HOW TO IMPLEMENT CRIMINAL JUSTICE STANDARDS FOR SPEEDY TRIAL

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Published by the American Bar Association Section of Criminal Justice, 1800 M Street, N.W., Washington, D.C. 20036, under a grant from the U.S. Department of Justice Law Enforcement Assistance Administration (#75-DF-99-0062). Points of view and opinions expressed herein are not necessarily the official position of the American Bar Association, the U.S. Department of Justice, the Law Enforcement Assistance Administration, or the Institute of Judicial Administration.

PREFACE

The American Bar Association Section of Criminal Justice is pleased to present this report on *How to Implement Criminal Justice Standards for Speedy Trial*—covering one of the most exciting and important areas of criminal justice improvement now underway.

The principal author of this brochure was Ian Bruce Eichner, Assistant Director of the Institute of Judicial Administration in New York City. Marianne Stecich and Steven Mendelsohn of the IJA staff also assisted in the project.

This is part of a series of eight brochures dealing with implementation of criminal justice standards. Other subjects included in the series are considerations of ways in which to bring about implementation of police standards, pretrial release standards, corrections standards, and an overall guideline on how to implement standards and goals. Each subject is examined from a number of perspectives, including the fiscal impacts of implementation. Additionally, there are publications on ways in which civic and religious leaders can work toward criminal justice improvement.

Copies of all of these brochures may be obtained at no charge from the American Bar Association Section of Criminal Justice, 1800 M St., NW, Washington, DC 20036.

INTRODUCTION

The prompt trial of criminal cases has become a major objective of the criminal justice system. Highly publicized problems of case delay, particularly in felony courts, have adversely affected the public's confidence in the functioning of the judicial process. Not only does delay adversely effect an accused's constitutional right to a speedy trial, but it also hinders effective enforcement of the criminal law.

Many jurisdictions concerned with case delay have enacted or are considering enacting, speedy trial rules or legislation. The *American Bar Association Standards Relating to Speedy Trial*[1] provide a model for drafters of speedy trial legislation. Specifically, the standards clarify the boundaries of the Sixth Amendment right to a speedy trial by addressing:

1. the time within which a defendant must be brought to trial,
2. which defendants are covered by the rule,
3. what the consequences of excessive delay should be.

Adopting such rules without some assurance that the courts will be able to dispose of cases within set time limits could result in large scale dismissals of pending cases. Dismissal of large numbers of cases is not desirable and is likely to be met with opposition from judges, prosecutors, legislators, the media and the public.

In order to achieve the goal of speedy trial, a jurisdiction must undertake a carefully conceived planning process that would involve key participants in the criminal justice system. The process would be directed toward:

1. documenting the extent of delay at present,
2. developing management and administrative techniques to insure effective use of existing resources,
3. discussing the effect of adding resources to ensure compliance with time limits imposed, and
4. developing an on-going monitoring system.

The aim of this pamphlet is to describe briefly the planning process necessary for successful implementation of a speedy trial program. It is not intended to define and discuss all of the possible causes of delay. However, it is important for the courts to understand the depth and complexity of the problem of delay and to structure requests for additional court resources in the context of an overall plan to achieve prompt trial. Such a plan may very well require additional resources for non-court agencies whose problems directly impact upon the courts' ability to oversee the prompt adjudication of criminal cases.

The pamphlet begins in Section I with a brief discussion of the ABA's *Standards Relating to Speedy Trial*; here the standards are compared with other national standards, and the key elements of the standards are discussed. Section II sets forth the kinds of information needed to ascertain the nature and extent of case backlog. Section III details a number of critical administrative practices and procedures that substantially impact upon the courts' ability to manage its caseload effectively. This section also sets forth selected methods for making more efficient use of existing court resources. Section IV describes plans for obtaining additional resources for the processing of criminal cases, including a discussion of the positive and negative considerations of each method.

TABLE OF CONTENTS

I. THE AMERICAN BAR ASSOCIATION STANDARDS RELATING TO SPEEDY TRIAL—ISSUES TO BE CONSIDERED IN ADOPTING LEGISLATION MODELED ON THE STANDARDS

A jurisdiction planning to adopt a speedy trial rule or to conform its present rule to the ABA proposal has several preliminary questions to consider. First, it should consider the ABA standards individually, examining most closely the reasoning behind the recommendations which are at variance with other national standards and individual state rules. Second, it should decide whether it wishes to be more specific than the ABA recommendations in certain areas, e.g. adopt more stringent guidelines for deciding on continuance requests. Finally, it should decide whether the most practical and effective way to adopt such a rule is by judicial order or legislative enactment.

The essence of the ABA standards is that each jurisdiction should commit itself to bringing defendants to trial or other disposition within a specified time running from arrest or filing of charges to disposition. Further, failure to afford defendants a trial within the period specified should lead to absolute dismissal of the charges against the defendants. These are the basic principles.

The standards also address the following related problems:

1. At what point should the time begin to run?
2. Should actions of a defendant toll the time and for how long?
3. What is the court's role in ensuring compliance with time limits?

The ABA speedy trial standards are divided into four parts. Part I relates to calendar control and scheduling. It requires, first, that control over the trial calendar be vested in the court rather than the prosecutor's office, and, second, that cases be scheduled on a priority basis rather than the order in which they are filed in courts.

Court control over calendaring is aimed at preventing the prosecutor from gaining an unfair advantage over the defendant and also places the responsibility for the flow of cases squarely upon the court. Criminal cases are to be given preference over civil cases and cases involving defendants in custody or defendants whose pre-trial liberty is reasonably believed to present unusual risks are to be given preference over other criminal cases.

It is important to understand that to accord priority of criminal cases over civil may entail reallocation of resources from the civil to the criminal side which may increase delay on the civil side. The allocation of new resources

and reallocation of existing resources is addressed in detail in Section IV.

The adoption and implementation of a strict continuance policy is one of the most crucial areas in ensuring the success of any speedy trial rule. The ABA recommends that the court grant continuances only upon a showing of good cause and only for so long as is necessary.[2] A court might wish to strengthen such a policy by promulgating standards to guide its judges in granting or denying continuances. The Federal Speedy Trial Act of 1974 offers broad guidelines (§3161(h)(8)(B)) and a few states have adopted specific guidelines.[3]

Part II of the ABA standards deals with determining what is a speedy trial. A speedy trial rule may set forth an overall time limit from arrest or filing of charge to trial, or it can detail the time allowed between various stages in the prosecution of a criminal case or both. The ABA standards embrace the overall time limit approach. The ABA recommends that each jurisdiction express its own speedy trial limit in terms of days or months running from a specified event. The specific number of days or months, however, are left to location determination, as is the specified event.[4]

The Present's Commission on Law Enforcement and Administration of Justice *Task Force Report: The Courts* (1967) proposed a detailed timetable—breaking the overall time into distinct segments—which, if adhered to, would result in the disposition through trial of almost all criminal cases within four months after arrest.

The National Advisory Commission on Criminal Justice Standards and Goals in its volume on Courts (1973) proposes an average time limit between arrest and trial of 30 days in misdemeanor prosecution and 60 days in felony prosecutions. However, it also recommends specific time frames for the various intermediate stages prior to trial.[5]

The Federal Speedy Trial Act[6] also provides maximum time limits for broad stages in the processing of criminal cases: 30 days between arrest or summons and indictment or information; 10 days between indictment and arraignment on the indictment; and 60 days between arraignment on the indictment and trial.

As can be seen from the foregoing a jurisdiction considering adopting the ABA speedy trial standards must determine the time limits of its rule, either in terms of an overall time standard, or by placing limitations between various stages of prosecution. One important factor to consider in fixing a standard is the extent of delay within the existing system. Specifically, how many cases are pending for what period of time. This information can be

used both as a baseline to measure subsequent change and to determine what overall or individual time standards should be adopted. A technique for collecting this information is set forth in Section II of this handbook.

Although most speedy trial statutes are silent as to whether the defendant must demand trial before the time commences to run, the ABA recommends a general no-demand policy and discusses at length when the time to trial should begin to run.

The ABA rejects the argument that a demand rule will prevent technical evasion of the charges by the defendant. The ABA position is that the duty of procuring prompt trial is upon the state, and hence the time should begin to run from a specified event, either arrest or the filing of charges.

Both the standards and the Federal Speedy Trial Act provide specifically for the periods which should be excluded in computing the time to trial. However, the ABA standard allows exclusion for delay resulting from congestion of the trial docket when the congestion is attributable to exceptional circumstances, while the federal rule does not.

Another area in which the ABA standards depart from many state speedy trial rules is in their protection of the right to speedy trial of defendants serving a term of imprisonment for another offense. Part III of the standards proposes special procedures for such defendants. This part includes a detailed discussion and comparison of the ABA recommendations with the Uniform Mandatory Disposition of Detainers Act and the Interstate Agreement on Detainers.[7]

Part IV of the speedy trial standards recommends, contrary to the position taken in several states and the Federal Speedy Trial Act, that the consequence of a speedy trial should be absolute discharge or dismissal.

Part IV addresses three distinct issues: (1) discharge as a consequence of unreasonable delay, (2) absoluteness of the discharge, and (3) burden on the defendant to move for discharge.

The Federal Speedy Trial Act incorporated the ABA standard with regard to issues (1) and (3), but does not provide that all discharges be absolute. Rather, a court should determine on a case-by-case basis whether the charge should be dismissed with or without prejudice, depending on a number of factors. A court should consider the seriousness of the offense, and the circumstances which led to dismissal. Additionally, a court should consider whether reprosecution will undermine the intent of the speedy trial act.

Similarly, the state speedy trial statutes are in general agreement with the ABA recommendations as to (1) and (3), but there is no consensus as to whether dismissal of the case should forever bar prosecution for the offense. The ABA standards on speedy trial contain commentaries on some of the individual states' provisions.

Neither the National Advisory Commission nor the President's Task Force on the Courts proposes sanctions to enforce their recommendations.

II. DOCUMENTING CASE BACKLOG AND DELAY

Before implementing a plan to reduce delay, it is necessary to assess the extent and identify the sources of delay. Statistical reports aimed at identifying specific sources of delay should be commissioned as a first step in a speedy trial program. These reports will also provide baseline data against which to measure changes resulting from new programs, procedures or resources.

In a jurisdiction with computerized court statistics, the reports can be generated from a fairly simple program. In other jurisdictions, the information required for the reports can be obtained in one data collection effort. See Appendix A for a form containing all the necessary data elements. Each report and time study should be prepared for the smallest unit in the court system implementing the rule; e.g. in a state where the courts sit by county, the suggested procedure should be done for each county. This procedure will enable each unit in the court system to measure changes in their case backlog and delay and will also permit state court administrators to identify problem areas.

The first report should be of the age of all cases in the jurisdiction, broken down by county or other geographical subdivision. It should contain summary information about the extent of delay and pinpoint the subdivisions where the problem seems greatest. Since the standard accords priority to the prosecution of jailed defendants over released defendants, the report should distinguish between the two groups. Table 1 suggests a format for such a report. Subsequent reports focus on the nature and sources of delay.

A court which has the statistical capability should also report the number and age of cases at various *stages* in the prosecution of a case. This report would be very useful for focusing on delay points, but it might be prohibitively difficult in a jurisdiction which does not have computerized judicial statistics and is therefore not essential. Table 2 contains a sample of such a report.

TABLE 1
AGE OF PENDING CASELOAD—STATEWIDE FIGURES
FELONIES

	Total Caseload		0-2 Months		2-4 Months		4-6 Months		6-9 Months		9-12 Months		Over 12	
	Jail	Released	Jail	Rel.	Jail	Rel.	Jail	Rel.	Jail	Rel.	Jail	Rel.	Jail	Rel.
County A														
County B														
County C														
County D														
County E														
County F														

NOTES:
1. The same report should be prepared for misdemeanors.
2. A court may find different time frames more suitable.

TABLE 2
AGE OF PENDING CASELOAD—AT PARTICULAR PROCESSING STAGES

	Number of Cases in Which Last Action Was					
	Arrest	First Appearance	Preliminary Hearing	Formal Charge	Arraignment	Pre-Trial Conference
Less Than 1 Week						
1 Week But Less Than 1 Month						
1 But Less Than 2 Mos.						
2 But Less Than 3 Mos.						
3 But Less Than 4 Mos.						
4 But Less Than 5 Mos.						
5 But Less Than 6 Mos.						
6 But Less Than 9 Mos.						
9 But Less Than 12 Mos.						
12 Mos. and Over						

NOTES:
1. These are suggested key stages in the processing of a case and may vary depending on procedural practices in each jurisdiction.
2. This report should be completed by the smallest working unit, *e.g.*, district or county court.

Next, it would be useful to examine more closely those cases that exceed the proposed speedy trial rule. If, for example, the rule is a six-months limit from arrest to trial, detailed reports should be made of all cases pending longer than six months. Such reports would focus more directly on possible causes of delay.

One report might be a breakdown of cases older than six months by type of case, to see whether particular kinds of cases take longer than others. The more detailed the case categories, the more useful the report will be. The use of overly broad categories will probably conceal these problem areas. Since many criminal defendants are charged with several counts stemming from one incident, the most serious offense should be used for reporting purposes. Table 3 includes a suggested format for this report.

TABLE 3
CASES OVER SIX MONTHS OLD—BREAKDOWN BY TYPE OF OFFENSE

Offense	Total Pending	Pending 6-12 Months	Pending Over 12 Months
Murder			
Manslaughter			
Burglary			
Robbery 1			
Robbery 2			
Assault 1			
Assault 2			
Larceny			

NOTES:
1. The offenses listed are examples of more serious crime categories. These may vary from jurisdiction to jurisdiction.
2. There should be a report for each court.

Pending cases broken down by type of attorney (retained, court-appointed, public defender) is designed to yield information about which group contributes more to delay. In districts which have an individual assignment system, a breakdown of cases by individual judges would show whether certain judges have signifi-

cantly older cases than others. Tables 4 and 5 contain formats for these reports.

TABLE 4
CASES OVER SIX MONTHS OLD—BREAKDOWN
BY TYPE OF ATTORNEY

	Total Cases Pending	Cases Pending 6-12 Months	Cases Pending Over 12 Months
Privately Retained			
Court-Appointed			
Public Defender			
Pro Se			

TABLE 5
CASES OVER SIX MONTHS OLD—BREAKDOWN
BY JUDGE

	Total Cases Pending	Cases Pending 6-12 Months	Cases Pending Over 12 Months
Judge A			
Judge B			
Judge C			
Judge D			

Misdemeanor and felony cases should be analyzed separately to determine if there are differences either in overall delay from arrest to disposition or between key points in the prosecution of particular types of case. This information will also be useful in measuring how far the court is from the model standards.

A time study should be also made of recently terminated cases in which defendant's initial plea was not guilty. To limit the study to cases which were actually tried could result in a distorted study if, as in many jurisdictions, very few cases are actually tried and the cases which are, might not be representative of the courts' caseload and processing.

The study should be done of a controlled sample of cases terminated during the previous year. A sample drawn from a period shorter than a year may be inaccurate if it includes cases processed during an unusually slow or busy period; such irregularities will ordinarily even out over a year. Medians, rather than averages, should be used since averages might be distorted by a few unusually old cases. A statistician should be used in developing a statistical sample.

In order to pinpoint delay as precisely as possible, the time intervals should be measured between each point in the processing of a case. For example, using the key-points in the President's Task Force report—the data to be captured in the study are: arrest, first judicial appearance, preliminary hearing, formal charge (indictment or information), arraignment, trial.

The report should distinguish between cases which actually went to trial and those in which guilty pleas were entered before trial commenced. It should also distinguish between felonies and misdemeanors. If a court wishes to obtain even more refined information, it might also break down the time lapse information by type of case, status of defendant, type of attorney or judge.

Table 6 is a suggested format for reporting the time lapse information. Appendix B contains a form which could be used for data collection.

TABLE 6
TIME LAPSE STUDY OF CASES TERMINATED AFTER INITIAL PLEA OF NOT GUILTY

	Number of Days Between				
	Arrest and First Judicial Appearance	First Appearance and Preliminary Hearings	Preliminary Hearing and Formal Charge	Formal Charge and Arraignment	Arraignment and Trial
FELONIES Trial Begun					
Guilty Plea Before Trial					
MISDEMEANORS Trial Begun					
Guilty Plea Before Trial					

APPENDIX A
PENDING CASELOAD INVENTORY DATA COLLECTION FORM

1. Case	2. Date Form Completed
3. County	4. Date of Arrest/Summons
5. Status of Defendant ☐ Jailed ☐ Released	6. Judge Assigned
7. Type of Attorney ☐ Privately Retained ☐ Public Defender ☐ Court Appointed ☐ Pro Se	8. Offense Charged ☐ Murder ☐ Larceny ☐ Involuntary Manslaughter ☐ Assault ☐ Burglary ☐ Rape ☐ Robbery ☐ Arson ☐ Embezzlement ☐ Perjury
9. Last Action ☐ Arrest ☐ Arraignment ☐ First Appearance ☐ Pretrial Conference ☐ Formal Charge ☐ Trial	

NOTES:
1. Question 6 is only applicable to systems with individual judge assignment.
2. Question 9 is only necessary if the court plans to do the report in Table 2.

APPENDIX B
TIME LAPSE STUDY DATA COLLECTION FORM

1. Case	2. County	3. Judge Assigned
4. Charge	5. Status of Defendant ☐ Jailed ☐ Released	6. Type of Attorney ☐ Privately Retained ☐ Public Defender ☐ Court Appointed ☐ Pro Se

7. Date of Arrest/Summons	12. Date Trial Began ☐ Jury ☐ Non-jury
8. Date of First Appearance	13. Date Trial Completed
9. Date of Preliminary Hearing	14. Date of Disposition

10. Date of Formal Charge	15. Type of Disposition ☐ Guilty Plea ☐ Finding of Guilty ☐ Nolle Prosequi ☐ Finding of Not Guilty
11. Date of Arraignment ☐ Guilty ☐ Not Guilty ☐ Nolo	16. Date of Sentencing

NOTES:
1. Question 3 is only applicable to systems with individual judge assignment.
2. Question 4 may be answered simply "felony" or "misdemeanor," or it may specify the offense charged.
3. Questions 7-16 will vary, depending on the procedural practices in different jurisdictions.

III. ENSURING THE EFFECTIVE USE OF COURT RESOURCES

Courts must review and evaluate existing practices and procedures in order to ensure that the courts are making optimal use of their existing resources.

The following section will describe a number of procedural and substantive approaches which have a more or less direct impact upon court efficiency. Not all the approaches suggested here will be appropriate or necessary in every state, nor will those deemed desirable necessarily be within the power of court administrators to implement unilaterally. They are cited here as examples of measures which have been or which can be taken in various jurisdictions to heighten the effectiveness of court operations, both qualitatively and in terms of dollar cost.

Administration

A key to efficient use of resources is good management. Strong administration permits proper planning, implementation and monitoring. Jurisdictions that have a state-wide administrative structure should be able to provide the courts with the internal capacity for planning, management, data collection, and budgeting. For example, centralized administrative authority for budget preparation will facilitate the establishment of priorities, implementation of measures for assessing cost effectiveness and personal productivity and other concerns directly related to implementing a prompt trial rule.

To stress state-wide administration is not, however, to underplay the fact that local courts and court administrators must have substantial responsibility for implementing a speedy trial program.

Court Calendaring and Case Schedules

1. *Court Calendaring.* Throughout the country, responsibility for preparing and controlling court calendars is usually vested in the courts themselves. The ABA standards specifically advocate court control of the calendar.

2. *Case Scheduling.* A number of practices have been used to achieve efficient use of court time, including:

- implementation of "ready" or "stand-by" calendars so that new cases may be brought on quickly in the event of premature termination or unanticipated delay;
- experimentation with different kinds of case assignment techniques including the individual and master calendar systems;
- scheduling incarcerated defendants at times when it is most certain that local correction departments will be able to meet the responsibility;
- establishment of procedures for timely substitution for absent nonjudicial staff.

3. *Continuance Policy.* Whereas many jurisdictions lack guidelines for disposing of requests for continuances or adjournments, the ABA standards provide for a strict policy regarding the granting of continuances. Uniform guidelines should be promulgated and enforced under which, continuances and adjournments are granted only for cause, and then only for the shortest period necessary. In this way, both the number of court appearances per case and the number of unproductive appearances are kept to a minimum.

Facility Utilization

1. *Use of Existing Facilities.* It is important to see that available facilities are best utilized, given the costs of construction and the finite court space available. Such questions as:

- whether court parts are designated so as to allow maximum use of available detention facilities;
- whether agencies currently occupying courthouse space could be relocated to space outside of the courthouse facility;
- whether non-essential court records such as case files more than 10 years old can be stored outside the courthouse;
- whether rooms that are being used as offices could be better used as court parts.

Often the relocation of particular agencies, offices of functions will avail considerable gains in overall efficiency. It may, for example, make greater sense to have probation staff housed in courthouse office space rather than other agencies such as the sheriff's department. Thus, by rearranging within existing facilities or by the relinquishing of some facilities in favor of others economies of times, effort and cost can be achieved.

Reduction of Case Volume

To the extent that the volume of cases in the system can be reduced, both congestion and delay can be diminished. Approaches to intake reduction include:

1. *Diversion.* Here is meant the now well-understood concept of diverting out of the criminal justice system

prior to adjudication cases in which the background of the defendant, nature of the offense, or other policy considerations make a rehabilitative approach superior to prosecution and sentence. An example is the use of statutes which permit the adjournment or continuance of selected cases in contemplation of dismissal. Typically, the defendant must agree to participate in a court approved rehabilitative program. After a specified time, the defendant must reappear before the court with a report on his progress. If the report is favorable, the case will be dismissed. Such programs often require the endorsement of the prosecutor's office in order to continue and subsequently dismiss the criminal case. Removal of this class of cases from the system lessens the burdens with which existing resources must cope and allows for the concentration of those resources on cases where application of traditional criminal sanctions is more appropriate.

2. *Arbitration as an Alternative.* Arbitration is another technique that may be used to dispose of less serious cases. Typically these cases involve two or more citizens in dispute that carries a criminal sanction. Both sides are usually required to agree that the case will be heard by a lay judge without attorneys for either side. Mechanisms for identifying potential cases before they reach court have been developed in several areas.

3. *Early Case Assessment.* Inevitably, some percentage of cases entering the system will result in dismissal. Such dismissal may result from the unreliability or unavailability of witnesses and other evidentiary weaknesses such as the illegal seizure of contraband. The sooner these cases can be identified, the sooner they can be either purged from the system or weaknesses corrected. To the extent possible, efforts should be made to identify defective cases prior to the filing of charges.

4. *Reduction of Trial Court Intake.* Many cases charged as felonies are ultimately disposed of as misdemeanors. To the extent that it is possible to identify felony charge cases that are likely to be disposed of by misdemeanor disposition, such disposition should be hastened. If at all possible, cases likely to end as misdemeanors should not be presented to the grand jury or moved to the trial court. Accordingly, means for the early identification of these cases, together with some mechanism for negotiation and disposition, should be developed. This effort should be closely coordinated with the early case assessment program discussed in item 3 above. Administrative guidelines may be helpful for identifying such cases, while a formalized case conferencing system,

analogous to that often employed in civil cases, may prove useful in effecting early dispositions. Wherever possible, experienced prosecutors and defense attorneys ought to be used to facilitate the results of such conference.

The net effect of such procedures is that cases are brought to the identical conclusion as would ordinarily have occurred, but with fewer appearances and a reduction in the expenditure of time and other resources. Moreover, the effect of such a procedure is particularly important in that it frees resources in the superior courts, where the most difficult and serious cases should be considered.

Reducing Court Appearances

Among the techniques employed to reduce the necessity for court appearances are:

- use of prearraignment procedures such as the Desk Arraignment Ticket as a summons-like alternative to arrest and arraignment;
- use of stipulated evidence wherever possible as to issues not in dispute;
- direct presentation of serious felony arrests to the grand jury so as to obviate the necessity for probable cause hearings in the lower courts;
- consolidation of pretrial motions by creation of an omnibus motion.

A variation on this theme involves the use of summary procedures, to the extent that preservation of the fairness of the trial process permits. Such procedures—some of which would shorten the trial itself include:

- allowing a defendant in states where grand juries are used to waive indictment in favor of prosecution upon information;
- establishment of a mandatory pre-trial conference mechanism for all felony charge cases;
- reducing jury size from 12 to 6;
- conducting jury voir dire by the trial judge rather than by counsel;
- advance rulings by the trial court on anticipated issues of law such as the admissibility of proffered evidence or the propriety of tendered questions.

In this connection, consideration of other elements of procedural and substantive law such as availability of interlocutory appeals, procedures for conducting discovery, and means for securing compulsory process, to name a few, may suggest areas in which efficiency may be increased without loss, and often with real gain, to the accuracy and fairness of the fact-finding process.

Review of Related Agencies and Services

The work of many related agencies impacts directly upon that of the courts. Calendars may be up-to-date, judges well-trained and their clerks efficient, but if the probation service is in arrears in the production of its reports, the correction department is unable to produce prisoners in a timely manner or witnesses fail to appear, the processing of cases may come to a near halt. Another example is drug cases which require a police laboratory analysis to prove that the substance in question is actually a dangerous drug as defined in the criminal law. Absent this report, the prosecution cannot move such a case to either the grand jury or to trial. The kind of data collection and analysis suggested earlier should identify such problems and permit decision-makers to identify the nature of the problem, make necessary administrative improvements, and structure requests for additional resources where appropriate.

Accordingly, to the extent that such related services effect the time to trial or disposition, the work of related agencies should be monitored with particular emphasis on isolating causes of delay and removing these causes. While increases in the personnel and funding available to such agencies may readily appear as the most obvious solution to their problems, other measures often exist.

Files Management and Paper Flow

Often the expeditious and efficient processing of cases is hindered by the illegibility, incompleteness, or absence of critical court documents. Thus, efforts to document case backlog and delay as described in Section II and to develop an on-goining monitoring system will be adversely affected. Review of the procedure for preparing, obtaining and filing these records may prove useful in obviating some of these problems. Redesigning standard forms to change the information required, simplify or otherwise improve the format, or provide information to multiple users by means of carbon copies or tearoff segment may have substantial impact on efficiency.

IV. ALLOCATING EXISTING RESOURCES TO MEET THE STANDARDS AND DETERMINING THE AMOUNT AND KIND OF ADDITIONAL RESOURCES NEEDED

Achieving the goal of prompt trial without the undesirable consequences of immediate dismissal of large numbers of pending cases is likely to require additional resources. The key questions at this point are:

- what amount and kind of additional resources are needed to meet the rule; and
- what methods can be employed to obtain the necessary resources?

The data needed to determine the current extent of delay has already been set forth in detail in Section II. This information should be used as a basis for determining the amount and kind of additional resources needed, e.g., if the data shows a lengthy delay between bind-over and presentation to the grand jury, it may be that the district attorney has scheduling problems, or lacks an adequate number of assistant district attorneys to make prompt presentations. However, it may also be that there are simply not enough grand juries sitting to handle the caseload.

Adding new personnel to dispose of a temporary backlog is probably not the most efficient use of resources. Rather, a short-term transfer of selected judges and supporting personnel from the civil to the criminal side is probably more cost-effective. The implications of such a transfer are discussed more fully later in this section.

A related problem is determining the amount and kind of resources needed to deal with the annual workload within the time limits established by the speedy trial rule. A number of different factors should be considered in making such a determination including: the annual number of cases docketed or arraigned, number of dispositions by plea, by trial including jury or non-jury, by dismissal and the overall number of cases disposed of per judge.

An extremely complex set of problems are associated with this effort, e.g., variations in police arrest policy or district attorney charging practices may result in substantial fluctuations in the courts' workload. Similarly, a legislature may enact new laws imposing more stringent penalties for existing offenses or adding new crimes to the penal code. For example, New York's Dangerous Drug law imposes harsh penalties for possession and/or sale of drugs. One result of this enactment has been a substantial growth in the number of such cases awaiting trial.

Changes in procedural requirements or in the substantive law may slow the pace of dispositions, while the introduction of no-fault insurance may decrease the courts' workload. Such events are difficult to predict and may be even more difficult to measure in terms of workload. Planners must however, develop methods for determining whether existing resources are likely to meet speedy trial standards and, if not, determine the

amount and kind of resources needed to meet such standards, e.g., see the California weighted caseload system.[8]

However, this effort still leaves unanswered the problem of dealing with the large number of pending cases that already exceed the speedy trial standard. As previously noted, dismissing such cases is unlikely to be a viable option.

Two alternatives stand out:

1. Converting resources allocated to civil court work to the criminal courts. The positive aspects of this strategy include the availability of existing facilities, judges and other court personnel. However, there are a number of other factors which should be considered:

a. the current extent of delay on the civil side and the impact of reallocating resources from civil to criminal work;
b. the possible need for additional prosecutors, public defenders, court appointed counsel, probation and correction personnel to staff additional criminal parts, produce presentence reports and deliver incarcerated defendants;
c. the impact on private counsel; particularly those lawyers that are carrying a large number of pending cases;
d. the lack of detention facilities in civil courtrooms may require that only cases involving released defendants can be processed in such facilities or in the alternative may necessitate building such facilities to accommodate jail cases;
e. the need for additional court officers or bailiffs to staff criminal as opposed to civil parts;
f. the need to train those judges and court personnel that have had no previous experience in handling criminal cases;
g. in large jurisdictions with different courthouses, the public reaction to mixing criminal and civil cases in one facility.

2. Use "double sessions" whereby the court schedules two sessions each day, e.g., morning arraignments and afternoon or evening arraignments. Similarly motions, trials or other actions may be scheduled to begin either in the later afternoon or in the early evening hours.

This approach obviates many of the problems associated with converting civil courts to criminal work. However, it is not without its own problems, including:

a. the need for an entire retinue of persons to staff each court part. Either new personnel would have to be hired or existing persons paid overtime, both costly alternatives.
b. possible union problems with court employees or persons employed by related agencies such as probation or correction. Specific clauses in union contracts relating to working conditions or the hiring of non-union personnel or the need to hire all court employees by civil service examination may make it virtually impossible to find the necessary staff;
c. witnesses may be reluctant to appear during evening hours—the same may also be true of the private bar and attorneys representing the indigent;
d. local correction departments may encounter great difficulty in producing prisoners for evening sessions because of complex scheduling problems surrounding the feeding and internal processing of inmates prior to court appearance.

Although these issues appear formidable, careful consideration should be given to some form of double session, e.g., night arraignments as a way of preventing lengthy waiting periods in the morning hours and minimizing police overtime costs.

As can be seen, neither of the approaches discussed above is ideal. However, some combination of the two offers a way of disposing of a backlog of cases without the costly addition of new facilities and staff that may very well not be justified after the backlog has been removed.

Conclusion

The court and court related agencies are likely to require additional resources to meet the mandate of prompt trial rules. However, as demonstrated above, the more salient and more difficult problems to decide are: what kinds of resources, and in what amount? The answers to these questions will vary greatly from one jurisdiction to another, but one key to the problem is a coordinated approach involving all relevant agencies.

All jurisdictions are urged to develop on-going methods for dealing with these issues recognizing the sophisticated nature of the problems and the need to demonstrate careful planning to budgeting authorities and legislators.

Footnotes

[1]American Bar Association Project on Minimum Standards for Criminal Justice. Standards Relating to Speedy Trial, Approved Draft. Chicago: American Bar Association, 1968.

[2]American Bar Association, supra §1.2.

[3]Federal Speedy Trial Act of 1974 Public Law 93-619 88 Stat. 2076.

[4]American Bar Association, supra §2.1.

[5]National Advisory Commission on Criminal Justice Standards and Goals, Courts 1973 §4.1.

[6]Federal Speedy Trial Act, supra.

[7]American Bar Association, supra §3.1 and §3.2.

[8]Arthur Young & Company. Study of the Weighted Caseload System for Determining Judicial Manpower Requirements for California's Superior and Municipal Courts. 1971.

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