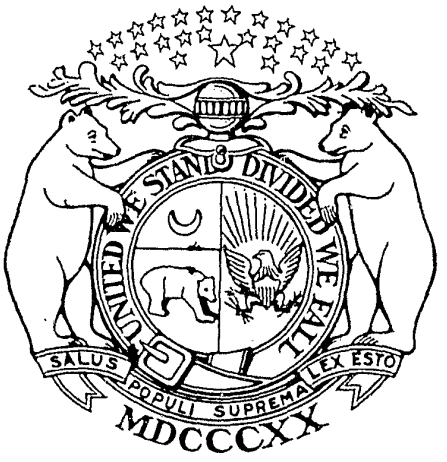
COURT ADMINISTRATION

ANALYSIS AND SUMMARIES

of

FIFTEEN COURT SYSTEM STUDIES



Prepared Under Supervision
of the
Twenty-Second Judicial Circuit Court of Missouri

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LEAA Grant No. S-MP7-73-e3

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PART II

SUMMARIES

PREFACE

Many studies of court systems around the country have been made; however, information of such studies has been usually limited to the local jurisdictions studied. In an effort to compile an evaluation of the results of some of these studies and to make available synopses of such studies, a federal grant was requested and obtained from the Law Enforcement Assistance Administration for funds to prepare such a compilation from various court studies available. A contract was entered into with Professor Gene P. Schultz of the St. Louis University School of Law to obtain the services of some students at the Law School and supervise their efforts in this compilation.

In an effort to obtain complete impartiality in preparing the summaries and report and to obtain the impression of reviewers not connected with any court system, the substance of the studies made by Professor Schultz and his team of students remains as submitted, thus representing the views of the students who worked on the Project. The entire work was edited for publication purposes by Mr. Kenneth Lauter, a graduate student at Washington University, St. Louis, Missouri. The entire project was again reviewed by Joseph Webb, Assistant Court Administrator and John S. Wilson, Court Administrator for grammatical purposes, and final proofreading for publication was done by Mary-Ellen Scharenberg and Kathy Mohan, their secretaries. Uniformity of style in preparing the synopses was anticipated. However, since the synopses of the studies

were prepared by several law students working individually, total uniformity was not achieved.

The reader's attention is called to the fact that some changes may have taken place since the date of the original studies. For instance the study of the Pre-Trial Release Program, insofar as the District of Columbia is concerned, was published in 1970 and relates to a court system in effect at the time of the study but which has since been reorganized. However, the findings and recommendations made in that study are valuable in that they may be adopted in whole, in part, or as modified, in some other judicial system. Therefore, it is suggested that in reading the synopses of the studies, the reader visualize the conditions that existed at the time the study was made and as referred to in each study.

It was anticipated at the time the grant was requested, and it is hoped that this project containing a compilation of fifteen studies may be of assistance to those readers who are involved in efforts to increase the efficiency of Judicial Administration in their own jurisdictions or in some other area of Judicial Administration.

John S. Wilson
Court Administrator
22nd Judicial Circuit Court
of Missouri

Joseph Webb
Assistant Court Administrator
22nd Judicial Circuit Court
of Missouri

September 9, 1974

INTRODUCTION

In recent years, many studies of individual court systems throughout the country have been completed, and many more studies are being conducted at this time in an effort to propose solutions to the problems of court administration.

While each individual court system may have some unique qualities that distinguish it from other court systems, the problems affecting all court systems in attempting to improve efficiency of administration, are basically the same.

The Court Administrator of the 22nd Judicial Circuit Court of St. Louis, Missouri, sought federal funds to contract for a study to be made of several court studies made in different parts of the country and consolidated in one book for reference and use where appropriate. Professor Gene P. Schultz, St. Louis University School of Law, St. Louis, Missouri, was awarded a contract to obtain the services of several law students to review the studies and prepare an overall evaluation and synopsis of each study.

Purpose

Because it contains many of the major recommendations from various studies of court systems to date (Part I), as well as summaries of their findings, conclusions, recommendations and methodologies (Part II), this report serves as

an important addition to the literature presently available in the field of court administration.

Methodology

This report was assembled in the following manner: Initially, the original studies concerned with management problems in court systems were obtained from courts throughout the country. These studies were read and analyzed by individual members of the team of law students who then compiled summary reports on each original study. One law student then reviewed the summaries, extracting and correlating data. And lastly, that data was used to assemble this report. Courts which were the subject of the original studies were contacted to ascertain which study recommendations had been implemented and what were the results of such implementations. Information from the two or three responses received was incorporated into the report where possible.

Value of This Report

This report should prove of interest because it points out general similarities and differences between the court systems studied and indicates current trends and direction in court administration. Court administrators hopefully, should be able to use this report to gain an insight into the common problems they and other court administrators face, the advances that other court systems have made, and the problems that some administrators have experienced in attempting to improve the efficiency of judicial administration.

Hopefully a court administrator will be able to use

this report as a handbook to assist him when he is faced with court management problems. He may also use Part I to identify a court system similar to his own which had a specific problem that he may be encountering and then ascertain what solutions were actually implemented and what were the results of such implementations.

The reader may turn to Part II, which contains the summary reports compiled from all the original studies used in this project. And finally, to obtain more detailed information on any court system reviewed, he may write to the court system covered in the report.

Limitations

There are several basic limitations of which readers of this report should be aware. First, the subject matter and methods in the original studies are diverse. The studies run the gamut from a highly technical engineering analysis of delay in court systems (LEADICS Study, Part II #9), to much more rudimentary reports. This diversity makes it difficult to extensively compare and contrast many of the original studies.

Second, the conclusions drawn in this report may be validly criticized as abstractions drawn from secondary sources. The compilers of the summaries of the original studies were at least one step removed from the actual court system in question, and the process of abstracting data may have distorted the individual court problems and solutions to same.

The benefits of a single summary report, however, far

outweigh the limitations involved. A concise overview of a complex problem is always desirable. Furthermore, the discovery of similar conclusions in studies conducted independently and with various methodologies may help to confirm the legitimacy of the recommendations of the original research. The assistance of John S. Wilson, Court Administrator, in outlining the project and answering our questions on the subject has been of assistance to me in supervising this project and the dedicated work of the law students who worked with me on the project, namely Mark Atmore, Michael Bastian, Alan Belliveau, and Joe Hutchison.

The summaries of the original reports were compiled in the summer and autumn of 1973. This report was compiled in the winter of 1973 and the spring of 1974.

Gene P. Schultz
Professor of Law
St. Louis University
School of Law
St. Louis, Missouri

PART I

CORRELATION OF DATA

Introduction

The individual reports studied here are grouped according to the type of court system involved. There are three categories:

1. Criminal Courts
2. Civil Courts
3. Municipal Courts

If a study contained data on more than one type court, the appropriate data was placed in all relevant categories.

I. The Criminal Court Systems

Eleven reports dealt with criminal court systems or criminal court problems. Below is a listing of those reports. They cover the entire spectrum of the criminal justice process from pre-trial detention to appeal of conviction, and from selection of jurors to discipline of judges. A summary of each study is contained in Part II of this report.

Reports Summarized that Dealt with Criminal Court Systems or Problems

1. A Comparison of Felony Processing in Cleveland, Denver and Houston, by the Institute for Court Management and National College of State Trial Judges jointly.
2. The Felony Processing System, Cuyahoga County, Ohio, by the Institute for Court Management.
3. Calendar Management in the Criminal Court of the Supreme Bench of Baltimore City, by Court Management Systems of Washington, D.C.

4. The Criminal Courts of Delaware: A study, compiled by the Institute of Judicial Administration, May, 1969.
5. The Massachusetts Superior Court Management and Administration Information System Study by Galin and Mazzetti of the MITRE Corporation.
6. N.B.S. Techincal Note 535. Compilation and Use of Criminal Court Data in Relation to Pre-Trial Release of Defendants: Pilot Study.
7. Courtroom Utilization Studies by E.D.C. Supreme Court Task Force, Supreme Court, Criminal Branch, New York County.
8. Philadelphia's Criminal Justice System by the Philadelphia Justice Consortium.
9. Law-Engineering Analysis of Delay in Court Systems (LEADICS) by the Law School and College of Engineering, University of Notre Dame, N.D., Indiana.
13. Report on the Management of the Ventura County Courts by the Institute for Court Management.
14. The Supreme Judicial Court and the Superior Court of the State of Maine by the Institute of Judicial Administration, January, 1971.

A. Pre-Trial Release

Pre-trial release appears to be a common amd major problem in criminal court systems. Table 1 lists the recommendations both with respect to pre-trial release and also with respect to pre-trial detention. Although specific recommendations varied from study to study, there is clearly agreement among the studies that pre-trial release standards

should be revised and that some type of pre-trial recognizance program should be adopted. Furthermore, two negative generalizations may be made: no reports recommended releasing fewer persons from pre-trial detention, and none recommended diffusion of policy or release decisions.

Table 1

RECOMMENDATIONS

1. Confinement conditions should be improved for persons in pre-trial detention (Study 3).
2. Pre-trial releases should be increased (Study 8).
3. A policy of release on recognizance should be adopted or utilized (Study 14).
4. A clear policy with respect to bail should be established (Study 13).
5. A new bail agency should be set up (Study 2,14).
6. A.B.A. pre-trial release standards should be adopted (Study 3).
7. Alternative bail devices should be explored (Study 13).
8. Bail and ROR decisions should be removed from the Sheriff's Office and this responsibility should be given to judicial officers (Study 13).
9. Records should be kept to determine what type persons released from pre-trial confinement return for trial Study 13).
10. Pre-trial offenders should be evaluated for their dangerousness before they are released at the pre-trial stage.

B. Case Screening

With respect to case screening, the recommendations centered mainly on screening out cases involving drug addicts and on receiving early assistance from the District Attorney's office with respect to screening out frivolous cases.

Table 2

RECOMMENDATIONS

1. Cases should be screened (Study 2,9).
2. A program involving case screening by Assistant District Attorneys at the police station should be expanded (Study 8).
3. Addict cases should be screened out (Study 2,8).
4. Police should receive legal help in drafting complaints (Study 14).

C. Defense Counsel

Recommendations concerning appointment of defense counsel varied as to whether a system of private attorneys or public defenders should be instituted. However, all the recommendations were designed to expand or improve the legal services provided to defendants.

Table 3

RECOMMENDATIONS

1. Defense counsel should be required for each defendant (Study 2).
2. Counsel should be assigned to indigent defendants at arraignment, regardless of any desire to retain private counsel (Study 9).
3. Public Defender Projects should receive more funding (Study 2).
4. Public Defender Offices, Solicitors Offices' and Attorney Generals' Offices should be consolidated (Study 4).

D. Use of the Grand Jury

Regarding the use of grand juries, the general trend in recommendations was toward limiting the use of grand juries to specific and special situations only. No study recommended that Grand Juries be used more frequently.

Table 4

RECOMMENDATIONS

1. In routine cases, action should move by Information rather than by Grand Jury indictment (Study 2,14).
2. Grand Juries should only be used in special and specific situations (Study 3,9).
3. Information filing should be used over indictment or presentment (Study 3).
4. Grand Jury systems should be improved (Study 3,4,9).

E. Management, Case Flow and Calendaring

Table 5 contains data on management, case-flow and calendaring. These three topics were grouped together because of their close interrelation. The number of systems with such problems and the number of recommendations made by each study indicates that case control in criminal court systems is a pervasive and complicated problem to which there is no simple solution. The basic problem is to find ways of speeding up the processing of cases without diminishing the quality of justice. The study recommendations generally centered on rationalizing the process and locating responsibility within the system. All the studies agreed that court control of the movement of criminal cases is essential and that calendar management procedures have to be improved. Because the solutions to case-flow problems are tied to such factors as the size of the court, its geography and existing case processing procedures, few generalizations can be drawn in this area. For a more comprehensive insight into these problems, the appropriate summaries of the studies should be consulted, particularly the summary in the LEADICS Study.

Table 5

RECOMMENDATIONS

1. Progressive management principles and technology must be applied to the courts. (Study 7,13)

2. Caseflow needs to be improved by keeping better case records and/or instituting time constraints at each stage. (Study 8,9)

3. Courts should control criminal case movement by controlling the court calendar. (Study 3, 7, 9, 14)

4. Calendar management should be improved. (Study 7)

5. An Administrative or Presiding Judge should supervise the Trial Calendar. (Study 9, 14)

6. A professional court manager should assist the Administrative or Presiding Judge. (Study 9)

7. Special administrative districts should be established with the presiding judge of each district in charge of all judicial activities in the district. (Study 14)

8. Municipal court documents should be adjusted to fit in with the state criminal court calendaring management process. (Study 3,9)

9. A Calendaring Administrative Office should be instituted. (Study 3)

10. The C.A.O. should be under the Assignment Judge. (Study 3)

11. Calendar Management Procedures for emergency civil disorder conditions should be devised. (Study 3)

12. Venue in criminal cases should be statewide. (Study 14)

13. Summons instead of arrest should be utilized. (Study 14)

14. Arraignment should be eliminated in certain cases or combined with the pre-trial conference. (Study 3, 7, 14)

15. Arraignment should be held within 3 days of arrest. (Study 9)

16. Cases should be scheduled for trial at arraignment, with the trial within 60 days of the arraignment date. (Study 9)

17. The position of Assignment Judge should be established. (Study 10)

18. A Management Information System should be set up under the Chief Justice's Office. (Study 5)

19. In the interest of problem resolution, a framework is needed which provides better communication between courts and justice agencies. (Study 13)

F. Funds and Facilities

Lack of funds and lack of adequate facilities are common problems of the criminal court systems studied. The recommendations are of a general nature i.e. increasing court funds, streamlining, expanding programs or services, and improving facilities. Since the courts have only minimal control over the allocation of funds and over the quality of their facilities, virtually the only feasible recommendations at present is to make more economical use of existing court rooms and judge time.

Table 6

RECOMMENDATIONS

1. Court systems should be reorganized by abolishing certain courts and consolidating others. (Study 4)

2. In the interest of problem resolution, a framework is needed which provides better communication between courts and justice agencies. (Study 13)

3. Court facilities should be improved and expanded. (Study 4,8,14)

4. Court funds should be increased. (Study 4,8)

5. Court support services and personnel should be increased. (Study 14)

6. More economical use of court rooms and judge time should be achieved (without sacrificing the quality of justice). (Study 4,7,14)

7. Substitute judges should be available for emergencies and illnesses. (Study 7)

8. Judicial matters between terms should be more effectively supervised. (Study 14)

9. New judges and court personnel should undergo training programs to orient them to the court management system. (Study 8,9)

10. All judges should receive training through seminars, meetings, and conferences. (Study 14)

G. Granting of Postponements and Continuances

The recommendations regarding granting of postponements and continuances were few and simple: eliminate those without cause.

Table 7

RECOMMENDATIONS

1. Parties who cause delay without cause

should be sanctioned. (Study 7)

2. No trial postponements should be allowed without cause. (Study 9)

H. Lower Court Rules

Several reports recommended that for equal protection of defendants and for case processing reasons, court rules should be promulgated which more closely control the operation of lower criminal courts and which unify the type of justice dispensed in these lower courts.

Table 8

RECOMMENDATIONS

1. Magistrates' and lower courts' responsibilities should be limited. (Study 4)

2. Minor offenders (traffic and minor misdemeanors) should receive equal treatment. (Study 4)

3. The Supreme Court should promulgate comprehensive court rules to be followed by the lower circuit court judges. (Study 7)

I. Sentencing

Few of the studies summarized dealt with sentencing problems. The general attitude of the studies which considered the problem was that judges, in order to properly impose a sentence, must be supplied with adequate information concerning the background and personality of the convicted person and must also be aware of current professional

trends and attitudes towards sentencing.

Table 9

RECOMMENDATIONS

1. Present statutory time limitations between adjudication and sentencing should be adhered to. (Study 12)

2. More information should be collected and supplied to judges for a more complete evaluation in the sentencing process. (Study 8)

3. An annual sentencing institute for judiciary should be held. (Study 14)

J. Selecting Court Personnel

Only one study made recommendations regarding the selection of judges and other court personnel.

Table 10

RECOMMENDATIONS

1. Court personnel should be chosen for competency and not for political reasons. (Study 8)

2. A non-partisan court plan should be implemented for use in selecting judges. (Study 10)

3. Judges' salaries should be increased. (Study 8)

K. Juries

Two studies made recommendations regarding the jury selection process. Both believed that modern techniques should be used to select jurors.

Table 11

RECOMMENDATIONS

1. Modern management techniques should be applied to the methods of selecting and using juries. (Study 8, 13)

2. Jury selection processes should be automated. (Study 13)

3. Voir Dire time should be reduced. (Study 13)

4. Jury operations should be consolidated into one office. (Study 13)

L. Appeals

Only the LEADICS study discussed the criminal appellate process. The study is comprehensive and it is recommended that anyone with a management problem involving the criminal appeals process read the appropriate sections.

Table 12

RECOMMENDATIONS

1. The form and substance of various post-conviction motions should be modified. (Study 9)

2. In ordinary cases, the defendant's assigned trial counsel should also be required to represent the defendant on appeal. (Study 9)

3. In ordinary cases, formal appellate briefs should be eliminated and emphasis placed on disposition after oral argument. (Study 9)

4. Appellate courts should use more short per curiam opinions with respect to appealed criminal cases. (Study 9)

Table 13

RECOMMENDATIONS

1. The Judicial Council should be more active in making policy and management decisions. (Study 14)

2. A Judicial Qualifications Commission should be created. (Study 14)

3. The Judicial Qualifications Commission should have a full time director and its budget should be increased. (Study 8)

4. Judges' Retirement Program should be upgraded. (Study 8)

M. Recommendations Peculiar to the System

All the studies made recommendations that were relevant only to the particular jurisdiction being studied. These recommendations have not been included in this final summary report. If an administrator finds that a particular court system studied is similar to his own, it is recommended that he read the summary or the original study on that particular court system in order to become acquainted with those specialized recommendations.

N. Implementation

It is not known which recommendations from this group of studies were implemented in the criminal court systems studied, nor what were the results of such implementations. The response to our inquiries for information relating to implementation of the changes recommended in the different studies was so minimal that it was decided best not to identify the two or three responses received.

II. The Civil Court Systems

Six reports dealt with problems in the civil court systems. These reports are listed in Table 14. As in the case of the criminal court summaries, it was impossible to list all the recommendations made and still have a meaningful summary. The State of Maine court study alone made 137 recommendations. Therefore only the major recommendations of each report are listed.

Table 14

Reports that Dealt with Civil Court Systems or Civil Calendaring Problems

5. Massachusetts Superior Court Management and Administration Information System Study by Melvin P. Galin and Joseph P. Mazzetti of the Management Systems Department of the MITRE Corporation.

10. Analysis of the Civil Calendaring Procedure of the Third Judicial Circuit Court, Wayne County, Michigan (Detroit) by the Institute for Court Management.

11. Study of Civil Calendar Management System in the District Court of Hennepin County (Minneapolis), Minnesota by the Institute for Court Management, June, 1971.

12. A Comparison of Civil Calendar Management in Boston, Detroit, and Minneapolis by the Institute for Court Management, June, 1971.

13. Report on the Management of the Ventura County Courts by the Institute for Court Management.

14. The Supreme Judicial Court and the Superior Court of the State of Maine by the Institute of Judicial Administration, January, 1971.

A. Management Information Systems

Five of the studies recommended that management information systems be designed and implemented for the court system being studied. Three of the studies (5,13,14) made detailed recommendations regarding the establishment of a Management Information System. No study recommended that such a system would be unnecessary. The three detailed studies agreed that a professional analyst should be hired by the Court systems. Coordination between the courts was stressed, and no study recommended that individual courts become more isolated from the other courts in the system. Several reports argued that internal control of the court system was a desired result of information management.

Table 15

RECOMMENDATIONS

1. A Management Information System should be established. (Study 5, 10, 11, 13, 14)

2. Management of information should be achieved through the use of Administrative Districts. (Study 14)

3. A Presiding Judge should be in charge of all judicial activities in the Administrative District. (Study 14)

4. An Executive Officer should be appointed to fill the void in Superior Court Administration. (Study 13)

5. Judges, through regular meetings, should make the policy that affects the courts. (Study 5, 14)

6. Court committees should be formed to facilitate greater involvement in the decision making process. (Study 14)

7. Annual meetings of all judicial employees should be convened to enhance involvement and committment to the goals of the judiciary. (Study 14)

8. Coordination or integration of the Superior and District Courts should be achieved. (Study 13, 14)

9. The Administrative Assistant to the Chief Justice should have the power to enforce administrative rules and policies promulgated by the Chief Justice. (Study 14)

10. A Professional Analyst (statistical, management, or systems type) should be hired. (Study 5, 14)

11. The court should set up some internal mechanism to achieve internal control and accountability. (Study 11, 14)

12. A Committee should be established to provide coordination with other agencies. (Study 13)

B. Calendaring Systems

Table 16 lists general recommendations made with regard to calendaring problems. The Boston, Detroit, Minneapolis report was a detailed study of the use of three different calendaring systems: The individual calendar, the master calendar, and a hybrid calendar system. The conclusion of this study was that civil court calendaring problems are more basic than the question of what type calendar system is used. There was general agreement that proper calendar management would significantly reduce delay from filing to trial.

Table 16

RECOMMENDATIONS

1. Calendaring problems are more basic than the question of whether a Master or Individual Calendar System is used (Study 12).

2. Either an individual calendar with a coordinated trial calendar or a master calendar with rigid pre-trial events schedule should be implemented (Study 13).

3. Calendar management process goals should be a median time to trial of one year or less with less than 10% of the cases exceeding one year (Study 13).

4. The waiting time between filing and trial should be reduced to 1 to 1¼ years (Study 10).

5. A more efficient calendaring system than the Block Assignment System currently in use is needed (Study 10).

C. Management Policy

The studies generally agreed that the judges themselves should make policy and set goals, and that both short term and long range goals planning was necessary for civil court systems. The studies also generally agreed that a uniform effort by the entire court bench is necessary in order to achieve any goal that the court sets.

Table 17

RECOMMENDATIONS

1. Courts should initiate long term planning covering the judicial employment system, consolidated budget, projected manpower needs, personnel training, and development of computerized information systems. (Study 5, 10, 13)

2. Clear and desirable national trends in court management (such as hiring of professional court administrators, implementation of progressive management principles and use of technological advances) should be voluntarily adopted in the interests of long term benefits to civil court systems. (Study 14)

3. Judges should meet to define goals for system performance. (Study 14)

4. The court as a whole must set performance goals for case disposition and set up a system for monitoring whether or not these goals are being met. (Study 11, 13, 14)

5. Present court rules should be enforced to prevent delay. (Study 11)

6. Greater control over case management is necessary. (Study 10)

7. A plan to reduce backlog of cases should be formulated. (Study 10)

8. The entire Bench must make an effort to gain court control of cases. (Study 11, 12)

9. A Judicial Qualifications Commission should be implemented. (Study 12)

D. Attorneys

Some recommendations dealt specifically with attorneys, focusing on the problems caused by attorneys with too many cases and on the problem of unnecessary continuance/postponement caused by unprepared attorneys.

Table 18

RECOMMENDATIONS

1. Courts should regulate the number of cases attorneys can accept so as to prevent delay from attorneys accepting more cases than they can handle (Study 10).

2. Attorneys should be prevented from rejecting trial dates assigned to them without showing good cause (Study 11).

3. Attorney congestion should be solved through joint cooperation between neighboring counties (Study 10).

4. A restrictive policy on the granting of continuances should be implemented. (Study 11, 12, 14)

5. A limited period within which to complete discovery should be initiated and enforced. (Study 14)

E. Personnel and Facilities

As one would expect, no study recommended fewer personnel be employed or smaller facilities be used in the civil court systems, but several studies did recommend that more economical use be made of court facilities and personnel currently available. Lack of finances is the controlling factor behind most of these recommendations.

Table 19

RECOMMENDATIONS

1. Court personnel and judges should be aware of management goals (Study 11, 14).

2. Sufficient personnel should be employed to prevent bottlenecks in the processing of cases (Study 10,14).

3. Judges should attend training seminars, conferences and meetings. Study 14).

4. Economic use of judge time is a necessity (Study 12, 14).

5. Facilities for the court should be improved or increased (Study 13, 14).

F. Implementation

The Executive Officer of the Ventura County Superior Court and the Administrator of the Supreme Judicial Court of the State of Maine responded to the inquiries regarding which recommendations were implemented and the results obtained. When analyzing this data it is necessary to keep in mind that many of the study recommendations require a statutory or constitutional change before they may be implemented.

As of August, 1973, the Maine Court had implemented virtually none of the study recommendations.

The Ventura County Courts study recommended the creation of the position of Court Administrator or Executive Officer in the Superior Court. The position of executive officer has since been created and filled. The study recommended the creation of an Executive Board of the Ventura

County Courts in order to improve coordination between the courts in the county. Judges from each court met for a period to test this recommendation but concluded that there was insufficient common business to justify continued regular meetings.

Progress has been made both towards totally automating and consolidating jury management programs and toward a joint bail/ROR program, as recommended in the study. Both courts are now regularly represented at meetings of County department heads, as the study recommended.

Judicial policy making functions have been improved in both courts through regular monthly meetings with formal agenda and minutes. However, consolidation of administrative functions of the courts has been impeded by statutory and constitutional restraints.

The recommendations regarding the processing of cases are being evaluated.

The study also suggested that it was untimely to design a new Hall of Justice building, but suggested that the courts acquire more space. However, the courts decided it was appropriate and timely to design a new Hall of Justice.

Virtually all the general recommendations for the study are being followed in one form or another, with the exception of those pertaining to unification of the judicial functions of the court and creation of a joint administrative hierarch.

No other civil court juridiction responded to the inquiries.

MUNICIPAL COURT SYSTEMS

A. Introduction

One of the reports summarized concerned Municipal Courts exclusively, and one other dealt with Municipal Courts in the context of their relation with lower state courts. The two major issues discussed in these reports are: approaches to municipal court management, and future merger of certain functions by the municipal courts and the lower state courts.

Table 20

Reports that Dealt with Municipal Court Systems

13. Report on the Management of the Ventura County Courts, by the Institute for Court Management, July, 1973.

15. Hennepin County Municipal Court Descriptive Analysis by the Institute for Court Management, June, 1971.

B. Merged Functions

Table 21 lists the municipal court management functions which the studies recommended be merged with the lower state courts. Although few reports dealt with municipal court problems, it is significant that no report recommended greater isolation or autonomy for municipal courts from the lower state courts.

Table 21

RECOMMENDATIONS

1. Coordination between the Municipal and State Court should be increased.

(Study 13)

2. Eventually the administration of both the Municipal and State courts should be unified (Study 13).

3. Eventually the Municipal Court should be merged with the lower State Court system so that there is only one trial court (Study 13).

4. The Municipal Court and the State Court should develop: a joint budget; joint personnel, space and equipment; joint management analysis and policy recommendations; co-ordination of space and equipment; a joint jury management system; joint court reporters; a joint pre-trial release program; a joint performance evaluation and case monitoring system which should also be administered and coordinated jointly.

C. General Recommendations

The municipal court problems appear to be similar to the state trial court system problems discussed elsewhere in this report. Pre-trial release standards, bail policies and adequate representation for indigents are problems common to the state criminal court systems studied.

Table 22

RECOMMENDATIONS

1. A Traffic Violations Bureau can handle traffic violations with a right to jury trial in cases where the defendant's license can be suspended (Study 15).

2. Clear bail policies should be established (Study 13).

3. Jury operations should be consolidated into one office (Study 13).

4. Municipal Courts should periodically receive updated jury lists (every 2 months). (Study 13)

5. Municipal Court delay in the conduct of preliminary hearings should be reduced (Study 13).

Implementation

The recommendations which were implemented by the Ventura County Courts are discussed in Civil Court Systems, above, in the Implementation Section. No other responses to the inquiries were received.

PART II

SUMMARIES

SUMMARY NUMBER ONE

A COMPARISON OF FELONY PROCESSING IN CLEVELAND, DENVER AND HOUSTON

by

The Institute for Court Management
University of Denver Law Center

1971

Summary Prepared
by
Mark Atmore

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BACKGROUND OF THE STUDY

This study, financed through a grant awarded to the Institute for Court Management and the National College of State Trial Judges by the Law Enforcement Assistance Administration of the U. S. Department of Justice, is one of a series of court management studies that was conducted during Fiscal Year 1971.

This study compares felony processing in Cuyahoga County, Ohio (Cleveland); Denver, Colorado; and Harris County, Texas (Houston). The comparison is part of an overall effort to learn more about the dynamics of criminal and civil litigation.

This report summarizes and contrasts the findings of the individual court studies.

SCOPE OF THE STUDY

The Institute cites the fact that very few studies have attempted to make a comparative analysis of felony processing among courts. The present study offers the perspective of a comparison of three criminal intake systems. The three felony systems compared in this study were the Cleveland Municipal Court and Cuyahoga County Court of Common Pleas; the Denver County and Denver District Courts; and two Justice of the Peace Courts (downtown Houston) and Harris County Criminal District Courts.

The process studied included the time period from arrest through trial in the upper court.

METHODOLOGY USED

The basic methodology in each of the systems studied was as follows:

a. A sample of one month's indictments or informations filed in the upper court was collected. If there were less than 150 cases the sample would move into the following month. In the event that one month included more than 250 cases the sample would cease at that point. The sample month selected was March 1-31, 1970. These cases were followed for a one year period until February 28, 1971, and their dispositions recorded. The same cases were followed backward into the lower court to record transactions at that level.

b. For a sample of cases extending for a period of two weeks in the lower court, the study team observed courtroom appearances and recorded the transactions as they occurred, such as whether or not defendant was represented by counsel, whether or not the case was adjudicated or continued, etc.

c. Another sample of cases extending for a period of one week, was collected. These were cases recorded by those prosecuting attorneys having the responsibility for screening complaints and indicating whether or not the charge was reduced to a misdemeanor, changed to another felony, dismissed, or filed as originally charged.

d. A series of structured interviews were conducted with key individuals in the criminal justice system with a view toward identifying key factors, problems and possible solutions.

DISCUSSION OF PROBLEMS AND RECOMMENDATIONS IN LIGHT OF STUDY OBJECTIVES

I. OBJECTIVE: Develop methodologies for studying the courts.

Rather than study the data for one court laterally for all of its functions, this study attempts to create a data base for one process, vertically, up to the time of trial.

A. The methodology was claimed to be generally satisfactory, though certain information was very difficult to obtain. The major deficiences were categorized in two ways:

1. docket books and related records typically record events but, they do not typically record who are present or at whose request the event was conducted, and

2. observation of courtroom appearances, by necessity, excludes the opportunity to be aware of transactions which may have occurred in chambers, over the telephone, or at other moments outside the courtroom.

B. Accordingly, the following data was listed as difficult to obtain:

1. Continuance information
2. Status (jail or bail) of the defendant
3. At what point bond was made
4. At what point, and who, represented the defendant
5. Plea negotiations.

C. As a result of these methodological difficulties, the Institute proposes an alternative approach to data gathering in future research designs. The primary problem cited is the gathering of data regarding past events and/or undocumented events. A secondary problem listed is the gathering of data regarding unrecorded events and events not typically observed (e.g., plea negotiations.)

The following considerations are recommended for inclusion in future research designs:

1. The research team should meet at the study site for a period of about one week and it should consist of the following people:

   a. project director
   b. any staff member who may be involved in helping shape the research design
   c. data processing director or coordinator
   d. data collectors
   e. court personnel who have been assigned to work with the project team

2. The design should proceed as follows:

   a. Day One: review the study objectives, explain and discuss the research instruments; assign personnel to specific data collection task; review the quality control checks which will be utilized during the week

   b. Day Two: Collect data

   c. Day Three: tabulate data and examine for accuracy, completeness, availability, problems in collection

   d. Day Four: revise forms if necessary; meet with court, if necessary, to obtain access to data which may not have been available; set up alternative methods of collecting, if necessary

   e. Day Five: collect data using new methods or forms if appropriate; establish data control schedules, i.e., set dates by which certain data will be required and in what form it will be reported.

II. OBJECTIVE: Identify key factors in the felony processing system.

The study assumed that the following factors were critical in felony processing:

1. Defendant's Status: in jail, on dollar bond or ROR
2. Lawyer: retained, Public Defender or appointed
3. Disposition of Case: dismissed, acquitted, guilty of a felony, guilty of a misdemeanor, plea or trial, etc.
4. Sentence: state penal institution, county jail, probation, suspended sentence, etc.
5. Continuance: by defense, state or court
6. Case Consolidated: yes or no
7. Motions: volume and type
8. Charge
9. Multiple Defendants: yes or no

By comparing the three court systems the Institute feels that two variables are particularly critical in processing felonies. They are:

1. whether or not the defendant is represented by counsel
2. whether or not the defendant is in jail, free on bail or ROR

As a result of the Institute's observations certain hypotheses are suggested as areas to be tested in later studies using a larger sample than three court systems. They are:

A. That defense representation early in the felony process will increase the number of cases dismissed or reduced to a misdemeanor; will reduce the median time to disposition; and will increase the number of defendants on bail and ROR; this hypothesis is suggested by the comparative data which show Denver, which uses an active Public Defender, having lower median times than Houston or Cleveland, both of which have limited provision for public defense counsel.

B. That increased use of ROR and/or bail will reduce median time to disposition; will have little, if any, effect on the number of defendants receiving probation; and need not be affected by the categories of crime prevalent in the court system; this hypothesis is suggested by the comparative data which show Denver which utilizes ROR to some extent (estimated 2-14%), having lower median times to disposition than Houston or Cleveland which seldom if ever utilize it. The number of defendants receiving probation are virtually the same in each of the jurisdictions. The categories of crime are not that dissimilar among the three.

III. OBJECTIVE: Increase understanding of felony processing

It was presumed that by comparing differing systems with respect to the same criteria, it would be possible to observe similarities and dissimilarities in processing. The comparison rather vividly pointed to three major dissimilarities inherent in the "format" of processing felonies among the three systems. They were as follows:

a. whether or not the system provides for public defense counsel
b. whether or not the system proceeds by Grand Jury or information
c. whether or not the system utilizes an adequate preliminary hearing.

Naturally, the above three "formats" are not mutually exclusive. It is however, clear, the Institute feels, that the

three systems may be categorized as follows:

	Public Defense Counsel	Preliminary Hearing	Grand Jury or Information
Cleveland	No provision in the lower court except for volunteers; appointed counsel or local Public Defender possible after indictment	Most waived; those held are perfunctory	Grand Jury
Denver	State Public Defender	Significant screening stage	Information
Houston	Virtually none	Most waived; those held closely resemble trial	Grand Jury

It is the Institute's belief that the three "formats" are related to differing performance characteristics such as median times, backlog, dispositions and utilization of manpower. The Institute suspects, however, that these "formats" are accomodations to other systemic factors such as dominance of the prosecutor, bifurcation of judicial systems (between lower and upper courts) and involvement of the local bar. However, the Institute feels that it is helpful to isolate the variables before putting them back together in a total system.

IV. OBJECTIVE: Develop data base for use in identifying volume and types of cases which have proceeded through various stages in felony processing.

The Institute recognizes that very little is known regarding the volume and types of cases which proceed through the system. It was presumed by the Institute that analysis

of three court systems would reveal certain trends in case processing which, when juxtaposed against descriptions of process, would provide a more empirical base for postulating changes in felony processing.

A. The data collected was helpful in categorizing the following as leading case categories:

1. burglary
2. theft
3. short check
4. unlawful possession of narcotics
5. unlawful possession of dangerous drugs
6. grand larceny
7. possession of firearms
8. aggravated robbery
9. other crimes against property
10. other crimes against public health and safety

B. The Institute further states that the data was also helpful in establishing different elapsed times from charge to disposition for the following categories:

1. guilty plea to misdemeanor
2. guilty plea to felony
3. bench trial
4. jury trial

The Institute further states that the data suggests that if one placed each of the above in order of their longest possible time to disposition, the order would be as follows:

1. jury trial (104-387 days)
2. bench trial (189-275 days)
3. guilty plea to a felony (33-214 days)
4. guilty plea to a misdemeanor (111-208 days)

With respect to guilty pleas, the Institute discovered what appears to be an "end loading" in Cleveland and Houston. That is, a substantial number of guilty pleas occur within three to six months after docketing (55-83%). 23-30% occur between nine and twelve months. The distribution tends to be bi-modal.

V. Search for dysfunctions in felony processing and calendaring

The Institute feels that too little attention has been directed toward an examination of the critical stages in the criminal intake process to determine whether or not each stage is fulfilling its purpose or contributing to delay. The most significant observation was the importance of the screening process and the impact of jurisdictional bifurcation on the administrative system. A comparison of the three systems suggested to the Institute that the early screening of cases directly affects backlog and delay.

It was found that Denver, which screens early and significantly, has lower median times to disposition than Cleveland and Houston. The critical differences, however, came in examining median times at various stages. Denver expends substantial time prior to the preliminary hearing and Houston and Cleveland expend most of their time in the upper court. The result is that guilty pleas are entered earlier in Denver, while both Houston and Cleveland experience a significant number of guilty pleas during the period of 9-12 months.

A comparison of the three systems suggested to the Institute that where division of the jurisdiction is accompanied by some administrative continuity in felony processing there is a decrease in backlog and delay and the number of dispositions per judge increases. Denver, which has lower median times to disposition is also characterized by a certain continuity in processing: the Denver office of the Public Defender and the District Attorney adjudicate felonies in both the lower and upper courts. The situation is different in Cleveland and

Houston as shown in the table below:

	Denver	Cleveland	Houston
LOWER COURT:			
Public Defense	State Public Defender	No provision; volunteers only	Seldom provided
Prosecutor	District Attorney	Police Prosecutor screens cases; County Prosecutor adjudicates	District Attorney
UPPER COURT:			
Public Defense	State Public Defender	County Public Defender; appointed counsel	Seldom provided
Prosecutor	District Attorney	County Prosecutor	District Attorney

Houston's District Attorney processes cases in both courts. Cleveland divides the screening and adjudicative function and provides a mixed Public Defender/appointed counsel system in the upper court only. Accordingly, the percentage of cases disposed of in 1970 which exceeds filing is highest in Denver, next highest in Houston, and lowest in Cleveland as shown below:

	Denver	Cleveland	Houston
1970 filings	1,891	3,533	12,701
dispositions	2,443	3,382	13,167
% of dispositions greater than filing	29.2	(-)4.3	3.7

Note: (1) complete data for years prior to 1970 were not available

(2) both Denver and Houston utilize the individual calendar; Cleveland, the master calendar

SUMMARY NUMBER TWO

THE FELONY PROCESSING SYSTEM

CUYAHOGA COUNTY, OHIO

by

The Institute for Court Management

University of Denver Law Center

1971

Summary Prepared

by

Mark Atmore

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A. BACKGROUND ON THE STUDY

The Institute for Court Management has conducted this study of the felony processing system within the Municipal Court of Cleveland and the Court of Common Pleas of Cuyahoga County. The initiation of the study was a response to both a national concern and a Cleveland-Cuyahoga County concern for an improved administration of criminal justice.

This study was designed as a companion effort to similar studies dealing with felony processing in Denver, Colorado and Harris County, Texas. In turn these studies were part of a larger Institute effort to learn more about the dynamics of criminal and civil litigation.

SCOPE

It was decided that the study would concentrate on the felony process from arrest through entry of a guilty plea or trial, with particular focus on the process as a case develops in the Municipal Court and either remains or proceeds to the Court of Common Pleas.

OBJECTIVES

The objectives as listed in the study are: 1. To develop methodologies for studying the courts; 2. To identify key factors in felony processing; 3. Increase understanding of felony processing; 4. Develop a data base for use in identifying volume and types of cases which have proceeded through various stages in the felony process; 5. Search for dysfunctions

in criminal intake and calendaring processes.

METHODOLOGY

The methodology utilized the following data sources:

1.The first 52 persons arrested for felony offenses by the Cleveland Police Department during January, 1971. These cases were followed to February 23, 1971, to determine how many were certified for filing, what changes were made in charge between the arrest charge and the filing charge, and the frequency of continuances granted at hearings in Municipal Court.

2.A sample of 98 hearings in the Municipal Court in which the study team observed courtroom appearances and recorded the transactions as they occurred.

3.A sample of 100 cases recorded by three Police Prosecutors who screen complaints brought in by the police.

4.A sample of 163 felony cases filed in the Court of Common Pleas during March 1 through March 31, 1970. These cases were followed for a one-year period until February 28, 1971, and their dispositions recorded. Similarly, the same cases were followed backward into the Municipal Court to record transactions at the lower level.

5.A series of structured interviews with judges, a private defense attorney, the Director of Safety, and Inspector of Detectives and the Prosecuting Attorney, regarding felony processing problems and possible solutions.

B. FELONY PROCESSING SYSTEM-CLEVELAND

For the vast majority of Cleveland felony defendants,

case processing begins with police arrest and the filing of an affidavit in the Cleveland Municipal Court Criminal Division.

It should be stated that the Cleveland procedure follows that of many cities in that the Police Department does not prepare or file the formal felony complaint, but rather presents this information and frequently the complaining witness to an office, known in Cleveland as the Police Prosecutor's Office or City Prosecutor's Office.

The Cuyahoga County bail bond system can be described as a private, commercial system. The arrested suspect knows of or is advised of the right to bail and is informed that this costs about 10 percent of the face amount. There is a reported failure by courts to keep track of the quality and quantity of the amounts of bonds written by commercial sureties and a failure to regularly and vigorously enforce forfeitures when defendants fail to appear for trial.

FELONY PROCESSING - MEDIAN TIME BETWEEN STAGES

Cleveland Municipal Court

ARREST		CHARGE		FIRST JUDICIAL APPEARANCE		FURTHER JUDICIAL APPEARANCE OR PRELIMINARY HEARING

Cuyahoga County Court of Common Pleas

	GRAND JURY AND DOCKET					GUILTY PLEA ENTERED OR TRIAL
36 days		15 days	ARRAIGNMENT	126 days		

The overall median for 163 cases from charge to plea or trial amounted to 206 days. The figures shown above have been computed for the separate stages and total 200 days.

C. CHARTS SHOWING THE CLEVELAND FELONY PROCESSING SYSTEM

FELONY PROCESSING SYSTEM - CLEVELAND WITH FUNCTIONAL STEPS

MUNICIPAL COURT

ARREST	PROSECUTORIAL SCREENING	COMPLAINT FILED	FIRST APPEARANCE	BONDING
1. Request affidavit for filing 2. Release	1. Certify felony 2. Certify misdemeanor 3. Deny certification	1. By arresting officer 2. By investigating officer 3. By citizen	1. Advised of certified charge 2. Advised of rights 3. Bond set 4. Date set for further hearing	1. Bond made in Municipal Court clerk's office 2. No ROR screening

COURT OF COMMON PLEAS

PRELIMINARY

FURTHER APPEARANCE	GRAND JURY	ARRAIGNMENT	PRE-TRIAL
1. Probable cause and bind over 2. No probable cause and dismiss 3. Waive hearing with bind over 4. Continue 5. Reduce to misdemeanor	1. True bill 2. No bill	1. Advised of indicted offenses 2. Advised of rights 3. Counsel appointed if indigent 4. Bond continued or re-examined	1. Plea negotiated 2. Plea negotiation not agreed

MOTIONS	PLEA OR TRIAL	SENTENCING DISPOSITIONS
1. Discovery 2. Continuance 3. Incompetency 4. Dismiss 5. Suppress 6. Sever 7. Consolidate 8. Other	1. Plea-felony 2. Plea-misdemeanor 3. Trial to jury 4. Trial to bench	1. State Correctional Institutions 2. County jail 3. Probation 4. Suspended Sentence 5. Criminal Insanity 6. Other

D. PROBLEMS AND RECOMMENDATIONS-BAIL

1. Problem: large numbers of persons fail to meet bail and remain in jail for long periods of time.
Recommendation: complete reformation of the Cuyahoga County bail system, urging that the rules of the Court of Common Pleas and of the Cleveland Municipal Court regarding pre-trial release be amended to adopt the standards relating to pre-trial release approved by the American Bar Association, August 6, 1968. (Specifically Standards 5.4; 1.2(a,b,c)1.1, 5.1(a)).

2. Problem: a speedy and regularized method of gathering information on each defendant awaiting a release decision is needed.
Recommendation: creation of a new agency to perform the bail investigative function, requiring a skilled staff, instant access to many areas of information, close collaboration with and the respect of the judges.

3. Problem: What can be studied as a model for the proposed new bail investigation agency?
Recommendation: the District of Columbia Bail Agency.

4. Problem: large numbers of persons are not receiving fast bail processing and release.
Recommendation: a combination of bail reform, with more extensive use of ROR, backed by a 10% deposit plan.

5. Problem: there is administrative delay because of inquiries as to defendant indigency, receipt of money bail deposits and enforcement of the bail system.

Recommendations: along with its role of making recommendations to a judicial officer regarding bail, an independent or court bail agency could make inquiry regarding a defendant's indigency, could receive money bail deposits, and be responsible for the system's enforcement.

E. PROBLEMS AND RECOMMENDATIONS-SCREENING

6. Problem: more screening out is needed at the initial police certification level.
Recommendation: Cleveland Police Department should employ a legal adviser to the police.

7. Problem: more prosecutorial screening is needed.
Recommendation: Cleveland Police Department should employ a legal adviser to the police.

8. Problem: a further major absorption is needed in the prosecutorial screening process in regards to more efficient management and administration.
Recommendation: the Office of Prosecuting Attorney should absorb felony screening and the presentment of preliminary hearings for the entire Cuyahoga County.

9. Problem: a further major absorption is needed in the prosecutorial screening process in regards to area of responsibility.
Recommendation: the proposed county-wide Office of Prosecuting Attorney should absorb misdemeanor responsibility as well as felony responsibility.

10. Problem: a further technique is needed to intensify the screening process.

Recommendation: development of a truly adversary preliminary hearing, with ample room for plea negotiation in the Cleveland Municipal Court.

F. PROBLEMS AND RECOMMENDATIONS-DEFENSE COUNSEL REPRESENTATION

11. Problem: the Cleveland Municipal Court innovation of arranging volunteer counsel is a commendable but inadequate approach to the Coleman v. Alabama mandate.

Recommendation: implementation of a strong, centralized, city-wide public defender system for Cuyahoga County, rather than a mixed private-public system.

12. Problem: in addition to Coleman, supra, there are increasing types of cases for which counsel has been deemed necessary or desirable, (In Re Gault, Mempa v. Rhay, Combs v. La Vella are cited) and which are not presently followed in Cuyahoga County at the time this study was made.

Recommendation: Cuyahoga County should develop a comprehensive felony legal defense system beginning at the arrest stage. It would also seem desirable to furnish counsel on misdemeanor cases and juvenile cases from the earliest onset of the case.

13. Problem: the present provision of reimbursement to the counties only for those cases committed to reformatories and penitentiaries is inadequate.

Recommendation: the state should "purchase" defense services through rules and regulations under an amended statute.

14. Problem: insufficient reimbursement (cont.)

Recommendation: Counties should continue to assist with the cost of financing legal defense services.

15. Problem: Stretching available funds.

Recommendation: the present $450,000 expended for the private-public defense system in Cuyahoga County could go much further if all appointments were made to an office of the public defender.

16. Problems: stretching available funds (cont.)

Recommendation: the Ohio Legislature should give consideration to the Uniform Law Commissioner's Model Public Defender Act, drafted and approved by the National Conference of Commissioners of Uniform Laws, and enacted in variously modified forms in approximately a dozen states.

17. Problems: source of further funds.

Recommendation: the Cuyahoga County Office of the Public Defender might seek further funds from the Ohio and United States Law Enforcement Assistance Administration, from the Model Cities' Office, from foundation sources, and even from the Ohio Highway Safety Coordinator who administers court-connected funds under the Ohio Highway Safety Act of 1966.

G. THE GRAND JURY-(PROBLEMS AND RECOMMENDATIONS, CONT.)

18. Problem: the grand jury method of criminal justice impedes the speedy processing of criminal cases, often by 60 to 90 days; therefore, resources allocated for the grand jury could be better used elsewhere, and a strong preliminary hearing could accomplish still more in the way of objectives.

Recommendation: A constitutional amendment should be adopted which would enable the Office of Prosecuting Attorney to move by information (without requiring the approval of the defendant) but reserving to the Office of Prosecuting Attorney the right to continue to use a grand jury for the non-routine case where insulation of the prosecutor's office is important or where a secret indictment process is desirable.

H. DISCUSSION OF MAJOR CONCERNS AND RECOMMENDATION

Information derived through the study has led the Institute to focus on four major dimensions of the Cuyahoga County criminal justice system. They are: bail; screening; defense counsel representation; and the grand jury.

1. BAIL

The Cuyahoga County justice administration received serious negative publicity during the past year concerning laxity in enforcing bond forfeitures against bonding companies. A new information system being developed by the Court Management Project will enable the courts to maintain accurate information as to the number of bonding companies, how much total security each may write bail bonds against, the current amount of bonds written by each company, and the fugitive status of defendants on bond. According to the Institute's data, about four out of ten persons arraigned at Common Pleas are still in jail at the time of this arraignment.

The ABA Standards recommended for adoption by the Institute eliminate the professional bondsmen. They are: 5.4

Prohibition of compensated sureties; 1.2(a)(b)(c), Conditions on release; 1.1 Policy favoring release; 5.1(a) Release on order to appear or on defendant's own recognizance.

The new agency recommended in No.2 could be a separate section of the courts; it can be an independent governmental agency; it may be a non-profit private corporation. It will require skilled staff, instant access to many areas of information, and close collaboration with and the respect of the judges.

The Institute data indicates ROR is only rarely granted at the Common Pleas level, and there is no similar institutional structure to investigate defendant eligibility for ROR upon first appearance in Municipal Court.

The ABA Standards elaborate a comprehensive approach to a new bail procedure. Many more defendants will be released on their own recognizance or by the deposit of 10 percent of the bail amount with the new bail agency.

Regarding recommendation No.3, statistics reveal that the District of Columbia Bail Project secured release without bail for 2,166 defendants in two and one half years, and 97 per cent returned without difficulty. The D.C. agency is located in a court facility; it has been authorized by legislation to prepare and present reports and recommendations regarding the release of jailed defendants; upon court request it is to investigate cases of intoxication, traffic violations, narcotics use; it is responsible for notifying released defendants of their court dates, and for notifying the court and the prosecuting attorney of the failure of released defendants to comply with conditions of release. It operates on a 24

hour a day basis, except Sundays, and processes about 13,000 persons a year.

In regards to Recommendation No.4, the Institute study found that in Cuyahoga County about 36 percent of felony defendants received a sentence of probation and an additional 22 percent were sentenced, on a plea reduction to a misdemeanor, to county jail. Another 7 percent had their sentence suspended and only about 1 of every 3 were sentenced to the state penitentiary. That such a high percentage of defendants were, by sentence, retained within the county should give added emphasis to an organized effort to retain fewer defendants in jail pending trial. The ABA Standards propose a network of approaches to the pre-trial release decision including: ROR; release under supervision of a probation officer or other appropriate public official; imposition of reasonable restrictions on activities, movements, associations and residences of the defendant.

Along with its role of making recommendations to a judicial officer regarding bail, an independant or court bail agency could make inquiry regarding a defendant's indigency, could receive money bail deposits, and be responsible for the system's enforcement. These services would be conducive to ongoing evaluation and would centralize an enormous amount of retrievable information. By placing the responsibility for bail and for determining indigency under the court's overall supervision, the court could continually monitor the progress of the program, reduce courtroom time devoted to inquiries regarding the defendant's current financial position, and

establish a rigorous, analytical review of the court's policies in regard to bonding and indigency. The indigency information would of course be relevant to the judicial appointment of defense counsel. The net result, the Institute feels, should be a more effective administration of criminal justice.

2.SCREENING

Most apparent screening out process in the current Cuyahoga County system is that done by the police department itself.

At the next screening stage, the preliminary hearing, the Institute found several significant factors: of 13 preliminary hearings observed, all 13 resulted in a bind over decision. Further, it was found that it is a very common practice to continue the preliminary hearing for seven or eight weeks because so many defendants lack counsel; within that period the grand jury invariably indicts the defendant and the preliminary hearing is cancelled out. Relatively few cases are screened out at the grand jury stage: in 1970, grand juries true billed 93 percent of cases and no true billed 7 percent.

The result is a transfer of the mass of felony matters to the Court of Common Pleas without adoption of the procedures used in other cities to eliminate more cases earlier in the process by more vigorous preliminary hearings or through a greater opportunity for plea negotiation at the Municipal Court level. The legal adviser recommended in No. 6 could be of further aid to the Cleveland Police Department

in a still more refined evaluation of their cases before the decision is made to request prosecutorial certification.

The Institute believes recommendation No.6 will help make the system more suitable. The study goes on to say that it makes screening and another office prosecute those same felonies through plea bargaining or trial. The responsibility for this function should be vested totally in the Office of the Prosecuting Attorney.

The shift of misdemeanor responsibility proposed in No.9 would require a major shift in prosecutorial manpower from suburban offices to the Office of Prosecuting Attorney and, in turn, the decentralization of assistant prosecutors back into suburban courts.

The Institute's study of preliminary hearings in Denver, Colorado, a court system with a strong public defender system, with defenders appointed in the lower court, and with a strong adversary preliminary hearing, revealed that 37% of all felonies were either dismissed at or before the preliminary hearing or reduced to misdemeanors with a guilty plea. Recommendation No.10 therefore, is that a strong, adversary preliminary hearing with ample room for plea negotiation at that stage, should be conducted in the Cleveland Municipal Court. A functional advantage is that more cases could be disposed of at the earlier stage and without the requirement of presentment for a grand jury indictment, duplicative docketing, duplicative arraignments, and time delays. This would require, the Institute feels, that Cleveland Municipal Court assign more judicial manpower to the preliminary hearing phase, but it is contended that this would be offset by

a substantially greater savings of judicial manpower at the Common Pleas level, as well as savings in grand jury and jail costs.

3.DEFENSE COUNSEL REPRESENTATION

The basic legal defense appointment practice in Cuyahoga County occurs at the Common Pleas level. At arraignment at Common Pleas, counsel is appointed for indigent defendants, some 29.2 percent of appointments going to the Public Defender and the balance to private attorneys. Another hallmark of the present Cuyahoga County practice is that a larger number of defendants retain their own attorneys than is thought the norm in other urban centers, (More defendants retained their own lawyer, in this sample, than the combined appointment total of public defender and appointed private counsel.)

Although the basic decision of Gideon v Wainwright is observed, Cleveland seems to make token compliance with the 1970 case of Coleman v Alabama.

The Study says, in regards to its recommendation No.11, that a public defender office is better able than a mixed public-private system to organize training programs for its staff, develop manuals and guides to criminal procedure and practice, and monitor current cases handed down daily by local, state and federal courts. A public defender office, they say, is better able to arrange strong investigative staffing, to contract with psychiatrists and other experts, obtain a range of laboratory tests and other necessary procedures. The Institute believes that a defense delivery system has superior capability under a centralized public office

than today's system of spreading appointments between private and public counsel.

The Institute also believes that the public defense system is less expensive to operate than a system appointing private counsel.

The Act cited in recommendation No.16 creates a high state official, the Defender General, and charges him with the primary responsibility to provide needy persons with legal services under the Act. He is authorized to contract with legal aid agencies for services or to carry them out under his office. The Model Act authorizes appointment of counsel to indigents charged with felonies, misdemeanors or offenses which involve the possibility of confinement for more than six months or a fine of more than $500, and law violations by juveniles.

4.THE GRAND JURY

Cuyahoga County reports reveal that it's grand juries true bill from 93% to 95% of offenses presented to them. The Institute's concern is not that the grand jury should screen out more cases and have a lower batting average but rather that this historic approach to criminal justice impedes the speedy processing of criminal cases, often by 60 to 90 days. It is considered that resources allocated for the grand jury could be better used elsewhere, and a strong preliminary hearing could accomplish still more in the way of objectives to speed up the process.

The grand jury is not constitutionally required in Ohio.

After initiation of Recommendation 18, defendants' rights would be protected by a requirement for a speedy preliminary hearing either in Municipal Court or the Court of Common Pleas. (suggested earlier).

The Institute believes that the fundamental grand jury screening function can be effectively handled by the Office of Prosecuting Attorney, with the exceptions set forth above, and that the ten or eleven thousand witnesses, reportedly one-third of them law enforcement personnel, who annually come before the Cuyahoga County grand jury, could then use their time more effectively.

The question then is asked: What steps can now be taken to mitigate certain of the problems inherent in the present grand jury process? One step has been taken in Ohio; addition of a second grand jury. The Institute feels this is commendable and hopes that the median time for a grand jury indictment will be substantially reduced.

SUMMARY NUMBER THREE

CALENDAR MANAGEMENT IN THE CRIMINAL COURT OF THE SUPREME BENCH OF BALTIMORE CITY

by

Court Management Systems

1971

Summary Prepared

by

Mark Atmore

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A. INTRODUCTION

The report summarized here is a portion of an ongoing study conducted by Court Managements Systems of Washington D.C., of the Baltimore City Criminal Justice System. The study group operated under a grant which was originally intended as a joint venture of the Supreme Bench of Baltimore and the Maryland State's Attorneys Office with the objective of achieving an integrated, automated, Baltimore City Criminal Justice system. However, the Maryland legislative transfer of the calendar management function from the State's Attorney's Office to the Supreme Bench has presented the Supreme Bench with both a new calendar management function and a new office, the Criminal Assignment Office (CAO), for the accomplishment of this function.

This legislative transfer has made the joint arrangement feature untenable. The transfer of the calendar management function to Supreme Bench control has focused the attention of all concerned agencies on the basic understanding that the Criminal calendar management system should form the basic ingredient of any integrated system of criminal justice for Baltimore. The study feels that the CAO policies and procedures must be developed as the essential features of such an integration system.

The Chief Judge of the Supreme Bench has approved the major principles of case assignment, scheduling, notification and inventory which are presented in the study as various general and specific recommendations. He has also approved and coordinated on a preliminary basis the tentative CAO organization and staffing chart.

The general recommendations of the study, listed below, set forth the principles recommended for the Supreme Bench for conduct of calendar management by the Supreme Bench. The specific recommendations that follow brief the policies by which the CAO should perform this calendar management function under direction and control of the Supreme Bench. The proposed organization and staffing chart for the CAO is included to clarify the proposed CAO operating systems and procedures which are not mentioned in this section of the overall report and will only generally be discussed in the study's final report.

The final report will, however, include a detailed discussion based on hypothesis and study of the now-operating CAO system which will support each general and specific recommendation. Consequently, the recommendations reviewed here will contain very little or no supporting discussion.

B.GENERAL POLICY RECOMMENDATIONS

The Study recommends:

1. Judicial responsibility for initially reviewing, as appropriate, the Criminal Court's acquisition of jurisdiction, whether by Municipal Court referral, by appeal for a trial de novo, by remand from a higher Appellate Court, by waiver of juvenile court disposition, by independent grand jury presentment without a prior preliminary commiting magistrated proceeding, or by the recommended increased use of the information with the defendant's consent. This screening process would be made by CAO under supervision of the Assignment Judge until repeal of the statute proceedings

for referrals by the Municipal Court in the interest of justice as recommended herein.

2. Judicial responsibility for controlling the progress of cases from Supreme Bench Criminal Court acquisition of jurisdiction to disposition.

3. Definitive time standards governing the calendaring of each judicial process by the CAO, with scheduled case setting, within the time standard of finite dates for the next process scheduled or for proceedings to determine such fixed dates, particularly in non-triable cases.

4. Use of pre-calendaring negotiations with interested parties for setting dates within the time standard, publication and distribution of calendars and strict enforcement of a restrictive continuance policy by a single Assignment Judge serving the Criminal Court en banc for this purpose.

5. An interim total of six months as a goal, from the acquisition of Supreme Bench Criminal Court jurisdiction to the final disposition of a criminal case, after which dismissal for want of a speedy trial would be normally provided, except on showing of good cause, naming the parties responsible for delay or showing that the case will be non-triable for an extended period of time. Adoption of an ultimate goal of 90 days to replace the interim six months goal is recommended once current case backlogs are brought under control and new CAO policies and procedures successfully instituted.

6. Case setting policies which realistically reflect the availability of judicial manpower and court facilities, as well as the average disposition rates for certain types of cases, including those tried by the court or by a jury.

7. A case assignment system which selectively assigns to particular Parts of the Criminal Court certain categories of cases and randomly assigns the large balance of cases to other Parts of the Court, with compensatory adjustments, on a random basis, to adjust caseload imbalance between Parts to consolidate all cases involving the same defendants in the same Part.

8. Adoption of principles of calendaring which, following case assignment, will cause each step relating to that case to be handled by the same judge in the Part to which the case is assigned. The only exception to this "cradle to grave" handling by the same judge once a case has been assigned to him would be requests for scheduled calendar date adjustments, postponements, or continuances, which would be handled by the Assignment Judge to present a unified approach to prosecutors and defense attorneys in the strict enforcement of restrictive continuance polices.

C. SPECIFIC RECOMMENDATIONS

The specific recommendations of the study bring the policies by which the CAO should perform this calendar management function under direction and control of the Supreme Bench. The study has listed them under general headings which are listed below with their corresponding problems and recommendations:

1.TAILORING CRIMINAL COURT CALENDAR MANAGEMENT PROCESSES TO SUIT THE VARYING CATEGORIES OF CRIMINAL CASES.

Problem: Current Supreme Bench Criminal calendar management processes, inherited from the Stat's Attorney, indicate that only three major calendar processes are utilized for the sixteen categories of criminal cases in which the Supreme Bench may acquire criminal jurisdiction.

Recommendation: The establishment of procedures administered by the CAO which will tailor Criminal Court judicial processes to best suit the category by which the Supreme Bench acquires jurisdiction. (Subsequent recommendations indicate the specific calendar management processes deemed suitable to each category of case by which the Supreme Bench Criminal Court acquires jurisdiction.)

Discussion: The three major criminal calendar processes utilized in the cases in which the Supreme Bench may acquire jurisdiction are: (a) Presentment and indictment; (b) appeals for a trial de novo from the Municipal Court; and (c) the specialized use of informations in bastardy and non-support cases and for violations of court orders in these areas. For example, the presentment and indictment process is applied not only to those individuals referred by the Municipal Court after preliminary proceedings binding the accused over for grand jury inquest on indictable offenses. It is also used when the defendant prays a jury trial in the Municipal Court and the case is referred by the Municipal Court "in the interests of justice" for Supreme Bench criminal court jurisdiction acquisition categories where the presentment and indictment process could be eliminated in favor of a more appropriate procedure.

2. REDUCTION OF CONCURRENT STATUTORY JURISDICTION BETWEEN THE MUNICIPAL COURT AND THE SUPREME BENCH CRIMINAL COURT

Problem: Concurrent jurisdictional offenses under Maryland statute.

Recommendation: That the legislature reduce the scope of these present concurrent jurisdictional provisions.

a. Problem: A clearer delineation of concurrent jurisdiction is needed to improve the administration of justice.

b. Recommendation: In the event that the District Court constitutional provision and supporting legislation is not approved and enacted, that the simplified concurrent and exclusive criminal jurisdictional as enunciated in Sec 145 (b)(4), SB NO.6, be adopted specifically by the legislature to govern the relations between the Baltimore City Municipal Court and the Supreme Bench Criminal Court.

Discussion: The aim here is that concurrent jurisdictions be clearly delineated and easily understood to eliminate preliminary legal maneuverings, court or judge "shopping", or Municipal Court disposition of a troublesome case.

3. ADJUSTMENT OF THE MUNICIPAL COURT REFERRAL DOCUMENTS FOR APPROPRIATE SUPREME CRIMINAL COURT CALENDAR MANAGEMENT

Problem: The three types of Baltimore Municipal Court referral documents and a fourth document which transmits an appeal from a Municipal Court decision, do not provide for

referral capacity. (Description of the various documents are located in the corresponding Discussion section)

Recommendation: These Municipal Court referral sheets be revised in format. Specifically to:

a. Consolidate the white and yellow bail/recognizance forms.

b. Include on the remaining green jail and yellow bail/recognizance forms all of the present concurrent jurisdictional clauses of the Maryland statute which enables the Municipal Court to transfer a case to the Supreme Bench Criminal Court (Art. 25, Sec 109)

c. Enable one of these two remaining forms to be utilized for appeals from the Municipal Court.

These recommendations also call for:

d. Municipal Court judges, as at present, to mark the particular jurisdictional reason for referral to the Supreme Bench.

e. Municipal Court to accept responsibility for the promptest possible collection and regular transmittal of all referral sheets to the Supreme Bench Criminal Court Clerk's Office.

f. The Criminal Clerk, prior to undertaking any other administrative action, to reproduce copies of the referral sheet, together with the required accompanying copy of the Police Arrest Report and to promptly and regularly distribute them to the CAO, the State's Attorney and to other appropriate Court Agencies.

Discussion: There are three types of Municipal Court referral documents, together with a fourth document which transmits an appeal from a Municipal Court decision. These documents are: (a) The yellow sheet referral entitled "Committment for Further Action", this is used for jailed defendants referred for "Trial in Criminal Court of Baltimore." This form currently provides for only four categories of referral:

"___ For Trial in the Criminal Court of Baltimore

_____As being beyond jurisdictional of the Municipal Court.

_____As a companion case with Arrest Register No.____ (Art 26, Sec 109 (b))

_____As Jurisdiction has been waived in the interest of Justice, (Art 26, Sec 109 (c) (Discretionary power of Judge)

_____As jury trial has been prayed by the defendant."

(b) The white sheet referral entitled "Corporate Application and Recognizance". This is used for recognizance obtained by the pledge of bail property. It is also used, with an appropriate notation, for defendants released on personal recognizance. The form provides for the same categories of referral as are indicated for the white sheet above.

The Municipal Court judge, by signing a referral sheet and indicating thereon the category for referral, has accomplished the transfer of jurisdiction to the Supreme Bench Criminal Court under present conditions without any further

judicial actions. In most cases, he has also routed the case automatically under current procedures through the presentment and indictment process in the Supreme Bench.

The requirement in the recommendation for the Police Arrest Report to accompany the Municipal Court referral sheet will not only serve to expedite Supreme Bench administrative process, but will also eliminate the current system by which the Police Officer arriving one hour early for his scheduled prsentment proceeding is required to have a copy reproduced for the State's Attorney as a means for that Officer of conduct his "screening" and to prepare his case for grand jury presentment.

4. ESTABLISHMENT OF INITIAL JUDICIAL REVIEW OVER SUPREME BENCH

Problem: Unless the Supreme Bench Criminal Court is placed in a position to exercise initial judicial review over case acquisition, the Court will not be in an easy position to regulate the criminal caseflow process or control the criminal caseload volume notwithstanding the Court's control over case disposition.

Recommendation: Initiation of a series of initial judicial review proceedings, adapted to the particular category of case by which the Supreme Bench acquires jurisdiction. These proceedings would be scheduled by the CAO after a judicial determination by the Assignment Judge that the request for review presented sufficient cause for a judicial review by the Assignment Judge on the merits or where the State's Attorney or defendant requested such review. Where appropriate, the CAO would schedule this review before the Assignment Judge as an established judicial process subject

to normal calendar management. These initial judicial reviews would cover the following situations:

a. Review of Municipal Court Preliminary Hearings

Problem: Subsequent recommendations deal with the problems of minimizing the use of presentments and indictments in Baltimore City in favor of the use of informations with the consent of the defendant. However, until this procedure is adopted and implemented the study recommends a stop-gap measure to help reduce the heavy current volume of presentments and indictments.

Discussion: This judicial review would seek to consider the following matters:

1. Whether the defendant's legal representation or other matters made subject to inquiry by Coleman vs. State of Alabama were adequately handled in the preliminary hearing by the Municipal Court acting as committing magistrate.
2. Whether the determination of probable cause in preliminary hearing was proper.
3. Whether the offense for which probable cause was determined, was an indictable offense under Art 26, Sec 109.
4. Whether there is an improper joinder of defendants and/or offenses.
5. Whether, even if an indictable offense is

involved, the court should dismiss the charges on a "de minimis" basis or in favor of alternative community rehabilitation or remand the case to the Municipal Court on a lesser but included offense within Municipal Court cognizance and sentencing authority. Such dismissal or remand would be particularly applicable where established community social rehabilitation might offer an acceptable alternate solution to legal action through scheduled counselling, diagnostic treatment, or rehabilitation procedures made available to the defendant, under a trained professional's recommendation to the court.

Recommendation: Establishment of a judicial review procedure applicable before presentment or after indictment.

Discussion: Such an initial judicial review proceeding would be scheduled by the CAO on appropriate application, with the consent of the Assignment Judge by:

1. The defendant's attorney selected or appointed in the Municipal Court.
2. The defendant pro se where no attorney has been appointed or is not available.
3. The state's Attorney, notwithstanding his right to proceed with the grand jury presentment, particularly if his screening in the Municipal Court was unable to be effected before the Municipal Court hearing, or where the Municipal Court committing magistrate insisted on binding over a defendant despite the recommendation of the State's Attorney presented at the preliminary hearing.
4. The Assignment Judge, to whose attention a case presenting unusual aspects had been addressed by the CAO as a result of its administrative review of the referral sheet and arrest reports in initial pre-scheduling processing.

b. Review of Presentments and Indictments

Problem: Heavy current volume of presentments and indictments.

Recommendation: The Supreme Bench establish a judicial review procedure over presentments and indictments.

Discussion: This judicial review, so long as it would remain a major judicial process, would consider:

1. Whether the offenses set forth in the presentment or indictment are indictable offenses.
2. Whether the presentment or indictment contains irrelevant counts, or charges not associated with the primary offense, or not charged against the particular defendant.
3. Whether there is any proper joinder of defendants and/or offenses.
4. Whether there is any substansive defect in the presentment and/or indictment contents or

procedures.

5. Whether the court will dismiss or remand to the Municipal Court for trial on a lesser but included offense within Municipal Court Jurisdiction in First Discussion under 4a above.

Such initial judicial review proceedings would be scheduled automatically by the CAO with the consent of the Assignment Judge by the same parties as are set forth in Second Discussion under 4a above.

c. Review Over Mixed Court Jurisdictional Offenses Under Art. 26, Sec. 109 (c)(1)

Problem: There is now no judicial review procedure over this category of referral.

Recommendation: The Supreme Bench should establish such a judicial review.

Discussion: This judicial review would be empowered to consider the following matters:

1. Whether, as a matter of law, the offenses charged are "mixed"; i.e., some Municipal Court and some within the Supreme Bench Criminal Court jurisdiction, and whether all offenses arise "out of the same circumstances."

2. Whether the Criminal Court will dismiss or remand to the Municipal Court for trial on a lesser but included offense within Municipal Court jurisdiction and sentencing.

d. Review Over Municipal Court Referrals Based on State's Attorney "Interests of Justice" Representation for Consolidation of Trials Under Art. 26,

Sec. 109, (c)(2)

Problem: There is no judicial review procedure scheduled in this area in Baltimore.

Recommendation: The study recommends that the Supreme Bench establish a judicial review procedure scheduled as set forth and on the application of the same parties referenced in the Discussion Recommendation 4a above.

Discussion: This judicial review would be empowered to consider the following matters:

1. Whether the "interests of justice" do require the consolidation of the trial of a Municipal Court offense of the same person with the trial of an unrelated indictable offense in the Supreme Bench Criminal Court.

2. Whether the "interests of justice" do require the consolidation of the trial of a Municipal Court offense committed by one defendant with the trial of another defendant on related offenses cognizable in the Supreme Bench Criminal Court.

3. Whether the consolidation of trials of different defendants do arise "out of related matters and facts."

4. Whether the Criminal Court will dismiss or remand to the Municipal Court for trial on the Municipal Court offense charged or trial on a lesser but included offense within the Municipal Court jurisdiction and sentencing.

e. Initial Supreme Bench Judicial Review Over Municipal Court Waivers of Municipal Court Offenses "In the Interests of Justice" under Art. 26, Sec. 109 (c)(4)

Problem: There is now no judicial review procedure scheduled in this area in Baltimore.

Recommendation: The study recommends the Supreme Bench establish a judicial review procedure scheduled as set forth on the application of the same parties, refer to the Discussion to Recommendation a, above.

Discussion: This judicial review would be empowered to consider the following matters:

1. Whether the "interests of justice" do require the removal of the trial of a Municipal Court offense from the Municipal Court to the Supreme Bench Criminal Court. In this connection, recommendations governing Municipal Court Procedures will be developed to provide uniform standards to assist Municipal Court judges in determining the "interests of justice" waiver. It is considered especially desirable that Municipal Courts do not make use of this "interest of justice" waiver to remove to the Supreme Bench Criminal Court the trial of undoubted Municipal Court Offenses which involve political, notorious, or otherwise difficult or undesirable defendants or charges.

2. Whether the Criminal Court will dismiss or

remand to the Municipal Court for trial on the Municipal Court offense charged or for trial on a lesser but included offense within the Municipal Court jurisdiction and sentencing.

f. Initial Supreme Bench Judicial Review of State's Attorneys Prayer for Jury Trial in Criminal Court for Municipal Court Offenses with Sentence Maximums Beyond Municipal Court Jurisdiction (Art. 26, Sec. 11lb

Problem: There is now no judicial review procedure scheduled in this area in Baltimore.

Recommendation: The study recommends that the Supreme Bench establish a judicial review procedure, scheduled as set forth and on the application of the same parties referred to in the Discussion to Recommendation 4al (infra).

Discussion: This judicial review would be empowered to consider the legal question as to whether the Municipal Court offense was "by statutory or common law punishable by either imprisonment, or fine, or both, in excess of the maximum imprisonment, or fine, or both, which can be imposed by the Municipal Court."

5. ELIMINATION OF UNNECESSARY PRESENTMENTS AND INDICTMENTS

Problem: The present procedure for grand jury presentment and indictment, long utilized on a mass basis in the City of Baltimore by the State's Attorney, are at present very time-consuming.

Recommendation: Present procedures for grand jury pre-

sentment and indictment in the City of Baltimore should be minimized in every possible fashion.

6. RULE 708 INFORMATION FILINGS IN LIEU OF PRESENTMENT AND INDICTMENT

Problem: The present practice of presenting certain defendant categories to the grand jury is inadequate.

Recommendation: That the present practice be discontinued in favor of an information automatically filed by the State's Attorney under Rule 708, without petition, where a Municipal Court offense (or misdemeanor) is charged and has been referred to the Supreme Bench Criminal Court but has not been successfully challenged, dismissed, or remanded back to the Municipal Court under the judicial review procedures of prior recommendations.

Discussion: The Municipal Court referrals recommended to be handled by a Rule 708 information filing by the State's Attorney include:

1. Individuals charged with Municipal Court offenses, where the Municipal Court in the "interests of justice" waives jurisdiction in favor of the Supreme Bench Criminal Court jurisdiction, Art. 26, Sec. 190 (c)(4).
2. Individuals charged with Municipal Court offenses and with related offenses within the Supreme Bench Criminal Court jurisdiction "arising out of the same circumstances." Art. 26, Sec. 109 (c)(1) Note: This information filing will cover only the Municipal Court offenses.
3. Individuals charged with Municipal Court offenses, as well as other unrelated offenses within the jurisdiction of the Supreme Bench Criminal Court, where the State's

Attorney has represented that a consolidated trial of all offenses against the same person would "best serve the interest of justice." Art. 26, Sec. 109 (c)(2) Note: This information filing will cover only the Municipal Court offenses.

4. Individuals charged with Municipal Court offenses in connection with Criminal Court charges pending against another person, "arising out of related matter and facts" where the State's Attorney has represented that a consolidated trial of these related offenses against the several persons involved would "best serve the interest of justice." Art. 26, Sec. 109 (c)(2) Note: This information filing will cover only the Municipal Court offenses.

7. RULE 709 INFORMATION FILINGS IN LIEU OF PRESENTMENT AND INDICTMENT

Problem: The present Baltimore practice of presenting to the grand jury defendants charged with indictable offenses and bound over by Municipal Court committing magistrates is inadequate.

Recommendation: The discontinuance of this practice. Under Rule 709B, such defendants, having petitioned for a jury trial, or having appealed from Municipal Court decision, may be tried on the Municipal Trial Court complaint or warrant, which is, in fact, an information prepared and duly authenticated by the Municipal Trial Court. The study also recommends that this same procedure be employed when the state prays a jury trial on a Municipal Court offense under Art. 26, Sec. 11lb.

CONTINUED

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8. ELIMINATION OF PRESENTMENTS AND INDICTMENTS ON PRAYERS FOR JURY TRIAL AND HANDLING APPEALS FROM MUNICIPAL COURT DECISIONS

Recommendation: The discontinuance of the present practice of presenting to the grand jury defendants charged with Municipal Court offenses who at their Municipal Court trials pray for a jury trial in the Criminal Court of the Supreme Bench. Also, the same procedure should be employed when the State prays a jury trial on a Municipal Court offense under Art. 26, Sec. 111(b).

Under Rule 709B, such defendants, having petitioned for a jury trial, or having appealed from Municipal Court decision, may be tried on the Municipal Trial Court complaint or warrant, which is, in fact, an information prepared and duly authenticated by the Municipal Trial Court.

9. MANDATORY USE OF PRESENTMENT AND INDICTMENT PROCEDURES

Problem: The grand jury presentment and indictment procedures in use in the City of Baltimore are unnecessarily used on a mass basis.

Recommendation: The study recommends that the grand jury presentment and indictment procedures should be continued in actual use only in these situations:

a. The exercise by the grand jury of its power to indict all defendants, charged with indictable offenses, and bound over by a Municipal Court committing magistrate, when defendants do not petition for a waiver of the grand jury or whose petitions for such waiver are denied, for good cause by the Assignment Judge after a judicial review hearing.

b. The exercise by the grand jury of its right to conduct any investigation initiated on its own motion or that of any of its predecessors under Art. 26, Sec. 109 (c)(3).

c. The exercise by the grand jury of its inspection rights over county and state correctional institutions located in the City of Baltimore.

d. The exercise by the grand jury of specific inquiries or investigations ordered by: (1) The Supreme Bench Criminal Court, particularly upon completion of any initial judicial review; (2) The Chief Judge of the Supreme Bench; (3) The State's Attorney; and (4) The Municipal Court committing magistrate who should endorse these views on the Municipal Court referral sheet.

e. When State's Attorney notifies CAO that he will submit a particular case to the Grand Jury.

10. IMPROVEMENTS IN GRAND JURY PROCEEDINGS

Problem: There are administrative improvements needed to expedite and facilitate the grand jury presentment and indictment process.

Recommendation 1: Require the CAO to schedule all presentments based on Municipal Court referrals and requests by the State's Attorney for presentment based on the State's Attorney investigation and initiation of grand jury indictment action. It is recommended that this scheduling be based on its normal criminal calendar management procedures described in subsequent Recommendations, including the following:

a. Review the defendant's file for all documents required for the presentment process: The Municipal Court Referral; the Arrest Record; any petition to waive grand jury proceedings and proceed to trial on information.

b. The use of prescheduling conferences with the State's Attorney in charge of grand jury proceedings, the Police, and other required material official and non-official witnesses. This prescheduling conference will determine the availability and readiness of all personnel at the proposed presentment date.

c. Furnish appropriate notification to all interested parties and prepare a calendar of scheduled presentments with carefully controlled and limited distribution to preserve grand jury secrecy.

d. Enforce the maintenance of scheduled presentments through the Assignment Commissioner and the Assignment Judge to minimize the present system whereby there are often repeated attempts to secure presentment.

e. Notify the Assignment Judge of any failure of the State's Attorney to convert True Bill presentments into signed indictments within the time period established by the court for this particular process.

Recommendation 2: Extend the grand jury hours of meeting from 9:30 to 4:30 with appropriate lunch periods. (The

grand jury presently meets from 10:00 to 12:30 or 1:00 P.M.) Also, make arrangements whereby individual grand jury panels are called up in one team so that grand jury service is limited to a period of two or three weeks instead of an entire term.

Recommendation 3: Review the Grand Jury administrative staff of the State's Attorney's Office to determine whether any administrative personnel (five in the courtroom, two outside the courtroom) could not be more usefully employed on the abundance of other tasks.

Recommendation 4: Develop in the CAO an automated system to publish the presentment calendar, notify the interested parties, and accomplish changes subject to the restriction of careful control and limited distribution of presentment scheduling calendars to preserve grand jury secrecy.

Recommendation 5: Develop a more practical and auditable financial accounting system for determining and paying fees to police and witnesses.

Recommendation 6: Insure that the State's Attorney personnel perform their screening activities well in advance of presentment date (in cooperation with the Police and other witnesses) so that any changes in the presentment calendar can be accommodated in the CAO's scheduling and notification, and more important, that the critical pre-presentment prosecutorial screening is more effectively accomplished with more significant results.

Recommendation 7: Insure that the State's Attorney prosecutor in charge of actual presentment is prepared over a

greater advance period than at present. Such preparation should include adequate coordination with the screening prosecutor, the Police, and with other witnesses--as well as advance receipt and familiarization with the file documents.

11. OPERATION OF THE SUPREME BENCH CRIMINAL ASSIGNMENT OFFICE (CAO)

Recommendation 1: That the Supreme Bench CAO serve as the judicial management agency of the Court controlling criminal case-flow, calendar management, and its allied functions. These calendar management procedures should eventually, after sufficient trial and error, be cast into Court rules.

Recommendation 2: That CAO calendar management principles envision Court control over every critical point involving the exercise of discretion in the operation of calendar management at all stages of judicial process. The Court should be centrally managed.

Recommendation 3: The Supreme Bench judicial control should commence on the acquisition of jurisdiction of a case, regardless of the category or source, and continue until disposition, including court supervised probation and parole. This judicial control should also include judicial control over community counseling, diagnostic treatment, and rehabilitation services. These may be integrated into law enforcement and judicial management to permit diversion of cases better handled under these rehabilitation services, or to provide alternate dispositions through rehabilitation services, which in turn cause the judicial agency to dismiss or reduce charges, to grant release, probation, or parole, conditioned on the mandated or promised adherence of an individual to a rehabilitation service as recommended by professionals in this field.

Recommendation 4: CAO judicial management control must be exclusive. Judicial control of case calendaring and assignment should prevail even if the Maryland legislature had not transferred these functions to the Supreme Bench. Any attempt by the State's Attorney to retain the essence of criminal calendar control, notwithstanding the formal transfer of the office and its attendant functions to the Supreme Bench, should be strongly rebutted.

Recommendation 5: CAO scheduling with interested parties should include the CAO review of the individual files for documentation sufficiency for the next process to be scheduled.

Recommendation 6: In the CAO scheduling, negotiation with all interested parties, the views of the prosecutor handling the case for the State's Attorney as to readiness should be given equal weight with the views of the defense attorney. The availability of the prosecutor should also be given equal weight with the availability of all other interested parties, particularly the police or other official witnesses. Non-availability due to conflicts on other judicial process should, however, receive special CAO consideration in its attempt to eliminate such non-availability by re-scheduling a hearing wherever possible. Under no circumstances, however, should the CAO accept any scheduling arrangement whereby the State's Attorney or any other agency undertakes to deal directly with all interested parties in setting dates.

Recommendation 7: That the Supreme Bench undertake to insure appropriate phase-in of any new CAO procedures to preserve the effective continuity of the currently operating procedures. The study believes it essential to a smooth transition that any phase-out of current CAO operating procedures is staged by a side-by-side parallel introduction, on a trial basis, of new systems. The old systems should not be discarded until the new systems have demonstrated after adequate trial runs that they can operate effectively on their merits.

12. IDENTIFICATION OF CAO CRIMINAL CALENDAR MANAGEMENT FUNCTIONS UNDER THE SUPERVISION OF THE ASSIGNMENT JUDGE

Recommendation: CAO criminal calendar management should include these functions:

1. Case assignment to Parts of the Criminal Court.
2. Calendaring of all judicial processes, depending upon the category of case by which the Court wishes to be centrally managed. These judicial processes specifically include the initial judicial review, presentment and information scheduling processes.
3. Scheduling of dates, including pre-scheduling negotiations with interested parties prior to publication to determine an acceptable date within the time period fixed by the court for that particular judicial process.
4. Case setting policies for jury and court trials.
5. Publication and distribution of calendars of scheduled cases for each judicial process subject to central calendar control.
6. Notification of all parties of scheduled dates of process and changes therein.
7. Rigid enforcement through the Assignment Commissioner and a single Assignment Judge of the calendar management process.
8. Constant surveillance to determine that the time periods established by the Court for each centrally managed judicial process and for the total judicial process are not exceeded. Management exception reports of significant overruns under parameters established by the Court should be provided.
9. Surveillance over the whereabouts of all active case defendants, including changes to their status from jail to bail to recognizance, in any order, or release, and including transfers between correctional institutions and commitments to and release from medical, psychiatric or rehabilitation institutions.
10. Maintenance of a special non-triable case inventory which will carry cases which cannot be tried for reasons outside control of the court, i.e., fugitives, defendants under long-term medical and/or psychiatric treatment, preventing trial.

13. INTRODUCTION OF PRE-SCHEDULING NEGOTIATION PROCEDURES INTO CAO CALENDAR MANAGEMENT

Recommendation: The study recommends the introduction

into CAO calendar management of pre-scheduling negotiation procedures with all key interested parties to establish dates for calendaring of all centrally managed judicial process within the time periods established for that process by the Court.

These pre-scheduling negotiations, which may be handled on the telephone, would seek to develop a mutually agreeable date to all key parties for the process in question at which the prosecutor and defense counsel will be ready to proceed and in which all key parties will be physically available. Key parties for negotiations include the prosecutor, defense counsel, police prosecuting witness, and any other official witness such as the medical examiner, the probation officer, or the psychiatric examiner. This procedure should minimize requests for continuance, postponement, or changes, confining them, presumably, to subsequent events creating conflict with the previously agreed upon date.

14. INTRODUCTION OF PRE-SCHEDULING FILE CHECKING INTO CAO CALENDAR MANAGEMENT

Recommendation: The study recommends the introduction of more extensive pre-scheduling case file checking in the calendar management procedures utilized by the CAO.

Among the most important items of record, which must be maintained on an up-dated status, as well as checked by the CAO, is the identification of the defendant and the offense by a comparison of the Arrest Record, Municipal Court referral, the indictment, information, or Municipal Court complaint-warrant, the prayer for a Jury Trial, the appeal from a Municipal Court decision, and the petition waiving grand

jury proceedings on indictable offenses in favor of a speedy trial.

15. DETERMINATION OF JUDICIAL PROCESSES FOR CENTRAL CAO CALENDAR MANAGEMENT

Recommendation 1: The study recommends that the Court establish for CAO calendar management these standard processes for scheduling of all cases in which the Supreme Bench acquires jurisdiction:

a. Presentment, Indictment, or Information (as required)
b. Initial Judicial Review (as utilized)
c. Pre-Trial Omnibus Proceedings (for all pre-trial motions or all other non-evidentiary matters which have not been handled at the initial judicial review and which should be disposed of prior to the trial)
d. Trial Process
e. Sentence Process
f. Other Post-Trial Process

Recommendation 2: In dealing with Municipal Court referral for Jury Trials, Appeals, and Remands from higher courts, where the proceeding will be based upon a Municipal Court complaint or with remands, on the prior case file, the study claims there will be need for CAO scheduling only in the following processes:

a. Pre-Trial Proceedings (particularly to determine the continued desire of the defendant to prosecute his appeal or to take a jury trial)
b. Trial Process

c. Sentence Process

d. Other Post-Trial Process

16. ELIMINATION OF ARRAIGNMENT PROCEDURES EXCEPT FOR GUILTY PLEAS

Problem: The daily hour arraignment process now confronting each Criminal Court judge in Baltimore is time-consuming.

Recommendation: Confining arraignments to cases where the individual defendant has indicated through a selected or appointed attorney that he is ready to plead guilty. These revised procedures should require the CAO to review the files to insure they contained the following:

a. A copy of the information or indictment with the defendant's acknowledgement of receipt and of having read the information or indictments or of having had them sufficiently explained.

b. An indication of the presence of a selected or duly appointed attorney, who has had adequate time, as set by the Court, to have prepared himself and consulted with the defendant as to the defendant's plea and his request for a Criminal Court jury trial, if any.

c. The defendant's plea, signed by his attorney.

d. The defendant's request for a jury trial, signed by his attorney.

e. Where the defendant is on bond or personal recognizance, communication as to his current address and that of his readiness or ability to respond to the notification of process. When

the defendant is on bail bond or surety bond, these communications must be signed by the bondsman or surety.

f. When the CAO file check indicates that all of these records are complete, the individual who has not entered a guilty plea through his attorney will be scheduled for the first judicial hearing. When the defendant has entered such guilty plea, the CAO will immediately schedule the trial. It is emphasized that the entry of this guilty plea will not be accepted unless the defendant's attorney has filed his appearance. The Chief Judge has informally indicated his willingness to hear such initial guilty pleas as well as those developed through prosecutor-defense counsel deliberations under the recently instituted special guilty plea procedures financed by the Governor's Commission on Law Enforcement and Criminal Justice.

Recommendation 2: Until Rule 791, which requires arraignment to be conducted in open court, can be altered, the requirement can be satisfied under the new procedure by running through the arraignment formalities, minimized by the contents of the file, at the first judicial hearing scheduled.

17. A FINITE DATE POLICY FOR EACH JUDICIAL PROCESS CALENDARED

Recommendation: The finite date policy should require that each judicial process calendared be set on a fixed date where the case is in a triable status.

Where the case is in a non-triable status, as where the

defendant is a fugitive, in long-time confinement elsewhere, or in civil mental commitment, the Court should establish a policy requiring the CAO to schedule a preliminary proceeding at reasonably short regular intervals with normally only the prosecutor and/or defense counsel present, to review the non-triable status, and set any possible date at which the next judicial process might be scheduled.

18. FIXED PERIODS FOR CALENDARING EACH JUDICIAL PROCESS

Recommendation: That the Court establish fixed periods for CAO administration for each judicial process.

These policies will permit the CAO to establish a bracket of time within the Court approved fixed period, in which to conduct pre-scheduling negotiations as well as to encourage interested parties to agree on a calendar date. It will also permit the enforcement of the calendaring process by requiring the CAO to report all cases in which the fixed periods for the next appropriate judicial process are not being or have not been met.

19. A TOTAL PERIOD OF JUDICIAL PROCESS AS A GOAL FOR SUPREME BENCH CRIMINAL COURT CALENDAR MANAGEMENT

Recommendation: That the Court establish a total fixed period goal of six months running from the acquisition of jurisdiction to the completion of Supreme Bench criminal judicial process.

Violation of this goal would serve as the basis for an application for dismissal for want of a speedy trial, except upon a good cause public showing to the Assignment Judge that the delays were not due to the defendant or his counsel.

20. PROCEDURES FOR CALENDAR MANAGEMENT UNDER EMERGENCY CIVIL DISORDER CONDITIONS

Recommendation: That the Court approve procedures for calendar management of cases under emergency civil disorder procedures. Present procedures will be reviewed by the Study Group and appropriate changes recommended to cope with this critical situation on an interlocking Police-Municipal Court-Criminal Court basis.

21. CALENDAR CASE SETTING POLICIES AND PROCEDURES.

Recommendation: That the Court approve certain calendar case setting policies and procedures to be significantly developed by the study group. These procedures would prescribe the number of jury and non-jury cases to be set on daily trial process calendars. They would fix the number of preliminary hearings, where only prosecutors, defense lawyers, or key witnesses need be present, to be set on daily preliminary hearing calendars. They would include case oversetting policies, if any, to be employed to cope with failures of notification or deliberate "no-shows."

22. CALENDAR CHANGES IN RESPONSE TO UNFORESEEN SHORTAGES OF JUDICIAL MANPOWER, COURTROOM SPACE, OR TRANSCRIPT TECHNICIANS

Recommendation: That the Court approve certain calendar change policies which will permit the CAO to cope with these unforeseen problems. These would include recommendations for the use of the Assignment Judge or the Administrative Judge in emergencies.

23. PROCEDURES FOR ACCUMULATING PLANNING INFORMATION ON JUDICIAL MANPOWER, COURTROOM AVAILABILITIES, AND TRANSCRIPT TECHNICIANS FOR ADEQUATE CASE CALENDARING

Recommendation: The establishment of appropriate procedures for accumulating advance information on planned judicial manpower leave or medical treatment or other judicial unavailability plans, including summer replacements and judge reassignments. Similar information is required on any planned courtroom or other facility alteration or construction. Similar information is required on projected Court terms, sessions, holidays, policies for holding night, holiday, Saturday or Sunday courts.

24. PROCEDURES FOR PREPARING AND DISTRIBUTING CALENDARS FOR EACH JUDICIAL PROCESS

These calendars would provide: the case docket number; the defendant; the nature of process scheduled; the prosecutor; the defense attorney; the specific court or chambers room number and building location; the identification of the Judge, Commissioner, or Master holding process; and the parties whose presence is required for the particular process scheduled.

25. PROCEDURES FOR PUBLISHING IN THE DAILY RECORD OF OTHER PRESS MEDIUM EXPURGATED PORTIONS OF EACH CALENDAR.

Recommendation: The establishment of procedures for publishing in the public press and posting appropriately in the courthouse or other public places all calendars, changes thereto, and repeat last-minute three day, two day, and

daily advance reminders.

These procedures must also provide for distribution of calendars to all judicial agencies, the judges, the court administrator, the Chief Judge, the Assignment Judge, the CAO, the State's Attorney, any organized public defense counsel agency, the Bar Associations, the Sheriff, the Jail, and all registered bondsmen. Special rules would govern the publication and distribution of presentment schedule calendars to preserve grand jury secrecy.

26. DIRECT NOTIFICATION PRINCIPLES FOR TRANSMISSION OF CALENDAR INFORMATION AND CHANGES TO PROSECUTORS, DEFENSE COUNSEL, BONDSMEN, POLICE, OTHER OFFICIAL AND TO DEFENDANTS IN CUSTODY

Recommendation: The adoption of suitable procedures providing for direct notification from the CAO would replace the use of the Sheriff's service of process for such direct notification.

27. SURVEILLANCE OF FAILURES TO TAKE DEFENDANTS, MATERIAL WITNESSES, AND MATERIALS INTO CUSTODY

Recommendation: The development of procedures for vigorous and continuous judicial surveillance through the CAO of all unexecuted capias and bench warrants, as well as other failures to take into custody material witnesses or evidentiary material. These procedures should employ automated listings developed from the automated active case or perpetual inventory system, to be produced on a regular basis by the CAO and circulated to the Sheriff, the Police,

and the use of the MILES procedure for interrogating other agencies, particularly the NCIC as to the whereabouts of these defendants.

28. ENFORCEMENT OF THE CRIMINAL CALENDARING SYSTEM

Recommendation: Enforcement of the criminal calendaring system through a rigid continuance policy rule. This would include defining the roles of:

a. The Criminal Assignment Commissioner's subordinate personnel in pre-scheduling notification.

b. The assignment Commissioner's handling of requests for postponements or delays beyond the finite date or fixed time period for calendaring that process as established by the court.

c. Appeal from the Criminal Assignment Commissioner to any Assignment Judge for calendaring outside the fixed period or finite time limits.

d. Requests to the Assignment Commissioner for changes in scheduled dates prior to the date of process and appeals from his rulings.

e. Requests to the Assignment Commission for postponements, continuances, or delays made at the date of scheduled process.

f. Requests to Assignment Judge from the Assignment Commissioner for contempt proceedings or equivalent judicial process for non-appearances at scheduled process or unwillingness to assent to a schedule within or without the fixed time periods for a particular process as established

by the court.

29. AN ASSIGNMENT JUDGE TO HANDLE ALL CASE CALENDARING, POSTPONEMENT, OR CONTINUANCES INVOLVING PREPARATION READINESS, OR PERSONAL AVAILABILITY

Recommendation: That the Chief Judge serve as a single Assignment Judge, exercising his powers as Administrative Judge under Rule 1200. This Assignment Judge jurisdiction would extend to motions of postponement or continuances made in another Judge's Court.

The procedures would provide that the Assignment Judge would supervise the contacts between the Assignment Commissioner and the prosecutor, defense attorney, or other necessary personnel in weighing all requests for change in dates, postponements, or continuances. The Assignment Judge would also serve as the ultimate authority on any latitude to be given an individual pleading non-readiness or non-availability for personal reasons.

Under Court rules establishing a rigid continuance policy, postponements, continuances, or scheduled date changes would not be granted by the Assignment Commissioner or the Assignment Judge, in the exercise of their respective roles except under the most exceptional circumstances, for good cause shown, as defined by the Court Rules.

Court Rules would further provide that official court records show all such actions granted, the reasons therefore, and the origination of the request or motion, together with the action taken.

30. INDIVIDUAL CASE ASSIGNMENT POLICIES MAXIMIZING RANDOM CASE ASSIGNMENT PROCEDURES

Recommendation: That the Court establish case assignment procedures which continue on a minimum basis the present procedure of concentrating assignment of certain categories of cases and which maximize the use of random assignment procedures for all other cases.

Compensatory adjustments, also on a random basis, must be built-in to overcome accidental case load imbalance in any part developed by the operation of the random assignment procedures. The normal case assignment would be made after the initial judicial review procedures. However, random assignments would be made of these initial judicial review proceedings, but the judge conducting an initial review proceeding, other than the Assignment Judge, would not be permitted by the operation of subsequent random assignment to acquire jurisdiction over a case in which he has previously conducted an initial judicial review.

31. CASE ASSIGNMENT PROCEDURES FOR MAXIMUM WITNESS-JUDGE CONTACT

Recommendation: Justice is more speedily dispensed on an even-handed basis when a single judge, particularly when randomly selected, is assigned all unrelated cases involving the same defendants or groups of defendants.

The Judge can give consideration to the entire range of currently charged offenses in making pre- and post-judgement determinations. Defendants facing the same judge on a range of unrelated offenses are often more anxious to enter guilty pleas on a selective basis.

PROPOSED ORGANIZATION AND STAFFING

SUPREME BENCH CRIMINAL ASSIGNMENT OFFICE

(Assuming Complement Supported by the Revised Grand Application)

(1) Criminal Assignment Commissioner (To be appointed)
($20,000 annual salary -- $5000 3 mos vacancy - $15,000)
Acting Criminal Assistant Commissioner
Mrs. Ernestine Karukas

(2) Deputy Criminal Assignment Commissioner (To be appointed)
($17,000 annual salary -- $5562 Gr 24 Clerk -- $11,438)

Systems Analyst Consultant
($21,023 -- Contract Services)

SPECIAL CALENDAR OPERATIONS SECTION

(3) Court Secretary II
(Grade 24 -- $5662)

(4) Court Clerical Assignment III
(Grade 22 -- $6094)

REGULAR CALENDAR OPERATIONS SECTION

(5) Docket Assignment Clerk
(Grade 32 -- $8022)

(6) Court Clerical Assistant II
(Grade 26 -- $6088)

(7) Court Clerical Assistant II
(Grade 26 -- $6088)

SCHEDULE VERIFICATION/NOTIFICATION SECTION

(8) Court Secretary II
(Grade 26 -- $6088

(9) Court Clerical Assistant III
(Grade 24 -- $5094)

*AUTOMATED INVENTORY/SURVEILLANCE SECTION

(10) Coding Technician (Grade 30 -- $7345)
Inventory Control

(11) Account Clerk (Grade 24 -- $5562)
Surveillance-Coding

(12) Account Clerk (Grade 24 -- $5562)
Inventory Coding

(13) Account Clerk (Grade 22 -- $5562)
Inventory Keypunching)

* Utilizes computer programmer, tab equipment operator and other Court data processing personnel and equipment.

PROPOSED UNIT FUNCTION ASSIGNMENTS

*Schedules/distributes calendars and changes for each judicial process on:

1. Remands
2. Appeals
3. Jury Trials
4. Special Calendar Calls

Maintains statistics:

Preliminary Hearing
Pre-Trial Process
Trial Process
Sentence Process
Post-Trial Processes

**Screens/schedules/distributes calendars and changes for each judicial process on:

1. Grand Jury Municipal Court Referrals
2. "Interest of Justice" Referrals
3. Mixed Court Jurisdiction Referrals
4. Ultra Municipal Court Punishment Referrals
5. Special Presentments
6. Informations

Makes pre-scheduling checks.

**Conducts document/process checks.

Provides direct notifications of all scheduled dates and changes for each judicial process schedule.

Institutes service of other notices by Sheriff or other means as determined appropriate.

Tracks service of capias/bench warrants.

Maintains case status records.

Keeps calendar of non-available defendants.

Maintains defendant status surveillance.

Maintains process time lapse data.

Receives/codes case input data.

Keypunches Code Sheet D checks.

Checks/distributes case inventories.

**Referral Process; Presentment; Limited Arraignment; Pre-Trial Process; Trial Process; Sentence Process; Post-Trial Process

[redacted]

SUMMARY NUMBER FOUR

Summary and Outline

of

A Study of

CRIMINAL COURTS OF DELAWARE

by

The Institute of Judicial Administration

May, 1969

Summary Prepared

by

Michael Bastian

TABLE OF CONTENTS

SUMMARY: The Criminal Courts of Delaware, Institute of Judicial Administration (May, 1969)

FOCUS: Criminal Courts of the State of Delaware

NATURE OF THIS STUDY:

Three studies of the Delaware judicial system were contracted for and carried out simultaneously. This study on the Delaware Courts was the product of the Institute of Judicial Administration under contract with the Delaware Planning Agency entered into on October 28, 1968. The International Association of Chiefs of Police was assigned the "Study of Police Practices" and the National Council on Crime and Delinquency undertook on a similar basis the "Study of Corrections and the Family Court."

Specifically, this study focuses on two aspects of the criminal justice machinery of the State of Delaware: 1) the courts which handle the ordinary criminal business of the state; and, 2) other agencies such as the Attorney General's Office and the Public Defender's Office which also play an important role in the functioning of these courts.

OBJECTIVES:

1. To study the Constitution, statutes, and such earlier reports and recommendations as existed.
2. To observe the operation of the courts in all three counties in the State of Delaware.
3. Interviews with knowledgeable persons in and outside the courts.

REASONS CITED FOR UNDERTAKING THE STUDY (from the Introduction)

1. That crime is on the increase.
2. That the Supreme Court's expansion of procedural rights has contributed to the length of the average "day in court."
3. That no single generalization can explain the vast range of behavior called crime.
4. That far more crime exists than is reported to the Police.
5. That the criminal justice system as it exists in Delaware and elsewhere was created in an earlier era and that it no longer serves the needs of 20th Century America in light of the "law explosion."

REPORT OUTLINE:

Part One: Illustrates how criminal justice is presently administered in Delaware (1969); i.e., structure of courts, operation, allied agencies, etc.

Part Two: Pinpoints deficiencies and makes recommendations for improvement through changes in the Constitution, statutes, rules, policies, and practices.

The report is generally directed to all concerned: judges, legislators, public defenders, prosecutors, the Attorney General, and the Planning Agency.

PART ONE

THE CRIMINAL COURTS OF THE STATE OF DELAWARE

Original criminal jurisdiction in the State of Delaware is vested primarily in the following courts: Justice of the Peace Courts, The Municipal Court of Wilmington, Courts of Common Pleas, The Superior Court. Appellate jurisdiction is exercised by: The Superior Court and The Supreme Court.

All of these courts except the Municipal Court of Wilmington hear Civil cases as well. There are also courts that exercise limited criminal jurisdiction and are not mentioned above -- the Aldermen's (or Mayor's) Courts, which is duplicated by the Justice of the Peace Courts, and the Family Courts. The Family Courts are the subject of a separate study.

The Delaware Constitution specifically provides for the creation of the Supreme Court, the Superior Court and the Justice of the Peace Courts. The legislature has the power (Article 4, Section 1 of the State Constitution) to create the additional tribunal listed above through specific enactment and the power to determine (subject to certain constitutional provisions) how the courts will operate.

Jurisdiction over criminal offenses committed in Delaware is distributed between the principal courts of the state in the following manner:

-- Justice of the Peace Courts -- authority to hear and determine all traffic offenses and certain misdemeanors specified in the penal code, as well as breaches

of municipal ordinances.

-- The Courts of Common Pleas (organized on a county basis) jurisdiction over virtually all misdemeanors.

-- The Municipal Court of Wilmington -- combines the functions of the above two courts hearing all misdemeancrs as well as more minor offenses.

-- The Superior Court -- the preliminary responsibility is to try felony cases, but it also exercises appellate jurisdiction over the lower trial courts.

-- The Supreme Court -- hears appeals from both felony and misdemeanor convictions in the Superior Court.

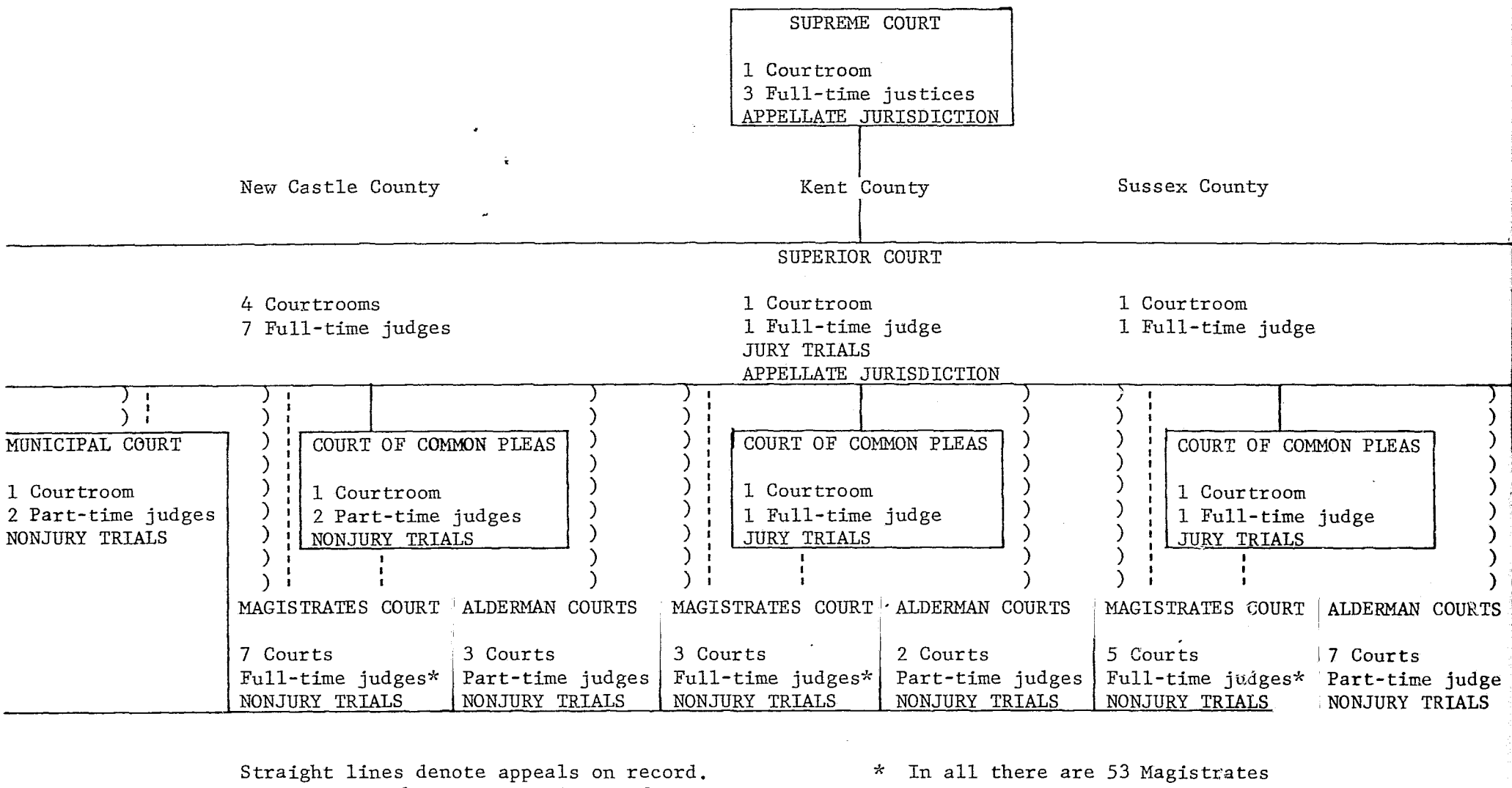
Delaware is comprised of three counties, one metropolitan in nature (New Castle which embraces the City of Wilmington), and two more rural counties Kent and Sussex. The courts of New Castle County differ from the system in the other two counties in organization, structure and jurisdiction.

In New Castle County neither the J.P. Courts nor the Court of Common Pleas have jurisdiction over offenses committed in the City of Wilmington. The New Castle Court of Common Pleas is dissimilar to its Kent and Sussex counterparts in two respects: 1) it shares original jurisdiction over misdemeanors with the Superior Court which has no misdemeanor jurisdiction in Kent or Sussex; 2) the New Castle Court of Common Pleas is not empowered to conduct jury trials as are its counterparts in Kent and Sussex. Other procedural differences exist at this level as well.

Twenty years ago the Courts of Oyer and Terminer and Courts of General Sessions were in existence. At that

PRESENT

DELAWARE CRIMINAL COURT STRUCTURE



Straight lines denote appeals on record.
Broken lines denote original transfers.
Zigzag lines denote trial de novo appeals.

* In all there are 53 Magistrates organized on a county basis but in a statewide system. One of the courts in New Castle (in Wilmington) presently has no criminal jurisdiction

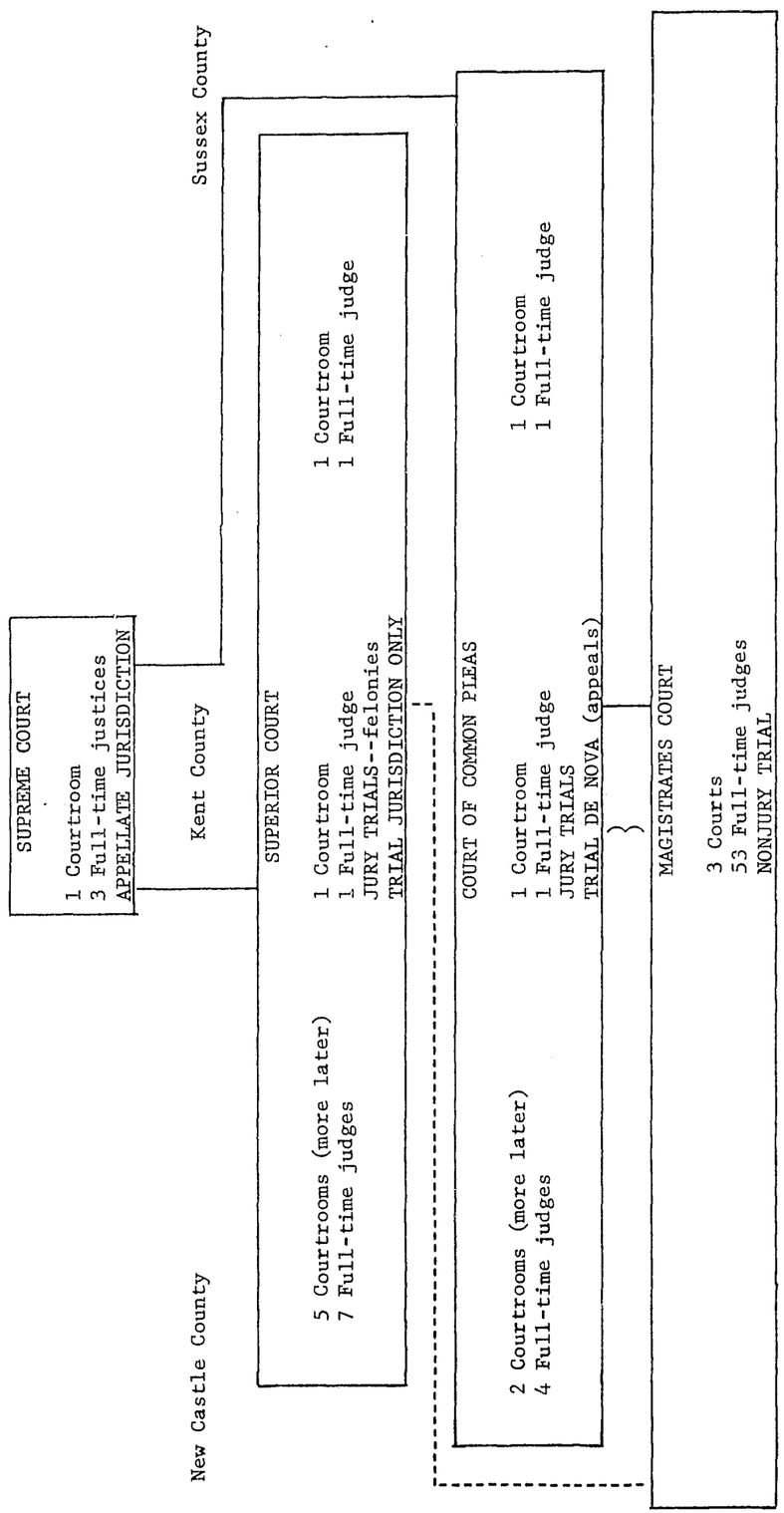
time Superior Court jurisdiction was limited to civil cases, and these courts exercised the criminal jurisdiction which the Superior Court has since assumed. Appellate review was also uniquely different. The Supreme Court has no separate identity. When it met it was composed of Superior and Chancery Court judges sitting en banc.

If effectuated, the recommendations in Part Two of this study by the Institute of Judicial Administration, will further simplify the Delaware court system.

The following two charts were taken from the report. They represent the present system of courts and the system proposed by the Institute of Judicial Administration.

PROPOSED

DELAWARE CRIMINAL COURT STRUCTURE



DESCRIPTION OF THE COURTS OF DELAWARE HANDLING CRIMINAL OFFENSES

Justice of the Peace Courts

The Justice of the Peace Courts were reorganized in 1965 and put under uniform state supervision. The J.P. Courts are in other states known as municipal or magistrate courts. Since reorganization the judges are referred to as "Magistrates." There are 15 J.P. Courts in the state and 53 judges, with every court having at least two judges and as many as four judges. The Magistrates are appointed by the governor and need not be chosen on a bipartisan basis. They receive $8,000 per year for a 40-hour week that may include odd working hours, and they are prohibited by law from practicing law part time. Consequently, there are no lawyers sitting as magistrates in the J.P. Courts; it is strictly a layman operation.

Assignment of judges, court locations, times for holding court, are determined by the Deputy Administrator for the Chief Justice of the Supreme Court of the State. The Deputy Administrator also conducts seminars in court procedure for all new magistrates. In addition, they receive on the job training before they assume their judicial duties.

The statutory requirement is that "in both Kent and Sussex Counties, there shall be at least 1 justice available at all times; and in New Castle County, there shall be at least 2 justices available at all times." This means night courts and in some instances 24-hour courts. In a 24-

hour day court one magistrate is on duty from 8 a.m. to 4 p.m. another from 4 p.m. to midnight, and another from midnight to 8 a.m. Hours and days of holding court are subject to change by the Deputy Administrator. Courtroom space is leased from private sources and in all courts handling criminal cases there is adequate parking available--two courts are located in shopping centers.

The J.P. Courts are staffed with clerical personnel. There are 15 chief clerks and 45 deputy clerks, all appointed on a bipartisan basis by the Chief Justice of the State. They are all paid $4500 per annum. At least one clerk is on duty during the hours it is open for business.

In addition to the above personnel, there are 25 Justice of the Peace Constables. They are appointed by the Chief Justice of the Supreme Court and compensated at a salary of $5,000 per year plus mileage at the rate of 10 cents per mile. Their chief function is the execution of warrants, orders, and other forms of process issued by the J.P. Courts.

These are not courts of record and therefore there are no court reporters.

The criminal jurisdiction of the J.P. Courts can be divided into the following categories:

1. Motor vehicle cases arising under either state law or municipal ordinances. These represent 70% of all criminal work handled by the J.P. Courts.
2. Minor misdemeanors arising under either state law or municipal ordinance. These cases represent

about 25% of the J.P. Courts' workload.

3. First appearance in felony and serious misdemeanor cases destined to be tried in the Superior Court or the Courts of Common Pleas. These cases represent about 5% of the J.P. Courts' workload.

The magistrates are not given jurisdiction to hear and determine felonies or serious misdemeanors, and they are never given exclusive jurisdiction to hear and determine the minor misdemeanors. As to minor misdemeanors the J.P. Courts have concurrent jurisdiction with the Courts of Common Pleas. The power to choose between these two forums is vested in the person initiating the proceedings, usually a police officer. There is a general understanding that all criminal cases ought to start in the Justice of the Peace Courts. Once his case is initiated in the J.P. Court, the defendant has the option of leaving the case where it is or having it transferred to the Court of Common Pleas of the county. In the latter case he is required to post bail. Most transfers occur in cases involving reckless or drunken driving where drivers licenses are in jeopardy, and where, therefore, a more professionally trained judge and a jury are desired.

Probably no more than 5% of all cases started in the J.P. Courts are transferred to higher courts, by jurisdictional necessity.

Procedure in the Justice of the Peace Courts

The study states:

"Arrest appears to be used more extensively in Delaware

than is necessary, particularly with respect to out-of-state motorists committing traffic offenses. The present extensive use of arrests has an adverse effect on the efficient use of manpower in the Justice Courts."

There is little or no assembly line justice in the Delaware J.P. Courts. Usually the only persons present when the defendant appears in court are the arresting officer and magistrate on duty.

The defendant is advised of his Miranda rights and other options open to him. He may choose to transfer his case to the Court of Common Pleas, to have it adjourned to a later date in the same J.P. court (whereupon in both cases, he will have to post bond), or to be disposed of immediately.

In 95% of the cases the accused chooses to plead guilty and have his case disposed of immediately. The magistrate has only to impose sentence--almost always a fine plus costs. This procedure takes little more than several minutes.

In 5% of the cases which the defendant chooses immediate disposition he pleads not guilty. The arresting officer tells his version, subject to cross examination, and the defendant tells his version subject to questions from the magistrate. The rules of evidence are in effect, but they are seldom followed. In about 10% of these cases, the defendant is acquitted. If convicted, the magistrate imposes sentence. "A typical trial would rarely last longer than five minutes," the study observes.

When a defendant is charged with a felony, the most the magistrate can do is advise him of his rights and conduct a preliminary hearing to determine whether there is sufficient evidence to hold him for action before a grand jury and possible trial in the Superior Court. In practice, few defendants appear with a lawyer, and the preliminary hearing is usually waived. The accused is then bound over to the Superior Court to await further action. The magistrate will release him on bail or, if the defendant cannot make bail, commit him to jail. If the defendant wishes his attorney to be present and refuses to waive the preliminary hearing or asks that an attorney be appointed because he is indigent, his case will be postponed and bail required.

Bail Practices

Bail is normally set at a sum equal to the highest monetary penalty which can be imposed for the offense charged. The defendant may be released on his own recognizance, but this is seldom granted, partly because the Pre-Trial Release Office does not function in the Justice Courts.

Cash is usually required. If a magistrate accepts a personal check, he does so at his own risk: if the bail is defaulted the magistrate is held personally responsible for the amount of bail. The study concludes:

"As bail is presently administered in Delaware, it imposes great and unnecessary hardships on many people who deserve better treatment....No wonder the vast majority of defendants elect to have their case disposed of immediately."

Sentencing Practices

The most common type of sentence imposed by any Justice Court is a fine plus $7.50 costs--$5.00 costs for docketing and $2.50 for conducting a trial or accepting a plea. Imprisonment results much more often from the defendant's inability to pay his fine and costs than where imposed as a penalty. There is no conscious effort to secure uniformity or sentencing. There are no organized sentencing councils or institutes. In 1968 approximately 1600 defendants were committed to jail by magistrates in default of immediate payment of their fines. As with bail, personal checks are not usually accepted to pay fines and costs.

Appeals

Few appeals are taken. When they are, a trial de novo may be had in the Superior Court and a jury may be had where the offense carries a maximum penalty of imprisonment exceeding one month or a fine exceeding $100. In 1968 there were 91 appeals to the Superior Court from all the Justice Courts in New Castle County. This was less than all the appeals from the Municipal Court of Wilmington in the same period (105).

Volume of Work

The Justice Courts processed 48,465 cases in 1968. If the cases had been scheduled with maximum efficiency and each were to take up to 10 minutes (a generous figure) it follows that 5 magistrates working a 40-hour, 48-week year could handle confortably all the criminal cases in the Justice Court system.

The study continues:

> "Even trebling the 1968 figures to allow for inefficient scheduling and night and weekend emergency work, only 13 magistrates would be needed. This is almost exactly one-fourth of the present number of magistrates (53). The point of these computations is to show that a great deal of time of the magistrates is now spent in waiting for cases to come in, and that there is an ample reserve of judicial manpower to handle all the cases in Alderman's Courts and all of the minor cases in the Wilmington Municipal Court...One of the recommendations to be made at the end of this report is that the jurisdiction of these courts just described be transferred to the magistrates...plenty of manpower is available in the Justice Court system to handle the minor cases now being processed in the courts just mentioned." (p. 45-46)

Costs of the Justice Courts

The present $1,000,000 budget for the Justice Court system in made up roughly as follows:

Magistrates' salaries.....	$424,000
Clerks' salaries.....	250,000
Constables.....	125,000
Rental of space, phones, travel admin., miscellaneous.....	200,000

Administration

The entire justice court system is centrally controlled by the Deputy Administrator to the Chief Justice who is assigned by two non-lawyers. One assistant is in charge of financial accounting for the entire system. The other is a trouble shooter, traveling from court to court.

The formal training seminars for new judges are in the process of being regularized and improved. "Doubtless the magistrates profit from such discussions, but what they need even more is a basic understanding of bail and sentencing policies--topics which have been neglected thus far." (p. 48)

PART TWO

RECOMMENDATIONS OF THE INSTITUTE OF JUDICIAL ADMINISTRATION

The report underscores two major deficiencies of the Delaware criminal justice system:

1. That the use of part-time employees--be they judges, public defenders, prosecutors, pre-trial release officers, pre-sentence officers, or staff--is a wholly inadequate and unnecessary practice.
2. There is uneven and unequal quality of justice in different parts of the state.

BASIC PROPOSAL:

The report recommends that the system be reorganized and simplified along the lines of the chart that appears supra, p. 160. The report lists these recommendations

at p. 165 and they include the following changes:

1. Abolition of all Aldermen's Courts. Functions would be handled by existing Justice of Peace Courts.
2. Abolition of the Municipal Court of Wilmington. Cases would be taken by the Justice of the Peace and Common Pleas Courts.
3. Administrative relocation of Justice Courts to accomplish the above.
4. Reorganization of the three separate Courts of Common Pleas into a separate unified statewide court. Jury trials would be available in all courts; all judges would be full time; all appeals would be on record and would go to the Supreme Court.
5. Elimination of appellate jurisdiction of the Superior Court.
6. Consolidation of the New Castle County Public Defender's Office into the State Public Defender's Office.
7. Consolidation of the Office of City Solicitor of Wilmington to the Department of Justice (Attorney General's Office).
8. Unification of all presentence personnel who are presently divided between the Department of Correction and the staff of the Superior Court.
9. Provision for 5 additional courtrooms in Wilmington, one of which could be immediately achieved by

converting the City Council chamber into a courtroom.

10. Establishment of an administrative office for all the courts under the supervision of the Chief Justice of the state.
11. Elimination of elected Prothonotaries, and vesting of control over all clerical personnel in the courts.
12. Sufficient appropriations from the legislature to accomplish these changes.

SUBSIDIARY AND RELATED PROPOSALS:

The report also makes several more limited recommendations to accompany the basic proposals above. They are listed in abbreviated form as follows:

13. Preliminary hearings in felony cases should be transferred from magistrates in the Justice Courts to Common Pleas judges with defendants being permitted to waive hearings only with the assistance of counsel and a full understanding of their rights.
14. The Justice Department (Attorney General's Office) should be permitted to proceed at its option in all cases by information rather than indictment by a grand jury. The grand jury would still function by initiating and conducting investigations unrelated to pending criminal cases and could issue an indictment where the Attorney General's office disagreed with a judicial finding of no probable

cause on a preliminary hearing.

15. A Deputy Attorney General and a court reporter should be present at any grand jury proceeding.
16. The Superior Court should control its own court calendar and sit in continuous session for arraignments and trials as soon as cases are ready.
17. Justices of the Peace should be appointed on a bipartisan basis.
18. Court costs levied in addition to fines should be eliminated in all courts.
19. Justices of the Peace and other judges should periodically attend seminars with particular attention to sentencing and bail practices. Sentencing policy should distinguish between the individuals varying ability to pay. Graduated fines would probably mean more net revenue to the state, fewer unnecessary incarcerations, and a more equal system of justice.
20. Salaries for non-judicial personnel (Deputy Attorney General, public defenders, clerks, stenographers, bailiffs, etc.) should be fixed in budgeted appropriations rather than by statute.

SPECIAL RECOMMENDATIONS RELATING TO TRAFFIC OFFENSES:

The report recommends eight more specific reforms that are directed to traffic offenses and minor misdemeanors. They are directed to curbing the excessive use of arrest in routine vehicle offenses and minor misdemeanor procedures. The following recommendations were made:

21. The use of a summons in lieu of arrest should be encouraged.

22. Warrants of arrest should be issued for Delaware citizens failing to respond to a summons, or giving bad checks for fines.

23. The State Motor Vehicle Bureau should be required to refuse to renew driving licenses or auto registrations where persons fail to settle traffic offenses by ignoring a summons or giving a bad check.

24. Greater use should be made than at present of the Interstate Driver License Compact in dealing with out-of-state motorists.

25. Additional interstate compacts should be negotiated and used for dealing with non-resident motorists who ignore a summons or give bad checks in payment of fines.

26. Justices of the Peace should be relieved of personal liability for taking checks which turn out to be bad, or for postponing payment of fines.

The following apply to minor misdemeanors:

27. Recommendations Nos. 21, 22, 26, relating to traffic offenses above apply as well to minor misdemeanors committed by residents of Delaware.

28. Consideration should be given to whether recommendations Nos. 21 and 26 should also be applied to non-residents who commit minor offenses. Since revenue is not a proper goal of court proceedings,

the legitimate ends of criminal justice may be better served by losing a few fines than by imprisoning first offenders from other states who are unable to pay them.

PRIORITIES:

The report recommends that priority be given to the following recommendations: 9, 15, 16, 19, 21, 22, 26, 27, 28.

THE ALDERMEN'S COURTS:

The Aldermen's Courts survive in at least 11 cities in the State of Delaware. They are creations of individual city charters, and their only apparent reason for existence lies in the patronage they provide local politicians.

"All of the Aldermen's cases are within the competency of the regular Justice Courts, so that these tribunals merely duplicate the jurisdiction of the regular courts." (p. 51) Four of the Aldermen's Courts are located in cities where Justice Courts operate. The others are located only a few miles from established Justice Courts.

Most cases handled in the Aldermen's Courts are brought to them by local, rather than state, police officers. The revenues go to the municipality wherein the court lies. The same is true for the revenues brought in by the Justice Courts except that the judges in the Aldermen's Courts are sometimes compensated on a fee basis rather than on salary.

The report recommends that the Aldermen's Courts be abolished and that the Justice Courts take up their caseload.

THE COMMON PLEAS COURTS:

There are three separate Common Pleas Courts, one for each county; they are not unified into a statewide system. The jurisdiction in all three is essentially the same, although the Courts in Kent and Sussex differ substantially from the court in New Castle in other aspects.

Jurisdiction

The Common Pleas Courts handle civil and criminal cases. Of the criminal cases, these courts deal primarily with the more serious misdemeanors and serious motor vehicle violations, such as drunk or reckless driving when the defendants face license revocation or jail. The caseloads are heavily weighted with non-traffic offenses. In 1968 only 30% of the caseload in the Common Pleas Court of Kent were motor vehicle offenses. Although it is possible to initiate cases in the Common Pleas Courts, it is seldom done--practically all cases originate in the Justice of the Peace Courts because they are beyond the jurisdiction of the justices or because the defendant elects to have a Common Pleas trial.

Felonies are reserved for trial in the Superior Court--the Common Pleas Courts have nothing to do with them not even by way of holding preliminary hearings which are held in the Justice of the Peace Courts.

In New Castle County the Common Pleas Court only has jurisdiction outside the City of Wilmington. All misdemeanors committed within the city go to the Municipal

Court of Wilmington. In the other two counties the courts have county-wide jurisdiction. Another difference is that in New Castle County jurisdiction over misdemeanors is concurrent with the Superior Court, whereas in Kent and Sussex the Superior Court has no jurisdiction over misdemeanors. Few if any misdemeanors find their way into Superior Court except by way of trial de novo on appeal.

The Common Pleas Court of Kent County

Personnel--One full-time professional judge appointed by the Governor to a 12-year term. He receives a salary of $21,000 per year and is not permitted to practice law.

A staff consisting of a secretary, two clerks, a court reporter and three part-time bailiffs. Also two presentence officers, two deputy attorney generals and one public defender, all of whom serve the Superior Court in the Court in the county.

Facilities--Located in the Dover County Courthouse; two courtrooms, one without jury facilities, are shared by the Superior Court and Common Pleas Court.

Arraignments--On the first and third Wednesday the court hears arraignments which consist of charges that are either dismissed or put into the form of informations. The informations are compiled from data received from the police report and the Justice Court complaints.

Pleas--About 40% plead guilty upon arraignment. Of the 60% who plead not guilty, about half demand a trial by jury, this must be afforded to defendants charged with an offense carrying a maximum fine in excess of $100 or a penalty of

more than one month in jail. Of the not guilty pleas 30% are entered nolle prosequis by the Deputy Attorney Generals, and in 20% of these cases the defendants later change their pleas to guilty. About half the originally scheduled trials actually take place. Plea barganing is heavily relied upon to speed this court's docket.

In 1968 there were 35 jury trials, although 118 initial demands were made by defendants.

The Common Pleas Court of Sussex County

The Sussex Court is very similar to the Kent court except that it has a higher criminal caseload. The number of dismissals is much higher.

This may be due to the fact that the judge in Sussex County conducts a pre-trial conference before every case scheduled for trial. This conference is scheduled three weeks or so after arraignment, and the trial date is set at this conference.

The public defender works on a part-time basis and must travel two hours from Wilmington to reach the courthouse in Sussex.

The Common Pleas Court of New Castle County

The operations of this court are different from the courts in the other two counties. As of March 1, 1971, the court has two full-time judges who must be appointed from separate political parties. They receive $21,000 annually. Other staff consists of two bailiffs, nine clerks and a court reporter. In addition, the court is

served by the Attorney Generals's Office and two Public Defenders specially appointed by the judges to serve only this court (they are not part of the State Public Defender's Office). All salaries and expenses are paid by the county.

The facilities are inadequate for jury trials. Defendants demanding jury trials are transferred to the Superior Court. If the case is tried without a jury, it is on record, and an appeal is not retried de novo in the Superior Court.

The Court, through its clerk's office, has taken over vital functions of the prosecution including screening of the cases which it sends to trial, setting arraignments, preparing informations, subpoenaing witnesses, and assigning counsel to indigents. "They (judges) not only decide cases but also control both the prosecution and defense to a large degree." (p. 75)

In this court, if the defendant does not demand a jury trial, the arraignment, trial, and sentencing usually occur in rapid sequence within a single day. Out of a total of 1000 cases disposed of monthly, only 7 or 8 are adjourned until a pre-sentencing report can be submitted.

Far fewer guilty pleas are entered. "Both in terms of absolute numbers and in relation to its volume of cases the New Castle Court conducts far more trials than the courts in the other two counties--622 in 1968 as compared with 133 trials in Kent as 42 trials in Sussex.

THE MUNICIPAL COURT OF WILMINGTON:

This court has no civil jurisdiction, only criminal. Limited to offenses committed within the city of Wilmington,

it has the busiest criminal docket in the state (13,000 cases per year). It handles both minor offenses and more serious misdemeanors--thus combining what would elsewhere be the jurisdiction of the Justice Courts and Courts of Common Pleas. About 5% of caseload would in other jurisdictions go to the Common Pleas Courts; the remaining 95% less serious cases would go to Justice Courts.

This court has professionally trained judges who serve part time. There are no facilities for jury trials--these are transferred to the Superior Court. It can conduct preliminary hearings in felony cases. Its decisions are subject to appeal in Superior Court for trial de novo.

Few statistics are kept by this court, so it is difficult to gauge procedures. The facilities are entirely inadequate. The courtroom is often crowded and noisy; the clerk's room houses all the files, the traffic violation bureau, and serves as a waiting room for prosecutors and police officers. In this room both judges share a single desk as their "chambers."

THE SUPERIOR COURT:

The Superior Court is the highest court of original jurisdiction in the state. It is statewide in administration and operation, with judges rotating from county to county to try cases throughout the state. There are nine judges, seven of whom at any given time are in Wilmington serving New Castle County, one in Dover serving Kent and one in Georgetown serving Sussex County. The President Judge is administrative head of the court. The judges meet

frequently to discuss problems.

Jurisdiction

This court has concurrent jurisdiction with the Court of Chancery in civil cases. It has exclusive original jurisdiction to try felony cases. It has original jurisdiction over misdemeanors in New Castle County and appellate jurisdiction over them throughout the state in cases coming from lower courts. Because of the way in which the Delaware Superior Courts are organized and administered and because the judges meet frequently to discuss problems there is a fair degree of uniformity in sentencing.

Personnel

The nine full-time judges receive salaries of $23,500 except the President Judge who receives, $24,000. Each judge has a private secretary. In each county the court has a law clerk, as many court reporters as necessary, and a statutorily specified number of bailiffs, criers, and pages. The clerical staff is headed by an elected official, the Prothonotary, in each county. The Prothonotary of New Castle County is the subject of a critical report, found in Appendix C of the study.

The court is assisted in its work by the Attorney General's Office, the State Public Defender's Office, the Pre-Trial Release Office, and by court appointed Presentence officers.

The court largely controls its own budget. Expenses are paid in part by the state (as for judges' salaries)

and in part by the counties (as for the salaries of most supporting personnel).

Facilities

The Superior Court is located in the county courthouse at Wilmington, Dover, and Georgetown. The facilities at Wilmington are, as noted earlier, inadequate. There are seven judges but only four courtrooms available for use at any one time.

Procedure

After the Grand Jury returns indictments, the Attorney General's Office determines when defendants are to be arraigned and when they are to be called for trial. Thus the Superior Court, unlike the Common Pleas Court, has little effective control over its calendar. On Friday the court hears motions, arraignments, and imposes sentences. At time of arraignment counsel may be appointed to indigents. Also bail may be set at this time.

Criminal trials normally take place within a three week period set aside for them. If they are not disposed of, they will be postponed until the next "criminal" term three months later. Most trials are by jury. In 1968 there were 93 jury trials and 32 trials without jury in New Castle County. This averages out to 10 criminal trials per year for each of the seven judges in this county.

The Deputy Attorney Generals are all part time, and due to inadequate screening and lack of trial preparation there is much plea bargaining done at the date of trial and many cases are nolle prossed. The Public Defenders are

also part-time officials.

Misdemeanors

The Superior Court has, in theory, original jurisdiction over misdemeanors committed in New Castle County, but in fact the only cases which reach it without having been tried in a lower court are those cases transferred from the Common Pleas Court of New Castle County upon a defendant's demand for trial by jury.

Appeals

The Superior Court also has appellate jurisdiction over virtually all criminal cases tried in lower courts. All appeals coming from lower courts that are courts of record--where a transcript is prepared--are dealt with much as any appeals court would deal with them. The transcript and written briefs are submitted and oral argument is heard by a single Superior Court judge. All appeals coming from other courts not of record will receive a trial de novo, just as if they have never been tried before.

Volume of Pleas and Dismissals

Well over half of all cases in Superior Court are disposed of by nolle prosequis. These figures are misleading though. If five charges are brought against a defendant and through plea barganing he pleads guilty to one charge, the remaining four are nolle prossed.

OTHER AGENCIES INVOLVED IN THE ADMINISTRATION OF CRIMINAL JUSTICE:

Police

The police play an essential, often dominant role in various stages of the criminal justice system. In the Justice Courts and Aldermen's Courts the Police initiate prosecutions. In all cases their reports are instrumental. They appear before the Grand Jury and give important evidence--which is seldom challenged. Most importantly they appear as witnesses in almost all criminal prosecutions.

Department of Justice

(prior to Jan. 1, 1969, the Attorney General's Office)

The Criminal Division of the Department of Justice is responsible for prosecuting almost all offenses against state law, with the exception of those cases heard in Municipal Court of Wilmington where the Attorney General has the power to exercise prosecution but does not do so. The main duty of the Division is to prosecute cases in the Superior Court and Courts of Common Pleas. The Attorney General's Office rarely participates in preliminary hearings.

The Deputy Attorney Generals who prosecute the cases at the trial level are on a part-time basis. They must also tend to their private practices. Plea barganing is relied upon heavily, although the judge is said to never participate. After agreement has been made for the defendant to plead guilty to a reduced charge, the indictment is nolle prossed and the new charge written up in an information and entered.

THE SUPREME COURT:

The Supreme Court is the highest court of last resort in the State of Delaware. It has three full-time justices appointed on a bipartisan basis by the Governor with the consent of the Senate for 12-year terms. The Court has appellate jurisdiction over all criminal cases coming from Superior Court. In 1967, 85 civil appeals were filed, compared to 38 criminal appeals. The normal yearly ratio of civil to criminal appeals is about two to one. The report recommends that the court also be given appellate jurisdiction over appeals from the Common Pleas Courts, which it could easily handle.

COURT ADMINISTRATION:

The Chief Justice "shall be administrative head of all the courts in the state, and shall have general administrative and supervisory powers over all of the courts" (Del. Const. Art. IV, Section 13). The Chief Justice is given little administrative machinery to rely upon for help. He does have assistance from the Council on the Administration of Justice and the "Deputy Administrator" for the Justice of the Peace Courts.

The Council on the Administration of Justice is composed of the Chief Justice who presides and the following members:

The Chancellor

The President Judge of the Superior Court

The President Pro-Tem of the Senate

The Speaker of the House

The Minority Leader of the Senate

The Minority Leader of the House

The Attorney General

The President of the Bar Association

The President of the University of Delaware

Five non-lawyers appointed by the Governor

The Council does not perform administrative functions. It meets twice yearly and issues a "Biennial Report" which recommends constitutional and legislative changes pertaining to the courts.

The Deputy Administrator for the Justice Courts is the only court administrator in the entire system that operates on a statewide basis. There is no chief administrator charged with responsibilities for the courts of the state as a whole.

The Chief Justice on his own initiative requires quarterly statistics from all of the courts of the state, except the Aldermen's Courts, and he publishes an annual summary. However, there is not sufficient breakdown of these statistics to serve as a basis for effective administrative control of the courts.

The report recommends that an administrative office for all courts of the state be set up. This has also been recommended by the State Bar Association.

Defense Counsel

Indigent defendants are entitled to the services of a public defender in all felony cases and in some misdemeanor cases. Those defendnats who do not qualify must employ private counsel or do without. There are essentially three sources of public defenders: the State Public Defender's Office, the New Castle County Public Defender's Office, and the method of assigned counsel of private attorneys where arrangements cannot be made with either of the above offices.

The State Public Defender's Office is state wide. The Public Defender is appointed by the Governor to a six-year term at an annual salary of $12,500. At present there are six Assistant Public Defenders, only one of whom is a full-time employee with tenure. Five are stationed in New Castle and one in Kent. Determinations of eligibility are usually made by the office itself.

In 1968 the office represented 1,827 clients and made a total of 5,170 appearances in various courts. One part-time attorney is assigned to the Municipal Court and another to the Family Court. The rest of the staff is assigned to the Superior Court and the Common Pleas Court of Kent and Sussex Counties. They rarely appear in the Justice Courts.

The 1968 budget was $128,200. Out of this must come money for the salaries, office facilities, transcripts, and the services of photographers and other experts. The office has one investigator who receives an annual salary of $5,460. The secretarial staff consists of three full-time

secretaries, one of whom doubles as the bookeeper. The facilities are inadequate. The report recommends an expanded agency with full-time attorneys.

The New Castle County Public Defender's Office was created one year prior to the creation of the state office. There are two part-time special public defenders for the Common Pleas Court of this county. Because of a lack of funds and personnel, the state office did not relieve this county office of its burdens. The Public Defenders have no office, no non-legal staff, and no money budgeted for transcripts or other essential costs. The report recommends that the two offices be consolidated.

The practice of assigning private counsel to represent indigents is only found in the Common Pleas Court of Sussex and Kent counties. Attorneys who happen to be in the courtroom when an indigent needs an attorney may find themselves in an attorney-client relationship at the direction of the presiding judge. The fees are fixed by the court, and all extrinsic expenses such as transcript fees are underwritten by the county.

Pre-Trial Release Office

The Pre-Trial Release Program began in January, 1968, and was set up to "participate in the process of fixing bail in a way which will allow many defendants to be released prior to trial without either endangering society or impeding the work of the courts." The personnel of this office includes a supervisor, three full-time investigators, and three part-time investigators.

The staff interviews defendants in the detention facilities where they are being held. Information sought from a prisoner falls into the following categories: 1) residence; 2) time in the area; 3) family ties; 4) employment; 5) character; and 6) prior record. Positive and negative points are awarded to the prisoner's verified responses. If he scores four or more points he will be recommended for release on his own recognizance.

Pre-Sentence Officers

The pre-sentence officers investigate the background of defendants who have been convicted of a crime and are awaiting sentencing. A report with recommendations is prepared and submitted to the judge who may in his discretion act accordingly. The work of these men is the subject of a separate study of corrections being conducted by the National Council on Crime and Delinquency.

SUMMARY NUMBER FIVE

THE MASSACHUSETTS SUPERIOR COURT MANAGEMENT AND ADMINISTRATION INFORMATION SYSTEM STUDY

by

The MITRE Corporation

1970

Summary Prepared

by

Joe Hutchison

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SUMMARY

Conclusions

The principal conclusions reached as a result of data evaluation are:

1. A management Information System for the Office of the Chief Justice should be implemented in phases. The initial phase can be developed for near-term use. Future expansion and improvement of the Management Information System should be related to the design and implementation of an extensively revised administrative system for the court.

2. Immediate, low cost improvements including the use of electronic data processing should be made to the Jury Management System of the Superior Court.

3. Further investigation into the trial assignment and scheduling process and into the functions of the Court Clerks is required in order to develop a basis for the design of an effective, machine-aided information system for judicial administration and management.

Recommendations

The principal recommendations resulting from the study are:

1. Management Information System

The initial phase of the Management Information System should be implemented as rapidly as possible. This phase includes the collecting, processing and reporting of data that is currently available and which can be provided to court administration at a relatively low cost, and without major

changes in the present administrative system.

Phase II management information should be acquired on a highly selective basis, and only after the application of a cost/benefit rationale to the data to be obtained.

An in-depth management analysis of the administrative processes of the judicial system should be conducted, beginning with the functions of the Court Clerk's Offices and the trial assignment process, in order to provide a basis for a new administrative system to move directly from Phase I to Phase III of the Management Information System. However, any effort to move into Phase III without a complete analysis of the judicial administrative system is discouraged.

2. Docket Process

Automatic data processing should not be applied to the docket process at this time, because the docket process is integrally related to other functions performed by the Court Clerks and it interfaces with most of the other agencies within the judicial system. Therefore, the principal benefits of automation cannot be obtained without an analysis of all the major activities of the Clerks' Offices because, in some instances, docket entries precede and trigger events in other functional areas; in other areas the reverse is true. In all instances, common data is shared concerning the cases and related transactions. As a result, automation without a comprehensive review of all related functions and procedures is inappropriate and would be without significant benefits.

For the following reasons it is not helpful to automate the docket process without an expanded study:

A. There is insufficient justification for current automa-

tion of the docket process either in terms of potential manpower, financial resource savings, or in terms of the securing of management information.

1. The estimated time, dollar, and manpower savings associated with the docket process would be insufficient to cover the operating costs of an automated system.
2. The work to provide near-term automation of the docket process would be based on current procedures and policies. Much of this effort would be wasted in terms of any future overall system design.
3. The automation of the docket process alone would cause significant disruption of current operations in the Offices of the Court Clerks.
4. Certain of the court management data which might be provided by the automation of the dockets can be obtained by other means and without the expense of such automation.

B. Sufficient time has not yet been devoted to defining the operating and management information requirements of the agencies and individuals within the judicial system. Hence, the experience base is not available to properly structure and code the dockets to permit the flexible retrieval of information. Such a base is built gradually through experience with management information.

C. The optimum handling of information within the judicial system cannot be reached until the functional activities to which the docket process relates are fully understood. Any total system design must provide for the common use of data,

the elimination of duplicated effort, and acceleration of case handling throughout the court.

It is recommended that a follow-up study related to improvement in both management information and judicial administration be conducted.

3. Trial Assignment Process

Management analysis studies should be performed in the areas of trial assignment and case scheduling and in the major administrative functions of the court clerk's office. The trial assignment process is not amenable to "piece-meal" investigation. For a true understanding of the process, an in-depth system study is required, the purpose which would be to provide a basis for major improvements in court administration and information systems.

4. Jury Management

Long-range improvement of jury management should be sought through greater centralization. Such improvements would require legislation to establish, for example, an office of Jury Commissioners at the County or State level. Such an office could assume most of the jury related functions currently performed by cities and towns as well as by Superior Court Officials.

Immediate assistance should be provided to the Superior Court in performing its jury management activities through the use of automated procedures to help with the clerical tasks associated with jury management.

To accomplish this recommendation, a jury management system for the Superior Court is proposed in the study.

5. General Recommendations

A. Consideration should be given to the development and design of extensive revision and improvement in Superior Court administrative processes (including an expanded, improved, and machine-aided management information system) and the preparation of a detailed system specification for such an improved system.

B. A high level committee should be appointed to operate under the direction of the Chief Justice for assisting in the establishment of policies for the development and implementation of management and information system procedures for Superior Court administrative functions.

C. A senior systems analyst should be employed in the Office of the Chief Justice to: 1) assist in the planning and implementation of previously made recommendations dealing with management information and jury administration and 2) under policy direction and guidance, to participate in carrying forward the analysis, design, and implementation of a new administration and information system for the Superior Court.

INTRODUCTION

The Massachusetts Superior Court Management and Administration Information System Study was prepared by the Managements Systems Department of the MITRE Corporation, Bedford, Mass., for the Honorable G. Joseph Tauro, Chief Justice, Massachusetts Superior Court.

Preliminary discussions were held with the Chief Justice and Superior Court personnel in order to select and define

the areas to be considered in the study. Prior studies were also analyzed.

The central focus of the study was on solutions to the congestion problem of the Superior Court. Because the efficient, economic and timely dissemination of relevant management information is critical in improving court management, the objectives of this study were: 1) The identification of specific activities and problems of the Superior Court in the area of management and administrative information. 2) The investigation of selected problems. 3) The recommendation of immediate and long-term actions which may be taken to improve the management and administration information operation of the Superior Court. 4) The identification of activities and problems for future investigations.

The study covered the following important areas identified by the Chief Justice:

1. The management and administrative information needs of the office of the Chief Justice.
2. The docket preparation process in the Court Clerk's Office.
3. The trial assignment process.
4. The management of juries.

The principal emphasis in the study was on problems at the Supreme Court level, and specifically the Supreme Court as it operates in Suffolk County, Mass. It is believed the findings are generally applicable to Superior Court activities throughout the state, and that certain findings may be applicable to the District and Municipal Court levels. The

study contains a brief description of the Massachusetts Court System, the court rules, procedures, and management and administrative policies presently in effect. After the areas of study were selected, extensive field research was conducted. Interviews and observations were the main sources of information.

MANAGEMENT INFORMATION SYSTEM

One of the four areas covered by this study was a survey to provide a broad identification of the management information needs of the Chief Justice and his principal assistants, and to consider how these needs may be better defined and more effectively satisfied.

The basic probem is that at present there is no single administrative information system for the Superior Court. The information originating activities which exist are manual and unable to supply the necessary relevant and timely date to the Office of the Chief Justice.

The study identified six principal categories of required information. These categories are:

1. Case Profile Information
2. Case Status Information
3. Case Disposition Information
4. Information on Parties Involved
5. Scheduling Data
6. Facility and Resource Information

Examination of these categories disclosed that much pertinent management information presently exists somewhere in the administrative system. It appears that for the short

run, information may be best acquired through extracting data from the present administrative process. In the long run, information requirements and the generation of reports should be built into new administrative procedures as they are developed.

In order to satisfy the management information needs of the office of the Chief Justice, the study recommends implementation of a three phase plan for the development of a Management Information System to acquire, analyze, and disseminate information for that office.

Phase I is a near-term solution which, for the most part, will be accomplished by extracting necessary data from the present administrative system at selected points in the case handling process (i.e., case entry, trial assignment, case disposition) without major system changes and at a relatively low cost. Detailed samples of possible collection forms, data elements, and output reports for Phase I of the Management Information System are given in the study.

Phase II is an intermediate range solution which would be a linear extension of Phase I with major modifications in the present judicial administrative system. The Phase II discussion in the study is in the form of a generalized outline because any extension of the System beyond Phase I would require evaluation of the Phase I results. Some of the possible areas for Phase II information system extensions are:

1. Establishment and maintenance of a coding system for Massachusetts attorneys to permit automatic correlation

and reporting of attorney data.

2. Automatic handling of some of the current clerical processes, such as list production.

3. Development of new reports and reporting schemes to more effectively utilize the data base.

4. Extension of the data collection processes and coding systems to gather more data about court operations.

Phase III of the Management Information System involves computer support of the case handling process, to the extent that most record keeping and routine clerical work will be handled by a computer. The computer would perform the data handling processes required for day-to-day operations and at the same time collect information for judicial management. Phase III should be designed with the following criteria in mind:

A. Single Point Entry--capture data to be included in the system one time only, and when that data is needed elsewhere, it will be retrived automatically.

B. Interfunctional Design--overhaul current processes and eliminate duplication of like operations within various functional units by sharing the outputs of certain processes automatically among those functions.

C. Central Data Base--provide a common base of data needed to serve all functions of the judicial process and greatly reduce record keeping operations.

D. Centralization of Certain Functions--identify those functions which, when performed centrally, significantly increase the processing efficiency and reduce time requirements.

E. Control Criteria--the system should be designed with

necessary control parameters and decision rules to determine problems that have developed in the handling of a case or cases, and to notify the appropriate management personnel in a reasonable time.

F. Standardized Coding Schemes--develop standard coding schemes to be used throughout the system.

G. Standardization Procedures--develop standard procedures within the framework of the General Laws, convention, and administrative, and judicial requirements which could not be unilaterally changed or obviated. These procedures would become the baseline for system operation.

THE DOCKET PROCESS

A second important area covered in this study was the docket preparation process in the Court Clerk's Office. A docket sheet is prepared for each civil and criminal case entered in the Superior Court. All pertinent transactions are summarized and listed chronologically on the docket. The dockets are, in effect, record journals. Since virtually all data on a case is made a part of the docket, organizing, analyzing and verifying the docket information has become a massive task in the judicial administration system. The Criminal Clerk's Office has a work force of approximately 50 people to perform that office's clerical and administrative tasks; likewise, the Civil Clerk's Office has a work force of approximately 100 people performing the same type tasks. The docket process permeates the functions of everyone in both offices.

The study determined that automatic data processing should not be applied to the docket process at this time because of the integral relation of the docket process to other functions performed by the Court Clerks and interfaces with most of the other agencies in the judicial system. As a result, the benefits of automation cannot be obtained without a comprehensive review of all related functions and procedures within the Clerks' Offices and in the other agencies.

THE TRIAL ASSIGNMENT PROCESS

A third area covered by the study was that of the trial assignment process. Trial assignment begins after the appeal, removal, or transfer of a case from the District court; after an indictment by the Grand Jury; or after the filing of a civil case in the Superior Court. It ends when a trial has begun or a disposition has been made in the case. The trial assignment process is at the heart of the problem of court delay. The objective of trial assignment is to dispose of individual cases as quickly as possible while remaining consistent with appropriate judicial safeguards.

The study determined that the trial assignment process was too complex for a "piece-meal" investigation and that an in-depth system study would be required for a true understanding of the process. Such a study, together with a management analysis of the functions of the Clerks' Offices, could provide most of the data needed for a statistical analysis of the process which in turn could lead to development of a revised computer-aided judicial administrative system.

JURY MANAGEMENT

The management of juries is the fourth important area covered by the study. Jury management consists of: developing lists of prospective jurors; the drawing, summoning and impaneling of jurors; and the general management of jurors.

A brief description of the present jury management process is given using the City of Boston as an example: Depending on the number of judges assigned by the Chief Justice to the civil and criminal sessions of the Superior Court in each county, the Civil and Criminal Clerks can gauge how many jurors they will need each month. At the appropriate time the Clerks prepare a writ of Venire Facias to call jurors for the following month. This venire is delivered to the Suffolk County Sheriff, who serves it on the City Clerk of Boston.

Prior to these events, the Board of Election Commissioners, through a police census, has selected about 25,000 names of Boston residents over twenty years of age. Through the mailing of summonses, these persons have come to city hall and have been interviewed by the election commissioners and filled out questionnaires. After these interviews a list of eligible names is forwarded to the City Clerk.

When the City Clerk receives the venires, the appropriate number of prospective jurors are randomly drawn from a pool made from the City Clerk's list. A check is made for any criminal records of prospective jurors by an appropriate agency and the Sheriff's Office then delivers summonses to

the jurors to be called.

When the jurors report to the Courthouse jury pool room, a judge assigned to jury work acquaints the jurors with their obligations and listens to requests to be excused and requests for delay in jury duty to a future date. The Clerk's Office is notified of excused or delayed jurors. The jury pool keeps attendance records and payroll reports and supplies jurors to the courtrooms as required. Jurors are paid by the auditor's office in the Boston City Hall.

The study recommends a Jury Administration System for the Superior Court which would automate the clerical processing now performed in the Superior Court Jury Management System. The proposed system would incorporate a Data Processing Unit into the present system and coordinate the Court Clerk's activities and the activities of the Jury Pool with this data processing unit. Such a system would:

1. Eliminate many of the clerical activities now performed by the Offices of the Court Clerks.
2. Save resources through the simplification of administrative procedures.
3. Improve the ability to quickly produce accurate and complete records for jury management.
4. Increase the ability to respond quickly, where required, for the calling and processing of juries.
5. Provide useful experience in the application of data processing to the problems of judicial administration.

SUMMARY NUMBER SIX

COMPILATION AND USE OF CRIMINAL COURT DATE IN RELATION TO PRE-TRIAL RELEASE OF DEFENDANTS: PILOT STUDY

by

The National Bureau of Standards

Technical Note 535

1970

Summary Prepared

by

Joe Hutchison

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SUMMARY

Prediction of Criminal Behavior

1. Development of an accurate prediction instrument requires acquisition of a sufficient data base, and more adequate testing of the predictability of criminal behavior from specified factors. The information-related activities of the Criminal Justice System would require expansion, and the continuing cooperation of that system in further analysis would be a prerequisite to progress in developing a reliable prediction mechanism.

2. With respect to predicting recidivism, the study recommends that the bail agency consider revising its interview form to obtain information on early defender involvement and family characteristics, in order to provide inputs toward the development of prediction devices.

3. Work for a general mathematical model for pre-trial release cases should begin. Such a model will be essential in the future development of a prediction device.

Data Collection

1. Accuracy necessitates that information be taken from records instead of from dockets, whenever possible.

2. Some common Identification System, such as Social Security Number or Drivers' License number, is desperately needed to reduce the high cost of analysis which is now imposed by the current system, in which each element in the system uses its own individual number for record keeping and which is further complicated by aliases, incorrect spellings, lack of middle initials, and so forth. This numbering

system would facilitate the accumulation and exchange of information. This numbering system should be augmented by formal data recording and summarization procedures.

3. A single dossier containing the entire history of the defendant's passage through the Criminal Justice System is needed. Without such a central record, inconsistencies develop from one record to the next and inordinate amounts of collection time are spent tracking down the widely dispersed information, making checks necessary to insure data accuracy.

4. Bail histories, because they are subject to so much revision, were never found on a single record and proved elusive in compiling.

5. A Court System Study Guide should be developed to aid other jurisdictions in obtaining data. This study guide would acquaint local jurisdictions with procedures for defining their sample, and would describe frequent problems and possible solutions, and would provide a standard data collection form aimed at greater accuracy in data collection and efficient conversion of output for computerization.

6. Jurisdictions where data collection efforts are currently underway should be contacted in an effort to coordinate possible results.

Summary Data and Illustrative Analyses

1. Persons classified as dangerous appear to exhibit a greater propensity to be re-arrested the longer they are on release.

2. An increased propensity to be re-arrested per day of release is found as the release period extends to more than

280 days after presentment.

3. Persons classified as dangerous exhibit an increased propensity to be rearrested in the period from 8 to 24 weeks prior to trial.

4. Based on the very limited sample, defendants exhibit a higher index of recidivism when released after trial (while awaiting sentence or appeal) than before trial.

5. From the special analysis on the single crime of robbery: Compared to the total sample of 40 robbery defenders, the recidivists as a group were younger, less educated, and less frequently employed. They show a high proportion of prior police arrests or juvenile records.

General Observations

1. The number of rearrests while on pre-trial release is an imperfect indicator of the volume of crime committed by persons on pre-trial release.

2. Recidivists among releases initially charged with felonies tend to be older and to be arrested for more serious crimes.

3. Employment seemed to be a significant factor in recidivism.

4. One important innotation of this pilot study is the definition of an exposure index and the strong indication that crime during pre-trial release appears to be differently related to the number of man-days released.

General Recommendations

1. Efforts should be made to complete the FBI record

correlation, to consult all related FBI records, and to complete the data forms with data based on information from other jurisdictions.

2. An attempt should be made to identify characteristics of the re-arrested population and to estimate the arrest rate for a similar sized population with like charateristics which has no recidivist history.

3. Data analysts, supported by legal experts, should continue to test out various hypotheses. Such an effort, resulting in very explicit, defined hypotheses, is advisable before any large-scale data collection project is undertaken.

Limitations on the Study

The small sample size, coupled with the problem of incomplete data and problems in gathering data was the major limitation to this study.

INTRODUCTION

Technical Note 535 (August, 1970), Compilation and Use of Criminal Court Data in Relation to Pre-Trial Release of Defendants: Pilot Study, is a study that was authorized under grants from the National Institute of Law Enforcement and Criminal Justice, which is the research arm of the Law Enforcement Assistance Administration (LEAA). The study was carried out by the Technical Analysis Division of the Institute for Applied Technology, the National Bureau of Standards, of the U.S. Department of Commerce.

The current anti-crime crusade has turned to the con-

cept of preventative detention based upon the prediction of a defendant's danger to society as one means of reducing the level of crime.

The purpose of this pilot study was to collect and analyze a sample of data on the problem of crimes committed by persons while on pre-trial release for alleged criminal behavior; and to determine whether further full-scale efforts in this area would be worthwhile with respect to developing a statistical method of predicting an individual's likelihood to commit crime while on pre-trial release.

All information available in the Washington D.C. Criminal Justice System was collected on 712 persons who entered the D.C. system during four (4) selected weeks in the first half of 1968.

PREDICTION OF CRIMINAL BEHAVIOR

At present, the major concern of the District of Columbia pre-trial release agencies is whether or not the defendant will appear for trial if he is released. The risk to the community in releasing the defendant prior to trial is not taken into account. As a result, the information now being collected by these agencies is inadequate for predicting recidivism during pre-trial release. This pilot project attempted to identify indicators of potential dangerousness in arrested defendants to determine whether a mechanism could be developed to predict dangerousness.

The project compared the pre-trial release determination with probation and parole determinations. The comparisons were inconclusive because of the completely different pro-

cesses involved. Time is a critical factor. The short time interval between initial consideration and the decision to release in the pre-trial situation differs from the greater amount of time available in the probation or parole determination. The standard of release is much different. In the probation or parole situation, the determination is based on the degree of rehabilitation exhibited by the person, whereas the pre-trial release determination is based on the likelihood of the defendant appearing for trial.

The project examined earlier studies on recidivism prediction. Approaches varied greatly from study to study; and as a result, comparisons are difficult to make.

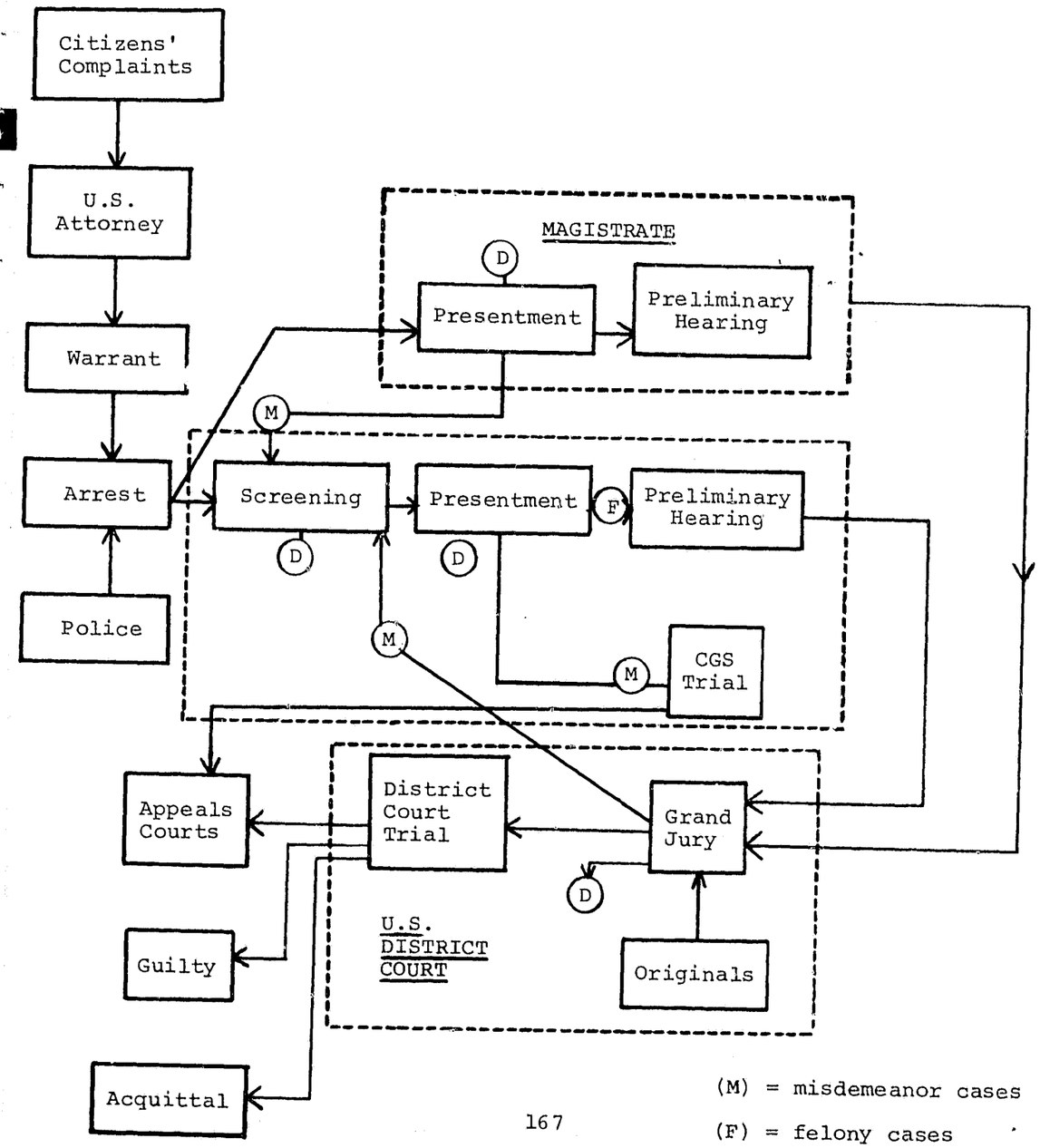
DISTRICT OF COLUMBIA CRIMINAL JUSTICE SYSTEM

Cases enter the District of Columbia Criminal Justice System in one of three ways: 1) through the D.C. Court of General Sessions, 2) through the U.S. Magistrate, 3) through action of the Grand Jury. The D.C. Court of General Sessions is an Article I court with a Civil Division and a Criminal Division. The Criminal Division is composed of a U.S. Branch, a D.C. Branch, and a Traffic Branch. This study is concerned with filings that enter the U.S. Branch; that is, all serious cases, including misdemeanors, and all felonies. Misdemeanors are processed by the Court of General Sessions, while felony cases are bound over to the Grand Jury. See Figure 1 for D.C. Criminal Justice Flow Chart, p. 231.

Figure 1

DISTRICT OF COLUMBIA

CRIMINAL JUSTICE FLOW CHART



(M) = misdemeanor cases

(F) = felony cases

(D) = dropped cases

DATE COLLECTION

The data sample was selected from among all the defendants entering the D.C. Criminal Justice System over a six month time span. Initially, a master list was drawn up to show every defendant brought into the system from January through June, 1968. The list was compiled from three sources: 1) the Criminal docket books of the Court of General Sessions, 2) the Magistrate's docket books in the U.S. District Court of D.C., 3) original indictments on the Indictment List for 1968 of the Grand Jury. From this list, four weeks were selected from among the six-month period for an information gathering effort. A 12-page data form was designed which balanced the need for completeness against time and resource limitations. Sources of data information were:

1. Criminal Clerk's Office, Court of General Sessions
2. Prosecutor's Office, Court of General Sessions
3. Criminal Clerk's Office, U.S. District Court for D.C.
4. U.S. Attorney's Office
5. Clerk's Office, U.S. Court of Appeals
6. Bail Agency
7. D.C. Jail
8. FBI Crime Career Files
9. Metropolitan Police Department Criminal Records

The study outlines collection procedures at each location and mentions the problems encountered at each location while collecting data.

The next step was to check the data for accuracy,

resolve inconsistencies, and ascertain whether the master list offense actually occurred during some period of release in another case. Emphasis was placed on verified data.

DATA PROCESSING PROCEDURE

After the information had been assembled by the individual data collector, it was screened for continuity and completeness. The data was then transferred to key-punch coding sheets for utilization in computer analysis.

POTENTIAL WAYS OF USING THE DATA

Complete analysis and interpretation of the data was not possible. Some approaches to potential uses of the data gathered in solving the problems of pre-trial release are suggested in the pilot reports. Several meaningful methods of data presentation suggested in the study are:

1. Classification according to crime categories.
2. Listing according to data categories, i.e., summary data, intitial data, nature of the crime, screening, court action, bail action, detention summary, etc.
3. Presentation by output categories, i.e., categories designed to indicate the extent of crimes allegedly committed while on pre-trial release, a cross-classification against alleged offenses committed while on bail for which convictions were obtained, etc.

Approaches to the interpretation of the data are suggested. The data interpretation must be guided by sound statistical principles, especially if used to predict future

recidivism. Common misuses of statistics are enumerated so as to give future researchers a better idea of questions they should consider before drawing conclusions from the data.

The study suggests possible means for measuring "dangerousness." A basic definition is that the higher the probability of committing a crime while free on pre-trial release, the greater the individual's "dangerousness" to the community at large. The study suggests that the type of crime committed must be a factor in this determination.

It is noted in the study that other methods (such as: public opinion, relative difference in terms of seriousness of the crime, rating according to the maximum penalty at law, assessing the number of elements to the crime, and expert opinion) have been used in previous attempts to determine "dangerousness."

Several mathematical models are briefly discussed from the viewpoint of predicting recidivism while on pre-trial release. These models are basic and simple and have proved to be valuable in apparently analogous fields. An economic model is discussed which seeks to minimize a cost function. The model takes into account the probability of recidivism, the cost of not releasing a person, and the cost associated with the commission of crime by a releasee.

Failure analysis model techniques are also discussed. The failure analysis represents recidivism as an exponential function that increases with time. This model is based on machine failure techniques used in industry to determine how long a given machine can be operated without servicing. In

the pre-trial release situation, this technique would be used to determine how long a certain type of offender could be expected to stay "clean" while on pre-trial release.

Multiple correllation studies are suggested to determine whether any one characteristic or set of characteristics can be utilized as appropriate predictors of "dangerousness."

SUMMARY DATA AND ILLUSTRATIVE ANALYSIS

Basic definitions and a graphical crime profile are given for Washington, D.C. for the first half of 1968. Basic characteristics of the data are then discussed. Summary data is compiled in a table (See Figure 2, p. 236). Also discussed are the number, type, and distribution of criminal charges in the sample; the relative frequencies of various release conditions; re-arrest charges; and personal characteristics such as age, employment, family ties and previous records.

The study next considers a recidivist index. The recidivist index analysis examines the data base to determine whether the persons in the sample exhibit different propensities to be re-arrested when classification is by type of original charges, and further, whether this propensity varies over time with the length of the release period. The recidivist index is defined as the number arrested per 1000 man-days of release for a given crime category and time period.

Figure 2

Summary Data

Basic Data		
1.	Total Master Cases in the Sample[1]	714
2.	Total People in the Sample	712
3.	Number of Defendants on Pre-Trial Release with Data Sufficient for Analysis[2]	426
4.	Number of People Arrested While on Pre-Trial Release for the Sample Case	47
5.	Percent Re-Arrested and Formally Charged	11.0
Other Data Features		
6.	Number of Cases No Papered and Not Reaching Presentment	58
7.	Number of Defendants Formally Charged[3]	654
8.	Cases "Nollied" or Otherwise Dismissed at Presentment	22
9.	Number of Defendants in Jail Who Were Never Released	176
10.	Number of Defendants in Jail Presumed Never Released, but Without Full Record	11
11.	Cases Where Data Were Not Sufficient to Permit Analysis	19

[1] A master case contains a completed form for each incident involving an individual.

[2] Obtained by subtracting the sum of lines 6, 8, 9, 10, and 11 from line 2.

[3] Obtained by subtracting line 6 from line 2.

RECIDIVIST CASES

Recidivist cases are discussed with the focus on the nature of recidivism rather than on the number of recidivists. The data is organized and tabulated according to:

1. Frequency of rearrest by type of crime.
2. Correlation of initial arrest to rearrest by degree of crime.
3. Disposition of initial and rearrest cases.
4. Frequency of conviction in both cases.
5. Change of pre-trial release condition from initial case to rearrest case.
6. Disposition of recidivist cases classified as "dangerous" in the proposed preventive detention legislation.

Next, the data was used to do a special analysis on a single type of crime--robbery. The sample contained 40 robbery cases. Compared to the total sample of 40 robbery defendants, the recidivists as a group were younger, less educated, and less frequently employed. They showed a higher proportion of prior police or juvenile records.

CONCLUSION

The ultimate decision to allow preventive detention or not is primarily a policy decision, which must depend on informed judgement of people knowledgeable in the judicial process and responsive to the wants and needs of society. The data in this document is essentially a summary of the facts available, to be used as an objective basis upon

which to superimpose policy considerations. Once the fundamental policy decisions are made, predictive devices using these data may be helpful in "tuning" specific applications to particular situations.

SUMMARY NUMBER SEVEN

COURT ROOM UTILIZATION STUDIES

by the

Economic Development Council

Supreme Court Task Force, Criminal Branch, New York County

1972

Summary Prepared

by

Joe Hutchison

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INTRODUCTION

The Economic Development Council conducted studies in early 1972 in all the courtrooms of the Criminal Parts of the Supreme Court in New York County to determine the extent and character of courtroom utilization.

The technique employed was an application of the principle of random sampling, which is considered a reliable technique. The conclusions reached were:

1. There is substantial under-utilization of the courtrooms studied.
2. The utilization patterns varied according to the particular hours of the day, with peak usage between 11:00 a.m. and 1:00 p.m.

RECOMMENDATIONS

The major recommendations were:

1. Extend the Judges' courtroom hours an additional one-half hour.
2. Maintain an open courtroom, manned by court personnel from 9:00 - 9:30 a.m. to assist assistant district attorneys and defense counsel with courtroom clerical work necessary to prepare a case before a Judge appears on the bench.
3. Load each Part with enough cases to keep the Part busy 5 hours per day.
4. Establish administrative procedures for equalizing Part workloads of pending cases for each court day and over continuing periods of time.

5. Assign a broader mix of work to all Parts to achieve fuller court utilization each day.
6. Limit the number of operating Parts in the Supreme Court to achieve better utilization and staffing of remaining Parts.
7. Use additional Judges on a reserve basis to substitute whenever any Judge is unavailable.
8. To help achieve the above recommendations, return the calendaring functions to the court (they are now performed by the District Attorney's Office).
9. Leave the Bench only as a last resort when a Part has no ready business.
10. Have the Part staff report immediately to the Chief Clerk for re-assignment if a Part shuts down for the day or for a substantial period of time.
11. Try to avoid closing down a Criminal Part when a security problem occurs elsewhere in the building.
12. Prepare, promulgate and enforce appropriate sanctions against those parties whose failure to appear, lack of preparedness or lateness without justifiable cause impedes the work of the Court.
13. Conduct periodic sampling of courtroom utilization.
14. Continue and expand the use of "combined" Parts, using both Supreme Court and Criminal Court calendars.
15. For more effective courtroom utilization, combine the arraignment and pre-trial conference functions.
16. Prohibit the use of Criminal Part Courtrooms with

detention pens for the handling of any Civil case until the Supreme Court felony case backlog is eliminated.

17. Abolish the practice of setting aside empty courtrooms for sentencing.
18. Implementation of many of the above recommendations requires better supervision and the development of greater management capability in whatever administrative levels are responsible for the Supreme Court Criminal Parts in New York County.

EXHIBITS

The study contains four exhibits:

A. a chart of Average Minutes Per Day Court Rooms Are in operation.

B. a chart of Summary of Time and Actions by Part.

C. a chart of Summary of Minutes the Judge is Active on the Bench During Each Hour of the Working Day

D. a Chart of Disposition Potential.

The results of a December, 1972, court utilization study are included in the report. This study was made to determine what variations, if any, were apparent when compared with the original study. The Conclusion of the December study was that: The addition of more Supreme Court parts and the extension of Supreme Court hours has resulted in a 10% drop in court use by Judges active on the Bench. Courtrooms are completely locked or vacant over 1½ hours per day. An important cause of such under-utilization appeared to be lack of available cases for the Parts.

SUMMARY NUMBER EIGHT

PHILADELPHIA'S CRIMINAL JUSTICE SYSTEM

a report by

The Philadelphia Justice Consortium

Appointed December 2, 1970, by President Judge D. Donald Jamieson

1972

Summary Prepared

by

Joe Hutchison

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INTRODUCTION

At the request of the Philadelphia Court of Common Pleas and the Philadelphia Regional Planning Council, a Consortium was formed to study selected areas of the Philadelphia adult of criminal justice system. The work began in January 1972. Each organization forming the consortium put together a field team. Each team studied an area in the criminal justice system within the organization's particular expertise.

The draft reports produced by the field teams were critiqued by an Executive Board of the Consortium. A summary of the individual reports and a consensus from the executive board meeting is included in the Report. The Report contains nine individual reports. The subject matter of the reports are:

1. Case Screening
2. Calendaring
3. Personnel, administration and management
4. Pre- and post-trial correctional processing and sentencing
5. Facilities: The City Hall as a Criminal Court
6. Financing Philadelphia Courts
7. Philadelphia's Judges: How they are selected, trained, disciplined, removed and compensated
8. Utilization of Jurors for the Voir Dire
9. Utilization of Judges - Utilization of Facilities

RECOMMENDATIONS

Case Screening

The major recommendation of the case screening report was the implementation of a drug screening program similar to the District of Columbia Program. The District of Columbia Program is designed to give the arraignment judge facts about a defendant's heroin problem before bail is set. It also serves as a means of diverting heroin users to treatment programs. The District of Columbia Program is the first complete drug testing operation within a court system anywhere in the United States. The study recommended it be followed in Philadelphia.

Calendaring

The report on Calendaring made several recommendations:

1. Expansion of the District Attorney's case screening program
2. Elimination of the grand jury indictment requirements
3. Unification of the Municipal and Common Pleas Court at the time recommendation 2 is implemented
4. Improvement of keeping case records by computerizing the active case record files
5. More accurate budgeting of costs, particularly cost in terms of wasted citizen, jury and police officer time
6. That case management be set up on a priority basis
7. That court output be defined by measuring performance of the criminal justice system as a whole

Personnel Administration and Management

This study concluded that the court's personnel system was not designed to obtain capable people; it merely gives the appearance of doing so. The study recommended that a classification, job evaluation, and pay study be conducted. The study also recommended that a personnel policy manual be developed and implemented to cover classification, pay, selection, promotion, performance evaluation, and related personnel matters, etc. The study recommended that the staff of the personnel office be increased to provide the technical assistance needed by the operating staff.

Pre- and Post-Trial Correctional Processing and Sentencing Recommendations

1. Court screening--The police courts, prosecution and probation intake service must improve screening devices to prevent excessive detention and excessive numbers of court referrals for cases not requiring judicial attention.
2. Disposition--All court operated probation services and detention and correctional institutions should be administratively consolidated into one city department of corrections. The Court of Common Pleas should encourage other social institutions to provide services of offenders.
3. Probation and community resource services--Probation departments should be staffed with adequate numbers of competent, qualified personnel to perform all necessary functions of probation.

4. Detention and correctional institutions--Population within the Philadelphia prisons and Youth Study Center must be decreased if custodial and rehabilitative services are to be provided for those persons in residence.
5. Information systems and planning--The Court of Common Pleas and the Family Court Division should establish a priority stepping up completion of data processing and information collection..

Facilities

The report recommended that City Hall not be considered as a permanent home for the Criminal Courts; but before construction of a new Criminal Court Building, the opinion of experts should be sought on design of a suitable building.

Financing

State support of the trial courts should be increased. Money should be available in all categories of the court budget; otherwise spending priorities may be determined by availability of money rather than need for increased spending. The court budget should be forwarded directly to the appropriating authority. The executive branch should only be a conduit. Review of the budget should be at the legislative level rather than at the executive level.

Judges - Selection

The Pennsylvania Judicial Qualifications Commission should have a full-time director, and the Judicial Inquiry and Review Board's budget should be substantially increased.

The structure of the current retirement program for Philadelphia's judges is inadequate and must be upgraded. It induces judges to continue in office after disability until they have met the inordinately long service requirements necessary for adequate benefits.

Utilization of Juries

The recommendations were that:

1. The number of jurors called each term should be matched more closely to the actual needs of judges.
2. Statistics should be collected to determine the actual needs of judges.
3. The Commissioner of Jury Selection should be instructed to coordinate the number of summons mailed out with the anticipated needs of the judges.
4. The Jury Assembly Room Supervisor should be given the discretion to dismiss jurors during their 3rd week if they are not needed.
5. Modern management techniques should be adopted to cut the excess supply of jurors.

Utilization of Judges

The recommendations were that:

1. Further study should be made of utilization of judges.
2. Planning be instituted.
3. Orientation programs be designed for new judges and court personnel.

4. Education programs be designed for personnel and the public on how the courts work.
5. A study of court related facilities be conducted to determine the advisability of reorganizing and remodelling.
6. The security issues facing the Court of Common Pleas should be studied.
7. A coordinating committee should be appointed to develop employee programs of time available to work on court improvement programs.

Summary of the Consortium

The study concluded with a summary by the Executive Board of the Consortium.

SUMMARY NUMBER NINE

LAW-ENGINEERING ANALYSIS OF DELAY IN COURT SYSTEMS

(LEADICS)

by the

Law School & College of Engineering

University of Notre Dame

1971

Summary Prepared

by

Joe Hutchison

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SUMMARY

Engineering Conclusions

The conclusion of the Engineering Segment of the project can be summarized as follows:

1. The mathematical model developed is adaptable to either the Marion or St. Joseph's County court system and appears to be capable of analyzing other court systems as well.

2. Use of Factor Analysis was successful in reducing the complexity of large amounts of interrelated data to a more usable format for joint analysis by the engineers and legal segments. The Factor Analysis from the two counties also showed many similarities in the factor composition. This indicates that the overall criminal justice processes in both counties are similar.

3. Data Acquisition and Data Accuracy were limitations on the scope of the project. In order to correct this situation two recommendations are made: a) Legal secretaries rather than law students should be used as data gatherers. b) In order to increase accuracy in the record keeping process, records-standardization procedures should be instituted. An alpha-numeric based record-keeping system should be used to replace the current handwritten and typed reports.

4. Due to analysis of Variance coefficients indicating wide dispersion of data points and also due to data gathering problems of fragmented information that was diversely located, it can be said that the criminal court is out of control in the two counties studied. This situation can be corrected by use of Quality Control techniques which have historically been successfully used to bring industrial systems under control. Quality Control techniques can be implemented by means of a central administrative body which could help resolve conflicts now present in the system which cause delay. This administrative body would ascertain where in the system and for what reasons cases required unusual amounts of time to be processed. By being given the power to mediate disputes and being held answerable only at the Appellate or Supreme Court level, the agency could successfully bring the system under control.

Legal Findings and Recommendations

The legal findings and recommendations were divided into three categories of recognizable delay: pre-arraignment delay, post-arraignment delay, and criminal appeals delay.

A. Pre-Arraignment Delay

1. Findings for the St. Joseph County court system:
   a. Prosecution by Grand Jury indictment causes significant delay in individual cases.
   b. Retained counsel is associated with delay.
   c. A portion of delay is traceable to continuances.
   d. Pre-arraignment continuances tend to correlate with post-arraignment delay and overall delay in the disposition of cases.
   e. Delay varies with the type of crime.
   f. Procedural motions addressed to the affidavit or indictment and Fourth and Fifth Amendment

suppression motions are used sparingly and do not contribute in any meaningful way to pre-arraignment delay.

g. Defendants who have retained counsel tend to be released on bond and to have a greater number of pre- and post-arraignment continuances associated with their cases.

h. If the rate of guilty pleas increased significantly, pre-arraignment delay would inhibit the system's capability to dispose of the increment within the recommended standard of 90 days.

i. Pre-arraignment delay decreased in the post-1967 sample period (possibly because of a uniform 3-judge Superior Court which was put into operation).

2. Findings for the Marion County court system with respect to pre-arraignment delay are as follows:

a. Delay accounts for a significant part of overall system delay.

b. Prosecution by grand jury indictment causes significant delay in individual cases.

c. An unusually high percentage of cases were initiated by grand jury indictments.

d. Prosecutions initiated by affidavit also involve substantial delay.

e. Affidavit prosecutions initiated in Municipal Court have significant delay.

f. The delay correlates noticeably with the number of pre-arraignment continuances.

g. The number of pre-arraignment continuances correlate significantly with the number of post-arriagnment continuances, post-arraignment delay, and overall delay of cases.

h. Defendants who are released on bond tend to retain counsel and to have more pre- and post-arraignment continuances associated with their cases.

i. Cases disposed of by trial tend to have more pre-arraignment continuances associated with them.

j. Retained counsel take significantly longer than appointed counsel to plead their defendants.

k. Crimes against the person reach the grand jury more expeditiously than do crimes against property, but grand jury processing time is about the same for both types of crime.

3. Recommendations with respect to pre-arraignment delay are as follows:

a. All felony charges should be initiated by prosecutor affidavit showing probable cause, or by personal appearance and verbal statements made under oath accepted by a judge of the Superior Court, Circuit or Criminal Court.

b. Prosecutors should select only those charges of which the evidence and circumstances suggest the accused is guilty with major regard

to the likelihood of conviction after trial before a judge or jury. Cases which in reality require no more than misdemeanor treatment should be screened out.

c. The statutory requirement of a grand jury indictment in any case should be eliminated. The grand jury should be used only in exceptional post-arrest cases. It should continue to be available for special investigations.

d. Arraignments should be held within three days of the arrest of the accused.

e. Counsel should be assigned, if necessary, at the arraignment regardless of the defendant's desire to retain counsel at a later time. In St. Joseph County, a public defender should be available to represent every accused at arraignment. If retained counsel does not enter an appearance within five days of arraignment, the counsel previously assigned should be instructed to proceed with the defense.

f. Pre-arraignment continuances are unnecessary and should not be allowed except where the defendant fails to appear.

g. The requirement that motions to quash an affidavit or indictment must be filed before plea should be eliminated. Such motions should be made after the arraignment.

B. Post-Arraignment Delay

1. Findings for St. Joseph County with respect to post-arraignment delay are as follows:

a. Cases take inordinately long to reach trial.

b. Trial time itself does not significantly contribute to post-arraignment delay or overall delay.

c. Cases which are disposed of by trial tend to have more pre- and post-arraignment continuances.

d. The likelihood of a case going to trial is influenced by the nature of the offense charged.

e. Post-arraignment delay correlates significantly with retained counsel and the number of post-arraignment continuances.

f. In Superior Court the manner of assigning cases to judges and the judge rotational system builds in a minimum interval of 10 weeks between arraignment and trial.

g. In the Superior Court continuances of the trial and the method of assigning cases for trial combine to cause the interval from arraignment to trial to be excessive.

h. Cases disposed of by plea of guilty entered after the arraignment take approximately as long as cases disposed of by trial.

i. Plea bargaining as presently administered does not expedite the flow of cases through the system.

j. Retained counsel takes significantly longer than appointed counsel to negotiate pleas.

k. Pre-sentence investigation reports took an average of 20 days to prepare.

l. The interval from plea or verdict to sentencing does not contribute significantly to post-arraignment delay.

m. 4th and 5th Admendment suppression motions do not contribute significantly to post-arraignment delay or to overall delay.

n. For the Superior Court post-arraignment delay in the post 1967 sample period was significantly reduced, but the intervals between the major post-arraignment events still exceed recommended norms.

2. Findings for Marion County with respect to post-arraignment delay are as follows:

a. Post-arraignment delay correlates strongly with the overall delay of cases.

b. Post-arraignment continuances are a significant factor in post-arraignment delay and overall delay.

c. Post-arraignment delay correlates significantly with defendants who are released on bond.

d. Cases disposed of by trial tend to correlate with post-arraignment delay.

e. Cases take inordinately long to reach trial.

f. Trial time does not appreciably affect the overall disposition time for individual cases.

g. Plea bargaining does not significantly reduce the overall disposition time for individual cases.

h. The interval from arraignment to disposition for cases with retained counsel is about two times greater than the same interval for cases with appointed counsel.

i. Delay attributable to motions to suppress was only an average of .05 days per case.

3. General findings for St. Joseph County are as follows:

a. 73.2% of all defendants entering the system were convicted.

b. Guilty pleas accounted for 88.7% of all convictions.

c. Approximately 41% of all guilty pleas are attributable to plea bargaining.

d. Only 11.0% of all cases entering the system reached trial.

e. The mean interval from arrest to sentencing for the combined courts was 208 days.

f. Homicide, rape, and assault prosecutions take significantly longer to process either by plea or trial than do the other crimes surveyed.

4. General findings for Marion County are as follows:

a. 74.4% of all defendants entering the system were convicted.

b. Guilty pleas accounted for 81.2% of all convictions.

c. 16.9% of the cases entering the system reached trial.

d. Approximately 50% of all guilty pleas are attributable to plea bargaining.

e. The mean interval from arrest to sentencing for cases prosecuted by indictment was 281 days, and for cases prosecuted by affidavit was 241 days.

f. Defendants are sentenced within 17 days of conviction.

5. Recommendations with respect to post-arraignment delay are as follows:

a. All cases should be scheduled for trial at the defendant's arraignment if the defendant pleads not guilty. A request for a jury trial should be made at that time.

b. The date set for trial should not be longer than 60 days from the date of arraignment.

c. All pre-trial defense and prosecution motions should be filed within 30 days of arraignment. In the case of retained counsel, an explicit reservation of rights to make further motions should be required. Pre-trial motions at arraignment should be encouraged.

d. A single date for considering all pre-trial

motions should be scheduled by the court at arraignment.

e. All pre-trial motions should be disposed of finally within 30 days after arraignment.

f. The motions should be made on the basis of a comprehensive check list and argued orally as a general rule; written memoranda should be used only at the court's request.

g. The judge to whom the case is assigned for trial should schedule a pre-trial conference with the parties within 30 days after arraignment. Counsel should indicate to the court at that time how they expect to dispose of the case.

h. No further negotiations regarding case disposition should be permitted after 14 days from the date of the pre-trial conference.

i. No pleas to reduced charges should be accepted after 14 days from the pre-trial conference.

j. No postponements of the trial date should be granted except upon a statement under oath by counsel as to: 1) the unavailability of a material witness, 2) illness of the accused, 3) insufficient time for preparation because of unusual complexities of the case.

k. The criminal calendars of courts with felony jurisdiction in counties with more than one such court should be controlled by an administrative judge. The sole authority to con-

duct arraignments, process pre-trial motions, schedule and assign cases, grant continuances, approve reduced pleas beyond the time limits suggested above should be reposed in the administrative judge. The judge should be assisted in case scheduling and courtroom assignment by a professional court manager. (In St. Joseph County, this would mean that the position of administrative judge could rotate among the Superior Court judges and the Circuit Court judge for a given period, e.g., a 6-month period.)

1. The present rule regarding changes of judge and venue should be substantially amended. Motions for a change of judge should be granted upon statements under oath tending to demonstrate the judge to whom the case is assigned is actually prejudiced against the accused or against the prosecution in the particular case to such an extent that the movant or the state cannot receive a fair trial.

C. Criminal Appeals Delay

The findings and recommendations pertaining to the key phases in the appeals process are as follows:

1. Motion to Correct Errors

a. The present motion to correct errors should be modified.

b. A motion for new trial or dismissal should be made orally before the trial court immediately after a guilty verdict or in writing within a relatively short period of time, for example, 7 days to file and 5 days to reply.

2. Praecipe for the Record

Eliminate the present rule regarding the praecipe for the record and establish a new rule requiring a simple notice of appeal be filed within 10 days of sentencing. This would eliminate unnecessary delay and would speed the initial decision to appeal and the assignment of counsel.

3. Preparation of the Record and Extension of Time to File

a. A 40-day period for filing the record should be adopted.

b. The Supreme Court should concern itself more directly with the record preparation process.

c. Governing statutes should be more strictly enforced.

d. Additional court reporters should be acquired to transcribe recorded testimony.

e. Court reporters who inexcusably delay records should be disciplined.

f. For the long term, computer transcription equipment should be acquired.

g. For the long term, routine cases should be appealed without full transcripts. Since in

many cases a full record may not be essential, the Supreme Court should encourage the use of appellate rules which allow abbreviated records and agreed upon statements of fact as the basis for the appeal.

4. Appellant's Brief

a. Except in cases presenting complex and difficult issues where it is the appellate court's view that an experienced appellate lawyer is needed, courts should try assigning the same lawyer assigned or retained for trial to process the appeal.

b. Criminal Rules in this area should be amended to provide that if the defendant wishes to appeal and is indigent, trial counsel should be appointed for the purpose of taking the appeal.

c. Late briefs from retained counsel should not be accepted without adequate explanation.

d. Responsibility for granting extensions should be clearly delineated and no extension should exceed 14 days.

e. Except in unusual circumstances no more than 2 extensions should be granted for the purpose of filing appellant's brief.

f. In the alternative of (e) above, establish a state office which would handle all indigent criminal appeals.

g. The requirements of formal briefs should be eliminated in routine cases and greater emphasis placed upon disposing of cases after oral argument.

5. State's Brief

a. The Supreme Court should enforce the appellate rules more strictly.

b. Unauthorized late briefs from the state should not be accepted.

c. The Attorney General should evaluate more cases to determine if briefs are even required in view of the routine character of the case, issues, and precedent nature of the applicable principles.

d. Long-range consideration should be given to the suggestion that the appellate representation of the State be transferred from the Attorney General to the trial prosecutor. An arrangement for assigning experienced appellate counsel for unusual cases may continue to involve the Attorney General's Office.

6. Oral Argument and Disposition

a. A maximum decision period of 90 days after case submission to the appellate court should be established.

b. The decision process of the court should be separated into 2 parts, the decision and the opinion. The court should announce a general

decision on the merits in every criminal appeal within 30 days of the receipt of complete briefs and records of oral argument. A written opinion, if needed, should follow 60 days thereafter.

c. The court should take advantage of the elimination of requirements that the court write opinions in all cases. More short per curiam opinions should be utilized.

d. In appropriate cases, the court should rely more heavily on oral argument as a means of effecting the savings of time through reduced emphasis on briefs.

e. Routine and simple cases should be decided from the bench after oral argument.

f. Cases should be assigned to a judge immediately after the notice of appeal and record is filed and deemed submitted to the judge upon expiration of the date for the state's brief.

g. The attorney general should be authorized to decide whether the state should file a brief.

h. The certification procedure should be eliminated. The opinion should be declared official and final by the Chief Justice and circulated to the parties and court reporter.

INTRODUCTION

The Law-Engineering Analysis of Delay in Court Systems (LEADICS) is a study of the problem of delay in the processing of criminal cases. The study is contained in three volumes: Volume I, Executive Summary; Volume II, Legal Analysis and Recommendations; and Volume III, Engineering Section.

The project was proposed and carried out jointly by the Law School and the College of Engineering at the University of Notre Dame, Notre Dame, Indiana. The project was funded through a Law Enforcement Assistance Administration (LEAA) grant. The research was conducted in Marion and St. Joseph Counties in the State of Indiana. These two counties were chosen because 1) each county had experienced a relatively stable court organization for the past several years so that data relative to each system would be susceptible to statistical analysis, 2) a significantly different court organization exists in the two counties, 3) the St. Joseph County Superior Court adjudicates both civil and criminal cases while Marion County Criminal Court is restricted to criminal cases, and 4) there is also a substantial differential in population and composition of the two counties, while each is still large enough to provide an acceptable sample size. Marion County has a population of over 800,000. It is almost entirely urban and includes the city of Indianapolis. St. Joseph County has a population of 250,000. It is over 15% rural, and South Bend is its urban center.

The criminal court system studied in St. Joseph County consisted of the St. Joseph Superior Court, the St. Joseph Circuit Court, and the City Courts of Mishawaka and of South Bend. The criminal court system studied in Marion County consisted of the Criminal Court of Marion County, the Municipal Court of Marion County, and the Magistrate's Court of Marion County.

The emphasis was placed on findings that could have general application to court systems anywhere and could include civil as well as criminal cases.

This research project sought to provide answers to the following questions: 1) do criminal cases take too long to process in the courts, 2) what are the reasons for such delay if it exists, 3) what can be done to reduce case disposition time in a criminal court system, 4) can computer modeling techniques be developed to aid these efforts to locate and reduce unnecessary delay. The main thrust of this project was to use mathematical modeling to answer these questions by locating those system elements wherein delay was a substantial problem.

ENGINEERING ANALYSIS

Basic Mechanics

As a starting point, in order to intelligently and accurately gather data for the project, Flow Charts of the respective county court systems were developed. These charts traced the flow of defendants through every possible path and process stage of the criminal system. They provided a graphical display of basic information concerning the functions and duties at each point in the criminal process. Analysis of the flow charts showed that the delay problem broke down into three phases:

1. Pre-Arraignment Delay
2. Post-Arraignment Delay
3. Delay on Appeal

The flow charts were obtained by interviewing judges, prosecutors, police administrators, clerical and support personnel to these functions. The charts were very detailed. The Marion County flow chart identified 72 separate service functions; the St. Joseph County flow chart identified 116 functions.

The flow charts also served as a means of communication between the engineering and law segments of the project. The engineers used the flow charts as the basis of their analysis. They reduced the charts into "block diagrams" which were further reduced to "topological" of "network diagrams." These were directly amenable to computer analysis and modeling techniques. The legal segment has the duty of overseeing the engineers to insure that they were interpreting the criminal court system correctly. The flow charts were meaningful to the legal segment since the charts were merely graphic representations of the criminal court systems.

Once the flow charts were constructed, the engineering and legal groups analyzed the charts from their respective view points and developed the data requirements needed from the individual cases that would be used in the study. The data requirements were made quite large because neither

segment knew prior to actual data analysis what data would be required and they wanted to avoid the problem of having insufficient data on hand when the analysis began.

A data gathering system was designed. The data was gathered on specially designed data gathering forms called Data Collection Scanning Sheets so that the data could be directly incorporated into the computer by means of optical scanning equipment for processing and research. Law students were used as the data gatherers. Detailed information on all aspects of approximately 2550 selected felony cases was gathered. The general period of research covered early 1968 to mid-1970. The research was limited to the following crimes:

1. Aggravated Assault
2. Auto Theft
3. Burglary
4. Drug Offenses Constituting a Felony
5. Intentional and Negligent Homicides (including Murder and Manslaughter)
6. Larceny
7. Possession of Stolen Property
8. Rape
9. Robbery

Information sources used for data gathering were the records of the pertinent police agencies, the prosecutor's office, the court docket sheet and files, and probation office material. Interviews with administrative personnel from each of the agencies in the criminal justice system in

the two counties provided general information on procedures for record keeping and use in analysis of the data obtained.

Data collection in St. Joseph County began in July, 1970, and ended in November, 1970. Data collection in Marion County began in August, 1970, and ended in May, 1971.

A data correction system was designed and all data gathered was then checked for accuracy by the system prior to being used in the analysis of the system.

Statistical Analysis

Two levels of statistical analysis then took place. In the first level, data was reduced to a set of descriptive variables of the court system and of the delay phenomena under analysis. The mean, median, variance, standard deviation, and number of items in the distribution are examples of descriptive variables. These variables were later used as inputs into the modeling process.

In the second level of statistical analysis, the data was analyzed to determine statistical comparisons. The technique of Factor Analysis was utilized. This technique reduces the amount of data to only those factors that have a significant influence on the system. This is an important technique because of the unwieldy amount of data collected. Factor Analysis reduces the amount of data by mathematically collecting groups of highly interrelated variables into separate factors. The specific factor analysis technique used in this project is known as the Principal Components Technique.

The end mathematical result of the factor analysis performed in this study was a set of correlation coefficients. These coefficients give an indication (depending on their value) as to the relationships between variables in the court system. After statistical analysis, a mathematical model of the court system was developed for computer analysis. The model developed in this study was based on the flow charts and the data that had been gathered and analyzed. A mathematical technique was chosen so that analysis, synthesis, optimization, or simulation could be achieved using the mathematical model of the court system. A detailed mathematical explanation of how the modeling technique works is contained in Volume III, Chapter VII of the original study.

An advantage of the Notre Dame technique over earlier court system models is that it utilizes a small computer system--in this case an IBM 1130 system. The model developed adapts to either of the courts analyzed and appears to be capable of analyzing other courts as well. It is presently being used to analyze various hypothetical court systems with changes based on suggestions by the legal and engineering analysts. The programs are set up so that when descriptive statistics are computer fed into the mathematical model, the output is in the form of statistical data or in the form of graphic displays. Because of lack of time, the Appeal Process was not modeled for analysis and simulation as was the trial process. The modeling technique is capable of being used to develop an appeal process model.

To investigate delay in the court system, it was necessary to check for two types of delay in general: 1) system

delay--where the court system cannot process a case ready to be processed and 2) individual case delay. A probability technique known as work sampling was utilized to check for system delay in the specific area of courtroom utilization. Random sampling of the courtrooms using work sampling techniques revealed that Marion County courts were inactive for 41.6% of the average work day and that St. Joseph County courts were inactive 72.3% of the time. These results correlated with the rest of the project findings which disclosed that neither court system experiences congestion at any particular point (with one possible exception), nor constant delay at all points. Rather, the delay that was revealed related to individual case delay.

LEGAL ANALYSIS

Introduction

The legal segment of the project used the information developed by the data gatherers, the statistical analyses, and the modeling techniques to analyze the criminal court systems from the legal perspective in order to develop specific solutions to the problems of delay.

Three approaches were utilized by the legal analysts in looking at the data: 1) Actual time periods experienced in the systems were compared to statutory or court norms for processing time or to limitations on case disposition. 2) General computations about performance were made in terms of type of case, type of counsel, status of the accused, and type of disposition. 3) Common dividing lines were estab-

lished (i.e., arrest to charge, charge to arraignment, etc.) and the performance levels in these divisions were compared to a fair standard. The standard used was the Model Timetable of the President's Crime Commission Report.

The legal analysts used the following three assumptions in formulating their recommendations: First, emphasis should be on timely disposal of the routine cases rather than the exceptional ones. Second, there are three ways to attack delay: a) eliminate some operations, b) shorten some intervals, c) shift defendants from longer to shorter types of disposition. The third assumption was that the court systems do not presently require radical restructuring to accomplish needed improvements. The findings and recommendations were divided into the following categories of recognizable delay:

Pre-Arraignment Delay

Concerning pre-arraignment delay, the report in summary says that whatever its cause, pre-arraignment delay is incompatible with both the right of accused and the public interest in prompt disposition of a criminal charge. When considerations such as police preference for a municipal court preliminary hearing, in order to hold an accused on higher bond, are allowed to influence the process, the judicial system is used as a device to aid law enforcement rather than for a proper judicial purpose. When continuances are granted to facilitate a lawyer's ability to obtain a retainer, the court helps build in the dollar sign as an impediment to speedy justice. When police and prosecutors use grand jury to process routine felony cases for the sake

of personal convenience, the integrity of the state's case is compromised since unnecessary delay is believed to frequently work to the advantage of the defense. When defendants are forced to spend time in jail or bear the burden of bail while a charge is being decided upon, their rights to speedy justice and prompt decisions affecting their lives are infringed upon.

Post-Arraignment Delay

Legal analysis of the data shows that there is unnecessary post-arraignment delay. The statistics suggest some of the causes. First, the in-court work measurement study suggests the courts need assistance to make more efficient use of the courtroom itself. Second, post-arraignment motions for continuances correlate significantly with overall length of disposition. The research suggests that such motions are routinely granted despite apparent statutory limitations. Third, the method by which the courts control their calendar contributes to delay. For example, the St. Joseph County Superior Court has a built-in 10-week delay between arraignment and the date set for trial. The fourth factor related to post-arraignment delay is plea bargaining. In St. Joseph County, the post-arraignment delay in plea bargaining cases is on the average 7 days longer than if the case had gone to trial. In Marion County, it is only 25 days less than if the case had gone to trial. The problem appears to be lack of judicial supervision of the process.

Criminal Appeals Delay

Only a small percentage of felony convictions are

appealed. Using the data gathered, only 44 out of the 2250 cases analyzed, or 1.7%, appealed their conviction. But the average appeal period for these 44 cases was 22 months. Even though numerically the number of appeals is small, this phase of the delay problem is important in that 1) the number of appeals may increase in the future, and 2) substantial delay where the caseload is light should be a cause of concern.

Concerning appeals delay, the report in summary says that adoption of the listed recommendations will eliminate most unnecessary delay presently built into the Indiana appellate process by outmoded statute or rule. It will reduce the appeal period from its present 22 months to 7 months. If the proposals relating to full records and brief are adopted, the overall time could be reduced even more significantly. Following the recommendations will allow the court to focus upon the problems of continuances, delay in records preparation, brief preparation and decision.

Beyond this the Indiana General Assembly should empower the Judicial Study Commission or the comparable body to compile annual data of similar scope and nature, of the productivity of the state's appeal courts and their effectiveness in expediting cases on their docket.

The Motion to Correct Errors contributes to unnecessary delay in at least three ways. First, it unnecessarily postpones the formal request for a transcript of the record. Second, it contributes to the delay in the decision to appeal where the defendant is indigent. Third, it unnecessarily delays the request for and preparation of the record for

the appeal.

The Appeal is initiated by the filing of a Praecipe for the Record. At the time of the study, there was no time limit in filing this request. Lack of time limits contributed to unnecessary delay.

With respect to Preparation of the Record, the statutory limitation of filing the record within 90 days of the ruling on the motion to correct errors is unnecessarily long and contributes to delay. Seventy percent of the cases sampled exceeded this limit with several unauthorized delays where extensions were not requested.

By court rule, the Appellant's Brief must be filed within 30 days after the transcript is filed. Sixty-five percent of the cases appealed in this study exceeded the 30-day period.

The State's Brief must be filed, according to court rule, within 30 days after filing of the appellant's brief. This time limit was exceeded in 46% of the cases. Seventy of those filed beyond the 30 day limit were considered to be unauthorized extensions.

Very few cases are granted Oral Argument--only 9 out of the 44 cases. The average time was 204 days between filing of the State's Brief and Oral Argument, plus 256 days to the date of opinion certification. The average period for all appealed cases from submission of a case to certification was 297 days.

LIMITATIONS OF THE STUDY

Limitations of the study are:

1. The impact of the court's civil caseload on the

criminal docket should be studied.

2. All recommendations should be tested on the computer model.
3. Tests are needed to determine the quality of justice dispensed as the judicial process is speeded up.
4. Research on a larger court system should be undertaken to give credence to this project's findings.

GENERAL CONCLUSIONS

Several general conclusions may be drawn: Major parts of the solution to delay must come from the individual and cooperative efforts of judges and prosecutors. If these two categories of officials agree to move cases through the system in accordance with a model timetable, a significant reduction in delay would result.

The objective of the empirical research done here is to help the courts establish a quality control and review procedure so that the collection of necessary data and their critical review becomes a part of the normal day-to-day operation of the courts.

SUMMARY NUMBER TEN

ANALYSIS OF THE CIVIL CALENDARING PROCEDURES THIRD JUDICIAL CIRCUIT, WAYNE COUNTY (DETROIT), MICHIGAN

by

The Institute for Court Management
University of Denver Law Center

1971

Summary Prepared

by

Joe Hutchison

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FINDINGS

1. The major reason for delay in Wayne County Circuit Court is insufficient control by the court of the civil cases that come under its jurisdiction.

2. Most important decisions made during the procession of civil actions are made by attorneys with only secondary influence being exercised by judges and other court personnel.

3. The court does not always effectively utilize the control it does have. For example, a control may be implemented, e.g., dismissal for no progress, only to be nullified by a later action, e.g., reinstatement.

4. Condemnation cases are placed on an individual calendar. Because of this, these cases are presently exempt from the control procedures adopted for dealing with trial adjournment.

5. Appeals to the Circuit Court have more control than the regular cases because many are at issue immediately on filing.

6. Domestic Relations Actions move along smoothly once a trial praecipe is filed. Delay in contested divorce actions at present is caused by the unavailability of trial time.

7. Judges make essentially no decisions which affect the speed with which Paternity Cases are heard. Speed is determined by attorneys, agencies, and the accused father.

8. Examination of the pending caseload reveals that it includes a much larger number of time consuming cases which are likely to go to trial than a similar size group of recently filed cases. The pending caseload represents accumulation of the more difficult cases, with the easier cases having been disposed of earlier. As a result, gross numbers of cases

are not meaningful in evaluating the implications of the backlog, unless the nature of the individual case in the backlog is assessed.

9. The docket book information system is fairly efficient in recording the events which transpire during the processing of cases.

10. The information system produces substantial statistics on a monthly basis, but it requires a large number of employees and the information supplied is not organized and often is incomplete.

11. Worthwhile programs have been initiated in the court but management control is lacking, in that few attempts have been made to find out how well the programs are working or to set up minimum standards for their success.

12. The court has made considerable efforts to improve procedures over the last few years.

13. A mediation docket is being set up.

14. Experiments are in progress allowing different amounts of discovery time for different types of cases.

15. The court is not resistant to change.

16. The court has an information system set up which can be easily adjusted to produce management control information.

17. The crash program to reduce the backlog has a good chance of succeeding.

18. Some control has been exercised by the court. Control is incomplete rather than absent.

RECOMMENDATIONS

1. All aspects of case management should be directly controlled by the court. Unless the present system is changed, there will always be very old cases pending in this court. This control has many aspects:

   a. Cases should be presumed at issue shortly after filing. If answers are not received, default should be compelled.

   b. "No-Process" would no longer be needed as such, but if a case is dismissed it should almost never be reinstated.

   c. The Civil Action number should be used for case control rather than the praecipe number.

   d. Attorneys should not make the decision on length of discovery.

   e. Pre-trial adjournments should be severely constrained and any adjournments should not effect the trial date. Clerks should not make the decision.

   f. Condemnation cases should be subject to the same controls as other civil actions.

   g. A stipulated trial adjournment should not be given because of absence of an expert witness.

   h. Notice should be sent to the client prior to dismissing a case for no progress.

   i. The present rules on entering judgements should be enforced.

   j. Present rules on answering interrogatories and

producing parties for depositions should be enforced.

k. When the attorney fails to appear in a non-contested divorce case the case should be dismissed rather than the "procon" praecipe.

l. The spinoff system might be reappraised, e.g., to reduce the uncertainty over the name of the trial judge.

m. Receivers should be compelled to appear at short intervals or meetings of the creditors can be arranged in a similar way. Also, present rules should be enforced.

n. Cases placed on the military docket should be put on for short times only and to have it returned, the attorney should have to prove that his presence cannot be obtained.

2. The court should not allow attorneys to accept more cases than they can reasonably handle, within the time limits to be imposed by the court.

a. Methods of arriving at reasonable workloads should be developed by the Supreme Court, the judges and the Bar. Attorneys with excessive numbers of cases already in the court should then be prevented from filing new cases, unless they can show that they have sufficient associates to handle them.

b. Eventually all the courts in the tri-county area should develop a coordinated approach to attorney conflicts.

c. The present inter-county Circuit Court agreement on priority for trial should be changed so that date of filing controls priority rather than date of assignment to trial. The present system always places Wayne County last in line.

3. An efficient and accurate information system should be developed to make court control of cases possible and to allow planning for the future.

a. The total number of cases reported should reflect all cases dealt with. The number should include all transcript cases. Miscellaneous appeals and those paternity and URESA cases screened but not accepted might also be added.

b. A more detailed breakdown of general civil cases should be required on filing. This breakdown might include: personal injury, products liability, malpractice, contracts, performance bonds, taxes, condemnation, various appeals, etc., as well as the present breakdown.

c. The case numbering system should be expanded so that all cases are in order of filing, but with an extra digit or number to designate case type.

d. Use of a separate FCO (First Case Out) number should cease.

e. A system of measuring different case types in workload units should be developed. This can be used to obtain needed personnel (judicial and others) when cases are first filed rather than later.

have been accomplished.

b. A study of the anticipated judicial workload, when much of the backlog has been disposed, should be made to realistically appraise the need for more judges.

c. The Court Administrator should obtain more people in order to be able to implement these new programs.

d. Sufficient floating Court Clerks should be obtained, so that no courtroom is unused because of the lack of a clerk. Bear in mind that change in no progress procedures should make clerks more available.

e. A standby system for replacement reporters should be developed.

f. The effectiveness and workloads of referees and investigators in the FCO office, and the Court workers in the paternity division, should be examined to determine if they need extra people on a temporary or permanent basis.

g. Another prosecutor doing paternity work should be required.

h. The number of M.D.'s doing blood tests should be expanded so that they are obtained in less than a month. Attempts to reduce the very high fee should also be made.

i. Circuit Court Commissioner positions should be filled and the personnel used to relieve the court of accounting functions; they should be controlled.

j. A more effective method of jury utilization should be obtained after a study of the present system.

k. More secretaries are required to prevent the present wasteful use of reporters in that capacity.

5. A coordinated plan should be developed to bring the waiting time from filing to trial for all triable cases down to a maximum of 1 to 1¼ years. This could be accomplished over three years (five at maximum).

The program should have a trained manager capable of implementing this complicated change. Detailed plans would require complete planning, but one approach is suggested:

a. Measures needed to control cases should be introduced at once, together with the new information system.

b. The survey of all cases over four-years old should be used to get rid of all old cases possible. The non-triable docket should be set up to separate these cases from those in triable status.

c. Crash program judges should be used to hear contested divorce cases now ready for trial. This should cut waiting in these cases close to the projected time.

d. All cases over two years old which have not been pre-tried, should have pre-trial hearings. Perhaps one or more judges on the crash program could concentrate on this area.

e. All remaining cases should be tried on a case number basis, gradually cutting back in stages until cases 1¼ years old are being tried.

f. A non-triable docket should be set up and only certain types of cases allowed on it. The categories should include criminal, paternity and URESA cases with outstanding warrants. Receivership cases and military docket cases could be put on as long as monitoring controls are exercised. Transcript cases could form another category to be included on the non-triable docket.

g. The statistical report to the State should be made more accurate and complete. The appeals column in particular should be filled out.

h. The definition of appeals should be clarified with the Supreme Court Administrator. It would be desirable if appeals from Common Pleas Court, its landlord-tenant division, administrative agencies, the Secretary of State and Probate Court all were included.

i. The report of trials over 5 days long made to the Supreme Court should cease unless it can be shown to be useful.

j. All the information procedures should be adapted for eventual use by a judicial computer system should one materialize. The court should cooperate in exploring this possibility.

4. Sufficient personnel should be employed at every level of court operations to prevent bottlenecks.

a. The present program of replacing vacationing judges should continue until the goals set by the court

6. Longer term planning should be carried out. This should cover a judicial employment system, a consolidated budget, determination of projected manpower needs, training of personnel and development of a computerized information system.

INTRODUCTION

In September-December, 1970, an initial survey of the Wayne County Circuit Court was conducted under a grant awarded jointly to the Institute for Court Management and the National College of State Trial Judges by the Law Enforcement Assistance Administration of the U.S. Department of Justice; and on the basis of this survey, it was decided that the Institute would undertake an in-depth examination of the court's civil case processing system.

Objectives

The objectives of this in-depth study were:

1. To produce a complete description of the dynamics of processing the multitude of different civil case types through the court. Particular attention has to be paid to whom makes decisions, how, when and why.

2. To determine how effectively the present system is operating and the critical factors which influence effectiveness.

3. To use the information collected and analyzed to make specific recommendations to simplify and expedite the caseflow in this court.

4. To define and refine a methodology for conducting effective studies of civil calendar management for this and

other courts.

Jurisdiction

The civil jurisdiction of the Circuit Court covers all types of Civil cases, including all Chancery and law matters where the amount involved is greater than $3,000. The Circuit Court shares jurisdiction with the Detroit Common Pleas Court in non-equity matters between $5,000-$10,000. Various equity matters must be commenced in Circuit Court regardless of the amount at issue, i.e., tax cases, estate title issues and condemnation actions initiated by certain agencies.

The court handles the divorce and paternity cases within the county. The court also serves as an appellate court reviewing the work of the Probate Court, Common Pleas Court of Detroit, the nine District Courts, 18 Municipal Courts and the Traffic and Ordinance Division of the Recorder's Court of Detroit. The Circuit Court also reviews certain administrative rulings.

Methodology

Three approaches were used to obtain information:

1. A 5% sample of all civil cases filed in 1968 was taken. Time spent at each step in the case, the type of case, the attorneys of record and the events that transpired were tabulated. All civil cases that were more than 4 years old were examined in detail to determine common reasons for delay.
2. Every category of person in the system, in other court systems, or who came into contact with the court in a

professional capacity was interviewed.

3. Key steps in the process were observed personally.

THE NUMBER AND TYPE OF CASES

There were 27,636 cases filed in the Circuit Court in 1968. This does not include enforcement of lower court judgements, miscellaneous appeals, post-judgement hearings, etc. Of the cases reported there were:

1,926 criminal cases

13,292 domestic relations cases

3,885 auto negligence cases

8,533 general civil cases

A 5% sample of all the cases filed in the Circuit Court in 1968 was taken. Extrapolations were made from this sample as to how many different types of cases were filed. A 5% sample is reliable enough to reflect percentage contributions of the main group. This sample analysis indicates that contract cases are a significant part of the workload as are appeals of various kinds. With respect to case disposition, auto negligence cases were accumulating at an annual rate of 10-20%. Domestic relations case disposition was keeping pace with the number of filings, because the backlog was remaining constant.

DESCRIPTION OF PROCEDURES

An order of priority according to case type exists in the calendaring procedures of the Circuit Court. A liberal statute of limitations allows a party up to 7 years (depending on the nature of the action) in which to proceed.

The civil action is commenced at the County Clerk's Office. After paying a filing fee, a civil action number is assigned and a record of the case entered into a log book on the basis of case type. At this time a judge becomes responsible for the case. The filing attorney can place the case on the regular or special docket. The docket choice controls the length of discovery time allowed.

Proof of service is controlled by general court rules. Once the person has been served, he has 20 days within which to answer. Default is rare at this stage, even if no answer is received within the 20-day time period. Once all answers have been received, an at-issue praecipe must be filed in order for the case to move forward.

If no praecipe is filed, no further attention is paid to the case until it is detected through a no progress procedure, which is a monthly examination by courtroom clerks of all cases filed 13 months before in the docket book. A list of those cases which have not progressed is compiled and published in the Legal News with a warning that failure to move the case forward or to get a delay from the presiding judge will result in dismissal for no progress.

In spite of the length of time allowed to file the praecipe, a significant number of cases are still dismissed; but the judge who dismisses the case can reinstate it upon the filing of a motion. The majority of requests for reinstatement are granted.

Court rules control the time given for answering interrogatories for taking depositions, but these are universally ignored. The Supreme Court introduced new orders in 1971

relevant to interrogatories and depositions in which a court granted motion is needed to extend the time needed to answer.

Pre-trial hearings are required by the general court rules for all actions, and the Supreme Court has ordered that pre-trial cannot be waived. If pre-trial does not result in a settlement, then the case is returned to the call list and awaits its turn to be set for trial. A case may be eligible for mediation, and be settled before a mediation board.

When pre-trial is completed, the praecipe is returned to the assignment clerk. He sets cases for trial, usually 6 weeks in advance. At this time, each judge assigned to hear cases is assigned 11 cases for that week. Notices are then sent to the attorneys, who have the right to obtain one stipulated adjournment of trial for good cause. The delay, if granted, is 30 to 90 days. A spin-off case list exists which consists of cases which were set but for various reasons not tried. In addition to the 11 assigned cases for the week, each judge has a list of spin-off cases. To a certain extent this system smooths out fluctuations in case assignment; but the cases in spin-off build up, and in the past have required curtailment of regular assignments in order to work off the spin-off cases.

Settlements can take place at any time prior to commencement of the trial. Since the defense attorney is not always free to settle, but must get the acquiescence of the claims manager of the company retaining him before agreeing to a settlement, and since certain insurance companies have

a policy never to settle under any circumstances, there is little purpose in the court expending excessive efforts to settle cases in this category. Malpractice cases and workmen's compensation cases present similar difficulties. Most civil cases are tried before a jury. Bifurcated trials are not widely utilized. Civil cases now utilize 6 man juries in Wayne County. Agreement of 5 jurors based on preponderance of the evidence is needed for a verdict. If the jurors cannot come to an agreement, or if certain improprieties occur, a mis-trial may result. If this occurs, the jury is discharged and the assignment clerk resets the case for trial. If a judge alone hears the cases, he returns the verdict.

A judgement must be entered to complete the disposition of the case. At times there is a delay problem between the verdict being rendered and the final disposition of the case. Once the judgement is introduced, it can be appealed as a matter of right to the Court of Appeals. A case that is appealed may be returned to the Circuit Court for retrial.

Motions can be brought at any time after the answer is received. A motion praecipe must be filed with the assignment clerk on the Monday preceding the hearing. Motions are generally heard fairly quickly. If attorneys do not appear for the motion hearing, the praecipe is dismissed.

Condemnation Actions

Condemnation cases are dealt with on an individual calendar basis. Condemnation complaints are filed in the

usual way. An order to show cause is then presented for signature to the assigned judge. A hearing date is then set. Seventy-five percent of the property owners settle without the necessity of court proceedings. Of those remaining, 15% settle before or at pre-trial. Only 10% have a court hearing. The judge and the parties agree on a trial date. The jury rules only on the question of value of the condemned property. After the trial, the judge's clerk notifies the assignment clerk and enters the disposition. The parties can appeal the judgement.

Divorce Actions

Nearly half of all the cases filed in the Circuit Court are divorce actions. A separate arm of the Circuit Court, called the Friend of the Court (FOC) exists to deal with every aspect of divorce cases. Divorce actions are initiated by filing the case in the usual way. If alimony or minor children are involved, the filing attorney is supposed to file a copy of the complaint with the FOC.

The usual rules of service and answer apply, and attorneys do exercise their rights in this area. Usually temporary support is requested by motion. An investigator of the FOC researches the case and the FOC make a recommendation. In practice, awards closely follow a prepared schedule. An award can be objected to. A judge makes the final ruling on temporary support at a hearing.

In a non-contested divorce, a yellow pro confesso praecipe can be filed 6 months after the complaint, if children are involved. Only 60 days is required in the absence

of children. After filing, the case file is sent to the FOC office. If the pleadings need amending, the FOC returns them to the attorney. If complete, the case is assigned by the assignment clerk. The assistant assignment clerk arranges that enough cases are set to dispose of them within a reasonable time. The more cases waiting, the more that are set.

When alimony or children are in question, the divorce is not granted until a Final Report has been prepared by an FOC investigator.

A request for this report should have been initiated early in the proceeding. The investigators know from experience that half of their interview appointments are not kept. They allow an interview to be adjourned twice and then charge $50.00 costs for failure to appear. At this stage they will enter the final report with a comment that the party did not cooperate by appearing for an interview.

The short hearing procedure is almost ritualistic, and the divorce is nearly always granted. The divorce is not complete until a final order is entered. This area is prone to abuse. If the attorney does not appear at the hearing, the praecipe is dismissed and in the absence of any further action will be dismissed in the usual way for no progress.

In a contested divorce, a blue praecipe is filed. At this stage, a request for a final report is usually made. If this is done the case is sent to the FOC investigation division. A contested actions list is made up by an FOC branch office clerk. This list is examined about 10 months

after the praecipe filing. It is never checked earlier than 6 months after filing. At the examination, misfiled cases are weeded out. Also, a check is made as to whether the parties are proceeding, whether a reconciliation has been accomplished or whether the marriage counselor is now involved. If the case is progressing but no final report request has been made, the clerk notifies the attorney to file such a request. If the case will need a referee's hearing, an order assigning the case to a referee is prepared and signed by the judge responsible for the case. A hearing date is set and notices are sent out. On the day of the hearing, the parties will usually negotiate prior to going before the referee. After the hearing, a referee's report is made which includes a recommendation. If the final report has been prepared, the case is dated and returned to the assignment clerk who orders them according to praecipe number. As the case nears a court appearance, a notice is published in the Legal News, and a clerk calls the attorney of record for each party to determine whether they are still responsible for the case and to see if the case has been settled. The assignment clerk then sets the cases for trial. Five cases per day are assigned, and adjournments must be requested before the presiding judge by the attorney. Although general court rules require it, no pre-trial is held. Motions are heard in the usual way.

At the trial, the parties must stipulate to the referee's report on property for it to be accepted. With respect to child custody and alimony, the judge reserves decisions to

himself. Once the judge makes a decision, the attorneys are instructed to introduce judgement within 10 days. A non-compliance problem exists here. Post judgement proceedings are a problem, usually arising because of failure to pay. The judges who try these issues are on spin-off or serving in the criminal division.

There is a mechanism developed for disposing of cases that start out as contested and develop into non-contested divorces during investigation or during the referee's hearing. This mechanism is called default judgement by withdrawal. This motion is heard in the usual manner, and once it has been granted, it remains only for judgement to be entered.

Uniform Reciprocal Enforcement of Support Cases (URESA)

The Circuit Court has special procedures developed to deal with support payment questions for a divorced party when another state is involved. This procedure varies depending on whether Michigan or another state initiates the action.

Paternity Actions

These cases are predominantly dealt with through an assistant prosecuting attorney and the paternity division of the FOC. Most cases are referred by ADC. The case is reviewed and if the FOC accepts the case, an investigator is assigned who interviews both parties when possible. If the man acknowledges paternity, he is induced to sign a form acknowledging paternity and a "P number" is assigned to the case. Information from the interview is used to make a

recommendation for temporary support, and the case is assigned to a judge by a paternity division attorney. A hearing is held and a temporary order is entered with the order of filiation, and the case is remanded to the FOC to determine payments. If the man fails to appear, an order may be entered anyway, or more likely, a summons will be issued and the case transferred to the presiding judge.

Where paternity is not admitted, the case is assigned to a caseworker, who arranges an interview. If paternity is not admitted at this interview, the case is set for a pre-trial hearing. If paternity is still not admitted, the party may choose to request that a blood test be carried out. Cases in which the possibility of paternity has not been disproved are then set for trial. If the man fails to appear for trial, a warrant is issued. If the woman doesn't come, the case will be dismissed with prejudice. In many of these cases the court is acting as a collection agency for ADC and substantial sums of money are recovered, but at some cost to the court.

A minority of paternity cases are brought by private counsel and the procedure involved is different than that of prosecutor-brought actions.

Appeals to Circuit Court

Appeals to the Circuit Court are commenced in the lower court or in the agency. If the appeal is de novo, a pre-trial procedure is followed. If on the record, the case is set for a hearing immediately.

A description of the procedures in a garnishment action

is also given in the report.

DESCRIPTION OF SELECTED AREAS

Use of Judicial Time

The present bench consists of 27 judges. Some judicial time appears to be lost due to election duties, since judges must run for re-election every 6 years. Criminal cases use substantially more judicial time than their statistical number would justify. There are theoretically available 180-190 trial days in a year. Even with the civil calendaring procedure changes that took place in 1969, there is still a disparity between the theoretical and the active number of trial days. The use of 3 judge panels in sensitive cases is expensive in that it consumes many units of judge time. Several cases of any length employing 3 judge panels would appreciably influence the availability of judges for other matters.

Availability of Attorneys

Only a small number of the practicing attorneys in the Detroit area engage in trial work. As a result, congestion exists in the trial bars, depending on the area of specialty. The data is so limited that it cannot now be collected and evaluated to determine the extent of court delay caused by trial attorneys with multiple cases.

Court Personnel

Reporters, clerks, sheriffs, expert witnesses and jurors are possible sources of delay. The data revealed that lack

of a sufficient number of court reporters is a cause of delay when a reporter is needed on short notice.

Adjournment

Scheduling conflicts with other area courts and within the Circuit Court itself accounted for over 70% of the adjournments in the Circuit Court during a 4-week sample period. A second adjournment, however, is difficult to obtain. The attorney must request the adjournment in front of the presiding judge.

Records Management

The records system of the Circuit Court is briefly described in the study.

ANALYSIS OF OLD CASES

Eighty percent of all cases over 7 years old are paternity cases. Most of these cases, and probably all cases over 1 year old, represent situations where a warrant has been issued for non-appearance and where the man has not yet been apprehended. The court's philosophy is that paternity cases will not be dismissed for no progress (as is done in neighboring circuits after 2 years time) because this would in effect be punishing the wrong party, i.e., the mother and her children.

A significant number of old cases concern receiverships. Approximately 200 receivers are appointed each year and 200 discharged. The receiver continues in this position until one party moves for discharge of the receiver and return of his bond.

A military docket exists for parties who are in the military service. If a case is placed on this docket, no further action will take place until the defendant's attorney notifies the court that he has been released from the service.

Reinstatements were found to be a cause of old cases on the trial list. Reinstatement of a case automatically extends its length by 1½ years. Failure to enter a judgement after a judge's ruling disposing of the case has been obtained is another cause of old cases on the docket. A small number of cases are old because they have spent considerable amounts of time in Appellate Courts.

Most of the reasons for the presence of old cases are not within the control of the courts.

STATISTICS COLLECTION

The Appendix to the study contains a statistics collection with flow charts and a discussion on the methodology involved in collecting the statistics.

SUMMARY NUMBER ELEVEN

STUDY OF CIVIL CALENDAR MANAGEMENT SYSTEM IN THE DISTRICT COURT OF HENNEPIN COUNTY (MINNEAPOLIS), MINNESOTA

by

The Institute for Court Management
University of Denver Law School

1970

Summary Prepared

by

Joe Hutchison

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I. SUMMARY

Specific Findings

1. The District Court of Hennepin County appears to be reasonably efficient in comparison to other metropolitan courts studied. One strong point is its declining backlog of civil cases. In January, 1967, the pending civil calendar case load stood at 7651. At the end of 1970 the figure was 4549. For 1970 the average delay for a civil case was 13.3 months from filing to disposition.

2. Statistics on backlog, delay, terminations, filings and the like are regularly gathered by the office of the court's Administrative Director and reported in convenient form to the Supreme Court of Minnesota. Such monitoring of the court system is an important element of efficient management and control.

3. The District Court appears to have an efficient jury management system. Jurors are centralized in one pool and drawn as needed for District Court and Hennepin County Municipal Court judges. A stand-by system has been initiated that allows jurors temporary leave from jury service subject to future recall. This accomodates the court system with respect to personal commitments or pressing business, resulting in significant annual monetary savings, since jurors would leave the payroll under these circumstances.

4. Another strong point in the system is the presence of an Administrative Director. The Administrative Director was responsible for implementing the efficient jury management system. The Bench recognizes that administrative tasks can

and should be handled by the court executive.

5. The attitude of the personnel in the Hennepin County District Court was impressive with respect to commitment to the tasks at hand and a healthy dissatisfaction with the present system.

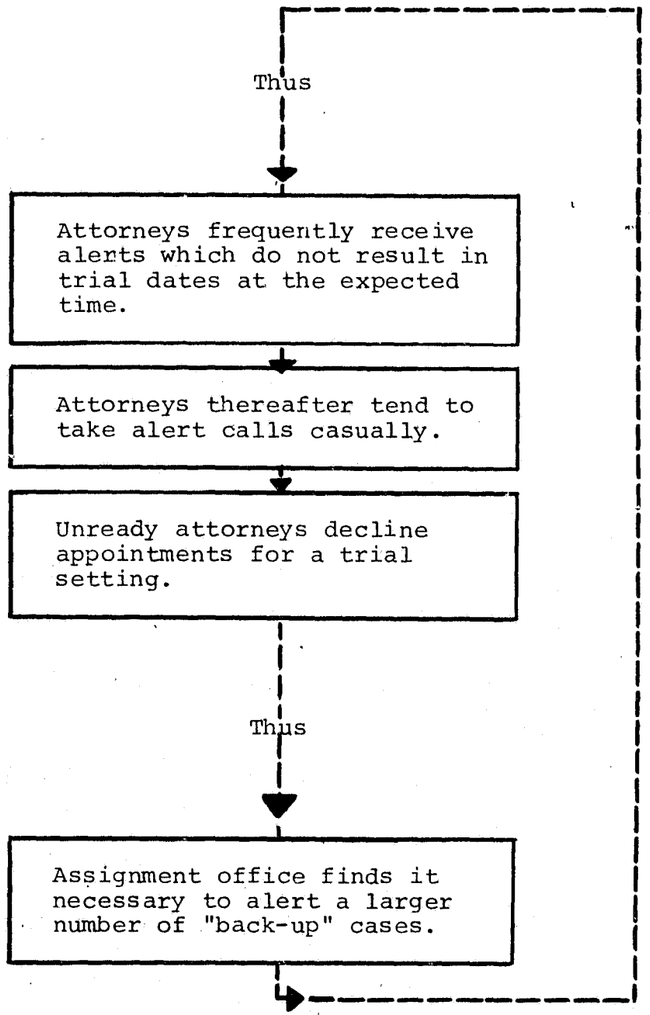
6. The Assignment Office system of alerting attorneys by phone for trial a week or so in advance and then attempting to set up an appointment for trial a day or so in advance of trial is not working properly. It was hoped that the alert telephone call would bring the case to the attorney's attention, and that if he accepted the alert he would have his case prepared for trial. In theory, if an attorney accepts the alert call there should be very few not ready responses with respect to the set-for-trial call. The statistics compiled in this study show that 42% of the alert calls are accepted, but 58% of the attorneys then decline the set-for-trial call. Diagram I sets up the cycle of events which causes the problem.

7. More than two-thirds of all Contract action cases reached a District Court termination at pre-trial with a settlement referee.

8. Mechanics Lien cases are extremely unlikely to reach termination at pre-trial.

9. The certificate of Readiness is not effective as a calendar management/control mechanism. The data in the study indicates that the median elapsed time is the same between filing of both a General Term Note of Issue and Certificate of Readiness. This indicates that the Certificate is automatic and not fulfilling its intended function.

DIAGRAM I



10. The sample included more negligence-personal injury cases than any other type, and the median elapsed time from filing to disposition for such cases was 13-15 months. Other types of cases were fewer in number and their median times were less. This indicated some potential for differential handling of cases according to type.

11. Eighty-seven percent of sample cases did not reach trial.

12. Old cases were backed up. Certain judges had disproportionate numbers of old cases backed up.

A. General Findings

The Block Assignment System has not realized its full potential, nor satisfied the expectations of judges, attorneys, and court personnel in the following areas:

1. Maximizing the use of available judge trial time.
2. Certainty of trial date.
3. Efficiency in scheduling/notification of trial dates.
4. Closely monitoring the progress of cases from filing to disposition.
5. Consistent, enforced policy on continuances.

B. Specific Recommendations

1. In Michigan, expert testimony via video tape is accepted in the courtroom, and absence of an expert witness is not a legitimate ground for a continuance. The Court might investigate this possibility.

2. Strict adherence to existing Court Rules might alleviate the problem of attorneys rejecting the notification of a

trial date. Rule 5(c) stipulates that an attorney who is on alert status must let the assignment office know in writing when he must be engaged by another court. Rule 34 provides that an attorney must notify the assignment clerk in the event that a case is settled prior to the time set for any hearing, pre-trial conference, or trial. At present these rules are largely ignored by counsel and by the court.

3. With respect to pre-trial procedures, the court should shift its emphasis with regards to the cases which go to pre-trial before the Settlement Referee; and procedures should be changed to successfully capitalize on a changed understanding of the nature of the process.

C. General Recommendations

Because a court committee was working on a plan to modify the Block Assignment System and thus attempt to remedy the problems at the time of this study a set of step-by-step recommendations was not offered; instead suggestions of a more general nature were offered, covering areas the Institute thought the court committee should consider in designing new policy and procedure.

1. For maximum success in its calendar management system, the entire Bench of the District Court must be committed to the principle that the Court rather than the Bar will control the progress of cases through the court. Concomitantly, the Court Administrative Director is well familiar with this principle and the responsibility it places on both the judges and the administrative personnel. His guidance in this area can be invaluable to the court.

2. At the same time, the court as a whole (judicial and administrative staff) must set some performance goals for the disposition of cases as well as a system for monitoring whether or not goals are being met. There are a number of "organizational development" techniques which can facilitate goal setting. The Institute could assist the court in this area. The Institute believes the personnel of this court would be particularly receptive to the concept of setting goals for the court.

3. The Administrative Director and the Chief Judge should take steps to ensure a thorough understanding on the part of all judges and personnel of: a) the goals that have been set and b) exactly how the new system should operate. It is important that judges, administrative personnel and attorneys are aware of each other's expectations about the system operation and the roles they will play.

4. System changes must build in sufficient time for administrative personnel to learn and understand new or changed tasks associated with the new system.

5. The Administrative Director should expand/modify the statistics now collected to include data that will readily:

   a. assist him in monitoring and managing the caseflow and making recommendations for change when appropriate;

   b. assist the judges in policy decisions and decisions on granting/denying continuances.

Having the necessary information provides the ability to control. While more and better information is available on the operation of this court than can be found for many other

courts, some further enlargement of the range of information would assist in improvements.

6. Any new procedures developed by the present committee must eliminate the present practice of allowing attorneys to reject notification of a trial date, which practice leads to the deterioration of the assignment system. The court should have a stringent and consistent policy. It seems that administering it can be delegated to assignment office personnel if attorneys know that the judges will fully support the clerks.

II. INTRODUCTION

This study was financed by a grant awarded jointly to the Institute for Court Management and the National College of State Trial Judges by the Law Enforcement Assistance Administration of the United States Department of Justice.

An initial survey of the Hennepin County District Court was conducted from September to December, 1970. On the basis of this survey it was decided that the Institute for Court Management would undertake an in-depth examination of the civil case processing system. This was a companion study to similar studies made in Boston and Detroit; and these civil calendar studies were part of an overall effort to learn more about the dynamics of criminal and civil litigation in courts of general jurisdiction.

III. OBJECTIVES

The objective of the study were:

1. To increase the available knowledge of: a) the dynamics of processing civil cases through courts and b) the elements essential to effective civil calendar management.
2. To define and refine a methodology for conducting effective studies of civil calendar management.
3. To develop suggestions to help improve the processing of civil litigation in the court.

IV. METHODOLOGY

The civil calendar management study employed a wide range of techniques to meet these objectives. A large number of both formal and informal interviews were conducted with a variety of court personnel, members of the bar, and judges in the District Court. Observations of various court processes on both formal and informal bases were utilized. This technique was important in the analysis of the system for assigning cases for trial. Statistical data were collected from court records in three important instances. A 5% sample of civil cases for the 12-month period beginning in February, 1968 was gathered. Certain characteristics of very old cases involved in a calendar call were gathered and tabulated. A 10% sample was taken of similar characteristics of cases which came before the pre-trial referee between June and December, 1970.

V. DESCRIPTION OF THE PRESENT SYSTEM

From the time a summons and complaint are filed until a Certificate of Readiness has been filed, a case is not on a judge's calendar. It progresses at a pace which is a combination of time constraints imposed by statutes and court rules and the inclination of counsel. If the summons and complaint are never answered, a default judgment may be asked for. If it is not asked for, then the possibility exists that no action will be taken on the summons and complaint for an indefinite period.

Summons and complaints which are answered proceed toward the point of note of issue, which is an indication to the Court that the issue is joined and that the action should be placed on the calendar. If the case is to be heard by the court without a jury it is ready for assignment to a judge's block at this point. Cases to be heard by a jury must be certified ready. The Certificate of Readiness must be filed no later than 6 months after the General Term Note of Issue. If it is not, the case is stricken from the Calendar, and consent of both parties must normally be had for reinstatement.

If opposing counsel desires to file a Certificate of Non-Readiness, the case is delayed up to 90 days' time before further action must be taken. Non-readiness time is limited to 90 days without showing of good cause, in which case a judge may extend the time. At this juncture, pre-trial may be held before the Settlement Referee by request of counsel. That proceeding will normally result from a request for

pre-trial filed at the time of certifying readiness. If pre-trial is held out, or if the case is not settled at pre-trial, the case is randomly assigned by a clerk to the "block" of any one of the court's judges (except juvenile and family court) at the next occurring quarterly assignments to blocks. Thereafter, any pre-trial hearings are before that judge, and the judge determines when to schedule the case for trial. He notifies the Assignment Office, which performs the trial noticing function for all the judges. The only ways in which a case may be removed to the block of another judge are: 1) by the informal decision of a judge for reasons of propriety, e.g., an old law firm or partner is handling the case; or 2) by the filing of an affidavit of prejudice against the judge by an attorney in the case.

The Assignment Office usually notifies the attorneys involved a week or so in advance of the date the judge sets for the case. This alert usually specifies only an approximate date, and attorneys at this point are frequently allowed to contest it. If they accept the alert, they are expected to locate their clients and witnesses and have the case ready. Approximately a day in advance of trial, another phone call is made by the Assignment Office to notify counsel. Settlement frequently occurs at this point.

The rest of the study is concerned with findings and suggestions. Both areas are covered in the Summary of this paper.

SUMMARY NUMBER TWELVE

A COMPARISON OF CIVIL CALENDAR MANAGEMENT IN BOSTON, DETROIT, AND MINNEAPOLIS

by

The Institute for Court Management
University of Denver Law Center

1971

Summary Prepared

by

Joe Hutchison

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I. SUMMARY

A. Methodology

A comparative approach was used. Data was gathered by experienced interns who were assigned to the individual courts. The data was gathered by observation, interview and data collection from a sample of each court's cases.

1. Findings

The benefits of this type of approach were:

1. Data on three different courts was gathered in a short term.
2. Collecting data from a sample of cases allowed the project to obtain information that was not available from court records.

The difficulties with this type of approach were:

1. The problem of ensuring that the team members, though physically remote from each other, were studying the same things in approximately the same way.
2. That excessive amounts of time and effort were required to extract data from court records, because the data was not centralized and because certain data was either illegible, never collected, or not retained. Also, statistical tabulations and reports were not available.

2. Recommendations

1. Until accuracy and accessibility of court's data improves, it is not productive for collectors to spend time trying to obtain excessive data.

2. Future studies should collect more data on a real time basis to supplement the historical data.

3. Standardized data collection forms are not feasible, but a more-or-less uniform form for use in courts being studied could be developed with careful pre-planning.

4. The project team should study each court together as a team, dividing the study tasks among themselves.

B. Comparative Observations

1. Findings

Description of Assignment Systems--Court control of case flow is more basic than the type of calendaring system used. None of the three case scheduling and assignment systems represented in these studies was demonstrated to be inherently most effective.

Control of Case-Flow from Filing to Termination--The progress of litigation seemed much more under the control of counsel than the courts. None of the courts in the study exhibited significant case-flow control.

Concentration of Cases in a Few Attorneys--People interviewed believed that the inadequate supply of trial attorneys is a great contributor to court delay.

Courts' Policy and Practice on Continuing Trials--Courts have a lenient attitude toward granting continuances.

2. RECOMMENDATIONS

1. A changed and updated attitude on the part of the courts as a whole and commitment on the part of the bench to responsibility for assuming control

is needed.

2. Observations tend to indicate that a lenient attitude toward continuances starts a cycle in motion which has a subtle effect on a busy attorney's inclination to be prepared the next time up. (For example, if the court is known to be lenient, counsel is less likely to make the extra effort to be prepared; or, knowing the court over-schedules, counsel plays the odds that his case will not be reached on the trial date, and therefore is less likely to be prepared.) This cycle must be broken. The Institute's judgement is that this issue is directly related to the issue of "court control" discussed above, and that both issues must be attacked concurrently.

II. INTRODUCTION

There is no generalized body of established principles of sound or efficient case-flow management on which a court administrator or Chief Judge can draw on when he attempts calendar management reforms. In the past, studies in specific courts have been performed to solve specific problems, and these studies have come up with recommendations applicable only to that court system under study.

At present, there is an argument whether "individual" calendar or "master" calendar management is the answer to courts' calendar management problems. The purpose of this study is to bypass the master v. individual calendar argument, go to a deeper level of analysis, and look at the key

elements in the calendar management system, so as to find out what caused a master calendar to work in one place, an individual calendar to work in another and a "hybrid" to work elsewhere.

III. METHODOLOGY

The project plan has emphasized studying the same things, at the same time, in the same way in several courts to compare similarities and differences in operation and effectiveness, in order to determine what techniques are best in various kinds of courts under a variety of conditions.

Each study team member had done internship work for the Institute for Court Management involving the court to which he was assigned. This meant each researcher was already acquainted with the operation and personnel of the court he was assigned to study. The data was gathered by observation, interview, and an abstraction of specific data on a 5% sample of cases filed during 1967/1968.

IV. COMPARATIVE OBSERVATIONS

A. Introduction

To study the dynamics of civil calendar management, three courts were chosen for the study that were diverse in such characteristics as a number of judges, number of filings and case scheduling-assignment systems. This was done in order to isolate key variables or characteristics and determine how they operated in each court and how they affected civil case flow. It was felt that comparing courts to each

other could help provide insight into the dynamics of effective and efficient caseflow management. It was also expected that the experience of conducting three simultaneous comparative civil calendar management studies would substantially contribute to a body of knowledge of how to do such studies.

B. Description of Assignment Systems

Rather than trying to fit the courts' scheduling and assignment systems into the common categories of individual calendar or master calendar, it is more meaningful to describe the particular characteristics of each system.

In Minneapolis, the District Court uses a "Block Assignment" system which operates as follows: From the time of filing until a Certificate of Readiness is filed, a case is not on a judge's calendar. It progresses at a pace which is a combination of statutes, court rules, and inclination of counsel. Pre-trial, before a settlement referee, is optional by request of counsel. After the Certificate of Readiness is filed, the case is randomly assigned by a clerk to the block of any one of the court's judges (except juvenile and family court) at the next occurring quarterly assignment to blocks. The process is random without reference to the number of cases currently in the judge's block. Thereafter, any pre-trial hearings are before that judge, and the judge determines when to schedule the case for trial. He notifies the Assignment Office which performs the trial notification function for all the judges.

In Detroit, the Circuit Court processes civil cases as follows: At the time of filing, a case is randomly assigned

directly to a judge who is theoretically responsible for the case through pre-trial conference. As in Minneapolis, progress of the case essentially depends on statutes, rules and the inclination of counsel. The judge to whom the case has been assigned does not monitor the progress of the case; however, motions, etc., in the cases are heard by that judge. At present, cases are scheduled for pre-trial about 2 years after filing an "at-issue praecipe." After pre-trial, or when pre-trial is waived, cases essentially go into a pool to await scheduling for trial by the assignment clerk. Assignment is to any one of the judges scheduled to hear civil cases about 6 weeks later.

The Boston Superior Court assigns cases as follows: After the case is filed and the issue is joined, it is eligible to go before an auditor for fact-finding or before a conciliator for a settlement conference. Lists of cases for both types of hearings are drawn up by clerks by searching the docket books for eligible cases. The auditors' findings are not final but are prima facie evidence in a subsequent trial. To be eligible for the trial list after an auditor's hearing, counsel must file a trial request within 10 days of the filing of the auditor's report. If the case is not settled as a result of conciliation hearing, the case is eligible to go on a trial list which, again, is made up be searching the dockets. On the assigned trial date, attorneys report to the Assignment Session where a judge and clerk dispatch ready cases to available trial judges.

C. Systems Evaluation

Due to the limited amount of time available, the Calendar Management Systems were evaluated in terms of a limited number of variables. These variables were:

1. Control of case-flow from filing to termination.
2. Concentration of cases in a few attorneys.
3. The courts' policies and practices on continuing trials.

The findings and recommendations are listed in the Summary.

V. EXHIBITS

The study also contains exhibits of the Data Collection Forms and Lists used by the research teams at the three courts studied, and the statistical samples recommended for inclusion in future civil calendar management studies.

SUMMARY NUMBER THIRTEEN

REPORT ON THE MANAGEMENT OF THE VENTURA COUNTY COURTS

by

The Institute for Court Management

University of Denver Law Center

1971-1972

Summary Prepared

by

Michael Bastian

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I. INTRODUCTION

This study by the Institute for Court Management deals specifically with the management of the Ventura County, California courts. It was published in three volumes: Volume I, Analysis and Recommendations; Volume II Present Court Operations: and Volume III, Appendices. The completion date is not indicated but the study was apparently completed in late 1971 or early 1972.

Another study prepared by Booz, Allen and Hamilton, Inc. was made of the California system as a whole and published simultaneously with the Institute for Court Management. In the preface the ICM researchers specify the contrasting approaches or attitudes of the two study groups. The ICM study supports reorganization of judicial management functions but maintains that the Chief Judge be elected by other judges and not appointed by the Chief Justice of the Supreme Court. "Team theory, not authority theory, will solve the deep-rooted problems in the courts which the Feasibility Report itemizes." The ICM study "concentrates on the mechanism of management which it believes will get results." Both reports recommend an administrative consolidation of the courts in common areas of administration. This consolidation would eventually lead to a combined administration in the Municipal and Superior Courts.

This project obviously concentrates on improved management techniques for the judicial system studied. But the study also provides a comprehensive analysis of the present operations and problems confronting the people involved in

the judicial processes of this county, and the quality of justice this system renders.

II. RECOMMENDATIONS

Volume I, Analysis and Recommendations, is divided into four sections. Section I deals with management. It provides an overview of the existing system, delineates problems, and submits a proposed structure. Section II, Some Implications for the Future, deals with the current trends in court management perceived by the study group. Discussion is made of the implications of these trends, of a new court building, a unified court, and the stages in achieving a unified court. Section III, Management Information, is related to the capabilities of the Management Information System (MIS) and other aspects of system design and evolution. Section IV, Four Management Areas Requiring Improvement, deals with the four specific areas: Felony case management, jury management, civil case management, and pre-trial detention policy.

The recommendations included in Section I are listed as follows:

1. A revised framework, providing better coordination and communication between courts and justice agencies, is essential to problem resolution.
2. Consonant with 1, supra, a broad mechanism for resolving overall problem areas could be brought into being. These mechanisms and better communications and coordination can be established, but "only if the judgesconcur and take the initiative."

3. Administrative channels between the courts and other justice agencies must improve in four areas:

   a. Superior Court administration.

   b. Coordination between the two courts.

   c. Feedback to the judges from internal criminal justice agencies and coordination between judges and justice agencies in resolving problems.

   d. Coordination with the external environment (the media, community based services, etc.).

4. Policy for the proposed changes must be established by creation of a new structure to perform new jobs. The system must have built-in evaluation, and must avoid becoming a new super agency. New approaches should be experimental because they offer the most promise for effecting improved operations.

5. Proposed structure:

   a. An executive officer is recommended to fill the void in Superior Court administration.

   b. Coordination between the two courts is achieved through joint administration. Two links are proposed:

      (1) The Executive Board of the Ventura County Courts and

      (2) the Executive Council which comprises the Executive Officers of the two courts

and the proposed Executive Director, who reports to the Executive Board.

   c. The Executive Council is proposed as the linkage to provide feedback to the judges from internal criminal justice agencies and to coordinate between judges and justice agencies in solving problems.

   d. The Executive Council is proposed as the linkage to provide coordination with other agencies.

The recommendations in Section II, Some Implications for the Future, might better be termed as observations of future changes. These are listed as follows:

1. Court management throughout the nation is undergoing transition. The clear, desirable trends should be adopted voluntarily to control their incorporation. The uncertain trends should be examined and evaluated.

2. Establishment of professional court administration is an inevitable trend.

3. The application of progressive management principles and technology to the courts is necessary to improve court performance.

4. Improved performance measurements are necessary.

5. A unified trial court is likely to be the model of the future; such a model has overall benefits.

6. State-wide financing of the judiciary, the re-examination of the court's role and the development

of para-judicial personnel seem to be trends of merit and should be tested.

7. Improved sentencing alternatives and community-based services are presently quite difficult to evaluate.

8. The implications of three of the perceived trends (i.e., that improved sentencing and sentencing alternatives will change current concepts of jails, that community-based services will allow many offices to be based elsewhere in the community, and that advanced computer technology will require specialized building design), require that the design of the new building be delayed until these considerations can be properly assessed. It would appear untimely to proceed with the design of the new Justice Building at the time of this study.

9. A program to re-allocate present space and acquire more space should start immediately.

10. The three stages in achieving a unified court are:
    a. linked administration;
    b. unified administration;
    c. unified court.

Section III, Management Information, addresses the management information needs for monitoring the workload of the courts, assessing compliance with statutes or court policy, and measuring the performance of the courts in handling their workload. The recommendations toward improving management ability are:

1. Begin defining output measures that can be used to guide improvement of court operations.

2. The initial system should provide four output functions:
    a. monitoring case flow,
    b. workload prediction,
    c. policy compliance measurement, and
    d. performance measurement.

3. The capabilities of the initial management information system (MIS) would include the tracking of cases through all proceedings before a judge. The principal need in outputs is for variety in presentation, quick responses to requests for additional outputs and ease of making these requests.

4. System design and evolution includes three phases leading to an information center.
    a. During the first phase, lasting a few months until an efficient way to mesh data-gathering needs of the MIS with the other operational data flow is devised, one or two information expediters would route complaints, informations, court minutes, etc., to the center.
    b. During the second phase, lasting a few months but perhaps overlapping with the design phase, transition to new procedures is accomplished.
    c. Ultimately, computer capabilities will be employed. Thus all input forms must be

designed for facile inputting to a computer. Although computer terminals may be installed among various agencies, there should always be an information center where people can call to get information from people familiar with computer technology.

In Section IV, Objectives in the Four Areas Requiring Improvement are:

Felony Case Management

1. Reduce the delays in Municipal Court conduct of preliminary hearings.
2. Reduce the exceptions to the statutory constraint of 21 days from adjudication to sentencing from 40% to 10%.
3. Achieve a better match of the motivations of lawyers to felony case proceedings.
4. Achieve better allocation of trial resources.

Jury Management

1. The selection process should be automated.
2. The Municipal Court should receive an updated list of its prospective jurors every two months.
3. The goal of both the Municipal Court and the Superior Court should be to actually use at least 30% of the jurors summoned.
4. The average time for the conducting of voir dires should be no more than three hours.
5. Jury operations should be consolidated in one office.

6. Following such consolidation, the juror utilization level should be 60% or double the goal achieved in the immediate objectives.

Civil Case Management

1. The Superior Court in Ventura County should choose between the following alternatives:
   a. Individual assignment of cases with a coordinated trial calendar.
   b. Continuation of the Master Calendar System with a rigid schedule of pre-trial events subject to judicial consideration and exception.
2. The goal of the calendar management process is to bring the median time to a trial in all civil cases to one year or less with not more than 10% exceeding one year. This goal should be reached within one year.

Pre-Trial Detention

1. Establish in writing a clear policy on bail, own recognizance and penalty assignments.
2. Require the Sheriff's department to notify a defendant of his right to bail and own recognizance before interviewing him on the recognizance issue.
3. Have all forms filled out by the Sheriff's watch commander in misdemeanor cases resulting in a denial of own recognizance sent to the Clerk of the Municipal Court.

4. Remove the bail, own recognizance decision from the Sheriff's Office and have a judicial officer on duty at all times for this purpose.
5. Expand the investigative function to determine more fully the facts about the defendants who will most probably appear for trial or other court appearance.
6. Keep statistics about what kind of persons appear for trial and the relative effectiveness of the bail or detention decisions.
7. Explore the possible uses of alternative bail devices, i.e., cash bonds, property bonds, and custody arrangements.

III. CONCLUSION

The study includes many charts, tables, and diagrams that appear in the text as well as in the appendix. Reference may be made to these illustrations for quick familiarization with the structure and flow of operations of this system.

The study isolates four management areas requiring improvement: felony case management, jury management, civil case management, and pre-trial detention policy. These are of course common areas of concern to all judicial administrators. (See Volume I, pages 105 through 143.)

Section III of Volume I deals with the treatment of management information. The capabilities of the Initial Management Information System are discussed from pages 80 to 97. The Management Information System (MIS) is particularly interesting and deserves careful consideration by the reader.

SUMMARY NUMBER FOURTEEN

A STUDY OF THE SUPREME JUDICIAL COURT AND THE SUPERIOR COURT OF MAINE

by

The Institute of Judicial Administration

1970

Summary Prepared

by

Joe Hutchison

TABLE OF CONTENTS

I. INTRODUCTION

The Institute of Judicial Administration began this study in January, 1970, and concluded it one year later. This study focused on the Supreme Judicial Court and the Superior Court of the State of Maine and was undertaken at the request of the Judicial Council of that State.

This summary of the study will concentrate chiefly on the problems and recommendations concerning the Superior Court rather than the Supreme Judicial Court, although many problems overlap the jurisdiction of both courts.

A. Methodology

This study proceeded by way of "extensive interviews with judges and others involved in or associated with the administration of justice, field surveys, review of existing material.....and observation and analysis of court or court related procedures." Statistical profiles were taken of several thousand cases and analyzed with the assistance of a computer. The statistical survey data, along with several other sections, make up a separate appendix to this study.

B. Introductory Facts

The Maine court system is unusual in that the justices of the Supreme Judicial Court divide their time about equally between appellate work and trial work. Until 1929 the Supreme Judicial Court was the principal trial court as well as the highest appellate court; in that year the Superior Court was created in state-wide form. There was at that time little appellate work to perform and the duel function of the

Supreme Court justices was retained. At present these justices perform roughly one-fourth as much trial work as is done by Superior Court judges. If one of his own trial cases comes up for review a justice will excuse himself from participating in the decision. The study does not reveal any statistics on the number of reversals of these justices' trial decisions as against reversals of Superior Court judges' decisions. The Supreme Judicial Court differs from other appellate courts in two other respects: One, it is empowered to render advisory sentences; and, two, it has an appellate division to review the propriety of legally permissible sentences in criminal cases. The study recommends some changes, but none that alter the basic pattern of the Supreme Judicial Court.

In relation to other states, Maine's trial caseload backlog is small, but it is nevertheless increasing. The median time lapse for civil cases between complaint and disposition is 277 days; for criminal bail cases, between arrest and disposition it is 79 days. But 11% of criminal cases are over 2 years old and 8% are over 3 years old. The study has concluded that:

> With regard to the Superior Court we find a developing backlog and an irregular case flow that couples hasty disposition in some instances with undue delays in others.

The study contends that the basic cause of this malady is the "loose, sometimes non-existant, administrative control of court operations."

CONTINUED

3 OF 4

Among the court practices given special scrutiny by the study are:

1. The term system. The judges ride circuit from county to county on 30-day terms.
2. Lack of control over the civil and criminal calendars.
3. Judicial time lost.
4. The Superior Court does not have trial time to handle the de novo appeals from the District courts (the lower courts handling non-felonies).
5. Financing--only the Superior Court of the three state-wide courts of Maine is financed partly by the state and partly by the counties.

A substantial portion of the study focuses upon a management system for the courts of Maine. The study observes that "while a formal structure exists for establishing and executing administrative policy, it is essentially a paper creation which has never taken on the aspects of vitality, especially at the county level."

Other sections of the study address the case load burden caused by the de novo cases taken from the District Courts; see Limitation on Superior Court Caseload, pages 31 through 34. Personnel is discussed on pages 48 through 54. Prosecutions and Defense Services are discussed on pages 54 through 63. Financing is discussed on pages 63 through 66 and Summary and Conclusions appear on pages 66 through 72.

II. RECOMMENDATIONS

The recommendations of the study relating to the Superior Court appear in summary form (on study pages 66 through 73).

A. General Changes

1. The court should control the movement of criminal cases through the system.
2. The progress of civil cases to trial should also be controlled by the court.
3. Excessive travel requirements which waste judicial time and public money should be curtailed.
4. Additional administrative controls are necessary to assure maximum utilization of judge time.
5. Where possible, two judges should work together to achieve greater judicial diligence and equalization of the workload.
6. More effective supervision of judicial matters between terms is required.
7. Work patterns should be developed which would permit judges to adopt a measured, deliberative style.
8. Judges should be continuously available within easy access of those who use the courts.
9. Sustained judicial pressure is required to end the vacuum in operational management which exists at the trial level.
10. To become effective, the courts of Maine require proper judicial support personnel and support

services.

11. More intense space utilization is necessary to obtain improved per case costs.

12. The term system, as it exists today, should be modified or abandoned.

13. To replace the term system, the establishment of five administrative districts with more stationary judges is recommended.

14. General principles of the administrative district plan:

    a. To the extent possible, each district will be composed of two or more counties and manned by two or more judges.

    b. A presiding judge will be in charge of all judicial activities within the administrative district.

    c. One court location within the administrative district will be selected as the Superior Court's main base of operations (court center) and its facilities upgraded in order that it may provide all the services necessary to a modern, efficient judicial operation.

    d. Depending on circumstances and need, the judges will continue to operate on a limited circuit basis, holding court in each of the counties comprising the district on a flexible schedule determined by the presiding judge.

    e. Clerks' offices should be consolidated.

    f. The administrative district concept need not lead to consolidation of all court activity in one place. It can be employed advantageously using the concept of a central courthouse at the court center of the administrative district and satelite courts at outlying locations.

15. The Chief Justice should have authority:

    a. To name the presiding judge for each district to serve at his pleasure.

    b. To assign Superior Court judges to each district and to change such assignments at periodic intervals.

    c. To change the geographic lines of the administrative district whenever deemed necessary.

    d. To temporarily assign, especially in times of emergency, a Supreme Court judge to hear District Court matters or a District Court judge to hear Superior Court matters.

16. Venue in criminal cases should be made state-wide.

17. Venue in civil cases should be made state-wide.

18. Whenever possible court support operations should be consolidated so that better services may be rendered through employment of full-time, career-minded individuals.

19. Judge shopping should be discouraged while, at the same time, permitting attorneys for legitimate reasons some limited choices of judges.

20. Judges should attend seminars, conferences and meetings designed specifically for their advanced training.

21. The proposed administrative districting plan is set forth in detail in the study including geographic boundaries and number of judges.

22. The sites recommended for development as court centers are: Portland, Auburn, Augusta, Bangor and Houlton.

23. In busier counties, trial delays are attributable directly to the shortage of courtrooms. Four more courtrooms are urgently needed.

B. Limitations on Superior Court Case Load

1. In order to eliminate excessive re-trials of District Court criminal cases, the following basic alternatives are recommended:

   a. A constitutional amendment which would rescind the right to trial by jury for petty criminal offenses.

   b. A new category of offenses entitled "infractions" as a means of eliminating trials de novo in many cases.

2. Use of tape recorders to create transcripts of District Court proceedings should be investigated. (p. 33)

3. To reduce the number of appeals, District Court procedures should be altered as follows:

   a. Conditions for the payment of fines should be relaxed: defendants should be given additional time to make payments, or they might even be permitted to make installment payments.

   b. A single Superior Court judge should review appealed District Court sentences, and trials de novo after acceptance of guilty pleas should be prohibited.

4. The District Court should be given exclusive jurisdiction of all monetary claims up to $5,000.

5. The filing fee for civil actions in the Superior Court should be $25.00

6. Procedures should be developed for in forma pauperis filings in the Superior Court.

7. A separate filing fee of $25.00 should be imposed on civil matters removed to the Superior Court from the District Court.

C. Basic Operational Changes

1. Rule provisions and policy guides should be established which would bring the intital stages of a criminal action under more firm control of the courts.

2. Implementation of the complaint justice system is suggested both as a means to helping the police obtain summonses and warrants, and also for further securing the rights of accused persons

3. Legal assistance should be provided to aid police

in drafting complaints.

4. Bail commissioners should be replaced.
5. To enable defendants to be released on bail prior to appearance in court, either a station house bail schedule should be adopted or a citation/summons instituted.
6. Money bail should be relegated to a position of last resort and presumption in favor of release without bail he adopted instead.
7. Defendants not qualified for personal recognizance release should be considered for release upon deposit of 10% of the bond with the court.
8. Bail and pre-sentence investigations should be conducted by a specially created court investigatory unit.
9. The court investigatory unit should have responsibility for the supervision of the defendant until he returns to court for final determination of his case.
10. Defendants released on bail should be required to report weekly to the court investigatory unit.
11. A new form should be devised which would provide complete information about the arrest, the charges and the defendant. This would be of value to police, jails and courts. (p. 38)
12. Greater judicial control should be exercised in all cases in which defendants are incarcerated awaiting hearing and trial.

13. A weekly list of defendants held in jail awaiting court action should be prepared for the Administrative Assistant, the Superior Court and the District Court.
14. The weekly jail list should show length of incarceration and the next scheduled court date.
15. The judiciary should establish time limits for pre-trial detention; defendants who are held beyond the limits established should be entitled to have their cases transferred to the nearest available county where court is being held.
16. Plea bargaining should be specific and in accordance with the American Bar Association's Minimum Standards governing pleas.
17. The hearing court should ascertain that the defendant fully understands the plea bargain, and that he is clearly guilty of the charges to which he pleads.
18. Plea proceedings should be transcribed shortly after the hearing and a copy placed in the clerk's file.
19. Hearsay evidence should be admissible in grand jury proceedings, as well as expert reports in lieu of testimony.
20. The information should be used more frequently to enable defendants to hasten the accusatorial process.
21. The judiciary should prepare form indictments for the guidance of the grand jury.

22. Arraignment for the purpose of entering a "not guilty" plea should be eliminated where possible at the request of the defendant in favor of a written response returned by mail.

23. The courts in Maine should conform to the model timetable for scheduling criminal cases established by the President's Commission on Law Enforcement and the Administration of Justice.

24. A criminal case record sheet should be employed to gather information from all agencies concerned with a given criminal case.

25. More attention should be paid to the creation of records with current usable information.

26. Notice forms should be designed to simplify the mechanical process of preparing the notices.

27. The Probation Department should be relieved of its duty to prepare pre-sentence investigation reports.

28. Superior Court judges should be appointed to the sentencing review board.

29. The judiciary should hold an annual sentencing institute.

30. The Maine statute which fails to grant credit for pre-trial detention as part of a defendant's sentence should be revised to grant such credit.

31. Continuances for civil actions should be restricted to proper instances in which a written motion has been filed and where real need is evidenced.

32. A terminal date and enforced period for the completion of discovery should be established.

33. Attorneys faced with calendar conflicts should report that fact to the Administrative Assistant or to a future master calendar control office established on a state-wide basis.

34. Consent order procedures should be adopted. When an adversary is not available to give consent or if a motion is actually opposed, the court should develop a calendar for disposing of motions at different hours of a certain day.

35. All motions should be in writing and attorneys should prepare orders for the judge's signature.

36. A central reporting system should be developed for cases in which decision has been reserved.

37. Judges whose reserved decisions are not forthcoming within a specified period might be relieved of other duties to permit them the time to conclude their cases.

D. A Management System for the Courts of Maine

1. The duties of the presiding judge of each Superior court district, appointed by and serving at the pleasure of the Chief Justice, should include the following:

   a. Supervision of all trial judges sitting in the district.

   b. Assignment of cases to Superior Court judges and the designation of the court within the district and courtroom in which cases are to be heard.

c. Supervision of the civil and criminal trial calendars.

d. Representation of the judicial branch of government with all other agencies in all matters affecting the operations of the trial courts in the district.

2. Administrative policy affecting the operations of the trial courts should be made at regular meetings attended by all presiding judges:

a. The meetings should be chaired by the Chief Justice.

b. The Administrative Assistant to the Chief Justice should serve as secretary to the meeting.

c. A written agenda should be distributed in advance, with judges having an opportunity to submit agenda items.

d. Policy decisions made at the meeting should be committed to writing and widely distributed.

e. Subsequent district level meetings should be held to discuss implementation of policies.

3. Court committees should be formed to facilitate greater involvement in the decision-making process.

4. An annual meeting of all judicial employees should be convened to enhance involvement and commitment to the goals of the judiciary.

5. The District Court and the Superior Court should

be convened to enhance involvement and commitment to the goals of the judiciary.

5. The District Court and the Superior Court should be better integrated into a single, closely-knit court system, by taking the following steps:

a. There should be greater interchange of judges between the courts.

b. Where possible, both courts should be housed in the same building.

c. A common clerical base for both courts should be developed.

d. Clerical operations for both should be managed centrally by one Chief Clerk.

e. The Chief Judge of the District Court should become an ex officio member of the Superior Court presiding judges' panel and participate in all its meetings.

f. Administrative actions taken by the Chief Judge of the District Court should be subject to the prior approval or authorization of the Chief Justice of the Supreme Judicial Court.

6. The Administrative Assistant to the Chief Justice, acting pursuant to detailed rules, should be charged with the following duties.

a. To enforce the rules, policies and directives of the Supreme Judicial Court and the Chief Justice relating to matters of administration.

b. To implement the administrative programs

adopted by the judiciary.

c. To take charge of all judicial support functions within the state.

7. A management analyst and a statistical analyst should be added to the staff of the administrative office.

8. In order for the judiciary to achieve complete internal control over its operation, as well as true equality with the executive and legislative branches, the judiciary must develop its own internal mechanism to achieve accountability.

9. The Judicial Council should serve the judicial branch in a watchdog capacity as a policy advisory and program review board.

10. The Judicial Council should help formulate both short-term and long-term objectives for court management, evaluate administrative performance in terms of progress toward meeting those objectives, and recommend new methods or programs to achieve better progress.

11. Studies concerned with the administrative aspects of the courts' operations should be conducted by the court administrator rather than by the Judicial Council.

12. Rules and methods of practice and procedure should be reviewed by the Supreme Judicial Court and its committees rather than by the Judicial Council.

13. The Judicial Council should continue to evaluate the work accomplished and the results produced by

the judicial system and formulate the courts' legislative program.

14. The judicial Council should meet frequently--at least quarterly, but as often as monthly if need be.

15. At each meeting of the Judicial Council, the Administrative Assistant should report on management and operations of the courts, and the current status of calendars.

16. Laymen should replace the Clerk and Attorney General presently serving as members of the Judicial Council. Lay representatives should be appointed by the Governor.

17. Judges who serve as members of the Judicial Council should be appointed by the Chief Justice.

18. Attorneys who serve as members of the Judicial Council should be appointed by the Maine State Bar Association.

19. The Judicial Council should prepare an annual report summarizing its work for the year and containing recommendations for the forthcoming year.

20. A statistical report prepared by the Administrative Assistant should accompany the Judicial Council report.

21. In order to keep the public informed with regard to the affairs of the judiciary, the Chief Justice should prepare each year an annual report on the "State of the Judiciary."

22. This report should contain an assessment of the judiciary's progress and a summary of recommendations developed over the previous year by the Judicial Council, as adopted by the Chief Justice.

23. A biennial citizen conference should be held for the purpose of discussing judicial topics with the lay public.

24. A Judicial Qualifications Commission should be created.

25. A Judicial Qualifications Commission should be empowered to perform the following tasks:

    a. Receive complaints, conduct confidential investigations and hold formal hearings when necessary.

    b. Recommend dismissal of a complaint or in the alternative appropriate disciplinary measures including: warning, censure, suspension, compulsory retirement or removal from office.

26. The Supreme Judicial Court, after receiving the Commission's factual evidence and recommendations, should make the final dispositions.

27. The Judicial Qualifications Commission should be granted full subpoena powers. The Commission should have authority to order psychiatric and medical examinations. (p. 30)

28. The Judicial Qualifications Commission should be composed of laymen, lawyers and judges presently serving on the Judicial Council.

29. A staff attorney should assist the Commission in conducting investigations.

III. CONCLUSIONS

The main thrust of the one-hundred thirty-seven recommendations issued in this study is directed toward improving a structure approach to administrative functions. This is perhaps the most valuable aspect of the study.

The judicial Qualifications Committee would provide more subtle machinery for dealing with sub-standard judges, although some of the recommendations (specifically, that the Commission be empowered to order psychiatric examinations) are both unfeasible and unpalatable. Such power or threat of power might give perfectly qualified judges cause to shy away from accepting this public office for fear of having their reputations impugned--the simple fact that a judge had been ordered to be psychiatrically examined is enough, in this day and age, to permanently stigmatize that individual. As a whole though, the recommendations concerning the proposed Commission are sound and go a long way to replace what is now a self-regulating system.

Other recommendations such as abolishing the right to a trial by jury for petty offenses deserves much more thorough analysis and criticism. If viewed as the only alternative solution to backlog or appeal case load problems, it stands only to serve expediency, not the quality of justice. The state's judiciary may in the long run be better served by appointing additional judges or by transfering these jury

trials to another judicial level.

The desirability of having judges ride circuit rather than remain in one courthouse year in and year out seems to have been balanced out by the fact that judicial time spent in travel is not being used in the courtrooms. "Thus the effective working strength of the Superior Court bench is really nine judges, rather than eleven." The establishment of a Five District plan and the abolishment of the term system should increase the efficiency of the Superior Court. This plan may begin a process whereby circuit riding is abolished altogether.

The recommended "public defender-assigned counsel system" is an interesting proposal that deserves more scrutiny. The study reveals that under the present assigned counsel system the defendants appear to be getting unequal representation and treatment under the law. For example, in 61 jury cases where assigned counsel tried the case to conclusion, they lost 66% of these cases. By contrast, retained counsel lost only 38% of cases that went to conclusion. Of those defendants represented by assigned counsel, 58% received prison terms whereas only 22% of those defendants represented by retained counsel received prison terms. The study recommends that the present assigned counsel system be replaced, but also observes that going to a statewide public defender system would not insure quality justice either. The combined system proposed puportedly provides the best of both systems, and in using part-time or fee basis counsel provides the best of both systems, and in using part-

time or fee basis counsel it may be cheaper as well.

The study's approach to sentencing is also worth mention. Appellate review of sentencing and the suggested creation of a sentencing institute to be held annually comprize part of the study's recommendations. It is also suggested that Superior Court judges be appointed to the appellate review board.

SUMMARY NUMBER FIFTEEN

ANALYSIS OF THE HENNEPIN COUNTY (MINNESOTA) MUNICIPAL COURT

by

The Institute for Court Management

University of Denver Law Center

1971

Summary Prepared

by

Joe Hutchison

TABLE OF CONTENTS

I. INTRODUCTION

The purpose of this report is to provide meaningful insights into the operations of the Hennepin County Municipal Court. The report is organized into three main sections: I, the administrative structure of the county and Municipal Court; II, the process flow of a case including criminal intake, arraignment, trial and calendaring; III, court, crime and county jail statistics.

II. ADMINISTRATIVE STRUCTURE

This section describes the administrative structure of the Municipal Court and the agencies with which it works in processing criminal cases. The county government structure, the Minnesota court structure and the jurisdiction of individual courts are discussed.

A. General Court Structure

Hennepin is the first county in Minnesota to have a county-wide court system. The Hennepin County Municipal Court (HCMC) was established under a 1963 special law that became effective in January, 1965. The HCMC replaced local courts and Justices of the Peace in 49 municipalities in the county. Prior to unification, justice varied within the county, some Justices of the Peace had no legal training, and many employees worked only part time.

The most frequent offenses handled by the court are traffic violations (55%), breach of peace, public drunkeness, petit theft and simple assault. There are five divisions of the HCMC. Division I, the main division, is located in

downtown Minneapolis.

Division I has two criminal sections, two traffic sections, a general assignment section, a special term section and a conciliation section. The general assignment section has six judges. The other sections have one judge each. The other divisions process the same type of cases as the main division, but one judge handles the entire court calendar. The sixteen judges on the Municipal Bench are elected to six-year terms of office in non-partisan elections. The Bench elects its Chief Judge. The judges rotate throughout the court parts every four weeks.

B. Jurisdiction

The Municipal Court is the lowest ranking court in Hennepin County. In criminal matters, the court has jurisdiction to arraign all defendants who commit an offense within the county of Hennepin; to try or otherwise dispose of all ordinance violations and misdemeanors; and to conduct preliminary hearings in felony cases, where if substantiated and not reduced, the defendant is bound over to the District Court of Minnesota.

The court has jurisdiction over civil actions at law in which the amount of controversy does not exceed $6,000, excepting cases involving title to real estate. The court has jurisdiction whether or not title to real estate is involved in actions of forcible entry and unlawful detainers involving land located wholly or in part within Hennepin County. The court has territorial jurisdiction to enforce summonses served in civil, forcible entry and unlawful de-

tainer actions only within the county of Hennepin. The court can enforce garnishment summonses, or subpoenas and all other civil and criminal processes and orders anywhere in the state. The court has no jurisdiction over: 1) any action where the relief asked is purely equitable in nature; 2) action for divorce; 3) issuing any order in proceedings supplementary to execution.

Traffic violations in the county are handled by the Traffic Violations Bureau. Anyone charged with a traffic offense where conviction would mean the revocation of his driver's license is entitled to demand a jury trial.

The judges of the Municipal Court also serve as judges of the Conciliatory Court, which has jurisdiction to hear, conciliate, try and determine civil actions where the amount in controversy does not exceed $350. The territorial jurisdiction of this court is the same as that of the Municipal Court. The Municipal Bench may appoint referees to serve in Conciliation Court. Conciliation Court is informal: lawyers and bailiffs are usually not present.

C. Non-Judicial Department Structure

The Court Administrator is appointed by the municipal bench. He supervises and controls the non-judicial activities of the court. The primary duties of the court administrator are: coordinating all staff activities; planning, developing and implementing improved management methods; preparing and administering the court budget; overall personnel administration; compiling and analyzing statistical data concerning the status of judicial business; providing

public relations; and maintaining a liaison with other courts, county officials and the legislature.

The Assignment Office provides coordination between the court and counsel. The Assignment Office schedules trial duties for jury cases and special court trials. The functions of the law clerk, hearing officer, staff assistants, Criminal Court Department, Traffic Court Department, Civil Court Department, Conciliation Court Department, Accounts and Judgements Department, Violations Bureau and Suburban Courts are described. The court facilities and its budget are discussed.

The study also discussed court supportive agencies, such as the Prosecuting Attorney's Office, the Public Defender Program, the County Sheriff's Office, court appointed counsel and Attorneys' Referral Service lawyers.

III. FLOW PROCESS

The purpose of this section is to describe the process flow of a case. The criminal intake process is described first.

A. Criminal Intake Process

It is the responsibility of the Police Department to arrest the alleged offender after the commission of a crime, secure evidence relating to the crime and present the prisoner and evidence in court for a judicial determination.

Following an arrest, the defendant is usually brought directly to the Minneapolis Police Headquarters for processing. An arrest report is filled out by the arresting

officer and the defendant may be held for further investigation.

If a summons is substituted for an arrest or used following an arrest, the defendant is told to report to court on a certain day for arraignment. There is no further contact with the defendant, unless he pleads "not guilty" at the arraignment, necessitating a trial.

Following the arrest and the detention of the offender without a complaint, the arresting officer discusses the facts with the prosecuting attorney. If the prosecutor decides no offense has been committed or that the evidence is not sufficient to charge the suspect, he is released from jail.

If the prosecutor determines that there are adequate grounds for a complaint, a complaint and warrant for arrest are drawn up. The complaint, arresting officer and/or injured party, are taken before a Municipal Court judge to attest to the facts in the complaint. If the judge agrees that there are adequate grounds for a complaint and warrant to be issued, he signs the documents. A copy of the complaint is then taken to the Municipal Court Clerk's Office for docketing. The jailer prepares a court sheet which states which suspects are in his custody and what offenses they are charged with. This sheet, along with a copy of the warrant, is sent to the Criminal Clerk for preparation of the daily arraignment calendar. The clerk collects the appropriate complaint (forwarded to him by the prosecuting attorney) and warrant; he places a docket number on the documents and

the calendar sheet and proceeds to type information such as defendant's name and the charge onto the calendar. The arraignment calendar therefore becomes a master sheet onto which all future court transactions with respect to the case are posted.

After processing and investigation, and after charges have been formally lodged against the defendant by the officer, the defendant is booked at the County Jail. During booking the defendant is identified, fingerprinted, photographed and searched. At this time a booking sheet is made up. It is sent to the Bureau of Identification, and a copy is sent to Data Processing for billing to the municipality for prisoner costs.

If the offense for which defendant has been arrested is a bailable misdemeanor, prior to arraignment the defendant may post bail in the County Jail. The Municipal Court has an approved bail schedule which the jailer may adjust downward, depending on the amount defendant is able to post. When the defendant is released from jail he is given a notice indicating the time and day he is to appear in Municipal Court for arraignment. The bail money is turned over to the Municipal Court by the Jailer. Through a special program, a Probation Officer is present most of the night and during the day at the jail to evaluate the defendants for release without bail and for Public Defender eligibility. The program has achieved significant results in these areas and also in the area of early identification of medical, psychiatric and sociological problems. This has served to alert

the court and probation office early in the day to cases which need immediate action.

A significant number of defendants were released with no bail required as a result of this program. Only five defendants out of 249 failed to reappear, and two of these returned after being contacted by a probation officer.

A special program has been set up called the Hennepin County Diversion Project which is funded by the Department of Labor. The purpose of the program is to divert selected defendants from the Criminal Justice Process between arrest and arraignment and to provide them with an intensive six-month evaluation and follow-up. Services offered by the project include casework, groupwork, job development, vocational counseling, job placement, vocational training and education. If a person successfully completes the six-month program, the staff will recommend dismissal of the initial complaint.

The system provides for release of a defendant in the custody of his attorney. The attorney, in effect, is guaranteeing that the defendant will be present in court at the time of his arraignment. Public Defenders do not have this privilege.

B. Arraignment

If the defendant has not posted bail, he is placed in a detention cell to await arraignment in Municipal Court, the following day. The purpose of arraignment is to bring a prisoner before the court to be informed of the charges against him and to answer the charges contained in the complaint.

At the time of arraignment, the court clerk reads a statement that advises defendants of their right to a lawyer or a Public Defender. The judge then enters the courtroom and processing begins. The clerk calls each case on the calendar. The charges are read, and the defendant is asked how he pleads. Prior to entering a plea the judge asks the defendant if he understands the charges. The Judge informs him of his right to counsel and asks if he desires the aid of counsel.

If the defendant has no counsel but desires the services of a lawyer, the case will be continued for a period up to two weeks. If the defendant is eligible for representation by the Public Defender, he may be arraigned that same day. If he is ineligible for Public Defender representation and does not know a lawyer, the court will refer him to the Attorney Referral Service of the County Bar Association.

If the defendant enters a plea of guilty to a misdemeanor he usually is sentenced that day, depending on whether a Probation Report is requested by the Court and whether it is completed that day. If the defendant receives a suspended sentence, he is advised by the courtroom clerk that he is free to leave the courtroom. When the defendant is fined, he may pay the fine in the clerk's office to an Accounting and Judgements Clerk and then is free to depart.

Misdemeanants entering a plea of not guilty are given a trial date three to six weeks from arraignment, depending on whether a court or jury trial is requested. For a jury trial, a notice is sent to all parties three weeks in advance

of the trial date. For court trials, no further notice is given to parties following the original assignment at the time of arraignment.

In cases involving felonies or gross misdemeanors, the defendant is given the option of demanding or waiving a preliminary hearing, used to determine whether there is reasonable cause to believe that the defendant committed the crime. If defendant waives the preliminary hearing, he is immediately bound over to the District Court which has jurisdiction to try felonies and gross misdemeanors. If he demands a preliminary hearing, the case will be scheduled for a hearing in two to four weeks, depending on the attorney's schedule and the judge's availability.

The procedure at the preliminary hearing varies with the presiding judge with respect to examination of the complainant and prosecution witnesses. After the prosecution presents its case, the accused, if he desires, may examine his own witnesses. The accused has the right to cross-examine prosecution witnesses, has the right to the assistance of counsel and has the right to have an attorney appointed for him if he is indigent.

Upon completion of the hearing, if the judge is satisfied that no offense has been committed, or that probable cause to believe that the accused is guilty is lacking, the prisoner is immediately released (which does not preclude the Prosecuting Attorney from obtaining a new complaint charging the accused with the same offen e). If the judge decides that the accused probably committed the offense

charged, the case is bound over to the District Court for arraignment. If the accused has posted or does post bail with the Municipal Court, he is temporarily released until the arraignment is held. If the bail is not put up, he is committed to the County Jail to await arraignment in the District Court. A stenographic record of the hearing is made, and the transcript is sent to District Court if defendant requests it.

When a case is not disposed of, but is adjourned for hearing, trial or sentencing, bail is generally set or the defendant is released on his own recognizance. Generally the Prosecuting Attorney will make a recommendation on bail amounts based on the nature of the charge and defendant's prior record. A defendant who is convicted and sentenced to a jail term or who is unable to post bond is committed to the custody of the County Jail. The commitment papers indicate whether the defendant is to serve a sentence at the workhouse or be detained for a future court appearance.

A defendant may be released on bail after being placed in the County Jail by having a friend or relative post the bond or by employing a bondsman.

C. Trial

The purpose of a trial is to determine the guilt or innocence of the accused. Misdemeanor court trials are held daily. Minnesota Statute 488A.10 Subcharter 6 states that:

> "A charge of violation of any municipal ordinance, charter provision, rule or regulation, other than a violation dealing with driving while under the

influence of an alcoholic beverage or narcotic drug, speeding that is a third or further offense occurring in one year, or careless or reckless driving where a personal injury is involved, shall be heard, tried and determined by a judge without a jury, and the defendant shall have no right to a jury trial on such a charge, except as otherwise required by law."

The state must prove its case against the defendant. A City or Municipal Attorney acts as prosecutor. On the basis of the evidence presented at the trial, the judge or jury will make a finding of either guilty or not guilty. A "non guilty" finding terminates the case. A "guilty" finding or a plea means that the defendant is convicted and the judge then determines the sentence.

D. Sentence

Punishment for a misdemeanor cannot exceed 90 days in the workhouse and/or a $300 fine for each charge on which the defendant is found guilty. Sentence is pronounced following the trial, usually allowing a few hours for a pre-sentence investigation by the Probation Department. Uniformity is not found in sentencing. One reason is that pre-sentence investigations may show the reasons for the individual's behavior, and hence the reason for individual sentencing variations.

Based on the nature of the correctional facilities, the judge might impose one of the following alternatives to incarceration: 1) unsupervised release, which usually takes

the form of a recommendation for a) unconditional discharge or b) conditional discharge; and 2) supervised release, where the defendant is paroled to the custody of the Probation Department.

Convictions on ordinance violations are appealable to the District Court. All civil cases and statutory violations are appealable directly to the Supreme Court.

If a defendant fails to appear for trial, a bench warrant for his arrest may be issued. A six-month survey showed this occurred approximately 6% of the time. The case is taken off the calendar until the defendant surrenders or is returned to court pursuant to the warrant.

IV. STATISTICS

Section III of the report is a presentation of court, crime and county jail statistics. A summary of crime statistics for 1969/1970 including type of offense, number of inmates, days served and average length of stay are presented. Court statistics on civil cases, criminal cases, traffic cases and conciliation cases in terms of cases pending, cases disposed of and type of disposition are given for 1968, 1969 and 1970. Court Budgets for 1969, 1970 and 1971 are presented.

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