

99464

U.S. Department of Justice
National Institute of Justice

National Institute
of Justice

Issues and Practices

MP-1

The Implications
of Effective
Case Processing for
Crowded Jails:
A Manual for Prosecutors

99464

About the National Institute of Justice

The National Institute of Justice is a research branch of the U.S. Department of Justice. The Institute's mission is to develop knowledge about crime, its causes and control. Priority is given to policy-relevant research that can yield approaches and information that State and local agencies can use in preventing and reducing crime. The decisions made by criminal justice practitioners and policymakers affect millions of citizens, and crime affects almost all our public institutions and the private sector as well. Targeting resources, assuring their effective allocation, and developing new means of cooperation between the public and private sector are some of the emerging issues in law enforcement and criminal justice that research can help illuminate.

Carrying out the mandate assigned by Congress in the Justice Assistance Act of 1984, the National Institute of Justice:

- ◊ Sponsors research and development to improve and strengthen the criminal justice system and related civil justice aspects, with a balanced program of basic and applied research.
- ◊ Evaluates the effectiveness of justice improvement programs and identifies programs that promise to be successful if continued or repeated.
- ◊ Tests and demonstrates new and improved approaches to strengthen the justice system, and recommends actions that can be taken by Federal, State, and local governments and private organizations and individuals to achieve this goal.
- ◊ Disseminates information from research, demonstrations, evaluations, and special programs to Federal, State, and local governments, and serves as an international clearinghouse of justice information.
- ◊ Trains criminal justice practitioners in research and evaluation findings, and assists practitioners and researchers through fellowships and special seminars.

Authority for administering the Institute and awarding grants, contracts, and cooperative agreements is vested in the NIJ Director. In establishing its research agenda, the Institute is guided by the priorities of the Attorney General and the needs of the criminal justice field. The Institute actively solicits the views of police, courts, and corrections practitioners as well as the private sector to identify the most critical problems and to plan research that can help resolve them.

James K. Stewart

Director



The Implications of Effective Case Processing for Crowded Jails:

A Manual for Prosecutors

by

**Jolanta J. Perlstein, Ph.D.
D. Alan Henry**

July 1986

National Institute of Justice

James K. Stewart

Director

Bruce A. Johnson

Project Monitor

99464

**U.S. Department of Justice
National Institute of Justice**

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

Public Domain/NIJ

U.S. Department of Justice

to the National Criminal Justice Reference Service (NCJRS).

Further reproduction outside of the NCJRS system requires permission of the copyright owner.

This project was supported by Grant Number (84-IJ-CX-0009) awarded to the Pretrial Services Resource Center by the National Institute of Justice, U.S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Acknowledgments

The contribution of the following district and assistant attorneys to this publication is gratefully acknowledged: Edward Austin, Ted Cannon, Robert Donnelly, Norman Early, Thomas Foley, Peter Gilchrist, Steven Goldsmith, James Gregart, Alexander Hunter, Robert Kramer, Michael McCann, Kurt Posner, Albert Reiderer, Howard Renlin, Alan Rockoff, Harold Ruvolt, John Tuthill, and Henry Wade.

Special thanks are also accorded to the members of the Review Panel: Paul Carmouche, Joan Jacoby, and Keith O'Donnell, for their advice and comments.

Thanks are especially due Bruce Johnson, the NIJ Program Monitor, for his ideas throughout the project and editing assistance, and to Angie Bailey, of the Pretrial Services Resource Center, for her invaluable help in the preparation of this document.

Abstract

A recent study by the National Institute of Justice found that jail crowding is the most pressing problem facing local criminal justice systems today. The problem of jail crowding must be recognized as one which demands the involvement of all key criminal justice system actors. Echoing this view, James K. Stewart, director, National Institute of Justice, suggested that while "we need to focus our attention on the overcrowding problem...if we deal with it on a piecemeal basis, we will not be meeting the needs of the whole system." Judges and prosecutors have been identified as key decisionmakers, each playing a pivotal role in managing case flow and influencing jail population levels. The Implications of Effective Case Processing for Crowded Jails: A Manual for Prosecutors and its companion, Dealing Effectively with Crowded Jails: A Manual for Judges, are intended to assist prosecutors and judges, respectively, in implementing procedural changes which achieve the dual goals of effective use of detention space and improved case processing and administration of justice.

Prosecutors' decisions at the intake, trial preparation, and sentencing stages bear directly on jail population levels and length of confinement. In numerous jurisdictions prosecutors have been instrumental in modifying case processing procedures to improve case flow and alleviate jail crowding.

At the intake stage, early screening procedures and stringent screening criteria have been employed by prosecutors in such sites as Milwaukee, Wisconsin; St. Paul, Minnesota; and Jefferson County, Colorado. Experienced staff prosecutors screen cases at intake in Hudson County, New Jersey, and Kalamazoo, Michigan, where prosecutors also screen warrants before they are issued to ensure that cases are properly prepared and investigated before they enter the criminal justice system. In Mecklenburg County, North Carolina, and Milwaukee County, Wisconsin, prosecutors attend the

initial appearance, facilitating the bail process. Also at the intake stage, diversion from prosecution programs in Kalamazoo, Michigan, and Monroe County, New York, have been shown to have an impact on the jail population.

At the trial preparation stage (between the filing of formal charges and sentencing), prosecutors' use of plea bargaining guidelines facilitates case disposition in many sites, including Marion County, Indiana; Davidson County, Tennessee; and Monroe County, New York. The imposition of time limits for accepting pleas by the prosecutor in Mecklenburg County, North Carolina, contributed to a substantial reduction in the trial caseload. Vertical case management systems are reported to enhance the speed of adjudication and, in turn, the jail population level. Special prosecution units are used in Salt Lake County, Utah; Monroe County, New York; and Hudson County, New Jersey, while charge consolidation techniques and accelerated calendars are key case expediting techniques in Kentucky and Connecticut.

At the sentencing stage, prosecutorial support for alternatives to incarceration can influence the jail population level. In Hudson County, New Jersey, "simultaneous sentencing plans" reduce case disposition time by four to five weeks. Finally, prosecutors have provided systemwide leadership in such jurisdictions as Marion County, Indiana; Dallas, Texas; and Mecklenburg County.

This report provides information on specific policies and procedures designed to improve case processing which have had an impact on jail population levels without detracting from the operations of the office and, in most instances, contributing to improvements in case processing and the administration of justice.

Contents

	Acknowledgments	iii
	Abstract	v
Chapter 1	Introduction	1
Chapter 2	Case Processing Functions	5
	Intake Stage	5
	Standards	
	Early Screening	
	Warrant Screening	
	Using Experienced Staff	
	Bail Recommendations	
	Attendance at Initial Appearance	
	Diversion	
	Trial Preparation Stage	12
	Plea Negotiations	
	Plea Bargaining Time Limits	
	Case Management Techniques	
	Vertical Case Management	
	Assigning Cases to Special Units	
	Calendar Control	
	Charge Consolidation	
	Accelerated Calendar	
	Sentencing Stage	17
	Recommending Sentencing Alternatives	
	Cooperating in "Simultaneous Sentencing Plans"	
Chapter 3	Leadership Role	19
Chapter 4	Conclusion	21

Appendix A: Survey Participants 23

References 25

Chapter 1: Introduction

Jail crowding, 1/ recognized in the late seventies as a serious national problem, 2/ is now regarded as having reached epidemic proportions. Prosecutors responding to a recent survey overwhelmingly agreed with other local officials in identifying jail crowding as "the most pressing problem" facing their state criminal justice systems. 3/ Nearly one of every three local jurisdictions reports involvement in civil suits challenging crowding and related conditions. 4/

If jail crowding is not simply viewed as a question of too many people for available bedspace, it must be approached as a system problem necessitating comprehensive planning involving all key system officials. 5/ To achieve the most effective use of jail space in a community, the entire criminal justice system must participate in determining ways in which the level of the jail population might be reduced while safeguarding community safety. Thus, efforts to reduce the size of the jail population must affect the number of admissions as well as the length of confinement.

With the possible exception of a judge, no official makes more decisions affecting the size of the jail population than the prosecutor. It is the prosecutor who provides guidelines for arrest and booking procedures, governs case screening and charging processes and generates system momentum toward case disposition. The prosecutor may also wield considerable influence with the judiciary in the important bail-setting and sentencing decisions. Because of his central position in the case-handling process, the prosecutor also exercises influence over the actions of other system members. In the instance of jail crowding, law enforcement, corrections, pretrial services and other agencies seeking remedies to the situation may find prosecutorial support to be essential to the implementation of specific procedural and/or programmatic changes. Indeed, few system modifications can take effect without the prosecutor's cooperation.

While many prosecutors are reluctant to play a role in the search for solutions to jail crowding, others have decided that it is important to act aggressively to deal with the problem. Prosecuting attorneys surveyed for this publication cited a number of reasons for their decisions to actively participate in finding causes and solutions, including:

- the enormous immediate and long-term costs of jail expansion;
- the prospect of losing control over jail and system operations to the courts as a result of jail crowding litigation;
- the drain on prosecutorial resources from jail crowding litigation;
- the detrimental effect of chronic jail crowding on day-to-day administration of justice;
- erosion of legislative and public confidence in the system's ability to resolve the problem; and
- the belief that resources were being expended to support high levels of incarceration that could be spent elsewhere to more effectively reduce crime.

The same officials expressed confidence that the measures they had taken or supported to reduce jail populations had not decreased case-handling efficiency, the quality of justice, the integrity of the court system, or the level of safety in the community; in fact, many cited significant improvements in these areas. For example, by establishing arrest guidelines, prosecutors have achieved greater cooperation with law enforcement officials. By implementing early case screening procedures, prosecutors have simultaneously expedited case processing and reduced the size of the jail population. Finally, by participating in task forces, prosecutors have been able to pursue systemic approaches to the resolution of jail crowding.

2 Introduction

This manual is intended to provide prosecutors with examples of procedural changes involving case processing that have been adopted around the country resulting in more efficient use of jail space. In the following sections, various prosecutorial activities, including functions commonly performed in the case processing sequence and in a leadership capacity, are discussed to highlight their potential for reducing jail admissions and length of confinement.

Survey information is used to provide specific examples of effective prosecutorial actions. Based on their reputation for successfully alleviating jail crowding, eighteen prosecutors were surveyed; eleven via telephone interview and seven by mail questionnaire. 6/ The selection process was informal and does not represent scientific sampling; as a result, the information about various practices, procedures and policies furnished by the chosen prosecutors serves only illustrative purposes.

Chapter 2: Case processing functions

In this section, prosecutorial case processing functions are grouped into the intake, trial preparation and post-conviction stages. The intake stage consists of screening and charging activities involving decisions related to arrest warrant review or approval, pretrial release recommendations and the use of diversion programs. The trial preparation stage encompasses plea negotiations, case management techniques and continuance policies. Finally, the post-conviction stage focuses on prosecutorial sentencing recommendations. Discussions of each stage will include the procedures and practices of prosecutors which affect not only case processing, but ultimately the jail population level.

Intake Stage

Intake decisions set the pace and groundwork for subsequent prosecutorial actions. Decisions concerning whether to drop a case, charge or divert an accused, whether to recommend pretrial release, whether to assign the case to a special unit, or to set it on an accelerated or priority calendar will in large part determine both the nature and speed of case disposition.

Within the criminal prosecutor's purview, the single most important duty is case screening, which involves deciding whether to instigate formal, criminal proceedings and, if so, determining the most appropriate charge to file. Screening is not solely performed to determine whether to file or what to charge; the prosecutor may opt to divert an individual and defer prosecution pending successful completion of a program or treatment plan. ^{7/} Additionally, depending on the charge, the case may be assigned to a special unit (e.g., organized crime, economic or white collar offenses, sexual assault cases), given priority ranking (typically for particularly serious offenses) and/or placed on an accelerated calendar (especially in cases involving defendants held

in pretrial custody). The prosecutor's bail recommendations which contribute either to the defendant's remaining in pretrial custody or the likelihood of his obtaining release have bearing on the jail population level and the outcome of the case.

Standards

Standards underlying the charging decisions can influence the intake and later stages. Offices using the legal sufficiency standard in which the presence of legal elements of a crime are sufficient for charging usually conduct only a cursory screening at intake. On the other hand, the trial sufficiency standard requires that only potentially convictable cases be charged. Offices following the latter standard tend to screen cases extensively at the intake stage, resulting in high rejection and/or reduction rates. Decisions made at the intake stage in turn, play a part in shaping other events throughout the criminal process; the earlier the case is screened out or reduced, the more time the prosecutor has to devote to convictable cases and the shorter the period of confinement for those detained pretrial.

Early Screening

Defined as occurring within a short interval following arrest, early screening benefits the prosecutor and results in reductions in jail admissions and the length of pretrial confinement. 8/ Early identification of cases which are likely to be dropped later in the proceedings, such as private disputes, can avoid subjecting defendants to pretrial confinement only to be later released. Early decisions to reduce charges can also affect the level of the jail population since defendants charged with a misdemeanor rather than a felony offense typically receive less stringent release conditions and disposition time is usually substantially less.

Clearly the timing of the defendant's initial appearance in court influences the speed of prosecutorial screening. In Milwaukee County, Wisconsin, for example, the prosecutor files charges within 24 hours of a weekday arrest (36 hours on weekends), or before the initial appearance. In felony cases, the police take the defendant directly to the prosecutor after booking. This procedure affords the prosecutor an opportunity not only to examine police reports and other information pertaining to the incident, but also to interview both the arresting officer and the defendant prior to filing. This results in the speedy elimination, downgrading or diversion of appropriate cases prior to the initial appearance. The Ramsey County, (St Paul), Minnesota, prosecutor makes charging decisions within 36 hours of arrest to comply with a Minnesota Rule of Criminal Procedure, while prosecutors in Jefferson County (Golden), Colorado, are encouraged to screen arrests and file charges within 40 hours. Although most offices make charge determinations within 72 hours of arrest, in some cases 10 days or longer transpire before formal charges are filed. 9/

In some jurisdictions the prosecutors' early screening is restricted to warrantless arrests. Prosecutors in the Lucas County, Ohio, Screening Unit are on call round-the-clock to screen by telephone warrantless arrests, which constitute 50 percent of all felonies. Approximately 20 percent of these cases are either dropped or reduced to misdemeanors. This review process has resulted in a decrease in the jail population level, according to the Lucas County prosecutor, by virtue of reduced jail admissions and shortened confinement for offenders whose charges have been reduced.

Warrant Screening

Numerous jurisdictions allow the prosecutor to participate in the warrant issuance decision. 10/ The practice of having prosecutors review and/or approve the issuance of warrants rests basically on two pragmatic considerations. First, the prosecutor knows the elements

necessary to proceed with a case; and, second, the prosecutor decides whether to go forward with a case or decline prosecution. Typically, the prosecutor not only relies on a police report to determine if probable cause exists to issue the warrant, but also proceeds to gather further evidence by interviewing witnesses and the investigating law enforcement officer.

Arrest warrant screening allows the prosecutor to screen cases very early in the process, thus ensuring that the cases have been properly prepared and investigated before they enter the criminal justice system. The procedure both prevents the unnecessary pretrial detention of suspects who may be eligible for summonses in lieu of arrest or diversion prior to formal charging and reduces the number of warrant applications submitted to judicial officers.

Of the jurisdictions surveyed for this manual, half reported that the prosecutor plays some role in the warrant review process. In Kalamazoo, Michigan, for example, a warrant screening prosecution officer is assigned the function of reviewing all warrant requests and citizen complaints prior to submission to a judicial officer for issuance. The process involves the officer reviewing relevant documents and information, including the police report, the suspect's prior record, and any written or oral statements. Before making the final decision, the screening officer schedules a meeting with the law enforcement officer involved to ensure that all relevant information has been examined.

Using Experienced Staff

A 1982 National Institute of Justice study of prosecutorial policies and practices conducted by the Bureau of Social Science Research found that more experienced staff attorneys more readily exercised their authority to decide which cases to divert, reduce or drop and to determine what charges to file. In fact, a preponderance of prosecutor offices surveyed for the study reported that experienced staff perform

8 Case Processing Functions

screening/charging functions as part of a separate organizational unit. Offices which delegate the authority to screen cases to new assistant prosecutors, rather than experienced staff, rely on supervision to ensure the task is performed expeditiously with a lack of adequate supervision resulting in delays in screening cases. Apparently, close supervision is necessary to meet 24 to 48 hour deadlines for charging. 11/

A special prosecutor's unit comprised of experienced assistant attorneys led by a senior staff member is responsible for screening cases before the initial appearance court in Hudson County (Jersey City), New Jersey. The special unit evaluates the cases to determine which are likely candidates for grand jury indictments. Cases not falling into this category are then considered for declination or downgrading to a misdemeanor charge. Many of the downgraded cases are disposed of at the initial appearance, commonly with a fine or other nonincarcerative sentence, thus relieving jail crowding.

Another consequence of having experienced attorneys handle the screening is exemplified by a Kalamazoo, Michigan, practice. There, experienced attorneys decide the charge which forms the basis for the "bottom-line offer" made to defense in plea negotiations. By having experienced staff make this important decision at the outset, the government can communicate its offer to the defense in advance of the probable cause hearing or arraignment, thus shortening the time to eventual case disposition.

Bail Recommendations

Though within the judge's jurisdiction, prosecutors influence the pretrial release or detention decision by their pretrial release recommendations. Many prosecutors routinely make pretrial release recommendations of either a specific bail amount or from a wide range of nonincarcerative pretrial conditions which assure appearance at court and maintain community safety. 12/

Several prosecutors surveyed indicated that they generally accede to the magistrate's inclination to release defendants on nonfinancial release conditions. In determining their own recommendations, many prosecutors rely principally on the defendant's criminal record and statement of facts on the instant charge, while others reported using information presented by a pretrial services agency.

Attendance at Initial Appearance

Although in many jurisdictions prosecutors do not attend the initial appearance, where they do, their presence aids in expediting the bail process and often curtails pretrial detention. In Mecklenburg County (Charlotte), North Carolina, a staff member of the prosecutor's office is present at the initial appearance to review cases and decide whether to dismiss or make a certain bail recommendation. Attendance at the initial appearance in Milwaukee County, Wisconsin, is used by the prosecutor to check the accuracy of the information about the defendant, to review relevant dates, and to be available should the complaint be challenged.

Diversion

Following arrest and after formal charges are filed, the prosecutor has the option of diverting cases from the criminal justice system. Diversion is intended to provide an alternative to the prosecution and incarceration of persons who are likely candidates for rehabilitation. Diversion programs may be operated by agencies within or outside the criminal justice system and offer a wide assortment of services, including counseling in employment, personal, and family matters; job training and placement; continuing education; housing and financial assistance; mental health services; and supervising community service and restitution. 13/

To have an impact on the jail population level, diversion programs need to draw from persons who are likely to be

detained pretrial and/or, upon conviction, sentenced to incarceration. How successfully diversion programs have been used as alternatives to incarceration is open to debate. Some argue that diversion is often used to channel off offenders unlikely to be incarcerated pre- or post-conviction and, instead of offering a true alternative, "widen the net" by placing individuals into treatment programs who ordinarily would be released from any custody. Still, some prosecutors contend that diversion programs have an immediate and measurable impact on jail population level.

According to the county prosecutor in Kalamazoo, Michigan, diverted cases accounted for 40 percent of the felony caseload (in 1984, out of 1,550 authorized felony charges 585 persons were diverted). The prosecutor found that the diversion program does have an impact on the jail population, since a substantial number of persons charged with a felony would otherwise be incarcerated prior to initial appearance.

In Monroe County (Rochester), New York, the diversion process is initiated after formal charges are filed, most often based on a referral by defense counsel. The diversion program screens defendants, makes recommendations to the district attorney, and with his approval, presents recommendations to the court. Annually, the pretrial intervention unit diverts about 300 defendants, accepting persons charged with misdemeanors or nonviolent felonies. In most cases, upon successful completion of a four- or five-month program, charges are dismissed, unless the defendant agrees in advance that charges will only be reduced or a particular sentence will be recommended.

An evaluation of the Monroe County diversion program showed a substantial impact on the local criminal justice system, including its jail population. In the absence of the program, the diversion participants would most likely have been prosecuted. Also, the program appeared to influence recidivism rates as participants had decisively lower rearrest and conviction rates over a one-year follow-up period than a similar comparison group. 14/

Trial Preparation Stage

Trial preparation may be a misnomer for the stage between filing of formal charges and sentencing, as a plea and not a trial is the most prevalent form of disposition of criminal cases. Many of the pleas are the result of negotiations between the prosecutor and the defense counsel. Thus, the prosecutor's policies regarding plea bargaining are important for determining the speed and nature of case dispositions which again affect the jail population. Also during this stage, the prosecutor's continuance policy, case assignment procedures, and other delay reduction strategies, such as establishing separate units for the prosecution of special cases, may have an impact on jail population levels.

Plea Negotiations

Plea bargaining can assume various forms, including explicit negotiations between the prosecutor and the defense and implicit or tacit agreements by defendants to plead guilty with the expectation of certain results. In some jurisdictions plea bargaining is banned, although defendants may obviously continue to enter guilty pleas. 15/ Besides expediting case processing, which in turn reduces the length of pretrial confinement, plea bargaining also appears to influence case outcomes. Studies show that it is common for defendants whose guilty plea results from plea negotiation to receive shorter sentences than others convicted by trial. 16/

Not without its critics, plea bargaining has received the endorsement of many, including Chief Justice Warren Burger, who described it as "an essential component of the administration of justice. Properly administered, it should be encouraged...It leads to prompt and largely final disposition of most criminal cases." 17/ Opponents of plea bargaining, however, cite the risk of coercion of innocent defendants to plead guilty and the uneven resources of the two bargaining sides.

The prosecutors surveyed for this manual attested to using plea bargaining to speed up the disposition of cases, but how the bargaining was conducted differed among the prosecutors' offices. The Mecklenburg prosecutor observed, for example, that novice assistant prosecutors' are less able than their more experienced colleagues to quickly formulate and present the government's offer and thereby prolong this stage of the proceedings.

Several surveyed prosecutors reported that adhering to plea bargaining guidelines facilitates case processing. Marion County (Indianapolis), Indiana's, plea bargaining standards and similar rules in Davidson County (Nashville), Tennessee, and Monroe County (Rochester), New York, provide considerable latitude in sentencing recommendations. Such latitude has resulted in jail time being seldom recommended in misdemeanor cases.

Plea Bargaining Time Limits

To motivate the defense to plead early, several jurisdictions have instituted time limits for plea acceptances after which the defendant can only plead to the original charge. Since November 1984, when the Mecklenburg County district attorney's office implemented such a plea bargaining rule, the trial caseload has declined by one-fourth. The rule specifies that at the arraignment the prosecutor makes a written plea offer and the judge enters the likely sentence. If the defendant does not accept the plea offer at this time, it is withdrawn, and the defendant must either stand trial or plead to the original charge. Although the formal plea offer is made officially at the arraignment, in practical terms, it is usually conveyed well in advance of that court event to afford the defense more time to consider the offer.

Case Management Techniques

Prosecutors have adopted other techniques to expedite case processing which intentionally or inadvertently affect the level of the pretrial population in the jail, such as vertical case management, case assignment to special units and strict adherence to set time limits. These organizational and policy changes alone cannot achieve efficient case processing; rather, the prosecutor's and other court officials' attitudes and expectations also influence the pace of criminal cases. A study of 21 metropolitan courts found that faster courts were characterized by the shared expectations of judges, prosecutors and defense counsel concerning early disposition of cases. 18/

Vertical Case Management

Many believe the vertical case management system to be more conducive to expeditious case processing than the horizontal or process-oriented system. In the vertical case management system, one prosecutor or a team of assistant attorneys is responsible for an entire case from start to finish. Different prosecutors are assigned to handle various stages of a criminal case under the horizontal case management system. Thus, any one prosecutor would be familiar only with a segment of a sequence of events related to each case. By allowing individual attention to all aspects of a case, vertical case management is considered to provide more professional satisfaction and accountability than the assembly-line fashion of processing cases under the horizontal case management system.

The type of case management system adopted by a prosecutor's office usually depends on the nature of the court calendar--master or individual--rather than the size and resources of the office or jurisdiction. In fact, studies show that the value in terms of achieving efficient case processing of each management system, depends more on the local environment or "legal culture" than any inherent attribute of a particular

14 Case Processing Functions

organizational method. Even though the effect of vertical case management on the speed of adjudication and in turn, the level of jail population is unclear, several prosecutors surveyed claim that it has had some impact.

Assigning Cases to Special Units

Another mechanism intended to produce speedier dispositions, albeit requiring substantial expenditure of resources and usually a large staff, involves assigning cases to special units. Assigning to special teams all cases involving specific charges, such as child abuse, arson, major fraud, major drug, serious felony offenders, misdemeanor and juvenile matters, has resulted in speeding their disposition. Among the prosecutors' surveyed, Salt Lake County, Utah, Monroe County, New York, and Hudson County, New Jersey, indicated success in using such special units. Smaller offices cannot afford to establish or sustain special units for lack of resources.

Calendar Control

In some jurisdictions, such as Louisiana, the prosecutor controls the court calendar and case scheduling. In such instances, the prosecutor can dramatically affect the disposition of cases and, by his scheduling of incarcerated defendants' cases, the level of the jail population.

Even in the majority of states where the court has the primary responsibility for the calendar, the prosecutor can affect defendant's length of confinement through his requests for continuances. While the prosecutors interviewed for this manual suggested that most continuance requests were made by the defense, they acknowledged that in certain instances (most often cited was waiting on laboratory test results necessary for trial), the government has to move for postponement. Excessive continuances not only hinder expeditious case processing, but also result in the unnecessary detention of defendants pending trial. To control this problem,

the State of Ohio has promulgated a rule which specifies several requirements: First, the application for a continuance must be in writing; second, a new trial date must be set before a continuance is granted; and third, the trial judge must keep a log of continuances and the reasons for each request. According to the Jackson County, Missouri, district attorney, a local rule providing that 10 days advance notification be given for a continuance application, successfully controls the potential for continuance abuse by dissuading both the prosecution and defense from making such a request.

Charge Consolidation

Consolidation of charges constitutes another case expediting technique. It is not unusual for defendants to be adjudicated on one charge while remaining in pretrial detention on other charges or "holds". To expedite the processing of these cases, prosecutor's offices have generally adopted a policy of consolidating cases filed against individual defendants as soon as possible. In Kentucky, for instance, the Lexington County prosecutor reviews case filings on a daily basis in order to consolidate cases against persons held in jail. However, in large jurisdictions, the sheer number of daily case findings and the associated complexities of having to deal with multiple facilities and courts may preclude, or at least impede prosecutors from consolidating charges early in the case process.

Accelerated Calendar

A "preferred" or "accelerated" calendar aims to reduce for jail cases the time elapsed between court events. As part of its population reduction strategy, Salt Lake County, Utah, established an accelerated calendar for jail cases setting a standard of 10 days between charge filing and preliminary hearing and another 45 days to trial. The State of Connecticut implemented a priority schedule for jail cases which contributed to lowering the pretrial population well below 20 percent of the

statewide jail population. By placing jail cases on an accelerated calendar, Bexar County, Texas, was able to reduce the time to indictment from between 90 and 120 days, to approximately 60 days, and cut by half the time for disposing of misdemeanor cases.

Sentencing Stage

Sentencing recommendations made by the prosecutor can have a significant effect on the jail population level. The prosecutor also may wield considerable influence regarding sentence revocation, work/study release, and in dealing with individual applicants for early release or sentence mitigation. Although incarceration is determined to be an appropriate course of action in many cases, prosecutors often conclude that alternative sentences can be imposed without undue risk to the community.

The role of the prosecutor in making sentencing recommendations has been the subject of much debate. The American Bar Association (ABA) standards reflect a limited view of prosecutorial participation in sentencing recommendations, specifying that the prosecutor should not make sentence recommendations unless requested by the court. The National District Attorney's Association standards take a much broader stand, recommending that "a prosecutor should have the discretion to make sentence recommendations to the judge in situations deemed appropriate." 19/

In some jurisdictions the prosecutor's role in sentencing is most evident not at the sentence hearing, but, as discussed earlier, during plea negotiations. In fact, the ABA standards find that "it is generally appropriate for the prosecutor to make a sentencing recommendation...where he has committed himself to the defendant as a part of negotiations leading to a plea...(because) the existence and terms of an agreement are highly relevant to the sentencing decision." 20/

Although none of the standards set forth any provisions for certain types of sentences, an ABA standard stipulates that "the prosecutor should not make the severity of sentences the index of effectiveness...he should seek to assure that a fair and informed judgment is made on the sentence and to avoid unfair sentence disparities." 21/

Recommending Sentencing Alternatives

Although the judge ultimately decides the sentence, the recommendation made by the Kalamazoo, Michigan, District Attorney's Office of a rehabilitation program for drug abusers and other alternative sentences is usually approved. The Kalamazoo Probation Enhancement intensive probation program was created in 1981 by the district attorney for persons who might otherwise be sentenced to 3 to 6 months incarceration. The program has contributed to lowering the sentenced jail population.

Cooperating in "Simultaneous Sentencing Plans"

The prosecutor can also play a role in reducing the time elapsed between conviction and sentencing. For instance, a plan developed by the Hudson County, New Jersey, Presiding Judge to expedite the sentencing process can only succeed with the cooperation of the district attorney and defense counsel called simultaneous sentencing. Called simultaneous sentencing, it involves having a case manager--typically a probation officer also trained to deal with pretrial matters--be responsible for tracking every defendant from the time of arrest in order to complete a presentence investigation report prior to the time when most pleas are negotiated. At the arraignment or other court hearing during which the defendant pleads guilty, the judge, if the prosecutor and defense counsel agree, simultaneously sentences the defendant. By conceding to simultaneous sentencing, the prosecutor (and defense counsel) can cut four to five weeks off case disposition time necessary for the preparation of a full presentence investigation report.

18 Case Processing Functions

Chapter 3: Leadership role

It is obvious that as law enforcement agent, prosecutor and officer of the court, the state's attorney has a multi-faceted role in the criminal justice system. In fulfilling the principal duty of administering justice, the prosecutor no longer merely takes an interest in the prosecution and incarceration of individual offenders, but in the broader issues of expediting case processing and making effective use of limited detention space.

The prosecutors surveyed for this publication described a wide variety of measures to achieve efficient and effective case processing and reduction or control of jail population levels. To this list, "leadership in crowding alleviation efforts" should be added.

"The prosecutor is the fulcrum upon which the criminal justice system pivots. The positive interaction between the prosecutor and other segments of that system are critical to the achievement of the overall goals of justice. Because of the importance of the prosecutor's position, this interaction must also be extended to all branches of the government. The prosecutor has the knowledge and expertise to be a leader in the criminal justice system's development. He should use his office and personal abilities to effectuate needed changes and establish realistic alternatives consistent with modern trends, and both national and local values. A fine balance must be achieved between valued traditions and conservative community values, and new rational and far-reaching indicators of administering what we've come to call 'justice.'" 22/

Although primarily concerned with strategies emphasizing the reduction of case processing time, prosecutorial actions also influence arrest procedures, pretrial confinement and sentencing. Because he plays a key role

in the local criminal justice system, legislators, executives, other criminal justice officials and the public rarely propose any modifications to criminal case-handling without the prosecutor's support.

The prosecutor can also play an active role in responding to a court order involving jail conditions. To comply with a federal court order to maintain the jail population within a specific capacity, the district attorney for Marion County, Indiana, required regular assessments of how his office's caseload processing efforts affected the level of the jail population. As a result of this policy, the district attorney receives a print-out identifying the individuals held in jail on \$1,000 bond or less and brings this information to the attention of the court. In Dallas, Texas, the district attorney took the initiative to create a jail case coordinator position in the prosecutor's office. The position involves daily monitoring of the jail population for the specific purpose of disposing as quickly as possible of those cases involving individuals with the longest periods of confinement.

Finally, as members of Task Forces and community groups, numerous prosecutors have assumed a leadership role in advocating a system-oriented approach—all the components of the criminal justice system hold joint responsibility for jail population levels and criminal case processing—to alleviate jail crowding and improve the administration of justice.

The Mecklenburg County, North Carolina, district attorney, who is one of five members of a "key court officials" group established to address jail crowding, remarked that "the most appropriate role for the prosecutor is to expedite cases and move people out of jail as soon as possible." This view has spurred efforts to involve the prosecutor—particularly those with considerable experience—as early as possible in the criminal process, including the pre-arrest warrant reviewing and felony screening stages. Membership in the Task Force has also achieved increased cooperation among the officials, contributing to efficient case processing.

Chapter 4: Conclusion

As an increasing number of jurisdictions are experiencing crowded jails, the problem has come to be recognized as one demanding involvement by all of the key actors in the criminal justice system. Given the broad range of prosecutorial activities in the criminal case process, the prosecutor's participation in efforts to alleviate jail crowding is essential. Crowded jails frustrate the execution of prosecutorial functions. Crowding severely constrains the prosecutor's ability to deal with individual cases in which incarceration is warranted but space is unavailable. Prosecutor's access to inmates may be impaired by overcrowded facilities. Other ramifications of jail crowding, such as court delay, financial strain and legal pressure to curb jail population growth contribute to making the prosecutor's role more difficult. The survey for this publication has demonstrated that prosecutors can assume a prominent role in reversing jail population growth.

Prosecutors who attended a jail crowding symposium expressed the following views:

One prosecutor remarked that although the traditional role for police and prosecutors is to incarcerate, he felt that it is important that prosecutors become involved in alternatives.

Another prosecutor advocated the use of imaginative methods of rehabilitation and ways to ease jail crowding, such as halfway houses and weekend sentences, in order to leave room for those who must be incarcerated.

Several prosecutors strongly urged the increase use of summonses, diversion programs, and intensified probation as alternatives to the institutionalization of individuals.

There was also a call for concern for overcrowding in the jail and a concerned effort to solve it.

This manual has provided examples of prosecutorial actions which can better equip prosecutors to assess and choose the most appropriate means of addressing jail crowding. The focus was placed on strategies for improving case processing which resulted in reducing the jail population. The scope of activities ranged from pre-arrest screening of warrants to sentencing recommendations. The fact that prosecutors developed and implemented each of the described strategies suggests that others might achieve equal or greater success with replicating such efforts.

Appendix A: Survey participants

Warren Bosworth, Esq.
Assistant District Attorney
Dallas, Texas

Nolan Brown, Esq.
District Attorney
Golden, Colorado

Robert Donnelly, C.A.O.
District Attorney
New Orleans, Louisiana

Norman Early, Esq.
Deputy District Attorney
Denver, Colorado

Walter R. Ellet, Esq.
Chief Deputy County Attorney
Salt Lake City, Utah

James E. Flynn, Esq.
First Assistant Prosecutor
Jersey City, New Jersey

Peter S. Gilchrist III, Esq.
District Attorney
Charlotte, North Carolina

James J. Gregart, Esq.
District Attorney
Charlotte, North Carolina

Patrick Kelly, Esq.
Sarpy County Attorney
Papillion, Nebraska

E. Michael McCann, Esq.
District Attorney
Milwaukee, Wisconsin

Larry Morgan, Esq.
Assistant District Attorney
Huntsville, Alabama

Kurt Posner, Esq.
Deputy District Attorney
Toledo, Ohio

Howard R. Renlin, Esq.
District Attorney
Rochester, New York

Albert Riederer, Esq.
Prosecuting Attorney
Kansas City, Missouri

Michael Robak, Esq.
Assistant District Attorney
Indianapolis, Indiana

Alan A. Rockoff, Esq.
District Attorney
New Brunswick, New Jersey

James A. Smith
Polk County Attorney
Des Moines, Iowa

Stephen R. White, Esq.
Assistant State's Attorney
Jacksonville, Florida

John Woehle, Esq.
Assistant District Attorney
St. Paul, Minnesota

References

1/ Jails are usually locally administered correctional facilities designed to hold persons awaiting trial or serving short sentences. Jails can be distinguished from prisons, which are state-run and house persons convicted of felonies for longer sentences, usually over one year. According to the latest jail census conducted by the Bureau of Justice (BJS), there were 223,551 persons detained in local jails throughout the United States in June, 1983. This total constituted a 41 percent increase since the last jail census in February 1978. The occupancy rate in large jails, where the majority of inmates are housed, rose from 77 percent in 1978 to 96 percent in 1983, exceeding the American Correctional Association's suggested population of 90 percent of available capacity. James T. Stephen, BJS Bulletin: The 1983 Jail Census (Washington, D.C.: BJS, November 1984).

2/ The Law Enforcement Assistance Administration (LEAA) launched the Jail Overcrowding Project in the 1970's to aid communities in developing jail population reduction strategies. Several publications describing the Project's format for jail population management planning were produced. See, for example, John Galvin, Instead of Jails, Vols. 1-5 (Washington, D.C.: National Institute of Law Enforcement and Criminal Justice, 1977) and Walter Busher, Jail Overcrowding: Identifying Causes and Planning for Solutions (Washington, D.C.: Office of Justice Assistance, Research and Statistics, 1983).

3/ Abt Associates, Inc., National Assessment Program: Assessing Needs in the Criminal Justice System (Washington, D.C.: National Institute of Justice, 1984).

4/ According to a 1982 National Sheriffs' Association (NSA) report, 11 percent of the jails surveyed were involved in law suits concerning jail conditions, and another 20 percent were under court order. See Ken Kerle and Francis R. Ford, The State of Our Nation's Jails (Washington, DC: NSA, August 1983), p. 12.

5/ A companion guidebook has been produced by the Pretrial Services Resource Center to assist for local practitioners and policymakers in planning systemwide strategies to reduce jail crowding. See Andy Hall et al., Alleviating Jail Crowding: A Systems Perspective (Washington, DC: National Institute of Justice, November 1985).

6/ For a complete list of participants, see Appendix A.

7/ According to standards promulgated by the National District Attorneys Association (NDAA), "the exercise of prosecutorial discretion in the screening decision is an integral part of the American Criminal Justice System. The prosecutor commonly and normally screens potential violations and selects those which he feels warrant an investigation and prosecution." See NDAA, National Prosecution Standards (Chicago, IL: 1977), p. 128.

8/ Prosecutors screen cases on the basis of several criteria, including whether prosecution will have deterrent value or, relative to the seriousness of the offense, whether the case can be better handled by diversion or other alternatives to prosecution. For a complete list of factors that are recommended for consideration by the prosecutor in screening cases, see NDAA, op. cit., pp. 125, 131.

9/ For example, in New Orleans Parish, Louisiana, the prosecutor has 10 days to file charges. Prosecutors in Florida have up to 21 days before filing must occur.

10/ A Michigan statute provides that prosecutors approve in writing all applications for warrants. Michigan Public Acts 1983, No. 108; 1929, No. 290. The prosecutor or the magistrate, without the approval of the other, is authorized to issue warrants in Wisconsin. Wis. Stat. Ann. Sections 954.01-02 (1958). In many other states, even in the absence of comparable legislation, the prosecutor prepares and/or approves issuance of arrest warrants. NDAA, op. cit., p. 118.

11/ Joan E. Jacoby, Leonard R. Mellon and Walter F. Smith, Policy and Prosecution (Washington, D.C.: National Institute of Justice, 1982), p. 13.

12/ For a list of studies examining nonfinancial versus surety bond pretrial release in terms of assuring appearance and preventing rearrest, see Donald E. Pryor and Walter F. Smith, Pretrial Issues: Significant Research Findings Concerning Pretrial Release (Washington, D.C.: Pretrial Services Resource Center, 1982). The NDAA standards include a policy favoring pretrial release. See NDAA, op. cit., pp. 134-135. Also, the National Association of Pretrial Services Agencies' (NAPSA) release standards stipulate that there be a presumption in favor of release on personal recognizance at the initial appearance. See NAPSA, Performance Standards and Goals for Pretrial Release and Diversion: Release (Washington, DC: 1978), pp. 15-19.

13/ According to the National Advisory Commission on Criminal Justice Standards and Goals (NAC), both law enforcement agencies and the prosecutor are authorized to divert offenders. However, the suggested diversion guidelines should either be promulgated by the prosecutor or, in the case of police diversion, promulgated by the police after consultation with the prosecutor, according to the NAC. See NAC, Report on Courts (Washington, DC: Government Printing Office, 1973), pp. 39-41.

14/ The Agency also operates a deferred prosecution program for eligible first-time felony DWI defendants. New York State law requires that convicted DWI offenders who are rearrested for drunk driving be prosecuted for felony DWI, which carries a mandatory jail sentence. However, successful completion of the program results in conviction on a misdemeanor DWI, which does not require incarceration. The program acts as a broker, receiving referrals from the district attorney's office, assessing the seriousness of the alcohol abuse problem, making referrals to appropriate service agencies, and monitoring the defendant's progress. The impact of the program is reflected in the fact that in the first three years, no diversion clients were rearrested for a DWI which upon

conviction would have mandated a jail sentence. See Andrea Valerio, Kathleen Kane, and Florie Saiger, "DWI Diversion in Monroe County: The Role of Pretrial Diversion in Effecting Client Change in a Non-Traditional Alcohol Treatment Program," and George Appleton and Joel Katz, "DWI Diversion in Monroe County: Creative Interventions in an Alcohol Awareness Program," both in Elizabeth Gaynes, ed., Pretrial Services Annual Journal, Vol V. (Washington, DC: Pretrial Services Resource Center, 1982), pp. 94-115.

15/ Alaska banned-plea bargaining in 1975.

16/ Herbert S. Miller et. al., Plea Bargaining in the United States (Washington, D.C.: Law Enforcement Assistance Administration, 1978). Herbert Jacob and James Eisenstein, Felony Justice (Boston, MA: Little, Brown and Company, 1977).

17/ Santobello v. New York, 404 U.S. 257, 260 (1971).

18/ Thomas Church et. al., Justice Delayed: The Pace of Litigation in Urban Trial Courts (Williamsburg, VA: The National Center for State Courts, 1978), p. 44.

19/ See NDAA, op. cit., Standard 18.1, p. 289, and American Bar Association (ABA) Project on Standards for Criminal Justice, Standards Relating to the Prosecution Function and the Defense Function, Approved Draft, (Washington, DC: American Bar Association, March 1971), Standard 6.1, pp. 131-133.

20/ ABA Project for Standards for Criminal Justice, Standards Relating to Sentencing Alternatives and Procedures, Approved Draft (Chicago, IL: ABA, 1968), pp. 242 and 245.

21/ ABA Project on Standards for Criminal Justice, Standards Relating to the Prosecution Function and the Defense Function, Approved Draft, (Washington, DC: ABA, March 1971), Standard 6.1, pp. 131-133.

22/ NDAA, op. cit., p. 22.

U.S. Department of Justice
National Institute of Justice

Washington, D.C. 20531

Official Business
Penalty for Private Use \$300

BULK RATE
POSTAGE & FEES PAID
DOJ/NIJ
Permit No. G-91