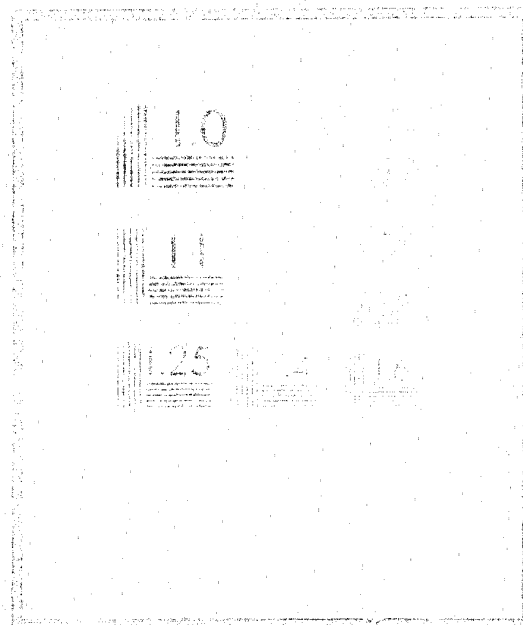


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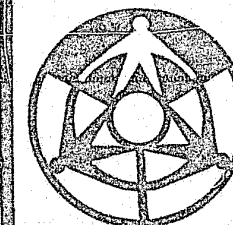
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THE AMERICAN UNIVERSITY

CRIMINAL COURTS TECHNICAL ASSISTANCE PROJECT
Institute for Advanced Studies in Justice
The American University Law School
Washington, D.C.

A Program of the
Office of Regional Operations
(Adjudication Division)
Law Enforcement Assistance Administration
U.S. Department of Justice



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RECOMMENDATIONS FOR IMPROVING CASE PROCESSING
IN THE DISTRICT COURTS OF
NUECES COUNTY, TEXAS

MARCH, 1974

Consultant:

Ernest C. Friesen, Jr.

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This report was prepared in conjunction with The American University Law School Criminal Courts Technical Assistance Project, under a contract with the Law Enforcement Assistance Administration of the U.S. Department of Justice.

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TABLE OF CONTENTS

I.	INTRODUCTION.	PAGE 1
II.	SUMMARY OF FINDINGS	2
III.	GENERAL BACKGROUND.	3
IV.	RECOMMENDED CASE ASSIGNMENT SYSTEM.	6
	A. Individual Calendar System.	6
	1. Civil Cases	6
	2. Criminal Cases.	6
	B. Recommendations for Implementation.	7
	C. The Weighted Caseload	8
	D. Proposed Goals.	9
	E. Case Coordination	11

I. INTRODUCTION

In an effort to improve both criminal and civil case processing in the District Courts of Nueces County (Corpus Christi) Texas, Judge Walter Dunham, Jr. sought the consultant services of Ernest C. Friesen, Jr., Director of the Institute for Court Management in Denver. The Nueces County Bar Association joined the Court in this request and committed funds to cover a portion of Mr. Friesen's study. The remaining costs were absorbed by LEAA's Criminal Court Technical Assistance Project at The American University.

During November and December 1973, Mr. Friesen made several visits to Nueces County during which he conducted a brief survey of the courts comprising the general jurisdiction of the County. He interviewed representatives of the principal participants in the system, examined such records as were available and developed statistics from the available data.

II. SUMMARY OF FINDINGS

1. The Bench is genuinely interested in reorganizing its case-flow procedures to accomplish a reliable and fair opportunity for each case to be heard within a reasonable time.
2. The Bench does not have adequate administrative staff to follow modern management procedures in the operation of an adequate case-flow system.
3. The Bar is willing to work toward a more reliable case-flow system and is open to any solution which will allow cases to reach trial at or very near the time for which they are set.
4. As the cases are not scheduled the case-flow is not predictable.
 - a. Lawyers assemble their witnesses and often do not reach trial.
 - b. In a few instances courts are not available.
 - c. Commonly the calendar for a given day fails to produce a triable case because one side is not ready.
 - d. There is some manipulation of the system to avoid a particular judge (judge-shopping is limited but does exist).
 - e. Settlements are avoided in most civil actions until the trial setting is sure.
 - f. There is much redundancy in the case-flow process which consumes lawyer time without productive effect.

III. GENERAL BACKGROUND

As in all courts of the nation the judges of Nueces County spend about half of their time in the actual trial of cases. Pre-trial conferences, motion hearings, motion decisions, administrative duties and case study consume slightly more than half of their time. A case scheduling system can be built around this fact, making it possible to set cases for trial on a schedule which does not attempt to keep all judges trying cases on the bench at the same time.

The case-flow process in a modern court is one of the most complex processes in modern society. Few of the necessary parties work for the judge who must control the flow. Jurors must be called and screened, witnesses must be drawn from many sources and the lawyers must simultaneously prepare for many cases. As a consequence the case-flow process requires much administrative time under thoughtful leadership.

No court functions effectively today by rotating the responsible leadership on a monthly basis. The case-flow process must be constantly and consistently monitored, corrective action must be taken when the process breaks down, goals must be defined and evaluation of their attainment made. A rotation of the responsible leadership on a monthly basis destroys the constancy (by interruption) and the consistency (by personality and value differences) of judicial management.

Most of the administrative time now spent by judges in managing the calendar could be accomplished by non-judicial personnel if they were present in sufficient numbers, properly trained and supervised. By setting procedures and standards to be administered by non-judicial personnel the judges could be more available for trial and avoid repeated non-productive contact with the attorneys. Judicial Management intervention in the case-flow could be by exception rather than common practice.

Attorney expectation that cases will not be reached for trial on the date set is the single most disruptive factor in the present system. The fact that lawyers will not make an effort to settle cases until they are reasonably sure that they will be reached for trial is universal in the United States. Devices can be designed to increase the number of trial-imminent settlements but their maintenance is usually not worth the effort. It is much easier to adjust the courtroom-judge-juror availability to assure that cases set will be reached. The available data in Nueces County is conclusive. By setting cases below the assured trial capacity, the maneuvering will be eliminated and the disposition rate substantially increased. If combined with a fair, consistent and tough continuance policy, the systemic delay in dispositions will be substantially reduced.

As a pragmatic matter several principles, if consistently applied, will reduce backlog and delay in any court where they have not been applied.

1. The court must take early control of the case. The case must be considered in the court's domain from the time it is filed.

2. The court must maintain constant control. A case should never be in limbo. If no action can be taken within times adopted as standard, it should be scheduled for a progress report (in writing to a monitoring system) at short intervals.
3. Necessary exceptions to standard schedules should be made within the minimum times reasonable under the believable circumstances.
4. Reasons given for delay should be audited and discipline imposed if honesty is in question.
5. Clients should be advised anytime a case is delayed beyond standard times for attorney induced causes.

A scheduling system which applies the foregoing principles will be effective. The following suggests a case assignment system which would make possible the application of the principles.

IV. RECOMMENDED CASE ASSIGNMENT SYSTEM

A. Individual Calendar System

1. Civil Cases:

As each case is filed it is assigned to a judge for all purposes.

Each judge must have a case scheduling system which sets deadlines for each significant event and monitors the progress of the cases against the deadlines set.

The court should mail a standard order to the litigants when the answer is filed stating:

- a. Discovery shall be complete 90 days from the order.
- b. All motions addressed to the action shall be brought within 120 days.
- c. A proposed pre-trial order shall be submitted to the court within 150 days. On the date the proposed pre-trial order is submitted the parties shall agree in writing to a date certain for trial within thirty days of the submission of the proposed order.
- d. The judge will set the case for a pre-trial hearing within the thirty days before trial if he believes the proposed order to be inadequate to define clearly the issues to be tried.

2. Criminal Cases

The court will hold a hearing within five days of the receipt of the accusation to set the schedule for the case.

If the defendant does not have counsel at the hearing to schedule, the court will adjourn the hearing for 48 hours for the defendant to get counsel. If counsel is not available at the adjourned date, the court will declare the defendant indigent and appoint counsel who will appear for the scheduling conference within 24 hours. (If indigency does not prove to be true, costs of counsel would be assessed against the defendant).

An agreed upon schedule form will be provided and, when signed by counsel for the defendant and the District Attorney, will constitute an order of the court. Exceptions to the schedule will be made only on motions made in writing, stating reasons. If information is not of the moving attorney's personal knowledge, the court will require a statement in writing from a person capable of making the statement of his own knowledge.

Criminal cases shall receive priority treatment in all available courts when a case is set for trial.

B. Recommendations for Implementation

1. Select one of the District Judges to be presiding judge for a period of one year.
2. Select a court administrator with substantial experience to perform such tasks as the Presiding Judge assigns.
3. Adopt a case-flow plan as follows:

- a. All cases, criminal and civil, individually assigned in accord with a plan which weights the case in accord with probable judge time involved in disposition.
- b. Domestic Relations cases assigned to the Domestic Relations Judge but weighted in such a manner that any overflow of a judge-year will be assigned to judge having a domestic relations preference.
- c. Criminal cases set on an individual calendar setting but not reached would have a preference before any judge obligated to provide a criminal preference. Cases transferred to accommodate a preference would be offset by a transfer back of a case not yet ready.
- d. The caseload attributable to judges whose district includes Kingsville would be designed to include the Kingsville caseload.
- e. Juvenile cases would be assigned to a judge in rotation but any judge available at Juvenile Hall could take a detained case at counsel's request.
- f. The judges would be responsible for scheduling all of their cases in accordance with limits on time agreed to by all the judges.

C. The Weighted Caseload

Two factors would be estimated to prescribe the initial weights:

1. The average time taken to try a case as estimated by each judge with jurisdiction of that type of case.
2. The incidence of trial as shown by a sample of the records.

For example:

	Juv.	Civil	Crim.	Dom. Rel.
Judge X	2 hrs.	15 hrs.	10 hrs.	3 hrs.
Judge Y	1 "	12 "	12 "	2 "
Judge Z	2 "	20 "	10 "	3 "
Judge A	3 "	12 "	6 "	5 "
Judge B	1 "	15 "	12 "	2 "
Judge C	2 "			1 "
Total	11 hrs.	74 hrs.	50 hrs.	16 hrs.
Average	2 hrs.	15 hrs.	10 hrs.	2.5 hrs.

Incidence of Trial	5%	20%	15%	20%
	.1 hrs.	2.0 hrs.	1.5 hrs.	.5 hrs.
Juvenile			1 units	
Civil			30 units	
Criminal			15 units	
Dom. Relations			5 units	

D. Proposed Goals

First Year -

No more than 40% of Civil cases over 12 months from filing.

No more than 40% of Criminal cases more than 6 months from indictment.

Second Year -

No more than 20% of Civil cases over 12 months from filing.

No more than 40% of Criminal cases more than 120 days from indictment.

Third Year -

No more than 10% of Civil cases over 12 months from filing.

No more than 10% of Criminal cases more than 120 days from indictment.

To accomplish these goals the following short-range measures should be adopted:

- Less than 5% monthly failure rate of trial settings.
- Criminal cases reached for trial within five settings at no more than two-week intervals.
- No case pending for more than 12 months continued without an affidavit setting forth factual justification and agreeing to a day certain for trial.

- Set monthly goals on cases designated as "critical."
 - All civil cases over two years are "critical."
 - All criminal cases over one year are "critical."
- Reduce criticals by 10% per month.

Any attorney with cases on the critical list must be available in Corpus Christi or absent working on the critical case until the cases are disposed of.

Critical cases will have priority for trial and be assigned to the first available trial date by the individual judges.

Critical cases may be set for Thursday afternoon and Friday morning with the understanding that the trial may be continued to Saturday and Monday if necessary.

Rule 1 - Any judge who does not have a trial in progress is available to take a transfer on a case not reached by any other judge actively trying a case.

Short causes, motions, sentencing and other matters which take less than one hour shall be set for 9:00 a.m. or after 4:00 p.m. each day on which any judge sets trials.

Until all critical cases are disposed of judges will set cases three out of four weeks each month and be available the fourth week to take cases set but not reached by other judges.

When all critical cases are disposed of judges may set cases two weeks per month and be available one week per month for cases set but not reached by other judges.

E. Case Coordination

Each judge should have a courtroom deputy clerk qualified and trained to act as a case scheduler for the judge. The deputy, in addition to his work in the courtroom, would be responsible for the maintenance of records on the status of all the cases assigned to the judge. He would be aware of the type of case, the probable number of witnesses, and check periodically on progress toward a settlement or other disposition. The deputy would be responsible for the notification of the Sheriff concerning jail cases and of the Bondsmen in bail cases. He would maintain contact with counsel, noting conflicts in schedules that need to be brought before the judge.

END