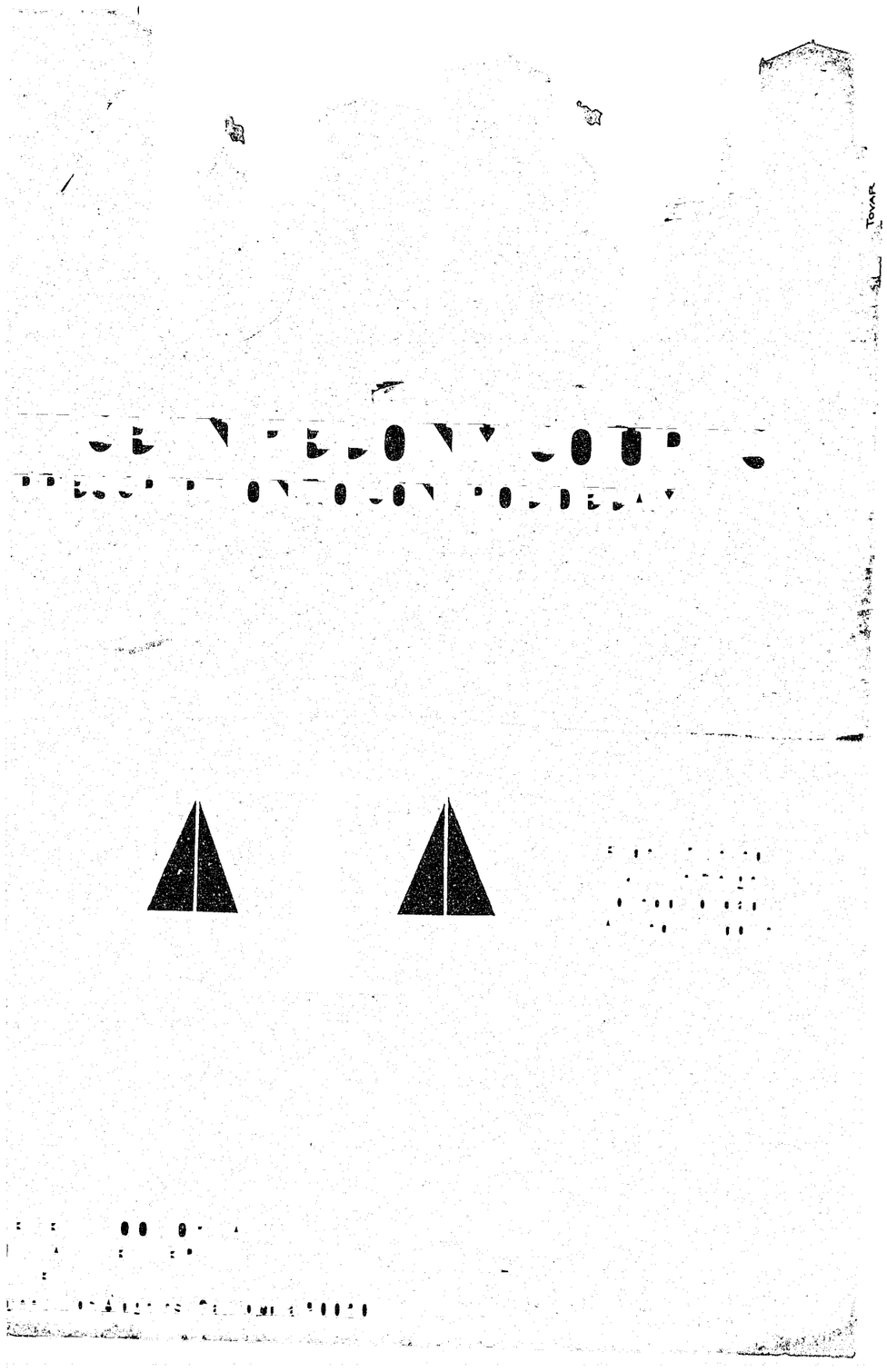

JUSTICE IN FELONY COURTS: A PRESCRIPTION TO CONTROL DELAY

A Report on a Study of Delay
in Metropolitan Courts
During 1978-1979

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Delays in the adversary system of justice destroy justice. Memory is lost, deterrence is reduced, witnesses move or disappear and costs are increased. The reduction of court delay is necessary to preserve the basic purpose of courts -- to do justice.

During a year of study in four courts the Whittier study staff compared the most expeditious felony court in the United States with four others, identifying the critical factors which affect delay. They included the following:

1. Organization of the system to make policy decisions
2. Organization of the court for case processing
3. The control of case inventories by the court
4. The use of arraignment as a control point
5. The existence and enforcement of operating standards
6. The existence and use of information for monitoring, controlling and evaluating the system
7. Having the resources necessary to maintain the control system.

Phase II of the program confirmed the importance of these factors and recognized as most critical the provision for (1) early discovery (2) structured plea conferences and (3) plea cutoff dates. Further, the Phase II program identified in more detail the cultural factors which tended to promote and maintain delay. These included the political, economic and social cultures of the systems, as well as the legal culture.

Most important, the Whittier staff encountered traditional

organizational resistance to change in the several systems studied and was at least partially successful in developing techniques with which to overcome this resistance.

In the course of the study a delay management program was developed with the following particulars:

First. Identify and describe the content and sequence of necessary court events.

a. Identify the due process events

b. Identify the control events

c. Identify the preparations and the times necessary for these preparations to make the events effective.

Second. Measure the existing time intervals between events.

Third. Determine the age of the active, pending inventory in significant time spans.

Fourth. Identify the relationships of the actors with respect to each event and its preparation.

Fifth. Convene the principal actors and present the above perspective to them.

Sixth. Organize task groups to work on identifiable problems.

Seventh. Provide staff assistance to the task groups.

Eighth. Develop and present to the principal actors standards and goals which can be reached with available or obtainable resources.

Ninth. Reinforce with information the accomplishment of the goals.

The program set forth above evolved within the passage of the year. The results in the systems were largely a product of the task

groups working on identifiable problems. They were, from any point of view, impressive. The changes are reflected in the following chart.

ARREST TO TRIAL LAPSE TIME*

		1st Quarter	Last Quarter
HARRIS	Studied Courts	233 days	144 days
	All Courts	239 days	170 days
DADE		212 days	80 days
PROVIDENCE		435 days	147 days
MONTGOMERY		114 days	76 days

* In order to reflect major differences in defining lapse time, several adjustments have been made. Where known, delay caused by unavailability of the defendant has not been included.

The staff support given to the task groups utilized basic analytic tools. Systems rates were developed and subsystems analyzed. The determination of systems rates made the progress more predictable and specific. The subsystems analysis made the delay problems more comprehensible by eliminating extraneous considerations.

The study staff concluded that delay can be controlled, even with limited resources, if attention is focused on specific delay-producing factors.

I

INTRODUCTION

A. DELAY AND ITS EFFECTS ON JUSTICE

It has been noted on several occasions that delay in an adversary system of justice administration often destroys justice.[1] Memory is lost; witnesses move away; costs of handling are increased and the impact of a timely decision on deterrent and rehabilitative efforts is lost. The question often posed is whether, in the process of speeding up decisions to ameliorate the above problems, something else is lost.

The usual proponent of delay has at least one anecdote involving a complex circumstantial murder or multiple defendant conspiracy which could not be tried promptly because of complex necessary preparations. It hardly needs to be noted that these cases are the exception and should not control the rate at which courts operate. Delay, when it pervades the system acts upon routine, one witness cases with the same force as on the complex. When ninety-five percent of the cases require only hours to prepare for trial or settlement it is dysfunctional to run them through the system at the same pace as the complex cases. Faced with this distinction, most people recognize, at least intellectually, that delays of even sixty days between arrest and trial can be considered excessive.

Clear violations of professional ethics exist when delay is used as a strategy in litigation.[2] Without regard to the time necessary for preparation, lawyers for criminal defendants regularly delay cases to gain the ad-

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1. See NATIONAL CENTER FOR STATE COURTS, STATE COURTS: A BLUEPRINT FOR THE FUTURE at 197 (1978) (Proceedings of the Second National Conference on Judiciary) (hereinafter cited as N.C.S.C.): LEVIN & WOOLEY, DISPATCH AND DELAY (1961); VANDERBILT, MINIMUM STANDARDS OF JUDICIAL ADMINISTRATION (1949).

2. Compare Court Congestion and Crash Program, 44 U. of DEN. L.R. 377 (1967).

vantages of lost memory, will, witnesses, etc. and will defend these intentional delays as necessary to maintain an adequate practice. It has been suggested that the reduction of delay will eliminate the private criminal defense bar. Somewhat anomalously, this suggestion often comes from persons who admit that they make a larger portion of their income in the pleading of routine cases than in the trial of complex cases.

Accepting the need to reduce the injustices caused by delay, one may not assume that all programs to reduce delay are just. Delay reduction programs can produce injustice. Crash programs which ignore basic due process or force quick decisions on courts without adequate deliberation time do not result in just dispositions. Injustice often results where an attempt to reduce delay fails to take into account the concentration of the active cases in the hands of a few lawyers. Justice is not served by forcing an unprepared lawyer to a quick trial. A regular one year delay cannot be reduced to six months by a crash program which ignores the capacity of the lawyers and judges in the system to absorb a larger number of trials in a short period of time. Delay reduction is more complex than identifying causes and writing a prescription. The cure must come over time with increments monitored to be sure that undesirable settlements are not being made and that unprepared lawyers are not forced to trial.

More has been done in the past several years to understand trial court delay than in all history from the time that man began to complain of the law's delay. More particularly the Law Enforcement Assistance Administration has initiated and financed several major efforts to reduce the delays normally associated with the courts.[3]

3. LAW ENFORCEMENT ASSISTANCE ADMINISTRATION GUIDE FOR DISCRETIONARY GRANT PROGRAMS, LEAA GUIDELINE MANUAL 4500.1G (1978) (Court Delay Reduction Program, id. at 43) (hereinafter cited as LEAA MANUAL).

The National Center for State Courts reporting on its broadly based national study in September of 1978 concluded that the conventionally advocated cures for court delay had little or no effect on such delay.[4] Applying court statistics drawn from many courts across the nation, the report recommends a managerial solution, after asserting that delay is largely a product of the "legal culture" of a given community, rather than a product of schemes of calendaring cases or court organizational structures.[5]

The American Bar Foundation in a report by Raymond Nimmer, independently supports the view reached by the National Center staff. The Nimmer report concludes, without mentioning a "legal culture," that there is little motive for change in the criminal justice system and that reform is possible only when seen by the principal actors to be in their individual interest.[6]

Whittier College School of Law concluded at the end of a one year study that the presence or absence of certain critical factors in a particular jurisdiction tended to reduce or increase delay.[7] In their report, the staff at Whittier delineated these factors in seven basic areas,[8] finding evidence for their conlcusions in a comparison between Multnomah County, Oregon and four other metropolitan counties. The evidence showed that delay was present or absent depending on how each of these factors varied.[9] The Whittier re-

4. T. CHURCH, A. CARLSON, J. LEE, T. TAN, JUSTICE DELAYED (1978) (hereinafter cited as JUSTICE DELAYED).

5. See generally id.

6. R. NIMMER, THE NATURE OF SYSTEM CHANGE (1978) (hereinafter cited as NIMMER).

7. E. FRIESEN, J. JORDAN, A. SULMONETTI, ARREST TO TRIAL IN FORTY-FIVE DAYS (1978) (hereinafter cited as ARREST).

8. Id. at 42-52. See notes 39-43 and 45-46 infra.

9. See ARREST, supra note 7.

port set up a structure which could be used in any court to isolate the occurrence of delay and the actors involved in each phase of the litigation process.[10]

The Law Enforcement Assistance Administration financed a second phase of the Whittier study to test whether the adoption of some of the specific methods of the faster courts would reduce the delay in the slower courts. This report records the findings of the second phase of Whittier's study.

B. PHASE I RESEARCH

During Phase I of the project (1977-1978) the Whittier staff made a detailed study of the felony case process in Multnomah County (Portland), Oregon. They documented the procedures and described the institutional relationships without evaluating the impact which any one part or relation might have upon the system.[11] Judge Alfred T. Sulmonetti, who took a sabbatical leave from his duties as Circuit Judge in Multnomah County to work with the Whittier staff, provided the entree into the system. Having participated in the development of the system as Presiding Judge and Chief Criminal Judge he was able to identify and describe the critical factors, which in his judgment played a role in reducing delay.[12]

The details of these critical factors were disclosed and the Whittier staff was made familiar with the minute detail of their perceived effect in Multnomah County. Armed with this detailed view, the Whittier staff surveyed four felony processes in diverse locations -- Montgomery County

10. Id. at 15-16.

11. ARREST, supra note 7 at 4-14.

12. See notes 39-43 and 45-46 and accompanying text infra.

(Dayton), Ohio; Dade County (Miami), Florida; Providence County, Rhode Island; and Harris County (Houston), Texas. They studied each of the counties on the basis of the significant detail they discovered in the Multnomah County system. They recorded the felony processes and the relationships in the system. They particularly noted the differences that existed, i.e., whether the factors deemed critical in Multnomah were present in the other counties.

The diversity of laws, populations, systems, and relationships in each of the locations surveyed were clear from the documentation.[13] Further, the organizations of the courts differed as did their methods of calendaring.[14] Despite these wide differences, however, the presence or absence of the Multnomah County variations on the critical factors was easily noted and the prediction justified that it would be possible to replicate these variations in each of the jurisdictions.[15]

C. PHASE II RESEARCH

With the agreement of the courts in three of the counties and of half of the judges in the fourth county, Phase II of the project began. The main objective of the project was to replicate to the extent possible the Multnomah County variations in the experimental courts and to measure their effect upon delay. To implement the project and to observe its progress, two members of the Whittier staff visited each court for at least three days each month. During these three days, the staff monitored the status of the variations and sampled the

13. ARREST, supra note 7 at 25-41.

14. Id. at 34-41.

15. See generally ARREST, supra note 7.

information to determine whether trial delays were being reduced.

The results of the experiments have been encouraging and informative. There proved to be a considerable difference between accepting the experiment intellectually and installing it as an operating demonstration. The principal finding of the study, in addition to the clear conclusion that felony court delay can be reduced, is that change in litigation processes must be approached slowly and incrementally.[16] Delay can be reduced through application of sound techniques, but successful application requires an ongoing attention to administrative controls which is not generally present in the institutions that make up the felony case process.

There was an impressive reduction in the amount of delay. In each of the courts studied the median time to a jury trial was reduced by at least 25%. In two of the courts the time was reduced by nearly 50%. To test whether this was a manipulated result the pending cases were aged in 30 day categories. In each instance, the cases pending over 120 days were reduced while the time to trial was improved.

In the early months it was almost impossible to get the necessary information without constant sampling. The necessary data prescribed in critical factor six[17] was not regularly available in any of the experimental courts. Despite the existence of computer based case information systems within each court system, the basic information needed by the Whittier staff was available only through manual operations. Much of the time in the early months was therefore devoted to organizing manual information systems which could produce the necessary information.

16. See generally pp. 72-77 infra.

17. See note 45, infra.

Once the Whittier staff had established an information gathering process it proceeded to evaluate the progress in the separate judicial systems. No court had adopted all of the Multnomah County variations on the critical factors, but at least two of the courts experimented with each of the factors. The absence of the adoption of all the factors by each court made it possible to make cross comparisons between courts, which enriched the value of the research. By comparing subsystems of the process, as had been defined in the Phase I report,[18] much insight into felony process operations was gained and is reported here. Most significantly, the staff was able to find techniques for controlling the application of a particular variation on a critical factor in one court and replicating it in another. As the experimenting courts solved problems, the cross fertilization of the staff in their reports to headquarters made implementations possible which had not been perceived in the limited exploration of Phase I.

Of particular value was the existence in three of the courts of basically individual assignment systems, which were quite different from the central assignment system in the model court. Techniques which could be studied only in other central systems could be studied in their wide variations in individual assignment systems. In one court eight judges operated with respect to the critical factors in eight different modes. The variations in result were striking and though they generally supported the importance of the critical factors, they also suggested some of the variations in application reported below.

Variations were recordable and observable not only from court to court and judge to judge, but also from time to time in the same court. As

18. See generally ARREST, supra note 7.

the adoption of one technique produced favorable results the courts adopted others. They became experimental. By the end of the project, no court was operating in the way it operated at the midpoint, let alone at the beginning.

The substantial variation among four systems had its dysfunctions in terms of research. The variations in rules and documented procedures were easy to follow but the subtle changes in relationships were not so easy to evaluate. The legal, political, social, and economic relationships surrounding the systems and subsystems of the court were altered in the process. The study staff had neither the time nor the ability to identify and describe the personal and institutional changes which caused the results noted here. It is sufficient that the behavior which these changes wrought can be recorded for further speculation by behavioral scientists.

Some of the results are inconclusive because they have not been sustained for a sufficient amount of time for us to judge their lasting effect. One court will be monitored for an additional three months and two of the others for at least a year. The steady improvement since the middle of the project year indicates a high probability that the results will endure.

II

A DELAY MANAGEMENT PROGRAM

If the Whittier staff were to pick one fundamental finding of its year of study it would be that delay is not reduced by identifying the causes and prescribing a rational program for a cure. The staff experience in the several counties during the twelve months immediately past led to the conclusion that change is, however, possible if a sensitive and thorough approach is made to the people in the system. The combination of factors discussed in the section on change accurately reflects the difficulties encountered in moving from knowledge to action.

Contrary to the pessimism of the Nimmer report, the Whittier experience found the participants willing to accept changes that did not necessarily work to their own selfish interest. Though not pervasive, a certain element of professional pride is present in the courts which can be harnessed to control delay. This finding does not, of course, contradict the Nimmer finding but it does perhaps soften it. The reduction of delay does generally work for the benefit of all of the participants except the defendants and even for defendants when they are proven innocent more expeditiously.

The Whittier experience found a willingness, even an eagerness, in many system participants to perform effectively. The most common impediment to change is not selfishness so much as a deeply ingrained defensiveness about the status quo. This defensiveness is usually expressed in a detailed rationalization of why delay is actually good. Typically, responsible leaders of the community suggest that "there is nothing wrong with six months to trial if the defendants do not want to be tried" or "we will not have any private trial bar if they

cannot get paid for keeping their clients on the street; you have to be practical, if a lawyer does not have time to get his fee, the state will have to pay the expense of the defense." The rationalizations are endless and usually strident when verbalized. They generally indicate an underlying dissatisfaction with a performance they cannot see how to improve.

The existence of expensive studies and even more expensive computerized information systems in the major metropolitan courts is some indication of the willingness of the courts to try to improve. Unfortunately, however, the recent influx of monies to pay consultants to advise prosecutors, defenders and courts has left the courthouses strewn with reports and little change. While millions have been spent on information systems, little of the information has been used and most of it is excessively complex or ill designed to assist in making basic management decisions.

Perhaps by design, but more by inadvertence, the Whittier team in its attempt to study and document delay reducing programs has identified a direct approach to controlling the forces which cause delay. For lack of a better label it is called a Delay Management Program.

Many people have experienced the frustration which results from returning to an old environment after an inspiring training program to find the people left behind unimpressed with the newly discovered concepts. Without application valid concepts are soon lost. Many others have experienced the frustration connected with a lack of implementation in plans well made. The management program outlined and explained below may help to bring about an acceptance of new

concepts by all of the actors in the system and make possible the design and implementation of a delay reduction program. The following sets forth a proven program:

I. Identify and describe the content and sequence of necessary court events.
   1. Identify the due process events.
   2. Identify the control events (decision and monitoring points).
   3. Identify the preparations and the times necessary for the preparations to make the event successful.

II. Measure the normal time interval between events.

III. Determine the age of the inventory of cases in appropriate time spans.

IV. Identify the relationships of the actors with respect to the significant events and their preparations.

V. Convene the principal actors and present the above perspective on the system.

VI. Organize task groups to work on identifiable problems.

VII. Provide staff assistance to the task groups.

VIII. Develop and present to the principal actors standards and goals which can be reached within available or obtainable resources.

IX. Reinforce with information the accomplishment of the goals.

Identify and describe the content and sequence of necessary events. The significant events in a delay reduction program are those necessary for due process or for controlling the progress of cases through the system. Most due process events can and should be used for control as well as due process. A hearing held to determine probable cause should be used to plan for and schedule the next event. If counsel is needed to prepare for the next event the occasion should be used to assure the

presence of counsel. Notice should not be sent, it should be given at the event. The event is thus defined by its purpose and its effectiveness evaluated in terms of accomplishment of the purpose.

The preparations needed to make these events successful need to be identified. The events usually fall short of their purpose for want of preparation, not purpose.

Measure the normal time interval between events. The system as it now exists can be approached in terms of its necessary events and the time it takes to have them occur. The description should be limited to the normal processes of significant categories of work. The bizarre case, though it may need special attention, is not the subject of analysis and design for routine operations. By knowing normal time intervals of the principal case flows of a system, the preparation time necessary can be judged and realistic time limits set based on the necessary time for preparation.

Determine the age of the inventory of cases in appropriate time spans. Normal time lapses between necessary events are meaningless if there is an accumulation of cases which do not reach these events. An aged inventory of cases in time spans appropriate for the process tells how the cases are moving or not moving toward the necessary events. In a summary sense, it tells whether the system is building backlogs within a generally even flow.

Identify the relationships of the actors with respect to the necessary events and their preparations. All of the relationships, from lawyer-client to sheriff-witness, need to be described in terms of the actions they take or do not take which may affect the orderly processing and preparation of cases. The way in which lawyers are

able to meet their clients, the relationship of the chief judge to the trial judges and every other activity having an impact on case flow should be examined and described. This must follow the identification of the events and preparations since it is the events and preparations which are being described.

In effect, this step defines the culture and its impact on the progress of the cases. Again, the normal or routine relationship, not the unusual, is sought.

Convene the principal actors and present the above perspective on the system. When time and human relationships are graphically expressed, they leave a lasting impression on the principal actors. Prosecutors, police chiefs, judges, administrators, clerks, defenders, sheriffs, etc., confronted with longer than necessary lapses of time in their sphere of operations quickly become interested in finding solutions. For the most part, they see facts displayed which had not occurred to them. The results are inspirational to some and therapeutic to others. The usual results are action on the perceived problems.

Organize task groups to work on identifiable problems. In many instances the perceived problems exist where two of the organizations meet. Work does not progress, preparations are not made because each institution is waiting for the other to act. Task groups are assigned to attack these problems and are asked to report.

Provide staff assistance to the task groups. Meet with the groups on a weekly or monthly basis. Gather data about the effectiveness of events and the preparations necessary. Emphasize the need to develop subsystem communication links; to have internal monitoring statistics

which measure progress; to have feedback to their operating personnel with respect to successes achieved; to reward productive behavior. Task groups tie the system together at the working level.

Develop and present to the principal actors standards of performance and goals which can be reached with available or obtainable resources. All subsystems should be examined in the light of the overall operations of the system. Once the subsystem changes are assimilated, standards and goals must be adopted, but they must only be adopted when the measure for accomplishment can be defined in advance.

Reinforce with information the accomplishment of the goals. The information defined in the beginning as indicative that goals were being attained must be collected and organized to show the success which is being reached. Negative results are, of course, necessary when good results are not being attained. The progress must be genuine if it is to last. When the goals are being reached, the highest elements of professional pride appear and spur on the activity which produced the results.

In many respects the foregoing appears mechanical and manipulative. If the process is conducted in a mechanistic way it will undoubtedly be rejected by the people in the system. In complex problems systematic methodology is necessary. When applied with sensitivity, a genuine appreciation of the importance of each individual doing their individual part, the method will not be perceived as mechanistic. The approach is more a check list of necessary activities than a process. A thorough approach to solving problems in complex processes makes necessary such reminders that there are many parts which affect the system.

To assist in the accomplishment of the foregoing tasks, the Whittier staff has designed a basic diagnostic instrument to cover the first four steps. It contains in part tables to be completed and in part check-off lists. The appended form (Appendix A) is intended to illustrate the organization of the material collected, not to serve as a working form. The space necessary to describe the relationships in the system takes pages rather than small spaces. The sequence of analysis represented by the form has proved to be helpful, as has the notation system.

III

CRITICAL FACTORS AFFIRMED AND SUPPLEMENTED

A. CRITICAL FACTORS REVISITED

The Phase I report identified the following factors as critical.[19]

1. The Organization for Making Policy Decisions
2. The Organization of the Court for Case Processing
3. The Method by which Case Inventories are Controlled
4. Use of Arraignments for Control
5. The Existence and Enforcement of Operating Standards
6. The Existence and Use of Information Available to Monitor, Control and Evaluate Program Performance
7. The Resources Available for Execution of the Control Program.

At the conclusion of Phase I, the Whittier staff had identified the variations on the critical factors in four courts: Montgomery County, Ohio; Providence and Bristol Counties, Rhode Island; Dade County, Florida; and Harris County, Texas. In varying degrees the courts had agreed to adopt principal parts of the Multnomah County program and to collect monitoring information which would indicate whether delay was being reduced after the adoption of these parts. In addition, each of the sites studied agreed to allow the Whittier staff to visit for three days each month to study and advise with respect to the critical factors being evaluated.

The results of the regular visits tended to confirm the viability of the seven factors as critical. More significantly the study demonstrated that substitutions could be made in the specific Multnomah County solutions within the general framework of basic factors. It is the object of this section of the report to delineate the relative significance of the several variations.

19. ARREST, supra note 7, at 42-52.

1. The Structure for Making Policy Decisions.[20] In its Multnomah County form this factor included monthly meeting of the judges as a board of judges; a planned agenda which was resolved at the meeting; minutes of the meeting published within seventy-two hours of the meeting and a coordinating council of the principal actors in the system who would similarly meet and record the results.

There can be little doubt that the Board of Judges must meet regularly as indicated and that a continuing mechanism must exist for the resolution of inter-organizational problems. The year's experience indicates further refinements of these conclusions.

Understandable statistical information must be fed back to the Board of Judges and the Coordinating Council. Without the information, the Board and the Council can become debating societies, defensive about perceived shortcomings more often compounding their ignorance than shedding light on the litigation delays. In several instances during the experiment the meetings of the Board of Judges slowed rather than enhanced the reduction of delay because of the misconceptions which were later corrected by accurate, well-organized reports.

20. 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 within 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

    Id. at 43.

2. The Organization of the Court for Case Processing.[21] The detail of this factor included a recommendation that there be a

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21. 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 noncompliance 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 throughout 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

Id. at 43-45.

presiding judge of the felony calendar assisted by an administrator responsible to this judge and that there be a committee of the court dedicated to this process.

Several variations on this earlier conclusion seem to be possible. If the presiding judge of the whole court will take on the day to day responsibility for the felony case flow assisted on a regular basis by the court administrator, there may be no reason to have a felony presiding judge. The possible loss of attention to other divisions would need to be examined in this arrangement, but the attention of the presiding judge to the details of a particular calendar is therapeutic.

The staff had experience in one court with a divided responsibility over felony case flow. Though substantial progress was made, the organization did not function at full effectiveness until the control organization was clarified. The problems created by the initial division were finally resolved by a committee nearly nine months after the initial attempt to organize the case flow was initiated.

A weekly meeting of all of the judges sitting on criminal matters appears to be ideal. A few minutes of discussion backed by accurate reports tends to reinforce the will of the judges to do what is necessary to meet their adopted standards.

3. Case Inventory Control.[22] Early and continuous control of felony cases has been an accepted norm of court calendar management for several years. A management program designed to apply this norm was set forth in Phase I. In two of the courts studied during Phase II a change was made from the traditional bifurcated felony process (through a lower and superior court) to a direct filing of the case in superior court. In both instances delay was reduced as a result.

Multnomah County accomplished much the same result by monitoring the filings in the lower court. But there was always a question as to whether this was an undue interference with the action of the lower court. Direct filing in superior court appears to be a better method of dealing with the early control problem.

The delays which occur before the case is filed in a superior

22. ORGANIZATION FOR CASE INVENTORY CONTROL
    - A. Monitoring the Procedures in the Intake Court
        - 3.11 Felony charged cases received a felony court number at the time they are first charged
        - 3.12 The felony case headquarters is notified by name 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)

    Id. at 45-46.

court can be brought under control by organizing a subcommittee of the Coordinating Council to deal with these delays. Since the delay is often caused by failure to get a lawyer at the early stage, particular attention must be paid to this problem by the committee. Substantial success was achieved by helping the police to solve resource problems which were interfering with orderly processes.

4. Arraignment as a Control Point.[23] The least adopted

23. ARRAIGNMENT 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 defendants
    - 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.

    Id. at 46-48.

solution of Phase I was the central arraignment. Two of the four studied courts adopted central arraignments including the future scheduling and the exchange of data features. The remaining two courts, both operating individual calendars, continued to have decentralized arraignments with some of the judges using their arraignment as a control point and others not. Since both of these courts went to direct filing, the effect of not controlling at arraignment was not measurable. In fact, most judges of these courts controlled their settings at an earlier date than the arraignment on felony charges with mixed results. It would be valid to conclude on the basis of this limited experience that direct filing provides an even better opportunity to control the process than central arraignment procedures.

Based on experiences in the two courts which used it, central arraignment does effectively reduce delay. Critical to the operation of central arraignment, however, is close cooperation between the arraigning judge and the trial judges. Any opportunity to release the control gained at central arraignment will be lost if the trial judges or judge supervising the conference process does not follow the arraignment judge's controls.

5. Operating Standards.[24] The adopting of operating standards without a monitoring and evaluation component is ineffective. The information component of the critical factors is dis-

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24. 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

ARREST, supra note 7, at 48-49.

cussed below.[25] Without regard to the monitoring problems, the courts were generally reluctant to adopt the short time frames advocated in the Phase I report. Each of the participating courts did adopt and, within the limits of loose continuance policies, carry out the standards adopted. For many diverse reasons the courts studied were reluctant to enforce the time limits adopted. The reasons given were as follows.

a. The court was too busy to reach the matter if it were not continued.

b. The private attorney had to be given time to collect his/her fee.

c. Conflicting engagements of counsel had to be accommodated.

d. Lab reports were not complete.

e. The defendant was undergoing a psychiatric examination.

No court adopted in its totality the structured conference concept used in Multnomah County. One court and many individual judges adopted the requirement that there be a conference and monitored its occurrence. No court or judge enforced a plea cutoff date on a regular basis. This will be discussed below[26] as a problem in change and in understanding the dynamics of the system. It is sufficient to note here that no court has attained the low continuance rate on the trial date which was achieved in Multnomah County. This result leads to the conclusion that the absence of a plea cutoff date consistently causes delay.

Enforcement of time standards and continuance control are

25. See pp. 49-53, infra.
Id. at 51-52.

26. See p. 32, infra.

two sides of the same coin. The judges and the lawyers are not convinced that it is in their joint or several best interest to reduce delay. In fact, defense counsel are thoroughly convinced that it is in their best interest to delay cases. The resolution of this as a problem in tight enforcement of continuance policies is not realistic.

6. Availability of Case Flow Information.[27] None of the

27. 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 probable 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 after trial commenced
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 by 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
Id. at 49-51.

courts studied in Phase II had the necessary information at the beginning of the study. A large portion of the study time was spent collecting and organizing data into a usable form.

In view of the many millions of dollars spent on court information systems it is sad to note that the basic management information needed to control case flow is not being generated. The section of this report dealing with information refinement and uses deals more completely with this subject. It is to be noted here that the presence of reliable, understandable information is the beginning point of delay reduction. The effects of several of the other factors, such as Boards of Judges, Felony Calendar Judges and Court Administrators, vary with the reliable information available. The enforcement of standards and the analysis of problems are dependent on an adequate information system. To a large degree the study staff found it necessary to install manual systems to get the necessary case management information even though expensive automated systems existed.

The information prescription in the Phase I report proved to be necessary to the management of the systems. In addition, information about certain ancilliary processes had to be collected. Delays within the prosecutor's office and police department were made the subject of special studies. This resulted in an internal monitoring system in these agencies.

7. Resources to Support Control.[28] The study did not include a general evaluation of court resources. Only those resources which made up a part of the control system were analyzed. The absence of resources for control is a long term problem not easily solved. The annual budget cycle alone makes solutions slow. Space requirements in already inadequate facilities are even more difficult to deal with.

Notably, the lack of conference space in court houses slows the process, the lack of trained personnel to collect information cripples the effort and the lack of psychiatric examiners restricts a portion of the process. Many other resource problems were identified in the systems studied but they were too idiosyncratic to include here. The critical need is for the analytic capacity in the system to separate a procedures or standards problem from a resource problem.

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28. 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 discussion
        - 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

    Id. at 51-52.

B. FACTORS OF MOST SIGNIFICANCE

Several delay producing phenomena seemed to persist in all of the systems studied. The principal common denominator of the several systems was the basic Anglo-American approach to the adversary resolution of disputed facts. The adversary processes in the several courts studied were by no theory identical, but their similarities made them subject to a uniform solution. The dysfunction of guilty pleas and dismissals on the day of trial has plagued courts for many years. The identification of a workable solution to this problem is a basic result of the current effort.

The identification of delay-producing behavior and procedures within the several systems studied by making a monthly inventory of the original critical factors in each court revealed the boundaries of this particularly tenacious problem. First, resistance by the prosecutor to the discovery of his case (which is almost always achieved before the trial begins) led to delay-producing maneuvers by the defense. Second, plea discussions are usually held in the hallways without an opportunity for the defendant to know what is going on or to participate intelligently in the process. Third, plea negotiations, which occur in one form or another in every court, were held on the day of trial preventing the court from effectively scheduling trials.

The recurrence of these problems in each system in almost the same form has prompted the Whittier staff to suggest a basic approach founded on substantial experience in Multnomah County, Oregon. This solution has three principal elements:

(1) Disclosure by the prosecutor at the time of arraignment

(2) Structuring the plea negotiation conference, and

(3) Establishing a cutoff date for pleas.

Disclosure at the time of arraignment. The purpose of dis-

closure at the arraignment is to avoid the need for a formal motion being filed by the defense counsel. The prosecutors, of course, argue that there is no obligation on their part to disclose at arraignment, and that they would much prefer that counsel for the defendant be required to file a formal motion pursuant to the terms of their discovery rules and statutes. Studies conducted by the Whittier staff in systems where the prosecutor follows this rigid policy showed that the application of the policy results in a delay of at least ten to fifteen days. This delay is quite unnecessary and in fact often works to the prosecutor's detriment as time is lost in getting the facts to trial.

It is becoming increasingly clear that the prosecution is going to have to disclose the principal evidence in its case at some time in the criminal proceedings and that the few exceptions to pretrial disclosure do not apply in the bulk of the cases.[29] The court should require full disclosure at arraignment subject to the prosecutor's motion for an exception. Such a requirement gives the defense counsel an opportunity to evaluate the testimony which the state has accumulated against his client and permits him to discuss the case more intelligently with his client who, in many cases, may have been lying to him about the facts surrounding the commission of the crime.

Experience indicated that minimal disclosure at the time of arraignment should include the following documents: a copy of the police report, the names of the witnesses that are known to the state at that time, statements which they have made, and the statement of

29. The basic exceptions involve the protection of witnesses from intimidation and are rarely involved when formal motion is made for discovery.

the defendant if he made one at the time of arrest.

Some prosecutors, when faced with the above requirements, acknowledge that disclosure at arraignment will reduce time from arrest to trial but argue that there should be reciprocal disclosure by the defense counsel. To the extent mandatory defense discovery can be kept within constitutional limitations, the defense counsel should be prepared to make disclosure at the plea negotiation conference. Additionally, the state should be prepared at the plea negotiation conference to divulge the names and statements of any additional witnesses which they have acquired since the date of arraignment.

Structured plea negotiations. Every criminal justice system has a form of plea negotiation. But if the plea negotiation is left without structure, it will take place in the corridor of the courthouse immediately before trial, by telephone conversations on the eve of trial or even during trial. No criminal justice system can hope to dispose of cases within tolerable delays if it persists in having a high proportion of its guilty pleas occur on the eve of trial. A structured plea negotiation conference supervised by the court tends to avoid these last minute settlements. The structured conference results in a savings of lawyer time because it occurs on a specific date and at a specific time on that date. The time and place is not left to the discretion of the attorneys, and the defendant should be present. The conference serves a basic justice function and needs to be brought under control by the criminal justice system.

In a structured conference both attorneys must be prepared to

discuss their case. The district attorney and defense counsel, knowing that they must face each other in a scheduled conference a short period of time after the date of arraignment, will prepare for the event. If the pretrial conference is scheduled to occur too long after the arraignment, the attorneys return to their respective offices, set the file aside and forget the case until it is called for a new purpose. When, however, the conference is set a week or ten days after the arraignment, the lawyers remember the basic facts and are able to deal with them without further review.

For the conference to be meaningful the prosecutor must have reviewed his file in every detail and be prepared to make an offer. It may be that the case requires the prosecutor to announce at the plea bargaining conference that the state is not willing to reduce the charge. This forces the defendant to plead guilty to the charge in the indictment or go to trial on that charge. If this is the case, the judges should insist, and a court rule should be adopted which will prohibit the prosecutor from reducing the charge on the day of trial. If there are valid and extenuating reasons for permitting a late plea to a reduced charge, a late plea should only be permitted upon a showing by the prosecutor in open court with a reporter present that there is a good reason why the plea could not have been taken on this basis at an earlier time.

In most of the cases, the prosecutor, after reviewing his file, will reach an early conclusion that a plea to a lesser charge is warranted. He will disclose this information to the defense counsel and his client at the time of the plea negotiation conference. A court rule should be adopted which provides that the defendant has no more than five judicial days

following the plea negotiation conference in which to advise the prosecutor of his decision to accept or reject the offer.

Cutoff Date for Pleas. In the event that the prosecutor's offer is rejected by the defense counsel, the case should proceed to trial upon all the charges in the indictment. It is not an unfair practice for the court to establish a cutoff date for acceptance of pleas. It is accepted by everyone in the system that anyone who has a difficult decision to make will delay making that decision as long as he can. A cutoff date for the acceptance of the offer made by the prosecutor forces the defense counsel and his client to make a decision within a reasonable time. It does not eliminate the day of reckoning, it simply advances it. It also permits the court system to make maximum utilization of its time by permitting the more precise scheduling of cases that are going to be tried.

Despite prevailing views of defense counsel to the contrary, under this structured system, the defense attorney also benefits. Many courts average more than 10 laywer appearances to dispose of a case. With a structured conference the lawyers are required to come to the courthouse only three times in the vast majority of cases; for a first appearance at the time of arraignment, for a second appearance at the plea negotiation conference, and for a third appearance on the day of trial.

One of the courts studied provides an illustration of how structuring these three basic concepts into a court system operates under an individual calendar system. There the judges adopted a procedure which provides that disclosure is made at arraignment, and a not guilty plea is entered by the court on

behalf of the defendant. In addition, some crucial dates are set at the arraignment. First, a negotiation conference is set seven days from arraignment date. Second, a scheduling conference is set for seven days from the plea negotiation conference. This second conference is to be before the judge to whom the case has been assigned, under a blind assignment system. This procedure provides that the cutoff date for accepting the offer made by the prosecutor at the pretrial conference is the same as the scheduling conference date, which is fourteen days from arraignment. At this scheduling conference several decisions are made. Initially, a date is set for the filing and argument on any motions that intend to be filed by counsel. Also at this time, guilty pleas are taken in the event the defendant elects to accept the presecutor's offer. Lastly, a trial date is set for fourteen to eighteen days from the conference. At this writing it appears that 80% of the pleas are occurring at the conference and that the delay is the least of all of the courts studied.

The primary purpose of the court system adopting rules which incorporate these three basic concepts is to provide an orderly process which will take the guilty pleas and dismissals out of the system at an early date. Unless this is done, the judges must resort to the old and counter-productive system of having to overset their dockets to compensate for the guilty pleas which are expected at the day of trial. This oversetting results in a loss of judge time, attorney time and certainly the loss of the time of witnesses who must appear not knowing whether the case will

be processed out of the system on the morning of trial.

This last observation is more important than is sometimes recognized. The cost of unused witnesses is substantial. A Chief Judge of one of the studied courts advised the staff that in 1978, $183,000 was paid to police for overtime where they were called to testify. He estimated that most of this time was spent by police who had been subpoenaed to appear at the courthouse for trial only to find that the defendant pled guilty on the morning of the trial. When cases are not structured and are permitted to float in the system until the day of trial, there is a major loss of time and expense. The system loses its appearance of justice and its public support. This is especially true with the lay witnesses who have been subpoenaed to appear for trial at a specific time only to find when they arrive at the courthouse that the case has been processed out by means of a guilty plea and their services and testimony are no longer needed.

C. UNDERLYING FACTOR: THE SOCIAL-LEGAL-POLITICAL CULTURE

The Phase I study by the Whittier staff concentrated on the critical factors affecting felony court delay as identified by particular behavior which tended to reduce or increase delay. The staff as they worked in the several courts during Phase II (1978-1979) noted the underlying causes which made many of these factors critical, i.e., the established culture of the courts.

In its report, Justice Delayed, the National Center for State Courts identified the chief cause of delay as the intransigence of the legal culture.[30] A careful analysis of the problems encompassed under this label would indicate that it is much more than a "legal" culture. The needs and attitudes which make change difficult in the litigation process are as much social, political and economic as they are legal. The Whittier staff identified many diverse factors which need to be perceived and delineated on a more precise basis if they are to be dealt with effectively.

Economic relationships. The financial well being of practicing lawyers is a constant factor in felony court delay. Each court studied allowed some delay to permit the retained lawyer to get his fee. Conversations with practicing lawyers support the belief that without some delay the client or family or friend cannot pay the necessary fee. It is accepted by all in the systems that a disposition, no matter how favorable, before the fee is paid will make the fee uncollectable. It need not be noted that imprisoned clients seldom pay fees. It may well be a signi-

30. JUSTICE DELAYED, supra note 4, at 54.

ficant variable that courts with the least delay have the highest rate of representation by government compensated counsel.

Political relationships. In most of the states studied the judges must stand for election at regular intervals. To be "filed against"[31] in the election is considered highly undesirable. Judges can be punished for running an efficient court by being filed against. The expense of campaigning is usually raised from lawyer committees who then have a right to the only favor a judge can regularly give, i.e., a continuance.

Politics goes much deeper than the judge-lawyer relationship. Clerks in the calendaring process often make up the list. A case left off the list is as effectively continued (delayed) as one which reaches a judge decision. Clerks who owe their allegiance to a political party or to a particular sponsor can delay cases indefinitely in a loose system of scheduling. Even in a tightly administered system "intentional" inadvertence, a misfiled card or a lost file can take a case out of order with little probability of a personal consequence.

Social relationships. As often as not the pressure on the clerk or judge to continue a case is social rather than political. Social opportunities for the clerk moving in the professional circles frequented by lawyers are many. The special attention of lawyers is used in all parts of the system to get the favor which makes the lawyer's life easier and, more important, the clients stay on the street longer. For many practitioners

31. In states where judges are elected, lawyers will file to run against them as a way of disciplining their administrative behavior.

the use of their social and political contacts to keep a client on the street is more important to their income than their ability before judge and jury on the merits.

Lawyer relationships. The one aspect of delay most assuredly a product of the legal culture is the lawyer's exercise of comity toward his fellow lawyer. "Today the other fellow needs a delay, tomorrow, I will. I cannot afford not to agree today." The judge who remembers well the times when for reasons quite unrelated to a fair disposition, he needed a delay becomes a party to the comity and the delay is granted.

Trading relationships exist in all organizations. It is important to be aware of them and to attempt to control their dysfunctional aspects. Clerks who ignore the needs of the system in response to social, political or economic pressure should be placed in positions where they have nothing to trade. Central arraignments and other central calendar controls are a response to the need of the court to prevent judges from exercising their discretion in favor of a few lawyers. Individual assignments avoid the judge shopping which is often aided and abetted by clerks who manipulate lists to help lawyers get before particular judges.

In the long run, the solution to dysfunctional trading within the system must be faced directly. The sense of ownership of the court objectives which comes only from prolonged management effectiveness is the solution. When the incentives which encourage support to the system are strong enough to counter-act the incentives which weaken the system, control over caseflow will come without structural attempts to avoid the trading.

The Whittier staff, at least in the short period of time which

they observed, noted that several programs can be made to work.

Court "Family" Relationships. In a speech before a national conference in St. Louis, Judge Samuel Gardner, Presiding Judge of the Detroit Recorders Court, explained an important fact which is supported by the Whittier research. The court family, i.e., the support staff which works regularly with a particular judge, is going to encourage the judges to take any action which will increase the probability of an early termination of the court day. Where the system allows the staff to leave the building when the judge adjourns for the day, the staff will have great difficulty finding lawyers, witnesses, jurors, etc. after lunch. Even where staff must stay until closing hours the pace of the work diminishes and social contact increases if the judge's work does not develop.

As a result of the above noted staff propensity, a case flow which depends upon personal support staff for its pace has a built in dampener. Experience in several of the individually calendared courts, however, indicated that a counter force is possible. When the supporting staff is made to feel responsible for the rate of trials and dispositions, the pace often quickens. The judge who asks his staff regularly, "How are we doing?" often develops a spirit which keeps the flow of cases moving. One judge has a sign on the back of his entry door which shows the team's monthly disposition and aging data like a box score. This judge has the most current docket on the court.

Short of the incentive brought about by pride in accomplishment, the courts seem to operate most effectively when the monitoring process is independent of personal staff. Both the return of clerks to a

central office when they are not working in the courtroom and the assignment of work which for trial personnel is more onerous than trials, have resulted in a diligent pursuit of trials.

It should of course be recognized that the endurance of court reporters is a limiting factor in the length of a trial day. Long trial days and proportionately longer transcripts with less time to produce them catch up with the court and restrict its activity. Pooling court reporters tends to resolve this difficulty but the trauma of separating the judge from his reporter may be more dysfunctional than the problem.

IV

THE COUNTIES STUDIED

The Whittier staff approached each court with the attitude that by systemically identifying areas of excessive delay and suggesting controls which would reduce these delays, they could assist each court with improving their systems. The staff avoided suggesting standard solutions for the problems identified. Each jurisdiction responded uniquely to the analysis presented. Changes which occurred were the product of local initiative. The comparisons which are made in this report are the products of identifying particular factors which seem significant and which appear from previous research to be present in each jurisdiction. The staff made no attempt to insist upon any solution in a particular jurisdiction.

The several counties involved responded to staff suggestions in different ways but the overall results were as follows when the statistics are developed on a common basis.

ARREST TO TRIAL LAPSE TIME*

		1st Quarter	Last Quarter
HARRIS	Studied Courts	233 days	144 days
	All Courts	239 days	170 days
DADE		212 days	80 days
PROVIDENCE		435 days	147 days
MONTGOMERY		114 days	76 days

* Several adjustments have been made to reflect major differences in defining lapse time. Where known, delay caused by unavailability of the defendant has not been included.

ACTIVE CASES PENDING MORE THAN 180 DAYS

	Begin First Quarter	End Fourth Quarter
HARRIS* (18 Judges)	2,602***	930***
DADE (12 Judges)	861**	327
PROVIDENCE (4 Judges)	2,063	805
MONTGOMERY (3 Judges FTE)	76	55

* Over 120 days rather than 180 in Harris County.
** Estimated from sources differing as much as 20%.
*** Adjusted to reflect comparable data by taking .6 of actual.

Each of the counties studied varied in the programs they applied to achieve the above results. The following summarizes the basic characteristics of each county and the more significant changes.

A. HARRIS COUNTY, TEXAS

Harris County is a rapidly growing county with a population just over 2,000,000. The general jurisdiction court is divided into two parts sitting separately in Civil and Criminal (felony) matters. The felony court had 17 judges during the first quarter of the study and 18 during three quarters. Two additional visiting judges sat regularly in annex court taking urgent jail cases when ready for trial.

Cases are assigned to the individual judges at the time of a case's first court appearance. In the last quarter of the study the judges took full responsibility for the cases directly after arrest, abandoning a traditional bifurcation of the process.

The judges elect an administrative judge annually. They have a court administrator who answers to the Board of Judges but in day to day operations works directly with the administrative judge.

Each judge has a case coordinator whose responsibility is to keep track of the cases pending before the judge and, under standards and procedures set up by each judge, to schedule the cases for appropriate hearing. No two judges manage their case flow under identical procedures.

The prosecutor assigns three assistants to each judge on a relatively long term basis. The number one assistant is in charge and handles the more difficult cases. The second handles the bulk of the difficult cases and the third is in a semi-learning status working the more routine cases.

Each judge appoints counsel for the indigent off of a relatively short list of attorneys of varying ability. An attempt is made to match the experienced lawyer with the difficult cases. There is no public defender system.

The prosecutor indicts from fifty to sixty cases per judge per month after a screening process which is under the supervision of an experienced assistant.

Seven of the original seventeen judges participated in the study. The eighteenth judge, taking office in September, joined the study as his case load developed.

The judges meet regularly to make decisions about matters of general administration.

The study program was presented to the judges at one of their regular meetings. Seven of the judges agreed to confer regularly with the study staff and to review the information that was developed to

identify the causes of delay in each of their individual courts. Each of the judges in the study responded to staff discussions by making one or more changes in their operations. During the study period, the court changed from a bifurcated process to direct filing of felony cases. Several of the judges who did not agree to participate permitted the staff to study their operations in detail.

Four of the judges of the court operated with consistent expedition over the period of the study. Twelve of the judges both improved their time to trial and lowered their pending case load during the period. All judges improved by reducing the number of pending cases.

ACTIVE CASE LOAD

	Least	Most	All Judges
June 1978	144	417	4,499
December 1978	82	328	3,879
June 1979	82	359	3,708

It would be difficult to describe in detail the procedures which separate the most expeditious courts from the least. The principal characteristic of the court (Judge) moving most quickly to trial is the creation of unequivocal expectations about the process to a plea. The prosecutors in the expedited court make their best offer early and maintain that offer or a less desirable offer as time passes. The coordinator works with the lawyers and the judge to maintain certainty about the scheduling of the cases for trial so that the false hopes in the case are dissipated early and consistently.

In a second court (Judge), with equally effective practices and equally impressive expedition, the judge and coordinator work to get

cases ready for trial and to trial without continuances. It is expected that if a case is not reached on the day scheduled, it will be reached within a few days thereafter. The coordinator keeps informed as to the settlement probability of all cases about to reach trial so that there are seldom any surprises on the morning of trial.

In a practice unusual in an individual calendar court, the judges often team up and take cases for trial rather than have them go off the trial list. In fact, this teaming effort may account for much of the progress which was made during the study. The practice was occasional at the beginning of the study and common by the end.

B. PROVIDENCE AND BRISTOL COUNTIES, RHODE ISLAND

Providence and Bristol Counties include just over 600,000 people. The Superior Court for the counties functions as a single unit in the Providence County Court House in Providence. The Superior Court is a statewide court of general jurisdiction. The administration of the Superior Court is under a Presiding Justice who has a life-time appointment from the Governor. The incumbent, Florence Murray, took the position just before the project started.

The court meets each month to consider matters of concern to the whole court. The court is served by an experienced court administrator who during the course of the study assumed full responsibility for scheduling the felony cases.

Four Superior Court Justices are regularly assigned to the Providence felony calendar. They take all matters from arraignment through final disposition. Preliminary matters are conducted by District Judges acting in the traditional role of magistrates. The District Courts are separately

administrated with the traditional bifurcation of the felony process.

The accusation process is internal to the Attorney General's Office. The Attorney General of Rhode Island is responsible for all prosecutions in the state. The incumbent took office in January of 1979.

Most indigent defendants are represented by the Public Defender who also operates on a statewide basis.

The diagnostic period in the Providence County Court House led to several conclusions:

1. Delay in felony cases was excessive at each stage of the process. Police, prosecution, courts and defenders each thought the others were the cause and there was no awareness in the system of where delays were accumulating.
2. The Superior Court Scheduling Office was confused about its role, responsibility and authority.
3. The information available to the court did not include basic system monitoring capacity.
4. There was little expectation that when an event was scheduled to occur, it would occur.

With the limited, systemic problems identified, the Whittier staff suggested the convening of a Coordinating Council and a Superior Courts Judges' Meeting for the single purpose of exposing the extent of these problems.

Presiding Justice Murray convened a joint meeting of a Coordinating Council jointly and the Superior Court Justices. As a result, three committees were created to work on subsystems of the criminal process, i.e., arrest to arraignment, arraignment to pretrial, and pretrial to trial. One month later, the committee reported solutions and proposed solutions to major delay problems.

The approach adopted by Presiding Justice Murray upon the recommenda-

tion of the committee was in two parts: first, to set standards for new cases and monitor them on a short schedule; second, to review the older cases on a systematic basis by calling them up for status hearings, and, when found triable, to set them for an immediate trial.

Initially several problems developed. New cases continued from the first trial setting were assigned to an unmonitored status until the problem was recognized and corrected. Pretrial conferences of the new cases were not being held as scheduled because one or both counsel failed to appear. Minor discipline was invoked and the problem disappeared.

The absence of monitoring information led to the creation of a manual data collection and reporting system which, within a thirty-day period, helped to identify problems that might have continued longer.

On the recommendation of the study staff, the Superior Court agreed to set a standard for monthly dispositions of 292 per month until the backlog was conquered. During the study the court averaged 362 per month.

The substantial progress made during the past year has been the result of the several participants in the process working together. No other major metropolitan court has accomplished as much in the relatively short period of time involved.

Still to be implemented, with substantial success anticipated, is a system of written continuances motions and a provision for a plea cut off time in the process. When these programs are established, Providence County could reach below the 60 days arrest to trial time which would make theirs an example for others to emulate.

C. DADE COUNTY, FLORIDA

With a population of about one and one-half million, Dade County is the largest court district in Florida. It operates under unified ad-

ministration with the County Courts and is subject to the administrative directives of the Chief Judge of the Circuit Court.

The Chief Judge is elected annually by the Circuit Judges and presides over a court of 51 Circuit Judges and 31 County Judges.

The felony cases are individually calendared as filed with the cases assigned for all purposes to a Circuit Judge. At mid year (in January), after an experiment with direct Circuit Court filing into two of the court departments, all felony cases were directly filed in Circuit Court.

Twelve judges sit regularly in felony cases. A criminal division administrative judge presides over the administration of these judges. They meet regularly to discuss overall management of the criminal felony division.

The courts are served by an elected clerk who has assigned a chief deputy to oversee the clerk's function in the felony division. The clerk's office works with the Court Administrator's office in the collection of data.

The courts participate in a computerized criminal justice information system which is currently undergoing redesign.

Progress in Dade County has been substantial. Chief Judge Cowart has taken a personal interest in each of the problem areas discovered. Working directly with Judge Morphonios-Gable, the Administrative Judge of criminal, several basic changes were made which reduced felony delay:

1. Direct filing in the Circuit Court reduced delays by about thirty-six days.
2. The collection of reliable data led to an active monitoring of cases approaching speedy trial dismissal. Weekly reports

now cover the subject.

3. Information system redesign, essential to long term effectiveness in the court, is partially complete. It was identified as a critical problem in December after much of the information provided was recognized as unreliable.
4. Excessive amounts of time consumed in discovery motions by the defense were reduced by persuading the prosecution to increase routine discovery. Still more can be accomplished in this area.
5. Screening by the state's attorney has been increased. A new state's attorney recognized the need and proceeded diligently to this end.
6. The elected County Clerk, Richard Brinker, became directly involved in the project by assigning William Stoiloff, an experienced public administrator, to work on the felony court process. Monthly statistics covering essential areas of the court's activity are now available.

The existence of information which later proved to be unreliable distorted early efforts to improve the system's performance. The conditions now exist for making substantial headway in all areas of delay.

D. MONTGOMERY COUNTY, OHIO

Montgomery County operates under a bifurcated felony process and with individual calendars undifferentiated as between civil and criminal. There are twelve Common Pleas Judges, three of which cover probate, juvenile and domestic, leaving nine to deal with the general civil and criminal work. Based on caseload analysis, the criminal work takes judicial time equal to the time of approximately three judges.

The Common Pleas Court meets regularly to consider problems of general administration and is presided over by a chief judge who is elected to the position by his peers.

The incumbent, Chief Judge Carl Kessler, initiated the current project efforts by asking the Whittier staff to participate. He, along with his court administrator, Joseph Greenwood, has provided the continuing attention that has made the substantial progress possible.

The Whittier staff, working with the court leadership, started the year of study by placing excessive demands on the system. As a result, management efforts were dissipated across too wide a spectrum. As the project progressed, suggestions were limited to a few accomplishable goals and the court was able to bring the whole system along with its ambitious management program.

Leadership played an important role in the Montgomery County progress. Judge Kessler convened a coordinating council and worked with it effectively to attain specific results. The council served to provide communication linkage not only for delay reduction purposes but for other managerial needs.

Monitoring of the procedures in the intake court was initially a problem but subsided as the mechanisms for regular communication were created.

Motions for delay, which were initially made orally and without recording reasons, are now, with most judges, made in writing and with stated reasons.

A cutoff date for motions has been established and is enforced with some consistency.

Operating standards have been adopted which, each month, are more nearly met. Monitoring of the standards is not yet adequate

due to delays in the development of an adequate reporting system.

Montgomery County, as can be noted from the above statistics, started from a more current position than the other courts studied. As a result its progress must be measured in smaller increments. It is more difficult to reduce delays already in partial control than to attack the uncontrolled. Much recognition is due to the Montgomery County leadership for undertaking to refine a system which was already operating more expeditiously than most of the systems in the country.

V

ANALYTIC TOOLS

The Whittier staff, in its role as consultant to each of the courts, employed a variety of techniques which helped to focus on particular problems and develop workable solutions. These included (1) the use of system rates for both diagnostics and planning, and (2) subsystem analysis to provide necessary concentration of efforts.

1. System Rates

Based on substantial experience in studying court statistics, it is generally accepted that the relationships in the systems, and consequently, the rates of flow through the system, change slowly and are generally predictable. As a consequence, simple mathematical models can be applied which aid in understanding operational characteristics of the system.

Over a period of years, members of the Whittier staff have applied a general formula to estimate backlog and delay. The formula has, when carefully applied, proved to be quite reliable. Its utility is in the ease with which the basic information can be gathered.

The following information is necessary to use the formula:

1. Annual filing rates in significant categories[32]
2. Jury trial to disposition rates for the significant categories
3. The number of judge days available to the courts (normally 220 days per judge, but sometimes less)
4. The average length of jury trial by significant categories
5. The number of active pending cases by significant categories.

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32. Significant categories are not the same in all jurisdictions. They must meet the tests of statistical significance to be useful in this context.

For general purpose planning, the significant categories may be as broad as felonies, misdemeanors, small claims, civil tort, civil contract, juvenile, domestic and probate. Up to a point, a refinement of the categories beyond this will usually provide a better result (dividing felonies and misdemeanors into smaller categories in the past has not proved useful because the subcategories used have not proved to be statistically significant).

The annual judge time needed to dispose of any given significant category can be derived as follows:

Jury Trial Rate x Average Length of Jury Trial x Annual Filings

$$\frac{\text{Jury Trial Rate} \times \text{Average Length of Jury Trial} \times \text{Annual Filings}}{550}$$

Example: $\frac{.1 \times 15 \text{ hours} \times 800 \text{ filings}}{550} = 2.2 \text{ judges}$

The "550" is one-half of the 1100 professional hours in a judge's year, i.e., 5 hours times 220 days. Studies of professional time support the five hour day as the effective chargeable time of a professional in an eight hour day.[33] The total hours (1100) is divided by two to reflect the effective trial time of a judge available at work, i.e., a judge is available for trials about one-half of the time. Pretrial conferences, sentencing, motions, chambers work and administration consume the other half. Though it has not been carefully documented there is considerable reason to conclude that judges who consistently spend more than half of their time in trial are not

33. See generally AMERICAN BAR ASSOCIATION STANDING COMMITTEE ON ECONOMICS OF LAW PRACTICE, O. Lewis, R. McAlpin, DOCKET CONTROL (1965).

performing other duties necessary to the disposition of their work.[34]

The court backlog can similarly be computed based on the above information. Backlog as defined here is the number of cases in any significant category which cannot be disposed of by the court within tolerable delays.[35] The definition of "tolerable" is a policy question. If the legislature, for example, provides for the dismissal of felony cases 90 days after arrest if not otherwise tried or disposed of, the legislature has announced a public policy that more than 90 days is intolerable.

If one accepts 90 days as an outer limit for felony delay, the median time to a disposition should be half of that or 45 days to be tolerable. Felony backlog is thus represented by the following formula:

$$\text{Backlog} = \text{Active Pending Cases} - \frac{\text{Annual Disposition Rate}}{\text{Tolerable Delay}}$$

Example:

300 Backlog = 400 Active Pending minus $\frac{800 \text{ Annual Disposition Rate}}{8 \text{ (45 days)}}$[36]

(cases which cannot be disposed of in 45 days)

In the example given, the median time from arrest to trial would usually be six months. The active inventory would turn over twice a year. The cases dismissed or pled short of the median time to trial and those disposed of at a longer delay would tend to balance out.

34. Several studies of judge time in connection with weighted caseload studies support this conclusion. The reports of these studies are not, however, available to the public.

35. See generally N.C.S.C., supra note 1.

36. Forty-five days is one-eighth of a 360 day year.

Using the given example again, a delay program to bring the court within tolerable delays would require dispositions at a higher rate than filings. Assuming a jury trial takes 15 hours and a judge has 550 trial hours available, then 2.2 judges can hold 80 trials and dispose of a total of 800 cases. To be able to reduce the backlog by 300 would require thirty additional trials or 450 hours which is .8 of a judge. Since 2.2 judges can dispose of the new filings, an additional .8 of a judge would be needed to reduce the pending caseload to 100 (no backlog) within one year.

The formula works to suggest other possibilities. If in fact the average length of trial could be reduced to 2 days, the judge years necessary to dispose of the filings would be 1.5. An additional .7 of a judge year would wipe out the 300 case backlog by holding 30 trials in the three hundred eighty-five trial days available. The formula would also suggest that by increasing the number of judges by the equivalent of one-half a judge, the backlog of 300 cases could be eliminated in something less than two years.

It is, of course, possible that trial length could vary or that filings could increase or decrease. By monitoring these factors and watching for any abnormal fluctuations, the resource allocations could be changed which would accomodate these variables.

Implicit in application of the formula must be a recognition that an increase in judge days does not automatically increase the effective judge days. If prosecutors, defense lawyers or expert witnesses are not available to accomodate the increase in judge time, the output will not increase. Generally speaking, however, the formula is equally applicable to prosecutors and defense lawyers. They have a personal trial rate and, in most instances, an average trial time which can be used to predict availability of trial days. Though it would be unusual for them to be able to participate in the same number of trials as a judge, they can be expected to participate in a constant number of trials per year. The foregoing is only illustrative and is included to indicate that the recognition of system rates has proved useful in the diagnostic and planning efforts of trial courts.

The Whittier staff, in each of its prescriptions, first calculated in terms of existing system rates the potential of the court to reach the goals proposed. They proposed a schedule during which it could be reasonably expected that the court could be current, i.e., have zero backlog as defined above. Based on knowledge of the staffing levels of the prosecution and defense, they recommended a rate for reducing the backlog consistent with all of the capacities in the system or with recommended increased capacities.

Of particular importance was the definition of the active pending caseload. A high proportion of old cases (which will be disposed of by dismissal rather than by trial) distorts the trial rate as the old cases are dismissed. Experience in several courts has indicated that a felony trial rate of 12% of all dispositions may be normal when the court is current. Backlogged courts clearing out old cases often have a trial rate of 5% or less. Needless to say the formula must be adjusted as the court

becomes more current.[37]

Disposing of old cases also distorts the 50% trial time constant. Holding substantial numbers of status conferences on old, marginally triable cases tends to reduce the effective trial time of a judge to 40% or less. Thus in 1100 hours of judge time in a judge year the trial time may be 450 rather than 550 hours, and the anticipated number of trials (with an average trial time of fifteen hours) is reduced by seven.

System rates vary widely across the United States. The average length of trial varies substantially from court to court. Trial length is, for instance, often directly proportional to the tolerated length of voir dire procedures. Trial days of six hours result in 20% more trials and 20% more dispositions than five hour trial days.

System rates have proved to be effective tools in planning for the reduction of delay. The Whittier staff relied heavily on the application of such understandable system rates to identify the characteristics of the system and to propose standards of performance which could be achieved. When the system was explained in terms of specific ratios, times and rates most of the participants in the systems were able to understand their problems better and accept the need to optimize trial time by reorganizing their work for this purpose.

2. Subsystem Analysis

Many of the delays in the system are caused by a limited

37. These trial to disposition rates are based on cases, with 1.3 defendants per case, and do not apply to jurisdictions that report by defendants or report cases on the basis of single counts.

interaction of a few participants. To concentrate their efforts on a narrow problem and to avoid confusion and wasted time the staff divided the work into discreet parts and worked only with the affected staff. Large coordinating council meetings proved to be unnecessary and even dysfunctional when the problem to be addressed could be narrowly defined. In some instances working with a few rather than many people prevented embarassment and defensiveness which would otherwise have slowed the progress toward a solution.

In the Phase I report the Whittier staff delineated six distinct subsystems of the felony case progress.[38] (Preparations necessary to make the events which bound these subsystems effective were also identified.) During Phase II these subsystems were examined and monitored as distinct problem areas. The division of the process into the six subsystems proved from several perspectives to be a useful tool during Phase II. Each of the subsystems had distinctly identifiable actors and relationships which could be isolated and a particular delayed activity identified.

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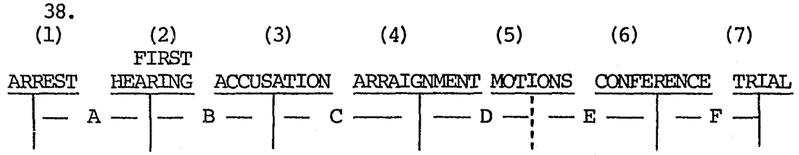

In this model the numbered items represent identifiable events and the capital letters represent time between events. The events, of course, consume time but with the exception of protracted trials, which are not significant in number, the time consumed by the events is not a critical factor in delay. The events are identification points in the process which establish boundaries. In each instance the event requires some processing by system participants before and after the event. ARREST, supra note 7, at 16.

Arrest to first hearing.[39] Though there were few delays in the period between the arrest and the first hearing, problems in police department office management were identified and solved by noting a regular delay at this stage. Narcotics cases, for instance, were consistently delayed. In one system, laboratory reports were consistently taking excessive time due to inadequate facilities for the police lab. The court intervened with the government to help solve this problem. In the same system, delays in police appearances before prosecution officials were reduced by paying attention to the duty time of officers.

First Hearing to Accusation.[40] The study of the period between the first hearing and accusation led to several effective changes. Police were able to identify and eliminate more than fifty days of delay at this stage in one system, and the prosecution consistently improved its accusatory review in each of the systems studied. The time spans were so limited that, in most instances, an average improvement of three to five days (out of 20) was considered significant. In each case where an administrative queue had formed in the screening process, the delay was shortened by managerial attention.

Arrest to Arraignment. Two of the courts studied faced with substantial delays between arrest and arraignment in felony court (three subsystems) eliminated the lower court process altogether and proceeded with the direct filing of felony cases in the felony court. Early review indicates a speeding up of the process in both of the courts as a result of this change. Direct filing can eliminate 10 to 30 days of transfer time in the system. But more important than the saving of transfer time is the overall effect of appointment for the indigent counsel who can stay with the case from beginning to end.

Accusation to Arraignment.[41] The period from accusation to felony court arraignment has always been a source of delay. In the systems which continued to bifurcate the process, substantial delays were occurring at this stage. Notice was the problem in one

39. A. ARREST AND FIRST HEARING. Between the arrest 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 prosecuting 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.

ARREST, supra note 7, at 21.

40. 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.

Id. at 21-22.

41. 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.

Id. at 22.

system where the larger number of persons had been released on bail pending indictment. Notice of the arraignment required from 10 days to two weeks for service. In addition there were more than the usual portion of fugitives developing at this stage. The solution readily identifiable by studying this subsystem was to give notice of the arraignment at the first hearing and mail a cancellation of the notice for those not indicted. Those to whom the cancellation was sent seemed always to get the cancellation.

Arraignment to Conference.[42] Most of the delay in the system exists between felony arraignment and conference. In one court, discovery motions are the principal culprit, but in most courts, lawyer conflicts and lawyer economics cause the problem. In another court a shortage of public defender personnel coupled with poor

42. D. ARRAIGNMENT TO 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 within a fixed response time.
    - 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 by either cooperation or motion.

Id. at 22-23.

public defender assignment policy caused the delay. In most instances the delays were reduced by careful attention to detail in the scheduling office.

Conference to Trial.[43] The usual practice as noted in more detail below, is to confer about settlement of cases on the eve or morning of trial. The time from conference to trial is, therefore, usually not a time in which preparations can be accomplished or controls can be involved. When held at a longer time before trial, lapse time between conference and trial is anomolously an area which should be increased to reduce delay.

It would be possible to detail more than one hundred specific delay producing practices in the subsystems studied and monitored. The most common recurring difficulties are the subject of a separate section of this report.[44] The important finding for purposes of this subject is the workability of attacking the subsystems as units of delay.

By appointing subcommittees and task forces within the coordinating councils staffed by operating personnel from the subsystems, alternative solutions for many delays were found. When asked to report

43. 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 Courtroom must be made available.
    - F.7 A judge must be made available.

Id. at 23-24.

44. See pp. 28-34, infra.

back within one month, their result was usually a solution rather than a report. Thus, focusing on a particular subsystem problem and fixing responsibility for its solution proved to be an effective delay reduction technique.

This conclusion should not be passed without noting that subsystem problem solving is sometimes dangerous. The propensity of the actors in any subsystem is to optimize their own behavior, which may be at substantial cost to those who may perform after them. The avoidance of this suboptimization must be an assigned task of the overall coordinating group whenever the technique is used.

VI

MANAGEMENT INFORMATION

As already noted, the Whittier staff concluded that the beginning point for change and one of the critical factors affecting delay is the existence of accurate information about court operations.[45] It was easy to prescribe the elements of information necessary to reduce and control delay based on the information used in Multnomah County.[46] The use of this information in each of the systems studied assisted in bringing about changes which were followed by reduced delay. The need for working management information systems was clear but more than six months was required to produce them on a routine basis.

The initial contact of the Whittier staff with the trial court led to the discovery that there was little serious concern for information with which to manage the court's business. The administrators and chief judges believed that they understood the problems that existed and that they had a fairly good grasp of the numbers involved in the measurement of the activity in the court. A cursory analysis of the operating statistics indicated, however, that there was a substantial disparity between this "gut feel" for the statistics and actuality. The process by which the several systems initiated and developed adequate management information was a follows:

First, a sample of critical indicators in the jurisdiction was prepared. Specific conditions of the system which indicated operating

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45. See pp. 25-26, supra.

46. See note 27, supra.

characteristics were identified. In several instances this proved to be a detailed review of dispositions, particularly of guilty pleas, on the day of trial. The information sampled was tested to assure that it represented what was regularly happening. A set of detailed worksheets was used to record the data making it possible to trace the source data from which the information was derived.

Second, the perceptions of the system participants with respect to these conditions which indicated operating characteristics were tested. The purpose of this step was two-fold: to determine the accuracy of the perception of systems operations from the viewpoint of the participants and to stir up curiosity.

Third, the operators were provided with the important information. By providing them with information that represents a clear and accurate picture of specific operating characteristics they recognized the difference between what they perceived the system to be doing and what it was actually doing. As mentioned in the first step, the determination of statistics relating to dispositions on the day of trial served this purpose. Genuine interest in the use of information emerged.

With their curiosity aroused, the operators were ready to search for more. It was important that they were not overwhelmed by the data. This was avoided by following through to develop a simple, accurate information system at the manual level. It was the intention of this system to highlight the operating characteristics in a simple, meaningful way. One individual was assigned the responsibility for gathering and assembling this information in order to present it to the operators of the system on a regular basis. For the most part

the data gathering was integrated into the normal record keeping functions. This made it possible to be both timely and accurate.

The study indicated that the information categories which follow are needed to support trial court operations.

Activity levels. This category of statistics is intended to provide basic, profile information related to the court operations. Case volume information broken down by various categories is a typical type of included data. The level of breakdown can go from the very general, such as civil, criminal, domestic relations, juvenile and appeals, to the substantive sub-categories of cases falling into each of these general categories. The type of breakdown depends largely upon the use of the statistics and the way they are intended to be reported. This breakdown is normally made in reference to number of filings, pending cases, dispositions, etc. In this respect it portrays the general volume through the system from the viewpoint of throughput and inventory. Resource information, usch as the number of visiting judge days and the dispositions per judge, is included.

Another category of data used in this context is that data which indicates trends. This category of data would portray the general movement in levels of court activity, such as increase in filings or increase in the number of pending cases over time. This trend information is usually kept on a simple basis, but is sometimes adjusted for seasonality or unusual occurrences which would affect the level of activity.

Diagnostic. This type of information is directed towards identifying problem areas in the system. The information collected is intended to identify abnormalities in the system which would be evidence of dysfunctions such as delay. Diagnostic information focuses on the

particular stages of proceedings so that it is possible to test the functioning of the system at each juncture. Diagnostic information not only serves to identify trouble spots in the system, but also can be used for setting goals and standards by which the system can be measured. Typically, in the development of diagnostic information intended to measure delay in the system, a realistic assessment of what the system is capable of producing can be fed into a definition of acceptable time standards for management programs to address.

Monitoring. Once the system's operating characteristics have been identified and an information system developed to support their measurement, the operation can be systematically monitored. The purpose of the monitoring system is to provide in the system a sensor which will check performance. This information often takes the form of lapse-time and interval-time measurements. It is intended to check limits and standards built into the system so that when a deviation from expected results is identified, it can be passed on in a reporting function.

Control. This area of information systems support is directed towards decision making. The information that comes from the monitoring function is directly utilized to assist in bringing the system into conformance with the standards that were described. A key element of this part of the information system is a selection of report types and frequency. An exception reporting system, for instance, brings to the administration only those matters which need attention. This element of the information system is structured in such a way that remedial action is indicated by the portrayal of the information itself.

Evaluation. This is the element of an information system which is often ignored. Evaluation information is particularly important in the development stages of new programs in that it provides a basis for evaluating the remedial action which has been taken. If a new program to provide assistance in reducing time from arrest to trial is adopted, evaluative data provides the ability to track the success or failure of that particular management program. In any change process it is always important to compare the results obtained with those predicted and planned for. In this respect, where the initial program predicted a reduction in the amount of time from arrest to trial, the starting data is as important as the current data. Comparisons over time measure the effect of the programs if those comparisons are designed in advance to accomplish that purpose. This element of the information system provides an ongoing reassessment of system progress toward identified goals.

VII

CHANGING THE PROCESSES AND RELATIONSHIPS

A. THE CHANGE PROCESS, GENERALLY

As indicated above, current research supports the conclusion that felony court delay is culturally imbedded in the litigation process.[47] Most attempts to change the courts and their related institutions to accelerate the felony process have failed. Court delay appears to resist each specific solution as the forces which would maintain the status quo coalesce to isolate the attempt. The problem is clearly systemic and persistent. The solution must take into account the general characteristics of institutions which support this persistence.

Institutions, especially those of government, are systems with a high degree of stability. They have the ability to absorb a great deal of pressure from outside before they become affected by that pressure. When their stability is endangered they change only for the purpose of stabilizing and only as much as is necessary to maintain their stability. The normal path of change is the one which offers the least resistance.

Individuals tend to change either because they do not like where they are or what is happening to them; or because they want to be somewhere else or have something else happening to them, more than they want to remain where they are. Both of these reasons require the individual to recognize where he is before he becomes interested in change. Wanting to be somewhere else induces a change toward something. When individuals do not like where they are, they change away from something. One is a positive reason for change, the other is negative.

Institutions, as a collection of individuals, change as do individuals, both for positive and negative reasons, but have further characteristics based on their collectivity. Institutions exist for purposes and they have goals to achieve those purposes. Those goals are pursued by the implementation of strategies. The strategies invariably involve individuals performing some specific tasks. The continuing performance of assigned tasks within an institution is the basis of each individual's security. The maintenance of the strategy is often the goal of the individual.[48] A particular strategy is more important to the individual than to the institution. Within an institutional setting, the combination of the strategies protects the individual's security. As a result, individuals working within institutions tend to maintain failing strategies and often abandon the organizational goals rather than strategies. Institutional change is thus far more complicated than identifying a new strategy and prescribing it. Careful consideration must be given to the internal work relationship which will be disturbed if a new strategy is to be implemented.

As is learned from Machiavelli in The Prince, resistance to change will be met by the full force of those who resist it, yet will only be halfheartedly supported by those who support it.[49] It must be recognized that change in institutions always involves risk and is generally a threat. The normal reaction to a threat is

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47. See generally JUSTICE DELAYED, supra note 4.

48. NIMMER suggests that there are informal norms working as well as the formal job-task relationships. NIMMER, supra note 6, at 177.

49. MACHIAVELLI, THE PRINCE (1532).

to defend within the organizational boundaries. Since a change of operational tasks destroys the security which each employee has in his or her job, the change to be effective must be presented in a manner which minimizes threats and thus minimizes resistance. Change can be managed or left to random occurrence. If the management course is chosen, the how and why of change must be understood, and if the proper purposes of institutions are to be preserved, constructive and controlled changes must be produced.

B. THE PROCESS OF CHANGE IN THE COURTS

1. Special Factors Which Affect Change in the Courts

There are numerous factors which have an effect or an influence on any change in the courts. The following are important:

(a) The Structure and Character of the Law

The courts are a creature and institution of the law; their stock in trade is the law, the people who run them and use them are men and women of the law. They are, in short, institutions of, for and by the law and they take their character from the law. Consequently they are rigid and heavily dependent on precedents. They are process oriented and have a nearly religious belief that stability has an inherent value. In many ways the law indicates that to stand still and be predictable is good, while to change and be uncertain is bad.

(b) Politics, Big and Small

The courts are also instruments of politics. Nearly all of the people who operate in the courts are products or appointments of the elective process. The courts are a part of the government.

The willingness and the ability to change -- or even the very framework in which the courts think about change -- is by and large defined and determined by the political construct. Nearly every external managegerial act of the courts reflects its concern for the world of politics.

Just as the external acts of the courts reflect politics in the large, the internal actions of the courts are influenced by the politics of the courthouse. The courts tend to operate much like a family business; they have the security of government and the personal loyalties of a family-owned organization. Employees take on an attitude of ownership to a particular task and loyalty becomes more dependent on personal relationships than on institutional goals or needs. All of this affects the process of change.

(c) The Judicial Syndrome

The judicial syndrome is used here as a term to describe a phenomenon which results from a special kind of interpersonal behavior. One could will start this discussion by recognizing four assumptions: (1) everyone is very dependent on feedback from others to provide a perception of one's self; (2) how one perceives himself affects his perceptions and, more importantly, his ability to accurately perceive reality; (3) judges are generally the center of power in the management of the courts; and (4) the effective management of change requires a rather accurate fix on what is actually happening. It follows from these assumptions that the kind of feedback judges get

on an interpersonal level is critical to the process of change in the courts. Unfortunately, it is extremely difficult for judges to get accurate feedback. Our legal and social systems make people want to please and impress judges. This way of treating judges not only affects their professional lives, it often spills over into their personal lives. All of this special consideration and filtered or guarded feedback takes its toll. Over the years judges may lose their ability to get accurate information on a personal level. Their antennae simply go bad. The result is that judges often have a very inaccurate perception of themselves and the world around them. It is important for the judicial change agent to recognize the judicial syndrome and to help compensate for its effect.

2. The Process for Effective Change in the Courts

(a) Creating the Climate

Change will more likely be constructive and controlled if addressed on a confident and rational basis. Furthermore, change will be more effectively implemented when the threatening aspects of change are reduced. All of this means that the proper climate needs to be created and maintained. As noted earlier, change will occur only when people are uncomfortable with what is happening or when they desire to be somewhere else. Therefore, before change can be accomplished, it is necessary to have some activity which creates discomfort or desire. It is obvious that when discomfort is the basis for change, people are moving away from something, while

if desire is the basis, they are moving toward something. Change is much healthier and positive if the focus is on moving toward some desired outcome. Finally, it is very important to create a climate of trust between the change agent and those to be affected by change. In this regard there is no substitute for time and personal credibility. Trust depends on personal relationships and personal relationships require time to develop.

(b) The Importance of Timing

As was discussed under Time and Mode of Change, selecting the proper time to institute a push for change is essential. There are no easy or mechanical rules which can be applied to determine the best time for activities of change. What is important is that the change agent knows what things need to be accomplished. With these items in mind it is possible to pick and choose the best moves under the circumstances of the moment. It is also important to recognize that inaction is costly and that even though it may not be a good time to push for some change or activity of change, it would probably be worse to wait.

(c) The Keys to Effective and Constructive Change

It is clear that the process of change is complicated and depends on numerous factors. It is suggested here that there are several key elements in the process of change in judicial institutions. If the change is based on moving toward something and it is to have lasting effects, it is suggested that five elements are necessary. They are information, vision, standards, monitoring and success.

Information is the starting point for constructive change. The court must be allowed, or possibly forced to know what is happening. Accurate information is the basis for discomfort.[50] Throughout the change process, information is the critical management tool -- it not only answers the questions that management asks, it becomes the basis and source for those questions.

Vision as used here means the ability to picture a different way of operating. As information is necessary to provide a basis of discomfort, vision is needed to provide a basis for the desire to move toward a particular outcome.[51] Vision is provided by creating in the minds of the court a framework or set of experiences which would enable the court to picture a better way of operating.

Standards adopted for the system are specifically measurable statements of the vision. Case delay can be reduced to a statement as to what the courts should tolerate. The ranges of tolerance become standards and the goal of management is to bring the courts within those standards. These standards should be explicit and public so that everyone knows exactly what the standards are and so that everyone will feel uncomfortable when the standards are not being met.

Monitoring is probably the most critical key to change. It

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50. See also p. 64, supra.

51. Id.

is the process by which management constantly compares what is taking place with what it has set out as its desired results. The very activity of monitoring affects behavior. The most effective change agent is the one who can maintain the trust and confidence of the court while at the same time making the court feel uncomfortable because they have not met their standards. The art of monitoring involves knowing what to look for, but moreover it involves the ability to present the results to judges and court administrators so as to make them want to make the changes and avoid criticism.

Success begets success. Success is a very important element of any lasting change. Where change is based on a desire to improve, success reinforces the commitment to improve. Only after successful experiences will the court develop the confidence to be willing to abandon any institutional stability and to rearrange the institutional structure to make the change a part of the judicial culture. It is important to recognize that every recommended change which requires institutional restructuring needs to prove itself with successful experiences before the institution will be willing to surrender its stability. Therefore successes cannot be transferred, they must be achieved repeatedly and consistently. Changing judicial behavior is not a process of quick and flashy results. It is rather a process of slow, steady and repeated minor changes.

The Whittier Staff applied these concepts in several ways: by sampling to collect the necessary data, by presenting the

data to the Boards of Judges and Coordinating Councils in understandable forms, by training or orientation lectures which set forth alternative methods for correcting the deficiencies which the data exposed, by explaining and proposing measurable standards and by recognizing each success achieved through meeting the standards.

The process of encouraging change within the organization was complex. In each instance the data samples had to be updated for each monthly meeting. Changes in procedures were constant and improvements were attempted after each visit. Monthly and quarterly reports reflecting slight but encouraging progress were prepared as soon as the data could be found.

Participants in the control processes were encouraged to attend out of state meetings and in particular, if they had not already been, to attend the National Judicial College Court Management Specialty Session. The results of these national forays were dramatic. The participants returned willing to apply new vision to their old problems.

In two courts, orientation programs dealing with general case management concepts were provided to all of the support personnel associated with any part of the case flow. In the same courts, management orientation sessions were held for all of the judges of general and limited jurisdiction who were involved in the resistance to the program and who provide a ready acceptance of what was being done. It appeared to alleviate the fears most

of the support personnel -- fears which usually accompany such programs. Most significantly it provided a concrete recognition that all of the participants in the case flow process are important to its effectiveness.

The adoption of standards for performance took many forms. In most instances they were reluctantly recognized as being encompassed in speedy trial dismissal limitations. By the end of the experimental period they became genuine goals which were used to measure progress. The first reaction was defensive since the court information showed that more than half of all cases were exceeding the mandatory limits. When, however, it became clear that early and constant control would bring the courts into reasonable compliance, the reaction was pride.

The Hawthorne effect of any study is a well known phenomena in research circles, i.e., the thing studied tends to improve without regard to the particular element changed. In effect the presence of the study team collecting and reporting accurate data accounts, in some part, for the improvements which took place. But a blind reliance on the Hawthorne effect without experience in knowing what to count, when and how to present it has been demonstrably ineffective. In fact, counting the wrong things can be dysfunctional. Counting dispositions, for instance, without counting trials and aging the inventory often builds backlogs of untried cases. Counting pretrials, motions, and arraignments without noting the disposition activity surrounding these imputs leads to massive wheelspinning and few or no results. The human behavior studied does change. Great care must be exercised to study it in such a way that it changes the behavior to produce the accepted goals of the system.

VIII

ROLE OF THE STATE IN TRIAL COURT ADMINISTRATION

State court administration, in whatever form, has some function with respect to the effective operation of the trial courts.[52] Whether perceived as a central service agency, a central office for interaction with other state agencies or a controlling accountable headquarters, the exercise of its responsibility with respect to trial court delay is not clearly delineated at present.

Exercising general superintending control, Chief Justices and Supreme Courts have imposed the method of assigning cases to judges within trial courts.[53] They have monitored individual performance, keeping track of hours on the bench, cases under advisement and numbers of trials, pretrials and motions per court.[54] Exercising a service function, central administration has provided advisory services on calendaring,[55] assisted in the redesign of local record keeping procedures[56] and helped to install personnel management procedures.[57] Exercising rule making power, central administration, in the form of Judicial Councils and Supreme Courts, have responded to perceived problems by adopting procedural rules.[58]

The role of state agencies in trial court administration and especially in controlling felony delay must include the executive and legislative branches. Through budgetary controls and speedy trial acts, legislatures set policy for trial courts which can help or hinder the felony process.[59] State attorneys general adopt felony processing standards, supervise prosecutors and collect information which affect the court processes.[60]

At present the role is ill defined. It is an important issue for this report to address as the Whittier staff completes its evaluation of procedures which appear to work. The natural question to ask in view of the conclusions contained here is "how can the processes of change and maintenance be sufficiently institutionalized to provide necessary long term progress?" What, if anything, can be done to provide realistic incentives for change and prevent the reversion of the altered institution to its original form?

The Whittier staff proposes a systematic and thorough exploration of the possibilities. At present there is no evidence that mandated operating procedures have had long term effectiveness. The failure to monitor for the right results, the failure to provide necessary services or the ignorance of resource needs have undoubtedly contributed

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52. See generally INSTITUTE FOR COURT MANAGEMENT, STATE COURT ADMINISTRATIVE SYSTEMS: PERSPECTIVE AND RELATIONSHIPS, DENVER (1978).

53. In both Ohio and Michigan individual case assignment systems have been prescribed by the Supreme Courts of those states.

54. The collection of information about the work of individual judges started in New Jersey under the late Chief Justice Vanderbilt and in varying forms has spread to several other jurisdictions.

55. The Judicial Council of California has provided a calendar management service for many years.

56. The Colorado Supreme Court staff pioneered in the area of a records management design service.

57. Several states have adopted statewide judicial personnel systems. These vary from minimum standards for selection of personnel in selected positions (New Jersey) to complete judicial civil service system (Colorado).

58. Almost all states now have some form of rule making function from advisory committees, which make recommendations to the legislature, to absolute procedural rule making power under state constitutions.

59. Speedy Trial Act Compendium.

60. The adoption of prosecution standards by the American Bar Association has led to a general movement nationally. Most attorneys general, however, do not have superintendary responsibility for prosecution.

to their lack of long-term success.

Perhaps more significantly, misconceived information needs at the state level have undoubtedly contributed to the problem. Collecting information to justify resource requests from the legislature when used to make decisions about operating needs almost always leads to wrong conclusions. The data were not collected nor designed for this purpose and consequently have proved dysfunctional when so used.

When measured by operating standards trial court statistics at the state level are notoriously inaccurate and are published too late for use of any consequence. The conditions that give rise to this state of affairs can be found at both the state and the trial court level. At the state level the source of the problem is in (1) the authority the state administrative body has, (2) the activities the administrative body is responsible for, and (3) the information it needs to exercise its authority over these activities. The cause of the problem at the trial court level is (1) the failure to understand how the state intends to use the information, and (2) the lack of definition by the state of the procedures for collecting and forwarding this information. Because the information has traditionally been manipulated to accomplish multiple purposes, there is little credibility given to the statistics by trial court personnel and therefore little concern for accurate data gathering and transmission. Frequently the individual who is given the task of collecting the information is one who is rather new to the court and not totally capable of understanding the data being collected. Considering the amount of time and cost that is involved in collecting, assembling and preparing the state-wide reports and re-

cognizing their general disregard for accuracy it would sometimes seem wiser to eliminate them altogether.

There is of course a genuine need for an accurate and timely statistical report on the condition of operations on a system wide basis. They are important not only for describing the levels of activities and thus the resources which the courts need to do their business, but also to provide a method of getting accurate planning information to those who are charged with ongoing programs for improving the court systems.

In terms of volume and even finality the trial courts are the basic operating instrument of the justice system. Accurate portrayal of the operating characteristics of a judicial system is essential to the exercise of the superintending as well as the service elements of state central administration. The next step in bringing greater uniformity to a given system will be in the proper exercise of the central role. Certain elements appear to be needed if the current shortcomings of state information systems are to be remedied.

First, there should be a general understanding by those who are not only the originators of the information but also by those who are going to be consumers of the information as to the purpose and benefits of information which can be gathered. This understanding can be induced by a program which identifies the roles and responsibilities of the various levels of courts within the state and the responsibilities which they are charged with for management. A key element of this understanding would include the development of an education plan which would provide those who are charged with gathering the informa-

tion with a clear and well-defined set of definitions and procedures. Forms used for collecting the information would be integrated with the normal operations of the court so that they do not represent a month-end task which is normally avoided until much of the data is difficult to assemble for preparation of the monthly report.

Second, the data gathering effort for the state level court system would originate as a spinoff from the trial court information system. Preferably a single entry type of system, such as a multi-part forms set, would provide this kind of capability. As an example, the first and second sheet of a uniform docketing system could be the tear-off for the case initiation and disposition transmission to the state. The third part could be a heavy stock form which would serve as a docket card in the court itself. Thus the information is entered once for use in the court operations (thus insuring its accuracy and timeliness) and as source documents to be forwarded to the state level.

Another aspect of the system's design would be a fast turn-around to the originating court for editing and correction purposes. If information is sent to the state to be compiled on a monthly basis, the edit listing of the information transmitted should be back in the hands of the originating court within four to five days after the close of the month. This allows the originator to review and edit the information so that corrections can be made in a timely way, avoiding a lengthy search for data which would be necessary if the turn-around time were greater. This also provides an opportunity to re-educate data originators at the trial court when it appears that the quality of the data gathered is decreasing.

Third, the data gathering methodology should be carefully chosen in the organization of the information systems design. If the authority and requirements of the state level system are such that a case by case tracking from initiation to disposition is essential then the amount of detail required in the report increases substantially. This implies a labor intensive effort on the part of the trial court. It leads to a need for a standardization program imposed at the state level and makes necessary a uniform docketing system. This is a complex and expensive method of gathering statistics for a management information system. If, however, totals of various types of activities such as filing, pending and disposed of cases is adequate, the information system can get its inputs from summary data. This requires the development of a method of tabulating the activities that have been designated as reportable information in such a way that it can be accomplished as the activities occur in the trial court. Regular audit is necessary to maintain such a system on a reliable basis.

It is, of course, not necessary to continually count each event in the universe. Sampling provides a reasonable approach to data gathering and analysis, particularly in a systems development phase of operations. Sampling provides the opportunity to take a look at various aspects of the court operations and to establish an economic approach to collecting and analyzing information. The development of the sample size must be done in a systematic responsible way.

Another inexpensive approach to identifying system operation is to take a statistical "snapshot." With this method you select a

specific short time frame and analyze the operating statistics for that period. This reduces the amount of information that needs to be collected but provides a complete picture of activity levels and system functioning for the purpose of reviewing the results of a particular management plan.

When all the information problems are identified, it will be clear that a conceptual approach to an integrated information system at both the state and trial court level is needed. At some time in the not too distant future the attempt must be made to meet this need.

But the problems of court delay, as has already been noted, go far beyond the bounds of information systems. Trial court staff often lose sight of the needs of the overall system for uniformity and economy. At the same time, central staff personnel, whether under the cloak of judicial appointment or as administrative heads of department, become isolated from operational problems in a short period of time. Supreme Courts typically become overly concerned with appellate processes and appeal producing trial factors and lose sight of operational problems at the trial court level. Trial courts lose sight of system integrity in their attempt to cope with urgent local problems.

The complexity of trial court delay, its roots in the culture of our society and the peculiar problems surrounding the need for judicial independence all contribute to the need for a better perception of the relationship which exists between local and state authorities. If change were brought easily by edict, an informed central authority could solve all of the system problems. But the problem is not one which can be solved by edict. As has been noted above, a correctly con-

ceived solution is only a first step. The local institutions, some in the court structure and some not, must participate in and understand the solution. As surely as there is a methodology for changing the trial courts there is a role for central administration in the process. Whether to provide service, resources, advice or leadership the central institutions have a role.

The Whittier staff is confident in its belief that by working with central state agencies coordinating experiments with trial courts over an eighteen month period they can discover and describe the possible effective roles which central state administration can play in the improvement processes. The state agencies can, on a consistent basis, perform the function the Whittier staff has performed and more. Thus is Phase III of the felony court delay project defined.

Appendix A

Delay Management Data Collection Forms

Prepare a matrix of Due Process and Control events indicating the name and the purpose using the outline notation as per example.

Event Name	Due Process Purpose	Control	Preparation Necessary
I	A. B.	C. D.	A. 1 C. 1 2 2 3 3
II	A. B.	C. D.	
III	A. B.	C. D.	
IV	A. B.	C. D.	

etc. etc.

Indicate normal processing time (average or median) between events.

I - II _____
II - III _____
III - IV _____
IV - V _____

Age the Inventory

	0 - 30	31 - 60	61 - 90	91 - 120	over 120
Current					
Year Before					

END