir. 1949).

(7) Medical reports the accused proposes to offer in evidence.

(8) Defendant to speak for voice identification; *U.S. v. Wade*, 388 U.S. 218, 222 (1967).

(9) Defendant to try on clothing; *Holt v. U.S.A.*, 218 U.S. 245 (1910); *U.S. v. Wade*, 388 U.S. 218, 221 (1967).

To provide such discovery to the prosecution, the court on motion may make necessary orders.

(*a*) Reasonable notice of time and place of defendants' required appearance shall be given defendant and his counsel;

(*b*) Provisions for such appearance may be made in the order admitting defendant to bail or providing for his release;

(*c*) If in custody, defendant can be ordered to be present and be produced by the custodial officer.

II. THE OMNIBUS HEARING

A. The Plan of the Omnibus Hearing

In addition, our sub-committee report will propose the procedural device referred to above as the Omnibus Hearing, to be held after arraignment and plea,

and following the obtaining by the defense, of mandatory discovery. At the Omnibus Hearing the court will entertain, by check list, motions or applications for discretionary or additional discovery; and from the check list, hear and decide all motions that can be heard without the taking of testimony. The court may require additional memoranda or supporting material to be filed.

Counsel are required to meet prior to the Omnibus Hearing—(1) secure their mutual discovery, (2) engage in plea bargaining, (3) fill out the Omnibus action form (OH No. 3), showing what discovery has been obtained, (4) and generally get the Omnibus action form in shape for presentation to the court at the Omnibus Hearing.

If a motion requires an evidentiary hearing, such as a motion to suppress contraband or admissions or confessions, or motion to reveal the name of the informer or produce grand jury transcripts, etc., then at the Omnibus Hearing, a date is set and the full fledged evidentiary hearing held later.

There is provision on the proposed forms for the securing of stipulations as to evidentiary facts which save time and money, such as the testimony of the chemist in a narcotic case, a stipulation as to the chain of custody, or a stipulation as to ownership of a vehicle in a Dyer Act case. The court may also, in a complicated or documentary case, set a formal pretrial hearing.

The purpose of the Omnibus procedure is to:

(1) Eliminate written motion practice, except where necessary;

(2) To provide a check list, suggesting to defense counsel the various procedures and tools available to them;

(3) Secure discovery by the prosecutor and the defense within the constitutional limits permitted;

(4) Encourage voluntary discovery by the prosecutor of its basic case;

(5) Rule upon and supervise additional discovery requested by the parties;

(6) Expose and dispose of latent constitutional issues;

(7) Provide a period of time prior to the Omnibus Hearing for disclosure, exploration and plea discussion between counsel;

(8) Allow the defendant discovery so that he may make an informed decision as to a plea of guilty, if such is his decision;

(9) Postpone for formal hearing those matters which will require of necessity, preparation of written documents, affidavits, memorandum and/or the calling of witnesses;

(10) Generally to make a record of discovery had, and to generally assure discovery by the defendant commensurate with the commands of *Brady v. Maryland, supra.*

The Action Form (OH No. 3) is signed by counsel and approved by the court as a memorial of what was accomplished, and goes into the file. The reporter's transcript is the real record if any dispute arises.

B. The Operation of Omnibus Hearing in Practice

As shown above, the concept of the Omnibus Hearing grew out of the exchange of ideas in the sub-committee. As Chief Judge of a two judge district, with a heavy criminal calendar, I agreed that my colleague, Judge Fred Kunzel and I, with the approval of the sub-committee, would experiment with the procedure. The Omnibus Hearing procedure has been used in the Southern District of California since April of 1967.

The Omnibus procedure has worked well in the Southern District of California. The quality of justice has improved. The trial moves more rapidly. The U.S. Attorneys and defense counsel have been saved much paper work on motions, offset by the time used for the additional appearance in court at the Omnibus Hearing. The hearings averaged about 15 minutes per case, which was time well spent.

Certainly, attorneys are better prepared; defendants are securing the constitutional protection afforded them by *Brady v. Maryland, supra;* pleas of guilty are made on a fully informed basis; better records are being made in the trial court; and there have been less appeals and less applications under 28 U.S.C. 2255, for post conviction relief. We anticipate that the files going to the circuit on appeal containing the action form, and the reporter's transcript showing the hearing, are of considerable help in finalizing convictions and in obviating 2255's, although as we know there is no complete protection against them.

On the other hand, there have been a few more acquittals and hung juries, largely in cases tried by visiting judges who have been assigned to help out with the heavy calendar. The cases certainly have been delayed at least a ten day period required for discovery before the Omnibus Hearing, and by attorneys waiting until after the Omnibus Hearing to enter a guilty plea.

There have been further delays in the Southern District of California. One cause for delay has been the inadequate staff, numerically, of the U.S. Attorney, six Assistant and the U.S. Attorney, handling 1,200 criminal cases a year, plus 800 "wetbacks," plus a sizable government civil load.

There have been further delays in getting cases to trial, but we attribute this not to the Omnibus procedure, but to the effect of the Bail Reform Act, whereby a larger number of defendants are going out on bail and are in no hurry to have their cases tried, and in no hurry to plead and go to jail or risk that consequence.

In February 1968, through the cooperation of the Administrative Office, five chief judges and their respective U.S. Attorneys came to San Diego to observe and examine the Omnibus Hearings. It was contemplated that certain of the districts involved would attempt to set up a uniform procedure for Omnibus Hearings, carry on the experiment under the supervision of the Administrative Office and develop statistical material to be compiled by the Administrative Office.

The Omnibus Hearing has been used by Judge Adrian Spears of the United States District Court in San Antonio, by Judge William Becker in the United States District Court in Kansas City, Missouri, and by Judge Ray Plummer of the United States District Court in Alaska. In addition, Judge Solomon in the United States District Court in Portland, Oregon, has for years informally done many of the things set forth in the Omnibus Hearing Plan, as part of the pretrial in criminal cases. Many other judges throughout the country have to a greater or lesser degree, customarily used techniques which are part of the Plan.

Finally, the Standards for Discovery and the Omnibus procedures, suggested by the sub-committee, are broad enough to be applicable in both state and federal criminal cases, and it is hopeful that upon the publication of the report, state and other federal judges will undertake to experiment with the procedure. No statute is required. The proceedings can be initiated by order or rule of court.

REPORT ON THE OPERATION OF THE JURY COMMISSION IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

AUGUST 1969

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REPORT ON THE OPERATION OF THE JURY COMMISSION IN THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

I. INTRODUCTION

Scope

This report contains the results of a study of the Jury Commission of the United States District Court for the District of Columbia. The study covered the methods and procedures used to draw and process names for jury service, the use of electronic data processing equipment, the clerical staffing of the Jury Commission Office, and paperwork and recordkeeping in the office. Time limitations prohibited an extension of the study into the areas of juror utilization or processing procedures used outside of the Jury Commission Office (*e.g.*, operation of the jury lounge).

Purpose

The purposes of this brief survey were to (1) determine and recommend methods for minimizing handposting and duplication of information recording; (2) evaluate the organization of the Jury Commission to determine the staff needed to operate the office; and (3) determine the extent to which automatic data processing could be used to improve office efficiency and reduce manpower requirements.

Background

In the District of Columbia, the Jury Commission of the U.S. District Court handles the selection, examination, and preliminary processing of petit jurors for the Juvenile Court, the Court of General Sessions, and the U.S. District Court. Each court, however, has its own Jury Lounge facilities and takes over the processing and use of jurors after they report for service in the respective courts. The Jury Commission also summonses, from time to time as directed by the District Court, citizens to serve as Grand Jurors.

When we first began our survey of the Jury Commission (Spring 1968) we found that names for jury service were copied by hand from the Polk Company *City Directory* by the Commission staff. During fiscal year 1967, 43,000 names were obtained in this manner. The volume of typing, handposting, and cross-checking connected with the processing of these names was immense.

It soon became apparent most of this could be eliminated through the use of a computer. The selection and processing of jurors is easily adapted to automation. It is a routine, repetitive, high volume operation that is particularly suited to computer or other automated processing. Consequently, the Court Management Study and the Administrative Office of the U.S. Courts (A.O.C.) investigated the desirability and the feasibility of using computer tapes from the Polk Company City Directory from which to randomly draw names for jury service using a computer. The A.O.C. arranged to obtain the

tapes and write the necessary computer programs. Beginning early in 1969, they began drawing names and addressing questionnaires by computer.

II. THE JURY COMMISSION IN THE DISTRICT OF COLUMBIA

Statutory Authority

The Jury Selection Act of 1968 (Public Law 90–274) required each U.S. District Court to develop a plan for the random selection of jurors in compliance with the provisions of the Act. One stipulation for the plan is stated as follows: "(1) the Plan must either establish a jury commission, or authorize the clerk of the court, to manage the jury selection process. If the plan establishes a jury commission, the District Court shall appoint one citizen to serve with the clerk of the court as the jury commission: *Provided, however*, that the plan for the District of Columbia may establish a jury commission consisting of three citizens." The "three citizens" commission for the District of Columbia permitted the then existing Jury Commission to continue unchanged.

Throughout the balance of Public Law 90–274 responsibility for performing the various activities involved in juror selection and processing is assigned to "the Clerk or the Jury Commission" unless it is a duty which must be performed by a judge. Occasionally, the Act is confusing in that it assigns certain duties to "the Clerk" but later assigns the same duties to "the Jury Commission."

The basic system for random selection and processing of jurors established by PL 90–274 is presented in the flow diagram in Appendix II. The District of Columbia, however, uses the Polk City Directory as a source of names for the Master Jury Wheel rather than Voting Lists shown in the diagram because the list of registered voters in the District of Columbia would not supply sufficient names.

Jury Commission

The three-man citizen commission, authorized for the District of Columbia by PL 90–274, is appointed by, and reports to, the Chief Judge. In practice he has delegated liaison responsibilities to a Jury Liaison Judge. With respect to duties and responsibilities, PL 90–274 states only that it is the responsibility of the Jury Commission "to manage the jury selection process."

In the past, the Commissioners, two retired gentlemen and a housewife, have assisted in processing questionnaires, interviewed prospective jurors when necessary, and drawn names from the "qualified wheel." Presently, as explained earlier, jurors names are drawn by computer and the office staff reads and screens questionnaires; interviews of prospective jurors are not held. The Commissioners are generally not actively engaged in the day-to-day operation of the Jury Commission Office or in policy or procedural decisions. While commissioners do re-read the questionnaires after screening by the office staff, as a practical matter, the Commissioners no longer exercise any clearcut administrative, supervisory, or policy-making function with respect to the drawing, summonsing, or processing of prospective jurors. However, for helping out as needed in the Jury Commission Office they may be paid $50/day up to a maximum of $1,250/year. For three Commissioners this is a total expenditure of $3,750/year for salaries.

Office Staff

The office of Jury Commission is staffed with the following clerical personnel:

1 Deputy Clerk, Grade 10 (supervises the office)
1 Deputy Clerk, Grade 7
1 Deputy Clerk, Grade 5
2 Deputy Clerks, Grade 4

The staff, supervised by Mrs. Lorraine Hodgson (with the office twenty years and Clerk of the Jury Commission for the past eight years), manages the selection, summonsing and processing of prospective jurors. While the Clerk of the Jury Commission does not have Division-Head recognition, authority or status, she in effect has to serve as the administrator of the jury selection system for the U.S. District Court, Court of General Sessions, and Juvenile Court. She satisfactorily carries out the functions of the Jury Commission without direct supervision.

In 1955, the Jury Commission staff consisted of a supervisor and four clerks. It is the same size today. It is estimated that during 1969, 100,000 questionnaires and approximately 25,000 second notices will be processed by the office. This is five times the workload of 1955, with no increase in staff. In fact the staff has been the same size since 1949.

Interviews and observation during the study revealed that working through the lunch-hour has been the rule rather than the exception, and vacations have had to be taken at times not necessarily convenient to the employees due to the high volume of paperwork. Sometimes employees on vacation had to be called back to work because the work was falling behind. In addition to the increase in workload over the years, the new provisions of PL 90-274 necessitate a significant increase in the number of names which must be drawn and processed each year by the Jury Commission. Further, pending legislation which will authorize 10–15 additional judges will increase the number of jurors needed. It is not reasonable to expect the existing staff to be able to successfully absorb this work on a long-range basis.

Use of Electronic Data Processing

Use of a computer by the Jury Commission began with the selection of names from the Polk *City Directory* for the Master Wheel and the addressing of questionnaires to those residents whose name had been drawn. During our study we recommended that punched-cards produced as a by-product of this process be used in the Jury Commission Office as the Master Record for each person to whom a questionnaire has been mailed. This had several benefits. First, it allowed the cards to be used as "ballots" in the "Qualified Wheel" so that the computer could be used to draw names for actual jury service and address the summonses, eliminating manual typing of ballots, court lists, and summonses. Second, using the punched cards eliminated the previous Kardex system in which a Kardex card had to be typed for each name and updated from time to time.

In addition to the advantages already realized through use of electronic data processing equipment, there are workload problems which we believe can be expeditiously solved through extending the

use of EDP equipment. Name and address changes received from residents who have been mailed questionnaires pose a problem because the punched-card must be corrected to reflect the change. Presently, these changes (about 1,600 per month) must be handwritten on a list (or on the punched-card) and sent to the Administrative Office for new cards to be keypunched. Thus, the cards are out of the Jury Commission Office 1–2, and occasionally 3, weeks while the changes are being made, and this delays and complicates the work of the Jury Commission.

The Jury Commission maintains limited statistical data on jurors, some required by court order, some needed to answer requests for information or analyze the number of jurors needed. They also must maintain records on qualification for service, length of service and court of service for each juror. Presently, the information is recorded by hand on the juror's punched card rather than on a Kardex card which was used in the past. However, to speed up access to the information and filing of cards the information should be *punched into the cards*. At present, however, this would mean transporting the cards back and forth between the courthouse and the Administrative Office if the Administrative Office found time to do the keypunching.

Problems associated with refiling cards and interfiling cards from new Master Wheel draws into the existing deck of cards previously drawn, have not been alleviated by conversion to computer processing. Since the punched cards serve as the Master Record, it would be easy to do all filing by computer or unit-record equipment. However, this would currently mean transporting as many as 60,000 cards or more to and from the Administrative Office on a daily or weekly basis, which is not feasible for the Jury Commission, aside from the fact that the Administrative Office has very limited computer-time available.

Jury Questionnaires are folded and mailed to prospective jurors by a commercial company. This service currently costs approximately $1,100 per year. Aside from cost, there is some question as to whether an outside company should perform this operation on the questionnaires. During the last mailing, a few questionnaires were lost or mislaid and were not recovered. It would seem advisable for the Jury Commission to directly supervise this operation.

III. RECOMMENDATIONS

1. The US. District Court for the District of Columbia should seek legislation to amend Public Law 90–274, especially section 1863(b), to—

(*a*) Abolish the three-man Jury Commission in the District of Columbia;

(*b*) Provide that the District of Columbia jury selection plan shall establish a Jury Commissioner to manage the jury selection system, and shall specify that the Commissioner be appointed from among qualified employees of the U.S. District Court for the District of Columbia.

(*c*) Provide that in the District of Columbia all functions named in PL 90–274 connected with the selection and processing of jurors, not specifically reserved for a judge, are the responsibility of the Jury Commissioner.

Based on our study, we do not believe that the present Jury Commission system is an efficient or effective method of managing the jury selection system. Further, we do not believe there would be substantial improvement if management of the system were transferred to the Clerk of the Court who has numerous other fulltime record-keeping responsibilities. More effective management will be achieved by assigning responsibility to one fulltime Jury Commissioner for actively managing the day-to-day operation of the jury selection system. This Jury Commissioner would directly report to the Court Executive and be responsible to the Judges of the Court.

With this recommendation, we are not proposing that the Court hire a new employee. Instead, we recommend that when a Jury Commissioner is created in the legislation, the Court drop the position of Clerk of the Jury Commission and promote the incumbent, Mrs. Lorraine Hodgson, to Jury Commissioner. Mrs. Hodgson has demonstrated her ability as a supervisor; she is interested in improving the jury selection system and is receptive to new ideas. In our judgment, she is entirely capable of managing the jury selection system for the U.S. District Court, in cooperation with the Court Executive and the judges.

2. Accordingly, the present Jury Commission Office should be renamed the Jury Division of the U.S. District Court. The title of the present Clerk of the Jury Commission should be changed to Jury Commissioner. This position should be upgraded to at least a Grade 11–12; and the Court should request such a reclassification by the Administrative Office of the U.S. Courts. The position would directly supervise all facets of the operation of the Jury Division and would be appointed by the Court Executive with the approval of the judges.

3. The staff of the Jury Division should be increased and reclassified as shown if recommended data processing equipment is also acquired. (Without the equipment, two Grade 4–5 positions would be needed):

Present		*Proposed*	
Supervisor, Grade 10	1	Jury Commissioner, Grade 11–12	1
Grade 7	1	Grade 7–8	1
Grade 5	1	Grade 5	3
Grade 4	2	Grade 4–5	1
Total	5	Total	6

We recommend that the Court hire additional personnel now, rather than waiting for a crisis situation to arise. The recent conversion to computer processing of:

(*a*) Drawing of names from both the Master Wheel and the Qualified Wheel;

(*b*) Addressing of questionnaires and summonses; and

(*c*) Printing of court lists of prospective jurors,

alleviates the problem of increased volume to the extent that only two additional employees should be necessary to allow the office to read and screen incoming questionnaires on a timely basis and keep the files and records up-to-date. However, if the EDP equipment we recommend is installed in the Jury Division, only one additional employee (as shown) would be necessary. The recommended duties for each staff member, under the proposed extended use of automation, are

presented in Appendix III. If our recommendations concerning reorganization of the courts' administrative staff (contained in our separate report "Administrative Management") are adopted by the court, it will be easier for the Jury Division to get temporary assistance from other departments to cover peak workload periods. Also, our reorganization recommendations should facilitate interdepartmental transfers and promotions between the Jury Division and other administrative divisions.

4. In the future, if local civil and criminal jurisdiction is transferred to the local Court, the Jury Division and staff should also be transferred to that Court, reporting to the Court Executive. The Jury Division of the local Superior Court would continue to supply jurors for the U.S. District Court.

5. The Court should place the responsibility for: (*a*) operating the jury lounge; and (*b*) sending jurors to courtrooms, with the Jury Division rather than the Clerk's Office where it is now, combining these with the other juror-processing functions under the Jury Commissioner. This will require a transfer of the two people currently performing the functions to the Jury Division.

6. Based on prior experience, it is estimated that from the 100,000 first notices and 25,000 second notices expected to be mailed in 1969, the Court will obtain at least 26,000 qualified jurors from the first notice alone. Since the combined courts in the District of Columbia annually summon about 12–13,000 jurors for service, these 26,000 plus others obtained after second notices are adequate. PL 90–274 leaves it up to the court whether to call non-responding jurors into the Jury Office. (See Sec. 1864(a).) PL 90–274 does not mention the sending of third (or even second) notices. Since this is not required by law, and since adequate names are obtained by first and second notices, we recommend that the court *not* expend the time and effort to send third notices or summon non-responding jurors for interviews at this time.

7. The Chief Judge should specify by order to the Jury Commissioner any special ground rules the Court will follow as to excuses and exemptions, etc., from jury service (see Sec. 1865 PL 90–274) so that the Commissioner can handle these in the majority of cases, reducing the number of questionnaires that must be sent to a judge for determination each month (presently about 350/month). This will save time and effort for the Jury Division and the Judge.

Also § 1865 and § 1866(d) are inconsistent as to (1) whether the Clerk or Jury Commissioner is in charge of recording the reason for disqualification, exemption, etc. on the jurors' forms; and (2) where this information is to be recorded. The Law should be amended to clarify this.

8. The Court should obtain and install in the Jury Division a keypunch and a collator to permit the court to (*a*) process, within the Jury Division, the records of potential jurors on an accurate and timely basis; and (*b*) maintain, within the Jury Division, all necessary records and statistics. A detailed description of uses for this equipment is found in Appendix IV. While these two pieces of equipment would not be in constant use in the Jury Division, their rental cost (Approximately $60 per month for the keypunch and $215–$250 per month for the collator) is offset by a) the salary saving of an

additional clerk who would be necessary without the equipment ($3,600/year rental vs. $5,522 Grade 4 Step 1 salary); and b) the ease of processing juror records and statistics. It should be noted that the choice between acquiring the equipment or hiring an employee is weighted in favor of the equipment not only by the salary saving, but also by the fact that the equipment's speed and capability will allow performance of special tasks in recordkeeping and filing that are not feasible by manual methods due to the high volume of records involved. Further, this equipment would be available to other court departments, the civil and criminal calendar sections for example, for recordkeeping and statistical purposes.

9. Obtain for the Jury Division a folder and an envelope inserter (one piece of equipment) to allow the Court to expeditiously and routinely mail out questionnaires without the assistance of a commercial mailing firm. This equipment could also be used by the Marshal's Office for mailing summonses. The Court already has an opener and an envelope sealer. The purchase price of a machine (manufactured by Pitney-Bowes) to fold the questionnaires and put them in envelopes is about $1,400 as compared with $1,100 *per year* expense with a commercial firm. Thus, over a five-year period, the Court could save approximately $4,000 by having its own machine. In addition, the machine would be available to other departments in the Court.

10. The District Court should request that the Administrative Office of the Courts assign an analyst to the Jury Division Office for 1–2 weeks to—

(*a*) further assist the Jury Division in adjusting their operating procedures in accordance with the constraints imposed by the automated system, thereby maximizing the benefits to be realized under this new system;

(*b*) determine what further limited computer processing is necessary to facilitate the Jury Division's use of the new system (for example, machine addressing of second notices); and

(*c*) assist them initially in integrating the keypunch and collator into the operation of the office, including revising the punched card layout and designing a special punched card for the Jury Division.

11. The U.S. District Court should make arrangements with the Court of General Sessions Data Processing Division for an eventual transfer from the Administrative Office of the U.S. Courts of all computer processing in juror selection and summonsing. This would ease the burden on the Administrative Office which has nationwide responsibilities. We believe this is an appropriate transfer of responsibility since the Jury Division selects jurors for the Court of General Sessions. Further, the Court of General Sessions Data Processing Division has the capability to do the work, and their location near the District Court would be more convenient for transporting cards, etc., back and forth.

Appendix I. Financial Summary

The recommendations contained in this report affect expenditures for the Jury Commission in the areas of staff salaries, Commissioner salaries, mailing expenses and equipment costs. If our recommendations are adopted, total expenditures for staff salaries (using step 1 of each schedule for computational purposes) would increase approximately $7,000 per year. This, however, would be partially off-set by the reduction of almost $4,000 in Commissioners' salaries.

The data processing equipment would add about $3,600 to the annual budget but would be compensated for by not having to hire a second additional employee at $5,522 (step 1—Grade 4). The one-time expense of $1,400 for the folding and inserting machine is off-set by the annual expense $1,100 now being paid a commercial firm for doing this job. The net result would be an increase in present annual expenditures of about $6,500. However, if the recommended data processing equipment is not acquired, resulting in the necessity for hiring an additional Grade 4 employee, the annual expenditure will increase by about $8,400 rather than $6,500.

APPENDIX III. SUGGESTED DUTIES FOR EACH STAFF MEMBER IN THE JURY DIVISION ASSUMING EXTENDED USE OF ELECTRONIC DATA PROCESSING EQUIPMENT AS RECOMMENDED IN THIS REPORT

Jury Commissioner (1), Grade 11–12

DUTIES

1. General supervision of the office.
2. Determination of office policies and procedures.
3. Consultation with Court Executive on policy matters or problems when necessary, or with other employees of the Court as required.
4. Analyze operation of the office, developing and instituting new methods and procedures to increase efficiency.
5. Determine and design necessary statistical reports.
6. Coordinate juror requirements with Juvenile Court and Court of General Sessions as well as United States District Court.
7. Coordinate details of jury draws with Administrative Office.
8. Maintain employee time records.
9. Supervise the training and development of employees.

Grade 7–8 Deputy Clerk (1)

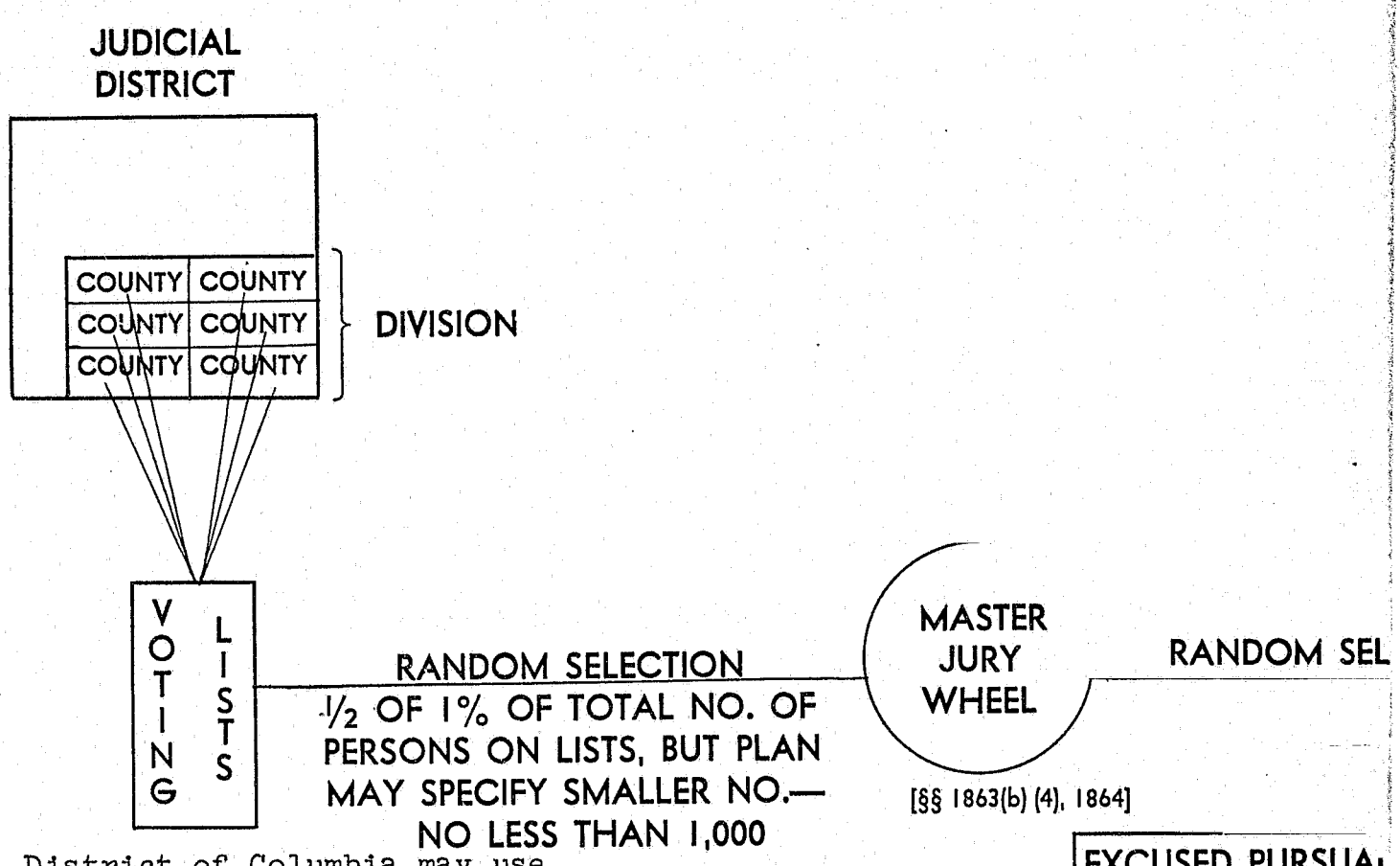
DUTIES

1. Prepare all necessary statistical reports from data supplied by Grade 5, Clerk.
2. Under the general supervision of the Jury Commissioner, supervise the office, determining work priorities and resolving questions.
3. Handle all correspondence for office.
4. Maintain "qualified wheel", having name/address corrections made on cards in wheel, and placing new names in the "wheel".
5. Arrange for cards to be sent to Administrative Office to allow them to update the "master Wheel".
6. Be responsible for Court Sheets including their preparation, delivery to courtroom, receipt from courtroom and any other processing.
7. Act as Jury Commissioner in her absence.
8. Coordinate with Administrative Office for sending Second Notices.
9. Send questionnaires to judges when necessary.
10. Assist in reading and grading questionnaires when necessary.

Grade 5 Clerk (2)

DUTIES

1. Read and screen questionnaires returned by prospective jurors.
2. Set aside those which must be returned because they are incomplete.
3. Determine which jurors are to be excused based on the information provided in the questionnaires.
4. Set aside questionnaires which must be reviewed by judge.
5. Identify questionnaires for which a name/address change must be made.



[Prepared under the supervision of Honorable Irving R. Kaufman, Judge, United States Court of Appeals, Second Circuit and Chairman, Judicial Conference Committee on the Operation of the Jury System.]

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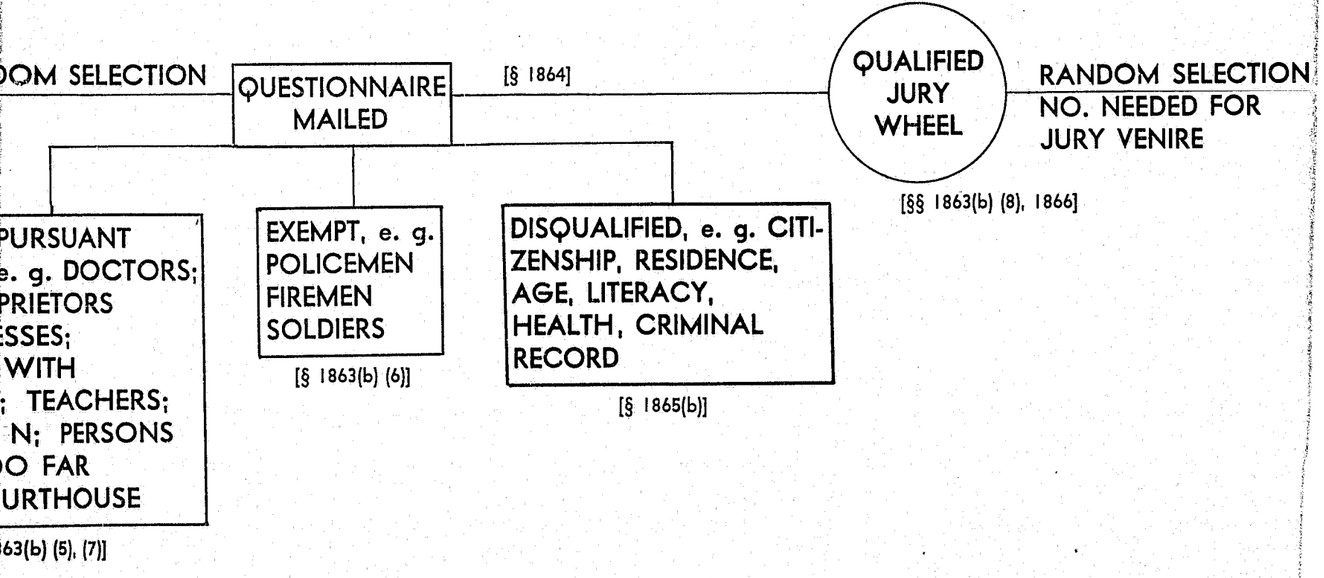
APPENDIX II

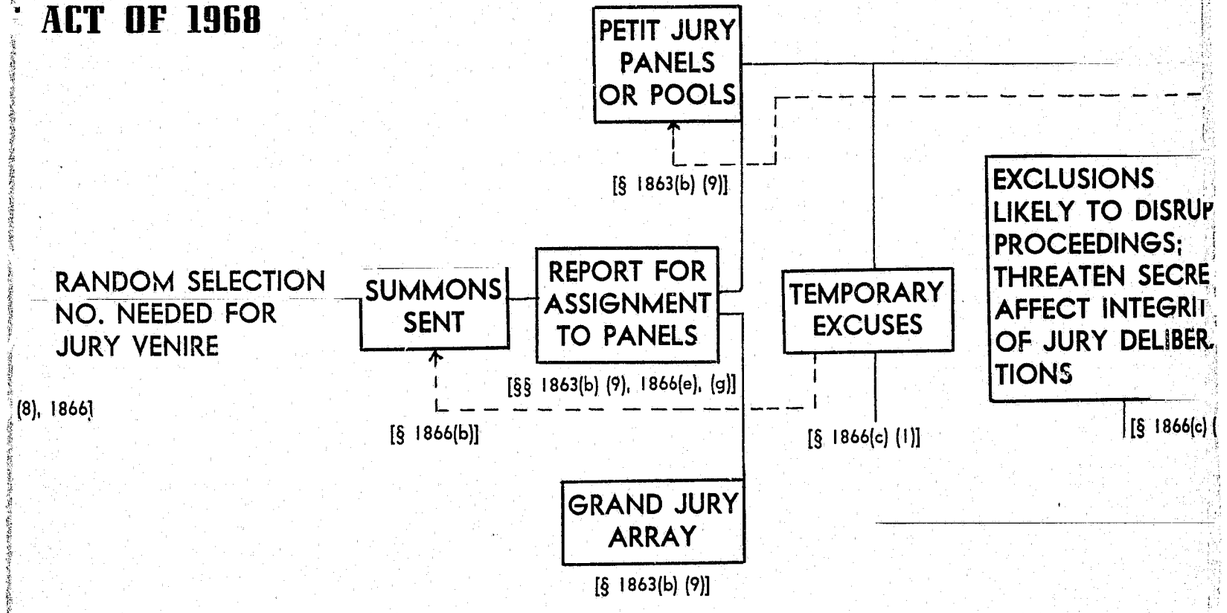
THE SYSTEM OF RANDOM SELECTION OF J N OF JURORS

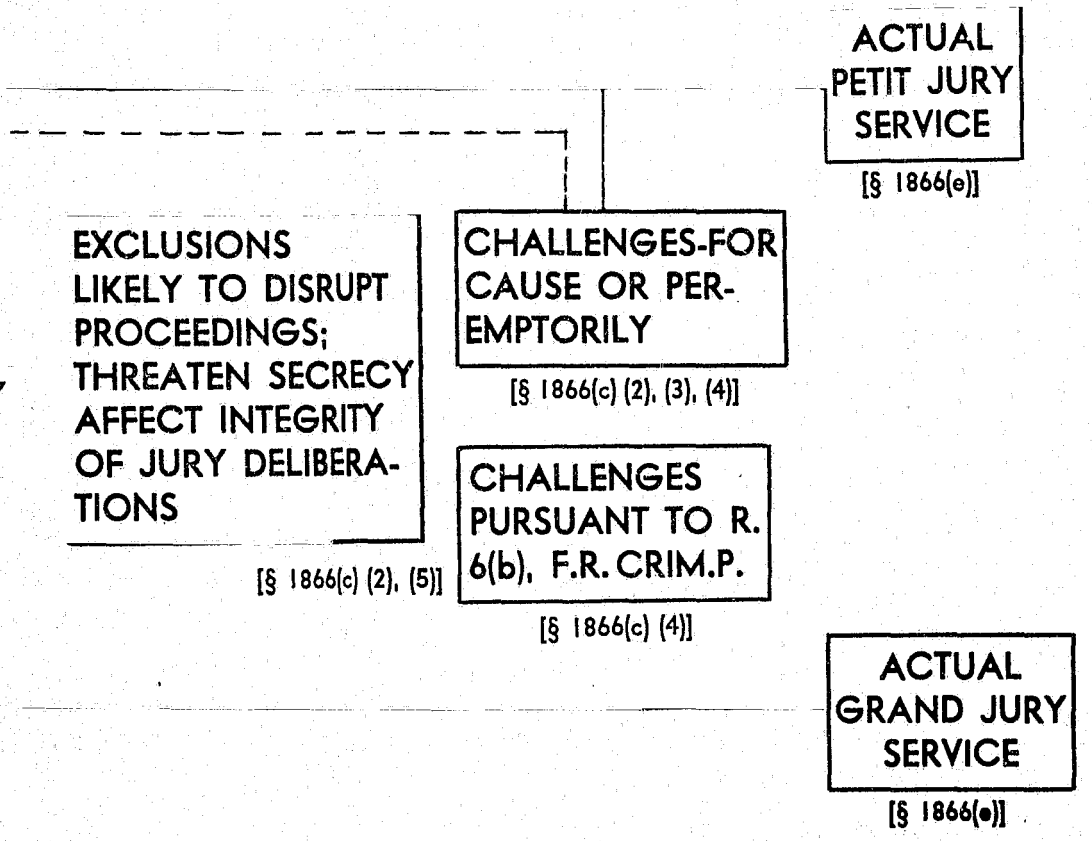
JURY SELECTION AND SERVICE ACT OF 1968

[28 U.S.C. §§ 1861 et seq.]



ACT OF 1968




ACTUAL PETIT JURY SERVICE
[§ 1866(e)]
EXCLUSIONS LIKELY TO DISRUPT PROCEEDINGS; THREATEN SECRECY AFFECT INTEGRITY OF JURY DELIBERATIONS
[§ 1866(c) (2), (5)]
CHALLENGES-FOR CAUSE OR PEREMPTORILY
[§ 1866(c) (2), (3), (4)]
CHALLENGES PURSUANT TO R. 6(b), F.R. CRIM.P.
[§ 1866(c) (4)]
ACTUAL GRAND JURY SERVICE
[§ 1866(e)]

Grade 5 Keypunch and Tab Machine Operator (1)

DUTIES

(This position is in charge of the punch-card files and all changes and processing of the cards)

1. Pull punch-cards for each questionnaire received each day (225 cards).
2. Keypunch status of juror into punch-card after questionnaires are read and graded.
3. Keypunch name and address changes into punch-cards.
4. Maintain punch-card files using collator to interfile and refile cards when necessary.
5. Keypunch statistics into punch-card for every questionnaire returned, also for questionnaires returned by Post Office as "not found".
6. Produce data for statistical reports using punch-cards and collator and give to Grade 7 Clerk.
7. Perform all other necessary machine operations on the punch-card file such as pulling cards for second notices.
8. Using collator, merge newly qualified jurors into the cards in the "Qualified Wheel".

Grade 4–5 Messenger and File Clerk (1)

DUTIES

1. Open mail each day.
2. Sort questionnaires into numerical order.
3. Deliver and pick up questionnaires to and from Judge for review as necessary.
4. Deliver court sheets and other material.
5. Deliver and pick up "Qualified Wheel" or other material to and from Administrative Office of the Courts when necessary.
6. File questionnaires.
7. Fold and stuff questionnaires and second notices for mailing (using folding machine recommended).
8. Return incomplete questionnaires to prospective jurors.
9. Order, receive, and file office supplies.
10. Handle public counter and telephone inquiries.
11. Perform other duties as may be assigned from time to time.

APPENDIX IV. RECOMMENDED USES OF ELECTRONIC DATA PROCESSING EQUIPMENT IN THE JURY DIVISION

KEYPUNCH MACHINE

A. Name/Address Changes

Prospective jurors who have been mailed questionnaires may indicate a change of name and/or address when they return their questionnaire; others notify the Commission at later times if such changes occur during the period in which they are eligible for jury service. These name/address changes occur at the rate of about 1,600 per month. The juror's punch-card in the Jury Commission Office must be changed to reflect the correct name or address.

Under the present system, 23 hours per month must be spent writing the corrections on the cards to be sent in batches to the Administrative Office of the U.S. Courts for keypunching. Then, due to its volume of other work, the Administrative Office takes about 1–3 weeks to prepare new cards. This means that the cards (the Master Records for the Jury Division) are unavailable to the Commission for staff use. When the new cards are received, they must be refiled *by hand* into the card deck.

If the Jury Division had a keypunch machine in its Office, changes could be keypunched directly from the source document (usually the questionnaire), eliminating hand posting of the information. At a volume of 1,600 changes per month this would require only about eight hours of keypunching per month, a saving of 15 man-hours per month in the Jury Division Office plus the saving of keypunch time in the Administrative Office. With the keypunch machine at the Court, the punch-cards would stay in the Court.

B. Statistics and Recordkeeping

Recording data in each punch-card about juror qualification or service would facilitate automatic preparation of monthly, quarterly, or special reports. It would eliminate the maintenance of hand tallys of various statistics and reduce paper work. Having the data punched into the jurors' cards would allow the staff to:

1. prepare statistical reports using a computer or collator
2. easily and quickly identify the prospective jurors who have not returned their questionnaires, so that second notices may be sent; and
3. consolidate the card files created by each draw from the "Master Wheel" into single file, eliminating confusion and saving time in record-keeping and filing.

Recording such data using the keypunch machine would take about ten hours per month and could be done as the questionnaires are received each day. This would keep the records in the Office up-to-date at all times.

COLLATOR

The functions listed below could be performed by an IBM 087 Alpha-Numeric Collator in the Jury Division Office. The list excludes the drawing of names from the "qualified deck" for jury service. This function takes very few minutes on a computer and should continue to be done by the A.O.C. as part of the process of addressing (by computer) the questionnaires. The functions listed for the collator are now either done by hand or not done at all due to volume and manpower problems in the Jury Division Office. If a collator is not acquired for the Office, an extra employee (in addition to those now recommended by this report) will be needed. The recommended uses for the collator are:

1. Refile punch-cards in Master Deck after entry of statistics, name/address change, or other use by Jury Commission.
2. Interfile new groups of 15,000 names from "Master Wheel" into existing Master deck of names previously sent questionnaires.
3. Select from Master Deck, those jurors who have not returned questionnaires and must be sent second notices.
4. Interfile newly qualified names into existing "qualified deck" and count total names in qualified deck.
5. Select cards from Master Deck for quarterly statistical reports.
6. Locate jurors cards in the deck by name when the I.D. number is not known.
7. Purge file of persons who have failed to answer all attempts at contact by questionnaires.
8. Verify requests to be excused due to previous service within the past two years.

AN APPRAISAL OF THE ADMINISTRATION OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

OCTOBER 1969

CONTENTS

AN APPRAISAL OF THE ADMINISTRATION OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

I. OBJECTIVES AND SCOPE OF STUDY

An integral part of our studies of the criminal and civil caseflows in the United States District Court for the District of Columbia (District Court) involved an appraisal of the administration of the District Court. This report contains our suggestions concerning improvements we believe are needed in the administration of the District Court. Our suggestions for improving criminal and civil calendar management policies and procedures are contained in separate reports.

As of October 1969, the non-judicial personnel of the Court, excluding the Judges' personal staffs, were organized into twelve major offices. We spent most of our time evaluating the Offices of the Clerk (71 employees) and the Assignment Commissioner (15 employees), the two largest offices most directly involved in processing criminal and civil cases.

Our study techniques included personal observations; analysis of forms, records, rules and reports; and extensive interviews with Court personnel, judges, attorneys and representatives of related organizations such as the Administrative Office of the U.S. Courts.

The suggestions in this report should be viewed as an initial plan rather than a total plan for improving the administration of the District Court. Further reorganization beyond that suggested in this report will be needed if, for example, the Court decides to permanently convert from a master calendar to an individual calendar for criminal and/or civil cases.

II. MAJOR FINDINGS AND CONCLUSIONS

The District Court is a large, complex organization. Fiscal Year 1967 expenditures for its operations were about $3.6 million. The Court has twelve major offices and a total complement of over 300 judicial and non-judicial personnel. As of October 1969 fifteen regular judgeships are authorized and there is one vacancy. In addition seven retired judges are also serving the Court. While the Court is a large organization, unlike other large organizations, it has no one with managerial expertise and administrative authority guiding and directing its administrative activities on a full-time basis. Authority for administering the Court is diffused among the Chief Judge, liaison judges, ad hoc committees of judges, the administrative assistant to the Chief Judge, and the heads of the various Court offices and departments. We found numerous significant weaknesses in the coordination and communication among these groups and individuals. For example, in a number of cases judges decided to make major changes in the methods of processing criminal and civil cases without fully consulting the non-judicial personnel who had to implement the changes. Consequently, some changes were ineffectively implemented, some were never implemented and some were implemented only at an excessive cost of non-judicial time and effort. (An example

of good coordination and communication is currently being demonstrated in the Court's implementation of an experimental individual calendar system for criminal cases. In this case the judges and Court personnel are working very closely together.)

In the absence of centralized leadership and direction, each Court office operates autonomously with a minimum of effective administrative contact with other Court offices. An example of the adverse effects of autonomous operation concerns the Offices of the Clerk and the Assignment Commissioner. At the time of our review it was generally believed within the Court that both these offices urgently needed additional personnel. We concluded, however, that no additional personnel would be needed if the two offices were consolidated, if progressive leadership were provided, and if unnecessary and duplicative procedures were discontinued. More specifically, we concluded that only 24 employees are needed to carry out certain civil functions currently being handled by 34 employees.

In addition to the structural weaknesses, there are critical weaknesses in the day-to-day management of non-judicial personnel, particularly in the Clerk's Office. In general, we found that: there is an over-reliancce on tradition and precedent with little emphasis given to finding new and better ways of performing old tasks; there is a marked tendency to over-specialize job duties which in turn tends to create repetitive, relatively boring jobs rather than stimulating, challenging jobs; despite being faced with a severe shortage of qualified back-up personnel for key positions, no efforts have been made to devise a career development program; interoffice job transfers are rare; no in-service training programs exist; no one is being trained in the field of data processing; and employees are not systematically encouraged to submit ideas and suggestions for improvement. In short, although we found the non-judicial personnel to be generally dedicated and competent, they are not achieving their maximum productive potential, primarily because a management oriented organizational climate emphasizing teamwork and employee involvement has *not* been established.

To correct these organizational and management weaknesses a number of short-range and long-range measures need to be taken. An important first step would be the appointment of a Court Executive to direct and control the Court's administrative activities subject to the supervision of the Chief Judge. His authority should include the authority to appoint, reassign and remove all the non-judicial employees of the Court, excluding judges' personal staffs. He should have a small professional staff to assist him in implementing modern personnel management and calendar management programs. (If the recommendations in this and other reports we are releasing to the Court are adopted, the Court Executive and his staff can be employed without increasing the Court's budget for personnel services. In fact, if all our recommendations were adopted, there would be an estimated net decrease of $134,000 to $161,000 in annual salaries.)

We believe that our findings in this and other reports we have released to the District Court demonstrate there is room for considerable improvement in the internal administration of the District Court's affairs. The District Court's decision to experiment with a revised

calendaring system for criminal cases is evidence of the type of leadership and commitment that must be continuously demonstrated to enable significant, permanent progress to be made.

III. RECOMMENDATIONS

The Court should seek authority to appoint a Court Executive who should have the authority to organize and administer all the non-judicial activities and non-judicial personnel of the Court. The Court Executive should be provided with sufficient professional and clerical staff to enable him to effectively discharge his responsibilities. (Details IV–B.)

Priority tasks of the Court Executive should include:

1. Development and implementation of revised calendar systems for both civil and criminal cases. This will include the development and implementation of more comprehensive and meaningful calendar status reports that will provide the types of information needed to evaluate and improve calendar management policies and practices. (See Details IV–C.)

2. Development and implementation of a plan for a major reorganization of the non-judicial personnel of the Court. (See Details IV–D.) The plan should provide for:

   (*a*) Consolidation of the Offices of the Clerk and the Assignment Commissioner. (See Details IV–D–1.)

   (*b*) Reorganization of the Office of the Clerk including grade increases for certain key positions. (See Details IV–D–2.)

   (*c*) Reevaluation of the continued need for a number of positions. (See Details IV–D–3.)

3. Development and implementation of a comprehensive employee development program for non-judicial personnel. The program should include provisions for in-service training and incentives to encourage and reward self-development and suggestions for improvement. (See Details IV–E.)

4. Preparation and issuance of periodic reports on the work of the Court. The prime purpose of the reports should be to provide the bar and the public with meaningful and objective information concerning the Court's performance, progress and problems. The reports should include narrative comments analyzing the significance of statistical data including trends. The statistical data should be presented in a standard format and should be compared with data for prior years. Examples of data that should be reported are median ages and age ranges of terminated cases, methods of disposition and the number and ages of pending cases. Finally, the reports should identify measures being taken by the Court to improve its operations and to expedite the processing of cases. (See Details IV–F.)

IV. FINDINGS

A. General Description and Evaluation of Present System

In this section we present a general description of the Court's current system of administration along with our general evaluation of the system. This will provide some focus for our more detailed evaluation presented in subsequent sections of this report.

1. DESCRIPTION

Powers and Duties of Chief Judge

By statute (28 USC 137) the business of a U.S. District Court having more than one judge is divided among the judges as provided by the rules and orders of the Court. The statute states, in part:

> The Chief Judge of the district court shall be responsible for the observance of such rules and orders, and shall divide the business and assign the cases so far as such rules and orders do not otherwise prescribe.

By statute (28 USC 136(a)) the judge in regular active service who is senior in commission and under 70 is designated Chief Judge.

By local rule (11j) the Chief Judge serves as the Court's Assignment Judge whose principal responsibilities include supervising assignments of cases to judges, ruling on requests for continuances of cases on the trial calendars, and handling preliminary matters in criminal cases such as arraignments, appointment of counsel, etc. His Assignment Judge responsibilities generally consume most of his mornings. He also carries a limited trial load.

Liaison Judges

The late Judge Bolitha Laws, Chief Judge from 1945 to 1958, established an administrative system under which each regular judge was designated to serve as "liaison" judge for one or more Offices or Departments of the Court. Under this system, nonjudicial personnel generally contact their liaison judge rather than the Chief Judge when they wish to discuss an administrative matter or problem.

Ad Hoc Committees of Judges

In addition to the liaison judge system, the Chief Judge has relied heavily upon ad hoc committees of judges to resolve pressing administrative problems. Time spent on these committees apparently has been substantial and, as a result, has reduced the time available for judicial duties. According to Court records, at least 20 separate ad hoc committees of judges were established during the period March 1966 through March 1969. Examples of committees established to handle administrative problems are:

Name of committee	*Date established*
Committee to Devise Ways and Means of Having Records Kept by the Administrative Office on All Working Judges	June 1967.
Committee on Courthouse Space	October 1967.
Committee on Jury Selection Act of 1968	May 1968.
Committee on Problems and Needs of the U.S. District Court	July 1968.

Administrative Assistant to the Chief Judge

This position, established by the Judicial Conference of the United States, has evolved into primarily a staff rather than a line position. The principal duties of this position include:

Conferring with Chief Judge on judge assignments;

Arranging meetings of judges and serving as secretary of such meetings;

Representing the Chief Judge in general supervision of the heads of various offices of the Court; and

Supervising the collection and distribution of calendar statistics.

The Administrative Assistant has no staff other than an executive secretary.

Heads of Offices

The non-judicial employees of the Court, excluding the personal staffs of the judges, are organized into 12 separate, autonomous offices, the heads of which generally have the power to appoint and remove their own personnel within position ceilings established by statute or the Administrative Office of the U.S. Courts.

Table No. 1 on the next page depicts the Court's current organization.

2. EVALUATION

The present system of administration is defective in a number of major respects as summarized below.

Chief Judge, Liaison Judges and Ad Hoc Committees of Judges

The Chief Judge's trial workload and Assignment Judge's responsibilities prevent him from devoting his full time to administrative matters. Yet the number and complexity of the Court's administrative processes and problems require full-time attention. While there are a number of alternative solutions, including reduction or elimination of the Chief Judge's trial workload, we believe the best solution would be to appoint a Court Executive.

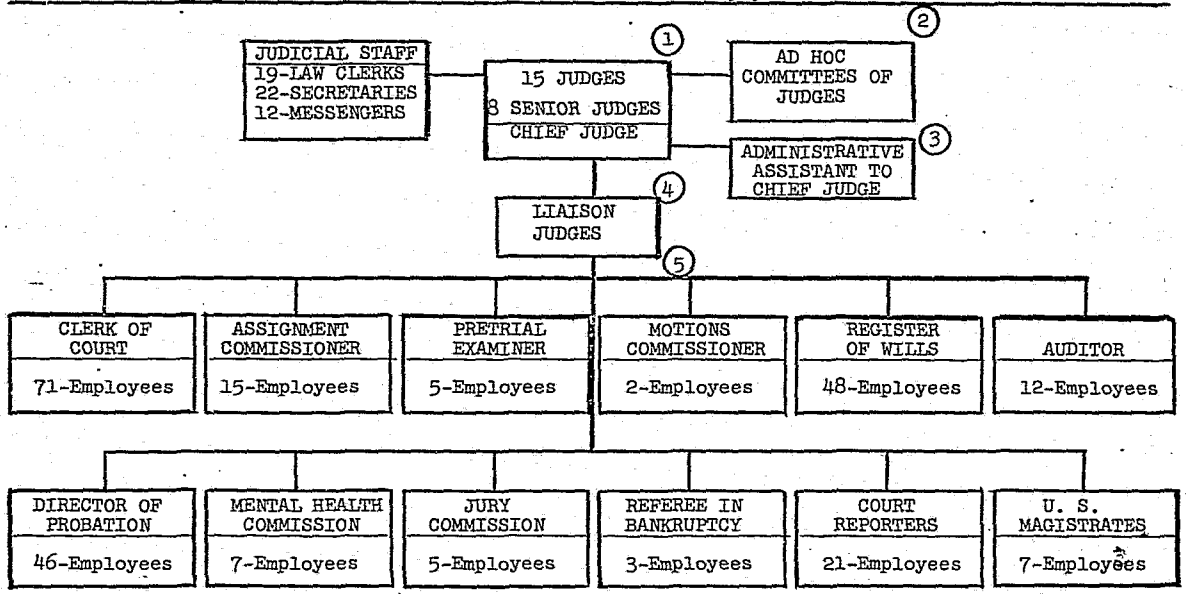
The liaison judge system diffuses administrative responsibility and control among many judges. Although this system has relieved the Chief Judge of the burden of handling all administrative matters, it has done so only at the expense of some other judge's time. Thus, a net loss of judicial time still occurs. If the judges were relieved of most of their administrative responsibilities, the Court's productive potential would thereby be increased. (By memorandum dated February 27, 1969, from the Director, Court Management Study, to the Chief Judge of the District Court, it was suggested that the Court consider establishing an Advisory Committee of judges to assist the Chief Judge in the area of administrative policy-making. The Advisory Committee would be a permanent committee operating at the policy level and would replace the existing liaison judge system and the ad hoc committees of judges.)

In his July 1969 testimony before the Senate Subcommittee on Improvements in Judiciary Machinery on the subject of Reorganization of the District of Columbia Courts, the Honorable George Hart, Jr., District Court Judge, clearly and concisely stated the need for professional assistance in administering the District Court's affairs:

> I think there is a crying need for a court administrator in our court. Our executive committee has been attempting to help [Chief] Judge Curran in the administration of the court, but let us face it: Judges are not administrators. That is not their forte. And furthermore, any time you spend in administration of the court you are not trying cases, and you are not doing work that only a Judge can do. . . . I do not think a committee of judges is a proper committee to decide much of anything on the administration of a court. Legal matters, yes, or certain legal things that the chief judge wants to appoint a committee for. But my own experience with two most able assistants on our executive committee has convinced me that judges are not administrators. (See page 1201 of Hearings.)

TABLE NO. 1

CURRENT ORGANIZATION CHART - U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
AUTHORIZED POSITIONS OCTOBER 1969



① As of October 1969, 15 regular judges are authorized, including the Chief Judge. Seven Senior (retired) Judges are also serving the Court.
② See p. 10
③ See p. 11
④ See p. 10
⑤ See p. 12

Another weakness is that the present system does not assure effective communications between those who make policy and those who execute policy. In fact, our study disclosed numerous examples of poor communications. For example, the Court devised its local rules in July 1968 by providing that each civil case on the Ready Calendar would be referred to a Settlement Judge. This constituted a significant change in the civil calendaring process yet the former Assignment Commissioner told us that he had not been advised by the Court as to how the rule would be implemented; consequently, he never took steps to implement it. As of July 1969, one year after its passage, the rule still had not been implemented.

We also found that in the Clerk's Office needless records and reports were being maintained simply because at some time in the past a judge asked for such a record or report. Because the non-judicial personnel were generally very reluctant to criticize the decision of a judge, even in administrative matters, these unnecessary records and reports were maintained until we recommended their discontinuance. (Our specific recommendations were given to the Court in November 1968. See Appendix C.)

Thus, poor communications have caused situations where calendar control rules are not enforced and unnecessary work is performed. Perhaps the single most effective way to improve communications between judicial and non-judicial personnel is to establish the position of Court Executive. The non-judicial personnel would be answerable to him rather than to individual judges and this would help create a "business" or "management" oriented staff rather than a "judge" oriented staff.

Administrative Assistant to Chief Judge

The Administrative Assistant is not able to fully and effectively discharge his many important responsibilities primarily because: (1) he has no authority over the appointment, reassignment or removal of the heads of offices and their staffs; and (2) he has no professional staff assistance. (See Details IV–B for additional comments.)

Heads of Offices

Allowing the head of each office to operate completely independent of other Court Offices has prevented the Court from achieving full utilization of its existing non-judicial resources. (See Details IV–D for additional comments.)

Summary

We believe there is a clear need for centralized leadership and control over the Court's non-judicial activities and personnel. We believe the best way to achieve this would be to appoint a Court Executive who would work to develop what has been a rather static, tradition oriented organization into a dynamic, management oriented organization. In fairness to the Court we want to comment again on its recent decision to experiment with a new calendaring system. This decision is evidence of the type of attitude that is an essential ingredient to improved administration.

B. Court Executive

A principal conclusion of this report is that the District Court urgently needs the leadership and direction of a top level manager. This is not a new or original concept. The District Court's need of managerial assistance was commented upon in 1966 by the D.C. Crime Commission whose report stated in part:

> Years ago the late Chief Judge Bolitha J. Laws of the District Court concluded that "no sizeable court of today can possibly function to its full state of efficiency without a capable administrator with an adequate force under his direction." . . . Administration of the District Court is generally entrusted to the Chief Judge, who is aided by an administrative assistant with no staff; administrative duties are divided among several units including the Assignment Office. . . . We recommend that the administrative assistant to the Chief Judge of the District Court be given an adequate staff and full administrative responsibility for the court. (See page 352 of the Commission's Report.)

As of October 1969, almost 3 years after the Commission issued its report, its recommendation had *not* been implemented, even though the need for effective administration is just as great if not greater now than it was in 1966. The administrative assistant still has no staff other than a GS–9, Executive Clerk (Secretary). His duties and powers have not been enlarged and he continues to serve primarily as a staff capacity as a "coordinator" rather than in a line capacity as a "director" or "leader."

As of October 1969, a bill (S. 952) was pending in Congress which would authorize U.S. District Courts with six or more judges to appoint a Court Executive upon approval of the Judicial Council of the Circuit and the Judicial Conference of the United States. Whether or not this bill is enacted we believe the Court should request authority to appoint a Court Executive.

To aid in recruitment and to help ensure only qualified candidates are considered, we believe the Court should seek the recruiting assistance of the Director of the Administrative Office of the U.S. Courts and select a person who has the approval of the Director. Candidates should have *demonstrated* managerial competence in a position with responsibilities comparable to those the Chief Executive will be assuming. Legal experience should *not* be a requisite.

Our detailed suggestions as to the powers and duties of the Court Executive are set forth in Appendix A; we will not comment further on them at this point except to emphasize the critical importance of the liaison duties. The District Court is only one part of a large, complex system of administering justice in the District of Columbia. Examples of the groups and organizations with whom the Court must effectively coordinate and communicate constantly, include: Bar Associations; U.S. Attorney; Department of Justice; U.S. Marshal; District of Columbia Government; Congressional Committees; Administrative Office of the U.S. Courts; D.C. Police; Other Courts in D.C. Court System; Other Federal Courts; and the Federal Judicial Center.

Even in a period of relative stability the time demands of these external relationships would be considerable. In a period of major change, it is easy to conclude that a Court Executive is needed to ensure that these external relationships are effectively handled. It is difficult to see how a major reorganization of the D.C. Court System as

has been proposed by the President, can be effectively implemented without a Court Executive for this Court.

The time demands of the external relationships, especially during the transition period, add support to the conclusion that the Court Executive must be given adequate professional staff to effectuate all the internal changes that are needed within the Court.

To make the position attractive to highly qualified managers and administrators, the annual salary range for the Court Executive position should be set at $30,000 to $35,000. (Some heads of individual offices of the Court, such as the Clerk and the Pretrial Examiner, currently receive over $26,000 per annum.)

We will now turn to a discussion of what we consider to be some of the priority tasks that will confront the new Court Executive.

C. Calendar Management

In separate reports covering our studies of the Court's criminal and civil calendars we conclude that the Court's systems of calendaring criminal and civil cases have proven to be ineffective and that significant backlogs and delays plague the Court. In those reports, we suggest that the Court substantially modify its calendar systems, and we identify the types of information that we believe need to be regularly developed and analyzed if the Court expects to obtain a clear picture of the nature of its workload. It is not enough to appoint a manager. To be effective a manager needs timely, accurate and comprehensive information upon which to base his decisions. Thus, we believe a priority task of the Court Executive should be to develop a reporting system that efficiently produces the types of data we have suggested in our separate reports.

We suggest that the person who is assigned primary responsibility for the task of devising and implementing revised calendar systems and internal reports be a member of the Court Executive's immediate staff. We suggest that the position be staffed at the JSP–13 or –14 level. We also suggest that this person heavily involve the Chief Clerks of the Civil and Criminal Divisions in the development and implementation processes.

Another factor adding to the urgency of improved internal reports is the Court's experiment with an individual calendar system for criminal cases as a possible prelude to adopting such a system for both civil and criminal cases. If the experiment which began October 1, 1969, is to be objectively and accurately evaluated, comprehensive data will have to be compiled.

For our detailed evaluations of the Court's criminal and civil calendar systems and for our detailed suggestions for improving such systems, see our separate reports.

D. Reorganization Plan

If the recommendations in this and our other reports to the Court are implemented major changes will be required in the Court's organization. A summary of the major changes is set forth on Pages 35–38, and Tables Nos. 2 and 3.

As we indicated earlier our evaluation of the Court's administration focused primarily on the two Court offices that were most heavily involved in processing the Court's criminal and civil cases: the Offices of the Clerk and the Assignment Commissioner. Our evaluation disclosed these Offices were operating at far from peak efficiency and effectiveness. The major factors impairing efficiency and effectiveness were poor organization, an absence of progressive leadership, and inadequate training and development of employees.

In our comments which follow we identify the major administrative weakness we detected and suggest how they might be corrected. These suggestions should be considered only an initial plan rather than a total plan for reorganization. Additional reorganization, including realignment of functions and duties, will undoubtedly be required especially if the Court's current experiment with an individual calendar for criminal cases leads to a permanent conversion to an individual calendar for criminal and/or civil cases. In that event, courtroom clerks will probably assume responsibility for the calendar of the Judge to whom they are assigned; this added responsibility would justify an upgrading of courtroom clerk positions. In addition, a conversion to an individual calendar for civil cases would require major changes in the way civil motions are processed. For example, the Court would have to evaluate and justify the continued need for a Motions Commissioner and a Motions Division in the Clerk's Office. (Some Federal District Court judges have reported that the volume of motions decreases considerably when a case is assigned to a judge for all purposes. See, for example, 29 FRD 191 (238).)

1. CONSOLIDATION OF THE FUNCTIONS OF THE CLERK'S OFFICE AND THE ASSIGNMENT COMMISSIONER'S OFFICE

Our study disclosed a number of administrative inefficiencies that could be corrected by consolidating the functions of the Clerk's Office and the Assignment Commissioner's Office (Assignment Office).

The Clerk's Office and the Assignment Office currently are completely separate, independent offices. The prime function of the Clerk's Office is to serve as the official records center for the Court. All papers are received by this office where they are docketed, indexed and filed. The prime function of the Assignment Office is to operate the calendar control system and schedule cases for hearings, pretrial, trial, etc. In other U.S. District Courts these two functions are administered by one office. This Court established a separate Assignment Office in 1931. For the reasons set forth below, we believe the Court should now consolidate these two closely related functions.

a. *Separate staffs have created recruitment, staff development, and morale problems.*—In the Assignment Office the highest grade a new employee can normally expect to obtain is a JSP–6 ($6,900 to $8,900 per annum), while in the Clerk's Office there are about 25 positions at JSP–10 ($10,300 to $13,300) and above. There are only 2 positions at or above the JSP–10 level in the Assignment Office. As a result, the Assignment Office can offer a new employee very little in the way of advancement possibilities. This would not be a permanent barrier to advancement if interoffice transfers were encouraged; however, we found that transfers are rare between the Clerk's Office and the Assignment Office or other offices in the Court. Recorded data on inter-

office transfers is not available; however, the former Assignment Commissioner, who retired in December 1968 after working for the Court as Assignment Commissioner for 20 years, said no employee from another office ever transferred into his. He could recall only one case of an employee transferring out to another office. The Clerk confirmed that interoffice transfers are rare. This absence of mobility of personnel between offices helps perpetuate an insular point of view and prevents the Court from developing employees who have a broad understanding of the Court's major functions.

b. *Separate staffs have produced employee utilization problems.*—Judicial and non-judicial personnel generally believed that the Clerk's Office and the Assignment Office were suffering from severe shortages of personnel. We were able to satisfy ourselves, however, that these offices had a sufficient number of personnel and that the real problem involved poor utilization of existing personnel due primarily to faulty organization and ineffective leadership. For example, in October 1968 the Assignment Office was unable to meet a reporting deadline because of unanticipated absences. The former Assignment Commissioner cited this as an example of the need for more personnel, yet he never even considered asking the Clerk for temporary typing help. (At the time, the Civil Division of the Clerk's Office could easily have spared an employee.) If the two offices were consolidated into one office a larger, more flexible and better coordinated pool of manpower would be created that would be in a better position to handle normal business and would be better able to respond to unusual, heavy demands on either office.

c. *Separate staffs have created communication and coordination problems.*—Each of these offices maintains its own set of records and statistics. This not only produces costly duplications of effort but, in addition, breakdowns between the systems occur frequently. For example, approximately 16 percent of the cases placed on the semiannual calls of the civil calendar over the past 3 years were placed there in error. This was due principally to the fact that the Assignment Office, which prepared the calendars, did not have up-to-date case information which was available in the Clerk's Office. If the two Offices were consolidated a unified and streamlined recordkeeping system could be developed.

Another example involves the processing of criminal cases. The Clerk's Office handles the appointment of counsel whereas the Assignment Office handles the work involved in notifying counsel of hearing dates, trial dates, etc. This separation of functions requires extensive and time-consuming interoffice communication and coordination.

d. *Separate staffs have created unhealthy interoffice rivalries.*—Each office is responsible for only a part of the total system of processing civil and criminal cases. To provide protection when the system breaks down, wasteful "protective records" are maintained. As an example, the Files Division of the Clerk's Office maintains a log showing the identity of each document sent to the Assignment Office, the date it was sent, and the time it was sent. In addition, the Assignment Office must receipt for each document on the same daily log. The log was established as a result of interoffice disputes over the receipt and location of files.

Summary and Conclusions

If the two Offices were consolidated into one they could begin working towards broader common goals rather than separate, narrower and sometimes conflicting goals. This should eliminate some unnecessary conflicts and produce greater efficiency through improved utilization of personnel, reduction of recordkeeping and increased coordination and communication.

The consolidation of these two Offices should take place irrespective of the calendaring system(s) employed by the Court. Specific duties of specific employees will, of course, vary depending upon the system of calendaring cases; however, for the reasons given above, we believe efficiencies and economies will be produced by consolidating the Court's recordkeeping and calendaring functions thereby providing centralized leadership, direction and control over these critical functions. Thus, we suggest that Calendar Sections be created in both the Civil and Criminal Divisions of the existing Clerk's Office and that current employees of the Assignment Office be transferred into these sections.

2. FURTHER REORGANIZATION OF CLERK'S OFFICE

Need to Combine Divisions

In addition to consolidating the Offices of the Clerk and the Assignment Comimssioner, the Court should combine a number of separate divisions within the Clerk's Office to obtain better utilization of existing personnel.

At the time of our review the Clerk's Office was organized as follows:

	Number of employees
Clerk's Immediate Office	4
Civil Division	15
Criminal Division	11
Financial Division	3
Motions Division	4
Copy, Appeals and Mental Health Division	6
Naturalization Division	2
Jury Lounge	2
Courtroom Clerks	15
Files Division	7
Printing Division	1
Total employees	70

Eleven separate divisions for only 70 employees is, in our opinion, too great a separation of functions and does not permit maximum utilization of employees. Divisional lines create real barriers to communication and coordination and inevitably produce divisional "loyalties". Each division tends to keep its employees busy on its work and generally will not take the initiative in offering to lend an employee to another division. For example, the Clerk advised us that one person could normally handle the functions of the Naturalization Division. Yet he said the two employees of this Division rarely, if ever, help out other divisions. We confirmed this through discussions with other employees.

Another reason for consolidating divisions concerns the difficulty the Clerk has in finding capable supervisors. As we show in Details

IV E, a number of key employees will be retiring within the next few years and, in some cases, there are no qualified replacements. If there were fewer divisions, there would be a need for fewer supervisors. In addition, employees under one supervisor responsible for a number of functions could be more readily rotated among the functions so that eventually a staff of qualified "generalists" rather than "specialists" could be developed.

We propose that as a first step in a gradual reorganization of the entire Clerk's Office, the Civil Division be reorganized along the following lines:

Docket Section.—Would include employees of the current Civil Division and the Mental Health Branch of the Copy, Appeals and Mental Health Division. (Eight employees.)

Calendar Section.—Would include employees currently assigned to the Civil Branch of the Assignment Commissioner's Office. (Four employees.)

Appeals Section.—Would include employees of the Appeals Branch of the Copy, Appeals and Mental Health Division. (Three employees.)

Files Section.—Would include employees of the Files Division, Printing Division and the Copy Branch of the Copy, Appeals and Mental Health Division. (Seven employees.)

These suggested organizational changes are illustrated and further explained in Appendix B. As Appendix B shows, if all these suggestions are implemented, we estimate that only 24 employees will be needed to carry out certain civil functions currently being handled by 34 employees.

During the course of our review the Court was engaged in a series of experimental programs designed to expedite the processing of criminal cases. This precluded us from making a realistic assessment of the number of employees needed to handle criminal cases. However, the reduction of personnel needed to handle civil cases will enable the Court to transfer some employees to the handling of criminal cases providing, of course, the transfers are needed and can be justified to the Administrative Office of the U.S. Courts.

As we indicated earlier the changes we are suggesting are only the initial steps in a gradual reorganization of the Clerk's Office. Ultimately, the 11 divisions could well be consolidated into 2 divisions—a Civil Division and a Criminal Division.

Need for Progressive Leadership

Reorganization alone will not produce the significant improvements that are needed in the Clerk's Office. There is also a need for progressive leadership.

The fact that the Office of the Clerk is similar in many respects to a business office and, consequently, faces similar administrative problems was recognized in a 1948 report of the Judicial Conference of the United States which said, in part: "Clerks' offices are the most important business offices of the courts . . . Due to these factors alone, it is highly desirable that the most efficient office methods be adopted and advantage taken of all feasible means of saving labor."

Also, the Manual for Clerks of the U.S. District Courts states, in part: "The Clerk should function as the Executive Officer for the Court and in that capacity be a positive and imaginative force in the

initiation and operation of those administrative procedures which will best promote efficient and effective movement of the Court's work."

We found, however, that the Office of the Clerk is generally not innovative in its approach to its administrative problems and procedures. There is, in our opinion, an over-reliance on tradition and precedent and a general unwillingness to experiment with new or different approaches. As an example, the Clerk was extremely reluctant to experiment with a simplified method of docketing which eliminates the need for an intermediate record and which is in use in the vast majority of other U.S. District Courts. Further, it took considerable and persistent discussion before the Clerk was willing to consider experimenting on a limited basis with a system of open shelf filing which has been proven by other courts to be a much more efficient and effective method of filing than the standard system of file cabinets used by the Clerk's Office.

Our discussions with numerous employees disclosed that with few major exceptions the details and mechanics of their jobs have remained essentially unchanged through the years. They have not been challenged and encouraged to find new and better ways to perform their duties; consequently, many employees have fallen into rather rigid work habits. (For other evidence of lack of progressive leadership see Details IV–E where we comment on the absence of an employee development program.)

The Clerk has been employed by the Court for over 27 years; his Chief Deputy has worked for the Court for over 38 years. While both these individuals have been extremely dedicated and competent employees, neither has received any formal management training and neither is versed in modern management concepts, principles, and practices. Thus, we do not believe it is reasonable for the Court to expect either of these employees to become progressive "managers," especially since both will be retiring within the next few years.

If a Court Executive is appointed and if the Clerk's Office is reorganized along the lines we suggest then we believe the responsibilities of the Clerk and the Chief Deputy Clerk can be effectively discharged by the Court Executive and by the Chief Clerks of the expanded Civil and Criminal Divisions; consequently, once a Court Executive is appointed we believe the Court should reevaluate the continued need for the Clerk and Chief Deputy Clerk positions. (See Details IV–D–3 for additional comments on this point.)

Need to Review Grade Levels

The last general upgrading of positions in the Clerk's Office occurred in 1964. Sufficient time has elapsed to warrant another overall review of grade levels by the Administrative Office of the U.S. Courts, which fixes grade levels; therefore, we believe the Court should develop and submit to the Administrative Office a proposed overall upgrading of positions. Even in the absence of such a general proposal, we believe the Court should request grade increases for the following positions which our study disclosed were in greatest need of increases:

(1) The grade levels of the Chief Clerks of the Civil and Criminal Divisions should be increased from JSP 11–12 to JSP 13–14. The Assistant Chiefs' grade levels should be increased from JSP 9–10 to JSP 11–12. Such increases would bring the salaries of these positions

in line with similar positions in the Court of General Sessions. They are the minimum necessary to motivate people with supervisory potential to seek such positions. Currently, a courtroom clerk with no supervisory responsibilities receives a JSP–10 salary, the same salary received by the assistant supervisor. Thus, there is little incentive for a courtroom clerk to assume supervisory responsibilities. In addition, under the reorganization we recommend, employees in these positions will have much greater responsibilities in terms of more functions and more employees to supervise. Accordingly, they should receive increased compensation.

(2) The grade levels of employees in the calendar section should be JSP 6–7–8. The top grade is currently a JSP–6 for employees in the Assignment Office operating the civil calendar. Their responsibilities for scheduling cases, dealing with counsel, etc., are comparable to the responsibilities of the JSP 6–7–8 counter clerks currently working in the Civil Division. Thus, they should be paid comparable salaries.

3. SUMMARY OF SUGGESTED POSITION CHANGES

If the Court adopts our recommendations for revised calendar systems and revisions in the system of administration and organization, there obviously will be changes in the duties and responsibilities of some positions. In some cases entirely new positions will have to be created, in some cases existing positions will be given added responsibilities (and added pay), and in some cases existing positions will no longer be needed. It is the purpose of this section to summarize and highlight the major position changes suggested by us in this and other reports we are releasing to the District Court. The major changes are illustrated in Tables Nos. 2 and 3.

It should be noted that we consider all existing employees of the Court eligible for consideration for the new positions we are suggesting. No doubt a number of these positions will be filled by competent employees presently on the rolls. It should also be noted that the staff we are recommending for the Court Executive is a minimum staff which could be expanded if justified.

Clerk and Chief Deputy Clerk

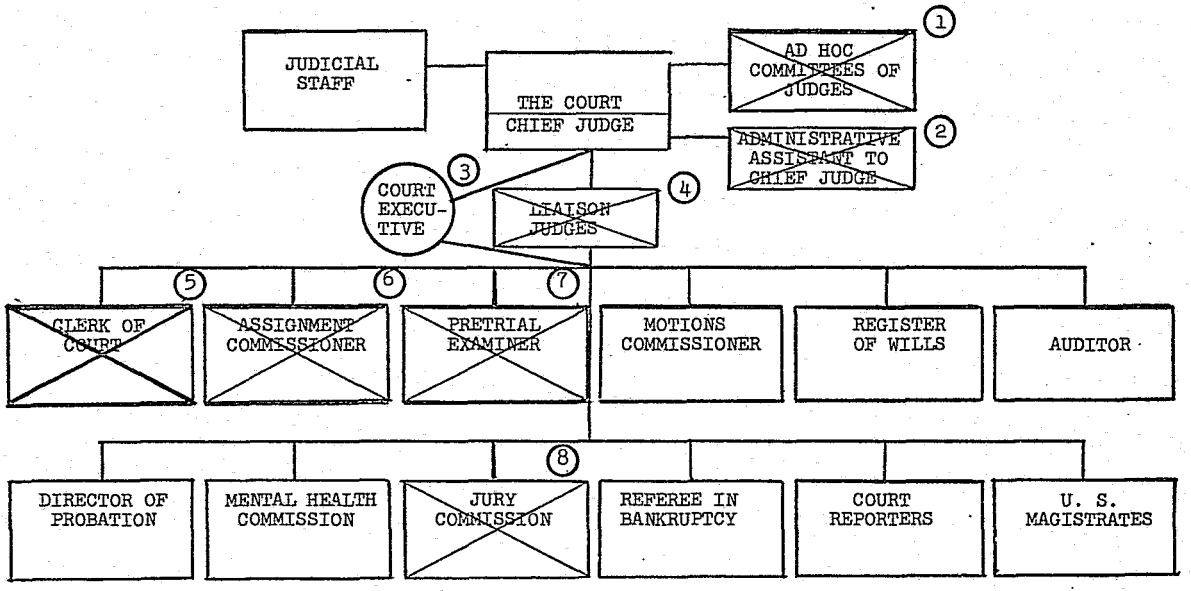
As we discussed in Details IV–D–2 these positions are currently filled by employees with lengthy Court careers. Both will be retiring within the next few years. If our suggestions in Details IV–D–1 and 2 are implemented, most of the day-to-day supervisory responsibilities of these employees will become the responsibility of the Chief Clerks of the enlarged Civil and Criminal Divisions. Further, their planning and leadership functions will be carried out by the Court Executive and his staff. Consequently, we do not believe the Court will need to fill these two positions once they are vacated provided, of course, a Court Executive is appointed. If they are filled, they should be filled with persons with demonstrated managerial competence.

Assignment Commissioner and Assistant Assignment Commissioner

Again, if our suggestions are implemented, the Office of the Assignment Commissioner will be abolished, and the duties of the cur-

TABLE NO. 2

SUGGESTED CHANGES IN THE ORGANIZATION OF THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA



(1) See p. 12
(2) See p. 16 & 39
(3) See p. 14
(4) See p. 12
(5) See p. 34 & 37
(6) See p. 38
(7) See p. 38
(8) See separate report.

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rent Commissioner and his Assistant will be discharged by the Chief Clerks of the Criminal and Civil Divisions of the Clerk's Office, their Calendar Sections (See Details IV–D–2) and the Court Executive's Assistant for Calendar Management (See Details IV–C).

Pretrial Examiner and Assistant Pretrial Examiner

If our recommendation in a separate report on the Court's Civil Calendar is adopted the Court will phase out the current system of Examiner conducted pretrials and replace it with a system of settlement/pretrial conferences conducted by judges. Thus, there no longer will be a need for the Pretrial Examiner, the Assistant Pretrial Examiner and their administrative secretary. One or both of the two clerk typists on the Pretrial Examiner's staff may well continue to be needed, however, for the settlement/pretrial conference program.

Administrative Assistant to Chief Judge

All of the duties and responsibilities of the Administrative Assistant will be assumed by the Court Executive. (See Details IV–B and Appendix A.)

Court Executive's Immediate Staff

The exact number of people needed for the Court Executive's immediate staff, their salary levels and their specific job responsibilities will have to be determined by the Court Executive once he is appointed. He will have to determine what types of positions and individuals will be needed to supplement and complement his own experience and abilities. Thus, our staffing suggestions should be considered merely as suggestions that will have to be evaluated by the Court Executive.

As we indicated earlier, we believe that liaison responsibilities will consume much of the Court Executive's time and we believe he will need some assistance to ensure that the major internal movements that are needed in both calendar management and personnel management are adequately planned for and effectively implemented. This will require constant attention to detail on a day-to-day basis. Thus, we suggest that at least two professional staff positions at the JSP–13 to 14 levels be authorized. In addition, the Court Executive will need a secretary and the professional staff assistants will need at least one secretary between them.

Summary

Table No. 3 shows that we are recommending the creation of 6 new positions at a total annual salary range of $85,500 to $112,600. If all our recommendations in this and other reports were adopted, we estimate the Court would be able to eliminate 21 existing positions with a total annual salary of approximately $246,500. This is a net decrease of 15 positions and from $133,900 to $161,000 in annual salaries.

TABLE 3.—SUMMARY OF SUGGESTED POSITION CHANGES

PT. I—SUGGESTED NEW POSITIONS

Position title	Proposed JSP grade range	Proposed salary range [1]	Report reference
Court executive	(2)	$30,000–$35,000	IV B, IV D 3.
Secretary to court executive	9–10	9,300– 13,300	IV D 3.
Staff assistant	13–14	15,800– 22,000	IV C, IV D 3.
Do	13–14	15,800– 22,000	IV D 3, IV E.
Secretary to staff assistants	8– 9	8,400– 12,100	IV D 3.
Docket clerk—Appeals	5– 6	6,200– 8,200	App. B.
Total (6 positions)		85,500–112,600	

[1] For graded positions the proposed salary ranges are based on annual salaries effective July 1969 for the JSP grades recommended in the 1st column. The proposed salary range for the court executive is explained in details IV B.
[2] Ungraded.

TABLE 3-A.—SUMMARY OF SUGGESTED POSITION CHANGES

PT. II—EXISTING POSITIONS THAT COULD BE ELIMINATED

Position title	JSP grade	Salary [1]	Report reference
Clerk	(2)	$26,150	IV D 2 and 3.
Chief deputy clerk	14	20,400	IV D 2 and 3.
Secretary to clerk	8	9,300	IV D 2 and 3.
Secretary to chief deputy clerk	6	6,900	IV D 2 and 3.
Docket clerk—Civil	5	*6,200	App. B.
Do	5	*6,200	App. B.
Statistical clerk—Civil	5	*6,200	App. B.
Fiduciary clerk—Civil	5	*6,200	App. B.
Clerical assistant—Civil	4	*5,500	App. B.
Supervisor, Mental Health and Appeals Division	10	11,600	App. B.
Docket clerk—Mental health	5	6,200	App. B.
File clerk	3	*4,900	App. B.
Do	3	*4,900	App. B.
Assignment commissioner	13	15,800	IV D 1 and 3.
Assistant assignment commissioner	12	13,400	IV D 1 and 3.
Secretary to assignment commissioner	6	7,600	App. B.
Pretrial examiner	(2)	26,150	IV D 3.
Assistant pretrial examiner	(2)	20,380	IV D 3.
Administrative secretary	8	10,100	IV D 3.
Administrative assistant to chief judge	14	22,200	IV B.
Executive clerk	9	10,200	IV B.
Total (21 positions)		246,480	

[1] Salary data represents the annual salary of the incumbent of the position except in those cases marked with an asterisk (*). In those cases the salary is the lowest annual salary authorized for the position.
[2] Ungraded.

E. Employee Development

Our survey of the Office of the Clerk, the largest office in the Court, disclosed that an extremely important aspect of management is being seriously neglected. The Office has no systematic employee development program and, as a result of this and other factors, the Clerk's staff is not operating at its maximum level of efficiency and effectiveness.

Earlier in this report we commented on the need for progressive leadership. This point is so important to employee development that it warrants reemphasis. Our contacts with many Court employees lead us to conclude that generally they individually are very competent. What is lacking, however, is the type of leadership that will develop competent "individuals" into a competent "team."

An organization cannot expect to have a highly motivated and highly productive team of employees if the organization does not (1) provide challenging and interesting work; (2) recognize and re-

ward outstanding performance; (3) provide opportunities for growth and advancement; and (4) provide a variety of training and educational opportunities. Measured by these standards the Clerk's Office is deficient in a number of major respects as indicated below:

—Although a principal function of the Clerk's Office is to serve as the Court's records center, no employee is given the responsibility to stay informed on developments in the broad fields of data processing or paperwork management.

—The Clerk's Office is not taking advantage of the workshops conducted by the National Archives and Records Service on such paperwork management subjects as files improvement, records disposition, records management, directives management, source data automation, information retrieval, etc.

—Employees are not systematically encouraged to embark on self-development programs nor are they challenged and encouraged to find new and better ways of doing things. Suggestions for improvement are not solicited. Staff meetings are not held. Most communication is on a downward one-to-one basis.

—No in-service training program exists. Supervisors are given no formal training. Literature concerning data processing, personnel administration, management, etc., is not available. The educational and training opportunities offered by such institutions as the U.S. Department of Agriculture Graduate School (which offers low cost evening and correspondence courses geared to the high school graduate in such subjects as supervisory practice, essentials of good office management, etc.) are not being utilized.

—Within the next few years, a number of key employees will be leaving the Office of the Clerk, primarily through retirement. For example, the Clerk, the Chief Deputy Clerk, and the supervisors of the Civil Division and the Copy, Mental Health, and Appeals Division will all be eligible to retire. It appears that a number of other key employees in less responsible positions will also be leaving. However, we found that neither the Clerk nor the Court had firm plans for replacing these key people, i.e., no one was being groomed for the Clerk or Chief Deputy Clerk positions.

In discussing the subject of employee training and development with the Clerk, we found that he believes that on-the-job training adequately meets his employees' training needs and that the problem of sufficient qualified staff can be solved only if salaries are raised and if additional positions are authorized. We agree that on-the-job training can be an important means of developing employees; however, it needs to be organized. Work on the job is not on-the-job training. We also believe that in order to obtain, develop and retain an efficient, productive workforce, on-the-job training needs to be supplemented with formal training and education in such areas as human relations and communications, basic principles of supervision and management, and problem solving and decision making. And we believe the need for such supplemental training would be just as great even if salaries were raised and more positions were authorized. (As we show in Details IV–D, we believe the real need is to make more efficient and effective use of existing employees rather than seek additional employees.)

The importance of employee development programs was emphasized by a Presidential Task Force on Career Advancement, which recently concluded that: "Money spent on training and time allowed for it will be much better invested by both management and employees if training is planned, coordinated and directed wisely . . . agencies with career systems get higher quality and greater quantity of work, and more readily hold on to their skilled people. Training and education are important factors in such career systems."

Until recently, the Federal Judiciary as a whole has not fully appreciated the value of employee development programs. As a result, appropriations to finance training programs were not requested; consequently, even if the Clerk were training-oriented, a comprehensive training program could not be implemented without funds. In December 1967, however, the Federal Judicial Center was established. One of its principal functions is: ". . . to stimulate, create, develop, and conduct programs of continuing education and training for personnel of the judicial branch of the government, including . . . clerks of court . . . ." We, therefore, recommend that the Court request the Federal Judicial Center to appraise the training needs of the Office of the Clerk. The objectives of such a study and appraisal might well include:

(1) Development of suggestions for improving current methods of orienting new employees.

(2) Development of suggestions for improving the effectiveness of existing on-the-job training procedures.

(3) Identification of specific courses or programs of study to meet training needs.

(4) Delineation of that training which may best be met through self-development.

(5) Formulation of a comprehensive employee development program, including an in-service training program and an employee suggestion program.

Pending such a study by the Federal Judicial Center, the Clerk should provide the Chief Judge (or the Court Executive, if one is appointed) with information showing the names, positions, and estimated retirement dates of those key employees who may be retiring within the next few years. He should then indicate what he is doing to ensure qualified replacements exist for these positions. If he does not believe potential replacements exist on his present staff, he should so advise the Chief Judge.

Our comments concerning employee development have been confined to the Office of the Clerk. Because of its importance to our related studies of civil and criminal calendar management, a large part of our study was devoted to appraising this Office. Limited reviews of other Offices indicated they, too, were in need of improvement in the area of employee development. For example, the Office of the Assignment Commissioner had no systematic in-service training program or suggestion program in effect. We therefore believe the Court's ultimate objective should be to devise an effective employee development program for all non-judicial employees. The place to start, however, is the Office of the Clerk where training needs are so obvious and so pressing.

F. Periodic Performance Reports

The Court Executive should periodically, preferably semi-annually, prepare for publication by the Court concise reports on the work of the Court. The purposes of the reports would be to provide the bar and the public with meaningful and objective information concerning the Court's performance, progress and problems. Consequently, in addition to statistical data it should include narrative analytical comments on the significance of statistical trends. It should also include explanatory comments on measures the Court is taking or plans to take to expedite the processing of its civil and criminal litigation.

There are two main reasons why we believe some of the Court's resources should be devoted to publishing periodic reports. First of all, the Court is a public institution and as such has a duty to account to the public periodically concerning its operations and activities. A concise report would be an effective means of discharging this responsibility. Secondly, the Court does not operate in a vacuum; in its day-to-day activities it relies heavily upon the cooperation of the bar and the public, as witnesses and jurors, for example. If the Court periodically kept the bar and the public informed in an objective manner of its performance, progress and problems, improved communications should result. Improved communications hopefully will produce improved coordination and cooperation. Thus, the process of reporting on its performance could eventually lead to improved performance.

As a minimum, the reports should include the following statistical data showing by case categories: number of cases commenced; number of cases terminated by type of termination (i.e., settled by parties, settled by a judge, tried, etc.); number and age of pending cases; and median ages and age ranges of the oldest and newest cases at date of disposition by type of termination. This data should be presented in a standard format and be compared with data for prior reporting periods.

In separate reports we discuss the problem of concentration of defense counsel in civil jury cases and the Court's experiment with an individual calendar system for criminal cases. Both of these subjects would be appropriate for inclusion in the Court's periodic reports. For example, the reports could include data showing the extent of attorney concentration and comment on measures being taken by the Court to solve the problem. In connection with the individual calendar system, the reports could include data showing the results produced and comments evaluating those results.

Although the quarterly and annual reports of the Administrative Office of the U.S. Courts (AOC) are rich with statistical data concerning the workloads of the U.S. Courts of Appeals and the U.S. District Courts, they are lengthy documents (the 1968 report was over 300 pages) and do not specifically address themselves to the local situation. Thus, we do not believe the AOC reports are adequate for informing the local public and the bar about this Court's operations although some of the data in the AOC reports can be abstracted and used in the Court's reports.

Appendix A. Suggested Powers and Duties of Court Executive

Except to the extent that such powers and duties are conferred upon the Administrative Office of the U.S. Courts by statute (see USC 604, 605), the Court

Executive for the U.S. District Court for the District of Columbia should have the following powers and duties which will be exercised under the direction of the Chief Judge and subject to his approval:

(1) Organize and administer efficiently and economically all of the non-judicial activities of the Court;

(2) Assign, supervise, and direct the work of the non-judicial officers and employees of the Court;

(3) Appoint and remove all non-judicial personnel except the personal staffs of the judges;

(4) Formulate and administer a system of personnel administration including an in-service training program for non-judicial personnel;

(5) Administer the Court's budget, fiscal, accounting procurement and space functions;

(6) Conduct studies of the business of the Court and prepare appropriate recommendations and reports relating to the business and administration of the Court;

(7) Define management information requirements and collect, compile, and analyze statistical data with a view to evaluation of the performance of the Court and preparation and presentation of reports;

(8) Establish procedures for the management of the jury selection system;

(9) Attend meetings of the judges of the Court and serve as secretary in such meetings;

(10) Except to the extent that this function is performed by the Chief Judge, maintain liaison with governmental and other public and private groups having an interest in the administration of the courts;

(11) Prepare and submit to the Court periodically, at least annually, a report of the activities and the state of business of the Court, which the Chief Judge shall publish. This report shall include meaningful and current data in a standard format on the ages and types of pending cases, method of disposition of cases, information of current operating problems and measures to indicate standards of performance. Median ages and the age ranges of oldest to youngest cases at date of disposition shall be specified for all matters requiring court action by trial or hearing. The report shall include a description of innovations and modifications introduced to improve the Court; and

(12) Perform such other duties as may be assigned to him by the Chief Judge and as may be necessary for the proper administration of the Court.

Appendix B. Current and Proposed Staffing Patterns of Major Civil Units Offices of the Clerk and Assignment Commissioner*

OFFICE OF THE CLERK

Position	Current[1]		Proposed		Reference
	Number	JSP grade	Number	JSP grade	
Civil Division:					
Supervisor	1	11–12	1	13–14	Details IV D 2.
Assistant Supervisor	1	9–10	1	11–12	Details IV D 2.
Counter clerks	3	6–7–8	3	6–7–8	(2).
Docket clerks	4	4–5–6	2	4–5–6	(2).
Statistical clerk	1	5–6	----	----	(2).
Backup new case desk	2	6–7	2	6–7	
Forma pauperis, habeas corpus	1	5–6	1	5–6	(3).
Clerical assistant	1	4	----	----	(4).
Fiduciary clerk	1	5–6	----	----	(3).
Subtotal	15	----	10	----	
Copy, Appeals, and Mental Health Division:					
Supervisor	1	9–10	----	----	(5).
Chief docket and process workers (appeals)	1	6	1	6–7	(5).
Assistant docket and process worker (appeals).	1	5–6	2	5–6	(5).
Chief docket and process worker (mental health).	1	7	1	6–7	(6).
Assistant docket and process worker (mental health).	1	5–6	----	----	(6).
Copy clerk, typist and general process worker.	1	4–5	1	4–5	
Subtotal	6	----	5	----	

APPENDIX B. CURRENT AND PROPOSED STAFFING PATTERNS OF MAJOR CIVIL UNITS OFFICES OF THE CLERK AND ASSIGNMENT COMMISSIONER*—Continued

OFFICE OF THE CLERK—Continued

Position	Current[1]		Proposed		Reference
	Number	JSP grade	Number	JSP grade	
Files Division:					
Supervisor	1	6	1	6	
File clerks	6	3–4	4	3–4	(7).
Subtotal	7		5		
OFFICE OF THE ASSIGNMENT COMMISSIONER					
Assignment Commissioner	1	13			(8).
Secretary to the Assignment Commissioner	1	6			(9).
Statistical clerk	1	6	1	5–7–8	(10).
Pretrial clerk	1	5	1	6–7–8	(10).
Jury clerk	1	6	1	6–7–8	(10).
Nonjury clerk	1	6	1	6–7–8	(10).
Subtotal	6		4		
Grand total	34		24		

* See Details IV D 1 and 2 for background information.

[1] Current staffing pattern is based on authorized positions as of September 1968, when our study was initiated.

[2] At the time of our review there were a total of 3 counter clerk positions and 4 docket clerk positions authorized. Based on our study which included extensive observations of employees in action, we believe only 3 counter clerks and 2 docket clerks are needed and we believe these 5 employees could easily absorb the duties of the statistical clerk. The statistical clerk's most time-consuming duty involves scanning the dockets to identify inactive cases. Under our suggested civil case control system set forth in a separate report this duty would be performed by the counter clerks. The statistical clerk's other major duties—preparation of statistical cards and reports—could also be performed by the counter and docket clerks. Finally, our November 1968 recommendations to the court contained a suggestion for streamlining the docketing process by utilizing procedures successfully employed by most other U.S. district courts. (See app. C for a listing of our November 1968 recommendations.)

[3] Our November 1968 recommendations contained suggestions for simplifying the paperwork in connection with these 2 positions. We recommended that the 2 positions be combined after streamlining these procedures. The clerk subsequently advised us that the 2 positions had been combined.

[4] The clerical assistant serves primarily as a messenger and our observations disclosed he has extensive amounts of free time. We believe the job should be abolished and the duties absorbed by employees of the files section.

[5] If the current Copy, Appeals, and Mental Health Division were abolished as we recommend there would no longer be a justification for a JSP 9–10 supervisor. The current supervisor, who spends most of her time processing appeals, plans to retire early in 1970. When she does, we suggest that the chief docket and process worker (appeals) be given a raise to a JSP–7, that another JSP 5–6 assistant docket and process worker be hired, and that the supervisory position be abolished.

[6] As we recommended in November 1968, we believe that the mental health workload has decreased to the point where 1 employee can handle the work with occasional help.

[7] If our November 1968 recommendations concerning the files system were adopted, we believe the file room could be operated with a maximum of 1 supervisor and 4 file clerks.

[8] Consolidation of the Assignment Commissioner's office and the clerk's office would eliminate the need for a separate Assignment Commissioner's position. His duties would be discharged by employees of the calendar section of the Civil Division and by court executive's assistant for calendar management.

[9] The secretary to the Assignment Commissioner spends very little time on secretarial duties. Much of her time is devoted to work connected with the semiannual call of the calendar and certificates of readiness, both of which would be abolished if our recommendations in our report on the civil calendar were implemented. Also, her administrative record-keeping duties could be performed by the court executive's immediate staff.

[10] These 4 employees would become the calendar section of the Civil Division in the clerk's office and their duties and responsibilities would entitle them to grades JSP 6–7–8, grades comparable to the counter clerks.

APPENDIX C. LIST OF RECOMMENDATIONS MADE TO THE COURT IN NOVEMBER 1968

Introduction

In November 1968 in response to the Court's request for an interim report on matters that could be acted upon immediately, we furnished the Court a listing of recommendations for action by the Clerk's Office on a variety of matters. Some of the recommendations dealt with significant matters such as planning for the replacement of key supervisory personnel; other recommendations dealt with minor matters such as the elimination of certain records and reports. The recommendations are listed below:

OFFICE OF THE CLERK OF THE COURT

1. The Clerk should begin developing firm plans for replacing key supervisory personnel who will be leaving court within the next few years. These plans should

include identifying potential supervisors and then providing them with needed training and experience.

2. The Clerk should require all employees who perform courtroom duties to complete a daily report showing time spent (*a*) in the courtroom or chambers, (*b*) preparing for courtroom work, and (*c*) documenting courtroom proceedings. If these reports disclose that existing courtroom clerks are fully and effectively utilized and that additional courtroom clerks are needed, the data should be used to support a request to the Administrative Office for additional courtroom clerks.

CIVIL DIVISION

3. On an experimental basis, blotters prepared by courtroom clerks and counter clerks should be eliminated and docket sheets for open cases should be filed in tubs rather than in binders. (If this experiment proves successful, we estimate the number of employees needed to perform the docketing function can be reduced from the current authorized staff of 7 to 5 employees.)

4. The card file for "Forma Pauperis" cases should be discontinued and replaced with a simple daily log. (The Civil Division Supervisor believes elimination of this card file will save a significant amount of time.)

5. Incoming mail should be routed directly from the Financial Division to the counter clerks rather than through the Civil Division Supervisor. Counter clerks should be responsible for preparing routine outgoing correspondence for the Civil Division Supervisor's signature.

6. The Civil Division Supervisor should discontinue double-checking all final orders, verdicts and judgments processed by the Motions Clerk and courtroom clerks. (Adoption of this recommendation and Recommendation No. 5 above will free the Supervisor to spend more time training and supervising subordinates.)

7. The Civil Division Supervisor should supervise the preparation of an up-to-date operating manual for the Civil Division. (Such a manual will be especially timely in view of current intentions of Supervisor and Assistant Supervisor to leave the Court within the next few years.)

8. The duties of the Fiduciary Desk should be thoroughly analyzed to determine whether the paper work can be reduced. For example, alternatives to the current Summary Hearing procedure for lot filed Fiduciary accounts and reports should be considered. (Possibly, reminders by phone should be made a week in advance of due date.) If such analysis produces a streamlined operation, consideration should be given to combining the Fiduciary Desk with the Informa Pauperis Desk.

9. The informal monthly report on the number and types of motions filed should be discontinued. (Elimination of this report should save 2–4 clerical hours per month.)

10. The Statistical Clerk should discontinue transcribing data from the Judge's Daily Reports. (Adoption of this recommendation should save about 1 clerical day per month.)

MOTIONS DIVISION

11. The monthly statistical report should be eliminated. (Elimination of this report should save about 1 clerical day per month.)

FILES DIVISION

12. The file room blotter should be discontinued. (Three file clerks currently spend every morning "blottering" papers to be filed. Thus, elimination of the blotter should enable at least 1 file clerk to be re-assigned to other duties.)

13. The Clerk of the Court should actively pursue the question of whether the existing file system of four and five drawer file cabinets should be replaced with a mechanized file and/or open shelf filing system.

14. The present procedure which requires a file room clerk to "stay with the file" whenever a file is subpoenaed for use in a Court of General Sessions case should be replaced with a receipt procedure. (The Supervisor of the Files Division estimates that once or twice a week he loses a man for a half or even a full day due to present requirements.)

15. The one employee in the Printing Division should be placed under the supervision of the Files Division Supervisor rather than the Chief Deputy Clerk.

MENTAL HEALTH, APPEALS AND COPY DIVISION

16. Blotters prepared by docket clerks for Mental Health cases should be eliminated and docket sheets for open cases should be filed in tubs rather than binders. (If this recommendation is adopted and if the Fiduciary responsibilities of Mental Health clerks are simplified in accord with Recommendation No. 8 above, 1 employee may be able to handle all Mental Health responsibilities—2 positions are currently authorized.)

17. The Supervisor of this Division should supervise the preparation of an up-to-date operating manual for this Division. (Such a manual will be especially timely since the Supervisor definitely plans to retire next year.)

CRIMINAL DIVISION

18. The Clerk should review the current criminal case file system to tighten, immediately, all controls for custody of such files. The Clerk should develop a plan of file control in consultation with the Court Management Study and submit the plan for review to the Executive Committee, before adoption.

19. Each judge and his personal staff should obtain, check out and directly return case files to the Criminal Division of the Clerk's Office. Each judge should be notified of this procedure by the Chief Judge and each present and new Court employee should be notified by memorandum of the procedure.

20. As a temporary relief, the Clerk should immediately assign a third person to assist in transferring information from blotters to criminal docket sheets.

21. The Clerk should personally investigate the current method of telephone and counter work in the Criminal Division and, in consultation with the Court Management Study, develop a plan for a system of improved coordination of such work.

22. The Clerk should install tubs and place the last 1500 active criminal docket sheets in them. He should develop a plan, in consultation with the Court Management Study, for appropriate controls for public use of docket sheets and for court employee use.

23. The Clerk should consider adoption of a smaller size docket sheet in criminal cases for ease in handling information and typing and copying.

THE CIVIL CALENDARING AND ASSIGNMENT SYSTEM IN THE COURT OF GENERAL SESSIONS

JUNE 1, 1969

47-070 O—70—pt. 2——8

FOREWORD

We are cognizant of the fact that the Court of General Sessions has made many operational improvements during the past several years. Our earlier experience in experimenting with new procedures in the Criminal Assignment Court indicates that judges of the Court are cooperative and receptive to new ideas. They are interested in innovation and experimentation. Based on these factors, the stage is set for further significant progress in the administration of justice by this Court.

Therefore, we submit this report on the processing of civil cases in the Court of General Sessions. While it is not an implementation plan, this report presents the ingredients we believe essential to a fairly and efficiently run calendaring system. The report emphasizes certain basic concepts without which successful implementation of a new system is extremely difficult.

CONTENTS

THE CIVIL CALENDARING AND ASSIGNMENT SYSTEM IN THE COURT OF GENERAL SESSIONS

I. INTRODUCTION

Scope

This report contains the findings and conclusions of a study of the civil case calendaring and assignment system in the Court of General Sessions. Civil calendaring and assignment system refers to the policies and procedures involved in calendaring and assigning Class GS civil cases (cases with prayers up to and including $10,000, the upper limit of the Court's jurisdiction) for motions hearings, pretrial conferences, or trials. Four to six judges are ordinarily assigned to the trial of these cases. The report does not apply specifically to Small Claims or Landlord-Tenant matters unless a jury demand has been made. We are studying the feasibility and desirability of expedited processing for small-value cases. This will be presented in a separate report.

This investigation covered the policies, rules, and operation of the civil assignment system; it did not deal with office procedures, personnel or court forms, except to the extent that any of these appeared to have a direct bearing on the effectiveness of the calendaring and assignment system in disposing of cases.

In addition to observation, study of court rules and procedures, and sampling of backlog and disposition records, the study included interviews with as many judges as possible and with the Clerk of the Court, Chief Deputy of the Civil Division, Civil Assignment Commissioner, staff of the Civil Assignment Office, and members of the Bar practicing in the Court of General Sessions. Many of the recommendations in this report reflect ideas received during these interviews. We especially appreciate the assistance of the staff of the Civil Assignment Office.

Purpose

The purpose of this study was to help the Court of General Sessions identify and understand problems in its calendaring and assignment system, and to develop recommendations to assist the Court in designing a calendaring and assignment system that meets the following objectives:

1. Maximizes the use of available judge trial time.
2. Insures that cases calendared for a date certain will be reached for trial on that date.
3. Minimizes the time between filing (or joinder of issue) and disposition of a case.
4. Facilitates and encourages non-trial dispositions.
5. Minimizes, through observance of standardized procedures and court rules, the necessity for discretionary action by non-judicial personnel.
6. Minimizes paper work associated with the calendaring and assignment function.

7. Is based on realistic, up-to-date court policies and rules, enforced and followed by the Court.
8. Includes judge-participation in the calendaring and assignment function where necessary to ensure the smooth and expeditious flow of cases through the system.
9. Includes collection of meaningful civil case statistics and generation of management information on a timely basis.

Summary of Findings

As a result of our study we conclude that the difficulties experienced by attorneys, judges, and court personnel under the present calendaring and assignment system can be explained in part by the fact that the Court needs to exercise more effective and organized control over the flow of cases from filing to termination. Over the years, filings have risen (from 21,065 in FY 1963 to 24,326 in FY 1968), complexity has increased, and the "mix" of civil cases has no doubt changed, but the method of calendaring and assigning civil cases has remained virtually unchanged for twenty years.

The need for a more effective calendaring system is evidenced by the 25.5-month median delay to jury trial (computed in June, 1969), a continuance rate averaging about 50 percent of the daily calendar, and a steady increase in the total backlog of civil cases at issue in spite of an increase in cases terminated annually. (See Tables 2–5.)

Calendaring decisions and the day-to-day operation of the calendaring and assignment process are handled by the staff of the Assignment Office. There is no direct participation by a judge. The administrative staff is capable and does its best under the system that exists, but no sustained policy-level attention is provided by the Chief Judge or by any other judge designated by him. As the system has evolved, the control of the calendar has moved somewhat into the hands of counsel rather than the court. Continuances (one of the most critical policy areas in calendar management) are routinely requested and received by counsel in the Assignment Office, with the tacit sanction of the Court. Though it is not always possible to have a perfect match between the number of cases on the calendar and available judges, we believe that the Court needs to improve the precision of its present estimates of daily caseload limits. (See Appendix IV.)

The Court of General Sessions collects statistics regarding criminal cases with the help of a computer, but it does not yet collect or analyze meaningful statistics on civil cases either manually or with computer assistance. A comprehensive calendar management program necessarily includes analyses and evaluation of detailed statistics on the condition of the current civil backlog, the delay to trial, and the disposition pattern.

Summary of Recommendations

General

The recommendations contained in this report are not designed primarily to immediately eliminate the existing backlog. However through the resultant increased productivity of the judges and increased efficiency of the calendaring system as a whole, the Court

should in fact be able to steadily reduce the backlog and delay to civil trial. It is expected that the recommended changes will make it easier for the Court to absorb the proposed transfer of jurisdiction.

While in our study of the criminal assignment system we recommended procedural modifications to a basically sound assignment court concept, the civil system requires a complete change and a new conception of the scope of the Court's responsibility in disposing of civil cases filed.

We do not believe any one assignment system has yet been demonstrated to be superior. Several Judges in the Court of General Sessions have recently instituted an individual calendar for civil cases on an experimental basis. The results of an extended trial of this system will be very valuable to the Court in evaluating the effectiveness of the Individual Calendar System for that Court.

It appears that the choice of a calendaring system should be tailored to the particular circumstances and problems of the Court in question. We are recommending that the Court of General Sessions adopt a new Master Calendar System rather than an Individual Calendar because we believe it to be the easiest and most logical first step from the system now in existence. We feel that a Master Calendar, or variation of it, would facilitate development of the central commitment, control and coordination that is essential for proper management of the civil caseflow. This coordination and control is essential no matter what kind of calendaring system is used. Considering the experience under the present calendaring and assignment system, we feel the greatest possibilities for strengthening and developing it lie in centralization, rather than decentralization to individual calendars. We agree with Judge Campbell of the Northern District of Illinois who says:

> We feel that the central calendar system works best where the cases are voluminous though small and uncomplicated and the court is composed of many judges (15 or more), as is the case in many of the state courts. It is apparent that under these circumstances, it is possible that each judge might find it difficult to conduct pretrial conferences, handle the great volume of motions presented to him, and, at the same time, try cases.[1]

Further, we believe that as the Court of General Sessions expands its Board of Judges under the proposed transfer of jurisdiction, the conflicting trial commitments for the attorneys will be more easily minimized under a central rather than an individual calendar.

In implementing the new calendaring system, the Court should develop a comprehensive master plan for expeditious processing of civil cases in accordance with our detailed recommendations. (See Details 1–4 in Section III of this report.) The major components of the plan should include taking responsibility at the time of filing, dismissing those cases in which appropriate action is not taken within six months, screening out the complex cases for early attention by a judge, special procedures for maximizing the settlement rate, firm control of continuances, assignment of cases by a Calendar Control judge, development of time standards and goals for the disposition of cases, development of statistics which will allow analysis of how well the Court is meeting its goals, and constant attention to system development, operation, and modification by the Chief Judge, Court Execu-

[1] Campbell, W. J., Chief Judge U.S.D.C., Northern District of Illinois, "Calendar Control and Motions Practice," 28 FRD 37, pp. 63–65.

tive and qualified staff members. It should be noted that none of these recommendations necessarily refers to a specific calendaring system (central versus individual). They are simply elements which we consider essential to the success of *any* calendaring system.

ESSENTIAL POLICIES

In the course of our study, we have reached the tentative conclusion that it is difficult to find a singular cause of backlog and delay that will fit many courts; one cure-all solution is even more elusive.

Through visiting other courts in the United States and studying the literature, we found that a variety of techniques are used by courts which efficiently dispose of their caseload: some hold pretrial conferences, others use only a settlement conference; Los Angeles County requires a Certificate of Readiness for trial, Prince Georges County does not. In support of our position that there is a variety of useful techniques, Maurice Rosenberg, of our National Advisory Committee, has said:

> On the evidence to date, no single measure has been shown completely efficacious to roll back delay; at best, it will take many procedures to move us substantially towards a solution.[2]

We did find, however, that an essential component of solutions to backlog and delay problems in all courts seems to be an uncompromising commitment by the judges and administrative staff, under the leadership of the Chief Judge, to finding a remedy. Uniformly, courts which successfully reduced their backlog and delay to trial did so with a well organized, task force approach. It involved a team effort with judicial and non-judicial staff giving a major portion of their time to this particular problem [3]—not just until they had come up with new techniques of calendaring and assignment, but until they had tested, "debugged," and validated their new system and there were visible improvements. Judge Aldisert describes it this way:

> "[We evolved] a system created by experiments. We were willing to try new techniques . . . but were equally willing to discard those that did not work. Gradually we were able to evolve a system of processing cases which produced the effectiveness we desired." [4]

Though there are a variety of effective calendaring and assignment techniques, there do seem to be four policy-level "absolutes" common to courts which successfully conquer delay problems. We present these below and present additional supporting detail in Section III of this report.

1. *No Continuances* (see Detail 9, Section III).—Judge Aldisert says that as Calendar Control Judge in Allegheny County, Pennsylvania, he granted no trial continuances. Counsel, having been given adequate notice of the date,were expected to ready. "Our policy of continuances is simply stated: no continuances, even if the request is made by all the parties. Although exceptions are made infrequently, this is the policy of the Court. . . . It is now so much a basic part of our routine that trial lawyers generally accept it." [5] Judge Nix of

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[2] Rosenberg, M., "Court Congestion: Status, Causes, and Proposed Remedies," *The Courts, the Public and the Law Explosion*, Prentiss Hall, New York, 1965.

[3] Nix, Lloyd S., former Presiding Judge, Los Angeles Superior Court, in a speech to the World Association of Judges, Geneva, Switzerland, 1967.

[4] Aldisert, R. J., former Calendar Control Judge, Allegheny Co., Pa., "A Metropolitan Court Conquers Its Backlog," *Judicature*, Vol. 51, No. 6, Jan. 1968, pp. 204–5.

[5] *Ibid.*, p. 206.

California believes the Court's policy with respect to continuances may be more important than any of the other calendar management policies:

> [An] analysis revealed that the majority of the backlog (cases *supposedly* ready for trial) had previously been assigned a trial date and then had asked for a continuance because they were *not* ready for trial. Many cases had had numerous continuances!! The point was dramatically brought home to us that firm calendar management was the key to successful control of backlog and delay.[6]

If attorneys know that the court expects them to be ready for trial, they are far more diligent in preparing their case and meeting the time constraints imposed by the Court Rules.

2. *Active Control by the Court of the Flow and Processing of Cases From Filing to Termination* (see section III).—Most courts affirm this in principle but fail to do so in practice. The key is commitment on the part of the entire bench and assignment of responsibility for calendar control to a specific judge.[7] In support of the position that the court must be in complete control of the operation of its calendar, Chief Judge William T. Campbell of the Northern District of Illinois says,

> Once a particular calendar system is put into operation, the judiciary is responsible for, and must maintain, a strict control over that calendar. I should like to say without any intended offense and with the same good will common to all of our many joint ventures that much as I respect and admire the members of the bar who practice before our courts, and much as I am swayed by an understanding of their problems, I strongly believe that a judge must always be in command of the members of the bar who practice before him and of his calendar, or else, I assure you, they will surely command him and his calendar. I cannot emphasize enough that if for one moment our calendars slip from our direct supervision and control, the result will be chaos.[8]

3. *Realistic and Effective Rules Observed and Enforced by the Court* (see Detail 5, Section III).—It is unrealistic to expect that counsel will observe court rules if the Court is lax in enforcing them. This is not to imply that attorneys irresponsibly flout court rules. In the allocation of his time, the busy practitioner will naturally devote most time to the cases demanding most time. By enforcing rules such as trial readiness rules, the Court creates a demand for attention to the cases scheduled for trial.

In a well-planned and fairly administered calendaring system, the notice of trial serves to remind the attorney that it is time to get this case ready for trial or decide to make some other disposition in the case. For many attorneys this will be the first time he has devoted substantial thought to the case.

If on the other hand an attorney *is* dilatory or has a backlog of cases too large to be disposed of in a reasonable time period, then in fairness to the litigant the court rules (and even sanctions) should force the attorney to increase the manpower in his office. Too often, delays caused by counsel are represented to the unwary client as court-imposed delays. Chief Judge Clary of the Eastern District of Pennsylvania says that delay, as experienced by litigants, is "not only congestion in courts, but equally if not more so congestion in law firms."[9]

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[6] Nix, Lloyd S., Op. cit. p. 7.
[7] Zirpoli, Alfonso J., U.S.D.C. Northern District California, "Organizing the Civil Business of the District Court," Speech at Judges' Seminar, Denver, December, 1964.
[8] Campbell, William T., "Calendar Control and Motions Practice," 28 FRD 37, pp. 63–65.
[9] Clary, Thomas J., "Report to the Trial Practice and Technique Committee of the Judicial Conference of the United States," *Congressional Record*, July 25, 1967.

At one point, Judge Clary threatened to communicate directly with the litigants so that they would know the real reason their cases were not going to trial.

4. *Mandatory Settlement Conferences* (see Detail 7, Section III).—The principal purpose of the settlement conference should be to settle the case. The conference should precede the trial date by no more than thirty days, even closer if possible. The Court of General Sessions judges and other judges throughout the country are reaching the conclusion that the imminence of trial increases the likelihood of settlement.

CONCLUSION

The Superior Courts of the State of California are often cited as among the best-managed in the country. Of the California courts, the Los Angeles Superior Court several years ago achieved phenomenal success in reducing the delay to trial through adopting totally new calendar control policies. In the space of eighteen months, the delay to jury trial was reduced from 23 months to six months. No new judges were added during this time. In discussing the policies which have contributed to the success of the calendar control procedures the Report of the Administrative Office of the California Court says:

> In addition to a firm continuance policy, courts have had the greatest success where other factors supplement readiness procedures; for example, (1) the court assumes firm control of the movement of cases from the time the memorandum to set the case for trial is filed until disposition; (2) attorneys can operate with predictability because the court's order of business is governed by rules and policies that are well understood by the Bar, are uniformly enforced and are consistently applied; (3) the court's departments are organized so as to maximize potential trial time; (4) the ratio of trial settings to departments is such that attorneys can rely on going to trial on the dates set and on trailing cases being kept to a minimum; and (5) trial dates are scheduled to follow pretrials very closely on the assurance that cases are ready for trial.[10]

II. FINDINGS—DETAIL

1. The most serious problem in processing civil cases in the Court of General Sessions has been the Court's failure to take early and effective control of the movement of cases.

Our study revealed that the Court of General Sessions follows no specific comprehensive plan for disposing of civil contested cases. No standards or goals are set for the performance of the calendaring system. Specific planning or strategy for expeditious processing of civil cases from filing to termination is sporadic. With few exceptions, the present calendaring and assignment system has remained unchanged for 20 years.

2. The lack of a master plan governing the flow of cases through the Court is demonstrated by the two-year average delay to jury trial and the increasing backlog of untried civil cases. It is also evident in the fact that many of the Civil Rules of Court having great potential impact on the effectiveness of the civil system are not observed or enforced by the Court. For example:

(a) *Continuances.*—Rule 39(e) states that only the Motions Judge can hear and rule on requests for continuance, and no case will be

[10] *Annual Report of the Administrative Office of the California Courts*, January 2, 1967, pp. 202–204.

continued on the day of trial or pretrial. Our sample of the daily calendars for 1967 and 1968 showed that jury continuances on trial date ranged from 35 percent to 70 percent. Non-jury ranged from 35 to 60 percent. (See Tables 7and 8.) Further, the Court has tacitly delegated to the administrative staff of the Assignment Office the responsibility for granting continuances. The effective result is that requests by counsel are routinely granted unless a party objects to the continuance.

(b) *Pretrial Waivers.*—Rule 16 requires pretrial in jury cases; no court rule authorizes waiving of pretrial by the parties. In practice, waivers are routinely requested and received in the Assignment Office. Our statistical survey covering 1963–1968 showed that about 20 percent of the jury cases waive pretrial. At time of disposition, 61 percent of the cases waiving pretrial had been continued at least once as opposed to 48 percent of *all* jury cases disposed of. Further, cases waiving pretrial were, on the average, six months older at disposition than all jury cases considered as a group. While in some jurisdictions a pretrial wavier is used to expedite disposition of the case, the waiver does not appear to be so used here.

(c) *Dismissals.*—Rule 41(e) provides for the Clerk of the Court to warn dilatory parties and have the case dismissed after six months of inaction by plaintiff. In practice, the Assignment Office from time to time warns plaintiffs in jury cases which are not "at issue." But according to the Civil Chief Deputy, the Court abandoned the procedure in non-jury cases not at issue because of insufficient manpower to assign this responsibility on a continuing basis. There are currently no statistics to show the total number of these non-jury cases pending and not at issue. Our estimate based on total filings, annual dispositions and other statistics imply that the number of these cases pending may increase at a rate of from 1,000–4,000 cases per year.[11] (See Table 5.) It should be noted that these cases are not part of the reported 4,800-case civil backlog. Technically, "backlog" in this report refers only to cases in which issue has been joined.

3. The civil jury backlog of cases at issue was 2,342 as of June 30, 1965 as opposed to 3,409 as of June 30, 1969. The non-jury backlog was 993 as opposed to 1,466 on June 30, 1969.

4. There is no formal or uniform plan for effecting settlements in jury or non-jury cases. (During April 1969, however, the Board of Judges voted to experiment with a new assignment system aimed at emphasizing settlement.) Statistics maintained by the Civil Assignment Commissioner and our sample of dispositions from 1963 to 1968 showed approximately a 75 percent settlement rate for jury cases and about a 50 percent rate for non-jury cases. Comparing automobile negligence cases, we find the same disparity in settlement rates between jury and non-jury cases.

5. The entire process of calendaring and assigning cases to judges for pretrial and trial, and all decisionmaking connected therewith, is handled by the Civil Assignment Commissioner (a non-judicial position) or his staff. There is no judge participation in this system.

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[11] We are not at this time recommending a crash program to identify and dispose of these cases, but the Court should consider it in connection with the overall program of calendar control.

6. The present method of calendaring and assignment regularly results, *on the same day* in:

(*a*) The Assignment Office continuing cases because they believe no judges will become available to try the cases.

(*b*) Judges calling Assignment Office later for another case and being advised that there are no cases currently available.

(*c*) Attorneys and litigants spending at least half a day in the Assignment Office on their trial date, then being continued to a future date.

7. Measurement of the "average" delay to jury trial is not based on the age of cases actually disposed of by trial during the past month (or other appropriate time interval). According to the Assignment Office, it is an estimate of expected disposition date for those cases next in line to be set for pretrial. The Court Management Study believes that ". . . the vital test of whether a court is current is the age of the civil cases at the time of their disposition." [12] Our analysis of jury cases disposed of by trial during June, 1969, showed a median age of 25.5 months (from date of issue to trial). The estimated age at trial disposition for non-jury cases is about 5 months. This indicates that, while the Court feels "non-jury cases are not a problem," the setting policy with respect to non-jury cases may contribute significantly to the jury case delay and backlog. In effect, the setting policy penalizes litigants for requesting a jury and rewards those who do not want a jury trial.

8. The Court publishes no regular statistical reports other than the semi-annual report to the Attorney General. Though the Court plans to use its computer to prepare statistical reports, at the present time internal reports are extremely limited and not suitable for thorough analysis of the backlog or dispositions. Filings, backlog, or terminations are not analyzed by type of case.

9. According to the Assignment Office, the Court is lenient in setting aside a previous Court Order for dismissal or default due to "no appearance," even when the attorney did not notify the Court prior to his non-appearance. No statistics are available.

10. Pretrial conferences, though required in jury cases, have been de-emphasized by the Court and scheduled on an irregular basis, with the result that—

(*a*) There are instances of insufficient pretried cases to set the trial calendar.

(*b*) Pretrial and trial are scheduled so far apart (two to six months or more), due to lack of planning, that there is no "imminence of trial" to encourage settlements at pretrial.

(*c*) The pretrial conference sometimes does and sometimes does not emphasize settlement possibilities, depending on the individual judge, since the Court has no firm policy on this matter.

III. RECOMMENDATIONS—DETAIL

We recommend that the Court develop and adopt a revised Master Calendar system (headed by a Calendar Control judge) for assignment of civil cases. An example of the flow of cases through this sys-

[12] Aldisert, R. J., *Op. cit.*, p. 202.

tem is given in Appendix II to this report. The recommendations which follow below generally assume a Master Calendar system, but most are independent of a particular calendaring system and are directed at problems more basic than the manner of assigning cases to judges.

1. The Court must take active responsibility for management of the flow of cases through the Court. The calendaring system must facilitate and encourage early dispositions. This means that the Court must know the status of all cases at any given time to identify those which are subject to dismissal under Rule 41(e) and those that are ready to be put on the calendar; [13] the system must encourage settlements; it must not allow cases to be continued on the trial or pretrial date. The Court should compute its daily civil calendar limits with greater precision so that as far as possible attorneys are assured of a judge and a courtroom on the trial date.[14]

2. There must be a comprehensive "Master Plan" providing for court control of civil cases from filing to termination. In so doing, the Court Executive should appoint a staff member to be in charge of (*a*) thoroughly planning for and designing the new system; (*b*) guiding the implementation; (*c*) monitoring performance of the new system; (*d*) recommending any required modifications. Implementation should not begin until the system planning is complete, down to the detail level, and foreseeable problems have been worked out.

3. Because effective management of the flow of cases prior to the trial date has an important impact on the quality of justice obtained, and because proper caseflow management can effect early dispositions, such management is one of the most important judicial functions in processing civil cases. Therefore, this important facet must be under the close control and supervision of the Chief Judge or the Civil Calendar Control Judge. Constant attention and commitment to management of the caseload is mandatory. This commitment is the single common denominator among courts which have had notable success in reducing delay to trial.

4. Because such commitment is essential, we recommend that the Chief Judge serve as Calendar Control Judge for a year to ensure that the new system is working properly and is firmly established. Though this would mean only a few hours of bench time each day to assign cases and hear motions, the Calendar Control Judge would necessarily spend considerable time with the Court Executive and staff during the first year planning, modifying, and monitoring the effectiveness of the new procedures. The following list of examples of duties of the Calendar Control Judge is based on a list compiled in January by one of the judges of the Court of General Sessions:

(*a*) Exercise overall supervision of the civil calendaring and assignment system.

(*b*) Assign cases to trial judges.

(*c*) Hear and rule on all motions for pretrial and trial continuances.

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[13] Ryan, Sylvester J., Chief Judge, U.S. District Court, Southern District of New York, "Effect of Calendar Control on the Disposition of Litigation," 28 FRD 37, pp. 66–74.

[14] "The threat of immediate trial is the greatest sanction possessed by the calendar control judge." Aldisert, R. J., former Calendar Control Judge, Allegheny County, Pennsylvania, *Ibid.*, p. 249.

(*d*) Maintain liaison with the civil trial judges and confer with each of them before they begin their assignment in civil trial.

(*e*) Arrange for the recording, reporting and analysis of civil case statistics to assess the effectiveness of the calendaring and assignment system and for other purposes as detailed in Appendix III of this report.

(*f*) Maintain liaison with the Rules Committee with respect to desirable changes in the Civil Rules.

(*g*) Confer with Court Executive and staff on policies affecting the operation of the calendaring and assignment system.

5. The Court must develop, follow, and enforce effective Rules of Civil Procedure, each of which specifically contributes to an articulated goal in the processing of civil cases. When a court does not follow or enforce its rules or have a published policy on important aspects of case processing, attorneys are left uncertain as to what is expected of them.[15] Under these circumstances, attorneys are less likely to observe the Court rules. The Court must consciously develop an effective means of enforcing its rules as to counsel for all parties. In the interest of the litigants, the Court must not hesitate to sanction dilatory attorneys, possibly by advising their client that the attorney is delaying the case.[16]

6. If the civil jurisdiction is expanded, the Court should study the possibility of a procedure for early screening of case files to identify complex cases which should be assigned early to one judge for all purposes. Criteria should be firmly established for classifying a case as complex. Professor Maurice Rosenberg suggests that in personal injury cases one basis for estimating complexity would be the potential size of the case, *i.e.*, the damages a jury could with propriety award, assuming liability were found. This might hinge on criteria such as novel issues, number and types of parties, or the extent of injuries.

7. The type of mandatory pretrial conference now called for by the court rules should be abolished. The Court of General Sessions is currently considering this. Provision should be made for an optional pretrial by request of parties or court. We recommend that the Court institute a readiness-settlement conference whose prime purpose is to settle the case. Some of the judges at the Court have said, and we agree, that this conference should be held no more than 30 days before the trial date. Counsel would be required to have completed discovery prior to this conference and must have full authority to settle the case. Failing settlement, the judge would assess the readiness of the case for trial and specify in his order any further discovery to be allowed before trial date. The case would then be assigned a firm trial date.

Statistics developed in this study lead us to conclude that the Court should experiment to determine the optimum basis for deciding in which cases the readiness-settlement conference should be mandatory. Since readiness for trial will be stressed at these conferences, perhaps all cases should be required to attend a readiness-settlement conference. Perhaps, since the difference in settlement rate between jury personal injury and non-jury personal injury cases is so great, *all* personal injury cases should be required to attend a readiness-settlement conference. But the Court should make a study to allow them to de-

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[15] Hodges, J. G., "A Lawyer Looks at Calendar Control," 28 FRD 37, pp. 83–88.
[16] Clary, Thomas J., *Ibid.*

velop a rule that is more meaningful than the current policy that jury cases must and non-jury cases need not attend a pretrial conference.

We are not convinced that under the existing system of pretrial, a "pretrial order" prepared by the judge is necessary or even helpful in the trial of the case. Judge Kenneth Chantry, former Presiding Judge of the Los Angeles Superior Court, where mandatory pretrial conferences were abolished in 1967, said he perceived no appreciable change in the length or quality of trials, after the standard pretrial order was abandoned. Judge Chantry agreed that it is essential to have some kind of conference (preferably settlement) close to the trial date to force counsel to pick up the case file.

If the Court desires to have a Pretrial Order, then the Pittsburgh Court of Common Pleas system might be adopted. Counsel are required to prepare and bring to the settlement conference a joint pretrial order.

8. Judges should be assigned to the readiness-settlement conference on the basis of their ability to effectively and fairly settle cases.

9. The Court must adopt and enforce a "no-continuance" policy as to all cases on the civil trial and readiness-settlement calendars. Under exceptional circumstances a case may be given one continuance at the readiness-settlement conference if the settlement judge feels it would increase chances of settlement. After the case has passed the settlement conference and is on the trial list, motions for continuances will be heard only on noticed motion by the Calendar Control Judge.

Generally, all requests for continuance or advancement must be made on motion before the Civil Calendar Control Judge at least five days in advance of the trial date, supported by written affidavit containing the reason for continuance and proof of five days' notice to all parties of intent to make the motion on that date.[17] Continuances should never be granted by the trial judge or by the administrative staff.

With respect to the effect of continuances on the disposition rate, we feel that even one continuance per case is excessive where the Court has given counsel adequate time (after the issue is joined) to prepare the case. Each time a case is continued and must come up on the calendar again it bumps another case which may be serious in its desire to proceed to trial. Since, at the time of this study, the Court maintained no record of the reason a case is continued, no analysis of reasons was possible. Subsequently, they have started writing the reasons on the daily calendar. We conclude from our sample of the 1963–68 dispositions that the average for all cases (including those disposed of early without trial) is one continuance per case.[18] However, our sample of the backlog indicated that cases then awaiting a jury trial date (pretrial completed) had been continued an average of three times each.

10. The Court must critically examine the present practices which allow the wide discrepancy in the delay to jury trial as opposed to non-jury trial. The concept of being "current" in the processing of civil cases embraces jury cases as well as non-jury cases. The Court has a responsibility to move both types of cases to disposition as

[17] Similar to procedure used in Judge Greene's special call of the civil calendar, March 1969.

[18] Excluding cases dismissed or settled before pretrial would substantially raise the average.

speedily and fairly as possible. No class of civil litigation (unless specially deemed to be entitled to preference) should be expedited at the expense of others. The current setting policy which results in a median delay to trial of eight months for non-jury personal injury cases but a 31-month delay for jury personal injury cases [19] is not an equitable system.

11. The Court should set realistic standards for moving cases. Performance should be monitored and remedial action should be taken when standards are consistently not met. Examples of standards are:

(*a*) Maximum interval of 12 months from issue date to trial in jury and non-jury cases (or for negligence cases, with some lesser time interval for contract cases, etc.). Certainty that court will reach and dispose of case within specific time after the case is at issue will be helpful to counsel.

(*b*) Thirty-day maximum time interval between readiness-settlement conference and trial.

(*c*) All discovery (with exceptions authorized by readiness-settlement judge) must be completed prior to readiness-settlement conference.

(*d*) Time limits within which motions must be heard and disposed of.

(*e*) Dismissal for want of prosecution after six months' failure to take appropriate action. This procedure would be a regular weekly process.

(*f*) Limit on number of cases any firm or attorney will be allowed on the weekly calendar.

12. The present one-month judge rotation system should be modified to lengthen assignments in civil and criminal trial to at least six months. A fast rotation system seems to contribute to lack of continuity and inconsistency in treatment of cases. For example, we observed judges setting aside a previous judge's order of "no further continuances." In pretrials, one month attorneys would find themselves under heavy pressure to settle the case; the next month the new pretrial judge would hardly mention settlement. Also, at the beginning of a new assignment in civil, substantial time may be lost due to judges who were previously in criminal trial having carryover sentencing matters to dispose of.

13. A civil case statistical system should be carefully designed to provide timely and accurate information for evaluation of performance and planning. (See Appendix III.) The Court's computer should be used where necessary.

14. Based on thorough statistical analysis of past disposition data and judicial attendance records, standard caseload limits for the daily calendars must be developed. (See Appendix IV.) Counsel should receive 30-days' notice of the readiness-settlement conference date and be informed that the trial date will follow that conference by no more than 30 days.

15. In connection with the recommendations to regularly analyze civil case statistics and develop realistic daily calendar limits:

Create the position of Court Statistician or Coordinator of Court Information Requirements, at the Deputy Clerk or Department Head level, reporting to the Court Executive (or, in his absence, the Chief Judge). Duties would include:

[19] Based on statistical sample of 1968 dispositions.

(*a*) Analysis of court statistical needs.
(*b*) Development and definition of reports.
(*c*) Development of systems for gathering, compiling and reporting information.
(*d*) Liaison with Computer Department.
(*e*) Recommendations to Court Executive and Chief Judge on publication of information.

16. One administrative person should set all trial and settlement conference dates, whether the result of a continuance or an original setting. In so doing, the person should maintain and consult a schedule showing the future trial commitments of all attorneys, to avoid conflict with previous commitments.

17. The Court must analyze the backlog and calendars as to concentration of cases in various law firms and set a policy with respect to attorneys whose caseload causes them to be unready for trial when their cases are set.

Appendix I. Statistical Analysis of the Court of General Sessions Civil Backlog, Calendar Management and Dispositions

Introduction

Analysis of the condition of the civil backlog and the effectiveness of the calendaring system was hindered by the lack of readily available statistical data. (See Appendix III.) The fact that the Court had not previously recorded, compiled, or analyzed comprehensive statistics leads us to believe that it has not routinely performed a critical self-evaluation with respect to the effectiveness of its civil calendar management.

To obtain even the limited statistics presented in this Appendix, the Court Management Study had to manually extract data from the disposition cards (approximately 21,000 cases) and the Ready Calendar backlog cards (approximately 5,000) filed in the Civil Assignment Office. Since the disposition cards are filed chronologically by the date issue was joined in the case, analysis by the year of disposition was possible only through the use of electronic data processing equipment.

Analysis of the disposition records by type of case (contract, negligence, etc.) was extremely difficult due to a change in coding system about eighteen months ago which resulted in different types of cases having the same code number for "type of case." Because automobile injury and damage cases form a major portion of the current caseload and of the jurisdiction proposed to be transferred to the Court of General Sessions, we spent considerable time trying to unscramble the codes in order to analyze the disposition patterns in these cases.

Using our statistics, the disposition report prepared monthly by the Assignment Commissioner, the Semi-Annual Report of the Chief Judge, the Monthly Report of Judgments entered by the Clerk, and the daily civil trial calendar, we pieced together a profile of the movement of civil cases through the Court of General Sessions. It is presented in three sections: Backlog, Calendar Management, and Dispositions.

Backlog

Our sample of the backlog plus other figures available in the Court reveals the following:

TABLE 1

	Jury	Nonjury
Total cases filed during calendar year 1968		23,661
Total cases pending as of March 1969 (including "not at issue")	4,609	Unknown.[1]
Cases at issue (as of Mar. 31, 1969)	3,534	1,266.
Median age of cases now set for pretrial[2]	19 months	
Median age of all cases now awaiting trial[3]	27 months	3 months.
Age range of cases awaiting trial[3]	16 to 71 months	0 to 59 months.
Average continuances per case awaiting trial[3]	3	1.
Auto-negligence cases as percentage of total cases	50 percent approximate	23 percent, approximate.

[1] May accumulate at a rate of approximately 1,000-4,000 per year (see table 5).
[2] All ages were calculated from out statistical sample and are measured from issue date to February, 1969.
[3] Pretrial completed or unnecessary.

Thirty percent of the jury cases in our sample awaiting *pretrial* are over 12 months old; 67 percent of the jury cases awaiting *trial* (pretrial completed) are over 24 months old; 93 percent of the jury cases awaiting *trial* (pretrial completed) are 18 months old or more; only 8 percent of the non-jury cases awaiting trial are over 12 months old.

Calendar Management

Analysis of the daily calendars for the second week of each month of calendar years 1964, 1967, and 1968 (see Tables 7 and 8), revealed that 35–60 percent of the cases set for trial each week are continued to a future date; 20–30 percent of the cases advise the Court on the day of trial that the case has previously been settled. The slight rise in the total backlog (of cases at issue) of 170 cases from FY 1967 to FY 1968 indicates that the Court is able to dispose of nearly as many cases as reach issue each year. The fact does not, of course, reveal the "mix" of cases making up the backlog, the efficiency or accuracy of the calendaring system in scheduling cases, how many of those cases will eventually require trial dispositions, the production of the judges in relation to capacity, the continuance rate, or the dissatisfaction of the attorneys, the judges, and the administrative staff with their experience under the present calendaring system.

A median delay to jury trial of 25.5 months from date of issue as compared to an estimated 16 months in 1965 (see Table 2), 15 percent of the jury calendar continued three or more times, and a consistent mismatch between judges making themselves available and ready cases being available in the Assignment Office, indicates that the Court needs improved calendar management to dispose of the existing backlog and reduce the delay to jury trial under the present system.

An increased caseload under the proposed transfer of civil jurisdiction could impose an unnecessarily severe hardship on the Court of General Sessions, even with a proportionate increase in judges, unless an improved calendaring and assignment system is adopted and the total output of the civil trial judges increases.

Dispositions

The available disposition statistics for civil jury and non-jury cases are summarized on a calendar year basis in Tables 3 and 4. Due to changes in the Court's reporting system, it is not possible to distinguish between settlements with or without judge participation.

No objective analysis of the disposition rate per judge was possible. Table 6 summarizes the March, 1969, Assignment Office records by judge. While showing the cases disposed of by each judge, the report does not reflect how many days of the month each judge was assigned to civil or what portion of the time each judge made himself available to take cases. Without too much difficulty the Court could devise a method for reporting the disposition rate per month for each judge. We believe such a record should be circulated regularly to all the judges. Reports of this nature are extremely important in expediting the caseflow. Each judge should have available an analysis of his disposition rate as compared to his fellow judges.

TABLE 2.—COURT OF GENERAL SESSIONS—BACKLOG AND DELAY STATISTICS

Year [1]	All-jury cases pending [2]	Jury cases at issue	All nonjury cases pending	Nonjury cases at issue	Total cases at issue	Estimated average delay to jury trials [3] (in months)
1963	1,434	1,027	----------	493	1,520	4.0
1964	2,430	1,570	----------	764	2,334	8.0
1965	3,333	2,342	(4)	993	3,335	16.0
1966	3,902	2,789	(4)	1,204	3,993	19.0
1967	5,018	3,236	(4)	1,090	4,326	23.0
1968	5,365	3,529	(4)	967	4,496	24.0
March 31, 1969	4,609	3,534	(4)	1,266	4,800	27.0
1969	4,666	3,409	(4)	1,466	4,875	25.5

[1] All figures as of close of fiscal year June 30 from the records of the Civil Assignment Commissioner.
[2] Includes all jury cases at issue and not at issue. The number of nonjury cases pending and not at issue is unknown.
[3] Except for the March and 1969 figures, these figures were obtained from the annual reports of the chief judge. They are the court's estimate of how long it will take cases pending (as of the date shown) to reach trial. The March and 1969, figures are the calculated median age of cases disposed of by trial during March 1969, and June 1969 (see p 20, No. 7).
[4] Unknown.

TABLE 3.—COURT OF GENERAL SESSIONS REPORT OF JURY ACTIONS—SUMMARY FOR CALENDAR YEARS 1963–68

Dispositions	1963	1964	1965	1966	1967	1968
Trials:						
Jury	197	200	184	168	163	127
Court	49	33	34	40	68	73
Trials as percent of all dispositions [1]	16	16	13	13	13	10
Ex parte proof	11	15	14	14	9	20
Settled after trial	10	17	19	7	2	15
Settled before trial	1,002	1,058	1,272	1,182	1,343	1,555
Percent	66	73	76	75	78	75
Consent judgment	56	41	54	76	62	70
Percent	4	3	3	5	3	3
Summary judgment	7	21	17	17	30	49
Dismissed—want of prosecution	55	23	40	40	42	74
Percent	4	2	3	3	2	3
Removed from calendar [2]	134	47	42	30	78	104
Percent	9	3	3	2	4	5
Total dispositions	1,521	1,455	1,676	1,574	1,797	2,087
Percent	100	100	100	100	100	100
Dismissals under rule 41(e)		337	420	77	296	284

[1] Percent of total disposition.
[2] This is not a final disposition in that the case has not been adjudicated, dismissed, or dropped by the parties.
Source: Monthly report of the Assignment Commissioner.

TABLE 4.—COURT OF GENERAL SESSIONS REPORT OF NON-JURY ACTIONS

Summary for calendar years 1963–68

Dispositions	1963	Percent	1964	Percent	1965	Percent	1966	Percent	1967	Percent	1968	Percent
Trials	667	29	752	28	733	26	612	23	572	21	513	18
Ex parte proof	201	------	188	------	252	------	246	------	172	------	205	------
Settled after trial	11	------	9	------	7	------	3	------	2	------	11	------
Settled before trial (including some dismissals)	1,059	45	1,320	50	1,448	52	1,423	53	1,541	57	1,774	60
Consent judgment (including confession)	199	9	219	8	201	7	257	10	205	8	201	7
Summary judgment	22	------	32	------	32	------	43	------	41	------	65	------
Default judgment	53	------	54	------	40	------	69	------	122	------	85	------
Dismissed for want of prosecution	108	5	76	3	62	2	45	2	56	2	76	3
Total	2,330	100	2,650	100	2,775	100	2,698	100	2,711	100	2,930	100

Source: Monthly reports of the assignment commissioner.

TABLE 5.—COURT OF GENERAL SESSIONS, FILINGS AND TERMINATIONS

Fiscal year ending June 30	Civil cases filed (M or GS)	Jury terminations	Nonjury terminations	Judgments entered by clerk
1963	21,065	1,341	2,780	(1)
1964	22,599	1,624	2,712	[2] 5,899
1965	23,472	1,922	2,837	12,492
1966	23,524	2,194	2,833	11,848
1967	26,813	1,685	2,785	13,306
1968	24,326	2,194	2,935	10,870
1969	23,862	3,487	2,228	11,499

[1] Unavailable.
[2] Last half fiscal year 1964 only.

TABLE 6.—CIVIL DISPOSITIONS BY JUDGES, MARCH 1969

Dispositions	Judges													
	A		B		C		D		E		F		G	
	Jury	Nonjury	Jury	Nonjury	Jury	Nonjury	Jury	Nonjury	Jury	Nonjury	Jury	Nonjury	Jury	Nonjury
Trial	1	1				2			2	5				
Judgments	1	2	3		2	4		1				2	1	1
Ex parte proof														
Settled before trial			3		1				3					
Settled after trial														
Dismissed														
Total	2	3	6	0	3	6	0	1	5	5	0	2	1	1

Dispositions	Judges												
	H		J		K		L		M				
	Jury	Nonjury	Jury	Nonjury	Jury	Nonjury	Jury	Nonjury	Jury	Nonjury	Jury	Nonjury	Total
Trial	6	7	1	7		2			2		7	13	56
Judgments	3	3	3	5	3	1		1	3	6	3	1	49
Ex parte proof											1		1
Settled before trial	3	1		1		1		1			7	2	23
Settled after trial													
Dismissed	1		2								4	2	9
Total	13	11	6	13	3	4	1	1	3	8	22	18	138

Explanation: (1) Judges E, H, and M were assigned to the Civil Division during the entire month of March. (2) Judges B and I were assigned for two weeks each. (3) Judge Barlow regularly assigned to the civil roster was not present. (4) The Assignment Office records do not distinguish between judges who were merely present in the courthouse and those who made themselves available to hear cases. (5) During March, the ratio of jury cases to nonjury cases on the calendar was substantially higher than in the past.

Source: March Disposition records of the Civil Assignment Office.

TABLE 7.—COURT OF GENERAL SESSIONS CIVIL JURY DAILY CALENDAR

	January						February						March					
	1964		1967		1968		1964		1967		1968		1964		1967		1968	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Reset	43	60	71	62.3	22	36.1	29	44.7	67	71.3	31	46.3	36	59.0	58	57.4	34	45.9
Settled	13	18.6	25	21.9	19	31.1	16	24.6	22	23.4	19	28.4	17	27.9	25	24.8	23	31.1
Assigned to judge	12	17.1	18	15.8	20	32.8	18	27.7	5	5.3	17	25.4	8	13.1	18	17.8	17	23.0
Other	3	4.3					2	3.1										
Total	70		114		61		65		94		67		61		101		74	

	April						May						June					
	1964		1967		1968		1964		1967		1968		1964		1967		1968	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Reset	23	53.5	72	70.6			29	45.3	46	50.5	46	60.5	47	69.0	53	61.6	50	63.3
Settled	4	9.3	15	14.7			12	18.8	31	34.1	24	31.6	6	8.8	12	14.0	19	24.1
Assigned to judge	14	32.6	15	14.7			20	31.3	14	15.4	6	7.9	14	20.6	21	24.4	10	12.7
Other	2	4.7					3	4.7					1	1.5				
Total	43		102				64		91		76		68		86		79	

TABLE 7.—COURT OF GENERAL SESSIONS CIVIL JURY DAILY CALENDAR—Continued

	July [1]						August [1]						September [2]					
	1964		1967		1968		1964		1967		1968		1964		1967		1968	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Reset	4	40.0											17	60.7	31	53.4		
Settled	2	20.0											7	25.0	12	20.7		
Assigned to judge	3	30.0					2	100.0					3	10.7	15	25.9		
Other	1	10.0											1	3.6				
Total	10						2						28		58			

	October						November						December					
	1964		1967		1968		1964		1967		1968		1964		1967		1968	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Reset	35	54.7	38	55.1	44	51.2	32	52.5	34	51.5	43	51.2	3	50.0	7	70.0	50	57.5
Settled	12	18.8	19	27.5	28	32.6	8	13.1	14	21.2	35	41.7			2	20.0	19	21.8
Assigned to judge	14	21.9	12	17.4	14	16.3	18	29.5	18	27.3	6	7.1	3	50.0	1	10.0	18	20.7
Other	3	4.8					3	4.9										
Total	64		69		86		61		66		84		3		10		87	

[1] No cases were set during the months of July and August 1968.
[2] During the entire month, 37 cases were reset, 21 settled and 18 were assigned to a judge for a total caseload of 76 cases.

Source: Court management study sample using 2d week of each month.

TABLE 8.—COURT OF GENERAL SESSIONS, CIVIL NONJURY DAILY CALENDAR

	January						February						March					
	1964		1967		1968		1964		1967		1968		1964		1967		1968	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Reset	69	51.1	96	57.1	70	57.4	90	54.9	98	49.0	71	43.8	63	51.6	118	52.9	87	59.6
Settled	21	15.6	46	27.4	29	23.8	20	12.2	52	26.0	37	22.8	15	12.3	60	26.9	26	17.8
Assigned to judge	37	27.4	26	15.5	23	18.9	48	29.3	50	25.0	54	33.3	37	30.3	45	20.2	33	22.6
Other	8	5.9					6	3.7					7	5.7				
Total	135		168		122		164		200		162		122		223		146	

	April						May						June					
	1964		1967		1968		1964		1967		1968		1964		1967		1968	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Reset	75	50.3	77	52.7			60	44.8	76	50.3	70	47.3	59	46.1	36	51.4	76	47.8
Settled	22	14.8	41	28.1			16	11.9	40	26.5	39	26.4	11	8.6	15	21.4	46	28.9
Assigned to judge	39	26.2	28	19.2			47	35.1	35	23.2	39	26.4	46	35.9	19	27.1	37	23.3
Other	13	8.7					11	8.2										
Total	149		146				134		151		148		128		70		159	

TABLE 8.—COURT OF GENERAL SESSIONS, CIVIL NONJURY DAILY CALENDAR—Continued

	July						August						September [1]					
	1964		1967		1968 [2]		1964		1967		1968 [2]		1964		1967		1968	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Reset	27	64.3	17	58.6			81	57.4					64	49.6	42	43.3		
Settled	8	19.0	5	17.2			17	12.1	4	57.1			15	11.6	23	23.7		
Assigned to judge	6	14.3	7	24.1			36	25.5	3	43.9			27	20.9	32	33.0		
Other	1	3.4					7	5.0					23	17.9				
Total	42		29				141		7				129		97			

	October						November						December					
	1964		1967		1968		1964		1967		1968		1964		1967		1968	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
Reset	64	47.1	65	48.1	63	47.4	35	53.8	65	35.9	65	45.0	41	46.1	3	30.0	87	60.0
Settled	15	11.0	36	26.7	39	29.3	10	15.4	58	32.0	34	22.8	10	11.2	5	50.0	28	19.3
Assigned to judge	51	37.5	34	25.2	31	23.3	16	24.6	58	32.0	48	32.2	27	30.3	2	20.0	30	20.7
Other	6	4.4					4	6.1					11	12.3				
Total	136		135		133		65		181		149		89		10		145	

Source: Court Management Study sample using second week of each month.

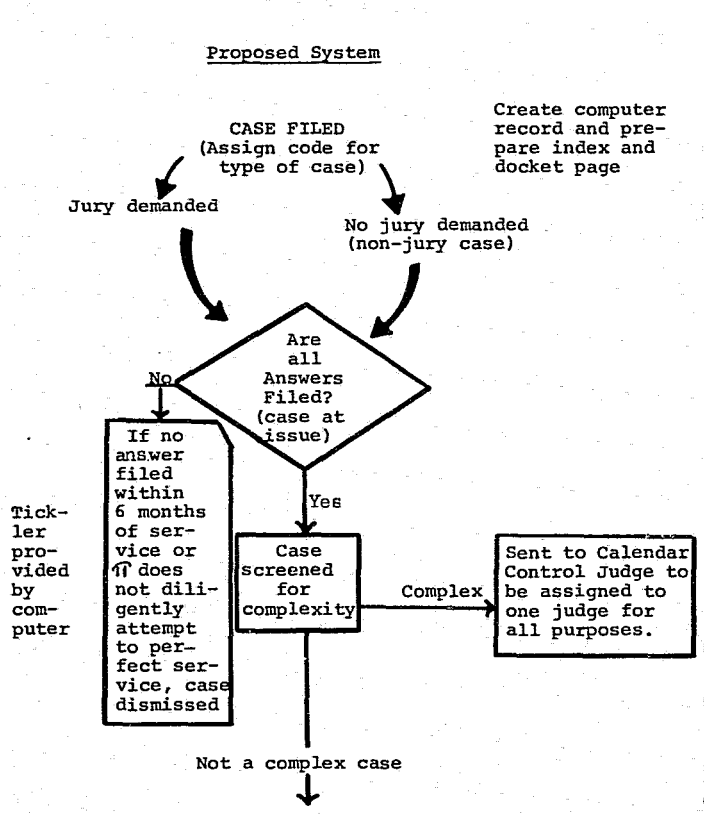
[1] During the entire month 79 cases were reset, 26 settled and 32 were assigned to a judge for a total monthly caseload of 137 cases.

[2] No cases were set during the month.

Appendix II. Outline of Proposed Central Assignment System

COURT OF GENERAL SESSIONS

Description of Suggested Civil Calendaring and Assignment System



Comparative Highlights of Present System

Code for "type of case" not assigned until case is at issue and reaches Assignment Office. Docket page does not indicate the type of case.

Jury demands recorded in Assignment Office as they are filed with Civil Clerk's Office.

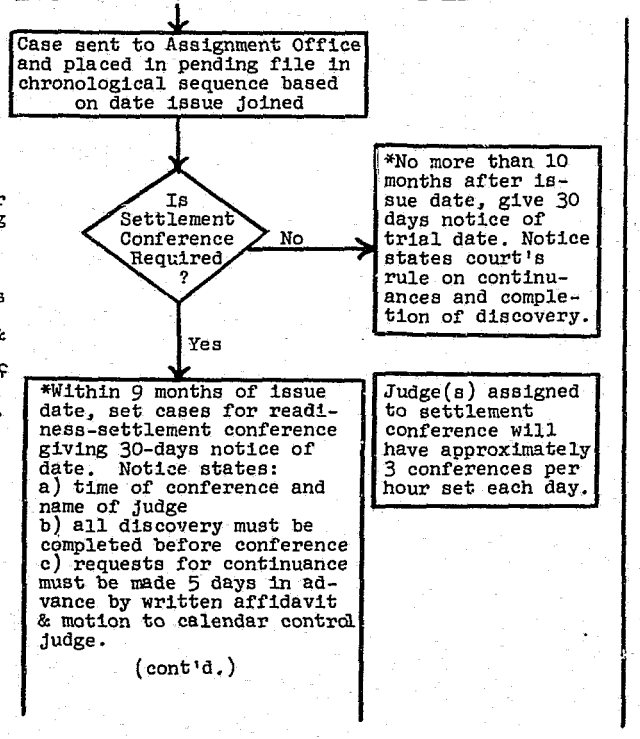
Currently no computer use in civil.

Assignment Office notifies and dismisses jury cases after 6 months of inactivity /Rule 41(e)/. No dismissal on non-jury cases though Rule 41(e) authorizes it.

When case is at issue, case goes to Civil Assignment Office for placing on Ready Calendar. No screening as to complexity.

COURT OF GENERAL SESSIONS

Description of Suggested Civil Calendaring and Assignment System - 2

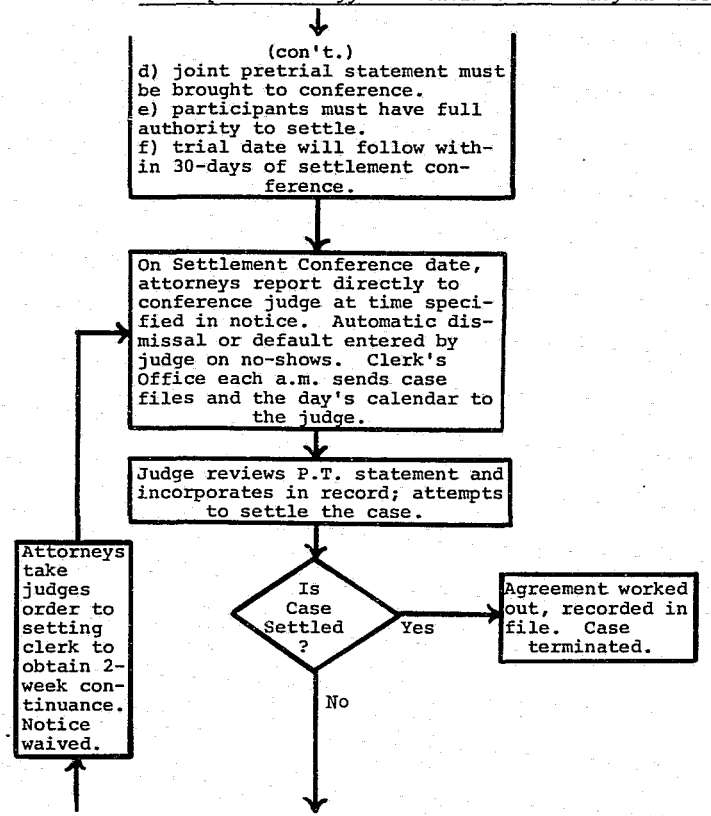


All cases are presently given approximately 30-days' notice of trial though court rules provide for only 10-days notice.

Pretrial Conference is required in all jury cases, no non-jury. Pretrial Conferences erratically scheduled, resulting in no pretried cases available for trial calendar though backlog awaiting pretrial. Should be steady flow.

* These are ideal time limits which could be observed only after the new system has begun to function properly. As part of the new system, the Court should set a time limit for achieving this goal.

Description of Suggested Civil Calendaring and Assignment System - 3

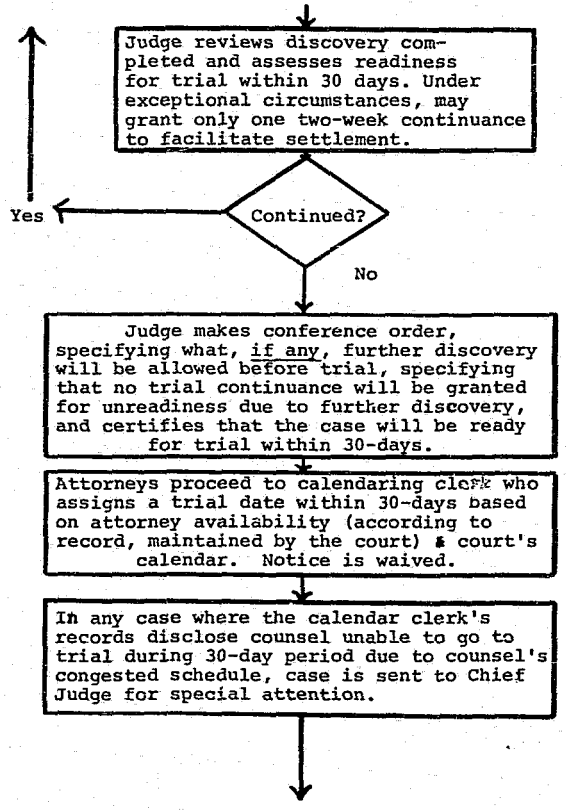


No Settlement Conference though some judges talk settlement in pretrial conference.

Opposing counsel rarely asks for default or dismissal. Court allegedly lenient on no-shows, even if attorney did not advise court he would not be present. No statistics available on number of reinstatements.

Pretrial judge does not determine readiness for trial, possibly due to 2-6 months time interval between pretrial & trial Present system does not encourage attorney diligence in preparing case prior to pretrial. Settlement techniques, when used, vary with judges.

Description of Suggested Civil Calendaring and Assignment System -4

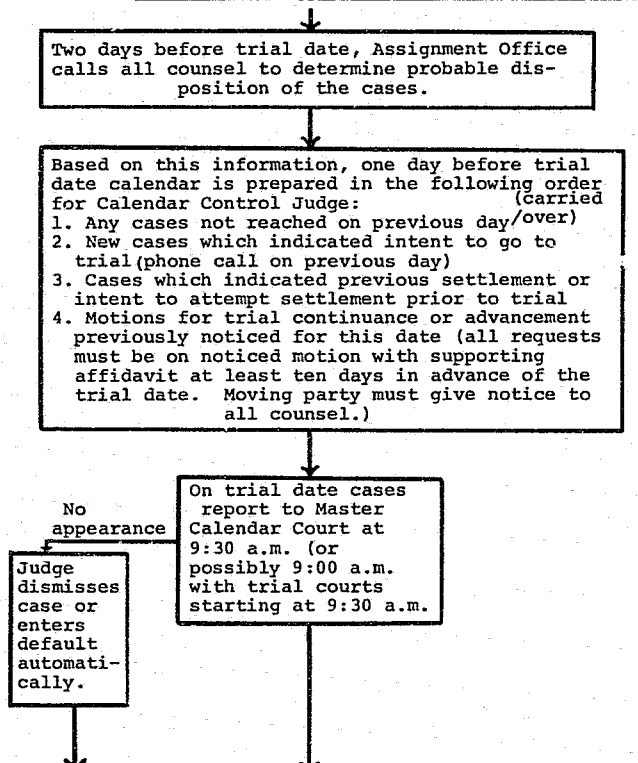


Continuances do not specify date by which case must be reset. Reasons for, or number of, continuances are not recorded in case file.

Trial dates are not ordinarily set in the presence of counsel. Notices are mailed out. After continuance, counsel therefore have very little idea when case may be calendared again.

COURT OF GENERAL SESSIONS

Description of Suggested Civil Calendaring and Assignment System - 5



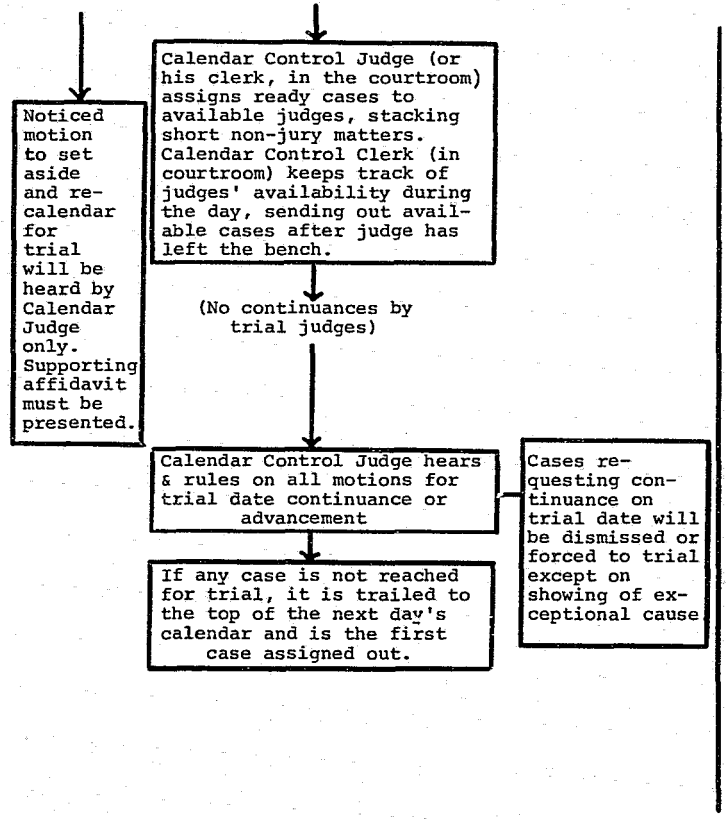
No advance contact with cases on daily calendar to determine possible disposition.

No formal motions procedure followed for continuances. Counsel requests continuance from Assignment Office in person or by telephone.

On trial date counsel & parties report to Assignment Office at 9:30 a.m. and wait to be sent to judge by Assignment Clerk at 10:00 a.m.

COURT OF GENERAL SESSIONS

Description of Suggested Civil Calendaring and Assignment System - 6



Assignment Clerk often does not know til 10a.m. or later what judges (of those assigned to civil) will take cases that day.

If "no appearance" under present assignment system dismissal or default occurs only at the request of the other side.

Court Policy lenient on reinstating cases.

Cases not reached are reset for future date & counsel is notified.

No standard time within which these cases must be reset.

Description of Suggested Civil Calendaring and Assignment System - 7

Problem areas to be flagged for attention of Chief Judge:

1. Cases not disposed of within 12 months of issue date.
2. Cases not settled or certified ready for trial by settlement judge within 2 weeks after first settlement conference date.
3. X% continuance rate of settlement conferences or trials.
4. Steady increase in average length of trials.
5. Consistent over- or under-setting of calendar.
6. Low production rates by judges.
7. Attorneys or law firms having too many cases already on calendar so that next ready case cannot be set for trial within thirty days.

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Appendix III. Recommendations on Civil Case Statistical Information

This Appendix to the Civil Caseflow Report contains recommendations for data that the Court should routinely maintain, report, and use. These recommendations not only represent the views of the Court Management Study but also reflect ideas obtained from Judges and other Court employees during the course of this study. The list is not exhaustive since a carefully planned, and properly managed information system can produce any number of useful reports organized or summarized in various ways depending on the needs of the users. It should be recognized that the Court's computer may be used expeditiously to supply timely management reports. However, much of the information outlined below can be produced manually by one or two people assigned this responsibility full time.

At the present time in the Court of General Sessions there is virtually no statistical information readily available to allow anyone to carefully analyze the civil case backlog as to such things as (1) the age of cases pending, by age groupings or by types of cases or by current status (*i.e.*, awaiting pretrial, etc.); (2) the average number of continuances per case or whether cases are continued by request of plaintiff, defendant, or Court's own motion; (3) the number of each type of case pending (*i.e.*, negligence, contract, etc.).

The situation with respect to information on monthly dispositions is only slightly better in that the Civil Assignment Commissioner prepares a monthly report of jury and non-jury case dispositions divided by type of disposition. This report, however, is not regularly circulated or used by the Chief Judge or Clerk of the Court.

Limited civil (GS) statistics are compiled for inclusion in the Chief Judge's Semi-Annual Report to the Attorney General, required by statute. This report has improved substantially during the past few years. However, though it provides summary information on the total cases filed and terminated during the period, jury demands made, size of jury and non-jury backlogs and an estimate of the "average" interval between joinder of issue and disposition for jury cases, more information is needed for a meaningful analysis of the actual workload represented by the filings or the backlog, the median delay to trial for jury and non-jury cases, reasons for delay, or effective methods to increase dispositions.

In trying to obtain civil caseload statistics essential to an understanding of the civil calendaring problem and necessary to support recommendations, we found that some information could be obtained by pulling together data maintained by various court employees. But some of the most basic data about the Court's civil caseload is not recorded or compiled. Examples of questions which the Court cannot readily answer about its civil cases are:

(1) How many automobile negligence cases were filed last year? How does this compare with prior years?

(2) How does a) the median age at disposition and b) the type of disposition vary among different types of cases?

(3) How many dismissals or default judgments are set aside?

(4) What was the median age of jury cases disposed of by trial during a given period?

(5) What percentage of the daily calendar is continued each month? How many are by plaintiff request? defense request? or Court's own motion?

We have developed statistics that answer some of these questions and many others. They were obtained by sampling the backlog and disposition records in the Civil Assignment Office and are quoted in other sections of the report. The fact remains, however, that the Court itself has devised no practical way to obtain this kind of information on a regular and timely basis.

We feel that appropriate information should be available to the Court Executive and Chief Judge as needed to manage the civil calendar and assignment system. It should be analyzed regularly by a staff member to recognize problem areas and recommend action.

Examples of the use of good statistical data are:

(1) To assess the inventory of work currently facing the Court.

(2) To determine the number and allocation of judicial manpower needed to dispose of it.

(3) To determine the most effective ways to insure early disposition of that workload.

(4) To analyze the performance levels of the judges.

(5) To assess the need for additional judicial manpower.

(6) To evaluate the effectiveness of calendaring and assignment procedures and suggest possible modifications.

(7) To refine estimates of the number of jurors needed.

One word of caution about compiling information such as we recommend. In planning an information system or reporting system, extreme care must be taken in—

(*a*) Deciding what information the Court needs to properly manage its business.

(*b*) Developing a method for obtaining the information from its source.

(*c*) Devising the reporting categories into which cases will be grouped, e.g., "type of case" categories, or "type of disposition" categories.

(*d*) Defining precisely the criteria by which cases will be categorized.

(*e*) Documenting the definitions for each category.

Finally, these report definitions must be meaningful, readily available and understandable to those who produce or receive the reports. Though these sound like truisms, they are not. These are precisely the problems which make most statistical reports useless.

Court statistics and management information have three levels of use:

Level 1: Use by administrative staff on weekly or monthly basis for regular analysis of the Court's workload and performance.

Level 2: Use by Chief Judge and Court Executive for policy-making or general information.

Level 3: Use by all judges and others for general information.

The suggested information below should be available promptly at the close of each month (accompanied by data from other time periods for comparison) primarily for Level 1 analysis. With respect to general dissemination of various items of information, the Court should work out monthly or quarterly report schedules.

Filings and Terminations

1. The number of cases of each type (contract, negligence, etc.) filed during the month.
2. The number of cases receiving final dispositions during the month, showing types of dispositions for each type of case; separate reports should be made for non-jury and jury cases.
3. For cases disposed of by jury trial or non-jury trial (and possibly other categories such as consent judgments);
   (*a*) Median age (Median interval from issue date, or filing date, to trial).
   (*b*) Range of ages of all cases.
   (*c*) Most frequently occurring age.

Calendar Management and Backlog

1. Number of jury or non-jury cases at issue and awaiting pretrial or trial:
   (*a*) Categorized by age groupings.
   (*b*) Categorized by types of cases.
2. Detailed identification of the ten oldest cases awaiting pretrial and ten oldest cases awaiting trial showing case number, names of counsel, type of case, number of continuances and reasons, present age of case, date now set for pretrial or trial.
3. Analysis of concentration of backlog by law firms or attorney.
4. Number of cases set for trial, pretrial, or settlement conference in each coming month compared to calendar limits established for these months.
5. Calendar limits for future months computed based on expected judge-days available and expected "per judge-day" disposition rate.
6. For use in scheduling cases, a listing showing dates of each attorney's future trial commitments.
7. Number and per cent of cases on the pretrial and trial calendars:
   (*a*) Sent to judges.
   (*b*) Continued.
   (*c*) Reported settled.
   (*d*) Removed from calendar (list cases and reasons).
8. Average lengths of jury and non-jury trials during month.

Other Useful Information

1. Number of motions of each type calendared, showing method of disposition.
2. Comparison of daily case output vs. time spent on cases (by type of disposition) for each civil judge (for international Court use only).

3. For guidance of settlement judges:
   (*a*) Monthly report of jury and non-jury trials (or judgments) giving abstract of facts of case, demand, offer, verdict, and award.
   (*b*) Average awards, by type of case and compared to demand.
4. Number of cases dismissed under Rule 41(e).
5. Number of cases pending which are not at issue.

The Information Flow Study now being conducted by Mr. Adams of our staff will assist the Court of General Sessions in devising methods to record and retrieve useful statistical information.

Appendix IV. The Determination of Realistic Calendar Limits

Our sampling of the daily civil calendars for the past few years reveals that on both the jury and non-jury calendars, at least 40 per cent and sometimes as high as 70 per cent of the cases set for trial are not reached or are continued by request of counsel to a future date. This should be ample illustration that refinement of the method for determining how many cases to set each day is necessary. It is a waste of the Court's time to allow cases to appear on their trial date and then ask for a continuance because they are not ready to proceed with trial. By the same token, it is a waste of counsel and litigant's time for the Court to consistently set more cases for trial than can reasonably be expected to be disposed of each day.

More accurate computation of the number of cases which the Court can dispose of each court day with a given complement of judges requires a systematic study. This study would involve investigation of historic and recent statistics on several factors that affect the Court's ability to dispose of cases. As a minimum, the following information would be required:

(*1*) *The number of judges assigned to civil trials at any given time*

As far as possible the number of judges assigned to civil trials by the Chief Judge should be constant.

(2) *The number of judge-days expected to be lost per day or per week due to illness, vacation, or other absences*

The result of such an analysis enables the person responsible for setting cases on the daily calendar to predict with reasonable accuracy, for any given week, what percentage of available judge-days (number of judges assigned to civil x number of days) will be lost. For example, the study might reveal that in the month of February usually ½ judge-day per day is lost due to illness, etc. Therefore, if six judges are assigned, the Court effectively has the services of 5½ judges. The calendar, then, would be set on the basis of 5½ judges being available—not six.

(*3*) *The number of jury and/or non-jury cases that a judge can ordinarily dispose of in a day or week*

(*4*) *The percentage of cases on the daily calendar which will settle or otherwise be disposed of before trial*

Based on the number of dispositions per judge and the number of cases which will be disposed of before trial, it is possible to more closely match the number of cases set on the daily calendar to the number of judges available to hear the cases.

By using the method outlined above, the case-setting "limits" can be determined more precisely. Only under unusual circumstances of unexpected absence or an unexpected fluctuation in the number of cases settling or requiring a continuance will the calendar be substantially over- or under-set. The accuracy of any formula based on statistical calculations fluctuates from day to day since it is based on probabilities. However, if the statistics are based on accurate data and careful calculations, there will be less chance than under the present system of wasting the Court's or the litigant's time. Also, dispositions should increase due to (1) increased certainty by the attorneys that a judge will be available; and (2) increase in cases sent to each judge.

Developing such a system is only half the battle. In using such a method to determine the optimum size for the daily calendar, it is important to constantly assess how well the estimates matched what actually occurred. If, over time, the calendar begins to be consistently over-set or under-set, then obviously modification is necessary to reflect existing conditions in the Court. Continual re-evaluation is essential, so that the system remains realistic under changing conditions.

STUDY OF JUROR UTILIZATION IN THE COURT OF GENERAL SESSIONS

DECEMBER 1969

CONTENTS

STUDY OF JUROR UTILIZATION IN THE COURT OF GENERAL SESSIONS

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Observations, interviews with people who have served as jurors in the past and analysis of available statistics indicated to us that the Court of General Sessions and the District Court might be able to reduce the number of jurors summoned each month and still have enough jurors available each day to fill all requests. As part of our study of the Jury Commission, we therefore undertook a limited study of juror utilization in both courts. This report concerns the Court of General Sessions.

After our discussion of juror utilization with Chief Judge Harold Greene, he requested the Supervisor of the Jury Lounge, Mr. Mario Upperman, to record certain statistics suggested by the Court Management Study for the month of October. Based on analysis of these statistics we have reached the conclusions and recommendations presented below. While we believe the October statistics are typical of other months, we feel the court should collect data for additional months so that possible trends toward more jury trials or longer trials can be identified and the number of jurors summoned adjusted if necessary.

I. Conclusions

(See supporting data in Discussion section and Appendix I)

1. The October statistics can be regarded as typical as far as the number of jurors used, since during October there were as many (and possibly more) jury panels sent out as in any other non-vacation month.

2. The Court calls about 165–185 jurors each month for jury service. During October, this was about 30–50 more than needed to fill requests for jury panels.

3. The number of jurors sent out on a panel ranges from 18–30, with 23 being sent most often. Most of the time this is more than the number needed to satisfy the maximum number of challenges.

4. The number of jurors needed for new trials at certain times of the day (e.g. before 11:00 and after 4:00) is consistently less than the number of jurors actually available in the lounge.

5. If the number of jurors called each month is reduced, it will have the following benefits:

   (*a*) A reduction in the amount of paperwork connected with summoning and processing jurors in the Court of General Sessions and in the Jury Commission.

   (*b*) Increased utilization of each juror summoned, thereby making jury service more meaningful for the juror and improving the Court of General Sessions' efficiency and public image.

   (*c*) A reduction in juror costs since jurors (except for government employees) are paid $20 for each day of duty whether or not they actually serve on a jury.

II. Recommendations

1. The Court should reduce to 20 the number of jurors sent out on panels.
2. Unless it is anticipated that the number of jury trials will soon increase substantially, the Court should reduce to 130 the number of jurors called for duty each month, except for the normal vacation months when even fewer should be necessary. This means that approximately 240 jurors should be summoned to result in 130 jurors available for jury service.
3. The Court should extend its present practice of staggering the hours at which jurors are to report, calling 60 for 10:00 a.m. (in addition to those on carry-over trials), 20 more for 11:00 a.m. and the remainder if any, for approximately 1:30. Only two panels should be kept in the lounge for the period between 4:00 and 5:00, unless there are ordinarily more trials commencing after 4:00 than was the case in October.
4. The Court should maintain and analyze on a regular basis the kind of statistics that were recorded for this special study.

DISCUSSION

Recommendations

October appears to be typical with respect to the number of panels sent out on cases. During fiscal 1969 jury trials per court day averaged 3.4; [1] panels sent to courtrooms during October average 4.9 per day. Thus it would appear to be a representative month upon which to base recommendations concerning juror utilization unless jury trials begin to increase substantially. We recognize, however, that proposed changes in the calendaring and assignment system could result in an increase in the number of civil jury trials commenced each day, as could the recent reassignment of civil judges to the criminal trials division. Therefore, while the following recommendations assume October to be a typical month, we expect that the court will want to approach the reduction in jurors cautiously, maintaining daily statistics to determine exactly how great a reduction can be made under the new assignment systems.

We are recommending that the Court reduce to twenty the number of jurors sent out on each panel. The statistics for October show that challenges for cause were exercised in only 18 cases out of the 107 panels that were sent out (17 percent). The highest number of these challenges in a civil case was 8, with 5 the next highest; in criminal cases the most was 4. (See Appendix I.) Thus if these cases had no peremptory challenges, 18 jurors would have been sufficient in all but one case though we are recommending an additional two, for a total of 20.

Data on the number of peremptory challenges actually exercised by counsel was incomplete. However, if the *maximum* peremptory

[1] 857 trials ÷ (12 mos. × 21 days/mo.) = 3.4; this of course includes July, August, and December, which probably lowers the average since these are vacation months.

challenges (three per side) had been exercised in the cases where there were *no challenges for cause*, the maximum number of jurors needed on the panel would have been 19 (13+6=19). If the maximum peremptory challenges had been exercised in the 17 percent (18/107) of the cases in which challenges for cause *were* exercised, then 20 jurors would have been sufficient on each panel except in 10 cases. (See list of challenges at bottom of Appendix I.)

However, it seems unlikely to us that the *maximum* peremptory challenges would be exercised. We believe 20 jurors per panel would be ample for choosing a jury of 13. If it appeared to the judge during voir dire that the total challenges would run over 7 (13+7=20), it should be possible to send additional jurors to the courtroom within five minutes from the Jury Lounge. The Court should explain this new practice to the attorneys, telling them that additional jurors will be sent immediately from the lounge if needed.

The statistics maintained by Mr. Upperman showed that the maximum number of panels in courtrooms at the same time in October was 8. This occurred on four days during October. On some days the number of panels in courtrooms at the same time did not exceed four. However, for purposes of our recommendations, we will assume that the Court wants sufficient jurors available to fill eight requests at the same time. The number of jurors needed, therefore, would be between 104 (8×13) and 160 (8×20) since some of the eight panels would probably be in the process of selection (twenty jurors therefore needed) and some panels would actually be sitting on cases (thirteen jurors needed).

In fact, the maximum number of jurors actually in use at the same time during October ranged from a low of 63 to a high of 136, but exceeded 130 only twice. On most days, 125 jurors or less were needed at the same time. (And this of course was under a system where more than twenty jurors were usually sent on each panel.) Therefore, we recommend that, to cover all requests for juries, the Court should call 130 jurors per month. Column 1 of the statistical table in the appendix shows that reducing the number of jurors to 130 will still result in substantial idle time for the jurors since on half of the days, the highest number of jurors in use at the same time was 110 or less. Even so, idle time will be less than under the present system of calling 160–185 jurors.

The records maintained by the Jury Commission show that in the past out of the total number of jurors summoned for the Court of General Sessions, 54–57 percent are available and able to serve as jurors. The remainder are either not located by the summons, do not appear on the date ordered, or are excused from service. Therefore in calculating the number of jurors to summon to result in 130 available and able to serve, the court should use the conservative percentage, 54 percent. Figuring that 54 percent of those summoned will be able to serve, then about 240 jurors should be summoned each month (130=54 percent of 240).

Our third recommendation, staggering the hours at which jurors are to report each day, is an extension of a practice now followed by the

Court. We recommend that 60 jurors (exclusive of those on carry-over trials) report in for 10:00 a.m. with 20 more jurors reporting at 11:00 a.m. The remainder, if any, would be directed the previous afternoon to report in at about 1:30. (See Appendix II, columns 5 and 6.)

The statistics show that on any day 60 jurors was the maximum number neded in the lounge between 10:00 a.m. and 10:55, i.e., 3 panels were the maximum number sent out (half the time 0–1 panels were sent out during this hour). At 11:00, 20 more jurors would be needed to cover possible requests for panels from 11:00–12:30 (although 70 percent of the time these 20 additional jurors would not be needed). Even this procedure of having only 80 jurors report by 11:00 would result 70 percent of the time in 20–40 jurors idle from 10:00–11:00; and 54 percent of the time 20–40 jurors would be idle from 11:00–lunch. Occasionally as many as 60 jurors would be unused during this period.

However, the idle time we are estimating under the recommended system is less than that presently experienced by jurors. For example in October the *minimum* number of jurors in the lounge between 10:00–11:00 ranged from 64 to 124 (column 3). The *minimum* number of jurors in the lounge before 1:30 ranged from 45–124. If the new calendaring procedures recommended in our Civil Calendaring and Assignment Report are adopted, the number of civil trials commencing at or around 10:00 a.m. could increase. Under these circumstances, more jurors would be needed at 10:00 a.m.

Also, during October there were only four days on which a panel was requested at or after 4:00 p.m. On one day two were needed. Therefore, it would seem reasonable to send most of the jurors home at 4:00 p.m., keeping only enough in the lounge to fill two panels. The Court presently follows this practice to a degree, sending some jurors home at various times prior to 5:00. We think this could be expanded as recommended above unless there begin to be more requests for jurors after 4:00 p.m.

USE OF JUDGES' TIME

While calling only 130 jurors each month will reduce the amount of juror idle time, each juror will still experience a substantial amount of unproductive time. Conversely, based on October statistics, having only 130 jurors instead of 169 would have resulted in only two instances where a judge would have had to wait for a jury—one 15-minute wait, and possibly one overnight wait (from 3:15), except in this particular instance the case didn't start anyway. At any time, there would appear to be only about a 2 percent chance of a judge not receiving a panel immediately if 130 jurors were called each month. This percentage, out of a total of 107 panels sent out during the month, seems a minimal amount of unused judge-time. This is especially true when compared to a month's pay for the fifteen extra jurors who

would have been necessary to fill these two requests immediately, about $3,000. When this occurred, the judge might take a non-jury case in the interim.

We suggest the Chief Judge request the trial judges to keep a record of any instances when they experience delay due to insufficient jurors available. They should make note of the date, time, and length of the delay. Such records would be used for discussion to assist in evaluating the changed procedures.

ESTIMATED COST SAVING

Aside from increasing the utilization of individual jurors and improving the experience of serving on jury duty, a reduction in the number of jurors summoned represents a potential cost saving.[2] Reducing the number of jurors called from 169 (the number present in October) to 130 would save approximately $7,500 per month [45 percent of (39 jurors × 21 days × $20/day)] if the percentage of non-government employees remains the same. It is possible that calling only 80 jurors in the morning (in addition to those on carry-over trials) could also save money if the remainder who reported in the afternoon could be paid for only a half day. This of course assumes these jurors could be at work during the morning and that half-day payments are authorized in the law.

CONCLUSION

Reducing the number of jurors called to 130 would be a conservative step. We are recommending this approach to ensure that judges will not be without a jury when they want one. In addition, we are recommending that the Court regularly maintain some of the statistics (as shown in Appendix II) recorded for this special study so that the Court itself can periodically perform its own analysis of how many jurors should be summoned.

Based on such statistics, we think it likely that the Court could further reduce the number of jurors called each month or at least vary even more the times of the day at which they are asked to report. For example, the October data indicate that perhaps only on Wednesdays and Thursdays would 80 jurors be needed before 1:30.

One final word as to the need for keeping the particular statistics we recommend in the Jury Lounge. Under new calendaring and assignment procedures or when judges are added to the Court or for any other reason when the number of the jury trials increase substantially the Court might have to increase the number of jurors called. The statistics would allow the Court to accurately gauge when this would be necessary and how many more jurors should be called.

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[2] In Fiscal 1969 the Court of General Sessions spent $286,690 in payments to non-government jurors. Government jurors are not paid by the Court since their regular salaries continue while they are on leave for jury duty. Roughly 45 percent of all jurors were government employees in Fiscal Year 1969. The jury payroll will be even higher from now on, since the daily payment increased from $5 to $20 per juror in the middle of Fiscal Year 1969.

Source: Records of the Administrative Office, Court of General Sessions.

Appendix I. Detailed Statistical Tabulations

EXHIBIT I

COURT OF GENERAL SESSIONS JUROR UTILIZATION STATISTICS, OCTOBER 1969

Date	Maximum jurors on cases at same time (1)	Maximum panels on cases at same time (2)	Lowest number of jurors in lounge: Before 11 (3)	Lowest number of jurors in lounge: Before 1:30 (4)	Number of new panels needed: 10 to 10:55 (5)	Number of new panels needed: 11 to 12:15 (6)
Oct. 1	91	7	142	108	3	2
2	100	6	66	66	1	4
3	72	5	124	124	1	1
6	110	7	135	67	2	0
7	130	8	68	63	1	1
8	(1)	(1)	(1)	(1)	0	1
9	112	8	95	70	2	1
10	96	6	101	78	3	2
13	117	7	80	80	1	1
14	104	6	123	123	1	1
15	119	6	78	55	1	1
16	63	4	100	100	3	1
17	(2)	(2)	(2)	(2)		
20	81	5	70	60	2	1
21	88	5	99	76	0	1
22	125	6	100	75	1	3
23	115	6	71	49	2	2
24	85	5	98	75	2	0
27	136	7	64	64	3	0
28	115	8	75	45	1	1
29	135	8	95	47	3	1
30	95	5	92	83	1	0
31	67	4	90	90	2	0

[1] Data incomplete.
[2] Data missing.

CHALLENGES FOR CAUSE

Civil cases (6 cases):	
PI	8
PI	1
I. & T	5
PI	2
Unknown	4
Tort	2
Criminal cases (12 cases):	
Attempted burglary	1
Burglary II	2
Assault	2
Criminal Cases—Continued	
Negligent homicide	2
CDW	4
CDW	1
Assault	1
Unknown	2
Do	1
Assault	1
Unknown	1
UUV	1

Appendix II. Instructions for Compiling Recommended Juror Statistics

INTRODUCTION

The purpose of the statistics illustrated on the attached chart is to allow the Court to more accurately estimate the number of jurors which must be summoned each month to fill daily requests for jury panels. There are two principal determinants of the number of jurors needed:

(1) The maximum number of panels actually in use at the same time during the day (and, therefore, the number of jurors in use at the same time); and,

(2) the number of jurors sent on each panel (which should be based on the number of challenges exercised in most cases).

The sample chart shows this information for October 28, 1969, in the Court of General Sessions.

If we can accurately predict the number of jurors who will be needed at the same time, then we can determine the number of jurors to summon so that we will not have many more than needed reporting to court every day. It is important that the statistics be recorded daily and analyzed on a weekly or monthly basis since conditions in the Court, and therefore the number of jurors needed, can show variation over time. For that reason, it is also important that those in charge of determining how many jurors to call be kept

informed of any policy changes which might influence the number of jurors needed. For example, the recent concentration of judges on criminal trials might be expected to increase the total number of jury trials. Thus such a change should be planned far enough in advance to allow any necessary adjustments to be made in the number of jurors summoned.

On the following pages we present an explanation of and instructions for recording juror utilization statistics.

STATISTICS

(NOTE.—The words "panel" and "jury" are used interchangeably here)

1. The first few lines on the form should list any cases which were carried over in trial the previous day.

2. Thereafter, entries should be made each time a panel is sent to a judge or when any jurors return to the lounge. The following information should be recorded:

(*a*) time jurors leave or return to lounge;

(*b*) name of judge;

(*c*) if panel is sent out, number of jurors on the panel (if additional jurors are sent to the same judge later, a separate entry should be made); if jurors returned, number returned;

(*d*) if panel is sent out, the number of challenges for cause and the number of peremptory challenges exercised by counsel (this information to be supplied by the courtroom clerk). Do not count jurors who are surplus to the needs of the court. For example: 22 jurors are sent to court; two are challenged for cause, the figure 2 is recorded in the appropriate column of the form; four are peremptorily challenged by counsel—the figure 4 is recorded under peremptory challenges; at this point, thirteen jurors are empaneled, leaving three who were not voir dire'd—these three are *not* recorded on the form under challenges;

(*e*) the total number of *panels* currently in courtrooms. This total should include all panels previously sent out *and not yet returned to the lounge.* This figure will fluctuate up and down during the day as cases are concluded or new cases are commenced. See discussion in item (*f*);

(*f*) The total number of *jurors* currently in courtrooms. For example (see the sample form on the form on the following page): At 10:00 a panel is sent to Judge Pryor. At that time there were five juries sitting (carried over from previous day; Judge Hyde had two). Twenty jurors were sent to Judge Pryor; thus the total number of jurors out was 85—(5×13)+20=85. From time to time during the day, as jurors are sent to the courtrooms and other jurors are returned from courtrooms (either because their case was concluded or they were not selected for the jury) this figure will fluctuate up and down. For example: at 10:00, 85 jurors were out; at 10:30, 30 more were sent out, bringing the total to 115. But between 10:30 and 12:00, two cases were completed, returning 26 jurors to the lounge, reducing the total out to 89. Also, the unused jurors from Judge Belson's and Judge Pryor's court returned, further reducing the figure to 66. Thus when 22 jurors are sent to Judge McIntyre at 12:00, the total number of jurors in courtrooms is 22+66, or 88.

3. It is very important that these statistics be accurate, since they will serve as the basis for deciding how many jurors to summon each month. Therefore, special care should be taken in recording them and they should be checked at the end of the day.

4. Once the number of jurors needed is determined, the number which should be summoned can be calculated. To do this, one needs to know what percentage of those summoned will be available and able to serve. This information can be obtained from the Jury Commission in the U.S. District Court. We found that during 1969, 54–57 percent of those summoned in various months were available and able to serve. Historically, this percentage does not seem to vary. Therefore, to result in 130 jurors, we use the following formula:

$$130+.54\,X;\ X=130/.54;\ X=240.1;$$

therefore, 240 jurors should be summoned. If the court wants 150 jurors, then 278 jurors should be summoned ($150=.54\times 278$).

DAILY JUROR UTILIZATION—DATE: OCTOBER 28

Panels	Time sent	Name of judge	Number of jurors sent	Number of challenges		Number of panels in courtrooms[3]	Number of jurors in courtrooms	Unassigned jurors in lounge[4]
				Cause	Peremptory[1,2]			
1	([5])	Hyde[6]	([7])	----------		([7])	([7])	([7])
2	([5])	McIntyre	([7])	----------		([7])	([7])	([7])
3	([5])	Edgerton	([7])	----------		([7])	([7])	([7])
4	([5])	Alexander	([7])	----------		([7])	([7])	([7])
5	10:00	Pryor	20	0	0	[8] 6	85	[8] 75
6	10:30	Belson	30	8	6	6	115	45
	11:30	----------				5	89	[9] 71
	12:00	----------				5	66	[10] 94
7	12:00	McIntyre	22	0	4	6	88	72
8	12:15	Edgerton	22	6	0	7	110	50
	3:00	----------				7	92	[11] 68
9	3:20	Greene	23	2	2	8	115	45

[1] Use actual peremptory challenges, not surplus jurors.
[2] This information not maintained by Mr. Uppuman. Therefore we have inserted numbers to demonstrate proper use of the form.
[3] Include all panels who are at a courtroom for a case whether they are being voir dire'd, are sitting, are deliberating, or have just arrived.
[4] This figure should fluctuate up and down during the day as jurors are sent to courtrooms and other jurors return, e.g., when they are not chosen for the jury, or when a case is concluded.
[5] Carried over.
[6] Judge Hyde had 2 cases and 2 panels.
[7] Not available.
[8] 95 at 9:30 a.m.
[9] 2 juries returned to lounge.
[10] Strikes returned from 10 and 10:30 panels.
[11] Includes strikes returned from 12 and 12:15 panels.

A STUDY OF THE JUVENILE COURT OF THE DISTRICT OF COLUMBIA

PART I. CASEFLOW AND CALENDAR MANAGEMENT

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April 1, 1970

47-070—70—pt. 2——11

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INTRODUCTION

PART I. CASEFLOW AND CALENDAR MANAGEMENT

PART II. ADMINISTRATIVE MANAGEMENT

* * *

GLOSSARY OF TERMS

Detention Hearing.—A hearing to determine whether a child taken into custody who has not been released by Intake prior to the hearing should be released or remanded to a detention facility, pending a decision on whether to have further court action. These hearings were instituted in April, 1968.

Disposition hearing.—A hearing to determine what order of disposition should be made after the allegations of the petition are established.

Initial hearing.—The equivalent of arraignment in an adult criminal court. At this hearing the child is informed of his right to counsel if an attorney has not yet been appointed; informed of the allegations of the petition; and given an opportunity to acknowledge or deny the allegations.

Intake.—The Section of the Social Work Division responsible for conducting preliminary investigations in all new complaints (i.e., first offense cases, and cases involving children not presently under the Court's jurisdiction).

Need of Supervision Cases.—Besides jurisdiction over cases of criminal law violation and cases of neglect, the Juvenile Court has jurisdiction over a number of offenses or conditions applicable only to children. These include being "beyond the control of . . . parents," being habitually truant from school, habitually so deporting oneself "as to injure or endanger himself or others," "associating with vagrants or vicious or immoral persons," and engaging in an occupation or situation "dangerous to life or limb or injurious to the health or morals" of oneself or others. (See D.C. Code Sec. 11–1551(a)(1)(B), (C) (D) (H) and (I).

Probable Cause Hearing.—A hearing to determine whether there is sufficient evidence to hold a child for further proceedings. These hearings were instituted in July, 1969, after the decision in *Cooley* v. *Stone* (C.A. D.C. Cir., July 14, 1969). As implemented by the Juvenile Court, they differ from adult probable cause hearings in the following respects: adult probable cause hearings are automatic, unless waived; must be held within a specified number of days; and are available to all persons charged with a felony, whether in detention or released on bail. Juvenile probable cause hearings must be requested; have no time limits within which they must be held; and are available only to children in detention. (Cf. Rule 5, Federal Rules of Criminal Procedure, 18 U.S.C. 3060.)

Receiving Home.—The principal secure detention facility in the District of Columbia. Due to the overcrowded conditions in the Receiving Home many children are detained in annexes at the Children's Center at the present time.

Section I Cases.—These involve children engaging in an occupation or in a situation "dangerous to life or limb or injurious to the health or morals of himself or others." (See D.C. Code Sec. 11–1551(a)(1)(I).)

Waiver Hearing.—A hearing to determine whether a juvenile charged with a serious felony should remain in Juvenile Court or be transferred for prosecution as an adult. (See D.C. Code Sec. 11–1553.)

WAPC. Without adequate parental support or care. (See D.C. Code Sec. 11–1551(a)(1)(F).)

Throughout this report a distinction has been drawn between *detention cases* (where a child has been remanded to custody, either in the Receiving Home, Shelter Care, or other detention facility) and *community cases* (where a child has been released to the community in the custody of an adult.)

A STUDY OF THE JUVENILE COURT OF THE DISTRICT OF COLUMBIA

I. PURPOSE AND SCOPE OF STUDY

A. Purpose of the Juvenile Court Study

During recent years the Juvenile Court for the District of Columbia has experienced a trend of mounting case backlogs and increased delays in the handling of cases. During the last two years pending jury trials have increased almost 800%.[1] Over the same time period, the number of cases awaiting trial before a judge has almost tripled.[2] These are but two major indicators of a range of problems which are currently impeding the Court's operations. Delay is implicit in this recent rapid growth of pending cases and can be attributed in part to an increase in the youthful population within the Court's jurisdiction, an increase in the number of referrals to the Court far out of proportion to the rise in the youth population, the marked increase in the number of juveniles requesting legal representation, and the recent trend toward more exacting procedural requirements. In addition, there has been a marked increase in the seriousness of the offenses with which juveniles are charged. While these factors aggravate the need for efficient handling of the Court's workload, they are not the primary cause of the Court's delays. The central element is administrative deficiencies, both in the areas of calendar management and in overall administration.

The purpose of this report is to recommend improvements in the areas of calendar management and administrative management which will enable the Juvenile Court to effectively discharge its responsibility to the litigants and to the public.

B. Scope of Study

This study is concerned with the Juvenile Court as a total system, and has examined the way it operates internally as well as the ways in which its relationships with other agencies affect its operations. It has focused on caseflow through the Court with primary emphasis on evaluating the Court's (1) internal management and judicial organization, (2) management of its flow of work, (3) response to the recent changes in juvenile law, (4) ability to integrate the due process safeguards mandated by appellate decision and traditional ideas of fairness into its daily procedures, and (5) response to its stated goals. Thus, certain qualitative judgments have been made as to the ultimate effectiveness of a variety of court operations. Analysis and recommendations are geared toward assisting the Court to improve its daily operations.

Although the report does include a section on personnel management, we have not proceeded toward any detailed analysis of Juve-

[1] Juvenile Court *Annual Report*, Fiscal Year 1969, p. 17.
[2] *Ibid.*

nile Court manpower needs. While there is a direct relationship between the amount of work the Court generates and the number of judges and supporting personnel required, we have found the Court to be an institution so greatly in need of basic management and organizational changes that until those changes are successfully effected, it is impossible to make an intelligent assessment of manpower needs.

Besides jurisdiction over juveniles, the Juvenile Court has jurisdiction over adults in cases in paternity, nonsupport, violations of compulsory school attendance and child labor laws, and contributing to the delinquency of a minor, and exercise of this jurisdiction has constituted a large portion of the Court's responsibility in the past. However, because of the pending legislative proposals to transfer the bulk of this jurisdiction out of the Court, our studies and recommendations relating to caseflow, calendaring, and use of judge-time, as well as the reports on probation, Corporation Counsel and appointment of counsel, have concentrated on the juvenile caseload. Where they deal with the adult jurisdiction of the Court, they do so only peripherally.

C. Method

During 1968, questionnaires were submitted to each non-judicial court employee requesting information on experience within the Court and within particular job assignments, perception of supervisory and management lines within the Court, and detailed descriptions of the specific duties carried out by each individual. Historical material on the Court's development and reports of previous studies relating to Court activities were assembled.

The three judges on the Court were interviewed to obtain their views on court operations and to inform them of the precise nature of the Study. Direct observation of Court activities began and personal interviews were held with management, supervisory and line employees.

In addition to the questionnaires filled out by every non-judicial employee, the Study team interviewed and consulted extensively with almost every management and supervisory employee of the Court, including but not limited to the Hearing Officer, Court Clerk, Statistician, Administrative Officer, Management Analyst, Attorney Advisor, Director of Social Services, Intake and Probation Section Chiefs, and the law clerks. In addition, interviews were had with clerical employees and social service staff personnel. In-depth interviews were held with almost every Intake Officer and approximately one-half of the Probation Officers.

We also received substantial cooperation from the chief attorney and staff of the Corporation Counsel's Office assigned to the Juvenile Court, the lawyers of the Legal Aid Agency assigned to Juvenile Court work, officers of the United States Marshal assigned to Juvenile Court, and from representatives of other agencies and institutions doing business in the Juvenile Court on a regular basis.

Because of the Court system's complexity, considerable effort was devoted to documenting case processing. The Court does not regularly compile and circulate statistical records on work volume at various work stations or on delays associated with work presently in process. Data needed for these measurements were therefore developed by the Study team and, for the most part, processed by computer to increase

flexibility and precision. The computer equipment used was carefully matched to computer facilities presently available or anticipated by the Juvenile Court with the hope that programs developed for operational research during our Study could be easily modified to process data for the Court on a daily ongoing basis. In addition, during the Study, we developed new formats for the recording, processing, analyzing, and reporting of data on court workload and performance.

Throughout the course of the Study, attempts were made to describe the operation of the system as distinguished from the practices or procedures of any individual judge operating in the system. However, because of the small number of judges and the highly individualistic methods and procedures used by each of the three judges, it has been somewhat difficult to dissociate the system from the personalities operating it. One caveat is in order: Because of the method of work division, certain descriptions of hearing procedures may be most reflective of the policies and procedures utilized by whichever of the three judges handles the bulk of the matters under discussion.

During the course of the Study, the Court Management Study staff made itself available to the Court for consultation and, where possible, recommended immediate implementation through informal suggestions to court employees.

This report contains a wide range of recommendations. While some of these recommendations may require legislative action, additional manpower or money, almost every one has major elements which are in the Court's power to implement or at least begin efforts to implement at the present time without legislative or budgetary action. For example, while statutory time limits have been recommended, pending such enactment the Court can establish similar standards as goals for its day-by-day operations. While statutory expansion of the Corporation Counsel's role is recommended, the same result could be achieved under present statutory authorization by agreement between the Court and the Corporation Council as to the future role of that office.

The majority of the recommendations in this report, dealing with the administration and management of the Court, the use of court personnel, the development of an effective calendaring system, the establishment of standardized procedures, and the development of a management information system are completely within the Court's power to implement. Where legislation is necessary or desirable, however, this has been indicated in connection with the recommendations.

II. DESCRIPTION OF THE JUVENILE COURT

A. Jurisdiction

The jurisdiction of the Juvenile Court is defined in Section 11–1551 of the District of Columbia Code and extends to children under the age of eighteen alleged to be dependent, neglected, delinquent or in need of supervision, those over 18 against whom charges have been filed prior to their 18th birthday, and previously adjudicated juvenile offenders between 18 and 21 years of age who are continued under the Court's jurisdiction.

The Court's jurisdiction also extends to adults involved in cases of paternity, non-support, violations of compulsory school attendance

and child labor laws, and contributing to the delinquency of a minor.

With respect to the adult jurisdiction, we support the legislative proposals which would (1) make paternity and non-support actions civil in nature, rather than continue them as quasi-criminal proceedings; and (2) have these matters handled either by the Domestic Relations Division or a Family Division of a Superior Court. Since these proposals would involve changes in the entire character and treatment of adult proceedings, we have not focused on the caseflow processing of the adult caseload.

In 1962, Congress increased the number of judges on the Court from one to three, all of whom are appointed for ten-year terms. At the present time the Juvenile Court operates on an annual budget of $1.6 million.

B. Workload

During fiscal 1969, a total of 1,441 adult cases and 6,875 juvenile cases were referred to the Court. Two-thirds of the adult cases involved paternity suits and 89 percent of the juvenile cases related to delinquency. Of these delinquency cases, 90 percent were filed against male delinquents.

As Table 1 in the Appendix shows, total juvenile cases referred rose from 4,878 in fiscal year 1963 to 6,875 in fiscal year 1969. This increase of 1,997 cases is mainly attributable to an increase, over the same period, of 1,829 delinquency cases (from 4,291 to 6,120). Slight increases in juvenile traffic (290 to 301) and dependency cases (297 to 454) are not significant enough to concern us. However, the 1,829 increase in delinquency cases since 1963 has cast a heavy burden on the Juvenile Court.

The following table shows a rapid growth in referrals for serious offenses over the period 1963–1969:

GROWTH OF REFERRALS FOR SERIOUS OFFENSES

[Fiscal 1963-69]

Most frequent reason for referral	Fiscal year cases		Amount of change	
	1963	1969	Number	Percent
Burglary II (unoccupied premises)	430	1,025	+595	138
Larceny, petit	792	922	+130	16
Unauthorized use of auto	413	795	+382	92
Robbery, other	270	519	+249	92
Assault, aggravated	197	304	+107	54
Disorderly conduct	309	279	−30	10
Robbery, armed	18	261	+243	1,350
Assault, simple	298	233	−65	21
Narcotics	[1] 2	77	+75	3,750
Purse snatching	67	158	+91	136
Burglary I (occupied premises)	180	90	−90	50
Total	2,976	4,663	+1,687	47

[1] 1964. This percentage is unduly magnified because of the low base figure.

Table 6 in the Appendix shows disposition data for juvenile delinquency cases. The data series is, unfortunately, only two years in length, but it reveals a declining output by the Court. A summary of Table 6 is as follows:

Fiscal year	Dispositions		
	Judicial action	No judicial action	Total
1968	3,599	2,110	5,709
1969	3,422	1,928	5,350

The following Table describes the juvenile caseload pending as of June 30 (the close of the fiscal year) from fiscal 1965–1969.

It shows an upsurge in *demand* for court and jury trials, from 116 in 1965 to 648 in 1969. However, demand does not reflect actual trials held since the number of trials actually held could be substantially less. While the number of cases awaiting initial hearing as of June 30 of each year would be more indicative of the backlog problem, discontinuous data prevents comparing 1969 with previous years. The number of disposition hearings pending dropped from 975 in 1965 to 219 in 1969. Nevertheless, the total number of undisposed of cases has risen substantially over the past three years, even if the non-comparable data is eliminated from the comparison.

Type of case	Number of cases pending June 30				
	1965	1966	1967	1968	1969
JUVENILE CASES					
Initial hearings	198	321	327	422	[1] 1,742
Court trials	106	108	134	242	358
Jury trials	10	10	34	187	290
Dispositions	975	616	367	282	219
Probation hearings	74	36	68	54	[2]
Commitment review	8	5	1	26	31
Suspended commitment hearings	27	6	7	3	[2]
Waiver hearings		3	3	11	18
Motion hearings		1	1	7	2
Medical report hearings	[2]	[2]	[2]	6	[2]
Other hearings	[2]	[2]	[2]	[2]	118
Total	1,398	1,106	942	1,240	2,778

[1] The court notes in the fiscal year 1969 report as follows: Revision in reporting during the fiscal year 1969 does not permit comparisons with prior years for these items.
[2] Data not recorded during the year.

We note that our own investigation of court records revealed that on August 4, 1969 there were 1,237 cases pending at intake and initial hearing stage. This figure does not square with the 1,742 cases reported for June 30, 1969 by the Court. As will be noted later in the report under data management, we have found serious deficiencies in the Court's recordkeeping system which may account for the existence of discrepancies such as this, and the inability of the Court and our staff to arrive at any explanation or reconciliation of such discrepancies.

The substantial increase, during the past few years, in the numbers of cases awaiting initial hearing, jury trial, or court trials is, in itself, alarming. The two major sections of this report which follow (Caseflow and Calendar Management, and Administrative Management) present recommendations which, if adopted as a cohesive unit, can substantially improve the operation of the Juvenile Court in the District of Columbia.

PART I. CASEFLOW AND CALENDAR MANAGEMENT

III. CASEFLOW AND CALENDAR MANAGEMENT

A. Introduction

The overall picture of the D.C. Juvenile Court is one of an organization which has not succeeded in attaining the goals of systematic efficiency in processing cases, or the traditional and still valid philosophical goals of a juvenile court to which it purports to subscribe; nor has it succeeded in fulfilling the responsibilities of a court of law. In an effort to process cases in some semblance of order, the Court devotes many manhours to trying to compensate for deficiencies in administration and procedure, but the inescapable conclusion is that the majority of judicial and non-judicial time is misallocated in both a qualitative and quantitative sense to such an extent that increased efficiency along present lines would not result in any great improvement in the total court process.

In the year and a half since the decision in *In re Gault*,[3] the D.C. Juvenile Court has failed to meet the challenge of developing a system within which it can dispense individualized justice with the speed that is an indispensable element of effective due process. Many of the procedural reforms it has instituted have been put into effect in such fashion as to result, through increasing delays, in serious deprivations of liberty. They have been grafted onto outmoded operating procedures already clogged with delay in ways that have resulted in even greater delays. As a consequence, not only are the Court's operating procedures inadequate and unfair to both the juvenile and to the community, which has a legitimate interest in prompt and efficient handling of cases and the deterrent effect that can be achieved therefrom. In addition, they may generate serious constitutional problems. For example:

1. The U.S. Court of Appeals in recent decisions has implied that trial delay of over a year in an adult prosecution may be a denial of the right to a speedy trial, yet many children are not even brought before a judge for initial hearing (the equivalent of arraignment) within that time.

2. It is questionable whether petitions filed between 2 weeks and 4 months after a child has been ordered held in detention, and anywhere from 3 to 12 months after a child has been released to the community, satisfy Gault's requirement of notice "at the earliest practicable time."[4]

3. Although children are being informed of their right to counsel and the Court is making efforts to assign counsel, in October 1969 there was a backlog of over 2,000 * cases in which counsel had been requested and not yet assigned. Frequently counsel has not been assigned by the time of the initial hearing, even when that hearing comes months after the time of an alleged offense.

4. Inherent in the right to counsel is the right to have counsel appointed at a time and in a way which will be meaningful to the

[3] 387 U.S. 1 (1967).
[4] 387 U.S. 1, 33 (1967).

*We have been informed that since the conclusion of this Study, the backlog of unappointed counsel cases has been substantially reduced.

child.[5] It can be contended that the present system of appointment of counsel—which often results in appointments many months after the offense, at a time when it may be exceedingly difficult to locate witnesses, challenge pre-trial detention, or exercise the right to a jury—gives only the form, and not the substance of due process protections.

5. Although the Court holds prompt detention hearings for children held at the Receiving Home, the promptness of these hearings may be vitiated in the amount of time a child ordered detained may be held in custody pending the filing of a petition and initial hearing. Such wholesale incarceration without formal charges has been constitutionally challenged elsewhere.[6]

The Juvenile Court has not settled comfortably into being a court of law different from other courts only in the age of its clients and the social services it offers outside the adjudicatory process. Judicial decisions have for a long time pointed in this direction, yet a certain paternalism associated with pre-*Gault*, and now outmoded, juvenile court philosophy is still evident in the Court's attitudes, action, and public image. A serious by-product is that the Court does not engender much respect in the individuals and organizations that daily have dealings with it.

This problem of the Juvenile Court's concept of its own role and responsibilities has ramifications at every point in the court process and in the Court's relations with police, lawyers, clients, and public and private agencies. Many of the Court's orders go unexecuted because the individuals and agencies most involved with the Court do not feel any sense of urgency or obligation. Police do not come to the Court promptly to sign petitions. Half of all attorneys contacted refuse appointments without even applying to the Court for permission to be released or giving reasons. Continuance requests frequently are telephoned in at the last minute. Department of Public Welfare personnel do not adhere faithfully to the terms of commitment orders. The U.S. Marshal's Office places Juvenile Court process so low on its priority list that 85 percent of Juvenile Court summonses go unserved. Within the Court, one judge has observed that the clerical staff is lax in observing his orders to continue particular hearings for certain days.

These problems are aggravated by the lack of standardized procedures within the Juvenile Court. Throughout the body of this report, references will be made to delays that occur in the processing of cases. These delays necessarily must be stated in ranges, e.g., it takes anywhere from 3 to 12 months for an initial hearing to be scheduled, 4 months to 2 years for a jury trial, and so on. The wide ranges reflect the lack of system for moving cases through. Thus, for example, hearings are not scheduled on a first-in-first-out basis, or because social workers have established priorities of cases, or because serious offenses are treated first. Nor were we able to perceive any other comprehensive calendaring policy. The one single item that appeared to have most relevance was whether the docket on a case found its way to an obvious location near the calendaring clerk.

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[5] Cf. *Hazlet* v. *U.S.*, 404 F. 2d 1273 (C.A. D.C. 1968), where the U.S. Court of Appeals showed deep concern that the quality of representation afforded the child be meaningful, and looked behind the fact of representation into the adequacy thereof.

[6] See e.g., *Baldwin* v. *Lewis*, 300 F. Supp. 1220, 1232 (W.D. Wisc., 1969.)

In our descriptions of case processing in the Court, we attempted to follow the route papers are supposed to take in the normal course of events and to measure delays at each point in the process. But for the large percentage of cases there is no "normal course of events." Only when individual social workers, attorneys or judges put pressure on staff to locate a lost file is there some chance that the child in question will move expeditiously through the system. Personal exertion on behalf of individual children is too often required to do justice in the Juvenile Court.

When we referred to "judicial responsibility" in the other courts studied, we were talking about judges' assumption of control of cases at the outset and responsibility for seeing that those cases were moved through the court. That kind of responsibility will be necessary for the Juvenile Court also, but that comes as a secondary matter today. The Court's first responsibility is to establish relationships within the Court, with the bar, and with public and private agencies whereby it will promulgate overall policies, assume responsibility for insuring that they are being carried out, and engender in these other institutions and individuals a respect which will encourage compliance with the stated policies.

Without this kind of major revision of its perception of its role and a mature recognition of its responsibilities as a court of law, very little progress can be made in the Juvenile Court. Streamlining present procedures will not be enough. Piecemeal improvements will not do the job. Only if current procedures are fully scrutinized and recommendations are made for fulfilling fundamental requirements of due process of law will our report and its recommendations have meaning, for due process and efficient management are inextricably intertwined in this Court.

B. Summary of Major Findings

1. There are major deficiencies in the Court's present system of operations in terms of psychological effect on children. One of the goals of the Court, deterrence, is not being realized when it sometimes takes more than a year even to inform the child of the charges against him and to accept his plea. If continuity of approach is an inherent part of individualized treatment, that goal is not being realized when a child processed by the Court is handled by 2 or 3 social workers, 2 or more attorneys, and different judges at adjudicatory hearings and dispositions.*

2. The Court's present haphazard system of operations is engendering serious problems of fairness, which may rise to the level of Constitutional questions. These include possible violation of the right to speedy trial in both detention and community cases, induced waiver of the right to jury trial in cases where the Court's jury trial backlog forces a child to forego exercise of his right, failure to provide counsel in a timely manner, and such widespread discrepancies in standards and procedures within the Court as to raise serious equal protection questions.

*Although there are often different judges at pretrial hearings as well, countervailing due-process considerations have led us to endorse a system which would have different judges at the pretrial and adjudicatory stages.

3. There is a substantial misallocation of resources in the Juvenile Court. For example, a disproportionate amount of both judicial and legal time and talent in the aggregate is expended in informing children of their right to counsel and ascertaining whether they want to have counsel appointed; yet very little is done to insure that, once attorneys are requested, they are appointed in timely fashion. Since in the end most children do request attorneys, making appointment of counsel automatic and concentrating efforts on the mechanics of timely appointment would result in far better utilization of resources.

4. Large blocs of non-judicial and judicial time are totally misspent. For example, the Corporation Counsel is required to attend numerous hearings in which the office plays no positive role(e.g., detention and initial hearings), yet is not asked to take part in hearings where an Assistant Corporation Counsel could perform a valuable function (e.g., probation revocation). As another example, detention hearings take approximately 25 percent of aggregate judicial bench time. Yet a second hearing must be scheduled in every one of these cases to read charges, take pleas, and hear probable cause. In most cases these could be performed at a single hearing, with a substantial savings in judicial time.

5. No one is effectively discharging the responsibility for insuring that cases are petitioned or calendared promptly. There is no judicial control, and, because of the Corporation Counsel's blurred role, the delays in appointing counsel, and the frequency of fragmented representation, there is seldom a prosecutor or attorney in a position to bring cases to the Court's attention.

6. Despite the fact that matters involving work division, caseflow, and calendar management are appropriately the responsibility and concern of every judge on the court, there is little or no consultation among the judges on these matters and responsibility in these areas has not been effectively assumed or carried out.

7. There is no systematic approach to caseflow or calendar management. The Court is operating too many calendars for simplified calendar management. In addition, there is a lack of active calendar management, with neither clerical nor judicial personnel responsible for ascertaining the readiness of cases prior to a scheduled court appearance. Certain calendars are underset, others are overset, continuance policies in many areas are overly lenient, and formal calendar calls come much too late in the entire process to weed out cases effectively and to take pleas.

8. As a result of the lengthy delays, almost every step in the judicial process fails to effect its intended purpose and serves only as a calendar call to weed out stale cases.

9. A comparatively small amount of aggregate judicial time is calendared for disposition hearings. Despite the acknowledged importance of social study and exploration of dispositional alternatives at the dispositional stage, this most important aspect of a juvenile court proceeding is given short shrift in many cases because of previous delays and backlog pressures.

10. Standardized operating procedures are lacking. For example, the Court has not fulfilled its responsibilities to (1) publish and adhere to standard working hours; (2) establish and adhere to standardized

motion practice; (3) promulgate rules covering such matters as continuance policies, pre-trial discovery, etc., which would inform attorneys of court policies and procedures and might save hours of judicial time.

C. Summary of Major Recommendations

Judicial responsibility for processing cases

1. The judges should establish and enforce a system to insure that cases are routinely filed and processed to conclusion within preestablished time limits. Toward this end, time limits should be established for filing of the case, holding an initial hearing, and ultimate disposition of the case. While legislation may be necessary to warrant dismissal of proceedings not completed within such limits, pending legislative action the limits should be established and announced by the Court as goals. Preliminary processes should be expedited and preliminary stage hearings (i.e., detention, initial, and probable cause hearings) consolidated, and increased emphasis placed on the dispositional stages of the proceedings where the major benefits of Juvenile Court process lie.

2. As an emergency measure, the judges should institute a calendar call to dispose of stale cases and assume control of those cases that remain in the backlog.

3. Attorneys should be appointed as soon as possible and, in any event, prior to the first court appearance. So long as the present delays in filing petitions and first court appearance continue, however, attorneys should be appointed immediately upon the Intake decision to petition the case. Further, the attorney should retain the case until final disposition. A comprehensive system of attorney appointments should be established under the aegis of and coordinated by the Legal Aid Agency. Children should not be permitted to waive counsel.

4. The Corporation Counsel should assume an orthodox prosecutor's role in delinquency and need of supervision cases. Toward this end the Office should: screen cases for legal sufficiency and prosecutorial merit, prepare and file petitions, and present evidence in support of the petition. Arresting officers and any other witnesses necessary to the decision to petition should report to the Corporation Counsel routinely after a complaint has been made out.

Work division and calendar management

1. In order to bring about a clearly defined allocation of judicial responsibility, and at the same time retain the benefits of informing the judge of social factors involving the child so as to better enable him to make an informed preliminary decision as to whether the child belongs in the court process, yet avoid any prejudice in a trial on the merits, the Juvenile Court should adopt a modified individual calendar system of work division. Under this system, one judge would be assigned for long-term rotation to handle all preliminary matters that involve disclosure of significant social information and to function as an assignment judge. In order that a judge not sit on the trial of a case in which he has been given social information on the child, in all cases where a denial of allegations is entered a trial date should be set and the matter assigned to one of the other judges to conduct all further matters on an individual calendar basis.

2. The Court should institute a calendar management program which has: (1) judicially supervised calendar management; (2) restrictive continuance policies; and (3) case-setting policies which realistically reflect the available judicial manpower, past performance rates of each judge, and an assessment of the specific factors of each case.

3. The Court should develop an effective management information system to gather and process relevant information on which these determinations can be based.

NEED FOR ADHERENCE TO STANDARDIZED PROCEDURES

The Court should establish, inform the bar and public of, and adhere to, standardized policies, procedures, and working hours. It should make fuller use of its rule-making powers to formulate uniform policies on matters that are presently unclear. Thus, for example, the Court should adopt discovery procedures that would apply uniformly to all cases, and should adopt by rule policies on such questions as continuances, motion practices, and the admissibility in evidence of statements made to Intake workers. The National Council on Crime and Delinquency's Model Rules for Juvenile Court Judges might furnish an appropriate guide. Efforts should be made to adhere to policies, once adopted.

RELATIONSHIPS WITH OTHER AGENCIES

The Court should seek to establish relationships with the agencies and individuals having business with it which will assure compliance with its orders and procedures. Thus, for example, the U.S. Marshal should be required to serve Juvenile Court process in timely fashion. (This recommendation has been made to the U.S. Marshal in another Court Management Study report).

REALLOCATION OF PERSONNEL

The Court should reassess its allocations of personnel to insure that the best use is made of judicial and non-judicial resources; and should establish performance guidelines and exercise supervisory powers. Thus, for example, use of court reporters should be reassessed to prevent avoidable absences from courtrooms when their services might be required, to insure their availability when needed, and to insure timely production of transcripts. Allocation of Probation Officer efforts should be reevaluated. (See pp. 197–197.)

SOCIAL SERVICES

1. The Social Service Division should maintain a systematic, up-to-date posting of dispositional resources, and orient Intake and Probation Officers to community resources and court procedures.

2. Intake hours and processes should be streamlined. Toward this end, interviews should be held and investigations begun early in the day; and Intake Officers should be placed in charge of screening cases prior to admission to the Receiving Home, under revised and tightened detention criteria.

3. The Court should reassess its use of Probation Officers; establish guidelines for and make increased use of social studies; determine an appropriate allocation of probation efforts between social studies and court appearances and supervision; place time limits on and encour-

age periodic review of probation orders; and statistically evaluate the effectiveness of the field offices as compared with the main office.

4. Probation Officers should follow up on treatment plans to insure the child is admitted to and attends the recommended program.

5. Probation revocation hearings should be commenced by the filing of a petition and prosecuted by the Corporation Counsel, not the Probation Officer.

"NEED OF SUPERVISION" PROCEDURES

Hearing procedures and procedures for appointment of counsel in "need of supervision" cases should conform to procedures in delinquency cases. Authority to sign petitions should, by legislation, be restricted to schools and social agencies, and dispositional alternatives should be limited, so that "need of supervision" children will not be incarcerated with delinquents.

D. Detailed Analysis of Court Operations

1. DELAY TO DISPOSITION

a. General

In the other trial courts we found that there was no judicial control of caseflow; that either private attorneys or the prosecutor determined the pace of litigation; and that cases did not come to the Court's attention until the parties decided to press for action. As will be set forth in more detail later in this report, in the Juvenile Court, not only is there no such judicial control; but, due to the Corporation Counsel's lack of prosecutorial responsibility, the delays in appointing counsel, and the frequency of fragmented representation, there is not even any prosecutor or attorney control. There is no one in charge of or responsible for insuring that cases are filed or calendared promptly.

As will be set forth in more depth on pp. 171–175 of this report, once a complaint is filed with the Court numerous offices and individuals have responsibility for certain limited functions which must be completed before the petition is filed and the child brought before a judge. In the normal course of events, the papers will, at a minimum, go from Central Files to Intake Officers, to Intake Supervisors, to the Petition Unit, to an Assistant Corporation Counsel, to the Petition Clerk, possibly to the Attorney Advisor, to the Assignment Clerk. As stated elsewhere in this report, there are no court rules, policies, or standard procedures by which the Court has set time limits for this initial processing, and there is no one individual with overall responsibility for insuring that each and every one of these component functions is expeditiously performed.

While our findings in the other courts related largely to problems and delays once a case had formally found its way into the court processes, in the Juvenile Court the most substantial problems and delays occur between the decision to file and the filing of the petition. The "initial hearing" is not held until after filing. Because of these delays, for children in detention an initial hearing may be scheduled anywhere from 2 weeks to 4 months after remand to the detention facility. For children released to the community, the first court appearance may not take place until anywhere from 3 months to over a year after the alleged offense. As a result of the delays at this point, the Court is

allocating almost all of its judicial and non-judicial resources to the preliminary stages.

In terms of the number of hearings held, in fiscal 1969 there were 1,409 detention hearings; and 5,820 initial hearings. There were 2,891 trials and disposition hearings.[7]

In terms of the amount of time scheduled, over half of the judicial bench time is calendared for detention and initial hearing despite the fact that these are largely routine, while only approximately 5 percent of judicial time is scheduled for disposition hearings following a social study, although this is the heart of the Judicial Court process.

The statistical picture of median times from filing to disposition in juvenile cases presents a somewhat distorted picture of the total process. Because of the delays prior to filing, the Court has attempted to expedite the process once a case is finally brought before a judge. In fiscal 1969 approximately 50 percent of the delinquency cases were closed at initial hearing.[8] Our samples, taken between August and October, 1969, indicate this percentage has risen to well over 60 percent. Thus, the median process-time to disposition for most cases is the relatively short time span between the formal filing of a petition by the Petition Clerk and the initial hearing, and in no way reflects the substantial delays *before* filing or the delays of up to a year prior to trial and/or disposition for those cases which are not disposed of at an initial stage.

Due to backlog pressures—in September, 1969, there were 3,021 cases backed up for trial [9]—almost every step in the judicial process has lost its substantive meaning, and serves largely as a calendar call to weed stale cases. As a consequence, the supposed benefits of a juvenile court have become almost totally illusory.

Backlog pressures have induced plea bargaining of a type which may seriously jeopardize procedural rights or lead to dispositions which may not be in the best interests to either the child or the community. For example, one judge indicates a willingness to limit disposition to probation in return for a plea of involvement, especially if a jury demand is made. While the desirability of this type of bargaining by a judge may be seriously questioned, a judge may do it because he is aware of mounting jury demands; attorneys accede because it may be the only practical alternative for their clients, who might otherwise spend an average of 7 months in detention awaiting a trial on the merits.

In accepting pleas and fashioning dispositions based on preliminary, cursory information the judges may often be guided less by a child's offense or needs than by the length of time the case has already been pending. At present, only about 20 percent of all cases are continued for social study.

Any deterrent effect on children that immediate apprehension and trial might have is lost. Children released to the community frequently tell social workers and others that their cases have been "dropped," when in fact their cases are pending as part of the backlog. By the time the case finally gets to court, children may not see the relationship between their acts and court action.[10]

[7] Juvenile Court Statistical Report, fiscal year 1969, p. 9.
[8] *Ibid.*, p. 10.
[9] Juvenile Court Quarterly Statistical Report, July–September, 1969.
[10] See statement of Judge Prettyman in Report of the President's Commission on Crime in the District of Columbia (1966), p. 678.

Many juveniles free pending trial commit interim crimes. For example, during fiscal 1969, 29 percent of all cases disposed of were disposed of by action in another case pending against the same child.[11]

In addition, the community suffers because it is more difficult to secure convictions in law violation cases when trials are finally held. Crucial witnesses may have disappeared and problems of proof may be aggravated.[12]

Recommendations

Measures should be taken immediately to insure immediate and continuing judicial responsibility for prompt handling of all cases.

1. The judges should assume responsibility for establishing and enforcing a system which will insure that cases are routinely filed and processed within the time limits recommended herein, and should exercise tight control over the progress of cases. In detention cases, Court responsibilty should be assumed prior to admission of any child to the detention facility. Intake workers should be stationed at the Receiving Home 24 hours a day to screen admissions under established and tightened Court detention criteria. Twenty-four hour screening should result in considerable reduction of the daytime Intake caseload. Thus, while it will be necessary to reallocate some personnel to night-time hours, it may not be necessary to increase the overall manpower in the Intake Section. In community release cases Court assumption of responsibility for the pace and processing of litigation should begin with the filing of the complaint and not await the filing of the petition.

2. Because of the measurably detrimental effects that delays in Juvenile Court processing have on the entire system of juvenile apprehension, deterrence and rehabilitation, we recommend establishment of specific, statutorily defined time limits in the Juvenile Court, and immediate allocation of sufficient judicial and non-judicial resources to enable the Juvenile Court to meet these standards.

While time limits are generally useful as a management tool, both as a yardstick for measuring and evaluating performance and as a guide for deployment of judicial resources, in the Juvenile Court time limits would have an additional advantage. Important substantive benefits could be achieved through establishing a system under which a child is immediately brought to court and confronted with the charges. Immediacy is of particular importance because of the age of the respondents and the opportunity for psychological impact if a child is brought before a judge promptly.

Specifically, we recommend that statutory limits be established under which detention cases would be processed from filing of the complaint to disposition within 45 days, community cases within 90 days.[13] Moreover, although establishment of time limits as a basis for

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[11] Juvenile Court Annual Statistical Report, fiscal 1969, p. 42.

[12] There were acquittals in 55 percent of the jury trials held in October, 1969, 25 percent on directed verdicts.

[13] Cf. New York Family Court Act, (McKinney, 1963, as amended 1967) Sections 730, 747, 748, and 749. New York, which does not provide for a jury trial in juvenile cases, routinely processes detention cases in 30 days, community cases in 60. Because juvenile proceedings in the District of Columbia do provide a jury trial upon request, we have recommended the longer time limits set forth herein.

In the event statutory informal adjustment is adopted (along the lines suggested on pp. 175–176, *infra*.) the time limits could be tolled for the duration of informal adjustment efforts.

dismissal would require legislation, pending statutory enactment, time standards should be established by court rule as performance goals to govern the processing of cases.

As well as a total time limitation for ultimate disposition of the case, individual standards should be set for each of the component parts of the proceeding, to enable the Court to effectively allocate its resources to processing the total case within the established time.

3. To deal with the backlog, the judges of the Juvenile Court should institute a calendar call of every case on its docket. This should be done as an *emergency* matter to assess the status of all cases as a first step toward assumption of continuing judicial control. We are not recommending that a calendar call be incorporated into the daily operations of the Court, as we have not found it an efficient technique for optimum utilization of judicial manpower under circumstances where a court has its caseload under tight judicial control. However, in a situation of the type confronting the Juvenile Court at the present time, where there is no such control of the caseload and an exceedingly large number of stale cases in the backlog, a one-time calendar call can be a highly effective technique to bring the caseload under judicial control and focus judicial attention on those cases where efforts would produce the most fruitful results. The plan followed by the U.S. District Court judges in October, 1969, suggests a workable model for a calendar call. The judges assigned to criminal cases suspended operations for one week, and called every one of the 1,630 criminal cases on the docket.[14]

The judges should set tight criteria to screen and dispose of these backlog cases, set trial dates in appropriate cases, and operate thereafter on an individual calendar to insure continuing responsibility. The hearing officer should be given temporary responsibility for screening backlog cases, under judicial supervision. Cases not disposed of through this screening process should be set on the calendar of one of the judges operating on an individual calendar.

Attempts should be made wherever possible to dismiss or otherwise dispose of stale cases at the calendar call so that all efforts can be concentrated on the new cases, where there is likely to be more opportunity for the Court to have an impact on the child, if the case comes before a judge promptly. This type of screening is in fact being done at the present time, albeit in a highly haphazard manner. Judges frequently close out all cases pending on a child and concentrate only on the most recent offense.[15] Attorneys have recently reported great ease in getting stale cases dismissed. If the Court's present unofficial efforts to dispose of stale cases could be officially stepped up, and the backlog substantially reduced, then the recommendations set forth in the rest of this report might stand some realistic chance of success.

b. Delay Between the Date of Complaint and Time Set for Initial Hearing

The blame for delay in filing cases has traditionally been laid to Intake investigations; and the argument for not streamlining pre-

[14] 8 judges each handled approximately 200 cases in 5 working days. Approximately 17 percent were finally disposed of through the call itself. (Report on the Results of the Calendar Call of Criminal Cases under the Experimental Individual Calendar System in the United States District Court for the District of Columbia, submitted by Chief Judge Edward M. Curran).

liminary screening processes is that shortening Intake investigations would destroy one of the unique benefits of Juvenile Court proceedings—a full social screening to determine whether the Court is the best resource available to deal with the child.

For this reason, we have made an in-depth analysis of Intake operations and preliminary processes, to determine (1) exactly where the delays were occurring; and (2) whether substantially shortening the time within which Intake had to operate would in any way lessen its effectiveness.

Generally, law violation cases are referred by the Youth Division of the Metropolitan Police Department, beyond control and truancy cases by parents or community agencies, and dependency cases by the Department of Public Welfare.

The complaint goes directly to the Central Files Unit of the Social Service Division. The Central Files Unit time-stamps all complaints, checks to see if there is a prior file on the child, asterisks detention cases for expedited handling, and forwards the complaint to Intake or Probation.[16] This is done the same morning as receipt of the complaint. The Intake Supervisors assign cases to Intake Officers, who conduct preliminary investigations. If the Intake Officer decides to recommend the filing of a petition, he fills out a brief petition request form, which is routed through the Section Chief for approval.

If a child is released to the community by the police, he and his parent or guardian are told to report to the Court for an Intake interview at 1:00 p.m., 2 working days after his release. If a child is held in detention by the police:

(1) A court hearing on detention is scheduled for 3:00 p.m. on the day following the child's arrest;

(2) Parents are told to report to the courthouse at 1:00 p.m. on the day of the detention hearing. The Receiving Home bus brings the children to the lockup between 1:00 and 1:30. Intake interviews are held between 1:30 and the 3:00 p.m. hearing.

(3) Parent and child are interviewed separately: parent in the waiting room, child in the lockup (which has not private interviewing rooms);

(4) Each child in detention has an attorney appointed to represent him at the detention hearing, and the attorney conducts whatever interviews he can with child and parent during the hour and a half prior to the hearing.[17]

Based on interviews with the parent and the child, the Intake Officer may either release the child or recommend that the child be remanded to the Receiving Home or placed in another detention facility pending an initial hearing.

Because all interviewing must be completed between 1:00 and 3:00 every afternoon, very little time is available for conducting meaning-

[15] In fiscal 1969, 23 percent of the 5,350 delinquency cases were disposed of in this fashion.

[16] New cases go to the Intake Section; children already under the Court's jurisdiction are screened by the Probation Section. For convenience, we will refer to all cases needing screening as handled by Intake.

[17] In the confusion with each child being interviewed by lawyer and Intake worker, children often have trouble differentiating between the two.

ful interviews and making judgments regarding detention or petitioning. The 1:00 to 3:00 p.m. hours present special problems in contacting schools and places of employment, since school officials and employers may be out to lunch.[18] Not only is interviewing done at one of the most pressured times of day, but the necessity to make all possible contacts in detention cases before the 3:00 p.m. hearing frequently results in slighting interviews in community cases. These are scheduled for 1:00 p.m. interviewing also, though they are rarely held on time. Sometimes the supervisors must be called on to conduct community case interviews, when Intake Officers cannot sandwich in the interview before court appearance; sometimes the community children are forced to wait until the Intake Officer returns from court; sometimes the interviews have to be postponed until the following day.

It is often impossible to gather information on all of the relevant factors in the short space of time allotted for screening. Despite this, the Intake Officer usually makes a recommendation based on the information he has by the close of the interview and the weeks between Intake interview and initial hearing are not used to gather supplemental information concerning the need for petitioning or for holding a child in detention.

Each Intake Officer conducts an average of four community case interviews per day and one or more detention case interviews. Community children and their parents are interviewed in the Intake offices, located in a building adjacent to the courthouse. Detained children are interviewed in the courthouse lockup and their parents in courthouse waiting rooms. Since interviews in both kinds of cases are scheduled each day at 1:00 p.m., an Intake Officer's physical presence is often required in two different buildings at once.

Intake Officers are required to attend the detention hearing on each case they have interviewed, yet no effort is made to schedule all of an Intake Officer's cases on a particular day before the same judge. Judicial and non-judicial time is consequently wasted in waiting for the appearance of an Intake Officer who is testifying before another judge in another courtroom.

From an inventory of 1,237 cases awaiting initial hearing on August 4, 1969, we found that all 1,237 cases had been processed by Intake within an average of 4–10 days. The relative dispatch with which these cases were processed at Intake contrasts sharply with the delays they later encountered: as of August 4, 1969, these cases had been awaiting an initial hearing from 58 to 245 days. This clearly indicates that delay prior to initial hearing cannot be attributed to delays in Intake Processing. (See Table I.)

[18] A number of Intake Officers have reported difficulty in obtaining information on a student from D.C. schools, even when contact is made promptly. Two people were recently hired as school liaisons to work within the school system, retrieving information, and this may facilitate timely collection of the necessary background information.

TABLE I

Intake officer	Number of cases	Average intake processing time (from receipt of complaint)	Average age of cases awaiting initial hearing as of Aug. 4, 1969[1]
		(days)	(days)
1	119	3.9	122.3
2	35	4.1	203.0
3	134	4.3	132.6
4	118	6.0	121.9
5	139	6.1	120.4
6	65	6.2	57.8
7	140	6.5	121.6
8	142	6.5	123.5
9	136	7.4	110.5
10	79	8.5	86.4
11	114	9.9	100.6
12[2]	16	10.8	244.9

[1] This is not the average time to an initial hearing. It is the average time the cases active in intake on Aug. 4, 1969, had been awaiting initial hearing. Many are still pending.

[2] Although intake officer No. 12 had resigned several months prior to Aug. 4, 1969, 16 of his cases were still pending initial hearing on that date. Actually there were 11 intake officers on Aug. 4.

Findings

Our findings with respect to case processing prior to initial hearing were as follows:

1. The actual decision to petition is, with a few exceptions, made by the close of the initial Intake interview. The time that elapses between Intake's decision to petition and the initial hearing is not generally used to reconsider, gather more information, or consult sources that could not be reached during the short afternoon period scheduled for the Intake interview.

2. The amount of time required in the Intake paperwork process (which consists of writing up summaries of the Intake interview and the petition-request form prior to seeking approval of the supervisor and section chief), is such that, in routine cases, there should be little difficulty in completing Intake investigations as they are presently conducted and making the decision to petition *the same day the complaint is filed with the court.*[19]

3. From Intake, the petition papers go to the Petition Unit of the Clerk's Office to be docketed, and from there to an assistant Corporation Counsel for approval. The average time for Corporation Counsel processing is under 2 days.

4. The papers are returned to the Petition Clerk for typing and signing of the petition and for collection of related dockets. Due to the lack of an adequate filing system, the collection of related dockets can be a very time-consuming process, sometimes taking as much as one full day in a single case. Cases then go to the Assignment Clerk for calendaring. It is at these two points in the Clerk's Office that major delays occur. The Petition Clerk usually takes approximately 3 weeks to 1 month to get the petition filed,[20] and the Assignment

[19] If there were to be a more in-depth investigation prior to petitioning than is made at the present time, more time would be needed. If it is considered desirable that Intake investigations be substantially more comprehensive, statutorily controlled informal adjustment procedures such as those set forth in footnote [23] on p. 176 of this report might be considered.

[20] Of the cases covered in our first-complaint sample: the median time papers remained with the Petition Clerk prior to filing of the petition was 1 month; over 15% of the cases were there over 2 months: and some as long as 9 months.

Clerk customarily calendars community case initial hearings a minimum of 3 weeks after the date the petition is filed.[21]

One proffered explanation for the Petition Clerk's delay is the failure of Youth Division or arresting officers to come to court to sign petitions. For example, Youth Division officers customarily come only on Thursdays. Thus, it often takes 5–10 days before the signature is entered.

While this situation could be remedied by having the arresting officer come to court immediately (recommendations on this point are developed more fully in the Corporation Counsel section), it should be noted that present law does not require a police officer's signature for filing a petition. In fact, law violation petitions occasionally go forward on the Intake Officer's signature, if not signed by the police officer prior to the initial hearing. Thus, the delay engendered by awaiting police signatures is unnecessary.

5. Delays occur in the appointment of counsel. The Assignment Clerk calendars community case initial hearings 3 weeks in advance. Thus, there is a minimum 3-week delay from the time the petition is filed to an initial hearing. If an attorney has been requested, the initial hearing is not supposed to be calendared until an attorney has been appointed. Since there is a backlog of cases awaiting appointment of counsel in the Attorney Advisor's Office, there can be additional delay pending appointment.

6. For children in detention, the total process time from the order to remand to initial hearing takes between two weeks and four months.[22] One judge has attempted to expedite initial hearings in cases of children ordered remanded by him, by writing a 7-day limitation into the detention order (order to expire if initial hearing not held within 7 days). Despite this, initial hearings are not in practice being held within the prescribed 7 days. On Corporation Counsel motion or by application to another judge, the prescribed detention period can easily be extended until an initial hearing can be held on the Court's own schedule.

For community-released children, initial hearings are rarely scheduled sooner than 3 months after the alleged offense. Most of them are scheduled for some time between 3 and 12 months later,[22] meaning that process time up to initial hearing is frequently as long as a year.

Recommendations

1. Strict time limits should be established for filing of the petition. Where the child has been held in detention, the petition should be filed no later than the next court day. Children who have been released to

[21] Detention cases are calendared for initial hearing more quickly than community cases, since 2 or 3 slots are left open for detention cases on each initial hearing calendar. It should be noted, however, that these slots are not sufficient to keep abreast of the number of detention cases remanded to the Receiving Home each week.

[22] These statistics were derived from 3 file samples (one of first-complaint cases, one from the docket index cards, and one from the randomly unfiled cases on chairs, boxes, and radiators); in-court observation of initial hearings over a 3-month period (August–October, 1969); and interviews with attorneys, judges, and court personnel. The ranges held true in *each* of the samples and our in-court observations. The range is accounted for by the fact that the Assignment Clerk attempts to alternate the oldest cases with some newer ones on each initial hearing calendar.

the community should either be petitioned or dismissed no later than five court days following receipt of of the complaint.[23]

2. Intake hours and processes should be revised so that interviews are held and investigations begun early in the day. This would mean that the decision to petition could be made around the middle of the day, so that those children who are to be petitioned can be brought before a judge later that same day, or, in any event, no later than the next court day. Toward this end:

(a) Each Intake Officer should be assigned either detention or community cases but not both on the same day.

(b) Detained children should be brought in from the Receiving Home at 9:00 a.m., rather than at 1:00 p.m., to allow more time for meaningful preliminary inquiries (as well as attorney interviews and investigations).

(c) Children released to the community should similarly report to the Court at 9:00 a.m., for prompt Intake interviewing, so that an initial hearing may be held the same day.

3. Once Intake has completed enough of a preliminary inquiry to determine that the case should go forward, the complaint should be forwarded to the Corporation Counsel, who should actively screen each case for sufficiency of the evidence and general prosecutorial merit. Arresting officers and any other witnesses necessary to the decision to petition should report to the Corporation Counsel routinely after a complaint has been made out.[24]

The Corporation Counsel should have final authority to decide whether to petition a case, and, once that decision has been made, should assume responsibility for preparing and filing the petition.[25]

4. Attorneys should be appointed as soon as possible, and in any event, prior to the first court appearance. So long as the present delays in filing of the petition and/or first court appearance continue, attorneys should be appointed immediately upon the Intake decision to petition the case. (Further recommendations as to a system for immediate appointment of counsel are set forth on pages 186–188, *infra.*)

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[23] If the Court feels it would be beneficial to allow time for informal adjustment of selected community cases, rather than immediate filing of the petition in every case, consideration should be given to spelling out a procedure for statutorily regulated and judicially supervised informal adjustment, for a period up to 2 months, with a possible judicial extension for a maximum of one more month, but only provided:

(1) The facts bring the case within the jurisdiction of the court;
(2) Counsel has been appointed to represent the child;
(3) The child and his parents consent to informal adjustment; and
(4) Statements made at informal adjustment conferences are inadmissible as evidence at subsequent fact-finding hearings.

See Uniform Juvenile Court Act, § 10, N.W. Family Court Act §§ 333 and 734 (McKinney, 1963); Hawaii Rev. Laws § 333-12 (Supp. 1965); Maryland Code, Art. 26, § 70-7 (1969); Ill. Stat. Ann., ch. 37, § 703-8 (Supp. 1966).

[24] An alternative procedure for the initial decision to petition was given serious consideration by this Study. Under this procedure, which would require legislative changes, all complaints would go immediately to the Corporation Counsel for initial screening rather than to Intake; the Corporation Counsel would make the initial decision to petition and have the child promptly brought before a judge. Intake could present a social recommendation in favor of dismissal of the case to the judge. Because this is an open question with strong arguments on both sides, and because our other recommendations involve substantial changes in the Corporation Counsel role which will require major efforts to implement, we have refrained from making a positive recommendation along these lines at this time. However, we suggest that it be given serious consideration.

[25] The Corporation Counsel and the Court could consult with the Court of General Sessions for further specifics on streamlining and timing the preliminary aspects of the initial papering process. While improvements could perhaps be made in Court of General Sessions operations, its procedures in this area are so much more efficient than the Juvenile Court's as to serve as a suggested model at this time.

5. For all cases the initial hearing should be held no later than the end of the next court day following the filing of a petition and should be combined with the probable cause hearing, if requested. For children in detention, the initial hearing should be combined with the hearing on the question of detention. For good cause shown, the Court could postpone the probable cause part of the hearing, in which event there could also be a postponement of the entry of a plea.

2. CALENDAR MANAGEMENT

a. General

The total picture in the Juvenile Court is one of an organization without any effective or efficient overall approach to caseflow or calendar management by either judicial or non-judicial personnel. A recent experimental jury calendar in October, 1969, involved a limited management effort on one of the Court's 16 calendars, to the exclusion of the other 15, many of which backed up substantially during that month.

Much of the time the Juvenile Court judges work long hours and the majority of our criticisms in this report relate not to the actual hours the judges are working, but to the ways in which efforts are expended and in what is in fact being accomplished during those hours on the bench.

A court as a public organization has an obligation to its users and the public to operate in a systematic fashion, establish standardized procedures, make them known to the public, and itself adhere to them. Serious management problems are generated when this is not done, and in the Juvenile Court this is not being done.

b. Allocation of Judicial Bench Time

Matters involving work division among the judges over a long-term period are appropriately the concern of all the judges on the court; and, particularly in a small three-judge court, should be decided by the Chief Judge only after consultation among the judges. Nevertheless, work division among the judges is determined by policy guidelines laid down by the Chief Judge alone. As of November, 1969, these determinations were being made without consultation with the associate judges. One judge sits primarily on juvenile initial, detention, and disposition hearings and is never assigned to court or jury trials. A second sits primarily on court and jury trials and adult matters, and on some disposition hearings, and is never assigned to initial hearings. The third judge sits on all matters, but primarily trials and dispositions and adult matters.[26]

Judicial bench time is divided among 16 calendars (see Chart on the following page).

Sixteen separate calendars are too many for simplified coordinated management in a three-judge court. The very existence of so many calendars generates a complexity at odds with the basic principles of calendar management and creates needless scheduling problems.[27]

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[26] As stated on pp. 158–159, because of the system of work division, certain descriptions of hearing procedures may be most reflective of the policies and procedures of whichever of the three judges handles the bulk of the matters under discussion.

[27] Imagine the chaos that could occur if the U.S. District Court had separate calendars for tort cases, contract cases for U.S. plaintiffs, contract cases for private plaintiffs, anti-trust cases, etc., for every category of case filed in the court. That is analogous to the calendar fragmentation presently practiced in the Juvenile Court.

16 Calendars Among Which Judicial Bench Time Is Divided

For Juveniles	*For Adults*
*1. Detention hearings	1. Adult Arraignment
*2. Initial hearings [28]	2. Adult Preliminary Hearings
3. Beyond control, Section I, and WAPC cases (a special calendar is set aside for these cases, which are handled by Friends of the Juvenile Court volunteer attorneys in hearings scheduled Thursday afternoons)	3. Adult Court Trial
4. Dependency (brought by DPW)	4. Adult Jury Trial
5. Special [28] (These include waiver hearings, arguments on motions, and any other matters not falling into another specific category)	5. Adult Disposition
*6. Calendar calls for court trials	
*7. Court trials	
*8. Calendar calls for jury trials	
*9. Jury trials	
*10. Disposition hearings	
11. Traffic—before a judge (These involve cases which have been continued from a hearing before a Hearing Officer because the juvenile (*a*) denied involvement, (*b*) declined to waive hearing before a judge, or (*c*) wants court review of the Hearing Officer's decision	

RECOMMENDATION

The Court should adopt a modified individual calendar method of work division, under which one judge should be assigned for long-term rotation to the hearing at which the child is first brought before the court, to handle all preliminary matters that involve disclosure of significant social information. In all cases where a denial of allegations is entered, the case should immediately be assigned to one of the other judges who would handle it through disposition. This system would maximize continuity while insuring that the judge sitting on the fact-finding hearing would not have been exposed to social information

[28] Probable cause hearings are either combined with the initial hearing or placed on the special hearing calendar. They are only held for children in detention.

*Those calendars marked by asterisks represent the major aspects of juvenile caseflow and will be dealt with in greater detail in this report.

which would normally be inadmissible in a fact-finding hearing, although relevant at preliminary stages.

Under the suggested system one judge would be assigned to handle all preliminary matters (e.g., initial and waiver hearings). We have suggested this assignment be for a relatively long term to establish continuity of procedures and enable the assignment judge to develop and maintain realistic case-setting policies.

If a child enters a plea of involvement, in order to maximize continuity this judge would schedule disposition of the case for his own calendar. In all cases where a denial of allegations is entered, he would function as an assignment judge and, having the calendars of the other judges before him, assign the case to a judge and set a trial date. The judge to whom the case has been assigned should hear all motions and conduct all further matters on an individual calendar basis.

Under an individual calendar system there can be a clearly defined allocation of judicial responsibility, which would be of major value in the Juvenile Court at this time. However, this system presupposes underlying cooperation and commitment to making the system work. An individual calendar cannot be operated effectively unless the judges establish uniform policies and procedures and coordinate their operations.

Because of the emphasis on social factors and diversion of children from the court process if other resources can be found better equipped to deal with the child's particular problem, preliminary proceedings in Juvenile Court frequently involve the disclosure of substantial social information of which it would be inappropriate for a trier of fact to have cognizance. This becomes particularly cogent if (as proposed in the pending Juvenile Code legislation) [29] the right to a jury trial is abolished. For this reason, we have not recommended adoption of a regular individual calendar system of work division, but rather a modification thereof, under which one judge would function in preliminary matters and as assignment judge, and the others would handle cases on an individual calendar basis once they have been assigned to them.

We strongly urge the Court to hire and train personnel who can plan and implement a calendar system along these lines, and suggest that they confer with the judges and court personnel operating on an individual calendar system in the U.S. District Court for particulars on how such a system could best be put into immediate operation.

c. Case-Setting Policies and Continuances

In the other trial courts in the District we found the daily calendars were routinely overset. In the Juvenile Court, the initial hearing and calender call calendars of at least one judge were set in terms of how many cases that judge could handle in the allotted time *if* every case went forward. No additional cases were set to cover the contingencies of calendar breakdowns, thus resulting in considerable waste of judicial bench-time.

As a calendaring technique, in setting calendars of this sort which involve relatively rapid handling of a large number of cases, it generally would be better to slightly overset the calendar—even in a sit-

[29] See S. 2981 and H.R. 14224 (91st Cong.).

uation where a prior assessment has been made as to which cases will go forward.

On the other hand, the jury trial calendars prior to October were in much the same situation as in other courts—i.e., although calendars were grossly overset in terms of the number of jury trials a judge could reasonably process in one day, the lack of prior judicial and clerical control, combined with the overly lenient continuance policies which were necessitated by the substantially overset calendars, led to calendar breakdowns which not only wasted judicial time, but inconvenienced attorneys, witnesses, and respondents by necessitating unnecessary trips to courts.

Once a court responds to calendar breakdowns by increasing the number of cases set for trial substantially beyond its capacity to handle the cases set, the judges—although they may not intend to be lenient—are forced by circumstances to exercise what in effect becomes a lenient or liberal continuance policy. Since the court will have to continue a certain number of cases, it becomes more prone to grant continuances for less compelling reasons. Furthermore, that extra pressure on the parties to be prepared to go forward dissipates as the likelihood of having a case continued increases. This, in turn, generates more demands for continuances.

There are no Court rules governing continuances and no stated continuance policies. Large numbers of continuances are granted on the day of trial. In many cases attorneys do not even appear on the trial date, and the Court automatically continues the case. Whatever sanctions are imposed are ineffective in bringing certainty to trial calendars.

Calendars are set in the following fashion. After consulting with Intake, Probation, and the Department of Public Welfare concerning their needs and most pressing backlog problems, the Clerk of the Court prepares a calendar schedule on a quarterly basis. This is then reviewed and approved by the Chief Judge.

The calendar is blocked out in morning and afternoon hearing units per judge,[30] in terms of the type of case and the hearing stage. If backlog problems seem to be centered around one particular hearing stage, more judicial time is calendared for hearings in the problem stage. For example, until October, 1969, juvenile jury trials were scheduled for one judge two days a week, every other week. The backlog of jury demands then rose so substantially (from 34 in June, to 290 by June, 1969) that in October, 1969, the Court scheduled one judge to hold a month of daily jury trials, and another to call the jury calendar to insure ready cases.[31]

Essentially this brush-fire approach to calendaring results in shifting the apparent backlog at regular intervals.

In general, a set number of cases are calendared per morning or afternoon: e.g., 15 initial hearings per session; 25 calendar call cases

[30] Morning sessions are scheduled to begin at 10:00 a.m. and continue until 12:00 or 12:30, unless the calendar is completed earlier. Afternoon sessions are scheduled to begin at 2:00 p.m. and go until 5:00 p.m. or whenever finished. Detention hearings are scheduled for one judge every afternoon at 3:00 p.m. If there are too many detention cases for that judge to handle, as other judges finish their calendars detention cases are routed to them.

[31] With regard to adult versus juvenile jurisdiction, the Court has recently taken a similar approach. Because of greater increases in the juvenile backlog than in adult cases, about 90 percent of available judge time was calendared for juvenile cases in September and October, 1969. It may be expected that the adult backlog will mount correspondingly.

for court trials; 8 to 12 jury trials; 20 dependency hearings; 10 beyond control and Section I cases. Prior to the hearing no one checks on the readiness of each individual case on the calendar. There is generally no review to determine the relationship among the number of cases set, the average length of time each hearing takes,[32] each judge's performance rate, and the likelihood of calendar breakdowns.[33] When calendar breakdowns occur, there is no review to determine the reason and take corrective action to reduce the likelihood of its occurring in the future.

While advance planning is necessary and desirable, effective calendar control can only be achieved if, along with long-range planning, constant and ongoing attention is given to calendar management on a daily basis. Clerical personnel under judicial supervision should be made responsible for ascertaining the status of each individual case on the calendar prior to the day set for court hearing. Judgments should be made as to the likelihood of the case going forward; the length of time it is likely to take, etc.; and these should be borne in mind in making a determination as to how many cases to set for each judge's calendar on any given day. This type of pre-planning and attention to individual cases by clerical personnel under judicial supervision before cases are brought before a judge would greatly minimize the amount of judicial time wasted, yet it is totally absent in the Juvenile Court. At present, there is no recognition of the importance of treating each case as a distinct entity for scheduling purposes, and making an assessment based on the specific needs of that case. Scheduling in the Clerk's Office is usually done without knowledge of, or attempt to determine, the individual readiness of each case prior to placing it on a calendar for court hearing.

RECOMMENDATIONS

1. Restrictive continuance policies should be set and observed, and case-setting policies developed which realistically reflect available judicial manpower and past performance rates of each judge.

2. It will be necessary to determine how many cases each judge can handle in an average week or month. This will involve examination of recent statistics to determine average performance rates, as well as a determination of now many cases can be expected to be disposed of short of trial. This presupposes an effective management information system under which relevant information is routinely gathered, processed, and made available to the judges and court personnel. With these factors in mind, the Court should be able to construct a realistic trial calender.

3. One additional factor must be kept in mind. This type of assessment and planning will *only* be effective if there has been prior super-

[32] Although, upon occasion, some take longer than the time estimates set forth herein, as presently conducted the average detention hearing usually takes about 5 minutes. The average initial hearing and disposition hearing each take approximately 10 minutes, and seldom longer than 15 minutes. Ninety percent of the jury trials held over the past year were completed in 1 day or less. On the average, court trials may take between one and three hours. At this point we do not express an opinion as to the adequacy or inadequacy of the time allotted to each class of court business.

[33] There is one reported exception to the statement in the text. Four jury cases used to be scheduled each jury day. When the judge assigned to jury trials reported a calendar breakdowns, this number was raised to 8, then to 12—a technique which, it should be noted, did not result in more jury trials being held, because the same uncontrolled factors which were operating to induce breakdowns or continuances on a 4-case calendar continued in operation regardless of the number of cases scheduled.

vision and control over the cases being set for each calendar, so that the evaluation is made in light of specific judgments as to each case.

d. Interest of Litigants, Attorneys and Witnesses

A large amount of time is wasted by litigants, attorneys and witnesses each day in the Juvenile Court due to the Court's haphazard mode of operation.

Neither judicial nor non-judicial personnel feel any obligation to have proceedings go forward at the times people are told they will. By this we do not allude to normal 5 or 10 minute delays a court may experience in getting started each day.[34] On a daily basis hearings in the Juvenile Court are scheduled for different hours than the Court plans to sit. Attorneys, respondents, probation officers, witnesses, etc., are all told to come to court at 9:00 a.m., although court does not start until 10:00 a.m., and often somewhat later. For afternoon sessions, they are told to appear at 1:00 p.m. when the court does not convene until 2:00 p.m., and often later. Thus, not only do court personnel, attorneys, and the public waste needless hours waiting around an overcrowded courthouse that lacks any comfortable waiting room facilties, but expectations are created that matters will not go forward as scheduled. As a result, people feel free to be late, and attorneys regularly undertake obligations to be in other courts when scheduled for a Juvenile Court appearance.

It becomes difficult for a court to impose sanctions for irresponsible behavior when the situation is generated by the court's own relaxed attitude to the schedules it has set.

RECOMMENDATION

The Court should publish and adhere to standardized working hours in order to create the expectation that things will go forward as scheduled and on time, and impose sanctions on persons who are late or do not show up.

e. Motions

Although the Quarterly Statistical Report, July–September, 1969, indicates only 2 motions pending at the close of fiscal year 1969, and 4 on September 30, 1969, in our samples and interviews with practitioners in the Court we came across numerous motions which have been filed but never acted upon. The Corporation Counsel usually does not respond to motions and the Court does not schedule them for hearing or rule on them.

While there are court rules governing the filing of motions, there are no established rules or procedures to provide that the Court consider them, and on a regular basis the Court is not considering them.

Many motions—especially those attempting to expedite the process—are eventually mooted out by other court action on the case. However, in some cases no further court action can be taken until a ruling on the motion.[35] Occasionally an attorney will resort to a *habeas corpus* petition in the U.S. District Court in an effort to get consideration of

[34] Efforts should also be made to avoid those delays.

[35] One such case was reported in the *Washington Post*, December 11, 1969. It has been set for jury trial December 10, but could not go forward because no ruling had been made on a motion to suppress evidence filed November 18, 1969. The case was postponed to an undetermined date, the child remanded to the Receiving Home, and no date was set for a hearing on the motion.

a matter the Juvenile Court has, through studied inaction, refused to consider.[36]

RECOMMENDATION

The Court should establish and itself adhere to standardized procedures under which motions will be heard and decided within a reasonable, preestablished time.

f. Appointment of Counsel [37]

Legal Basis for Appointment of Counsel

By case law, there is a right to counsel in juvenile law violation and probation revocation proceedings, and by practice the Court has extended the right to need of supervision cases. The Court has also extended the right to counsel to all adult cases in the Juvenile Court. Rule 23 of the Juvenile Court (as amended October 14, 1968) provides for automatic, non-waivable appointment of counsel in all cases where the court is seriously considering waiver of a juvenile whose parents cannot afford an attorney. Rule 6 A of the Juvenile Court (effective July 1, 1969) provides for advising juveniles in other cases of their right to counsel, and for appointment by the Court if requested, but the right to counsel in non-waiver cases may be waived by the child or his parents on his behalf.

Pursuant to Judge Fauntleroy's approval of a voucher for compensation under the Criminal Justice Act, the Judicial Council recently acted to bring juvenile proceedings within the scope of the Criminal Justice Act of 1964 by extending the compensation plan of the Criminal Justice Act to "proceedings before the Juvenile Court for the District of Columbia." [38] The Juvenile Court, in a document entitled "The Juvenile Court of the District of Columbia and the Criminal Justice Act" has, however, interpreted this coverage to exclude juvenile petty offenses and need of supervision cases.

While it is true that the Criminal Justice Act itself excludes adult petty offenses from its compensation scheme, there is a crucial difference between adult and juvenile petty offenses. For adults, punishment in such cases cannot exceed six months, whereas children may be incarcerated in delinquents' institutions until age 21 for committing identical offenses or being "in need of supervision." [39]

Rule 6 B of the Juvenile Court, effective July 1, 1969, directs the Chief Judge's Legal Assistant (hereafter referred to as "Attorney Advisor") to maintain a panel of attorneys composed of volunteer private attorneys, Legal Aid Agency attorneys and Georgetown Legal Interns. From these panel lists, the Chief Judge is to make all appointments for representation of indigent persons. Wherever possible, the Attorney Advisor is directed to determine the need and desire for appointed counsel prior to a person's initial court appearance. She

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[36] One such example is *Kirksey* v. *Thompson*. The child has been in detention since June, 1969. A motion for a speedy trial was filed in the Juvenile Court September 23, 1969. The Corporation Counsel never responded to the motion; the Court has not decided it; and no trial date has been set. A *habeas corpus* petition raising the speedy trial issue was filed in U.S. District Court December 31, 1969.

[37] See Appendix I for a description of the method of appointing counsel.

[38] "Plan for Furnishing Representation for Indigents in the District of Columbia (As Modified May 13, 1969)." Hereinafter referred to as "Modified Plan."

[39] The Supreme Court in *Duncan* v. *Louisiana*, 391 U.S. 145 (1968), indicated that the maximum penalty authorized by law, *not* the label or the actual sentence, was the determinant factor in whether a case should be adjudged a "petty offense."

then mails notices of appointment to attorneys on the panel list. The Chief Judge may impose restrictions upon the maximum number of defendants whom any attorney may represent, and no attorney may be compensated under the Criminal Justice Act for representation in excess of the prescribed number of appointments.

Essentially, Rule 6 B implements the requirement of the Judicial Council's Modified Plan. However, in practice, almost none of the requirements of Rule 6 B or the Judicial Council's Modified Plan are being realized. In brief summary:

1. The Court has not maintained the type of regular panel of qualified attorneys contemplated by the Criminal Justice Act.
2. An equitable distribution of appointments has not been achieved.
3. Attorneys appointed by the Juvenile Court are not required to continue and often do not continue to represent persons at all stages of proceedings until final disposition.
4. No compensation guidelines pursuant to the Criminal Justice Act have yet been established by the Juvenile Court.

Backlog of Appointments; Misallocation of Attorney Resources

In October, 1969, the backlog of cases awaiting trial where an attorney had not yet been appointed was over 2,000. Each week, 75–80 new requests are made for attorneys. Under the system then in operation for appointment of counsel, the Attorney Advisor who made the appointment barely kept up with new requests, and, during the period under survey, made few inroads on the existing backlog of cases awaiting appointment of an attorney.[40]

No statistics are kept on the number of continuances and delays caused by hiatus in the appointment of counsel. But courtroom observations reveal that initial hearings frequently have to be continued because a child appears without counsel.

Over-Reliance on Volunteers and Inequitable Distribution of Appointments

A basic problem with assignment of private counsel in the Juvenile Court lies in the Court's policy of relying exclusively on attorneys who consent to take cases and the Court's willingness to promulgate a policy whereby members of the bar are under obligation to accept appointments.[41]

The Court is operating on a volunteer system, without exercising sanctions against lawyers who refuse appointments. Up until July 1969, approximately 50 percent of those contacted mailed back refusals. Under the present system, only those who have evidenced a willingness and interest in taking cases are contacted, and there is an 80–90 percent acceptance rate within that group. It should be noted that there are less than 200 lawyers on the volunteer list maintained by the

[40] Subsequently, Chief Judge Miller, in a letter dated February 27, 1970, informed us that this number has been reduced to 300.

[41] Neither the Juvenile Court nor the Legal Aid Agency keeps statistics on the percentage of total Juvenile Court representation handled by the private bar as opposed to the Legal Aid Agency. Beginning October 1, 1969, the Legal Aid Agency planned to assign one member of the D.C. Bar and one non-member full-time to Juvenile Court work. Two members of the bar were scheduled to pick up juvenile cases part-time, between stints at the Court of General Sessions and the U.S. District Court.

Court, and not all of those are being utilized. Most appointments are in fact being made to the same 15 or 20 attorneys. In some cases this is due to their availability around the courthouse; in others it is due to the fact that the Attorney Advisor's Office personally approves of their approach to handling juvenile cases.

While it is appropriate for the Court to maintain a voluntary panel of those attorneys who wish appointments on a regular basis, it is not sufficient to rely *solely* on such a system—particularly after it has become clear that the system is not producing sufficient numbers of lawyers.

Personality Considerations and the Problem of Discretion Over Appointments

Personality considerations often figure predominantly in the distribution of appointments. This occurs because the office has adopted a policy of attempting, where possible, to match individual attorney and child on factors other than professional qualifications;[42] because it is under pressure from a few attorneys wishing appointments; and because of the internal administrative tensions resulting from operation of the office under the policy guidance of the Chief Judge. The discretion vested in the Office of the Attorney Advisor is checked by no guidelines except those of the Modified Plan. And, as noted earlier, those guidelines have not been faithfully followed in the first few months of operation under the Criminal Justice Act.

Fragmented Representation

Since one of the advantages of representation of juveniles by counsel is supposed to be the promotion of respect for the legal process, the psychological effect on the child of a system of representation seems a legitimate factor to consider. This factor was given some emphasis by the Supreme Court in *In re Gault.*

Under the present system of representation in the D.C. Juvenile Court, fragmentation of representation may occur, or appear to the child to occur, in two ways. The community-case child meets with and is "counseled by" a law student interviewer, then receives an assigned attorney. Since the law student has already questioned the child as to his version of the incident, the child may well be confused by the later appointment of a different lawyer. In the past the detention-case child could have been interviewed and represented by a Legal Aid lawyer for the detention hearing only. In beyond-control detention hearings, a child is always represented by an attorney different from his ultimate attorney. Thus, in these cases the potential psychological benefits of having one constant, efficient, and effective attorney on the child's side may be sacrificed.

A more serious by-product of fragmented representation is that in detention cases where the detention-level lawyer is permitted to withdraw after the detention hearing, the child may be remanded to the Receiving Home indefinitely without an appointed attorney. In these cases no one is alert to or responsible for securing the child's freedom,

[42] For example, the office may consider whether the child would benefit most from a "Harvard" or "Wall Street" type lawyer, a black or white lawyer, and so on.

and the child may remain at the Receiving Home for months awaiting appointment of counsel. One result is that attorneys, when finally appointed, are almost forced to advise entering guilty pleas in order to get children quickly out of the Receiving Home and on probation. If the attorney who had represented the child at the detention hearing had stayed with the case, there would at least be someone responsible for jogging the system to ensure that the case was scheduled for an initial hearing within a reasonable time. To continue the present practice constitutes a *de facto* infringement of the right of counsel, since many children are kept in a detention facility for months without representation of counsel.

We do not believe, however, that employment of additional personnel in the Attorney Advisor's Office would result in more efficient operations. The failures in the appointment of counsel system spring basically from unenforced policies and ineffective systems and procedures. By several criteria, the present appointment of counsel system is not working well in the Juvenile Court. It is not producing sufficient lawyers, nor is it producing them in timely fashion. The Judicial Council's guidelines as set forth in the Modified Plan remain largely unimplemented: representation in juvenile cases is frequently fragmented, appointments are inequitably distributed, and experience and skill of the attorneys are often ignored as selection criteria due to pressures of time and personality considerations. The system is grossly inefficient in the time wasted each day contacting detention case attorneys and the failure to make inroads on the existing backlog of cases awaiting appointment of counsel. Resources are wasted on the office of the Attorney Advisor that could be better spent toward additional resources for the Legal Aid Agency to enable it to establish a coordinated appointment of counsel system for all of the courts, and to provide additional lawyers to represent juveniles in this Court.

Recommendations

1. Appointment of counsel should be automatic in all cases in the Juvenile Court. This was the recommendation of the National Crime Commission,[43] and it is our recommendation for a number of reasons. *First*, many children are too young or unsophisticated to understand the point or purpose of representation by counsel and/or make an informed decision regarding the necessity for counsel.[44] *Second*, unnecessary time now spent determining questions concerning the validity of waiver of counsel may be saved. *Third*, social work talent and legal talent now spent informing children of the right to counsel (Intake

[43] *The Challenge of Crime in a Free Society*, Report by the President's Commission on Law Enforcement and Administration of Justice, (February, 1967), p. 87.

[44] The reasons why an attorney can be valuable in proceedings against children may be summarized as follows: (1) the attorney can help develop evidence so that the judge is not cast in the triple role of prosecutor, defense lawyer, and impartial judge; (2) the attorney can seek precise development of the evidence where a child may have committed a particular act but not in a manner which could constitute any violation of law; (3) the attorney can insure that the child received whatever protections the law grants him, such as to remain silent; (4) the experienced attorney can speak for poorly educated or inarticulate children and their parents who might otherwise be frightened by court confrontation; (5) the attorney can assist in the dispositional phase by adducing or questioning background facts or suggesting treatment possibilities; (6) the presence of an attorney may present "the appearance as well as the actuality of fairness, impartiality and orderliness—in short, the essentials of due process [which] may be a more impressive and more therapeutic attitude so far as the juvenile is concerned." *In re Gault*, 387 U.S. 1, 26 (1967). For additional reasons why a juvenile should not be considered competent to waive counsel, see Lefstein, Stapleton and Teitelbaum, "In Search of Juvenile Justice," *Law and Society Review*, Volume III, No. 4 (May, 1969), 491, 537–38.

Officers, law students in the Juvenile Court Legal Aid Project, and judges) could be much more profitably used in other areas. The law students, for example, could assist appointed attorneys in the investigation and preparation of cases. *Fourth*, continuances for appointment of counsel would be eliminated if children routinely appeared at all court hearings represented by counsel. *Fifth*, the knowledge that counsel must automatically be appointed would enable the Juvenile Court, the Legal Aid Agency and the private bar to work out a systematic method for furnishing representation. Uncertainties involving waiver possibilities, timing of appointment, and exploration of the child's wishes could be eliminated from these agencies' calculations.

2. Attorneys appointed to juvenile "need of supervision" cases should be appointed under the same system that is set up for representation generally in the Juvenile Court, and attorneys appointed to need of supervision and petty offense cases should be entitled to compensation under the Criminal Justice Act. The Judicial Council should act to clarify Criminal Justice Act coverage for these cases. In the alternative, efforts should be made by the Court to process a voucher to determine whether these cases can be brought under Criminal Justice Act coverage without additional legislation. If this is unsuccessful, necessary legislation should be sought. So long as the dispositional possibilities in petty offense and need of supervision cases are the same as in delinquency cases (an indeterminate commitment until age 21), these cases merit the same quality and constancy of representation as law violation cases. This distinction from adult cases has been recognized to the extent that the Legal Aid Agency, although not authorized to provide representation in adult petty offense cases, is by statute authorized to represent juveniles in both petty offense and need of supervision cases.

3. Consistent with our recommendation for the other District of Columbia courts, appointment of counsel in the Juvenile Court should be coordinated by the Legal Aid Agency. The Legal Aid Agency should handle about 60 percent of the burden of representation, the private bar 40 percent.[45] This will give the private bar an opportunity to acquaint itself with Juvenile Court process and procedures, participate in the business of that Court, and generally demonstrate its interest in and responsibility for representation of children in the Juvenile Court. Although appointments among the private bar should be distributed equitably in accordance with demonstrated desire to serve, a special panel of lawyers desiring constant appointments could also be maintained. However, we believe it appropriate to recommend that this initial 60–40 percent mix be viewed as an experiment. If the Court is unable to secure sufficient participation from the private bar under this system, then we would recommend that a system like the New York law guardian program be instituted across the board. Under that system as it operates in New York City, a permanent staff of salaried attorneys from the Legal Aid Society handle 97 percent of juvenile business in the New York Family Court. This has resulted in swift, efficient and systematic representation of children, without

[45] This specific ratio has been recommended because it is consistent with the terms of the Public Defender Service bill, S. 2602, which has passed the Senate and is presently pending before the House; and with the proposed expansion plans of the Legal Aid Agency; and thus should realistically be capable of fulfillment within a relatively short span of time.

any hiatus between receipt of complaints and appointment of counsel, and it has promoted the development of expertise among those lawyers who have chosen juvenile work.

g. Use of Hearing Officers

Five years ago, the position of Hearing Officer was created by the Juvenile Court to siphon off some of the increasing workload of the judges. The Hearing Officer performs selected duties which would otherwise be performed by the judges. He makes recommendations to the Chief Judge and other judges, and when these are approved by them, they become the order of the Court. The responsibilities of the Hearing Officer, and the number of hearings in each category for 1968 and 1969, are indicated in the following chart. Total hearings conducted by the Hearing Officer decreased from 4,810 in 1968 to 4,137 in 1969.

	Number of hearings	
	Fiscal year 1969	Fiscal year 1968
Disposition hearings on selected juvenile cases and review of juveniles on probation	1,672	1,912
Initial hearings on traffic cases	305	331
Entry of support orders in cases of children born out of wedlock or of nonsupport of legitimate family members	872	1,091
Review of cases in which adult defendant failed to appear for arraignment	1,251	1,476
Review of cases to determine why defendant failed to secure counsel	37	
Total	4,137	4,810

In assessing the operations of the Hearing Officer, we found the following problems:

(1) As a general rule, juveniles should be released from probation in person, with dismissals without the child's presence in court being the exception rather than the rule—yet the Hearing Officer conducts more than half of the probation dismissal hearings without requiring the child's presence. While we recognize that this is due to the pressures of the backlog and the decision by the Court to concentrate its resources on the pre-dispositional stages, it is worth noting that the deterrence value and appearance of dignity entailed in a formal appearance before a court, are sacrificed.

(2) Any child who does not appear with counsel waives the right to counsel simultaneously with waiving the right to hearing before a judge.[46] Consistent with our recommendations for non-waivable counsel in every case in the Juvenile Court, we recommend that all children appearing before the Hearing Officer have counsel appointed prior to such appearance.

(3) As a general principle, a referee system should be closely monitored by a supervising judge and guidelines clearly established by court rule to govern such things as court policies, procedures of appeal from the Hearing Officer's decision, etc. Such clearly articulated guidelines, supervision, and procedures appeared to be lacking.

[46] The prescribed court form for waiver of appearance before a judge provides: "I do hereby waive the hearing of this matter by a Judge and elect to proceed before the Hearing Officer and speak for myself."

RECOMMENDATION

Delegation of judicial functions to non-judicial officers has been used in a number of state juvenile courts as a device to reduce the judicial workload. While the delegation of judicial responsibility to non-judicial officers seems superficially attractive as a way of reducing the court's workload, as a matter of policy we agree with the New York Family Court Act that intervention in the lives and liberty of the children is a serious matter requiring affixation of judicial responsibility in every case. Not only should judges be responsible for all decisions involving children's lives as a matter of policy, but also psychological considerations demand the use of judges at all court proceedings. During our study we gave serious consideration to a proposal that magistrates be appointed to handle initial hearings. But we rejected that proposal on the ground that the child's initial contact with the court is one of the points of major psychological impact. Indeed, we felt that at every point in the judicial process, it is worth the effort and expense to have the hearing presided over by a judge. This recommendation is premised on policy grounds and is not intended as a criticism on the handling of cases by the Hearing Officer.

However, because of the crisis backlog situation in the Juvenile Court at the present time, and the inability of the Court to cope with its growing caseload, we are faced with a situation where we cannot recommend that the Court on principle dispose of an authorized employee who is in a position to help carry the burden of these cases. Thus, as a temporary measure, we recommend that the Hearing Officer be used to help dispose of the backlog.

3. HEARING PROCEDURES

a. Preliminary Stages

As stated previously, the Court has been concentrating most of its resources on the preliminary stages of the proceedings. These are handled in the following fashion:

Detention Hearings

On its quarterly calendar projections the Clerk's Office allots between 25–30 percent of the aggregate judge-time available to the Court to detention hearings. The projections provide that all three judges be available for detention hearings every afternoon. However, in practice, the Chief Judge had been taking them on a regular basis, every day, beginning shortly after 3:00 p.m. If there were too many cases for him to handle, detention hearing cases were routed to the other judges when their other calendars were finished. The judges sit until the last case is heard.[47] There were 1,409 detention hearings held in fiscal 1969. During the period of our in-court investigations the fraction of children released at these hearings was around one-third. Court figures indicate that it generally is about one-fourth. Attorneys are automatically appointed to represent all children subject to detention hearings, and the hearings are routinely held the next day after arrest.

While the promptness of the detention hearing and the systematic appointment of counsel are commendable, and beneficial to those chil-

[47] This is usually around 5:00 p.m., but on Mondays, when there are substantially more cases because of weekend arrests, judges sometimes sit until 6:30 or 7:00 p.m.

dren who are released, there are two major problems with the detention hearing in its present form:

(1) Because so much delay generally occurs between the time of an order of remand to the Receiving Home and the filing of a petition, and again between the time a petition is filed and the time of initial hearing, a child can be held for months under official judicial sanction without the filing of formal charges or a determination of probable cause. In other words, the effect of the detention hearing is to put a judicial stamp of approval on prolonged incarceration without formal charges. This situation is aggravated by the fact that the attorney appointed for the detention hearing often drops out of the case once the hearing is over, so that the child may be officially detained for months with no attorney to contest this state of affairs.

(2) Needless duplication of effort and waste of judge-time are occasioned because a second hearing must be scheduled to read charges, take pleas, and if a probable cause hearing is asked for, hear probable cause, despite the fact that in most cases these could be combined into a single hearing with the detention question. Twenty-five per cent of the initial hearings scheduled in fiscal 1969 involved children who had been previously in court for detention hearings.

INITIAL HEARING

In the ordinary course of events, the child's first formal appearance before a judge after a petition has been filed is the initial hearing.[48] If a probable cause hearing has been requested for a child in detention, it may be combined with the initial hearing.[49]

As noted earlier, it may be anywhere from 2 weeks to 4 months in detention cases and 3 months to a year in community cases before cases are first set down for initial hearing. These lengthy delays are compounded by a high continuance rate. For example, in delinquency cases in fiscal 1969, 5,087 initial hearings were scheduled. Due to failure of service of process, non-appearance of attorneys[50] or respondents, and a variety of other factors, 30 percent of these had to be continued. During August–October 1969, our observations indicated that even this high percentage of continuances had risen substantially, so that only half of the initial hearings scheduled were actually being held. As a result, the judge primarily responsible for the initial hearing calendar during this period seldom spent over one hour of his morning on initial hearings. The rest of the time was spent on miscellaneous functions such as issuing attachments, requesting that attorneys be located, and ordering searches for lost dockets. The other judge assigned to initial hearings usually handled a mixed calendar of dispositions, initial hearings and miscellaneous matters; and, perhaps as a result of the mix of business which included disposition hearings where there was a greater likelihood of the parties actually showing up, had more productive use of bench-time in terms of his total calendar. However, the number of initial hearings in which parties did not show up, files were lost or the case failed to go forward for other reasons held constant for this judge as well. Thus, although more of his

[48] One exception to this would be if a waiver hearing has been initiated.

[49] The Juvenile Court has interpreted *Cooley* v. *Stone*, *op. cit.*, to give the right to a probable cause hearing only if the child is in detention. The D.C. Court of Appeals upheld this interpretation that a child released to the community is not entitled to a probable cause hearing. D.C. Court of Appeals 4979 *In re Marion Cooper Taylor*, decided March 31, 1970. The case is now on appeal to the U.S. Court of Appeals.

[50] The problem of failure to appoint an attorney where requested, prior to the initial hearing, is discussed in the section on Appointment of Counsel.

total assigned bench-time was in fact utilized on the bench, a large proportion of his initial hearing bench-time was wasted in the same miscellaneous functions of waiting for misplaced dockets, missing parties, etc.

Those initial hearings actually held on schedule frequently serve the purpose of disposing of the case altogether. Recently, perhaps because of the growing backlog, there has been an intensive effort to dispose of cases at the initial hearing stage. Either cases are dropped outright, because they have grown stale and crucial witnesses are unavailable, or pleas of involvement [51] are accepted and dispositions are fashioned based on the Intake worker's preliminary investigation report. (In cases of children already known to the Court, a disposition may be based on a prior social study). Our samples indicate that over 60 percent of all cases are presently disposed of at initial hearing.[52]

FINDINGS

1. Since the initial hearing is not scheduled in some cases until 3 months to a year after an alleged offense, and even then the continuance rate is high, it is questionable whether the initial hearing as presently scheduled provides notice of the charges promptly enough either to satisfy the requirements of *Gault* or to have any psychological impact on the child.

2. To be of optimum benefit to a respondent the notice, arraignment, and appointment of counsel functions should be performed promptly. These functions have lost much of their meaning and as presently conducted serve largely as calendar calls to weed out stale cases. However, even the possible calendar control function is inefficiently performed.

RECOMMENDATION

An initial hearing should be held no later than the next court day after filing of the petition. Counsel should be appointed and a petition filed prior to this hearing. At the hearing the child should be informed of and given the opportunity to admit or deny the allegations of the petition; the question of pre-trial detention, if appropriate, should be determined; and a probable cause hearing, if requested, should be held at that time for all children, not only those in detention. Provision should be made for a short adjournment of the probable cause hearing if requested, in which event there could likewise be a postponement of the entry of a plea (perhaps 5 days in detention cases, 10 in community-release cases).

b. Trials

Once preliminary procedures are streamlined, delays reduced, and attorneys are brought into a case at an early stage, it can be anticipated that the nature of Juvenile Court proceedings will change substantially. Initial hearings are likely to become more of a routine formality, and trial demands drastically increase. These developments are already apparent in the rise in Court and jury demands over the

[51] The equivalent of a guilty plea in an adult proceeding.

[52] This is a somewhat higher rate than is indicated by the Juvenile Court's figures for fiscal 1969. According to the Annual Statistical Report, of delinquency cases for which initial hearings were held in fiscal 1969, 50 percent were finally disposed of at initial hearing, 16 percent were continued for social study, and 34 percent were continued for trial.

past two years. There has been an almost 800 percent increase in pending jury trials [53] and the number of cases awaiting court trial has almost tripled.[54]

Court Trials

On days that court trials are scheduled, one judge devotes the entire morning to conducting a calendar call and assigning ready cases for trial. If two judges are scheduled for court trials, 25 cases are set; if only one judge is scheduled, 15 cases are set. In general, the Assignment Clerk calculates that one judge can actually hear 3 or 4 court trials per day.

During our period of in-court observation (August-October, 1969) we found that the judge conducting the calendar calls did succeed in producing 3 or 4 ready cases out of the 15 cases set. (Only one judge was assigned to court trials during this period). Hence, the judge sitting on court trials was able to make efficient use of his time. However, almost half of the time of the judge performing the calendar call was spent on miscellaneous functions not involving assignment of ready cases;[55] and, as was found to be the case for initial hearings, so many attorneys or respondents failed to appear that judicial time actually devoted to the calendar call seldom lasted over an hour.

The judge usually assigned to call the calendar never sits on the trial of a case. Thus, even on days when the trial judge was unable to handle all of the cases certified out for trial, the calendar judge would adjourn, rather than handle the trial of a case.

Jury Trials

Jury trials unquestionably take longer than court trials, partly because of the length of time it takes to choose a jury. However, an examination of the juvenile jury calendars of the two judges who handled juvenile jury trials over the 8-month period from January through August, 1969, clearly indicates that the large juvenile jury backlog is not caused by the length of time it takes to try jury cases, but rather was caused by a lack of calendar control creating calendar breakdowns, which the Court attempted to combat by setting increasingly larger number of cases, on which the judges were then forced to grant continuances because so many more cases were set than could realistically be handled by the Court on any given day.[56] In effect, a cycle of lack of control leading to calendar breakdowns, leading to overset calendars, leading to lenient continuance policies, leading to calendar breakdowns, has been generated in which it is now difficult to dissociate cause from effect. This, in turn, has also increased the burden on the Corporation Counsel's Office, in that each day it must be prepared to go forward on an unrealistically large number of cases.

Through the cooperation of both trial judges and their staffs, we were able to construct records of the 37 juvenile jury days [57] the Court scheduled out of approximately 160 court days during this period, to

[53] 34 cases were awaiting jury trial at the close of fiscal 1967, 187 in fiscal 1968, 290 in fiscal 1969. During those 3 years the Court held 11, 32, and 28 jury trials, respectively. (Juv. Ct. Annual Stat. Rpt., F. 1969, pp. 17 and 52.)

[54] 134 cases were awaiting court trial at the close of fiscal 1967, 242 in fiscal 1968, 358 in fiscal 1969. Since the Court in its statistical reports combined court trials with disposition hearings, it was not possible to determine how many court trials were actually held during this period. (Juv. Ct. Annual Stat. Rpt., F. 1969, pp. 17 and 52).

[55] E.g. ordering searches for lost dockets, waiting for attorneys to show up.

[56] With one judge scheduled to hear jury trials on any particular day, the Court scheduled between 8 and 15 jury trials per day.

[57] Two of these days involved combined juvenile and adult jury calendars.

ascertain which cases went forward, and the reasons why the others did not. For further verification of these records, we checked the dockets of a representative sample of these cases. Trials were actually held on 20 days (one of these was a court trial in an adult case). Thus, on almost 50 percent of the jury days no jury trials went forward. Of the 312 jury cases called during this period, 107 (34 percent) were disposed of. Continuances were granted in 52 percent of the cases, 36 percent of these on the day scheduled for trial.

One argument frequently used to attack the right to jury trial is that attorneys request jury trials primarily as a delaying tactic, only to withdraw their jury demands on the day of trial. In our sample, however, we found that attorneys withdrew their request for a jury on the day of trial in less than 3 percent of the cases.

The jury backlog grew substantially in fiscal 1969; 290 jury demands were pending at the close of the fiscal year. In order to cut down on the jury backlog the Court scheduled a special jury month in October, 1969, making a concerted effort to assume judicial control of all cases prior to the day of trial. This involved prescreening them to take pleas or dispose of appropriate cases, and determining which of those cases remaining on the calendar were in fact ready for trial. The law clerks were given responsibility for monitoring all cases on the jury calendar, maintaining contact with the attorneys, and insuring that cases would be ready for trial.

The court held a calendar call of 160 cases (102 respondents) in September, disposed of 55 jury demand cases, and set ready cases for trial in October.

Ninety-four cases (100 respondents) were originally set for trial in October. Six were then removed, leaving 88 cases (92 respondents) on the calendar. Twenty-three jury trial days were scheduled, and trials went forward on every one of these days. Twenty-one jury trials were held (2 of them lasting 3 days); 36 cases were otherwise disposed of on the eve of trial; in 5 cases, the jury demand was dropped. Continuances were granted in 30 percent of the cases, and 64 percent were disposed of.

Through these stringent measures, the Court reduced its jury backlog from 290 to 155 jury demands at the end of October, 1969. On the whole, the experiment represented a marked improvement over prior performance. On every single jury day scheduled, cases were heard. Although continuance policies were still somewhat lenient because more cases were set than the Court could handle, as a result of the prescreening and control exercised by judicial and non-judicial personnel, this did not result in any measurable waste of judicial time.

FINDINGS

In its October, 1969, jury experiment, the Court demonstrated that substantial inroads could be made on the jury backlog through the assumption of judicial control and close supervision of the calendared cases. This is an encouraging development, since jury trials constitute the single most time-consuming aspect of the Court's calendar.

However, it should be noted that, despite its success, this experiment did not mark the beginning of an ongoing effort. In December, 1969, the Court reverted to its former method of scheduling 8 cases per day—none previously screened—for jury trial.

RECOMMENDATION

While a calendar call is highly effective as an emergency measure in a situation where there has been no prior judicial control (as was the case here), we do not find that it is an efficient technique for optimum utilization of judicial time as a regular part of court operations. The true success of the October experiment lay in the pre-trial screening and tight case control which were carried on by the judges and court personnel after the calendar call. This is precisely the kind of control that should be exercised in all cases, not just in emergency situations, in the Juvenile Court, and it should begin immediately upon filing of the petition. Clerk's Office personnel should routinely assume responsibility for monitoring each case placed on each calendar, just as the law clerks did for jury cases during the experiment. If this kind of control could be exercised throughout, the Court should be able to preserve the jury trial right without creating future backlog situations.

c. Disposition Stages

One of the unique benefits of a juvenile court traditionally lies in the area of dispositions. If a child is found to have committed an alleged act, theoretically the Court has a broad range of dispositional alternatives and a corps of trained social service personnel to conduct background studies and recommend appropriate treatment plans. The Supreme Court gave particular emphasis to this aspect of Juvenile Court proceedings—as a primary raison d'etre for the Juvenile Court—in its opinion in *In re Gault*.[58]

It has been suggested that the essence of the dispositional stage of a juvenile proceeding is:

> A fair hearing, at which the juvenile is given an opportunity to be heard meaningfully on the appropriate disposition of his case. The range of alternatives open to the Juvenile Court is so vast and the result so crucial for the future development of the juvenile that a summary or *ex parte* proceeding would be intolerable.[59]

In the D.C. Juvenile Court the pressure of time and the growing backlog of cases are causing the Court to short-circuit or bypass the dispositional stage altogether. Because of the long delays already encountered by the time of initial hearing, judges make every effort to dispose of cases at that stage or at least at the close of trial. Instead of continuing cases for social study [60] and awaiting in-depth reports, they simply rely on the Intake Officer's preliminary investigative material or old social studies in cases of children previously known to the Court. Since many Intake reports are completed in a short span of time, without double-checking the accuracy and often without full information, and since Probation Officers have reported that these preliminary investigations are not especially useful in compiling a more

[58] 387 U.S. 1 (1967).

[59] Dorsen and Rezneck, "In Re Gault and the Future of Juvenile Law," Family Law Quarterly, Vol. I, No. 4, December 1967, pp. 42–3.

[60] A social study is a complete biographical and environmental profile. While the Court has informed us that written requirements concerning form and content for Probation Officer guidance exist, the Probation Officers we interviewed did not have them, and were not aware of their existence. This situation has continued despite the D.C. Crime Commission's recommendation in 1966 that such guidelines be promulgated (pp. 692, 780). Generally, Probation Officers seem to consider the following factors in drawing up reports: the child's home and neighborhood, school record, relationship with community agencies, employment record, history of law violations, demeanor, and medical history. Social studies usually involve several interviews and some telephone contracts or written requests for information to employers, schools, or other relevant agencies. Generally social studies are conducted afresh, since information furnished by the Intake Section is sketchy.

complete social study, judicial reliance on these reports rather than ordering up-to-date studies made may be less than fair to the child.

Only about 20 percent of all cases are continued for social study and a separate disposition hearing at the present time. Despite the availability of additional Probation Officers to conduct the studies the Juvenile Court has reported "a much lower number of social studies ordered during 1969 as compared with 1968." [61] Overall, only 5 percent of total judge-time is calendared for disposition hearings.

Disposition hearings may be scheduled any time from a few days to over a year after the case has been referred for social study. This often depends on the facts of the particular case, and whether special efforts are made to expedite or delay it for any reason. 90 days is the standard time allowance for social studies. However, unless a judge specifies a date for a disposition hearing, it is often 6 months before the Clerk's Office calendars the case for hearing.

Partly because a dispositional hearing may be scheduled so long after the initial or fact-finding hearing,[62] the officer doing a study frequently attempts to work with a child as though he had already been placed on probation. Although the intentions of officers in such cases are undoubtedly good, it may be questioned whether unofficial probation of this kind prior to court order constitutes a legitimate Probation Section function. In effect, judicial control over the disposition of these cases has been abdicated to the Probation Officer's discretion.

RECOMMENDATION

We believe the present slighting of dispositional hearings constitutes a serious defect in the Court's processing of juvenile cases. The solution lies, however, not in a mechanical allotment of more time for dispositional hearings within the present framework, but rather, in expedited processing of all cases prior to the dispositional stage. The Court would then have more time for performing one of its most important functions, weighing alternative dispositions and making informal judgments at the disposition stage.

d. Post-disposition Stages

If a child violates the conditions of probation or his parents complain continually about his behavior, or if he cannot maintain himself in the community and does not appear to be benefitting from the strictures of probation, his Probation Officer can request a hearing before a judge and recommend revocation of probation. If it not necessary for the child to commit a new violation for the proceeding to be instituted; in fact, frequently the Probation Officer's motivation in requesting a probation revocation hearing is to forestall the commission of new law violations by removing the child from his environment. Unless a new law violation is alleged, no formal petition is brought; nor is formal notice of the charge furnished to the child in advance of the hearing. He is simply notified to report to Court at a specified time. In all instances where there is a possibility of commitment, the child is informed of his right to counsel.

The hearing is conducted as an adversary proceeding, but not by the Corporation Counsel. Instead, the Probation Officer who requested

[61] Juvenile Court Annual Stat. Report, F. 1969, p. 8. Six hundred and seventy-nine were ordered during F. 1969, as compared with 1,090 in F. 1968.

[62] Some children are continued on social study for periods up to and over a year.

the hearing presents the evidence and, in appropriate cases, recommends commitment of the child. This may, of course, create tension between the Probation Officer and his charge if the child is then continued on probation under the same officer's supervision. Even where the child is committed, the practice of Probation Officers "prosecuting" the proceedings may create a feeling of betrayal on the part of the child.

The Juvenile Court statistical reports do not distinguish probation revocation hearings from other proceedings or report how many probation revocation hearings are requested or held.

RECOMMENDATIONS

1. The Corporation Counsel, not the Probation Officer, should prosecute proceedings for probation revocation.
2. The proceedings should be commenced by the filing of a petition and prompt notice of the charges should be given.
3. Counsel should be appointed automatically, consistent with our recommendations for automatic appointment of counsel at all stages of court proceedings.

4. OPERATION OF THE SOCIAL SERVICE DIVISION

A court social service division must of necessity rely extensively on available community resources and programs. A major function of Intake is to divert children from the court process if a community resource is better equipped to deal with them. A major function of Probation, in developing realistic treatment plans for children placed on probation, is to refer the child to available community resources which may help his adjustment, and make sure he can get into and attends the recommended program.

The entire Social Service Division lacks a systematized orientation in this direction. There are no adequate in-service orientation programs to acquaint Intake or Probation Officers with the full range of community resources. No up-to-date central posting is maintained to keep abreast of all available resources and acquaint officers at a glance with office hours, how many places in a program are open for new referrals, whom to contact, etc. At present, such information as each section has developed is exchanged by word-of-mouth among the officers and largely depends on what individual workers have learned through their contacts. Some information is developed through the liaison officers furnished by the Department of Health and other government agencies.

Nor are there any formal training programs to acquaint Intake and Probation Officers with court operations and procedures other than a group orientation held once a year. Generally, the officers themselves feel the court in-service training program is deficient in keeping them informed of new court procedures, social service techniques, and resources in the field.

RECOMMENDATIONS

The Social Service Division should develop information on the full range of dispositional resources to which children can be referred (mental health clinics, job corps programs, etc.) and should incorporate this body of information into its orientation of new Intake and Probation Officers. The information should be systematized and kept up-to-date in such a way that an officer, by simple reference, can

determine: the full range of community agencies currently in operation that deal with juveniles, the programs they offer, capacities, vacancies, hours, how referrals are made, etc.

Probation Section

Many of the problems most affecting the work of the Probation Section are not entirely within the Probation Section's control because they stem from judicial demands on their time. For example, Probation Officers waste large amounts of time waiting to make court appearances. They must not only be present at disposition hearings for cases in which they have prepared social studies, but for every subsequent court appearance (except court or jury trials) involving a child placed under their supervision, i.e., probation revocation, initial hearings, waiver hearings, detention hearings, etc. Thus, each day they are potentially on call for detention hearings if any of their probationers have been arrested or detained and perform all Intake functions on those cases. As noted elsewhere in this report, hearings seldom go forward when scheduled, and needless hours are wasted outside courtrooms waiting for cases to be called.

All too often, cases are not continued for social study and treatment plan recommendation, even though it might be beneficial to the child and helpful to the judge to have such information before him. When social studies are ordered, children are frequently continued on social study for several months without judicial resolution of the case, because no disposition hearing has been calendared.[63]

Children placed on probation are allowed to remain there for unjustifiably long times, despite the fact that Probation Officers may be no longer actively working with them, because of insufficient time to review cases and the absence of court supervision over probation dismissals.[64] These delays artificially expand the Probation Section workload, generate needless paperwork, and do little good for the child—who could perhaps benefit more from a release for good behavior after a limited time under supervision.

RECOMMENDATIONS

1. Resolution of these problems must come first of all from the court itself. It should involve: (a) basic reorganization of court scheduling practices to insure that individual cases will go forward as planned; (b) judges requiring and waiting for social studies as the rule, not the exception to the rule; [65] (c) expedited processing of cases so that disposition hearings are scheduled within a reasonable time after the initial or fact-finding hearing; (d) reasonable time limitations on all probation orders (subject to renewal in appropriate cases); and (e) establishment of requirements that the Probation Section conduct periodic reviews and take steps to secure timely dismissals in appropriate cases.

2. Since those Probation Officers stationed in the central office are in such close proximity to the courtrooms, the Court should explore the possibility of installing a mechanical paging system. This might

[63] See Disposition Hearing Section for further details.

[64] In an average case a Probation Officer will recommend dismissal after 9–12 months unless new complaints on the child have been received; but many cases are continued beyond these time limits because Probation Officers do not have time to close them out. Frequently there are additional delays of up to 3 months before the Hearing Officer acts upon dismissal requests.

[65] These could be abbreviated in instances in which the child is known to the Court and up-to-date information is already available.

conserve much of the time officers presently waste waiting outside courtrooms for cases to be called.

3. Improvements should also be made in Section operations themselves. Probation Officers should take steps to improve their social studies, primarily in regard to suggested treatment plans. Dispositional alternatives should be fully explored so that a realistic plan may be suggested to the Court. Once a treatment plan has been approved, the Probation Officer should follow through to insure that the child is accepted in and attends the recommended programs.

Probation Officers estimate [66] that a majority of their time is spent on social studies and court appearances, leaving relatively little time for probation supervision. Probation Officers in the central office are seeking most probationers assigned for supervision only once a month. They have no time to review files or to move for dismissal. This large allocation of time and effort to social study and court appearance exists despite the Court's reduced reliance on social studies prior to disposition, and despite the fact that the Probation Section had 1,202 cases active on social study in fiscal 1969, as compared with 3,520 cases referred for supervision.

Within the framework of expedited processing and improved procedures, the Probation Section should reassess its allocations of manpower to issue a realistic allocation of efforts between social study and supervision.

Field Offices

Two field offices have recently been opened by the Juvenile Court Probation Office. One is located at 418 Florida Avenue, N.E., opened in September, 1968, and the other is at 2737½ Nichols Avenue, S.E., opened in June, 1969.

In the short time they have been open, the Probation Section's field offices seem to have met with substantial success. According to officers in the field, this is because of a number of related factors. *First*, proximity of families to the field offices is a distinct advantage; families do not feel lost in the vastness of a building like the Juvenile Court, and the offices are easy to locate. Probation Officers often find that parents walk in unannounced, seeking help when special problems arise. *Second*, there is no transportation problem for child or parent, inducing missed appointments; children can walk to the offices after school. *Third*, the office is kept open one evening a week. This is crucially important for working parents or working probationers themselves. *Fourth*, caseloads of Probation Officers in the field offices are, on the average, smaller than those in the central office, allowing more time to devote to office visits. Probation Officers in the field report that they try to see all new and more serious cases once a week, others twice a month, and all cases at least once a month. Moreover, many have time to review their files periodically, even though this is not a stated requirement, and is not done to any extent in the central office. *Fifth*, Probation Officers in the field are able to make more home visits, and their proximity to their clients' neighborhoods keeps them constantly attuned to community trends and problems. Because they become familiar with the schools their clients go to, the children their clients associate with, and what is happening generally in the neighborhood, they are able to work more sensitively with a given child.

[66] This information was obtained from interviews with approximately one-half of the Probation staff.

RECOMMENDATION

From a preliminary survey, Probation field offices appear to be successful and should be expanded in keeping with efficient operation and the volume of cases. However, the Court should institute a record-keeping system and systematic evaluation of the cases in field offices as compared with those in the central office, to be in a position to scientifically evaluate usefulness of these offices. For example, as well as the statistics that the Court is presently collecting on the recidivism rate of juveniles placed under field office supervision as compared with the recidivism rate of other juveniles on probation, the Court could also collect other pertinent data, such as the frequency of juveniles keeping appointments and contacts generally; the frequency of interviews and contacts with parents, teachers and other significant persons in the child's life; the number of "crisis" situations where proximity of Probation Officer to a child facilitated on-the-spot intervention and help; the number of voluntary appearances of parent or child to talk over a problem, outside of regularly scheduled appointments. (This list is meant to be suggestive only).

5. PROCESSING NEED OF SUPERVISION CASES

It is not possible to ascertain the precise number of need of supervision cases annually processed by the Juvenile Court, because such statistics as the Court gathers are not collected in terms of the statutory categories set forth above.[67] In any case, however, raw statistics would not clearly reflect the amount of time presently devoted to these matters by the Court. One judge takes a full afternoon each week for hearing need of supervision cases. Two of the eleven Intake workers are assigned full-time to screening beyond control complaints. The screening process itself takes substantially longer than interviews in other cases, due to the complex psychological nature of the information involved. Ultimately 50–60% of complaints are rejected for petitioning.

A disproportionate number of need of supervision cases are held at the Receiving Home too. Present policy of the police, the Court and the Department of Public Welfare dictates that children may be released only in the custody of responsible adults (usually a parent). Since most need of supervision cases involve conflict originating in the home between parents and their children, many of the parents of these children refuse to accept custody pending a factfinding hearing. Hence, such children are held in the Receiving Home, often for protracted periods of time.[68]

Need of supervision cases present special problems for the Juvenile Court. On the one hand, children involved in them have, by definition,

[67] The Juvenile Court's Annual Report lists statistics for fiscal 1969 on beyond control cases and truancy cases (grouping both under a "delinquency" heading), but does not detail statistics on any of the others. "Section I" referrals ("dangerous to self or others") appear to be considered as law violations if referred by the police, neglect cases if referred by the Department of Public Welfare, and beyond control cases if referred by other individuals.

[68] Our observations and file sample both showed a delay of two weeks to four months for initial hearing for detained children, and most of the 3 to 4 months delays involved children alleged to be beyond control. In most cases the delay was caused by the fact that these cases are calendared for hearing only one afternoon a week, at the convenience of the volunteer attorneys. However, in some instances delay was due to the fact that court records involving the child were lost and, due to the systematic fragmented representation in these cases or the fact that a parent may not have have returned to court to sign the petition, no one was aware of the child's predicament.

committed no crime. On the other hand, they do represent a difficult, unruly class of children, difficult to "rehabilitate," who may require especially patient attention and supervision if brought within the jurisdiction of the Court. Because the kind of therapy and counseling needed in these cases can seldom be supplied within a judicial framework, a number of authorities have recommended that such cases be dropped from the jurisdiction of juvenile courts.[69] It has also been suggested that jurisdiction be restricted because of the harmful effects of the labelling process.[70]

RECOMMENDATIONS

Consideration should be given to whether or not these cases should be withdrawn from the Court's jurisdiction. However, so long as they remain within the Court's purview, we recommend the following:

1. The Court should accept complaints only from schools or social agencies, restricting access of irate parents to the court process. Such imposed preliminary screening by a social agency equipped to handle this type of case could well result in the family receiving the desired help and consultation without resort to court processes, which should be used only as a last resort. (This change would require legislative action).

2. The same rights and procedures should be applied to need of supervision cases as are used in delinquency cases. If these cases cannot be settled informally and have been determined serious enough to merit court action, then they merit formal treatment while in the court process. This is particularly cogent since children in need of supervision are presently subject to the same incarceration as delinquents. Thus:

(*a*) the Corporation Counsel should screen these cases, make the final decision as to whether a petition should be filed, and prosecute the case;[71] and

(*b*) automatic appointment of counsel (compensated under the Criminal Justice Act) should apply.[72]

3. Limitations should be placed on dispositional alternatives so that need of supervision children are not incarcerated with delinquents either in detention or commitment facilities unless they have been charged with or found guilty of a law violation.

E. Miscellaneous Problems

There are a number of miscellaneous matters which, although none are in and of themselves glaring problems, generally impede the orderly and efficient processing of cases and create needless inconvenience. Among these are:

1. *Problems relating to the number, availability and use of Court reporters.*—There are three court reporters to record and transcribe

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[69] See The President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: Juvenile Delinquency and Youth Crime* 27 (1967); *id.*, authorities cited at 91, 99, 353, 397–98, 409, 419; Rubin, *Crime and Juvenile Delinquency* 66 (2d ed. 1961); *Crime—A Community Responds*, Proceedings of the Conference on the Report of the President's Commission on Crime in the District of Columbia 140, 150 (1967).

[70] Wheeler, Cottrell & Romasco, *Juvenile Delinquency—Its Prevention and Control* (reproduced by permission of the Russell Sage Foundation) in National Crime Commission Report 409, 417.

[71] The question of whether there is legally sufficient evidence to sustain the charges is the same, regardless of the label of the case.

[72] This recommendation was discussed in more detail in the Section on Appointment of Counsel.

the proceedings of the three judges and one Hearing Officer in the Juvenile Court. This is too few. If the reporters are in the court for all proceedings, they do not have the time to transcribe. When they are excused from court to transcribe, attorneys may be placed in the position of proceeding without a transcript or requesting a continuance.

There is no systematic method for obtaining transcripts in timely fashion. There are no court rules or time units governing production of transcripts, and attorneys are almost totally dependent on the generosity of a court reporter taking time from recording duties or working overtime to produce transcripts.

Because of the transcribing backlog, production of transcripts has become a matter of personal pressure by attorneys or reporters.

While the entire Juvenile Court personnel system is under Civil Service, special problems are engendered by having to hire court reporters through the Civil Service lists. The Court is not in a comparable position with the other courts, which operate their own personnel systems.

2. *The failure of the Court to enforce the service of summonses and subpoenas*, or to develop other measures pursuant to its Rule-making powers to insure that subpoenas are served. (Over 85 percent of all Juvenile Court process are left unserved by the U.S. Marshal's Office).

3. *The failure of the Court to enforce execution of attachments.*—This is especially important if one considers the large number of scheduled hearings which cannot go forward because the child has not shown up.[73] In many of these cases, the child is at a known address, in easy reach of the Court. It certainly does not enhance the Court's image or create any deterrent effect when a child can ignore court summonses with impunity.

4. *The lack of a notary in the courthouse.*—This is of particular inconvenience in a court where such a high percentage of the clientele are indigent and there is need for a notary to authenticate affidavits of indigency. Access to a notary in the courthouse would be of substantial convenience to attorneys.

RECOMMENDATIONS

1. The Court should apply for budgetary authorization to hire at least two, and preferably three more court reporters; and should establish working procedures whereby the reporters alternate recording and transcribing duties on a regular basis, to insure prompt production of transcripts. The Court should set guidelines and exercise supervisory control to insure that reporters produce transcripts on schedule.

2. As long as the Court continues to operate on a Civil Service personnel system, it should investigate the possibility of obtaining an exemption from Civil Service for the position of court reporter.

3. The Court should confer with the U.S. Marshal and take steps to insure that the U.S. Marshal's Office promptly and expeditiously executes Juvenile Court attachments and other process,[74] and the

[73] Of 5,087 delinquency initial hearings scheduled in F.Y. 1969, children were in abscondence in 231 and did not show up in 686 others.

[74] The Court Management Staff has discussed this matter with the U.S. Marshal's Office in connection with our study and report on the work of the Office. Despite the fact that a majority of Juvenile Court summonses involve serious law violations of major concern to the community, service of Juvenile Court process is treated as of lower priority than service of process in the average civil case in the Court of General Sessions.

U.S. Marshal should allocate sufficient personnel to adequately serve Juvenile Court needs. In addition, the Court should establish by Court Rule a procedure for private service of process. (See D.C. Code § 11–1526; cf. Federal Rules of Civil Procedure, Rule 45.)

4. The Court should have at least one member of the court staff qualified to act as a notary.

F. Corporation Counsel

There is a serious problem of role conception on the part of both the Court and the Corporation Counsel, which may have its genesis in early juvenile court philosophy as reflected in the present Juvenile Code. Because the statute speaks of "assisting" the Court "upon request," [75] and because an adversary tone has only gradually crept into the proceedings under recent judicial decisions, the Court still views the Corporation Counsel as a servant of the judges. He is considered to be there to attend or observe hearings upon their request, not to assume an orthodox prosecutorial stance. It has not been officially recognized that the Corporation Counsel's basic responsibility is to secure convictions. The result has been an unfortunate misallocation of Corporation Counsel resources and function.

Assistants are expected to be physically in court even though they have no prosecutorial role, yet are occasionally excluded when they might make some contribution. The Corporation Counsel is requested by the Court to attend *all* detention, initial, and beyond control, truancy, Section I, and WAPC factfinding hearings, despite the fact that he plays no active part in those hearings. The aggregate amount of staff time wasted in needless attendance at these hearings varies according to the weekly hearing schedule. However, it should be noted that, when all 3 judges are sitting on detention hearings, attendance at the daily detention hearings alone can take the time of 50 percent of the staff for one-quarter of every day.

The Corporation Counsel takes an active role in probable cause, waiver, and law violation factfinding hearings, yet has, upon occasion, been excluded from aspects of factfinding hearings.[76]

The Corporation Counsel does not attend or take part in probation revocation hearings—despite the fact that he might be able to play a meaningful role in such proceedings.

Unlike his counterpart in the adult court the Corporation Counsel is not authorized to plea bargain. Thus, defense counsel has no one with whom to discuss the case or attempt to negotiate a plea prior to court appearance.

Even within the office, time and efforts are not expended in screening, preparing or trying cases in ways that will secure convictions. Screening is by and large a rubber-stamp procedure. Since January 1968, only 4 complaints have been rejected by the Corporation Counsel as legally insufficient. No effort is made to interview complainants or witnesses prior to approval for petitioning of complaints referred by Intake. Since routine cases usually are not assigned to an assistant

[75] D.C. Code, Sec. 11–1583(a).
[76] See *Rice v. District of Columbia*, 385 F. 2d 976 (D.C. Cir., 1967); Report of the President's Commission on Crime in the District of Columbia (1966), p. 685.

until 10 days prior to trial, there is no subsequent effort to interview witnesses while events are still fresh in their minds.

The result is that many cases without prosecutorial merit are initiated, remain in the court process, hang over a child's head, and are finally dismissed on the eve of trial.[77] Many meritorious cases that might have resulted in convictions are ultimately dropped or lost at trial because key witnesses were not contacted at the outset or have disappeared.[78]

RECOMMENDATIONS

The Corporation Counsel's role should be clarified and changed both at the initial stages of processing a case and in hearings after a case has been petitioned.[79] In general, the Corporation Counsel should assume a true prosecutor's function at every stage of a juvenile case prior to disposition. He should interview all complainants at the outset and should determine legal sufficiency.[80] At factfinding hearings he should be present in all juvenile cases, and he should clearly function as a prosecutor, presenting the evidence in support of all petitions, selecting and assessing witnesses, and meeting a prescribed standard of proof. He need not be present at disposition hearings, since here "social" evidence is relevant and the charges have already been admitted or established at trial. He should, however, prosecute and prove violations of probation just as he would present the state's case at a factfinding hearing. Finally, the Corporation Counsel should present the case in favor of waiver and make a final recommendation.

While it would be best to clarify the Corporation Counsel's role by legislation, immediate steps can be taken even within the present legislative framework.

1. Consistent with Sec. 11–1583(a), the Court can request the Corporation Counsel to assume a traditional prosecutor's role.[81]

2. The Court can drop its requirements for Corporation Counsel presence at hearings where the official presently plays no part.

3. The Corporation Counsel could establish procedures similar to those used by his office in the General Sessions Court, whereby the police would report directly to him with the complaint, and he would screen the case for legal sufficiency and prosecutorial merit, prior to approving the petition.

4. We are unable to make any assessment as to what increased manpower the office would need to operate in this fashion. Once unnecessary attendance at hearing is eliminated and court operations expedited,

[77] The government was unprepared to go forward in 20 percent of the cases on the sample of jury calendars January–August, 1969, and moved for dismissal in 5 percent on the day of trial. While this figure may not seem high compared with prosecutor dismissal rates in other courts, it is not a comparable figure because, unlike a true prosecutor, the Corporation Counsel is not authorized to plea bargain, or to *nolle pros* a case for social reasons, because of other charges pending against a child, etc. Thus, these dismissals are almost totally attributable to government unpreparedness.

[78] In jury trials in the month of October the Corporation Counsel had a 45-percent conviction rate, with 25 percent of the acquittals on directed verdicts. From a sample of jury trials over the preceding 8 months the conviction rate was not substantially better. By contrast, in fiscal 1969 the U.S. Attorney's Office had a 78-percent conviction rate in jury cases in the U.S. District Court.

[79] This was also the recommendation of the D.C. Crime Commission, p. 729.

[80] As to the role of the Corporation Counsel vis-a-vis Intake in the initial processing stages, see p. 176.

[81] This would include screening cases at the outset and presenting evidence on all petitions (including beyond control and probation revocation petitions) on behalf of the District of Columbia.

much staff time should be freed to take on the functions recommended above. Less time may be needed for preparing cases for trial, once prompt screening and interviewing become routine and the necessary information is gathered while still fresh in witnesses' minds. Thus, in the long run, assumption of screening responsibility and early case preparation may not substantially increase the total workload of this office.

PART II. ADMINISTRATIVE MANAGEMENT

IV. ADMINISTRATIVE MANAGEMENT

A. Present Administrative Organization

By statute,[82] all three judges of the Juvenile Court are responsible for making rules, establishing procedures and appointing such employees as they deem necessary, including the Clerk of the Court, the Director of Social Work, and the Supervisor of Probation. The Chief Judge is responsible for administration of the Court. In addition, the Chief Judge and the two associate judges preside over juvenile and adult hearings. The judges are assisted by 161 court employees (177 authorized, fiscal year 1969). This figure includes two law clerks, one attorney advisory and one hearing officer. The court employees are distributed among seven divisions (see chart on page 213) : Office of the Clerk of the Court, (40) ; Administrative Office, (13) ; Research and Development Division (7) ; Management Office (1) ; Social Work Division, (90) ; Guidance Clinic, (5) ; Legal Assistance Unit, (1).

Over half of the employees are located in the Social Work Division which is comprised of:

Child Support Section
Central Files Section
Student Division (composed of social work students who work at Juvenile Court as part of their academic programs)
Juvenile Intake Section
Probation Section

In addition to employees of the Court, the Corporation Counsel's Office provides a chief and six Assistant Corporation Counsels. The United States Marshal's Office assigns four deputies to serve in the three courtrooms and the detention area. In addition to these salaried employees, the Friends of the Juvenile Court, a volunteer organization, provides 75 volunteers who are available to work at the Court under the supervision of a Voluntary Coordinator and funded through an outside source.

The Court is housed in the Juvenile Court Building, except for the Social Work Division which occupies the nearby old District of Columbia Courthouse. In addition, two field probation units have recently been established in the community (as described earlier on page 198).

The estimated budget for the Juvenile Court for fiscal year 1969 was $1,665,800, with an estimated $1,276,638 allocated for employee salaries.[83] This represented an increase of $203,000 over the Court's total estimated budget for fiscal year 1968.

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[82] See discussion beginning at page 205.
[83] Juvenile Court Budget, Fiscal Year 1969.

B. Summary of Recommendations

Our principal recommendations regarding administrative management in the Juvenile Court appear below. A discussion of the recommendations and detailed findings supporting them follow.

NEED FOR FUNDAMENTAL JUDICIAL REORGANIZATION

The judges of the Juvenile Court should meet regularly to establish procedures.

NEED FOR BASIC MANAGEMENT REORGANIZATION

The judges of the Juvenile Court (in consultation with the Executive Director, a position which we recommend be created) should develop and implement a plan for reorganization of the lines of managerial authority to permit more effective performance by the Court.

NEED TO IMPROVE RECORDS AND DATA MANAGEMENT

1. The Juvenile Court should institute a records and files control program and simplify and modernize its filing systems.
2. The Juvenile Court should (1) modernize its data management, (2) extend the use of automation in its current data recording and retrieval system, and (3) gather and report detailed case data concerning internal case processing stages including specific data about time intervals from point to point in the workflow process.

NEED TO IMPROVE PERSONNEL MANAGEMENT

The Juvenile Court should improve personnel policies to encourage better performance by its employees.

NEED FOR ADDITIONAL FACILITIES

The Court should continue to explore possibilities of acquiring additional jury courtrooms and lockup space, and installing a mechanical paging system.

C. Detailed Analysis of Recommendations

1. NEED FOR JUDICIAL REORGANIZATION

The Judges of the Juvenile Court Should Meet Regularly to Establish Procedures

Our study of the Juvenile Court indicates that the operation of the Court by the judges does not conform to statutory provisions established by Congress for the Court. While Section 11–1503 of the District of Columbia Code* gives the Chief Judge responsibility for the administration of the Court, other sections of the code (see particularly Sections 11–1521 and 11–1523 to 1526)* specify that certain other powers to make rules, procedures and appointments are shared by all judges of the Court.

As a whole, these statutes clearly require *joint judicial performance* in significant sectors of the Juvenile Court operations. Statutory interpretation requires a look at all of the statutes passed by Congress to establish the Juvenile Court. The statutes clearly distinguish in a careful manner between the Juvenile Court and the Chief Judge.

*Sections —11–1503, 11–1521, 11–1523 to 1526, and 11–1586 are cited on pages 118–A to E *infra*.

Note particularly the language in Sections 11–1521 and 11–1523 which contain both the words "Juvenile Court" and "Chief Judge." The result is that Congress clearly intended each of the judges of the Court to share equally in critical appointments of key personnel and in the establishment of the rules and procedures. See especially Sections 11–1526 and 11–1586.*

The authority of the Chief Judge to administer the Court, granted in Section 11–1503(a), is to be interpreted in the light of other statutes cited previously. The Chief Judge has the administrative authority but such authority is limited by a grant of appointment and rule-making authority to the Court as a whole. This is quite similar to the position of Chief Judge of the Court of General Sessions.

However, the Chief Judge has asserted sole authority over development of rules and procedures, and over the assignment of judges and appointment of personnel.[84] In fact, until recently, the judges had not met for three years because of differences over such matters. That fact seemed extremely unusual to us; yet it was continually verified through our interviews with persons connected with the Court. The Chief Judge recently conceded this omission before the Senate Committee on the District of Columbia and the Judiciary Subcommittee on Improvements in Judicial Machinery.[85]

In the District of Columbia, other courts meet monthly.[86] The U.S. Court of Appeals observes a similar practice. The People's Court in suburban Montgomery County, Maryland, meets regularly and in its annual report reveals typical court practices:

> During the year the Court held twenty-one regular meetings. These meetings are the most essential element in the operation and administration of the Court. Every matter of any consequence is thoroughly discussed and acted upon after careful deliberation. While it is, of course, impossible to expect each judge to act uniformly on all matters and no attempt is made to seek uniformity in strictly judicial functions, we strive for consistency in matters of administration and policy . . . A number of other meetings were held throughout the year on administrative matters with various County and State officials . . .[87]

The failure over a long period of years to met regularly to establish and review court rules and procedures has been accompanied by an absence or a severe curtailment of those functions so essential to a well-run organization. The functions include: general management, personnel management, calendar management, space and equipment management, and records and data management. Thus, the long-term lack of regular meetings has had widespread and cumulatively devastating results insofar as the business of the Court is concerned. Some examples are as follows:

§ 11–1503. Administration of court; absence, disability, disqualification, or death of judges

(a) The *chief judge* of the Juvenile Court shall be responsible for the administration of the court. During the temporary absence or disability of the chief judge, the associate judge of the court designated by the chief judge or acting

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*Sections 11–1503, 11–1521, 11–1523 to 1526, and 11–1586 are cited on pages 118–A to E *infra*.

[84] We are advised that one or both of the associate judges have sought to develop rules and procedures to control court operations, but their efforts had been rebuffed by the Chief Judge.

[85] *Crime in the National Capital* (Part 3), Hearings before the Committee on the District of Columbia and Subcommittee on Improvements in Judicial Machinery, U.S. Senate, 91st Cong., 1st sess. (July 17, 1969), pp. 1276–1277.

[86] D.C. Code, Section 11–907.

[87] People's Court for Montgomery County, Maryland, *Annual Report* for the year ended June 30, 1969, p. 15.

chief judge of the United States District Court for the District of Columbia shall be responsible for the administration of the court.

(b) Except as provided by subsection (a) of this section, when a judge of the Juvenile Court dies, or is absent, ill, or disabled to serve in any case, the chief judge or acting chief judge of the United States District Court for the District of Columbia shall designate one of the judges of the District of Columbia Court of General Sessions to serve as a judge of the Juvenile Court until the vacancy is filled or until the removal of such disability, and the return of the regular judge of that court. Dec. 23, 1963, Pub. L. 22–241, § 1, 77 Stat. 496. (Emphasis supplied.)

SUBCHAPTER II—COURT OFFICERS AND EMPLOYEES

§ 11–1521. Clerk, compensation, bond, oath, and duties

(a) The *Juvenile Court* shall appoint from the eligible list of the Civil Service Commission, a clerk of the court, and shall fix his compensation in accordance with the Classification Act of 1949, as amended.

(b) The clerk shall give bond, with surety, and take the oath of office prescribed by law for clerks of the United States district courts.

(c) The clerk shall:

(1) keep accurate and complete accounts of moneys collected from persons under the supervision of the probation department, give receipts therefor, and make reports thereon as the chief judge directs; and

(2) perform other duties and keep other records as prescribed by the *chief judge*. Dec. 23, 1963, Pub. L. 88–241, § 7, 77 Stat. 497. (Emphasis supplied.)

§ 11–1523. Director of Social Work; compensation; qualifications; duties

(a) The *Juvenile Court* shall appoint, from the eligible list of the Civil Service Commission, a Director of Social Work, and shall fix his compensation in accordance with the Classification Act of 1949, as amended. The Director must have the qualifications prescribed by the Civil Service Commission pursuant to the Classification Act of 1949, as amended.

(b) Under the *administrative direction of the chief judge*, the Director of Social Work shall:

(1) have charge of all the social work of the court; and

(2) in association with other social agencies of the District of Columbia, study sources and causes of delinquency and assist in developing and correlating community-wide plans for the prevention and treatment of delinquency. Dec. 23, 1963, Pub. L. 88–241, § 1, 77 Stat. 497. (Emphasis supplied.)

§ 11–1524. Supervisor of Probation and other probation officers; compensation; qualifications; duties of Probation Department and officers.

(a) The *Juvenile Court* shall appoint, from eligible lists of the Civil Service Commission, a Supervisor of Probation and such other probation officers as it deems necessary, and shall fix their compensation in accordance with the Classification Act of 1949, as amended. The Supervisor of Probation and probation officers must have the qualifications prescribed by the Civil Service Commission pursuant to the Classification Act of 1949, as amended.

§ 11–1525. Other court employees

The *Juvenile Court* shall appoint, from eligible lists of the Civil Service Commission, such other employees of the court as it deems necessary, and shall fix their compensation in accordance with the Classification Act of 1949, as amended. Employees appointed pursuant to this section must have the qualifications prescribed by the Civil Service Commission pursuant to the Classification Act of 1949, as amended. Dec. 23, 1963, Pub. L. 88–241, § 1, 77 Stat. 498.

§ 11–1526. Rules governing conduct of personnel

The *Juvenile Court* may issue all necessary orders and writs in aid of its jurisdiction as prescribed by law, and may adopt and publish rules governing its procedure and the conduct of its officers and employees. The rules shall be enforced and construed beneficially for the remedial purposes of this chapter and chapter 23 of Title 16. Dec. 23, 1963, Pub. L. 88–241, § 1, 77 Stat. 498. (Emphasis supplied.)

§ 11–1586. Records; limited inspection; penalties for unlawful disclosure or use

(a) The *Juvenile Court* shall maintain records of all cases brought before the court pursuant to subchapter I of chapter 23 of Title 16. The records shall

be withheld from indiscriminate public inspection but shall be open to inspection only by respondents, their parents or guardians and their duly authorized attorneys, and by the institution or agency to which the respondent under 18 years of age may have been committed pursuant to sections 16–2307 and 16–2308.

Pursuant to rule or special order of the court, other interested persons, institutions, and agencies may inspect the records. As used in this subsection, "records" includes:

(1) notices filed with the court by arresting officers pursuant to section 16–2306;

(2) the docket of the court and entries therein;

(3) the petitions, complaints, informations, motions, and other papers filed in a case;

(4) transcripts of testimony taken in a case tried by the Court;

(5) findings, verdicts, judgments, orders and decrees; and

(6) other writings filed in proceedings before the court, other than social records.

(b) The records or parts thereof made by officers of the court pursuant to sections 11–1525 and 16–2302, referred to in subsection (a) of this section as social records, shall be withheld from indiscriminate public inspection, except that they shall be made available by rule or special order of court to such persons, governmental and private agencies, and institutions as have a legitimate interest in the protection, welfare, treatment, and rehabilitation of the child under 18 years of age, and to any court before which the child may appear. The court may also provide by rule or a judge may provide by special order that any such person or agency may make or receive copies of the records or parts thereof. Persons, agencies, or institutions receiving records or information pursuant to this subsection may not publish or use them for any purpose other than that for which they were received. (Emphasis supplied)

General Management

a. According to testimony of the Chief Judge in July, 1969, the Court had what amounted to a six-year backup of jury cases, assuming one jury trial per week were held.[88] Through a concerted effort at calendar control in September and October, 1969, the Court was able to dispose of 135 jury cases (46.5% of the 290 cases pending) and to reduce the backlog to 155 cases by the end of October, 1969. Such a contradiction regarding the Court's ability to control its backlogged jury caseload is evidence of poor planning and serious lack of control.

b. Our records from Court sources indicate that the Chief Judge had been meeting about one-half hour per month with all department heads, except during the months of June, July, and August when no meetings were held. This is inadequate for effective direction and coordination of 161 employees.

c. The post of Executive Director of the Juvenile Court was abolished in early 1969. The result left the Court with no high-level central non-judicial direction at a time of increasing disorganization.

d. The positions of Management Analyst and Administrative Officer are organized separately although they both cover management problems.[89] Each reports directly to the Chief Judge. Failure to integrate the activities of these two key management staff members is evidence of poor organization and coordination of resources and personnel.

e. Written detention policies providing court-approved criteria to detain children while the court makes certain further decisions were found in the possession of only *one* of the Intake Officers. (We inter-

[88] *Crime in the National Capital* (Part 3), *Op. Cit.*, pp. 1275–1276.

[89] According to the Court, the post of Management Analyst was created to implement a recommendation in a study performed by the National Archives and Research Service. The post has been recently consolidated with that of Director of Research and Development.

viewed all but one of the Intake Officers). These critical court policies affecting the liberty of children before the court are, therefore, rendered largely ineffective. From a management perspective, there is little purpose in having a policy without communication of that policy.

Personnel Management

a. There is no centralized leadership and control over the Court's non-judicial activities and personnel. There are too many supervisors of different departments, with wide ranges of salary levels and responsibilities, all reporting directly to the Chief Judge, with relatively little lateral communication. The lack of central personnel and management control at an administrative level below that of the Chief Judge has resulted in poor communication between the departments and in poor communication between those who make policy and those who execute policy.

b. There are no adequate formal training programs nor a procedures manual for new Intake and Probation Officers.[90] There is no organized method of orienting new employees as to community resources available to the Court, although knowledge of such resources is essential to the effective performance of Intake and Probation functions.

Calendar Management

(For a detailed discussion of the problems of calendar operations, see pages 177 to 189.)

Space and Equipment Management

a. A major problem with bringing large numbers of children to the Court at any time is that the lockup is much too small to accommodate the needs of the Court. It is routinely too overcrowded for either safety or minimal comfort. There are no private cubicles for interviewing.

b. Members of the bench have expressed the need for more jury trial rooms. Nevertheless, the one jury courtroom is used two days per week for jury trials and the rest of the time by the Chief Judge for initial hearings where jurors are not needed. In addition to the ineffective use of this one jury trial room, there has been no sustained effort to seek out additional jury trial space in court facilities within the block of the Juvenile Court building or across the street.

c. The Juvenile Court's third floor contains large unused hall areas which could be more effectively utilized.

d. Only recently has there been a forms design or control program. Forms were frequently printed in extremely large numbers and became obsolete either because procedures changed or the names of officials printed on the forms were no longer in office. Such management of material resources indicates poor administrative coordination and utilization of physical assets.

Records and Data Management

a. Perhaps the single biggest problem in records management is the filing system. It has not been possible to quantify the full extent of the

[90] The Court has made repeated requests for a Staff Development Officer and has advised us that such officer is necessary before adequate training programs can be developed. Although such an officer could be helpful in the development of training and orientation programs, we feel that, in the absence of such a staff person, the supervisors in the various departments should undertake to develop such programs for orientation of their staffs. The Court further advised us that a procedures manual has been under development for over a year and issuance is expected soon; but the lack of a comprehensive manual has hampered the orientation procedure.

problem of lost files. Certainly the detriment to the individual child whose file has been misplaced cannot be measured. Some children remain in the Receiving Home for months because a docket has been lost and the case never calendared for hearing. In other cases judges refuse to act until all the dockets on a child are before them. Attorneys have reported being unable to get a child into promising dispositional facilities [91] because a court social file was lost. Appeals have been mooted because there was no record to appeal from without the court file.

How many of these cases exist, and the amount of time spent in searching for files or calendaring cases with incomplete files, can only be surmised. One Legal Aid Attorney recently reported 18 out of 20 dockets lost in cases to which he had been appointed. The Attorney Advisor reported being asked five times in one morning to help locate a docket, adding that this was not an unusual situation.

The greatest delays in the petitioning process have been traced directly to the petitioning unit of the Clerk's Office; delays here are caused by time-consuming searches for related dockets for each child. The supervisor of that office reports that it sometimes takes an entire day to locate one file, and it may involve a search of almost every office in the Court. Sometimes these dockets simply cannot be found. Then the cases are adjourned indefinitely until the necessary papers turn up.

b. The Court operates a totally inadequate system for filing and locating case files. A spotcheck made on a single day revealed that 42 index cards to files had been misfiled on that one day alone. These haphazard filing procedures result in extended detention of children whose dockets cannot be found.

c. There is insufficient data measuring the time elapsed for processing cases from work station to work station in the Court. It is extremely difficult to gain any precise understanding of the time involved in juvenile case processing from court records. As a result, management control and coordination are severely hampered.

d. No microfilm system for records is maintained.[92]

e. The alphabetical card index to cases pending before the Intake Section of the Social Service Division is not updated because disposition data is not related back to these court files.

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[91] E.g., Boys Town.

[92] The Court advises us that it has applied to the District of Columbia Office of Criminal Justice Planning for a Law Enforcement Assistance Administration grant to install such a system. We urge that funds be made available promptly for this purpose.

Recommendations

This broad array of management difficulties is not a comprehensive list but is merely illustrative of the total lack of management orientation in the Juvenile Court. The problem is not unique to but is particularly serious in the Juvenile Court. (See: Court Management Study findings in the other trial courts in the District of Columbia and recommendations therein for Court Executives to introduce high level management expertise).

As will be set forth in more detail subsequently, we recommend nationwide recruitment to obtain an individual with the best possible management credentials for the position of Executive Director. Consistent with our recommendations as to the relationship between top-level management and the judges in the other trial courts, this individual should be responsible for the day-to-day administration and management in the Court, working closely with and under the authority of the Chief Judge, but operating under policies and guidelines established by the Court as a whole.

In order to establish such guidelines and policies, regular meetings of the Court will be necessary. In December, 1969, the Juvenile Court bench met formally for the first time in years. At that meeting, two decisions were made: (1) to divide some of the cases pending before the judges by a new method, and (2) to discuss and re-evaluate relations with the Youth Division of the Police Department.

Future *en banc* meetings of the Juvenile Court judges should be devoted to fundamental problem areas. The following topics should be discussed:

(1) Methods of getting maximum benefit from funds currently spent on management personnel;

(2) Improvement of the Court's information system in view of the criticisms made in this report;

(3) Development of comprehensive training programs for employees;

(4) Development of a system for microfilming records;

(5) Ways of improving the system for providing defense counsel.

Such topics should be taken up by the Juvenile Court judges in regular meetings with the advice and consultation of key department heads. With the passage of the proposed court reorganization bill, the need will remain to provide juvenile services through the specialized juvenile judges even though they may be organized within a larger Superior Court.

Differences among judges over rules and procedures must be resolved. The optimum means for solving such differences is for the judges themselves to cooperate in working them out jointly. However, if differences absolutely cannot be resolved in this manner, then some other means is necessary. Such impasses cannot be permitted to develop and continue so as to curtail the operations of the Court and its responsibilities to the public. The Court should conform to majority rule of its own members.

Failing that, we suggest that by statute, deadlocks in the Court should be made appealable to the Chief Judge of either the U.S. District Court or the U.S. Court of Appeals, which has statutory responsibility for the proper administration of the courts in the circuit. Of course, with the passage of the court reorganization bill pending before Congress, deadlocks among Family Division judges could be arbitrated and determined by the new Superior Court. However, without court reorganization, if deadlocks continue, Congress should be apprised of the situation so that appropriate corrective action by law may be taken.

2 NEED FOR BASIC MANAGEMENT REORGANIZATION

The Judges of the Juvenile Court Should Develop and Implement a Plan for Basic Reorganization of the Internal Management of the Court

Another basic finding of the Court Management Study is that the management organization of the Juvenile Court is basically unsound. Too many individuals report directly to the Chief Judge, who does not and cannot (due to heavy caseloads) spend enough time planning, directing, coordinating and controlling the operations of the Court. This is not to say that the Chief Judge should necessarily devote significantly more time to management.

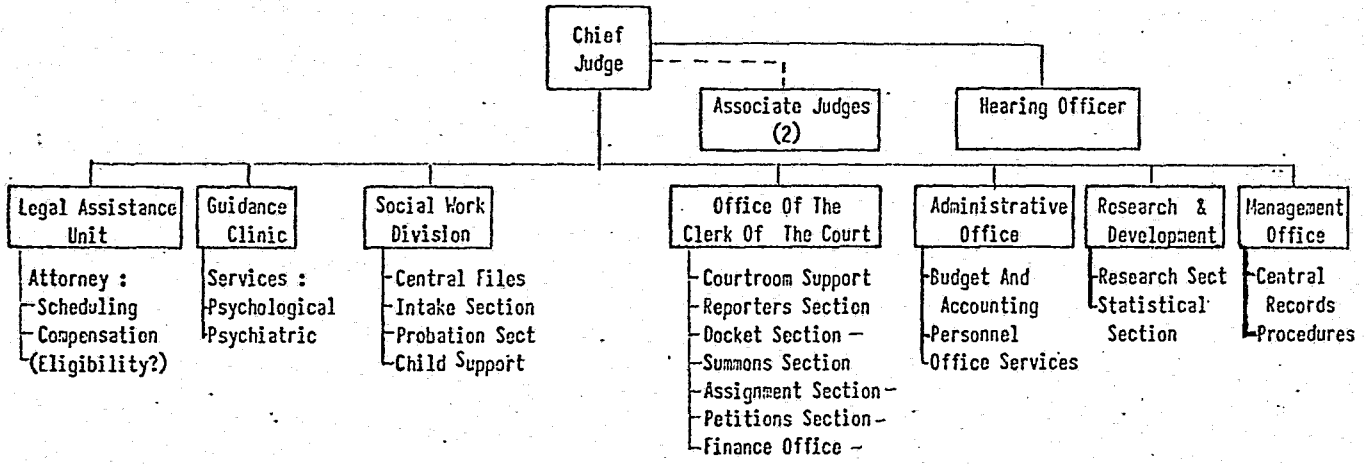
The position of Chief Judge entails such substantial adjudicative and administrative responsibilities as to make it impractical for him to serve as an administrative director on a day-to-day basis.

What small core of management oriented employees exist in the Court are scattered in the various divisions and, thus, their effestiveness is reduced. The result is obvious; the Juvenile Court is almost totally deficient in centralized organization of such employees.

The following chart indicates in general terms the 1969 organization of the Juvenile Court. The management structure is horizontal with the heads of each of the seven divisions reporting directly to the Chief Judge.

JUVENILE COURT OF THE DISTRICT OF COLUMBIA

ORGANIZATION CHART



When we examine the upper management level of this organization we find eleven major positions:

Title	GS grade level	Current minimum pay in GS level
Administrative officer	GS–12	$13,389
Management analyst	GS–12	13,389
Director of Research and Development	GS–15	21,589
Director of Social Work	GS–15	21,589
Assistant Director of Social Work	GS–14	18,500
Chief of Child Support	GS–13	15,812
Chief of Intake	GS–13	15,812
Chief of Juvenile Probation	GS–13	15,812
Clerk of the Court	GS–12	13,389
Chief Deputy Clerk	GS–10	10,252
Director of Child Guidance Clinic	GS–13	15,812
Total		175,345

Such an array of professional talents presents a complex management challenge. With the $175,345 spent annually for the purpose of upper level managing of the Juvenile Court, we believe the court could have a more effective management organization. The organization is unnecessarily cumbersome. For example, the separate offices of Management Analyst, Administrative Officer, and Director of Research and Development each entail overlapping management responsibilities. Coordination difficulties are increased by such fractionalized management, and effectiveness is reduced for all concerned.

The following recommendations have been formulated to improve the managerial organization and administration of the Juvenile Court.

RECOMMENDATIONS

1. The horizontal organizational structure with so many division heads reporting directly to the Chief Judge should be modified so that these employees report to one administrative manager.
2. The position of Executive Director should be revived.
3. The organization of court services should be bifurcated into those providing professional services to juveniles and those providing support to judges and social and legal professionals.
4. The Executive Director should be provided staff to carry out the executive management directives of the entire court.

The proposed management reorganization is shown on the following chart.

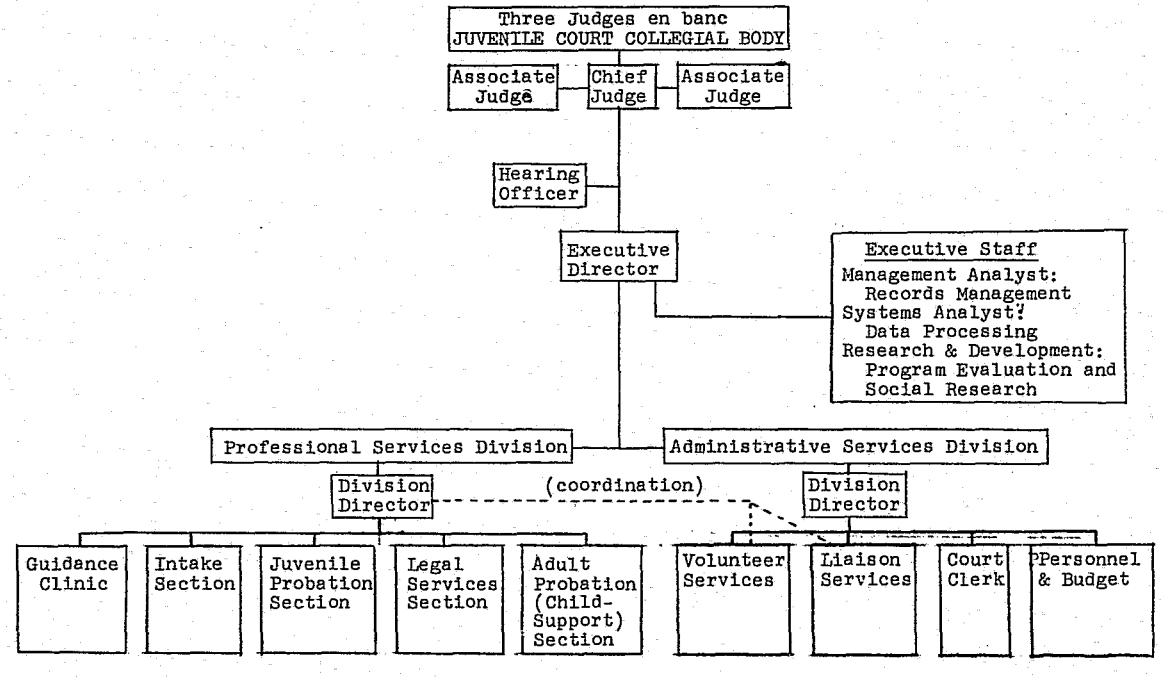
REORGANIZATION CHART

DISTRICT OF COLUMBIA JUVENILE COURT

RECOMMENDED BY

COURT MANAGEMENT STUDY

DECEMBER 1969



The following steps should be undertaken to implement the management reorganization plan proposed above:

a. The three judges should establish a plan of general internal reorganization of the Court. We believe it is the responsibility of the entire Court to adopt and publish rules governing its procedure and, more particularly, "the conduct of its officers and employees." (D. C. Code Section 11–1526). Not only is the Court as a whole responsible by statute for the conduct of its employees, but it is appropriate for all of the judges to consider basic reorganiaztion of the Court. The Chief Judge should be guided by the plan.

b. The proposed Executive Director should report directly to the Chief Judge. The Executive Director should meet with all of the judges and provide staff services of a management nature. The salary should be above the GS–15 level.

c. The Executive Director should consolidate and reorganize the posts of Administrative Officer (GS–12), Management Analyst (GS–12), and Director of Research and Development (GS–15).* Staff from the Research and Development Division should be under the immediate direction of the Executive Director. Staff (11 positions) from the Central Files Unit should report directly to the Executive Director.

d. The present Administrative Officer (GS–12) should be shifted to the new position of Division Director of Administrative Services and should report directly to the Executive Director. Consideration should be given to increasing the salary to the GS–15 level. Under this Division the following offices should be reorganized:

(1) The office of Clerk of Court (40 positions).

(2) The personnel of the Administrative Office (12) who provide budget, accounting, personnel, purchasing and communication services (switchboard and messenger).

(3) The Volunteer Services coordinator, who should report on administrative problems to the proposed Division Director of Administrative Services. The Volunteer Services coordinator should report to the Director of Professional Services in offering services to social work and legal professionals.

(4) Administrative responsibilities for maintaining liaison services with non-court offices such as the Receiving Home, the Youth Division of the Police Department and other offices should be channelled through the Director of Administrative Services. Liaison activities on specific cases should be coordinated through the Professional Services Director.

e. The position of Division Director of Professional Services should be created, with a salary equal to that of the Division Director of Administrative Services (GS–15).

f. Under the proposed Professional Services Division there should be consolidated the following offices:

*The posts of Director of Research and Development and Management Analyst have been consolidated since completion of this study.

(1) The Guidance Clinic (5 positions).
(2) The Social Work Division with its:
Director's Office (4 posts),
Intake Section (15 posts),
Probation Section (37 posts),
Child Support Section (24 posts).
(3) Attorney Advisor (1 position). All liaison with the Legal Aid Agency should be carried out through this division.

The proposed management reorganization plan outlined above would provide two main lines of authority reporting to one office (the Executive Director) who would be responsible to the Chief Judge in day-to-day administrative matters and to the entire bench on basic problems. His responsibilities would include planning, staffing, directing, controlling and coordinating all administrative personnel of the Court. Moreover, the coordination of services of the two basic sectors of the Court—professional and administrative—would be enhanced and clarified by such a plan. The cost of the plan could be offset by redesigning the current positions. It is not possible to closely estimate the cost at this time because too many interim decisions must be made by the Court during planning.

Modification of this plan may be necessary if the Juvenile Court is transferred to the proposed Superior Court. Among other things, it may be desirable to transfer certain sub-units of the Clerk's Office (e.g., finance, court reporter, and assignment sections) into other subdivisions of the court to permit further consolidation of similar services.

The management reorganization plan proposed in this report is designed to: (1) Lighten the management burden on the judiciary while retaining general direction at the judicial level; (2) Improve the quantity and quality of management and support services to the professionals in the Court; and, (3) Permit the orderly development of short-range and long-range integrated plans and programs to improve court services to juveniles (detailed elsewhere in this report).

The same approach as is used to fill the position of Deputy Mayor, i.e., national recruitment, should be used to fill the proposed position of Executive Director in the Juvenile Court. The goal is to obtain the best qualified person from any place in the nation, not to confine recruitment efforts to the Juvenile Court or the District of Columbia, since the difficulty of the position and the current circumstances of the Court require top expertise.

3. NEED TO IMPROVE RECORDS AND DATA MANAGEMENT

The Juvenile Court Should Institute a Record and Files Control Program and Simplify and Modernize Its Filing System

The docket section in the Clerk's Office contains the Court's legal files. Our study of that section in mid-1969 revealed that hundreds of case files were piled upon chairs to the point of tipping over. These files were in no particular order. The files were awaiting the preparation of proceedings cards to update the files after action. The files were then to be refiled. We estimated that about a third of the files

were in active use and some court employee was required to rifle through the disorganized file pile at least 20 to 30 times a day to find files. We photographed the files. Subsequently, the files were taken from the chairs, alphabetized and placed in a different location, although still not filed in file drawers. Upon the conclusion of the study at the end of 1969, the files still remained disorganized and unfiled.

In May, 1969, we surveyed the Central Files Unit of the Social Service Division. About 90% of the Court's workload originates in this unit. All social records of the Court are housed in one room on the second floor of the old D. C. Courthouse building. The functions of this unit are: (a) Maintenance and storage of all inactive adult and juvenile social files; (b) Activation of inactive social records, or the initiation of new records for adults and juveniles referred to the Court; (c) Destruction of juvenile social files when the juvenile reaches age 25; and (d) Preparation of typed social summaries prepared by the Intake and Probation Sections.

The staff consisted of a supervisor, an assistant, three filing clerks, two clerk-stenographers and four clerk-typists. There was one vacancy in a filing clerk position when we made our study.

The social files are voluminous. They were housed in 54 five-drawer legal files—some 270 drawers. Despite the importance of confidentiality of Juvenile Court social records, and the fact that tight controls on access to them are required by law,[93] there is little or no control over access to these files.

Our findings are set forth below:

Filing System

The social records are filed in ascending numerical order based on the assignment of a six-digit social file number at the time a case is opened. In general, the files reflect the poor management that is apparent throughout this unit. Cards on the file drawer face indentifying the contents in many cases are extremely inaccurate. Drawers range from jammed to completely empty. Some contain copies of police reports and court calendar reports, but these contents are not so indicated. Also in unmarked drawers is a backlog of what appears to be several thousand unfiled case disposition sheets which the staff is presumably too pressed to get around to filing. A casual check of one drawer revealed two misfiled cases. A check of a few "out-cards" on removed files shows records out to Probation Officers for from two to four years prior. In many cases, no date is given when the file was pulled and often random sheets of paper (easily destructible) are used in place of cards.

General Physical Appearance

The general appearance of the room is poor. Sections of the wallboard have been completely removed, exposing bare pipes and conduit tubing. Wallpaper is peeling off due to moisture and ceiling tile is absent in several places.

Boxes, scraps of paper and material to be filed are piled at random on file cabinets. A space behind the entranceway is piled high with

[93] See D.C. Code Section 11–1586.

processed dictabelts in no order and ranging in age up to at least six months.

Staff

One of the prime CFU functions is, upon receipt of complaint lists from the police department, the pulling of an existing file or the beginning of a new file for each juvenile referred. During both the times we observed this process, it was being done by the Supervisor and the Assistant Supervisor rather than the operating staff one would normally associate with an indexing and record gathering operation. While this is an indicator of poor management, it is compounded by regular filing staff either absent or at their desks engaged in personal conversations. Our last check revealed 8 out of 9 line employees absent from their desks.[94]

Revisions Planned for the Central Files Unit

The Juvenile Court maintains two basic types of records: Legal Records (housed primarily in the main Juvenile Court building); and Social Records (housed primarily in the old D.C. Courthouse). This type of organization, as would be expected, left much to be desired for efficient and effective record handling. During late 1968 the Court decided to experiment with consolidating these two types of records into a central records facility. This activity was to be conducted on a limited trial basis with an ongoing evaluation to determine its utility. The hiring of a Management Analyst during early 1969 made available to the Court an individual with the necessary time and skills to plan and supervise this new operation. Space in the main Juvenile Court building was allocated and new open-shelf filing equipment was purchased. One individual from the Central Files Unit and one from the Clerk's Office had been assigned to this new unit scheduled to begin operations June 15, 1969.

For the first 30 to 90 days, depending on volume, only new cases (children previously unknown to the court) were to be handled by this unit. If the operation proved satisfactory, all social and legal records within the court would be merged into the new unit.

Our subsequent study indicates that the court is moving in the proper direction. Nevertheless, as indicated above, the social files and legal files are maintained respectively in the Social Service Division in the D.C. Courthouse Building and the Clerk's Office in the main Juvenile Court Building. Thus, physical transportation and effective coordination becomes a problem of sheer physical logistics. The court attempts to monitor these files with two separate central indexes. Neither of these indexes is a viable tool for pinpointing the location of particular files at court processing stations. They are of no utility for compilation of reports of data for trend analysis or aging of pending cases. Entries are generally handwritten, contributing to illegibility and confusion. File control and even basic alphabetic filing is inadequate judging from the difficulty we experienced in attempts to draw information from these indexes. During one study of initial hearing cases, we were unable, even after extensive search of both social and legal indexes, to obtain information about 17 children who

[94] The Court advises us that such employees are drawn upon to fill other positions on a temporary basis where absence may be caused, for example, by illness.

had been through the initial hearing process. The Clerk of the Court's suggestion that we wait a few days to see if they turned up hardly appeared satisfactory, and, in fact, proved fruitless.

The files in use fare no better under the system. The D.C. Crime Commission cited the disproportionate amounts of time required to search for social and legal files. Our study three years later disclosed this to be still a major problem. There are no technological barriers to improvement of the Court's filing systems, and we recommend that implementation efforts be begun immediately, and that they be closely supervised. At the outset, the proposed Executive Director should maintain daily supervisory control over the program to integrate these files. When the files have been improved, it should be possible to reduce central control under adequate new supervision.

The Juvenile Court Should (1) Modernize Its Data Management, (2) Extend the Use of Automation in Its Current Data Recording and Retrieval System, and (3) Gather and Report Detailed Case Data Concerning Internal Case Processing Stages, Including Specific Data About Time Intervals From Point to Point in the Workflow Process

Under the data collection system presently in use in the Court, much necessary data about delay and backlogs in the Juvenile Court is difficult to obtain. Such information is vital for the judges to assess operations and for the public to assess the performance of the judges and court employees. Information is lacking concerning internal processing stages after petitioning, through the Clerk's Office, to detention and intake proceedings and on to trial and ultimate dispositional hearings. Dates of major events for each case are not recorded in machine processable form. Thus, the trends of workflow at each stage are not capable of assessment. Statistics on delays and the age of cases at pertinent stages is not compiled. In sum, the Court does not compile necessary data in a way that would enable it to be used as a management tool in making day-to-day management decisions.

The Annual Report of the Juvenile Court is a good example of "after the fact" or "summary" report of information. Annual trends, numbers of cases filed or referred and terminations plus social data is available. However, continuity of data tables from year to year is very poor, making comparisons of performance almost impossible. Moreover, it is impossible to measure case progress and performance. It is extremely difficult, therefore, to evaluate operations. In addition, management control becomes impossible as the organization grows in size.

To illustrate the difficulty of obtaining data in work statistics activity, let us explain one attempt of the Court Management Study to collect management data. Our questions were simple: (1) what cases are pending before the Intake Officers? [95] (2) which Officer has what pending? (3) how long have the Intake Officers had the cases? (4) how old are the cases at the moment of looking at the Intake Section?

Our results are summarized in several different places in this report. The table on aging of caseloads (p. 221) shows that 48 percent of the

[95] For reporting purposes cases remain pending in Intake until after the initial hearing is held. Intake Officers normally have completed their inquiries and investigations prior to that time.

1,237 cases pending initial hearing were over 90 days old on August 4, 1969. This data was gathered from index cards and indicates a significant management problem although it is not available in any summary form for daily management information. Inspection of the case inventory pending initial hearing should be established as a regular matter so that the Court knows weekly what is happening at the input level. This example should be extended to all stages of caseflow in the court.

DISTRICT OF COLUMBIA JUVENILE COURT

AGING ANALYSIS OF 1,237 CASES PENDING INITIAL HEARING ON AUG. 4 1969—BY STATION AND BY LENGTH OF TIME PENDING

Station No.—	Total cases	Number of cases pending 30 days or less	Number of cases pending 31 to 60 days	Number of cases pending 61 to 90 days	Number o cases pending over 91 days
1	142	9	33	27	73
2	35	1	6	1	27
3	140	14	28	29	69
4	119	10	26	17	66
5	114	15	33	20	46
6	136	2	49	16	69
7	139	13	35	23	68
8	118	15	25	21	57
9	16	0	0	0	16
10	134	14	23	19	78
11	65	13	22	22	8
12	79	5	25	22	27
Total	1,237	111	305	217	604
Percent	100	8	24	20	48

Several opportunities appear to be developing to overcome the various deficiencies noted in the Court's information system. The District of Columbia's Office of Crime Analysis is currently coordinating the development of an information system which would provide baseline data on children. It links the Youth Division of the Metropolitan Police Department, the Juvenile Court, and the District of Columbia Department of Public Welfare. This type of system has long been needed and is essential for effective policy development and operational decision-making within these three closely related agencies. A comprehensive management information system would provide the vehicle for intelligent and integrated administrative action by the three organizations. We support the Court in its effort to make the system operational. We urge the Court to make a maximum commitment of its resources to ensure the earliest availability of shared information on children referred to the Court, consistent with the demands of confidentiality.

The Court of General Sessions' computer facility is another potential resource and, if the Court Reorganization Bill is passed, the computer section of the new court would be available for juvenile data processing.

As this report nears completion, we understand that the Office of Crime Analysis may make a substantial commitment of funds and personnel that would permit the study and design of a new system for the

processing of the Court's internal workflow. These proposed activities would include an evaluation of whether computer facilities of the Court of General Sessions or those of the government of the District of Columbia would ultimately be used for processing the Court's workload. We urge that the Juvenile Court continue its present policy of utilizing the General Sessions' computer facilities for processing its information. Our past experience with courts that rely on outside agencies for services of this nature has revealed that these courts tend to receive low priorities and minimal service. A consultant study of the Court of General Sessions completed for the Court Management Study drew the same conclusion:

NEED FOR OWN STAFF AND COMPUTER

It is especially important that the Court (of General Sessions) retain its computing staff and computer. Should the work be transferred to another agency, two consequences may be expected: first, the computer runs will not be made on time (for example, to an executive department, a tax run will appear to have priority over most court applications) and second, the outside computing staff will be unfamiliar with court operations, i.e., a request to produce a simple report—if couched in terminology familiar to court personnel—will most likely be misunderstood. Neither of these consequences is speculative—both are based on experience of other courts who have not had the foresight to maintain their own staff and facility. If a court is responsible for its operations, it must have control over its operations. This is especially true of data processing operations.[96]

4. NEED TO IMPROVE PERSONNEL MANAGEMENT

The Juvenile Court Should Improve Personnel Policies to Encourage Better Performance by Its Employees

No resource of the judges of the Juvenile Court is more important than the employees of the court. Most of the Court's annual budget is devoted to their salaries; court services to the public are rendered through these personnel. In each case, decisions of the judges, professional, legal and social workers have an immediate impact on the juvenile before the court and upon his family. In theory, the public "buys" the best decision-making money can provide. The overall responsibility for the selection, training, salaries, health, safety, discipline of court employees rests in the hands of the three judges and one or two of their key managers.

Our study of employee organization in the Juvenile Court reveals an overwhelming need for improved management. There was slack in some departments, overload in others—a clear indication of the lack of overall supervision and of poor utilization of present employees.

Our investigation of turnover of all employees shows a rate of 14 percent in fiscal year 1969. Some large offices of the court experienced a 16 percent rate, others 37 percent. Although no standards exist to establish whether the overall percentage is normal, our judgment is that it is rather high.

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[96] Eldridge Adams. *A Study of Management Reporting Techniques for the Court of General Sessions.* (1969) p. 40.

The employees of the Court represent considerable occupational diversity, as the following list indicates:

Judge	Telephone Operator
Law Clerk	Statistician
Hearing Officer	EAM Project Planner
Secretary	Research Analyst
Attorney Advisor	Volunteer Director
Administrative Aide	Court Reporter
Administrative Officer	Accounting Clerk
Personnel Clerk	Bailiff
Detention Guard	Psychologist
Supervising Social Worker	Probation Officer
Locator	Receptionist
File Clerk	Clerk Typist

The institution of the Juvenile Court, therefore, requires a high degree of personnel management sophistication.

Federal Civil Service regulations apply in the Juvenile Court, in contrast to the other courts in the District of Columbia which have their own personnel systems. This element of external control provided by the Civil Service regulations affects the Court's capability for devising its own system of personnel administration. The Court informs us that it feels severely hampered in its ability to obtain competent personnel at competitive levels with the other courts in the District because it is restricted to the Civil Service lists. (Since the proposed Superior Court will not be operating on a Civil Service personnel system, it can be anticipated that these problems will be alleviated once the Juvenile Court is consolidated into the Superior Court).

We believe the Court should expand training opportunities for court employees. The new employee needs better orientation to the Court. Training sessions for new employees in the court, especially in those divisions working directly with juveniles, need attention. A once-a-year orientation for new social workers is insufficient. There is a failure to communicate overall policies. The lack of knowledge by court employees of other parts of the court shows that the court as an institution is not training broad-gauged employees, but is developing narrow sub-unit specialists at every level. The poor coordination in the Court is an outgrowth of a personnel system with an insular viewpoint. The Court's relationships with institutions outside the court can hardly be progressive if within the Court the same employees do not have a broad outlook.

The following steps can be taken immediately to improve personnel management:

a. The Court should issue written materials to orient new employees to their jobs in the court. Prompt issuance of the new procedural manual is advised.

b. For those on the job, the Court should encourage appropriate in-service training through the wealth of university and

federal resources available to persons in the Washington Metropolitan Area.

c. The Court should seek out training facilities in both public and private agencies to assist court employees to understand their roles more fully.

The Juvenile Court employee needs special attention at this time; his problem is principally a lack of adequate information and a declining morale. There are no "hard data" to support these conclusions. However, our study confirms them. We trust that the judges and the key managers of the Juvenile Court will recognize that the personnel policies they follow will have, in the long run, a decided impact upon the quality and quantity of service rendered to juveniles and their families in the District of Columbia. As court employees are better prepared, court services to the community should become more effective and worthwhile.

Appendix I. Method of Appointment of Counsel

The appointment of counsel system in practice in the Juvenile Court

The system for appointment of counsel operates along the following lines.

1. Detention Cases

Every day approximately 15 detention hearings are held. At 11:00 each morning, the Attorney Advisor receives a list of the children scheduled for detention hearings that day and a copy of the complaint in each case. All the children are assumed to be indigent and to want an attorney; appointment of counsel is automatic in detention cases. Since no panel of private lawyers has been developed to come to court to represent children at detention hearings on certain dates and most lawyers are out to lunch between 12 and 2, there is a problem locating attorneys between 11:00 and 3:00, when the detention hearings begin.

A private lawyer who takes a case at the detention level is supposed to represent the child at all subsequent court hearings.[1] Because detention cases tend to be the most difficult and sensitive cases the Attorney Advisor does not want to appoint just "any" lawyer. Yet, despite the predictable need for qualified lawyers for these cases every day and the problems involved in contacting lawyers at the last minute, no system has been developed under which advance arrangements could be made to have sufficient lawyers on call or in court to accept these appointments. At the same time, the Attorney Advisor often attempts to match attorneys with children on factors other than professional qualifications, and a group of courthouse regulars, not all of whom may be qualified for difficult cases, has begun to form and request appointments. The task of locating lawyers every day is thus compounded by the pressure of personalities and placation of courthouse regulars, as well as by the pressure of time.

Since November 1, 1969, Legal Aid Agency agreed to have 4 lawyers each take at least 5 new cases per week at detention hearings. The Court must rely on the private bar to handle the rest of the detention cases.

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[1] An exception to the goal of continuity of representation is always made in beyond control cases. The private attorney assigned to represent an allegedly beyond control child at the detention level is excused from pursuing the case further, and the child's case is reassigned to one of the volunteer attorneys who handles such cases through a program developed by the Friends of the Juvenile Court. This means that if a beyond control child is remanded to the Receiving Home, no lawyer is assigned the case until the case is calendared for an initial hearing. The practical result is that such children often remain months in the Receiving Home, without an attorney who might challenge their confinement, waiting for the vagaries of the court calendar system to bring their names to the top of an initial hearing list.

Appendix II. Juvenile Court Statistics

TABLE 1.—JUVENILE CASES: TREND IN NUMBER REFERRED AND RATE OF CHILDREN INVOLVED, BY TYPE OF CASE[1]

[Fiscal years 1963–69]

Fiscal year	Total		Delinquency			Traffic			Dependency		
	Cases	Children	Cases	Children	Rate	Cases	Children	Rate	Cases	Children	Rate
1969	6,875	4,774	6,120	4,058	26.7	301	264	7.2	454	452	1.6
1968	7,662	5,272	6,663	4,348	28.8	585	512	14.5	414	412	1.5
1967	7,355	5,190	6,299	4,222	28.8	678	591	17.1	378	377	1.4
1966	6,194	4,596	5,227	3,704	26.6	562	487	14.1	405	405	1.5
1965	6,709	4,781	5,824	3,985	29.5	560	483	14.6	315	313	1.4
1964	5,972	4,380	5,292	3,727	28.6	336	309	10.0	344	344	1.2
1963	4,878	3,698	4,291	3,134	25.1	290	267	9.4	297	297	1.2

[1] A "case" is one or more complaints against a child referred to the court by 1 source (1) for 1 or more related acts occurring about the same time or (2) for a series of related acts occurring over a longer period of time, provided the complaints are received at the same time.

A "child" is the one involved in a case and is counted only once regardless of the number of times he may have been referred to court during the year. "Rate" is the number of children involved in each type of case per 1,000 child population at risk in appropriate age groups—ages 7–17 for delinquency; 15–17 for traffic; under 18 for dependency. Estimates of child population are derived from Bureau of the Census, Current Population Reports, series P–25. No. 420.

TABLE 2.—JUVENILE CASES: NUMBER REFERRED, BY AGE, TYPE, AND SEX[1]

[Fiscal Year 1969]

Age	Total	Total			Boys			Girls		
		Delinquency	Traffic	Dependency	Delinquency	Traffic	Dependency	Delinquency	Traffic	Dependency
Total	6,875	6,120	301	454	5,515	296	247	605	5	207
Under 1 year	63			63			34			29
1	42			42			23			19
2	24			24			11			13
3	32			32			22			10
4	24			24			17			7
5	27			27			17			10
6	33			33			16			17
7	31	6		25	6		14			11
8	48	21		27	21		16			11
9	103	77		26	75		14	2		12
10	126	105		21	99		16	6		5
11	275	257		18	247		9	10		9
12	408	380	2	26	344	2	14	36		12
13	641	615	4	22	532	3	10	83	1	12
14	1,037	1,008	10	19	861	10	8	147		11
15	1,216	1,178	29	9	1,036	29	3	142		6
16	1,277	1,195	74	8	1,096	74	2	99		6
17 and over	1,468	1,278	182	8	1,198	178	1	80	4	7

[1] Excerpt from Annual Report of the Juvenile Court, fiscal year 1969.

TABLE 4.—JUVENILE DELINQUENCY CASES: TREND IN NUMBER REFERRED BY REASON FOR REFERRAL[1]

[Fiscal years 1963–69]

Reason for referral	Fiscal year—						
	1969	1968	1967	1966	1965	1964	1963
Total	6,120	6,663	6,299	5,227	5,834	5,292	4,291
Acts against persons	1,664	1,637	1,580	1,261	1,304	1,088	919
Assault:							
Aggravated	304	323	333	290	301	221	197
Simple	233	272	336	286	331	339	298
Carnal knowledge	21	39	37	27	33	21	18
Homicide	29	20	7	9	11	11	11
Indecent act on a minor	10	20	11	5	16	12	6
Mayhem		2			1		
Pocket picking	65	22	17	9	9	14	16
Purse snatching	158	179	199	140	166	112	67
Rape	37	32	23	31	15	34	7
Robbery:							
Armed	261	161	66	52	43	29	18
Other	519	536	534	399	369	279	270
Sodomy	27	31	17	13	9	16	11
Acts against property	3,472	3,735	3,351	2,603	3,138	3,037	2,285
Arson	24	33	10	11	20	14	16
Burglary I:[2]							
Occupied premises	90	284	396	354	338	312	180
Attempted	22	30	25	23	34	14	3
Burglary II:[2]							
Unoccupied premises	1,025	1,011	510	403	593	566	430
Attempted	94	69	59	34	42	65	47
Forgery	29	22	15	11	9	10	7
Larceny:							
Grand	84	83	80	56	82	64	80
Petit	922	975	1,107	927	1,000	1,037	792
Property damage or injury	120	160	182	127	140	136	147
Taking property without right	17	40	53	24	36	32	42
Unauthorized use of auto	795	758	604	472	698	603	413
Unlawful entry	157	163	217	113	110	131	89
Stolen property	79	96	62	25	28	43	33
Other	14	31	31	23	8	10	6
Acts against public order	566	883	874	774	791	629	473
Disorderly conduct	279	592	603	527	494	438	309
Drunkenness	14	60	82	103	93	46	57
Indecent exposure	8	11	6	9	7	6	6
Other sex offenses	25	21	25	18	27	19	28
Loitering	7	25	16	13	32	10	
Narcotics	77	41	15	3	3	2	
Possessing or carrying weapons	112	101	108	84	122	83	49
Other	44	32	19	17	13	25	24
Truancy	195	132	139	207	257	237	212
School	180	109	136	195	236	214	201
Home	15	23	3	12	21	23	11
Beyond control of parents or guardian	191	240	305	338	298	255	364
All other offenses	32	36	50	44	46	46	38

[1] Excerpts from Annual Report of the Juvenile Court, fiscal year 1969.
[2] Prior to Dec. 27, 1967, these offenses were classified under housebreaking.

TABLE 6.—JUVENILE DELINQUENCY CASES: NUMBER DISPOSED OF, BY TYPE, MANNER OF DISPOSITION, AND SEX [1]

[Fiscal Year 1968]

Disposition	Total		Boys		Girls	
	Number	Percent	Number	Percent	Number	Percent
Total [2]	5,709	100	5,062	100	647	100
Disposed of by judicial action	3,599	63	3,185	63	414	64
Waived to U.S. district court	21	(3)	21	(3)		
Dismissed without a finding	585	10	523	10	62	10
Disposed of in another case	1,031	18	976	19	55	8
Juvenile found not involved	54	1	50	1	4	1
Juvenile found involved:						
Dismissed	404	7	351	7	53	8
Probation to court	1,152	21	952	19	200	31
Commitment to—						
Department of Public Welfare	236	4	198	4	38	6
National Training School	20	(3)	20	(3)		
Fine or restitution only	93	2	93	2		
Other	3	(3)	1	(3)	2	(3)
Disposed of without judicial action	2,110	37	1,877	37	233	36
Disposed of in another case	212	4	201	4	11	2
Adjusted and case closed	1,148	20	983	19	165	26
Adjusted but status continued:						
On probation	314	6	288	6	26	4
Ward of the Department of Public Welfare	232	4	217	4	15	2
Ward of the National Training School	24	(3)	24	1		
Other	180	3	164	3	16	2

[1] Disposition here means what actually happened to the juvenile as a result of the referral of his delinquency case. It does not refer to those cases that are returned to court for rehearing (renewing a commitment, changing type of care given, releasing a juvenile from probation, etc.) or to actions taken on the case pending the disposition.

[2] The number of juvenile delinquency cases disposed of in 1968 does not agree with the number referred to court in 1968. It includes 1,758 cases referred prior to 1968, but disposed of in 1968 as well as 3,951 referred and disposed of in 1968. It excludes cases pending disposition at the end of the year.

[3] Less than 0.5 percent.

Source: Excerpt from Annual Report of the Juvenile Court, fiscal year 1968.

TABLE 6. JUVENILE DELINQUENCY CASES: NUMBER DISPOSED OF, BY TYPE, MANNER OF DISPOSITION, AND SEX [1]

[Fiscal year 1969]

Disposition	Total		Boys		Girls	
	Number	Percent	Number	Percent	Number	Percent
Total [2]	5,350	100	4,875	100	475	100
Disposed of by judicial action	3,422	64	3,129	64	293	62
Waived to U.S. district court	18	(3)	18	(3)		
Dismissed without a finding	626	12	566	12	60	13
Disposed of in another case	1,225	23	1,174	24	51	11
Juvenile found not involved	51	1	47	1	4	1
Juvenile found involved:						
Dismissed	202	4	187	4	15	3
Probation to court	1,021	19	876	18	145	30
Commitment to the Department of Public Welfare	198	4	180	4	18	4
Fine or restitution only	70	1	70	1		
Other	11	(3)	11	(3)		
Disposed of without judicial action	1,928	36	1,746	36	182	38
Disposed of in another case	334	6	317	7	17	4
Adjusted and case closed	1,230	23	1,086	22	144	30
Adjusted but status continued:						
On probation	208	4	191	4	17	4
Ward of the Department of Public Welfare	115	2	113	2	2	(3)
Other	41	1	39	1	2	(3)

[1] Disposition here means what actually happened to the juvenile as a result of the referral of his delinquency case. It does not refer to hose cases that are returned to court for rehearing (renewing a commitment, changing type of care given, releasing a juvenile from probation, etc.) or to actions taken on the case pending the disposition.

[2] The number of juvenile delinquency cases disposed of in 1969 does not agree with the number referred to court in 1969. It includes 2,541 cases referred prior to 1969, but disposed of in 1969, as well as 2,809 cases referred and disposed of in 1969. It excludes cases pending disposition at the end of the year.

[3] Less than 0.5 percent.

Source: Excerpt from Annual Report of the Juvenile Court, fiscal year 1969.

TABLE 21.—JUDICIAL ACTIONS: CASES AWAITING COURT HEARING [1]

[June 30, 1967, 1968, 1969]

Type of case	June 30, 1969	June 30, 1968	June 30, 1967
Total, all cases	3,483	(2)	(2)
Juvenile cases	2,778	(2)	(2)
Initial hearings	1,742	(2)	(2)
Court trials	358	242	134
Jury trials	290	187	34
Dispositions	219	282	367
Commitment reviews	31	26	1
Waiver hearings	18	11	3
Motion hearings	2	7	1
Other hearings	118	63	75
Adult cases	705	862	1,389
Arraignments	538	572	1,232
Paternity	282	375	984
Nonsupport	254	189	244
Other	2	8	4
Court trials	18	87	23
Paternity	12	76	12
Nonsupport	6	11	11
Other			
Jury trials	83	140	100
Paternity	81	131	93
Nonsupport	2	9	7
Other			
Preliminary hearings	63	60	34
Paternity	63	60	34
Motion hearings	1	3	
Other hearings	2		

[1] Excerpt from Annual Report of the Juvenile Court, fiscal year 1969.
[2] Revision in reporting during the fiscal year 1969 does not permit comparisons with prior years for these items.

A STUDY OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

DECEMBER 1969

CONTENTS

ACKNOWLEDGEMENTS

Numerous people contributed their knowledge, time and understanding to this report. In particular the employees of the U.S. Court of Appeals deserve recognition for the many hours they spent explaining their work, describing procedures and pointing out sources. Special debts are owed Chief Judge David L. Bazelon who cooperated fully in this study and Nathan Paulson, Clerk of the Court, who spent many hours answering questions.

A very special debt is also owed the Administrative Office of the United States Courts. In particular, Mr. James A. McCafferty of that office assisted us in too many ways to mention—but all of them were sincerely appreciated.

47-070 O—70—pt. 2——16

A STUDY OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA

JURISDICTION OF THE COURT

Current jurisdiction of the United States Court of Appeals for the District of Columbia circuit falls into three general categories. The first is jurisdiction under 28 U.S.C. § 1291 over all appeals from the United States District Court for the District of Columbia. This category is the most important in terms of the number of appeals commenced. In fiscal year 1969 for example, the United States District Court was the source for 891 of the 1,094 cases commenced in the United States Court of Appeals.

The second category involves the court's authority to review orders of the various federal administrative agencies. This court, together with the United States Courts of Appeals for the other circuits, has authority to review orders of the Civil Aeronautics Board, Federal Trade Commission, Federal Power Commission, Interstate Commerce Commission, National Labor Relations Board, Securities and Exchange Commission and others. Other agencies whose action is subject to review by the United States Court of Appeals are listed in the revision note to 28 U.S.C. § 1291. In addition, the United States Court of Appeals for the District of Columbia Circuit has special jurisdiction, such as the power to review decisions of the Federal Communications Commission. 47 U.S. § 402(b).

The third area of jurisdiction of the United States Court of Appeals for the District of Columbia Circuit is its discretionary power to review decisions of the District of Columbia Court of Appeals. This jurisdiction is granted specifically by the D.C. Code § 11–321 which provides:

> (*a*) In addition to its jurisdiction otherwise conferred by law, the United States Court of Appeals for the District of Columbia Circuit has jurisdiction of appeals from judgments of the District of Columbia Court of Appeals, including judgments of that court rendered on review of orders and decisions of the administrative agencies of the District of Columbia specified by Section 11–742(a).
>
> (*b*) A party aggrieved by a judgment of the District of Columbia Court of Appeals may seek a review thereof by the United States Court of Appeals for the District of Columbia Circuit by petition for the allowance of an appeal.[1]

[1] The United States Court of Appeals also has the authority to review decisions of the District of Columbia Tax Court. See D.C. Code § 47–2404.

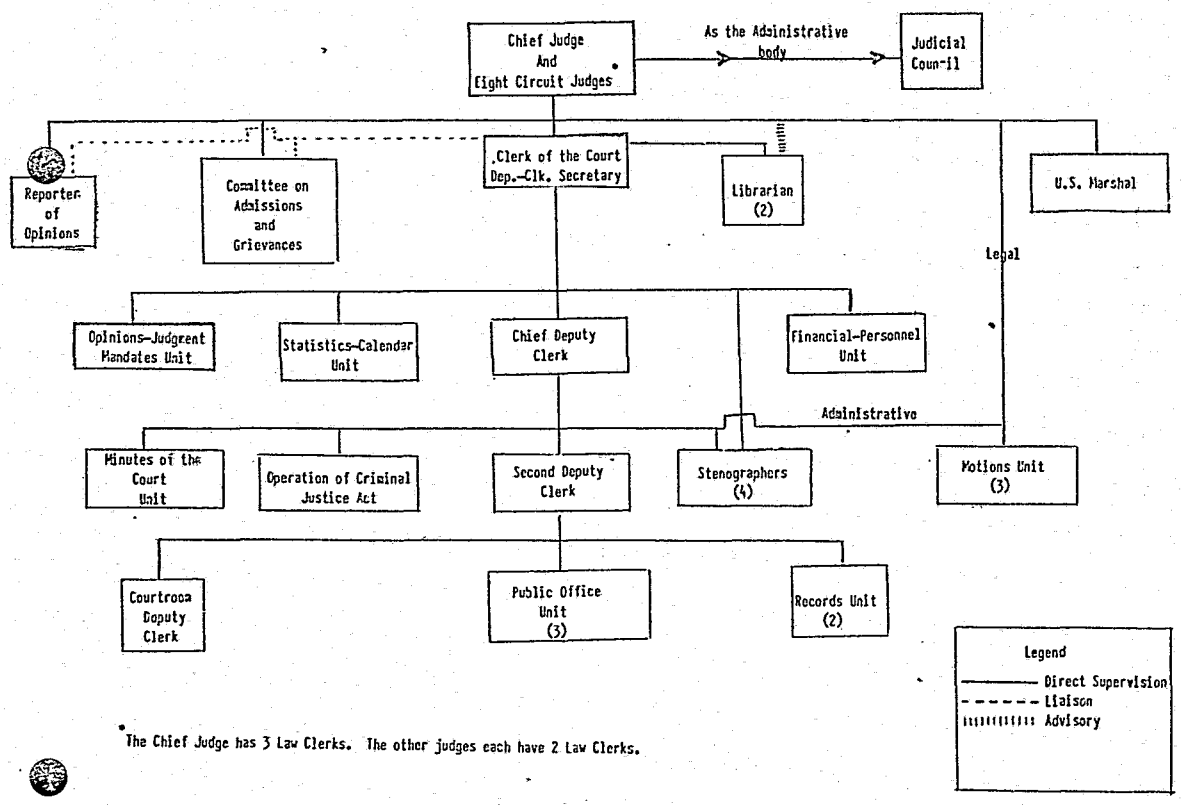
An unusual feature of the jurisdiction of the court resides in its having local as well as federal jurisdiction. Cases of a local nature reach the court since the United States District Court for the District of Columbia from which direct appeals are heard, is the local trial court for felonies and civil cases where the jurisdictional amount exceeds $10,000 and for bankruptcy cases. Such "dual jurisdiction" makes the court unique among United States appellate courts.

Organization of the Court

The formal arrangement of authority, personnel and work units of the court is shown below. As the chart indicates, the U.S. Court of Appeals for the District of Columbia has nine judgeships.

U.S. COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT



The Chief Judge has 3 Law Clerks. The other judges each have 2 Law Clerks.

THE MOVEMENT OF CASES IN THE U.S. CIRCUIT COURT OF APPEALS, DISTRICT OF COLUMBIA

The appellate case process in the United States Circuit Court of Appeals may be viewed as consisting of essentially five steps which are:

1. Docketing of the appeal.
2. Filing of the record of proceedings of the previous trial or hearing.
3. Filing of the briefs for the appellant and the appellee.
4. Hearing of oral arguments or submission without hearing.
5. Issuance of an opinion or order of the court.

To illustrate the movement of an appellate case through these steps let us assume that we are concerned with a criminal case which involves an indigent appellant and a published opinion. Briefly, what occurs is as follows.

A Notice of Appeal is filed in the U.S. District Court. A copy of this Notice is sent to U.S.C.A. Upon receipt of the copy U.S.C.A. dockets the case and the court proceeds to appoint an attorney for the appellant. (The appointed attorney may be previous or new counsel.) Transcription of the record of District Court proceedings is begun and when complete is sent to the U.S.C.A. After this record has been received and filed, the court awaits the filing of complete briefs by opposing counsel for the appellant and appellee. When these briefs have been filed, the case is calendared, that is, scheduled for oral argument and counsel are so notified. The oral arguments are heard, the judges deliberate and decide, and the written opinion in the case is published and issued, concluding the proceedings.

This summary description of the court's work, which is divided according to the stages used administratively to time the movement of cases through the court,[2] gives one the general flavor of the appellate process. A fuller appreciation of the actual work involved in the handling of cases would have to include reference to the numerous motions and petitions which are involved in the disposition of each case and which constitute a significant segment of the workload of the court. The volume of these motions has increased dramatically in the past five years. As the following table illustrates, in Fiscal Year 1964 the court entertained a total of 3,257 motions and petitions of all types, while in Fiscal Year 1969, the court dealt with a total of 6,948, an increase of 120 percent.

MOTIONS AND PETITIONS, U.S. COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT, FISCAL YEARS 1964–69

	1964	1965	1966	1967	1968	1969
Number of procedural motions (action required by chief judge only)	2,164	2,448	2,899	3,451	3,908	5,278
Number of motions and petitions (action by 3 judges required)	1,093	1,253	1,255	1,540	1,543	1,670
Total number of all motions and petitions	3,257	3,701	4,154	4,991	5,451	6,948

Source: U.S. Court of Appeals, office of the clerk of the court, motions records, fiscal years 1964–69.

Tracing a simplified, hypothetical case through the appellate process will provide a better understanding of the court's work. Let us assume that the court is presented with a criminal case in which the

[2] See for example, Table B4, Annual Report 1968, Administrative Office of the Courts.

appellant, a Mr. Smith, is indigent. The appeal begins with the filing of the Notice of Appeal in the U.S. District Court; a copy of the Notice is then sent to the U.S.C.A. The worker at the court's central intake point (through which all incoming documents flow) dockets the case and notifies another employee that the appellant is indigent and will require the appointment of counsel. This employee asks the trial attorney whether he will stay with the case on appeal. Assuming that the attorney advises that he will be available to represent the appellant, the papers necessary for his appointment are then prepared and submitted to the Chief Judge for his consideration. Shortly, a court order appointing the attorney is issued.

The record of the District Court proceedings arrives through the central intake desk and the appropriate entries are made on the docket.[3] A few days later, the appointed counsel submits a motion asking leave to withdraw from the case. This request is directed to a Court Law Clerk who draws up a memorandum and submits it with his recommendation to the weekly motions panel, which consists of two judges, with a third judge called upon to break a tie vote. Let us assume that the motion is approved; a court order vacating the original appointment is issued and a new attorney is appointed to represent appellant. New counsel requests that the time allowed for the filing of his briefs be extended, and the court so orders. Counsel for the appellee, the United States Attorney, also requests that the time for filing his briefs be extended, and the cycle of work involving motions and docket entries is repeated. Subsequently, the appellant's brief arrives (and, in the case of an indigent, is mimeographed by court personnel), followed by the appellee's brief and the appellant's reply brief.

When a check by the clerk's office indicates that all documents and papers are in order, the case is deemed ready for calendaring. The Clerk of the Court places the case number in his container of cases for the next sitting period's random drawing, and the case is assigned to a panel. Once the calendar has been set, notice is sent to the attorneys of the date and time of the argument, and copies of the briefs and record are delivered to the three judges who have been selected to hear the case.

At oral argument, approximately one hour (thirty minutes to the side) is allowed for the *Smith* case; one of the other cases heard that morning is also allotted an hour of oral argument, while the other two cases being heard are on the "summary calendar" and are given half an hour each. A record of the attorneys who argued the cases is kept in the clerk's minute book, and a tape of the oral argument is kept by the Marshal for the judges should they wish to refer to it. After oral argument is concluded, the panel retires to the conference room to discuss the cases. If a disposition is agreed upon, the case will usually be assigned to one of the judges for an opinion; in other cases, the judges may wish to study the case in more detail and exchange memoranda before arriving at a disposition.

During the course of their deliberations, the judges are assisted by their law clerks, who may furnish pertinent background material or

[3] During the period of this study, a major reason for appellate delay was the large backlog in the transcription of district court proceedings. The U.S.C.A. developed a partial solution to the problem by having the District Court issue an order to show cause if a court reporter failed to prepare the record in the time (a maximum of 90 days) allowed by Rule 11 of the Federal Rules of Appellate Procedure. Congress subsequently increased the number of reporters, and the court reports that the backlog has been substantially reduced.

legal memoranda on the case as required by the judges. Assuming that the *Smith* case has been assigned to one of the judges, he prepares an opinion and circulates it to the other members of the panel for their comments. Under the court's rules, when a judge concurs in the proposed opinion, he sends a memorandum to that effect to the members of the panel and Clerk. The third judge then has thirty days in which to concur or dissent, with or without opinion. Let us assume that the third judge in the *Smith* case files a separate opinion concurring in the result. The judge writing the majority opinion then circulates the two opinions to the entire court and sends them to the printer for proofs which, in turn, are subject to further revision and perhaps additional printings. (An opinion log with names and dates is kept in the Clerk's Office to monitor the process in this case and in every other in which opinions are being written). Seven days are allowed after the opinion has been circulated to the court for suggestions from the other judges that changes be made in the opinion and to permit any circuit judge in active service to call for a vote to rehear the case *en banc*. There being no such action in the *Smith* case, and the judges having corrected the printer's proof of their opinions, the opinion is duly printed and distributed by a member of the clerk's staff to the court and to the persons (approximately 900 at present) who receive the court's opinions on a subscription basis. After allowing fourteen days (during which the parties can petition for rehearing, suggest rehearing *en banc*, or apply for certiorari to the Supreme Court) the Clerk's office enters the judgment of the court in conformity with the opinion, and the appellate process comes to an end.

Court Rules

Case procedures in U.S.C.A. are governed by essentially two sets of rules. These are the federal rules of appellate procedure which set forth guidelines for both civil and criminal appeals and the general rules of the court itself.[4] Federal rules specify such things as time standards for various stages of the appellate process, the required form of briefs and what papers constitute the record on appeal in all cases. In accordance with these rules, for example, notice of appeal in criminal cases must be filed within 10 days after the entry of the judgment or order whereas in civil cases, an appeal must be filed within 30 days of the date of entry of judgment or order unless the U.S. or an officer or agency thereof is a party in which case the time period is 60 days (rules 4a and 4b).

The general rules of U.S.C.A. supplement federal rules of appellate procedure and contain additional rules concerning the review of cases from the D.C. Court of Appeals. These general rules, in addition to indicating areas in which federal rules are applicable, specify a number of court procedures in detail. In addition to references to time intervals for filing appeals, briefs and so forth there are references to such items as attorney admission procedures, the printing of opinions of the court and the transmission of the record on appeal. Illustrative of the latter type is the rule stating that the appellant's brief contain a section headed "References to Rulings" wherein counsel "shall make such references as may be feasible identifying any opin-

[4] See Rules of Criminal and Appellate Procedure—Criminal Code (Minnesota, West Publishing Co., 1968) and General Rules Supplementing the Federal Rules of Appellate Procedure and Rules Governing the Review of Cases from the D.C. Court of Appeals (Minnesota, West Publishing Co.).

ion, memorandum, findings and conclusions, or other oral or written ruling in which the court set forth the basis of the order or judgment presented for review by this court." [5]

WORKLOAD OF THE COURT OF APPEALS

Origins and Trends

In fiscal 1968, 945 appeals of all types were filed in the Court of Appeals. Of this total, 392 were criminal appeals and the remainder (553) were civil cases, i.e., non-criminal. Table I shows that the total load of the court has more than doubled since 1950 when 434 appeals were filed.[6]

The table also shows that the largest share of the increased load is accounted for by the increases in criminal filings—both in terms of absolute numbers and percentage increases. In 1950, 354 non-criminal cases were filed in the court—approximately 200 fewer than the 1968 figures. Criminal filings on the other hand increased five-fold in the same time span—from 80 cases in 1950 to the 1968 figure of 392 cases.

The data in the table show the dramatic character of the increase in criminal cases before the court in yet another way. In 1950, the court's business was overwhelmingly civil business—80 percent of the cases filed in that year were non-criminal cases. By the time the D.C. Crime Commission reported in 1966 that percentage had declined to 68.4 percent. In 1968 less than 60 percent of the cases filed were civil cases. Or, to state the change another way, in 1950, 1 out of every 5 cases before the court was a criminal case, whereas by 1968, 2 out of every 5 appeals filed were criminal cases.

The 1969 report of the Administrative Office of the Courts indicated that the upward trend was continuing, both for all appeals in the court and for criminal appeals. Their figures for 1969 showed 1,094 cases filed—an increase of almost 16 percent above the 1968 figure. Criminal appeals increased at a greater rate than the overall total. In 1969, 497 criminal appeals were filed—an increase of almost 27 percent. In contrast, civil filings increased by only 44 cases in 1969 to a total of 597 cases. Thus, in 1969 almost half (45.4 percent) of the court's load consisted of criminal cases. If this trend continues (as it appears to be doing), in 1970 more than half of the appeals filed will be criminal appeals for the first time in the post-1950 history of the court.

Table II shows the source of appeals filed in the court. These data show the bulk of the court's work is from the U.S. District Court. Of the 945 cases filed in 1968, 722 (76.4 percent) had their origin in the District Court. This is a fairly constant percentage and has changed very little for the years shown. Another sizeable source of appeals was the National Labor Relations Board (3 percent to 8 percent).

All other boards and commissions accounted for almost 20 percent of the courts' appeals in 1963, but by 1968 slightly less than 12 percent of the appeals originated from these boards and commissions. Thus, less than 5 percent of the court's appeals had sources other than the

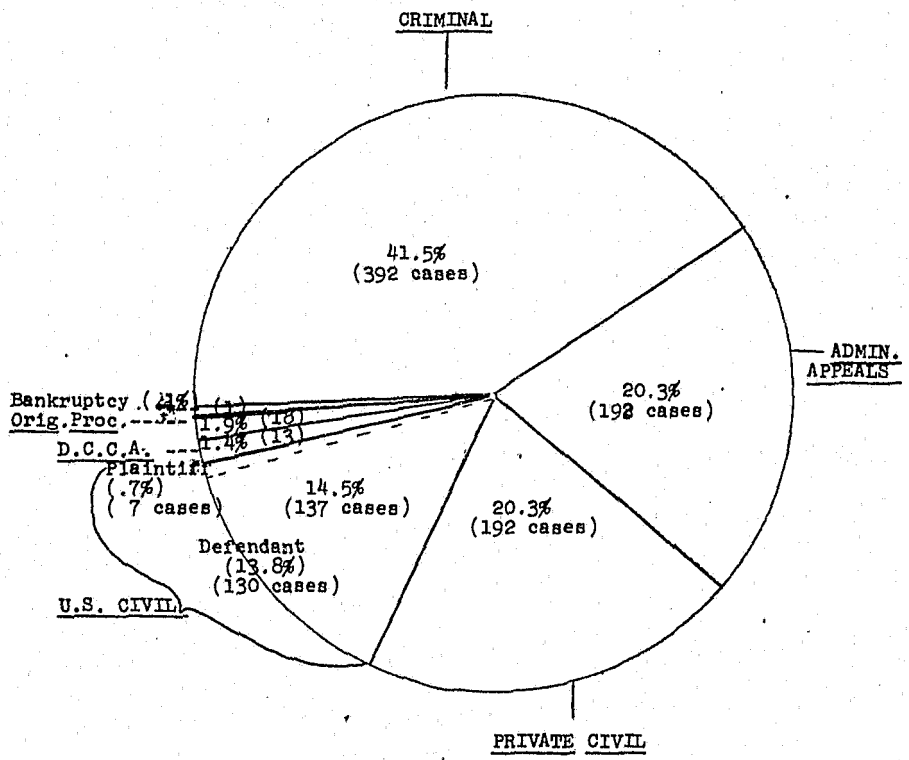
[5] For the complete text of this rule see general rule 8f of the U.S. Court of Appeals, D.C. Circuit.

[6] For convenience, all tables have been placed at the end of the report. See Appendix I.

FIGURE I

U. S. CIRCUIT COURT OF APPEALS: D.C. CIRCUIT

CASES FILED BY NATURE OF PROCEEDINGS*
(Fiscal 1968)



* Total Number of Cases = 945

SOURCE: AOC Annual Report, 1968

three already cited. Effectively, in numbers of appeals at least, these figures strongly suggest that the caseload of the Court of Appeals will fluctuate as the caseload of the U.S. District Court fluctuates.

Figure I shows the sources of the court's appeals for 1968 in a different fashion. It also shows a breakdown in civil cases between private cases and those involving the government. As the proportions in the figure show, slightly more than 20 percent of the court's civil appeals were of private civil cases and slightly less than 15 percent of the appeals filed were U.S. civil cases.

In the light of the importance of criminal appeals from the U.S. District Court a further look at this aspect of the appeals load is warranted. Table III shows that since 1950 there has been an increase in the percentage of defendants convicted by trial in District Court out of all defendants convicted—that is to say, a smaller percentage of the defendants plead guilty or Nolo Contendere. Prior to 1962, generally less than 30 percent of the defendants were convicted following trial. In 4 of the 7 years since 1962 the figure for conviction by trial has been over 30 percent. This means that a larger percentage of the defendants are more easily eligible to appeal.

The table also shows that since 1962 a larger percentage of all defendants convicted in District Court have appealed. Prior to 1962, 10 percent or less of all defendants convicted in District Court by any means appealed their cases. In 1962 the figure reached 13.7 percent. In 1963 the figure increased to 21.8 percent and continued to increase each year through 1967 when it reached a high of 34.1 percent. There was a drop the following year (1968) to 28.9 percent.

For all defendants convicted after trial, the table shows a substantial increase in the percentage of those so convicted taking an appeal to the Court of Appeals. In 1950, less than 1 defendant out of 5 (18.3 percent) convicted by trial raised an appeal.[7] This percentage declined 5 points in 1951 but then almost doubled to 24.9 percent in the following year. By 1960, the percentage slightly exceeded 36 percent. Following a one-year decline in 1961, 1962 saw the percentage go above 40 percent for the first time. In 1963, the rate increased once again to 69.4 percent. In 1964, it surpassed 80 percent for the first time and by 1966 it reached its peak of 92.6 percent.

In the two years since 1966, the rate has declined. It dropped, slightly, to 89.1 percent in 1967 and then declined to 81.3 percent in 1968. Whether this is the beginning of a long-term trend, minor fluctuation, or an artifact of the data cannot be determined at this point. Each of these is a possibility.

In sum these figures on criminal appeals indicate the importance of and the trends for three variables which are related to the absolute numbers of criminal appeals. These variables and trends are as follows:

VARIABLE 1. THE ABSOLUTE NUMBER OF DEFENDANTS CONVICTED IN U.S. DISTRICT COURT

Trend.—Down approximately 150 defendants since 1950, but up to 1,378 defendants in 1968—an increase of more than 600 as compared to the low year of 1967.

[7] In calculating the rate of appeal, what appears to be the usual practice has been followed—the rate has been determined in the following way: number of appeals commenced in a year was divided by the number of defendants found guilty in District Court in that same year. There is an unknown amount of error in this method since it is not based on a case for case count.

VARIABLE 2. THE PERCENTAGE OF DEFENDANTS CONVICTED FOLLOWING TRIAL IN U.S. DISTRICT COURT

Trend.—In general, since 1962 more than 30 percent have been convicted following trial.

VARIABLE 3. THE PERCENTAGE RATE OF APPEALS COMMENCED

Trend.—This percentage has increased substantially since 1950 (from 18.3 percent to 81.3 percent in 1968), but is down since the peak percentage of 92.6 in 1966.

Overall, since 1950 the most significant factor affecting the number of appeals commenced in the U.S. Court of Appeals has been number 3—the rate of appeal. The percentage of those convicted following trial (#2) has had some minor impact over the years. The absolute number convicted in U.S. District Court (#1) had its most recent substantial effect in 1968. Recent reforms in District Court are likely to increase this total. It is possible that any such increase will offset the effect of any further decline in the rate of appeal.

Terminations

In 1968, 744 cases were terminated by the Court of Appeals. Of this number 233 were criminal cases and the remainder (511) were civil (non-criminal) cases. Table IV shows that all terminations have increased by more than 300 cases over the 1950 figure of 432, an increase of 72 percent; however, this is less than the increase in filings which were up 118 percent in the same period. Much of this gap is the result of the sudden and substantial increase in filings in the court in 1968, a point noted earlier in the data on filings. For example, when the same comparison of total increase is made on the basis of 1950 to 1967 figures, they show an increase in filings of 84 percent as compared to an increase in terminations of 73 percent.

As the data on filings might have suggested, much of the increase in terminations is accounted for by the added load of criminal appeals. Since 1950, the table shows that criminal terminations were up almost five-fold from 50 criminal cases in 1950 to 233 cases in 1968. In the same period civil cases increased by 129 cases, from a total of 382 cases to a total of 511 cases.

The data in the table show that the pattern of terminations has also changed. The change is similar to the change in distribution noted in filings. In 1950, the court was a civil court—88.4 percent of the terminations were civil cases and 11.6 percent were terminations of criminal cases—a ratio of approximately eight to one. By 1965, the ratio was down to approximately two to one—65.4 percent civil terminations to 34.6 percent criminal terminations. In 1968, the percentage of civil terminations was up slightly over 1965. In 1968, 68.7 percent of all terminations were civil and 31.3 percent were terminations of criminal cases.

Data for 1969 reveal that terminations increased 20.4 percent over the 1968 total—from 744 to 896. The increase is almost completely accounted for by terminations on the criminal side. These terminations increased 57 percent over the 1968 figure. They were up to 366 from the 1968 figure of 233—an absolute increase of 133 cases. The increase in civil terminations, on the other hand, was negligible. Such termina-

tions increased by 5.7 percent (29 cases) from 511 cases in 1968 to 530 cases in 1969. As a result of this differential rate of increase in terminations, the 1969 data also show that slightly over 40 percent of all terminations were accounted for by criminal cases—close to the filing figure for 1969 of just over 45 percent.

Table V shows terminations by the nature of the proceedings for 1968. The upper half of the table shows that of total terminations, next to criminal, the largest group is private civil cases (24.9 percent). U.S. civil cases constitute slightly more than one-fifth (22.4 percent) of all terminations and administrative appeals are approximately one-sixth (16.5 percent) of the total number. The remaining categories (Bankruptcy, D.C. Court of Appeals and Original Proceedings) constitute just under 5 percent of the total terminations.

The lower half of the table shows the percentages for non-criminal cases only. These figures show that private civil cases amount to slightly more than a third of the non-criminal terminations (36.2 percent) and cases where the U.S. is a party are slightly less than a third (32.7 percent). Administrative appeals total just under one-quarter and all other cases amount to less than one-twelfth (7 percent) of the total non-criminal terminations. In other words, more than 90 percent of the non-criminal terminations in 1968 are accounted for by private and U.S. civil cases plus administrative appeals.

Table VI shows the distribution of terminations by nature of proceedings since 1950. These data show quite clearly that the "minor" categories of Bankruptcy, D.C. Court of Appeals and Original Proceedings have never constituted a large proportion of the appeals caseload, at least in terms of numbers of cases. The peak year for these categories was 1954 when Original Proceedings amounted to 10.9 percent of total terminations.

The table shows that U.S. civil cases have approximately doubled in number since 1950 when 87 such cases were terminated by the court as compared to the 167 terminated in 1968. As a percentage of total terminations, however, U.S. civil cases are about where they were in 1950. In that year they amounted to 20.1 percent of the terminations, about 2 percent less than the 1968 figure. The peak figure for these cases was reached in 1958 when they accounted for 33.7 percent of the terminations. Since that time, with some fluctuation, they have declined.

The number of private civil terminations has increased very little since 1950. The total in 1950 was 156 cases as compared to the 1968 total of 185 terminations, a difference of 29 cases. As a consequence of this relatively small increase, private civil cases contribute an increasingly smaller percentage of total terminations. In 1950, these cases were at their height and 36.1 percent of the Court's terminations were in this area. They remained above 30 percent in 1951 and 1952 but in the 16 years since then they have reached this level only twice (1960 and 1961). As pointed out above, in 1968 they constituted 24.9 percent of all terminations, slightly more than 11 percent under the 1950 figure.

The number of Administrative Appeals terminated has increased slightly less than 50 percent in the period from 1950 to 1968. In 1950 84 such cases were terminated compared to 123 in 1968 (a difference

of 39 cases). As a proportion of total terminations, they have declined slightly since 1950, when they amounted to 19.4 percent of the total—a decline just shy of 3 percent. As a proportion of total terminations, this category reached its zenith in 1963 and has declined in a rather constant fashion since that year to its 1968 level of 16.5 percent.

In terminating cases, the court can either hear a case out in full, or it may dispose of a case without hearing it in full. In a gross fashion, one can treat the rate of termination of appeals without hearing or submission as being very roughly analogous to the termination of cases in a trial court short of a full-fledged trial by judge or jury. This is particularly true of cases dismissed by the parties. However, in addition to cases where parties move to stop an appeal short, the court on its initiative may stop a case short of full hearing or submission. It should also be noted that in accounting for the court's workload another method of terminating a case short of hearing is included—two or more cases may be consolidated and in effect or fact the court hears them as one to dispose of them. If, for example, three cases are consolidated, one would be counted as having been disposed of after hearing or submission and two would not be.[8] Following AOC practice, consolidated cases are included in the figures for cases terminated without hearing or submission in the tables on terminations. It is a sizeable number. For example, of the 744 cases terminated in the D.C. Circuit in 1968, 106, or 14.2 percent, were disposed of by consolidation.

Table VII shows that in 1968 the court disposed of 47.3 percent of its cases without hearing or submission and 52.7 percent of its cases after hearing or submission. These figures were very close to those for 1950 when, respectively, the percentages were 44.4 and 55.5. Over the years shown, however, there have been some substantial differences. From 1950 to 1958 there was a general decline in the percentage of cases disposed of without hearing or submission. The low point in the series was reached in 1958 when 26.1 percent of the cases were terminated in this way.

From 1958 to 1963 the trend reversed and this percentage climbed. By 1960, a third of the cases were disposed of without hearing or submission. By 1963, a peak of 45.5 percent was reached—a figure which slightly exceeded the 1950 figure.

From 1963 through 1966, the percentage of cases terminated without hearing or submission once again declined. By 1966 the figure was down to 41.7 percent. Each year since 1966 the figure has increased. In 1967, it increased to 44.6 percent. In 1968, it went up approximately 3 points to 47.3 percent. AOC figures for 1969 indicated it increased once again to 48.8 percent. However, it should be kept in mind that the total load of the court has increased substantially over this period as noted earlier. Thus, though the court is now disposing of a slightly smaller percentage of cases after hearing or submission, in absolute numbers more cases were terminated after hearing or submission in 1968 (392) than in 1950 (240).

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[8] For example, in a criminal case with multiple defendants in the trial court each defendant files an appeal. In turn, the appeals court may and quite regularly does consolidate such cases. The court may also consolidate on a point of law at the request of counsel.

The comparable percentages (shown separately in Table VII) for criminal and non-criminal cases indicate a somewhat different pattern for each. In 1968, 39.4 percent of the criminal cases were terminated without hearing or submission compared to 50.9 percent of the civil cases; whereas in 1950 the comparable figure was 66 percent for criminal cases and 41.6 percent for civil cases. Thus, the overall trend is to hear a greater percentage of the criminal cases and a smaller percentage of civil cases. (The 1969 figures from the Administrative Office of the Courts of 48.8 percent for criminal cases and 54.2 percent for civil cases continued this trend.)

It should be noted that the 1950 figure of 66 percent for disposal of criminal cases without hearing or submission is the high point in this series. There was a sharp drop to 36.8 percent in 1951 followed by increases in 1952 and 1953. The low point in the series was reached in 1958 when 21.2 percent of the criminal cases were disposed of without hearing or submission. In 1959 the percentage increased to 30.3 percent followed again by a short-term decline in 1960 and 1961. Since 1961, the general trend has been up and each year since then (with one exception—1963) the percentage of criminal cases disposed of without hearing or submission has increased.

On the civil side, the percentage of cases terminated without hearing or submission alternated regularly (up one year—down the next) from 1950 to 1958. The latter year was the low point for the court as well as the low point for criminal cases. It was also the low point for civil cases. From the low of 27.3 percent in 1958, the percentage of civil cases terminated without hearing or submission then climbed to its pre-1969 high of 51.8 percent in 1963. The civil percentage then hovered around the 50 percent mark (excepting 1966) through 1968, showing a very slight upward trend.

These percentages, along with the actual numbers shown, demonstrate how the court has absorbed a portion of its increased load since 1950. First, it has simply increased its productivity and terminated more cases and this appears to be the most significant factor. It has terminated more cases after hearing or submission and has terminated more without hearing or submission. By 1968, the former was up 63 percent over 1950 and the latter was up 78.1 percent over the same year. As these figures would suggest and as the percentage breakdown for all terminations in the table show, the Court has (since 1950 and generally since 1958) been increasing the percentage of cases it terminates without hearing or submission. To the extent that terminating cases in this fashion takes less resources, it serves as a means for increasing overall court output. As between the general categories of cases set out in the table (criminal vs. non-criminal) the court has reallocted its resources to some extent. It terminates a larger percentage of criminal cases after hearing or submission as compared to 1950, while on the civil side a smaller percentage of cases are terminated after hearing or submission.

The general data on terminations are further refined in Table VIII which adds the breakdown of non-criminal cases by major type to the data already presented on criminal cases. The data show the percentages of U.S. Civil, Private Civil, Administrative Appeals, and others terminated without and after hearing or submission.

The percentages for Private Civil and Administrative Appeals show that there has been a sizeable increase in the percentage of such cases terminated without hearing or submission. In 1950, 27.6 percent of the Private Civil cases were terminated without hearing or submission, whereas in 1968, 49.2 percent of these cases were terminated in this fashion. It is interesting to note that this is the only major category of court cases in which fewer cases were heard or submitted in 1968 (94) than in 1950 (113). As the data make evident, the change of percentages for this category of cases is substantial and of a long run character. Since 1959, when 16.8 percent of the Private Civil cases were terminated without hearing or submission, the percentage has generally increased. Contrast this to the pre-1959 pattern, when there was a mild decrease in the percentage of Private Civil cases terminated without hearing or submission.

The trend for Administrative Appeals for the last 10 years or so is similar to the one for Private Civil cases, though it has not been as steep for Administrative cases. In 1958, 34.7 percent of the Administrative Appeals were terminated without hearing or submission. By 1965, the percentage was up to 61 percent and each of the intervening years showed some increase. In 1966, the percentage dropped almost 13 points to 48.3 percent; however, it increased again in 1967 to 54.3 percent and in 1968 remained at approximately the same level. Last, it should be noted that in general a larger percentage of Administrative Appeals are terimnated without hearing or submission than is the case for the other 3 major categories of appeals—Criminal, U.S. Civil and Private Civil. Since 1954, in only one year (1956) has this not been the case.

As is the case for Private Civil cases, the numerical increase in Administrative Appeals (as the percentages cited suggest) has been absorbed in the category of terminations without hearing or submission. Though the total number of Administrative Appeals between 1950 and 1968 increased by slightly more than 46 percent, the court terminated only one more such case after hearing or submission in 1968 than it did in 1950 (56 and 55 cases respectively).

As is the case for Private Civil and Administrative Appeals, a larger percentage of U.S. Civil cases are terminated without hearing or submission in 1968 than was the case in 1950. For U.S. Civil cases, however, the change is a relatively small one of approximately 5 points—going from 44.8 percent in 1950 to 49.7 percent in 1968. From 1950 to 1954, there was a rather sharp decline in the percentage of these cases terminated without hearing or submission. From this low point (19.3 percent), there has been an overall upward trend—excepting the occasional yearly declines.

The miscellany of remaining cases terminated by the court is included in the "All Other" category. Unlike the other categories of non-criminal cases, the percentage of cases in this group terminated without hearing or submission has declined on an overall basis since 1950. However, similar to the other categories, the figures show a decline before the late fifties and an overall upward trend since 1959. But the interpretation must be a guarded one since the number of cases in a given year is ofttimes too small to work with and the mix of cases varies from year to year.

In summary, the following can be said:

1. Since 1950, the trend has been in the direction of terminating a larger percentage of all cases without hearing or submission. This general trend breaks down into two rather distinct periods. From 1950 to 1958, the percentage of cases terminated without hearing or submission declined. Since 1958 the trend has been in the opposite direction—up. Since 1966, the trend through 1969 appears to be taking a slightly sharper turn upwards.

2. Both in terms of numbers of cases and changes in percentages the largest shift since 1950 has been in the termination of criminal cases. If, however, 1950 is excluded, the shift in percentage is much less dramatic, though still there. Again, the overall trend in the percentages has two rather distinct periods. From 1950 to 1958, the percentage of criminal cases terminated without hearing or submission showed a general decline, while since that year there has been a general increase.

As the earlier figures on the overall shift in the load of the court would suggest, the numerical increases for criminal cases exceed those of each of the other categories. For example, since 1950, the number of criminal cases terminated without hearing or submission has almost tripled whereas each of the other categories has slightly more than doubled. To state it another way, since 1950 there has been a gross increase of 171 cases and a net increase of 152 cases terminated after hearing or submission. (The number of Private Civil cases in this category decreased by 19 since 1950.) Over the same period of time, there has been an increase of 124 in the number of criminal cases terminated after hearing or submission.

3. There has been a sizeable increase in the percentage of Administrative Appeals terminated without hearing or submission since 1950. Starting in 1954, the percentage of these cases terminated in this way exceeded the percentages for every other major category of appeals. Again, the upward trend has two periods (though less distinct)—a fluctuating decline from 1950 to 1954 and a relatively sharp increase from 1954 to 1968, modified somewhat since 1966.

4. The percentage of Private Civil cases terminated without hearing or submission has also increased substantially to the point where the absolute number of cases terminated after hearing or submission has declined since 1950. This is in the face of an increase in the total number of Private Civil appeals filed. Again the time span has two periods—a moderate decline in the percentage of cases terminated without hearing or submission from 1950 to 1959 and an increase from 1959 through 1968.

5. The patterns noted above are also generally true of U.S. Civil cases. Since 1950, there has been an overall increase shown in cases terminated without hearing or submission. Second, the overall trend has two periods—a decline in the percentage of cases terminated in this fashion from 1950 to 1954 and an increase since that year.

6. Numerically, the court has increased its productivity in cases terminated by splitting the increased numbers almost equally between termination categories. Overall, in 1968, the court terminated 312 more cases than it did in 1950 (an increase of 72.2 percent). The number of cases terminated without hearing or submission increased by 160, and the number terminated after hearing or submission increased by 152

cases. However, relatively, the former represents a considerably larger increase than the latter (83.3 percent to 63.3 percent).

Time Taken To Process Cases

Table IX shows that in the face of a substantial increase in its caseload since 1950 the court has reduced the amount of time it takes to process its cases. (The figures relate only to cases terminated after hearing or submission. No figures have been computed for cases terminated without hearing or submission.) The median time in 1950 from the time a complete record was received in the court to final disposition was 11.2 months. This figure means that 50 percent of the cases took less than this time, while the remaining 50 percent of the cases took more than this time. The table shows that by 1968 the median time was down to 7.2 months. However, recently available figures for 1969 show that the median is now up to 8.8 months—higher than 1968, but still below the 1950 figure.

This overall downward trend since 1950 is, however, made up of two rather distinct major periods—a fact that has been pointed out in connection with several other sets of data. The figures for complete record to final disposition show there was a decline in the median time from the peak figure of 1950 to a low figure of 6.3 months in 1959. Median time was up to 6.5 months in 1961 and has shown some tendency to rise since that year—though the rise has been marked by alternate year declines in 1964, 1966 and 1968. The 1969 increase (noted above) fitted the pattern of the post-1959 trend upward.

It is important to note that the general outlines of the above trend remains, even if the more conservative figure for 1954 is chosen as the base year for analysis. If 1954 is chosen as the base year, then the only change in what is stated is that the median of 8.8 months for 1969 exceeds the figure of 8.3 for 1954.

The other columns in the table show the median times for the major steps in processing an appeal that fall between the filing of a complete record and a final disposition of the case. In 1968 the median times for the steps were: 3.2 months from complete record to last brief; 1.3 months from last brief to hearing or submission; and, 1.6 months from hearing or submission to decision or final order. (The figures, respectively, for 1969 are: 3.5 months; 1.7 months; and, 2.3 months—each up over 1968, but at or below the 1950 figures.)

The time from complete record to last brief is essentially "attorney time," though the court can influence its length by granting or not granting extensions to the parties involved. The median times for this step show a pattern similar to that of the overall time for processing a case. The time is down from 4.4 months in 1950 to 3.2 months in 1968 (and 3.5 months in 1969). There are again two rather distinct periods in this overall trend. From 1950 to 1961, there was a general decline, marked by a rather stable period in the early years (1950 to 1955). The 1962 median time was 3.3 months—the same as 1961. Since 1962, there has been a very moderate increase in the median time for this step—interrupted by the unusual peak of 5.4 months in 1963. However, perhaps this post-1962 period is best thought of as stable, since the median time from complete record to last brief appears to stay very close to a figure of roughly 3.5 months during these years.

Last brief to hearing or submission could perhaps best be thought of as "Court time." Once the attorneys have filed their briefs, the case clearly is the court's responsibility and it must be scheduled on the calendar for whatever type of processing the court feels the case merits. The court can increase or decrease the length of time it takes from brief to hearing or submission. It can increase or decrease the length of this interval by granting or denying extensions of time for the filing briefs. Thus, if it has no room on its calendar, this span of time from last brief to hearing or submission can be maintained as a short interval by simply giving over more time to attorneys. This reduces the number of cases likely to be ready for hearing or submission, thereby changing the time interval for the period. In other words, the court can stack its cases in the earlier stage (complete record to last brief). One must, therefore, be cautious in the interpretation of figures for this stage (last brief to hearing or submission) of the appellate process.

As already noted, the median time from last brief to hearing or submission was 1.3 months in 1968—up to 1.7 months in 1969. Both of these figures are below the peak figure of 2.3 months for 1950. Again, the overall trend shows a decrease since 1950 and, once again, the overall trend has two periods—though a bit less distinguishable than in other data. From 1950 to 1962, there was a slow, if variable, decline to a low of .7 months in this latter year. The median time started the climb again in 1963 and 1964. It dropped again over the years to .9 months in 1966 and started upwards again in 1967, 1968 and 1969. These fluctuations aside, the post-1962 period shows a slight trend upward, just as the overall data on time showed.

The last stage of the appellate process for which time intervals are shown is from hearing or submission to decision or final order. This might best be thought of as "judge time," for it is in this stage that panel decisions are made and opinions written. In 1968, the median time for this stage was 1.6 months. (The 1969 figure is 2.3 months.) Again, these figures (1969 aside) show a decrease from 1950 to 1968. (Though the 1969 interval is the same as the 1950 figure, it is less than the 1951 peak in the series of 3.0 months.) This series is also split into two periods, breaking at the low point of .9 months in 1959. Before 1959 there was a fluctuating decrease in the median time and since 1959 there has been a fluctuating and moderate increase in the median time.

In considering median times for cases, it is important to recognize that the overall median can be affected by the mix of cases, even if the Court's level of productivity does not change. Different types of cases take differing amounts of time. A special analysis for 1969 makes this clear. The overall median (from complete record to final disposition) for that year was 8.8 months in the District of Columbia Circuit. Administrative appeals had a median time of 10.2 months, civil cases a median of 9.5 months and criminal cases a median of 7.2 months.

Two other sets of time intervals are shown in the table. The first is from notice of appeal in the lower court to complete record in the appeals court and the second is median time from docketing in the lower court to final disposition in the appeals court. The intervals for civil and criminal cases are shown separately.

The time from notice of appeal in the lower court to complete record in the appeals court can, perhaps, best be thought of as "court reporter time." It is during this period that the reporter must transcribe the trial record. This is part of the process carried out by the lower court in providing the appeals court with a complete record.

The data available for this part of the pre-appeals stage started in 1961. The data show that since 1961 the median time for preparing the civil record has been virtually stable at 1.3 months. (The figure for 1969 is also 1.3 months.)

The median for criminal cases, on the other hand, shows considerable fluctuation over the years. In 1961, 1962 and 1963, it took no longer to process criminal cases than civil cases. The median time for both was 1.3 months. The time for criminal cases then dropped sharply for the next two years to .6 month. Starting in 1966, the trend is up. By 1968, the median time for criminal cases from notice of appeal in the lower court to filing the complete record in the appeals court was up to 3.4 months and in 1969 it rose to 4.2 months.

The last set of figures for time intervals is included in the table to place the appeals figures for the District of Columbia in a larger perspective. Docketing in the lower court to final disposition in the appeals court includes all the times cited above plus the time it takes the lower court to process cases. When the annual medians for this period are compared with the annual medians for the appeals process (complete record to final disposition), it is evident that the lower court process absorbs the bulk of the time in cases, as measured by the median.

In summary then, the data on time for processing cases show the following:

1. From 1950 to 1968, the overall median time required to process a case in the appeals court from filing of the complete record to final disposition declined from 11.2 to 7.2 months. However, since 1959 the median time from complete record to final disposition has increased. In 1969, the median time increased once again to 8.8 months.

2. The median times from complete record to last brief, last brief to hearing or submission, and hearing or submission to decision or final order showed patterns similar to those outlined above for the overall processing time—down from 1950 to 1968, but increasing since the late fifties or early sixties. They also showed increases for 1969—in line with the more recent trend.

3. The median time from notice of appeal in the lower court to complete record in the appeals court has been virtually stable at 1.3 months for civil cases, but since 1965, the median time for criminal cases has increased and was 3.4 months in 1968 and 4.2 months in 1969.

4. Analysis of 1969 data showed that the median time for processing administrative, civil and criminal cases differs. In general, at each stage of the appeals process administrative cases take the most time and criminal cases the least. This suggests that, all other things equal, a change in the mix of cases will change the median time for all cases.

RECOMMENDATIONS

1. It is recommended that the Court stiffen its policy toward the granting of extensions in the filing of briefs. Although no detailed

analysis was done, it is our understanding that such extensions are granted routinely. A stiffer policy will have the effect of moving cases along more quickly to any point of overload in the system. Thus, it is quite conceivable that under such a policy, all other things equal, "attorney time" will be shortened, while the time from last brief to hearing or submission will increase. This will serve to give the court a more precise view of where the problems are and, thereby, increase the efficacy of actions taken to better order its business.

2. It is recommended that the Court of Appeals require, at least monthly, a report on the status of cases from all court reporters employed in the lower court as means of exercising operator control over the preparation of records for cases on appeal. Aside from the necessary identifying information on the case, the report should indicate, at a minimum, the name of the reporter; the estimated length of the transcript (in pages); the number of pages, if any, already transcribed; the estimated date of completion; the date of the notice of appeal. (The reporting record now used in the Court of General Sessions may provide a useful example. See Appendix II–3 for sample.)

3. It is recommended that all discretionary grants of time to judges not now granted by the Chief Judge or reported to him be reported to him routinely in the future as they occur. For example, the Chief Judge should be notified of any time extension for the preparation of opinions requested by a member judge of a panel. He should also be notified, routinely, of time requests made by judges as they examine and correct the printer's proof of opinions.

4. As part of both its control system and its administrative operations, standard page formats should be set for transcripts specifying margins, spacing, and any other specifications deemed appropriate and necessary. In effect, a manual of style should be prepared. This will serve to ease the problem of estimating length of transcripts and will serve to equalize payments to court reporters for transcription for the performance of equal work. In addition, a standard format should assist on the business side of the court in such matters as estimating costs and budget planning. The same standard page format or a similar format might also be used for reporters in the U.S. District Court.

Cases Pending

As noted earlier, from 1950 to 1968, filings in the court increased 118 percent and terminations 72 percent. Over this same span, the number of cases pending in the court increased from 371 at the end of 1950 to 711 at the end of fiscal 1968. This is an increase of 92 percent. The figures for 1969 showed pending cases were up 26 percent above the 1968 total to 909 cases, while terminations increased by 20 percent.

Of the 711 cases pending in 1968, 331 (46 percent) were criminal cases and 380 (53.4 percent) were civil (non-criminal) cases. In 1969, slightly less than 51 percent of the cases pending were criminal cases.

The figures on pending cases from 1950 to 1968 are shown in Table X. As the data show, from 1950 to 1958 the total number of pending cases showed a downward trend. From the low of 249 in 1958, the total for pending cases started its upward climb. The increases from 1958 through 1961 were relatively small; however, the increase in 1962

was 31 percent and it put the total number of cases above 300 (344) for the first time since 1957. In 1963 the total went over 400 for the first time as a result of a 36 percent increase to 469 cases. In 1964, the total rose slightly to 491 cases. The next two years (1965 and 1966) the totals remained relatively stable and below the 1964 figure. In 1967, there was a moderate increase of 11 percent to 510 cases, followed by the largest percentage increase in this series of 39 percent in 1968. (As already noted, 1969 was marked by an increase of 26 percent.)

The above figures make it evident that the bulk of the increase in the number of pending cases has occurred in the last two years—1968 and 1969. These two dramatic increases aside, the increase in the absoutle number of pending cases from 1950 through 1967 may be misleading. Though the number of pending cases obviously increased over this period, the relative position of the court vis-a-vis its pending file remained much the same. This fact bceomes evident when it is remembered that over the same time period the court showed a substantial increase in the number of cases it terminated. In effect, the court increased its capacity to absorb an increased number of pending cases by increasing its productivity.

The point is perhaps made sharper if the number of cases pending in a given year is compared to the number terminated in that same year. First, in the instance of this court (prior to 1969), the number of cases pending was always less than the number terminated in that year, even though the number pending generally increased from 1950 through 1968. (In 1969, terminations and number pending were approximately equal.)

Second, and even more significant in our judgment, is the relative comparison between terminations and the number of cases pending. The relative measure employed in this analysis was the number of cases pending in a year as a percentage of the number terminated in that year. This measure showed that despite the increase in absolute numbers, the pending file in the court was relatively stable from 1950 through 1967. Roughly, no matter what the absolute numbers, the percentage was most frequently between 60 and 70 percent. In other words, through 1967, the court was not losing ground vis-a-vis the number of cases pending.

It is beyond question that the court lost substantial ground in 1968 and 1969. In these two years the relative measure increased to 96 percent in 1968 and to 101 percent in 1969, compared to 67 percent in 1967. However, it should be kept in mind that there were vacancies on the bench in these two years. In addition, as already noted, the increase in filings was very sharp and substantial in each of the years—not a gradual buildup which could be adjusted to slowly and with easy foresight.

The totals for criminal and non-criminal cases in Table X make it evident that the bulk of the pending load is accounted for by criminal

cases. Since 1950 the number of pending criminal cases increased by 257 cases from 74 cases in 1950 to 331 cases in 1968. Meanwhile, the net increase in civil cases for the period was 83 cases (297 cases in 1950 to 380 in 1968). The major increase on the criminal side occurred since 1961. In 1962, pending criminal cases increased by 61 percent followed by another increase of 51 percent in 1963. In 1964, there was another large increase of 54 percent. The next large increase was in 1968 when pending criminal cases increased by 92 percent—or, in other words, they almost doubled. (The 1969 increase was relatively small in comparison—it amounted to 39 percent.)

Although the increase for civil cases has been considerably less dramatic, it should be noted that numerically they outnumbered criminal cases through 1968. It was only in 1969 that the number of pending criminal cases exceeded the number of pending civil cases. This fact is reflected in the percentage shown in the table as to the division of the pending load in each year. From 1950 through 1963, pending civil cases outnumbered criminal cases 3 or 4 to 1. For the next three years, the ratio was 2 to 1 and in 1968 and 1969, it was approximately 1 to 1—half criminal, half civil.

The Table shows that pending civil cases decreased by over 30 percent between 1950 and 1958, then they started to climb rather steadily upwards. They increased by 16 percent in 1959. They then stayed stable through 1961. In 1962, they increased by 25 percent and in 1963 by 32 percent. They then declined through 1965 and started back up in 1966 with a small increase—as did criminal cases. In 1967, they increased by 12 percent and again by 12 percent in 1968. In 1969, pending civil cases increased once more by 18 percent.

But, Table XI shows that among the various types of non-criminal cases, each has not accumulated to the same extent. The number of pending U.S. civil cases, for example, declined by 22 cases (22 percent) between 1950 and 1968 and private civil cases showed an increase of 15 cases (13 percent). The number of pending administrative appeals, by contrast, increased from 58 cases in 1950 to 166 in 1968—an increase of 186 percent. The 1969 figures showed, however, that pending administrative appeals were down slightly to 163 cases, while the number of pending U.S. civil cases increased to 110 and the number of private cases to 158.

Age of Pending Cases

In order to determine more precisely what the figures on pending cases mean, an analysis of cases pending at the end of fiscal years 1968 and 1969 was undertaken. The cases were grouped by the month in which they were docketed in the court and aged from the end of the fiscal year. For example, a case docketed in June of the fiscal year was counted as being one month old. The data are presented in the following figures.

FIGURE 2. U.S. COURT OF APPEALS, D.C. CIRCUIT: PERCENTAGE OF CASES OLDER THAN A GIVEN AGE LEVEL
FISCAL YEARS 1968 & 1969

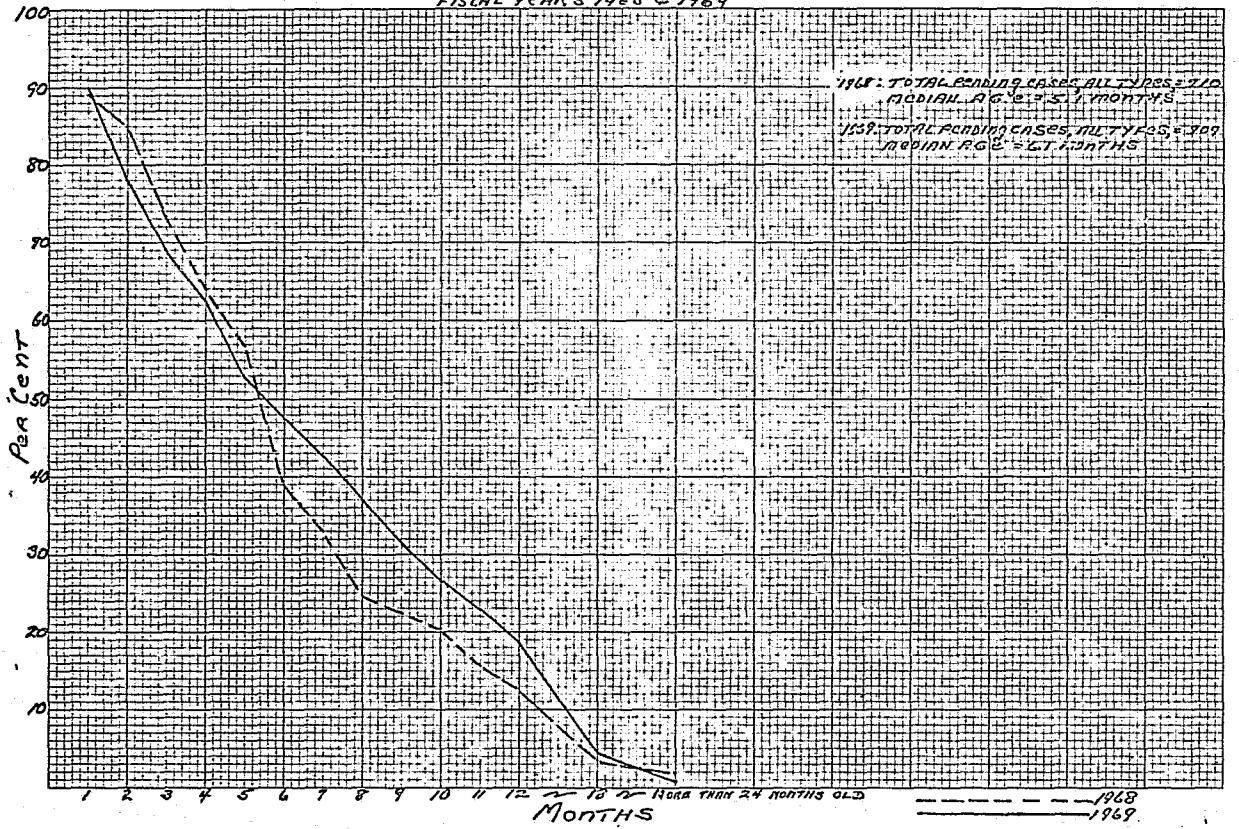


FIGURE 3. U.S. COURT OF APPEALS, D.C. CIRCUIT: PERCENTAGE OF CRIMINAL CASES OLDER THAN A GIVEN AGE LEVEL
FISCAL YEARS 1962 + 1969

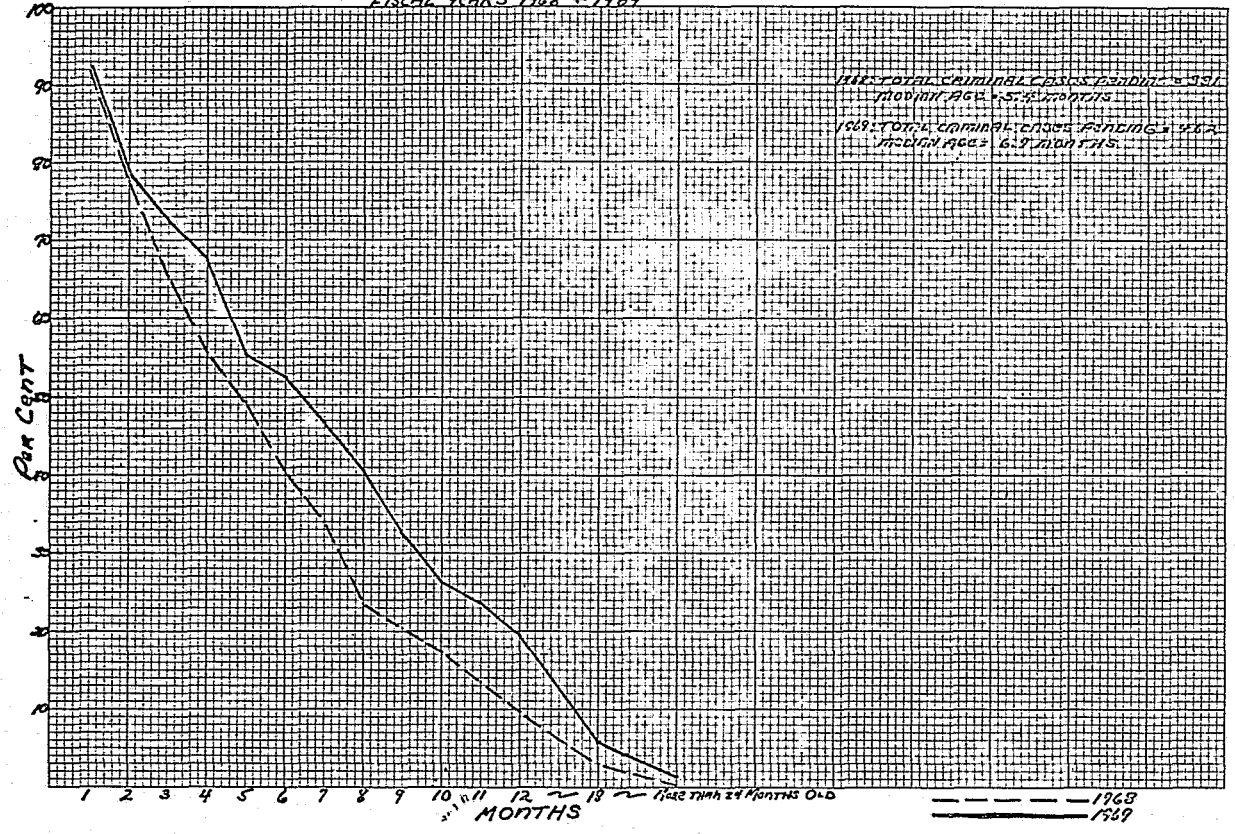


FIGURE 4. U.S. COURT OF APPEALS, D.C. CIRCUIT: PERCENTAGE OF U.S. CIVIL CASES OLDER THAN A GIVEN AGE LEVEL
FISCAL YEARS 1968 & 1969

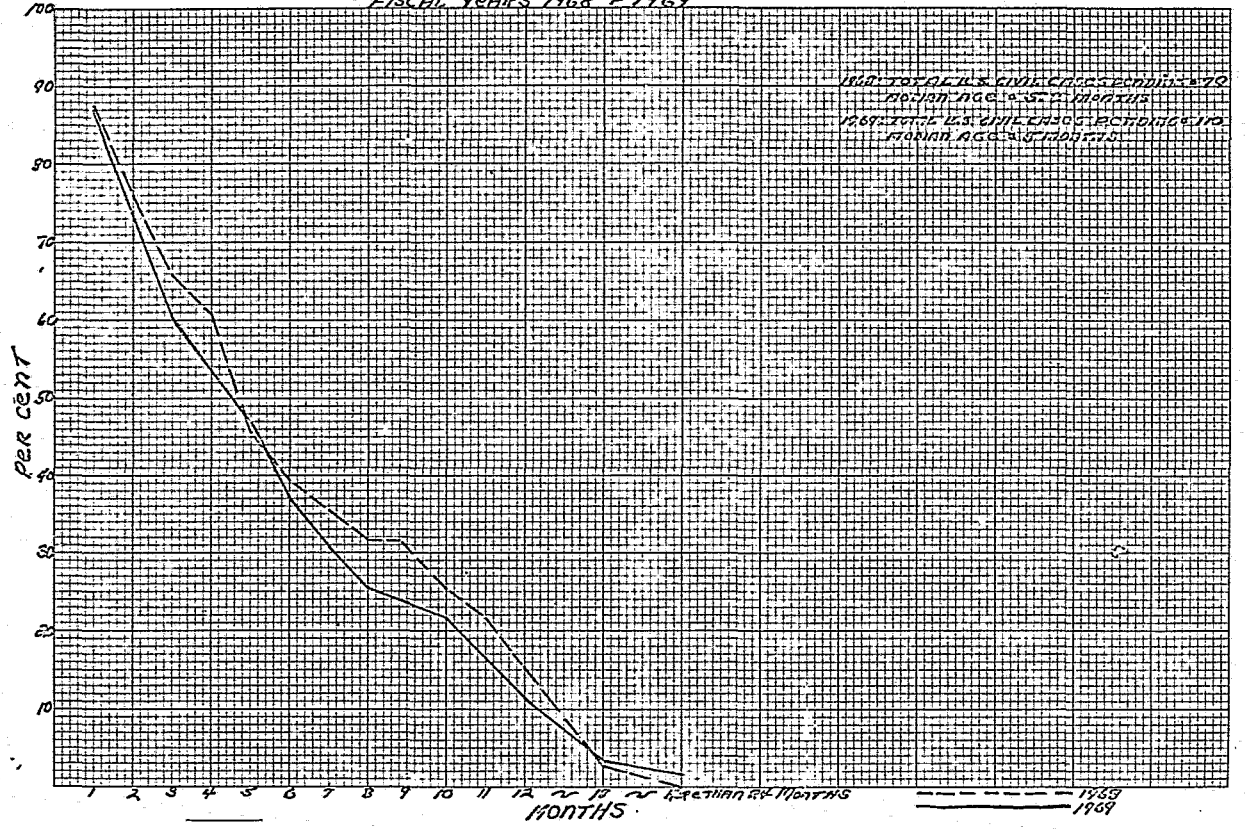


FIGURE 5. U.S. COURT OF APPEALS, D.C. CIRCUIT: PERCENTAGE OF ADMINISTRATIVE CASES OLDER THAN A GIVEN AGE LEVEL
FISCAL YEARS 1968 & 1969

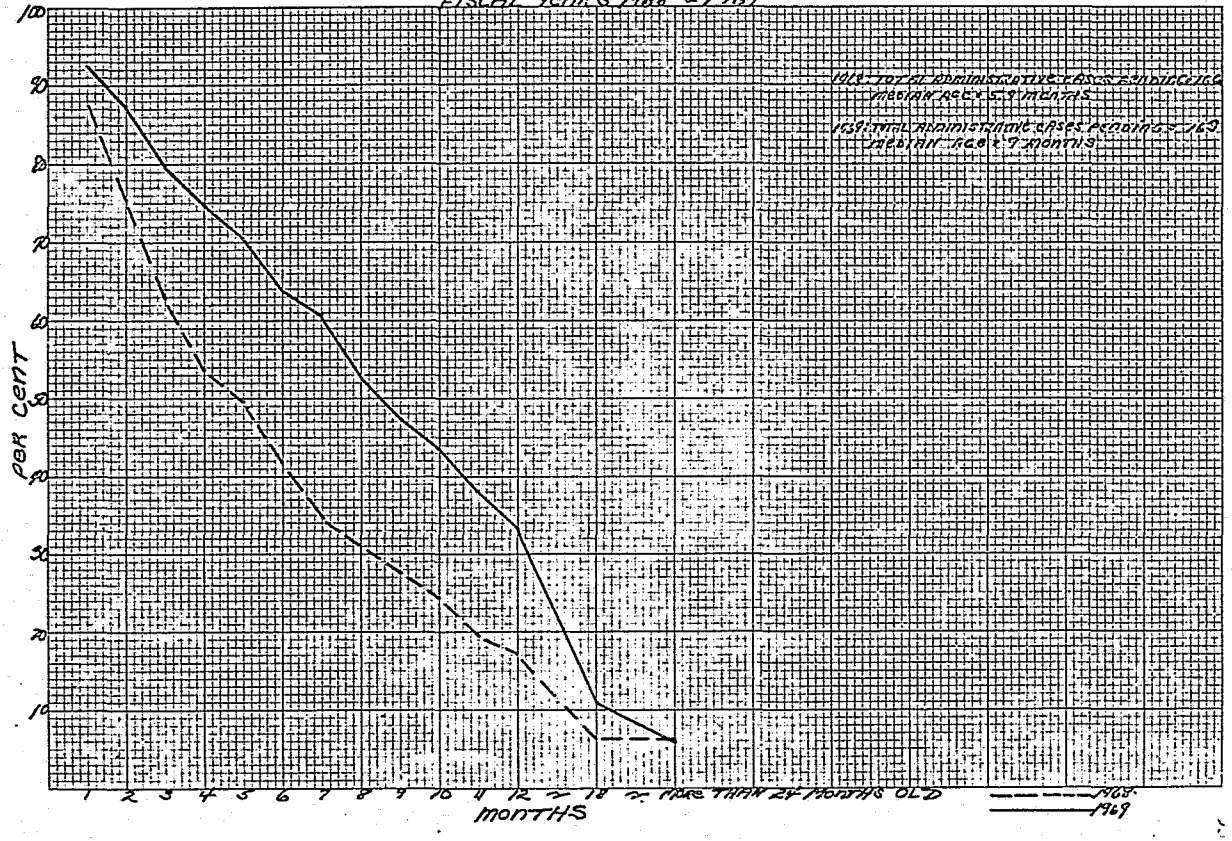
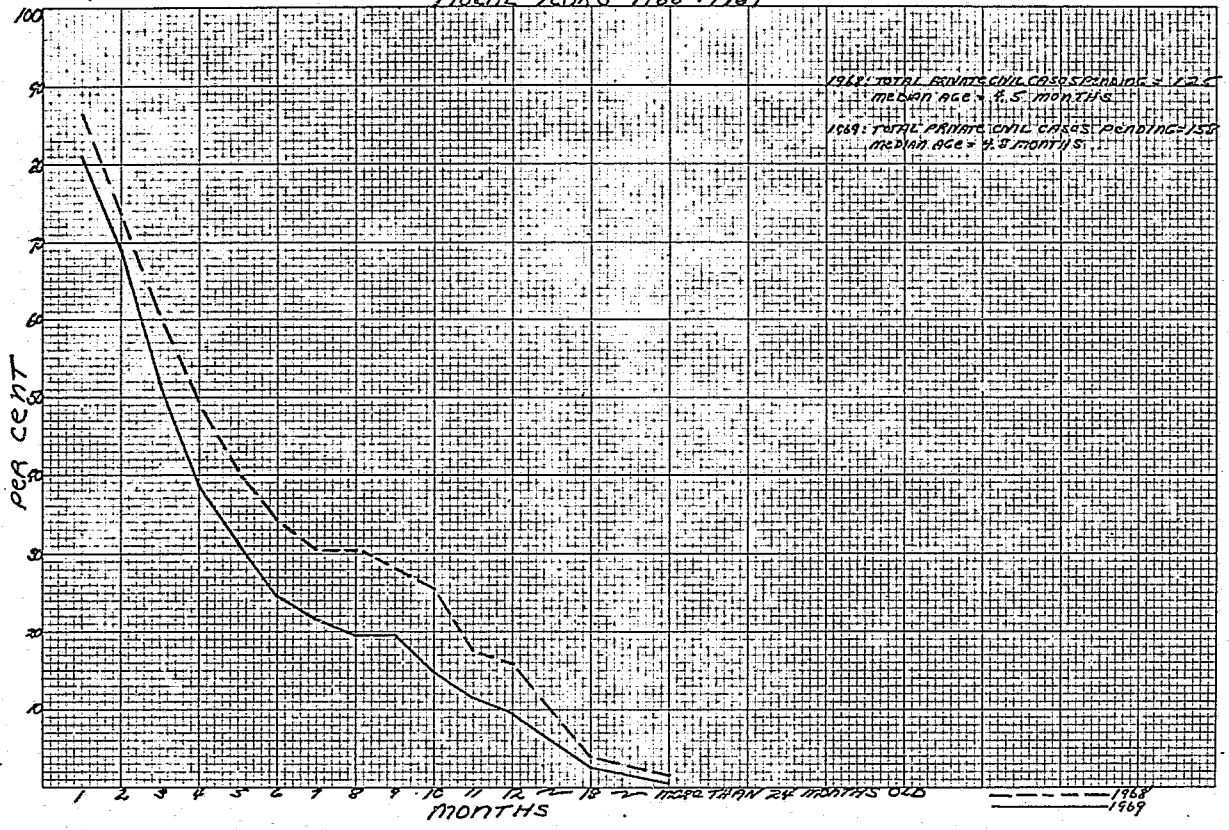


FIGURE 6. U.S. COURT OF APPEALS, D.C. CIRCUIT: PERCENTAGE OF PRIVATE CIVIL CASES OLDER THAN A GIVEN AGE LEVEL
FISCAL YEARS 1968 & 1969



The analysis showed that the median age for all pending cases was 5.1 months in 1968 and 6.1 months in 1969. In 1968, approximately 87 percent of the cases were 12 or fewer months old and in 1969, 81 percent were 12 or fewer months old. In each year, approximately 2 percent of the cases were more than 24 months old.[9] In each of the years, approximately one-third of the cases had been docketed in the last 3 months of the fiscal year.

By type of case, the data for 1968 showed that the median ages were as follows: Administrative cases 5.9 months; Criminal cases 5.4 months; U.S. Civil cases 5.2 months; and, Private Civil cases 4.5 months. In 1969, the comparable times were: 9 months; 6.9 months; 5 months; and, 4.8 months.

The 1969 data showed that 20 percent of the Administrative cases were filed in the last 3 months of the year, 67 percent were 12 or fewer months old and approximately 6 percent were more than 2 years old. In 1968, 37 percent were filed in the last 3 months of the year, 83 percent were 12 or fewer months old and 4 percent were more than 2 years old.

For criminal cases in 1968, 35 percent were filed in the last 3 months of the year, 90 percent were 12 or fewer months old and 1 case was more than 2 years old. In 1969, 28 percent were filed in the last 3 months of the year, 81 percent were 12 or fewer months old and 1 percent was more than 2 years old.

In 1968, 85 percent of the U.S. Civil cases were 12 or fewer months old and in 1969 the figure was 89 percent. Thirty-four percent of the cases were filed in the last 3 months in 1968 and 40 percent in 1969. In 1968, no cases were more than 2 years old and 1 case was that old in 1969.

For Private Civil cases in 1968, the data show that 39 percent were filed in the last 3 months, 84 percent were a year or less old and less than 2 percent (2 cases) were more than 2 years old. In 1969, 90 percent were a year or less old and 48 percent of the cases had been filed in the last 3 months of the year. One case was more than 2 years old.

In summary, the data showed the following:

1. From 1950 to 1968, the total number of pending cases increased by 92 percent.

2. The highest rates of increase occurred since 1961. In 3 years since 1961 (1962, 1963 and 1968), the rate of increase was more than 30 percent and most recently in 1969 there was a 26 percent increase.

3. The bulk of the numerical increase in pending cases is attributable to the increase in criminal cases. This figure rose from 74 cases in 1950 to 331 in 1968, while the number of pending civil cases rose from 297 to 380 in the same period.

4. Similar to the change in the mix of cases filed, by 1968 almost half of the pending cases were criminal cases and in 1969 they did exceed the 50-percent figure. This is a major change since 1950 when 80 percent of the pending cases were civil cases.

5. A breakdown of the pending non-criminal (civil) cases showed that the bulk of the increase in such cases between 1950 and 1968 was a result, mainly, of an increase in Administrative Appeals which

[9] Several of the oldest cases were checked. The check revealed that several had been cleared as of late calendar 1969.

almost tripled in this time. They increased from 58 cases in 1950 to 166 in 1968. Meanwhile, U.S. Civil cases declined and Private Civil cases went from 110 cases in 1950 to 125 in 1968. In 1969, U.S. and Private Civil cases increased, while the number of Administrative cases showed a very slight decrease.

6. An analysis of cases pending in 1968 and 1969 showed a tendency for the backlog to be aging slightly for these years. The median age for all cases was 5.1 months in 1968 and 6.1 months in 1969. Very few of the cases have remained on the docket for more than 2 years. Over 80 percent of the cases in each year are 12 months or less old—87 percent in 1968 and 81 percent in 1969. In general, the distributions for each of the four major types of cases (criminal, private civil, U.S. civil, administrative) were similar to the overall distribution of cases.

SPECIAL PROBLEMS

Appointment of Counsel

Aside from how the Court handles its cases, counsel plays a major role in moving cases along. Counsel cannot act, however, until he is given control of the case. Retained counsel settles this question of involvement with his client, but in the instance of appointed counsel a procedure must be established by the Court to bring counsel into the case. Clearly, a delay in the procedure prevents counsel's appearance on the scene and denies him the opportunity to take his share of the responsibility for seeing a case through with dispatch.

In this court the prompt appointment of counsel does not appear to be a problem. As soon as the case is docketed in the Court, any need for counsel is immediately noted and called to the Chief Judge's attention by the Clerk's Office. The Judge, in turn, then appoints counsel. Interviews with the personnel is involved and an examination of records indicates this is generally handled promptly and with minimal loss of time.

As noted earlier, the Court dockets on duplicate notice of appeal without waiting for the original record. This brings the case under the Court's control much sooner than would otherwise be the case. An analysis of 153 cases covering the first eight months of calendar 1969 shows that the median time difference saved by not waiting for the original record for docketing purposes was slightly more than 64 days. One of the reasons for choosing the early docketing date is to get counsel appointed as soon as possible in the face of this time lag.

There is, however, a problem of another order associated with the appointment of counsel for a case on appeal. A court can appoint the trial counsel on appeal, or a new attorney can be appointed. The question then arises as to whether new counsel or trial counsel will take longer to prepare the appeal and see it through. Generally, it is argued that appointing a new attorney on appeal level will lengthen the time taken for the appeal. The additional time, it is argued, will be needed by the new attorney to familiarize himself with the record of the case. He will have to search for points and develop his line of argument, all of which takes time.

On the other hand, it is claimed, the attorney who tried the case already knows what happened in the trial and the points on which

to appeal. In addition, it is argued, he has his own notes on the case. Thus, it is reasoned, unlike the new appointee, the trial attorney will not need a complete transcript; he will not have to start the process of becoming familiar with a case; and, he will already know the points on which to base an appeal. As a result, the line of reasoning asserts that an appeal taken by the trial attorney will take less time than one placed in the hands of a new attorney.

To test this proposition a set of cases covering the period from January to June, 1969, was examined. These were cases in which records were available on whether a new attorney was appointed or whether the trial attorney was appointed. Time intervals were then calculated for major steps in the appeals process. (See Table XII.)

The data are presented in Table XIII. They are very gross data in that the number of cases in which trial counsel was appointed is small. They, therefore, must be thought of as suggestive and must be treated in a cautious and tentative manner.

The suggestive point in these data is the median time shown from notice of appeal to filing of appellant's brief.[10] The latter point is the first major act by counsel on appeal that is recorded in the Court's records. A comparison of the times between trial counsel and new counsel shows that the median time for trial attorneys (209 days) is greater than that for new attorneys (156.7)—a finding contrary to the line of reasoning outlined above.

The question remains, however, how best to interpret these figures for, unfortunately, as noted above, the number of cases is too few to constitute an adequate test of the proposition. A preliminary survey of other circuits that touched on this problem only served to indicate there are, apparently, no numbers now available that can be brought to bear directly on this question.

The other circuits generally follow the policy of appointing trial counsel, but exceptions are allowed. The difficulty arises in that it is unknown how extensive the exceptions are.[11] However, given this difference in policy between D.C. and the other circuits, one gross comparison of some use can be made between the median time taken from complete record to the filing of the last brief for all cases in D.C. as compared to the other circuits. Seemingly, this is the period during which a switch in counsel would have a major impact according to the reasoning cited earlier. If the choice of type of counsel has a major bearing on the time taken to prepare a case, one might reasonably expect the D.C. figure to be higher.

The comparison showed that the D.C. median time for this period was higher than the all-circuit figure in just two out of the last 13 years for which data were available. In other words, from 1956 through 1969, the median time in D.C. from complete record to the filing of the last brief was less than or equal to the comparable median for all circuits, in all but two years. (As noted earlier, no such medians were

[10] A comparison of median times for several steps in the process, plus the overall median time would also be desirable. In addition, since complexity of the case might vary by type of crime, and therefore affect time, a more complete analysis should also include this variable. Neither factor could be dealt with effectively with the available data.

[11] This point is based on replies to written inquiries on this point. For example, one judge noted the general policy of the court was to appoint trial counsel. He then indicated the reasons for exceptions and further stated exceptions were not infrequent. Lack of data makes it impossible to determine the meaning of this statement and other similar statements.

recorded for 1958.) In the most recent years (1966–1969), when the large increases in the number of criminal cases in the D.C. Circuit occurred, the D.C. median time was less than the all-circuit median in 1966, 1967 and 1968 and in 1969, the two were equal.

As noted earlier in the discussion of time taken to process a case, a special analysis of time intervals for cases terminated after hearing or submission in 1969 was undertaken by the staff. In this analysis medians were prepared by type of case for each of the circuits. This analysis showed that for criminal cases the median time in the D.C. Circuit from complete record to last brief was 3.4 months. Although this time span involves more than just the work of the appellant's attorney, it is reasonable to argue that any sizeable delay by newly appointed counsel should increase the length of this period.

No trend data are available, but a comparison can be made between the D.C. median time and the median time taken in each of the other circuits. As a second choice, the comparison does provide a standard for judgment. Also, it seems to be a reasonable comparison when it is kept in mind that the other circuits report that they usually appoint trial counsel and not new counsel on appeal. (See Table XIII–A.)

Overall, these data showed that the D.C. time of 3.4 months from complete record to last brief tied it for the 5th best time among the circuits. In other words, 4 other circuits had better median times and D.C. and the 8th Circuit tied for fifth place. The circuit times ranged from 1.1 months for the 42 criminal cases in the 3rd Circuit to 7.2 months for 72 criminal cases in the 7th Circuit. (The D.C. figure was for 216 cases.) The 4th Circuit had 265 cases and a median time of 3.2 months which give it a rank of 4, just ahead of the D.C. Circuit. The only other circuit with a volume of criminal cases roughly comparable to D.C. was the 9th Circuit with 231 cases. Its median time was 5.4 months which ranked it 10th among the circuits.

The interpretation of these data would seem to vary depending on the assumptions one is willing to make. If one assumes the volume of the criminal case load is not relevant, these data would seem to imply that the performance of the D.C. Circuit is about average as measured by its rank order among the circuits. This might then be interpreted as suggesting that the use of new counsel may slow the court in its work. This would appear to be the worse possible interpretation that could be placed on these data.

If the volume of the criminal load is considered, one might reach a different conclusion. In absolute terms, in 1969 these data show the D.C. Circuit with the third highest number of criminal cases among the circuits. In relative terms the D.C. Circuit has the highest load—47.1% of the cases it terminated after hearing on submission were criminal cases. If it is assumed that the volume of cases negatively affects the time required to process a case, then these data would seem to suggest that the D.C. Circuit does quite well. In turn, this would seem to suggest either: (1) use of new counsel on appeal has little or no effect; or (2) use of new counsel speeds up the processing of cases—at least from complete record to last brief.

Thus, the data seem to yield mixed results on the use of trial counsel compared to the use of new counsel on criminal appeals. One line of reasoning and a very negative interpretation of one set of data

suggest trial counsel used on appeal moves a case along more quickly. On the other hand, a special analysis of cases in the D.C. Circuit and other data suggest that use of new counsel on appeal either has no affect or moves the case more quickly.

Hindsight suggests that there may be reasons as to why new counsel could move an appeal more quickly. First, trial counsel may find his time heavily committed to trial work. Both as a matter of personal economics and personal preference, trial counsel may find appeals work a bother. Further, in the D.C. Circuit, agency lawyers are often used as new counsel on appeal. These people are experienced brief writers and they may also view appeals work as a welcome professional interlude. Further, they may only take a case at a time which would allow them to concentrate their efforts. The combination of these factors (those on trial counsel and those on new counsel) may result in new counsel on appeal moving cases along as quickly as, if not quicker than, trial counsel.

RECOMMENDATION

1. While neither these suggestions, nor the data clearly answer the question about the effect of counsel on time required to process a case, they do seem to raise serious questions as to how much advantage, if any, trial counsel has over new counsel. It is the staff's opinion that the data be treated (or questioned) on this point, for as noted, they are not sufficient nor, for the most part, direct enough to enable one to draw conclusions with confidence. Since the problem is a major one in the estimate of experienced people in the field, it is recommended that the needed data be gathered over time to examine this problem.

ADDENDUM

Last, it should be noted that no analysis of time differentials between trial counsel and new counsel will speak to the problem of competence of counsel. One of the issues associated with discussions of time as it relates to counsel is that of competence, though it is often not made explicit. Some argue that only the most competent counsel should be used on criminal appeals. Others seem to take the position that this is either not for the court to judge, or that the court's standards are unrealistically high in this regard. Whatever the merits of these respective positions, time analysis sheds no light on them. To do a complete analysis on the problem of type of counsel, both sets of questions—about time and competence—will have to be answered.

Reversals

Another facet of the Court's operation which is often cited in a critical vein is its reversal rate on cases, especially criminal cases. Although in the narrowest sense, this is not a management problem, in a broad and realistic sense it is very much part of the management of the Court of Appeals as an organization. The narrow view is recognized in that it is included under the heading of Special Problems.

In the broad sense, it deserves inclusion as a management problem since an organization is affected by the views of its various users and consumers just as such users and consumers are affected by the organization's operations. In modern management terms, the individuals

and groups who make up these users and consumers are often included as part of the organization when thinking of it and planning for it. They are at least, recognized as relevant for the organization's prospects, even when they are not given dominant positions.

Thus, this problem is included as a recognition that some consumers of the court's services see reversal rates as a problem. Since a broad view of management also suggests that what people see as a problem is one whether a narrow management logic dictates it or not, a discussion of reversal rates follows. The discussion is presented in the hope that a presentation of the facts and relative standards for evaluation will assist the court and its users in the management of its business in the broadest sense.

The data in Table XIV show the percentage of cases reversed, by type, since 1950. For example, the court reversed a total of 76 cases in 1968 and this constituted 19.4 percent of the cases terminated after hearing or submission in that year. (In all, 392 cases were terminated after hearing or submission, as noted earlier.) For all cases, the first column in Table XIV shows that the highest reversal rate occurred in 1954 when it reached 30.2 percent. Since 1960, the highest year was 1963 when the court reversed 28.7 percent of its cases. Since 1963, the court's rate of reversal for all cases has stayed close to the 20 percent figure, give or take a point or two. (This includes 1969 data which showed a 20.5 percent reversal rate.)

However, the major controversy focuses on the rate of reversal in criminal cases. Amidst the current tension surrounding the issue of "crime in the streets," the finger has often been pointed at the court, though more often with feelings than with figures. The data show that in 1968, the Court reversed 14.9 percent of the criminal cases it terminated after hearing or submission (21 cases). Both figures showed a decline in 1969 to 8.8 percent and 19 cases, respectively.

The peak year for criminal reversals was 1955, when the Court reversed 29.3 percent of its criminal cases. The data show a general decline in the rate since that year, though the overall trend is marked by one and two-year exceptions to the trend which are sometimes rather sharp. However, certainly since 1965 the rate has dropped and remained at a lower level. The 1969 figure tends to confirm the recent trend.

As to the reversal rates on the other three types of cases (U.S. Civil, Private Civil and Administrative Appeals), little will be said since, as noted above, the main concern is, apparently, with criminal cases. However, since 1965, the reversal rates for U.S. Civil cases appears to be on the increase. (The figure for 1969 of 40.9 percent seems to confirm this trend.) The rate for private cases has declined since 1963 when it was 46.3 percent and is currently about what it was in the early 1950's. (The 1969 figure was 27.6 percent.) Administrative Appeals seem to be divided into roughly two periods. Prior to 1962 the rate of reversals was generally above 20 percent. Starting with 1962, the rate has generally been below 20 percent. (The 1969 figure, however, was 24.3 percent.)

For one perspective on these figures, let us turn to comparable figures for all the circuits. The data for all circuits are presented in Table XV. A comparison of the criminal figures in this table to the

ones for D.C. show that in most years since 1950 the all-circuit figure has been lower. In 11 of the 19 years shown this was the case; however, from 1960 to 1968 (9 years), the all-circuit figure was higher than the D.C. figure in 5 of those 9 years. Furthermore, in the last 3 years (including 1969), the all-circuit figure was higher.

In addition, for all practical purposes, the D.C. and the all-circuit percentages were the same for 1966. (The actual difference was .5 percent.) These figures would seem to indicate that the D.C. Circuit percentage and the all-circuit percentage have, at least in recent years, been very similar. The average reversal rates for the two for the last ten years (1960–1969) confirm this point. The ten-year average for the D.C. Circuit was 16.9 percent as compared to a ten-year average for all circuits of 17.3 percent. The average figure for the last five years (1965–1969) was respectively, 13.9 percent and 14.9 percent—again very similar. The similarity appears to be a result of the D.C. rate decreasing more sharply than the all-circuit figure.

Again, since the main focus is on the criminal rate, only a few remarks will be made about the other types of cases. For U.S. Civil cases, perhaps, the most interesting point is that since 1965 the D.C. rate has been increasing, while the all-circuit figure has been relatively stable. As a result, the D.C. percentage has exceeded the all-circuit figure in each of the last three years (1967–1969). Again, the ten-year averages are very similar. For the D.C. Circuit the ten-year average (1960–1969) was 23.2 percent while the all-circuit average for the same period was 24.9 percent. The five-year averages were 24.3 percent and 23.5 percent, respectively, reflecting the recent increases in D.C. rates.

In Private Civil cases, the data show that in general the D.C. rate has been higher than the all-circuit figure. The figures for the more recent years may indicate a change, for in 1965, 1967 and 1968, the all-circuit rate was higher. (In 1969, D.C. was once again higher—27.6 percent to 24 percent for all circuits.) The ten-year average for D.C. was 28.7 percent and the five-year average was 22.5 percent. The respective all-circuit averages were 24.9 percent and 24.5 percent.

The data on Administrative Appeals show that in the majority of years the all-circuit rate was higher than the D.C. rate. In 7 of the last 10 years (including 1969), this was the case. Again, the ten and five year averages are very similar. The average rate for D.C. from 1960–1969 was 19.6 percent and the all-circuit average was 21.4 percent. The five-year average (1965–1969) was 19.4 percent for D.C. and 20.2 percent for all circuits.

Since the all-circuit percentage necessarily hides the differences among the circuits, it may be useful to compare circuit by circuit. In Table XVI, the percentage of criminal cases reversed in each circuit is shown for the 10-year period of 1960 through 1969. Only criminal cases will be treated in this way since this is the major category of interest.

The data show that in 1969 the D.C. Circuit's rate of reversal for criminal cases ranked (R) second lowest among all the circuits. Only the 4th Circuit had a lower rate of reversal while the remaining 9 circuits had a higher reversal rate. In 1968, the D.C. Circuit ranked 6th. In other words, it held the middle rank—five circuits were higher and five were lower.

For the 10-year period, in 6 of the 10 years, the D.C. Circuit ranked at the midpoint or above among all circuits as ranked from the lowest rate of reversal to the highest reversal rate. In one year (1961), it ranked highest with the lowest rate of reversals. In one year (1960) it had the highest rate of reversals and ranked 9th and last.

IN SUMMARY

1. All circuit figures and D.C. figures for reversals of criminal cases indicate that in recent years, D.C. had a lower rate than all circuits combined. This is shown by several facts: first, in 6 of the last 10 years (1960–1969), the all-circuit rate exceeded the D.C. rate. Second, the D.C. average (16.9 percent) for this period was less than the all-circuit average (17.3 percent). The same was true for an average of the last 5 years (1965–1969) when the figures were, respectively, 13.9 percent and 14.9 percent.

2. A rank order comparison of the D.C. Circuit to the other circuits tended to support the finding cited above. In 6 of the last 10 years, the D.C. Circuit was at or above the middle rank among all circuits as ranked from lowest rate of reversal to highest rate of reversal.

3. The actual number of criminal cases reversed in the D.C. Circuit in any one year is rather small. From 1950 through 1968, the highest number was 36 and in 10 of 19 years the figure fell between 17 and 24 cases. In 7 of the remaining 9 years, the figure was less than 17 cases.

4. As to the other 3 major types of cases, U.S. Civil, Private Civil and Administrative Appeals, the D.C. rate is very similar to and generally lower than the all-circuit rate, when measured by 10-year (1960–1969) and 5-year (1965–1969) averages. Only in two instances does the D.C. average exceed the all-circuit average: these are the 5-year average on U.S. Civil cases (24.3 percent to 23.5 percent) and the 10-year average for Private Civil cases (28.7 percent to 24.9 percent).

ADDENDUM

Brief reference was made above to the absolute number of cases reversed in the D.C. Circuit. The numbers are, as implied above, small, frequently amounting to 20 or less cases per year. When compared to filings in this Court of several hundred per year, or the number of defendants convicted (1000 to 1500 per year) in the lower court, they appear to be even smaller. Such comparisons are, perhaps, one way to place the questions of reversals in perspective.

It is recognized, however, that absolute numbers are only one way to view the problem of reversals. Clearly, a reversal may have direct and indirect impact on other cases, causing them to be reversed or causing the trial court to treat the case differently. The numbers shown here do not deal with this type of impact. If the problem is not wholly rate or numbers, then a much more detailed analysis, beyond the scope of this study, is undoubtedly in order.

Selection of Panels

The selection of panels is a problem of an order similar to that of reversals. In the narrow sense, aside from mechanics, it is not a management problem, but in the broader perspective of managing a court it deserves discussion. This is especially so in the instance of this court

since the method of panel selection is an issue subject to considerable private debate and on occasion, public question. As noted earlier, matters of this character are, and deserve to be, dealt with as part of the broad picture of the organization and its management. Furthermore, issues such as these affect the relations between the organization and its publics. For both these reasons, a brief discussion of panel selection in the court is presented. In addition, a discussion of these issues may serve to reduce some of the tensions surrounding them.

Appeals courts, like trial courts, face the problem of distributing units of workload (cases) among their members (judges). The problem is slightly more complicated, in one sense, in an appeals court because a case must usually be dealt with by more than one judge. Thus, an appeals court must not only assign the case, but it must also have a procedure for selecting judges (most commonly 3) to hear and decide the case.

The problem associated with assigning a case to a judge or judges is whether or not it is fair and results in a relatively unbiased performance by the court. In the trial court this problem is basically dealt with by whatever procedure the calendar system permits for bringing a case to a judge. In a desire to treat defendants fairly and reduce to a minimum the impact of unavoidable human defects, many trial courts use some variation of a random case assignment system combined with a regular rotation of judges from civil to criminal cases. The rotation system in a trial court is a procedure analogous to the procedure needed in an appeals court for assigning judges to a panel in a fashion such that fairness and relatively unbiased performance results in the court. Basically, the concern over the matters of assignment is a recognition of a desire in a court to (1) distribute equitably, if not minimize, human and judicial differences, and, (2) to give others the feeling that they are being treated fairly and justice is being done.

Private conversations with attorneys indicate that some are dissatisfied with panel selection and case assignment in the U.S. Court of Appeals. However, it should quickly be added that many raised no questions about these matters and did not think of these as problems. What the relative split in the legal community is, we cannot say. In one questionnaire mailed to over 5,000 members of the bar, responses by slightly less than 20% did not point this up as a problem area.[12] On the other hand, panel selection did evoke a question at the Judicial Conference's meeting in June, 1969. The question became the basis for a newspaper story making it an issue of public note.[13]

This issue of panel selection is not, of course, an abstract issue of interest simply as a matter of procedure. It is tied closely with the division in the court and reactions of attorneys and others to who wins in the light of that division. Those dissatisfied with the Court's majority view are likely to have the most questions about panel selection In a word, they accuse the court of "stacking" its panels.

While the D.C. Crime Commission did not deal with the matter of panel selection, it did recognize the controversy surrounding the

[12] This survey was conducted by the Court Management Study and results are discussed elsewhere in the Report of Study.

[13] See, for example, the story in the *Washington Post* on June 15, 1969 by Thomas W. Lippman. The sub-title on the story was "Attorneys Suspicious of System."

Court and its internal conflicts. They discussed the matter at some length in their report and stated:

> . . . the Commission is concerned by the widespread community feeling that the outcome in a particular case too often depends on the choice of judges. We believe that the court should be sensitive to the effects of judicial dissension on the public, those convicted of crime, (sic) and attorneys who argue before the court.[24]

They believed that an "appearance of uniformity" was of special importance in this court because of its peculiar jurisdiction and recommended that the court increase the use of en banc hearings—which it has. But, the controversy remains and some of it, at least, focuses on panel selection.

Panel selection was examined. Briefly, the names of the judges are placed in one container and cases in another. The names of three judges are then drawn from the one container to form a panel. Cases are then drawn from the other container. The case, at this point, is simply a number on a slip of paper—no names are on it.

Physically, the drawing takes place in the Clerk's office and the actual random drawing is done by the Clerk in the presence of one or two members of his staff. Afterwards, the case name is looked up and judges and attorneys notified. The attorneys, however, do not discover the makeup of their panel until they appear before it on the morning of argument.

Since the workload in the court is not equally distributed, some judges' names are more often available for drawing than others. That is, some judges sit more frequently than others and their names are therefore likely to be drawn with greater frequency.

No panel drawing was physically observed, but we have no reason to question it. However, the main reason it was not observed is that it was apparent that this would add little to the weight of our remarks. As one dissatisfied member of the bar put it, "If you watch one drawing, it will prove absolutely nothing to me. What happens the other times?"

Like the Crime Commission, we believe the Court must be sensitive to the feelings in the community and the bar about its appearance. While a court cannot and should not sacrifice its judicial integrity to soothe the feelings of dissatisfaction, it is our belief that a public organization, perhaps especially a court, should do all in its power to remove any peripheral sources of such dissatisfaction.

RECOMMENDATIONS

It is recommended that the Court in some appropriate form allow witnesses to observe the Clerk's random drawing of panels. One possibility would be to provide that all the presidents of the local bar associations (or their agents) might be required witnesses. They could all be required to attend each drawing, or each one could be named in turn as a witness for a single drawing and rotated.

Whether this or another alternative is chosen, it is our recommendation that such a procedure for witnesses be established. Further, it is recommended that it be established in consultation with a committee of the bar to assure that all views are represented in this matter.

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[24] Report of the President's Commission on Crime in the District of Columbia, Appendix GPO (1966), pp. 324–25.

This recommendation is made on the assumption that (1) no other human or social values seem to require complete privacy on the part of the court in this matter; (2) no legal objections have been raised—i.e., it does not seem to pose potential injury for the cases, nor does it involve a constitutional or statutory matter; and, (3) such a procedure should serve to still one source of controversy and dissatisfaction surrounding the Court.

Mechanically, the current procedure is speedy and simple. The suggestion for having witnesses to the drawing of panels would not seem to change this in any substantial way.

Administratively, it has been suggested that continuances might increase if attorneys knew their panels in advance—one possible result from having witnesses to the drawing. First, it may be that this will not be a necessity. That is, it may be that a joint committee of the bar and bench will develop a procedure—satisfactory to all— that will not require or permit this type of disclosure.

Second, if disclosure nevertheless results, then it will fall on the Court to evaluate the merit of requests for continuances, as they always must, and allow them only under the most unusual circumstances. Certainly having the drawings witnessed will not change the notification procedures now in force by the Court which give attorneys a good deal of advance notice, nor will it change the Court's customary right to give its business priority over the business of lower courts and other types of hearings.

Apparently, the seemingly simple solution of keeping the case before the selected panel following a continuance would often create other scheduling problems. However, it may be that in some instances this would be the preferred procedure—a decision the Court would take in the light of its own preferences and other demands on its time.

No extensive research was done on other circuits on this question; however, a brief survey was attempted with less than 100 percent response. It showed that none of the other circuits apparently employ any procedure attended by persons outside of the court and its staff. It did show that in at least one circuit panels are "balanced" by the Chief Judge.

The survey and an analysis of this court's practices suggested that perhaps the problem deserves consideration over a broader range and not simply in terms of this court's operations.

OTHER ASPECTS OF COURT OPERATIONS

Note on Opinions

It has been suggested at times that the U.S. Court of Appeals for the District of Columbia Circuit devotes too much effort and takes too much time to produce opinions. As a result, it is suggested the Court takes too long to process its cases. As the data on median times for this stage of the appeals process may have already suggested, this may not be the case. The data that follow present another perspective on this question about the Court's operation.

Table XVII shows the percentage of cases terminated after hearing or submission in which the Court writes no opinion, delivers a signed opinion, or writes a per curiam opinion. The figures for the D.C. Cir-

cuit show that for the three years for which data are available the percentage of cases with signed opinions was virtually stable. In 1966, it was 36.8 percent; in 1967, 38.6 percent; and, in 1968, 38.5 percent. In 1966 and 1967, these were the lowest percentages of signed opinions in any of the eleven circuits and, of course, it was well below the all circuit figure. In 1968, the only circuit lower than D.C. was the Sixth which was .4 of 1 percent less than D.C.

At the other extreme for opinions—no opinion—the court's percentage was high. In 1966 and 1967, approximately 44 percent of the cases were handled in this fashion—far above the other circuits. In 1968, the D.C. figure declined to 30.6 percent which placed the Circuit second to the Sixth Circuit which disposed of 42.6 percent of its cases in this manner.

In 1966 and 1967, the D.C. Circuit handled approximately 19 percent of its cases by per curiam. Logically, these were relatively low figures compared to the other circuits. In 1968, the decrease in the percentage of no written opinions, noted above, was absorbed in the per curiam group which increased to 30.9 percent.

The 1969 data showed a substantial change for the D.C. Circuit. Whereas in prior years this Circuit had a considerably lower percentage of signed opinions, in 1969 their percentage increased to 49.9 percent. Though this is far above their prior figures, compared to the other circuits, they are the third lowest. In other words, only two circuits (the Third and the Sixth) had a lower percentage of signed opinions. The percentage for no opinion cases dropped to 14.8 percent (4th highest among the circuits) and the use of per curiams increased slightly to 33.1 percent—5th highest among the circuits.[15]

In summary, the data showed that from 1966 through 1968 the court, compared to the other circuits, signed few opinions and provided no opinion in a relatively large share of its cases. In 1969, the court lost ground to the other circuits in these practices, but still maintained a comparatively high position as measured by its rank among the circuits. It also compared favorably to the all circuit figures for 1969—56.7 percent signed opinions, 31.7 percent per curiam and 11.6 percent no opinion.

Another rough indicator of time and effort consumed at the opinion stage of the appeals process is provided by the number of cases held under submission over a specified period of time. However, these figures must be treated cautiously since chance would seem to dictate that the larger a circuit's load and the larger the number of cases terminated after submission the more likely it is that a circuit will have more cases held under submission for a longer period of time.

With the above caveat in mind, the data in the next table are presented (Table XVIII). At the end of 1966, the D.C. Circuit had 10 cases under submission for more than 3 months—lowest for all circuits other than the Tenth. As measured by its rank among the circuits as well as by the absolute number of such cases, it lost ground in 1967

[15] The change in court practice from order judgments, reported as no opinions, to per curiam opinions was explained by the Chief Judge in his report to the U.S. Senate Committee on the District of Columbia. Basically, he explained defendants and counsel were dissatisfied with order judgments. They felt they had not received due consideration. As a result, according to the Chief Judge, their resentment resulted in petitions for rehearing en banc. See Crime in the District of Columbia: Implementing the Suggestions of the President's Commission on Crime, Committee Print compiled for the Committee on the District of Columbia, U.S. Senate, 91st Congress, 1st Session (GPO, 1969), pp. 55–56.

and in 1968 and gained some ground back in 1969. In these two years it ranked third highest among the circuits with 19 cases in 1967 and 33 such cases in 1968. In 1969, it was fifth highest among the circuits with 11 such cases.

Perhaps, the only other point that should be noted about these data is that like the majority of the other circuits, the data on the D.C. Circuit show no concentration of cases in the over 9-month categories.

Administration—Internal Management

At the center of the Court's administrative management is the Clerk's Office. Assisted by his Chief Deputy and an able staff of 25 people, the Clerk is responsible for the paperwork, scheduling, and files of the Court. All court documents pass through this office one or more times as the cases move through the various stages of appeals and processing outlined in the first section of this report.

No desk audits or time analyses were done of the office; however, several other techniques were employed. Informal interviews were conducted with most of the employees in the office—at least once. Second, the office or parts of it were observed in operation on numerous occasions. Third, a brief one-page job description questionnaire was distributed to the staff of the court. Fourth, in the process of gathering data for other parts of this analysis a number of conversations were held with key staff people.

Though no quantitative measures were developed, the above sources of information led to the conclusion that the internal operations of the court are quite capably and effectively executed. In contrast to the trial courts observed by other staff members, no major "bottlenecks" or "jams" that compounded or caused problems for processing cases were discovered. Papers are moved as they should be; records are up to date; and files are in order. If any problems in this area arise, they would certainly appear to be minor ones. By normal standards the court (in these terms) is very well administered. The following are the factors on which this conclusion is based.

First, the court (judges and staff) generally know the status of their business. What is not known can be discovered from an examination of the records. In numerous instances there was occasion to ask for records on various aspects of the court's business. Though our requests varied, the court had available (in good form) records (generally numbers) on the problem. In other words, the court records a set of indicators on the status and progress of its business. Some of these records must, of course, be kept for official purposes for the Administrative Office; however, others are kept at the court's initiative.

Furthermore, there is every indication that the records are used by the court for decision-making purposes. Many are regularly circulated to the judges—often at their request. Further, staff members use them to keep track of what is developing and as indicators for checking on the progress of their tasks. A good indicator of this was that the staff members knew what was available, and could explain, quite clearly, what the records contained. Also, several staff members commented on the utility of their records and the need they felt to keep them up-to-date. Another interesting point is that some records were abandoned when it was found they were no longer useful. Last,

as new problems arose, new records were apparently added by the court.

Another indicator of quality is the job procedure knowledge of the employees. In the case of veteran employees, and there are several, such knowledge is both expected and present among the employees. The truly interesting part is that the more junior employees also showed excellent understanding and knowledge of both their tasks as well as the work of related jobs.

Aside from sheer on-the-job experience, this seems to be the product of two other factors. First, whenever possible, an attempt is made to train new employees (or persons promoted) under the supervision and alongside of the person leaving the job. Second, most jobs that we examined had some type of manual or written instructions explaining the tasks and timing associated with it. On a longer term basis, an attempt is made to train a replacement for each individual holding one of the key positions in the office. This adds to the employee's knowledge of the operations. In addition, it is good planning and adds short-term flexibility to the court's operation.

Another indication of quality in the administration of the court is the manner in which it treats its publics. Over the counter and telephone contacts were observed at length and, in addition, several office conferences were also observed. These instances of public contact showed a sincere concern for the requests, questions and problems of the persons involved by the court and its staff. The staff members were very courteous and patient as well as very helpful. This appeared to be the case whether the person was an official, a lawyer, a student or a member of the public at large. These acts of courtesy and patience seemed to be more than just superficial concerns with official images. By statement and action staff members demonstrated a sincere concern and attention for the individuals involved.

Staff members also exhibited pride in and sense of identity with "their" court. For example, one staff member quietly boasted about working some extra hours to complete a job on schedule when a special problem arose. In conversation, staff members indicated considerable involvement in seeing to it that they did their part to get the court's work done. Also, staff members fill in for one another with general willingness and little in the way of pettiness. In other words, one is left with the impression that there is a good spirit of cooperation and high morale among the staff.

It is our impression that much of the quality of the operation is attributable to the leadership supplied by the judges and supervisory personnel. As noted above, the judges of this court are involved in and show a concern for the administration of its business. The monthly meetings of the judges are a form of collegial social pressure to produce and the staff is aware of this and seems to look upon it as an example. (The meeting is preceded by the circulation of a written monthly summary of the court's business.) Individual judges demonstrate to the staff by their special involvement in one aspect or another in the court's administration their interest and the importance of this or that aspect of the court's operation. A similar pattern of leadership is shown by supervisory personnel who, by example and word, show their interest and pride in the court.

A last indicator of the quality of the internal administration of the court is a history that shows a willingness to experiment and change. For example, a good deal of effort has been devoted to developing procedures for physically producing opinions quickly. The courts development and use of the "summary" classification of cases for oral argument is another example. Another is the experiment with order judgments on cases. These attempts and others generally indicate an organization relatively open to new ideas.

Though the picture outlined is a positive one, this is not to say that there are not some dissatisfactions and tensions associated with the administration of the court. For example, independent and capable employees exercise a great deal of initiative, which is to the good. On the other hand, the same type of employee often resents (or rejects) any form of directive supervision. Similarly, collegial activities among the judges distributes the burdens and exploits individual interests, but it also often leaves some yearning for a more authoritative arrangement. Though these problems do exist in the court, they appear to be minimal and they do not change our judgments that the court is effectively administered.

One point in the administration of the court appears worthy of further examination. A critical node in the initial processing of cases as they come to the court is the Public Office Unit. This unit handles, among other things, over the counter intake of briefs. In addition, it also handles numerous inquiries associated with the preparation of cases and the submission of briefs—both by phone and over-the-counter. It is the basic intake point for the court and all cases pass this point in their journey through the court as they are recorded and as the physical parts of the cases are put together for the judges.

Several days of observation suggested that this point in the system frequently comes close to being overloaded. Aside from the over-the-counter work, file work and other tasks that must be carried out at this point, a very large volume of phone inquiries also is received and initiated from this point. It appears that many of these inquiries are related to the Federal Rules of Appellate Procedure, the Court's rules and associated mechanics.

At the current time, the heavy load is dealt with effectively primarily because the key staff member involved has over 20 years' experience with the court and intimate knowledge of federal rules. However, to prevent any problems in the future, it is suggested that an intensive analysis of the load at this station be undertaken to determine accurately its makeup. Once determined, it may be possible to divert some of the load to other points in the system or to reduce its volume. In particular, a cursory examination suggests that some members of the bar may exploit the Court's services. If this is the case, it may be that other means could be found to reduce these inquiries—e.g., special manuals or training sessions on federal rules. However, this is only an impression, and further analysis might suggest otherwise and therefore suggest other remedies.

Last, a word is in order on the matter of a Court Executive. In other reports on the two trial courts in the District of Columbia, a key recommendation has been the creation of a post of Court Executive staffed by an individual oriented to and skilled in modern manage-

ment methods. A similar proposal has been made in the Congress for Court Executives in the United States Courts of Appeals (S. 952).

We support the creation of the positions embodied in S. 952. The need for a Court Executive can be perhaps more dramatically demonstrated in large overloaded trial courts than is the case in the Circuit Courts, but administrative expertise is needed in each. Each Circuit Court has responsibilities extending beyond the management and operation of its own court, and if staffed by an individual oriented to and skilled in modern management methods, the business of the court will be conducted in a more efficient manner. In some of the Circuits the position of Clerk and the Executive could doubtless be combined. But the opportunity of improving the judicial process as contemplated by S. 952 should not be lost.

In summary, then, it is concluded that:

(1) As measured by the indicators employed, the Court is effectively administered. No major internal administrative bottlenecks were observed.

(2) It is recommended that the position of Court Executive be created as contemplated by S. 952. Such a position would institutionalize the current concern for administration and serve as a safeguard in the future.

(3) It is also suggested that the intake load in the Public Office Unit of the Court be considered for further study. The objective of such an analysis would be to determine if some of this load might be diverted or reduced.

Output Per Judge

Another way to analyze the court is to reduce the total figures to the number of cases per judge on the average. Since filings are not directly controlled by the court, the number of filings per judge will not be presented. The Administrative Office does however include these figures in its annual reports and for 1967 and 1968 the D.C. Circuit showed an average or above average figure. In 1967, the all circuit figure was 90 appeals commenced per judge and the D.C. figure was 89. In 1968 the figures were respectively 94 and 105. By rank order of circuits, the 1967 figure for D.C. was the seventh highest and the 1968 figure was second highest.

However, the measure of the court is the cases it terminates rather than the cases presented to it. Though the volume of the intake may interact in rather unexpected ways with the terminations, this section will concentrate on terminations per judge. The use of the per judge figure does allow a more direct comparison among the circuits since it removes the differences of absolute numbers of cases and the differences in size of the bench. But before proceeding to the analysis, the limitations in these figures must be noted.

Four uncontrolled factors are immediately apparent in the per judge figures and they are critical in the analysis and to the operating management of the courts. First, the figures presented are per authorized judgeship and not per judge, though the latter term will be employed in the discussion. In other words, the averages are averages per authorized position for the bench not per judge actually serving on the bench.

Use of the per judgeship figure accounts for two of the uncontrolled factors. First, a per judgeship figure does not take account of vacancies on the bench due to retirements or long-term illnesses. Second, it does not take account of the work handled by senior judges, visiting judges, or district court judges. A vacancy will tend to reduce the per judgeship average, while assistance by senior, visiting, or district court judges will inflate a court's per judgeship average.

A third major factor is the mix in the court's caseload. Analysis shows that criminal cases tend to take the least time and administrative cases the most time, while civil cases are usually in the middle. To the extent that time figures are a measure of judicial effort a court, for example, works harder to produce one administrative case, on the average, than it does to produce a civil case. Thus, a change in the mix of the court's caseload from year to year, increases or decreases the average output per judgeship. Similarly, a difference in mix among the circuits will lead to an artificial difference in output per judgeship among circuits.

Last, there are, apparently, some differences among the circuits as to how or when they docket a filing as a case. No extensive analysis was done of this problem in this study; however, Shafroth,[16] for example, reported some differences among the circuits with regards to prisoner petitions. Again, the difference in procedure could inflate or deflate the averages.

First, terminations after hearing or submission per judge show that the average for the D.C. Circuit has increased from 27 cases per judge in 1950 to 44 per judge in 1968. The highest averages over the years occurred in 1965, 1966, and 1967 when the figures were, respectively, 47, 50 and 46 cases per judge. (The figures for 1969 showed an average of 51 cases per judge. See Table XIX.)

Since 1960, however, the D.C. Circuit increased at a slightly lesser rate compared to the other circuits. In contrast, from 1950 through 1958 this circuit gained compared to the other circuits. These trends are shown by the yearly rank order of the D.C. averages. In 1950 and 1951, the average for the D.C. Circuit ranked 9th among all the circuits. It moved up in the ranks through the 50's till it ranked 4th among all circuits in 1958. The court held that position through 1959 and 1960. But, from 1961 through 1968 the average number of terminations per judge (after hearing or submission) ranked the D.C. Circuit either 5th, 6th or 7th. (The one exception was 1965 when the D.C. Circuit tied for fourth.) In other words, for the last eight years the D.C. Circuit occupied the middle ranks, whereas in the late 50's it was slightly above the middle rank.

The figures for all terminations per judge showed a somewhat similar pattern. The D.C. average has increased from 48 cases per judge in 1950 to 71 cases per judge in 1968 (the 1969 figure was 84 cases per judge) (Table XX).

In terms of rank order, the D.C. average was 5th among all circuits in 1950. For the years through 1955 it remained, roughly 5th in the ranks. From 1956 through 1963, it shuttled between the ranks of 3rd and 4th. It first occupied the third position in 1959 and last reached it in 1962.

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[16] See Crisis in the Federal Courts, Hearings before the Subcommittee on Improvements in Judicial Machinery, Committee on the Judiciary, U.S. Senate, 90th Congress, 1st Session, 1967, pp. 60, 85–86, Shafroth.

Since 1964, it has lost some ground (as measured by the rank order of all terminations per judge) to the other circuits. In 1964 and 1965 it was 5th. In 1966 it was 6th; in 1967 it was tied for 7th; and, in 1968 it was back to 6th. Roughly then, the D.C. Circuit was above the middle rank from 1950 through 1965 and since 1965 it has been at or slightly below the middle rank on a scale of average terminations per judgeship.

In conclusion:

1. Since 1950, the average output per judgeship in the D.C. Circuit, whether measured by all terminations or terminations after hearing or submission, has increased. The former increased from 48 cases per judgeship in 1950 to 71 in 1968 and 84 in 1969. The latter termination average climbed from 27 cases per judgeship in 1950 to 44 cases in 1968 and in 1969 the figure was 51 cases per judgeship.

2. In general, the output per judgeship in the D.C. Circuit has tended to place the circuit in the middle ranks as compared to all of the circuits. In relative terms, the D.C. Circuit has lost some ground to the other circuits in the last few years and has, more recently, been at or just below the middle rank.

3. The figures on output per judgeship, though useful, must be treated with some caution because they do not take into account four factors: vacancies; assistance from senior, visiting, or district judges: the mix in caseloads; and, differences in docketing procedures.

RECOMMENDATIONS

1. For purposes of managing the court, as well as for purposes of long-range operations and planning, court statistics provided by the Administrative Office should be revised to take account of the uncontrolled factors associated with current per judgeship figures. These revisions should include the following:

a. Averages should be computed for fulltime equivalent judges rather than official judgeships. An average per fulltime equivalent (FTE) would produce a figure that takes into account vacancies on the bench as well as assistance by judges not on the active bench.

a.1. An FTE figure could be calculated by defining a standard judicial year, such as 220 days. The total number of judicial days from any source would then be divided by the number of days in a standard judicial year and the quotient would be the FTE.

$$\text{Equivalent Fulltime Judges} = \frac{\text{Total \# of judicial days}}{\text{\# days in a standard judicial year}}$$

2. To improve the quality of intra and inter-circuit comparisons so necessary for maangement analysis, operations and planning, a method for calculating a standard or weighted caseload for the circuits should be developed. If the general method proves inapplicable to the D.C. Circuit because of its peculiar mixture of cases, then a separate standard or weighted caseload should be developed for this circuit in order to facilitate longitudinal analysis within the circuit. The development of such a method might most appropriately be undertaken by either the Administrative Office or, perhaps, by the Federal Judicial Center.

a.1. It should be noted that the Administrative Office already calculates a weighted caseload for district courts.

b.1. It should also be noted that the Judicial Council of California calculates a weighted caseload for appellate courts. This system is derived from data and assessments on written opinions.[17]

3. The court is already experimenting with increased sittings; therefore, more have not been recommended at this time.

Appeals and the Other Circuits

In a number of instances, data on the other circuits have been introduced into the analysis. The introduction of these data have served the useful purpose of putting data on the D.C. Circuit into perspective. In some ways, it is our view that one would have the most thorough understanding of a single circuit only after completing and comparing thorough analyses of each circuit.

Such an analysis in depth is even further complicated in the case of the D.C. Circuit because of its peculiar caseload as compared to the other circuits. The most outstanding peculiarity is the jurisdiction of this court over appeals involving so-called ordinary crimes. When examined from this point of view, this court might better be compared with state courts of intermediate appellate jurisdiction. To the extent that a court's management and operation is conditioned by the character of its caseload these courts may provide a more useful comparative framework for the D.C. Circuit when its criminal load is treated as the dominant characteristic.

However, any analysis has its limits and in our case—no matter how useful—the other circuits could not (within the context of this study) be subjected to the type of thorough analysis advocated above, nor could the above-named state courts. But additional data on the other circuits are relevant to an understanding of the operations and problems of the U.S. Court of Appeals and any proposed solutions or palliatives. Therefore, additional data (mainly) on the other circuits and discussion follows.

Much of what is happening in the world of appellate law and courts would seem to have little to do with the view or reputation of any given court. The law explosion noted by many carriers with it an appellate explosion as well.

A brief examination of the reports of the Administrative Office of the Courts makes this point immediately evident. Let us use their words and their analysis to make the point.

1. Reporting in 1969, they stated:

> Over the last decade the United States courts of appeals have experienced a consistent upward trend in the number of appeals docketed. This trend continued in 1969, as 10,248 appeals were received—a record number amounting to a 12.4 percent increase over the 9,116 appeals filed in 1968.

2. Again in 1969 speaking of terminations and pending cases, they reported:

> Although the number of appeals terminated increased substantially to a record 9,014, compared to 8,264 terminated in 1968, the number of appeals pending increased by 1,234 to an all-time high of 7,849 as of June 30, 1969—an increase of 18.7 percent in only one year.
>
> In the last seven years both the number of appeals docketed and the number pending have more than doubled.

[17] See the Annual Report of the Administrative Office of California Courts, 1967, pp. 184–187.

3. These increases are not the result of anything peculiar to one circuit as the following statements make evident:

> The courts of appeals in 9 of the 11 circuits registered increases in appeals docketed during the year. The largest increases percentage-wise occurred in the Fifth Circuit, with an increase of 27.9 percent; in the Ninth Circuit, with an increase of 26.4 percent; in the Second Circuit, with an increase of 17.8 percent; and in the District of Columbia, with an increase of 15.8 percent. In 1968 these same four courts experienced increases respectively, of 17.5 percent, 26.4 percent, 9.5 percent, 18.4 percent.

In 1967, Will Shafroth, a consultant to the Administrative Office of the U.S. Courts, testified before the Senate and cited the following facts: [18]

(1) From 1940 to 1960 appeals rose by only 20 percent. But, from 1960 to 1966 appeals increased 67 percent, from 3,900 to 6,500.

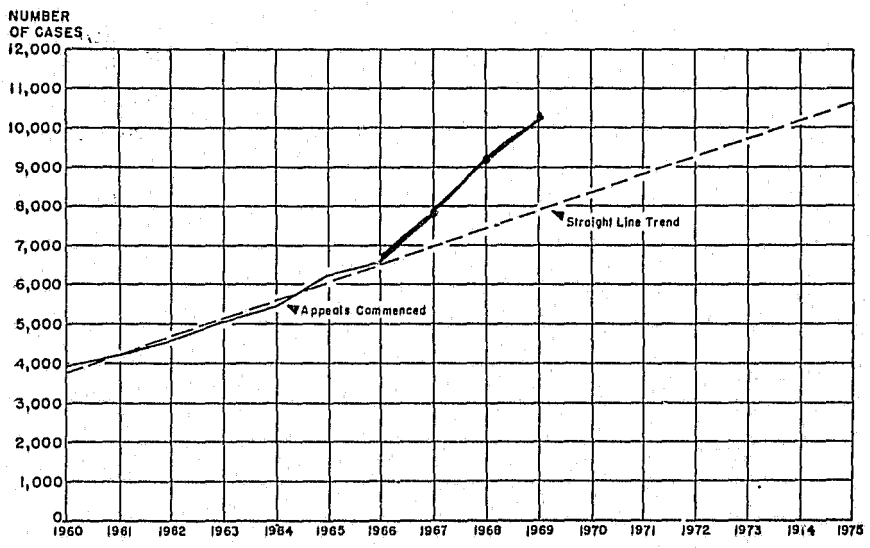
(2) A breakdown of the 1960 to 1966 increase by type of case showed civil cases up 66 percent; criminal appeals up by 112 percent; and administrative appeals up by almost 50 percent.

In his excellent analysis Shaforth also developed estimates of future filings in the courts of appeals. He used 1960 to 1966 as the basis for projecting the 1967 through 1975 caseloads. Though Shaforth was concerned that he might be overestimating the load, the actual figures for 1969 as reported by AOC showed that the growth of the appellate caseloads far exceeded his projections. The projected figures for all circuits through 1975 and the actual figures through 1969 are shown on the following graph.

UNITED STATES COURTS OF APPEALS

TREND OF APPEALS COMMENCED

FISCAL YEARS 1960 TO 1975



Source: Adapted from Shafroth, p. 73.

[18] See Crisis in the Federal Courts, Hearings before the Subcommittee on Improvements in Judicial Machinery, Committee on the Judiciary, U.S. Senate, 90th Congress, 1st Session, 1967, p. 55. Shafroth.

For example, he projected a load of 10,600 in all circuits by 1975. In fact, filings in 1969 exceeded his projected figure for 1974. In four of the circuits (D.C., the 2nd, the 7th, and the 9th) filings in 1969 were larger than his projections for 1975. In three more circuits (1st, 3rd and 4th), 1969 filings were equal to or larger than his projections for the year 1973. For the three remaining circuits, in two (the 6th and the 8th), 1969 filings exceeded projections for 1970 and in the 10th Circuit, the filings in 1969 were approximately equal to the projected figure for that year.

Professor Paul Carrington sums up the point of these data with his bleak forecase for the future. He concluded as a result of his own research on the courts that ". . . although the demand on federal appellate courts is likely to fluctuate, it will continue to grow." Further, he stated, "There are no visible factors that seem likely to diminish the rate of appeal." [19] In other words, the figures cited earlier on filings are, perhaps, only the beginnings of what is yet to come in the courts.

Carrington's analysis of theories, factors and solutions concentrates on the appeals courts. He, as do most others, looks for the problems and the solutions within the confines of the appeals courts when analyzing their operations. Quite reasonably the assumption is made that if we sense a problem with appeals then the problem must rest with the appeals courts. Logically, it seems to follow that any solutions to these problems will also be found in the appeals courts. It follows then that the solutions concentrate on the management or reorganization of the courts of appeals. Carrington, for example, suggests that internal administrative changes will yield only minor increases for the courts of appeals and basically dismisses them. Instead, the concentrates on the reorganization or the circuits.

Concentration on the courts of appeals is a quite reasonable approach. It is like the practice of clinical medicine—a sick patient requires treatment. But, there is also another side to medicine—preventive medical care. Essentially, preventive medical care looks elsewhere in the system for both problems and solutions to those problems.

The same approach may, perhaps, profitably be applied to the analysis of appeals and appeals courts in our judgment. If one treats the notion of legal system in a serious manner, then the courts of appeals should be considered in that light and both the analyses of their problems and suggested solutions should profit from that conception. (In this analysis, broader social problems which are also relevant to the courts must be set aside, though they cannot be ignored in any broader analysis of the courts' problems.)

It was shown in the analysis of filings, for example, that a shift in the way in which trial courts handle cases has an impact on the load in the court of appeals. For example, these data suggested that if guilty plea rates shifted up or down in the trial court, this shift would affect the court of appeals, all other things equal. This finding is an example

[19] P. D. Carrington, "Crowded Dockets and the Courts of Appeals: The Threat to the Function of Review and the National Law," *Harvard Law Review*, 82 (January, 1969). Carrington was Project director on the American Bar Foundation's Study of the Courts of Appeals.

of the way in which an appeals court is part of a system and how a change in another part of the system can affect the court of appeals.

The character of this example anticipates our suggestion. The analysis of the data on appeals suggests that perhaps a profitable long-range approach to the problems in the court(s) of appeals rests in a thorough analysis of who appeals for what reasons. In other words, we are suggesting that the most effective way to treat our appeal patient may be with preventive care. It may be that an analysis of the motivations behind appeals will reveal an effective solution(s) that denies no rights and yet reduces the strain on the courts of appeals.

It is our opinion that such a solution is of major importance, for current solutions tend to lean in the direction of bureaucratizing the appeals courts—that is, routinizing and de-judicializing the handling of appeals. This seems to have already happened in many trial courts and, in our opinion, the results are less than satisfactory. Professor Blumberg, for example, suggests that the net result is that trial courts often make a mockery of our ideals of justice as a result.[20] Too great an emphasis on speeding appeals and managing the process, combined with a heavy load of appeals could too quickly place the appeals courts in a similar position. Therefore, though managerial solutions to the appeals load must be sought, they appear, according to expert observers, to be both of questionable production value and to contain certain major risks. In light of this a search elsewhere seems worth the effort at this point, even if one takes the position that it seems remote.

There are several factors that led us in this direction. Unfortunately, the data only allow us to illustrate the problem in the instance of criminal cases. First, there was a premise that appeals involve a decision made jointly by defendant and his counsel. Though several factors affect this decision, it appeared that dissatisfaction with the whole set of events leading to conviction might be one of the significant factors in deciding to appeal.

Common sense seems to suggest that a defendant who feels he got "a fair deal" through the point of conviction might decide, in conjunction with counsel, not to appeal, whereas one who felt otherwise would appeal. This premise was further reinforced by the work of Professor Howard Trebach with convicted felons.[21] Trebach found that felons drew rather sharp distinctions among law enforcement agencies. They pointed out those that treated them fairly and those that did not.

Furthermore, we computed rates of appeal by type of crime for all circuits and for the District of Columbia. We reasoned that if easy availability of counsel and transcript were the only factors operating then there should be no difference by type of crime. Furthermore, differences by type of crime might serve to suggest the presence of motivational factors.

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[20] See A. Blumberg, *Criminal Justice*, 1967. See also, H. James, *Crisis in the Courts* 1967 and H. L. Packer, "Two Models of the Criminal Process," *U. of Pa. Law Review*, CXIII (November, 1964).

[21] H. Trebach, *The Rationing of Justice*, 1964.

The data, though admittedly crude, did show differences. For example, in all circuits the rate of appeals for homicides in 1967 was 69 percent while the rate of appeals for robberies was 97 percent. Or, in 1968 in the District of Columbia, the rate of appeals for burglary convictions was 95 percent compared to 80 percent for robberies and 83 percent for homicides.

There are, admittedly, a number of uncontrolled variables in this analysis, but it is suggested that human motives play an important role and satisfaction with the trial court may be among them. The data are not presented to prove the case, but merely to suggest the existence of one.

Another piece of data that suggested the existence of such a case is the difference in guilty plea rates between the District Court in the District of Columbia and all district courts. These were computed for the years 1950 through 1968. The rate was computed by calculating the percentage of defendants who pled guilty or nolo contendere of all those convicted. These calculations showed that in no year observed was the guilty plea rate in D.C. as high as the rate in all districts. For example, in 1950 the D.C. figure was 71 percent and the all district figure was 95 percent. In 1968, the figures were respectively 65 percent and 86 percent. If guilty pleas are interpreted as a rough indicator of the defendant's total "satisfaction" with the preparation and development of the case, these figures would seem to suggest that more might be done to "satisfy" a defendant in the District of Columbia as compared to all districts. (All circuit data in Table XXI.)

Again, many variables are uncontrolled and the data are not presented to prove the case. They are presented to suggest the possible existence of one and the need to pursue it further with more intensive research on the motivations behind appeals.

It should also be stated that a search for motivations is not suggested as the only solution to the problems faced by the court(s) of appeals. If the reasoning makes sense, it is our judgment that it is one more worthwhile avenue to pursue in search of aids to a court that operates as part of a legal system.

In sum:

(1) It is recommended that research to determine the motivation for appeals be undertaken as part of long-range management planning in courts.

(2) As part of this long-range effort, it is recommended that the court be furnished with social statistics on appellants. Such information is already recorded for U.S. District Courts and is now available in the records of the Administrative Office of the Courts.

(3) As part of this effort, it is recommended that a refined system be established for calculating rates of appeals for civil and administrative cases and that the basis for calculating criminal appeals be reexamined in the process. Again, the bulk of this information is already available in the records of the Administrative Office of the Courts.

A Note on Court Reorganization in the District of Columbia

Several proposals have been made to reorganize the jurisdiction of the courts in the District of Columbia. The Committee on the Administration of Justice and members of Congress have made such proposals. Basically, the proposals for reorganization envision a dual court system for the District of Columbia. The local courts would be enlarged by removing more of the "local" business from the federal courts in the District. As a result, the courts in the District would be more similar to the state-federal division of labor throughout the country.

Though the proposed reorganizations differ as to how many and what types of cases they would shift to the local courts, each has implications for the workload and management of the U.S. Court of Appeals. The most far-reaching proposals would remove all local business—criminal and civil—from the U.S. District Court for the District of Columbia. Further, all appeals under this type of reorganization would go to the District of Columbia Court of Appeals, thereby reducing the workload of the U.S. Court of Appeals for the District of Columbia Circuit.

No detailed analysis of the amount of local business in the U.S. Court of Appeals was prepared. However, it was estimated by the Office of the U.S. Attorney General that 70 percent of the criminal cases in the U.S. District Court were "local" crimes. Further, a bar committee study estimated that 65 percent of the civil business was "local" and would normally (i.e., in other jurisdictions) not be handled by a federal court. If it is assumed that the same proportions hold on appeal, then how many cases would be taken from the U.S. Court of Appeals?

In 1969, approximately 1,100 cases were filed in the U.S. Court of Appeals. Slightly fewer than 500 of these were criminal cases. Seventy percent of 500 is 350 cases. In the same year, approximately 200 private civil appeals were filed in the court. Sixty-five percent of 200 is 130 cases.

Thus, if one of the more extensive reorganization proposals were adopted, approximately 480 cases (as of 1969) would be removed from the U.S. Court of Appeals' docket. On the 1969 base, this would leave the court with a workload of just over 600 cases. Assuming the court can terminate approximately 1,000 cases a year, it would take the court slightly over one year to reduce its 1969 pending file of 909 cases to a normal level, if the workload remained roughly as it was as of the end of Fiscal Year 1969.

How ever long it would take to accomplish this, the point is that a substantial reorganization of the courts in the District of Columbia would solve any workload problems for the U.S. Court of Appeals in relatively quick order. The burden would, in turn, be shifted to the District of Columbia Court of Appeals. The U.S. Court of Appeals would, at least temporarily, have some "excess" capacity.

The details of any proposed reorganization would determine just how much "excess" capacity would be left to the court. The rate of

growth of the remaining types of cases combined with the rate of increases in productivity by the court would determine just how long such excess capacity would continue to exist. The figures cited above are the maximum estimates and, of course, less extensive reorganization would mean a lesser reduction in the court's workload.

Furthermore, it should be noted that the maximum transfer figure for private civil cases might never be reached. There is reason to believe that routine adjustments by counsel motivated by a desire to practice before federal judges would reduce the impact of proposed reorganization plans when dollar limits are used as the basis for the transfer of private civil cases. In this regard, it appears that the categorical transfer of civil cases is a more effective way for reorganizing the civil caseload.

Though many factors must obviously be considered in an extensive reorganization of the courts, from a purely national organization perspective an extensive reorganization of the courts would have one advantage. If all local business were removed from the U.S. Court of Appeals, it could then be dealt with as just another U.S. court of appeals. Thus, in any nationwide reorganization of the courts of appeals, the court of appeals in the District of Columbia could be considered in proposed plans without need of special attention to its currently peculiar caseload.

Appendix I. Tables

TABLE I.—APPEALS IN CIVIL AND CRIMINAL CASES, U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Fiscal years 1950–68]

Fiscal year	Criminal cases filed		Civil cases filed		Total cases filed
	Number	Percent	Number	Percent	
1950	80	18.4	354	81.6	434
1951	52	13.2	342	86.8	394
1952	91	21.0	343	79.0	434
1953	101	24.0	320	76.0	421
1954	97	20.6	375	79.4	472
1955	71	16.2	366	83.8	437
1956	94	17.5	443	82.5	537
1957	97	19.5	401	80.5	498
1958	107	22.5	369	77.5	476
1959	135	25.0	405	75.0	540
1960	100	19.8	405	80.2	505
1961	91	17.3	436	82.7	527
1962	136	20.8	517	79.2	653
1963	200	25.3	591	74.7	791
1964	251	34.1	484	65.9	735
1965	237	34.6	448	65.4	685
1966	252	31.6	545	68.4	797
1967	254	31.9	544	68.1	798
1968	392	41.5	553	58.5	945
Percent change:					
1950–65	+196		+27		+58
1955–65	+234		+22		+57
1960–65	+137		+11		+36
1950–68	+390		+51		+118
1955–68	+452		+46		+116
1960–68	+292		+32		+87
1965–68	+65		+19		+38

Source: Administrative Office of U.S. Courts, Ann. Reps. (1950–68).

TABLE II.—U.S. COURT OF APPEALS (DISTRICT OF COLUMBIA CIRCUIT)—SOURCE OF APPEALS AND ORIGINAL PROCEEDINGS COMMENCED

Source	Fiscal years											
	1963		1964		1965		1966		1967		1968	
	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent
U.S. District Court	586	74.1	563	76.6	505	73.7	599	75.2	613	76.8	722	76.4
District of Columbia Court of Appeals	3	.4	9	1.2	8	1.2	13	1.6	23	2.9	13	1.4
Board of Tax Appeals	7	.9	21	2.9	12	1.8	4	.5	7	.9	5	.5
U.S. Tax Court	2	.3	2	.3	1	.4	3	.4				
NLRB	32	4.0	22	3.0	36	9.6	66	8.3	37	4.6	75	7.9
All other boards and commissions	153	19.3	105	14.3	108	14.6	100	12.5	102	12.8	112	11.9
Original proceedings	8	1.0	13	1.8	15	1.8	12	1.5	16	2.3	18	1.9
Total	791		735		685		797		798		945	

Sources: AOC annual reports and staff calculations.

TABLE III.—DEFENDANTS FILING CRIMINAL APPEALS, U.S. COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Fiscal year	All defendants, fiscal years 1950–68					Defendants eligible to appeal, fiscal years 1950–68		
	Number of defendants convicted after guilty plea or nolo contendre, trial, U.S. district court (1)	Number of defendants convicted after trial, U.S. district court (2)	Total number of defendants convicted after guilty plea or nolo contendre, trial, U.S. district court (3)	Number of criminal appeals filed in the court of appeals (4)	Percent of appeals commenced (cols. 4/3) (5)	Number of defendants convicted after trial, U.S. district court (6)	Number of criminal appeals filed in the court of appeals (7)	Percent of appeals commenced (cols. 7/6) (8)
1950	1,092	437	1,529	80	5.2	437	80	18.3
1951	992	383	1,375	52	3.7	383	52	13.6
1952	896	365	1,261	91	7.2	365	91	24.9
1953	1,075	464	1,539	101	6.5	464	101	21.8
1954	951	476	1,425	97	6.8	476	97	20.4
1955	762	353	1,115	71	6.3	353	71	20.1
1956	860	359	1,219	94	7.7	359	94	26.2
1957	847	352	1,199	97	8.1	352	97	27.6
1958	873	392	1,265	107	8.3	392	107	27.3
1959	951	373	1,324	135	10.1	373	135	36.2
1960	814	275	1,089	100	9.1	275	100	36.4
1961	762	317	1,079	91	8.4	317	91	28.7
1962	651	337	988	136	13.7	337	136	40.4
1963	628	288	916	200	21.8	288	200	69.4
1964	817	298	1,115	251	22.5	298	251	84.2
1965	716	265	981	237	24.1	265	237	89.4
1966	640	272	912	252	27.6	272	252	92.6
1967	444	285	729	254	34.1	285	254	89.1
1968	896	482	1,378	392	28.4	482	392	81.3

Sources: AOC annual reports and staff calculations.

TABLE IV.—TERMINATIONS BY TYPE, 1950–68

Year	Criminal cases terminated		Civil cases terminated		Total cases terminated	Year	Criminal cases terminated		Civil cases terminated		Total cases terminated
	Number	Percent	Number	Percent			Number	Percent	Number	Percent	
1950	50	11.6	382	88.4	432	1960	120	22.5	414	77.5	534
1951	68	16.2	353	83.8	421	1961	91	17.6	427	82.4	518
1952	84	17.8	389	82.2	473	1962	108	18.9	463	81.1	571
1953	91	28.1	312	71.9	434	1963	162	24.3	504	75.7	666
1954	98	21.4	359	78.6	457	1964	190	26.6	523	73.4	713
1955	98	20.6	378	79.4	476	1965	257	34.6	486	65.4	743
1956	88	18.2	395	81.8	483	1966	235	30.6	534	69.4	769
1957	90	17.8	417	82.2	507	1967	252	33.6	497	66.4	749
1958	104	19.3	436	80.7	540	1968	233	31.3	511	68.7	744
1959	132	26.0	375	74.0	507						

Source: AOC annual reports and staff calculations.

TABLE V.—CASES TERMINATED BY NATURE OF PROCEEDINGS, 1968

	Number	Percent
Criminal	233	31.3
U.S. civil	167	22.4
Private civil	185	24.9
Bankruptcy	3	.4
Administrative appeals	123	16.5
District of Columbia Court of Appeals	17	2.3
Original proceedings	16	2.2
Total	744	100.0
Noncriminal:		
U.S. civil	167	32.7
Private civil	185	36.2
Bankruptcy	3	.6
Administrative appeals	123	24.1
District of Columbia Court of Appeals	17	3.3
Original proceedings	16	3.1
Total	511	100.0

Source: AOC annual report, 1968.

TABLE VI.—CASES TERMINATED BY NATURE OF PROCEEDINGS, FISCAL YEAR 1950-68, U S COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT

Fiscal year	Criminal		U S civil		Private civil		Bankruptcy		Administrative appeals		District of Columbia Court of Appeals		Original proceedings		Total terminations
	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	
1950	11.6	50	20.1	87	36.1	156	----------		19.4	84	----------	(1)	6.7	29	432
1951	16.2	68	27.8	117	30.9	130	0.5	2	11.9	50	----------	(1)	5.5	23	421
1952	17.8	84	24.1	114	33.8	160	----------		12.7	60	----------	(1)	2.5	12	473
1953	19.4	84	20.5	89	24.2	105	----------		16.6	72	----------	(1)	6.0	26	434
1954	21.4	98	24.9	114	19.7	90	----------		16.2	74	----------	(1)	10.9	50	457
1955	20.6	98	20.6	98	29.6	141	.8	4	16.0	76	----------	(1)	4.8	23	476
1956	18.2	88	30.2	146	25.7	124	----------		17.2	83	----------	(1)	1.4	7	483
1957	17.8	90	32.7	166	23.9	121	.4	2	22.7	115	----------	(1)	1.3	7	507
1958	19.3	104	33.7	182	27.4	148	.2	1	18.1	98	----------	(1)	.7	4	540
1959	26.0	132	25.0	127	27.0	137	.2	1	18.7	95	----------	(1)	2.6	13	507
1960	22.5	120	25.1	134	30.0	160	.4	2	19.3	103	----------	(1)	1.3	7	534
1961	17.6	91	21.4	111	32.2	167	.2	1	26.3	136	----------	(1)	1.4	7	518
1962	18.9	108	24.3	139	24.2	138	.2	1	29.1	166	----------	(1)	1.2	7	571
1963	24.3	162	24.3	162	28.1	187	----------		21.8	145	----------	(1)	1.2	8	666
1964	26.6	190	20.1	143	26.9	192	.1	1	23.6	168	----------	(1)	2.0	14	713
1965	34.6	257	16.7	124	22.3	166	----------		23.1	172	1.3	10	1.9	14	743
1966	30.6	235	20.4	157	23.0	177	----------		22.9	176	1.8	14	1.3	10	769
1967	33.6	252	18.6	139	21.4	160	.1	1	21.9	164	2.3	17	2.1	16	749
1968	31.3	233	22.4	167	24.9	185	.4	3	16.5	123	2.3	17	2.2	16	744

[1] Not available

Source: AOC annual reports and staff calculations

TABLE VII.—U.S. CIRCUIT COURT OF APPEALS, DISTRICT OF COLUMBIA CIRCUIT—METHODS OF TERMINATING APPEALS

Year	All cases					Criminal cases					Noncriminal cases				
		Without hearing or submission[1]		After hearing or submission			Without hearing or submission		After hearing or submission			Without hearing or submission		After hearing or submission	
	Total	Percent	Number	Percent	Number	Total	Percent	Number	Percent	Number	Total	Percent	Number	Percent	Number
1950	432	44.4	192	55.5	240	50	66.0	33	34.0	17	382	41.6	159	58.4	220
1951	421	42.3	178	57.7	243	68	36.8	25	63.2	43	353	43.3	153	56.6	203
1952	473	35.9	170	64.0	303	84	38.1	32	61.9	52	389	35.5	138	64.5	251
1953	434	37.3	162	62.7	272	91	41.8	38	58.2	53	343	36.2	124	63.8	219
1954	457	32.8	150	67.2	307	98	25.5	25	74.5	73	359	34.8	125	65.2	234
1955	476	34.0	162	66.0	314	98	23.5	23	76.5	75	378	36.8	139	63.2	239
1956	483	30.0	145	70.0	338	88	28.4	25	71.6	63	395	30.4	120	69.6	275
1957	507	32.9	167	67.1	340	90	30.0	27	70.0	63	417	33.6	140	66.4	277
1958	540	26.1	141	73.9	399	104	21.2	22	78.8	82	436	27.3	119	72.7	317
1959	507	30.6	155	69.4	352	132	30.3	40	69.7	92	375	30.7	115	69.3	260
1960	534	33.7	180	66.3	354	120	25.0	30	75.0	90	414	36.2	150	63.8	264
1961	518	34.7	180	65.2	338	91	22.0	20	78.0	71	427	37.5	160	62.5	267
1962	571	42.9	245	57.1	326	108	28.7	31	71.3	77	463	46.2	214	53.8	249
1963	666	45.5	303	54.5	363	162	25.9	42	74.1	120	504	51.8	261	48.2	243
1964	713	44.2	315	55.8	398	190	29.5	56	70.5	134	523	49.5	259	50.5	264
1965	743	42.7	317	57.3	426	257	30.4	78	69.6	179	486	49.2	239	50.8	247
1966	769	41.7	321	58.2	448	235	34.5	81	65.5	154	534	44.9	240	55.0	294
1967	749	44.6	334	55.4	415	252	34.9	88	65.0	164	497	49.5	246	50.5	251
1968	744	47.3	352	52.7	392	233	39.4	92	60.5	141	511	50.9	260	49.1	251

[1] Includes consolidations.

Sources: AOC annual reports and staff calculations.

TABLE VIII.—U.S. CIRCUIT COURT OF APPEALS (DISTRICT OF COLUMBIA CIRCUIT)—PERCENTAGE OF CASES TERMINATED WITHOUT AND AFTER HEARING OR SUBMISSION; METHODS OF TERMINATING APPEALS

Fiscal year	Criminal					Noncriminal									
						U.S. civil					Private civil				
		Without hearing or submission [1]		After hearing or submission			Without hearing or submission		After hearing or submission			Without hearing or submission		After hearing or submission	
	Total cases	Percent	Number	Percent	Number	Total cases	Percent	Number	Percent	Number	Total cases	Percent	Number	Percent	Number
1950	50	66.0	33	34.0	17	87	44.8	39	55.2	48	156	27.6	43	72.4	113
1951	68	36.8	25	63.2	43	117	39.3	46	60.7	71	130	33.8	44	66.2	86
1952	84	38.1	32	61.9	52	114	28.9	33	71.1	81	160	26.9	43	73.1	117
1953	91	41.8	38	58.2	53	95	27.4	26	72.6	69	120	28.3	34	71.7	86
1954	98	25.5	25	74.5	73	114	19.3	22	80.7	92	90	17.8	16	82.2	74
1955	98	23.5	23	76.5	75	98	23.5	23	76.5	75	141	29.1	41	70.9	100
1956	88	28.4	25	71.6	63	146	25.3	37	74.7	109	124	23.4	29	76.6	95
1957	90	30.0	27	70.0	63	166	38.6	64	61.4	102	121	17.4	21	82.6	100
1958	104	21.2	22	78.8	82	182	25.3	46	74.7	136	148	25.0	37	75.0	111
1959	132	30.3	40	69.7	92	127	40.9	52	59.1	75	137	16.8	23	83.2	114
1960	120	25.0	30	75.0	90	134	36.6	49	63.4	85	160	27.5	44	72.5	116
1961	91	22.0	20	78.0	71	111	37.8	42	62.2	69	167	33.5	56	66.5	111
1962	108	28.7	31	71.3	77	139	42.4	59	57.6	80	138	39.1	54	60.9	84
1963	162	25.9	42	74.1	120	162	48.1	78	51.9	84	187	49.2	92	50.8	95
1964	190	29.5	56	70.5	134	143	42.7	61	57.3	82	192	46.9	90	53.1	102
1965	257	30.4	78	69.6	179	124	44.4	55	55.6	69	166	40.4	67	59.6	99
1966	235	34.5	81	65.5	154	157	42.0	66	58.0	91	177	46.3	82	53.7	95
1967	252	34.9	88	65.0	164	139	48.1	68	51.1	71	160	43.8	70	56.3	90
1968	233	39.4	92	60.5	141	167	49.7	83	50.3	84	185	49.2	91	50.8	94

Fiscal year	Noncriminal									
	Administrative					All other categories[2]				
		Without hearing or submission		After hearing or submission			Without hearing or submission		After hearing or submission	
	Total cases	Percent	Number	Percent	Number	Total cases	Percent	Number	Percent	Number
1950	84	34.5	29	65.5	55	55	87.3	48	12.7	7
1951	50	26.0	13	74.0	37	56	89.3	50	10.7	6
1952	60	30.0	18	70.0	42	55	80.0	44	20.0	11
1953	76	38.2	29	61.8	47	52	67.3	35	32.7	17
1954	74	43.2	32	56.8	42	81	67.9	55	32.1	26
1955	76	44.7	34	55.3	42	63	61.9	39	38.1	24
1956	83	24.1	20	75.9	63	42	81.0	34	19.0	8
1957	115	40.0	46	60.0	69	15	60.0	9	40.0	6
1958	98	34.7	34	65.3	64	8	25.0	2	75.0	6
1959	95	40.0	38	60.0	57	16	12.5	2	87.5	14
1960	103	48.5	50	51.5	53	17	41.2	7	58.8	10
1961	136	52.3	58	57.4	78	13	30.8	4	69.2	9
1962	166	57.2	95	42.8	71	20	30.0	6	70.0	14
1963	145	59.3	86	40.7	59	10	50.0	5	50.0	5
1964	168	60.7	102	39.3	66	20	30.0	6	70.0	14
1965	172	61.0	105	38.9	67	24	50.0	12	50.0	12
1966	176	48.3	85	51.7	91	24	29.2	7	70.8	17
1967	164	54.3	89	45.7	75	34	55.9	19	44.1	15
1968	123	54.5	67	45.5	56	36	52.8	19	47.2	17

[1] Includes consolidations.
[2] Includes bankruptcy, District of Columbia Court of Appeals, original proceedings and all other appeals.

Source: AOC annual reports; calculations by staff.

TABLE IX.—U.S. COURT OF APPEALS, U.S. DISTRICT COURT—MEDIAN TIME INTERVALS IN MONTHS FOR CASES TERMINATED AFTER HEARING OR SUBMISSION

	Complete record to final disposition		Complete record to last brief		Last brief to hearing or submission		Hearing or submission to decision or final order		Notice of appeal in lower court to complete record in appeals court [1]				Docketing in lower court to final disposition in appeals court [1]			
									Civil		Criminal		Civil		Criminal	
	Number	Months	Number	Months	Number	Months	Number	Months	Number of cases	Months (median)	Number of cases	Months (median)	Number of cases	Months (median)	Numbor of cases	Months (median)
Fiscal year:																
1950	240	11.2	237	4.4	237	2.3	240	2.3								
1951	243	9.7	226	4.0	226	1.4	243	3.0								
1952	303	9.8	279	4.4	279	1.6	303	2.3								
1953	272	9.9	258	5.0	258	1.6	272	2.4								
1954	307	8.3	265	4.5	261	1.4	307	1.9								
1955	314	8.4	297	4.6	297	1.6	314	1.5								
1956	338	7.9	329	3.9	330	1.2	338	2.0								
1957	340	8.1	332	3.9	332	1.5	340	1.4								
1958 [2]	399	6.9														
1959	352	6.3	327	3.5	327	1.2	352	.9								
1960	354	6.5	342	3.3	342	.8	354	1.4								
1961	338	6.6	332	3.3	332	.7	338	1.6	180	1.3	71	1.3	174	25.3	71	13.3
1962	326	6.9	321	3.4	321	1.0	326	1.7	164	1.3	77	1.3	164	19.9	77	13.2
1963	363	7.6	356	5.4	356	1.4	363	1.3	179	1.3	120	1.3	172	22.6	120	16.4
1964	398	6.9	385	3.6	385	1.1	398	1.0	184	1.3	134	.6	181	21.4	134	16.3
1965	426	7.9	422	3.9	422	1.2	426	1.4	168	1.3	179	.6	168	24.6	179	15.7
1966	448	7.0	406	3.6	406	.9	448	1.3	186	1.2	154	1.5	186	20.1	154	15.8
1967	415	7.5	503	3.6	403	1.2	415	1.3	161	1.3	164	2.7	161	23.7	164	17.8
1968	392	7.2	392	3.2	392	1.3	392	1.6	178	1.3	141	3.4	178	25.0	141	22.7

[1] Pre-1961 data not reported.
[2] Complete data not reported.

Source: Annual reports, AOC.

TABLE X.—U.S. COURT OF APPEALS—DISTRICT OF COLUMBIA CIRCUIT CASES PENDING

End of fiscal year	Total all cases	Total criminal cases		Total noncriminal cases	
		Percent	Number	Percent	Number
1949 [1]	369	11.9	44	88.1	325
1950	371	20.0	74	80.0	297
1951	344	16.9	58	83.1	286
1952 [2]	267	21.7	58	78.3	209
1953	292	25.7	75	74.3	217
1954	307	24.1	74	75.9	233
1955	268	17.5	47	82.5	221
1956	322	16.5	53	83.5	269
1957	313	19.2	60	80.8	253
1958	249	25.3	63	74.7	186
1959	282	23.4	66	76.6	216
1960	253	18.2	46	81.8	207
1961	262	17.6	46	82.4	216
1962	344	21.5	74	78.5	270
1963	469	23.9	112	76.1	357
1964	491	35.2	173	64.8	318
1965	433	35.3	153	64.7	280
1966	461	36.9	170	63.1	291
1967	510	33.7	172	66.3	338
1968	711	46.6	331	53.4	380

[1] Cases pending at end of fiscal 1949.
[2] In this year, an accounting change was made affecting the counting of pending cases.

Sources: AOC annual reports and staff calculations.

TABLE XI.—U.S. COURT OF APPEALS—DISTRICT OF COLUMBIA CIRCUIT, PENDING CASES BY TYPE OF CASE

Year	Total number criminal cases pending this fiscal year		Noncriminal										Total all cases pending this fiscal year
			Total number noncriminal cases pending this fiscal year		Total number U.S. civil cases pending this fiscal year		Total number private civil cases pending this fiscal year		Total number administrative appeals cases pending this fiscal year		All other cases pending this fiscal year		
	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	Percent	Number	
1949 [1]	11.9	44	88.1	325	24.4	90	36.3	134	21.4	79	6.0	22	369
1950	19.9	74	80.0	297	27.2	101	29.6	110	15.6	58	7.5	28	371
1951	16.9	58	83.1	286	21.8	75	39.2	135	14.0	48	8.1	28	344
1952	21.7	58	78.3	209	26.2	70	35.2	94	21.7	58	6.7	18	267
1953	25.7	75	74.3	217	32.2	94	21.2	62	16.4	48	4.5	13	292
1954	24.1	74	75.9	233	21.8	67	27.7	85	18.6	57	7.8	24	307
1955	17.5	47	82.5	221	31.7	85	25.4	68	21.3	57	4.1	11	268
1956	16.5	53	83.5	269	31.4	101	23.0	74	27.0	87	2.2	7	322
1957	19.2	60	80.8	253	30.7	96	26.8	84	22.7	71	.6	2	313
1958	25.3	63	74.7	186	18.9	47	23.3	58	32.1	80	.4	1	249
1959	23.4	66	76.6	216	20.2	57	24.5	69	30.5	86	1.4	4	282
1960	18.2	46	81.8	207	17.4	44	24.5	62	37.9	96	2.0	5	253
1961	17.6	46	82.4	216	18.7	49	22.9	60	38.2	100	2.7	7	262
1962	21.5	74	78.5	270	22.7	78	25.6	88	29.7	102	.6	2	344
1963	23.9	112	76.1	357	18.8	88	24.5	115	32.2	151	.6	3	469
1964	35.2	173	64.8	318	17.7	87	18.7	92	27.1	133	1.2	6	491
1965	35.3	153	64.7	280	18.7	81	17.6	76	27.3	118	1.2	5	433
1966	36.9	170	63.1	291	15.4	71	21.5	99	24.9	115	1.3	6	461
1967	33.7	172	66.3	338	21.4	109	23.1	118	19.0	97	2.7	14	510
1968	46.6	331	53.4	380	11.1	79	17.6	125	23.3	166	1.4	10	711

[1] Pending, end of fiscal year 1949.

Sources: AOC annual reports and staff calculations.

TABLE XII.—MEDIAN TIME INTERVALS FOR ALL CASES IN WHICH AN ATTORNEY WAS APPOINTED, U.S. COURT OF APPEALS

	Notice of appeal filed to duplicate notice	Notice of appeal filed to certification of record	Duplicate notice of appeal to certification of record	Notice of appeal to appellant's brief	Notice of appeal to filing of appellee's brief	Notice of appeal to reply to appellee's brief	Notice of appeal filed to reply to appellant's reply	Filing of appellant's brief to filing of appellee's brief	Appellant's brief to reply to appellant's reply	Appellee's brief to reply to appellee's brief	Reply to appellee's brief to reply to appellant's reply	Notice of appeal to argument
Median (days)	33.8	90.7	64.3	157	203.4	203	211	47.5	54.5	13.8	(1)	226
Number of cases used in computing median [2]	168.0	183.0	153.0	102	55.0	15	3	54.0	2.0	15.0	----	5

[1] Not available.
[2] Total number cases examined 194.

Source: Calculations based on docket entries, Office of the Clerk of the Court.

TABLE XIII.—COMPARISON OF MEDIAN TIME INTERVALS: APPOINTMENT OF TRIAL ATTORNEY VERSUS APPOINTMENT OF NEW ATTORNEY,[1] U.S. COURT OF APPEALS

	Notice of appeal to duplicate notice of appeal and preliminary record		Notice of appeal to certification of original record		Duplicate notice of appeal to certification of original record		Notice of appeal to appellant's brief		Notice of appeal to appellee's brief		Notice of appeal to reply to appellee's brief	
	Number of cases	Median (days)	Number of cases	Median (days)	Number of cases	Median (days)	Number of cases	Median (days)	Number of cases	Median (days)	Number of cases	Median (days)
Trial attorney total cases, 13	9	22.3	13	96.0	9	73.0	7	209.0	2	232.5	1	269.0
New attorney total cases, 181	159	34.3	170	90.5	146	63.1	95	156.8	53	203.1	14	202.5

	Notice of appeal to reply to appellant's reply		Appellant's brief to appellee's brief		Appellant's brief to reply to appellant's reply		Appellee's brief to reply to appellee's brief		Reply to appellee's brief to reply to appellant's reply		Filing of notice of appeal to argument	
	Number of cases	Median (days)	Number of cases	Median (days)	Number of cases	Median (days)	Number of cases	Median (days)	Number of cases	Median (days)	Number of cases	Median (days)
Trial attorney total cases, 13	(2)	(2)	2	56	(2)	(2)	1	13	(2)	(2)	1	294
New attorney total cases, 181	3	211	52	47.5	2	54.5	14	13.9	(2)	(2)	4	218

[1] Because of the small number of cases involving the appointment of trial attorney, these figures must be interpreted with caution.
[2] Not available.

Source: Calculations based on docket entries, Office of the Clerk of the Court.

TABLE XIII–A.—MEDIAN TIME INTERVALS—U.S. CIRCUIT COURTS OF APPEALS—BY CIRCUIT, TYPE CASE, FOR CASES TERMINATED AFTER HEARING OR SUBMISSION, FOR THE FISCAL YEAR, 1969

Circuit and type of case	Number of cases	Median (months)— From filing of complete record to final disposition	From filing of complete record to filing last brief	From filing last brief to hearing or submission	From hearing or submission to final disposition	From filing notice of appeal in lower court to filing of complete record in appellate court	From docketing in lower court to final disposition in appellate court
District of Columbia:							
Administrative	70	10.2	4.3	1.4	3.7		
Civil	164	9.5	3.5	2.5	2.4	1.3	32.2
Criminal	216	7.2	3.4	1.5	1.3	4.2	23.8
1st:							
Administrative	20	5.8	4.0	.5	1.4		
Civil	86	4.7	2.7	.6	1.4	1.2	20.7
Criminal	25	6.9	4.3	.4	1.8	1.4	16.9
2d:							
Administrative	20	5.8	3.6	.6	1.3		
Civil	274	5.4	3.3	.2	1.1	1.2	22.4
Criminal	131	6.1	3.8	.1	.7	1.9	24.6
3d:							
Administrative	24	8.4	4.6	1.0	2.3		
Civil	246	7.7	2.7	1.5	1.8	2.1	26.1
Criminal	42	5.3	1.1	1.0	2.2	7.8	27.3
4th:							
Administrative	34	8.2	3.5	1.0	3.8		
Civil	173	6.4	2.4	1.2	1.9	1.3	25.4
Criminal	97	5.1	2.9	1.0	.9	1.6	14.0

5th:							
Administrative	116	7.4	2.7	2.2	2.1		
Civil	735	7.4	2.7	1.9	1.7	3.0	25.4
Criminal	265	8.0	3.2	2.1	1.5	3.0	20.3
6th:							
Administrative	106	12.6	5.7	4.4	1.5		
Civil	336	10.7	4.4	3.7	1.7	1.2	24.4
Criminal	135	9.8	5.3	2.3	1.4	2.9	21.6
7th:							
Administrative	40	9.6	4.9	1.2	3.0		
Civil	214	8.5	4.8	1.2	1.9	1.3	23.1
Criminal	72	11.6	7.2	.9	2.6	2.2	24.8
8th:							
Administrative	28	8.8	2.0	1.6	3.9		
Civil	149	8.2	1.9	2.5	2.8	3.7	23.5
Criminal	71	8.6	3.4	1.7	2.4	2.9	17.7
9th:							
Administrative	81	13.6	6.3	4.6	1.4		
Civil	326	14.3	5.6	5.7	1.9	1.9	27.9
Criminal	231	10.5	5.4	2.0	1.0	2.4	20.8
10th:							
Administrative	30	6.9	1.2	2.2	2.9		
Civil	268	6.4	1.4	1.6	2.0	2.3	17.8
Criminal	90	6.7	2.8	.6	2.2	2.9	13.8

Source: AOC data and staff calculations.

TABLE XIV.—U.S. COURT OF APPEALS—DISTRICT OF COLUMBIA CIRCUIT PERCENT OF REVERSALS (FISCAL YEARS 1950–68)

Year	Total number and percent of cases reversed		Criminal cases		U.S. civil cases		Private civil cases		Administrative appeals	
	Number [1]	Percent	Number [1]	Percent	Number [1]	Percent	Number [1]	Percent	Number [1]	Percent
1950	55	22.9	1	5.9	16	33.3	31	27.4	5	9.1
1951	67	27.6	10	23.3	20	28.2	25	29.1	9	5.4
1952	65	21.5	9	17.3	11	13.6	36	30.8	4	9.5
1953	70	25.7	9	17.0	15	21.7	25	29.1	15	31.9
1954	103	30.2	18	24.7	47	51.1	11	14.9	5	11.9
1955	93	28.9	22	29.3	23	31.5	21	21.0	14	33.3
1956	94	28.0	18	28.6	37	33.9	20	21.1	15	23.8
1957	87	25.7	17	27.0	21	20.6	29	29.0	17	24.6
1958	109	27.5	13	15.9	41	30.1	33	29.7	21	32.8
1959	86	24.4	19	20.7	17	23.0	33	28.9	12	21.1
1960	93	26.3	22	24.4	22	25.9	35	30.2	11	20.8
1961	81	24.0	10	14.1	13	18.8	33	29.7	24	30.8
1962	85	26.1	15	19.5	20	25.0	31	36.9	14	19.7
1963	104	28.7	28	23.3	21	25.0	44	46.3	9	15.3
1964	79	19.8	24	17.9	13	15.9	32	31.4	8	12.1
1965	72	17.1	36	20.1	6	8.7	17	17.2	11	16.4
1966	94	21.3	23	14.9	14	15.4	24	25.3	29	31.9
1967	74	17.8	18	11.0	19	26.8	20	22.2	13	17.3
1968	76	19.4	21	14.9	25	29.8	19	20.2	4	7.1

[1] Number of cases reversed.

Source: AOC annual reports.

TABLE XV.—U.S. COURT OF APPEALS—PERCENT REVERSALS—ALL CIRCUITS, BY TYPE OF CASE, (FISCAL YEARS 1950-68)

Fiscal year	Total number and percent cases reversed		Criminal cases reversed		U.S. civil cases reversed		Private civil cases reversed		Administrative appeals reversals	
	Number [1]	Percent	Number	Percent	Number [2]	Percent	Number [2]	Percent	Number [2]	Percent
1950	528	22.4	40	15.9	156	25.4	212	21.8	77	20.7
1951	572	26.8	36	16.8	145	27.1	260	28.1	66	21.7
1952	588	25.5	37	13.8	110	21.9	259	26.8	123	30.2
1953	641	26.3	68	24.4	151	27.2	270	26.2	107	24.5
1954	668	26.4	80	23.5	184	28.3	206	24.7	124	27.2
1955	777	26.9	129	26.1	182	26.5	282	26.3	107	28.7
1956	743	25.1	111	24.7	179	26.9	293	23.9	119	25.1
1957	621	23.1	80	19.9	166	25.7	264	23.4	88	21.8
1958	689	24.7	93	20.8	174	25.3	309	25.5	87	25.3
1959	648	24.0	86	19.6	157	27.4	296	25.1	74	21.3
1960	656	24.5	78	17.7	133	24.9	318	26.5	91	25.2
1961	692	24.7	96	21.4	185	29.8	269	24.4	108	23.6
1962	680	23.5	94	20.9	163	25.3	286	24.7	103	22.1
1963	791	24.9	119	20.3	167	25.6	364	27.6	104	23.5
1964	765	21.5	117	18.2	185	25.4	331	23.2	98	18.7
1965	773	22.0	116	16.9	166	22.1	352	25.1	95	19.4
1966	866	21.7	115	14.4	175	22.3	418	24.7	125	22.2
1967	984	21.5	133	13.5	203	24.7	472	24.5	107	20.5
1968	1,009	21.6	184	16.0	192	24.9	486	24.0	99	17.8

[1] Total number of cases.
[2] Number of cases reversed.

Source: AOC annual reports.

TABLE XVI.—PERCENTAGE OF CRIMINAL CASES REVERSED, BY CIRCUIT, FISCAL YEARS 1960–69

Circuit	1969			1968			1967			1966			1965		
	Rank	Total [1]	Percent	Rank	Total [1]	Percent	Rank	Total [1]	Percent	Rank	Total [1]	Percent	Rank	Total [1]	Percent
District of Columbia	2	216	8.8	6	141	14.9	4	164	11.0	7	154	14.9	9	179	20.1
1st	7	25	16.0	5	34	14.7	----------	18	([2])	11	29	31.9	11	23	[3] 30.4
2d	3	131	9.2	1	121	6.6	2	138	8.7	2	97	8.2	5	66	13.6
3d	10	42	26.2	9	42	23.8	9	47	19.1	9	35	20.0	2	25	8.0
4th	1	97	8.2	2	90	8.9	1	58	8.6	5	51	11.8	10	49	20.4
5th	9	265	16.6	10	205	23.9	7	148	14.9	8	123	19.5	7	95	18.9
6th	8	135	16.3	8	119	16.8	8	86	16.3	4	69	10.1	3	46	8.7
7th	11	72	26.4	11	64	25.0	5	66	12.1	6	63	12.7	4	53	13.2
8th	4	71	9.9	3	66	16.7	3	40	10.0	1	44	6.8	1	33	6.1
9th	6	231	14.3	3	185	13.0	10	149	19.5	3	92	9.8	6	72	16.7
10th	5	90	10.0	4	83	14.5	6	70	14.3	10	44	25.0	8	47	19.1

Circuit	1964			1963			1962			1961			1960		
	Rank	Total [1]	Percent	Rank	Total [1]	Percent	Rank	Total [1]	Percent	Rank	Total [1]	Percent	Rank	Total [1]	Percent
District of Columbia	5	134	17.9	6	120	23.3	4.5	46	19.6	1	71	14.1	9	90	24.4
1st	----------	14	([2])	----------	14	([2])	----------	9	([2])	----------	7	([2])	----------	5	([2])
2d	2	76	13.2	2	89	12.4	4.5	46	19.6	7	63	22.2	3	57	14.0
3d	7	24	[3] 21.6	----------	17	([2])	9	23	[3] 30.4	6	23	[3] 21.7	1	22	[3] 4.5
4th	9	37	24.3	10	39	25.6	2	30	10.0	8	24	[3] 25.0	7	21	[3] 19.0
5th	6	118	20.3	8	96	25.0	7	77	23.4	4	61	18.0	6	76	18.4
6th	10	36	25.0	1	33	12.1	3	40	15.0	2	38	15.8	8	31	19.4
7th	8	44	22.7	4	33	15.2	10	21	[3] 33.3	3	36	16.7	4	36	16.7
8th	1	38	5.3	3	22	[3] 13.6	1	30	6.7	----------	19	([2])	2	23	[3] 8.7
9th	3	89	14.6	5	85	18.8	8	71	25.3	5	73	20.5	5	64	17.2
10th	1	34	14.7	7	38	23.7	6	26	23.1	9	33	45.5	----------	16	([2])

[1] Total number of cases terminated.
[2] Total number of cases less than 20. No percentage or rank calculated.
[3] Total number cases of less than 25. AOC does not compute—staff computations.
Source: Annual reports AOC.

TABLE XVII.—U.S. COURTS OF APPEALS OPINIONS IN CASES DECIDED AFTER HEARING OR SUBMISSION

Circuit	Total	Percent—no written opinion		Percent—signed opinion		Percent—per curiam opinions	
		Number	Percent	Number	Percent	Number	Percent
1966							
District of Columbia	448	198	44.2	165	36.8	85	19.0
1st	158	28	17.7	108	68.4	22	13.9
2d	428	75	17.5	263	61.4	90	21.0
3d	321	40	12.5	137	42.7	144	44.9
4th	277	16	5.7	166	59.9	95	34.3
5th	703	45	6.4	348	49.5	310	44.1
6th	325	52	16.0	171	52.6	102	31.4
7th	329	30	9.1	283	86.0	16	4.9
8th	243	11	4.5	200	82.3	32	13.2
9th	496	55	11.1	336	67.7	105	21.2
10th	359	25	7.0	237	66.0	97	27.0
All circuits	4,087	575	14.1	2,414	59.1	1,048	25.6
1967							
District of Columbia	415	180	43.4	160	38.6	75	18.7
1st	114	9	7.9	78	68.4	27	23.7
2d	475	65	13.7	294	61.9	116	24.4
3d	339	17	5.0	191	56.3	131	38.6
4th	348	9	2.6	210	60.3	129	37.1
5th	844	27	3.2	446	52.8	371	44.0
6th	429	145	33.8	179	41.7	105	24.5
7th	314	48	15.3	244	77.7	22	7.0
8th	220	9	4.1	179	81.4	32	14.5
9th	577	33	5.7	371	64.3	173	30.0
10th	393	27	6.9	281	71.5	85	21.6
All circuits	4,468	569	12.7	2,633	58.9	1,266	28.3
1968							
District of Columbia	392	120	30.6	151	38.5	121	30.9
1st	133	24	18.0	88	66.7	21	15.8
2d	448	79	17.6	269	60.0	100	22.3
3d	347	10	2.9	177	51.0	160	46.1
4th	342	7	2.0	188	55.0	147	43.0
5th	942	24	2.5	480	50.1	438	46.5
6th	512	218	42.6	195	38.1	99	19.3
7th	312	57	18.3	241	77.2	14	4.5
8th	235	11	4.7	192	81.7	32	13.6
9th	535	39	7.9	327	61.1	169	31.6
10th	470	5	1.1	264	56.2	201	42.8
All circuits	4,668	594	12.7	2,572	55.1	1,502	32.2

Source: AOC annual reports.

TABLE XVIII.—U.S. COURT OF APPEALS CASES HELD UNDER SUBMISSION OVER 3 MONTHS AS OF JUNE 30, FISCAL YEAR

Circuits	1966					1967				
	Total	More than 3 but less than 6 months	More than 6 but less than 9 months	More than 9 months but less than 1 year	More than 1 year	Total	More than 3 but less than 6 months	More than 6 but less than 9 months	More than 9 months but less than 1 year	More than 1 year
District of Columbia	10	7	3			19	13	5		1
1st										
2d	11	11				11	6	4	1	
3d	17	15	1	1		14	10	4		
4th	54	23	14	1	16	30	7	1		22
5th	66	33	22	1	10	83	38	28	5	12
6th	12	4	8			10	6	4		
7th										
8th	25	18	3	4		7	7			
9th	51	32	12	3	4	17	9	3	1	4
10th						1	1			
Total	246	143	63	10	30	193	97	50	7	39

Circuits	1968					1969				
	Total	More than 3 but less than 6 months	More than 6 but less than 9 months	More than 9 months but less than 1 year	More than 1 year	Total	More than 3 but less than 6 months	More than 6 but less than 9 months	More than 9 months but less than 1 year	More than 1 year
District of Columbia	33	21	11		1	11	10	1		
1st										
2d	12	6	3	1	2	9	6	2	1	
3d	7	6	1			4	4			
4th	15	15				6	1	5		
5th	121	54	44	6	17	82	26	26	7	23
6th	7	3	4			22	17	5		
7th						7	6	1		
8th	13	9	4			9	7	2		
9th	40	23	9	5	3	40	26	8	6	
10th	8	4	2	2		17	11	6		
Total	256	141	78	14	23	207	114	56	14	23

Source: AOC annual reports.

TABLE XIX.—TERMINATIONS PER JUDGESHIP, CASES TERMINATED AFTER HEARING OR SUBMISSION, ALL CIRCUITS (1950-68)

Fiscal year	District of Columbia Circuit			1st			2d			3d			4th			5th		
	Judge-ships	Total	Termi-nations per judge-ship	Judge-ships	Total	Termi-nations per judge-ship	Judge-ships	Total	Termi-nations per judge-ship	Judge-ships	Total	Termi-nations per judge-ship	Judge-ships	Total	Termi-nations per judge-ship	Judge-ships	Total	Termi-nations per judge-ship
1950	9	240	27	3	69	23	6	292	49	7	237	34	3	171	57	6	340	57
1951	9	243	27	3	53	18	6	268	45	7	211	30	3	146	49	6	280	47
1952	9	303	34	3	60	20	6	286	48	7	228	33	3	131	44	6	369	62
1953	9	272	30	3	67	22	6	296	49	7	249	36	3	152	51	6	431	72
1954	9	307	34	3	79	26	6	264	44	7	231	33	3	169	56	6	403	67
1955	9	314	35	3	90	30	6	349	58	7	219	31	3	175	58	7	467	67
1956	9	338	38	3	98	33	6	369	62	7	221	32	3	186	62	7	472	67
1957	9	340	38	3	87	29	6	351	59	7	201	29	3	179	60	7	414	59
1958	9	399	44	3	78	26	6	349	58	7	254	36	3	184	61	7	467	67
1959	9	352	39	3	69	23	6	330	55	7	231	33	3	176	59	7	449	64
1960	9	354	39	3	89	30	6	362	60	7	200	29	3	177	59	7	438	63
1961	9	338	38	3	108	36	6	393	66	7	207	30	5	174	35	7	405	58
1962	9	326	36	3	114	38	9	364	40	8	225	28	5	202	40	9	466	52
1963	9	363	40	3	91	30	9	440	49	8	212	27	5	247	49	9	562	62
1964	9	398	44	3	97	32	9	417	46	8	275	34	5	250	50	9	702	78
1965	9	426	47	3	115	38	9	427	47	8	243	30	5	266	53	9	621	69
1966	9	448	50	3	158	53	9	428	48	8	321	40	5	279	55	9	703	78
1967	9	415	46	3	114	38	9	475	53	8	339	42	7	348	50	13	844	65
1968	9	392	44	3	133	44	9	448	50	9	347	39	7	342	49	15	942	63

TABLE XIX.—TERMINATIONS PER JUDGESHIP, CASES TERMINATED AFTER HEARING OR SUBMISSION, ALL CIRCUITS (1950-68)—Continued

Fiscal year	6th			7th			8th			9th			10th		
	Judge-ships	Total	Termina-tions per judgeship	Judge-ships	Total	Termina-tions per judgeship	Judge-ships	Total	Termina-tions per judgeship	Judge-ships	Total	Termina-tions per judgeship	Judge-ships	Total	Termina-tions per judgeship
1950	6	192	32	6	225	38	7	153	22	7	257	37	5	179	36
1951	6	169	28	6	220	37	7	149	21	7	248	35	5	149	30
1952	6	151	25	6	173	29	7	152	22	7	332	47	5	179	36
1953	6	194	32	6	201	34	7	168	24	7	252	36	5	154	31
1954	6	224	37	6	199	33	7	167	24	7	241	34	5	143	29
1955	6	238	40	6	215	36	7	170	24	9	387	43	5	185	37
1956	6	295	49	6	240	40	7	161	23	9	397	44	5	196	39
1957	6	235	39	6	221	37	7	151	22	9	357	40	5	173	35
1958	6	226	38	6	221	37	7	154	22	9	318	35	5	181	36
1959	6	224	37	6	227	38	7	134	19	9	346	38	5	167	33
1960	6	203	34	6	235	39	7	156	22	9	288	32	5	179	36
1961	6	252	42	6	227	38	7	142	20	9	347	39	5	213	43
1962	6	218	36	7	249	36	7	181	26	9	348	39	6	202	34
1963	6	241	40	7	260	37	7	157	22	9	386	43	6	213	36
1964	6	268	45	7	275	39	7	201	29	9	437	49	6	232	39
1965	6	300	50	7	283	40	7	198	28	9	398	44	6	269	45
1966	6	325	54	7	329	47	7	243	35	9	496	55	6	359	60
1967	8	429	54	8	314	39	8	220	28	9	577	64	6	393	66
1968	9	512	57	8	312	39	8	235	29	13	535	41	7	470	67

[1] Number of terminations after hearing or submission.

Source: Figures compiled from tables S-1 for all circuits, Shafroth report and AOC reports for 1967 and 1968.

TABLE XX.—TERMINATIONS [1] PER JUDGESHIPS: CIRCUIT COMPARISON—FISCAL YEARS 1950–68

Fiscal year	District of Columbia circuit			1st			2d			3d			4th			5th		
	Judgeships	Total [2]	Terminations [3]	Judgeships	Total [2]	Terminations [3]	Judgeships	Total [2]	Terminations [3]	Judgeships	Total [2]	Terminations [3]	Judgeships	Total [2]	Terminations [3]	Judgeships	Total [2]	Terminations [3]
1950	9	432	48	3	86	29	6	355	59	7	304	43	3	209	70	6	418	70
1951	9	421	47	3	77	26	6	319	53	7	264	38	3	177	59	6	358	60
1952	9	473	53	3	74	25	6	349	58	7	279	40	3	163	54	6	443	74
1953	9	396	44	3	79	26	6	359	60	7	296	42	3	173	58	6	461	77
1954	9	457	58	3	111	37	6	325	54	7	273	39	3	206	69	6	489	82
1955	9	476	53	3	124	41	6	453	76	7	265	38	3	200	87	7	554	79
1956	9	483	54	3	141	47	6	480	80	7	278	40	3	206	69	7	544	78
1957	9	507	56	3	118	39	6	459	77	7	284	41	3	208	69	7	553	79
1958	9	540	60	3	118	39	6	506	84	7	315	45	3	235	78	7	554	79
1959	9	507	56	3	119	40	6	511	85	7	295	42	3	223	74	7	546	78
1960	9	543	59	3	134	45	6	554	92	7	294	42	3	224	75	7	550	79
1961	9	518	58	3	172	57	6	663	110	7	309	44	5	250	50	7	509	73
1962	9	519	58	3	148	49	9	526	58	8	323	40	5	292	58	9	575	64
1963	9	593	66	3	134	45	9	669	74	7	328	47	5	352	70	9	750	83
1964	9	602	67	3	156	52	9	623	69	7	384	55	5	450	90	9	902	100
1965	9	626	70	3	180	60	9	716	80	7	357	51	5	568	114	9	842	94
1966	9	674	75	3	199	66	9	708	79	7	461	66	5	569	114	9	970	108
1967	9	640	71	3	167	56	9	808	90	7	494	71	7	[4] 652	93	13	1,112	86
1968	9	638	71	3	198	66	9	887	99	9	608	68	7	[5] 815	116	15	1,245	83

TABLE XX.—TERMINATIONS[1] PER JUDGESHIPS: CIRCUIT COMPARISON—FISCAL YEARS 1950-68—Continued

Fiscal year	6th			7th			8th			9th			10th		
	Judge-ships	Total[2]	Termina-tions[3]	Judge-ships	Total[2]	Termina-tions[3]	Judge-ships	Total[2]	Termina-tions[3]	Judge-ships	Total[2]	Termina-tions[3]	Judge-ships	Total[2]	Termina-tions
1950	6	252	42	6	291	49	7	208	29	7	307	30	5	202	40
1951	6	201	34	6	279	47	7	218	31	7	337	48	5	178	36
1952	6	213	36	6	219	37	7	212	30	7	419	60	5	204	41
1953	6	278	46	6	230	38	7	228	33	7	352	50	5	191	38
1954	6	280	47	6	276	46	7	245	35	7	363	52	5	167	33
1955	6	305	51	6	282	47	7	242	35	9	523	58	5	230	46
1956	6	360	60	6	291	49	7	237	34	9	484	54	5	230	46
1957	6	334	56	6	319	53	7	208	30	9	458	51	5	239	48
1958	6	310	52	6	286	48	7	217	31	9	401	45	5	222	44
1959	6	311	52	6	309	52	7	225	32	9	473	53	5	247	49
1960	6	283	47	6	298	50	7	226	32	9	404	45	5	222	44
1961	6	324	54	6	320	53	7	243	35	9	470	52	5	279	56
1962	6	329	55	7	313	45	7	247	35	9	449	50	6	251	42
1963	6	341	57	7	366	52	7	233	33	9	555	62	6	285	48
1964	6	404	67	7	378	54	7	299	43	9	670	74	6	287	48
1965	6	497	83	7	374	53	7	278	40	9	532	59	6	357	60
1966	6	510	85	7	453	65	7	347	50	9	718	80	6	431	72
1967	8	627	78	8	463	58	8	331	41	9	864	96	6	535	89
1968	9	740	82	8	517	65	8	371	46	13	814	63	7	539	77

[1] Terminations of all types—that is, without hearings or submission plus after hearing or submission.
[2] Total number of cases terminated.
[3] Number of terminations per judgeship.
[4] AOC note: Includes 210 cases in which memoranda were filed by court setting forth reasons for the dismissal, or in some cases the reversal of the appeal. See table B-1, 1967.
[5] AOC note: Includes 371 cases in which memoranda were filed by court setting forth reasons for the dismissal, or in some cases the reversal of the appeal. See table B-1, 1968.

Note.—Beginning in 1962, number of cases terminated is reduced by cases disposed of by consolidation.

Source: Tables S-1, Shafroth Report and AOC Reports, for fiscal years 1967 and 1968.

TABLE XXI.—DEFENDANTS FILING CRIMINAL APPEALS ALL CIRCUIT TOTALS, EXCLUDING DISTRICT OF COLUMBIA (FISCAL YEARS 1950-65)

Fiscal Year	(1) Total of all defendants convicted, district courts	(2) Total number criminal appeals filed, appeals courts	(3) Percent of appeals commenced column 2/ column 1	(4) Total of all convicted after trial district courts	(5) Total number criminal appeals filed, appeals courts	(6) Percent of appeals commenced column 5/ column 4
1950 [1]	33,502	228	.7	1,763	228	12.9
1951 [1]	37,000	246	.7	1,729	246	14.2
1952	34,788	300	.9	2,054	300	14.6
1953	33,473	353	1.1	2,137	353	16.5
1954	38,141	453	1.2	2,581	453	17.6
1955	33,843	606	1.8	2,719	606	22.3
1956	27,580	463	1.7	2,544	463	18.2
1957	26,254	438	1.7	2,387	438	18.3
1958	26,808	492	2.2	2,552	492	19.3
1959	27,033	471	1.7	2,240	471	21.0
1960	26,728	523	2.0	2,483	523	21.1
1961 [2]	28,625	525	1.8	3,795	525	13.8
1962 [2]	28,511	637	2.2	3,872	637	16.5
1963 [3]	29,803	765	2.6	3,879	765	19.7
1964 [3]	29,170	792	2.7	2,897	792	27.3
1965	[4]	986	[5]	[5]	986	
1966 [2]	27,314	1,206	4.4	3,187	1,206	37.8
1967 [6]	26,344	1,411	5.4	3,213	1,411	43.9
1968 [6]	25,674	1,706	6.6	3,619	1,706	47.1

[1] Total for 86 districts; excluding Alaska, Canal Zone, and Virgin Islands.
[2] Total for 87 district courts; excluding Alaska, Canal Zone, and Virgin Islands.
[3] Total for 88 district courts; excluding Alaska, Canal Zone, and Virgin Islands.
[4] Data not shown.
[5] This fiscal year (AOC report).
[6] Total for 89 district courts; excluding Alaska, Canal Zone, and Virgin Islands.
Source: Staff computation based on AOC annual reports.

APPENDIX II–1. RECOMMENDATIONS ON THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA BY THE PRESIDENT'S COMMISSION ON CRIME IN THE DISTRICT OF COLUMBIA, 1966*

APPELLATE REVIEW

15. The United States Court of Appeals for the District of Columbia and the District of Columbia Court of Appeals should minimize the time required for appellate proceedings in criminal cases.

a. Strict adherence to court rules governing time should be required.

b. Trial and appellate courts should cooperate to ensure adequate court reporting staffs and to eliminate delay in preparing transcripts for appeal.

c. Administrative procedures to assure appointment of counsel for the indigent defendants no more than 5 days after notice of appeal should be established.

d. Consistent with proper deliberations, every effort should be made to minimize the amount of time between oral argument and final decision, utilizing the order form of decision to the fullest extent possible.

16. Criminal cases pending on appeal more than 6 months and criminal cases involving more than one appeal or one trial should be brought to the attention of the court by the clerk of the court and placed on a special calendar for expedited handling.

17. In order to minimize conflict in panel opinions by different panels of judges, the U.S. Court of Appeals should consider increased use of en banc hearings.

18. The U.S. Court of Appeals should participate in the proposed project to expedite felony cases and should develop modified appellate procedures which reduce time for preparing records and briefs.

*Source: Report of the President's Commission on Crime in the District of Columbia, 1966, p. 365.

APPENDIX II–2. LETTER FROM CHIEF JUDGE OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT TO THE UNITED STATES SENATE REPORTING ON IMPLEMENTATION OF CRIME COMMISSION RECOMMENDATIONS, 1969*

U.S. COURT OF APPEALS

U.S. COURT OF APPEALS,
Washington, D.C., February 11, 1969.

Hon. JOSEPH D. TYDINGS,
U.S. Senate, Washington, D.C.

DEAR SENATOR TYDINGS: I have your request of February 4, 1969, for a "report detailing the degree to which each of the suggestions of the 1966 District of Columbia Crime Commission Report have been implemented" in this court. The suggestions (see p. 365 of the report) are as follows:

APPELLATE REVIEW

15. The U.S. Court of Appeals for the District of Columbia and the District of Columbia Court of Appeals should minimize the time required for appellate proceedings in criminal cases.

(a) Strict adherence to court rules governing time should be required.

(b) Trial and appellate courts should cooperate to insure adequate court reporting staffs and to eliminate delay in preparing transcripts for appeal.

(c) Administrative procedures to assure appointment of counsel for the indigent defendants no more than 5 days after notice of appeal should be established.

(d) Consistent with proper deliberations, every effort should be made to minimize the amount of time between oral argument and final decision, utilizing the order form of decision to the fullest extent possible.

16. Criminal cases pending on appeal more than 6 months and criminal cases involving more than one appeal or one trial should be brought to the attention of the court by the clerk of the court and placed on a special calendar for expedited handling.

17. In order to minimize conflict in panel opinions by different panels of judges, the U.S. Court of Appeals should consider increased use of en banc hearings.

18. The U.S. Court of Appeals should participate in the proposed project to expedite felony cases and should develop modified appellate procedures which reduce time for preparing records and briefs.

I reply to each suggestion seriatim.

15 (a). We enforce strict adherence to court rules governing time within which documents are to be filed. Extensions of time are allowed only in special circumstances and primarily upon request of attorneys who are appointed by the court to represent indigents and who have no associates.

15 (b). A very great deal of effort has been devoted to eliminating the delay in the preparation of transcripts on appeals. During the past several years arrangements were made with the Administrative Office of the Courts to provide the district court with addtional reporting help required to service each trial judge and also to provide sufficient free time for reporters to prepare the necessary transcripts for appeal. Since the issuance of the report the Administrative Office has made it possible to increase the prices paid by the U.S. Government for indigent transcripts and thereby eliminate a complaint of the court reporters that the method for determining fair compensation resulted in low compensation. There are, however, continuing difficulties in securing able reporters. We are therefore engaged in a continuing and strenuous effort.

15 (c). Administrative procedures were adopted almost immediately after the issuance of the report to insure the appointment of counsel for indigent defendants immediately after a notice of appeal is filed.

It should be noted that in approximately 90 percent or more of the criminal cases in this jurisdiction counsel are appointed for indigent defendants under the Criminal Justice Act. The task of selecting competent counsel is indeed an important and difficult one.

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*Source: Crime in the District of Columbia: Implementing the Suggestions of the President's Commission on Crime, Committee Print compiled for the Committee on the District of Columbia, U.S. Senate, 91st Congress, first Session, 1969, pp. 55–57.

15 (d). Consistent with proper deliberations and our responsibilities, every effort has been made by the members of this court to minimize the amount of time between oral arguments and final decisions. In line with the Commission's recommendations the court amended its rules to provide a formal foundation for the use of order judgments.[1] Efforts were made to use order judgments. It developed that this was resented by defendants, and their counsel (usually appointed), who felt they had not been given due consideration. Indeed the practice was counterproductive, for it stimulated petitions for rehearing en banc which complained that the decisions had evidently not focused on their contentions. While judgment orders are still used to some extent, experience has led the court to try another approach; namely, the use of short per curiam opinions, which are often not printed but merely filed with Xerox copies to counsel. These opinions take more time and effort than orders, of course, but they represent an intermediate administrative technique that may have greater acceptance and overall utility.

The data for fiscal 1968 (Administrative Office Report, p. 163) show that out of 392 cases decided after hearing, 120 were without written opinion—or about 30 percent. The national average is about 13 percent. But the data for fiscal 1969 will likely show some recession in use of judgment orders, for reasons indicated above.

The median time from hearing or submission of a case before a panel of this court to the final disposition of that case amounts to 1.6 months. See page 184 of the Report of the Proceedings of the Judicial Conference of the United States for the year 1968. While four circuits do show a lesser figure, and it is possible that some further improvement can be made, we doubt that any significantly better median showing is feasible.

Our judicial council meets each month and considers and discusses all pening appeals. We have been concentrating on reducing the number of cases pending over 3 months. There are always some such cases, though a minority. We are chipping away at this group.

We hope for some improvement on the filling of the vacancy that has existed since April 1967. A second vacancy was created in January.

17. We have continued our effort to avoid conflicting opinions and have been alert to employ en banc consideration to resolve any conflicts which do arise.

18. This court has been informed by the District Court of the District of Columbia that preparations have been made to expedite certain felony cases for trial. We shall make every effort to expedite appellate consideration to the greatest extent consistent with the provisions of the Federal Rules of Appellate Procedure and the time limits imposed in those rules.

Our greatest roadblock to expedition of appeals generally has been the delay in the preparation of transcripts for the record on appeal. The Federal Rules of Appellate Procedure prescribe the following time table (adopted July 1, 1968):

(1) An appeal must be filed within 10 days after the entry of the judgment of conviction. This time may be extended for a period of 10 days after a decision made by a judge on a motion for a new trial (rule 4(b)).

(2) The clerk of the district court is then required to send the record to this court within 40 days after the filing of the notice of appeal, unless the time is shortened or extended by the district court. This extension may run as high as 50 additional days so that the maximum amount of time within which the clerk of the district court may under these circumstances transmit the record to this court can run up to 90 days from the filing of the first notice of appeal.

(3) When the record arrives at this court and is docketed, appellant's brief is due within 40 days.

(4) Appellee's brief is then due within 30 days after appellant's brief has been filed.

(5) Appellant then may serve and file a reply brief within 14 days after appellee's brief has been filed.

(6) When all of these dates are totaled, we find that the minimum time within which a case can be ready to be put on the calendar for oral argument amounts to 84 days after the record is filed.

---

[1] See amended rule 24(c), adopted Apr. 25, 1967. This old rule was continued in the new general rules supplementing the Federal Rules of Appellate Procedure which went into effect July 1, 1968 (rule 13(c)).

After the case is calendered we have been able to set it for argument and submission within a month in almost all criminal cases.

The data in the Administrative Office Report (p. 184) show that this circuit's median time from filing of record to final disposition is 7.2 months, compared to a national average of 7.8 months.

We are attempting to secure improvement, by various means. However, we call attention to the mounting caseload in our circuit. Appeals commenced in the last 4 fiscal years are:

Fiscal 1965	685
Fiscal 1966	797
Fiscal 1967	798
Fiscal 1968	945

At present this circuit has a workload, based on fiscal 1968 data, of 105 appeals commenced per judgeship (assuming full strength of nine active judges). The national average is 94 appeals per judgeship. (Administrative Office Report, p. 100.) The data for fiscal 1969 moreover shows an increase in workload over 1968.

We are naturally concerned that the increase in workload will offset our efforts to curtail delay in processing appeals, but we are continuing those efforts.

Sincerely yours,

DAVID L. BAZELON.

APPENDIX II–3. SAMPLE SHEET—STATUS OF CASE REPORT

DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS—OFFICIAL COURT REPORTERS, OPEN TRANSCRIPTS AS OF JULY 16, 1969

Request number	Case number	Reporter	Req. by	Title	Order date	Estimated pages	Case type	Act. type	Daily copy	Pages complete	Date part completed to	Fully complete
101	21938 67	B	P	Foster, Barbara V., D.C. Transit System, Inc.	Apr. 14, 1969	40	C	MS				July 8, 1969
Total pages for reporter B, 40:												
8	570 69	C	C	Lynch, George E. (U.S. V)	Mar. 18, 1969	10	F	PH				June 30, 1969
13	5690 69	C	G	Roubin and Janeiro (D.C. V)	Apr. 1, 1969	75	M	NJ				
10	611 69	C	C	Austin, Whitt (U.S. V)	Apr. 3, 1969	10	F	PH				June 30, 1969
11	5753 69	C	C	White, William M. (U.S. V)	Apr. 8, 1969	10	F	PH				
145	35007 68	C	C	Martin, Charles T. (U.S. V)	Apr. 21, 1969	20	F	PH				
166	2586 69	C	C	Otts, Oscar (U.S. V)	Apr. 25, 1969	20	F	PH				
266	12723 69	C	G	Head, Eugene S. (U.S. V)	June 2, 1969	85	M	MS				
297	16659 66	C	P	Salmon V. (D.C.)	June 13, 1969	35	C	JT				
368	17 69	C	G	Williams, Archie, et al. (U.S. V)	July 3, 1969	25	F	PH				
375	14716 69	C	G	Bishton, Thomas W. (U.S. V)	July 7, 1969	45	M	NJ				
386	7551 69	C	C	Beard, Richard (U.S. V)	July 10, 1969	10	F	PH				
391	7260 69	C	G	Taylor, Robert, et al. (U.S. V)	July 11, 1969	20	F	PH				
Total pages for reporter C, 365:												
18	43105 68	D	C	Butler, James L. (U.S. V)	Mar. 26, 1969	70	M	NJ				
167	2685 69	D	C	Turner, Richard L. (U.S. V)	Apr. 25, 1969		M					
199	10756 69	D	C	Gaskins, Harry R., (U.S. V)	May 5, 1969	50	M	MS				May 28, 1969
222	4906 69	D	C	Inman, Ronald A., (U.S. V)	May 20, 1969	10	F	PH				
236	10907 69	D	C	Bassil, Bernard L., (U.S. V)	May 21, 1969	20	F	PH				
305	11751 69	D	L	Digsby, James W. (U.S. V)	June 16, 1969	18	F	PH				
306	11751 69	D	P	Digsby, James W. (U.S. V)	June 16, 1969	18	F	PH				
325	11945 69	D	C	Fleming, Charles (U.S. V)	June 19, 1969	10	F	PH				
331	11751 69	D	C	Bullock, Jessie L. (U.S. V)	June 20, 1969	15	F	PH				
396	11188 69	D	C	Davis, William H. (U.S. V)	July 14, 1969	11	F	PH				
397	11642 69	D	C	Lucas, Lloyd, et al (U.S. V)	July 14, 1969	30	F	PH				
Total pages for reporter D, 252:												
21	44481 68	E	C	Brown, Thomas W. (U.S. V)	Mar. 5, 1969	15	F	PH				
22	45359 68	E	C	Lathon, Robert C. (U.S. V)	Mar. 13, 1969	25	F	PH				
23	44810 68	E	C	West, Edward H. (U.S. V)	Mar. 17, 1969	15	F	PH				
25	42589 68	E	C	Peay, George V. (U.S. V)	Mar. 22, 1969	15	F	PH				
26	40632 68	E	C	Kettington, Rufus (U.S. V)	Mar. 24, 1969	20	F	PH				
143	9133 69	E	C	White, Hilton L. (U.S. V)	Apr. 21, 1969	10	F	PH				
263	14457 69	E	P	Peters, William T. (U.S. V)	May 28, 1969	20	F	PH				
267	13611 69	E	C	Flood, Clarice (U.S. V)	June 2, 1969	20	M	NJ				May 13, 1969
300	10756 69	E	C	Gaskins, Harry R. (U.S. V)	June 16, 1969	12	M	NJ				

A SURVEY OF CALENDAR MANAGEMENT POLICIES AND PRACTICES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS

DECEMBER 1969

47-070 O—70—pt. 2——21

CONTENTS

A SURVEY OF CALENDAR MANAGEMENT POLICIES AND PRACTICES OF THE DISTRICT OF COLUMBIA COURT OF APPEALS

I. PURPOSE AND SCOPE OF SURVEY

The purpose of this survey of the District of Columbia Court of Appeals is to seek ways to expedite hearings and determinations of appeals and to reduce the backlog of cases in the court. The critical task of the Court Management Study was to identify those areas where improvements could be made in the operation of the court. Consequently, the survey will focus upon present problems encountered in moving cases through the appellate process. Practical solutions are suggested with the aim of preserving both the promptness and the integrity of the decisional process.

The material incorporated into this study was gathered by interview, and observation, and by analysis of court records. Many persons have assisted in the consideration and development of the recommendations which follow.

II. INFORMATION ABOUT THE DISTRICT OF COLUMBIA COURT OF APPEALS

A. General Information

The District of Columbia Court of Appeals is an intermediate appellate court serving the District of Columbia. Its jurisdiction is over appeals of right from the Juvenile Court and the Court of General Sessions. (See Chart No. 4 on page 321.)

The District of Columbia Court of Appeals had been a three-judge court from its creation in 1942 until 1968 when the number of judgships was increased from three to six. There has been a corresponding augmentation of staff and space.

Throughout most of its history, the court kept abreast of its business by terminating almost as many cases each year as were filed, although it typically maintained a small pending inventory of cases at any one point in time. Recently, however, as the judgeships, jurisdiction and litigation have increased in the Court of General Sessions and Juvenile Court, the resultant growth of civil and criminal appeals have had a noticeable impact on the Court of Appeals. Thus, forces outside of the court have created conditions of backlog with which the court must now deal.

Credit is due to Chief Judge Andrew Hood and the other members of the bench for their efforts to increase the size of the court in the face of increasing caseloads. The court has taken responsibility to testify before Congress on behalf of this increase and to plan for the addition of the new judges. In addition, it should be noted that the court is respected for its workmanship. The recommendations in no

way should detract from this esteem nor from the managerial and legal improvements that have been made in the past. Indeed, without those improvements it would not be possible to offer recommendations of the nature suggested in this report.

B. Judicial Complement, Court Employees and Finances

There are currently six regular active judges of the District of Columbia Court of Appeals (a Chief Judge and five associate judges) and three retired judges who are permitted by law to work up to sixty days per calendar year for the court. The three new judges took office on: March 20, 1968, August 12, 1968, and October 22, 1968. A fourth appointee, replacing an associate judge who retired in December 1968, took office in May 1969.

It must be noted, therefore, that the Court has recently undergone a transition in manpower. Despite the creation of the three new judgeships in 1968, the court has not benefited from a six-judge team until May 1969 with the exception of a brief period in November and December 1968 prior to the retirement of the associate judge.

Presently, the court employees number twenty-two, of whom fourteen are on the judges' personal staffs and eight are on the clerk's staff. The functions of court employees are distributed in the manner indicated on the organization chart below (Chart No. 1).

Chart No. 1

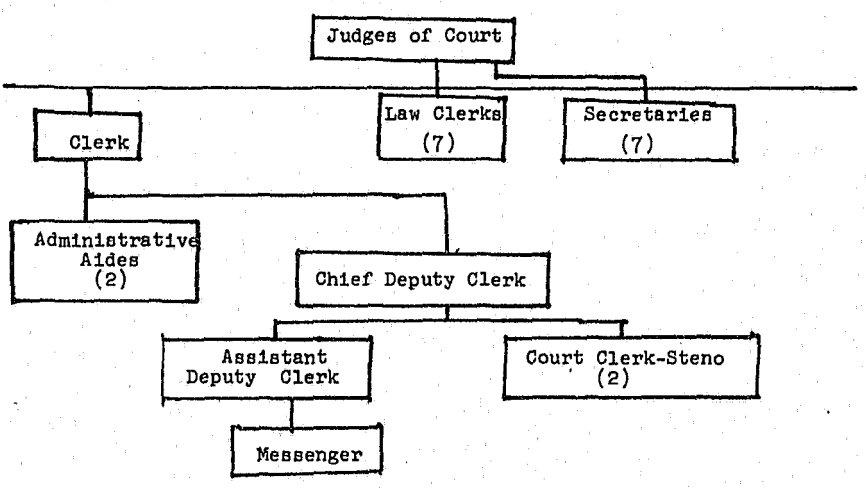
DISTRICT OF COLUMBIA

COURT OF APPEALS

WASHINGTON, D.C.

ORGANIZATION CHART*

June 1969



* Based upon survey of personnel.

Funds to operate the court at a new level rose from a 1968 fiscal year estimate of $255,200, to a 1969 fiscal year estimate of $418,700. This

sharp rise can be explained by the creation of the following twelve new positions: three judgeships each with supporting staff of one law clerk and one secretary; one assistant Deputy Clerk, one assistant administrative aide and one clerk-stenographer. Only 5.5 percent of this increase was allocated for services, supplies or equipment despite the doubling of judgeships (see Chart No. 2). It must be noted that the court's expenditures are sparing and that, in comparison with other courts, employee grade levels are frequently lower and physical facilities frequently more crowded and inadequate. For example, there is no robing room for the judges, and law clerks often share working space. In addition, the use of additional office and staff space three blocks from the court necessarily results in inconvenience and detracts from greatest efficiency.

CHART NO. 2.—ANALYSIS OF FISCAL YEAR 1969 INCREASE, JUSTIFICATION BY ACTIVITY AND PROGRAM

	1967 obligations		1968 adjusted		Increase		1969 estimate	
	Positions	Total	Positions	Total	Positions	Total	Positions	Total
ACTIVITY BY MAIN OBJECT CLASS								
Personnel (comp.):								
Permanent positions (16)		$182,434	16.0	$189,135	12.0	$147,650	28.0	$336,785
Deduct lapse	1.7	18,905	.4	5,085	−.3	1,382	.1	1,367
Pay increase						(5,100)		
Total	14.3	163,529	15.6	184,050	12.3	151,368	27.9	335,418
Personnel benefits		7,711		11,256		3,099		14,355
Benefits for former personnel		35,121		42,667				42,667
Actual services, etc		3,617		4,479		3,058		7,537
Equipment		5,522		6,758		5,975		12,733
Services performed by other District of Columbia agencies		5,613		5,990				5,990
Total, direct appropriation	16.0	221,113	16.0	255,200	12.0	163,500	28.0	418,700

C. ORGANIZATION OF COURT SYSTEM

The relationship between the District of Columbia Court of Appeals and the other courts in the District of Columbia is indicated in Chart No. 3. The court's jurisdiction is described in Chart No. 4, and a statistical breakdown describing the types of cases handled during fiscal year 1969 is contained in Chart No. 4A.

Pending legislation, S. 2601, would add another three judges to the District of Columbia Court of Appeals and would transfer the appeal of many matters to the court in a staged transfer. The bill also provides a program of administration of the new court system.

DISTRICT OF COLUMBIA COURT STRUCTURE

OCTOBER 1968

Chart No. 3

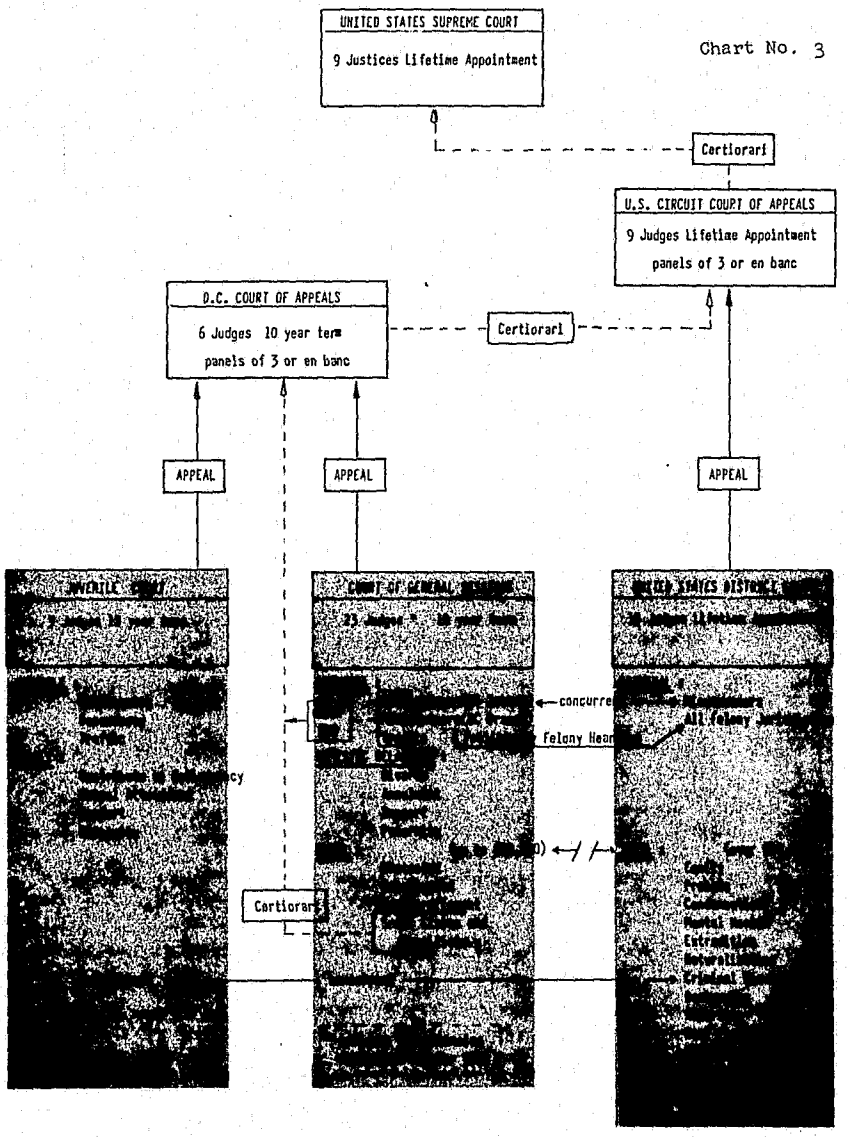


Chart No. 4

D.C. COURT OF APPEALS

Appellate Jurisdiction

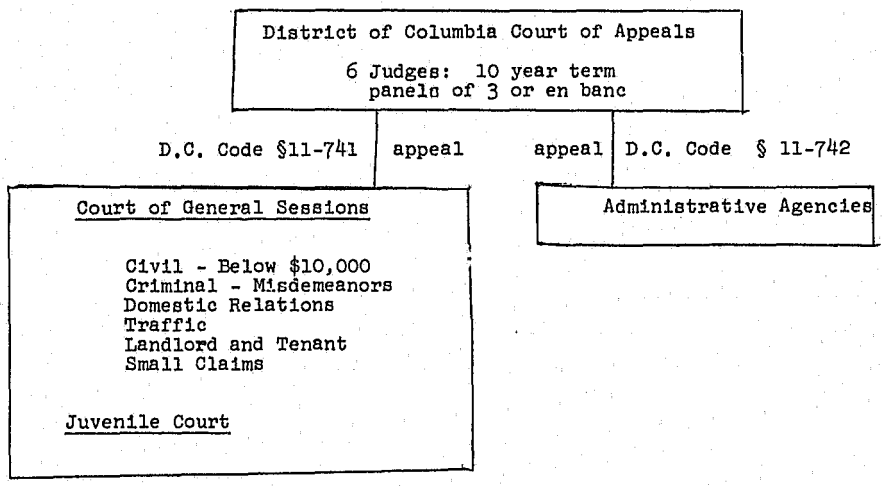


CHART NO. 4A.—DISTRICT OF COLUMBIA COURT OF APPEALS STATISTICAL REPORT FOR THE FISCAL YEAR ENDED JUNE 30, 1969

Nature of proceeding	Pending July 1, 1968	Filed 1968-69	Total	Dismissed by court or counsel	Disposition of by judgment w/o opinion	Disposition of by opinion	Disposition of 231 cases; 197 by opinion and 34 by judgment						Pending July 1, 1969
							Affirmed	Reversed	Dismissed	Remand	A in part R in part	A in part dismissed in part	
General docket	275	275	550	52	34	197	150	69	5	4	2	1	[1] 267
District of Columbia Court of General Sessions:													
Criminal:													
United States	72	102	174	8	28	80	69	37		2			58
District of Columbia	14	11	25	3	1	15	13	2		1			6
District of Columbia (traffic)	3	0	3			3	2	1					0
Civil:													
Contract	63	32	95	3		29	16	9	1		2	1	63
Tort	43	24	67	6		27	19	8					34
Other	22	28	50	13	2	14	8	7		1			21
Landlord and tenant	18	21	39	4	2	12	7	3	4				21
Domestic relations	28	33	61	7	1	8	8	1					45
Small claims branch	1	4	5			1		1					4
District of Columbia agencies	6	5	11	4		2	2						5
Juvenile court	5	15	20	4		6	6						10

[1] 64 cases argued and not decided.

Note: Percentage reversed 24.3.

D. Caseload Information

The caseload of the court is as follows:

DISTRICT OF COLUMBIA COURT OF APPEALS[1] CIVIL AND CRIMINAL CASES, FISCAL YEARS 1960-69

TOTAL COMMENCED, TERMINATED, AND PENDING

Fiscal year	Commenced during fiscal year	Terminated during fiscal year	Pending at end of fiscal year
1959-60	208	201	99
1960-61	236	207	128
1961-62	222	220	130
1962-63	216	250	96
1963-64	211	231	76
1964-65	241	220	97
1965-66	295	206	186
1966-67	312	274	222
1967-68	344	290	275
1968-69	275	283	267

[1] Source: Annual reports, clerk of court, District of Columbia Court of Appeals. A more refined analysis of cases commenced shows a percentage decline of contract and some other civil cases with tort cases holding a steady percentage from 1960 to 1969. The growth is in U.S. criminal appeals from General Sessions. District of Columbia Code violation appeal cases held constant.

CIVIL AND CRIMINAL CASES, FISCAL YEAR 1960-69

COMMENCED

Fiscal year	Civil	Criminal	Total
1959-60	176	32	208
1960-61	177	59	236
1961-62	162	60	222
1962-63	172	44	216
1963-64	155	56	211
1964-65	171	70	241
1965-66	183	112	295
1966-67	146	166	312
1967-68	146	198	344
1968-69	162	113	275

E. Stages in the Appellate Process

The appellate process in the District of Columbia Court of Appeals occurs in stages. Chart No. 5 and Table No. 1 describe them.

Stage One.—From the filing of *notice of appeal* to the *filing of the record* of the trial or hearing below. In 1968 this stage required 62 median days.

Stage Two.—From the *filing of the record* to the *filing of the last brief* after which the case is ready for hearing. This stage required 49 median days in 1968.

Stage Three.—From the *filing of the last brief* to the day of *oral argument or submission* to the court without argument. This stage added 172 median days in 1968.

Stage Four.—From *oral argument or submission* to *opinion or order* of the court. In 1968 stage four required 60 median days.

The trends in each of these stages in the District of Columbia Court of Appeals are significant and are set forth in Chart No. 5 and Table No. 1. The table is a composite of court records and indicates that stages one, three and four are all in a period of change. Moreover, between 1950 and 1968, the increase in these three stages is most dramatic at stage three. Our recommendations will deal specifically with this problem area.

Chart No. 5

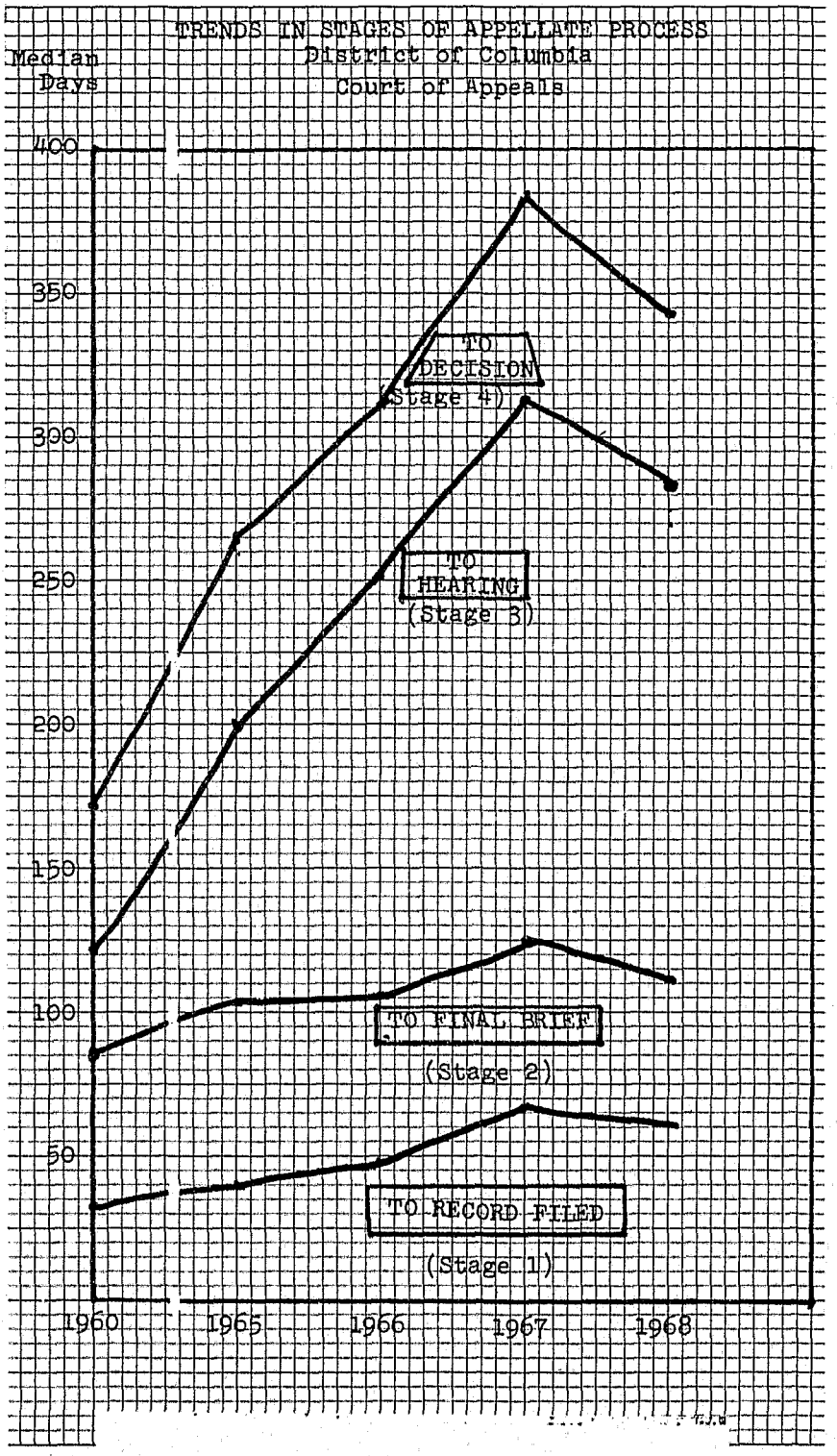

TRENDS IN STAGES OF APPELLATE PROCESS
District of Columbia
Court of Appeals
Median Days
400
350
300
250
200
150
100
50
TO DECISION (Stage 4)
TO HEARING (Stage 3)
TO FINAL BRIEF (Stage 2)
TO RECORD FILED (Stage 1)
1960
1965
1966
1967
1968

TABLE NO. 1.—TIME ELAPSED AT VARIOUS STEPS OF APPELLATE PROCESS, DISTRICT OF COLUMBIA COURT OF APPEALS (MEDIAN DAYS)

Calendar year	Steps in process				
	Stage 1	Stage 2	Stage 3	Stage 4	Total[1]
1942	31.5	34.5	13.0	25.0	115.0
1943	27.0	37.0	19.0	24.0	118.0
1944	32.0	35.0	22.0	32.0	132.0
1945	33.0	41.0	25.0	37.0	137.0
1946	32.0	47.5	14.0	29.5	119.0
1947	27.0	35.0	12.0	25.0	109.0
1948	32.0	43.5	23.0	32.0	137.5
1949	29.5	46.0	6.0	28.0	123.5
1950	37.0	50.0	8.0	30.0	119.0
1951	28.0	42.0	13.0	30.0	123.0
1952	35.0	45.0	10.0	26.0	122.0
1953	29.0	42.0	9.0	29.0	114.0
1954	32.0	37.0	7.0	30.0	115.0
1955	35.0	39.0	10.0	32.0	121.0
1956	31.0	63.0	9.0	56.0	144.0
1957	29.0	35.0	7.0	72.0	160.0
1958	27.0	40.0	14.0	88.0	179.0
1959	32.0	43.0	51.0	73.0	224.0
1960	34.0	51.0	36.0	51.0	256.0
1961	42.0	55.0	146.0	46.0	278.0
1962	39.0	57.0	94.0	43.0	238.0
1963	32.0	46.0	52.0	49.0	205.0
1964	35.0	55.0	24.0	60.0	176.0
1965	40.0	63.0	97.0	65.0	285.0
1966	48.0	58.0	146.0	59.0	339.0
1967	67.0	58.0	188.0	71.0	381.0
1968	62.0	49.0	172.0	60.0	322.0

NOTES

Stage 1—From notice of appeal to filing of record in court of appeals.
Stage 2—From filing of record in court of appeals to filing of last brief.
Stage 3—From filing of last brief to argument or submission.
Stage 4—From oral argument or submission to opinion or order of the court of appeals.

TIME SPECIFIED IN RULES

Stage 1—18 to 38 days maximum, depending on form of record.
Stage 2—40 days.
Stage 3—None specified.
Stage 4—None specified.

[1] Total is based upon the median delay from the filing of notice of appeal to opinion or order of the court. Each day elapsed—not merely workdays—is counted in the total time.

Source of data: Clerk, District of Columbia Court of Appeals.

The District of Columbia Court of Appeals local Rule 27 regulates filing time during appeal. Chart No. 6 explains these limits in general terms and shows that, where no extensions are granted, a case should proceed through stages one and two within a maximum of 86 days.

CHART 6.—TIME SCHEDULE FOR STEPS IN FILING APPEAL OF RIGHT

Steps	Days for cases with statement of proceedings	Days for cases with no statement of proceedings
Stage 1:		
Filing of notice of appeal from date of entry of judgment	10	10
Designation of record	5	5
Counterdesignation	3	3
Reporter's transcript	[1] 10	----------
Objection to statement of proceedings	[2] 5	----------
Approval and certification of proceedings	10	----------
Filing of record (upon settlement of objections)	3	10
Stage 2:		
Appellant's brief	20	20
Appellee's brief	15	15
Appellant's reply brief	5	5
Motion for rehearing	10	10

[1] With possible 10-day extension. (See 27(l).)
[2] With possible 5-day extension. (See 27(j).)

Note: DCCA rules amended 1966.

III. SUMMARY OF RECOMMENDATIONS

The recommendations are ordered to conform with the stages of the appellate process. A more detailed explanation and justification for each of the recommendations listed below will be found in the next section of this report.

A. Recommendations Relating to Stages of the Process of Appeal

1. Pre-Stage One Appeals (discussed in detail on p. 327)

Early Control.—The court should exercise supervisory control over the preparation and timely filing of transcript records by court reporters.

2. Stage One—From filing of notice of appeal to filing of record (discussed in detail on pp. 327–29)

Motions.—The court should standardize its motions practice, relieve the panel from responsibility for routine motions, regularize the motion time, and direct a court employee to do the necessary paperwork associated with bringing cases to hearing on motions.

3. Stage Two—From filing of record to filing of brief (discussed in detail on p. 329)

Filing of Briefs.—The court should develop a guideline and articulate criteria governing the extension of time for filing briefs.

4. Stage Three—From filing of last brief to hearing by court (discussed in detail on pp. 330–36)

a. *Select Time Limit for Hearing and Increase Hearing Time.*—The court should articulate a rule for its own operation that a maximum of 75 cases should be pending at any one time and that no case should be pending without hearing for longer than 90 days after the record and briefs have been filed. In the event of such a backlog, the court should begin immediately to increase hearing time.

b. *Screen Cases Before Hearing.*—The court should screen the 125 cases (about 100 civil and 25 criminal in September 1969) now pending by use of the senior judges as back up and regular active judges examining the records to determine whether the case deserves full-scale hearing or not. (The technique is based upon a successful experiment in the United States Circuit Court of Appeals for the Fifth Circuit in Houston.)

c. *Control Hearing Period and Set Added Cases.*—The court should require counsel to establish in writing the week before oral hearing the amount of time to be required at the hearing. Sanctions should be provided in the event a case is submitted on the record and briefs at the last moment or counsel does not effectively utilize the hearing time requested. (See Table No. 2 on p. 335.) In the light of the requested hearing times, the court should schedule a sufficient number of cases for each hearing session so that the hearing period is effectively utilized.

5. Stage Four—From the hearing of the case until the decision (discussed in detail on p. 336)

a. *Control of Opinion Writing.*—The court should adopt the practice of requiring that 45 days after the hearing if no draft opinion

is released by the judge assigned that responsibility, the chief judge should contact such judge to determine what difficulties are being encountered in preparation of a draft opinion. Thereafter, both the chief judge and the judge assigned the responsibility for writing the opinion should bear joint responsibility for prompt disposition of the case.

b. *Establish Expected Norm of Opinions.*—The court should develop an understanding among the judges that a numerical range of written opinions is expected of the court without overstressing the production ethic.

c. *Coordinating Work Effort.*—The court should adopt a policy of having a monthly meeting of the judges at which the unfinished work of each judge is discussed briefly by the entire bench to determine the status of each pending opinion and why certain judges are not meeting the agreed standard for opinion production.

d. *Shortening Process of Publishing Opinions.*—The court should analyze and thereby seek to reduce the amount of time taken in the process of going from the original draft opinion and its circulation to other judges to its ultimate printing as a slip decision.

B. Recommendations Relating to Other Matters

1. *Restricted Treatment of Written Opinions.*—The court should review its current policies and practices and determine whether it could make increased use of memorandum and per curiam opinions and thereby expedite the processing of cases.

IV. DETAILED EXPLANATIONS OF RECOMMENDATIONS

A. Relating to Stages of Process of Appeal

1. Pre-Stage One Period

Recommendation: Early Control.

The appellate court should exercise more supervisory control over the preparation and timely filing of transcript records by court reporters.

Before a case can enter stage one, it is necessary to file in the appellate court a complete verbatim record of the proceedings in the trial court. Normally it takes a number of days to complete this work.[2] The lower court record is prepared by a court reporter who, as part of the court reporter pool of the Court of General Sessions, is subject to the supervision of that court as well as to the demands of the U.S. Attorney's Office and others for whom he records courtroom proceedings. Once the record is finally completed, the appeals clerk in the trial court coordinates the filing of the record and the case file and certifies that they are true and correct.

Our analysis of the records kept by the appeals clerk in the Court of General Sessions shows that a motion to extend the time to file the record by the trial reporter is granted freely by the Court of Appeals. This frequency indicates that the reporters cannot conclude their appeal transcript within the time allowed. In Rule 27 cases, the Court Rules provide that the record shall be filed 10 days after the notice of

[2] See D.C. Court of Appeals Court Rules 16 through 20 particularly.

appeal. The extensions for filing of the record obviously must account, in part, for the rise from 34 median days in 1960 to 62 median days in 1968 in the period between the filing of notice of appeal and the filing of the record.

Moreover, this extension practice raises two significant problems.

First, such a procedure means that two distinct organizations, separate by management and by law, share some control over the same administrative function: the filing of transcript records. Involved are the complex relationship between the trial court judge, his reporter, the trial court clerk, the appellate clerk and the appellate court. Thus a confusing situation arises whereby an employee of the *trial court* is granted an extension of time by the *appellate court* to prepare a record of the *trial court*. Obviously, there is little pressure to complete this record promptly as the transcriber is aware that the appellate court does not enforce its time rules for the filing of transcripts. We do not suggest that the appellate court not have such power, but that it should enforce its rules or amend them.

Second, while this policy may not contribute significantly to appellate delay when the appeals court is backlogged, it will certainly be detrimental once the backlogged conditions are reduced. Understandably, the court is presently satisfied that the records are being prepared promptly and the case files are moving up as swiftly as the court now has time to hear them. However, when the court reaches a current condition, will it continue to allow approximately 60 days to elapse from the filing of the notice of appeal to the receipt of the record?

The figures on motions granted in cases awaiting action in the fall of 1969 are as follows:

Cases awaiting action	210
Motions requesting extensions of time for filing transcripts	152
Motions denied	0

This 210 case sample shows that 56.6 percent requested at least one extension of time for filing the transcript, and 11.5 percent requested from two to four extensions.

Obviously, the appropriate time for filing transcripts is determined by the length of the trial proceeding in each case. Additional delays, however, by the trial reporter should be minimized. In addition to establishing strict criteria governing extensions, the District of Columbia Court of Appeals should encourage the trial court to experiment with electronic sound recording—as the American Bar Association has suggested—particularly when court reporters are unavailable.

> Continuing efforts should be exerted to improve techniques for the preparation of records for appeals. Methods should be adopted that will minimize the cost of preparation in terms of money and time. The traditional requirement of a printed record should be abandoned completely. Developing technology should be watched; and, as promising new processes are perfected, they should be accepted as soon as they provide more rapid and efficient preparation of records.[3]

Some courts have experienced success with various types of equipment. The State of Alaska has for years.

It has been suggested that a shortage of reporters is a constraining factor in transcript preparation. In such a situation the appellate and

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[3] *Standards Relating to Criminal Appeals*, p. 12, Institute of Judicial Administration, American Bar Association Project on Minimum Standards for Criminal Justice. S. 952, presently under consideration, also deals with this area.

trial courts should meet to review the situation to determine whether reporter controls are adequate. They should then seek specific courtroom relief for a particular reporter in a specific case to be transcribed or they should seek further funds to obtain temporary reporter services while backlogged conditions exist.

2. Stage One—From filing of notice of appeal to filing of record

Recommendations: Motions Practice.

The court should standardize its motions practice, relieve the panel from responsibility for routine motions, regularize the motion time, and direct a court employee to do the necessary paperwork associated with bringing cases to hearing on motions.

Presently, the court has the following classes of *common* motions:

motion to extend time to file records
motion to extend time to file briefs
motion to dismiss

Although the court does not keep statistical records of the motion activity, we estimate that about 80 motions are filed per month, or about 1,000 per year based upon a limited case sampling in a recent month.

According to information supplied by the clerk's office, motions are processed as follows:

1. Motion is filed in the clerk's office and is docketed.
2. Motion is sent to a 3-judge panel selected monthly on a rotating basis.[4]
3. Panel acts on motion.
4. Clerk notifies counsel of panel action.

Law clerks are not involved in the motions procedure except as they may do individual assignments for their supervising judges.

We recommend a standard motion procedure by which (1) initial analysis of motions would be prepared and researched by law clerks, (2) routine motions would require action by one judge rather than the panel and (3) all necessary paperwork would be delegated to a court employee.[5] In addition, we recommend the designation of a regular time for panel consideration of motions.[6] Finally, we suggest that statistical records of motion activity be kept in the clerk's office.

3. Stage Two—From filing of record to filing of last brief

Recommendation: Filing of Briefs.

The court should develop a guideline and articulate criteria governing the extension of time for filing briefs.

A sample of cases was examined to determine whether a commonly acknowledged policy of freely granting motions to extend time for the filing of briefs did, in fact, exist. The 247 case samples selected

[4] According to the court, the panel customarily permits the senior judge to rule on the routine procedural motions which are unopposed. The Chief Judge handles all motions to appoint counsel for criminal indigent appeals and to authorize transcript production.

[5] The American Bar Association makes a similar recommendation by which one judge with administrative assistance would be assigned to supervise a criminal case from docketing through hearing or submission. Procedural questions arising, for example, in the preparation and filing of the record or the appointment of counsel, etc., could therefore be handled without requiring panel action. (See *Standards Relating to Criminal Appeals*, American Bar Association Project on Minimum Standards for Criminal Justice, p. 11.)

[6] A regular sitting time once a week at a particular time would enable judges responsible to plan their schedules.

from 1968 and 1969 cases shows that only 17 percent asked for no extensions. Moreover, of the 83 percent (204 cases) requesting extensions, only 1 percent were denied. The bulk, or 99 percent of 204 cases, were granted such motions.

Every added motion creates work for the judges who now are backlogged. Such a policy obviously encourages delay and promotes motion production. Since 1955, the median time elapsed in stage two has fluctuated from 39 median days to 63, with current level at 49 median days. (See Table No. 1 on page 325.) Despite the recent slight decline, the need for control remains. The Court Rules impose time limits and should be sufficient indication to the bar to tighten its practices and refrain from requesting additional time.[7] A critical court policy based on specific criteria, such as illness of counsel, should be developed in this area.

4. Stage Three—From filing of last brief to hearing by court

a. *Recommendation: Select Limit for Cases Awaiting Hearing and Increase Hearing Time*

The court should articulate a rule for its own operation that a maximum of 75 cases should be pending at any one time and that no case should be pending without hearing for longer than 90 days after the record and briefs have been filed. In the event of such a backlog, the court should begin immediately to increase hearing time.

The court should have a pending caseload no larger than that which will allow it to dispose of a case within 90 days, although we expect the median time for disposition to range between 40 and 50 days for most cases.

We suggest 75 cases as the limit for pending caseload to bring the court back to a July 1, 1964 condition when 76 cases were carried over from the previous year.[8] As the following figures indicate, the backlog since that date has soared and presently dates back one year.

Date	Number of cases pending
July 1, 1964	76
July 1, 1965	97
July 1, 1966	97
July 1, 1967	222
July 1, 1968	275
July 1, 1969	267

Growth in pending unfinished cases outstrips growth in cases commenced by 65 percent. Let us explain.

We have suggested a 1964 (75 case) norm for a pending caseload. In the five year period from 1959–60 through 1963–64, the cases commenced averaged 218 per year. Since then, cases commenced have increased so that during the five year period 1964–65 through 1968–69, the average was 293 cases per year. The growth from an average of 218 cases to 293 cases is 34 percent. The pending case average of 105 cases in the 1959–60 to 1963–64 period compares with a 209 case pend-

[7] We were advised that the court plans to amend court rules to extend time for filing briefs. This will lengthen the appellate process.

[8] The suggestion is made that the court itself begin to answer for the public the question: when is an appellate court current?

ing average in the 1964–65 to 1968–69 period. The growth from 105 average cases pending to 209 cases pending is 99 percent. Thus, average growth in cases commenced of 34 percent does not justify an average pending case increase on June 30 of each year of nearly 100 percent.

This current backlog of 267 cases could be cleared up within a maximum of 24 weeks assuming the following propositions:

1. Hearing panels meet 4 times per week (each panel meeting twice a week) and 184 times per year (based on the present 46-week year).

2. An average of 4 cases are heard by each panel per hearing period, or 736 cases per year.

3. Two of the four weekly hearing periods are devoted to backlog and two are devoted to current appeals.

	Cases
Present backlog	267
Maximum allowable backlog	75
Backlog to be cleared immediately	192

4. If 8 cases are heard per week, 24 weeks will be required to clear up the backlog to an allowable limit. During that 24-week period, we assume that approximately one-half of the yearly caseload (140 new cases) will be appealed. If the two panels hear 8 backlogged cases per week during two hearing periods per week, they should be able to hear the 140 new cases during the other two hearing periods per week in a maximum of 24 weeks. Therefore, no new backlog of cases should accumulate.

Regardless of the number of backlogged cases, however, we recommend a 90-day limit governing the period between filing of the record and briefs and oral argument. An examination of the court records shows a range from 4 to 571 days which cases take at this third stage of the appellate process. Many cases are well over 400 days languishing before hearing. The central tendency or median measure of all cases is about 175 days, or about half a year. The central measure, however, should not mask the extreme variation found—too much variation. The recommendation to maintain time constraints in stages one and two have little effect if unlimited flexibility on the part of the court is permitted in the remaining stages. Thus, additional standards should be set here.

To overcome the current situation and to maintain the court on an even keel in the future, the court should reduce the time at this period to the bare minimum. The proposed rule should express the outer limits of what the court believes is fair treatment of appealed cases and the rights of the persons who appeal. Such a benchmark will aid in the process of control by alerting judges and staffs to an intolerable delayed condition in a specific case.

Court Rule 27 spells out time limitations on appeals of right for stages one and two through the filing of the reporter's transcript, objections, and the filing of briefs. Yet, the court rules *do not* provide similar guidelines for the permissible period in which to hear a case. Just as the bar is required to produce for appellate purposes, so should the appeals court conform to standards which tell the court employees, the judges, the bar and the public what can be expected of the judiciary in the typical case. Parity of treatment should exist for

both the bar and the court. A more balanced appellate procedure would result.

In addition, it is recommended that the court increase hearing time for each judge by three hours per week, or the equivalent of an additional morning or afternoon [9] as long as a backlog exists. Currently, each judge hears cases three hours per week for 46 weeks during the year.

This recommendation is made after reviewing numerous considerations.

First, a serious bottleneck has developed at this stage of the appellate process. The time elapsing between the filing of the last brief to hearing has increased from 36 median days in 1960 to 172 median days in 1968, as the following figures indicate:

Calendar year	*Stage 3 median days*
1960	36
1965	97
1966	146
1967	188
1968	172

On September 15, 1969, the court had 125 cases ready for hearing: 20 criminal cases and 105 civil cases.[10]

Second, the court has approximately a one-year backup of cases. Moreover, 20% of the 267 cases pending on June 30, 1969 were one and one-half years old or older. The following chart illustrates the age of these cases:

Age	*Number of cases*
547 to 599 days	19
600 to 699 days	17
700 to 799 days	11
800 to 1,099 days	7
1,100 to 1,200 days	1
Total cases pending 547 or more days	55

Third, this backlog should be removed promptly. Appellants should not be required to wait a year or more for justice. The court must therefore take the responsibility for reconsidering its basic practices now.

Fourth, the policy of hearing cases one morning per week has not changed since the court was created in 1942 even though three new judges have been added to the court. Each judge now sits with two other judges in a panel of three to hear cases one morning per week. The court has two three-judge panels. Each week, for example, panel one hears cases on Monday; panel two hears cases on Tuesday. According to the Clerk of the court, the judges are mixed in nearly random appearance on the panels established by the clerk.

Finally, at the current rate of hearing cases, the court will continue to have a backlog of cases unless some change in practice is instituted. Since the court is now housed in enlarged facilities with new judges and support staff on duty, conditions are greatly favorable for improved decision-making in terms of numbers of cases concluded.

[9] More hearing time should be coupled with an increase in decision-making at the next stage; related recommendations are therefore included on pp. 326–27 of this report.

[10] Data received from the Clerk, District of Columbia Court of Appeals.

We urge, therefore, the immediate three-hour weekly increase in hearing time per judge. On the basis of a normal week of forty hours, the court would be re-allocating about 7 percent of its time to this vital function now in a clogged condition. Of course, the additional alternative of screening may reduce the need for some additional hearing time.

THE 55 OLDEST CASES PENDING ON JUNE 30, 1969 [1]

Case No.	Appeal noted	Days from notice of appeal to June 30, 1969	Case No.	Appeal noted	Days from notice of appeal to June 30, 1969
4093	May 27, 1966	1,130	4586	Nov. 22, 1967	586
4358	Feb. 23, 1967	858	4589	Sept. 16, 1967	653
4366	Apr. 3, 1967	819	4590	Sept. 16, 1967	653
4394	June 19, 1967	742	4596	Dec. 4, 1967	574
4415	Feb. 20, 1967	861	4600	Dec. 23, 1967	555
4416	Apr. 17, 1967	805	4601	Nov. 27, 1967	581
4417	July 5, 1967	726	4606	Nov. 22, 1967	586
4446	May 18, 1967	774	4616	Nov. 17, 1967	591
4455	Aug. 2, 1967	698	4617	Nov. 20, 1967	588
4476	June 30, 1967	731	4618	Dec. 15, 1967	563
4488	Apr. 24, 1967	798	4620	Dec. 6, 1967	572
4500	Sept. 5, 1967	664	4621	Oct. 20, 1967	619
4502	Jan. 28, 1967	884	4622	Dec. 29, 1967	549
4503	Jan. 28, 1967	884	4633	June 21, 1967	740
4514	July 6, 1967	725	4639	Nov. 20, 1967	587
4516	July 10, 1967	721	4645	Oct. 6, 1967	633
4542	Oct. 3, 1967	636	4647	Dec. 21, 1967	557
4548	Aug. 28, 1967	672	4649	Sept. 22, 1967	647
4549	Aug. 25, 1969	675	4650	Dec. 1, 1967	577
4550	Aug. 25, 1967	675	4654	Dec. 7, 1967	571
4552	Sept. 15, 1967	654	4655	Dec. 7, 1967	571
4559	Oct. 10, 1967	629	4680	Dec. 19, 1967	559
4564	June 14, 1967	747	4684	Dec. 1, 1967	577
4567	July 25, 1967	706	4695	Feb. 10, 1967	871
4572	Oct. 4, 1967	635	4714	Oct. 9, 1967	630
4575	Aug. 31, 1967	669	4719	July 25, 1967	706
4581	Nov. 13, 1967	595	4736	Dec. 15, 1967	563
4584	Nov. 7, 1967	601			

[1] Based on records of clerk of court, District of Columbia Court of Appeals.

The increase in hearing time will have a twofold significance. First, the caseload will be reduced ot a reasonable level for prompt disposition within an acceptable time. Second, the court will be prepared to deal with the potential increase in appeals which would result from the proposed court reorganization and expansion of its jurisdiction.

b. *Recommendation: Screen Cases Before Hearing.*

The court should screen the 125 cases (about 100 civil and 25 criminal in September 1969) now pending by use of the senior judges as back-up and regular active judges examining the records to determine whether the case deserves full-scale hearing or not.[11] *(The technique is based upon a successful experiment in the United States Circuit Court of Appeals for the Fifth Circuit in Houston.)*

The District of Columbia Court of Appeals has an ideal combination of favorable conditions to begin a new program of screening cases awaiting hearing. It has senior judges, it has a nearby Federal Judicial Center willing to help bring in experienced judges to explain the procedures, and it has the valuable experience of the federal Circuit Court of Appeals in Houston to study.

[11] We have been advised that the court will begin in December 1969 to screen the oldest pending 100 civil cases by use of retired judges to determine those cases which can be set on a summary calendar for 15-minute-per-side argument.

An articulate spokesman for the screening technique is Justice Tom C. Clark, Director of the Federal Judicial Center, who testified on September 18, 1969 on the appeal court screening subject before the U.S. House of Representatives Select Committee on Crime:

Reduction of Appeal Time: Another recurring delay is in appeals. Some of this is occasioned by the rules of the court as well as the volume of the cases. The Center has developed a screening program in the Fifth Circuit that exposes cases without merit and those not requiring oral argument. They are then handled, after notice, by summary order. The experiment has permitted the Circuit to dispose of over 30 percent of its filings by summary proceedings and has reduced the number of panel sittings by some 15 percent. The results of this pilot operation were reported to the Conference of Chief Justices at its annual meeting last month and were well received.

The significance to the D.C. Court of Appeals of such a procedure is in its providing another option to attack the pending backlog. It offers a precise method of reducing delay in the appellate process where the Court has all of the ingredients to make a decision but lacks a method for distinguishing fairly among appealed cases. In addition, the three senior judges on the court could participate valuably in the screening experiment by taking the place of regular judges on panels where the regular judges are involved in the screening process.

In the event the court adopts the screening program, and it proves effective in this jurisdiction, it would be reasonable to reduce some of the hearing time suggested in the previous recommendation. For example, as backlog is cleared up, the court may find that increased hearing time is necessary on alternate weeks only.

A detailed outline of the screening procedure according to remarks of Chief Judge John R. Brown of the Fifth Circuit is included in the appendix.

c. *Recommendation: Control Hearing Period and Set Additional Cases.*

The court should require counsel to establish in writing the week before oral hearing the amount of time to be required at the hearing. Sanctions should be provided in the event a case is submitted on the record and briefs at the last moment or counsel does not effectively utilize the hearing time requested. (See Table No. 2 on page 335.) The court should schedule a sufficient number of cases for each hearing session so that the hearing period is effectively utilized. Reference should be made to the hearing time requested by individual counsel.

Rule 40 of the District of Columbia Court of Appeals provides:

Not more than 45 minutes on each side shall be allowed for argument unless the time is extended by the Court.

Our examination of hearing schedules indicates that this 45 minute per side maximum has little effect on actual hearing patterns. The court, itself, regularly schedules three cases for each 10 to 12:30 hearing period—thus allowing only 45 minutes per case. A typical hearing period schedule is as follows:

10:00 to 10:45—Case No. 1
10:45 to 11:30—Case No. 2
11:30 to 12:15—Case No. 3
Additional mid-morning break of 15 minutes
Conclude at 12:30 P.M.

This reduced allowance, however, is often too generous, and the following table shows how *long* the court has actually sat at each hearing period from January 1, 1969 through September 17, 1969.

TABLE 2.—SCHEDULE OF HEARING TIME UTILIZED DURING HEARING DAYS[1]—DISTRICT OF COLUMBIA COURT OF APPEALS, JANUARY TO SEPT. 17, 1969 (44 HEARING DAYS)

Beginning time	Finish time	Distribution of days	Percentage of total days
10 a.m.	10 to 10:59 a.m.	10	23
Do.	11 to 11:29 a.m.	13	30
Do.	11:30 to 11:59 a.m.	9	20
Do.	12 to 12:29 p.m.	5	11
Do.	12:30 to 12:59 p.m.	4	9
Do.	1 to 1:29 p.m.	2	5
Do.	1:30 to 1:59 p.m.		
Do.	2 to 2:29 p.m.		
Do.	2:30 to 2:59 p.m.		
Do.	3 to 3:29 p.m.	1	2
Total		44	100

[1] If a case extends beyond 12:30, the court will, when possible, extend the hearing period for that day.

Assuming that a hearing period lasts a minimum of 2½ hours (10:00 to 12:30), this time analysis shows that 1½ hours were lost in 23 percent of the sessions, one hour was lost in an additional 30 percent of the cases and that only 27 percent of the hearing sessions utilized the minimum 2½ hour period. Thus, the 45 minute per side maximum in the court rule exceeded the arguing time actually used in most cases.

Corrections in two areas might result in more effective use of hearing time.

The first area involves allocation of hearing time in individual cases. The Clerk of the court indicates that hearing periods are frequently shortened because counsel do not utilize the full hearing period allotted to their cases, or counsel decide the morning of the hearing to submit the case on the briefs. Rule 40(d) provides: "Any case may be submitted on briefs."

Trifling with the scarce time of three judges,[12] court employees and counsel assembled for the express purpose of hearing argument and then at the last minute deciding to submit the case on briefs is irresponsible. The court should resolve to firm up its hearing periods by requiring counsel to notify the court one week in advance of estimated hearing time. The court must know, so that it may schedule other cases. Abuses of hearing time should be sanctioned appropriately. The court should consider modifying Rule 40(d) to accomplish this goal.

Second, effort should be made to schedule additional cases for each hearing period with an extra case as standby with notice to counsel to appear if phoned by the court the morning of the hearing. In this way, the extra case, if not reached, could be heard first on the next hearing day. The fact that 32 out of 44 hearing days ended at noon,

[12] Even though judges may not lose time if cases are not heard and argued but submitted (since the judges may retire to chambers to begin work on these and other cases), opposing counsel and court employees are affected in their work. The cases waiting to be heard (25 criminal and 100 civil in September 1969) are not scheduled because of full hearing schedules; yet, ironically, the hearing time is dissipated through cases submitted without argument.

and that 23 finished by 11:30 means that by having an extra case scheduled, the court could have heard more cases by filling in hearing days where the hearing ceased at 11:00, 11:30 or 12:00.

To expect a perfect match of cases and times is unrealistic. The clerk should be given credit for being sensitive to the various lengths of the cases. On some days, the court sets only two cases because of the knowledge that the case will take a long time for hearing. However, by encouraging the bar to be fully communicative with the clerk, the court can encourage counsel to assist the court in keeping its hearing periods full—at least until 12:30 each hearing day. Such an aim is reasonable, and the bar should cooperate to achieve that goal of preserving the hearing time of the court.[13]

5. Stage Four—From the hearing of the case until the decision

a. *Recommendation: Control of Opinion Writing.*

The court should adopt the practice of requiring that 45 days after the hearing if no draft opinion is released by the judge assigned that responsibility, the chief judge should contact such judge to determine what difficulties are being encountered in preparation of a draft opinion. Thereafter, both the chief judge and the judge assigned the responsibility for writing the opinion should bear joint responsibility for prompt disposition of the case:

Although we recognize the philosophical and practical need for judicial independence and professional autonomy at the opinion writing stage of appellate work, even these have inherent limitations based upon a need to face the realities of new cases being appealed each day. The natural consequence of slowness and/or excessive caution in writing opinions is a clogged condition after hearing which can puzzle counsel, appellants and appellees. The median time in this stage has increased from 30 days in 1950 to 51 days in 1960, to 60 days in 1968, and, in the fourth stage figures for 1968 we note a range from 7 days to 210 days—a considerable variation in treatment.

Serious consideration should therefore be given to more adequate control on the bench. Since the matter of moving cases along through the opinion writing stage is a matter requiring great tact among coequals whose real authority is knowledge, we suggest that the chief judge, through his acknowledged administrative responsibility, make certain that cases move along. Our survey of federal courts reveals that chief judges in many circuits do take such responsibility.

b. *Recommendation: Establish Expected Norm of Opinions.*

The court should develop an understanding among the judges that a numerical range of written opinions is expected of the court without overstressing the production ethic.

A production quota of written opinions is *not* what is suggested in this recommendation. What is suggested, rather, is that an understanding be developed about the acceptable range of written opinions for each judge on the court. The norm of opinion writing should be discussed openly. The court may find it helpful to refer to the actual opinion figures by judge based upon prior experience in the court. The following chart illustrates the experience in the D.C. Court of Appeals.

[13] This is the goal of the U.S. Circuit Court of Appeals in the District of Columbia according t[illegible] formation received from that court. That court starts hearings at 9:30 a.m. and contin[illegible]em to 12:30 p.m., scheduling the periods fully.

Range of actual opinions in a year:	*Number of total judge-years [1] with actual opinions [2] falling within the range in the period 1960–69*
Less than 10	10
11 to 15	2
16 to 20	5
21 to 25	4
26 to 30	4
31 to 35	4
36 to 40	7
41 to 45	6
46 to 50	5
51 to 55	1

[1] *Judge-year* refers to the activity of a single judge during one fiscal year. For example, during two fiscal years, 11 to 15 opinions were written. For purposes of this chart, this number of opinions may have been written either by one judge during two fiscal years, or two judges during one fiscal year.

[2] *Actual opinions* includes total number of per curiam and signed opinions delivered by the court.

Thus, between 1960 and 1969 one judge in one year wrote 51–55 opinions; judges representing a composite of five years on the bench wrote 46–50 opinions per judge per year; judges representing a composite of six years on the bench wrote 41–45 opinions per judge per year, etc. The "less than 10" opinions and other low categories a year reflect retired working judges, part-of-year new appointees or retirees and illness situations. The norm for the District of Columbia Court of Appeals actual opinions per year ranges between 30 and 50. Of course, a transfer of jurisdiction resulting in more complex appeals, and a change in court opinion writing practice could reduce the norm.

c. Recommendation: Coordinating Work Effort.

The court should adopt a policy of having a monthly meeting of the judges at which the unfinished work of each judge is discussed briefly by the entire bench to determine the status of each pending opinion.

As a form of collegial control, good attitudes are promoted by an open review of where judges stand on various opinions. Periodic meetings of the bench could produce a sense of accountability in the nature of review. The U.S. Circuit of Appeals in Washington established a similar practice which does in fact produce periodic and consistent clean-up of most pending matters prior to such a meeting.

d. Recommendation: Shortening Process of Publishing Opinions.

The court should analyze and thereby seek to reduce the amount of time taken in the process of going from the original draft opinion and its circulation to other judges to its ultimate printing as a slip decision.

The steps in the process today are as follows:

(1) The judge submits a typed copy of the draft opinion to the clerk's office after obtaining approval of other panel members.

(2) The clerk sends a copy of the draft opinion to the printer within one to three days.

(3) The printer returns the proofs to the clerk's office within five to seven days.

(4) The proofs are sent back to the three judges on the panel for corrections and approval, and are then returned to the clerk.

(5) Proofs are sent back to the printer and returned in final form within one week.

Thus, the process takes about three weeks.

In contrast, opinion publication in the U.S. Court of Appeals has been cut to four days. The Clerk of that court has studied this matter at length and can be consulted as an excellent source for advice in this area. He has cut the two 5–7 day delays at the printer's to 48 hours and 36 hours, respectively, by contract stipulation. In addition, a photoduplication process has been substituted for the more time-consuming procedure of individual type-setting used by the District of Columbia Court of Appeals.

B. Recommendation Relating To Other Matters

1. Restricted Treatment of Written Opinions.

The court should review its current policies and practices and determine whether it could make increased use of memorandum and per curiam opinions, and thereby expedite the processing of cases.

In a speech to the Conference of Chief Justices in Dallas, August 6–9, 1969, Bernard E. Witkin, an advisory member of the California Judicial Council explored the delicate question of "Court Management by Appellate Courts." The speech, included in the appendix, is an excellent general essay describing the entire subject of how much value and effort an appellate judge should place upon writing an opinion as distinct from coming to a decision in a case. We recognize the intimate link between writing an opinion and deciding a case, and that the process of writing often affects the decision. Yet, Witkin's plea for restraint in writing opinions and his plea for memorandum opinions of the variety suggested, deserve some consideration by the judges of the D.C. Court of Appeals.

A recent report of recommendations entitled "Accommodating the Workload of the United States Courts of Appeal" [14] suggested that one of the ways a judge could more effectively use his time was to consider more use of brief per curiam opinions.

> The parties and the public are entitled to assurance that a case recevies proper consideration, but this does not require full exposition on problems of little general significance by courts that can ill afford the time necessary to perform this task.[15]

Thus, it is evident that judicial scholars are becoming increasingly interested in restricting the opinion writing function of the appellate court. The figures [16] on opinions for the District of Columbia Court of Appeals reveal the following pattern:

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[14] American Bar Foundation, *Accommodating the Workload of the United States Courts of Appeal*, 1968.

[15] *Ibid.*, page 4.

[16] Annual Reports, Clerk, D.C. Court of Appeals.

Fiscal year	Total number of "actual opinions" [1]	Number per curiam included	Fiscal year	Total number of "actual opinions" [1]	Number per curiam included
1958	166	13	1964	157	11
1959	158	31	1965	139	9
1960	159	(2)	1966	125	13
1961	145	(2)	1967	125	15
1962	167	27	1968	101	6
1963	175	27	1969	147	15

[1] "Actual opinions" refers, in this case, to signed and per curiam opinions. It should be noted, however, that the U.S. Court of Appeals includes in its statistical records a 3d major category for opinions which makes up between 30 to 45 percent of the total opinions delivered by that court: "no written opinion." While this category is not noted in the records of the District of Columbia Court of Appeals, a related classification, "judgment without opinion," indicates a range of 5.5 to 25.8 percent of the total opinions delivered by the court since 1965.
[2] Not available.

A comparison of the percentage of per curiam opinions delivered over the last four years by the U.S. Circuit Court of Appeals for the District of Columbia [17] and the District of Columbia Court of Appeals [18] reveals the following:

Fiscal year	Court	Percentage of per curiam opinions of [1] actual opinions delivered
1966	U.S. Circuit Court of Appeals	34.0
	District of Columbia Court of Appeals	10.5
1967	U.S. Circuit Court of Appeals	31.9
	District of Columbia Court of Appeals	12.0
1968	U.S. Circuit Court of Appeals	44.5
	District of Columbia Court of Appeals	5.9
1969	U.S. Circuit Court of Appeals	38.9
	District of Columbia Court of Appeals	10.2

[1] See footnote 15, supra.

It is evident from the above analysis that the District of Columbia Court of Appeals devotes only a small amount of time to the writing of per curiam opinions with a large amount of effort being spent on the more lengthy process of written opinions. We suggest that the court explore the possibilities of increasing the percentage of per curiam opinions in its overall effort to restrict its opinion-writing function.

Since the peak year 1962–1963, we do note a decline in actual opinions written by the District of Columbia Court of Appeals. This suggests that the court is aware that the proper allocation of scarce judicial time is vital to its success in keeping abreast of its appeals. Yet, although it appears that restraint has been exercised, backlog has increased.

If one couples the increased length of time at stage four from 51 days in 1960 to 60 days in 1968, with the average decline in total numbers of written opinions in the 1960–1969 period, it is obvious that a drop in the opinion-writing process did not produce more prompt dis-

[17] Source: Reports of the Proceedings of the Judicial Conference of the United States, 1966–1969.
[18] See footnote 13, *supra*.

position. One could conclude that cases were held longer at stage four and fewer opinions were written. This recommendation must, therefore, be considered in the light of other recommendations made in this report.

V. CONCLUSION

The District of Columbia Court of Appeals is frequently the court of last resort on many crucial community issues affecting the citizens in its jurisdiction. When an appellate court—such as this one—struggles to keep its head above the flood of new cases filed day after day, it is too easy to overlook the management aspects of administering the court. Policies must be set for the bench, bar and staffs to support its daily activities. The foregoing recommendations, therefore, are designed to alleviate backlog and expedite the decisionmaking process.

There are many avenues to be explored—some beyond the scope of this survey. In closing, we suggest consideration of one such area—inter-court relations. We hope that coordination and cooperation—particularly between the lower courts and the appellate court—will increase Employee training, record-keeping and space allocation are important topics for joint consideration. Greater efficiency in the lower courts would obviously expedite the appellate process. For this reason, we feel that the creation of a court executive position in the trial court (recommended in another report of this committee) makes a similar position in the District of Columbia Court of Appeals unnecessary at this time.

As other possibilities are developed, the court should remain continually mindful of its role in a changing society, and of its needs for a new outlook to effectively deal with those changes. We are confident that support for this new outlook can better be devised by the judges of the court than by us with any long parade of facts and figures. For, ultimately, the future of the court will depend, in large part, upon the initiative of its members.

VI. APPENDIX

SUMMARY OF REMARKS BY CHIEF JUDGE JOHN R. BROWN ON SCREENING PROCESS

CHIEF JUDGE JOHN R. BROWN'S REMARKS, March 15, 1969*

Explanation of Screening Process

Summary

A. Goal
   1. increase general productivity
   2. decrease time for disposal of cases (reduce backlog of 90 days and get cases decided earlier.)
   3. try to attain substantive uniformity of standards, procedures, methods, etc.

B. Preliminary Stages.
   1. committee appointed to draw up formal recommendations
   2. policy decisions made
      a. work only with active judges
      b. use visiting as well as regular judges (for uniformity)
      c. require action of one judge -- not panel -- for classification of cases for oral argument as limited or unlimited.
      d. require unanimous agreement of three judges to deprive a person of oral argument and put case on summary calendar.
      e. if, after placing case on summary calendar, any member of panel differs with proposed opinion, case is automatically removed and reclassified for limited or full argument.
   3. adoption of rules
      a. Fifth Circuit Rules.
      b. note also Rule 18(c): notice required in writing to parties or counsel if the case is transferred to summary calendar.
   4. Classification standards
      a. Class I: Frivolous
      b. Class II: Cases not requiring oral argument because:
         1) clearly will be reversed or affirmed
         2) intervening decision of court or Supreme Court will change result.
         3) substantial issues presented but oral argument would not be helpful
         4) great overriding public interest in point of time requiring disposal without delay (i.e. injunctions, etc.)
      c. Class III: limited oral argument (15 minutes)
      d. Class IV: full oral argument

C. Screening Process
   1. selecting panels
      a. use active judges
      b. set up four standing panels composed of four senior-most judges and four junior judges with occasional use of reserve judges (thereby benefiting from long-term experience).

* Chief Judge, Fifth Circuit, U.S. Circuit Court of Appeals, Houston, Texas.

2. Procedures for submitting cases to panel.
   a. submit for screening when last brief is in or time for filing last brief under FRAP has expired.
   b. clerk sends out cases when they are ready and assigns them to panels on rotating basis.
      1) clerk fills in name and style of case and state of origin.
      2) initiating judge is picked off screening log (whoever is next judge) and takes full responsibility for case.
      3) initiating judge gets original and 3 copies from clerk with copies of briefs and record.
      4) initiating judge reads briefs and decides whether case should be classified II, III, or IV.

         If Class III (limited argument):
         Judge checks III at stage 2, signs his name, checks off papers returned and sends it back to clerk.

         If Class II (no oral argument):
         a. judge sends confidential copy to clerk, keeps 1 copy for file and sends 1 to other panel judges showing recommendation to affirm, reverse, etc.
         b. clerk sends briefs and records to other 2 panel members.
         c. two other panel members read briefs and records and indicate approval or disapproval of Class II.
         d. If any judges disapprove, record is sent back to initiating judge and he must send it to clerk as Class III or Class IV.
            (disapproval occurred in only 5 of 313 cases)

      5) opinion is written (preferably by initiating judge) and initiating judge informs clerk of opinion.

         If Class III (limited argument) or Class IV (full argument)
         clerk sends necessary forms for completion

         If Class I or II (no argument)
         a. initiating judge sends form requesting summary calendar as I or II and shows opinion is attached or forthcoming.
         b. clerk notifies parties or counsel that case has been put on summary calendar and indicates on opinion if case is without counsel.

      6) approval of opinion by other panel members.

D. Significance of Screening Process
1. reduces number of weeks for oral argument by 30% (based on percentage of Class II's)
2. reduces availability of cases to be put on calendar as Class III or IV cases for oral argument.
3. permits analysis of relative performance by panels, judges and subject-matter to determine consistency in screening process.
4. Specific Advantages for Fifth Circuit.
   a. reduced period between receipt for screening and writing of opinion -- particularly compared with time which would have been required for calendaring. (60-day reduction)
   b. reduced time from date of hearing or submission to date of final disposition from 45 days to 36 days.
   c. reduced median days from time sent to first judge until filing of opinion by 60 days and median days from last brief to date of transmitting to full panel in Class II by 51 days.
   d. leaves more time for difficult cases and better balanced calendar for oral argument.
   e. reduced sitting time in other than home city which resulted in greater efficiency.
   f. concentrated 30% of judicial business in hands of Fifth Circuit judges (eliminating problems of unfamiliar situations for visiting judges.)

5. Disadvantages.
   a. ties judge down (8 to 9 cases come in each month)
   b. lack of face-to-face conferences on pro se cases.
   c. slight duplication with panel orally hearing case.
   d. no reduction in visiting judges required (need 1 for every week of 46-week year)

6. Statistical Results. (through early March 1969)
   313 of 346 cases judicially screened and returned to clerk

   1 as Class I
   92 on summary calendar (Class II)
   114 as Class III
   106 as Class IV

Breakdown of Summary Calendar (Class II)

Percentage	Nature	No. of Cases
22%	Habeas corpus and 2255 without counsel	21
4%	Habeas corpus and 2255 with counsel	4
22%	Direct appeals in summary cases (80% affirmed; 20% reversed)	21
52%	Civil cases	47

Screening Panel Routing Form

Panel A: JRB, HT, LRM
B: JMW, JPC, BS
C: WPG, ILG, DWD
D: GRB, RAA, JCG

No.:_____ Style:_____
State of Origin:_____

Step 1. Action by Clerk

To initiating Judge:_____of Panel _____(orig. & 3 cc)

Date transmitted:_____, 196__

Step 2. Action by Initiating Judge

To Clerk for following action:

(a) Classify (final) this case: Class III:_____
Class IV: _____

Papers retd.:____

_____, 1969 _____
(signature of initiating Judge)

_____no cc to panel members_____

(b) Send briefs and records to panel members for panel determination.

I recommend classify as: Class I: _____
Class II:_____

Single typewritten record mailed to: Clerk_____
Judge_____

Following confidential information furnished by copy to panel members only:

Recommended disposition: Affirm_____
Reverse_____
Open _____
Other _____

_____, 1969 _____
(signature of initiating Judge)

cc: panel members

Screening Routing Form

Panel A: JRB, HT, LRM
B: JMW, JPC, BS
C: WPG, ILG, DWD
D: GRB, RAA, JCG

No.:_____ Style:_____
State of Origin:_____ Initiating Judge ____of Panel_

Step 3. Action by Clerk: To other Panel Mmebers:

Initiating Judge has recommended classification as Class I: _____ Class II: _____

Enclosed are the following: Briefs _____

Reproduced Record _____

Single typewritten record to Judge _____

2 cc's: Initiating Judge - 3 cc's: Panel Members

_____, 196__

Step 4. Responsive Action by Panel Members on Classifications I and II

To Initiating Judge:

I approve _____ Recommendation: Affirm _____

Reverse _____

Open _____

Other _____

I disapprove _____
(all papers retd. to Clerk)

_____, 196__ _____
(signature of panel member)

cc: Other Panel Member

single typewritten record transmitted to: Other Panel member ____ Initiating Judge _____

Step 5. Final Action by Initiating Judge for Panel On Class I and II

To Clerk : (a) Action: Put case on summary calendar
Classified: Class I:____
Class II:____

Opinion: Attached _____

Forthcoming____

47-070 O—70—pt. 2——23

Step 5. (continued)

(b) Action: Place on regular calendar
(Papers retd. to Clerk)

Reclassified: Class III _____

Class IV _____

_____, 196__ _____
(signature of initiating judge)

Court Management by Appellate Courts

(By Bernard E. Witkin, Attorney at Law, Advisory Member, California Judicial Council)

Introduction

About 30 years ago, a fellow by the name of Faulkner went around asking middle-aged middle-western farmers "Why do you plough?" The answers he got were pretty much of a pattern—they ploughed the soil because their fathers had done so, and their fathers' fathers before them. But until Faulkner managed to find a publisher for his book—Plowman's Folly—hardly anybody thought of trying to find out whether it was doing any good.

Why do high courts write opinions in nearly all of the appeals which come before them? Judges and lawyers have been asking themselves this question with increasing concern in the last decade. But the answer is disturbingly similar to that of the farmer: We plough and replough the fields of precedent, burying leading cases in an incredible mass of repetitive churnings of settled law, exhausting the justices and the judicial soil because it has always been this way. But we are beginning to realize that the individually prepared legal essay, the product of countless hours of precious judicial time, is not only an impossible procedure with today's monstrous caseload; in the majority of appeals it serves no useful social purpose.

The traditional and justifiable purpose of the carefully prepared judicial opinion is to serve as a precedent or guideline in later cases. And most of those we prepare today serve no such purpose: They do not break new ground, but merely add cumulative bulk to the digests, encyclopedias and annotated codes. The incidental psychological benefits to successful appellate counsel, and the dangers of technological unemployment in the commercial publishing industry are no longer persuasive reasons for burdening the appellate process with an unneeded and unwanted product. The time of high courts will be better spent producing more appellate decisions, and fewer and better appellate opinions.

And that, I guess, brings me to my assigned subject of Efficient Disposition of Appeals, and, in particular, Appellate Opinions. I have selected two slightly related topics:

First,

The Memorandum Opinion

This is the heart of the problem, for without memorandum opinions the objective of greater production of decisions and better precedent-making opinions can never be achieved. There is no reason for and no time for a legal essay on all appealed cases, whether that essay be long or short. The individually written legal opinion, with its statement of the nature of the action, the issues, the facts, the law and the reasoning which leads to the decision, should be reserved for cases in which that opinion will add something of significance to the law—new principles or rules, or new applications of old principles or rules.

The point to be made here bears repetition and calls for a basic distinction: We are not talking about short or shorter opinions. An opinion which covers only two or three pages, but which states the facts, issues, law and reasoning, in all respects conforms to tradition. The only significant distinction between the short opinion and the long opinion is that the short one eliminates the faults of repetition and irrelevance so characteristic of many long opinions. A less important distinction is, of course, that it takes longer to write a short one than a long one.

The Memorandum Opinion is quite different: It does not give the facts and does not discuss the law. It is used to dispose of matters which, in an intelligent and conscientious performance of the appellate function, do not require the full treatment. What kinds of matters are these? Those of us who have read Memorandum Opinions, and who have read conventional opinions which should have been Memorandum Opinions, can easily call to mind the typical situations:

First, a controlling statute determines the appeal, and the statute is not challenged for unconstitutionality and does not present a substantial question of interpretation or application. It should be sufficient to say just that—without reciting the factual background of the litigation, without quoting the statute,

without quoting or citing cases which hold that the statute is valid and that it means what it says or what the courts have said it says.

Second, a controlling decision determines the appeal, and the decision is not subject to any infirmity—as of now—which calls for a reexamination of the principle or rule laid down, and the principle or rule is not one which calls for definitive restatement for the guidance of the bench and bar. It should be sufficient merely to cite the decision and state that it is controlling—without facts, without detailed discussion of that obvious and inescapable conclusion.

Third, the only issues involved are factual, and the evidence is in substantial conflict; hence, under the prevailing theory of appellate review, the determination of the jury or trial judge must be accepted. Again there is no need to say more than that, except perhaps to cite one of the 10,000 cases which has reaffirmed the substantial evidence rule. Nothing is gained by a recital of facts, a digest of the evidence, or extended quotation of cases saying the same thing in a lot more words.

The other obvious categories are appeal from a clearly nonappealable order, appeal by an appellant without standing to appeal or seek review, and appeal to an appellate court without jurisdiction. These are actually applications of the first two categories—controlling statute or controlling decision.

Conservative lawyers who derive pleasure or some kind of understanding from the existing practice of painstaking treatment of all aspects of their appeals are quite often hostile to the Memorandum device. And sensitive judges often agree that the idea has merit but believe that its implementation would involve acute psychological discomfort both before and behind the bench. There is therefore a school of thought which counsels proudence—i.e., inaction: continue to write tailor-made opinions in all cases, to keep lawyers happy.

But we have no such choice. The crisis has been reached, and we cannot have efficient and adequate appellate review with the same full treatment given to every case. The only way we can keep up with the increasing volume of appeals is to dispose of most of them, after careful study, by Memorandum Opinions, using the legal essay for the small percentage of cases in which it serves a proper purpose.

Nor is the happiness of lawyers to be ignored. Lawyers, as well as judges, are aware of the appellate crisis; they complain as much of the result as judges do of the burden. Lawyers are surfeited with unnecessary opinions and unnecessarily long opinions, and with their almost endless byproducts in digest paragraphs, encyclopedic footnotes, and—worst horror of all—their extended discussion and quotation in new unnecessary and unnecessarily long opinions. Counsel for the unsuccessful appellant may grumble about brush-off and short-change, and publishers may weep bitter tears and lay off an editor or two, but thousands of lawyers will view the new streamlined advance sheet with pure ecstasy.

One other charge has been leveled at this proposal: That the Memorandum Opinion will become a stereotype, a kind of judicial boiler-plate, which will to an alarming extent be the product of the court's research attorneys rather than the court. The charge is fundamentally correct if we eliminate the "alarming" part: The system necessarily depends on a large participation by staff, for the reason that justices, like business and governmental executives, cannot hope to personally perform all of their functions. They cannot study all of the records and briefs, or read all of the authorities cited, or write all of the words of every judicial opinion. They will have to rely increasingly on highly skilled and well-trained staff for the preparation of reports or pre-decision memoranda, which will disclose the absence of significant issues requiring a full-scale opinion. And the decision reached on this appeal should be the result of the same thoughtful and deliberate consideration that leads to the decision in a case which does require an opinion. Only the tedious and wholly useless process of a legal essay on established law will be eliminated. In its place will be a standardized cliche, lifted from a file of forms, with the message coming through loud and clear—that the emancipated appellate courts will no longer spend a major part of their time explaining in detail why an absolutely meritless appeal has absolutely no merit.

Second,

THE JUDGE'S STYLE

I want to turn now to another aspect of the appellate process—the production of the necessary judicial opinion, the one which makes a useful contribution to the accumulated precedents or restates and updates the law in an area troubled

by conflict or uncertainty. I am going to zero in on a single phase of it, but I should like to preface my observations with a couple from higher authority:

Justice Gailor, in 32 A.B.A.J. 443:

"When I was appointed to the Supreme Court of Tennessee and had the duty of preparing and delivering opinions, I turned to the libraries for textbooks on the method, the technique, the mechanics, of writing a judicial opinion . . . but so far as I can find, no such book has ever been written. Now that I have undertaken to write this paper I begin to see why."

Justice Leflar, in 61 Columb. L. Rev. 814, 820:

"Is there any guidance available to new members of appellate courts on how to write their opinions so as to achieve literary quality, sound personal craftsmanship, and in general the ends that good appellate opinions are supposed to serve?" (His answer, like that of others who have looked into the subject, was No.)

Well, I guess I don't need any other explanation of my own hesitancy to plunge into it, and I hope you will bear with me for a brief inquiry into the touchy subject of style.

I stand firmly with Cardozo, who said that an opinion need not be ugly; and I recall that Justice Gibson thought that a legal writer can make a stab at eloquence. We also know that appellate judges, essentially a group of modest men aware of the need for expertise in the difficult job of writing opinions, sometimes turn to outside experts for criticism and advice. Indeed, one report told of sending sample opinions to a professor of English for correction and grading; and in one session of a judges' group an English professor mounted the platform and gave a learned dissertation on style. Other reports tell of explorations with public relations counsel and semanticists.

It seems to me that this kind of talk can lead us astray. If judges could write like Sam Clemens or Damon Runyon or Abe Burrows, their opinions would achieve notable success—a popularity which would overcome every erroneous principle and every bad result. But that isn't what we're looking for; and I suggest a different approach. Let us put to one side the English professors as well as Flesch and Hayakawa. Let us frankly admit that a judge has individual style, good or bad; that when he ascends the appellate bench the likelihood of changing that style is no greater than the likelihood of developing a new golf swing. And there is no time for lessons in writing, in the sense that some critics of the judicial product use the term.

What we seek in the superior judicial opinion is not style but content: Organization, clarity, completeness of coverage, and avoidance of repetition and superfluous matter. And justices can both teach and learn how to put together opinions in the best possible manner. There are rules of content that are sound, tested, and easily mastered. Crude as the expression may sound, there are forms or models of opinions—good methods of handling certain kinds of cases, certain kinds of problems, certain kinds of issues, certain kinds of authorities, certain kinds of appellate powers.

If we can recognize this simple fact that style doesn't matter much but content matters a great deal, and that a judicial opinion is an expert form of treatment of legal problems which can be the subject of expert guidance, we will have taken an enormous step forward in the improvement of the appellate process.

REPORT OF A MANAGEMENT SURVEY OF THE OFFICE OF THE U.S. ATTORNEY FOR THE DISTRICT OF COLUMBIA

DECEMBER 1969

CONTENTS

I. PURPOSE OF SURVEY

A principal objective of the Court Management Study of the District of Columbia Court System was to develop concrete recommendations to expedite the flow of civil and criminal cases through the system. As a major participant in the system, the Office of the U.S. Attorney has a significant impact on the operations of the courts. We, therefore, conducted a survey of the organization and operation of that office to determine whether there were any areas in need of improvement.

II. SCOPE OF SURVEY

Our survey consisted of two major phases. In the spring and summer of 1969 detailed surveys were made of the operations or three major organizational units of the U.S. Attorney's Office: the Court of General Sessions Division; the Appellate Division; and the Grand Jury Unit. We have furnished the U.S. Attorney reports of our detailed findings, conclusions and recommendations relating to these three units.

In September and October 1969 more general surveys were conducted of (1) the overall management and operation of the Office and (2) the Criminal Division.

Our survey did *not* include an appraisal of the adequacy and effectiveness of such substantive matters as charging policies or plea bargaining policies. Such an appraisal would have entailed a major research effort which would have required more time and resources than were available to us. In any event, those policy areas have been scrutinized by other recent study groups which have authored recommendations designed to strengthen such policies and make them more uniform and more visible. These study groups include the D.C. Crime Commission, the Judicial Council Bail Committee, and the D.C. Committee on the Administration of Justice Under Emergency Conditions. All the recommendations made by these study groups are summarized in Appendix A.

III. BACKGROUND INFORMATION

The U.S. Attorney's staff has expanded greatly in the past few years. In 1965 the professional staff totaled 52. The staffing situation as of October 31, 1969 was as follows:

	Authorized	On duty	In process
Professionals	93	87	5
Administrative and clerical	72	69	4

The U.S. Attorney's staff is organizationally divided into five major divisions and four major units as shown by the chart. Briefly, the major responsibilities of these divisions and units are:

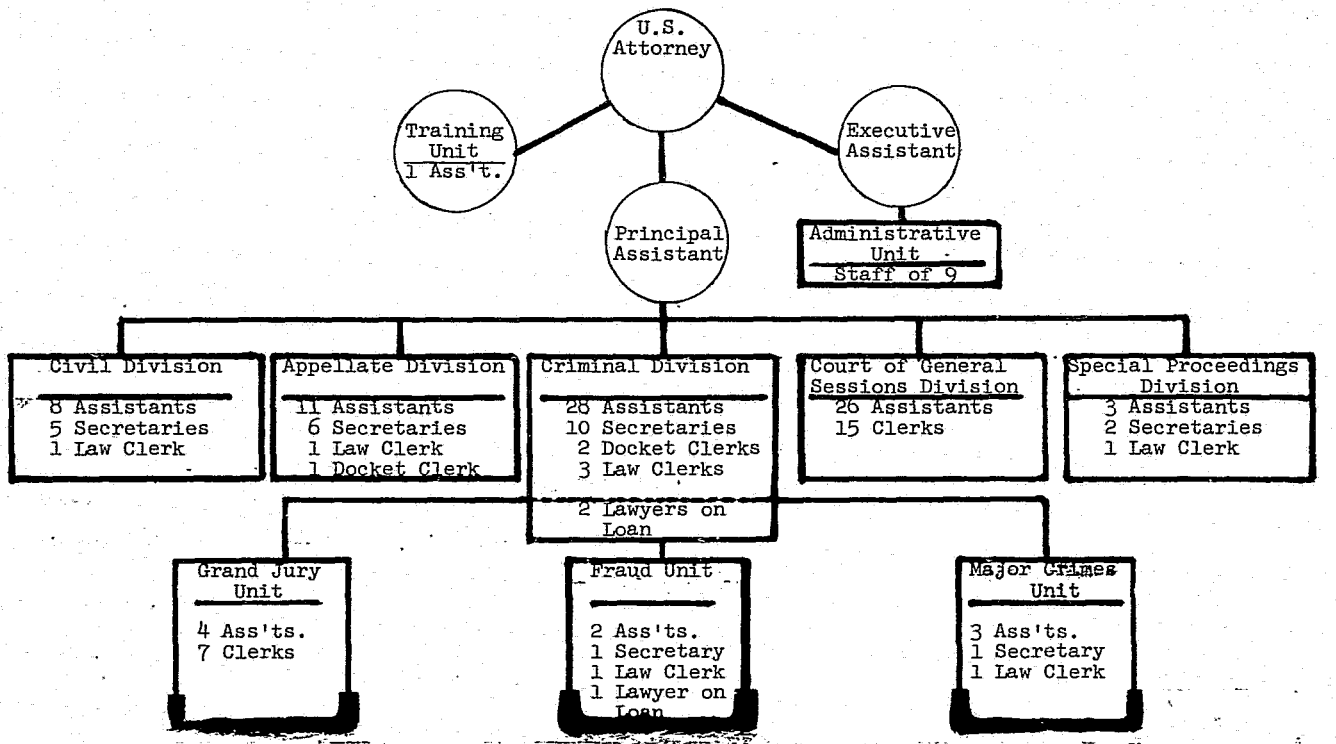
Civil Division.—Represents the U.S. in civil cases brought in the U.S. District Court for the District of Columbia. Represents the U.S. in some civil cases appealed to the U.S. Court of Appeals for the District of Columbia. Also handles such civil matters as collections.

Appellate Division.—Represents the U.S. in civil and criminal cases which have been appealed from the U.S. District Court for the District of Columbia, from the Court of General Sessions and from the D.C. Court of Appeals.

Criminal Division.—Represents the U.S. in criminal cases involving defendants charged with felonies and indictable misdemeanors in the U.S. District Court for the District of Columbia.

ORGANIZATION CHART

OFFICE OF U. S. ATTORNEY FOR
THE DISTRICT OF COLUMBIA -
STAFF ON BOARD - AS OF OCTOBER 31, 1969



Grand Jury Unit.—Represents the U.S. Government in cases before the grand jury.

Fraud Unit.—In cooperation with other law enforcement agencies, investigates and prosecutes all criminal fraud cases involving "white collar" criminals who engage in a wide range of fraudulent criminal activity including fraudulent home repair schemes, loan sharking activities, forging of worthless promissory notes and securities, etc.

Major Crimes Unit.—In cooperation with other law enforcement agencies, investigate and prosecutes narcotics wholesalers, major gamblers, and principal "fingermen" and "fences," who plan large scale burglaries and hijackings and then arrange to distribute the proceeds of these crimes through illegitimate channels.

Court of General Sessions Division.—Represents the U.S. Government in criminal cases involving defendants charged with misdemeanors under the U.S. and D.C. Codes. Also represents the U.S. Government. Performs a variety of other functions including deciding whether cases should be charged as a felony or misdemeanor, hearing and acting upon citizens' complaints, and conducting preliminary hearings.

Special Proceedings Division.—Processes matters not clearly the responsibility of any other division. Workload consists primarily of actions testing the legality of confinement of an individual within a jail or hospital. Also handles all drug user commitments.

Administrative Unit.—Provides administrative support services to the other divisions.

IV. SUMMARY OF MAJOR FINDINGS AND CONCLUSIONS

The Office of the U.S. Attorney was in a period of major transition throughout our survey. The current U.S. Attorney, Thomas A. Flannery, took office on May 25, 1969. Within the next few months he announced a number of major organizational changes, including:

—Creation of a "Major Crimes Unit" to identify and prosecute narcotics wholesalers, big-time gamblers, and principal "fingermen" and "fences."

—Creation of a "Fraud Unit" to expose and prosecute those perpetrating "white collar" crimes.

—Shifting of personnel filling such key positions as the Principal Assistant and the Chiefs of the Criminal and Court of General Sessions Divisions.

—Designation of an Executive Assistant to assist in matters involving management and administration.

—Designation of a Training Officer.

Effective implementation of these changes should produce significant improvements in the operations of th Office.

Another important change that occu ed during our survey was the U.S. District Court's implementatio, effective October 1, 1969, of an experimental individual calendar system for felony cases.[1] Under this system, control over the movement of a case rests with the court, not the prosecutor. The previous system which had been in effect since October 1966 vested control with the prosecutor. It had

[1] A recommendation made by the Court Management Study.

not been an effective system: In Fiscal 1966, 1,453 cases were filed and the median time from indictment to termination was 4.8 months. At the end of the year, 913 cases were pending. By Fiscal 1968, although filings rose only 21 percent to 1,756 cases, the delay between indictment and termination practically doubled, rising to 9.5 months. The backlog expanded to 1,374 pending cases.

An important feature of the experimental program is the assignment of teams of three prosecutors to specific judges. This should eliminate a number of problems that plagued the former system. All too frequently an Assistant would be scheduled to appear before more than one judge at the same time. Also, there was great uncertainty concerning when a case would actually go to trial. This along with scheduling conflicts, frequently produced hasty last-minute preparations for trial by an Assistant unfamiliar with the case. The experimental program, providing for assignment of Assistants to one, and only one, judge, will eliminate scheduling conflicts for the prosecutor and permit more time for pretrial preparation.[2]

The experimental program has not been in effect long enough to permit a conclusive evaluation. However, interviews with judges, court personnel and U.S. Attorney personnel conducted after the program had been in effect for a few weeks revealed a general belief that the new system is a major improvement.

While the U.S. Attorney's Office is thus already engaged in a series of major reforms, our survey disclosed a number of additional areas in need of increased attention and positive action. Three major areas involve: (1) a need for a vastly improved management information system; (2) a need for a more systematic and comprehensive staff development (training) program; and (3) a need for prompt and positive action on recommendations made by prior study groups. Each of these three areas is discussed in general terms below. More detailed discussions will be found in Section VI of this report.

The D.C. Crime Commission concluded in 1966 that "Improvement in the administration of criminal justice in the District of Columbia requires vastly improved data." While the U.S. Attorney's Office does maintain some meaningful data, there is still a need for vastly improved data. Examples of the inadequacies of the U.S. Attorney's current information system include: (1) current internal reports do not tell the U.S. Attorney how effectively his policy of expediting the processing of crimes of violence is actually being implemented; and (2) the Grand Jury Unit maintains few meaningful records and does not attempt to ascertain such things as: (*a*) the number, nature and age of cases pending presentment to the Grand Jury; (*b*) the time interval between preliminary hearing and indictment; and (*c*) the number of cases dismissed and/or referred back to the Court of General Sessions.

To effectively manage and control, a manager needs timely, accurate and comprehensive information that will enable him to evaluate actual performance against stated policies and objectives. In the case of the U.S. Attorney this means, for example, that data will have to be gath-

[2] For details concerning the defects of the prior system and the mechanics of the new system, see our report entitled "A Study of the Criminal Calendar of the U.S. District Court for the District of Columbia" *ibid.*, pp. 33–59. That report points out that another major problem was the uneven allocation of cases among Assistants. Some Assistants carried heavy caseloads and this, too, contributed to scheduling problems.

ered and analyzed to determine whether the current individual calendar experiment is, in fact, a better system. Does it produce greater certainty concerning trial and hearing dates? Does it reduce the time interval from filing to disposition? What effect does the system have on the timing and rate of guilty pleas? The U.S. Attorney's data gathering and reporting processes should be revised to provide timely and accurate answers to these questions.

Thus, we believe the U.S. Attorney should give priority attention to the development of an improved management information system. Major steps in this process should include: (1) a series of meetings of the U.S. Attorney's principal staff to define specific data needs of each organizational unit; and (2) the establishment of a Management Reports Office position under the Executive Assistant to implement and maintain the management information system.

A second major area in need of substantial improvement is staff development. The U.S. Attorney's staff has expanded greatly in the past few years. In 1965 the professional staff totaled 52, whereas on October 27, 1969 there were 87 assistants on the rolls—an increase of 70 percent. Between January and October 1969, 24 assistants left the office. This turnover rate has produced relatively inexperienced staffs in both the Court of General Sessions and the Criminal Divisions. Excluding the Chief and Deputy Chiefs, the staff of the Court of General Sessions Division totaled 24 in October 1969. Of these 24, 20 had less than 6 months experience with the Office. In the same month, 21 of the 27 men assigned to the Criminal Division (excluding the Chief) had less than two years experience with the Office.

To effectively cope with both the expanding staff and the high turnover rate, the U.S. Attorney needs to develop a systematic and comprehensive staff development (training) program designed to produce effective and productive Assistants in the shortest possible time. While the U.S. Attorney has already recognized the need for training and has taken some steps to meet the need, we believe additional steps are necessary. For example, to quickly and uniformly acquaint new Assistants with the manner in which the Office is organized and operated, a short handbook should be prepared that concisely covers such matters as lines of authority and responsibility; basic objectives, policies and procedures of each organizational unit; and workloads and staffing patterns of each organizational unit. There is also a need for the development of an overall plan for meeting the technical training needs of individual Assistants. Currently, the Training Officer has no overall plan, schedule or curriculum. Finally, Assistants who are promoted to supervisory and managerial positions should receive formalized training designed to develop supervisory and managerial skills and abilities.

A third major area that we believe should receive priority attention involves the need for action on recommendations made by prior study groups. Their studies produced a number of important recommendations for improvement, some of which have yet to be implemented. For example, the Judicial Council Bail Committee recommended that the U.S. Attorney establish a standard of presenting felony cases to the

grand jury within two weeks of preliminary hearing and completion of grand jury action within 10 days thereafter. The Office has not yet established a standard and our survey disclosed that in Fiscal Year 1968 the median time interval from preliminary hearing to completion of grand jury action was about 50 days.

To ensure that prompt and appropriate action is taken on recommendations of prior study groups, as well as the recommendations resulting from our survey, we suggest the U.S. Attorney fix responsibility within his Office for implementation, set target dates for completion of action, and require periodic progress reports until corrective action is complete. (See Appendix A for a summary of the recommendations of these prior study groups.)

V. RECOMMENDATIONS

PART I[3]

A. The U.S. Attorney should give high priority to the establishment of an improved management information system that will permit him to timely and accurately measure actual performance against stated objectives. Major steps in the development of such a system should include:

1. Definition by the U.S. Attorney's principal staff of the specific data needed to measure the performance of each organizational unit. (See pages 363 through 366.)
2. Creation of a Management Reports Officer position. (See page 366.)

B. The U.S. Attorney should also give high priority to the development of a comprehensive staff development (training) program. Major elements of such a program should include:

1. Development and issuance of a short handbook designed to quickly and uniformly inform new Assistants of such important matters as: lines of authority and responsibility; basic objectives, policies and procedures of each organizational unit; and workload data. (See page 366.)
2. Development of an overall plan providing for a coordinated approach to the technical training needs of Assistants. (See page 368.)
3. Provision for formal supervisory and managerial training for Assistants placed in supervisory and managerial positions. (See page 368.)

C. The U.S. Attorney should fix responsibility within the Office for implementing recommendations of this and prior studies. Target dates for full implementation should be established and progress reports required until corrective action is complete. (See page 368.)

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[3] The recommendations in this part relate to the three major areas of the U.S. Attorney's operations that we believe are in need of some improvement. These areas were discussed in general terms in Section IV of this report and will be discussed in greater detail in Section VI.

PART II [4]

A. GRAND JURY UNIT

The Grand Jury Unit should:

1. Be given control over the intake of all felony cases.
2. Document its charging policies.
3. Establish a management information system.
4. Significantly reduce the time required to process a case between preliminary hearing and the return of an indictment.
5. Be given additional professional and clerical manpower.
6. Encourage disposition of cases by plea before presentation to the Grand Jury.

B. COURT OF GENERAL SESSIONS DIVISION

1. A member of the Grand Jury Division should be assigned the duties of preparing cases for preliminary hearings and conducting the hearings.
2. The Grand Jury Division should provide the General Sessions Division personnel with written criteria for the charging of a felony.
3. Two more police officers and one more Assistant should be assigned the task of hearing citizens' complaints.
4. The U.S. Attorney should assume full responsibility for the trial attendance of all civilian witnesses by sending letters of notification to the civilian witnesses—including special police officers—in each case. Those witnesses who fail to appear at trial should be subpoenaed.
5. Once the letter notification system is operational, two Assistants should be assigned the task of interviewing witnesses, reviewing the papers and trying their assigned cases. The results of this effort should then be evaluated.
6. The absence and tardiness of police officers should be recorded and reported promptly to the Police Liaison Office by U.S. Attorney personnel assigned to the Witness Room.
7. A highly qualified law clerk should be assigned to assist the Assistant in the Witness Room during the morning hours.
8. Until the low conviction rate (43 percent) of cases tried by a jury is substantially improved, the Deputy Chief should review each case in which the Government does not obtain a guilty verdict. This review should generally be based on a typed transcript of the proceedings.
9. The professional manpower level of the Division should be set at least 24 men in addition to the Chief, Deputy Chief, and the Director of Administration and Training. In addition, it would be desirable to provide three additional positions: two to be used in experimental processing of cases and the other to be assigned to the Grand Jury Division for training. Assistants should be required to remain in the Division for at least one year.

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[4] The recommendations in this part were developed during our detailed surveys of the Court of General Sessions Division, the Appellate Division, and the Grand Jury Unit. Separate reports on each of these surveys have already been furnished by the U.S. Attorney's Office. The recommendations are listed here to give the reader some idea of the nature and scope of the detailed surveys and to provide a ready reference to all the recommendations resulting from our review of the U.S. Attorney's organization and operations. As of November 1969 the U.S. Attorney's Office had initiated action on a number of our recommendations. For example, the size of the Court of General Sessions Division was increased and the U.S. Attorney's Office assumed responsibility for notifying civilian witnesses in misdemeanor cases. Also, action has been taken to improve communication and coordination between the Court of General Sessions Division and the Grand Jury Unit.

10. In selecting new Assistants, particular emphasis should be placed upon aptitude for, and interest in, litigation.

11. As the D.C. Crime Commission recommended, Assistants should be subject to the Classification Act and be eligible for grade and step increases on a parity with their contemporaries in the Justice Department.

12. Training given to new Assistants should be intensified. More classroom instruction should be provided and there should be more opportunities to observe senior Assistants. Realistic moot courts should be conducted at least once a week. Upon completion of indoctrination period, the trial performance of Assistants should be observed and criticized regularly.

13. Existing physical facilities should be improved by:

(*a*) Radically improving the sound dampening in the office.

(*b*) Modifying the public address system so each Assistant can be called by a bell code signal.

(*c*) Providing each Assistant with a private telephone extension.

(*d*) Striving to increase office space so that each Assistant will have a totally enclosed private office.

(*e*) Enclosing the facilities of the Assistant in the Witness Room in glass and equipping the entire room with sound dampening materials and a public address system. Finally, a partition should be erected in the Witness Room to separate government witnesses from the general public.

C. APPELLATE DIVISION

1. The Appellate Division should be staffed with 15 Assistants in addition to the Chief and Deputy Chief. Four to five of the Assistants should have at least 2 years experience at the appellate level; the remainder of the Assistants should be retained in the Division for at least one year.

2. Once fully staffed, the Appellate Division should assume responsibility for preparing briefs in all civil cases and should permit experienced assistants to try 2 or 3 felony cases per year.

3. The clerical staff of the Appellate Division should include a secretary for each 2 Assistants. The deputy docket clerk position should be filled by a person whose sole duties will be to assist the docket clerk.

4. The training and supervision of Assistants should be improved by subjecting their briefs to a thorough review by the Chief or a Deputy Chief.

5. The preparation for a moot court presentation should include a reading of the opposing counsel's brief and substantial contemplation of the issues raised by the facts of the case.

VI. FINDINGS

A. Need for Improved Management Information System

To effectively manage and control his rapidly expanding operations and to permit an objective evaluation of the impact of changes he has introduced, the U.S. Attorney will need more timely, more accurate, more meaningful and more comprehensive information than he currently receives.

Perhaps the best example of the need for an improved flow of information is the Grand Jury Unit of the Criminal Division. At the beginning of our survey of that unit we asked for basic data that would reflect how large the unit's workload was and how rapidly the workload was being processed. We were told that such data was not maintained on a regular basis and that the only "statistical" data available was compiled at the end of the year by reviewing all the files.

In the absence of meaningful data with which to measure workload, performance can not be monitored and significant changes in procedures can not be evaluated. For example, a second Grand Jury was established in May 1967 to reduce the delay between preliminary hearing and indictment; however, the time lapse is now greater than before. In 1965 the median time lapse was 40 days; in Fiscal Year 1969 the median time lapse was 50 days. To some extent this is due to an increase in the number of cases processed, yet this is not the complete explanation. At the time the second Grand Jury was established, the unit reduced the time previously worked by the first Grand Jury. If meaningful data had been compiled, it would have been possible to measure the actual impact of the second Grand Jury.

We believe that the data needed to timely and accurately measure the unit's workload can be maintained with a minimum of clerical effort. One way to compile the data would be to maintain a simple log with the following headings:

1. Case Number [The number should be coded to indicate whether the case was received from the Court of General Sessions (CGS) or the Federal Magistrate (M). Thus M 1260 would be a Magistrate case and CGS 1400 would be a Court of General Sessions Case.]
2. Type of Case [Codes would be used to show what type of case is involved such as ADW for Assault with a Deadly Weapon.]
3. Preliminary Hearing Date
4. Date Presented to Grand Jury
5. Disposition Date
6. Time Interval [Number of calendar days between Column 3—Preliminary Hearing Date and Column 5—Disposition Date.]
7. Method of Disposition [Codes would be used to show how the case was disposed of—i.e., I=Indictment, IGN=Ignoramus, etc.]

Such a log would provide most of the information needed to effectively monitor the unit's performance. In Chart No. 1 we set forth the categories of information we believe should be reported to the U.S. Attorney monthly.

CHART NO. 1.—*Suggested Data to be Reported Monthly on the Activities of the Grand Jury Unit*[1]

A. Number of New Cases Received
   1. From Court of General Sessions
   2. From Magistrate
   3. Other

[1] Except for the data on continuances, all the data needed for this report can be compiled from the log that we describe above. Since the Chief of the Grand Jury Unit must authorize all continuances it would be a simple matter for him to maintain a separate record of continuances and reasons therefore.

NOTE.—To make the report even more meaningful this monthly data could well be supplemented with columns showing: (1) year to date totals and (2) totals for same month last year.

B. Number of Cases Presented to Grand Jury
C. Number of Cases Continued
    1. Civilian witness unavailable
    2. Police witness unavailable
    3. Other
D. Number of Cases Pending Presentment at End of Month (by type of case and by length of time pending)
E. Number of Cases Disposed of
    1. U.S. Attorney Action
        a. Dismissed without presentment to Grand Jury
        b. Dismissed and referred to Court of General Sessions
        c. Plea to misdemeanor accepted
    2. Grand Jury Action
        a. Indicted
        b. Ignored and dismissed
        c. Ignored and referred to Court of General Sessions

Our survey of the Criminal Division disclosed that it is in better shape than the Grand Jury Unit in terms of information compiled and reported. However, there is room for improvement not only in the types of information reported but also in the methods by which the information is compiled.

For example, the monthly statistical report to the U.S. Attorney on felony cases would be much more meaningful if it were expanded to include information on:

1. Number of Cases Pending at End of Month by Type of Case and by Length of Time Pending and by Status of Case (i.e.—Ready for Trial, Fugitive Case, etc.).
2. Median Time Intervals From Indictment to Disposition by Method of Disposition.
3. Volume of Continuances and Reasons Therefore.
4. Year to Date Totals Compared to Prior Year.

That part of the monthly statistical report showing total dispositions during the month for each Assistant by method of disposition could be made much more meaningful if (1) cumulative year to date figures were shown for each Assistant, and (2) the Assistants were identified and listed by the judge to whom they are assigned rather than in straight alphabetic sequence. (Subtotals of dispositions by team would permit ready evaluation of relative team performance.)

The weekly report to the Chief of the Criminal Division would also be more useful if the data were arranged in team sequence rather than alphabetic sequence and if it distinguished ready and non-ready for trial cases.

Responsibility for compiling and reporting data is split between the Secretary to the Criminal Division Chief and the Docket Section. The Secretary maintains her own card and record system and prepares the monthly report to the U.S. Attorney. The Docket Section prepares the weekly report to the Chief of the Criminal Division. This Section also maintains the docket cards which are the source document for the Department of Justice's statistical reporting system. (At the time of our review the Docket Section was three months behind in notifying the Department of case dispositions.)

The Secretary of the Criminal Division Chief should not, in our opinion, be burdened with significant recordkeeping and reporting responsibilites. If the monthly reports are modfied as we suggested earlier more time and effort will be required to prepare them.

Also, to minimize duplication and increase efficiency we believe the recordkeeping and reporting responsibilities should be placed under the centralized control of an individual trained in the use and value of statistics. Such a person should have control over the preparation and analysis of statistical reports covering all the organizational units of the U.S. Attorney's office.

Thus, we suggest that a Management Reports Officer position be created at either the GS–11 ($11,200 per annum) or GS–12 ($13,400 per annum level. The position would be on the Executive Assistant's staff and the prime responsibilities would be to implement and maintain a comprehensive management information system for the entire office including the General Sessions Division, Grand Jury Unit, etc., that will timely and accurately produce information that will enable the U.S. Attorney to effectively "manage" his operation.

As a first step towards implementation of such a system we believe the U.S. Attorney and his principal staff should determine, after giving due consideration to the suggestions in this and other reports, the basic data needed to effectively monitor and evaluate the performance of each organizational unit. Once these decisions are made then steps can be taken to compile and report the necessary data.

B. Need for Improved Training Program

As the organization and operations of the U.S. Attorney's Office become larger and more complex, the need for a systematic and organized approach to training becomes essential. The U.S. Attorney recognizes the importance of training and has taken steps to strengthen this phase of his operations; however, our survey disclosed additional improvements are needed.

We will discuss existing training efforts and our suggestions for improvement under three broad categories: orientation, technical training, and supervisory or management training.

Orientation

There is no formalized program for orienting new Assistants about the Office organization and functions. There is no handbook or other document which summarizes major objectives, policies and procedures of the Office. Usually, the new Assistant is assigned immediately to the Court of General Sessions Division without spending any time familiarizing himself with the functions of other organizational units.

As we indicated in the Summary Section of this report (Page 355) the U.S. Attorney's Office is rapidly expanding in size and continues to have a high turnover rate among Assistants. Both of these factors point to the need for an effective orientation program that will quickly and uniformly acquaint new Assistants with basic policies and procedures. The more a new Assistant knows about the organization the sooner he can become an effective member of the "team."

A very helpful device for orienting a new Assistant would be a short handbook which could well include a functional organization chart; a statement of overall office objectives, policies and procedures; similar statements for each major organizational unit; workload data; and information on how the U.S. Attorney's Office coordinates its activities with other organizations in the Criminal Justice System.

After arming each new Assistant with the orientation document, and prior to giving him an assignment, interviews should be scheduled for him with the head of each organizational unit. The prime purposes of such interviews would be to provide additional information to the new Assistant about the functions of each unit. This seems especially desirable in the case of the Fraud Unit and Major Crimes both of which rely on "intelligence" from a number of sources including Assistants in the Court of General Sessions Division.

Examples of important policy matters that should be covered in the handbook include charging policies, priority cases and time standards. For example, the Chief of the Criminal Division told us that crimes of violence are receiving priority treatment in an attempt to expedite their processing. Although no fixed time standards have been established, he indicated that considering the existing backlog it would be a considerable achievement to process these cases within 60 days after indictment. Such major policies and objectives concerning priorities and time standards should be documented to ensure uniform understanding and consistent application.

TECHNICAL TRAINING

Except for the Court of General Sessions Division, no formalized training programs are in effect and an Assistant learns primarily through "trial and error."

In the Court of General Sessions Division all new Assistants participate in a six-week training program during which they observe the performance of senior Assistants and receive formal instruction designed to enable them to properly evaluate cases in terms of whether they should be dismissed or prosecuted as felonies or misdemeanors. Thereafter, formal training is limited primarily to weekly staff meetings which keep Assistants abreast of legal developments and current problems within the Division. In our detailed report on the Court of General Sessions Division we concluded with respect to training that:

> . . . new Assistants should be given more classroom instruction and, simultaneously, more opportunities to observe senior Assistants on a regular basis . . . new Assistants should be permitted to observe trials in the District Court. In addition, realistic moot courts—involving cases which raise principles taught in the classroom—should be conducted at least once a week.
>
> After the indoctrination period, the performance of Assistants at trial should be observed and extensively criticized on a regular basis . . . an experienced member of the U.S. Attorney's Office should be assigned to observe trials in the Court of General Sessions on each day of the week. Members of the Division should observe trials in the District Court at least once every month.

The new Training Director, an experienced prosecutor with 18 years of experience with the Office, has conducted a few lectures for Court of General Sessions Division Assistants but has confined his training activities primarily to observations of individual Assistants in trial followed by critique sessions.

When we interviewed the Training Officer in September he advised us he had not had time to make formal plans or training schedules or to write out his lectures although he believed that it might be beneficial to do so. We suggested that he also might wish to formally and systematically ask (via a questionnaire) all Assistants what areas in which they especially desired additional training—i.e., how to properly prepare for a trial, how to cross-examine a hostile witness, etc.

Based on their responses and information received from their supervisors and from judges, the Training Officer could develop a list of priority training needs and then develop a schedule for meeting those needs.

SUPERVISORY AND MANAGERIAL TRAINING

Assistants who are promoted to positions with supervisory and managerial responsibilities currently receive no formal supervisory or management training.

A competent trial attorney does not necessarily make a competent supervisor or manager. The fact that a good technician is not automatically a good manager has long been recognized by both government and industry. As a result, an extremely large variety of training courses have been devised to help develop competent supervisors and managers. Among those institutions offering courses locally are the U.S. Civil Service Commission and the U.S. Department of Agriculture Graduate School.

The U.S. Attorney has recognized the importance of sound management by appointing an Executive Assistant to assist him in "matters of management and administration." To further improve the management of the entire Office we suggest that plans be developed for systematically providing the U.S. Attorney and his principal staff with formalized management training.

We suggest that at the outset the U.S. Attorney's Office consult with the Office of Agency Consultation and Advice, Bureau of Training, U.S. Civil Service Commission, in developing plans for an improved approach to training. We also suggest the U.S. Attorney clarify the respective training authorities and responsibilities of the Executive Assistant and the Training Officer.

C. Need for More Action on Recommendations of Prior Study Groups

Within the past few years various aspects of the operations of the U.S. Attorney's Office have been evaluated by a number of study groups including the D.C. Crime Commission, the Judicial Council Bail Committee, the D.C. Committee on Administration of Justice Under Emergency Conditions, and the Office of Criminal Justice of the Justice Department.

The above studies produced numerous recommendations designed to improve various aspects of the U.S. Attorney's operations. (See Appendix A for a listing.) Recommendations ranged from detailed suggestions for development of forms to more substantive suggestions concerning broad policy matters. As of October 1969 a number of these recommendations had not yet been implemented. For example, both the D.C. Crime Commission and the Judicial Council Bail Committee recommended that the U.S. Attorney take action to significantly reduce the time lapse between preliminary hearing and return of indictment—i.e. reduce it to 10 days or less. Our survey disclosed that the U.S. Attorney kept no records on time lapses; consequently, we had to construct a sample from U.S. District Court records. We drew a random sample of 550 felony cases out of a total of 2,195 cases docketed in Fiscal Year (FY) 1969. The sample disclosed that the median time interval from preliminary hearing to indictment was 54

days for the first six months of FY 1969; 48 days for the last six months of FY 1969; and 50 days for the full 12 months. Each of these time intervals exceeds the 40 day FY 1965 figure which precipitated the D.C. Crime Commission's recommendation for action to reduce the time lapse.

The above is but one example of a number of recommendations which remain unimplemented. We recognize of course that there may be valid reasons for not implementing some recommendations; however, it appears that a number of recommendations, including the one discussed above, have gone unimplemented due to the "press of day-to-day business" rather than being rejected on their merits.

It is easy to put off action on recommendations especially when implementation involves change, time and effort and especially when existing workloads are heavy. Thus, we believe it will take a special and concerted effort on the part of the U.S. Attorney's Office to ensure that all the recommendations of prior study groups and our study are thoroughly evaluated on their merits and then implemented, if appropriate. To aid the U.S. Attorney's Office in conducting such an effort, we furnished him a control sheet which lists all the recommendations made to the U.S. Attorney's Office during the three year period October 1966 through October 1969. We provided space on the control sheet for the U.S. Attorney to indicate: (1) whether he agrees or disagrees with a particular recommendation; (2) the extent of implementation as of October 31, 1969; (3) whether additional resources are needed in order to implement; and (4) the target date for full implementation.

We suggest the U.S. Attorney assign specific persons on his staff responsibility for implementing specific recommendations. For example, the Chief of the Grand Jury Unit could be told to take action to reduce the time interval from preliminary hearing to indictment. The U.S. Attorney may wish to delegate to either his Principal Assistant or his Executive Assistant the responsibility for monitoring the progress of action being taken on specific recommendations. In any event, the U.S. Attorney should receive periodic written progress reports until action is complete. In the absence of such reports, corrective action may continue to be deferred due to the "press of day-to-day business."

D. Highlights of Detailed Reports

To give the reader a better understanding of the nature and scope of the detailed reports we have furnished the U.S. Attorney covering our studies of the Appellate Division, Court of General Sessions Division, and Grand Jury Unit, we are summarizing in this Section the major findings and conclusions in those reports. Also see Section V, Part II (Pages 362–63) where we list the recommendations in those reports.

1. APPELLATE DIVISION

In order to increase the quality of the work of the Division to a level of consistent excellence, the manpower assigned to this Division should be increased to a total of 17 Assistants, including the Chief and Deputy Chief. This would reduce the workload of each Assistant

to the acceptable level of two briefs per month. It would also enable the Division to greatly intensify the review and supervision of the work of individual Assistants. Currently, very little review and supervision is provided.

The practice of holding moot courts shortly before oral argument should be continued but the preparation for moot court should be improved to include, at a minimum, the reading of the opposing counsel's brief and substantial contemplation of the issues raised by the facts of the case.

Finally, in order to recruit and train attorneys who will be interested in remaining with the Division for longer periods, the Division should (1) assume responsibility for preparing briefs in all civil cases tried by the Office, and (2) permit experienced Assistants to try two or three felony cases per year.

2. COURT OF GENERAL SESSIONS DIVISION

A number of serious problems were disclosed by our study of this Division. For example, many cases set for trial had to be continued because the prosecutor was not ready for trial. In most cases the prosecutor was not ready because either civilian witnesses or police witnesses necessary for prosecution of a case failed to appear. Moreover, our sampling showed that about 20 percent of all cases terminated were nolle prossed or dismissed primarily because witnesses failed to appear or refused to testify. At the time of our study the police had the responsibility for notifying witnesses of trial dates. We concluded that the U.S. Attorney's Office should assume full responsibility for the notification of civilian witnesses and should promptly advise the Police Liaison Office of Police Officers who fail to appear for trial.

Another major problem concerned the low jury trial conviction rate, which our samples disclosed to be about 43 per cent—i.e. only 43 per cent of defendants who were tried by a jury were found guilty.[5] It appeared that a number of factors were contributing to this low conviction rate including unavailability of witnesses, inadequate pretrial preparation, a tendency on the part of defense counsel to limit their demands for jury trials to cases in which there was a substantial possibility that the trier of facts could find for the defendant, etc.

Until this conviction rate is substantially improved, or until its causes are clearly identified, we believe the Deputy Chief of the Division should personally make a detailed review of all jury cases resulting in not guilty verdicts.

We also concluded that additional Assistant prosecutors should be assigned to the Division to permit improved pretrial preparation, allow more time for Assistants to determine what changes should be filed, improve the handling of citizens' complaints, and to permit a more intensified training program.

3. GRAND JURY UNIT

In calendar year 1968 this unit decided (without presentment to the Grand Jury) that 17 percent (440 of 2,626) of the cases submitted

[5] By contrast ,the conviction rate in the U.S. District Court of cases tried by jury in Fiscal Year 1968 was 77 percent. (See Table D4a of the 1968 Annual Report of the Director of the Administrative Office of the United States Courts.)

to it as felonies should be prosecuted by the Court of General Sessions Division as misdemeanors. In most of these cases the Court of General Sessions Division had made the initial determination that the case should be prosecuted as a felony. The shuttling of hundreds of cases between the Grand Jury Unit and the Court of General Sessions Division consumes large amounts of professional and clerical time, inconveniences witnesses and police officers, and, most importantly, contributes to delay in finally disposing of cases.

We also found that the unit was not promptly processing its caseload. In Fiscal Year 1969 the median delay between preliminary hearing and indictment was 50 days. (In 1966 the D.C. Crime Commission recommended that this time interval be kept to less than two weeks.)

A third major problem concerned the fact that the unit did not maintain any meaningful data that would permit an on-going evaluation of its performance.

We concluded that the unit should be given additional professional (5 assistants) and clerical (2 clerks) manpower and that it should assume the responsibility of reviewing the felony intake at the Court of General Sessions Division and conducting preliminary hearings. The additional manpower should also permit the unit to expedite the processing of cases, develop and maintain adequate records and reports, and improve the quantity and quality of its training efforts.

Appendix A. Listing of Recommendations of Prior Study Groups

A. Criminal Justice in a Metropolitan Court, October 1966 (Subin Report)

1. Staff Court of General Sessions Section with 15 Assistants, including 1 Chief Assistant and 2 Deputy Chief Assistants.
2. Charge one Deputy Chief with active supervision of office activities.
3. Charge other Deputy Chief with supervision of Assistants in court, especially training them in trial tactics and procedures.
4. To induce Assistants to remain in General Sessions Section longer:
   (*a*) Provide a financial incentive, perhaps in the form of more rapid pay increases.
   (*b*) Allow Assistant to handle felony cases for a 2- or 3-month period, rotating on a seniority basis.
5. To improve the existing bargaining process, the following procedure is suggested:
   (*a*) After appointment of defense counsel, counsel for both sides should meet to determine whether out of court disposition is possible. If parties are unable to agree on disposition, a signed statement to this effect should be submitted to the court.
   (*b*) If negotiation appears appropriate, the case should be placed on trial calendar and the parties given one week to negotiate. After that, continuances or further changes in the charges should not be tolerated.
   (*c*) Continue to follow the liberal discovery policy which permits considerable exchange of information between counsel.
   (*d*) When the negotiation has produced a compromise, an agreed statement of facts should be submitted to the judge along with the formal charges. The statement should contain the reasons why a guilty plea was offered and accepted, or why a charge was dropped.
6. The present program involving shoplifters and check writers should be continued and a follow-up study made of the recidivism rate. Further experimentation in this area is warranted, and other crimes might be included.
7. Related to the first offender program, an experiment should be undertaken in which prosecution would be suspended on condition that the defendant agree to obtain employment, seek psychiatric or other aid, avoid certain associations or practices, etc.

8. A small, well-trained unit of the Police Department should be attached to the U.S. Attorney's Office. The staff could work in the consumer fraud area as well as in solidifying cases by filling evidentiary gaps.

9. A research assistant should be assigned to the Court of General Sessions Section.

B. D.C. CRIME COMMISSION (DECEMBER 1966)

1. The number of Assistant United States Attorneys in the District of Columbia should be increased, and the Classification Act should be made applicable to them for salary purposes.

2. The United States Attorney should maintain close liaison with the courts and develop coordinated procedures to assure prosecution of all cases which merit criminal proceedings and to minimize delay in the processing of criminal cases.

(*a*) The United States Attorney should take the initiative in proposing remedies for easing calendar congestion in both the United States District Court and the Court of General Sessions, and should keep detailed records on time lapses in prosecutions, cases not reached as scheduled and other pertinent matters.

(*b*) To assist in calendaring felony cases under Rule 87, the United States Attorney should obtain the services of persons skilled in scheduling techniques.

(*c*) Schedules should be arranged which permit grand jury proceedings almost immediately after presentment, certification of cases to the ready calendar, usually within 2 weeks after motions are decided, and utilization of appellate motions for summary decision where issues are not complex.

3. The exercise of prosecutive discretion by the United States Attorney should be made more visible.

(*a*) Detailed reasons for declining prosecution, dismissing cases or reducing charges should be recorded.

(*b*) Regular review of these reasons for exercising discretion should be initiated to ensure the use of proper and uniform criteria.

The exercise of discretion in handling citizen complaints should be recorded and reviewed in the same manner.

4. The United States Attorney should develop training programs covering police practices as well as legal developments and the exercise of prosecutive discretion. Assistants should regularly participate in special training institutes and programs for prosecutors.

5. Investigative units staffed by the Metropolitan Police Department should be assigned to assist the United States Attorney in the Court of General Sessions and in the United States District Court.

6. We recommend that the court and prosecutor cooperate in devising an experimental project which will select certain cases of high public risk for an expedited schedule. Such an expedited schedule might include presentment to the grand jury on the day of arrest or immediately following the presentment or preliminary hearing in the Court of General Sessions. The action by the grand jury should be filed with the court within 3 days. The United States Attorney should add any additional personnel necessary for the administrative duty of preparing the court papers immediately.

Arraignment should occur no less than 3 days after indictment. For the expedited cases, motions should be filed within 10 days after indictment and disposition of the motions should occur within 3 weeks after indictment. Trial might then occur within 2 weeks after disposition of motions. The goal of this experimental project would be the processing of felony cases within an 8-week period.

C. INTERIM REPORT OF D.C. COMMITTEE ON THE ADMINISTRATION OF JUSTICE UNDER EMERGENCY CONDITIONS (MAY 25, 1968)

1. That lawyers, with criminal trial experience, presently employed elsewhere in the U.S. Attorney's Office be designated as stand-by reserves to augment the General Sessions U.S. Attorneys in future emergencies thereby permitting regular 8-hour shifts.

2. That the U.S. Attorney and Corporation Counsel hold training sessions for police supervisors and transportation officers on the proper use of the multi-copy field arrest form.

3. That clerical personnel in offices of the U.S. Attorney, Corporation Counsel, Marshal and Clerk of Court, who are normally assigned to other duties, be trained in the processing of General Sessions criminal papers, so that they will be available to serve in a supplemental clerical pool if the need arises.

4. That the U.S. Attorney and Corporation Counsel maintain a desk, continuously staffed by at least 2 assistants, in the Witness Room of the Court of General Sessions, so that defense counsel can seek help on special problems.

5. That bail recommendations by the prosecutors and defense counsel, and bail decisions by the judges, be based on the particular facts of each case.

D. JUDICIAL COUNCIL BAIL COMMITTEE (MAY 1968)

1. Develop a tear sheet in General Sessions to provide judicial officers with information relating to the nature and circumstances of the offense and the weight of the evidence against the defendant, and assist completion of Bail Reform Act Form No. 1 in all bail review hearings and all District Court bail proceedings.

2. Assist Bail Agency, Metropolitan Police Department, Corporation Counsel and Court of General Sessions in developing guidelines to facilitate police use of citation authority and reduce reliance on stationhouse bail.

3. Guide judicial officers in following Bail Reform Act priorities, and discontinue recommendations for restrictive release conditions which are irrelevant or unenforceable.

4. Recommend additional conditions of release whenever appropriate to supplement traditional money bonds, including responsiblity of bondsman to serve as third party custodian.

5. Assist Bail Agency in developing new procedures for preparing monthly detention reports to carry out purposes of Rule 46(h).

6. Assist courts in ensuring warnings and notices to, and acknowledgments by defendants prior to release.

7. Seek United States Commissioner warrants for nationwide service if defendant missing for more than 10 days is believed beyond the confines of the District of Columbia.

8. Refer bail jumping warrants to the FBI for execution.

9. Take initiative in formulating, together with FBI, United States Marshal and Metropolitan Police Department, strong enforcement policy against bail jumpers.

10. Seek strict enforcement of bail bond forfeitures.

11. Seek sanctions, as suggested, for violations of release conditions in every possible case.

12. Seek suggested conditions of release for, and enforcement of sanctions against, defendants considered likely to commit crime on bail.

13. Establish standard of presenting felony cases to grand jury within two weeks of preliminary hearing, and completion of grand jury action within 10 days thereafter, with high priority for cases of jailed defendants.

14. Return to former practice of presenting cases to grand jury on same day as preliminary hearing, wherever possible.

15. Assist courts in expediting trials for contempt, bail jumping and persons charged with or believed likely to commit crime on bail.

16. Establish policy of proceeding in both cases whenever defendant is charged with offense allegedly committed on bail; avoid negotiating dismissal of second charge except in extraordinary cases.

E. RECOMMENDATIONS OF THE PRESIDENT (JANUARY 31, 1969)

1. A comprehensive reorganization of the U.S. Attorney's Office is imperative. This should include:

(*a*) A restructuring of the office to provide for 2-man prosecutor teams in important cases.

(*b*) The development of specialized functions for technical cases such as frauds and other economic crimes.

(*c*) The creation of a special "violent crimes unit" to handle such crimes as armed bank robberies on a priority basis.

(*d*) Placing greater emphasis on the development of policy guidelines and training programs.

F. JUSTICE IN TIME OF CRISIS (APRIL 1969)[1]

1. The U.S. Attorney's Office should reformulate plea bargaining guidelines for mass arrest situations based on an analysis of the prosecution and sentencing patterns which emerged from the April 1968 disorders. The guidelines so developed should be made public. (Committee recommendation.)

2. The U.S. Attorney should carefully work out a charging policy for disorders to prosecute only serious offenders as felons, without relying on plea-bargaining. (Staff recommendation.)

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[1] A Staff Report to the D.C. Committee on the Administration of Justice Under Emergency conditions.

A STUDY OF THE GENERAL SESSIONS DIVISION OF THE OFFICE OF THE UNITED STATES ATTORNEY

JUNE 1969

CONTENTS

47-070—70—pt. 2——25

GENERAL SESSIONS DIVISION

In accordance with the request of the Committee on the Administration of Justice in the District of Columbia, and with the approval of the Department of Justice, the Court Management Staff commenced a study of the operations of the Office of the United States Attorney for the District of Columbia on April 2, 1969. The study began with an evaluation of the operations of the General Sessions Division of the office, the unit which processes the highest volume of criminal cases in the District of Columbia.

This report on the General Sessions Division is based on daily observations over a two and one-half month period, interviews with all the assistants assigned to one division and with a number of the judges of the Court of General Sessions, and several statistical studies. Part I, denominated "Case Flow," describes the processing of a criminal case by the General Sessions Division from arrest to judgment; Part II describes the Division's personnel; Part III sets forth the Study Team's evaluation of the present performance of the office; and Part IV outlines the changes which the Study Team recommends. Except as otherwise indicated, the report describes the Division as it was at the end of June 1969.

PART I. CASE FLOW

Each morning of the week, 30–50 policemen crowd into the General Sessions Division Office to assist the Assistant U.S. Attorneys (AUSA's) in the papering of criminal cases—*i.e.*, in the preparation of a "back-up sheet," which sets forth the charge to be made against the accused and other minimal information about the case. This sheet, together with the officer's fact sheet (P.D. 163) and the information or complaint, will serve as the Government's papers throughout the processing of the case in the Court of General Sessions. Although the exercise of prosecutorial discretion is one of the most important responsibilities of the U.S. Attorney, in the District of Columbia the decisions of whether to prosecute, and, if so, whether to charge a felony or a misdemeanor are necessarily made in haste and, except in a relatively few instances, without consultation with another AUSA; in most instances, the facts are elicited from the arresting officer and, due to the pressure of time, cannot be corroborated or otherwise checked. On the occasional instance in which the arrest has been made on the basis of a warrant drawn up by an AUSA at the instance of a private citizen, the decision to prosecute is often based upon the very biased assertions of an irate lover or neighbor.[1]

[1] In an effort to minimize the number of unsound complaints which are papered, the Division instituted in August, 1969, a policy whereby the application for a warrant based on a citizens complaint must be approved by the Deputy Chief or one of the four Senior Assistants.

A. Felonies

If the AUSA determines that felony charges should be filed against an accused, he will complete the back-up sheet, noting thereon the felony to be charged, and direct the officer to report to the Office of the Clerk of the Court where the officer will swear out a complaint against the accused. The officer will then carry the complaint, the back-up sheet, the fact sheet and any other relevant papers to the Assignment Court where the presentment will be held at about noon. During the period of the study of the General Sessions Division, the officer was required to remain in the Assignment Court in case the accused exercised his right to a prompt preliminary hearing. Thus, if the preliminary hearing was continued for a week, as was the usual practice, the officer would learn of the continued date in the Assignment Court. In addition, the officer would be reminded of the continued date by the Police Liaison Office, which in turn received its information from the General Sessions Division of the U.S. Attorney's Office. In July, the Chief Judge of the Court of General Sessions authorized police officers to leave the Courthouse upon delivering the felony papers to the Assignment Court. Presumably, the officer continues to be advised of the continued date by the Police Liaison Office.[2]

On occasion, the AUSA in the Assignment Court will, at the instigation of the papering AUSA, move the Assignment Court to order a line-up on the day prior to the preliminary hearing. In such cases, one of the AUSA's will attend the line-up at the Robbery Squad. Otherwise, the Division will not consider the case until the day set for the preliminary hearing. On that day, an AUSA, usually other than the AUSA who papered the case, will review the case with the arresting officer and, where appropriate, any necessary witnesses. In many instances, perhaps 15–20%, the reviewing AUSA will break down, on his own initiative, the felony charge to one or more misdemeanors. In other instances, he may agree to break down the charge in exchange for a defense counsel's promise of a guilty plea.

The preliminary hearing itself is usually perfunctory; the defendant being bound over in nearly all cases. Thus, the prosecutor's decision to charge a felony is subject to little or no outside scrutiny.

The General Sessions Division's responsibility for the prosecution of felonies ends with the completion of the Preliminary Hearing.

B. Misdemeanors

If the papering AUSA determines to charge a misdemeanor, he will direct the officer in charge of the case to have an information prepared by a member of the office's clerical staff and to deliver the signed information, the back-up sheet and other relevant papers to the Assignment Court for use at the arraignment. In addition, the papering AUSA will usually advise the officer that he is responsible for preparing the case for trial—*i.e.*, that it is his duty to ensure that the witnesses, evidence and reports of tests, if necessary, will be available on the day set for trial. On occasion, the officer will be further

[2] It should be noted that the police officer is primarily responsible for determining the dates of his own trials.

advised or directed to subpoena witnesses, but in practice this requirement is not enforced. Rather, it appears that witnesses are usually given an oral notification of the date of trial by the police officer.

The defendant charged with a misdemeanor is usually arraigned by the Assignment Court at approximately 12:30 P.M. on the day following his arrest. Misdemeanor trials are seldom, if ever, held on the day of arraignment. Rather, if the defendant demands a jury trial, his trial date will be continued for six weeks—usually to a day which the police officer involved in the case has indicated is acceptable to him. If the accused waives a jury trial, he will normally be tried within two weeks, but he may insist upon trial on the day following the arraignment.

In a not infrequent number of instances, either the AUSA or defense counsel will move the Assignment Court to send the defendant to St. Elizabeth's Hospital for a 60-day period during which an evaluation will be made as to the defendant's competency to stand trial. In such instances, the trial date will be continued for approximately 2 months.

During the period between arraignment and trial, the defendant will frequently be released on personal recognizance or, otherwise, on bond, if he can raise the necessary money. The decision on bail release is entirely that of the Assignment Court; the papering AUSA often makes a recommendation as to bond, but it is frequently ignored, perhaps because the recommendation is often too severe and, on numerous occasions, offered without sufficient concern for the Bail Reform Act criteria.

As a rule, the police officers involved in the case will not be present in the Assignment Court when the date for trial is selected. Rather, they will be notified of the trial date by the Police Liaison Office, which in turn is advised of the trial date by the Clerk of the General Sessions Division of the U.S. Attorney's Office.

During the period between arraignment and trial, the office of the U.S. Attorney will do little or nothing in preparation for trial. As noted above, the police officers involved in the case are advised that they alone are responsible for the appearance of witnesses, for the production of evidence and for the completion of any necessary tests. On occasion, when prompted by either the police officers or by defense counsel, the AUSA's will inquire further into a particular case by, for example, interviewing a witness. Otherwise, the Office will usually not even review the case until the moment of trial, unless a motion is filed with respect to the case or unless the defendant has been sent to St. Elizabeth's, in both of which cases one of the AUSA's will make minimal preparations for the appropriate hearing.

Two or three of the 50 to 70 cases which are set by the court for trial on a given date will be assigned to a special trial unit (S.T.U.) of the Division. Typically these cases involve fairly complex fact situations or difficult legal problems. While the title "Special Trial Unit" suggests that a constant team of AUSA's is assigned to such difficult cases, in practice any one of several of the more experienced AUSA's may be directed to give special treatment to a particular case. These AUSA's will normally be assigned to S.T.U. duty for a period of one week at a time. S.T.U. preparation will normally involve

interviewing each of the police officers and witnesses, and where appropriate, legal research.

On the date set for trial, the police officer in charge of the case is expected to report to the AUSA on duty in the Witness Room in the Court of General Sessions before 9:30 A.M. At that time, the witnesses and evidence which will be needed for the prosecution of the case by the Government should also be in the Witness Room. If the case is "ready" for trial, the AUSA in the Witness Room so advises the AUSA on duty in the Assignment Court. The witnesses for the case are then directed to wait in the Witness Room; the officer in charge of the case is required to remain in the Witness Room or to keep the police sergeant in the Witness Room advised of his whereabouts.

* * *

NOTE.—If the case has once been set for trial and is thereafter continued, the officer will be advised of the new trial date by the AUSA on duty in the Witness Room on the day that the continuance is allowed. The police Liaison Office will not learn of the new trial date until the calendar listing the case is printed, usually about one week in advance of the trial. At that time the Police Liaison Office will undertake to notify the Office of the continued date. However, the actual date of notification is usually substantially less than one week in advance of trial since the Police Liaison Office must first convert the badge numbers shown on the calendar into the names of the police officers. The conversion is made by looking up the court papers in each case. Thus, if the courts papers are not in the file at the time the conversion is made, the officer will not be reminded of his trial date.

Since the conversion process takes two days and since notification is made through the precinct commanders, it is not surprising that some officers are not reminded of the continued date. The reminder may in fact be an initial notification if, as happens on occasion, the officer was not initially advised of the new continued date by the AUSA in the Witness Room, or if, as when the trial date is set after a mental competency hearing, the officer was not in the courthouse at the time of continuance. The system of reminding or notifying officers of a new continued date on the basis of the calendar can only work for continuances of at least ten days. Shorter continuances will not be printed until the day of trial. Since the Police Liaison Office does not have ready access to information as to short continuances, the U.S. Attorney has assumed the responsibility of notifying officers of short continuances. Unfortunately, in part because this responsibility is delegated to four different clerks of the General Sessions Division, the officers frequently do not learn of the continuance until the day of trial—when they are notified by the AUSA or the sergeant in the Witness Room.

* * *

Between 9:30 and 10:00 A.M., the Assignment Court begins to assign cases in which both sides are ready for trial to a trial judge. At the time a case is assigned to a judge, the AUSA in the Assignment Court advises the AUSA in the Witness Room of the name of the judge to whom the case has been assigned;[3] the AUSA in the Witness Room, or the clerk assigned to assist him, then calls out in the Witness Room for the officer in charge of the case either by his name or by the name

[3] The advice given to the Witness Room AUSA by the AUSA in the Assignment Court is superfluous since the Assignment Commissioner, to whom the court papers are always delivered upon assignment of the case by the Assignment Court, will also advise the Witness Room of the name of the judge to whom the case has been assigned. The Court Management Staff, in the course of its study of the operation of the Assignment Court, noted that the AUSA's attempts to notify the Witness Room of the assignment of cases often disrupted the courtroom proceedings and so advised the Deputy Chief of the General Sessions Division. Although the Deputy Chief had directed his assistants to discontinue the practice of notifying the Witness Room of assignments before the study of the General Sessions Division began, the practice persisted throughout the study period, apparently because most of the assistants feel they need the time between notification by the Assignment Commissioner to ensure that the witnesses and officers involved in an assigned case will be located and sent to the trial court by the time the trial judge is ready to begin the trial.

of the defendant. The police officer then gathers his witnesses and evidence, picks up the Government's papers and proceeds to the assigned court.[4] There he will meet the AUSA who is on duty in the court for the day and, during a 5 minute recess which is usually allowed by the trial judge, discuss the case with him. The AUSA will usually have no prior knowledge of the case and will therefore be obliged to try the case on the basis of the police fact sheet, and back-up sheet and his 5 minute discussion with the police officer and civilian witnesses involved in the case. Even when the case has been assigned for special treatment, the AUSA who has prepared the case will often not be available and thus another AUSA will be obliged to try the case.

The AUSA is on his own throughout the trial. He will not be assisted or even observed,[5] regardless of his experience. If a difficult question arises, he may usually obtain a short recess during which he can seek advice from another assistant. Otherwise, and in the great majority of instances, the AUSA will be expected to be familiar with criminal law and procedure to deal with all questions as they arise.

In most instances, the Division's responsibility for a case ends with the verdict or judgment. The AUSA will not make a recommendation as to sentencing.

PART II. PERSONNEL

A. Credentials of the Assistants

At the close of the study, in June, 1969, there are 19 AUSA's assigned to the General Sessions Division, in addition to the Chief and Deputy Chief. The authorized quota for this office is 17 AUSA's, in addition to the Chief and Deputy Chief. Thus, the office was theoretically overstaffed. However, 5 of these assistants were on loan for a period of approximately four months from the Justice Department and a number of transfers appeared to be imminent.

The qualifications of the personnel in the office during the study were generally impressive. For example, in March, 1969, when biographies on the 16 AUSA's then assigned to the Office were compiled by the Deputy Chief, 10 of the 14 new men were clearly qualified as "honor recruits" under the Justice Department's hiring standards. The remaining 4 probably qualified as "honor recruits" on the basis of superior legal achievements. The "average" assistant in March had 4.3 years of experience prior to becoming an AUSA the median experience of these AUSA's was 3 years. Seven of the 16 assistants in March had prior prosecutorial experience, either in the Justice Department or with one of the armed services.[6]

While the credentials of the assistants are generally impressive, their collective experience as prosecutors in the Court of General Sessions is not. In March, the "average" assistant had 5 months ex-

[4] If the officer is not available at the time the case is assigned, the sergeant on duty in the Witness Room is charged with the responsibility of locating him.

[5] In June, Mr. Victor Caputy, an experienced AUSA, announced his intention to observe the trial work of a number of assistants as part of his new responsibility as Training Administrator. Unfortunately, it appeared, as of August, 1969, that Mr. Caputy's responsibilities at the District Court level were precluding him from assisting significantly in the training at the General Sessions Division.

[6] Unfortunately, the March statistics may not be illustrative. In August, after a heavy turnover, most of the Assistants had little or no prior experience.

perience in office. The most experienced man had been in the office for nine months. By the end of the study period, 2 assistants had been in the office for eleven months and the average time in office for the group was 6 months per man. However, it was then anticipated that a number of the more experienced men would be transferred to other divisions of the office of the U.S. Attorney within the next two months.

As of June, 1969, there were no black AUSA's in the General Sessions Office, other than the Chief of the Section, nor had there been any in the past several months.

B. Workload

The "average" assistant devotes approximately 8–8.5 working hours each Monday through Friday to his duties in the Division, not including lunch time. The working day begins at 8:30 and continues on until well after the official closing time of 5:00 P.M. In addition each assistant is required to work on one Saturday morning *in every three* weeks and one week night every three weeks.

Notwithstanding the long office hours, as the description of the caseflow suggests, the AUSA's in the Division do not even have time to carefully exercise their discretion as to whether to prosecute, let alone to prepare cases for trial. The caseflow description does not, and could not, adequately describe the extraordinary time pressures under which the office operates at nearly all times. While some of the chronic crisis in time is the result of inefficient work habits, it is primarily attributable to the heavy workload which constantly burdens the Division. On the "average" day of a week during which the utilization of manpower was carefully scrutinized by the Court Management Study Team, the assistants of the Division, other than the Chief and Deputy Chief, apportioned their collective man-days (assuming 8.5 hours/day) approximately as follows:

	Man-days
Courtroom appearances (including Assignment Court appearances)	4¾
Citizen complaint hearings (25 minutes per hearing)	2
Papering of cases (17 minutes per case)	1¾
Work on specially assigned cases (including S.T.U.)	1½
Witness room duty	1¼
Preparation for in-court activities other than trial (e.g., preliminary hearings)	¾
All other hearings	¾
Night duty	½
Preparation of briefs for Appellate Division	½
Preparation for trial	¼
Legal research	¼
Plea negotiations (other than those conducted in witness room)	¼
Other (including legal discussion, staff meetings, etc.)	1¼
Training	[1] 0
Leave	1¼
Rest and recreation (e.g., coffee breaks)	¾
Total (8.5 hours per day)	17

[1] Some man-hours would have been devoted to training had there been a need for indoctrination of new men. Some training is offered during the staff meeting.

Further details as to the Division's workload are set forth in Appendix A. As is apparent from that discussion, as well as from the brief summary set forth above, there is little opportunity to decrease the

workload of the Division, except to eliminate the appellate brief writing. In fact, if the Division were to undertake the preparation for trial, the legal research and the training which some persons believe is essential, the average work day would be substantially in excess of 8.5 hours.[7]

C. Clerical Assistance

The General Sessions Division is presently staffed by a Chief Clerk, a Deputy Chief Clerk, three other clerks, two secretaries and one typist/clerk. There is no file clerk, although one is now authorized, and there are no subpoena clerks.

The adequacies and utilization of the clerical personnel were not evaluated during the study. Nevertheless, daily observations of the operations of the office prompt the following remarks:

1. The secretary assigned to the Chief of the Division is definitely underemployed; it is even possible that her duties could be assumed by the secretary to the Deputy Chief if that girl were relieved of but a small portion of her work.
2. The typist/clerk is absent with alarming frequency. When present, she seems to work satisfactorily in the morning on the preparation of informations; but she does not appear to have any assigned tasks in the afternoon, other than to type addresses in connection with citizen complaint hearings.
3. The clerk assigned to assist the AUSA in the witness room is not capable of acting as more than a messenger.
4. The absence of a file clerk results in frequently lost or misfiled government papers.
5. It is questionable whether the two male clerks are effectively utilized.

PART III. EVALUATION

Although the proper criteria for evaluating the performance of the General Sessions Division are open to debate, the following would appear to represent the minimum questions which must be answered:

1. Are proper charges filed against those, and only those, who are apparently responsible for a crime.
2. Are those who are apparently responsible for a crime effectively prosecuted.
3. Does the Division provide satisfactory support to the Court in the processing of cases.
4. Are citizens given an adequate opportunity to lodge criminal complaints.
5. Are the assistants given adequate training which will prepare them for service in other divisions of the Office of the United States Attorney.

In an effort to form responses to these questions, the Court Management Study Team first made a two-week study which was designed to determine the percentage of cases in which the Government was

[7] During the week of evaluation of the utilization of manpower, the "average" assistant devoted 8.5 hours per day to his duties in the Division. While this high figure is in part attributable to the extraordinary efforts made by a small number of the assistants, most assistants do work in the office for a full 8 hours each day not including lunch.

ready to proceed to trial on a given day, the time at which it was ready, and the causes for its frequent inability to proceed. Briefly, this study disclosed that:

1. The Government was ready to proceed to trial in 62 percent of the 49 cases set for trial on an "average" day.[8]

2. One-half of the cases which were ultimately ready during the course of the day were ready at 9:30; two-thirds of these cases were ready at 10:00 A.M.

3. The Government was not ready for trial in 24 percent of the cases set for trial because civilian witnesses necessary for prosecution of the case failed to appear.

4. Of the thirty cases per average day involving civilian witnesses, 39 percent, or 11 were not ready because the witnesses failed to appear. An additional thirty percent of these cases involving civilian witnesses were not ready until after 9:30 because witnesses necessary for the prosecution were late.

5. Twelve percent of the cases set for trial were not ready at any time during the day because the police officer in charge of the case was absent.

6. Thirteen percent of the cases set for trial were not ready until after 9:30 because the police officer did not report in to the AUSA until after 9:30.

7. The readiness of the Government in cases which had been previously assigned for trial and thereafter continued was not significantly different from the readiness of the Government in all cases; similarly, the absenteeism of witnesses in such previously continued cases was not significantly different from the absenteeism of witnesses in all cases.

The specific data underlying these summaries is set forth in Appendix B.

After the readiness study, the Study Team undertook a study of the disposition of each misdemeanor case set for trial during the months of February, March and April, 1969. Briefly summarized, this study disclosed that:

1. One out of every two of the 4,528 cases set for trial during the three month period was continued.

2. 31.0 percent of the 2,154 cases not continued were terminated by pleas.

3. 46.4 percent of all cases not continued were terminated by nolle prosequi's or by dismissal for want of prosecution (DWP).

4. 22.0 percent of all cases not continued were terminated by trial.

5. 64.7 percent of the 473 defendants who were tried during the three month period were found guilty; but only 43.5 of the 177 defendants who were tried by jury were found guilty.

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[8] In determining the number of cases set for trial on a given day, cases which would definitely not go on trial, even though calendared, were omitted. Thus, if a prior agreement to nolle pros had been made, as when the defendant had been given first offender treatment, the case would not have been included in the number of cases "set for trail." During the month of April, an average of 67 cases were calendared for trial each day.

The 62 percent figure is somewhat misleading since an average of 4 of the 30 ready cases were nolle prossed after assignment, notwithstanding the fact that the Government was ready to proceed to trial. On the other hand, during the readiness study, a number of cases were assigned for a plea, notwithstanding the fact that the Government was not ready to proceed to trial. These cases were not included in the number of ready cases, even though the court could act upon them.

Complete details as to the findings of this study are set forth in Appendix C, Tables I and II.[9]

The high nolle-DWP rate—46.4 percent of all cases terminated and 50.3 percent of all jury calendar cases terminated—prompted an examination of 200 terminated jury calendar cases which were chosen at random. The sample represented approximately 6 percent of all jury calendar cases terminated during the period January 1–May 15, 1969. Briefly, this study disclosed that of the 100 cases terminated by a nolle prosequi or by dismissal:

4 should never have been papered.

11 were nolle prossed because the complaining witness refused to testify and "signed off."

13 were nolle prossed and 11 dismissed because a critical witness failed to appear for trial.

3 cases were nolle prossed because narcotics analyses were not ready.

14 other cases which were nolle prossed or dismissed probably should or could have been prosecuted.

A detailed description of the findings of this study of 200 cases is set forth in Appendix B, Table III.

A. Charging—"Are proper charges filed against those, and only those who are apparently responsible for a crime?"

1. *Misdemeanors.*—The study of 200 cases described above indicated that only four of the 200 cases were improperly instituted by the General Sessions Division. While a study of such limited scope is not particularly meaningful by itself, the indication which flows therefrom—that few unfounded cases were instituted—is confirmed by (*a*) the fact that the overall conviction rate for cases tried (64.7 percent) is comparable to that achieved in the District Court [10] and (*b*) personal observations made by the Court Management Study Team of the papering process.

It is more difficult to state whether all the charges filed against the misdemeanor defendants were proper, notwithstanding the fact that personal observations indicate that most were technically warranted. It is the common practice of the office to charge two or more offenses for a single act. For example, when a burglary charge might have been brought against the defendant, but a decision is made to file misdemeanor charges, the resulting information will usually charge the defendant with attempted burglary (II), petty larceny, destruction of property and, on occasion, unlawful entry. Similarly where an assault is made with a knife, the usual information will charge the defendant with simple assult and carrying a dangerous weapon (CDW—knife). While these charges are usually warranted by the facts, they do have a coercive effect upon a defendant to plea to one charge rather than to face trial on two or more charges. On the other hand, the prosecutor is faced with the problem that part of his case might not survive a motion to suppress or that the Government might not be ready for trial if one of the witnesses fails to appear. Moreover, if the prosecutor limited himself to one of several charges, he might find that a loss on

[9] Nearly identical results were achieved during May, 1969, but these were not included in the above figures.

[10] See 1968 Annual Report of the Director of the Administrative Office of the U.S. Courts, Table D4a.

that charge would bar filing of the other charges at a subsequent time.

2. *Felony Charges.*—Statistics as to the propriety of felony charging have not been gathered. However, personal observations by the Court Management Study Team suggest that here, as in the case of misdemeanors, charges are filed against those, and only those who are apparently responsible for a felony. During the study, no instances were observed in which a technically unwarranted felony charge was instituted. Nevertheless, a number of felony charges are broken down at or immediately before the preliminary hearing, and in addition, a number of such cases are referred back to the Court of General Sessions, after a delay of up to six weeks, by the Grand Jury Division of the U.S. Attorney's Office without grand jury action—much to the annoyance of the judges of the Court of General Sessions. As might be expected in light of the above, there are no written standards by which an AUSA can decide whether to charge a felony or a misdemeanor.

B. Prosecution—"Are those who are apparently responsible for a crime being effectively prosecuted?"

The studies described above revealed that approximately 20 percent of all cases terminated in the Court of General Sessions were nolle prossed or dismissed because witnesses failed to appear or refused to testify, or because a narcotics analysis was not ready. In addition, another 7 per cent of all cases were nolle prossed or dismissed for unstated reasons, but, since personal observations by the Court Management Study Team suggest that the assistants are usually careful to note their reasons for entering justifiable nolle prosequi's, it seems probable that most of these losses were not justifiable. Thus it appears that one out of every four apparently guilty defendants is not prosecuted. Moreover, although not supported by any statistics, personal observations of the Court Management Study Team suggest that plea bargaining is often undertaken by the Government when one or more of its witnesses or some of its evidence is missing. As a result, the defendant acknowledges guilt to less charges than he might have if the Government had been ready for trial on all counts.

It seems clear from the readiness study, as well as from the examination of the 200 cases, that the problem of the nonprosecuted or underprosecuted defendant is largely attributable to the Government's inability to ensure the attendance at trial of its critical civilian witnesses. On an average day during the readiness study, 24 percent of the cases set for trial were not ready because the civilian witnesses failed to appear. The examination of the 200 cases suggests that the civilian witnesses' failure to appear for trial continues until the case is dismissed. By contrast, while police officers were absent in 12 percent of the cases set for trial during the readiness study, only one of the 200 cases was dismissed or nolle prossed because a police officer failed to appear. While this statistic could indicate that the judges are inclined to continue cases in which police officers are absent and to dismiss cases in which civilian witnesses are absent, it seems more likely, on the basis of personal observations, that the police officers, unlike the civilian witnesses, are not likely to miss a trial date on two consecutive occasions.

It should be noted that the complaining witnesses who "sign-off" do in fact appear at the office of the U.S. Attorney. Thus even if there

were in effect an ideal system of compulsory process, at least one out of every 20 apparently guilty defendants would not be prosecuted.

Once it is able to proceed to trial, the Government performs rather creditably. 75 to 80 percent of those defendants who waived their jury trial demand received guilty judgments. However, only 43 percent of those who opted for a jury trial were found guilty. The strikingly low conviction rate in jury trials [11] can be explained in part by the fact that in the Court of General Sessions defense counsel tend to limit the demand for a jury trial to cases in which there is some substantial possibility that the trier of facts could find for the defendant—either on the basis of the evidence or on emotional grounds. Moreover, a number of judges of the Court emphasize that in recent years the jury has tended to become more and more favorable towards the defendant.

A study of all of the jury trials held during the months of February through May, 1969, suggests that there are no other factors, other than those within the control of the U.S. Attorney, which would explain the low conviction rate: during the period studied, there was no increase or decrease in the rate of convictions as the jury panel became more experienced; similarly, with one exception, the conviction rate did not vary significantly depending on which judge presided; the conviction rate in the cases presided over by the exceptional judge was markedly in favor of the Government. Nor did the type of case appear to affect the conviction rate, except that charges of attempted burglary (II) resulted in guilty verdicts with striking regularity. Finally, the low conviction rate does not appear to be attributable to the particular skill of a small group of lawyers: 72 different lawyers represented the 151 defendants who chose a jury trial and whose counsel were listed on the February through May calendars.

A two week experiment, conceived and executed by the Deputy Chief of the Division, may have isolated a principal cause of the low conviction rate. During the period of May 19–29, 8–10 cases per day were assigned for pretrial preparation to two-man teams approximately two weeks before the scheduled trial date. While it was recognized that not all cases would be truly prepared for trial, it was hoped that at least the officers and perhaps the witnesses involved in the case would be notified by the team assigned, and that one member of the team would review the Government papers prior to trial.

The notification and pretrial preparation of the AUSA's was spotty. Some made a major effort to fulfill their new responsibility, others little or none. Nevertheless, the results in terms of conviction rates were suggestive. While the conviction rate in cases tried without a jury remained about the same, the rate in cases tried by jury rose 13 percent to 56 percent. More importantly, the percentage of cases tried with a jury dropped from 37.4 percent of all cases tried during the months of February, March and April to 18.75 percent of all cases tried during the two week experiment. As a consequence, the overall conviction rate in cases tried rose from 64.7 percent to 75.0 percent. Since defendants were probably unaware that the AUSA's were more prepared to try their assigned cases, if in fact they were, it seems probable that the defense counsel decided to forego a jury trial only

[11] By contrast, the conviction rate in the U.S. District Court of cases tried by jury in the fiscal year ended June 30, 1968, was 76.6%. See 1968 Annual Report of the Director of the Administrative Office of the United States Courts, Table D4a.

when they realized that all of the government witnesses in their case were present. Thus, the low conviction rate achieved in jury trials during the February through April period appears to be due, in large part, to the inability of the Government to ensure the presence of *all* its necessary witnesses.

Most of the judges of the Court of General Sessions who were interviewed suggested that the prosecutors' inexperience and lack of training, in addition to lack of pretrial preparation, were the principal reasons for the low conviction rate; in particular, while they felt they could reach a proper judgment even where the prosecutor was inartful, they believed that the jury was particularly affected by the inadequacies of the AUSA's trial techniques. Notwithstanding the trial judges' claims to be able to ignore the prosecutor's inexpertise, one cannot help but wonder—in light of the low jury conviction rate—whether the non-jury trial conviction rate might not increase significantly if Government counsel were better trained and more experienced, in addition to being better prepared.

C. Readiness—"Does the Division provide adequate support to the court in the processing of cases?"

The Court Management Staff's study of the Court of General Sessions disclosed two impediments to the effective administration of justice which constantly plagued the court—the regular continuance of one-half of all cases set for trial, and abnormal delays in the processing of those cases which were not continued. The subsequent study of the readiness of the Government for trial has disclosed that both the continuances and the inefficient processing of cases are in large part due to the inability of the Government to ensure the attendance at trial of its witnesses—both civilian and police.

Following the readiness study, two experiments were undertaken in an effort to improve the readiness of the Government. During the first week in May, a member of the Study Team assisted the AUSA in the Witness Room. It was hoped that a clerk could relieve some of the pressure of the AUSA and thus enable him to devote more time to saving cases. While the presence of the clerk did relieve some of the pressure upon the AUSA, it cannot be said that it increased the readiness of the Government. However, one activity of the clerk did yield significant benefits. Each day the clerk noted the names of all officers reporting in to the U.S. Attorney after 9:15 A.M. The mere notation of the names, together with the increased vigilance of the sergeant on duty in the Witness Room, seemed to have an extraordinary effect on tardiness. Whereas 4 to 5 officers a day reported to the U.S. Attorney after 9:30 at the beginning of the period, such tardiness was virtually eliminated by the end of the week, notwithstanding the fact that the names were not reported to the officer's precinct commander. The elimination of the tardiness had the expected effect of increasing the Government's readiness for trial at 10:00 A.M. from 42 percent to 52 percent.

In the second experiment, which has been previously described, 8–10 cases were assigned to two-man teams approximately two weeks before the scheduled trial date. Although the notification of civilian witnesses and police witnesses by the AUSA's was spotty, the readiness of the Government during the two week period increased in absolute figures by 6.5 percent, as compared to the readiness of the Government—62 percent—during the April readiness study. Moreover, during

the second experiment, a number of cases, which would have been shown as ready in the April readiness study, were nolle prossed for justifiable reasons in the Assignment Court. Thus the readiness increase was substantially greater than 6.5 percent. Notification by the AUSA's also resulted in a 10 percent increase, to 52 percent, in the readiness of the Government at 10:00 A.M., as compared to the readiness at 10:00 A.M., achieved during the April study; surprisingly, however, the readiness at 10:00 A.M. during the second experiment was the same as that achieved at the end of the first experiment.

In summary, it seems clear that the U.S. Attorney is not now adequately assisting the Court in the processing of cases and that, with sufficient clerical manpower to improve the notification of both civilian and police witnesses, its readiness for trial could be radically increased.

D. Citizens' Complaints—"Are citizens given an adequate opportunity to lodge criminal complaints?"

In the District of Columbia, a private citizen is unable to lodge a complaint against a disdemeanant in his local police station; accordingly, he must journey down to the U.S. Attorney's Office where, after a wait of up to 5 hours, he will have an opportunity to describe his grievance to a police officer. If the officer believes the offense committed against the complainant may warrant criminal prosecution, he will schedule a hearing for a date approximately 4 weeks later; in critical cases, a hearing with an AUSA will be held on the day the complainant lodges his complaint. At the close of the 20–25 minute hearing, at which the citizen will be given an opportunity to air his grievance, the AUSA may decide, for example, not to proceed further with respect to the complaint, to prepare a warrant for the arrest of the accused, or to summon the alleged offender to the Office for a second hearing, after which the AUSA might either institute criminal proceedings or seek to work out a settlement.

The present system appears to give citizens for whom time is not important an adequate opportunity to lodge criminal complaints. However, because of the long wait which a citizen must endure to even discuss his grievance with a police officer, and because the citizen must come down to the Division Office on two or three separate occasions to file a complaint, it seems inevitable that a number of citizens will suffer a criminal offense in silence rather than attempt to institute criminal proceedings. While this harassment can be rationalized on the ground that it will deter the filing of some frivolous complaints, in the opinion of the Court Management Study Team, the silencing of real complaints is neither justifiable nor tolerable.

E. Training—"Are the Assistants given adequate training which will prepare them for service in other divisions of the Office of the U.S. Attorney?"

Each new assistant in the General Sessions Division participates in a six week training program during which he (1) receives approximately 25 to 30 hours of formal instruction, and (2) observes the professional activities of one of the senior assistants in the office. The period of observation on a given day is necessarily curtailed by the fact that new assistants begin papering cases within a week after their arrival and are expected to assist in the processing of citizen complaints shortly thereafter. Although the formal indoctrination sessions were not observed on a regular basis, the initial training of new

assistants appears to be fairly successful since at least some of the new assistants are able to effectively undertake the full duties of their office upon completion of the program. On the other hand, during the period of observation, one or two of the new assistants appeared to be inadequately prepared to assume the responsibilities of their office, notwithstanding the six week indoctrination period. In short, one gets the impression that the present indoctrination period benefits those, and only those, who take an active interest in the materials being taught and who make a significant individual effort to learn the fundamentals of their new position. The present indoctrination program does not attempt to give intensive training in trial techniques.

Upon completion of the indoctrination, the assistant will not receive any further formal training other than that which is conducted each Wednesday afternoon at a staff meeting. The staff meeting is intended to, and effectively does, keep the assistants abreast of recent developments in the law and of particular problems which have arisen in the processing of cases in the Court of General Sessions. The professional development of each assistant in the office is further encouraged by the constant interchange between assistants on matters relating to criminal law and criminal procedure. But neither the staff meetings nor the interchange serves to tutor the assistant who has failed to learn his fundamentals during the indoctrination period. Since there is no manual on office procedure, nor an adequate treatise on the criminal law in the District of Columbia,[12] his competence will come, if ever, only through trial and error.

During the period of observation, the principal shortcoming of the Division's training program was that no effort was made to criticize the performance of the U.S. Attorneys in trial. Thus, any expertise which the assistants gained was almost wholly attributable to self-help, trial and error, and grudging assistance offered by the judges of the court. As a consequence, while it can be stated that many assistants have achieved a minimal competence in the trial technique, none can yet be said to be truly trained trial attorneys. Thus, if the period in General Sessions is intended to be the principal time for learning the art of trial advocacy, as has been stated by a number of persons familiar with the office, one cannot help but wonder whether the experience of an assistant serving in the Office of the United States Attorney is nearly as meaningful as it might or should be.

The failure of the office to provide effective training in trial advocacy shortchanges not only the assistant who has agreed to serve in the office in the expectation of achieving some expertise in trial advocacy, but also the public which reasonably expects that its United States Attorneys will effectively prosecute those who are apparently responsible for crime.

At the end of June, the new U.S. Attorney's Training Administrator began to observe trials and to offer limited criticisms of the trial technique employed by the AUSA. Whether this observation effort is sufficient to adequately improve the trial ability of the assistants in the office has not been observed.

[12] The Division's Trial Manual does contain brief descriptions of the elements of most crimes and citations to leading cases on these crimes. However, the manual is rather out of date, notwithstanding the efforts of the Deputy Chief to revise it, and, in any case, it is designed to refresh, not to instruct, the assistant trying a case.

PART IV. RECOMMENDATIONS

Based on its three months' study of the General Sessions Division of the United States Attorney's Office, the Court Management Study Team recommends the changes described below. These recommendations are not listed in the order of their importance, nor do they include all of the possible changes which might be advisable.

A. Operating Procedures

1. PAPERING

The short period of time—17 minutes—which can be devoted to the questions of whether and what to charge does not appear to result in the unwarranted institution of charges against citizens. However, it does appear that on numerous occasions the haste with which the prosecutorial discretion is exercised, when combined with the lack of standards as to when to institute felony charges, results in overcharging and consequent referrals from the Grand Jury Division. While this problem could be alleviated by the promulgation of detailed charging guidelines, by more extensive training of the assistants on the subject of charging, and by an increase in the number of personnel in the office so that more time could be devoted to charging, it would be more practical, and perhaps more effective, if a member of the Grand Jury Division were assigned the duties of preparing cases for preliminary hearings and of conducting the hearing. This assistant would then have the opportunity to interview police officers and witnesses and, based on his experience in the Grand Jury Division, to reduce felony charges to appropriate misdemeanor charges before the preliminary hearing. In addition, to ensure that overcharging is kept to a minimum, the Grand Jury Division should provide the General Sessions Division personnel with written criteria for the charging of a felony.

The schedule of the Assignment Court in the Court of General Sessions contemplates the assignment of counsel to indigent persons at 10:30 A.M. Consequently, to ensure that defense counsel are not appointed to persons against whom charges will be dropped, and to give defense counsel adequate notice of the charges against his appointed client, the General Sessions Division is expected to complete its papering of cases before 10:30 A.M. Although the Division had agreed to the 10:30 A.M. schedule, it was unable to compete the papering of cases by 10:30 A.M. throughout most of the period of the study, largely because those members of the staff who are assigned to report at 8:30 A.M. to paper cases failed to arrive on time. As a consequence, the office changed its working hours at the end of May from 9:00 A.M.–5:30 P.M. to 8:30 A.M.–5:00 P.M. The personnel administering the Criminal Justice Act report that the change in office hours has increased the number of cases papered before 10:30 A.M.; nevertheless, in late June, nearly 30 percent of the papers continued to arrive in the Assignment Court after 10:30 A.M. Although the daily office routine was not regularly observed by the Court Management Study Team during the month of June, observations on two days suggested that tardiness continued to be a cause in the delay in papering.[13] If this is correct, then it would

[13] In August, the Deputy Chief advised that the continued delay in papering is in part attributable to the tardiness of police officers as well as that of the AUSA's.

seem that the moral suasion of the Deputy Chief and of the Chief of the Division has been ineffective; consequently, disciplinary measures may have to be taken against those who are regularly tardy.

2. CITIZENS' COMPLAINTS

To many assistants in the General Sessions Division, the citizens complaint system is the bastard child of the Office. An argument can be made that the Police Department should be responsible for hearing all citizens' complaints and for assisting citizens in the securing of arrest warrants. Indeed, this is the procedure in at least one major U.S. city. However, because the Police Department is already heavily burdened, and because the black citizens of the Washington community often mistrust the police, it is the opinion of the Court Management Study Team that the responsibility for hearing and acting upon citizens' complaints should remain that of the United States Attorney, who should be assisted as neecssary by the Police Department. Such is the present practice in the District of Columbia, where police officers screen complaints made by citizens in the General Sessions Division office and arrange hearings for those whose complaints appear to warrant criminal action.

Because the citizens' complaint system in the District of Columbia is presently inadequate for citizens for whom time is a consideration, it is recommended that two additional police officers—or a total of four—be assigned to the General Sessions Division on a regular basis to screen citizens' complaints. Naturally, these officers must be mature, experienced, and most of all respected by the black community. In addition, the United States Attorney must assign a second assistant to the task of hearing citizens' complaints on each week day.

On July 1, 1969, the District of Columbia Government permitted the Citizens' Information Service to expire for lack of funds. The C.I.S. had theretofore heard many of the complaints of, and provided assistance to, citizens who might otherwise have come to the General Sessions Division office for assistance. If, as seems quite possible, the termination of the Citizens' Information Services results in a substantial increase in the number of complaints made at the General Sessions Division office, the number of personnel assigned to the duty of hearing such complaints will have to be increased beyond the numbers suggested above. Naturally, a refunding of the C.I.S. would be preferable.

3. PRE-TRIAL PREPARATION

The April readiness observation, the examination of the 200 cases and the two experiments conducted in May clearly disclosed that the low jury trial conviction rate, the low readiness rate, and the high nolle pros and DWP rates were principally attributable to the inability of the United States Attorney to ensure the attendance at trial of civilian, and to a lesser extent, police witnesses. As noted in the caseflow description, the police officers are presently responsible for the attendance of civilian witnesses. While the officers could perhaps be forced to perform this duty more effectively, it seems probable that many witnesses would respond more favorably to an official written request for their attendance at court than they would to a telephone call by the police. Moreover, the procedures which would have to be

adopted to ensure that each officer notified his witness would be offensive to the police, time-consuming, and not necessarily productive. Accordingly, the Court Management Study Team strongly recommends that the U.S. Attorney assume full responsibility for the attendance at trial of all civilian witnesses.

By contrast, the Study Team does not believe that the U.S. Attorney should assume any responsibility for the attendance of police officers other than to advise the Police Liaison Office of continued dates.[14] The notification of the officers should remain the responsibility of the Police Liaison Office, which, through the Chief of Police, has the power to discipline errant officers. Of course, the U.S. Attorney should notify the Police Liaison Office of the names of any officers who fail to attend at trial. If that office, as it is prone to do, fails to ensure that discipline is meted out to the errant officers, the U.S. Attorney should direct his notices of absenteeism to the Chief of Police himself.

The most effective means of ensuring the attendance in court of the civilian witnesses would be through the issuance of subpoenas. However, it seems unlikely that the U.S. Marshal's Office is presently capable of serving more than a few such subpoenas per day. Moreover, because presently issued subpoenas are seldom enforced through contempt citations, the issuance of large numbers of subpoenas might cause the community to lose their respect for such court orders. Thus the Government might find that the issuance of large numbers of subpoenas would undermine its present ability to compel the attendance of witnesses in critical cases.

In these circumstances, it is recommended that the United States Attorney at least send letters of notification to the civilian witnesses, including special police officers, in each of its cases. Those civilian witnesses who fail to appear at trial, notwithstanding the letter notification, should be subpoenaed. Naturally, the subpoena should be enforced with a contempt citation in the event the civilian witness again fails to appear.

While the U.S. Attorney's assumption of the responsibility for the notification and, where necessary, the subpoenaing of civilian witnesses should substantially increase the conviction rate and lower the nolle and DWP rate, it might also be desirable to have a sufficient number of assistants in the General Sessions Division to assign one assistant to each case for the purpose of interviewing the witnesses, reviewing the Government papers and trying the case. Unfortunately, it is not possible, on the basis of observations made during the study, to determine the marginal utility of these extra pretrial preparations. Since the extra work would consume approximately 5 man-days per day (assuming 10–15 cases per man-day), it would be inadvisable to make the necessary increase in the size of the professional force without firm knowledge of the likely benefits. Accordingly, the Study Team recommends that after the letter notification system has been fully implemented, the Chief of the Division should assign two assistants to the task of interviewing witnesses, reviewing the papers and trying their assigned cases. After a representative

[14] The U.S. Attorney should, however, continue to advise police officers, either personally or through their precinct commanders, of short continuances. But to do this successfully, the Division will have to designate one man to note short continuances, by reviewing all jackets at the close of the day, and to make the notification.

period, their results should be compared with those of the rest of the Division.

4. WITNESS ROOM

It is recommended that the absence and tardiness of police officers be recorded and reported promptly to the Police Liaison Office by the personnel on duty in the witness room. In addition, if the recommendation of subpoenaing missing witnesses is adopted, the duty of preparing such subpoenas should be that of the AUSA in the witness room. Similarly, where a missing witness has been previously subpoenaed, the AUSA in the witness room should have the responsibility of initiating the appropriate contempt proceedings.

The assistant in the witness room is presently heavily burdened and he cannot be expected to assume additional responsibilities. Accordingly, it is recommended that a highly qualified law clerk be assigned to assist the AUSA in the witness room during the morning hours. It should be this law clerk's duty, in addition to relieving the AUSA of as many clerical duties as possible, to note the absence or tardiness of police officers, to prompt the Police Liaison Office to locate such officers, and to submit a written report to the PoliceLiaison Office of such absences and tardiness. It is believed that the AUSA, if so assisted by a highly qualified law clerk, could assume the additional responsibility of preparing subpoenas for missing witnesses and, where appropriate, of instituting appropriate contempt proceedings.

5. POST-TRIAL

The present 43 percent conviction rate of cases tried by a jury is obviously unacceptable. Accordingly, it is recommended that until this rate is substantially improved, or until the causes for the low rate are clearly identified, the Deputy Chief should review each case in which the Government fails to obtain a guilty verdict. This review should be based on a typed transcript of the proceedings, unless the reason for the failure to obtain a guilty verdict is obvious. While this review may cause some problems for the reporters and may be somewhat expensive, it should serve as an excellent training device.

B. PERSONNEL

It is recommended that the professional manpower level of the Division be set and maintained at at least 24 men, in addition to the Chief, the Deputy Chief of the Division,[15] and the Director of Administration and Training. In addition, it would be desirable to provide for three additional billets: two of these would be used in experimental processing of cases; the other would allow the Division to assign one man to the Grand Jury Division for training. No increase in professional personnel is necessary to implement the letter notification system. To ensure that the office is staffed with sufficiently experienced personnel, assistants should be required to remain in the Division for at least one year.

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[15] These 24 men might be assigned as follows:

Trial Courts	7	Citizens' Hearings	2
Assignment Court	1	Motions, M.O.'s and Check Hearings	1
Witness Room	1	Reviewing and Office Supervision	1
Preliminary Hearing	1	Training	4
Special Cases and Assignments	4	Leave and Comp. Time	2

Naturally, if the Grand Jury Division assumed the responsibility for preliminary hearings, one less man would be needed in the General Sessions Division.

In selecting new assistants, the U.S. Attorney should place particular emphasis upon the candidate's aptitude for, and interest in, litigation. The Division should not be forced to operate with any assistants who are unable to cope with the pressure which is always existent in the office. In addition, the U.S. Attorney should strive to find able Negroes to serve as AUSA's in the General Sessions Division.

As was recommended three years ago, assistant U.S. Attorneys in the District of Columbia should be subject to the Classification Act and eligible for grade and step increases on a parity with their contemporaries in the Justice Department. While the recent increases in salary have eliminated the gross disparities which existed under the prior U.S. Attorney, the present lack of parity cannot be justified.[16]

The training offered during the indoctrination period should be intensified and should not be interrupted by either papering or citizen complaint hearings, other than as is necessary for *training* purposes. In particular, new assistants should be given more classroom instruction and, simultaneously, more opportunities to observe the more senior assistants on a regular basis. During the last week, the new assistants should be permitted to observe trials in the District Court. In addition, realistic moot courts—involving cases which raise principles taught in the classroom instruction periods—should be conducted at least once a week.

After the indoctrination period, the performance of the assistants at trial should be observed and extensively criticized on a regular basis. Specifically, it is recommended that an experienced member of the U.S. Attorney's Office be assigned to observe trials in the Court of General Sessions on each day of the week. Members of the Division should observe trials in the District Court at least once every month.

C. Physical Facilities

While not of critical importance, the following changes in physical facilities would help to increase the efficiency of the office:

1. The recent relocation of the library to the third floor, and the consequent release of space for use by assistants on the first floor, should do much to relieve the confusion and noise level in the office; in particular, each assistant should now have a desk of his own. However, further changes are necessary. The sound dampening in the office should be radically improved, perhaps including a lowered ceiling. In addition, the present public address system should be modified so that each assistant can be called by a bell code signal, rather than by his name as is the present practice. Finally, each assistant should have his own telephone extension, thereby precluding the need, on many occasions, to utilize the public address system.

In the future, the office should strive to increase its office space so that eventually each assistant will have a totally enclosed private office.

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[16] Until late June, the salaries of the assistants were markedly below those paid to their contemporaries in the Justice Department. For example, several of those who qualified as honor recruits in March were earning $8,500 per year while their contemporaries in Justice were earning $11,900. The salary of the Deputy Chief of the Division was $10,200, while his contemporaries in Justice were earning over $12,000 as honor recruits.

In July, at the apparent instigation of the new U.S. Attorney, salaries of the AUSA's were increased, but not to parity levels. Each assistant with over one but not more than two years' experience, now earns *$10,200*. His "honor recruit" contemporary at Justice earns *$13,100*. The Deputy Chief, who graduated from law school in 1966, earns *$13,600;* his honor recruit contemporaries at Justice are eligible to earn *$15,000*.

2. The library is woefully inadequate. For example, in June, it did not even contain a set of the Federal Supplement series.

3. The witness room. The facilities of the AUSA in the witness room should be enclosed in glass to minimize the noise level and to curtail the constant pestering of the AUSA by defense attorneys, inquiring witnesses, and police officers. In addition, the witness room itself should be equipped with sound dampening materials and a public address system. Finally, a partition should be erected in the witness room which would serve to separate Government witnesses from the general public. At the present time, witnesses are occasionally subjected to harassment by defense counsel, and even by defendants, while waiting for trial.

D. Clerical Assistants

As noted above, it is the opinion of the Court Management Study Team that the clerical staff should include personnel who will perform the duties of subpoenaing witnesses and of filing the Government papers However, it is not clear to the Study Team whether additional clerical billets are needed in the office to perform these duties, or whether the present manpower authorization—including the file cerk—is adequate. If the file clerk were of the GS–9 or 11 level and competent to make all necessary entries as to continuances on the Government papers, it seems unlikely that any new personnel would be needed. On the other hand, if, as is the present plan, the file clerk is a GS–4, then at least one subpoena clerk billet will have to be authorized.

Appendix A. General Sessions Division Activities

The following material is intended to give those who are unfamiliar with the operations of the General Sessions Division a basic understanding of the principal and most time consuming activities of the office. An estimate as to the percentage of man-hour devoted to each activity is indicated in parentheses.

1. Court Appearances (30.4 per cent)

a. *Assignment Court.*—Each day of the week, including Saturday, an assistant is required to represent the Government before the Assignment Judge. It is this assistant's duty to advise the Assignment Court of the cases in which the Government is ready for trial and to represent the Government, particularly with respect to bail release recommendations, during arraignments. Although these tasks are largely clerical, and seldom require the exercise of professional discretion, the assistant will usually be preoccupied with these duties in the Assignment Court from 9:30 A.M. until approximately 3:00 P.M.

b. *Trial Court.*—In theory, six assistants a day are assigned to represent the Government before the six judges scheduled to conduct trials on the average day; in practice, however, only four judges hear trials on the typical day and thus two of the assistants assigned to trial work are free to assist in other office duties. Those assistants who are assigned to trial judges are obliged to remain in attendance in the trial court from approximately 10:00 A.M. until 4:00 P.M., or later, notwithstanding the fact that some judges arrive in the court long after 10:00 A.M. or take exceptionally long lunch hours.

c. *Preliminary Hearings.*—Preliminary hearings on felony complaints are conducted each day at 1:30 P.M. The assistant assigned to conduct the preliminary hearings will normally have been free in the morning to prepare these cases, and where appropriate, to dismiss the charges or to break the felony charge down into misdemeanors. It is the usual practice of assistants assigned to preliminary hearings to interview the arresting police officer in the morning.

d. *Mental Competency Hearings.*—Each Tuesday afternoon, hearings are held to determine whether some 10–20 defendants are competent to stand trial. The AUSA's preparation for these hearings usually begins on Monday evening and usually extends through a portion of Tuesday morning. The hearings will usually last until 3:00 or 3:30 P.M.

e. *Motions Court.*—Hearings on the 15–20 motions filed each week are set for Friday mornings. The AUSA assigned to motions begins his preparation on Thursday afternoon by reviewing the Government papers in each case, by advising, when appropriate, officers of the necessity of their attendance, and, in rare instances, by researching the law. The Government seldom submits written responses to motions. The AUSA's entire Friday morning will be devoted to this duty.

2. Citizens Complaints (12.5 percent)

In the District of Columbia a warrant for the arrest of an alleged misdemeanant can only be obtained by filing a complaint in the U.S. Attorney's Office. Thus, each day dozens of private citizens who are unable to obtain help at their local police station enter the General Sessions Division Office to lodge a complaint, sometimes after a wait of several hours, against a fellow citizen. In 1968, over 13,500 such complaints were made. Each of these complaints is screened by one or two members of the Metropolitan Police Department assigned to the General Sessions Division Office; if the citizen appears to have a grievance which might warrant criminal prosecution, a hearing with an AUSA is scheduled. Last year 4,237 citizen complaint hearings were so scheduled.

The average hearing takes about 25 minutes—a time which cannot be significantly reduced since both the complainant and the accused will properly expect and insist upon an opportunity to be heard. Thus, on an average day in the spring, fall and winter, approximately 16 man hours—in addition to night duty hours—are devoted to citizens' complaint hearings. Even more hours are devoted to these hearings during the summer. One man is assigned the responsibility of conducting these hearings each day; but, because the number necessarily scheduled for each day cannot be heard by a single man, each of the other AUSA's is expected to conduct hearings whenever he has free time during the day.

3. Papering (11.2 percent)

Papering begins at 8:30 a.m. and usually continues until approximately 11:00 a.m. It involves approximately 13 man hours per day Tuesday through Saturday and nearly 20 man hours on Monday morning. Each AUSA, who is not otherwise occupied, is expected to assist in papering until all cases have been processed. The "average" assistant devotes 17 minutes to the papering of an "average" case.

4. Special Treatment Units (10.0 percent)

On the average day, two assistants will be assigned to the Special Treatment Unit. Since these cases are usually quite complex and therefore require much advance preparation, the assistants assigned to the Unit are normally permitted to devote their entire day to this duty except for the time when they are papering cases.

When a specially assigned case comes up for trial, the AUSA often will not still be assigned to a Special Treatment Unit. Nevertheless, he will frequently be released from his other duties and permitted to try his case.

5. Witness Room (7.6 percent)

The assistant assigned to the Witness Room is charged with the responsibilities of (1) determining the readiness of the 60 to 70 cases calendared for trial on a given day, (2) delivering assigned cases to the appropriate court, (3) saving cases which are not ready at 9:30 a.m., (4) advising police officers and witnesses of new continued dates, and (5) noting such continuances on the Government papers. In addition, several assistants prepare notations on each case listed on the trial calendar to facilitate the determination of readiness and nearly all assistants become involved in plea negotiations during the day, often in order to save a case.

Typically, the AUSA arrives in the Witness Room at 8:30 a.m. and remains there throughout the day until 3:30 or 4:00, with no more than 45 minutes break for lunch. He is usually assisted from 8:30 to 9:30 a.m. by the AUSA assigned to the Assignment Court. In addition, he is theoretically assisted throughout the day by a clerk, but at the present time, this clerk's activities are limited to notifying special police officers—a task which is not performed until the day of trial—and to "delivering," on occasion, cases from the Witness Room to the assigned trial court.

6. Other Activities (28.3 percent)

The remaining man hours of the office are devoted to such activities as preparation for court appearances—including conducting preliminary hearings, mental competency hearings and notations—(6.6 percent), conducting hearings on ap-

plications for warrants, check hearings, night duty (from 6 p.m. to 10 p.m.) (3 percent), writing of briefs for the appellate division, attendance at staff meetings (3 percent), and plea negotiations. Remarkably little legal research is conducted by the office personnel, and formal training, other than that conducted during the staff meeting, is virtually nonexistent, except during the period when new assistants are being indoctrinated.

Most of the night duty is devoted to the conducting of citizen complaint hearings, although calls are received on occasion from police officers seeking advice.

Appendix B.—Quantitative Readiness of the Government

The statistics set forth below were gathered during a two-week period of observation[1] during the month of April, 1969. The purpose of the observation was to determine in a quantitative sense the readiness of the Government to proceed to trial on a given day. (No effort was made to determine the actual disposition of cases during the day.) Thus cases in which the Government was not obliged to be "ready" for trial—such as where a decision had been made to give the defendant first offender treatment—were excluded. As a consequence, the number of cases listed below for each day does not coincide with the number of cases listed on the calendar for that day. A case was listed as "ready" only if the Government could have proceeded to trial. Thus, even if the case was reported "ready" to the Assignment Court because defense counsel had agreed to enter a plea, it was not recorded as "ready" in the statistics set forth below unless the Government could have proceeded to trial in the absence of a plea.

Witnesses were listed as absent or late whenever the Government was precluded or delayed from going to trial because one or more of the witnesses were absent. Thus even if three or four witnesses were present, the witnesses were listed as absent if the missing witness was necessary to the prosecution of the case.

The recording of absenteeism of police officers was made on the same basis as the recording of absenteeism of witnesses. However, officers were listed as late only where it was clear that their tardiness was not attributable to a problem in obtaining the attendance of witnesses. Thus, in most instances of recorded police officer tardiness, the cases did not involve any civilian witnesses.

[1] Although the period of observation encompassed ten work days, sufficient specific data was only obtained for five of these days.

	Day 1	Day 2	Day 3	Day 4	Day 5	Average
Nonjury calender:						
Total cases	13	14	11	12	12	12
Percent ready	67	43	45	58	75	58
Percent ready at 9:30	35	21	27	42	42	33
Percent ready at 10	42	21	36	42	50	38
Percent of cases with witnesses	23	36	36	25	75	
Percent of total cases in which witnesses absent	15	21	18	25	17	19
Percent of cases with witnesses in which witnesses absent	67	60	50	75	22	55
Percent late	0	40	0	25	22	17
Percent of all cases in which police officer absent	15	36	27	17	8	21
Percent late	15	14	18	8	8	13
Jury calendar:						
Total cases	43	44	33	29	34	37
Percent ready	67	64	54	66	71	64
Percent ready at 9:30	35	25	30	38	18	29
Percent ready at 10	42	39	42	45	35	41
Percent of cases with witnesses	67	54	82	76	68	69
Percent of total cases in which witnesses absent	25	20	30	24	26	25
Percent of cases with witnesses in which witnesses absent	38	38	37	32	39	37
Percent late	21	33	26	36	48	33
Percent of all cases in which police officer absent	2	2	15	10	3	6
Percent late	16	20	3	3	21	13
Combined calendar:						
Total cases	56	58	44	41	46	49
Percent ready	67	58	52	63	71	62
Percent ready at 9:30	39	24	30	39	24	31
Percent ready at 10	45	34	41	44	39	41
Percent of cases with witnesses	57	50	70	63	70	62
Percent of total cases in which witnesses absent	23	21	27	24	24	24
Percent of cases with witnesses absent	41	41	39	38	34	39
Percent late	19	34	23	35	40	30
Percent of all cases in which police officer absent	5	19	18	12	4	12
Percent late	16	19	7	5	17	13
Prior continuances:						
Total cases with prior continuances	17	15	11	13	15	14
Percent of all cases in which witnesses absent	18	20	36	15	27	23
Percent of cases with witnesses in which witnesses absent	30	27	40	40	57	39
Percent of all cases in which police officer present	12	7	9	8	0	9

APPENDIX C

TABLE I.—STATISTICAL ANALYSIS OF ALL MISDEMEANORS CALENDARED FOR TRIAL IN FEBRUARY, MARCH, AND APRIL 1969 (PART I)

A. Jury calendar (by defendants):	
Cases set for trial	3,228
Continued (including 47 in which the jury trial demand was withdrawn and 126 which were sent to the files because the defendant was missing)	1,655
Nolle prossed	605
Dismissed for want of prosecution (DWP)	187
Defendant plead	434
Tried by jury	177
Guilty	77
Acquitted	65
Directed verdict	28
Other (hung jury, mistrial)	7
Tried by court (jury trial demand having been withdrawn)	164
Guilty	124
Not guilty	40
Security forfeited	6
B. Nonjury calendar:	
Cases set for trial	1,300
Continued (including 94 in which a jury trial request was granted, 17 which were continued for mental observations, and 32 which were sent to the files)	719
Nolle prossed	153
Dismissed for want of prosecution (DWP)	55
Plead	234
Tried	132
Guilty	105
Not guilty (including MJOA granted)	27
Security forfeited	7
C. Combined calendars:	
Cases set for trial	4,528
Continued	2,374
Nolle prossed	728
Dismissed for want of prosecution (DWP)	242
Plead	668
Tried	473
Guilty	306
Not guilty	132
Directed verdict	28
Other	7
Security forfeited	13

TABLE II.—STATISTICAL ANALYSIS OF ALL MISDEMEANORS CALENDARED FOR TRIAL IN FEBRUARY, MARCH, AND APRIL 1969 (PT. II)

[In percent]

	3 months	By month
A. Percentage of convictions in cases tried:		
1. Jury trial	43.5	February 48.1. March 44.8. April 37.9.
2. Tried by court (jury trial demand having been withdrawn)	75.6	February 87.3. March 65.0. April 75.5.
3. Nonjury calendar	79.5	February 79.2. March 77.1. April 81.8.
4. Combined calendars	64.7	February 71.9. March 59.2. April 62.9.
B. Percentage of pleas in cases terminated:		
1. Jury calendar	27.6	February 29.6. March 26.8. April 26.6.
2. Nonjury calendar	40.3	February 41.5. March 37.9.

TABLE II.—STATISTICAL ANALYSIS OF ALL MISDEMEANORS CALENDARED FOR TRIAL IN FEBRUARY, MARCH, AND APRIL 1969 (PT. II)—Continued

[In percent]

	3 months	By month
3. Combined calendars	31.0	April 41.4. February 32.8. March 29.6. April 30.9.
C. Percentage of convictions (including pleas, forfeits, and findings of guilty) in cases terminated:		
1. Jury calendar	40.8	February 43.7. March 39.4. April 39.4.
2. Nonjury calendar	59.6	February 62.0. March 53.2. April 63.4.
3. Combined calendars	45.8	February 48.6. March 43.0. April 46.3.
D. Percentage of nolles and DWP's in cases terminated:		
1. Jury calendar	50.3	February 50.5. March 50.1. April 51.3.
2. Nonjury calendar	34.9	February 32.7. March 42.6. April 32.2.
3. Combined calendars	46.4	February 45.7. March 48.2. April 45.8.
E. Percentage of cases tried among cases terminated:		
1. Jury calendar	21.6	February 18.8. March 23.1. April 19.1.
2. Nonjury calendar	22.6	February 25.9. March 17.4. April 23.7.
3. Combined calendars	22.0	February 20.7. March 21.6. April 22.7.

TABLE III.—ANALYSIS OF 200 TERMINATED JURY CALENDAR CASES CHOSEN AT RANDOM

A. Number of cases (by defendant) examined	200
B. Number of cases nolle prossed or dismissed for want of prosecution	100
C. Reasons for nolle or DWP:	
First offender treatment (FOT) (nolle)	17
Project crossroads (nolle)	3
Defendant apparently innocent (though innocence not apparent at time of papering) (nolle)	5
Cases which should not have been papered (nolle)	4
Complaining witness refused to testify and "signed off" (nolle)	11
Witness failed to appear for trial (13 nolle, 11 DWP) (the 24 absentees consisted of 5 special police officers, 15 complaining witnesses, 3 other witnesses and 1 police officer) (13 nolle; 11 DWP)	24
Special cases (unavoidable nolles, e.g., defendant in Lexington)	6
Special cases (avoidable nolles, e.g., chemical analysis not ready)	3
Prosecutorial discretion (Defendant apparently guilty but interests of justice not served by prosecution) (nolle)	13
No reason given on case jacket (12 nolle, 2 DWP)	14
D. Unavoidable nolles: 44 or 51.2 percent of all cases nolled (excluding nolles and DWP's where no reason given).	
E. Avoidable nolles and DWP's: 42 or 48.8 percent of all cases nolled (excluding nolles and DWP's where no reason given).	
F. Unavoidable nolles as a percentage of all cases terminated: 23.6 percent (excluding nolles' and DWP's where no reason given).	

REPORT ON THE GRAND JURY UNIT OF THE UNITED STATES ATTORNEY'S OFFICE OF THE DISTRICT OF COLUMBIA

NOVEMBER 1969

CONTENTS

GRAND JURY UNIT

I. INTRODUCTION

The United States Attorney's Office—Grand Jury Unit, composed of a Chief and three Assistants plus six clerical personnel has the responsibility for processing felony cases through the Indictment Stage of a criminal prosecution.[1] To reach this stage, an initial determination of prosecutive merit for treatment as a felony must be made by an Assistant U.S. Attorney at the Court of General Sessions or before a Federal Magistrate (formerly the United States Commissioner).

After a finding of probable cause by a committing magistrate or a waiver by the defendant of the necessity for such a finding, the case is held for the action of the Grand Jury. There, Grand Jury Unit Assistants review the case and determine anew whether it is properly regarded as a felony. If yes, the witnesses are presented to the Grand Jury which may then return an indictment, not return an indictment (ignoramus) and/or recommend, without binding authority, the referral of the matter to the Court of General Sessions for disposition as a misdemeanor. When an indictment issues the case is transferred to the Criminal Trial Division for ultimate prosecution in the United States District Court.

II. DESCRIPTION

A. The Work of the Grand Jury Unit

1. THE WORKLOAD OF THE UNIT

During 1968 the Grand Jury Unit presented 2,186 cases to the Grand Jury. This represented a 31.6 percent increase in presentations over the previous year. Of the cases presented, 1,730 resulted in indictments, a 14.8 percent increase in indictments over 1967.

In addition to those cases actually presented to the Grand Jury, another 440 cases, after review by the Grand Jury Unit, were not presented to the Grand Jury and were dismissed. Of these, 226 were referred back to the Court of General Sessions for disposition as misdemeanors. A comparison of the workload increase of the Grand Jury Unit over the past several years is shown in Table I.[2]

[1] This study of the Grand Jury Unit occurred in various stages during the period of May–November 1969. In mid-November an additional Assistant U.S. Attorney was added to the Unit, bringing the complement to a Chief plus four Assistants.

[2] The cases arising out of the April 1968 civil disturbances are not considered in these discussions, as they were processed by personnel not assigned to the Grand Jury Unit and cases were presented to a special Grand Jury.

TABLE NO. 1.—CASES PROCESSED BY GRAND JURY [1]

	1966	1967	1968
Total cases presented to grand jury by grand jury unit	1,658	1,661	2,186
Total indictments prepared by grand jury unit [2]		1,506	1,730
Total cases ignored by grand jury	319	99	77
Total cases referred by grand jury to court of general sessions for prosecution	151	154	155
Total cases referred to court of general sessions for prosecution without presentation to grand jury	161	72	226
Total cases dismissed without referral to court of general sessions	202	171	214

[1] This table does not include the 305 cases which arose out of the April 1968 civil disturbances and were presented to a special grand jury by a different group of assistants.
[2] Statistics not available for 1966.

Source: Data furnished by grand jury unit.

In the crucial area of delay before indictment, a twelve-month sampling of cases, covering the period from July 1968 to June 1969 shows that the median number of days which elapsed from the preliminary hearing/waiver of preliminary hearing ("preliminary hearing/waiver") until the return of the indictment was 50.[3]

This indicates an increase over 1965 when the median time was 40 days.[4] In 1965, these cases were presented to one regularly impaneled Grand Jury; now such presentations are made to two regularly impaneled Grand Juries.

2. REGULATING THE FLOW OF FELONY CASES

The Grand Jury Unit has major responsibilities in determining how many cases will be treated as felonies and how many as misdemeanors. The initial determination, however, in more than 60 percent of the cases, is made by Assistants at the Court of General Sessions Division, one of the two places where new cases are first brought by the police. In about 20 percent of the cases the decision is made by an Assistant, operating under Grand Jury Unit control, before the Federal Magistrate. The remaining 20 percent of the cases are Grand Jury Originals, that is, initiated at the Grand Jury level.[5]

Except for Grand Jury Originals, where the initial determination is that a case is a felony, the defendant has a preliminary hearing or waives his right to a preliminary hearing and the case is then held for the action of the Grand Jury.

At this point, the Grand Jury Unit reviews the case and may determine, prior to presenting the matter to the Grand Jury, that the case should be:

(*a*) Dismissed (informal dismissal) or

(*b*) Sent to the Court of General Sessions for treatment as a misdemeanor (informal referral).

This informal referral or dismissal by the Grand Jury Section prior to presentation of the case to the Grand Jury usually involves one or more of the following reasons:

(*a*) That the evidence does not support the felony charge.

(*b*) That this a "cheap" case, i.e., one not worthy of the District Court.

[3] Source: Court Management Staff; Number of Days from Preliminary Hearing to Indictments—United States District Court—Fiscal Year 1969 (Sample of 25 percent of the Indictments).
[4] Source: Court Management Staff, Origin of Cases—United States District Court, Fiscal Year 1969 (Sample of 25 percent of the Indictments).
[5] Navarro and Taylor, *Data Analysis for Simulation of the District of Columbia Trial Court System for the Processing of Felony Defendants* (IDA, 1968), p. 14.

(*c*) That certain equitable considerations involving the defendant warrant reduction of the charge.

(*d*) That the defendant is now prepared to plead to a misdemeanor charge and avoid a felony conviction.

(*e*) That the defendant, in exchange for a plea to a misdemeanor or dismissal of the case is prepared to assist the Government in investigatory work.

The discretionary power of the Assistants of the Grand Jury Unit to make informal dismissals or informal referrals has resulted in some sharp statements by a few judges in the Court of General Sessions. They are of the view that if a preliminary hearing is held or probable cause is found by a committing magistrate, an Assistant U.S. Attorney does not have the authority to avoid presenting the matter to the Grand Jury. The District of Columbia Court of Appeals, however, has upheld the prosecutor's discretionary power in this regard.[6]

3. PREPARATION OF THE CASE FOR PRESENTATION TO THE GRAND JURY

A total of 60–70 cases are scheduled for presentation before the two regularly impaneled Grand Juries during each week. Of these, about ten per week are continued for later dates. Presentations to the Grand Jury occur three days a week. At 9:00 A.M. witnesses and police officers are interviewed by one of three clerks and a Grand Jury statement sheet is prepared. This statement contains each witness' testimony, in brief, and serves as quick factual reference for Assistants assigned this case.

After completion of the statement to the clerks, the witnesses await their turn to testify to the Grand Jury itself.

Two Assistants, one for each Grand Jury, are assigned to present cases. Prior to making each presentation, an Assistant has only a few moments to review the facts by reading the prepared statements and personally interviewing the police officer or the civilian witnesses. Thereafter, the witnesses testify before the Grand Jury. The presentation of a case to the grand jury is typically brief, about 15 to 30 minutes. Certain cases, such as homicides, consume much greater periods of time.

4. PREPARATION OF THE CASE FOR TRIAL

While examining the case, before presentation to the Grand Jury, the Grand Jury Unit attempts, when possible, to look beyond the Indictment stage and to secure evidence which will assist the prosecution during trial. As the occurrences alleged in the indictment are still relatively fresh at this point, additional evidence or witnesses may then be obtained which would be lost with the passage of time. The press of business, however, prevents close supervision of the police even where further investigation is warranted.

5. MISCELLANEOUS RESPONSIBILITIES OF THE GRAND JURY SECTION

a. Appearances before the Federal Magistrate (formerly the United States Commissioner)

Twice a week a Grand Jury Unit Assistant appears before the Federal Magistrate to consider the prosecutive merit of cases in which the police or other law enforcement agencies are seeking to prosecute

[6] *United States* v. *Vaughn*, 255 A2d 483 (D.C. Ct. App., 1969).

a defendant as a felon. Before the case is presented to the Federal Magistrate for a determination of probable cause, the Assistant, like his counterpart in the Court of General Sessions, must decide whether a particular case should be entirely dismissed, treated as a misdemeanor, or receive felony treatment and proceed to a preliminary hearing. If viewed as a misdemeanor, the case is sent to the Court of General Sessions for disposition through a plea of guilty or trial.

The initial determination of where to commence a felony prosecution—either before the Court of General Sessions or before the Federal Magistrate—resides entirely within the discretion of the police officer or law enforcement agent. Presently, if the case is a felony it can be initiated at either intake point. By custom, the police headquarter squads, i.e., homicide, robbery, narcotics, gambling, etc., and federal law enforcement agents, i.e., FBI agents, narcotics agents, bring their felony cases directly to the Federal Magistrate and thus bypass their initial review by the Court of General Sessions Section Assistants. These officers and agents are of the opinion that they are able to make qualitative judgments about felony cases and thus there is no need to go to the Court of General Sessions where cases which should be treated as felonies are sometimes reduced to misdemeanors by inexperienced Assistants.

The "doctrine" that the squads and agents have weeded out bad cases and only bring felonies before the Federal Magistrate is self-reinforcing. An Assistant tends to accept the view that the bad cases have been weeded out and thus, in borderline situations, will allow felony treatment for a case which might at the Court of General Sessions Division be reduced to a misdemeanor. The aura, for example, which surrounds an FBI case may be a potent force for accepting the judgment of the agent. Subsequent judgments by the Assistant who presents the case to the Grand Jury may be similarly affected, although this is not, of course, subject to proof.

b. Line-up Identifications

Following the Supreme Court decision in the Wade-Stovall [7] cases, the Grand Jury Unit assumed the responsibility of conducting line-up identifications in advance of presentation of a case to the Grand Jury where the case against the defendant was based, in part, on an eyewitness identification. The line-ups, which are designed to test the ability of the witnesses to identify the defendant, are conducted twice a week on police premises. Aside from the time involved in the actual line-up process, several hours on each occasion, the Grand Jury Unit assumes the responsibility of notifying defense counsel and witnesses as to the scheduling of the line-up.

B. Personnel

1. Assistant United States Attorneys

As of October, 1969, the Grand Jury Unit consisted of a Chief and three Assistants. The duties of the Chief include supervision of the Assistants, review of all indictments returned by the Grand Jury,

[7] *Wade* v. *United States*, 388, U.S. 218 (1967); *Stovall* v. *Denno*, 388, U.S. 293 (1967); *Gilbert* v. *State of California*, 388, U.S. 263 (1967).

consultation with law enforcement officials with respect to potential prosecutions, and occasional discussions with attorneys with respect to disposition of cases. At the time of commencement of this study the Grand Jury Unit Chief was Donald Smith, who had 4½ years experience in that position. In September, 1969, Nicholas Nunzio became the Unit Chief, after several years of service as an Assistant in the Criminal Trial Division, but without any Grand Jury Unit experience.

Two Assistants do the bulk of the work involved in reviewing cases and making presentations to the Grand Jury. A third Assistant devotes his time to handling matters which are brought to the Federal Magistrate and to other miscellaneous matters. (See, *supra*, II. A.5). This includes evaluating the prosecuturial merit of particular cases, arranging for disposition, and presenting witnesses in order to establish a basis for holding a defendant for the action of the Grand Jury. He is not regularly involved in presenting cases to the Grand Jury.

Assignment to the Grand Jury Unit is generally for a period up to one year, and usually follows a ten-month tour in the Court of General Sessions.

Typically, the Assistants assigned to the Unit have no direct knowledge about the requirements of the other Divisions of the Office, notably Criminal Trial and Appellate. An Assistant newly assigned to the Unit receives only on-the-job training and will, for a period of a few weeks, follow other Assistants through the Unit to observe presentations to the Grand Jury.

2. ADMINISTRATIVE STAFF

The entire administrative work of the Unit is performed by six clerks. Three of these clerks work in the central office and every morning they interview civilian and police witnesses in cases scheduled for presentation to the Grand Jury on that particular day. The prepared interview forms are used as the main factual reference for the case both in the presentation to the Grand Jury and later at trial.

A considerable degree of skill is required in order to conduct an interview and accurately record the statements of the witnesses. These clerks handle about 20 cases per morning, three days a week. At other times they perform various clerical work which includes maintaining dockets, issuing notifications, etc.

One clerk spends all of her time in drafting and typing the indictment in each case where the Grand Jury has voted to return an indictment. These are then individually reviewed by the Grand Jury Unit Chief and thereafter, under the requirements of *United States* v. *Gaither*, 134 U.S. App. D.C. 154, 413 F. 2d 1061 (1969) are, one morning per week, read to the Grand Jury so that it may approve the counts in the indictment.

C. Management Information System

The failure of the Unit to maintain even a basic management information system has, through the years, had many undesirable consequences.

The Unit does not know, for instance, whether particular kinds of cases are consistently overcharged nor where the overcharging is oc-

curring, i.e., the Court of General Sessions or before the Federal Magistrate.

In 1968 the Grand Jury Unit dismissed and referred back to the Court of General Sessions some 17 percent of the cases sent to it for felony treatment (440 of 2,626; see Table I). The shuttling of hundreds of cases between the Grand Jury Unit and the Court of General Sessions involves large expenditures of professional and clerical time. Witnesses suffer unnecessary inconveniences, including loss of salary, while the government disburses substantial sums of money as witness fees for appearances at the Grand Jury Section. Police officers lose time for work or, if on days off, receive time and a half pay, for an unnecessary trip to the Courthouse.

Finally, cases which are referred back by the Grand Jury Unit to the Court of General Sessions for misdemeanor prosecution are sometimes dismissed by the Assistants there! This occurs because too many persons have lost interest in the case as a result of the two or three month period which has elapsed from the date of arrest. The witnesses are increasingly uncooperative because of the frustration of going from court to court and then back again; the prosecution and police are concerned with more recent matters. The Judges in the Court of General Sessions are impatient with a case sent back from the Grand Jury Unit to the Court of General Sessions and will, on occasion, enter a dismissal with little pretext. After a few more continuances, a normal feature of the Court of General Sessions, the case becomes even more stale.

Thus, ironically, where, in the first instance, an Assistant was able to justify, at least in his own mind, the placing of felony charges, the end result of this shuttle treatment is the complete dismissal of the case, even as a misdemeanor. In justice, if the case should have been dismissed or reduced in charge at the outset there are no grounds for keeping a defendant in suspense during an extended interval.

Not only is there no ongoing evaluation of the office workload involving problems such as described above, but significant changes in office structure are not monitored. Although a second Grand Jury was established in May 1967 to reduce the delay period between preliminary hearing/waiver this time lapse is now greater than before. To some extent this is the result of an increase in the felony caseflow, yet this is not the complete explanation. Even while implementing a second Grand Jury, the Unit curtailed the number of working days of the Grand Jury. Proper monitoring would have shown how to utilize the two Grand Juries to the maximum degree. To some, the answers sought in such data may seem self-apparent. It is not.

The data obtained could be used not only to provide allocations of personnel within the Office but also to provide justification for requests to the Department of Justice for additional personnel.

The Unit explains the reason for its inadequate information system on the inability to allocate any clerical time to the necessary record keeping and compilations. In our view, this is a misplaced reading of priorities. If an adequate information system existed then the Unit could, for example, focus on the problem of case shuttling between the Grand Jury and the Court of General Sessions, reduce the number of cases being transported from that Court to the Unit and back again and save the valuable professional and administrative time which is

now consumed in a totally unproductive process. Other problems in the Unit could be similarly resolved and remedied if a better knowledge of cause and effect were available.

III. EVALUATION AND RECOMMENDATIONS

A. Evaluation of Performance

1. POSSIBLE CRITERIA

(*a*) Does the Grand Jury Unit effectively regulate the flow of felony cases through the office?

(*b*) Is the time period which elapses between preliminary hearing/waiver and the return of the indictment consistent with the requirement of speedy trial after arrest of the defendant?

2. APPLICATION OF THE CRITERIA

(*a*) Does the Grand Jury Section effectively regulate the flow of felony cases through the office?

As noted there are presently two intake points for felony cases. One is the Court of General Sessions under the supervision of the Chief of the Court of General Sessions Division. The other is before the Federal Magistrate where the Grand Jury Unit has an Assistant who has discretion with respect to cases initially presented there. About 17 percent of the cases sent to the Grand Jury Unit were either completely dismissed or referred back to the Court of General Sessions for misdemeanor treatment prior to presentation before the Grand Jury. No statistics are available to show which of these cases originated in the Court of General Sessions Division or which before the Federal Magistrate. The informed judgment is, however, that the overwhelming percentage of cases referred for misdemeanor treatment by the Grand Jury Unit came from the Court of General Sessions Division.

During 1968, this 17 percent amounted to some 440 cases; this is strong evidence to support the proposition that the standard applied in screening felony cases at the Grand Jury Unit is stricter than the one used at the Court of General Sessions Division. It would appear, although this is not susceptible to proof on the available records, that in the vast majority of the cases dismissed or dismissed and referred for misdemeanor treatment the difference in judgment was based on an application of different standards and not on some change in the circumstances of the case after the preliminary hearing/waiver.

In exercising prosecutorial discretion and in determining whether a case should be treated as a felony, the Court of General Sessions Division and the Grand Jury Unit operate independently. The Assistants are responsible only to their immediate chief. The Court of General Sessions Division Chief is answerable only to the United States Attorney, while the Grand Jury Unit Chief works under the Criminal Division Chief, who in turn is responsible to the United States Attorney. The liaison which does exist between the Grand Jury Unit and the Court of General Sessions Division is established only through the particular inclinations of the personnel working at each locale and not as a result of an office plan.

The Office has never set forth a comprehensive statement of its charging policy with respect to particular defendants and particular crimes. Admittedly, the development of such a document is not only

difficult but potentially embarrassing. Such considerations do not excuse the failure of the Office to internally communicate, in some less helter-skelter fashion, how particular cases should be viewed.

The failure of liaison between these different parts of the Office, the absence of a defined charging policy, and the tendency to pass the responsibility for reducing a felony to a misdemeanor from the Court of General Sessions Assistants to the Grand Jury Unit Assistants results in the high rate of cases which are dismissed or dismissed and referred for misdemeanor prosecution.

In addition to the 17 percent of the cases falling within this category, another 10 percent of the cases (232 of 2,186) are, after presentation to the Grand Jury, either ignored by that body or ignored and referred back to the Court of General Sessions for treatment as a misdemeanor. While the U.S. Attorney's Office cannot be expected to screen out all cases which the Grand Jury might choose to ignore and, in some instances, the Office may wish to have a Grand Jury determination in order to avoid public accusation of undue leniency, nevertheless, an even smaller percentage of the cases presented to the Grand Jury should result in ignoramuses. With the considerable experience that the Grand Jury Unit has with the Grand Jury, the Assistants should be able to incorporate the predictable views of that body in decisions affecting the prosecutive merit of particular cases.

As the views of the Grand Jury Unit with respect to what constitutes a felony are imperfectly transmitted to the Court of General Sessions Division, one may surmise that some cases receive misdemeanor treatment at the Court of General Sessions which the Grand Jury Unit, if given the opportunity, would consider as felony cases. There is, however, no measure for determining how many cases fall into this category.

(*b*) Is the time period which elapses between the preliminary hearing/waiver of preliminary hearing period and the return of the indictment consistent with the right to a speedy trial?

In the 1966 *Report Of the President's Commission On Crime In The District of Columbia*, the Commission stated, at page 332, "The needs of prosecution in the District of Columbia require a substantial increase in the number of Assistant U.S. Attorneys. There must be a sufficient number in the Grand Jury Unit to keep the time between preliminary hearing and indictment to less than 2 weeks."

In 1965 with only one Grand Jury sitting four days a week and hearing approximately 40 cases per week, the median time which elapsed between preliminary hearing/waiver and the return of the indictment was 40 days.[8]

Based on its study which included establishing a court simulation model the Navarro group recommended the establishment of a second Grand Jury.

In May 1967, a second Grand Jury was established and the two now hear some 60 cases per week on a three-day per week schedule. A portion of a fourth day is devoted to reading the indictment charges to the Grand Jury for its approval, a procedure implemented under the *Gaither*, *supra* (p. 411), decision.

[8] Navarro and Taylor, *supra*, p. 412.

The addition of a second Grand Jury was not accompanied by any significant increase in the number of personnel in the Unit. Whereas previously, when only one Grand Jury was sitting, the Grand Jury Chief and an Assistant made presentations to that Grand Jury, at present two Assistants, each operating before a single Grand Jury make almost all of the presentations.

The number of clerks preparing statements and indictments was not adequately increased. Because the clerks must also work on administrative matters on one day per week, Friday, the two Grand Juries are on that day not used. On Monday the Grand Juries are only partially used to hear new cases.

As a result of the increase in the number of cases that the Grand Jury Unit now processes, coupled with the failure to provide sufficient personnel to service the Grand Juries, the median time which now elapses between the preliminary hearing/waiver and return of indictment is 50 days, exceeding the 1965 median time by some 10 days and far in excess, by some 36 days, of the standard set forth in the District of Columbia Crime Commission Report. While some cases may not be ready to go to the Grand Jury immediately because of delay in the preparation of pertinent reports, such as the chemist's in narcotics cases, a more complete utilization of the two Grand Juries should make a dent in reducing the time lag. Such an effort cannot be undertaken unless there is a significant increase in the number of Assistants and clerks in the Grand Jury Unit who have the responsibility of servicing the two Grand Juries. As it is now, the activity of the Assistants and the clerks is, because of the ever increasing workload, at a constant pitch of frenzy.

To date, the insistent demands of the community that a defendant be brought to trial as soon as possible after arrest have not been heeded. Speedy trial, from the community point of view, is desirable, as has frequently been noted, in order that a defendant who is on release pending trial will be quickly adjudicated and, if found guilty, sentenced. The effectiveness of punishment is much greater if it occurs within a short period of time after the breach of the law. Further, a defendant is entitled to have a speedy resolution of the charges against him.

B. Recommendations

1. The Grand Jury Unit should be given control over the input of all felony cases

The Grand Jury Unit should have the responsibility for quickly reviewing all cases where Assistants in the Court of General Sessions Division intend to place felony charges. By detaching two Grand Jury Assistants, on a rotating basis, to work in the Court of General Sessions Division, but, nevertheless, directly responsible to the Grand Jury Unit Chief, immediate central control over felony cases would be established. As each felony case is prepared by a Court of General Sessions Division Assistant, the Grand Jury Unit Assistant would review the matter and make a determination whether, by the standards of his Unit, the case is properly regarded as a felony. Further, Grand Jury Unit Assistants would conduct all preliminary hear-

ings in the Court of General Sessions so that an additional preliminary hearing review would occur.[9]

The Grand Jury Unit effectively sets the standards as to felony cases, by filtering out those cases which in its opinion are overcharged. By instituting immediate review at the earliest possible stage of the processing, the cases which are now dismissed or referred back by the Grand Jury Unit some 17 percent of the cases, would avoid the unnecessary and costly shuttle.

As the Grand Jury Unit is currently responsible for processing cases through all stages if the matter is first brought to the Federal Magistrate, under the proposal contained here, all of immediate review of felony cases will lodge in the Grand Jury Unit.

If the jurisdictional powers of the courts in the District of Columbia remain unchanged there is no reason why two separate intake points, the Court of General Sessions and the Federal Magistrate, should continue for the purpose of processing felony cases. The intake of felony cases should occur at one place, either before the Court of General Sessions or the Federal Magistrate. As the scope of the Federal Magistrate's work is still uncertain it is somewhat premature, at this point, to assign all felony preliminary hearings to the Federal Magistrate.

Quite logically, from a viewpoint of administration, all preliminary hearings could be conducted by the Federal Magistrate and facilities for holding such hearings could be established at the Court of General Sessions or, felony cases could be brought to the United States District Court after the papering by a Court of General Sessions Assistant and review by a Grand Jury Assistant. Thereafter, the preliminary hearing would occur before the Federal Magistrate. The current dichotomy, where cases are brought to either the Court of General Sessions or the Federal Magistrate has no basis in reason or sound judicial administration and may perpetuate unequal treatment between defendants in similar circumstances. Centralizing the intake of all cases is not, however, dependent on using the Federal Magistrate to conduct all preliminary hearings.

2. THE GRAND JURY UNIT SHOULD DOCUMENT ITS CHARGING POLICY

Setting forth, in writing, the charging policy of the Office would provide for a more uniform processing of cases. Putting the charging policy in writing is not an easy task but the reasons for attempting the task are persuasive. The Office has a constant influx of new Assistants. It is essential that they have a ready reference which will aid them in

[9] During the course of this study a number of conversations were held with the various personnel in the Grand Jury Unit. Particular emphasis was placed on problems concerning the shuttling of cases between the Grand Jury Unit and the Court of General Sessions and the absence of any management information system. Subsequently, the Grand Jury Unit has, with a receptivity to constructive criticism, made certain changes.

In mid-November an additional Assistant was assigned to the Unit. With this increase in manpower the Unit undertook the responsibility of rotating one Assistant to the Court of General Sessions Division who, on a daily basis, reviews all felony cases at this point of intake. By consulting with the Court of General Sessions Assistants, based on his understanding of the Grand Jury Unit policy, he attempts to insure that cases are not overcharged.

The first few weeks of this program are encouraging. It appears that the screening process will result in far fewer cases being returned to the Court of General Sessions after preliminary hearing/waiver.

Further, the rudiments of a management information are now being constructed by maintaining, on a daily basis, information indicating dismissals, referrals, etc.

assimilating the official policy with respect to charging defendants who are involved in particular types of crimes. Such a policy statement would include general considerations that an Assistant should examine before placing a charge, the weight given to defendant's previous record, the relationship between defendant and victim, i.e., husband, wife, offers of restitution, etc. Further, Office policy should be set forth concerning crimes of violence, drugs, etc.

A statement of charging policy is necessary not only with respect to training new Assistants but is also of prime importance with respect to establishing throughout the office the intentions of its leadership.

Even if the Grand Jury Unit assumes control for processing felony cases from time of intake until the return of the indictment, other Assistants at the Court of General Sessions Division will need to know the charging policy so that they will not undercharge. Further, the views of Assistants in the trial and appellate sections should be sought because their particular experience gives some indicaion as to how the juries and judges are reacting to particular types of prosecutions.

3. THE GRAND JURY UNIT SHOULD ESTABLISH A MANAGEMENT INFORMATION SYSTEM BY WHICH TO JUDGE ITS PERFORMANCE

As noted, record keeping in the Unit has until recently generally been regarded either as an unnecessary luxury or a plain nuisance. Because the flow of cases is constant and heavy and the small staff is regarded as tightly stretched, the allocation of much time to record keeping would, it is felt, hamper the ability to process cases at the current rate.

The need for and use of management information is not well understood. Requests for data are regarded as impositions designed only to meet some abstract theory of management and of little practical utility.

The Unit does not know, for instance, its pending backlog, the delay which is being encountered from the time of the preliminary hearing/waiver and the return of the indictment, the number of cases which are referred back to the Court of General Sessions for disposition as misdemeanors, etc.

A basic management information system would provide data such as the following:

(A) Number of new cases received
  (1) From Court of General Sessions
  (2) From Magistrate
  (3) Other
(B) Number of cases scheduled for presentment
(C) Number of cases actually presented
(D) Number of cases continued
(E) Reasons for continuances
  (1) Civilian witnesses unavailable
  (2) Police witness unavailable
  (3) Other
(F) Number of cases pending presentment at end of period (by type of case and by length of time pending since preliminary hearing)

(G) Number of cases disposed of
  (1) U.S. Attorney Action
    (*a*) By informal dismissal before presentment to Grand Jury
    (*b*) By informal dismissal and then referral to Court of General Sessions
    (*c*) Reasons for each of above.
  (2) Grand Jury Action
    (*a*) By indictment
    (*b*) By ignoramus
    (*c*) By referral back to Court of General Sessions.

(H) Time intervals from preliminary hearing/waiver to disposition by category of case and by type of disposition.

All the above data could be compiled by using either a case control card system or a simple daily log. The cards or the log should have spaces for recording the following information: Case Number; Type of Case; Preliminary Hearing Date; Date Presented to Grand Jury; Disposition Date; Method of Disposition; and Dates of Continuances.

4. THE TIME PERIOD REQUIRED TO PROCESS A CASE BETWEEN PRELIMINARY HEARING/WAIVER AND THE RETURN OF THE INDICTMENT SHOULD BE REDUCED

In most cases no more than two weeks should elapse between the preliminary hearing/waiver and the return of the indictment. In fact, the median time for this lapse period was some 7 weeks in Fiscal Year 1969. As the scheduling of the presentation of cases to the Grand Jury is almost entirely within the control of the United States Attorney's Office, it must assume complete responsibility for meeting time standards.

Before a third Grand Jury is created, the U.S. Attorney's Office should make better use of the two Grand Juries now regularly impaneled. The working hours of the Grand Jury could, by providing additional personnel in the Grand Jury Section of the United States Attorney's Office, be expanded. Only a portion of Monday is consumed by each. By staggering the hours of the Grand Jury, some cases, not all, could even be presented to the Grand Jury on the same day as the preliminary hearing. Certain accommodations would be necessary such as providing fares for taxi service for grand jurors who are cautious about traveling at night. Some cases, such as narcotics, where a chemist report is necessary, or cases where a lineup must be held cannot be presented immediately to the Grand Jury. By carefully working out the details some cases could be brought immediately to the Grand Jury at the time of the preliminary hearing.

5. THE NUMBER OF PERSONNEL ASSIGNED TO THIS UNIT SHOULD BE INCREASED

To accomplish these ends and to improve the operation of the office the Grand Jury Unit should have a total complement of a Chief plus five Assistants. Two of these Assistants should work on a rotating basis to review the felony intake at the Court of General Sessions Division and make presentations at preliminary hearings. Two Assistants would work in preparing and presenting cases for the Grand Jury and ulti-

mately for trial, conducting special investigations, and drafting statements of charging policy. The fifth Assistant would be undergoing training.

Additional clerical personnel must also be provided. At least two clericals should be added so that more cases can be processed each week and the necessary management information files maintained. Despite the addition of a second Grand Jury there has been no concurrent increase in clerical strength.

With an additional complement in the Grand Jury Unit greater emphasis should be placed on establishing a more thorough training program than currently exists. At present the training is limited to on-the-job observation. As there is no charging policy document Assistants must understand the charging policy of the office through trial and error. Further, a training manual describing the role of the Grand Jury, leading cases regarding the Grand Jury, and setting forth the essential requirements for presenting particular kinds of cases, such as narcotics cases with their report from the chemist, gun cases with the requirement for certificate of no license and ballistic tests, would provide a check list of considerable benefit to the Assistant in the Unit and prevent cases with infirmities from proceeding prematurely to the Grand Jury.

6. THE GRAND JURY UNIT SHOULD ENCOURAGE DISPOSITION OF CASES BY PLEA PRIOR TO PRESENTATION TO THE GRAND JURY

The Grand Jury Unit does not now emphasize this aspect of its function. Attorneys are generally unaware that the disposition of a case is somewhat easier to accomplish when the case is still in a fluid form, prior to the return of the indictment. The decline in the guilty plea rate over a number of years has been a cause in the increase of the United States District Court case backlog. Encouraging attorneys and defendants to consider disposition of cases prior to indictment should have some effect in increasing the guilty plea rate from its current level.

STUDY OF THE APPELLATE DIVISION OF THE OFFICE OF THE U.S. ATTORNEY

JUNE 1969

CONTENTS

APPELLATE DIVISION

INTRODUCTION

The Court Management Study Team undertook a four-week study of the Appellate Division in June, 1969. This report is based primarily upon daily observations, statistical analyses, numerous interviews and upon a study of 75 briefs submitted by the Government in cases pending before the U.S. Court of Appeals. Except as indicated, the report described the Division as it was at the end of June, 1969.

The Appellate Division is responsible for representing the Government in nearly all criminal cases which have been appealed from the District Court for the District of Columbia or from the Court of General Sessions. In 1968, this responsibility entailed the preparation and submission of 252 briefs in cases pending before the U.S. Court of Appeals, 63 briefs in appeals before the District of Columbia Court of Appeals, and over 150 bail release appeals.[1] In addition, the Division submitted or responded to over 1,000 motions.[2] The Division also represented the United States in 14 civil appeals last year, but these were generally quasi-criminal in nature, arising, for example, out of denials of petitions for habeas corpus. Due to its manpower shortage, the Division usually does not represent the Government in civil appeals; these are handled by the Civil Division of the U.S. Attorney's Office, or by the Justice Department.

PART I. CASE FLOW

The Division first takes cognizance of an appeal upon receipt of the brief for the appellant.[3] At that time, or shortly thereafter, appellant's brief will be read by the Chief of the Division, who will then assign the case to one of the Assistant U.S. Attorneys, if any are free to take the case. If, as is often the case, the personnel of the Division are already overburdened, the brief will be assigned to a member of the Justice Department or of the General Sessions Division who has volunteered his time, or to one whose time has been volunteered by his superior in response to the personal pleas of the Chief of the Appellate Division.

The attorney assigned to the case is expected to prepare the brief entirely on his own. Usually he will discuss critical issues arising in his case with fellow assistants, but the actual brief will be written, printed and submitted to the Court without any supervision or review whatsoever. Because of the extraordinary workload of the Office, the assistant usually will only devote 7 working days to the preparation and typing of the brief. Moreover, his backlog is almost always so great that he will have to request an extension of time to file his brief.

[1] Except for the bail release cases, nearly all appeals are argued.
[2] Motions are seldom argued before either court.
[3] In the great majority of cases, the Government is the appellee.

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Because of a severe shortage of secretarial help, the brief will be printed on the basis of the first draft typed by the secretaries.

Once the brief has been printed and filed, it is distributed to the other assistants in the Office, many of whom will read it and offer criticisms. If sufficiently important, these criticisms will be met in the oral argument.

On the day before oral argument, the brief writer and two or three assistants will meet in a "moot court," at which time the brief writer will air his oral argument, and undergo an examination which is intended to resemble that which might occur during the argument. However, because the members of the moot court panel do not have time to read the appellant's brief, or to carefully consider the issues in the case, the mock "judicial inquiry" is often meaningless.

Although the Chief of the Division reads the brief, and attends the oral argument as co-counsel, he usually will not discuss the case with the assistant. Thus the assistant is again on his own before the court, subject only to the surveillance and possible reassurance of the Chief. At the close of the argument, the Chief will normally offer a brief critique of both the brief and the oral argument.

PART II. PERSONNEL

As of the end of June, 1969, 12 attorneys, including the Acting Chief and two men temporarily on loan from the Justice Department, were assigned to the Appellate Division.[4] The credentials of these assistants were generally impressive. While they had less legal experience than their contemporaries in the General Sessions Division, they tended to be from more prestigious law schools.

Seven out of the ten had no prior experience in the U.S. Attorney's Office, and each of these seven expected and hoped to be transferred to the General Sessions Division within the near future. Only one member of the Division expressed a desire to continue in appellate advocacy. The others all came to the U.S. Attorney's Office in the hope of gaining trial experience.

As the case flow suggests, the assistants in the Appellate Division carry a heavy caseload and, as a consequence, are under a constant strain. At the end of June, due to the heavy June caseload, each assistant was being required to submit a brief a week! Moreover, each had seven different cases pending at the same time. In more usual times, each of the assistants has been obliged to prepare three briefs a month. There is not even enough time for the assistants to maintain a subject matter index file of briefs written in the Office.

The assistants' workloads are aggravated by the severe shortage of secretarial help. At the end of June, three typists were available to type briefs.[5] Only one of these was particularly proficient. As a consequence, the assistants could not submit a brief to a typist for a rough draft: time permitted only one draft, and that went to the printer.

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[4] Although there is no specifically assigned quota, the Office has been staffed at approximately the same level since mid-1968. In 1958 and 1959, the Office was manned by an average of approximately 9 permanently assigned assistants, notwithstanding the fact that there were only 148 and 155 appeals, respectively, in those two years. In fact, a number of these appeals were assigned to personnel outside the Office.

[5] The Division is theoretically authorized to have 5 stenographers, in addition to the Chief's secretary.

Naturally, the typists do no more than type. By contrast, a few years ago they proofread their own material. They do not now, and apparently never have, taken dictation. They are expected to file new briefs, slip opinions, and other material, but, due to other work, often get one month behind.

The Chief's secretary, who is theoretically the Office Manager, is almost completely preoccupied with the work of the docket clerk. While a new docket clerk has recently joined the office, she is not yet trained. Even when the new docket clerk is able to assume her duties, the Chief's secretary will be obliged to give her much assistance, since two persons are expected to keep the docket file up to date: a deputy docket clerk billet exists, but that is presently filled by a law clerk who prepares the briefs in all of the bail release appeals.

PART III. THE HANDLING OF APPEALS IN OTHER OFFICES

In an effort to obtain ideas for the improvement of the Appellate Division, we inquired into the methods of preparation of briefs utilized by the U.S. Attorney's Office in Manhattan and by the Appeals Bureau of the Office of the District Attorney for New York County. While the inquiry was limited, it did disclose some interesting information.

In the U.S. Attorney's Office for the Southern District of New York, there is no appellate section or bureau. Instead, briefs are usually drafted by the assistant who tried the case in the District Court.[6] He is assisted by a senior assistant—one with more than two years' experience, who has the responsibility of becoming thoroughly familiar with the case and of revising the brief where necessary. Upon completion of the revision, the brief is submitted to the Chief Appellate Attorney or his assistant for a final editing.

As in the District of Columbia, assistants in the New York U.S. Attorney's Office participate in a moot court proceeding on the day before oral argument. The New York moot court panel, however, consists of the revisor, the Chief Appellate Attorney, and a third AUSA who has read both the Appellant's and the Appellee's briefs; thus the panel is quite familiar with the case. It is not unusual, according to one AUSA, for the moot court to continue for two or more hours while an effort is made to meet all possible challenges.

During one year, the "average" assistant will prepare approximately 10 to 12 appeals and, in addition, conduct an equal number of trials. The office estimates that its reversal rate is approximately that of the Second Circuit—*i.e.*, 6.6 percent.[7]

Although personnel in the Criminal Division never handle civil matters, the U.S. Attorney's Office in New York is able to attract highly qualified personnel from the Wall Street firms, as well as from clerkships. At present the balance between experienced (i.e., two or more years out of law school) Wall Street practitioners and recent clerks is approximately 50–50.

The Appeals Bureau of the New York County District Attorney's Office, which is manned by 13 attorneys, including the Chief of the

[6] If that assistant is involved in a trial, the brief will be assigned to another assistant who is temporarily free from trial work. The assistant who tried the case below will then act as the revisor.

[7] See 1968 Annual Report of the Director of the Administrative Office of the United States Courts, Table B1.

Bureau, is responsible for the preparation of over 700 appeal briefs per year—an average of nearly 4.5 briefs per month per man. To deal with this extraordinary workload, the Bureau has been forced to severely limit its effort in the 250 appeals of misdemeanor cases; thus the briefs in these cases are usually written in an admittedly cursory fashion, without any review or revision. In the 125–150 appeals of felony convictions in which there has been no evidentiary hearing, the brief will again be written in rapid fashion, but it will be edited by a senior member of the Bureau. By contrast, the appeals of felony convictions in which there has been an evidentiary proceeding, and all appeals to the Court of Appeals, are considered "heavy," and as such, are given careful consideration by the writer and close editing by the Chief of the Bureau. The Chief of the Bureau estimates that there are approximately 13 "heavy" briefs per month—or one per man per month.[8]

The Appeals Bureau does not conduct a moot court prior to oral argument, but where the appeal is to be argued by a relatively inexperienced attorney, the Bureau Chief will discuss the case with the attorney on the day before oral argument. In addition, the Bureau Chief attempts to attend all oral arguments before the Appellate Division (*i.e.*, appeals of felonies).

In 1968, according to the Bureau Chief, the Appeals Bureau suffered reversals in 5 percent of the appeals heard before the Appellate Division. By contrast, its 1968 reversal rate in cases heard by the Appellate Term (*i.e.*, misdemeanor appeals) was 12–15 percent. In the same year, the Bureau was reversed in 8 of the 16 cases brought before the New York Court of Appeals by defendants.

An attorney in the Appeals Bureau will usually have had at least one year's experience in the junior bureaus—*i.e.*, complaints, criminal court (misdemeanor) and indictments. He will have been chosen for the Appeals Bureau on the basis of his own expressed preference and will usually remain in that Bureau throughout the remainder of his four year commitment. Although an attorney in the Appeals Bureau will not handle any purely civil matters, he will be given an opportunity to try two or three felony cases per year, usually in the summer months.

PART IV. EVALUATION

The evaluation of the Appellate Division was based on the following questions:

(1) Does the Division effectively represent the interests of the Government on appeal?

(2) Does the Division adequately assist the Court in the processing of cases?

A. Effectiveness of Representation

During the fiscal year ended June 30, 1968, the Government suffered a reversal in 14.9 percent of its criminal cases which were submitted in the U.S. Court of Appeals for the District of Columbia.[9] Although the

[8] The remaining cases—consisting primarily of Federal habeas corpus petitions and petitions for certification are usually given limited treatment.

[9] See 1968 Annual Report of the Director of the Administrative Office of the United States Courts, Table B1.

final figures for the fiscal year ended June 30, 1969, are not yet available, our statistics indicate that the rate for 1969 will be approximately the same as that for 1968. This reversal rate is slightly less than those realized in other federal jurisdictions, i.e., 16 percent; but it is more than double the rate achieved by the U.S. Attorney for the Southern District of New York and by the Appeals Bureau of the New York County District Attorney in appeals before the Appellate Division.

A study of 75 briefs prepared by the Division, or at its request, suggests that the representation has been spotty. Approximately 70 percent of the briefs prepared inside the Office were, in the opinion of one member of the Study Team, good to excellent in quality; 22.5 percent satisfactory, and 7.5 percent were barely satisfactory. By contrast, of the briefs prepared outside the Office, only 40 percent were good to excellent in quality and two were unacceptably poor.[10] Thus, approximately 60 percent of all briefs submitted on behalf of the Government fall within the good to excellent category. Unfortunately, this figure is somewhat misleading since it includes the simple briefs, all of which should be excellent in quality. Of the briefs submitted in the more complex cases, only 45 percent of those written in the office and 53 percent of all such briefs could be deemed good to excellent.

While the above evaluations only represent the views of one observer, they do accord with the views of the four judges of the U.S. Court of Appeals who were interviewed and who each expressed the view that the performance of the office in brief writing varied from occasionally unacceptable to excellent. Three of the four judges had noticed that briefs prepared outside the Appellate Division were often inferior. The other felt that the briefs written outside the office were often better than those written by the assistants.

Three of the judges felt that the Government's performance on oral argument was generally rather good, though here too the performance was said to be spotty; one felt that the inexperience of the prosecutors demonstrated itself most markedly during oral argument.

To summarize: Although the reversal rate is slightly lower in the District of Columbia than in some other federal appellate jurisdictions, the quality of briefs submitted needs to be improved. In light of the number of marginal briefs, and because a large portion of U.S. Court of Appeals' jurisdiction in the District consists of simple criminal cases which one would expect to be affirmed, one cannot help but wonder if the briefs are not affecting the outcome in a quantitative sense; it seems inevitable that the briefs must affect the outcome in a qualitative sense—*i.e.*, a poor brief will not offer any guidelines for an opinion affirming the conviction or help to restrain an opinion reversing the decision below.

B. Assistance to the Court

The four judges of the Court who were interviewed expressed general satisfaction with the effort being made by the office to assist the Court in the processing of cases—except insofar as it is submitting substantively inadequate briefs. In particular, the judges felt that

[10] However, the few briefs which had been prepared by members of the Office of Legal Counsel and of the Office of the Solicitor General were uniformly good or excellent.

the presentation of facts in the briefs, while sometimes incomplete, was generally reliable and therefore useful. One judge felt that the members of the Division should be making a greater effort to find answers to obvious questions, which are not resolved by the record, but which could be resolved by a telephone call to the trial attorney.

Though not mentioned by the judges, the Division is obviously inhibiting the effective administration of justice by its practice of requesting extensions of time in approximately 90 percent of its cases. Since such requests are systematically granted by the Court, of necessity, the Division can be said to be responsible for one month of the appellate backlog.

PART V. RECOMMENDATIONS

A. Operating Methods

On the basis of (1) interviews with the assistants in the Appellate Division, and with the former Chief of the Division, and (2) the practice in the Division in 1958 and 1959, (3) the practice in the Appeals Bureau in the New York County District Attorney's Office and in the U.S. Attorney's Office for the Southern District of New York, and (4) the personal observations and experience of the Court Management Study Team, it is recommended that assistants assigned to the Appellate Division not be expected or required to prepare more than two briefs per month.[11] The team further recommends that

	Days
Reading of the Record	1
Legal Research	2
Writing of Facts	2
Writing of Legal Arguments	2
Revision	1
Preparation	1

The remaining man-day would be consumed by various administrative duties, participation in other assistants' moot courts, preparation of, or responding to, motions, oral arguments, etc.

no brief be assigned to members of the Justice Department, other than to members of the Office of Legal Counsel and of the Solicitor General's Office.

Even two briefs per month will be excessive workload unless the assistants have the opportunity to work with a draft typed by a secretary, and unless the secretary, in typing the final draft, is expected to make obvious corrections and to proofread, with the assistance of another secretary, all of her final copy.

In a private law firm, a brief is normally prepared by an associate and thereafter reviewed, with extraordinary care, by a partner who is usually equally familiar with the case as is his associate. A similar procedure is utilized at the appellate level in the Justice Department, in the U.S. Attorney's Office for the Southern District of New York, and in the Appeals Bureau of the New York County District Attorney's Office. The Study Team believes that the quality of the briefs prepared by the Appellate Division of the U.S. Attorney's Office in the District of Columbia cannot be raised to a level of consistent excellence unless the briefs are subjected to similar review and supervision. The purpose of such supervision should not be to make edi-

[11] The working 10 days which would thus be available for the preparation of each case might be divided as follows:

torial changes, although some such changes may be necessary; rather the review should be designed to ensure that all questions raised by the record, even if not raised by the defendant, are adequately and persuasively discussed in the brief of the Government.[12] In addition, and equally important, the revision process would serve to improve the appellate advocacy ability of the assistants. If the revision process were to occur but once per brief, it would have to be made by exceptionally qualified assistants, who might be designated Deputy Chiefs.

It should be noted that as of June, 1969, the Acting Chief and a number of the members of the Division had substantial doubts whether such supervision was necessary or desirable. They believed that their briefs would be quite adequate, without review or revision, if they had sufficient time for preparation. In addition, they felt that one of the principal attractions of the office is that an assistant is given an opportunity to represent the Government on his own. The former Chief of the Division, Judge Nebeker, believes that extensive supervision should be given only to briefs prepared by assistants of less than three months' experience; that briefs written by assistants of three to six months' experience should be subjected to somewhat less supervision; and that briefs written by more experienced assistants should not be given more than very limited supervision. The new Chief would, in ideal circumstances, like to give more attention to briefs written by the more experienced assistants than would Judge Nebeker, but he feels that such added supervision is neither practical nor relatively consequential in light of the office's other manpower needs. Judge Nebeker suggests that even his limited supervision, along with the usual office administrative duties would occupy the full time of two Deputy Chiefs.

We recommend the immediate adoption of a program whereby all briefs are subjected to close supervision; however, in light of the practicalities, we also urge as an alternative that at the least Judge Nebeker's plan for supervision of the briefs be adopted as a starter and that all briefs not subjected to careful review by a Deputy Chief should at least be read by the Chief or a Deputy Chief prior to being filed. To ensure that the training aspect of the revision process is not wasted, the Division should not be required to accept attorneys on loan for a few months from the Justice Department.

B. Oral Arguments

The moot court often fails to prepare the assistant for oral argument since the panel of assistants has not had an opportunity to read the appellant's brief or to otherwise prepare for the moot court, other than to read the government briefs. As a consequence, some of the more experienced assistants question the utility of the moot court. In our opinion, the practice of holding moot courts shortly before oral argument should be continued. However, the preparation for the moot court should include, at the minimum, the reading of the opposing counsel's brief and substantial contemplation of the issues raised by the facts of the case. Unless such preparation is made for the moot court of

[12] The supervision would also help to prevent instances in which a brief writer takes a position which is inconsistent with that taken by the Government in other cases.

an experienced assistant, it is recommended that he not be required to participate in the moot court exercise, since that will be a waste of his time.

C. Personnel

In order to reduce the caseload to an acceptable level, *i.e.*, two briefs per man per month, we recommend that the Division be manned by 15 assistants in addition to the Chief and Deputy Chief.[13] In addition, the Study Team agrees with Judge Nebeker that four to five of the attorneys in the Division should have at least two years experience at the appellate level; the remaining assistants should be retained in the Division for at least one year.

At the present time, nearly all the assistants who serve in the Appellate Division look forward to the day when they will be assigned to criminal trial work. It appears that the narrow practice of the Division, *i.e.*, criminal appeals only, together with the lack of training in appellate advocacy, may deter young men interested in appellate experience from joining the U.S. Attorney's Office in the District of Columbia. Accordingly, in order to recruit and retain attorneys who are interested in remaining with the Appellate Division for two or more years, the Division should offer more training, through the supervision of brief writing, at least to the extent suggested by Judge Nebeker, and in addition, the Division should (1) assume the responsibility for preparing briefs in all civil cases tried by the U.S. Attorney's Office in the District of Columbia, and (2) permit experienced assistants to try two or three felony cases per year. Once these changes are made, the Division should actively recruit attorneys who are interested in an appellate as well as trial experience.

If the office staff included four or five assistants, in addition to the Chief and Deputy Chief, who had two or more years experience, Judge Nebeker believes, and we agree, that the Division could assume the responsibility for preparing the 3 to 4 briefs per month in appeals of civil cases tried by the U.S. Attorney's Office in the District of Columbia without additional personnel, other than the number necessary to bring the office to 15 assistants, in addition to the Chief and Deputy Chief.

D. Clerical Personnel

The Study Team recommends that the office's clerical staff include a secretary for each two attorneys assigned to the Division. Thus, if, as has been recommended, the professional staff is increased to 16 in addition to the Chief, a total of eight secretaries, in addition to the Chief's secretary, will be needed.

The deputy docket clerk billet should be filled by a person whose sole duties will be to assist the docket clerk. If the profesional staff is increased as has been suggested, the office should not need the services of a law clerk.

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[13] The average number of briefs which the Division has been obliged to prepare each month in 1969 has been 28; in 1968, the monthly average was 26.5. At any given time, there should also be at least one trainee who should not be required, or allowed, to write more than one brief in a month.

REPORT ON SPECIAL PROCEEDINGS DIVISION OF THE UNITED STATES ATTORNEY'S OFFICE OF THE DISTRICT OF COLUMBIA

NOVEMBER 1969

SPECIAL PROCEEDINGS DIVISION

I. RESPONSIBILITIES

The Special Proceedings Division processes those matters which are not clearly the responsibility of any other division of the Office. Such a definition is perhaps too inclusive, but the collection of cases here is not easily classifiable. Matters relating to civil or criminal trials, cases presented before the Grand Jury or appeals are not within the purview of this Division. Primarily, however, the work of this Division involves actions testing the legality of confinement of an individual within a jail or hospital, and cases involving commitments to custody which are not the result of a criminal trial.[1]

II. PERSONNEL

The Division is composed of a Chief, who initially performed all of these tasks alone and has over ten years of familarity with the problems arising in this area, and two Assistants who are assigned for a period of 9–12 months. Recently, a full-time law clerk was made available to assist in the Division's activity. Two secretaries provide the clerical complement.

Training for these Assistants occurs under the direction of the Chief. When possible an Assistant departing from the Division is retained for a period of time in order to train his replacement. According to the Chief, a two-three month overlap between the time of the arrival of a replacement and the departure of a "veteran" Assistant is necessary in order to assure proper training and continuity of service. Usually, the overlap period is limited to 1–1½ months.

The Chief is of the view that this complement, which was increased recently through the addition of a permanent law clerk and the second full-time secretary, should be adequate to serve the needs of this Unit for the immedate future.

The work of the Assistants is to respond to those cases arising as a result of the filing of an action in the Court by a defendant or an attorney acting on his behalf arising under one of the statutes described above. When a case is filed, an Assistant is assigned to check the files, conduct personal investigations, such as contacting the jail or hospital and, if necessary, interview witnesses. A response is then prepared and filed. As part of the disposition of a case, a hearing or oral argument before the Court may be required.

III. MANAGEMENT

Because of the small size of the Division and its relative isolation from the work flow of the office it was not deemed a proper expenditure

[1] These include, responding on behalf of the government in habeas corpus matters; proceedings under 28 U.S.C. 2255; extradition cases; commitments to custody arising under Title III of the Narcotic Addict Rehabilitation Act of 1966, 42 U.S.C. Sections 3411, 3426 (Civil commitment of drug addicts not charged with crime); other civil mental health commitments; coram nobis; and special problems relating to parole, probation, detainers, civil and criminal insanity, incompetency to stand trial; and credit for time spent in custody while awaiting sentence.

of resources for the Study Team to construct data to sort the work flow by category and quantity.

The Division does not, as a normal course of its business, keep statistics, though it has in the past kept certain minimal records as to its performance. The Chief advises that cases are processed generally to meet the requirements set forth in the rules, or, when the rules do not specify the response period, these responses are filled within a reasonable period of time.

IV. DISCUSSION AND RECOMMENDATIONS

From the viewpoint of administration, the lessons to be drawn from the operation of this Division are instructive.

The Chief, who is totally committed to his work, exercises close personal supervision, which involves reading and commenting on all papers filed in the Court by members of his staff. Such supervisory conduct is, for example, unlike the operation of the Appellate Division, where a brief is generally not read by a supervisor prior to printing. (See, Report: *Appellate Division*, p. 425.)

While good supervision is a basic norm of sound administration other generally accepted administrative practices are not followed here. As noted, there is no management information system. Office policy is formulated by the Chief and is transmitted to other Assistants only through on-the-job exposure. No written policy statements are available to assist new Assistants to assess cases and to insure some measure of consistency in practice in the absence of the Chief.

Yet, one cannot say with certainty that the failure to follow all the well established rules for sound administration has been the cause of significant problems. The reasons that the Unit "works" are to be found in (1) the small number of persons working here; (2) the relative isolation of this Division from the other operations of the office; and (3) the highly personalized direct control exercised by a highly experienced and dedicated Chief. If any of these conditions were to change, the administrative shortcomings of the Division would soon become apparent. Even here, more management information would allow a better understanding of the effect of the cases handled on the administration of justice as it involves the courts, hospitals and jails. For instance, information about the number of habeas corpus or 2255's filed, the frequency of filings by particular defendants, the issues most commonly raised, etc., might lead to proposals for legislative change.

Information as to how much court time is consumed, by category, in processing the cases handled by the Special Proceedings Division would either support or refute critics who maintain that Appellate Court decisions have opened the floodgates to collateral attacks on convictions. The material contained in the files is rich for such research, but, in its present form, it is accessible only with some effort.

As for the immediate, the unit should (1) develop a written policy as to how particular types of cases should be handled; (2) insist that an Assistant, before transfer from the Division, remain for two months to train a successor; (3) attempt to establish a basic management information system. (See, Report: *Grand Jury Unit*, p. 417.)

SURVEY OF THE OFFICE OF THE U.S. MARSHAL FOR THE DISTRICT OF COLUMBIA

NOVEMBER 1969

PREFACE

The District of Columbia U.S. Marshal's Office is a large organization, and because of the diverse nature of its operations, a study conducted on a limited basis cannot, and should not, purport to be exhaustive.

Even an exhaustive organizational study remains a still-life which looks progressively less life-like as the subject ages. Thus, since the most intensive field work was done from late July, 1969 to early September, 1969, the pictures which have been drawn of the office's procedures and resources are frozen into that temporal zone. The major exception to that chronological rigidity is that, since much of the field work was done, it has been learned that a substantial number of new positions have been authorized, and that factor has been considered in the writing of this report.

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SURVEY OF THE OFFICE OF THE U.S. MARSHAL FOR THE DISTRICT OF COLUMBIA

PURPOSE AND SCOPE

Purpose

The major duty of the United States Marshal is to serve the judiciary. Usually, the judiciary to be served is a Federal Court system, but, in the District of Columbia, the court system to be served by the United States Marshal's Office includes both Federal and local courts. Because of its close and constant relationship to the Courts in the District of Columbia, insufficiencies in the U.S. Marshal's Office have a markedly deleterious effect upon the operations of those courts. The Court Management Study is engaged in formulating recommendations for improving the internal management and administration of the Courts of the District of Columbia, and the U.S. Marshal for the District of Columbia is an integral part of the administrative picture.

In addition to its role in the administration of the courts, the U.S. Marshal's Office is required to enforce federal laws and to execute orders of the federal courts. It is because of these duties that the efficient functioning of the U.S. Marshal for the District of Columbia, as a significant law enforcement agency in the nation's capital, should be of interest to all citizens and taxpayers.

This report is prepared for the purposes of explaining the operations of the U.S. Marshal for the District of Columbia and making recommendations which are directed toward improving those operations.

Scope

This survey evolved from a concern about the effect that the Office of the U.S. Marshal for the District of Columbia has had upon the flow of cases throughout the District of Columbia court system. For that reason, the resources necessary for a greatly detailed management study—e.g., one which would include a study of paperwork within the office—were not devoted to the preparation of this report.

The study, then, deals with the functioning of the U.S. Marshal for the District of Columbia. The focus is upon administration—the quantity and utilization of resources. Important social issues outside the area of administration (e.g., Marshal-community relations) have been left for a much needed later study, perhaps by the Executive Office of the U.S. Marshal.

GENERAL DESCRIPTION

Setting

The U.S. Marshal for the District of Columbia, like the U.S. Marshal for every other federal judicial district, is appointed by the President. The U.S. Marshal is supervised in a large part of his daily work by the

federal judiciary; although, structurally the U.S. Marshal's Office is part of the Department of Justice and therefore ultimately responsible to the Attorney General of the United States.

The U.S. Marshal for the District of Columbia differs from his counterpart in other judicial districts in two respects: First, except for the U.S. Marshal for the Southern District of New York, the U.S. Marshal for the District of Columbia is the only U.S. Marshal who need not be a resident of the judicial district; and, more importantly, in the context of this study, unlike any other U.S. Marshal, he is charged with performing the tasks, generated by a large urban court system, which are—in a state court system—usually assigned to a sheriff.

Function

By rule of court and statute, the U.S. Marshal is given the responsibility for serving or executing the process of the United States District Court for the District of Columbia, the Juvenile Court, and the Court of General Sessions. Because of his unique status as a combined Federal Marshal and local sheriff, the range of process served by the U.S. Marshal for the District of Columbia varies from Small Claims summons and complaints for less than $150 to summons and complaints instituting multi-million dollar federal litigation.

A second major duty of the U.S. Marshal for the District of Columbia is law enforcement. "Law enforcement," for the U.S. Marshal has two dimensions. First, it means executing court orders and bench warrants, and, second, it means that when a federal agency with the power of arrest is needed, the U.S. Marshal may be called upon. Examples of the latter situation are the March on the Pentagon in the fall of 1967, and a major narcotics raid in the Washington Metropolitan Area in the summer of 1969.

Federal prisoners are transported within the District of Columbia and across the country by the U.S. Marshal for the District of Columbia. Cellblocks in the U.S. District Court for the District of Columbia, the Court of General Sessions, and Juvenile Court are operated by the U.S. Marshal, and from these cellblocks, prisoners are escorted to court.

The U.S. Marshal serves the Federal courts in other ways besides execution of its process and handling its prisoners. In the U.S. District Court for the District of Columbia, deputy U.S. Marshals act as bailiffs. In the Juvenile Court and the Court of General Sessions they attend court to assure order, tend to the jury or handle prisoners—although those courts employ separate bailiffs. Grand juries in the U.S. District Court, and petit juries in the U.S. District Court, the Court of General Sessions, and Juvenile Court, are attended to by deputy U.S. Marshals.

The U.S. Marshal is also the cashier for the courts. (In 1968, the U.S. Marshal for the District of Columbia collected over $380,000 in fees.) The salaries of the court employees and the U.S. Attorney's employees, as well as witnesses and juror fees are paid by the District of Columbia U.S. Marshal's Office.

Personnel

At the time of our investigation, the U.S. Marshal for the District of Columbia had 112 authorized slots. Of those, 90 were occupied by

deputy U.S. Marshals, 17 were filled with clerical personnel and the remainder were vacant.

As of September 22, 1969, the number of authorized slots was raised to 168—at the request of the U.S. Marshal for the District of Columbia. He reports that he intends to increase the number of clerical positions to about 23, and the number of deputy U.S. Marshals, in his office, to 145. The process of screening applicants for the unfilled slots is presently underway.

SUMMARY OF CONCLUSIONS

These findings are extremely generalized, thus the details, and the data supporting them, are set out at greater length below. The findings in this section are arranged in the same order in which they are presented in the section on "Analysis and Detailed Recommendations".

We find:

1. That the chain of command is not being followed, and that lines of authority and responsibility in the Office of the U.S. Marshal for the District of Columbia are unclear;
2. That the Warrant Squad does not have sufficient manpower to properly handle its workload;
3. That the security facilities at the Court of General Sessions are inadequate, and that both manpower and equipment are lacking in the General Sessions Division of the District of Columbia U.S. Marshal's Office;
4. That court delays contribute to the workload in the U.S. District Court cellblock;
5. That the service of process operation is badly in need of overhauling, and that, in its present state it impedes the efficient administration of justice;
6. That the use of deputy U.S. Marshals as bailiffs in civil cases in the U.S. District Court is not necessary;
7. That the U.S. Marshal for the District of Columbia needs two-way radio communication, vehicles, and clerical personnel to have the maximum use of his deputies; and
8. That in relation to the District of Columbia Metropolitan Police, the deputy U.S. Marshals have higher prerequisites to appointment, but receive less training and, but for the overtime pay, receive less compensation.

SUMMARY OF RECOMMENDATIONS

As with the "Summary of Conclusion," the briefly summarized recommendations, in this section, are presented in the same order in which they are supported—and more extensively discussed—in the section on "Analysis and Detailed Recommendations."

It is recommended:

1. That lines of authority and responsibility within the Office of the U.S. Marshal for the District of Columbia be more clearly defined and then adhered to;
2. That deputy U.S. Marshals engaged in the execution of warrants and the service of process move towards quality in their work;

3. That the Court of General Sessions cellblock facility be completely renovated to provide adequate security;

4. That judges in the Court of General Sessions restrict their requests for a deputy U.S. Marshal to attend court to special situations; and,

5. That the cellblock unit of the U.S. Marshal's Office in the U.S. District Court for the District of Columbia, change its present operating procedure to increase security and prisoner supervision;

6. That, in order to provide attorneys with advance notice of the unavailability of witnesses, definite time limits be imposed upon the filing and return of subpoenas;

7. That summons and complaints from the Civil Division of the Court of General Sessions, and complaints for possession from the Landlord and Tenant Branch of that Court, be mailed;

8. That, until sufficient manpower is in fact assigned to the service of process operation, Juvenile Court summonses, along with warrants and criminal subpoenas, be given top priority;

9. That the use of U.S. Marshals as bailiffs, in civil cases in the U.S. District Court for the District of Columbia, be discontinued;

10. That a company in the communications-systems field be requested to study and recommend means for providing an effective radio and telephone communications network for the District of Columbia U.S. Marshal's Office;

11. That three suitable buses and two such vans be provided for the purpose of transporting prisoners;

12. That either the salaries of deputy U.S. Marshals be raised, or their prerequisites of appointment be lowered, to reach parity with the D.C. Metropolitan Police;

13. That deputy U.S. Marshals be given administrative leave for disabilities incurred in the line of duty;

14. That the U.S. Marshal implement an operating manual and a formal training program, tailored to the needs of deputy U.S. Marshals in the District of Columbia.

ANALYSIS AND DETAILED RECOMMENDATIONS

Because the Office of the U.S. Marshal for the District of Columbia has obtained 56 new slots, based upon its own recommendations, the conclusions and recommendations in this report do not deal in significant detail with the number of individuals who are needed for each task. Rather, the purpose of the recommendations is to make suggestions which will lead the U.S. Marshal to greater efficiency in the performance of his role in the administration of justice in the District of Columbia.

Organizational Structure

The organizational chart in Appendix A shows a definite hierarchy. If the chart were set out in greater detail, the appearance would be more pyramidal since the deputies in the 14 Territories account for the majority of sworn personnel in the U.S. Marshal's Office. Each deputy is usually charged with performing multiple duties, from prisoner

handling to the service of process. As the chart indicates, such a deputy would appear to be four levels away from the Assistant Chief Deputy, five away from the Chief Deputy, and six away from the U.S. Marshal; however, the results of a questionnaire which was administered to the Marshal's Office in the summer of 1968 indicate that the organization chart is not an accurate picture of the lines of control.

Of the 37 responding deputies in the territories, seven of them did not name their territory leader as their immediate supervisor. In the warrant squad, the five deputies responding named the head of the warrant squad, and not their area supervisors as immediate supervisors. Although this improper view of the hierarchy by the deputies is not substantial in terms of the number who failed to properly place themselves, it would still seem significant that *any* of the deputies would either be unaware of who is their immediate supervisor, or, even if aware of it, receive most of their supervision from someone else.

When the deputies responded to "Names and Titles of Persons (Other Than Immediate Supervisor) From Whom You Receive Work Assignments," 16 of the 31 territory deputies (this excludes territory leaders) who responded named the U.S. Marshal, the Chief Deputy, and the Assistant Chief Deputy.

Because such a large percentage (52 percent of those responding to the questionnaire) of deputies received assignments from all of the three highest executives in the department, it seems fair to conclude that the chain of command is not being honored. The advisability of such a situation is discussed by O. W. Wilson—who was Dean of the School of Criminology, University of California, Berkeley, and Superintendent of Police, Chicago, Illinois—in his book, *Police Administration*.

> Adherence to officially established lines of authority may seem to cause needless delay, and the process of control may appear to be unduly cumbersome and involved. Desire to get on with the job sometimes leads to cutting across lines of control in violation of the principle of unity of command. The same desire tempts the executive to undertake an unreasonable span of control in order to provide a more direct access to those engaged in the performance of a task. Friction and loss of control then result. When the principles are disregarded, the force operates without organization, and its effectiveness becomes dependent on the judgment and good will of its members.[1]

CONCLUSIONS AND RECOMMENDATIONS

There are many factors which may account for the inability of the U.S. Marshal for the District of Columbia to handle his workload effectively. Some of these factors are discussed at length elsewhere in this report. Given both the U.S. Marshal's inability to perform all his assigned duties, and the disparity between the formal and de facto lines of control, it may be that the latter contributes to the former to some degree.

As of August, 1969, the District of Columbia U.S. Marshal's Office was adopting procedures to bring itself into closer proximity to the formal chain of command. This will mean that there will be less day-to-day involvement of the U.S. Marshal for the District of Columbia, the Chief Deputy, and the Assistant Chief Deputy (District Court Division), in the operations of each deputy.

[1] O. W. Wilson, *Police Administration*, 2d Ed. (New York: McGraw-Hill, 1963), p. 36.

Recommendation.—Lines of authority and responsibility should be clearly defined and adhered to. Lower level supervisors—primarily the territory leaders and area supervisors—should more actively engage in the day-to-day tasks of inspection and supervision. The U.S. Marshal for the District of Columbia, the Chief Deputy, and the Assistant Chief Deputy (District Court Division), should remain available for special situations which might require a high level decision and they should devote most of their time to their planning, leadership and coordination responsibilities. They should refrain from getting involved in the details of day-to-day operations. In addition, these executives should periodically inspect the operations of the various units to assure that official procedures are being followed and that those procedures are working.[2]

Warrant Squad

STRUCTURE

At the time of our investigation the Warrant Squad had 9 deputies (one section head, two unit supervisors and 6 other deputies), and a secretary. In the field, they work in teams of two, the ninth man is either at a desk handling clerical work, such as communications with other agencies or Marshal's Offices, or is detailed out of the squad.

FUNCTION AND WORKLOAD

Primarily, as the name indicates, the Warrant Squad is charged with the execution of federal warrants. This squad is the heart of the District of Columbia Marshal's law enforcement function.

Each month 250 to 350 new warrants are received.[3] Those which are not executed, withdrawn, expired (in the case of civil attachments), or sent out, will be carried forward. The rate at which warrants are disposed of is running behind the rate at which they are received. As of July 9, 1969, there were approximately 1,300 working warrants on hand[4]—this is equivalent to roughly 4 months' worth of warrants received.

While there are 1,300 working warrants outstanding, arrests are averaging 153 per month. One reason for the low arrest rate could well be that the full resources of the Warrant Squad are not being devoted to executing warrants. Duties, which have priority, such as transporting prisoners, guarding witnesses, cellblock and courtroom assignments, and miscellaneous tasks for the Department of Justice, account for an average of 75 work days per month.[5] Another plausible reason for the number of outstanding warrants is that attempts at executing the warrants are often superficial. It is reported that the emphasis has been upon quantity—e.g., visiting as many last known addresses as possible—rather than thorough investigation.

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[2] O. W. Wilson, *Police Administration*, 2d Ed. (New York: McGraw-Hill, 1963), pp. 36 and 109–112.

[3] Source: Warrant Squad Monthly Statistical Report. Although their accuracy was not independently verified, these in-house figures have been used throughout this report. It is felt, however, that such figures are extremely valuable, both because they are at least indicative of the true state of affairs, and because they are relied upon for decisionmaking within the U.S. Marshal's office.

[4] A working warrant is one which is to be executed immediately. A non-working warrant is one on which an arrest cannot be made immediately upon locating the individual who is sought, because that individual is in the custody of some other agency.

[5] Source: Warrant Squad monthly statistical reports. If a standard month of 20 work days is used, there are 180 work days (excluding overtime) available to the nine-man Warrant Squad. The other duties, then, account for almost 42 percent of the Warrant Squad's time.

Conclusions and Recommendations

The Warrant Squad is responsible for all arrests made by the U.S. Marshal under ordinary circumstances (extra-ordinary circumstances would include the March on the Pentagon and a major narcotics raid). The over 1,300 outstanding warrants may be due to a number of factors (e.g. the Bail Reform Act),[6] but the arrest rate and the figures on time required for other tasks would indicate that insufficient manpower is available for the quality of investigation which is needed to retire those outstanding warrants. The relationship of unexecuted bench warrants to the efficient administration of criminal justice is demonstrated by the fact that as of September 1, 1969, in 278 of the 1,798 criminal cases pending in the U.S. District Court for the District of Columbia, a bench warrant had been issued for the defendant. If respect for the legal system is sought, measures must be taken to reduce the number of individuals who successfully defy it.

The Marshal's Office reports that the Warrant Squad's manpower deficit will be the first order of business when additional deputies are hired; that action should bring about favorable change in the unit's situation.

Recommendation.—In light of the fact that sufficient manpower is in the process of being made available, it is recommended that much emphasis be placed upon high quality work. The term "quality" is to be contrasted with "quantity," and indicates that every reasonable means will be employed to carry out the assignments. Thus, when a deputy U.S. Marshal is informed that the individual he is seeking is no longer at the given address, he should continue to follow leads to search for that individual. The performance of these deputies should be closely monitored by the Warrant Squad Supervisor, in order to assure that the move towards quality is proceeding steadily. It is also recommended that someone other than a deputy U.S. Marshal be assigned the clerical work.

General Sessions

Structure

The permanently assigned staff in the General Sessions section of the District of Columbia Marshal's Office, at the time of our study, was distributed as follows: Criminal Division: 1 supervisor, 3 deputies; Civil Division: 1 supervisor, 1 deputy, 1 cashier; Juvenile Division: 1 supervisor, 3 deputies.

Additionally, 8 to 12 deputy marshals were assigned daily, from the General Assignment Section; the number so assigned will depend upon the anticipated workload and the number of part time U.S. Marshal's employees (these are the "per diem" employees who are paid by the day, though they may work for one day, a month, or more) available.

Function and Workload

The deputies on the criminal side are responsible for prisoners; in the cellblock, in court, and going to and from court. They are also re-

[6] Prior to the Bail Reform Act, bondsmen shouldered much of the burden of pursuing defendants who had jumped bail. The Bail Reform Act has, in part, shifted this burden to the U.S. Marshal's Office. At the end of April, 1969, for example, the Warrant Squad's statistics show that 117 warrants were outstanding on defendants who had been out on personal recognizance.

quired, by the judge, to maintain order in most courtrooms hearing criminal matters

On the civil side, deputies attend court when specifically requested, by the judge, and must attend both civil and criminal courts whenever there is a jury to be entrusted to them.

In the court where preliminary hearings on felonies are held ("Felony Court")—which runs each afternoon—there are two deputies for up to 15 prisoners. One deputy is in charge of the cell behind the courtroom and the other is in the courtroom.

In the Assignment Court, two deputies are used in the morning; in the afternoon when most of the prisoners come through, three or four deputies are used for up to forty prisoners at a time. One deputy sits in front of the bench doing clerical work, another is used solely to assure order. In the afternoon, there is a deputy watching the cellblock and perhaps a second deputy in the courtroom to assure order.

As mentioned before, all jury cases require a deputy Marshal, and some judges will require the deputy to be present for the whole trial, as opposed to just the period during which the jury is placed in his custody. Usually, a deputy assigned to a court will take care of the jury, but, again, some judges require a second deputy.

From our observation and interviews with supervisory deputy U.S. Marshals, it does not appear that an excess of deputies are being assigned to courtrooms by the Marshal. The presence of deputy U.S. Marshals in the General Sessions courtrooms must ordinarily be requested by a judge. A deputy is usually assigned to a courtroom, absent a judicial request, only to handle prisoners or to take charge of a sequestered or deliberating jury. The Marshal's Office reports that, in General Sessions, 900 to 1,500 hours per month are spent with prisoners in court, and 40 to 100 hours per month are spent with deliberating or sequestered juries. Another 50 to 160 hours per month are spent in General Sessions Courtrooms without prisoners.[7]

The cashier is responsible for receiving process and fees for service. According to the monthly report of General Sessions Marshal's Office, from 700 to over 1,000 items are received on an average weekday. Since there is only one cashier and since the bulk of items come in late in the day, a deputy is usually required to help out in the cashier's cage.

Each month the Marshal at General Sessions handles 1,900 to 2,300 prisoners. The cellblock in General Sessions, where the prisoners are kept, contains two bull pens—one of which is inoperative and under repair because of a fire in January, 1969. The other is not always under supervision, so that occurrences in it may go unnoticed. When one leaves the bull pen, he must go through a second iron door to get into the cellblock central area which contains a desk. Once in the central area, and without a key, one may go to the elevators to the Felony and Assignment Courts' lockups, or the *public* elevator to the first floor hallway. In addition, the other bull pen area would be accessible with a key, as would the garage which is usually kept closed only when prisoners are being brought in or our. However, *the key for access to the garage from the central area is hanging on a chain on the door and may be reached from either side*—the garage or the central area.

[7] Source: U.S. Marshal, Court of General Sessions Section, Monthly Statistical Reports.

Generally, one or two unarmed men are in the central area; each man has a complete set of keys at all times, so that the man who opens the bull pen to get a prisoner for court has—on the same key ring—the key to the cellblock central area and the courtroom cellblocks.

The bars in the bull pen extend only as far as the false ceiling. The false ceiling is accoustical material, and it is reported that four prisoners recently escaped by removing the ceiling panels and crawling out of the cell.

Criminal trials may be held in any courtroom in the General Sessions criminal building, the General Sessions civil building across the park, or the old City Hall which is across E Street from the General Sessions criminal building. In addition, the old Pension Building, across F Street is being altered to house General Sessions trials. Only two courtrooms—those being used for Felony and Assignment courts—have lockups which are directly accessible from the General Sessions cellblock; all the others in the three buildings require the Marshal to escort prisoners through public areas and/or through open space. A one-to-one prisoner to deputy ratio is usually attempted for moving through public areas, but, it is reported and confirmed by observation that, at a given time, sufficient deputies may be unavailable.

CONCLUSIONS AND RECOMMENDATIONS

1. Physical Security

Physically, the present system allows any or all of the 50 prisoners to take the keys from a deputy in the bull pen and escape. All the keys needed to reach the outside are readily available.[8]

Recommendation.—A Federal Bureau of Prisons Jail Inspector should be requested to study the General Sessions cellblock and to make more detailed recommendations. No new facility should be constructed for locking up General Sessions prisoners without consulting such an expert.

2. Prisoner Supervision

There is no supervision of the bull pen occupants. It was reported that attacks on prisoners have occurred, and it is believed that they will continue to occur so long as there is no one who is charged with assuring the safety of individual prisoners.

Recommendation.—A desk which is raised to a sufficient height to give its occupant an unobstructed view of the entire cell should be installed in each bull pen area, in order that the person at the desk can continually be aware of the prisoners' activities. The person at the desk would also have the duty of summoning individual prisoners and letting them out of the bull pen.

3. Prisoner Movement

The movement of prisoners between the cellblock and the courtroom, in most cases, involves traversing open space and/or public hallways. Certainly this is undesirable from a security point of view;[9]

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[8] On his "Administrative Checklist," question Number 262, Mr. Wilson asks: "If the jailer should be overpowered and his keys taken from him, is the escape of prisoners possible except through a locked door to which they would not have a key?" U.S. Marshal, Court of General Sessions Section, Monthly Statistical Reports, p. 491.

[9] In this "Administrative Checklist," question Number 263, Mr. Wilson asks: "May prisoners be taken from their jail cells into the courtroom without the necessity of traversing space to which the public or officers other than jail staff have access?" *Ibid.*, p. 491.

especially when, as reported and confirmed by observation, one deputy may have to escort two prisoners through these public areas.

Recommendation.—Ideally, direct non-public access from cellblock to courtroom should be available. In addition, each courtroom should have its own lockup. However, until a new facility is built for the Court of General Sessions, it is assumed that the cost would be prohibitive, and that the only temporary solution would be to use more deputies to escort prisoners to court.

4. Felony Court and Assignment Court

The Felony and Assignment Courts are special cases. They occupy courtrooms which, in sharp contrast to other General Sessions Courtrooms, provide both adjacent lockups and direct non-public access to the cellblock. Because they are so equipped, the security risks in these courtrooms are relatively minimal. It should, however, be pointed out that the number of prisoners involved—possibly 15 in Felony Court and 40 in Assignment Court on an ordinary day—creates an ever present risk of escape, if the 2 to 4 deputies in the courtroom are careless in their handling of the prisoners. Further, the inadequate protection of the windows in the Felony Court lockup has allowed at least one prisoner to escape.

Recommendation.—Prisoners should be brought from the lockup to the courtroom one at a time, and returned immediately after the judge has finished with them.

Repetition of the reported escape from the Felony Court lockup can be avoided by covering the windows with tightly fitted heavy guage screening.

The use of three or four deputies in Assignment Court should be continued when prisoners are present; absent prisoners, one deputy is sufficient. There is now a deputy doing clerical work in the Assignment Court, and, as long as he must be there for security, he should continue this function.

It is recommended that two to three deputies be stationed in the Felony Court. Since Felony Court runs in the afternoon, the deputies assigned there will be free for other duties in the morning.

5. Manpower

Despite the scheduled increase in the number of deputies permanently assigned to General Sessions (General Sessions and Juvenile Court are reportedly slated for an increase to 25 deputies), the projected expansion of the Court of General Sessions makes it quite possible that the Marshal's staff will be unable to provide the additional security which is going to be needed when a fourth building—without direct non-public access to the cellblock—is in use.

The use of deputies in criminal cases now depends upon the preference of the individual judge. Some judges will not hear any criminal matters—even if the defendant is on personal bond—without a Marshal. In civil cases the use of Marshals for non-jury matters is also in the discretion of the judge.

Recommendations.—To make the best use of the deputy U.S. Marshals at General Sessions, it is recommended that in each building housing General Sessions Courtrooms, an office be provided for, and staffed by, deputy U.S. Marshals. Such an arrangement will insure a

speedy response to either emergencies or special judicial requests for additional deputies. Such an arrangement also makes it reasonable to ask judges not to request a full-time deputy in the courtroom unless there are prisoners, deliberating juries, or other special circumstances.

The practice of using a deputy U.S. Marshal, earning over $10,000 per year, as an assistant cashier should cease; an appropriate clerk should be given the position.

District Court Cellblock

STRUCTURE

The Cellblock Unit reports to the Assistant Chief Deputy. At the time of our observation there was a supervisor, four male deputies, one female deputy, a chauffeur, and usually three deputy Marshals who were specially assigned. In addition, five or more deputies were assigned on a Friday (the busiest day).

FUNCTION AND WORKLOAD

Essentially, the Cellblock section has two duties: transportation of prisoners and cellblock security. In addition, the deputies who are specially assigned there will escort prisoners to courtrooms. According to the April, 1969, prisoner lists; on an average day, Monday through Thursday, 35 to 50 prisoners were brought up for the District Court. Friday used to involve over twice as many total prisoners because arraignments were held on that day in District Court. With the institution, in the District Court, of the individual calendar, the daily number of prisoners will increase, but the prisoner load on Fridays will no longer be so greatly disproportionate.

The cellblock is in the basement of the U.S. District Courthouse. There are four bull pens, each with a capacity of about 50 prisoners. In addition, there are women's facilities and some smaller retaining cells which are used for new arrivals, first aid, interviews, and other special situations. From the bull pens, the prisoners move: To special elevators which carry them directly to the courtroom lockups; through a locked gate to either the van lift pit or the Commissioner's elevator; or, through a locked door to the office (which must be left by a second locked door). The bull pens are equipped with a small anteroom which is segregated from the rest of the bull pen by an electrically operated gate, the gate however is not usually used. There is no system presently in use for observing prisoners in the bull pens, so that incidents may go unnoticed.

A sample of prisoner lists in April, 1969, shows that, of the 35 to 50 prisoners brought up to District Court each day, 7 to 16 had been brought up for the sole purpose of awaiting trial. Thus in the two weeks which were sampled, 57 prisoners were brought up to be held for trial. Of the 57, nearly 30 percent were brought up twice, and two had been brought up four times within the two week period. An even more revealing figure is that over the sample period of eight days on which these "Hold for Trials" were brought up, only once did the number who saw a judge exceed 50 percent.[10]

[10] Of those, in the sample, who *did* go before a judge, 33 percent withdrew their not guilty plea. It has been demonstrated that the percentage of not guilty pleas withdrawn will decrease as the number of court appearances increases. Banfield and Anderson, *Continuances in the Cook County Criminal Courts*, 35 Chi. L. Rev. 259, 301 (1968). There is, however, no indication as to whether coming up to await trial can be equated with a court appearance.

The situation with respect to unnecessary call-ups of prisoners is only an arc in a circle. While the unnecessary call-ups are a function of defects in calendaring and caseflow, to some extent those defects are attributable to insufficiences in the U.S. Marshal's prisoner handling operation. To demonstrate this point, one need only compare the large percentage of prisoners, who needlessly are brought up for trial each day, with the statements of judges on their "Trial Delay Reports." Ninety-seven such reports were submitted to the Chief Judge, with varying regularity, from September, 1968, to May, 1969; in 14 of these reports, delays which ranged from ½ hour to 2¼ hours were attributed to the fact that the prisoner was not in court on time. Thus, the judges in the U.S. District Court over-scheduled cases to assure a steady flow of work and the oversetting strains the U.S. Marshal's prisoner handling operation. When that operation falters, the attendant delays cause the judges to react by continuing to overset their calendars. It is evident, therefore, that calendar breakdowns, in the courts, are closely related to breakdowns throughout the system. The end result is, that, like the courts and other related agencies, the Marshal's Office must unnecessarily expend labor and funds in an attempt to break out of the circle.[11]

Security in the cellblock *is* possible with existing facilities. Under present practice, however, it is also possible for the 50 or so inhabitants of a bull pen to overpower the unarmed deputies and escape via the commissioner's elevator. The cellblock deputies carry all the keys needed for this escape.

Recommendations.—It is recommended that prisoners summoned for court be requested to step into the ante area and that the ante area be sealed off from the bull pen before the door is unlocked. This procedure can be implemented immediately, and, assuming the electric doors are in working order, at no expense.

Recommendation.—It is recommended that, in order to maintain supervision of the interior of the bull pens, unbreakable mirrors be installed in the corridors outside the cells. These mirrors, similar to those used to curtail shoplifting in retail stores, should provide observation for deputies stationed in the cellblock area. The alternative would be to have a commercial firm investigate the advisability of a closed circuit television system like that used in other prisoner facilities.

Recommendation.—The department procedure requiring deputies to constantly patrol the cellblock—and not as is often the case, congregate in the front area—should be followed. This is essential if the above recommendations are to be effective.

Service of Process

DESCRIPTION

Most process is handled by the Process Control Center, which shares a large room in the U.S. Courthouse with the General Assignment Section. One clerk, and, usually, one deputy are assigned to the Center. Other deputies, when they are not in Court or in the field, will assist from time to time.

[11] Many recommendations for improvement in the areas of calendaring and caseflow are made in *A Study of the Criminal Calendar of the U.S. District Court for the District of Columbia,* prepared by the Court Management Study in June, 1969.

Most process comes from either the General Sessions or District Court cashiers, having originated with the Court clerk. The Process Control Center then sorts the process by territory and gives it to the territory leaders. They in turn distribute it for service and, when served, return it to the Center. The Center will send it back to the Court clerks.

The process received can be put into two broad categories. One is that requiring actual execution (e.g. writs of replevin) and the other is that which is served for the purpose of giving the recipient notice (garnishments, subpoenas and summonses are the major ones).

The overwhelming majority of total process received is from General Sessions. In July, 1969, for example, 14,000 of the almost 19,000 pieces of process received by the Marshal's Office were from General Sessions. A partial breakdown of the General Sessions figure, in July, shows that over 1,300 were General Sessions summons and complaints and that 10,400 were Landlord and Tenant complaints.

Service of this volume of process is the responsibility of the deputies in the territories. However, their primary duty is to service the Courts—handling prisoners and maintaining order in the Courtrooms. When process is served, criminal subpoenas receive first priority. Civil subpoenas are second, and other process is served if there is time.

CONCLUSIONS AND RECOMMENDATIONS

1. District Court Subpoenas

Procedurally, subpoenas need not be returned by the Marshal until the date of the hearing. For that reason an attorney may not know until the day he is due in Court whether a given witness has been notified. This in turn may result in the need for a last minute continuance and contribute to a calendar collapse. Part of the reason for problems with subpoenas is that they are often delivered to the Marshal only 2 to 4 days before the witness is due in Court (The Marshal's Office reports that the U.S. Attorney does this more often than private attorneys.).

Recommendation.—Subpoenas should be filed at least one week before the hearing. The subpoenas should contain a return date which is at least two days before the hearing. Either of these requirements can be waived for good cause shown upon application to a judge or commissioner of the District Court.

2. Civil Summons and Complaints

The sheer volume of General Sessions and Landlord and Tenant summons and complaints makes it clear that any recommendations to expedite service of process must deal with them. In July 1969, over 4,000 pieces of process expired without even being endeavored.[12] An endeavor means that a deputy went out and tried to serve the process; expired process indicates that this attempt was not made. Most of this unendeavored process came from the various General Sessions branches.

The number of man-hours available for service of process is insufficient to handle the volume, and the possibility of "quality" service does not exist. Quality service would occur if a deputy, when told

[12] Source: General Assignment Section (U.S. Marshal's Office) Monthly statistical report for July, 1969.

the person to be served has moved, followed up the lead in order to assure service—as opposed to settling for an endeavor. The expiration of process, and the lack of quality service are costing the legal system and the taxpayers time and money.

Recommendation.—It is strongly recommended that General Sessions civil summons and complaints be mailed. It is also strongly recommended that Landlord and Tenant complaints for possession be mailed. The proposal will be set out in detail below.

The purpose of service of process is notice. The ultimate validity of the system is judged by its relative ability to actually notify the defendant of the charges against him and to give him an opportunity to defend.

Broadly speaking, the proposed system is based upon the idea that mailed process will usually succeed.[13] The proposal would provide first for a mailing, and, if the mailing should not reach the defendant, personal service would be required. In essence, mailing would be a prerequisite to asking the Marshal to personally serve process. Its purpose is to lighten the flow of process from General Sessions, not to totally eliminate it.

The District of Columbia Bar Association has previously submitted a proposal for mailing civil process from the Court of General Sessions (Appendix B). Further, both Maryland (Appendix C) and the Small Claims Branch of the District of Columbia Court of General Sessions (Appendix D) permit the mailing of process. The proposed rule, which is set out below, is believed to be superior to the aforementioned rules in two respects. First, it is the only rule which makes mailing a prerequisite—as opposed to an alternative—to personal service; thus the advantages of mailing, in terms of the U.S. Marshal's workload, are maximized. Secondly, only the Small Claims rule (Appendix D) and the proposed rule, below, require the mailing to be done by a neutral non-party.

PROPOSED GS RULE 4(C)

(1) *Manner of Service:* The Summons and Complaint shall be served together. Service shall be as follows:

(A) *By Registered or Certified Mail, With Return Receipt.*—

(1) The Marshal shall, on the day of filing enclose a copy of the Complaint in an envelope, furnished by the Plaintiff and addressed to *each* defendant, seal the same, prepay the postage and registry or certification fees with funds obtained from the Plaintiff or his Attorney, and mail the same forthwith, noting on his records the day and hour of mailing, and the registry or certification number.

(2) Service of the summons and complaint shall be deemed valid if it is delivered by the postman to the addressee or to any other responsible person qualified to receive the addressee's registered or certified mail, in accordance with the Postal Laws and Regulations of the United States, which Laws and Regulations shall be judicially noticed in this Court. Service shall not be set aside on the ground that the notice was delivered to a person not so qualified, if the notice in fact came to the attention of the addressee within a reasonable time after delivery by the postman, and within a reasonable time before the return day named in said notice.

[13] Although prediction is a difficult task, at least an indication of how much of mailed process would reach the intended recipient is provided by looking at the experience of the Jury Commission for the U.S. District Court for the District of Columbia in a sample year, 1967. The Jury Commission, using names drawn at random from the Polk Company *City Directory,* mailed 43,200 first notices—within two weeks, 74 percent of the addresses had responded.

(3) Such notice shall be valid although refused by the defendant or his agent and not delivered for that reason, provided the Clerk shall promptly upon receipt of notice of such refusal, mail to the defendant by ordinary mail, a copy of the complaint, together with a notice that despite such refusal the plaintiff is entitled to seek and to obtain a default judgment against the defendant.

(4) Every registry or certification return receipt which shows either receipt by the defendant, or other responsible and qualified person, or refusal by the defendant, or his agent, shall, upon being received by the Marshal and returned to the Clerk, be prima facie proof of service.

(B) *Personal Service of Summons and Complaint.*—If the summons and complaint are not received or refused under (A)(2) or (A)(3), above, the Marshal shall promptly make service as follows:

(1) Upon an individual, other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally, or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon an infant or an incompetent person by serving the summons and complaint in the manner prescribed by Law.

(3) Upon a domestic or foreign corporation, or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

A similar rule is recommended as Landlord and Tenant Rule 4A as follows:

LANDLORD AND TENANT RULE 4A

A. *Manner of Service:* The summons and complaint shall be served together. Service shall be as follows:

(1) By registered or certified mail, with return receipt.

(a) The Marshall shall, on the day of filing enclose a copy of the complaint in an envelope furnished by the plaintiff and addressed to the defendant(s) at the premises at issue, seal the same, prepay the postage and registry or certification fees with funds obtained from the plaintiff or his attorney, and mail the same forthwith, noting on his records the day and hour of mailing, and the registery or certification number.

(b) Service of the summons and complaint shall be deemed valid if it is delivered by the postman to the addressee or to any other responsible person qualified to receive the addressee's registered or certified mail, in accordance with the Postal Laws and Regulations of the United States, which Laws and Regulations shall be judicially noticed in this Court. Service shall not be set aside on the ground that the notice was delivered to a person not so qualified, if the notice in fact came to the attention of the addressee within a reasonable time after the delivery by the postman, and within a reasonable time before the return day named in said notice.

(c) Such notice shall be valid although refused by the defendant or his agent and not delivered for that reason, provided the Clerk shall promptly upon receipt of notice of such refusal, mail to the defendant by ordinary mail, a notice that despite such refusal the case will be proceeded with on the return day, and reciting the name and number of the case, the day and hour when the case will be called, and the nature and amount of the claim; and warning the defendant that judgment by default will be rendered against him and that he may be evicted unless he appears to defend the suit.

(d) Every registry or certification return receipt which shows either receipt by the defendant, or other responsible and qualified person, or refusal by the defendant, or his agent, shall, upon being received by the Marshal and returned to the Clerk, be prima facie proof of service.

(2) *Personal Service of Summons and Complaint:* If the summons and complaint are not received or refused under (1)(b) or (1)(c), above, the Marshal shall promptly make service as follows:

(a) Upon an individual, other than an infant or an incompetent person, by delivering a copy of the summons and complaint to him personally, or by leaving copies thereof at the premises at issue with some person of suitable age and discretion then in occupancy of said premises or, if no such person can be found, by posting a copy of said summons and complaint on the main entrance of said premises.

(b) Upon an infant or incompetent person, in addition to the procedure required in (2)(a), above, by serving the summons and complaint in the manner prescribed by law.

(c) Upon a domestic or foreign corporation, or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process who is on the premises at issue; or, if no such person is found on said premises, by posting a copy of said summons and complaint on the main entrance of the premises at issue.

Administratively, the process would be handled by a complement of four people in the GS cashier's office. One cashier will be responsible for receiving money and keeping the statistics, but, unlike the present system, a clerk will be available to help out in a rush or when the cashier is absent. That clerk, most of the time, and two other clerks all the time, will, upon receipt, by the cashier, of the Marshal's fee plus postage for every GS and L&T complaint, stuff the envelope (one for each defendant), attach a return receipt and mail the complaint. Each will keep a log of mailings, and a record of whether the mailing succeeded, and dates. The return receipt will be fastened to the Marshal's copy and a stamp indicating whether and on what date it was received, refused, or not delivered, will be put on that copy much the same way as returns are now made. If there is *no* delivery the *Marshal will automatically attempt* personal service and in those cases—as with other GS process (e.g. garnishments)—the process will be served as in the past.

In no event may a default judgment be obtained merely by mailing unless the defendant, or other responsible person under postal regulations, received the complaint; or unless the defendant, or his agent (as the term is defined under existing law), actually refused delivery. Thus, refused or received process will be stamped and delivered to the clerk; undelivered process will indicate mailing was unsuccessful and be handled as in the past by being distributed to deputies for service.

Whether or not the change in the Rule is adopted:

It is recommended that at least one more clerk be added to the Process Control Center.

It is recommended that the service of process operation be geared towards quality service. When a return is improperly filled out, the service is invalid and a second attempt must be made. When a Deputy Marshal fails to ask if and where the person to be served can be located, the machinery of the administration of justice is not working properly. In view of the above proposals, and the authorized increase in manpower, the service of process operation should no longer need to struggle vainly for quantity, and may now concentrate upon quality service.

3. Juvenile Court

Although the Court of General Sessions and the U.S. District Court generate most of the process, about 800 summonses per month are issued by the Juvenile Court.

These "summonses" serve a variety of purposes. They are issued after a mailed notice was unsuccessful, and the individual summoned may be a parent, a juvenile or adult defendant, or a witness.

During the month of August, 1969, the Juvenile Court Clerk's Office recorded the status of the approximately 750 summonses returned by the U.S. Marshal in that month. Only about 30 percent of those summonses had been served. The 70 percent which were not served are difficult to subdivide, because the records did not always distinguish non-endeavors from unsuccessful attempts. However, a rough estimate would be that of the entire 750 summonses, 35 to 60 percent were not endeavored.

Thus, while Juvenile Court summonses represented 4 per cent of all process received in August, 1969, the number of Juvenile Court summonses returned unserved (i.e., endeavored or unendeavored) came to 8 per cent of the total of such process in the U.S. Marshal's Office.

When one considers the fact that service of Juvenile Court summonses is essential to the processing of many cases involving acts which would be serious felonies, if committed by adults; the disparity between the service of Juvenile and other process is even more appalling. This is not to say that it is justifiable to allow a civil complaint to go unserved; however, if the U.S. Marshal's Office is aware of its inability to serve all of its process, a reasonable system of priorities would dictate an active effort to be more diligent in serving Juvenile Court process.

Recommendation.—When sufficient manpower becomes available to increase the quantity and quality of the service of process, the Juvenile Court should be a primary beneficiary. In the interim, it is recommended that the Juvenile Court summonses be given a high priority by the deputy U.S. Marshals engaged in the service of process. The area supervisors should regularly monitor the returns to assure that this priority is being respected.

The U.S. Marshal in U.S. District Court Civil Courtrooms

PRESENT SITUATION

While both Juvenile Court and the Court of General Sessions employ other individuals as bailiffs, deputy U.S. Marshals are now being used as bailiffs in U.S. District Court for the District of Columbia. As such these deputies assure the safety of the judge, maintain order in the courtroom, escort the judge to and from his chambers, open court, sequester witnesses, and attend to the jury from the time it is charged until it is discharged.

There are usually six to ten judges assigned to civil matters in District Court. Each judge will have a deputy Marshal assigned to him for his protection and to serve as a bailiff. The assignment of a deputy U.S. Marshal to a U.S. District Court Judge is practically permanent, and a close symbiotic relationship will often develop between a judge and "his deputy." According to a questionnaire administered in the summer of 1968, the median judge's deputy spends 80 percent of his

time in court (the average of 71 percent is deceptive, because of the low amount of bench time of certain senior judges whose deputies reported). Thus between five and eight full-time deputies are being used in civil cases. The median salary for judges' deputies is now $9,942, and the average is over $9,600.

CONCLUSIONS AND RECOMMENDATIONS

The deputy U.S. Marshals, as will be shown below, is usually an individual with a substantial background in some area of law enforcement, and it is felt that his constant presence in the civil courtroom is a waste of resources. The present cost of this to the taxpayers is between $50,000 and $80,000 per year in salaries alone. If the cost were figured in terms of other jobs undone for lack of available manpower, it would probably be even more substantial. Since the major Marshal's installation is situated in the District Court building, a deputy U.S. Marshal would always be nearby and could respond quickly if an emergency should occur in a civil courtroom.

Recommendation.—It is recommended that the practice of using deputies in civil cases be discontinued, and that existing law clerks be tried out as bailiffs. If the use of law clerks proves to be unworkable, bailiffs can be hired at a lower salary than is being paid to deputies since they need not have the qualifications required of deputy Marshals. The availability of deputy U.S. Marshals, for speedy response to courtroom emergencies could be further assured by providing a desk for one deputy on each floor of the U.S. Courthouse where there are courtrooms in use. As indicated below, there is no legal impediment to relieving deputies of bailiff duty in U.S. District Court, nor—in civil cases—does there appear to be any practical impediment.

Memorandum of Points and Authorities for the Proposal to Replace Deputy Marshals as Bailiffs in U.S. District Court

Though the statutory provisions are not absolutely clear, two points should be remembered in the interpretation of the statutes. First:

> Apart from any statutory law, a court of record possesses the inherent power to provide the necessary assistance as a means of conducting its business with reasonable dispatch and the court itself may determine the necessity.[14]

Secondly, one U.S. District Court judge has already forsaken the traditional use of Marshals.[15]

The United States Code expressly empowers the District Court judge to appoint "a crier . . . who shall also perform the duties of bailiff and messenger." [16] At one time, the duties of crier and bailiff were clearly separate,[17] but the present law, *supra*, permits them to be merged in one person.

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[14] Laughlin v. Clephane 77 F. Supp. 103, 105 (D.C.D.C. 1947).

[15] Unfortunately, although the Administrative Office of the U.S. Courts informed us about this practice, it would not readily release the name of the judge or his district. The actual existence of this practice makes the statutory argument stronger. In addition we were advised that the Department of Justice admits there is no legal impediment.

[16] 28 U.S.C. 755 (1965).

[17] "The crier is a creature of the court . . . bailiffs are creatures of the Marshal. . . ." Kelly v. U.S. 51 Ct. Cl. 246, 250 (1906). This statement was based upon Revised Statutes 755, which did not contain a provision requiring the crier to perform the duties of a bailiff.

The statute provides that the U.S. Marshal "may employ" up to four bailiffs.[18] The word 'may' is characteristic of the entire section relating to the use of Marshal-appointed bailiffs. The employment of bailiffs by the Marshal; the number of bailiffs employed, and the duties performed by these bailiffs, are all subject to the approval and supervision of the judge.[19]

Aside from the general proposition that, as first noted, the judge is in complete charge of his courtroom assistants, the provision permitting him to appoint a crier-bailiff-messenger also gives the judge specific authority to appoint his law clerk to the position.[20] The law clerk's salary, only to the extent it exceeds his compensation as crier-bailiff-messenger, is considered in calculating the statutory judge's allotment for law clerks and secretaries.[21] While the present practice of using deputy Marshals as bailiffs is sanctioned by the U.S. Code, the foregoing indicates that Congress is willing to permit an alternative; and, that the district judge is given the authority to put this alternative into use.

The duties of the bailiff are not expressly set out, but they seem broadly defined as: Attending the court, waiting upon the grand and petit juries, and performing such other necessary duties as the judge may direct.[22]

If the judge should feel that a deputy Marshal is needed in the courtroom, as in a criminal case, his inherent authority is again given statutory sanction; and the Marshal's attendance at any session of court may be required.[23]

Support Facilities

EQUIPMENT—COMMUNICATIONS

The U.S. Marshal for the District of Columbia is unique among significant law enforcement agencies in the Washington Metropolitan Area because until October 1969 it was without effective radio communication. The then existing two-way radio system was received second-hand from the FBI, and reported to work properly only on occasion. Some of the prisoner vehicles and the District Court cellblock were the only units in the Marshal's Office which had the benefit of even that system.

The deputy U.S. Marshals assigned to the Warrant Squad are charged with finding and apprehending, *inter alia*, criminal defendants who have failed to appear for trial. If an incident were to occur in the course of an arrest, a deputy would have to walk to a telephone to summon assistance. In addition, the earlier recommendation that this unit move towards quality in its work carries with it a need for co-ordinated investigation—which would be greatly expedited if there

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[18] 28 U.S.C. 755 (1965).

[19] *E.g.*, "Each United States Marshal may employ, *with the approval of the judge*, not exceeding four bailiffs *as the district judge may determine*. . . ." [Emphasis supplied.] Id.

[20] Id.

[21] Id.

[22] Id. The language is part of the paragraph empowering the Marshal to appoint—subject to the judge's approval—bailiffs. Since the word 'bailiff' is used throughout the section, it seems fair to treat the definition in this paragraph as applicable whenever the term is used.

[23] 28 U.S.C. 569 (a).

were radio communication. The statutory [24] concept of cooperation between the Warrant Squad and the District of Columbia Metropolitan Police is also given greater effect if the U.S. Marshal's Office has access to the police frequency.

Deputy U.S. Marshals engaged in the service of process may not frequently need instantaneous communication with other units; however, two factors should be considered in deciding whether they should be two-way radio equipped. The first is that instances can arise where the central office wants all available sworn personnel to respond to an emergency; and, the second is that some tasks, like evictions, may result in a situation where the deputy will need help.

The lack of two-way radios, which work consistently, in the prisoner vehicles creates both waste and risk. When such a vehicle is empty and returning to the courthouse, it cannot be instructed to go to some detention facility for other prisoners until it has reached its destination. The risk occurs because, if something goes awry in the course of transporting prisoners, someone must walk to a telephone to get aid.

Co-ordination of prisoner movement in General Sessions, and U.S. District Court, between courtrooms and cellblock is accomplished by means of telephone communication. Although there have been no problems reported in the U.S. District Court, the Assistant Chief Deputy in General Sessions reports that insufficiencies in that telephone system cause court delays. The reason is that, when the judge's clerk calls the cellblock to request a prisoner, the line may be tied up. Besides lost bench time, another problem which results from the inadequate telephone situation at General Sessions is the security problem. Thus, when there was a fire in one of the General Sessions bull pens in January, 1969, the assistance of additional deputy U.S. Marshals could not be immediately obtained because the phone line was tied up.

Recommendation.—The D.C. United States Marshal's Office is presently receiving two-way radios. As of October 16, 1969, it had 12 sets which were operational. The installation of two-way radios should continue at a rapid pace. The entire U.S. Marshal's Office in the District of Columbia—with special priority to the Warrant Squad and the prisoner vehicles—should be linked by two-way radios, and, in addition access to the District of Columbia police frequency should be available. A communications-systems expert should study, and make detailed recommendations on, the proposed two-way radio network. The communications study should include the existing telephone system, and should focus upon improving that system and coordinating it with the two-way radio network.

EQUIPMENT—VEHICLES

The U.S. Marshal for the District of Columbia now has one bus and two vans with which to transport over 200 prisoners each day. Because the number of prisoners is so much greater than the capacity of these vehicles, the U.S. Marshal borrows two buses each day from the D.C. Department of Corrections and, occasionally, must borrow prisoner vans from the D.C. Metropolitan Police Department.

Although the job of transporting all prisoners to court from the juvenile and women's detention facilities, D.C. Jail, St. Elizabeth's,

[24] D.C. Code 4:134(a), requires the Metropolitan Police to keep records on the U.S. Marshal's warrants.

Lorton (in Virginia) and the police precinct lockups, is technically the Marshal's job, the U.S. Marshal's Office has shunted responsibility for some of this work to other agencies. Thus, a single deputy U.S. Marshal goes down to Lorton, Virginia, each morning, and takes custody of about 20 of the prisoners who are loaded on the Department of Corrections' bus. Then, in his car, the deputy follows that bus to the District of Columbia.

The U.S. Marshal's Office uses its own vehicles primarily for intra-city prisoner movement. Even this limited use of those vehicles causes court delays. The letter in Appendix E explains the relation between vehicular inadequacies and case-flow in the Court of General Sessions. An illustration of the effect of those inadequacies upon case-flow in the U.S. District Court is concisely given in the Trial Delay Report submitted by U.S. District Court Judge John Lewis Smith, Jr., on September 6, 1968: "Trial delayed 45 minutes because bus bringing prisoners from jail was delayed. Sentences set for 10:00 A.M. were also delayed for the same reason." The impact, upon the smooth flow of criminal cases, of the breakdown of a bus containing more than 30 prisoners who are due in court is both obvious and substantial. Between January 1, 1969 and April 29, 1969, the U.S. Marshal's prisoner bus had received $6,349.76 in maintenance and repairs.

In terms of suitability for prisoner transport the U.S. Marshal's bus is poor, and the buses on loan from the Department of Corrections are worse. All of the buses are not airconditioned, requiring that the windows be opened on hot days to keep the prisoners and deputies from suffocating. This allows prisoners to communicate with passers-by, and, in the words of one deputy U.S. Marshal: "Every woman who happens by is visually and often verbally raped by every man on the bus." The Department of Corrections buses, because the windows are only barred, permit the prisoners to further annoy the public by, e.g. pounding on the tops of cars.

The U.S. Marshal's Office also has two prisoner vans. One van is new; the other is not, and, like the Marshal's bus, has never passed the District of Columbia vehicle inspection.

Recommendation.—It is felt that the fact that the U.S. Marshal has been given the responsibility for having prisoners from facilities like Laurel (in Maryland), Lorton, D.C. Jail and St. Elizabeths at the Juvenile, General Sessions and U.S. District Courts, when the judges are ready for them, requires that the Marshal be equipped to properly handle that responsibility. The U.S. Marshal should have three buses (one replacement bus and two others) which are air-conditioned and have well protected sealed windows. The need to transport special prisoners—for example, women and juveniles—justifies the further recommendation that the U.S. Marshal obtain two new prisoner vans (one replacement van and one new van, plus the existing new van, for a total of three). All the prisoner vehicles must, of course, be part of the recommended two-way radio system.

CLERKS, TYPISTS, AND MESSENGERS

In addition to other specific recommendations in this area, it is recommended that at least one more clerk be added to the Administrative Section, and that a clerk typist be employed in the General Assignment Section. This would eliminate such spectacles as the Assistant

Chief Deputy filing time cards, and GS 9 deputies spending their time on typing. It is further recommended that a messenger be employed to relieve the deputies from this duty, for which their skills are not needed.

MORALE

The term "morale" was chosen for this section because, ultimately, it is felt that the benefits to the employees determine, at least in part, their morale. It is also believed that work output is related to this factor.

It is instructive to compare the salaries of deputies with the salaries of Metropolitan police officers in the District.

Deputy U.S. Marshal			Equivalent District of Columbia Metropolitan Police	
Position	Salary	Grade	Position	Salary
Trainee	$6,882	GS-6	Appointee	$8,000.
Territory leader	$9,320 to $11,186	GS-9	Detective	$9,570 to $11,610.
			Police sergeant	$10,175 to $12,215.
			Detective sergeant	$10,485 to $12,525.

Although, as the table indicates, a deputy earns less than a police officer, a comparison of recruiting announcements shows that he is required to meet higher standards in order to receive an appointment. In contrast to the police requirement of a high school diploma *or* one year of experience in urban law enforcement, a deputy must have one year of general experience and 2½ years of special experience (investigative work, and some college training are within this category). The complete educational equivalents for deputy U.S. Marshals are limited to either graduate study (in law enforcement, business administration, or accounting) or an LLB from a recognized law school. It should also be pointed out that because they attended grand juries, deputies must meet extremely high security clearance criteria.[24]

Another contrast between the benefits to police and deputy U.S. Marshals is indicated by the fact that police are eligible for administrative leave if injured in the line of duty. It was reported that one deputy was seriously ill, and used up his sick leave. Shortly after returning to work, he was hit by a missile at Howard University—the time he lost was charged against his annual leave.

Why, then, does anyone become a Marshal? There are at least two plausible reasons which can be found. One is the intangible—the prestige of the job. The other is that , because of overtime generated by the heavy workload, most, or all, deputies are on 25 percent premium which adds approximately $2,000 to their regular annual salary.

These incentives have some effect, since it is reported that many applications are on file. The problem is that the present salary levels, as well as the high security and background requirements, make the recruitment and processing of qualified individuals both difficult and slow.[25]

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[24] Note that some individuals were hired experimentally at a GS–4 to train, in service, as deputies. In the opinion of supervisory personnel, because these trainees were given the full responsibility of a deputy, the system is unsatisfactory and generates an unacceptable work product.

[25] The U.S. Marshal's office reports that the applications of the last two men to "come on board" took about 3 months to process.

Recommendation.—If the applications are processed more quickly, the recent authorization of a substantial number of new positions should bring about a more effective handling of the U.S. Marshal's workload. When that end is finally achieved, overtime pay for many of the deputy U.S. Marshals will disappear, and with it will go the tenuous superiority in salary that the deputy, with a premium, has over his police officer counterpart. Should the stringent requirements for deputies be retained, the deputy U.S. Marshals should be upgraded to a level of parity with their police counterparts.

Recommendation.—If zealous performance of hazardous tasks is sought, the deputy U.S. Marshals should be eligible for administrative leave. Sick leave, annual leave, or, conceivably, salary, should not be wagered by a deputy when he is ordered to enforce the laws of the United States or the mandates of its Courts.

Training

Present situation

At the time of our investigation there was no operating manual in effect in the U.S. Marshal's Office. The reason given was that the volume of superseding directives had made the old manual obsolete. It was, however, intimated that a new manual was being prepared.

When a deputy Marshal is hired as a GS–6 trainee, he has, as previously indicated, a relatively substantial background. His formal training with the U.S. Marshal's Office consists mainly in performing the usual tasks of a deputy Marshal; i.e., learning through experience. To supplement this, the trainee usually receives a total of 10 to 20 hours of instruction which cover, primarily, three subjects: Physical Security; Testifying in Court; and Sources of Investigative Information. This instruction is given on an informal basis by the acting Chief Deputy.

A more intensive training program is available to two deputies at a time in the United States Treasury School. This school runs 8 week sessions, and covers a wide range of subjects from Report Writing to Constitutional Law. The admission of deputy U.S. Marshals to this course is done as a courtesy by the Treasury Department. As of September, 1969, a total of 4 deputies from the District of Columbia U.S. Marshal's office had been through the Treasury School, and two more were attending it.

It is reported that, like the operating manual, a formal training program is presently in the formative stages.

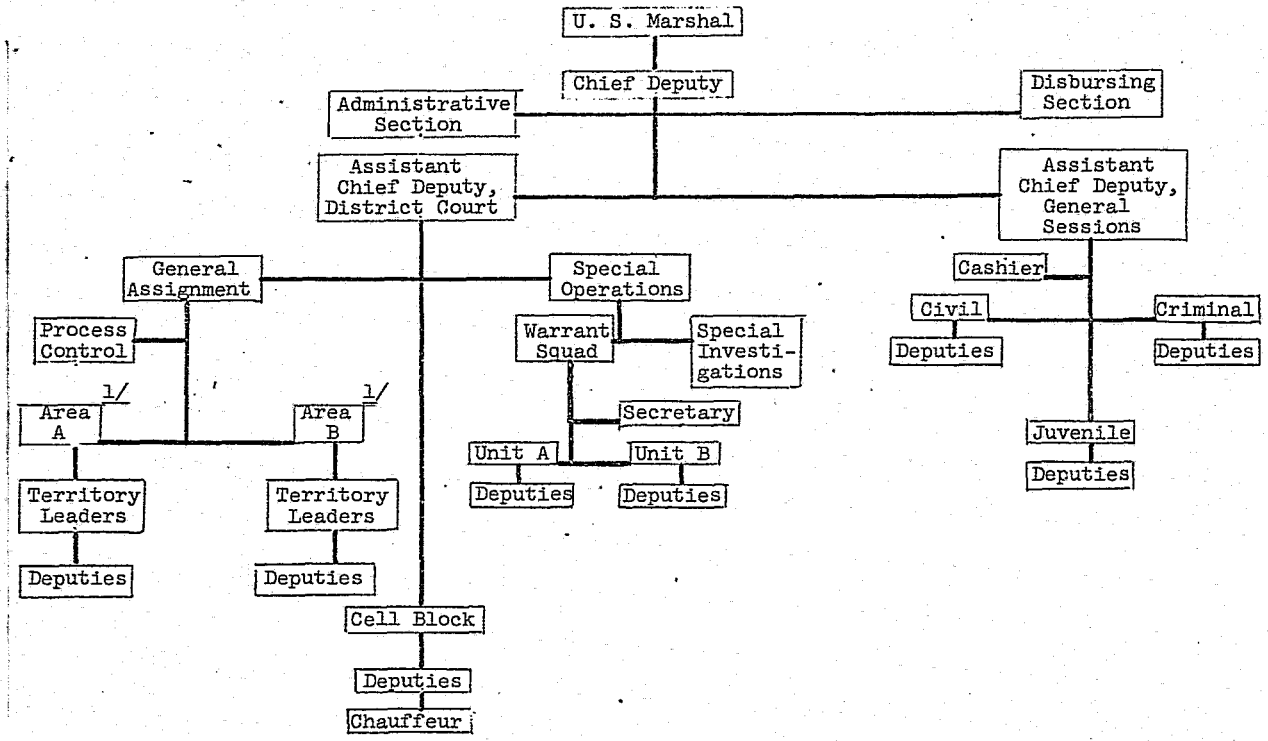
Conclusions and recommendations

As with salary and other benefits, comparison of the training given to deputy U.S. Marshals with that given to the District of Columbia Police recruits is instructive. The Metropolitan Police Department's recruiting announcement indicates that a police recruit receives a 15 *week* training course—a marked contrast to the informal 10 to 20 *hours* for the new deputy U.S. Marshal. Because of the small number of deputies who can use it, and because it is generalized and therefore unsuited to the special demands of service in the District of Columbia, the Treasury School does not present a workable alternative to a formal training program for deputy U.S. Marshals in the District of Columbia.

One possible excuse for the absence of a formal training program for deputy Marshals is the degree of prior experience required for appointment; however, in view of the unique nature of the duties of a deputy Marshal in the District of Columbia, such a justification would appear inadequate.

Recommendations.—It is recommended that the movement towards establishing a training program and an operating manual proceed more quickly. The manual and a training program will probably be the product of the Executive Office of United States Marshal. If that is the case, the United States Marshal for the District of Columbia should expand both the manual and the training program to deal with the unique responsibilities of a deputy U.S. Marshal in the District of Columbia.

APPENDIX A: Organizational Chart of the Office of the U.S. Marshal for the District of Columbia



1/ There are 14 territories, seven in each area, which are geographically the same as the former police precincts. Since the police have abandoned the precincts, the Marshal's Office is currently engaged in developing 9 new territories -- but they will not be the same as the new police districts.

APPENDIX B. D.C. BAR ASSOCIATION PROPOSAL FOR MAILING PROCESS

NOVEMBER 14, 1968.

Hon. HAROLD H. GREENE,
Chief Judge, District of Columbia Court of General Sessions,
Washington, D.C.

DEAR JUDGE GREENE: Enclosed herein please find a proposed change for service of process in cases that have been instituted in the District of Columbia Court of General Sessions.

The authority which permits the Court to make these changes is found in the following code provisions:

Section 13–302. Service by marshal

Subject to the provisions of law *or rules of court for service by other persons*, the United States marshal for the District of Columbia or his deputy shall serve the process of the District of Columbia Court of Appeals, and the District of Columbia Court of General Sessions, including the Domestic Relations Branch thereof. Dec. 23, 1963, Pub. L. 88–241, Sec. 1.77 Stat. 513. [Emphasis supplied.]

Section 13–331. Service under other laws and rules of court.

This chapter does not limit or affect the right to serve process in any other manner now or hereafter required or permitted by:

(1) other law, including any other provisions of this Code; or

(2) *rule of court.* Dec. 23, 1963, Pub. L. 88–241 Sec. 1.77 Stat. 513. [Emphasis supplied.]

The present civil rule 4 of the Rules of the District of Columbia Court of General Sessions would be changed as follows:

1. Section (C) is entirely superseded.
2. Section (E) should be changed to put the word "by" before the words "the marshal" and immediately after the word "marshal" add "he."
3. Section (G) is eliminated.

I would be happy to meet with any persons you designate to discuss these suggested rule changes.

Sincerely yours,

HERBERT D. HOROWITZ.

Addendum 1.

(c) Service of Process—Generally

(1) *Manner of Service.*—The Summons and Complaint shall be served together. Service of process to require appearance shall be made in the following manner:

(A) Personal Delivery:

(1) Upon an individual, other than an infant or an incompetent person, by delivering a copy of the summons and of the complaint to him personally, or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(2) Upon an infant or an incompetent person by serving the summons and complaint in the manner prescribed by law.

(3) Upon a domestic or foreign corporation, or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized, by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(B) Registered or Certified Mail, With Return Receipt:

(1) In lieu of personal delivery, a copy of the summons together with a copy of the original pleading may be served on a defendant within the District by registered mail, or certified mail, delivery restricted to the addressee. Upon return through the post office of the return receipt, an affidavit shall be filed with the clerk showing (i) that the aforesaid copies were mailed to the defendant; and (ii) that they were in fact received by the defendant within the District as evidenced by his signature on the original return receipt which shall be attached to the affidavit shall be prima facie evidence of service of process.

(2) In lieu of personal delivery, a copy of a subpoena with witness fee and travel expenses as authorized may be served as set forth in B(1) above.

(2) *Service Other Than Personal Delivery or Registered or Certified Mail.*—(A) When Allowed—How Made.—Service other than by personal delivery or registered or certified mail, upon a domiciliary or resident or one who maintains his principal place of business in this District, may be made under the following circumstances:

When proof is made by affidavit that a defendant has acted to evade service, the court may order that service be made by (i) mailing a copy of the summons together with a copy of the original pleading to the defendant at his last known residence, and (ii) delivering a copy of each to a person of suitable age and discretion at the place of business, dwelling house or usual place of abode of the defendant within the District.

(B) Individual Eligible to Deliver Process.—Delivery of process, provided for in subsection A of this section, may be made by any competent private person over 21 years of age, including an attorney of record, but not a party to the action.

(C) Return—Proof of Service—Affidavit.—

(1) Return and Proof of Service.—Each person making service of process shall make proof of service by affidavit and such affidavit shall be filed with the clerk promptly after service.

(2) Affidavit—Content.—The affidavit shall set out the name of the person served, and the date, particular place and manner of service, and shall state whether the person making service is of the age of 21 or over.

(3) Effect of Failure to Make Proof of Service.—Service otherwise valid shall not be rendered invalid by failure to make proof of service pursuant to this section.

(3) *Service Under This Rule Not Exclusive.*—The method of service provided in this Rule shall be in addition to and not exclusive of other means of service which may be provided by statute or rule.

Rule 4 (g) Special Process Server—Deleted.

Appendix C. Maryland Rule of Court 104(b)

Maryland Rule 104 as amended in 1966:

"b. *Manner Service.* Service of process to require appearance shall be made in the following manner:

* * *

"2. Registered Mail

"In lieu of personal delivery, a copy of the summons together with a copy of the original pleading may be served on a defendant within the State by registered mail, delivery restricted to the addressee. Upon return through the post office of the return receipt, an affidavit shall be filed with the clerk showing (i) that the aforesaid copies were mailed to the defendant; and (ii) that they were in fact received by the defendant within the State as indicated by his signature on the original return receipt which shall be attached to the affidavit. The affidavit shall be the prima facie evidence of service of process."

Appendix D. GS Small Claims Rule 8

Service by registered or certified mail

(a) Method and Time of Mailing. When notice is served by registered mail, or by certified mail, the clerk shall, on the day of filing, enclose a copy of the statement of claim, verification and notice and envelope addressed to the defendant, seal the same, prepay the postage and registry *or certification* fees with funds obtained from plaintiff or his attorney, and mail the same forthwith, noting on the records the day and hour of mailing, and the registry *or certification* number.

(b) Delivery of Notice. Service of such notice shall be deemed valid if it is delivered by the postman to the addressee or to any other responsible person

qualified to receive the addressee's registered *or certified* mail, in accordance with the Postal Laws and Regulations of the United States, which Laws and Regulations shall be judicially noticed in this branch. Service shall not be set aside on the ground that the notice was delivered to a person not so qualified, if the notice in fact came to the attention of the addressee within a reasonable time after delivery by the postman, and within a reasonable time before the return day named in said notice.

(c) NOTICE VALID ALTHOUGH REFUSED. Such notice shall be valid although refused by the defendant and not delivered for that reason, provided the clerk shall promptly upon the receipt of notice of such refusal, mail to the defendant by ordinary mail, a notice that despite such refusal, the case will be proceeded with on the return day, and reciting the name and number of the case, the day and hour when the case will be called, and the nature and amount of the claim; and warning the defendant that judgment by default will be rendered against him unless he appears to defend the suit.

(d) Service shall be deemed to have been made as of the day when the notice is delivered and the return receipt signed; or if such notice is refused, and the notice provided in paragraph (c) is forthwith sent by ordinary mail, as of the day when the registered *or certified* mail notice would have been delivered, except for such refusal.

(e) RETURN RECEIPT TO BE FILED. Every registry or *certification* return receipt shall, promptly upon being received by the clerk, be attached to and filed with the original statement of the claim. The clerk shall promptly note on the docket sheet the fact of having received such return receipt and whether such receipt shows delivery to the defendant, or to a representative or agent of the defendant, and the date of such delivery, or a refusal by the defendant.

APPENDIX E

COMMITTEE ON THE ADMINISTRATION OF JUSTICE,
Washington, D.C., December 11, 1968.

Hon. FRED M. VINSON, Jr.
Assistant Attorney General,
U.S. Department of Justice,
Washington, D.C.

DEAR MR. VINSON: We have recommended certain changes in the procedures of the Court of General Sessions with a view to improving the operations of that Court. We found that quite often the case is not heard when it is set for trial, and one purpose we had in making our recommendations was to make certain that cases scheduled for trial on a particular date will in fact have a high likelihood of reaching trial on that date.

The Court adopted our recommendations and they are proving quite helpful, but we find that they are not measuring up to our expectations due in large part to the fact that the U.S. Marshal fails to have prisoners at Court on the date and hour when their trial is to be held.

It is our understanding that all defendants are under the jurisdiction of the United States Marshal who is responsible for having them in Court on their day of trial. Most of them are housed in the D.C. Jail, although some are held at St. Elizabeth's Hospital, the Women's Detention Center, and the Lorton Reformatory in Virginia. To transport prisoners from these locations to the Court of General Sessions and the District Court, the Marshal has one old bus which carries 38 passengers and a small van which hauls 16. In addition the Marshal recently borrowed a bus from the D.C. Department of Corrections to transport prisoners to and from the Lorton Reformatory.

On an average day the Marshal brings 30 to 35 prisoners to the Court of General Sessions for trial. Another 60 or so prisoners are brought to the District Court except on Fridays when 100 or more are brought to that Court for motions, sentencing, or arraignments.

It is obvious that the available transportation to the United States Marshal makes it difficult for him to service both Courts adequately, and in fact they are not being serviced adequately. When there is a breakdown or some other problem, the Court of General Sessions is usually the one that suffers most. During our study of the operations of the Court of General Sessions, there have been a number of occasions when trials were delayed because the prisoners had not arrived from the Jail by 9:30. In fact, the day Chief Judge Greene began

implementing some of our suggestions, October 21, 1968, the jail defendants did not reach Court until mid-morning, and on October 25 they did not arrive until after 11:00.

In order for the Court to hear these cases, it is essential that the prisoners be produced, and we ask that whatever arrangements that are necessary in order to accomplish this result be put into effect at the earliest possible moment. It does little good for the Court itself to streamline its own procedure and find that the efforts to try cases are thwarted by the failure of the United States Marshal to produce the prisoners.

One additional problem has arisen, and that is that trials have been delayed because there was no Marshal available to guard a prisoner. This results, we think, from inadequate personnel. We hope that this difficulty can be corrected together with the lack of adequate transportation equipment so that the work of the Court of General Sessions may not be impeded in this very important field.

Cordially yours,

NEWELL W. ELLISON.

PLAN FOR FURNISHING DEFENSE REPRESENTATION IN THE DISTRICT OF COLUMBIA

AUGUST 1969

LETTER OF TRANSMITTAL

THE BAR ASSOCIATION OF THE DISTRICT OF COLUMBIA,
Washington, D.C., August 22, 1969.

Hon. DAVID L. BAZELON,
Chief Judge, U.S. Court of Appeals for the District of Columbia Circuit,
Hon. EDWARD M. CURRAN,
Chief Judge, U.S. District Court for the District of Columbia,
U.S. Courthouse, Washington, D.C.

MY DEAR CHIEF JUDGES: Transmitted herewith for the consideration of the Courts is a "Plan for Furnishing Defense Representation in the District of Columbia", originally submitted on May 28, 1969, by the Committee on the Administration of Justice, as revised with the assistance of David Epstein, Esq., of the Committee's staff, after consultation with the Chief Judges of the District of Columbia Court of Appeals, Court of General Sessions, and Juvenile Court.

As pointed out by the Chairman of the Committee on the Administration of Justice in his transmittal of May 28, 1969, the Plan is designed to place the responsibility for the daily administration of the Criminal Justice Act Plan and the coordination of the appointment of counsel among the various Courts in the District of Columbia in the Director of the Legal Aid Agency. The Chief Judges of the District of Columbia Courts have made a number of helpful suggestions which have been incorporated into the revised Plan. Chief Judge Morris Miller of the Juvenile Court would also add the following, at the end of Section V, Paragraph C, page 8, of the Plan:

"When a respondent or defendant appears without counsel before the Juvenile Court and does not waive his right to counsel, the judge will refer him to the Attorney-Advisor of the Juvenile Court for a preliminary determination of indigency and for submission of an attorney's name for appointment."

This provision has not been incorporated because it is our view that it would be inconsistent with the general purpose of the Plan to centralize the coordination of the appointment system in the Director of the Legal Aid Agency. It is to be noted that under Section V, Paragraph A, page 7, the responsibility for the determination of the need for appointed counsel, and the authority to appoint counsel in each case, will continue to reside in each Court.

We shall be pleased to meet with you, or a Committee of Judges, or other representatives, to discuss the proposed Plan for a centralized system of coordination for the appointments of counsel by the Courts within the District of Columbia.

Respectfully yours,

HERBERT E. FORREST,
Chairman, Committee on Court Appointments of Counsel.

PLAN FOR FURNISHING DEFENSE REPRESENTATION IN THE DISTRICT OF COLUMBIA

I. INTRODUCTORY

The Criminal Justice Act of 1964, 18 U.S.C. § 3006A, contemplates filing in the Administrative Office of the United States Courts of a plan for furnishing representation to defendants who are financially unable to obtain an adequate defense in proceedings in the United States District Court, the United States Court of Appeals, and the United States Commissioner, involving felonies and misdemeanors other than petty offenses. The Comptroller General of the United States has ruled that this statute also extends to the same offenses in the Court of General Sessions of the District of Columbia, and to appeals in such matters in the District of Columbia Court of Appeals. Furthermore, the Judicial Conference Committee to Implement the Criminal Justice Act has authorized the Administrative Office of the United States Courts to honor vouchers relating to the performance of services in the Juvenile Court of the District of Columbia. Although this Plan makes provisions for representation of such defendants in tribunals and circumstances when the Criminal Justice Act may not apply, compensation of counsel will necessarily be limited to proceedings within the coverage of the Act.

II. STATEMENT OF POLICY

Adequate representation is the first objective of any appointment system. Consistent with that goal it is the policy of this Plan to establish a uniform system which will distribute appointments equitably among all qualified members of the Bar of the United States District Court. While staff attorneys of the Legal Aid Agency will represent a portion of the indigent defendants, all qualified members of the Bar will be expected to participate and to accept appointments under this Plan. Where a Court relies upon an existing panel of volunteer attorneys, such a voluntary system of representation will be preserved and encouraged. Since representation of those financially unable to obtain an adequate legal representation in proceedings within the scope of this Plan is a duty of all members of the Bar, appointments will be vacated only upon good cause shown. Appointments under this Plan are not a matter of right, and (as set forth more specifically herein) will be made only with due regard to the experience and qualifications of the individual attorney in relation to the type case.

III. SCOPE

The Plan shall apply to the appointment of counsel for those financially unable to obtain an adequate legal representation (hereinafter "defendants") in the following proceedings:

1. Criminal proceedings before the United States Commissioner.
2. Criminal proceedings before the District of Columbia Court of General Sessions.
3. Criminal proceedings before the United States District Court for the District of Columbia.
4. Habeas Corpus and all other proceedings before the United States District Court for the District of Columbia which challenge the legality of confinement.
5. Mental health cases before the Commission on Mental Health and the United States District Court for the District of Columbia.
6. Certain Proceedings before the Juvenile Court for the District of Columbia.
7. Appeals from any of the foregoing proceedings before the District of Columbia Court of Appeals.
8. Appeals from any of the foregoing proceedings before the United States Court of Appeals for the District of Columbia Circuit.

IV. ADMINISTRATIVE ORGANIZATION

A. Supervisory and Advisory Functions

1. JUDICIAL COUNCIL AUGMENTED BY CHIEF JUDGES

It shall be the duty of the Judicial Council of this Circuit, augmented by the Chief Judges of the United States District Court, of the District of Columbia Court of Appeals, of the Court of General Sessions, of the District of Columbia Juvenile Court (hereinafter collectively called the "Council"), and the Board of Trustees of the Legal Aid Agency for the District of Columbia to oversee the operation of this Plan; to advise the Director of the Legal Aid Agency or his designated representatives (hereinafter "Director"), who shall function as provided in Paragraph B2 hereof, directly responsible to the Board of Trustees of the Agency; to solicit the views of the bench and bar regarding the operation of the appointment system; and to recommend modifications to this Plan, when necessary, to the Court or body possessing the power of modification.

2. CRIMINAL JUSTICE ACT ADVISORY BOARD

A Criminal Justice Act Advisory Board, consisting of seven private attorneys who are admitted to practice before the Bar of the United States District Court for the District of Columbia will be appointed by the Council. This Advisory Board shall meet, at least quarterly, to review the operations of the Plan and make recommendations as are deemed appropriate to the Board of Trustees and/or the Council. The Advisory Board shall hear the appeals of aggrieved attorneys under this Plan and will make final disposition of all cases involving the voluntary or involuntary removal of attorneys from the appointment lists.

B. The Director

1. OFFICE AND STAFF

The Director shall be provided appropriate assistants, offices, equipment and supplies. Staff appointments will be made, subject to the approval of the Board of Trustees.

2. THE DUTIES OF THE DIRECTOR

(*a*) The Director shall be responsible for developing and maintaining a central file of attorneys for appointment in the various proceedings. Said central file shall contain information concerning the experience and other qualifications of all attorneys who are members of the Bar of the United States District Court for the District of Columbia. The active administration and coordination under this Plan shall be lodged in the Director subject to the discretion of the Board of Trustees but the power of appointment of counsel shall reside in each Court. The Director shall consult with the several interested Courts to insure that the special problems of each Court are considered.

(*b*) The Director shall submit semi-annual reports of the operation of the Plan to the Council, to the Board of Trustees, to the Criminal Justice Act Advisory Board, and to the bench and bar. The Director shall develop within the Legal Aid Agency and encourage the bar associations to develop appropriate support functions for appointed attorneys such as trial assistance, investigative and clerical assistance.

3. REPRESENTATION BY ATTORNEYS

(*a*) The Director shall develop lists of attorneys to receive appointments to (1) criminal proceedings before the United States Commissioner; (2) criminal proceedings before the United States District Court for the District of Columbia; (3) habeas corpus and all other proceedings before the United States District Court for the District of Columbia which challenge the legality of confinement; (4) mental health cases before the Commission on Mental Health and the United States District Court for the District of Columbia; (5) proceedings before the Juvenile Court for the District of Columbia; (6) criminal proceedings before the District of Columbia Court of General Sessions; (7) appeals from any of the foregoing proceedings before the District of Columbia Court of Appeals; and (8) appeals from any of the foregoing proceedings before the United States Court of Appeals for the District of Columbia Circuit.

(*b*) Appointments should be arranged to insure full use of the attorneys and staff of the Legal Aid Agency for the District of Columbia and the Georgetown University Law School Legal Internship Program.

(*c*) As a general rule, no attorney shall be assigned to the capital cases who has not actively participated in the trial of two previous capital cases of five previous felony cases, or has equivalent qualifications.

(*d*) As a general rule, attorneys with no previous experience in felony trials should serve as associate counsel without compensation in two felony trials, or have equivalent trial qualifications, such as participation in other criminal and civil litigation, before they may be appointed as chief counsel with compensation in non-capital felony cases.

(*e*) The Director shall, when necessary, make recommendations to the Criminal Justice Act Advisory Board for the voluntary or involuntary removal of attorneys from the appointment lists.

(*f*) Lawyers upon attaining the age of sixty (60) may be omitted from all appointment lists upon request.

(*g*) To the extent it may be permitted by law, arrangements may be made for the participation of government lawyers in representation under this Plan where the Court concerned approves this participation.

V. APPOINTMENT PROCEDURE

A. Initial Appearance—Appointment of Counsel

Each defendant will be advised of his right to counsel. If the defendant desires appointed counsel and is financally unable to employ counsel, the judge or committing magistrate will appoint an attorney to represent him.

B. Procedures

The Director shall furnish to the Courts from time to time, as appropriate, the names and qualifications of attorneys for appointment in accordance with the Plan. To this end the Director shall establish detailed regulations under the Plan, subject to the approval of the Board of Trustees. The Courts shall not be precluded from taking into consideration the qualifications of an attorney and the nature of the case in any individual appointments, or from appointing an attorney without regard to these procedures in special or exceptional cases or as justice requires.

C. Counsel at Arraignment

If the defendant appears for arraignment after indictment without counsel, or if a juvenile appears at a detention hearing or an initial hearing without counsel, a Legal Aid Agency attorney will be appointed to represent the defendant for arraignment. Thereafter, the judge will refer the defendant's name to the Director for a preliminary determination of his financial ability to obtain an adequate representation and for submission of attorneys' names for appointment.

D. Duration of Appointment

The appointed attorney shall actively represent the defendant at all stages of the proceedings until relieved, until final disposition of the case or until a new attorney is appointed.

In all proceedings under this Plan the attorney shall advise the defendant of his right to appeal or such other legal remedies as may be available, of his right to counsel and shall, if the defendant so desires and the law allows, perfect said appeal or take such steps as are necessary to secure further remedies as may be allowed under the circumstances.

In the event of a second trial, whether as a result of a mistrial, successful motion for a new trial, remand from appeal or similar action, the trial counsel shall again represent the defendant unless relieved.

The Director shall, consistent with the policy of this Plan and in consultation with the Court of General Sessions and the United States District Court, develop a procedure whereby in felony cases attorneys will be appointed to represent defendants prior to the time of preliminary hearing, where practicable, who will serve as counsel until the final disposition of the matter in the trial court.

VI. DISBURSEMENTS UNDER 18 U.S.C. 3006A

A. Compensation of Counsel

1. RATES AND AMOUNTS

Unless cause to the contrary is shown, it is anticipated that the maximum rates and amounts allowed under the statute will be allowed as a matter of course since the average hourly rates and amounts for comparable work in the District of Columbia by competent attorneys far exceed the maximum compensation under the statute.

2. WHEN ENTITLED—SEGMENT DEFINED

Appointed counsel in cases prosecuted before the United States Commissioner, the Juvenile Court, the Court of General Sessions, the District of Columbia Court of Appeals, the United States District Court and the United States Court of Appeals shall at the conclusion of the representation, or any segment thereof, be entitled to compensation for his representation in accord with the statutory schedule, and reimbursement for his expenses reasonably incurred. Provided, however, that if the Board of Judges of any of these Courts adopts guidelines with respect to the amounts of compensation for attorneys, any voucher for compensation in excess of these guidelines shall be submitted for payment only after approval by the Chief Judge of the Court or a committee of judges appointed by him.

The term "segment" shall mean the total representation afforded to conclusion before the United States Commissioner, the Juvenile Court, the Court of General Sessions, the District of Columbia Court of Appeals, the District Court, or the United States Court of Appeals; provided, however, that renewed trial proceedings as a result of a mistrial, successful motion for new trial, remand from appeal, or similar action shall be treated as a separate proceeding in determining compensation of counsel and other disbursements under 18 U.S.C. 3006A.

Compensation may not be paid to attorneys or legal research assistants not appointed by the Court. Compensation may not be awarded to more than one attorney for any one defendant for concurrent services in any one case, except upon approval by the Court upon a showing of extraordinary circumstances.

3. MULTIPLICITY PROVISIONS

Multiple charges against the same defendant shall be treated as one case under 18 U.S.C. 3006A so long as all charges are disposed of in one proceeding.

An indictment or information charging multiple defendants shall be treated as one case under 18 U.S.C. 3006A only to the extent that multiple defendants are represented by one attorney in a joint proceeding.

The overall limits of compensation shall remain applicable when there is a substitution of attorneys.

4. REASONABLE EXPENSE UNDER 18 U.S.C. 3006A(2)(d)

Reasonable expenses under 18 U.S.C. 3006A(2)(d) shall include only the expenses of the assigned counsel arising directly out of his services on behalf of the defendant, including:

Transcripts

Telephone and travel expenses

Preparation of exhibits (but not exhibits prepared by a person performing service for claiming reimbursement under 18 U.S.C. 3006A(2)(c))

Such other expenses of assigned counsel as the District Court, the United States Court of Appeals, the Court of General Sessions or the Juvenile Court may approve

Reimbursment will not be provided for the following expenses:

Printing, typing, or reproduction of briefs or records

Secretarial assistance (except on a contract basis)

Other items of expense normally associated with office overhead

Application for such reimbursement may be made in segments, as defined in this Plan, and in no case will the Court reimburse assigned counsel for expenses for persons rendering service under 18 U.S.C. 3006A(2)(e)—such persons must make a separate application for reimbursement of expenses.

5. CLAIMS FOR COMPENSATION UPON ADMINISTRATIVE OFFICE FORMS

All claims for compensation and reimbursement of expenses shall be in writing upon forms prepared by the Administrative Office of the United States Courts where available, and approved claims shall be forwarded through the Director to the Administrative Office of the United States Courts for payment.

6. TIME LIMITATION ON CLAIMS

No claim will be honored which is filed over three months after termination of the representation.

7. COMPENSATION FOR TRIAL REPRESENTATION IN EXTRAORDINARY CIRCUMSTANCES UNDER 18 U.S.C. 3006A(2)(d)

Payment of compensation for representation in excess of the statutory limits may be permitted under extraordinary circumstances if the Chief Judge of the trial Court certifies that such payment is necessary to provide fair compensation for protracted representation, and the amount of the excess payment is approved by the Chief Judge of the United States Court of Appeals.

B. Services Other Than Counsel Under 18 U.S.C. 3006A(2)(e)

1. NATURE AND AVAILABILITY

Investigative, expert, or other services necessary to an adequate defense can be furnished under the provisions of 18 U.S.C. 3006A(2)(e). Such services will be made available to a defendant who is financially unable to obtain them, whether that defendant is represented by assigned counsel or has retained counsel. The services which may be authorized under the Act include:

Accountant
Bacteriologist
Coin Expert
Fingerprint Expert
Gemologist
Handwriting Expert
Interpreter
Key Punch Operator
Machine Operator
Medical Doctor
Psychiatrist
Psychologist (testing)
Reporter (transcripts, depositions)
Statistician

However, investigative services are available without cost from the Legal Aid Agency, and requests for such services will be approved only upon a showing that the services of the Legal Aid Agency are inadequate.

2. METHODS OF OBTAINING SERVICES

Counsel for a defendant requesting the furnishing of such services shall make an ex parte application to any District Judge, or to any Judge of the Court of General Sessions or of the Juvenile Court in the case of services requested in connection with matters pending in those Courts. If the Court finds, after appropriate inquiry, both that the services are necessary and that the defendant is financially unable to obtain them, the Court will authorize counsel to obtain such services. The Court may ratify such services after they have been obtained pursuant to 18 U.S.C. 3006A(2)(e), but it will only do so when the Court finds that the services were necessary in the interests of justice and that the need for the services was immediate and could not await prior approval by the Court. The preservation of tire marks, footprints, fingerprints, photographs at the scene, immediate blood tests or similar tests, and matters of similar character where delay may result in the loss of evidence are the kind of necessary services contemplated under this Plan.

3. QUALITY OF SERVICES

The Court will in all cases hold counsel accountable to obtain only qualified investigators or experts.

4. CLAIMS FOR COMPENSATION

Individuals or organizations rendering such services shall, within three months of completion of such services, submit to the Court a claim for compensation upon forms furnished by the Director specifying in affidavit form:

(*a*) The time expended
(*b*) The services rendered
(*c*) The expenses incurred on behalf of the defendant, itemized and supported by receipts, if possible
(*d*) Any compensation received in the same case or for the same services from any other sources

The total compensation in each segment of representation, as defined above, shall not exceed the statutory maximum for felony cases and for misdemeanors for representation prior to and at the trial, except in extraordinary cases, nor shall the statutory limits for felony cases and misdemeanors be exceeded in any case. The maximum payment shall be made for cases before the Juvenile Court, consistent with the Criminal Justice Act.

5. APPROVAL BY COURT

The Juvenile Court, the Court of General Sessions, the District of Columbia Court of Appeals, the United States District Court, or the United States Court of Appeals, acting through a judge of the respective Court, if satisfied that claims for compensation and expenses submitted to the Court are reasonable, will approve such claims and forward them to the Director who, in turn, shall forward the claim to the Administrative Office of the United States Courts for payment.

6. OTHER PAYMENTS PURSUANT TO 18 U.S.C. 3006A(2)(f)

At any time during the proceedings in any case in which counsel has been assigned or other services authorized, or both, the Court shall, if it finds other funds are available for payment from or on behalf of a defendant, exercise its discretion to direct or authorize that such funds be paid to the assigned attorney, to any person or organization authorized to render investigative, expert, or other services. Except as so authorized or directed, no person or organization may request or accept any payment or promise of payment for assisting in the representation of a defendant after counsel has been assigned to represent any defendant.

C. Previous Practice Unaffected

Nothing contained in this Plan shall be deemed to affect previous practice which allows certain witnesses and other expenses to be secured at government expense. No prior Court authorization shall be required to secure such investigation and other services as provided by the Legal Aid Agency for the District of Columbia or the Junior Bar Section of the District of Columbia Bar Association through law school student legal aid societies.

VII. ADOPTION OF THE PLAN AS AN APPENDIX TO THE RULES OF THE COURT

This Plan, as modified and effective, shall constitute an Appendix to the Rules of the United States District Court, and shall be so published.

PROJECT No. 4314404

ANALYSIS OF PAPERWORK POLICIES AND PROCEDURES OF THE CRIMINAL CLERK'S OFFICE DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

47-070 O—70—pt. 2——32

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ANALYSIS OF PAPERWORK POLICIES AND PROCEDURES OF THE CRIMINAL CLERK'S OFFICE, DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

FOREWORD

The Criminal Clerk's Office of the District of Columbia Court of General Sessions is continually updating its operational procedures to improve its effectiveness and efficiency. Such concern is especially appropriate at present, since currently proposed legislation suggests a possible extension of the responsibilities of the Court of General Sessions to include not only its current jurisdiction for misdemeanor offenses against the United States Code, offenses against the District of Columbia Code, and traffic offenses, but also a major portion of the felony offenses against the United States Code. This report documents a study of the current paperwork and information handling procedures in the Clerk's Office and suggests possible improvements.

ACKNOWLEDGMENT

The cooperation of Mr. Fred Beane, Chief Deputy Clerk, Criminal Division and his staff, particularly Mr. John March, Clerical Section Supervisor, materially contributed to the accomplishment of the study objectives. The guidance and editorial comments provided by Miss Maureen McPeak of the Court Management Study Group of the Committee on the Administration of Justice added scope to the study and significantly improved the clarity of the report. This work was completed for the Court Management Study Group of the Committee on the Administration of Justice, which consists of practicing lawyers who have volunteered to serve at the request of the District of Columbia Judicial Council composed of active judges of the U.S. Court of Appeals for the D.C. Circuit.

1. INTRODUCTION

The Chief Deputy Clerk, Criminal Division of the District of Columbia Court of General Sessions, is the officer of the Court responsible for keeping the required records on criminal case filings. In addition he is responsible for collecting fines, returning deposits and collateral, receiving and accounting for monies collected by the police department, supervising bondsmen, holding in custody accused persons under detention in the Court House, and supplying information to defense attorneys, prosecuting attorneys and the general public. This study of operations in the Criminal Clerk's Office was directed at identifying possible improvements in coping with the heavy flow of paperwork engendered by these functions.

The study was planned as a two man-mouth "best" effort, a limitation which ruled out a comprehensive treatment of the subject. Primary emphasis of the study was on the flow of a case's File Folder as it is routed and re-routed through the Office. This folder, which contains the court action documents and is the source for most of the court operating data, is the trigger for almost all other paperwork. In addition, the work load in the Clerk's Office and the associated computer processing operations were examined and the accuracy and completeness of the records were reviewed.

This report begins with brief descriptions of the functions of the Criminal Clerk's Office, the objectives of the study and the study design. These are followed by a summary of the investigation describing the paper work and the flow of the File Folder. A substantive review of various functions is contained in the analysis section, which leads in turn to statements of conclusions reached and recommendations offered.

2. DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS—BACKGROUND INFORMATION

The Court of General Sessions of the District of Columbia traces its beginning to the Organic Act of 1801. Among other things that Act provided for appointment of Justices of the Peace for the District to handle minor offenses that did not merit the attention of a higher court. These Justices did not constitute a court of record.

In 1870, a Police Court was established and given jurisdiction over those criminal cases that had been under the cognizance of the Justices of the Peace. In 1901, the Justices of the Peace were officially constituted as an Inferior Court for the District of Columbia. The Police Court and the Justice of Peace Court were consolidated in 1942 as the Municipal Court. Today's Court of General Sessions was created by the Congress as an inferior court under the provisions of Article I, Section 8 of the Constitution in 1962. The Court remains as a lesser court with almost all of its civil cases each involving less than $3,000 (maximum $10,000) and with the scope of its criminal dispositions limited to misdemeanors (sentences less than one year). The Court is divided into two main divisions, the Civil Division and the Criminal Division. This study deals only with the duties of the Office of the Chief Deputy Clerk, Criminal Division (commonly referred to as the Criminal Clerk's Office).

The criminal jurisdiction of the Court of General Sessions is set forth in 11 D.C. Code Section 963 as follows:

§ 11–963. Criminal jurisdiction: Commitment

(a) Except as otherwise expressly provided by this section or by other law, the District of Columbia Court of General Sessions has original jurisdiction, concurrently with the United States District Court for the District of Columbia, of:

(1) Offenses committed in the District of Columbia for which the punishment is by fine or by imprisonment for one year or less, and

(2) Offenses against municipal ordinances or regulations in force in the District.

(b) The Court of General Sessions does not have jurisdiction of the offenses of libel, conspiracy, or violation of the postal or pension laws of the United States.

(c) In all cases, whether cognizable in the Court of General Sessions or in the District Court, the Court of General Sessions has jurisdiction to make preliminary examination and commit offenders or grant bail in bailable cases, either for trial or for further examination.

(d) The Court of General Sessions has jurisdiction of all criminal cases pending in the Municipal Court of the District of Columbia on January 1, 1965.

The Criminal Division has three branches, all created by rule of the judges. These are: the United States Branch which processes offenses against the United States Code, the District of Columbia Branch which processes offenses against the District of Columbia code and the Traffic Branch which processes those offenses involving traffic violations. In 1968 new criminal cases filed in the Court of General Sessions totalled 63,557. Of these new cases 17,440 were in the United States Branch, 15,350 were in the District of Columbia Branch and the remaining 30,767 were in the Traffic Branch.[1]

In general, the Court of General Sessions has remained a "minor" court with criminal disposition limited to misdemeanors. Even so, a recent observation indicates that "the Court of General Sessions has grown to a point where, in terms of number of cases and contact with the citizenry of the District of Columbia, it is, for all practical purposes, the most important court in the District."[2]

3. OBJECTIVES OF THE STUDY

There is growing concern throughout the nation about the increasing backlog of cases in the criminal justice system. The Report of the President's Commission on Crime in the District of Columbia indicated that the criminal misdemeanor backlog in the Court of General Sessions had grown by 117% in the ten year period 1955–1965 while the volume of criminal filings had grown by only 51% during the same period.[3] In addition to the growing backlog, recent Congressional hearings have been held on legislation that would, if enacted, transfer a significant number of felony cases from the United States District Court to the D. C. Court of General Sessions, resulting in a still greater workload. As the number of cases being processed through the Court of General Sessions grows, so does the volume of paperwork.

In recognition of these developments, the Committee on the Administration of Justice was of the opinion that a review of the paperwork flow in the Criminal Clerk's Office would be useful in suggesting ways of handling this increasing workload.

The Court Management Study Group of the Committee on the Administration of Justice was aware that the Technical Analysis Division (TAD) of the National Bureau of Standards was conducting a study on pre-trial release for the Department of Justice's National Institute of Law Enforcement and Criminal Justice. This effort had acquainted TAD with some of the data and procedures in the Criminal Clerk's office. The Court Management Study Group therefore approached TAD with a request to undertake a two man-month study to conduct the desired review. It was recognized at the outset that due to limited time and resources available for the task, a complete description and analysis of *all* paperwork in the Criminal Clerk's office would be beyond the scope of the project.

The objective of this limited study was to provide a description of the more important paperwork and related activities in the Criminal Clerk's office. Analysis would be made of these processes to seek an-

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[1] The workload per case in the Traffic Branch is much less than the workload per case in the other two branches.

[2] "History and Jurisdiction of the D.C. Court System" prepared by the Young Lawyer's Committee of the District of Columbia Bar Association, as found in "Crime in the National Capital," U.S. Senate Hearings before the Committee on the District of Columbia, and the Subcommittee on Improvements in Judicial Machinery of the Committee on the Judiciary, 91st Congress, 1st Session, Part 3, page 562.

[3] Report of the President's Commission on Crime in the District of Columbia, U.S. Government Printing Office, 1966 (page 277).

swers to what, when, where, how, and why questions about the paperwork. Based on this analysis, recommendations would then be made bearing on revealed opportunities for elimination of unnecessary tasks, reduction in paperwork processing time, reduction of overlapping and duplicate recording, meeting of clearly indicated personnel needs, and better utilization of staff skills.

4. THE STUDY DESIGN

The study was separated into a number of sequential phases as follows:

A. Investigation:
   (1) Preliminary meeting with personnel of the Criminal Clerk's Office, a representative of the sponsor and the study staff to explain the project and arrange for the conduct of the project.
   (2) Elucidation of the functions of the Criminal Clerk's Office.
   (3) Development of a table of organization of the Office, including numbers of persons in the staff, their skill areas, and the nature of their duties.
   (4) Identification of the forms that are currently in use within the Clerk's Office.
   (5) Determination of the extent of present task-cost accounting procedures.
   (6) A review of the study to balance the scope of the effort for maximum achievement within the constraints.

B. Major Data Gathering: For major items of paperwork, trace their flow through the system, defining operations, movements, inspections, delays and storage.

C. Preliminary Analysis: A review of the collected data to seek answers to the questions of who does what, when, how and why.

D. Additional Data Gathering: This phase would seek specific information that was found necessary to complete meaningful analysis of the paperwork flow.

E. Complete Analysis and Draft Report: This phase would integrate the latter data into the analysis and prepare an initial draft of the report document.

F. Report Review: This phase would be the review of the draft document in accordance with standard TAD procedures. Preliminary review by others as appropriate.

G. Report Revision and Publication.

5. THE INVESTIGATION

An initial meeting was held with Mr. Fred Beane, the Chief Deputy Clerk, Criminal Division; a representative of the Court Management Study Staff; and TAD research ersonnel. Mr. Beane conducted a walk-through of his office spaces, indicated enthusiastic support of the effort and offered his cooperation.

External to the Court of General Scssions, primary transmitters of information to the Clerk's Office are:

(1) District of Columbia Metropolitan Police
(2) United States Marshal's Office

(3) United States Attorney's Office
(4) District of Columbia Corporation Counsel's Office
(5) Attorneys

From the police and marshals, the Clerk's office receives information on persons accused of crimes. These inputs relate to the nature of the offenses and to the delivery of the persons to the Courthouse. The United States Attorney and the District of Columbia Corporation Counsel provide information on the government's decisions with respect to criminal filings. Attorneys file motions on behalf of their clients and provide other information with respect to the defense of criminal filings.

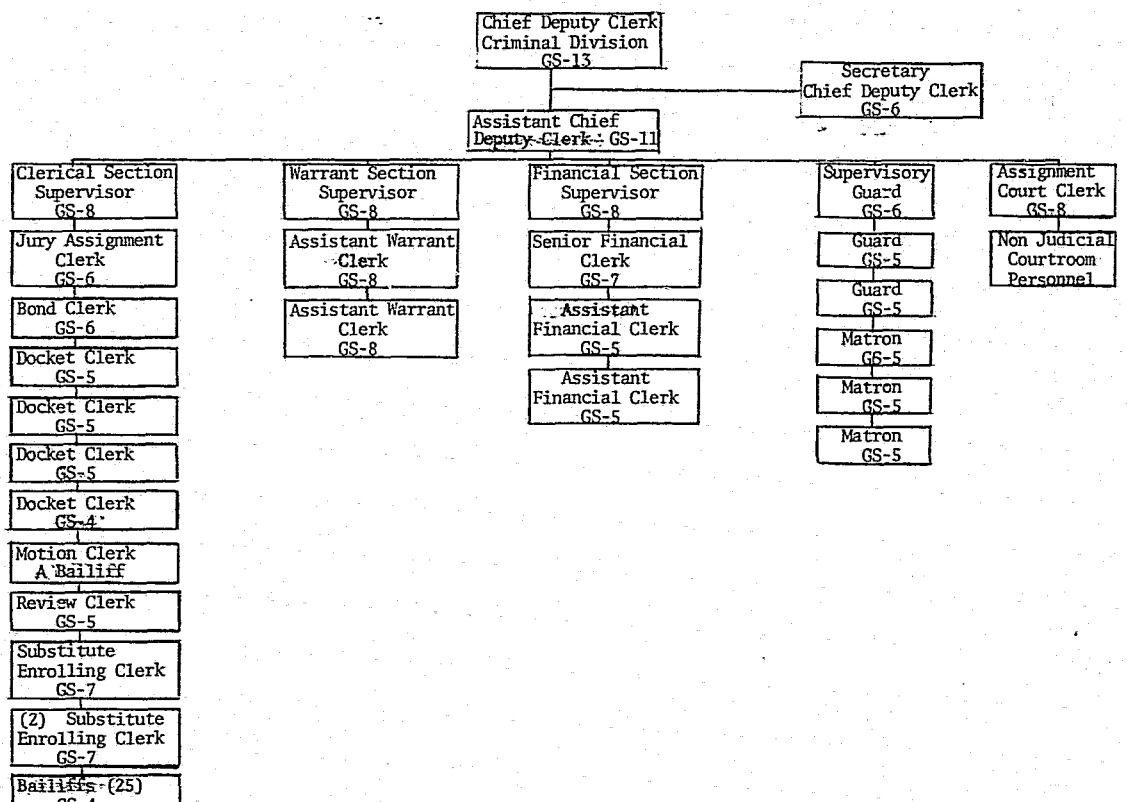
The Criminal Clerk's office organizes all this material to initiate and maintain a data file. In addition, the Clerk's office is responsible for recording courtroom actions on the filings and for maintaining cognizance of people charged as directed by these actions. The Criminal Clerk is also responsible for preparing warrants and summons, for the appearance of accused persons who have been detained, and for supplying the case file in court as required for trial, examination or hearing.

Agencies which are sources of information to the Clerk's office were listed above. Agencies *to* which the office provides information on a relatively routine basis include:

(1) District of Columbia Bail Agency
(2) Criminal Justice Act Program
(3) Hospitals
    (*a*) D.C. General
    (*b*) St. Elizabeth's
(4) District of Columbia Jail
(5) United States District Court
(6) Surety Bondsmen
(7) Courts in other Jurisdictions
(8) Division of Motor Vehicles (Traffic Records Division)
(9) Metropolitan Police Department (Criminal Records Division)
(10) Metropolitan Police Liaison Officer

Figure 1 shows the organization chart of the Criminal Clerk's office. The four main segments of the office are: the clerical section, the warrant section, the financial section and the guards. The Assignment Court Clerk is nominally under the jurisdiction of the Criminal Clerk while the court is in session, but in actual practice is responsive to the Assignment Court Judge. The Jury Assignment Clerk and the Information Clerk support the clerical section supervisor and the courtroom clerks. Non-judicial courtroom personnel include the U.S. Marshals, the Bailiffs when physically in the courtroom, and the courtroom clerks when court is in session.

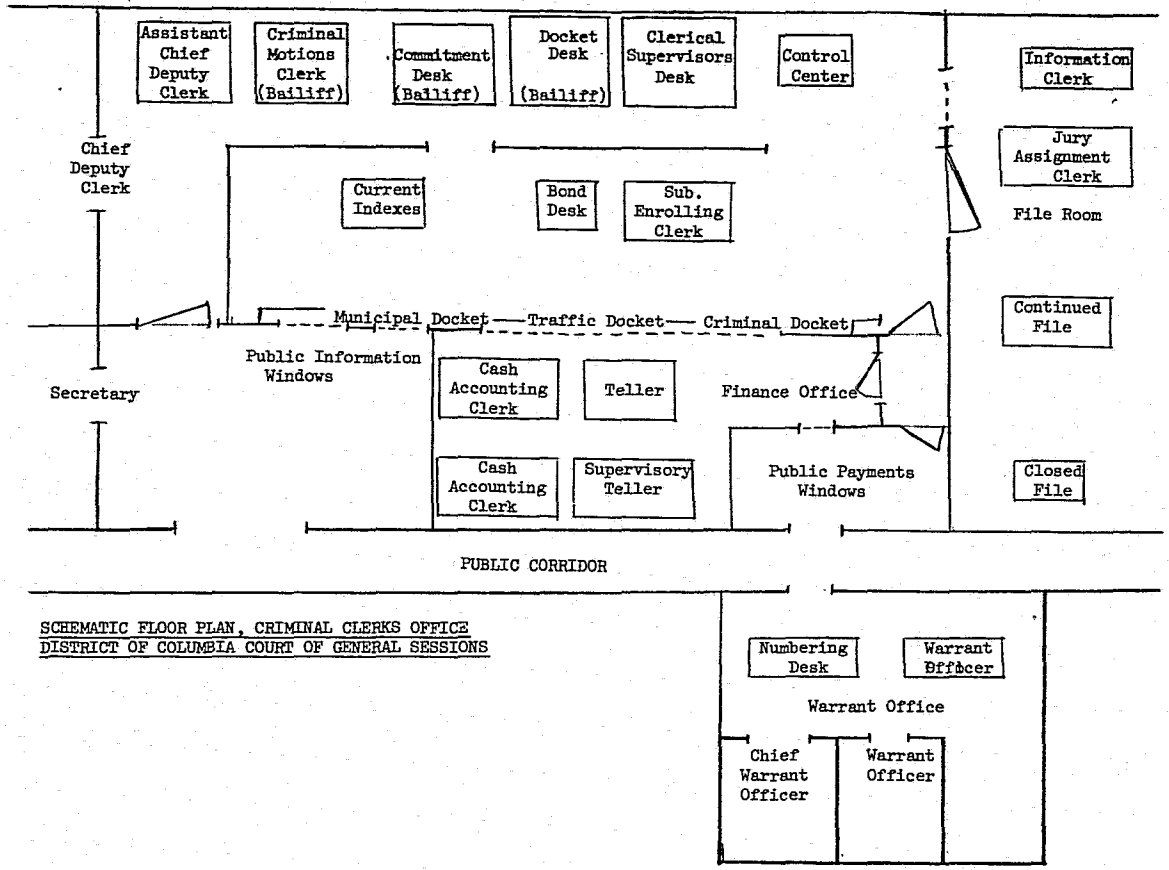
Figure 1
Table of Organization - Office of the Clerk, Criminal Division



The total authorized staff of the Criminal Clerk's office is 52 persons. At present, there are 7 bailiff vacancies. A high turnover rate due to low pay and transfer to more rewarding positions is being experienced, of course causing operational problems. Forty percent of the GS–4 rated employees (primarily bailiffs) left and were replaced in fiscal year 1969. Another serious problem is the turnover rate for the Courtroom Clerks, which was in excess of 50 percent during the year.

Figure 2 is a sketch of the office space used by the staff of the Criminal Clerk's office, indicating desk locations. There is considerable flexibility in who staffs several of the desks. No one is explicitly assigned to the public information windows. The Chief Deputy Clerk takes pride in the fact that he can and does take over in any one of these positions as the need arises—a not infrequent occurrence. That this officer must often assume a function not among his normal duties indicates that the office either is understaffed or else has a serious workload allocation problem. Neither employee's hours nor their salaries are recorded formally against specific tasks, therefore task-cost information cannot be determined.

Figure 2



SCHEMATIC FLOOR PLAN, CRIMINAL CLERKS OFFICE
DISTRICT OF COLUMBIA COURT OF GENERAL SESSIONS

Table I is a listing of the forms presently in use in the Criminal Clerk's Office. In the left hand columns are shown the number of each type prepared each day and the time required to prepare the form as estimated by the Clerical Section Supervisor. These figures are typical for a day and indicate the general work loads. The scheduling becomes even more complex due to fluctuations which normally occur from day-to-day. In the column showing preparation time, an A indicates under one minute preparation time and a B indicates under one-half minute preparation time. The forms placed in the case file folder (pre-numbered case jacket) are also indicated.

TABLE I.—FORMS IN USE IN CRIMINAL CLERK'S OFFICE—PREPARATION TIME AND DAILY VOLUME

[0* indicates document is typed; "A" denotes under 1 minute in preparation time; "B" denotes under ½ minute in preparation time]

Form	Number per day	Preparation time	Placed in folder
I. NUMBERED FORMS			
1. Form 1—To District of Columbia jail—Receive into your custody		5 minutes	
2. Form 1-A—To St. Elizabeths Hospital—Recieve into your custody		5 minutes	
3. Form 2—To Attorney General, United States (jail and fine)	100	5 minutes	
4. Form 2-A—To Attorney General, United States (jail and fine)		5 minutes	
5. Form 2-B—To Attorney General, United States (jail)		5 minutes	
6. Form 3—To District of Columbia jail—Receive into your custody		5 minutes	
7. Form 7—Time of court operations	3	A	
8. Form 14—Clerk's office—Sent to—Requested by	125	A	
9. Form 15—Stationkeep—Precinct, bond in the sum of	1	1.5 minutes	
10. Form 17—Grand jury card	25	B	
11. Form 18—United States v. ———. The clerk of the court will please	75	B	×
12. Form 19—To the clerk of the court. I will be in the			
13. Form 20—No paper and change of charge slip			×
14. Form 21—To District of Columbia jail—Release from your custody	20	A	
15. Form 22A—Notification of release of prisoners	35	B	
16. Form 26—Jury trial demands	5	10 minutes	
17. Form 70—Recognizance to answer in the District of Columbia Court of Appeals.	1 per week	3 minutes	
18. Form 72—District of Columbia Court of General Sessions daily summary sheet.	1	17 minutes	
19. Form 73—Transcript of entries	20	5 minutes	
20. Form 74—District of Columbia Court of General Sessions summary sheet ledger—Postings—Bal.	1	20 minutes	
21. Form 78—District of Columbia Chief of Police—Commanded to attend the body.	10	5 minutes	×
22. Form 86—Certificate of attendance in court	5	2 minutes	
23. Form 88—Production of defendant for bond	25	1 minute	
24. Form 139—To St. Elizabeths or District of Columbia General Hospital—Receive into custody.	With 1-6 above		
25. Form 73-A—O*Traffic transcript	50	5 minutes	
26. Form 23—District of Columbia jail—Bond release	7	1 minute	
II. COMPLAINTS[1]			
27 General			×
28 Bail violation, title 18, sec. 3150, United States Code			×
29 Larceny			×
30 Destruction of property			×
31 Assault with a dangerous weapon			×
32 Assault			×
33 Assault on a police officer			×
34 Threats			×
35 Embezzlement			×
36 False pretenses			×
37 Bad check			×
38 Operating a lottery			×
39 Burglary II			×
40 Larceny after trust			×
41 Unauthorized use of motor vehicle			×
42 Carnal knowledge			×
43 Robbery			×
44 Unlawful entry			×
45 Carrying a deadly weapon after conviction of felony			×
46 Indecent act on a minor child			×
47 Fugitive from justice			×

See footnotes at end of table.

TABLE I.—FORMS IN USE IN CRIMINAL CLERK'S OFFICE—PREPARATION TIME AND DAILY VOLUME—Continued

[0* indicates document is typed; "A" denotes under 1 minute in preparation time; "B" denotes under ½ minute in preparation time]

Form	Number per day	Preparation time	Placed in folder
III. WARRANTS AND SUMMONS			
48 Bench warrant—Employee St. Elizabeth's Hospital	2/months	1 minute	×
48-A Form 83 bench warrant	3	15 minutes	
49 Search warrant—Property	2	15 minutes	
50 Search warrant—Alcoholic beverages	15		×
51 Affidavit in support of * * * warrant for * * *	25		×
52 Affidavit in support of—Arrest warrant	10	20 minutes	×
53 Judicial warrant	20	5 minutes	×
IV. COURT ORDERS			
54 Appearance bond	25	5 minutes	×
55 (This doc. has been abolished)			
56 Motion to set aside for future	75	10 minutes	×
57 Order—Tuberculosis isolation	1 per month	15 minutes	×
58 U.S. attorney—Receive into your custody—(Fed. Youto Corr. Ad)	1	3 minutes	
59 Order of commitment St. Elizabeth's—Mental			×
60 Order of commitment St. Elizabeth's—Oral objection			
61 Do			×
62 Order of commitment St. Elizabeth's—After psychiatric reports			
V. STATUS AND FINANCIAL			
63 Daily jury statistical reports, District of Columbia, traffic, United States	1	30 minutes	
64 Monthly jury statistical reports, District of Columbia, and combined	1/month	60 minutes	
65 Monthly warrant office statistical report	1/month	60 minutes	
66 Continued case schedules, jury and straight—Assign., District of Columbia, traffic, felony, file copy.	1	20 minutes	
67 Financial transaction sheet	225	5 minutes	
68 Voucher for witness fee	22	4 minutes	
69 Witness fee voucher list sheet	1.5	5 minutes	
70 List of persons on collateral who appeared—sheet	6	10 minutes	
71 Voucher for refunds	1	10 minutes	
72 Criminal finance office bankbook—sheet	12	10 minutes	
73 Finance office recapitalization	1	10 minutes	
VI. MISCELLANEOUS			
74 Permission to interview slip	1 week	A	
75 Updated card	750	B	
76 Collateral receipt, Metropolitan Police Department	5	A	
77 Motion calendar slip	50	3 min	
78 (Civil Division form)			
79 Relief of bondsman	0	A	×
80 Heading card	400	1.5 minutes	×
81 Application for continuance of case on bond or call	1 week	A	
82 Route slip for St. Elizabeth's	5	0	
83 Route slip for District of Columbia General	2 months	0	
VII. ADDITIONAL FORMS			
84 Prenumbered case jacket (folder)	400	3 minutes	×
85 Traffic warrant charge information sheet (numerous types)	350	B	×
86 Warrant—Disorderly conduct (numerous types)	50	B	×
87 Charge sheet	150	2 minutes	×
88 Complaint—Forgery (this belongs in sec. II)			×
89 Waiver of trial by jury	15	B	×
90 Release on conditions	250	B	×
91 Jury calendars—U.S. traffic, District of Columbia (these have no forms)	1	3 to 4 hours	
92 Bond form	1	2 to 3 hours	
93 Transmittal forms, grand jury, warrants and attachments	10	Full day	
94 Finance jail releases	5	5 to 10 minutes	
95 Small blue vouchers	12–15	5 to 10 minutes	
96 Docket entries		3 to 4 hours	
97 Court information sheet—U.S. attorney's office			×

Note: Typically 12 man-days are required to complete these forms each day.

[1] About 65 per day, 5 to 10 minutes each. (If drawn in corporation counsel's office or U.S. attorney's office they require about 2 minutes.)

The primary analysis effort described in the following section was devoted (1) to tracing the movements of the criminal information folder, (2) to the use of the Court's computer in preparing documents, and (3) to some extent to a review of procedures for responding to inquiries from the public in person and by telephone.

6. THE ANALYSIS

1. PAPERWORK FLOW

The flow of paperwork in the Criminal Clerk's Office is centered on the case file folder. This folder contains the complaint(s), warrants, court orders, etc., that are prepared as the case is processed through the court. The folder itself is an improvement adopted in September, 1969 to simplify filing and to facilitate handling; prior to September, court records were attached to and folded within the complaint. Each folder shows, on its outside cover, a synopsis of the case's current status. The courtroom clerks are supposed to have completed this synopsis when the courtroom activity is completed, but in many instances they do not complete the entries and the Criminal Clerk's office staff must go through the folder and make appropriate entries. The flow chart in Figure 3 was developed to depict the flow of the folder from initiation of the case to its filing.

Figure 3

Flow Diagram of Information Folder Through the Criminal Courts of the D. C. Court of General Sessions

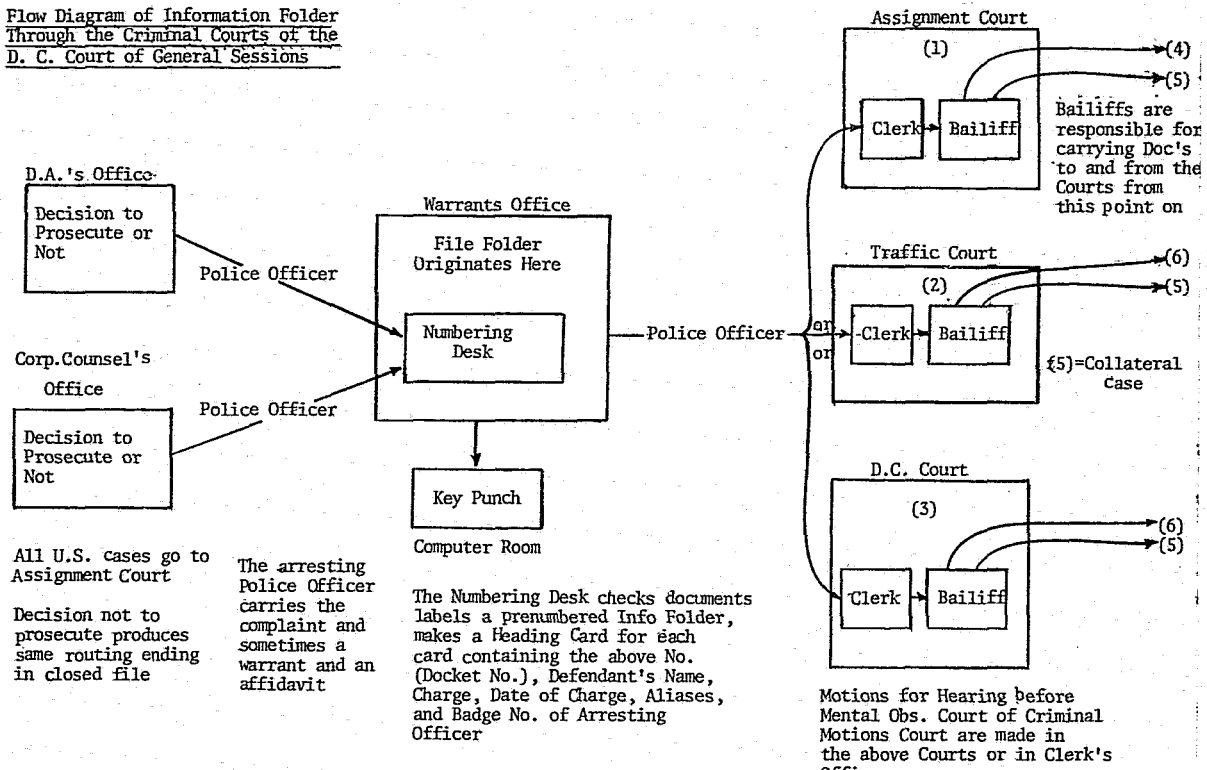
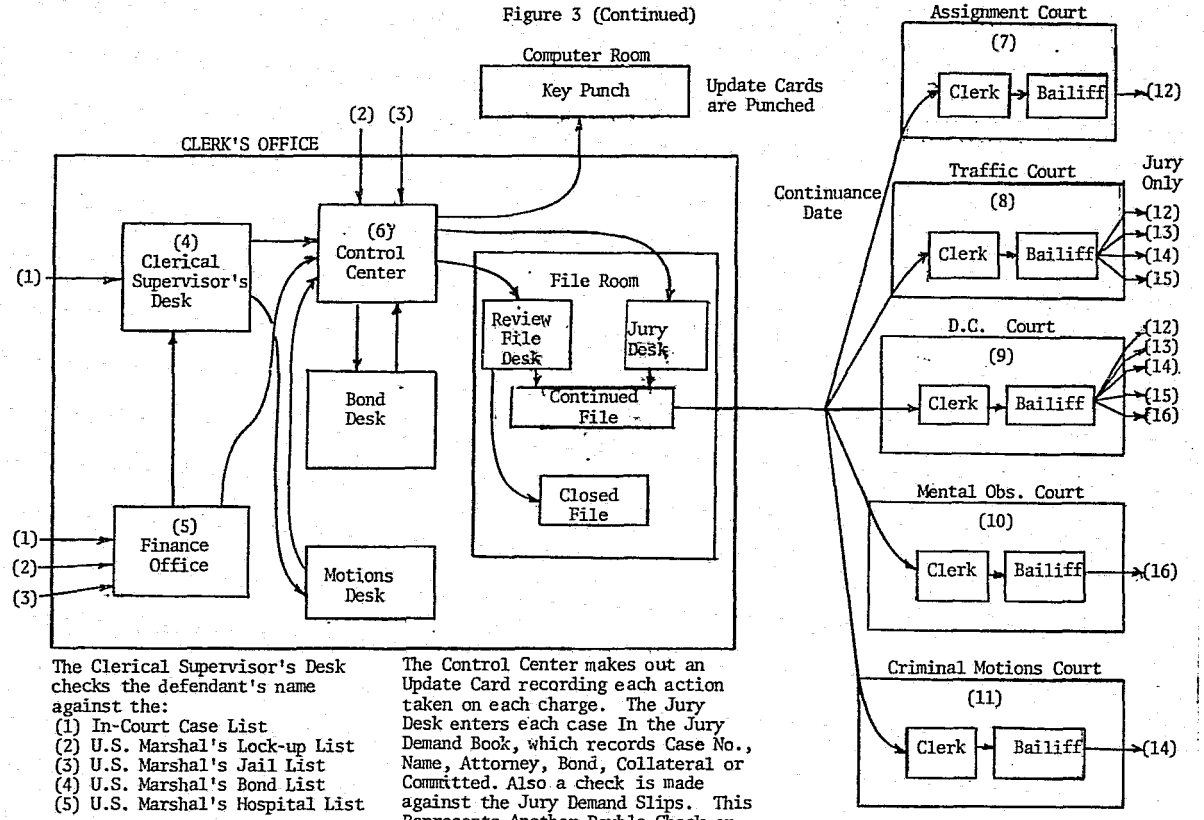


Figure 3 (Continued)



The Clerical Supervisor's Desk checks the defendant's name against the:
(1) In-Court Case List
(2) U.S. Marshal's Lock-up List
(3) U.S. Marshal's Jail List
(4) U.S. Marshal's Bond List
(5) U.S. Marshal's Hospital List

After this check, all requesting agencies and individuals have access to the Information Folder

The Control Center makes out an Update Card recording each action taken on each charge. The Jury Desk enters each case In the Jury Demand Book, which records Case No., Name, Attorney, Bond, Collateral or Committed. Also a check is made against the Jury Demand Slips. This Represents Another Double-Check or body count, as is the Marshal's List. Non-jury Cases in Traffic and D.C. Court are tried there and Folder sent to Probation Off., Con. Center or Finance Off.

Court Clerk is responsible for obtaining Info. Folder from File Room on Continuance Date.

Figure 3 (Continued)

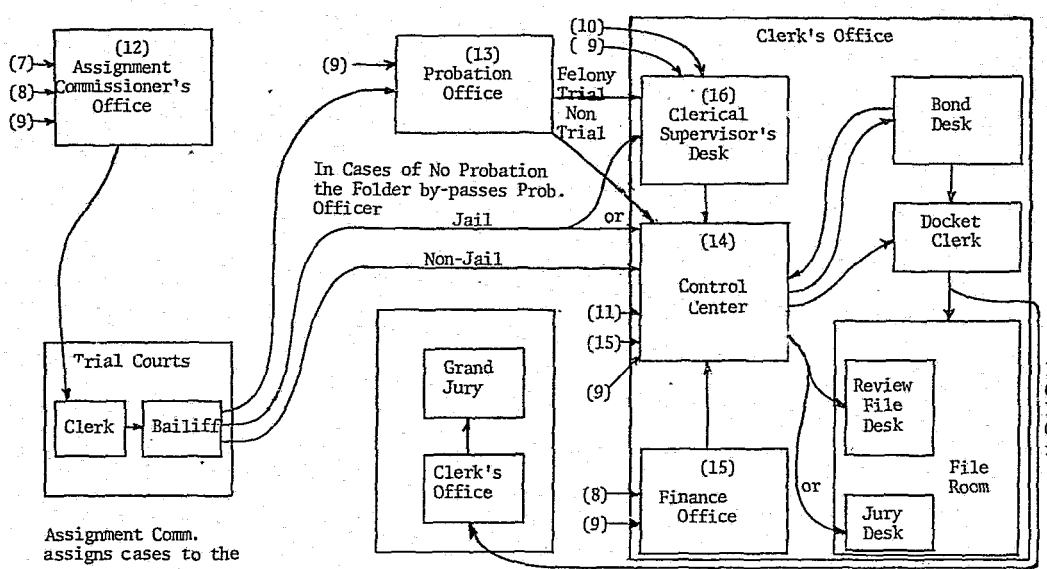
Disposition of case determines which file this folder is returned to. The following are the files currently maintained:

1. Attachments
2. U.S. Cases
3. Traffic Cases
4. D.C. Cases
5. Open Cases
6. Closed Cases
7. Convictions

The Computer Supplies:

1. Index of All Cases Filed During Year
2. Dockets
3. Continued Calendar
4. Statistics
5. Attachment Lists
6. Outstanding Bench Warrant List

In cases of Appeal, Folder is sent to Finance Office for $5 fee, then to Docket Desk and Motions Desk Folder returns thru Chief Dept. Clerk's Office.



Bond Clerk is approached thru Public Info. Windows to make Bond. Payments are handled by Finance Office.

For Felony cases, Original Info. Folder goes to Grand Jury-Xerox in File Room.

Assignment Comm. assigns cases to the Criminal Trial Courts

Grand Jury can indict or refer back to Court of Gen. Sessions for processing as misdemeanor. Info Folder is held but Statement is sent to D.A.'s Office for his review and decision to prosecute.

Any court action taken within the calendar month of the Arraignment by-passes the Docket Clerk.

A new folder is prepared at the numbering desk in the warrant office each time a police officer brings action against an individual on charges that the U.S. Attorney or the Corporation Counsel elects to prosecute. This folder represents a case. Each case folder can contain several charges or complaints. A folder is also created if the officer delivers notification that prosecution against an arrested individual is being declined.

After the complaint is completed in the warrant office, the necessary information is recorded on the folder, a computer heading card is prepared, and the complaint is placed within the folder. The police officer then takes the folder to the appropriate courtroom. Charges of violating the U.S. Code are taken to Assignment Court. Charges of violating the D.C. Code are taken to D.C. Court and traffic violations are taken to Traffic Court. When charges are of mixed jurisdiction the folder usually goes to the Assignment Court if any U.S. offense is charged, and to D.C. Court if only D.C. and Traffic Offenses are charged. In the respective courtrooms the Courtroom Clerk enters notations on the Folder's cover and on the contained documents to reflect courtroom action on initial appearance. Examples of actions are: dispositions, continuances, bail decisions and actions on motions.

When court action on the case is completed for the day, the folder is taken to the Criminal Clerk's Office by the Bailiff. If the case involves collateral the folder is delivered to the finance office where the appropriate data are recorded. The folder is then routed to the Clerical Supervisor's desk or to the Control Center. If the case involves a new offense against the U.S. code and the defendant involved was or will be detained, the folder is forwarded to the Clerical Supervisor's Desk. The Clerical Supervisor screens the cases to record information to keep track of the custody of the individual. He then forwards the folder to the Control Center. In cases where none of these conditions exist, the folder is routed from the Courtroom direct to the Control Center.

At the Control Center, folders from the financial office not going via the Clerical Section Supervisor, the folders from the Clerical Section Supervisor's desk, and the remaining folders received directly from the courtrooms are checked for completeness, and a computer Update Card on each charge is prepared. The folders are then routed to the files, via the Jury Assignment Clerk for those cases where jury trial is demanded and via the Information Clerk for cases to be tried without a jury. Folders for completed cases are also routed to the files via the Information Clerk.

The Information and Jury Clerks tabulate the continuance date and place the folder in the appropriate file. Jury and non-jury trial cases folders are filed by their continuance date. Completed folders are filed by their case numbers.

When bond is to be posted, the Control Center forwards the folder to the Bond Desk where a check is made to see that the Bondsman posts the bond. The folder then is returned to file via Finance Office, Clerical

Section Supervisor, Control Center and Jury Assignment Clerk or Information Clerk as appropriate.

When criminal motions are filed the bailiff manning the Motions Desk retrieves the folder from its file, enters the motion and returns it to file via the Motion Court, Judges Chambers, the Clerical Supervisor's desk, Control Center, etc., as appropriate.

On the continuance date the Courtroom Clerks obtain appropriate folders from the file room. The courts include the Assignment Court for U.S. cases, the D.C. Court for D.C. cases, Traffic Court for traffic cases, the Mental Observation Court when examination has been ordered to determine competence, or the Motions Court for hearing and ruling on motions. Folders of cases not sent to trial have appropriate entries recorded by the Courtroom Clerk and are returned to the Criminal Clerk's office where they follow routes determined by circumstances described earlier for initial action cases.

Folders for D.C. and traffic cases for trial without a jury are sent to the D.C. and Traffic Court as they are called. The Courtroom Clerk makes appropriate notations on and in the folder and it is returned to the Control Center for processing via the Probation Office, Finance Office and/or Clerical Section Supervisor as appropriate.

Folders of cases ready for trial with a jury in the Assignment Court are directed to courtrooms until all available judges are hearing cases. Additional cases are then routed to the Criminal Assignment Commissioner to be scheduled for hearing when other cases are completed. Cases that cannot be accommodated on the appointed day are continued by the Assignment Commissioner and returned for refiling in the Clerk's Office via the desks as described above. Folders of cases ready for trial with a jury in the D.C. and Traffic Courts are sent directly to the Assignment Commissioner to be sent to an available trial judge.

Cases that are tried have appropriate entries made on and in the case folder and the folders are then returned by the bailiffs to the Clerk's Office for processing and filing.

Felony cases are given preliminary hearings rather than trial. If probable cause is found, the case is bound over to the Grand Jury. The Case Folder is returned to the Clerk's Office where the contents are duplicated. Originals of the contents and a file copy of the Case Folder are sent to the District Court for Grand Jury Action.

2. WORK LOAD IN THE CRIMINAL CLERK'S OFFICE

The work load in the Criminal Clerk's Office is estimated on the basis of two weeks of interviewing supervisory personnel, observing office routine, and tabulating events at the Control Center. This work load appears to peak for all functions at about the same time of day, late morning, which causes additional complication in scheduling.

Paper Work.—An estimated average of 350 prenumbered case folders (Form No. 84 in Table I) are originated each day which require over 2 man-days of effort. The preparation of transmittal forms (Form No. 93) requires one man full-time, and the 75 court motions (Form 56) represent well over a day's effort for one man. Summing the times involved each day in preparing only those documents which require over one minute to prepare gives a total of approximately twelve man-days effort per day. To this work load of initial folders

must be added a similar number of case folders which cycle through the Clerk's Office as court actions occur. Most of these are non-traffic cases, which appear before the court an estimated three times after presentment before they are closed, and the folders are thus processed three times in the Clerk's Office.

Public Information Windows.—The public information service is provided at the information windows in the Criminal Clerk's Office and by telephone. While the information recorded by the office is a matter of public record, these records are not made physically available to the public because of the danger of theft or destruction.

There are two public information windows side by side, in the office. It is to these two windows that defense lawyers, defendants, and interested parties come in order to acquire information on case dispositions or status, court calendars, charges, etc. No formal assignment of office personnel to these windows is made although these windows are in almost constant use during the day. The number of inquiries at the windows is estimated to be 500 per day. Finance Office staff are not responsible for the public information windows since they maintain the public payments windows. The Information Clerk and the Jury Clerk are in another room. As a result the balance of the staff, the Chief Deputy Clerk, Assistant Chief Deputy Clerk, the Docket Clerks, the Enrolling Clerks, and whatever bailiffs are available, provide service to the public information windows in addition to their assigned tasks.

Most requests for information require going to the docket books or the various indexes that are maintained at the index table (shown in Figure 2) but in a significant number of cases, the information folder must be consulted. A majority of information requests require from 3 to 5 minutes to service. With only two windows, the result is that queues (waiting lines) develop, particularly in the morning hours as people come to inquire about arraignments and cases scheduled for that day. On Mondays, the windows are particularly crowded with the queue extending into the corridor and adding to the congestion of the queue at the Warrant Office.

Over and above the problem caused by the small number of windows and by peak periods of demand, the task of servicing the public information windows is made more difficult and time consuming by the fact that the majority of inquiries are made by people who do not understand court procedures and requirements or legal terminology. As a result, the office staff finds it necessary to probe for the information desired and to correct misinformation before it can answer the questions.

Telephone Inquiries.—More inquiries are made by telephone than are made at the windows. There are 4 lines into the office and no specific staff member is responsible for answering these calls. Considerable delay is experienced by callers waiting while office personnel consult appropriate records. At one point in the past one person was exclusively assigned to answer all telephone inquiries; it was observed that at peak demand, all incoming lines would be ringing for some time while information in answer to a given call was collected.

3. USE OF AUTOMATIC DATA PROCESSING BY THE CRIMINAL CLERK'S OFFICE

The Office of the Chief Deputy Clerk, Criminal Division does not have a computer facility directly under its jurisdiction, but shares

the facility serving the whole court. Currently this facility consists of an IBM 360/30 Central Processing Unit (CPU) with 32,000 storage units of internal memory, two 2401 tape units for data files, three Model 2311 disc packs and a 2540 printer. Approximately 35 percent of the computer facility operating time is devoted to generating court calendars, indexing, updating old cases, and entering new cases into the memory in support of the activities of the Criminal Clerk's Office. Once a month, a complete update is made, and summary statistics are prepared.

The computer facility currently has a limited capacity, and cannot perform all desirable functions for the Criminal Clerk's Office. For instance, the data bank of lawyers' names cannot be stored for ready access and possible use in automatically generating notices for defense attorney appearances. The capacity is to be approximately doubled in early 1970 but will still not be large enough to accommodate on-line direct inquiry of cases during the working day. A brief description of the operating procedures in using the computer is presented in the paragraphs which follow.

When a new case folder is issued at the numbering desk, a heading card is prepared manually for each charge showing:

Case number. Composed of a 5-digit serial number, an alphabetic suffix to discriminate among charges, and a calendar year suffix (xxxxx–A69).
Last and first names with middle initial.
The code number for the charge listed.
The filing date.
The offense date.
The badge number of the police officer.
An indication whether a citation is listed.

The cards are then forwarded to the Court Computer Staff where they are key punched and verified. They are entered into the computer file on a daily basis. Space is provided on the Heading Card for initialing by the preparing clerk and for a code to identify the key puncher. Each time the folder passes through the Control Center, an Update Card is prepared manually for those items added or changed since the last Update Card was prepared. Data recorded are:

Case number, charge suffix, year suffix.
Defense lawyer's code number.
A status code.
The dollar amount of bond.
A bondsman's code.
The defendant's plea.
A judgment code.
A trial type code.
A code for the judge.
Type of trial and continuation date.
Code for party requesting continuance.
Other action codes.
Judgment date.
Disposition date.
Amount of collateral deposited.
Amount of fine paid.
Amount of collateral returned.

Sentence in days.
Fine in dollars.
Days suspended.
A code for probation.
Months and/or years on probation.
A code for summons issuance.
A code for bench warrant issuance.
A code for attachment issuance.

Space is provided for control clerk and keypunch identification. These cards are also forwarded daily for key punching, verifying and entry into the computer file.

The computer center prepares daily for use in the Clerk's office:

Index of cases.
U.S. jury continued calendar.
U.S. non-jury continued calendar.
Felony continued calendar.
D.C. jury continued calendar.
D.C. non-jury continued calendar.
Traffic court continued calendar.
Mental continued calendar.

These calendars show cases scheduled seven days from the date prepared. All updating is done by hand after the original calendar is presented.

Data entering the computer center are key punched and entered into the computer on the morning following the day received. Updated material is available for the Criminal Clerk's office the next day.

Periodically, the following material is prepared:

Docket book page.
Number of jury cases pending.
Number of non-jury cases pending.
Number of nolles entered.
Number of charges where presentation was declined.
Number of non-jury trials.
Number of jury trials.
Number of pleas entered.
Number of defendants committed by reason of insanity.
Number of forfeitures.
Charges filed by charge.
Number of felonies filed.
Number of misdemeanors filed.
Percent of cases open—closed.
Percent of cases open 3 months or more.
Average number of days from filing until date of disposition in jury trials.
Average number of days from filing to date of disposition in non-jury trials.
Listing of cases not up-dated.

Although these data are useful in analysis of court operations, they should be prepared on a more regularly scheduled basis and more detail is highly desirable. For instance the average number of days from filing to date of sentence is shown, but no detail is provided by type of charge. In addition, only the latest action date is retained in the computer memory. As the cases proceed from continuance to

continuance to trial to sentencing, the current dates are dropped in favor of the dates for the next action on the case. It would be useful in analyzing time delays if all dates were retained in the computer memory.

The Court Management Study Group, sponsor of this report, has suggested in an earlier analysis, that for a thorough study of court operations all data necessary to generate the types of reports shown in Table A–1 in the appendix should be retained. Data required to generate these reports are shown in Table A–2. Note that many of these data are now being stored in the computer. Others, such as many of the dates, are being lost. Still others, such as the reason for continuance, are not now being recorded. A computer system could easily accommodate all of these data.

4. ACCURACY AND COMPLETENESS OF DATA

During the data gathering phase of the study, questions arose as to the accuracy and completeness of data (1) listed on the outside of the criminal information folder and (2) contained in the computerized information system. To obtain a gross indication concerning data on the folder, a check of 660 information folders was made as they passed through the Control Desk at random times during the course of a week. Following is a list of the number of missing folder cover entries which should have been recorded. (See Figure 4 (on next page) for folder cover format.) No attempt was made to compare the missing entries with total entries which should have been made for each category on the list, since the total varies and time was not available for a detailed analysis of each folder.

(1) Attorney's name, number and status not recorded 48
(2) Attorney's name recorded, but number and status not recorded 112
(3) Attorney's name and status recorded, but number not recorded 162
(4) Attorney's name and number recorded, but status not recorded 130
(NOTE.—These four entries were complete in fewer than one-third of the cases.)
(5) No indication of demand for jury trial 14
(6) No indication of waiver of jury trial 4
(7) No bond information 24
(8) No notation of party requesting continuance 82
(9) No notation that defendant was advised of penalties for failure to appear 48
(10) No indication that defendant was released or committed 60
(11) No notation of a fine being paid 1
(12) Folders returned from courtroom with no action indicated 8
(13) 60 folder covers contained notations that were confusing or not clear, necessitating reference to the enclosed documents to determine what was done in the courtroom. Failure to account for all charges appeared to be the most prevalent problem.
(14) It was further observed that above 40% of the folders did not contain an Attorney's appearance slip.

Most of these data should have been recorded on the folder by the courtroom clerks. When they are missing, the Clerk's Office must complete the form from the records inside the folder. The computer Update Card is prepared directly from the data on the file folder cover.

To obtain a gross indication of the problems associated with the computerized system, 392 Heading Cards and 661 Update Cards together with the key punched cards prepared therefrom for a complete

Figure 4
Outside Format of Case File Folder

			Appointed			Retained	
1.	Attorney	No.	☐ CJA	☐	Other	☐	Date
2.	Attorney	No.	☐ CJA	☐	Other	☐	Date

E	ENTRIES	JUDGE
	____Charges filed ____US ____TR ____DC (See Inside)	
	☐ Defendant Informed of Complaint(s) and Right to Counsel	
	☐ Defendant Waives Right to Counsel ☐ Plea Guilty ☐ Plea Not Guilty	
	Jury Trial ☐ Demanded ☐ Waived	
	BOND: ☐ Personal Recognizance ☐ Money Bond $	
	☐ With Conditions ☐ Percent Bond	
	Continued to Request ☐ Government ☐ Defendant	
	☐ Defendant Advised of Penalties for Failure to Appear ☐ Released ☐ Committed	

KP 10488

☐ Verdict ☐ Judgement

☐ Guilty ☐ Not Guilty ☐ Other Specify

Sentence: _____

_____

_____

_____
JUDGE

day were obtained. Although it was not feasible to check every punched card against the appropriate folder, the following discrepancies were noted:

(1) Ten Update Cards apparently were not punched for the day surveyed.

(2) Case numbers on the Heading and Update Cards are almost universally written xxxxx–69A where the first five numbers identify the case, 69 identifies the year, and A identifies the specific charge. However, the computer program is set up to handle the numbers as xxxxx–A69 and the keypuncher is forced to make the conversions as the cards are punched.

(3) When there are a number of charges for a given case (A,B,C——), the Update Card may be prepared for one charge and a hand notation will be made on top of the card that the information should be repeated for the other charges (B, C——). The keypunch operator then must interpret this and produce additional cards as appropriate.

(4) When a jury trial is demanded, the Update Cards invariably do not show a plea. Yet, the punched cards always show an "N" in the plea column, hence the keypunch operator is introducing the information.

For these latter three items, we note that the keypunch operators are obliged to interpret data submitted to them from the Criminal Clerk's Office. This slows down the keypunching operation and increases chances for error. Edit routines have been established to discern these errors when the data are entered in the computer. How many times the keypunch operator has to go back to correct these errors is not known. This check indicates that personnel in the Criminal Clerk's Office are not following the procedures which have been established for filling out the Update Cards. For proper control, either the procedures should be changed (and the computer printout accordingly) or a check should be made to see that the cards are filled out properly.

The U.S. Cases, which comprise nearly one-third of the sample, were reviewed in more detail. The following additional discrepancies were noted.

(1) Because all new filings on U.S. charges should have a Heading and at least one Update Card (since presentation normally occurs the day of filing), a check was made of heading cards against Update Cards. It was found that for five individuals there were one or more Update Cards not in the file to match with a Heading Card. In one instance this was because a citation was issued and the defendant was not in court that day.

In the other four instances investigation of the folders indicated court action had taken place on the appropriate date. The number of missing Update Cards were 1 of 1, 4 of 4, 3 of 3 and 4 of 5 in the four instances. That is, 12 Update Cards out of a total of approximately 100 were missing. It is not clear whether the Update Cards were never prepared, or whether they were lost.

(2) Attorney's numbers were missing from 14 of a possible total of 28 Update Cards with origin of the case on the date in question and a jury trial demanded. Inspection of the folders

indicated the attorney's name was on the outside of the folder in all such cases but his number was generally missing.

(3) One Update punched Card was found with data punched one column to the left.

(4) One Update punched Card was found with data not properly registered in a field.

(5) The party requesting continuance is generally not being recorded on the Update Cards even though the continuance date is shown.

The computer functions are being handled energetically, but it appears that better control of the input data in the Criminal Clerk's Office and faster turnaround times at the Computer Center are necessary if the computer is to operate at its full potential in support of the Criminal Clerk's Office in scheduling cases and supporting other operations. The new equipment being installed in early 1970 should materially increase the potential support to the Criminal Clerk's Office, yet this equipment is still not sufficient to allow on-line inquiry as to the status of specific cases for which data are requested from the public.

More importantly, however, the Criminal Clerk's Office should look to computer services as an integral part of the office operations rather than as an independent activity, if the full potential of the computer is to be realized. Specific recommendations to this effect are given in the next Section.

7. OBSERVATIONS AND RECOMMENDATIONS

Recent innovations in the Criminal Clerk's Office, such as the adoption of prenumbered case folders and the installation of the control center have been significant steps in improving operations. Future plans, such as the installation of expanded computer equipment by the Court will also help to improve operations. Current planning emphasizes evolutionary developments. Our recommendations relate to these evolutionary developments as well as to long range plans which would result in significant change. Short range recommendations are numbered consecutively under the headings which follow, while long range recommendations appear alphabetically.

Tasks of Office Personnel.—The large number of forms which must be completed by the Criminal Clerk's Office have been shown in Table I, and the sequence of operations for the primary form, the Case Folder, is described in Section 6.1. The many optional paths which the Case Folder can follow are noted, depending on the given situation. Checks against various lists such as the In-court Case List, Lock-up List, Bond List, Hospital List, Jury Demand Book, etc., to ensure positive control of cases, defendants and money were briefly mentioned. These checks are necessary, but it is felt that considerable duplication and checking could be eliminated by more extensive use of the computer. We recommend that:

1. The Computer Heading and Update Cards be simplified (Recommendation 3), checked for completeness, and be made the primary data collection vehicles. From these, the basic lists can be prepared and checks made against each list as the status of

the cases change. Office personnel would act as trouble shoooters and conflict resolvers rather than as data tabulators.

A. In the future, the computer could be used to generate many of the special forms now filled in by hand (e.g. forms 1, 2, 3, 4, 5, 6, 10, 11, 13, . . . shown in Table I). Many manual tasks would thus be eliminated.

Processing Time.—The offenses seem to be handled in the sequence received by the various desks in the Criminal Clerk's Office, regardless of the seriousness of the charge or the immediacy of data requirements. However, in traffic cases where a jury cannot be demanded or where fines have not been levied, there is no pressing need for speedy handling. The case folder could be checked and updated and the data prepared for the computer during slack times or in the evenings. We recommend that:

2. A priority system be established and that the more serious cases requiring positive control activity (e.g. transfer of prisoners, collection of a fine, bond posting, etc), be handled first.

As noted under the previous heading, the Update Cards are a key link in the process. Discussions in Section 6.3 indicate that certain keypunch operations (not-guilty plea in case demand, case numbering) are accomplished even though the Update Cards are not filled in properly. We recommend that:

3. The Update Card format be changed to simplify its completion. Perhaps prenumbered Update Cards could be used. At least the year suffix could be printed on all cards in its proper place. Many entries (e.g. plea) could be made by circling appropriate options (G.N.)[4] on the form rather than requiring the letters to be filled in.

B. In the future, portions of the card could be prepared for optical character reading (OCR), thereby eliminating the requirement for keypunching.

The computer room processes the data on the basis of a one-day turnaround time (Section 6.3). This is not often enough to keep personnel in the Clerk's Office abreast of the courtroom schedules, defense and prosecuting attorney's commitments, and case financial and bail status. We recommend that:

4. A twice daily update be available for the more serious cases. More often would almost require on-line computer equipment, not available in the foreseeable future.

C. In the future, immediate updating would be desirable.

Section 6.2 describes the public information service. It is noted that the people directly responsible for processing the forms are often called upon to answer inquiries. This disrupts their train of thought and the efficient completion of their work. We recommend that:

5. Specific personnel be assigned to answering inquiries at the Information Window, scheduled so that more people are assigned during peak demand. In periods of low demand, these people could be assigned to handling the less serious cases.

[4] G=Guilty, N=Not Guilty.

6. Telephone inquiries be handled so that call-backs could be made (at a specified time) wherever possible, thereby spreading the demand over a longer working period and freeing up the lines. The people assigned in (1) above could handle these inquiries in periods of slack time.

7. An information card be prepared and made available for all who come to the Information Windows to help them phrase their questions in a readily researchable manner. This would reduce the time required to orient the inquirer when serving him. A second form should be developed, with appropriate entries indicating the extent of data available and requesting the inquirer to write the name of the person about whom he is inquiring and requesting him to check those entries concerning which he would like information. This same form could be used for taking telephone calls. Appropriate signs in the waiting area would also be desirable.

D. Currently, inquiries take 3 to 5 minutes to answer because the answers have to be looked up in the docket books or in some instances, the case folder which is stored in the file room. In the future, on-line computer terminals could be provided at the Information Window and telephones, enabling the servicing personnel to obtain the information desired almost immediately. Such a system could require a significant upgrading in the computer equipment currently planned.

To save time in the Financial Office, we recommend that:

8. The Financial Office Bank Book be changed so that the information is listed according to the date set for continuance rather than the current practice of listing according to date on which collateral was received. This will simplify the location of records in collateral refund cases.

Accuracy and Duplication of Functions.—As described in Section 6.4, errors and incompleteness in the folder data arise in meeting the responsibilities of the courtroom clerks, the Criminal Clerk's Office personnel and the Computer Center. The most frequent problem is that the courtroom clerks do not completely tabulate the data on the Case Folder cover. This omission is normally corrected by the Control Center, and/or by the other desks handling the folder, requiring a duplicate effort to sort through the papers contained in the Folder to find the data. Even so, we noted that the information was not getting on the cover in many cases. We recommend that:

9. The Criminal Clerk's Office tabulate the frequency of these omissions by courtroom clerks, and that a weekly summary be prepared and forwarded both to the judge to whom the offending clerk reports and to the Chief Judge. This should not take much time if a tabular form is prepared. These checks could be reduced or eliminated if the situation improves.

10. The Criminal Clerk's Office have a brief course of instruction ready, and that the offending courtroom clerks be invited to scheduled presentations of that course, a copy of the invitation going to the appropriate judges and the Chief Judge.

E. In the future, it would be desirable for the courtroom clerks to serve an apprenticeship in the Criminal Clerk's Of-

fice to become familiar with the procedure and the importance of proper form completion before they assume their duties in the courtrooms.

F. In the future, it would be desirable if the courtroom clerks reported administratively (time records, pay, etc.) to the Criminal Clerk's Office, since their primary function is record processing. Operationally, for the day to day courtroom proceedings, they should report to the judges. This type of functional split is common today in various industries, where the quality of the product is judged by a technical expert and the responsiveness to demand is judged by those served. The Clerk's Office would be responsible for hiring, training, promotions, etc.

11. An invitation be forwarded to all clerks, with copies to the judges, requesting their attendance at briefing sessions when new procedures affecting them are introduced by the Criminal Clerk's Office (as was the case upon adoption of the new Case Folder).

12. The Control Center personnel be stabilized (consistently assigned) and held responsible when case folders which pass through them are found with missing data on the covers.

13. The Update Cards be prepared by the Control Center personnel from the papers within the folder and compared with data on the folder covers, at least periodically, to check the accuracy of the data being placed on the covers.

14. The computer print-out of Heading and Update Cards be periodically compared with the Update Cards after they have returned from the Computer Room to check for keypunch accuracy. As a minimum, a count of cards and computer entries should be made to ensure consistency.

G. In the future, use of OCR equipment would help to reduce these errors.

The computer equipment generates calendars (listed in Section 6.3) approximately a week before trial date. Revisions and additions to these calendars are made manually thereafter as the trial date approaches. Often these revisions are not even in the same format as the computer generated calendars. We recommend that:

15. The computer prepares revised calendars daily, at least up to the last day before the trial date. This would reduce duplication of effort, reduce time spent in the Criminal Clerk's Office and lead to more responsive participation by the computer staff.

16. A final calendar, produced on the trial date, be prepared and compared with actual proceedings. This would provide a check on the accuracy of the data in the computer—a check that is badly needed since no comparable check is now made before monthly statistics are generated.

H. As the computer system becomes more responsive in the future, it should generate the final court calendars.

Table I shows that almost 100 forms of all types are used in the Criminal Clerk's Office. They appear in all shapes, sizes and colors; some numbered, some not; some titled and some not. Some appear to be duplicates of others, except for one or two word changes. Some may

be old—there is no date identification. This must certainly cause errors and delays, especially with new employees. We recommend that:

17. An integrated form control program be established by the Criminal Clerk's Office. Features of this control program would include as a minimum positive identification of each form with a form number, title, and date of initial use. Standard sizes should also be defined. Color codes could be used, indicating desk of origin or some other useful designation.

Personnel Needs, Skills Utilization, and Office Space.—The implementation of some of the recommendations herein would undoubtedly require more manpower in the Criminal Clerk's Office initially. However, as implementation (e.g. checking functions) becomes routine and fewer checks are required, the number of personnel required should be reduced freeing the staff for a greater workload or to initiate still other changes. We also noted in Chapter 2 that there are 7 bailiff vacancies and that there is a high bailiff turn over. We recommend that:

18. The current bailiff vacancies be filled promptly, as various recommendations requiring additional manpower are implemented.

19. The bailiffs, as they become more experienced, should be able to rise above a GS–4 rating without having to take a formal assignment in another position. One position at GS–6 and several GS–5 would appear appropriate.

A review of the Table of Organization (Figure 1) indicates that over half of the personnel report to the Clerical Section Supervisor. In addition, he is responsible for the control of most of the records. In view of this responsibility, we recommend that:

20. The Clerical Section Supervisor assignment be upgraded to at least the GS–9 level.

The Floor Plan shown in Figure 2 clearly shows that the main clerical functions (Clerical Supervisor, Control Center, Docket Desk, Commitment Desk, etc.) are being performed in the midst of office activity and traffic. This must be distracting to the people staffing these desks and must reduce their effectiveness. We recommend that:

21. The clerical functions be enclosed by a partition or wall to reduce the distractions—particularly if the more vigorous checking functions recommended above are instituted.

22. A desk be established near the Current Indexes with those assigned to it primarily responsible for responding to inquiries at the Public Information Windows.

Overall.—It was noted during the investigation, that on frequent occasions, top supervisory personnel function as line employees to meet the "current crises" (particularly at the Information Windows). This appeared to be true in the Criminal Clerk's Office and in the Computer Office as well. Although both incumbents are eminently qualified to handle any assignment in their respective offices, possibly better than anyone on their staff, and are concerned that they demonstrate their willingness to work along with their employees, we feel that such participation materially reduces the time they can spend on

the really pressing administrative functions such as analysis of their operations, revising procedures, conducting long range planning, and making decisions. We recommend that:

23. The Chief Deputy Clerk, Criminal Division minimize direct participation in the daily operational functions wherever possible.

24. Any time saved due to the above be devoted to analysis of his and the Court's operations, based on recommendations in Table A–1 in the appendix.

25. A long range plan for operations showing alternatives and contingencies be prepared to act as a stimulus for developing and implementing new recommendations.

In support of these last two recommendations and several of the other recommendations relating to form design and computer usage, we suggest that the Chief Deputy Clerk, Criminal Division, consider employing at least on a part time basis, a private consultant familiar with information system implementation and operations.

These recommendations are based upon a limited assessment of the proceedings in the Criminal Clerk's Office. Ideally, a complete description of all functions of the Clerk's Office should be prepared and critically analyzed to determine the cost and the associated output of the Clerk's Office related to each of these functions. Such an analysis would also permit a systematic justification for the reports suggested in Table A–1. The analysis of functions could also indicate other reports which should be prepared but are not now on the list.

APPENDIX

Suggested Reports and Data

(Note.—These tables are suggestions generated within the Court Management Study Group. They may include some reports on data that are less valuable than others, not shown, which could have been identified in a more detailed analytical study.)

Table A–1.—*Suggested reports about criminal cases*

For all information below, the reporting system should include the capability to report *by defendant* or *by charge* or *by trials* held.

A. Disposition of Cases on Daily Trial Calendar in Assignment Court during the Reporting Week (separately for jury and non-jury cases).
   1. Total Cases on Calendar
   2. Number certified to trial courts, (also number of cases certified by 10:00 A.M. only)
   3. Number con't. at Government request
   4. Number con't. at defense request
   5. Number con't. on court's motion
   6. Reason for each continuance
   7. Number of guilty pleas entered
   8. Number dismissed with prejudice (DWP) or nolle prosequi
   9. Number of bench-warrants issued
   10. Number of mental observations ordered

B. Disposition of Cases Certified to Trial Courts from Assignment Court During Reporting Week (separately for jury and non-jury).
   1. Total cases certified (same as A. 2. plus C. 5.)
   2. Number of trials
   3. Number continued to future date
   4. Reason for continuance
   5. Number of guilty pleas entered
   6. Number of DWP or nolle prosequi
   7. Number of bench warrants issued

10. Number returned to Assignment Court
11. Reasons for returning case
12. Median age of cases disposed of by jury trial this week? By non-jury trial?

C. Misdemeanors Arraigned in Assignment Court During Reporting Week

1. Total Number Arraigned
   a. Number of defendants in custody
   b. Number of defendants not in custody
2. Number continued for ascertainment of counsel
3. Number assigned future date for jury trial
4. Number assigned future date for non-jury trial.
5. Number certified to trial court on day of arraignment
6. Number of guilty pleas entered
7. Number in which charges were dropped

D. Felonies Presented in Assignment Court

1. Total Number for Presentment
2. Number assigned future date for Preliminary Hearing
3. Number of cases certified for Preliminary Hearing on day of presentment
4. Number in which charges were dropped

E. Preliminary Hearing Calendar During Reporting Week

1. Number on Calendar
2. Number hearings held
3. Number in which no probable cause found
4. Number held for Grand Jury Action
5. Number Hearings continued to future date
6. Reason for continuance

F. Setting Information

1. For each coming month, number of cases now set for trial each day as compared to established calendar caseload daily limits
2. Number of cases over 60 days old now set for future date
3. Earliest trial date now available
4. Latest trial date now set

G. Workload Information

1. Number of cases disposed of by each judge during reporting period showing method of disposition
2. Number of judges assigned to criminal trial during reporting period
3. Number of judges actually hearing cases each day (shown in hours per day)
4. Defendants awaiting sentencing at close of reporting period
   a. Number in custody
   b. Number on bond
5. Number of motions of each type calendared, heard, and manner of disposition
6. List of defendants presently under mental observation exceeding period ordered by court
7. For each attorney, numberof cases pending on trial calendar each day

TABLE A–2.—*Data to be gathered to produce the recommended reports (for all dates use month, day, year)*

A. Data for Criminal Cases

1. Case number
2. Defendant's I.D. number
3. Defendant's name
4. Date of arrest
5. Charges (i.e. type of case) filed by U.S. Attorney
6. Date charges filed
7. Date arraignment or presentment held
8. Attorney I.D. number
9. First trial date
10. Trial date now set
11. Jury trial requested?

12. Next action date
13. Action due to occur on that date
14. Number of continuances
15. For each continuance identify:
    a. Continuance of trial? arraignment? presentment?
    b. Reason
    c. By whom request
    d. Date
16. Date bench warrant issued
17. Current status of defendant (i.e., on personal bond, in custody, etc.)
18. Type of plea (original plea)
19. Changed plea (if any)
20. Date mental observation ordered
21. Period ordered for mental observation
22. Date returned from mental observation
23. Date trial commenced
24. Date trial terminated
25. Date of verdict or judgment
26. Type of disposition
27. Type of trial
28. Convicted charges
29. Type of sentence imposed
30. Date of sentencing
31. Type of motion calendared
32. Type of disposition for each motion
33. Date now set for preliminary hearing (or date held if already completed)
34. Result of preliminary hearing
35. Judge at disposition

A STUDY OF MANAGEMENT REPORTING TECHNIQUES FOR THE COURT OF GENERAL SESSIONS

FEBRUARY 1 TO JULY 31, 1969

CONTENTS

A STUDY OF MANAGEMENT REPORTING TECHNIQUES FOR THE COURT OF GENERAL SESSIONS

INTRODUCTION

The purpose of this report is to help the Court of General Sessions in choosing and designing new management reports, gathering the data needed to generate such reports, and adopting new approaches to writing programs to produce such reports. These three functions correspond to the three functions of computer system development that are called (in the jargon of the trade) output, input, and programing.

A primary goal of this report is to guide the Court in such a way that it can respond flexibly to future information demands, including those suggested here. Rather than design of a specific system, recommendations useful for coping with typical long-term problems are offered. This approach was adopted because the Court asked for guidance in evolution, rather than creation of a revolutionary process for management reporting. Indeed, the Court of General Sessions, when compared to other courts of our nation, has a well developed capability to produce a variety of reports through automation. This study was designed to supplement that capability.

The study involved working with the Court Management Study staff (see Appendix A) to describe recommended reports. It included study of the methods of data collection now employed by the Court, how these methods were developed, and an evaluation of alternate methods. In coordination with the Court's Data Processing Section, certain new approaches to programming court management reports were developed and tested in an operational environment, one in which the kinds of reports studied here were already under development. As a result of the study, recommendations are that some existing practices be maintained or enhanced, and that some new practices be adopted.

Current operations, as they relate to the cases studied (U.S. criminal and GS civil cases), are described in the next section, followed by a description of new reports to be produced based on recommendations of the Court Management Study staff. Then the data to be collected and methods for doing so are considered. Finally, programming techniques that have been developed for such applications, pursuant to felt needs of the Court, are discussed.

It was assumed in this study that the Court would either retain the computing facility and personnel that it had, make use of a similar facility elsewhere (which should be avoided, if possible), or obtain a more powerful machine along with the necessary personnel. Since this was a study undertaken by an investigator from outside the Court—indeed, from outside the geographic area—tasks selected were

those that seemed most suitable for that type of investigation, rather than undertaking those tasks that fell within the capability of the Court or could easily be acquired locally. It is felt that this procedure has given the Court the maximum return on investment in this study.

A significant opportunity was available to this study and was exploited. It permitted avoiding a restriction normally present in studies of this type. The restriction is that studies involving future application are contemplative in nature and, therefore, an experimental "shakedown" phase needs to be anticipated. Under these circumstances the initial design is necessarily more flexible than if experiments could be performed and lessons learned from them prior to the design effort.

However, during the course of this study, the Colorado Judicial Department had under development a data processing system similar to the one contemplated for the Court of General Sessions. Participation in this development was available to and made a part of this study so that the lessons learned during that development could be transmitted in this report, as well as during the course of the study. It is felt that the use of the Colorado experience is significant because the methods used have proven to be operationally important. The work involved testing methods of communication between a court administrative staff and a programming staff, after experience had indicated this to be a most critical area. Of course, such an approach is valid only to the degree that similar situations exist in Colorado and in Washington, but previous studies of a wide variety of courts throughout the United States indicate that problems in implementing data processing systems in our courts are more similar than is sometimes supposed. The validity of this assertion becomes evident through survey of a variety of courts or when judges or administrators from different jurisdictions compare notes at such common gathering places as the sessions of the National College of State Trial Judges or the National Association of Trial Court Administrators.

Emphasis in this study has been placed on helping the Court "do its own thing," i.e., to help the Court. This means that, although it may seem a critical attitude toward gaps in the Court's expertise should be maintained in a study such as this, such an attitude should be avoided unless absolutely necessary. After outside investigations are concluded, it is the personnel in the Court who must make the court function. Under these circumstances, unguarded criticism, especially if it be public, may lead to an understandably uncooperative attitude by the Court toward changes recommended. Fortunately, the Court of General Sessions appears to be competent in its data processing capability: the staff is experienced, makes good use of limited facilities, and has profited from its experience with data collection methods. The circumstances of court administration, especially in the District of Columbia where national attention is a fact of life, are always difficult, and in that context this Court is doing a good job in the area of data processing.

CURRENT OPERATIONS

Workload and Organization

The number of filings and dispositions partially determine the data processing workload. (Other determinants are the number of data processing functions and their types.) Filings and dispositions in 1968 are shown in Tables I, II and III. (U.S. criminal cases and class GS civil cases were the subject of this study. U.S. cases include felony preliminary hearings and misdemeanors prosecuted by the U.S. attorney which are the more serious misdemeanors). It is significant that criminal statistics are more complete. This is true primarily because very little civil data is processed through automation. Numbers of criminal filings by offense are prepared; in civil no comparable statistics are available.

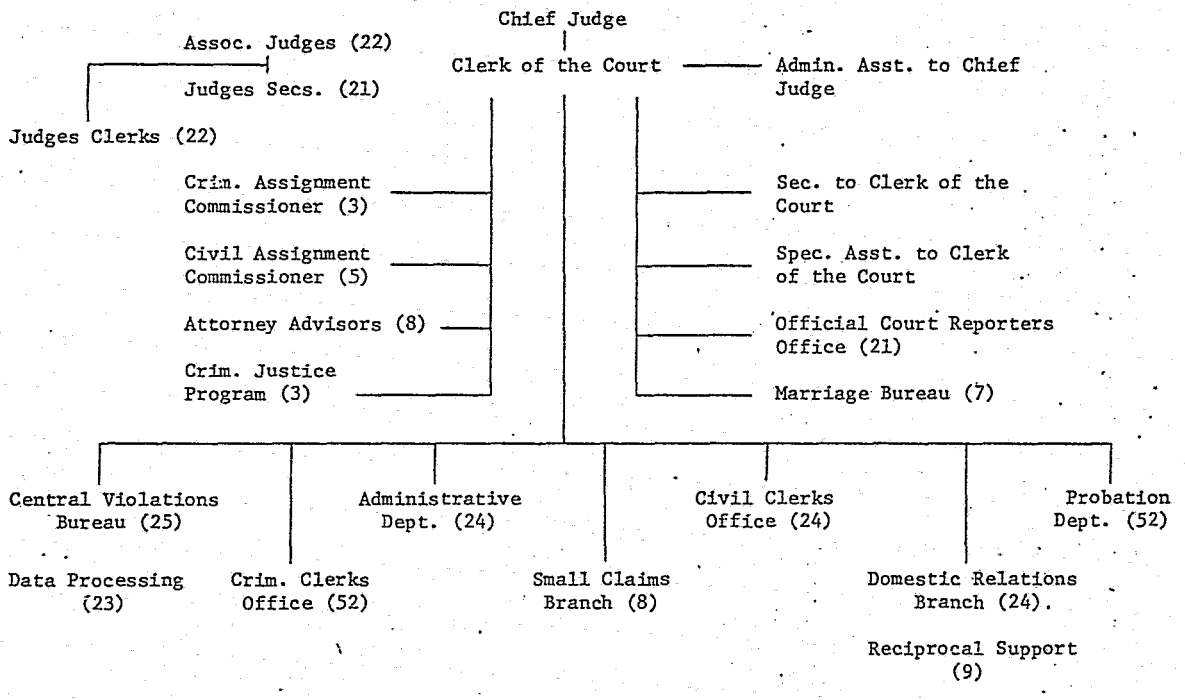
Other implications of these data for this study are that few cases are decided in lengthy trial. Most criminal cases were decided by guilty pleas or routinely dismissed; most civil cases never reached trial. Indeed, most civil cases never reach a courtroom—data about them must be obtained from the Clerks Office. Data collection is accordingly simplified. A small sample of class GS cases filed in early 1968 (this date was chosen to include terminated cases) shows that about half were settled, outside the courtroom and that the mean number of docket entries was less than 12 (within confidence limits of 95%).

In the Court of General Sessions, a Chief Judge and 22 Associate Judges are authorized for assignment among the following functions:

Chief Judge
Assignment
Civil Motions
Civil Trial
Criminal (U.S.)
Criminal (D.C.)
Domestic Relations
Traffic
Landlord, Tenant, and Small Claims

Court Organization is shown in Chart 1. Organization of the Criminal and Civil Clerks Offices is shown in Charts 2 and 3.

Court of General Sessions



Total: 360 persons

Chart 1

Criminal Division Clerks Office

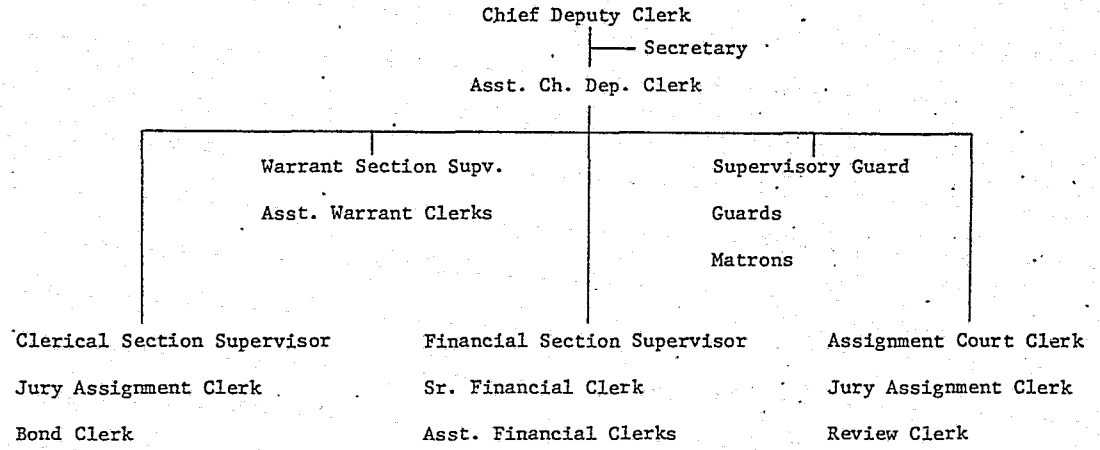


Chart 2

Civil Division Clerks Office

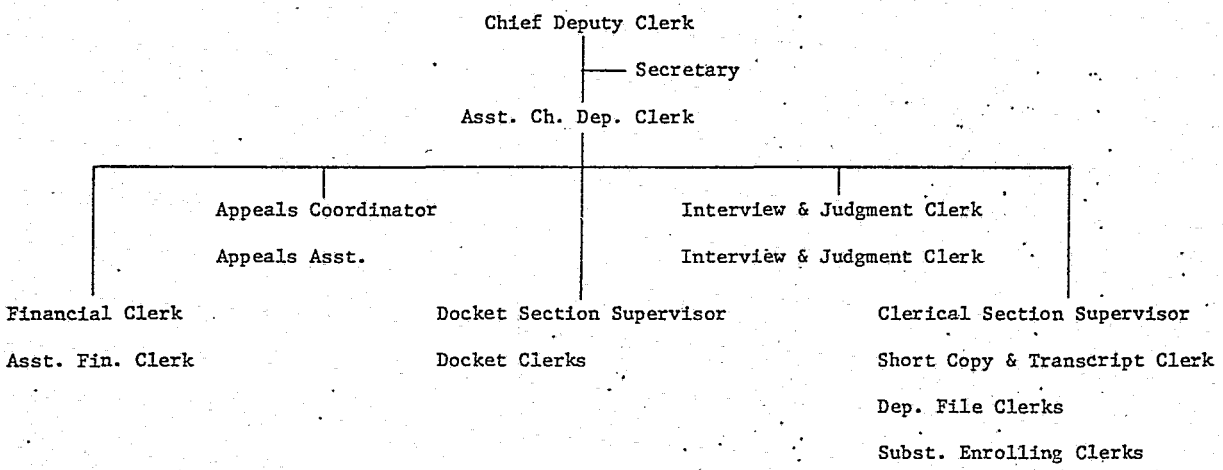


Chart 3

TABLE I.—*Fillings in calendar year 1968*

Criminal filings:	
Felonies	7,049
U.S. misdemeanors	15,139
D.C. cases	12,115
Traffic	34,876
Total	69,179
Civil filings:	
Class GS	23,661
Small claims	20,151
Landlord and tenant	119,078
Domestic relations	5,912
Total	168,802

Source: Chief Judge's Reports for 1968 and 1969 and the Criminal Clerks Office.

TABLE II.—*Criminal dispositions in calendar year 1968: U.S. cases*

Misdemeanors:	
Nolle	3,817
No paper	1,459
DWP	1,313
Nonjury:	
Guilty	4,072
Not guilty	478
(Guilty and nolo pleas 3,165.)	
Jury:	
Guilty	345
Not guilty	227
(Jury trials held 589.)	
Unclassified	594
Total	12,305
Felonies:	
No paper	3,275
Nolle	1,066
DWP	176
Waived to grand jury	81
Heard:	
Held for grand jury	2,148
Dismissed	37
Total	6,783

Source: Criminal Clerks Office.

TABLE III.—*Civil dispositions in calendar year 1968: GS cases*

Judgments entered by clerk	13,893
Otherwise settled without trial	3,329
Nonjury trial judgments	586
Jury trial verdicts	127
Other dispositions	1,259

Data processing activity covered in this report is concerned with four functions: Criminal Clerks Office, Civil Clerks Office, courtroom clerks (the judges' clerks, called Enrolling Clerks), and the Data

Processing Section. FY 1969 turnover percentages for the first three are (Data Processing turnover is considered on page 536):

	Percent
Criminal:	
GS–4	44
GS–6	2
GS–7	2
Civil:	
GS–4	4
GS–5	4
Courtroom:	
GS–8	52

Source: Civil Clerks Office and Court Management Study.

Thus, since the courtroom clerks have a high turnover and move from court to court, they are less suitable candidates for data collection (where standard practice is important). Although it is true that a similar problem exists in the GS–4 category in the Criminal Clerks Office, only five or six persons are involved in data collection there and they can be carefully chosen. (In fact, they are specially selected on the basis of past experience, and are assigned to the numbering desk under an experienced clerk before they are eligible for assignment to the control center. These functions are described below).

Document Handling

Document handling as it relates to the collection of data for management reports can be simply described. The following concentrate on criminal flow because it amply illustrates what happens and because it is there that most collection of data for computer operations now exists. (It should be emphasized that a new forms design program is now underway.)

All official data about a case are entered on a form which eventually reaches the Clerks Office, where it is bound or stapled into a case file. This means that even though some case data are acquired in a courtroom, they are ultimately transmitted to the Clerks Office, which therefore becomes the logical takeoff point for machine-processable data unless remote terminals or some transcription device is provided at or near the courtrooms. Courtroom clerks have the very human characteristic of doing things their own way. This may be efficient, given the requirements of a particular court and a particular judge, but is difficult to incorporate smoothly into an automated system which characteristically requires uniformity. Thus, the Clerks Office has become the location for the extraction of machine-processable data. This approach permits examination of documents by a small number of specially trained personnel that can be reasonably expected to produce uniformity. This is in contrast to utilizing courtroom clerks whose primary tasks encompass a much larger set of duties than the extraction of data for an automated system, and who handle only "courtroom cases."

Documentation and flow of the following types of criminal cases were examined:

U.S., Petit Larceny, D.C. Code Sec. 22–2202.
U.S., Robbery, D.C. Code Sec. 22–2901.

These cases were represented by the Criminal Clerks Office to typify the forms currently used. These case files contained the following forms:

U.S., Petit Larceny:
- Information sheet (statement of facts on reverse) with 3½ by 8 inch attachment.
- Bail information (reverse blank).
- Waiver of trial by jury.

U.S., Robbery:
- Information sheet (complaint and warrant on reverse) with 3½ by 8 inch attachment.

The case files are thus very simple and are stapled rather than jacketed. Except as noted, the case files consist of single sheets of paper 8½ by 14 inches printed on both sides.

The 3½ by 8 inch sheet and the face of the information sheet for the Petit Larceny case are illustrated in Charts 4, 5, and 6. (These charts are not replicas but are accurate representations of the forms, their content, and their legibility.) Chart 4 illustrates the small sheet, Charts 5 and 6 illustrate the left and right portions of one side of the information sheet. The relationship of the three charts is depicted in the corner of each chart.

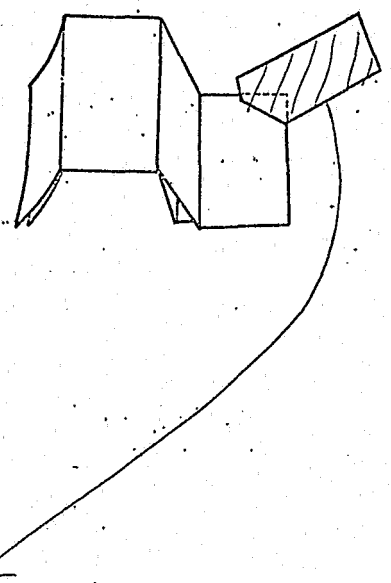
Literally hundreds of rubber stamps are used by the clerks. Samples are shown in Chart 7.

Four methods of entering information on these forms are used:
- Handwriting.
- Rubber stamps.
- Checkoff forms.
- Crossing out inappropriate lines.

These charts demonstrate that interpreting these forms can be a real challenge. Not only is the handwriting almost illegible but entries are made in handwriting everyday even though alternate methods (rubber stamps or checkoff "boxes") are available. Of course automation and improved forms design will not eliminate all errors in recording, but can reduce the number of errors in management reports. For example, the error of entering "Jury demand withdrawn," when in fact no jury demand was made, can be automatically detected.

Data Collection

At one time, informations were sent to keypunching for data extraction. Of course keypunching was delayed when the forms were required in the courtroom. Therefore, the Criminal Clerks Office implemented a *control point* approach to data extraction. All court forms flow past two control points: to one, the *numbering desk*, at the time of filing and to another, the *control center*, after the forms are filled out in the courtrooms. At those points, data are transferred to another form by persons specially trained for that task. The transcribed data are then sent to another room for keypunching.



JAN 30 1969

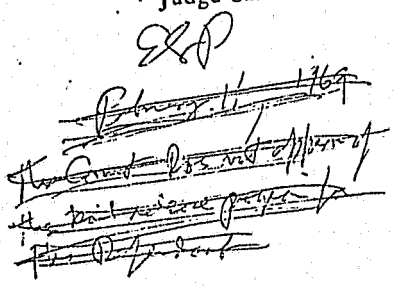
C 1-31-69
for Gilbert
review

Judge Smith

JAN 31 1969

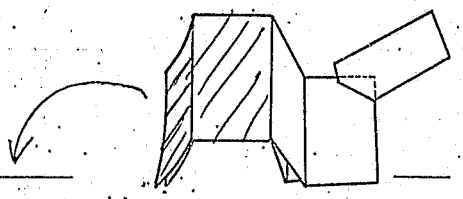
Returned by Secretary
Sentenced
Deft placed on five
year probation

Judge Smith



Judge Smith

Chart 4



570 No. 99999-68 A

UNITED STATES
vs.
Donald Deft (24)

158

4-4

A U033 Petit Larceny
DC Code Sec. 22-2202

☐ U003 Assault
DC Code Sec. 22-504

☐ U009 Carrying Deadly Weapon
DC Code Sec. 22-3204

☐ _____ Possession Prohibited Weapon
DC Code Sec. 22-3214(b)

☐ U047 Possession Prohibited Weapon
(Knife over 3")
DC Code Sec. 22-3214(b)

Date of Offense (s) July 8, 1968
Officer in Charge SPO Richard Roe
Badge No.

FOR FINAL DISPOSITION ONLY

1 yr in jail may
$200/ one year in jail
bound over to atty Gen
with Recommendation that
Defendant be sent to
Lexington Ky.

Judge Smith No.

Lawyer
No. Appt ☐ CJA ☐ Rtd ☐

☐ Defendant (s) informed of the within complaint and right of counsel

☐ Defendant (s) waive right to counsel

Plea Guilty ☐ Not Guilty ☐
Jury Trial Demanded ☐ Waived ☐
Continued to
Request Govt. ☐ Deft. ☐
Bond

☐ Released on Personal Bond

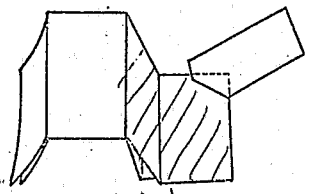
☐ Deft. advised of penalties for failing to re-appear.

JUL 9 1969
7/22/68
Bond $1,000.00

The Court requests Hospital
Treatment for this Prisioner
(drug addict)
2

Committed

Chart 5



JUL 22 1969

JUL 22 1969

- Cert. To Assign. Comm.
- Time to Assign. Comm.
- Time to Trial Judge
- Time Trial Judge Rec'd. 12:32

Sept. Grand
desire to plead
guilty no objection
by Govt.
Jury demand
withdrawn
Plea guilty
Found guilty
C 7-29-68
Request Probation
for investigation
as to suitability for
Narcotic Rehabilitation
Judge Smith

Committed

August 14, 1968
Sentence vacated
as clerical error -
ordered committed
to Custody of
Attorney General
with recommendation
he be sent to
federal narcotic
Rehabilitation
facility for exam-
ination & Report
C 10-22-68
for Report
Judge Smith
Jan 29, 1969
Unable to
Sentence Atty -
Attorney not
present C1-306

Chart 6

APR 24 1969

A TRUE COPY
TEST:
JOSEPH M. BURTON
Clerk, District of Columbia
Court of General Sessions
By _____
Deputy Clerk

NO PAPERS

Committed

NOLLE

Release Sent to D. C. Jail

Plea Not Guilty
Jury Trial demanded
Contd for assignment
Bond $_____

TO RUN CONCURRENT WITH
_____

PLEA NOW GUILTY
Contd. to _____
Bond in _____ applies
See _____
_____

To take effect upon expiration of term of commitment in D. C. Jail under Cr. No. _____, and in Case No. _____

The Court orders the Defendant released under the provisions of the D.C. Work Release Act pursuant to Public Law 89-803, 89th Congress.

Dismissed

Chart 7

Filing consists of bringing the filing documents to the numbering desk. There the time and docket number are stamped and information is transcribed in handwriting to a heading card shown in Chart 8.

The papers are then transmitted to the appropriate court. After action in any court, most papers are transmitted by the bailiffs to the control center. (All collateral such as traffic bail goes to the financial section for fiscal processing; all commitments go through supervisor's checking and then to the control center.) At the control center an up-date card shown in Chart 9 is filled in as appropriate. According to the Clerks Office, some 600 to 800 update cards are filled out each day and keypunched the next day. Heading cards are punched the same day that they are filled out. The Court requires the calendar to be made up 5 days in advance, thus on the day of trial it would be out of date by 5 days but subsequent entries are added manually in the Clerks Office. (The data collected and stored are listed on pages 558–59.)

The Civil Clerks Office is similar to the Criminal Clerks Office in significant respects. There are two points to which all documents flow: first, at filing, to the cashier, where the case is given a number and the fees are collected by the cashier; second, every time an action takes place, the form is sent to the Clerks Office for recording on the docket. Thus, the dual control-point concept is applicable also to civil flow.

DATA PROCESSING

In late 1964 an IBM 1440 was acquired by the Court chiefly to process parking violations. Later, domestic relations accounting and criminal index and docket applications were added. At first, docket were printed daily; later they were printed monthly to eliminate many interim hand entries. In early 1967, an IBM 360/30 with 16k bytes of main memory was acquired. More criminal data were then collected and the continued calendar was printed. Updating of the computer record of criminal cases was also implemented. In early 1968, machine capacity was increased to the current configuration:

IBM 360/30 (32k bytes of core memory)
2 tape drives (2401 mod 1)
3 disc drives (2311 mod 1)
1 card reader and punch (2540)
1 printer (1403 mod 2)

As an example of the new capability, the Court now processes 50 percent more traffic notices than 3 years ago, and in less than half the time.

There are six professional programmers in the Data Processing Section: the Supervisor, a System Analyst, and four programmers. In 1967, seven positions were filled and there have been four terminations and three hires since—two hires this year. The Supervisor has been there since February 1965, the next two senior personnel since October 1964. All programmers are from within the Court. Assembly language is used because the operating system has been cut to the minimum to make more use of disc for working storage. However, the staff plans to use COBOL either with the advent of additional equipment or additional shifts.

HEADING CARD

1-9 Case No.	
10-22 Last Name	
23-30 First Name	
31 Initial	
32-35 Charge	
36-41 File Date	
42-47 Offense Date	
48-51 Badge	
52 Alias	
53 Citation	
80 Puncher Code	

W-9

CONTROL CLERK

Chart 8

UPDATE CARD

1-9 Case Number	10-14 Lawyer	15 Status	16-20 Bd. Amt.	21-22 Bds.man	23 Plea	24 Jmnt	25 Trial	26-27 Judge	28-34 Cont'd Date

35 Who Cont'd	36 Others	37	38-43 Jmnt Date	44-49 Disp. Date	50-52 Coll. Dep.	53-56 Fine Pd.	57-59 Coll. Ret.	60-62 Days

63-66 Dollars	67-69 Days	70 Susp.	71 Prob.	72 Mons.	73 Yrs.	74 Summ	75 B.W.	76 Att.	80 Puncher	

W-8

CONTROL CLERK

Chart 9

Currently the following operations are automated (list extracted from the 1969 Report of the Chief Judge. Reference is to fiscal years):

(1) *Parking Violations*
- (a) provides a record of all parking tickets (763,925 last year);
- (b) audits tickets to verify that all tickets in a book have actually been turned in and that none has been destroyed;
- (c) records all payments made as required by the ticket;
- (d) if payment is not made, automatically mails notice of intent to issue warrant 10 days after issuance of ticket to registered owner of vehicle (202,541 last year);
- (e) 10 days later, automatically prepare arrest warrant (121,107 last year);
- (f) if ticket is paid with bad check, issues special traffic violation warrant;
- (g) twice weekly, furnishes to Police Department list of all persons on whom warrants have been issued who subsequently paid collateral.
- (h) reports to State Department once a year on all diplomatic vehicle parking tickets issued;
- (i) reports four times a year to the Police Department on tickets issued to persons from other States (grouped by States, tag number, and locations of offenses).

(2) *Other Traffic*
- (a) prepares monthly activity report to Police Department on the number of moving and parking tickets issued by each police officer.

(3) *Domestic Relations*
- (a) reports daily alimony payments received by Court (approximately 75,000 per year) and writes checks to persons entitled to alimony, maintenance or support;
- (b) reports daily to Domestic Relations Branch on persons who are in arrears on alimony payments;
- (c) maintains attorney escrow account and writes checks for attorneys when due;
- (d) furnishes to Domestic Relations Branch a list of all persons on welfare who receive alimoney and of the amounts received.

(4) *Criminal*
- (a) prepares daily index (which includes charges, continued dates, bail status, disposition, etc.) and cumulative master index;
- (b) prints jury and nonjury calendars one week in advance of trial date;
- (c) prepares monthly complete docket of all cases;
- (d) compiles statistics for management purposes (including elapsed time from charge to disposition; percentages of cases disposed of and not disposed of; cases 3 months old or older; number of persons rearrested while on bond);
- (e) lists of all defendants against whom attachments or bench warrants are outstanding.

(5) *Other*

(a) prepares landlord-tenant index (approximately 170,000 per year) by both plaintiff and defendant;

(b) prepares weekly index of court reporter transcripts (date transcript requested, pages completed, not yet completed, etc.)

A run book is kept on each program (including utility programs not listed above). Currently the following documentation, as applicable, is entered in each book:

Flow charts.
Programmer's coding sheets.
Assembled listing.
Input layout.
Output layout.
Internal storage layout.

In addition, an operators instruction file is maintained. A card for each job provides needed data for the operator, such as what form to install in the printer or what tapes to mount.

SUMMARY

1. Trial is not the typical source of data.
2. Turnover among courtroom clerks is very high. Among control point clerks it is acceptable (less than 5 percent).
3. The Court has tried different methods of data collection. It has implemented the design of new forms. It is willing to experiment.
4. Courtroom clerks are inclined to make handwritten entries when alternate methods are available.
5. Data collection workload for all criminal cases is approximately:
   "Heading" entries—70,000 per year.
   Update entries—170,000 per year (700 actions per day).
6. Corresponding workload for civil GS cases would be approximately:
   "Heading" entries—24,000 per year.
   Update entries—less than 190,000 per year (12 per case).
7. The Court has an experienced data processing staff using a small computer, and programming in assembly language.

NEW REPORTS

The Court Management Study staff has been studying caseflow of U.S. criminal cases and GS civil cases. They have concluded that there is need for additional management reports. Their recommendations can be described as follows:

A. Reports on U.S. Criminal Cases (for all information below, the reporting system should include the capability to report *by defendant* or *by charge* or *by trials held*):

WEEKLY REPORTS

1. Calendar Dispositions in Assignment Court (see Chart 10).
2. Continuances (see Chart 11).
3. Trial Court Dispositions (see Chart 12).
4. Arrangement and Presentment Dispositions (see Chart 13).

U.S. Cases

On Calendar in Assignment Court

Dispositions W/E March 7, 1969

	Total	Certified to Trial		Continued for			Pled Guilty	DWP or Nolle	Bench Warrants Issued	Mental Observ. Ordered
		Prior to 10 AM	After 10 AM	Gov't	Def.	Court				
Jury										
Nonjury										
Total										

Chart 10

U.S. Cases

Reasons for Continuances
and Returns to Assignment Court

W/E March 7, 1969

Cases on Calendar
in Assignment Court

Reasons	Number

Cases Certified to
Trial Courts

Reasons	Number

Cases on Prelim.
Hearing Calendar

Reasons	Number

Cases Returned to
Assignment Court
from Trial Courts

Reasons	Number

Chart 11

U.S. Cases

Certified to Trial Courts from Assignment Court

Dispositions W/E March 7, 1969

	Total	Number of Trials	Pled Guilty	DWP or Nolle	Bench Warrants Issued	Returned to Assignment Court
Jury						
Nonjury						
Total						

Median age of cases disposed of by jury trial--

by nonjury trial--

Chart 12

U.S. Cases

Dispositions of Arraignments & Presentments

Arrignments:

Total	-
In custody	-
Not in custody	-
Continued for Ascertainment of Counsel	-
Assigned future trial date	
Jury	-
Nonjury	-
Cert. to trial court on day of arraignment	-
Guilty pleas entered	-
Charges dropped	-

Presentments:

Total	-
Assigned future preliminary hearing date	-
Cert. for preliminary hearing on day of presentment	-
Charges dropped	-

Chart 13

5. Preliminary Hearing Dispositions:
   - Number on Calendar.
   - Number hearings held.
   - Number in which no probable cause found.
   - Number held for Grand Jury action.
   - Number hearings continued to future date.
6. Setting Data:
   - For each coming month, number of cases now set for trial each day as compared to established calendar caseload daily limits.
   - Number of cases over 60 days old now set for future date.
   - Earliest trial date now available.
   - Latest trial date now set.
7. Judge.
   - Number of cases disposed of by each judge during reporting period, showing method of disposition.
   - Number of judges assigned to criminal trial during reporting period.
   - Number of judges actually hearing cases each day (shown in hours per day).
8. Defendants:
   - Defendants awaiting sentencing at close of reporting period:
     - Number in custody.
     - Number in bond.
   - List of defendants presently under mental observation exceeding period ordered by court.
9. Attorneys: For each attorney, number of cases pending on trial calendar for each future date.
10. Motions: Number of motions of each type calendared, heard, and manner of disposition.

B. Reports on GS Civil Cases: To be reported monthly (with comparable numbers for the same month of the previous year, except for items 4 and 9):

1. Filed, Terminated, and Pending (see Chart 14).
2. Pending for Trial or Pretrial (see Chart 15).
3. Age and Trial Duration (see Chart 16).
4. Oldest (see Chart 17).
5. Attorney: For each law firm or attorney, the number of cases pending on the trial or pretrial calendars each day.
6. Settings and Limits:
   - Calendar caseload daily limits computed as a function of expected judge-days available for trial, and of expected disposition rate per judge day (separately for trial, pretrial, and settlement conference settings for each coming month).
   - Number of cases set on calendars (separately for trial, pretrial, and settlement conference settings for each coming month).

Class GS Cases

Filings, Dispositions, and Pending Cases

for March 1969

Type of Case	Filings	Dispositions			Pending
		Without Trial	With Trial		
			Court	Jury	
	(alternate lines contain data for previous year)				

Number of cases dismissed under Rule 41(e)--

Number of cases pending, but not at issue --

Chart 14

Class GS Cases

Pending for Pretrial

Jury Cases:

Type of Case	Age end of 3/68							Age end of 3/69						
	< 1 mo.	1-3	3-6	6-12	12-18	18-24	>24	1 mo.	1-3	3-6	6-12	12-18	18-24	>24

Repeated for nonjury; similarly for cases pending for trial

Chart 15

Class GS Cases

Ages and Trial Duration

March 1969

		3/69	3/68
Cases Terminated by Jury Trial			
Median Age	--		
Range of Ages	from --		
	to --		
Most frequently occurring age	--		
Cases Terminated by Nonjury Trial		3/69	3/68
Median Age	--		
Range of Ages	from --		
	to --		
Most frequently occurring age	--		
Average Duration of Trials	--		
Jury	--		
Nonjury	--		

(Age measured from issue to trial)

Chart 16

Class GS Cases

Ten Oldest Cases

March 1969

Oldest Cases Awaiting Pretrial

Case Number --

Names of Counsel --

Type of Case --

Age of Case (since issue date) --

Date set for pretrial --

Continuances --

Reason	Number

(Repeated for each case; similarly for cases awaiting trial)

Chart 17

7. Calendar Dispositions—for Pretrial, Trial, and Settlement Calendars Number and percent of cases—
   Sent to judges.
   Continued.
   Settled.
   Placed off-calender.
   (Separately for each reason.)
8. Judge: Number of cases terminated by each judge, and type of disposition.
9. Settlement Summaries:
   For cases settled:
   Abstract of facts of case.
   Demand.
   Offer.
   Verdict.
   Award.
10. Awards vs. Demands:
    For all judgments: Summary of awards vs. demands.
11. Motion Dispositions: Number of motions of each type calendered (separately for each type of disposition).
12. Dispositions before Trial: Analysis per thousand cases filed of the types and numbers thereof of dispositions before trial for each major category of cases.

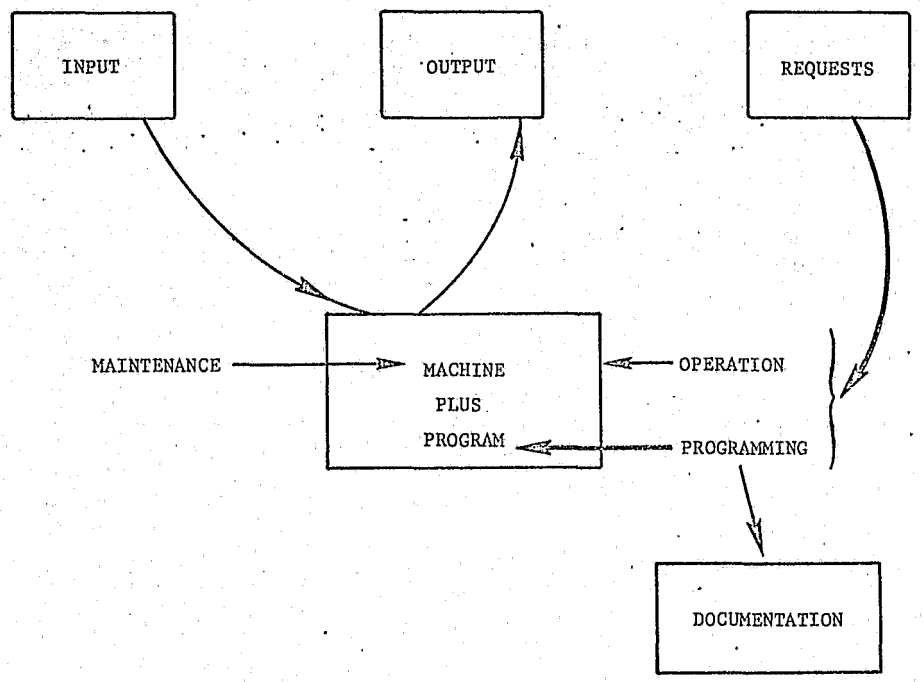
It is recommended that certain of these reports be prepared manually. These are: calendar caseload daily limits, judge data (criminal report #7), data on oldest civil cases, and civil settlement summaries.

Implications

Adding the production of all these reports to the Court's data processing workload has certain implications. It will not be accomplished overnight. Data processing systems involve not only machines, but also programs. (which make the machines do what they do), operators, programming staff, maintenance personnel, extensive documentation, communication with the user, data gathering, and production of reports (see Chart 18).

Extensive documentation needs to be maintained in a programming facility. As an example, two of the IBM 360 tape and disc programming systems require the acquisition and maintenance of approximately two dozen documents. A few of these are devoted to programming languages; some are introductory in nature; some describe equipment and its operation; some describe specialized programs, such as sort programs; some are devoted to the management of data; and some are indexes and bibliographies to the other documents.

In other words, an organization can have the best computers and still not do its job. It is a very serious error to talk about "putting something in the machine" or to talk about "what a computer can do." Computers do nothing alone; it takes people and programs and an approach. For example, computers do not solve the calendar control problem. Even computers, programmers, and programs will not do that: all they do is provide information to help solve calendaring



Components of a Computer System
--Documents, People, and Machines

Chart 18

problems. It is people, like judges, acting on the information, who do the job.

Data collection for an automated system has peculiar characteristics. Some of these are occasioned by the need for transcription, which arises because most machines cannot directly process the written documents normally found in the courts. This means that either special types of documents must be devised, or the data contained in documents must be transcribed into a form that can be processed by machine (such as in the form of holes in a punch card), or both. As mentioned above, transcription directly from court forms has been tried by the Court of General Sessions, but found wanting because the forms were not available for their normal use during the transcription process. Accordingly, the Court developed what they have called the control point approach. Under this approach, court forms that contain data to be transcribed are caused to flow past a control point where the data are transferred to another form by persons specially trained for the task. One of the advantages of using specialists (as in the control point approach) is that they are able to detect errors contained in the original document. Some automatic checking is also possible but is normally used for elementary errors, such as identity of plaintiff matching the case number, order of events apparently incorrect, etc. Of course, with more modern equipment the data could be transcribed at the control point directly into a form that is processable by a machine (e.g., a remote terminal at the control point).

The work necessary in implementing a data processing system is often underestimated, sometimes even by those who have to carry out the work. In general, the following steps are involved:

Organization
Equipment selection
Site preparation
Design
Planning the conversion process
Programming
Testing and conversion

Organization for these tasks will involve developing a detailed plan, hiring needed personnel, and setting conventions and standards for documentation and design. Equipment selection involves a survey of available equipment and software, delivery times and economics, preliminary selection of a restricted set of alternates, final selection of equipment, and order of the equipment. Site preparation includes design of site, its preparation, and installation of equipment. Design includes specification of output, input, processes, and files, and the design of printed output forms, if necessary.

The conversion plan will involve file conversion as well as the planning of parallel operations, including consideration of phasing personnel from old to new operations, removal of equipment, and the like. Programming includes flowcharting, coding, design of tests, testing, and documentation. Testing and conversion involve final test of the overall system, parallel operation, evaluation and modification of the new system, termination of the old system, and preparation of documentation.

Need for Own Staff and Computer

It is especially important that the Court retain its computing staff and computer. Should the work be transferred to another agency, two consequences may be expected: first, the computer runs will not be made on time (for example, to an executive department, a tax run will appear to have priority over most court applications) and second, the outside computing staff will be unfamiliar with court operations, i.e., a request to produce a simple report—if couched in terminology familiar to court personnel—will most likely be misunderstood. Neither of these consequences is speculative—both are based on experience of other courts who have not had the foresight to maintain their own staff and facility. If a court is responsible for its operations, it must have control over its operations. This is especially true of data processing operations.

Summary

1. The Court needs to produce additional management reports. (A few should be prepared manually—see page 550.)
2. Satisfaction of this need imposes requirements of equipment, manpower, documentation, and procedures.
3. The Court must have its own data processing staff and computer.

DATA TO BE COLLECTED

To generate the reports described in the last section, certain input data must be routinely collected. These data are listed below. In some cases, redundant entries are called for to increase reliability in recording data accurately.

The following data should be collected for criminal cases:

If any action occurs in a case, the following identifying data will be recorded along with the action:

Date of action _____
Judge sitting over action reported _____
Case number _____
Charge _____
Initials of clerk recording data _____

The following will be recorded if there is a change in custody or bail:

Prior Status

NOT in custody ☐
In custody ☐
Amount of bail _____

New Status

RELEASED ☐
Remanded to custody ☐
Amount of bail _____

The following will be recorded as appropriate:

Complaint filed ☐
Government attorney _____
Defense attorney _____
Jury demanded ☐

Jury waived ☐

Set for prelim. hearing ☐

Date scheduled to occur _____

Set for trial ☐

Date scheduled to occur _____

Continued

By Gov't ☐ Reason _____

By defense ☐ Reason _____

By court ☐ Reason _____

For ascertainment of counsel ☐

Returned to Assignment Ct. ☐

Reason _____

Type of hearing continued

Arraignment ☐

Presentment ☐

Assignment Court ☐

Preliminary hearing ☐

Trial ☐

Motion

Arraignment or presentment occurred ☐

Assigned to judge for preliminary hearing ☐

Judge _____

Preliminary hearing held ☐

No prob. cause ☐

Held for grand jury ☐

Motion set for hearing ☐

Date scheduled to occur _____

Motion heard ☐

Disposition _____

Assigned to trial judge ☐

Before 10 AM ☐

Judge assigned _____

Trial commenced ☐
Trial completed ☐
Bench warrant issued ☐
Mental observation ordered ☐
Mental competency hearing held ☐
Def. found competent ☐
Def. not competent ☐
DWP or nolle ☐
Plea of guilty entered ☐
Found guilty ☐
Sentence _____
Acquitted ☐

The following data should be collected for civil cases:

If any action occurs in a case, the following identifying data will be recorded along with the action:

Date of action _____
Judge sitting over action recorded _____
Case number _____
Type of case _____
Initials of clerk recording data _____

The following will be recorded as appropriate:

Plantiff's attorney _____
Defendant's attorney _____
Complaint filed ☐
Prayer _____
Answer filed ☐
Cross-complaint filed ☐
Answer to cross-com. filed ☐
Jury demand ☐
Jury waived ☐
Set for hearing on a motion ☐
Date scheduled to occur _____
Motion heard ☐
Type of disposition _____

Set ☐

For Settlement conf. ☐

For pretrial ☐

For trial ☐

Date scheduled to occur _____

Sent to judge ☐

Judge _____

Continued ☐

Type of hearing continued:

Settlement ☐

Pretrial ☐

Trial ☐

Motion ☐

Settled ☐

Placed off calendar ☐

Reason _____

Trial starts ☐

Terminated ☐

Dismissed under Rule 41(e) ☐

Award _____

Most of these are fixed format items such as dates, judge designations, case numbers, bail, prayer, or award. Indeed, many are one-bit items. If codes are composed for the following, data processing will be facilitated, since all items will then be fixed format:

Types of civil cases
Attorney identification
Reasons for continuances
Types of dispositions of motions in criminal and civil cases
Reasons for placing civil cases off-calendar
Types of dispositions of civil cases by judges

Experience indicates that such codes are best composed by court personnel. The results of the Court Management Study should provide guidance. Lists used in two courts (Los Angeles and the State of Colorado) are given in Appendix C. In Colorado, the list is changed on an ad hoc basis. If assigning numbers to attorneys seems objectionable, names can be used, but using names does require a length limit to be imposed and is more expensive.

Data Currently Collected

Data currently collected and stored in machine-processable form is listed below. Only the dates and judges of a few actions are recorded. Most of the data recommended for collection in this report is not now collected. For criminal cases, case number, charge, bail and custody status, filing, defense attorney, jury or nonjury status, whether continued by government or defense, preliminary hearing results, verdict or judgment, issuance of bench warrant, ordering and results of mental observation, nolle, no paper, dismissed for want of prosecution, plea, and sentence are both on the recommended list and currently collected. Remaining items are new. Data currently stored (with byte sizes in parentheses) are the following:

Criminal

Case No. (9)
Name (22)
Charge (4)
Date Filed (6)
Date of Offense (6)
Lawyer (5)
Lawyer Status (type of appointment) (1)
Bond Amount (5)
Bondsman, Cash Bond, or Personal Recognizance (2)
Officer Badge No. (4)
Plea (1)
Judgment (1)
Type of Trial (1)
Judge (2)
Latest Continued Date (7)
Who Continued By (1)
Disposition Code (in binary) (1)
Alias (1)
Date of Judgment (6)
Date of Disposition (6)
Collateral Deposit (3)
Fine Paid (4)
Collateral Returned (3)
Sentence:
    (days) (3)
    (dollars) (4)
    (days in alternative to fine) (3)

Suspended (1)
Probation (1)
Months (1)
Years (1)
Summons Issues (1)
Bench Warrant Issued (1)
Attachment Made (1)
Previous Continued Dates (four latest)
(7 each)
Continued by Pros. (2)
Continued by Def. (2)
Total Number of Continuances (2)
Jury Demand Withdrawn (1)
Citation (1)
Bail Reform Act (1)
Spare (2)

Civil

Case No. (8)
Plaintiff (43)
Defendant (43)
Date Filed (6)

Method

Certain decisions need to be made as to what method of data collection will be employed. First, will data be collected where the action occurs (e.g., the courtroom) or at a control point? Second, should remote on-line keyboards and displays be considered as alternate data collection devices in lieu of keypunches?

The first question is the easier to answer. In view of the turnover and rotation from court to court of courtroom clerks and because most civil case dispositions are recorded in the clerks' office rather than in a courtroom, the control point approach should be retained for criminal cases and used in civil cases.

As to the second question, keypunch costs vary with the number of strokes required per card. Assume a GS–4 operator at mid range FY 1969 rates, 1600 working hours per year, a share of supervisor costs, about 50¢ per hour for the machine, and normal card costs. Then, keypunch and verifying costs each will be slightly over $5.00 per hour. Using 6000 strokes per hour, the following total costs per card result:

Strokes per card:	*Cost per card*
20	$0.03
40	.06
60	.10
80	.13

The lower figures do not allow for feedtime. Thus, it seems reasonable to use 10¢ for "heading" entries and 5¢ for update entries. The total cost is then about $28,000 per year for U.S. and GS cases at current input rates. A commercial quote for this type of application is 10¢ per card, which yields a yearly cost of about $36,000.

Of the various keyboard-display devices, the IBM 2260/2848 combination would appear to be most promising for this application. Five stations in each of the two clerk's offices would cost a total of about $18,000 per year. (Such stations would be operated by existing control point clerks and so operator costs need not be considered.) However, the computer would have to be augmented to handle current operations, the new reports, and the special devices. Such augmentation

alone could cost more than the above keypunching costs—doubling memory and adding three disc packs would cost about $36,000 per year—but is indicated in view of the increased demands. Thus keyboard-display combinations should be seriously considered. Among the advantages are:

"Electronic" access to current docket status

Elimination of current double copying of data (i.e., filling out heading cards followed by keypunching)

Fast access to the records (a few minutes, rather than a few days after entry).

With the workloads the Court faces, the problems of inaccurate data occasioned by current delays, and the increased workload occasioned by probable changes in jurisdiction, keyboard-display systems similar to those used by airlines seem inevitable (already the Kansas City Circuit Court is installing such equipment). A pilot installation is recommended for this Court. The Court should try one or two such devices; the best place probably is the control center in the Criminal Clerks Office. In that way, two features could be evaluated: (1) utility as data entry devices; and (2) utility in rapidly providing up-to-date information about case status.

Summary

1. The Court will need to collect additional data to produce the reports described in the previous Section.
2. The Court should experiment with keyboard-display devices for data entry and rapid reporting of case status, as planned.
3. The Court should augment its computer capacity to cope with the increased workload and to permit use of a procedure-oriented language.

PROGRAMMING AIDS

There are a variety of methods—called programming languages—for expressing the statements necessary to control the computer. Some of these languages are obeyed by the machine directly, but generally these are difficult to understand by a person who is unfamiliar with the actual process being carried out. But there are other languages, developed to overcome this difficulty, that permit a more English-like description of the process. However, no such program appears to have been developed that is suitable for presentation to a judge or court administrator (unless he happens to have a specialized knowledge of programming) in such a way that he will be familiar with the processes that are to be carried out by the program.

As discussed previously, documentation of a management information system is needed to specify the output report, to specify the input data, and to process the output reports from the input data. A criterion for such documentation is that it clearly specifies the system to responsible officials of a court and to its programming staff, especially new programmers. Experience indicates that several problems arise when this criterion is violated. First, the court cannot control its processes simply because their nature has not been clearly specified. This may be especially true when the nature of the process is reported to the judicial administrator in data processing terms. Second, the

processes may not be adequate because the nature of the judicial processes and the intent of the judicial administrator are usually not clear to the data processing specialist new to the court. Third, since the employee that writes today's program should not be expected to be there when the program needs to be fixed or modified, his knowledge of the programs will go with him. Therefore, specifications of programs should be as clear as possible to aid the programmer new to the court.

Use of Cobol

One of the more common English-like program languages designed to obviate such problems is COBOL (Common Business Oriented Language). This language has the advantage not only of being more natural, but also of being widely known. Thus a replacement programmer (in the case of employee turnover) is less likely to require training in the language. Furthermore, although even COBOL requires a considerable amount of documentation, in many respects it is a self-documenting language. COBOL has been used in court data-processing systems in Colorado and Kansas City, Missouri.

Even though COBOL shows promise as a programming language for court applications, almost to the point where it is a suitable specification language for the administrator, it nonetheless falls short of the ideal in several respects.

For instance, the use of suitably long data-names can be tedious and costly. COBOL permits the programmer to use longer names for the data being processed than do many other languages. For example, he may use Type-of-Case, where in other languages he would be permitted only a five- or six-letter abbreviation. This makes the program easier to interpret by programmers and even by the administrator who must specify the processes. However, the use of long names becomes costly in programming time because the same name (with certain exceptions) must be written every time it is used in a program.

Second, the part of the COBOL program that describes the procedure to be carried out, although it is English-like and somewhat easier to follow than many program languages, nonetheless can become quite complicated. In general, COBOL programs of more than about 100 instructions become difficult to follow without the aid of flowcharts or other documentation. If flowcharts are to be employed by the Court to specify computer processes, considerable thought needs to be given to methods for making them clear to administrators.

There is a third problem. As is true with language, COBOL achieves some of its natural clarity through a high degree of redundancy. Although a kind of ditto mark can sometimes be used by the programmer to achieve this redundancy, often it cannot, and the result is that he often must write the same word over and over again even though it is not strictly necessary for clear specification of the program. (COBOL programmers will recognize PICTURE as falling into this category.)

A fourth problem with COBOL is that the specification of files is distributed through the program. For example, information about the

file name and the device in which the file resides will occur early in the program, but if one wants to know whether the file is an input or an output file, he has to study that part of the program that describes the process. A programmer who wants to know the nature of the file would usually want to know its name, the number and type of device in which it resides, its recording mode, the type of labels, whether it is an input or output file, and the number of records that are written at one time. To determine this information in some COBOL programs, he may have to look at almost all of the program.

Alternate Approaches

Experimentation undertaken in this study sought to alleviate such problems by development of a language that would describe programs adequatley, both to the programmer and to the judicial administrator. For the programmer, it would specify, by implication at least, the detailed flow and record layout. For the administrator the language would be easily understandable in terms of court operations.

Three approaches were evaluated during this study to solve the above problems. The first was development of a program that would interpret a language more suitable for court applications and produce, as its output, a series of statements that would in turn be interpreted by COBOL. The second approach (one used and suggested by McDonnell Automation Co. of Denver Colorado) was the use of forms on which much of the redundant language was preprinted. The third approach was to regard the selected language as a specification language rather than as an input for a specialized program or as words to be entered on a preprinted form.

Which approach should be employed is not only a matter of the needs and the extent of computer applications in a particular court but also depends upon coding costs, which in turn depend upon the size and seniority of the programming staff. Where less senior programmers are available, a combination of the preprinted form approach and the use of a standardized specification language would appear to be attractive. On the other hand, if only limited manpower is available (such as a senior member of a judicial staff), a specialized program that would receive statements prepared by the judicial staff member and produce COBOL input statements would be appropriate.

Such a program was coded during the court of this study to get a feel for its feasibility. Its functions, only some of which were implemented, included the following:

Writing single digits or letters to produce common COBOL division and section names.

Writing comments at any place in the program.

Writing normal COBOL statements.

Using a table of abbreviations so that abbreviated names would automatically be written in full to make the resulting program easily interpretable to a variety of readers.

Receiving the layout of a line on an output form and producing the required COBOL data descriptions.

Receiving an abbreviated data description and producing a full COBOL data description (using for example, F for Filler, 93 for S9(3) Computational-3).

Merely writing two group names followed by desired elementary data names as a "move corresponding" option, where that is not part of COBOL in a particular installation.

Specifying files concisely in one statement with automatic production of the required COBOL statements at the needed places in the program.

These provisions were chosen after coding programs written in the COBOL language that would produce reports of the type recommended by the Court Management Study. Such an approach is not new and similar programs have been developed and appear to be commercially available. However, most of these have been developed for the professional programmer without regard for use by a judicial administrator. The specifications described above were developed in cooperation with a judicial administrator as he also specified court management-information system programs.

For the benefit of those families with COBOL, three of the above provisions are illustrated in Charts 19 and 20. Chart 19 shows how headings may be specified; Chart 20 shows two examples of data description and an example of a group move.

The concept of the preprinted form is quite simple. Three examples are illustrated in Charts 21, 22, and 23. The form illustrated in Chart 21 requires only two entries to specify the full contents of eight cards. In situations where no configuration section is needed, those lines can simply be crossed out before sending the form to keypunching. Chart 22 shows how a heading might be specified using this approach. Only its name and value need be entered. Chart 23 shows a preprinted form used to accomplish a group move (where MS and OS are preassigned names for a group to which there was frequent reference).

An advantage of the prepirnted form approach is that it can be quickly and easily adopted by any programming installation. However, it does not solve all the problems mentioned above and does require just as much keypunching as a COBOL program. The first approach considered above, the use of a program to produce COBOL statements, requires neither as much keypunching nor as much writing on the part of the coder. Such simple automatic programming systems can be programmed by the Court's staff to suit their own needs, i.e., to handle just those programming steps that are repetitive in a given set of applications.

Summary

1. When the Court uses COBOL it will find it requires less training time for new programmers and will be able to exchange programming experience with other courts.
2. Reprinted forms will improve efficiency in programming.
3. The Court will be able to write a simple program that will make writing Court COBOL programs simpler.

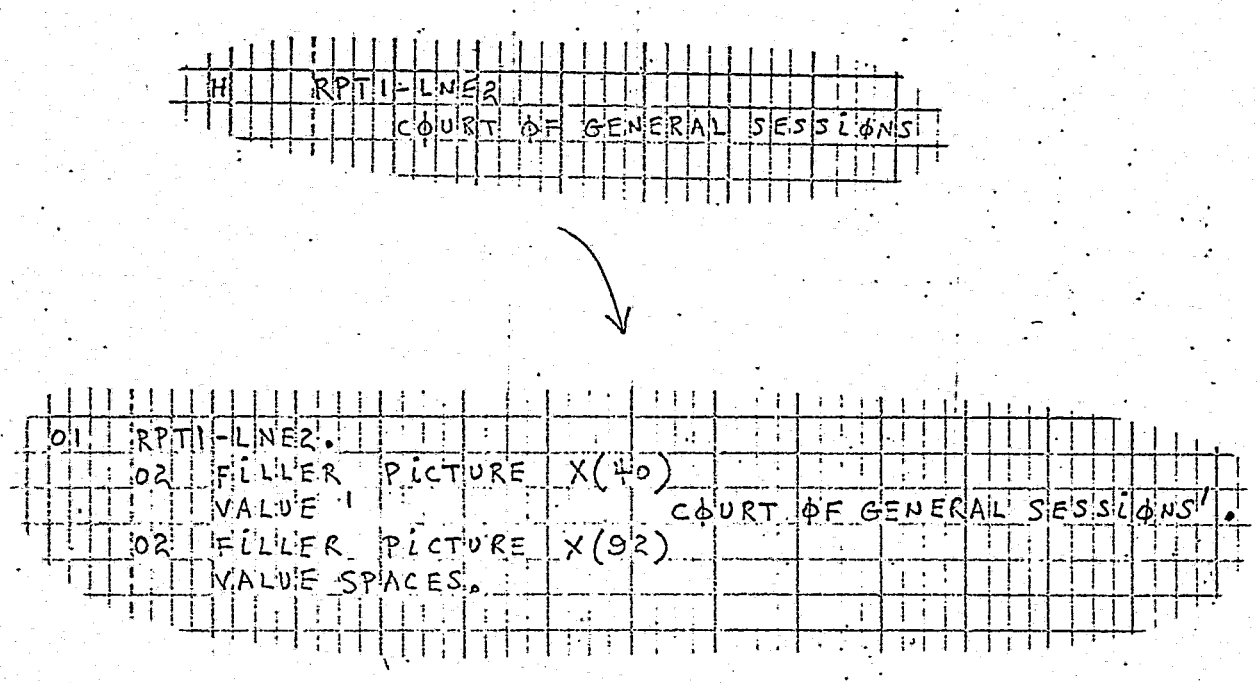

H RPTI-LNE2
COURT OF GENERAL SESSIONS
01 RPTI-LNE2.
02 FILLER PICTURE X(10)
VALUE ' '
02 FILLER PICTURE X(92)
VALUE SPACES.
COURT OF GENERAL SESSIONS'.

Chart 19

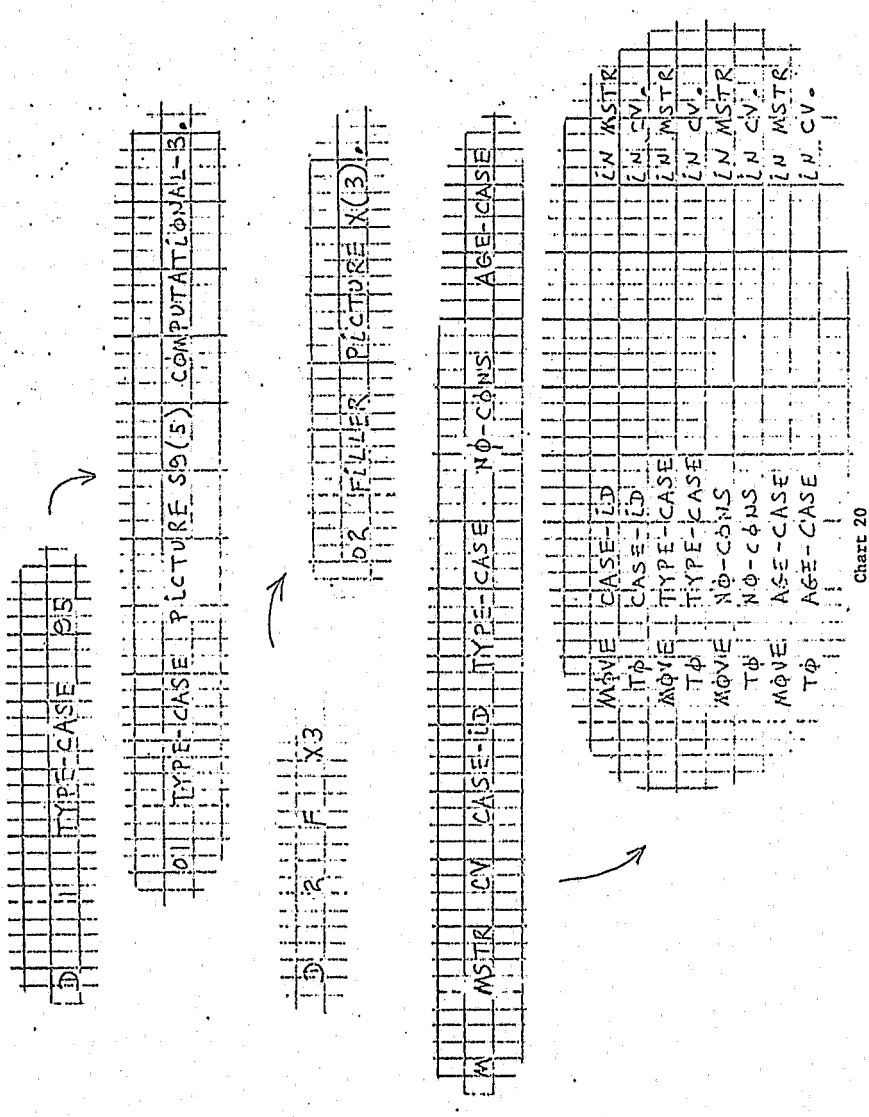

01 TYPE-CASE PIC S9(5) COMPUTATIONAL-3.
02 FILLER PICTURE X(3).
MSTR CV.
CASE-ID
TYPE-CASE
NO-CONS
AGE-CASE
MOVE
TO
IN MSTR
IN CV.

Chart 20

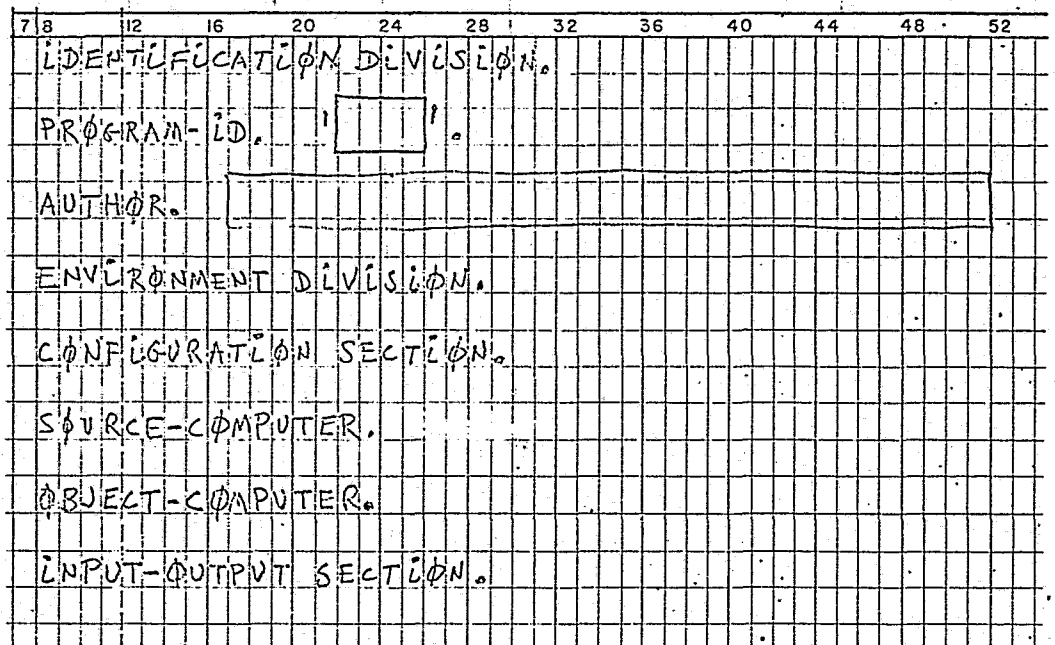

7 8 12 16 20 24 28 32 36 40 44 48 52
IDENTIFICATION DIVISION.
PROGRAM-ID. '[ ]'.
AUTHOR.
ENVIRONMENT DIVISION.
CONFIGURATION SECTION.
SOURCE-COMPUTER.
OBJECT-COMPUTER.
INPUT-OUTPUT SECTION.

Chart 21

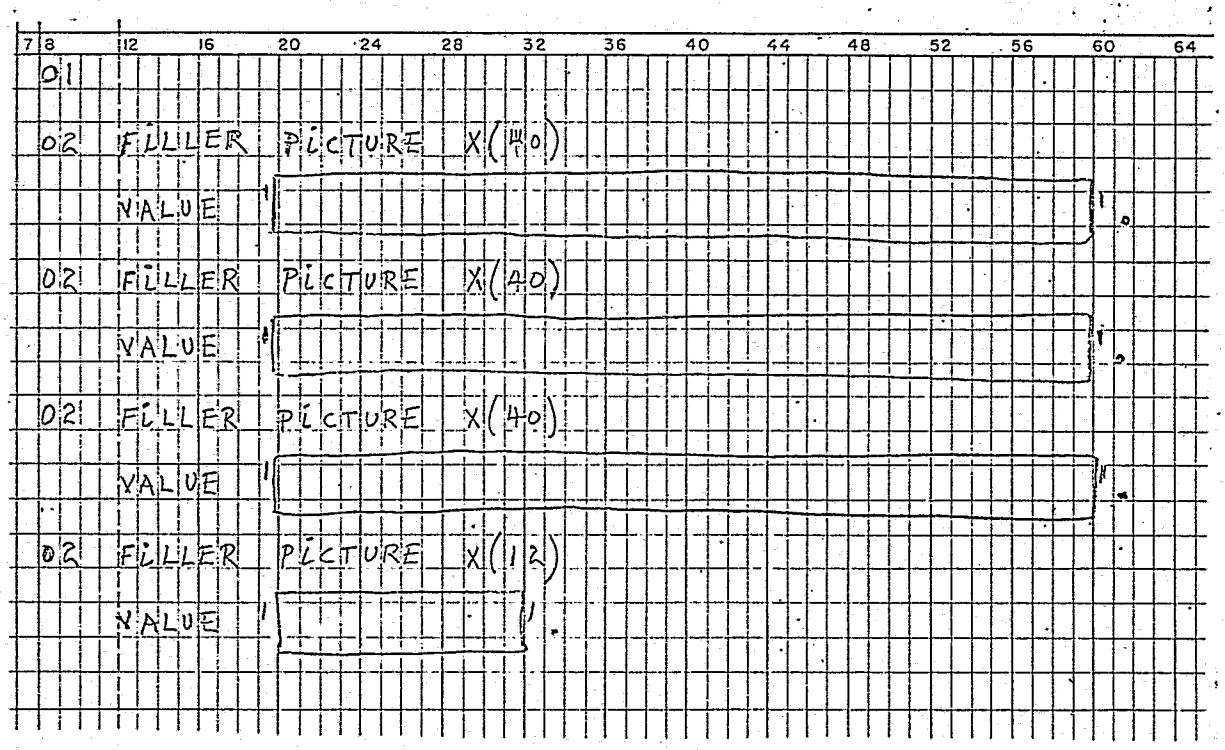

7 8 12 16 20 24 28 32 36 40 44 48 52 56 60 64
01
02 FILLER PICTURE X(40)
VALUE
02 FILLER PICTURE X(40)
VALUE
02 FILLER PICTURE X(40)
VALUE
02 FILLER PICTURE X(12)
VALUE

Chart 22

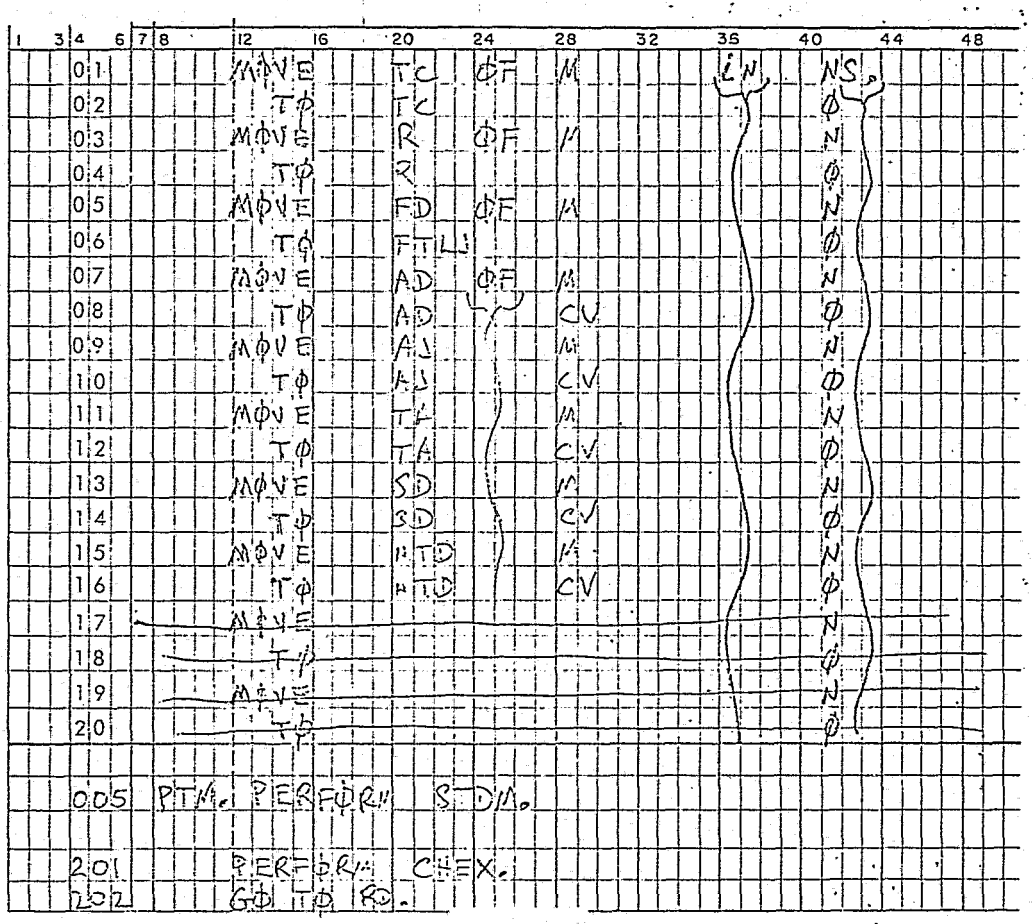


Chart 23

SUMMARY OF RECOMMENDATIONS

1. The Court needs to produce additional management reports (p. 553).
2. The Court must retain its own data processing staff and facility (p. 553).
3. The Court needs to collect additional data (p. 560).
4. The Court should experiment with keyboard-display devices, as planned (p. 560).
5. The Court should augment its computer capacity (p. 560).
6. The Court should carry out its plans to use improved programmining techniques (p. 563).

APPENDIX A. BACKGROUND OF STUDY

In March of 1966, the Judicial Council of the District of Columbia (which is composed of active judges of the U.S. Court of Appeals for the District) appointed a Committee on the Administration of Justice to study the courts and related institutions in the District and to study other matters pertinent to the administration of justice there. The Committee consists of lawyers practicing in the District. In May of 1967, the Committee published its initial recommendations, which called for (among other things) the courts to publish quarterly reports that reflected the state of their dockets. For example, the Committee recommended that the Court of General Sessions ". . . should submit regular quarterly reports to the bar and the public showing the caseload, backlog, and other statistics. This report should contain some detail as to the number of civil and criminal cases tried, settled, and disposed of in each branch of the court, together with the number of cases in each category pending by age since filing." A management study was also recommended, one of its objectives being to study procedures required to develop adequate statistical data. The Committee and Senator Tydings (of Maryland) secured funds for a Court Management Study that was staffed during the summer of 1968. Plans for this study have emphasized "case flow," but they have also called for study of personnel, budgets, and documentation systems. The emphasis has been on administrative functions of the courts rather than their social or judicial functions.

APPENDIX B. MANAGEMENT REPORTS IN OTHER COURTS

The charts in this appendix were prepared to help the Court Management Study staff in their consideration of an effective set of reports for the Court of General Sessions. Gathering data on such reports into a common format apparently has not been done before. It was felt that such charts would be useful in answering the summary questions: What data are reported to court management?

STATE-WIDE COURT STATISTICS—HAWAII

Reports of filings and terminations: One sheet for each District.
Layout of a typical sheet is illustrated below.

Type of action	New filings	Total terminations	Types of terminations			
			Contested		No contest	Other
			Jury	Nonjury		
Domestic relations:						
1. Divorce	70	53	----------	9	35	9
2. Separation						
Civil actions:						
1. Contract	36	37	----------	3	27	7
2. Personal injury:						
Motor vehicle	10	8	----------	1	----------	7
Other	4					
Probate:						
1. Regular probate	20	12				
2. Small estate over $300	14	11				
Juvenile court:						
1. Juvenile proceedings:						
Delinquency	86	97	----------	34	----------	63
Dependency	12	11	----------	6	----------	5

Summary of Headings Used

DOWN	ACROSS
District	New filings
Type of case	Total terminations
	Type of termination
	Contested
	Jury
	Non-jury
	No contest
	Other

CRIMINAL DEFENDANT INFORMATION, STATE TRIAL COURT—KANSAS CITY, MO.

4 lists:

(1) Awaiting sentence
(2) Terminations
(3) Inactive cases
(4) Open active cases

Layount of a typical sheet is illustrated on the following page.

Summary of Headings Used

DOWN	ACROSS
Status	Case number
Defendant	Defendant letter
History	Name
	Alias
Status categories:	Attorneys
Awaiting sentence	Charge
Terminations	Reduced charge
Inactive cases	Magistrate's court number
Open active cases	Number of continuances
	During arraignment
	During pre-trial
	Trial
	Bond information
	Plea information

STATE-WIDE COURT STATISTICS—COLORADO

12 reports (heading format is given on p. 572).

(*1*) *District Court Docket Status*

In a separate report for each county, the following information is given for each type of case:

Number of cases pending at beginning of month.
Number of cases filed during month.
Number of cases filed to date.
Number of cases reinstated during month.
Number of cases reinstated to date.
Number of cases terminated during month.
Number of cases terminated to date.
Number of cases pending at end of month.

(*2*) *Civil Cases Under Advisement 60 Days or More*

In a separate report for each division, lists every case under advisement for 60 days or more, giving the judge, the type of case, docket number, and the date the case was taken under advisement.

(Magistrate's court number)

DEFENDANT ALIAS	DEF ATTORNEY PRO ATTORNEY	CHARGE RED CHARGE	MG CT NO AC PC TC		YR MO DY DIV
37906A SMITH HARRY A	P D ADAMS	M-2 F MANSLAUGHTER F	3	ARRAIGNMENT DATE PRE-TRIAL DATE DISPOSAL DATE DATE PSI ORDERED	68 09 26 11 BOND 68 10 24 11 68 10 08 11 PG 68 10 08 11

(Arraignment, pre-trial, and trial continuances)

(Bond amount is printed at the end of the first line)

(Pled guilty)

TITLE OF REPORT

DISTRICT nn PAGE nn
CLEAR CREEK COUNTY JULY 1999
DIVISION nn

(heading format of the Colorado reports)

(3) *Criminal Cases Six Months From Arraignment*

In a separate report for each division; lists every case six or more months from arraignment, giving type of case, docket number, defendant number, arraignment date, and type of action.

(4) *Disposition of County Court Appeals*

In a separate report for each division, gives (for civil cases appealed from a county court), the number with changed venue, dismissed, affirmed, reversed, remanded, or de novo.

(5) *Age From Date of Filing and Date at Issue of Pending Civil and Domestic Relations Cases*

Lists age from date of filing and from date at issue by case status, type, judge, and division.

(6) *Age From Date of Filing and Date at Issue of Terminated Civil and Domestic Relations Cases*

Similar to number 5.
(Format is given below.)

TERMINATED CIVIL AND DOMESTIC RELATIONS CASES—AGE FROM DATE OF FILING AND DATE AT ISSUE

	Months from filing							Months from issue					
	3	6	9	12	18	24	Up	3	6	9	12	24	Up
Judge Hol:													
1A10:													
Dismiss—other		1						2					
Noncontested		2	2					1					
1A41:													
Dismiss—other			1					1					
Judge before trial				3				1	1	1			
Total for judge		3	3	3			9	5	1	1			6
Total for division		4	3	3			10	6	2	1			8

(7) *Age from filing and date of arraignment pending criminal cases*

In a separate report for each division, give judge, type of case, plea at arraignment, and latest type of actions, and age from filing and date of arraignment.

(8) *Age from filing of terminated criminal cases*

In a separate report for each division, gives judge, type of cases, and disposition, and age from filing.

(9) *Age from arraignment of terminated criminal cases*

Similar to number 8.

(10) *Juvenile social report—reason for referral and number of referrals*

List reason for referral number of referrals, age, sex, culture group, school work status, income source, source of referral, and (for adoptions) type of placement, relationship to petitioner, and birth status. By sex and county.

(11) *Juvenile social report—Reason for referral, cultural group, and age*

Similar to number 10. In 10 the object is to indicate how the number of referrals varies with the reason for referral, separately for males and females. In 11 the object is to show age distribution within cultural groups for each type (reason) of referral.

(12) Pending cases

In a separate report for each division, lists docket number, type of case reinstatement or filing date, type of action and date, arraignment date (for criminal actions), trial date, and issue date of all cases not terminated.

Data That Can Be Stored in the Colorado Statistical System

District
County
Division
Type of Case
Docket Number
Filing Date
Filing Judge
Date at Issue
Action Code
Action Date
Action Judge
Number of Actions to Date
Setting Date
Termination Type
Termination Date
Termination Judge
Number of Trial Days
Amount of Judgment
Reinstatement Type
Reinstatement Date
Reinstatement Judge

Juvenile Information:

- Juvenile Number
- Age
- Sex
- Cultural Group
- School Work Status
- Family Income Amount and Source
- Number of Previous Referrals
- Referral Source
- Referral Reason
- Type of Placement (Adoption Cases)
- Child's Birth Status (Adoption Case)
- Child's Relation to Petitioner (Adoption Cases)

Criminal Information:

- Defendant Number
- Age
- Sex
- Number of Offenses Charged
- Number of Previous Felony Offenses
- Attorney Type and (if appointed) Fee
- Arraignment Date
- Bail Amount
- Initial Plea
- Final Plea
- Trial Date
- Whether Court or Jury
- Offenses Found Guilty
  - Number 1
  - Number 2
  - Number 3
  - Number 4
- Sentence
- Fine Amount

Domestic Relations Information:

Age of Husband
Age of Wife
Residence
Number of Years Married
Number of Children under Eighteen
Plaintiff (Whether Husband or Wife)
Grounds
For Whom Decree Entered
Whether Alimony Granted
Whether Property Settlement Made
Whether Support Awarded
Name

Summary of Headings Used

(Reports 2 through 9)

DOWN	ACROSS
2 County	2 Docket number
Division	Date taken under advisement
Judge	3 Type of case
Case	Docket and defendant number
3 County	Arraignment date
Division	Type of action
Defendant	4 Number
4 County	change venue (civil) nolle (criminal)
Division	dismissed
	affirmed
	reversed
	remanded
	tried de novo

(Reports 5 through 9)

ACROSS	ACROSS	ACROSS
5, 6 Type	7 Type	8, 9 Type
Judge	Judge	Judge
Case status	Plea at arraignment	Disposition
	Type of action	

PITTSBURGH—SUMMARY OF WHAT IS REPORTED

Numbers of:
Pending cases at issue, by type of case.
Civil dispositions:
By type of settlement.
By type of case.
Jury case disposed:
Through trial.
Through conciliation.
Dispositions, other non-civil cases.
Defendants (there is a subcategory for cases that cannot be set).
Probationers, parolees, and investigations.
Criminal dispositions:
By type of case.
By type of disposition.
Age of disposed cases.
Amounts of settlements and verdicts, by type of settlement or verdict.

Typical Headings Used To Classify Disposition

Mode:
- Verdict for Plaintiff
- Settlement
  - Consent verdicts
  - Transfer [sic]
  - Non-Suited/Non-Prossed
  - Dismissed/Judgment/Off Issue
- Consent Decrees/Orders
- Final Decrees
- Decrees Nisi
- Mass Conciliation
- Stricken From Issue Docket

Place or Time:
- Trial Judge
- Calendar Control Judge
- Assignment Room
- Conciliation
- Where settlements were reported
- Calendar Control Division
- During Trial
- Prior to Assignment
- After Jury Selection

SETTING AND DISPOSITION INFORMATION, STATE TRIAL COURT, PORTLAND

(1) Comparison With Prior Years.
(2) Civil Docket (summary on next page).
(3) Criminal Docket.
(4) Lower Court Docket.
(5) Summary Sheet (of above reports).
(6) Numbers of Jurors (by day).
(7) Hearings on Cases Long at Issue.
(8) Domestic Relations.

Report on civil trial docket, month of May 1968

Cases set (civil):		
2.7 cases set per day per trial judge		601
4½ months trial docket.		
Latest filing date Jan. 24, 1968.		
Cases carried over from April to bottom of list of May docket, SCD cases, etc		69
Total cases disposed of during May		670
Trials by jury		51
After trial commenced 7 of the above jury cases were settled:		
Involuntary nonsuit	4	
Voluntary nonsuit	1	
Mistrial	2	
Directed verdict	0	
Disagreed jury	0	
Trials by court		48
Civil cases referred to referee		0
Civil cases settled before Friday call		29
Civil cases set over before Friday call upon stipulation of counsel		20
Civil cases settled after Friday call and before assignment		82
Civil cases settled after assignment prior to trial		50
Civil cases dismissed prior to assignment		23
Civil cases dismissed after assignment prior to trial		0
Voluntary nonsuit after assignment prior to trial		4
Voluntary nonsuit before assignment		5
Involuntary nonsuit after assignment prior to trial		0
Change of venue		0
Removed to Federal court		0
Civil cases postponed before assignment for the following reasons:		

Summary of Headings Used

Number (of) (count of cases unless otherwise noted):
- Set
- Judicial days
- Average daily case setting per trial judge
- Trials by jury
- Trials by court
- Divorce cases tried by court
- Referred to referee
- Change of venue
- Settled
- Set over
- Dismissed before assignment
- Dismissed between assignment and trial
- Involuntary non-suit before assignment
- Terminated
- Average daily cases terminated per trial judge
- Judge days
- Working days
- Trial judges
- Age of trial docket
- Latest filing date
- Carried over from previous reporting period
- Postponed [by reason]
- Postponed after assignment for reasons which did not occur subsequent to assignment so far as is known to presiding judge
- Total dispositions

Notes on identification of assigned judges.

APPENDIX C. CODES FOR TYPES OF CASES

Los Angeles Codes

Type of action	*Code*
Contracts:	
Reform	101
Recission	102
Set aside	103
Specific performance	104
Approval of minors	105
Damage to persons:	
Color discrimination	208
False imprisonment	209
Rights of privacy, invasion of	210
Libel	211
Slander	212
Malicious prosecution	213
Seduction	215
Accident:	
Motor vehicle	291
Electric railway	292
Miscellaneous	294
Steam road	295
Wrongful death accident	296
Assault and battery	297
Malpractice	298
Breach of warranty	299
Damage to property:	
Breach of contract	301
Fraud or mistake	302
Plagerism	305
Conversion	307
Escheat	308
Miscellaneous damage to property	393
Personal property	394
Real property	396

Writs:	
Mandamus	801
Prohibition	802
Review certiorari	803
Others:	
Accounting	901
Claim and delivery replevin	902
Declaratory relief	903
Injunction	904
Abate nuisance	905
Findings and awards	906
Interpleader	907
Confession of judgment	908
Set aside judgment	910
Leave to sue	911
Declare trust	912
Impress trust	913
Enforce trust	914
Establish trust	915
Reform trust	916
Terminate trust	917
Usury	918
Appeal other Court	920

COLORADO CODES

Personal injury:	
Motor vehicle	1B00
Other	1B20
Real property	1C00
Rule 105	1C10
Rule 120	1C20
Condemnation	1C30
Mechanic's lien	1C40
Other	1C50
Foreclosure (other than rule 120)	1C60
Administrative review and local government:	
Workmen's compensation	1D10
Other administrative review	1D20
Unemployment compensation	1D21
P.U.C. cases	1D22
Other State regulatory agencies	1D23
District incorporation	1D30
Municipal incorporation	1D40
Annexation	1D50
Other local government	1D60
Money demand (contracts, promissory notes):	
Forcible entry and detainer	1F00
Replevin and attachment	1G00
Injunctions	1H00
Inventory of assignee	1I00
Water adjudications	1J00
Rule 106	1K00
Appeals	1L00
Change of name	1M00
Birth certificates	1N00
Miscellaneous	1P00
Determination of interest	1P10
Receivership	1P20
Declaratory judgments	1P30
Specific performance	1P31
Damages (other than personal injury)	1Q00

○