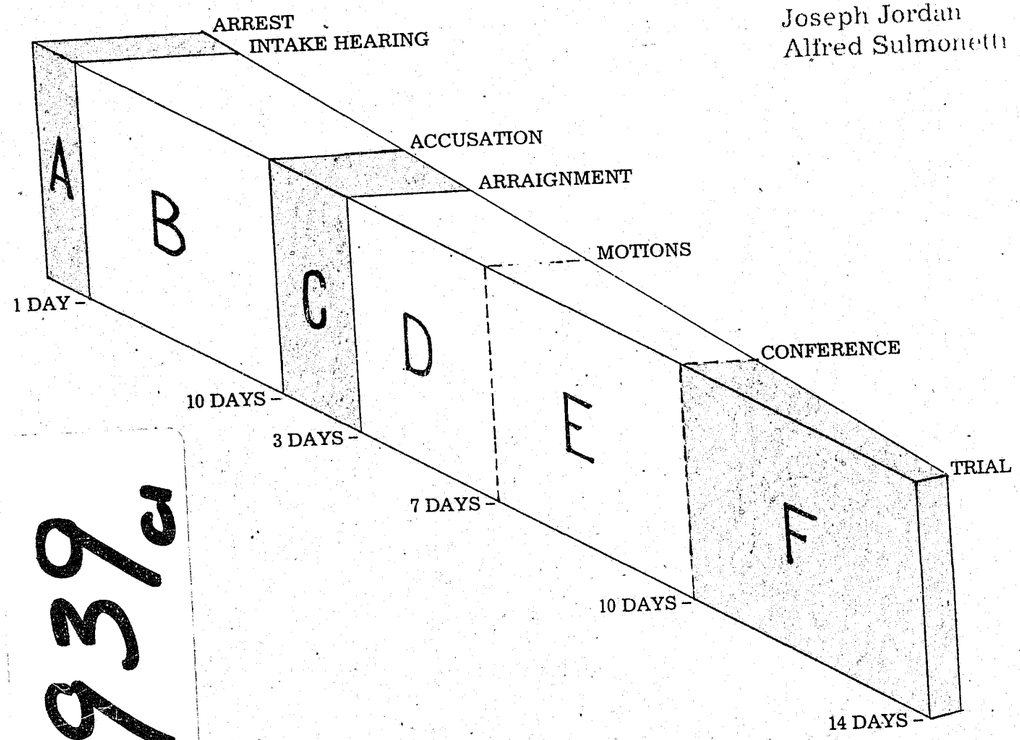
ARREST TO TRIAL IN FORTY-FIVE DAYS

A Report On A Study
Of Delay In Metropolitan
Courts During 1977-1978

Ernest Friesen
Joseph Jordan
Alfred Sulmonetti



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PREFACE

By the spring of 1977, Multnomah County, (Portland) Oregon, had for a number of years consistently succeeded in trying most of its felony cases within forty-five days of arrest. No other metropolitan center in the United States had attained such a record. Faced with increasing criminal court delay throughout the United States, it seemed particularly important to discover how Multnomah County had achieved this result and to explore whether the accomplishment could be transferred to other metropolitan courts.

In July of 1978, the Whittier College School of Law received a grant of $84,286.00 from the Law Enforcement Assistance Administration of the United States Department of Justice to document the Multnomah County experience and compare it with experiences in four other metropolitan courts. The study was completed in May of 1978. This report describes the results of the Whittier efforts.

The staff, in conducting this study, has received the enthusiastic cooperation of court officials and other criminal justice officials throughout the United States. In particular, Chief Judge Carl Kessler of the Montgomery County Ohio Common Pleas Court, Presiding Justice Joseph Weisberger of the Rhode Island Superior Court, Chief Judge Edward Cowart of the Dade County Florida Circuit Court and

Administrative Judge Myron Love of the Harris County District Court made possible the comparative studies.

The efforts of the Circuit Bench in Multnomah County, Oregon, and its staff were critical to the study and helped in every way to make it accurate and complete. Presiding Judge Phillip Roth and Chief Criminal Judge Robert Jones, who served during the study, provided us with substantial insights into the success of their programs as did Michael Hall, the Court Administrator.

The Law Enforcement Assistance Administration, in addition to providing the necessary funds, provided the staff with information about other projects and efforts aimed at criminal court delay for which we are grateful.

Ernest Friesen
Project Director

I

INTRODUCTION

If one aspect of the work of trial courts has been singled out as the subject of criticism and concern by the public, news media and other disciplines, it is the failure of the criminal court system to give those in our society who become involved in criminal conduct a speedy trial. The criticism and concern is genuine but too often results in more heat than light. Who really wants a speedy trial, what are the responsibilities of the system to insure this concept, and what are its tolerable or acceptable limits?

Although we have come a long way in the last twenty-five years, the criminal justice system in most judicial districts has failed to give substance and meaning to the concept of a trial without delay. The fundamental American concern over the rights of accused persons has been used as an excuse to ignore the need of society to have swift as well as fair justice. The swiftness serves the public good only when fair but there is no need to choose between the two since justice can be both swift and fair when the participants in the system work to those ends.

Chief Justice Burger, addressing a meeting of the American Bar Association, stated that every person accused of a crime should be tried within sixty days from date of arrest. Some district attorneys and trial judges passed this statement off as just another Chief Justice with a visionary dream; but the constitutional mandate imposed upon the judiciary to insure a "speedy trial" has come under review by citizens groups as well as legislative bodies. The resulting statutes imposed upon the judicial system certain time constraints, generally 60 to 90 days from date of arrest to trial.

Too often lawyers and judges engaged in the criminal justice process, anxious to preserve their old ways, have ignored this mandate or, even worse, frustrated it by imposing unjustified exceptions. Most often they have read into the rule "unless the defendant doesn't want to be tried within 60 days." A rule adopted to protect both public and individual interests has been interpreted to reflect only the individual interests.

Public respect for and support of the legal system makes necessary the acceptance of the current statutory mandates. To merit respect, all of the agencies of criminal justice must subject their premises and process to an ongoing evaluation to the end that the expressed goals of prompt trials can be met.

If we accept the premise that the primary function of court systems is the orderly processing of conflicts presented for resolution, time is a critical factor. The adversary system is a memory dependent system and memory diminishes with time. In a highly mobile society, witnesses are lost and exhibits deteriorate resulting in the loss of such truth as may at one time have been available. Prompt trials of the issues of fact are essential to justice. In the absence of a prompt trial, the courts mock the concept of justice.

The judges of the Circuit Court in Multnomah County, Oregon, took the mandate of their legislature seriously and succeeded more than any other court in making prompt justice a reality. This project was conceived to test whether the experience is transferable.

II

MODEL AND METHOD

Multnomah County, Oregon, has, in a period of seven years, substantially reduced its felony court delay. Under a legislative mandate to give every defendant a trial within sixty days of arrest the Circuit Court undertook a continuing program of change in its procedures. Largely by trial and error it brought the amount of delay into control. At the peak of their effort it was trying most of its felony cases within thirty to forty days after arrest. By comparison most metropolitan courts in the United States are delayed six months in reaching an actual trial. Without further elaboration the conclusion is readily reached; either Multnomah County had unique characteristics or its experience should prove valuable to other metropolitan counties.

In the past, court practices transmitted from one court to another have met with some success but rarely have they reached the optimistic results predicted by their advocates. Based on judicial hunches rather than controlled experimentation or systematic observation the transmitted practices were often applied in dissimilar circumstances without success. The Multnomah County experience was certainly worthy of systematic and objective analysis. This project was the result.

The research questions involved in the first phase of this project were as follows:

1. Can the critical factors which affected delay in Multnomah County be identified?

2. Can these same factors be identified in other jurisdictions facing delays similar to those faced in Multnomah County?

The project staff undertook in the first three months to perform a detailed analysis of all of the relationships and procedures in the Multnomah County system. Judge Alfred Sulmonetti, on leave from the Circuit Court as a visiting professor of Judicial Administration at Whittier College School of Law, provided an entre into the system and a knowledge of its detail which was invaluable to the effort. Joseph Jordan, an experienced court system analyst, "walked the track" in Portland charting the criminal justice process from arrest through trial. Ernest Friesen, as project director, suggested areas for special emphases and analysis. The result was a detailed description of the relationships and procedures in the system.

It may be a unique feature of this project that it has been as concerned with relationships as with procedures. The large number of dependent functions performed by independent participants in the criminal justice process makes an awareness of participant relationships essential to a description of the system.

It is not enough, for instance, to suggest that in two jurisdictions the prosecutor screens the cases at the first intake court hearing if in one instance the screener had the confidence of the police and is supported by them and in the other, the screener does not have this support. It is not sufficient to say that two jurisdictions operate under individual calendars if in one court the prosecutor sets the cases for the judges and in another the judge makes the setting decision.

The list of examples could go on for a hundred pages. The research, to be effective, had to identify the procedure and the human interplay in the procedure if it was to be complete.

There were, of course, many human interactions and relationships within the system which had no effect upon delay. The first goal of the study was to describe accurately the significant or critical relationships and procedures. These were called by many names but were ultimately called the "critical factors." The test for inclusion as a critical factor was whether there appeared to be either historically or logically a cause and effect relationship between the factor and the reduction of delay. The loss of delay was in some cases dramatic; in other instances barely discernable. For the most part the research relied on the memories of those who had participated in bringing about the changes. Where there

was dissent among the participants as to consequences of changes, the staff made specific studies of the case records and other available data.

Historically, delay is relatively easy to measure. The time from event to event in the process can be discerned by studying docket entries. When the time between events changes dramatically after procedural changes are introduced one can at least suggest a causal connection. By the same reasoning a change in the time between events following major changes in relationships suggest a probable causality.

Such probabilities are at best insight provoking rather than empirical. Any assurance that particular processes or relationships caused changes in time between events needs an approach which would observe behavior in controlled circumstances. Unfortunately one cannot tamper with justice for the sake of research. The best that could be done was to identify other jurisdictions, observe them in the same detail as the model county was observed and compare for similar results.

The design of the project research attempted to identify similar and different processes in each system studied to see if delay varied accordingly. Relationships in the systems were likewise observed and cataloged in an attempt to note differences and similarities with the results they appear to

produce. The product of these observations was a partly changed perception of the critical factors as discerned in Multnomah County and, at the same time, a practical recognition that the absence of certain Multnomah County practices seemed to result in delay.

A rough test of these conclusions was made possible as the several courts studied responded to recommendations (in an executive summary of each study) by adopting Multnomah County solutions. Several of the recommendations were adopted immediately with significant reductions in delay. The results occurred so rapidly after the changes that a systematic monitoring of the results was justified. If the predicted consequence of the Multnomah procedures occurred in more than one place it would justify the conclusion that the Multnomah County experience is transferable. The final section (VI) of this report states the working hypotheses of a second phase of study which is now under way.

The four studied were Montgomery County (Dayton) Ohio, Harris County (Houston) Texas, Dade County (Miami) Florida and the State of Rhode Island. The characteristics of the several locations in terms of the community served, the amount of crime and the organization and procedures of the system are described in a later section (IV). For the purpose of describing the project method, they are not

significant. In each place the data collected was the same.

Three team members divided the work in several broad categories:

1. The legal environment which included the statutes, rules of procedure and constitutional constraints on the system as well as the organizational relationships between the prosecution, court, defense and law enforcement officials.

2. The system flow which included a step by step examination of all distinct processes and events* from arrest to trial including all decisions and the points at which they were made.

3. The information support which involved a detailed critique of the information provided to the decision makers in the system.

4. The support resources which included an overview of the personnel, space and financial resources available to process and decide criminal cases.

The staff, in performing their several assigned tasks, met each evening to brief each other on their progress and to exchange information gleened from their efforts which would fit into other categories. The resulting reports were read by each of the members of the project team to further coordinate efforts.

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* See section III

Particular difficulties were encountered in each of the courts studied. The basic data as to how much crime there was and how many felonies proceeded against was not readily available. No court studied outside of Multnomah County could readily provide data as to the age of the case load or the median time from arrest to trial. Though there were in each court operating computer systems with massive amounts of detail available in them, the basic information about delay was obtainable only by detailed analysis of undifferentiated information. In the findings section of this report (V) the information difficulties encountered are described in more detail.

In all but the model county the management data available was deemed unreliable by the system users. The staff, after sampling original records for management data, developed their own management information.

The project staff operated from several perspectives and included a former presiding judge (Judge Sulmonetti), a court management specialist (Dean Friesen), a systems and information analyst (Mr. Jordan), and an office management analyst (Ms. Alice Robison). Each asked questions and recorded perceptions based on their own background and experience. The result was a description of the several systems from highly varying perspectives. The assimilation of these perspectives aided immeasurably in the recognition

of similarities and dissimilarities which appeared to affect delay.

In several instances procedures and relationships observed in the courts studied led us back to Multnomah County for further observation. When the staff encountered delays caused by examinations for competency, the model county was examined and a critical factor added. When Multnomah cut out plea bargaining in major cases the effect of this change was carefully documented and the overall results considered. Information system shortcomings in the studied courts were compared with the model court procedures and the reporting system of the model was added in concept to the critical factors list. The process was, in short, interactive.

After completion of the study of each site the critical factors were restated. Fine differences in approach were accomodated but the initial concepts remained basically unchanged. These factors became more, rather than less, detailed as more situations were encountered. In their initial form, for instance, the factors stated regular judge meetings were necessary. In their final form the factors prescribed a regular meeting with advanced agenda, with agenda resolved by action and with minutes promptly distributed. This later conclusion was the product of finding judges who met in regular meetings without significant results. On re-examination of the Multnomah County practice it was clear that

their more successful results were a product of the added detail.

Comparing arraignment practices also led to the amendment of factors and more detailed standards. Superficially similar practices outside Multnomah County were meeting with less success. With a modified perspective and the detail collected in the model county, the factors could be changed to reflect the necessary specificity.

Comparison of detail in Multnomah with other courts had the same effect on the positive side. The absence of delay in particular areas was found to follow practices which were similarly enforced. The early appointment of counsel at the first intake court hearing and assistance to defendants in arranging for retained counsel tends to reduce delay wherever the practice exists.

Despite the fact that the staff believed all of the emerging critical factors would significantly affect delay, they did not always recommend their adoption. Starting from different points, the courts in some instances were more ready for change than others. One which is currently without substantial central control can't adopt practices which are dependent on uniformity in judicial behavior. Inadequately staffed public defenders can't be asked to be available on the same terms as those which are more adequately staffed. Where there is an insufficient supply of court rooms additional judges can't be

easily added. The resulting executive summaries with their recommendations were based on the more critical areas as locally applied.

In some instances previous studies of the same courts by other groups were helpful in identifying procedures. These earlier studies, however, rarely identified the working relationships of the participatns as they affected the operation of the procedures. In particular, studies related to the computerization of criminal justice information had in each instance led to detailed analysis of the flow of criminal defendants through the system. By studying resulting flow charts the staff identified all of the many possible alternatives. Unfortunately these flow charts, prepared by thorough practitioners of systems analysis, dealt with all possibilities rather than the probabilities. Charts which describe the bizarre and the ordinary procedure together distort the normal procedure by their thoroughness. Delay in bizarre cases with peculiar characteristics can be tolerated. Delay in ordinary cases should not be tolerated. The staff therefore had to separate the ordinary from the universal case procedure to identify the typical or routine. The analytic framework which has been adopted for this report (section III) is a product of following the routine rather than the universal case. It is assumed that precedurally unusual cases are a relatively small portion of the total

and should be managed by exception.

Previous management critiques of the systems studied were less than helpful. Observation about the existing practices were seldom separated from the conclusions reached. The studies suffered from the propensity of the investigators to have a particular solution to sell and who apparently find the data in each case to support their solutions. The project staff were more than normally aware of this propensity having been involved in similar efforts in the past. The staff was able to avoid simple solutions through the current project the breadth of observation which their many perspectives provided. The staff attempted only one comparison and that one with Multnomah County. The result is a much broader look at detail with which to better understand the tremendous complexity of the systems.

The detailed results of the several studies are not included here. No useful purpose would be served by airing specific criticisms of particular courts. Analysis of the effect of changes in these systems is now the subject of a second phase project the premises for which are more fully set forth in section VI.

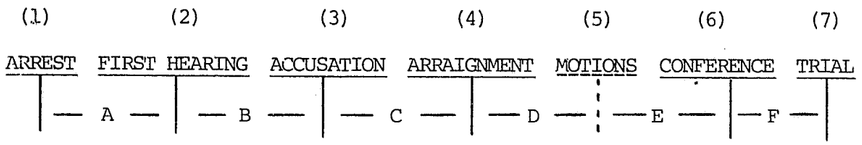
III

ANALYTIC FRAMEWORK FOR CRIMINAL CASE DELAY

The identification of the critical factors involved in felony case processing has been somewhat evolutionary. As delays were identified action was taken which attempted to reduce the delay. Many actions which initially appeared to be effective had little lasting effect. Symptoms were perceived as causes resulting in solutions which exacerbated as often as they cured the problems.

Even as this project on metropolitan court delay started, no one could reliably relate events and behavior in the process to the resulting delay. Multnomah County, Oregon, had conquered delay by trial and error and not by systems analysis. This project applied detail analysis techniques to the Multnomah County system and uncovered critical procedures and organizational relationships which appear to have resulted in limiting the time from arrest to a trial.

An explanation of the critical factors which evolved out of the study is dependent on the creation of an adequate conceptual model of the system. To be useful the model must be sufficiently general to accomodate all American felony processing systems and yet be specific enough to communicate the underlying reality. After considerable experimentation of the project staff advanced the following conceptual frame to meet these two requirements:



In this model the numbered items represent identifiable events and the capital letters represent time between events. The events, of course, consume time but with the exception of protracted trials, which are not significant in number, the time consumed by the events is not a critical factor in delay. The events are identification points in the process which establish boundries. In each instance the event requires some processing by system participants before and after the event.

In this framework it is helpful to make a distinction between processing time and waiting time. Processing time, as used in this framework, is the time during which a participant in the process is actually working on the case. Processing time is seldom the critical factor in delay. The time during which participants are waiting for something to happen is waiting time. Waiting time accounts for most of the delay. The basic assumption of this analytic framework is that delay is best attacked by organizing and controlling to eliminate waiting time rather than to speed up processing time.

THE EVENTS:

1. ARREST. The arrest starts the clock running for purposes of accounting for delay in the criminal justice pro-

cess. In an overall measure of the system delay one would start with the commission of the crime. The pre-arrest investigation time, though important to system effectiveness, is not a part of this study.

The arrest is a multi-part event which can include the following:

1.1 The apprehension and control of a suspect.

1.2 The booking of the suspect.

1.3 Prosecutional screening of the arrest and charge.

1.4 The preparation of a charging instrument.

1.5 The determination of an appropriate bail by the police if permissible within the system.

1.6 Notice to appear at first hearing when released.

2. FIRST HEARING. The first hearing can accomplish several purposes when properly conducted as follows:

2.1 Identifies the person appearing as the person accused in the charge.

2.2 Determines that the complaint is sufficient to state a crime.

2.3 Advises the accused of the nature of the accusation.

2.4 Makes a record of the advice to the accused.

2.5 Makes a determination of indigency in appropriate cases.

2.6 Arranges for the advice of counsel.

2.7 Fixes bail or otherwise fixes term of release of incarceration.

3. ACCUSATION. All American systems have some process for screening felony accusations to avoid the burden of defending what may be insufficient evidence to support a conviction. Since the time of Magna Carta a grand jury was the accepted screening device. More recently one can be forced to answer to felony charges after a preliminary hearing or more summarily after a review by the prosecuting officials if all of the information reviewed is submitted to the defendant. The filing of the formal accusing document, usually known as an indictment or information, accomplishes the following:

3.1 Fixes the limits of the crime for which the accused may be tried.

3.2 Provides a record of the accusation.

3.3 Provides a check against frivolous or unwarranted accusations.

4. ARRAIGNMENT. The term arraignment does not mean the same thing in all jurisdictions. As used here it means the first hearing after an accusation of a felony has been lodged in a court which may try the felony. The hearing may serve other purposes but it must do the following:

4.1 Identify the accused as the person named in the information or indictment.

4.2 Formally advise the accused of the charges which must be answered or defended.

4.3 Provide an opportunity for accused to deny the charges or enter such a denial as a matter of course.

5. MOTIONS. In many cases no motions are filed and this event does not occur. Delays of a substantial amount do occur in connection with pretrial motions. Evidence is sometimes taken, briefs are sometimes submitted, judges often take motions under advisement and often opinions are written. Some motions are appropriately handled between arraignment and trial while others should be held at trial time. The motion as an event in the pretrial process occurs with sufficient frequency to be a necessary event. To avoid obvious criticism it should be acknowledged that motions may occur at any time so as to make the above time periods D, E, and F imprecise. The dotted line in the flow diagram (page 15) reflects the possibility that this event does not regularly occur. Motion hearings should provide the following:

5.1 An opportunity to apply adversary techniques to the resolution of a clearly defined issue.

5.2 A time for the parties and the judge to better understand the boundries of the controversy.

5.3 Resolution of an uncertainty in the case.

6. CONFERENCE. Not all courts require a conference between counsel to the parties before a case is tried. The conferences, however, almost always occur, if at no other time, immediately before the trial. The conference with

or without the presence of a judge is a necessary event for effective management of a case through the court. It includes one or more of the following:

6.1 A discussion of the evidence which the prosecution and defense will put forward (including numbers of witnesses).

6.2 A discussion of the propriety of the charges.

6.3 A discussion of an appropriate sentence if the defendant is found guilty.

6.4 A discussion of the length of trial.

6.5 A discussion of motions which might be dispositive of the case.

7. TRIAL. Since very few trials actually occur, the significance of the event is found more in the results which flow from the probability that the event will occur than the actual occurrence of the event. The arrival of the event thus has the following consequences:

7.1 The uncertainities as to the availability of a particular judge are resolved.

7.2 The uncertainities as to the available evidence are resolved.

7.3 Where pleas are settled, the best offer from both sides is fixed.

7.4 The nature of the jury is known.

7.5 The reliability of witnesses under examination is established.

7.6 A decision of the jury or judge is reached.

The importance of identifying the events and their characteristics or purposes is first, to conceptualize the processing time necessary to prepare for the events and second, to understand the waiting time which may be reduced. It is not enough to control the events if the processes are not controlled. Most waiting time occurs at all stages of the process because the processes necessary for the proper disposal of the events are not in control.

A. ARREST TO FIRST HEARING. Between the arrest and first hearing the following processes should take place:

A.1 The sufficiency of the evidence if not screened at the arrest should be screened by an experienced presecuting attorney.

A.2 The police report should be written and reviewed.

A.3 Charges should be prepared sufficient to state the crime which has been committed.

A.4 A bail investigation should be conducted.

A.5 Eligibility for defense aid should be investigated.

B. FIRST HEARING TO ACCUSATION. The principal cause of delay in the period between first hearing and an accusation of the completion of the investigation. The following matters relating to the investigation often need to occur:

B.1 Witnesses must be interviewed.

B.2 Laboratory reports must be obtained.

B.3 New reports must be written.

B.4 New reports must be typed.

B.5 A formal indictment (or information) must be drafted and reviewed.

B.6 Evidence must be organized and reviewed.

B.7 Legal research must be completed.

C. ACCUSATION TO ARRAIGNMENT. There is very little reason to delay the arraignment after an accusation has been made. The following procedures are largely clerical:

C.1 The arraignment date must be set.

C.2 The arrangements must be made for a judge and courtroom.

C.3 The papers must be drafted, reviewed and transmitted to the felony court clerk's office.

C.4 The persons necessary must be notified of the arraignment.

D. ARRAIGNMENT OF PRETRIAL MOTIONS. Delays occur in this process in many instances because rules of procedures require waiting periods between steps in the process. Waiting time is thereby mandatory if motion processes are involved. Typical delays are as follows:

D.1 Ten days are allowed after arraignment for the filing of certain motions.

D.2 Ten days are allowed to respond to the motions.

D.3 Five days are allowed to reply to the responses.

D.4 A motion is set for hearing ten days after a response time.

D.5 Briefs are requested after hearing with fixed response times.

D.6 Evidence, if taken, must be transcribed by the reporter which is often back logged for 30-60 days (this, even though the typing time for the transcript is less than one day).

D.7 Evaluation of the need for psychiatric and physical exams.

D.8 Evaluations of the possibility of dispositive motions.

E. PRETRIAL MOTIONS TO CONFERENCE. Conferences are often not scheduled or controlled. The processing which must take place is as follows:

E.1 The lawyers must evaluate the difficulties in their case.

E.2 The defense lawyer must have a conference with his client.

E.3 All discovery must be complete either by cooperation or motion.

F. CONFERENCE TO TRIAL. The delays between conference and trial are usually minimal because the lawyers do not confer until the trial time is upon them. Most of the processing between conference and trial is in preparation for trial as follows:

F.1 Witnesses must be found and notified.

F.2 Attorney schedules must be adjusted and planned.

F.3 In some cases new trial attorneys must be briefed.

F.4 New physical or mental examinations must be had.

F.5 Everyone must be notified.

F.6 Court room must be made available.

F.7 A judge must be made available.

The foregoing list of processes which take place between events is not complete. For purposes of this analytic framework the list provides an adequate number of processes to illustrate the problems involved in controlling delay.

The causes of delay in the criminal justice system are many and complex. Without some framework it would be impossible to define the interdependencies and relationships which affect the system. The findings which are the subject of Chapter V are built on the above analytic framework and, though they cannot be universally applied, should provide a base for the analysis of all justice systems growing out of the common law.

IV

LOCAL DIFFERENCES AND DELAY

The Community

The criminal justice processes and relationships of any community are, of course, affected by the demographic, economic and geographic characteristics of the community. No two American communities are alike and statistics about them do not explain the differences. The purpose of this section is to suggest that, despite discernable distinctions in the places studied, there appears to be nothing in the Multnomah County makeup which is more or less productive of delay than in the other communities studied.

Geographically Dade County Florida has the lowest population rate per square mile while the Providence/Bristol area of Rhode Island has the highest density. This would indicate that Dade County residents would have to travel further and notice might require more time and effort. The available information does not indicate that there are such problems in Miami based on the more widely dispersed population.

The Dade County population is slightly older but there appears to be no more nor less difficulty in getting jurors or witnesses from that population than other places.

Median income is not substantially different from one community to another. Minority population is lowest in Providence-Bristol but no significant time interval can be traced to racial composition. Crime rates (see next sub-section) appear to be consistent across the several populations in so far as they can be known.

Table 1 provides a comparison of available demographic information.

TABLE 1

DEMOGRAPHIC COMPARISON ACROSS FIVE COUNTIES

DEMOGRAPHIC VARIABLE	MULTNOMAH OREGON (Portland)	MONTGOMERY OHIO (Dayton)	PROVIDENCE RHODE ISLAND (Providence-Bristol)	HARRIS TEXAS (Houston)	DADE FLORIDA (Miami)
Population: County (City) 1976 estimates	549,900 (381,877)	582,700 (243,459)	613,700 (179,233)	2,044,400 (1,232,407)	1,466,800 (335,075)
Area	423 sq. mi.	459 sq. mi.	441 sq. mi.	1,723 sq. mi.	2,042 sq. mi.
Government	Council-Elected Executive	Council-Administrator	* *	Council-Commission	Council-Administrator
Geographic location	Northwest	Northeast/Central	Northeast	South Central	Southeast
Make-up	Agricultural/ Timber	Industrial/ Agricultural	Commercial/ Industrial	Commercial/ Industrial	Commerical/ Shipping
1972 Per Capita Income	4,307	4,156	* *	4,147	4,366
Density Per Square Mile	1,311	1,326	1,399	1,011	621
Age Distribution:					
% under 18	17.6	27.2	22	31.2	15.7
% 65+	12.7	7.8	10.9	5.9	13.7
median age	31.4	27.4	30.9	25.8	34.3
% Non-white	4%	14%	3%	17%	13%
% Change Population from 1970-1976	-0.9	-4.2	-3.4	17.4	15.7

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Amount of Crime

The only data about the amount of crime which is definitionally consistent and available comes from the Uniform Crime Reports. They are, at best, unreliable tools for comparisons. There are in these statistics no reason to believe that the amount of crime in the areas studied causes significant differences in the operation of the justice system. The number of index crimes per 100,000 population are varied but there is no correlation between the delays encountered in the various systems and the amount of reported crimes. It may be assumed that the intake and apprehension system has in each community responded to the crime tolerance levels of the community and is processing cases into the courts at the system rates which the available resources allow. In all jurisdictions the crime known to police substantially exceeds the crime proceded against, leading to the conclusion that if additional investigative and prosecutorial resources were added, there would be an increase in the number of cases substantially above the current levels.

Harris County, Texas, has a significantly higher rate of criminal homicide when compared with the other jurisdictions studied. This usually indicates a lower rate of guilty pleas but Harris County has the highest guilty plea rate of the systems studied. Aggravated

assaults are lower in Harris County and disproportionately high in Dade County. No delay causive workload consequences can be noted based on these variations.

Table 2 reflects the information available about the amount of crime. Tables 3, 4, 5, 6 and 7 provide some indication of the rates at which the crimes known result in convictions. The reported crime figures are from the Uniform Crime Report while the rates of processing are from a collection of other sources. An attempt has been made to report the available information on a consistent basis.

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TABLE 2

1976 INDEX OF CRIME COMPARISON

ACROSS FIVE COUNTIES*

	POPULATION	INDEX CRIME TOTAL	RATE PER 100,000	CRIMINAL HOMICIDE	FORCIBLE RAPE	ROBBERY	AGGRAVATED ASSAULT	BURGLARY	LARCENY	MOTOR VEHICLE THEFT
Multnomah Oregon	549,900	53,173	9685.5	34	336	1650	2318	15,661	29,365	3,838
Montgomery Ohio	582,700	48,555	8342.8	78	221	2292	1340	13,223	28,809	2,524
Providence/Bristol Rhode Island	613,700	38,009	6200.5	17	58	608	1375	9,174	20,260	6,391
Harris Texas	2,044,400	153,871	7542.7	429	946	6633	3073	44,281	81,812	16,455
Dade Florida	1,466,800	131,999	9041.0	211	501	5645	9612	35,036	72,953	7,900

* Except for the population figures, all data on this chart has been computed. It was necessary to make extrapolations from the 1976 Uniform Crime Report (UCR) statistics because the UCR did not provide statistics in the form needed here. A key assumption made in computing these county statistics is that the rate of crime in the metropolitan reporting area outside of the major city is the same as the rate in the county suburban area.

TABLE 3

MULTNOMAH COUNTY FELONY CASE FALL OUT CHART

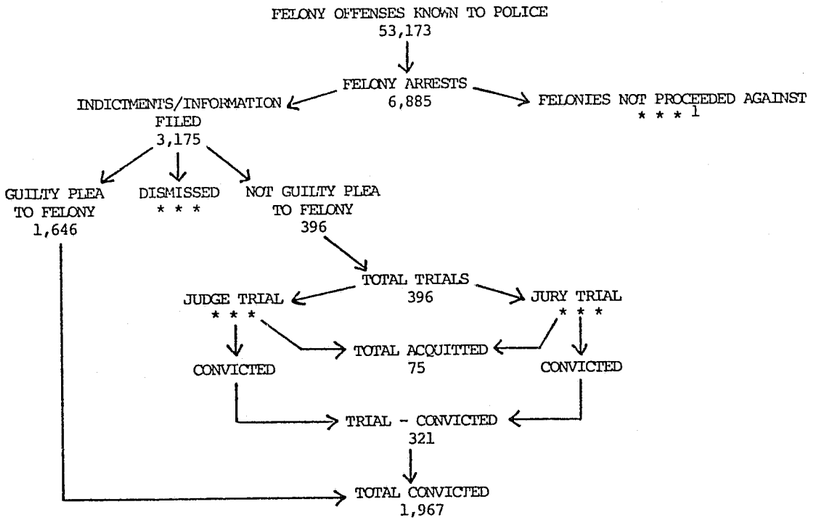
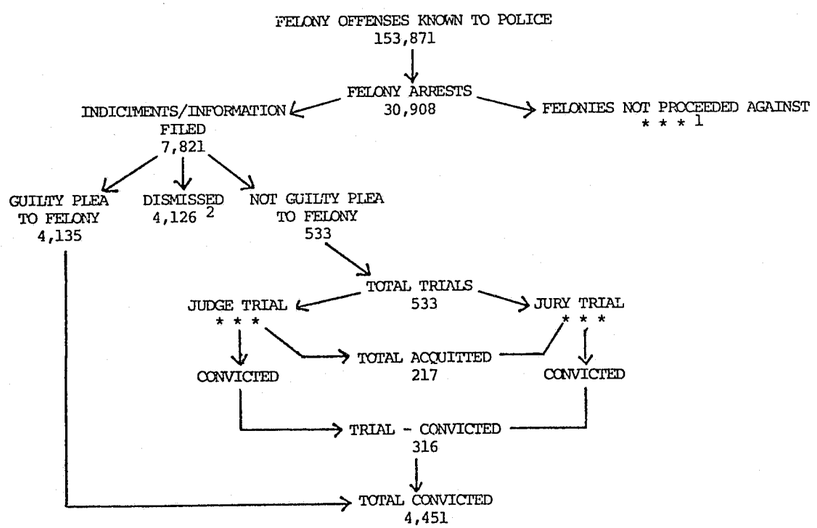


TABLE 4

HARRIS COUNTY FELONY CASE FALL OUT CHART



* * * Denotes unavailable information.
1. Includes no probable cause, reduced to misdemeanor and dismissed for non-sufficient evidence.
2. Total pending - 6,571.

TABLE 5

MONTGOMERY COUNTY FELONY CASE FALL OUT CHART

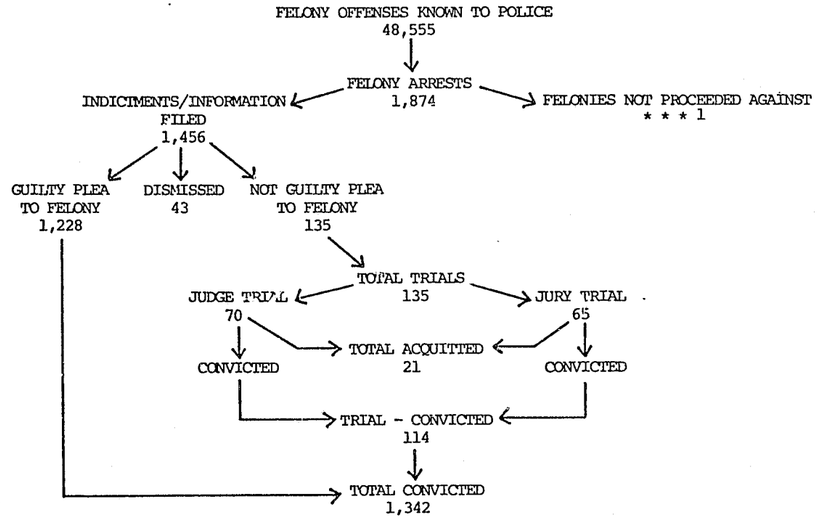
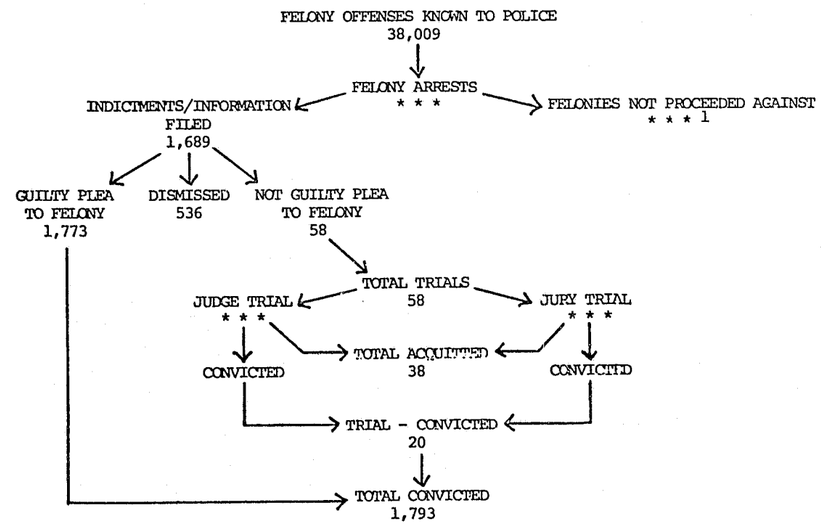


TABLE 6

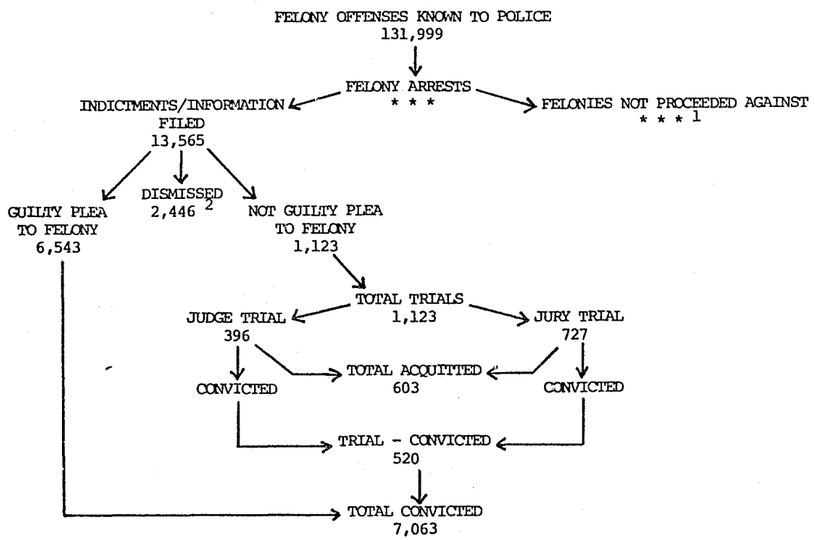
PROVIDENCE-BRISTOL COUNTY FELONY CASE FALL OUT CHART



* * * Denotes unavailable information.
1. Includes no probable cause, reduced to misdemeanor and dismissed for non-sufficient evidence.

TABLE 7

DADE COUNTY FELONY CASE FALL OUT CHART



* * * Denotes unavailable information.

1. Includes no probable cause, reduced to misdemeanor and dismissed for non-sufficient evidence.
2. Total pending - 3,382.

Organization and Procedure

The purpose of this description is to indicate differences which have been thought to be significant in earlier analyses of criminal justice processes and not to provide a detailed description of the organization or procedures of any one of the courts. Where the detail appears to be significant it is presented in other sections of the report. General comparisons are necessary here to explain that the usual level of generality involved in describing justice systems provides little basis for local differentiation in results.

a. Court organization

The courts studied exist within state court systems at varying stages of development. Four of the states have a state court administrative headquarters, one does not. The state systems operate with little or no control over trial scheduling with one exception, Rhode Island, which has a central administration for the general jurisdiction and special jurisdiction courts. In no instance is there significant monitoring of local court procedures by the central system.

All of the courts studied have local court administrators and an administrative or presiding judge. All of the courts have meetings of the judges of general jurisdiction to make policy. The performance of the court administrator,

presiding judges and judicial boards was highly variable. The court with the most permanent presiding officer had the longest delay. It also had a record of regular meetings. The court with the most experienced (in terms of years) court administrator had the least delay but the correlation between his duties and criminal case processing was not established.

With the exception of the model court where the clerk and court administrator are an integrated operation, all of the courts studied have a clerk whose office is independent of the court administrator. Cooperation between the offices ranges from near integration of effort to near conflict. The support of the clerical personnel to the criminal court processing did not follow the pattern of relationships between the clerk and the court administration staff. In at least one instance the criminal scheduling process was cooperative in the absence of good relations between the overall administration of the court and the clerk. This was not surprising to the staff since court/clerk relations are often built upon long term, narrow functional roles which survive the conflict of particular presiding judges, court administrators and clerks.

b. System resources

None of the systems have any central budgeting process for the criminal justice operations. All, except Rhode Island, are basically dependent on local government for the bulk of their resources.

c. Prosecution and defense

Both prosecution and defense are a product of local government except in Rhode Island where both functions are organized and financed on a state wide basis. The size of Rhode Island and the role of the legislature in supporting the justice function provides a moderately more integrated resource center but the counties, which supply the resources in other systems, are not far different.

Four of the five courts have public defenders and the other relies on private counsel to represent most of the indigent. The greatest delays exist where there is a public defender and the second greatest delay exists with appointed counsel. Shortage of lawyers in the public defender's office clearly causes delay but there was no evidence that the private, appointed defender causes delay. The coexistence of delay and private appointed defender appears to be unrelated. In most instances the private appointed defender cases moved more quickly than the private retained lawyer cases. The problems involved in collecting fees are universal.

d. Personnel systems

Personnel systems appear to vary from civil service to patronage based practices. The staff discerned no significant variation in support services supplied in the several systems.

In fact, the only correlation between delay and systems characteristic which appeared worth thorough exploration was the correlation between longest delay and patronage selection of personnel in one system. Despite the correlation, the staff could identify no dysfunctional behavior attributable to their patronage appointment. It is a fact that the system having the least delay operates in a civil service environment. It may well be that the attitudes which have a high tolerance for patronage in a community also result in a high tolerance for delay in case processing. Such a proposition was beyond the scope of this study.

e. Case management systems

Two of the courts studied, the most expeditious and and least expeditious, operate on master calendars. The other three are basically operating with individual case assignment systems. The delay ranges from 45 days to 420 days (arrest to trial) with the master calendar and from 84 days to 185 days with the individal assignments.

The accusation process (indictment or information) varies widely from a procedure which takes almost 100% of the felonies before a grand jury, to the procedure which resolves the accusation by an internal hearing in the prosecutor's office. The greatest delay to accusation

exists where the process is internal to the prosecutor's office and the least delay occurs where the bulk of the cases proceed by preliminary hearing. There is, however, little significant difference between the delay encountered under at least one grand jury system and preliminary hearing procedures.

f. Bail bondsmen

Commerical bail bonds continue to exist in four of the systems studied. There was some evidence that bonding practice delayed cases as an institutional phenomenon but the court using the fewest commerical bonds had the longest delays.

g. Full disclosure

It has often been suggested that disclosure of the prosecution's case to the defendant will uniformly expedite disposition. The court with the most complete disclosure is the most delayed. The factor is, however, quite difficult to isolate. The court with systematic review of the disclosure process was least delayed.

h. Information support system

This matter is more fully discussed in section V, but it is significant to note that all systems had some form of computerized, defendant based information system. There is no correlation between the existence of the information systems and the amount of delay.

i. Bifurcated procedure

All of the courts studied were a product of common law court system and their bifurcated criminal procedures. (One was in the process of changing to a unitary process in which felonies would commence and be concluded in felony court.) At the time of the studies almost all felonies started by a charging process in an intake court and, by one process or another (accusation), were bound over to a felony division of the court of general jurisdiction. Delays were encountered in these processes in each instance until the felony court undertook to supervise and monitor the accusation process. The several courts were, at the time of the study, in varying stages of the process of monitoring the lower court procedures. This was one area in which the model county's success could be most clearly verified in the local practices.

j. Plea negotiations

All of the courts involved in the study have a process by which a negotiated plea may be given effect. Only the model county had regularized and supervised the negotiations by using a scheduled conference. Two of the five systems regularly accept the prosecutor's recommendations as to sentence and awarded the sentence proposed. The model court, during the study, changed from regular plea negotiation conferences to the non-negotiation of particular classes of cases without perceptible effect on the delay. The model

court has historically had the highest rate of trials when compared to total dispositions of all of the courts studied. The range is from 15% down to 3%.

Only in the model county is the defendant required to be present for a plea negotiation conference. It was not uncommon, however, for the judge to set a case specially to bring the defendant into the court house for consultations associated with plea negotiations. The effect of non-negotiation on delay is worthy of considerable study. It is anticipated that Phase II of this study will be able to further document the results of changes in plea negotiation procedures.

General Observations

As indicated in the beginning of this section the project research does not support many of the views about the causes of delay held by local and national advocates of particular solutions to the problems of criminal court delay. The difficulty posed by much of the advocacy has been the need to justify reform on some basis and thereafter chosing delay as the most persuasive enemy. Disclosure of the prosecutor's case at an early date may well be desirable but standing alone, i.e. without management controls, it does not reduce delay. Grand juries may be undesirable, achronistic,impediments to justice, but their

existence with proper management does not delay cases. The absence of plea negotiations in a court of inadequate resources may contribute to the build up of a backlog but its absence is not the cause nor are extensive plea negotiations a guarantee of expedition. As more fully appears in the findings which follow, the staff of this project sees delay as caused by the absence of necessary organization, standards and management processes. The system is immensely complex and does not respond to cure alls of any sort. Delay is the product of many dependent interactions at each stage of the proceeding and it will not be brought under control by any one agency acting independently of the others.

V

FINDINGS

The basic product of the year long study is an articulation of critical factors affecting the delay of criminal, felony cases between arrest and trial. For each of the delay producing relationships or procedures a critical factor has been identified based upon the working solutions adopted in Multnomah County.

The factors cannot be conceived in simple single variable terms. Before any major adjustment can be made the system must be organized for control. Once some organization exists, goals and standards can be defined. With goals and standards adopted operational procedures can be designed and applied. By monitoring the operations against the goal and standards, the procedures can be evaluated and the results fed back to the performers. Finally procedures can be redesigned and installed which in turn can be evaluated and altered to meet the objectives which the organization has set.

As was noted earlier (Introduction) the study assumes that the initiation of system control should be by the judiciary rather than by any other principal participant in the system. This is not to conclude that the court may direct the prosecution and defense in their many procedures. In

the ultimate design, control of the process will be a cooperative effort visibly monitored by all of the participants.

The current version of the critical factors is set forth below:

CRITICAL FACTORS

I. ORGANIZATION FOR DECISION MAKING

A. Board of Judges

1.11 Board of Judges meets at least once each month

1.12 Meeting with advanced agenda

1.13 Agenda resolved at the meetings

1.14 Includes report of compliance with adopted standards

1.15 Minutes are distributed with 72 hours of meeting

B. Coordinating Council

1.21 Organize a coordinating council of criminal justice system decision makers

1.22 Coordinating council meets once each month

1.23 Meeting with advanced agenda

1.24 Agenda resolved at the meeting

1.25 Minutes are distributed within 72 hours of meeting

II. ORGANIZATION FOR CONTROL

A. Felony Calendar Judge

2.11 One of the judges regularly sitting in criminal cases must be placed in charge of the felony criminal procedure

2.12 Select an administrative officer responsible to the Felony Calendar Judge

2.13 The Felony Calendar Judge should hold the Administrative Officer responsible for collecting and reporting the information prescribed in VI below

B. Felony Courts Committee

2.21 Appoint a committee of three judges who regularly sit in criminal cases to consult with and advise the Presiding Judge and the court on matters relating to the criminal process

2.22 The committee should meet weekly to study information indicating compliance or non-compliance with adopted standards

C. Central Arraignment Procedures

2.31 Intake of cases into the felony court controlled by the Felony Calendar Judge

2.32 The Felony Calendar Judge holds all arraignments on felony information and indictments before assigning cases to a particular judge for action

2.33 All scheduled procedures in criminal cases held as scheduled unless postponed by the Felony Calendar Judge

2.34 Holding facilities available near the Felony Calendar Judge

2.35 Conference rooms available within the secure area near the Felony Calendar Judge

D. Bail Review and Investigation Staff

2.41 Appoint bail review and investigation staff to serve the felony court

2.42 The chief of the bail review and investigation staff reports to the Felony Calendar Judge

2.43 The bail review and investigation process serves both the intake and felony court

E. Counsel for Indigent Appointments

2.51 Appointment of counsel for indigent felony defendants in the intake court is under the control of the felony court

2.52 Through public defender or approved lists counsel is designated at the earliest possible time after arrest to continue through the whole process

2.53 Information regarding the work-loads of attorneys assigned to represent indigents is regularly made available to the Felony Calendar Judge

III. ORGANIZATION FOR CASE INVENTORY CONTROL

A. Monitoring the Procedures in the intake court

3.11 Felony charged cases receive a felony court number at the time they are first charged

3.12 The felony case headquarters is notified by name and number of all cases charged as felonies

3.13 The felony case headquarters receives weekly reports of felony cases status pending under intake court control

3.14 The presiding judge of the intake court meets weekly with the Felony Calendar Judge to review the status of cases exceeding the established standards

B. Arraignments Scheduled

3.21 When received by the felony headquarters cases are set for arraignment within three days

3.22 Cases in which the intake court binds over for felony trial receive an arraignment time and date before the hearing is adjourned

3.23 Felony cases which may be indicted by a process outside the intake court receive notice of the scheduled felony court arraignment at the time of the first intake court hearing (subject to being withdrawn if not indicted)

IV. ARRAIGNMENTS WITH CONTROL

A. Standard Arraignment Procedures in felony court

4.11 Trial counsel available with their trial schedules

4.12 Counsel for indigent reviewed against case type standards

4.13 Prosecutor delivers to the defendant's attorney a copy of the (a) indictment/information; (b) police report; (c) names and statements of witnesses known to the prosecutor

4.14 Court enters a not guilty plea

4.15 Court advises defendants that failure to appear for conference is a felony and bail will forfeit

4.16 Clerk hands notice of conference and trial date to defendant

B. Future scheduled at Arraignment

4.21 Plea discussion conference set for seven days hence at particular time and place. Cases are set on fifteen minute intervals

4.22 Defendant is required to be present at the conference as at any other scheduled court hearing

4.23 Counsel makes complete disclosure of case at the conference

4.24 The judge is not present but is available

4.25 Pleas of guilty are taken by the Felony Calendar Judge or substitute after the conference when appropriate

4.26 Cases are sent to individual judges for sentence

C. Trial Settings

4.31 Cases are set for trial fourteen to eighteen days after the dates set for the plea conferences. If cases are individually assigned, trials are set on the morning following the arraignment by the trial judge to whom assigned

4.32 Any setting more than 21 days from the conference setting must be explained by the setting judge

V. OPERATING STANDARDS TO PROVIDE CONTROL

A. Assignment of Cases for Trial

5.11 Master calendared cases assigned to a judge at 9:00 a.m. on the day prior to trial date

5.12 Individually calendared cases are reviewed for trial on the morning preceeding the date assigned for trial

B. Motions for Delay

5.21 Motions for delay are in writing with reasons stated (See Appendix A)

5.22 Motions for delay when granted are simultaneously rescheduled

C. Motions to Suppress or Attack the Information/ Indictments

5.31 Motions addressed to the information/indictments are made within two days of plea discussion conference

5.32 Motions are set for a hearing within two days of being filed without affecting the scheduled trial dates

D. Psychiatric Examinations

5.41 Appointment of psychiatrist or authorization for psychiatric examination is by motion

5.42 Time limits for completion of the examination and report (the shortest possible) are fixed at the time the motion is granted

E. Acceptance of Negotiated Plea

5.51 No guilty plea is accepted except to all charges in the indictment or information within two days of the trial setting

5.52 Pleas on date of trial are sent back to the Felony Calendar Judge for plea and to the trial judge for sentence

F. Guilty pleas by Signed Form

5.61 Guilty pleas are taken by a petition to enter guilty plea and an order entering plea (See Appendices B & C)

5.62 Defense Counsel is responsible for advising the defendant in clear language as to the contents of the form and to certify same

VI. STATISTICAL INFORMATION FOR CONTROL

A. Information about the Inventory

6.11 Total cases charged in intake court

6.12 Total felony cases disposed in intake court by (a) no probably cause found (b) guilty plea to a lesser cause (c) dismissals or not proceeded against

6.13 Total cases advanced to felony court

6.14 Total cases filed in felony court

6.15 Total cases disposed in felony court

6.16 Age of pending cases in 30 day intervals

6.17 Breakdown of cases by significant characteristics pending more than 60 days

6.18 Separate listing of fugitives in the inventory

B. Information about the Process (weekly, monthly, quarterly)

6.21 Cases disposed by jury verdict

6.22 Cases disposed by dismissal

6.23 Cases disposed by plea of guilty

6.24 Cases disposed by judge trial to a judgment

6.25 Cases plead on day of trial

6.26 Cases plead after trial commenced

6.27 Cases continued at trial date

6.28 Reasons cases continued at trial date

6.29 Cases continued for conference

6.30 Reasons cases continued for conference

C. Age of Cases from Arrest

6.31 Median time to jury trial

6.32 Median time to judge trial

6.33 Median time to information/indictment

6.34 Median time to arraignment

6.35 Median time to conference

D. Percentage of Dispositions

6.41 By jury verdict

6.42 By judge trial

6.43 By plea of guilty

6.44 By dismissal

(See Appendices D, E for data collection and reporting forms)

VII. RESOURCES TO SUPPORT CONTROL

A. Space for felony headquarters

7.11 Felony Calendar Judge's courtroom adjacent to holding facility

7.12 Conference rooms in the security area near Felony Calendar Judge's courtroom

7.13 Room in jail to conduct psychiatric examinations

B. Prosecution Personnel

7.21 Experienced prosecutor, with authority to decide, assigned to plea discussions

7.22 Prosecutors assigned immediately to argue motions

7.23 Prosecutor assigned in advance of trial date to try the case

C. Psychiatric Examinations

7.31 Psychiatrists appointed from an approved list of those willing to conduct examinations in adequate jail facilities

D. Counsel Appointment System

7.41 Public Defender adequately staffed/or

7.42 An organized system of private defenders adequately compensated and supervised to assure an available group of experienced defense counsel

VI

TESTING THE CONCLUSIONS: PHASE II

The initial documentation of Multnomah County and subsequent studies of the other areas raised more questions than it answered. While it appears probable that the Multnomah County experience can be adapted and applied to other counties it is by no means certain. Delay has plagued court processes from the beginning of the common law and we have no reason to expect cures to be effective until we witness the healthy system.

If the model is perceived as a detail plan of specific standards and procedures local differences in attitude and culture will prevent adoption. If the model can be treated as a group of essential elements sufficiently general to permit local adaptation their adoption is possible. This section will set forth these essential elements with sufficient specificity to make possible a judgment as to whether they have been adopted but avoiding the specificity of the critical factors, supra.

It is sufficient to suggest that certain functions be performed without prescribing who shall perform them. It is not assumed that each court experimenting with the recommendations will accept them all. It will be sufficient for the scope of the next phase of the research to document the absence of the performance of

particular functions and to measure its effect.

The text of this section will follow the organization of the critical factors (section V). This organization does not reflect a judgment as to the order of importance.

ORGANIZATION FOR DECISION MAKING

The several courts studied are in various stages of organization ranging from a loose collection of judges with individual staffs to a highly structured, centrally administered team of judges and staff. The critical factors do not prescribe a central court structure but do indicate the establishment of a Board of Judges which will meet regularly to provide guidance for the court and set goals. The critical factors also note the need for a coordinating council which must likewise meet regularly.

Though it can only be stated as a working hypothesis, it appears probable that courts which best control delay do so as a result of first deciding that they want to control it. Lest this sounds somewhat obvious, it is important to note that trial courts have been ordered by their state headquarters and by legislatures to reduce delay with little or no result. Judges seem to respond most quickly to the pressure of their peers for performance. When each judge of a court is exposed on a

regular (monthly) basis to what each of the other judges has accomplished during the immediate past, productivity usually increases. In this interactive process simple disposition rates are to be avoided as counterproductive. Reports which reflect the quality of the case loads, the length of trials as well as disposition data are essential to the process.

More important than the direct peer pressure to the management of courts is the creation of a mechanism through which standards of performance can be discussed and adopted. As of the present, it is probably sufficient to set court goals as to processing times and assign responsibility for gathering the information to monitor progress toward these goals. One conclusion in this area appears indisputable; without a regular meeting, advance agenda, deadlines for reports of committees and promptly distributed minutes, goals will not be set and responsibility for progress monitoring will not be accomplished.

The criminal justice system, of course, extends beyond the boundries of court organization. The existence of a mechanism to explore system solutions to interdependent problems needs little elaboration. The absence of such a mechanism or its disuse in most metropolitan areas suggests that its practical necessity is less than obvious to the usual participants in the system.

The absence of regular communication between the several parts of the system appears to be the most significant single reason for delay. As the project staff organized "coordinating council" type meetings or acted as mediary to the system participants they were constantly amazed to find that the leaders were ignorant of the affect which their staffs had on the process. Carefully selected and accurate information fed to the coordinating council leadership has resulted in more expeditions than any other single factor.

This coordination might be accomplished with fewer than monthly meetings if task groups were organized to attack specifically identified problem areas and the behavior which is causing them. Coordination must be made routine if delay is to be limited. The council appears to be the best mechanism for this purpose.

2. Organization for Control

This report ignores the possible need for overall court administration and concentrates on that part which affects the felony processing. It may well be that felony process control is not possible in a court of unlimited jurisdiction without substantial management of the whole organization.

The critical factors prescribe the existence of a judge in charge and someone (a non-judge) to help with the day to day monitoring of the system. The essence

of the prescription is to have a felony case headquarters which is assigned the responsibility of knowing what is going on. At best the headquarters can distribute and redistribute work in accord with the best utilization of facilities and resources. At worst (but still better than not at all) it can provide the Board of Judges with accurate and timely reports about what is going on.

The Felony Courts Committee is necessary to provide support for and advice to the felony case headquarters. In addition, the committee, as a part of the Board of Judges, becomes a resource to the Board in this special area of activity.

Arraignment, conceived of as a critical control time in the criminal justice procedure, is discussed under several topics and is a part of several critical factors. As an organizational matter the felony headquarters of a court must assume responsibility for seeing that the case comes under tight court control at the arraignment.

The central arraignment requirements implicit in the critical factors have encountered the most resistance among the courts studied. The three courts running individual calendars are willing to monitor the arraignments to assure compliance with the factors by individual judges but are not inclined to accept the concept as a necessity. Phase II should be able to resolve this dispute with some

certainty.

Early bail review appears to succeed only when there is an adequate staff under the control of the felony court headquarters. Since the decision on bail can cause multiple hearings and thereby delay the case, the staff control is necessary.

The appointment of counsel for the indigent in a bifurcated processing system must also be controlled by the felony court headquarters if delay is to be avoided. Information as to attorney workload and experience is essential to a controlled appointment of counsel.

3. Organization for Case Inventory Control

The control of cases must begin with the first court appearance if the delay is to be controlled. For all practical purposes the felony case is in the inventory of the felony court when the defendant is arrested. Whether or not the defendant is later accused, for management purposes, the earlier the potential case load is recognized and accounted for the better prepared the court will be to deal with it.

In addition many of the procedures which take place before accusation have a direct affect on the later proceedings. Monitoring of the intake process by the felony court headquarters is essential to its participation in the coordination process. Police, prosecutor, defense,

bail and notice procedures must be coordinated to control delay. The felony court is central to the whole process.

Meetings between the felony calendar judge and the presiding judge or judges of the intake courts is an additional necessary coordinating mechanism to manage a smooth flow of work from one court to the other. It is best conceived of as a permanent working task group of the coordinating council.

Arraignment organization is an essential part of organizing for control. Scheduling arraignments is an essential part of controlling the inventory from the beginning of the case.

4. Arraignments with Control

Critical Factors Heading IV and V taken together are a recognition of the basic concept that a case must come under court control at the earliest possible date and be subject to court control continuously thereafter. These factors reduce the general concept to specific requirement, i.e., that the felony court headquarters receive notice of the initial felony charge at the time of the intake court's first contact and monitor it to the accusation. At arraignment the relationship changes from monitoring to full control. Since problems of notice to the defendant are often a major factor in delay, the procedure provides for the giving of notice of each subsequent event at the earlier event. This

combination is easy to implement and encounters only the resistence of bureaucratic intransigence.

As noted above the central arraignment and conference control has been the most controversial of all of the critical procedures proposed for adoption. Both are prescribed as necessary for consistent administration of the process. Inconsistent judicial behavior in enforcing arraignment and conference goals leads to uncertainty in the process which in turn allows variation in participant preparation for these events. A compromise in this factor may be permissible if the results are carefully documented. In the courts with individual assignment systems the felony arraignments could meet the standards prescribed if all of the judges agreed.

Conference consistency is more difficult to achieve by agreement. The conference must occur, full disclosure must be made, the client must be available for consultation and it must be understood that the last best offer of the prosecution must be accepted at least three days before the trial setting. Individual variations among judges in their attitude toward these factors is inevitable but a delay reduction program which does not adopt these procedures will have a restricted success. Perhaps by regularly meeting to discuss particular approaches, the judges can reach a minimum of consistency.

A basic conclusion of the staff based on experience both in the project and otherwise is that short scheduling techniques must be applied to control delay. Events must be scheduled with the shortest possible time between events and exceptions carefully controlled. No case should go off the schedule but should always be set for a time and date certain to report on the progress toward a trial or other disposition.

Disclosure at the conference held within seven days of arraignment makes it possible to evaluate the case at an early date. Where potentially dispository motions are appropriate they can be made and some cases thereby terminated. Full disclosure of the prosecution case constitutes a fundamental premise leading to early settlement and must be accomplished substantially before trial if early dispositions and reliable calendars are to be set.

5. Operating Standards to Provide Control

Critical to any management process are the goals and standards by which performance is judged. Since justice standards are almost impossible to establish, delay, as one of the causes of injustice is treated as an objective measure of justice. It may well be the principal controllable variable in doing justice.

Delay is controlled by controlling the behavior of

participants in the system. Thus, continuances or other postponements, by whatever name, must be carefully considered and granted only when there is an honest, adequate reason. Experience in the project has demonstrated that recorded and monitored continuance procedures are a necessary standard in limiting delay. This becomes data available at all stages of the procedure to decide on changes and understand the cause for changes in the time required to reach trial.

Continuances are often granted obliquely. A clerk or secretary takes a matter off the schedule without a request in writing or parties are honored in their agreement to postpone. Faced with more work than is deemed accomplishable the judges readily accept these delays. As a consequence, the reason for delay which may be inadequate judge time or over-scheduling is lost and the management system doesn't know why it is failing. The only way to meet this requirement is to insist upon a written request and to state the reason for each extension. The system can, if delay continues, know why.

Several delay producing procedures must be dealt with on a sufficiently regular basis to be the subject of standards. Competency to stand trial examinations often causesunnecessary delay. Monitoring this delay can be minimized. Allowing pleas on trial day to an arrangement which could have been decided several days

before unduly complicates trial calendars and postpones dispositions. Control of last minute pleas thus becomes an important subject for standards. Guilty pleas often consume excessive amounts of judge's time. They can be dealt with better and more expeditiously when a petition is signed which contains representations on many issues.

Wherever an effective procedure is discovered, the court by adopting the procedures as a court standard, saves time. The several operating standards expressed in the factors may be improved upon but as of now are demonstrably effective.

6. Statistical Information for Control

The universal problem faced in the courts studied was the lack of an effective management information system. Each of the courts had, in various stages of automation, case tracking information systems which provide useful reports. None had approached the information as a tool for the management of the system.

As noted above (supra p. 9), one of the initial activities undertaken by the Project Team in each of the studies jurisdictions was to conduct an analysis of the data presently available. This review was conducted by reviewing the reports regularly prepared (manual and automated) as to format, content, and accuracy. Accuracy was tested by selecting a sample of the criminal case summary records and tabulating base statistics. In each court studied,

there were discrepancies in the various categories of the report information. In some of the categories of information the difference between the test data and the reported data were considerable.

The experience gained through this approach clearly indicated that a more reliable system must be installed in each of the courts involved before the delay reducing model proposed by the team could be implemented. This critical factor with respect to information for management was lacking in all but the model court and there it was not integrated in the information system of the court but was rather pieced together as each management demand was made.

The basic characteristic of the information systems studied fit the pattern installed in courts throughout the country. They were not designed to make management decisions or to provide for the monitoring and controlling of the process. Their basic purpose was and is to provide status reports on individual defendants as they progress through the system. This type of an approach is more historical than predictive in its use and purpose. To design an effective management information system the decision points must be identified and the information which best supports the decisions must be specified.

Flexibility must exist in the design so that the experience gained in using the information can be used

to refine the process. The information provided to the decision maker must often be increased or eliminated to provide for better decisions. This is a continuing process which allows the information system to adjust incrementally as the managerial skills of those using it mature.

More specifically, to meet the information requirements contemplated in the critical factors, the operating characteristics of the jurisdiction must be examined in detail. This is accomplished by a step-by-step "walking the track" to identify the sequence and flow of the work processes. During this review the individuals that are integral to the daily operation of the system are identified so that the classification of their function pinpoints decisions that they make. As the individuals and their roles in the decision making process are identified, it becomes possible to determine not only what information they require but also with what frequency and in what format to meet their needs. Included in the Findings Chapter (Critical Factors VI) is an itemization of the information which is essential to the initial development of a monitoring and controlling process for criminal case flow. The user and the format are a product of local operating procedures.

The staff has concluded from the Multnomah County experience that a simple manual system may be preferable

in the initial stages of operation. This provides an opportunity to start the development of the system with minimum confusion and thus provide some clear definition as to what would be appropriate for automation. After the usefulness of the information and the report formats is determined, a program for developing an automated system can be undertaken with assurance that the information reported is useful.

A consistent problem in the jurisdiction reviewed was the inability of the data processing department to meet the need of the users for program modifications. This appears to grow out of the fact that the program definition was not clear in the first place. Included in Appendix F is a detailed list showing the use for which the information listed in the critical factors is to be used.

7, Resources to Support Control

A number of the factors are dependent on adequate resources for their adoption. In a few instances special resources need to be acquired to adopt minimally effective operations. The felony headquarters must have the space and equipment necessary to its defined mission. Conference facilities seldom adequate in American court houses, must be made available. Room in the jail adequate for psychiatric examinations must be available. The absence

of space can in itself cause delay.

Lawyers in the public service are generally in short supply. The best procedures in the world won't cure the need for prosecutors, defenders, judges and private lawyers to try cases. Uneconomic practices drive good practitioners and good judges from the criminal justice process. Adequate pay and facilities are a necessary factor if delay is to be reduced.

Much more could be said about systems which do not provide adequate support to accomplish the standards adopted. Suffice it to note at this point that the recognition that certain things must occur within specific time limits carries with it the concept that the resources must be available to process the cases within those limits. The problem is to know when the cause is a shortage of resources rather than an inadequate management of available resources. The proposed program is designed to help make this distinction.

A P P E N D I C E S

APPENDIX A

IN THE CIRCUIT COURT OF THE STATE OF OREGON

FOR MULTNOMAH COUNTY

THE STATE OF OREGON,
Plaintiff,
v.
_____,
Defendant

No. C _____
DA _____

MOTION FOR CONTINUANCE

MOTION FILED BY: District Attorney ☐ Defense Attorney ☐

SCHEDULED TRIAL DATE: _____

DATE OF ARREST: _____

REASON FOR REQUESTED DELAY:

District Attorney _____

Defense Attorney _____

GRANTED ☐ DENIED ☐

NEW TRIAL DATE: _____

IT IS SO ORDERED.

DATED: _____

_____
JUDGE

Entered by: Chief Clerk
Calendar Secretary

APPENDIX B

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR MULTNOMAH COUNTY

STATE OF OREGON
Plaintiff,

vs.

_____
Defendant

C_____
DA No._____

PETITION TO ENTER PLEA OF GUILTY

The defendant represents to the Court:

1. My full true name is: _____
and I am also known as: _____
and I request that all proceedings against me be had in my true name.

2. I am represented by a lawyer; his name is: _____

3. I wish to plead GUILTY to the charge(s) of _____
_____

4. I told my lawyer all the facts and circumstances known to me about the charges against me. I believe that my lawyer is fully informed on all such matters. My lawyer has counselled and advised me on the nature of each charge; on any and all lesser included charges; and on all possible defenses that I might have in this case.

5. I understand that I may plead "Not Guilty" to any offense charged against me. If I choose to plead "Not Guilty" the Constitution guarantees me (a) the right to a speedy and public trial by jury, (b) the right to see, hear and face in open court all witnesses called to testify against me, (c) the right to use the power and process of the Court to compel the production of any evidence, including the attendance of any witnesses in my favor, and (d) the right to have the assistance of a lawyer at all stages of the proceedings, and (e) also the right to take the witness stand at my sole option; and, if I do not take the witness stand, I understand the jury will be told that this may be held against me.

6. I also understand that if I plead "GUILTY" the Court may impose the same punishment as if I had plead "Not Guilty", stood trial and been convicted.

7. I know that if I plead "GUILTY" to this charge (these charges), the maximum possible sentence is _____ years imprisonment and/or a fine of $_____. I know also that the sentence is up to the Court. The District Attorney will take no part other than providing to the Court, Police Reports and other factual information as requested by the Court; and the District Attorney shall make no recommendations to the Courts concerning my sentence except as follows _____
_____

8. I have ☐ have not ☐ been convicted of one or more felonies in the past as follows: _____
_____

9. I am [ ] am not [ ] presently on probation or parole. I understand that by pleading guilty in this case this may cause revocation of my probation or parole and that this could result in a sentence of _____ years in that case. I further understand that if my parole or probation is revoked, any sentence in that case my be consecutive to or in addition to any sentence in this case.

10. I also know that the law provides for an increase in maximum sentence described in Paragraph 7 to a maximum of 30 years if I qualify as a dangerous offender. I understand that this may happen in this case. [ ] If not applicable, check [ ].

11. I am _____ years of age. I have gone to school up to and including _____; my physical and mental health is presently satisfactory. At this time I am not under the influence of any drugs or intoxicants (nor was I at the time the crime was committed), except: _____
_____

12. I declare that no officer or agent of any branch of government (Federal, State or local) has made any promise or suggestion of any kind to me, or within my knowledge to anyone else, that I will receive a lighter sentence, or probation, or any other form of leniency if I plead "GUILTY", except: _____
_____

13. I believe that my lawyer has done all that anyone could do to counsel and assist me. I AM SATISFIED WITH THE ADVICE AND HELP HE HAS GIVEN ME; I recognize that if I have been told by my lawyer that I might receive probation or a light sentence, this is merely his prediction and is not binding on the Court.

14. I plead "GUILTY" and request the Court to accept my plea of "GUILTY" and to have entered my plea of "GUILTY" on the basis of _____
_____

15. I OFFER MY PLEA OF "GUILTY" FREELY AND VOLUNTARILY AND OF MY OWN ACCORD AND WITH FULL UNDERSTANDING OF ALL THE MATTERS SET FORTH IN THE INDICTMENT AND IN THIS PETITION AND IN THE CERTIFICATE OF MY LAWYER WHICH FOLLOWS.

16. I further state that I wish to waive the reading of the indictment or information in open Court. I request the Court to enter my plea of "GUILTY" as set forth in Paragraph 14.

Signed by me in the presence of my attorney this _____ day of _____, 19____

_____ _____
Address Defendant

CERTIFICATE OF COUNSEL

The undersigned, as lawyer and counsellor for the above defendant hereby certifies:

1. I have read and fully explained to the defendant the allegations contained in the indictment in this case.

2. To the best of my knowledge and belief the statements, representations and declarations made by the defendant in the foregoing petition are in all respect accurate and true.

3. I have explained the maximum penalty for each count to the defendant, and consider him competent to understand the charges against him and the effect of his petition to enter a plea of guilty.

4. The plea of "GUILTY" offered by the defendant in paragraph 7 accords with my understanding of the facts he related to me and is consistent with my advice to the defendant.

5. In my opinion the plea of "GUILTY" as offered by the defendant in paragraph 7 of the petition is voluntarily and understandingly made. I recommend that the Court accept the plea of "GUILTY".

6. Having discussed this matter carefully with the defendant, I am satisfied, and I hereby certify, in my opinion, that he is mentally and physically competent; there is no mental or physical condition which would affect his understanding of these proceedings; further, I state that I have no reason to believe that he is presently operating under the influence of drugs or intoxicants. (Any exceptions to this should be stated by counsel on the record.)

Signed by me in the presence of the defendant above named and after full discussion of the contents of this certificate with the defendant, this _____ day of _____. 19____

_____
Attorney for the Defendant

APPENDIX C

In the Circuit Court of the State of Oregon

for Multnomah County

THE STATE OF OREGON,

Plaintiff,

vs.

_____,

_____

_____,

Residence and phone.

Defendant.

No. C_____ Cr

DA _____

ORDER ENTERING PLEA OF GUILTY PURSUANT TO PETITION FILED

IT IS ORDERED that the following be entered of record:

Appearances: _____ Dep. DA: _____ Def. Att.

(___) defendant's plea of GUILTY: (___) and arraignment (truly named in charging instrument, or as follows: _____).

(___) to _____ as charged in _____
count, indictment, information, complaint

(___) to the lesser, included offense of _____.

(___) defendant's withdrawal of his former plea of Not Guilty and his Plea of GUILTY.

(___) this case continued pending receipt of a presentence investigation conducted by _____

(___) the Corrections Division: (___) long form; (___) short form

(___) previous report updated; must be received by _____

(___) Diagnostic Center; must be received by _____

(___) other _____

(___) the following matters be continued pending disposition of the within case: (___) indictment;

(___) count(s) _____ of the indictment. (___) other cases, Nos. _____

(___) this case continued for sentence to _____
(day, date and time)

_____

(___) the within matter be continued to a later date yet to be determined by the Court.

(___) other _____

DATED this _____ day of _____, 19____.

_____
JUDGE

DISTRIBUTION:

Original: File
Yellow: Def. Att.
Pink: Court
Goldenrod: DA
Green: DA

APPENDIX D

CRIMINAL

RECORD OF DISPOSITION

Case No. _____ STATE vs. _____

Judge _____ District Attorney _____

Defense Attorney _____ _____
(Phone)

Trial Date _____ Estimated Trial Time _____

Continued to _____ Actual Trial Time _____

Crime Charged _____ Crime Convicted _____

Plead on day of trial ___ Plead before trial ___ Plead during trial ___

Tried to: JURY ___ COURT ___ GUILTY ___ NOT GUILTY ___

Disposed by Motion: Suppress ___ Demurrer ___
Dismissed by D.A. ___ Mistrial ___
Acquittal ___ Hung Jury ___

Case under advisement ___ Court Reporter _____

_____

NOTE: Print on 5x7 index card

APPENDIX E

COMPARATIVE ANALYSIS OF DISPOSITIONS

CRIMINAL CASES

JANUARY (Month), 1978

	Nov. 1977	Dec. 1977	Jan. 1978	Jan 19
IN CHIEF CRIMINAL COURT				
Cases Arraigned				
Cases Dismissed				
Guilty Pleas				
Motions Heard				
IN TRIAL DEPARTMENTS				
Total Cases Set For Trial				
Cases Continued From Assigned Trial Date				
Failure To Appear At Trial				
Guilty Pleas Before Trial				
Guilty Pleas On Day Of Trial				
Guilty Pleas During Trial				
Cases Dismissed Before Trial				
Cases Dismissed On Day of Trial				
Mistrials (Including Hung Juries)				
Motions To Suppress Granted				
Cases Tried To Jury				
Cases Tried To Court				
PERFORMANCE OF SYSTEM				
Total Cases Tried (Including Mistrials)				
Average Time Lapse From Arrest To Trial In Days				
Ratio Of All Pleas Of Guilty To Trials				
Cases Tried Over 60 Days From Arrest				

INVENTORY: CASES FILED_____ CASES TERMINATED_____ CASES PENDING____

AGE OF PENDING CASES:

LESS THAN 30 DAYS	LESS THAN 60 DAYS	LESS THAN 90 DAYS	3 MONTHS TO 6 MONTHS	6 MONTHS TO 12 MONTHS	OVER 12 MONTHS

RECOGNIZANCE AND BAIL:

	ADMITTED TO BAIL	SCREENED FOR RECOG.	RELEASED ON RECOG.	FAILURE TO APPEAR
MAGISTRATE COURT				
FELONY COURT				

APPENDIX F

Included in this appendix material is an outline and discussion of the kinds of information which would serve as a foundation for the courts' information systems. For each event (arrest, first hearing, etc.) four main categories of information have been designated to enable the courts to effectively monitor their criminal case flow. They are Lapse Time (LT), Event Occurrence (EO), Interval Time (IT) and Status (S).

Under the heading of Lapse Time, information is collected to determine the following: (a) the amount of time which occurs between two events, (b) the time difference between the lapse time for the case in question and the standard set forth by the court and (c) special characteristics of those cases less than or more than the standard time, such as the number of defendants and type of crime.

Included under the heading of Event Occurence is a specification of each process which must occur at the event. Information collected here allows the court to detect whether the process at the event did or did not occur. Two principle reasons why an event does not occur are the lack of available resources or persons at the event and the lack of preparation by participants. Information required to monitor these is specified in the remaining two categories.

Under the heading of Interval Time is a specification of tasks or activities that are a part of the process. There are two components to the measurement of interval time. The first is measurement of the time that represents preparation. This is the time that it takes for the processors to perform their tasks. An example of this is the amount of time necessary to identify the need for and prepare a document which would be significant for the case to move, such as the preparation of the notice. The other component of the interval time is the waiting time between the activities that the processor experiences. An example of this would be the time during which no action is taken because the processor can't or doesn't take any action.

Interval Time activities can take place either simultaneously or in sequences. Those activities that represent simultaneous tasks would be items such as the ordering and receipt of a laboratory report together with the ordering and receipt of a psychiatric report. On the other hand, tasks which must be performed in sequence are the identification of individuals to whom notices are to be sent and then the actual preparation of the notice.

Information collected under the fourth information category, Status, reflects the availability of resources and participants at the event. Depending on which event it addresses, this information could include the availability of courtrooms, judges, defense lawyers, prosecution

lawyers, defendants, witnesses, juries, police reports, lab reports etc. The key monitoring concern here is to learn how often the unavailability of resources or participants interferes with the event.

The use of these four measurements in the monitoring of the total case processes is extremely important in that they identify which resources are necessary at each point in the case movement and also, the systematic identification of the activities and processes within the events provides identification of all tasks which must take place for the case to move. The failure of an important task to take place therefore can be tracked back to the root cause.

The following represents a partial list of information elements classified by monitor category. This list will expand, contract and change as experience increases in particular jurisdictions as to the monitoring needs. Also, sharpening of management skills will play a role in identifying which types of controls are most effective in attaining desired goals for particular jurisdictions and thus what frequency the information needs to be reported.

INFORMATION REQUIREMENTS OUTLINE

1. ARREST

A. Process to First Hearing

LT 1 A Lapse time between arrest and first hearing

1 B Time difference between this case and standard

(a) special defendant characteristics of cases less than or more than the standard time

(b) special subject matter characteristics of cases less than or more than the standard time

EO 1 A Apprehend and control suspect

1 B Book suspect

1 C Prosecution screens

1 D Prepare charge

1 E Determine conditions of release - bail, own recognizance, custody

1 F Give notice to appear for first hearing

IT 1 A Experienced prosecutor screens evidence not screened at arrest

1 B Write and review police report

1 C Prepare charges and sufficiently state crime committed

1 D Conduct bail investigation

1 E Determine eligibility for defense aid

S 1 A Location of suspect

1 B Availability of police report

1 C Availability of prosecution staff

1 D Availability of bail review staff

2. FIRST HEARING

B. Process to Accusation

LT 2 A Lapse time between first hearing and accusation

2 B Time difference between this case and standard

(a) special defendant characteristics of cases less than or more than the standard time

(b) special subject matter characteristics of cases less than or more than the standard time

EO 2 A Identify person as one being accused

2 B Advise accused of charges

2 C Make record of advice

2 D Arrange for the advice of counsel

2 E Determine indigency

2 F Determine conditions of release - bail, own recognizance, custody

2 G Set day certain for arraignment

IT 2 A Interview witnesses

2 B Obtain lab reports

2 C Write new reports

2 D Type new reports

2 E Draft and review formal indictment (or information)

2 F Organize and review evidence

2 G Complete legal research

S 2 A Availability of judge, courtroom, defense and prosecution

3. ACCUSATION

C. Process to Arraignment

LT 3 A Lapse time between accusation and arraignment

3 B Time difference between this case and standard

(a) special defendant characteristics of cases less than or more than the standard time

(b) special subject matter characteristics of cases less than or more than the standard time

EO 3 A Fix limit of crime

3 B Provide record of accusation

3 C Check against unwarranted accusations

3 D Give notice to appear for arraignment

IT 3 A Set arraignment date

3 B Make arrangements for judge and courtroom

3 C Draft, review and transmit case papers to felony court clerk's office

3 D Notify person of arraignment

S 3 A Availability of indictment/information

3 B Location of defendant

4. ARRAIGNMENT

D. Process to Motions

LT 4 A Lapse time between arraignment and motions

4 B Time difference between this case and standard

(a) special defendant charateristics of cases less than or more than the standard time

(b) special subject matter characteristics of cases less than or more than the standard time

EO 4 A Identify accused as one named in information/ indictment

4 B Advise accused of charges

4 C Allow accused to deny charges or court enters not guilty plea

4 D Prosecutor gives defense counsel indictment/ information, police report, names and statements of witnesses

4 E Set day certain for conference and trial

4 F Give notice to appear and advise defendant that failure to appear is a felony

IT 4 A File motions within ten days after arraignment

4 B Respond to motions within ten days

4 C Reply to response within five days

4 D Set motion for hearing ten days after reply due

4 E Notify persons of hearing

4 F Request briefs after hearing with fixed response times

CONTINUED

1 OF 2

4 G Reporter transcribes evidence

4 H Evaluate need for psychiatric and physical exams

4 I Evaluate possibility of dispositive motions

S 4 A Availability of judge and courtroom

4 B Availability of prosecution and defense with trial schedules

4 C Availability of indictment/information, police report and names of witnesses and statements

5. MOTIONS

E. Process to Conference

LT 5 A Lapse time between motions and conference

5 B Time difference between this case and standard

(a) special defendant characteristics of cases less than or more than the standard time

(b) special subject matter characteristics of case less than or more than the standard time

EO 5 A Apply adversary techniques to resolution of case issue

5 B Understand boundaries of controversy

5 C Resolve uncertainties in the case

IT 5 A Lawyers evaluate difficulties in their case

5 B Defense lawyer meet with client

5 C Complete discovery either by cooperation or motion

S 5 A Availability of judge, courtroom, defense and prosecution

6. CONFERENCE

F. Process to Trial

LT 6 A Lapse time between conference and trial

6 B Time difference between this case and standard

(a) special defendant characteristics of cases less than or more than the standard time

(b) special subject matter characteristics of case less than or more than the standard time

EO 6 A Discuss evidence to be presented by prosecution and defense

6 B Discuss propriety of the charges

6 C Discuss appropriate sentence if defendant to be found guilty

6 D Discuss length of trial

6 E Discuss possible dispositive motions

6 F Take guilty plea by signed form

IT 6 A Find and notify witnesses

6 B Adjust and plan attorney schedules

6 C Brief new trial attorneys

6 D Conduct physical or mental exams

6 E Notify persons of trial date

6 F Arrange for courtroom and judge

6 G If needed, arrange for jurors

S 6 A Availability of conference space

6 B Availability of prosecution and defense (including defendant)

6 C Availability of judge as needed to take guilty plea and assign for sentencing

7. TRIAL

LT 7 A Lapse time between taking of guilty plea and scheduled trial date

7 B Time difference between this case and standard

(a) special defendant characteristics of cases less than or more than the standard time

(b) special subject matter characteristics of case less than or more than the standard time

EO 7 A Resolve uncertainties as to available judge

7 B Resolve uncertainties as to available evidence

7 C Fix best plea offer from both sides

7 D Learn nature of the jury

7 E Establish reliability of witnesses

7 F Reach jury or judge decision

S 7 A Availability of judge, courtroom, prosecution and defense

7 B Availability of jury

7 C Availability of witnesses