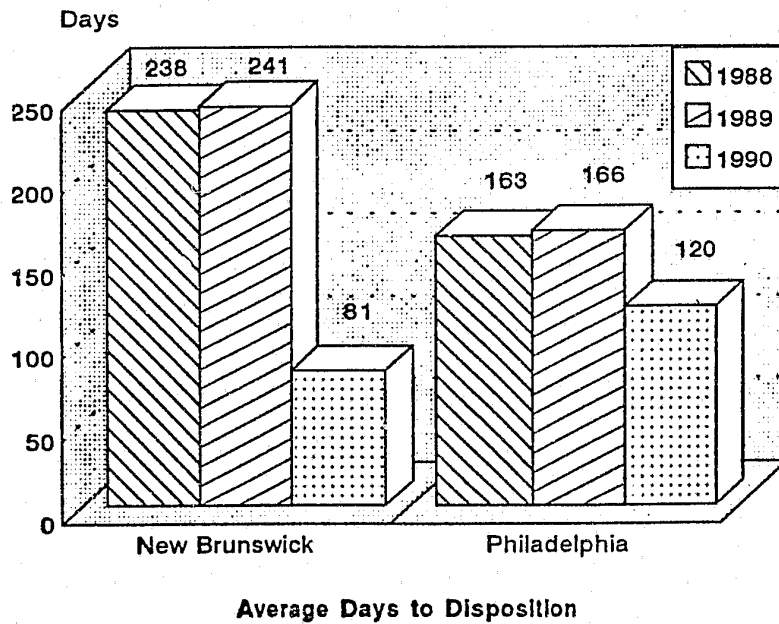




EXPEDITED DRUG CASE MANAGEMENT PROGRAMS

ISSUES FOR PROGRAM DEVELOPMENT



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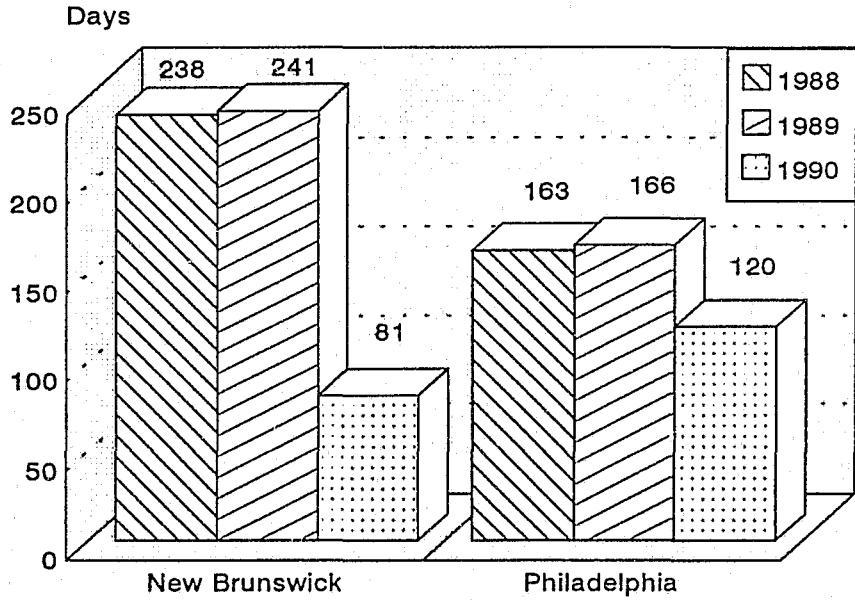
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EXPEDITED DRUG CASE MANAGEMENT PROGRAMS

ISSUES FOR PROGRAM DEVELOPMENT

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Average Days to Disposition

137393

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April, 1992

**Jefferson Institute for Justice Studies
Washington, D.C.**

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EXPEDITED DRUG CASE MANAGEMENT PROGRAMS

ISSUES FOR PROGRAM DEVELOPMENT

I. COURT REFORM THROUGH EDCM

A new era has begun in the judicial system. With DCM we envision a future time when there is ample time allotted for pre-trial discovery, and preparation, when no energy will be wasted forcing cases into events for which they are not ready, when trial dates are real and credible, when the public has been served efficiently, and when we have all enjoyed serving. *Judge Rudolph J. Rossetti, Camden County Superior Court, New Jersey.*

Expedited Drug Case Management (EDCM) programs and their progenitors, Differentiated Case Management (DCM) programs, represent the most important court reform since docketing became a science and court administrators, an indispensable profession. DCM and EDCM are strategies that rationalize the court's case processing system by differentiating between cases according to their expected demand on the docket. They do this without affecting the safeguards guaranteed by the constitution and legislation, and produce remarkable benefits for almost all participants in the criminal justice process including defendants.

The strategies employed by DCM/EDCM programs are premised on a simple assumption, i.e. all cases do not need to follow the same court processing sequence from arraignment to disposition and sentencing. They recognize the reality of adjudication; that some cases are disposed early in the court process, while others require extensive court involvement in pre-trial motions, coordination of evidence and testimony, negotiations or trials. They accept the assumption that some cases can be processed more promptly than others for reasons unrelated to their age, defendant's detention status or complexity. The concepts imbedded in DCM/EDCM programs have the ability to reform court docketing and case management procedures, make the adjudication process more efficient, reduce workload for prosecution and defense, and substantially increase the availability of jail beds.

Malcolm Feeley (1983) concluded in his book, *Court Reform on Trial*, that the strategies for change which have the best chance for success are those that are based on problem-solving. Problem-oriented approaches insist on realism and sensitivity to details of administration. However, as simple as this idea is, policy makers "prefer pursuing bold new programs to making incremental and unexciting adjustments in the administration of existing ones". (1983:210)

DCM/EDCM strategies are problem-oriented, grounded in reality and as we will see, require detailed administrative attention. At the same time, they are bold ventures into the area of court reform and, therefore, are subject to easy failure. Their weaknesses lie in two areas. First, these reforms require a docketing strategy that flies in the face of traditional docketing schemes which are based on the principles of "oldest cases heard first" and "jail cases before bail cases". Secondly, they "insist on realism and sensitivity to details of administration" which many courts are unable to provide. DCM/EDCM programs have the potential to reform the courts and the adjudication process; but without proper program planning,

development and implementation, they may also become another of Feeley's simple solutions that failed.

This report has been prepared to avert this outcome by presenting the results of an evaluation, supported by the National Institute of Justice (NIJ), of EDCM programs established in three demonstration sites. It describes the impact of EDCM on the courts, jail, and other criminal justice agencies; discusses the dynamics of the program development process; and identifies the essential ingredients to successful operations.

ACKNOWLEDGMENTS

It is important that the contributions of the consultants and staff to this evaluation be acknowledged. The results reported here are a synthesis of their expertise and experiences and contribute to the comprehensiveness of this report. Our only regret is that we could not include all the nuances and detail that surround these complex programs. Instead, we have been limited to highlighting the major points and findings. Nevertheless, if the reader would like to discuss any of these areas, both staff and consultants are available to you.

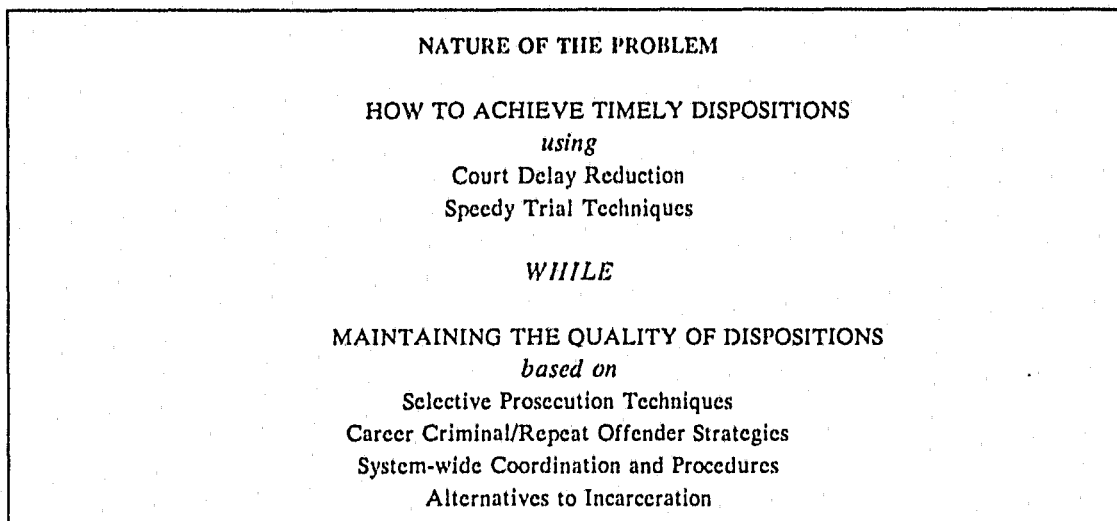
We especially commend the work and assessments provided by the consultants, *Judge Ronald Taylor*, Berrien County, MI formerly a prosecutor and presently Chief Judge of the Second Circuit, and *Richard Kriscuinas*, Assistant Prosecuting Attorney for Wayne County, MI. *Judge Taylor* gave unstintingly of his time and expertise and provided valuable assessments of these programs. *Richard Kriscuinas* brought to the assessment team an insight into prosecution and the courts that was gained from working in a prosecutor's office with a national reputation for professionalism and innovation. His perspective tempered that of the courts and provided critical balance to this assessment.

The quantitative analysis was conducted by *Edward Ralledge*, Director of the Center for Applied Demography and Survey Research at the University of Delaware. His expertise in evaluation design and his ability to manipulate original case data files strengthened the reliability and validity of the findings reported here.

As the reader will note throughout this assessment, we were fortunate to be dealing with professionals who understood the goals of the evaluation and provided us with much needed support and information. To each and every one, we extend our thanks and gratitude for making this evaluation possible.

Finally, we would like to thank the staff of the Jefferson Institute who worked diligently to bring this project to a successful conclusion. This includes *Noddie Barrion* who conducted analyses of financial and expenditure data; *Kai Martensen* who worked on site with the team assessments; and *Erica Price* who provided the backup support to this project including its documentation, graphics and statistical analysis.

II. THE NATURE OF THE PROBLEM



The goals of DCM/EDCM programs are to provide courts with a strategy to relieve their congested criminal and civil dockets, to use existing resources in a more efficient and effective way, and to assist the courts in satisfying the constitutional requirements of a speedy trial without sacrificing the needs of non-drug cases to the demands of the soaring drug filings. They are based on the premise that not all cases need the same processing.

The roots of EDCM can be found in New Jersey when, in 1980, Robert Lipscher, Administrative Director of the New Jersey Courts (AOC), experimented with the concept of differentiating cases in the civil courts in Hudson and Middlesex. Two experimental programs were undertaken in the courts in Hudson and Middlesex Counties to reduce delay and improve efficiency. Hudson County courts modified their process by screening cases within the first 24 hours, thereby redirecting most of the indictable felonies to a Central Judicial Processing and Remand Court. This had the effect of reducing case processing times for lesser felonies by nearly two thirds and reducing the average cost per case from \$120 to \$103. Middlesex County Courts gave the central intake responsibility to the presiding judge of the criminal division for Superior Court with a similar result in efficiency and savings. (Guynes and Miller, 1988).

In 1982, at the behest of the AOC, the New Jersey Supreme Court authorized pilot programs, known as the Individualized Case Management Project (ICMP) in Burlington and Union County. A 40-member commission headed by Supreme Court Justice Sidney M. Schreiber, undertook an extensive review of the ICMPs and recommended the adoption of a comprehensive program of case management that provided for the assignment of all civil cases to one of three tracks for management and disposition. This recommendation resulted in the authorization of a civil DCM project in Bergen County in 1986.

The completion of the Bergen County assessment and its recommendation for expansion coincided with BJA's request for proposals for local DCM projects. Camden County received funding for both a civil and criminal program. In 1984, a DCM program was installed in the Bergen County Superior Court for civil cases, and later, the AOC experimented with the application of the DCM concept to

criminal cases in Camden County with the assistance of a BJA grant. The AOC believed that drug cases would be a natural fit for differentiation based on their severity and case management needs.

DCM, as a case management system, has the ability to incorporate and express some of the forefront ideas that are shaping our times in court administration. *Robert Lipscher, Administrative Director of the Courts, New Jersey.*

DCM programs were first established in other jurisdictions in July 1987 when the Bureau of Justice Assistance (BJA) funded a pilot program in five jurisdictions and six courts to: (1) test the application of DCM techniques to criminal and civil dockets handled in state trial courts; and, (2) determine whether they contributed to more efficient and expeditious case processing. Each court, selected through a competitive process, mirrored differences in local case processing concerns and priorities, organization, procedures and available resources. The pilot programs included both criminal and civil dockets, including drug cases. An essential application requirement was the demonstrated commitment of the local prosecutor, indigent defense service provider, and the bar to work with the court to develop this program.

The jurisdictions selected represent a cross-section of judicial environments and case processing systems. Each of them developed models with a different case processing focus. They include:

Camden County, New Jersey Superior Court included both criminal and civil cases;

Pierce County (Tacoma), Washington Superior Court concentrated on drug cases initially but later expanded to sexual assault cases and then to all criminal cases.

The Recorder's Court for the City of Detroit, Michigan focused on criminal cases, its entire docket.

Second Judicial Circuit Court, St. Joseph (Berrien County), Michigan concentrated on criminal cases after successes in the civil court;

Second Judicial District Court, St. Paul (Ramsey County), Minnesota initially focused on civil cases, subsequently expanded to drug cases and later to all criminal cases.

Although most of the DCM sites, at first, focused only on segments of the caseload, subsequently each expanded its program to the entire criminal and civil docket. An evaluation of these programs was conducted by the National Center for State Courts (1991) which provides more descriptive information about the programs.

It is the development and operation of the DCM program that has allowed Berrien County to continue to maintain a current docket despite the serious increase in caseload. *Judge Ronald J. Taylor, Chief Judge, Second Circuit, St. Joseph, Michigan.*

The preliminary success of DCM gave rise to EDCM. The EDCM program was launched by BJA in July 1989. Designed to apply DCM concepts to the adjudication, as well as the treatment and supervision component of drug cases, three sites were selected and began operations January 1990. The sites that are the subject of this evaluation are:

Philadelphia Court of Common Pleas, Pennsylvania;
Superior Court of Middlesex County (New Brunswick), New Jersey;
Merion County (Indianapolis), Indiana.

Although the structure and operations of these programs permit flexibility, each rely on fundamental DCM case management principles, that include:

CASE MANAGEMENT PRINCIPLES
<p>1. Early screening and classification of cases based on case processing complexity, an expected disposition location and route, and likely sanction;</p>
<p>2. Assignment of each case to a "track" which anticipated the likely court events that will take place, (e.g. pre-trial conference, discovery motions, trial);</p>
<p>3. Establishment of applicable time frames by track for major court events and times to disposition that represent goals, not "speedy trial" caps; and</p>
<p>4. Continuous monitoring of each case, with track reassignment if necessary, to assure that cases are disposed within the time frame set.</p>

Instrumental in the successful development and implementation of DCM/EDCM programs were the American University, School of Public Affairs (SPA), Projects Office and the BJA grant monitor, *Jay Marshall. Caroline Cooper* who headed the AU effort provided the nucleus around which the programs revolved. Under her direction, AU held workshops in which the principals in each of the jurisdictions engaged in a program planning process that emphasized detail and reality. Other workshops provided for the exchange of information among the participants and the establishment of a mutual support and encouragement network, much needed as the programs developed and encountered problems or barriers.

Caroline Cooper directed a strong program of technical assistance, providing experts in court administration and judicial reform to sites as they needed it or requested it. The advisors sent were specifically selected according to the problem facing the jurisdiction. Often *Caroline Cooper* and *Jay Marshall* were in attendance as well.

The strong interactive role that both AU and BJA assumed meant that each was aware of the strengths and weaknesses of each of the programs so that assistance

and support could be given that was relevant. This type of interaction and service is rarely encountered in many demonstration programs; yet its value to the success of the demonstration is immeasurable and was an essential ingredient in this program.

Without the planning, coordinating, communication and assistance provided by American University, it is unlikely that these programs would have moved to operational status.

The first workshop for the EDCM group was held in October, 1989 at American University. Two of the EDCM programs (Philadelphia and New Brunswick) became operational in January 1990. The third site, Marion County was never to achieve operational status and the lessons learned from its failure are valuable in themselves. As of this report, the program has been expanded in Philadelphia with impressive results; but the future of New Brunswick's program is at present uncertain.

The evaluation of the EDCM projects was conducted by the Jefferson Institute for Justice Studies and began simultaneously with the development of the EDCM program plans. Even though this evaluation covers just 12 months of operation, the preliminary results indicate that the operational programs showed a significant reduction in case processing time and increased court efficiency that allowed these courts to dispose of more cases in a shorter time without a significant increase in resources.

PURPOSE AND SCOPE OF THIS EVALUATION

Evaluation is critical to the nation's ability to effectively address the drug problem in communities and towns throughout the country. Gerald P. Regier, Acting Director, Bureau of Justice Assistance.

This report presents the results of the evaluation of the EDCM programs undertaken by the Jefferson Institute. It focuses on the developmental stage of these programs, their planning and early implementation. It does not extend to the next stage - that of institutionalization - which has continued since the end of this evaluation. Thus, some of what is described here may already be changed or modified as the programs mature. However, the evaluation of the planning and development process is of value to other jurisdictions considering this reform of their court case management system. Fortunately, the American University has received additional BJA funds to support these programs, and to develop an implementation guide. This will also be available to other interested jurisdictions from American University.

The evaluation was conducted with two audiences in mind: first, other jurisdictions interested in the strategy of DCM/EDCM and considering its adoption in their courts; and secondly, the Office of Justice Programs, both BJA and NIJ, who should be provided with information that will guide their leadership and the direction of their efforts in the future. Evaluations need to be more than just a description of effects, necessary though they are. They should also identify issues for consideration, provide knowledge for informed decision-making, and give a sense of perspective to this program in relation to the universe of criminal justice programs.

EVALUATION OBJECTIVES

- * Test whether programs had effect on times to disposition
- * Evaluate the effectiveness of programs in relation to their specific goals
- * Assess value to other local CJS jurisdictions in different environments.

The purpose of this report is to: (1) Describe the EDCM programs and their effects; (2) Identify and discuss the essential ingredients to establish and operate these programs; (3) Provide documentation for other courts and jurisdictions interested in adopting this approach; and, (4) Identify future programmatic and research directions.

The last two purposes are essential to this evaluation because the strategy of DCM and EDCM represents one of the most powerful and reasonable approaches to court management and operations developed to date.

METHODOLOGY

The methodology employed two types of analysis:

(1) a *qualitative* assessment of the program focusing on problems and issues which affect case processing times and which are likely to enhance or impede the success of the program; and,

(2) a *quantitative* assessment of the outcome and process variables to: (a) test the validity of the program's assumptions; (b) identify the critical factors that affect the program and its objectives; and, (c) estimate the impact of changes under different conditions or with different models.

The qualitative analysis was conducted through on-site visits by a team of experts including:

Ronald Taylor, Chief Judge, Second Circuit, Michigan
Richard Kriscuinas, Assistant Prosecuting Attorney, Wayne County, Michigan
Edward Rattedge, Associate Professor, University of Delaware
Joan Jacoby, Executive Director, Jefferson Institute
Noddie Barrion, Principal Associate, Jefferson Institute
Kai Martensen, Principal Associate, Jefferson Institute

Based on the results of these visits, program descriptions were prepared and a preliminary determination was made of the differences between tracks, the essential barriers to, or supports for the program, and alternative methods of operation. The results of the evaluation were submitted to the evaluators for their review and comments which are incorporated into this report.

The quantitative analysis was based on a time-series analysis, and was directed by *Edward Rattedge*. Philadelphia has an automated court case management system that contained sufficient data for this analysis. Therefore, it was also possible to compare the program year (1990) with 2 years prior to the program year.

In New Brunswick, court data is maintained by the New Jersey Administrative Office of the Courts (AOC) in Trenton based on statewide reporting. The case manager in Middlesex County maintained the EDCM program data on a separate computer. Therefore, the analysis for this jurisdiction uses these two sources. In order to provide a comparison with non-EDCM cases, a twenty percent sample was drawn from the AOC files for the program year and 2 years preceding. Since Marion County never maintained an operational status, there was no data available for analysis.

The reliability of the data is increased by the availability of data for two years prior to the program so that comparisons can be made between program effects and non-program behavior, and to identify whether any of the changes might be due to changing trends. Because the cases were "trackable" in Philadelphia, the analysis examines the status of each case up to 18 months after the beginning of each calendar year. So, for example, the statistics shown for cases filed in the court in 1990, the EDCM program year, reflect their status as of June, 1991. This longer time frame reduces the processing time bias which is introduced by cases filed, for example, in December of the program year, since the status of these cases is reported as of six months later, in June, 1991.

The Middlesex County cases are tracked for 21 months after the beginning of the calendar year in which they entered. Since the non-drug case dispositions are based on a twenty percent sample for each of the three year periods, they are subject to sampling variability. (A notation about the data base reconstruction and methodology is included as Appendix A).

The questions of interest to the analysis were:

1. Did the program have an impact? What type, where and how sizable was it in comparison to the non-EDCM cases, and/or in comparison to previous years before EDCM?
2. Were there differences between the tracks and their performance? Were these differences the ones anticipated? Were there other unanticipated effects?
3. Where were the add-on costs incurred by the program? What was the nature of these costs? Were there other unanticipated costs?

In Philadelphia, the evaluation examined measures of pending and disposed drug caseload specifically the volume and age of the cases, location of disposition, method of disposition, and pretrial detention status.

In addition process variables were also monitored including track assignment, changes in tracks, types of court hearings, changes in plea and motions practices and so forth.

The adjudication process was divided into five stages and the average time to adjudication was computed for each stage. They include: arrest to indictment; indictment to arraignment; arraignment to disposition; disposition to sentence; and indictment to sentence.

In Middlesex County, because a separate drug court was established for the EDCM program in New Brunswick, the evaluation examined the internal operations of the track assignments, continuances and dispositions. These results were compared to (1) drug cases processed in the remainder of Middlesex County; (2) non-drug cases handled in Middlesex County, excluding New Brunswick; and (3) non-drug cases processed by the other courts in New Brunswick. The purpose of this comparison was to determine whether changes found in the EDCM program were found elsewhere in non-EDCM prosecutions, or whether the effects could be attributed to the program.

Two measures are of primary interest in the evaluation, the number of *days from case initiation to disposition* and *days from "charging" which is defined to include indictment or the filing of the accusatory instrument to sentence* because they most accurately reflect the felony court workload. Time to sentencing is not included as a measure because it may reflect time not under EDCM control. In Philadelphia, for example, the time between disposition (adjudication) and sentencing is inordinately long because of the use of psychiatric evaluations for most cases as part of the pre-sentence investigation. Therefore, a cleaner measurement of the impact of the program is to be found in the arraignment to disposition measure. Both measures are presented in the report.

Because Philadelphia undertook to process *all* cases based on EDCM strategies, the before/after time series analysis only compared the program year with preceding years. Cases were followed for eighteen months or until disposition, whichever came sooner. In contrast, New Brunswick's EDCM program operated out of a drug court so that a comparison between EDCM and non-EDCM case processing systems in the program year also could be made. New Brunswick's program was expanded 9 months after the program started to include 3 additional townships. However, the volume they added in the last three months of the evaluation (calendar year 1990) was included in the evaluation but was not large enough to be broken out separately.

STRUCTURE AND ORGANIZATION OF THIS REPORT

The purpose of this evaluation is to be informative to other courts and jurisdictions interested in the DCM/EDCM concept. Therefore, this evaluation has been organized to provide as much information to the reader to achieve this goal. Of primary importance is the overall impact of these programs on the courts and criminal justice system. Therefore the program results will be presented first. The next section describes each of the demonstration projects, their goals and objectives, how they were established and operated including the criteria for the assignment of cases to tracks.

Following each program description is a presentation of the effects of the program on the courts and other criminal justice agencies. Because the Marion County program was started but did not become operational, a chronology of the events leading to its termination is presented to help others understand the reasons for the failure.

Once the reader has gained an understanding of the dynamics of these programs, then a discussion of the important issues is presented. The purpose of this section is to identify the choices that should be considered by program planners and the implications of these choices on the successful implementation of the

DCM/EDCM program. It concludes with a summary of the keys to successful program development.

Finally, the report closes with a section discussing directions for the future. EDCM programs are in their infancy. They have special requirements and needs that should not be overlooked in the glow of initial success.

III. THE IMPACT OF EDCM PROGRAMS

The DCM/EDCM approach significantly improved the efficiency of the court, and reduced demand for jail space.

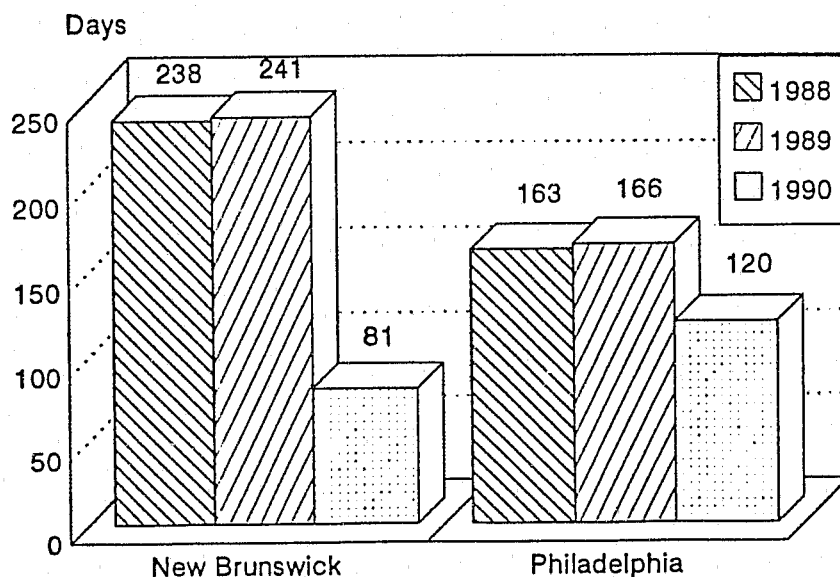
The impact of EDCM on case processing times and pre-trial detention space is impressive. The results are visible in the changes in the number of days to disposition and the average number of days in pretrial detention that occurred in the 1990 program year.

IMPACT ON DISPOSITIONS

Figure 1 shows the impact of the EDCM program on the average days to disposition in Philadelphia and New Brunswick for the program year 1990 compared to the two previous years when EDCM was not installed.

Figure 1

Average Days to Disposition Philadelphia and New Brunswick by Year

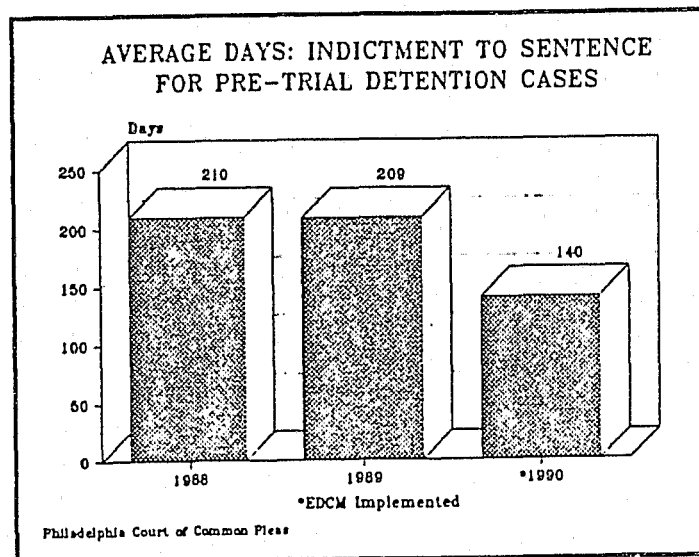


The Philadelphia statistics represent all felony cases; the Middlesex County figures are only for drug cases which were processed in a single court. In both jurisdictions, the changes in disposition times can be attributed to the EDCM program and not to long-term reductions in court processing times that might have occurred independent of the EDCM program.

IMPACT ON THE JAIL

In Philadelphia, EDCM impact was also felt by the jail where the average number of jail bed days for pre-trial detainees was reduced by 36 percent from 1988. (Figure 2). Pre-trial detention data for New Brunswick was not available for a similar analysis; however, one could assume that there would have been a similar effect on the jails in that locale.

Figure 2



COST FACTORS

The EDCM programs were provided "seed" money by BJA for development and implementation. Philadelphia and Middlesex County (through the Administrative Office of the Courts) received \$190,000, each. Marion County received \$145,000. Whether these amounts sufficiently covered start-up costs is almost immaterial since they played an even more important role in motivating the participants to implement this court reform. Most of the funds were used for personnel, especially in the offices of the public defender, prosecutor and probation. Additional funds were used for fax equipment, to support the crime lab, and for case management information systems. In Middlesex County, funds were also set aside for drug treatment services.

A cost analysis of the program was not part of this evaluation. However, the cost implications of the program can not be ignored because they are factors to be considered by other jurisdictions. Therefore, the question of interest was:

In what areas should other jurisdictions expect to find additional costs, if they attempt to implement an EDCM program?

From the court's perspective, there are relatively few added costs; existing resources can be reallocated to support the program. Much of the impact was on the clerks. The increased volume in the arraignment court had clerks working overtime and until 10 PM to process the high volume of paper produced by so many early dispositions. Later, as increased capacity was experienced in the trial courts, trial

dates became more certain, and there was a need for more clerks to handle the increased paperwork generated by the more efficient system in trials. With fewer continuances and more date-certain events, more court papers had to be prepared.

Philadelphia did not increase the number of courts, so these costs were avoided. Also in this program, as the courts became more efficient, the productivity of the staff increased along with their commitment to the program. The result of cost avoidance and increased productivity was ultimately reflected in lower costs to the courts.

The major impacts were felt by those agencies interfacing with the program. i.e. prosecutor, public defender, sheriff, and probation. To a lesser extent, law enforcement agencies were also affected.

The prosecutor and public defender experienced increased demands for both attorneys and staff. Staff are essential for file management including case preparation, pulling files, and, most importantly, making sure that files were returned to their proper place after a court hearing and made ready for the next scheduled one. One of the worst outcomes is to lose a case because a file is lost.

Additional prosecutors and defense attorneys had to be assigned to the arraignment court in Philadelphia and the drug court in Middlesex because of the high volume of dispositions. In Philadelphia, 5 prosecutors were initially assigned to the courtroom, then the number was reduced to 4 as the program stabilized. Since the number of courts was not changed in Philadelphia, the number of attorneys required represented real increases not reallocations of existing staff. In Middlesex County, the new drug court also required additional attorneys.

In both courts, the need was for experienced trial attorneys, those who could evaluate cases and enter into acceptable plea negotiations. The assignment of experienced attorneys to what was essentially arraignment court is a radical change in procedure which affected both the public defender as well as the prosecutor.

In Philadelphia, *the Sheriff* faced increased demands for transportation and security since the jail was not adjacent to the courts so the prisoners were transported in batches creating scheduling problems. Too few deputies and busses produced delays in some courts. Clearly, more deputies were needed to handle the high volume of prisoner movement.

Probation was probably the one agency most significantly affected by the program which increased the workload of both the probation officers and the staff. Since the program called for more intensive screening and early recommendations, it generated a need for clerical support. Additionally the combined effect of the overall increase in the number of dispositions and the increase in the numbers receiving sentences of probation was to increase the probation officers' caseloads. In New Brunswick, cases were assigned to a probation officer upon intake into the court. This resulted in the court's ability to have pre-sentence information available at a much earlier time. It also lengthened the span of control of the probation officer since the same officer maintained the case after conviction and a sentence to probation.

Finally, the impact on *law enforcement agencies* was felt mostly by those parts involved in transmitting information needed by the courts. Where efficiencies

could be established, like prioritizing the work of the crime lab, providing fax machines between the court, crime lab and criminal records, the process was improved. The smaller costs associated with these services are just as critical to the program as the larger ones borne by the other agencies. They all need to be taken into consideration by program directors.

TRANSFERABILITY TO OTHER JURISDICTIONS

The success of this project has been beyond our wildest expectations. *Beverly Bright, Court Administrator, Pierce County Superior Court, Tacoma, WA.*

Based on both DCM and EDCM experiences, there is no doubt that these programs can be successfully transferred to other jurisdictions and achieve analogous results *if* care is taken in the planning and administration of the program.

While simple in concept, these programs are demanding in their operation and administration. They cannot be adopted, implemented and left alone if they are to be successful. The need for prosecution and public defender commitments to the program, for monitoring and daily attention to the status of cases with respect to track criteria, and for the court's acceptance is essential. Without this, continuances will creep up, and the adjudication process will slow down. Ultimately, the performance of the program will be indistinguishable from the rest of the court.

CONCLUDING NOTE

In retrospect, evaluating the first year of the life of a new program has its analogies to human development. These programs, bringing about major court reform, are as fragile in their infancy as their human counterparts. Thus, the need for a nurturing and supportive environment is essential. It is quite clear that without the supporting mechanism provided by the American University School of Public Affairs Projects Office and the active participation of BJA, these programs would not have become operational. The establishment of this type of infrastructure to coordinate the planning process, support efforts to implement the program, and become the nexus for a network of participants who are dealing with similar problems is essential for new and innovative programs.

IV. ASSESSING THE RESULTS OF EDCM PROGRAMS

The EDCM program has dramatically reduced case backlogs and case processing time, and has improved the quality of the adjudication process. One judge now produces in one month, the equivalent of what eight judges used to produce. *Judge Legrome Davis, Court of Common Pleas, Philadelphia.*

The programs scheduled to be implemented in three court systems followed essentially the same developmental process. Teams from each jurisdiction met in October, 1989 at American University for a planning workshop. By January 2, 1990 the programs were to start. Only Marion County was not operational by that date. Following are the program descriptions of this developmental phase.

PHILADELPHIA COURT OF COMMON PLEAS

PHILADELPHIA COURT OF COMMON PLEAS

* Funded: \$190,000

* Five Tracks

TRACK A - Cases disposed immediately

TRACK B - All custody defendants except Track A

TRACK C - Multiple pending cases (excl. homicide)

TRACK D - All other cases, primarily bail and custody

TRACK E - Serious violent felonies

* All felonies included in program

* Court administrator makes assignment, monitors case status

Background

The County of Philadelphia, which is made up of the entire city of Philadelphia, has a population of 1.6 million. Philadelphia is a large, metropolitan area with all the current urban problems, including a very serious budgetary crisis which has virtually gotten out of control. The criminal justice system, along with other governmental services has suffered greatly because of these constraints.

In addition, like most areas of the country, especially urban centers, Philadelphia has been inundated with an influx of drugs, along with the inevitable fallout of increasing caseloads comprised of directly and indirectly drug-related criminality. As a result, the Expedited Drug Case Management program (EDCM) was developed to begin to make some inroads into the backlog of cases created by the

general problems of crime in a modern urban society coupled with the additional pervasive problem of today's drug culture.

Volume and caseload

The drug epidemic has had a substantial impact upon the court system in Philadelphia. Since 1984, the number of felony drug cases involving sale or distribution of a controlled substance has increased 12 times, from 292 cases in 1984 to 3,545 in 1989. Philadelphia's court inventory increased to 12,199 cases in 1989, a direct result of increased drug usage and drug-related crimes. In 1980, narcotics cases made up 8 percent of the docket. In 1989, narcotics cases rose to 24 percent of the docket. In 1989, new felony cases filed in the Court of Common Pleas increased 47 percent from 1984 (1984: 10,970 to 1989: 16,081). The moratorium on county prison admissions, coupled with the increases in defendants with multiple cases awaiting trial clogged the docket. Delays of 18 to 24 months to trial were not unusual.

The result of the precipitant rise in drug cases over the last several years has been a 7,000 case inventory awaiting trial, with virtually no possibility of reasonably prompt disposition given current staffing and judicial complements. According to statistics, 37 percent of all cases awaiting adjudication in January, 1990 involved the delivery or distribution of a controlled substance.

Sentencing guidelines and mandatory minimums

Pennsylvania has sentencing guidelines and mandatory minimum sentences in drug cases. Pennsylvania also has the lowest threshold for mandatory incarceration in the country. Possession of two grams or more of a controlled substance like heroin or cocaine carries a one year minimum sentence. Possession of ten grams or more mandates a three year minimum sentence.

The effect of these mandatory minimums may be exacerbated by virtue of a recent modification of a Federal Court ruling in a jail overcrowding case in Philadelphia that, in an effort to control jail population, amended release guidelines to require the release on recognizance (ROR) of accused drug dealers where the amounts involved are below 50 grams. As the volume of defendants in jail under sentence increased, more pretrial defendants were being released under *Harris vs. Reeves*. As more defendants were out on the street awaiting trial, the number of failures to appear (FTA) increased. Defendants also picked up new cases that they would not have picked up if they had remained in jail. The disparity between the release criteria of 50 grams and the mandatory minimum sentencing requirement at the 2 gram level creates an incentive to ignore court dates and increased the number of FTA's. Defendants who possess more than 10 grams, who face a three year minimum sentence, would be foolish to show up in court.

Diversion

Pennsylvania has a diversion program, titled Accelerated Rehabilitative Disposition (ARD), which permits a defendant to be diverted from the criminal justice system and have his case dismissed upon successful completion of a period of probation. To extend this concept to drug cases, the court attempted to use the provision under Section 780-117 (Section 17) that made a defendant with no prior drug convictions, who is a drug abuser, eligible for special treatment. A defendant may be entitled to "probation without verdict" if he pleads or is found guilty of a

drug possession crime. The court may, without entering a judgment, defer proceedings and place the defendant on probation for a period not to exceed the maximum for the offense. Upon successful completion of the probation, the court may dismiss the case against the defendant. This effort met with less than satisfactory results, primarily as a result of the lack of available staff and the opposition of the District Attorney to diversion for individuals who had not been positively identified as drug abusers.

Plea bargaining and discovery

The State's mandatory minimum drug sentences also contributed to the case backlog. Prosecutors would not plea bargain for any reduced sentences; any offers that were made were usually in the middle or high range of the State's sentencing guidelines. These were routinely rejected. The public defenders would not recommend that the defendant plead guilty to any mandatory minimum. They believed that by going to trial, the trial judge might acquit or convict at reduced charges.

The Public Defenders complained that discovery materials were not being provided until after the arraignment on the information, and frequently not provided until closer to trial date. Most plea offers were not made until the trial date. The prosecutors assigned to the pre-trial courtrooms were usually less experienced with no authority to discuss a change in the plea offer made by the attorney assigned to try the case. A reasonable counter-offer by the public defender could not be approved without the consent of a supervisor.

In addition, the public defenders' policy was not to plead a defendant guilty until the suspected controlled substance had been tested and weighed. In cases where the amount of narcotics was near the mandatory minimums of 2.0 grams and 10.0 grams, the public defender wanted the drugs weighed again, and sometimes wanted to be present at the weighing.

Arraignment and continuances

Historically, the Common Pleas arraignment on the information had largely been considered a purely administrative function where various scheduling activities occurred. Arraignments were conducted by the Trial Commissioner in courtroom 875. The Trial Commissioner, who was not a judge, immediately scheduled a trial date. No machinery was in place to take an immediate guilty plea due to staffing shortages.

Continuances on the trial date were routinely given. In an effort to deal with the backlog, as many as 12 trials a day were scheduled on a single judge's docket. (This figure occasionally rose to 14 trials due to judges granting short continuances and adding cases onto an already established list.) Since the most bench trials that a judge could handle in a day was eight, the prosecutor and the public defender knew that about half of the scheduled trials would have to be adjourned. As a result, there was no certainty of going to trial on the first scheduled date, and no pressure to be ready for trial on a case that had not been previously adjourned. If anything, there was built-in certainty that a case would be adjourned on the first scheduled date.

Facilities

Not surprisingly, the Chemistry Lab of the Philadelphia Police Department was understaffed and overwhelmed by the increase of drug cases. Delays in analysis and weighing were routine. Reports of the results were sent to the prosecutor through inter-office mail.

The court facilities in Philadelphia must rank among the worst in the country. As Philadelphia teeters on the edge of bankruptcy, improvement in the courthouse and sheriff's department must be made. A better facility for the court, with improved cell space for prisoners and elevators for their transfer would be a step in the right direction. Much time is wasted in court waiting for prisoners to be transferred to the appropriate courtroom. If there are only two deputies assigned to a courtroom, the case of only one jailed defendant may be handled at a given time. Once the defendant's case is disposed of, there is a delay of up to 15 minutes while the deputies return the defendant to the cell and return with a new prisoner. On the day of the site team's visit, some prisoners scheduled for trial had not been delivered to Judge Davis's courtroom by 3:00 PM.

Development of the EDCM program

It was into this environment that the EDCM program was born. The time was ripe for change. Sparked by the initiative of *Michael Green*, Deputy Chief Probation Officer, the Philadelphia Court of Common Pleas applied for, and was awarded a \$190,000 grant from BJA. In October, 1989, Common Pleas Judge *Legrome Davis*, Chief Deputy Court Administrator *David C. Lawrence*, Deputy Court Administrator *Joseph A. Cairone*, and Deputy Chief Probation Officer *Michael Green* attended the planning workshop for EDCM in Washington, DC, sponsored by American University under a grant provided by the Bureau of Justice Assistance. The purpose of this meeting was to initiate a three month planning process for the development of Expedited Drug Case Management programs that were scheduled for implementation on January 1, 1990.

Along with 2 other jurisdictions (Middlesex County, NJ and Marion County, IN) the parties brainstormed ideas for assignment tracks and time lines for different cases. At the end of this meeting agreement was reached to put together a plan that would make arraignment the starting point in the tracking process and give it substantial importance. *Judge Davis* agreed to handle guilty pleas at the arraignment stage if the District Attorney and the Public Defender would agree to provide adequate staffing for his courtroom on a daily basis. *Judge Davis* believed that more defendants would plea guilty at the earliest stage of the criminal process if the prosecutor would cooperate by making a more reasonable plea offer at this stage. *Judge Davis* felt that this would happen if experienced prosecutors were available to make offers consistent with those generally made at the trial stage.

Meetings between the key parties in the criminal justice system were intensive. *Judge Davis*, *David Lawrence*, *Joe Cairone* and representatives from the District Attorney, Public Defender and Probation Department met to iron out logistical problems. The parties tried to anticipate problems ranging from staffing, to the number of cases that could be scheduled daily, to file flow. Notices were published in legal newspapers alerting the defense bar to the tracking system. *Joe Cairone* went to Criminal Bar meetings to explain the new program to the private bar. Wherever there was interest or concern expressed, the court administrators were ready to listen and respond.

The parties agreed that for the plan to work, both the District Attorney and the Public Defender would have to buy into the program. After a series of meetings, both parties agreed to provide sufficient staff to make the plan work. The District Attorney also agreed to re-evaluate the plea offers that were made at the arraignment stage.

The Philadelphia Expedited Drug Case Management (EDCM) program was scheduled to begin in January, 1990. *Judge Davis* was positive and upbeat in his approach to setting up the program. The principals met every two weeks leading up to the January 2, 1990 starting date. The meetings were spirited with lots of give and take. Once the program went into effect, the parties met on a daily basis in *Judge Davis*' chambers before court convened.

As problems arose, the parties caucused and worked out resolutions and compromises. *David Lawrence, Joe Cairone, Michael Green* and staff acted as problem solvers and facilitators. The source of the problem had to be quickly identified, evaluated and just as quickly remedied. For example, the Court Administrator found that the clerks had to make copies of certain documents and that this resulted in the clerks having to walk from the arraignment courtroom 875 to the copying machine in the court administrator's office. To remedy this problem, a copier was moved into the courtroom. The Court Administrator also provided a fax machine in courtroom 875 so that the clerks could communicate with the county prisons so that the appropriate prisoners could be delivered to the court the next day.

To expedite the handling of drug cases, BJA provided funds from the grant for the police crime lab to hire a lab assistant who would help analyze and weigh suspected narcotics before the arraignment. The Court gave the Police Laboratory access to the Court's computer which enabled them to conduct their lab analyses based on the anticipated date the case was due in court. The lab also enters the amounts of drugs seized in each case in the Court's computer. This was especially important in light of the mandatory sentence minimums. Additionally, the Court's were granted access to the Police Department's computer in order to obtain lab reports in a timely fashion. A fax machine was also provided so that the court and lab could be in communication, and lab reports could be sent to the courtroom whenever necessary.

It was this type of practical problem-solving that established the necessary supports for the implementation and operation of the program. Additionally, there were policy and procedural barriers to be overcome. For example, the court had reservations about whether the public defenders and the prosecutors could work together. They knew from past experience that if there was resistance on the part of either party, the program could not work.

Thus, the agreement of *District Attorney Ronald Castille* to assign experienced attorneys to the arraignment courtroom was critical to the program's success. It ensured that plea offers were made early in the proceedings and these offers were reasonable. As part of this cooperative effort, the prosecutors developed one plan to have their files present in court, and another to make sure that victims were contacted so that a plea offer could be made.

The public defenders assigned to the arraignment courtroom recognized the changes in prosecutorial policy and accepted the fact that the prosecutor was

making "reasonable and generous plea offers", consistent with the end result after trial. As a result, they felt comfortable in recommending that the defendant accept the prosecutor's offer.

The District Attorney, who had been opposed to plea bargaining, was initially concerned that his office might appear to be "giving the store away". The court was able to convince him that some of his offers were unreasonable based on sentencing statistics for low end offenses. Judges were sentencing defendants in the low or mitigated ranges of the guidelines instead of in the upper range where the prosecutors were making plea offers. As a result, the District Attorney realized that the final plea offers made by his office would not really have to change that much. Instead, the same offers that were being made to the defendant on the day of the trial would merely be made months earlier, at the arraignment stage.

The Public Defender agreed to cooperate in the plan if there was a real benefit to the defendant, i.e. that offers were in the low or mitigated guideline ranges. A reasonable plea and sentence offer would more readily be accepted because it meant that a defendant would spend less time in jail awaiting trial. The underlying reason why both the prosecutor and the public defender made these concessions was their belief in the fairness of *Judge Legrome Davis*.

The Court provided funding to both the prosecutor and the public defender to staff the arraignment courtroom. While the funding, in reality, helped pay for only one attorney for each office, the District Attorney agreed to staff the courtroom with three experienced prosecutors and two paralegals. The Public Defender agreed to staff the courtroom with five attorneys and one paralegal. With the principals in place, the policy and procedures established, the program began operations.

Five tracks were established under EDCM,

A Track

This track consists of those cases in which there exists a reasonable expectation that adjudication can occur on the same day as the arraignment. The types of charges represented by A Track cases include commercial burglaries, forgeries, bad checks, auto thefts, retail thefts, less serious assaults and drug cases. It is a diversion/plea track designed to weed out cases that are least likely to require trial. Cases placed on the A Track are adjudicated through ARD (probation without trial), Section 17 (similar to ARD where narcotics use is indicated), and through guilty pleas in other non-violent felonies. The A Track is a one day track, i.e., with disposition within one day of arraignment. The public defender screens custodial defendants on the A Track for participation in the program. If eligible, they enter a residential treatment program for 30 days.

B Track

This track is established for cases involving a defendant in custody are assigned to B Track directly at arraignment, or after an initial A Track designation has not resulted in adjudication. Cases on B Track are scheduled for trial 49 days (seven weeks) after arraignment. In the event a continuance is required, it does not exceed 30 days. A trial readiness conference is held for all B Track cases 20 working days after arraignment before a designated judge. The purpose of the conference is to monitor the discovery process, discuss stipulations to testimony,

screen jury demands and identify additional non-trial dispositions. The result of the conference is to increase trial date certainty by eliminating as many causes of continuance as possible.

C Track

This track is a mechanism through which defendants having multiple cases in Common Pleas Court are placed on a track for 14 days. With the exception of homicide cases, the cases are consolidated and scheduled before a designated judge who entertains guilty pleas or re-routes all cases to any judge before whom the defendant is scheduled for the purpose of entering a guilty plea. This opportunity to consolidate cases is offered to a defendant with a specific set of cases on a one-time basis. Only if the defendant is subsequently charged with additional cases may she or he enter C Track a second time. When selected for C Track, a defendant may not enter a guilty plea to a single case and forego adjudication of another without the agreement of the District Attorney. The defendant may, however, elect to forego adjudication of a single case and enter a plea to others. C cases not disposed at consolidation are reassigned to D track.

Initially, C Track identification efforts focused on those defendants in custody having four or more pending cases. Eight such defendants were scheduled for adjudication four days per week, leaving one day available to the Court to reschedule any case or cases requiring additional discussion. As the eligible population of detained defendants declines, those defendants having fewer than four cases will be scheduled for adjudication until the caseload eventually disappears.

D Track

This track is the standard track through which all felony cases not selected for other tracks are placed. The D Track consists of bail cases and custody cases involving complex issues or impediments to trial which are not quickly resolved. It also includes all cases initially assigned to A, B and C tracks that were not disposed in their respective tracks and were reassigned to D track. For evaluation purposes D track has been assigned a limit of 180 days.

E Track

E Track was created midway through the program's first year to distinguish violent felony cases and other complex cases requiring extensive adjudication procedures.

The program operates on the basis of a free exchange of information between the various elements of the criminal justice system, and is dependent upon the cooperation of each of the agencies involved. It was apparent during the on-site visit that the aura of cooperation within the Philadelphia system is a new and refreshing experience to all concerned, and that all parties are encouraged and optimistic by the results so far.

Operational procedures utilized in the program stress the importance of early court intervention in the identification, screening and scheduling of all felony List cases. Immediately following a preliminary hearing, the public defender notifies the Court Administrator of defendants who may qualify for diversion programs or

who seem likely for resolution of the charges through an A Track designation. A copy of this notice is also supplied to the Adult Probation Department.

Upon receipt of the notice, Adult Probation immediately notifies the police chemical laboratory of narcotics cases so identified, and requests that the chemical analysis, including the specific weight of the substance, be available *prior* to arraignment. Due to the relatively low mandatory sentence threshold, i.e. two grams, the prompt delivery of the analysis is critically important.

As a result of the public defender's preliminary notice, the Adult Probation Department also obtains criminal histories and pre-sentence records of all individuals so identified, and prepares pretrial investigation evaluations on selected offenders who may benefit from intensive, community-based parole supervision.

Many of the delays that existed prior to EDCM have been eliminated. The District Attorney secured cooperation from the police department to expedite the filing of police reports. The public defender's investigator was able to obtain the majority of its discovery from the prosecutor before the arraignment on the information. The prosecutor established an open file policy at the arraignment to permit defense counsel to have whatever information was necessary to assist the defendant in making the correct plea decision.

The public defender developed a procedure to have trial files in court on time and to give counsel the opportunity to review the files and the discovery, talk to the prosecutor and present any offers to the defendant. The public defender established new procedures that called for interviewing the defendant before the arraignment. However, there are still problems associated with getting the right opportunity to interview defendants in the county jail. The lack of deputies and space make the interview process long and tedious.

The mandatory minimum sentences in drug cases remain a problem. If a plea cannot be agreed upon, the only way to dispose of a case is by trial. If the List judge assigned to the case for trial is perceived to be a tough sentencer, the public defender tends to demand a jury trial in front of another judge in the Calendar program. To deal with the 150 jury demands a month that were being made by the defense, the Administrative Judge decided to assign three judges who would have individual dockets and would handle the trials. These judges were perceived to have a diverse sentencing philosophy.

Track assignments are made by the Deputy Court Administrator 48 hours prior to arraignment based on the charges, the defendant's history and other relevant information. The information is entered into the computer which provides the court with a monitoring capability essential to the operation of the program.

On the morning of arraignment, counsel for the Commonwealth and defense meet to discuss all cases assigned to A Track. If the discussions between counsel result in an agreement as to the terms of a guilty plea, or the defendant expresses a desire to enter an open guilty plea to the charges, the case will be referred to the designated judge for immediate adjudication and, where possible, disposition. Additionally, cases qualifying for disposition under Section 17 are similarly routed. Cases approved for other diversionary programs are scheduled for a diversion hearing not more than 14 days from arraignment. In doing so, they are removed from the mainstream of cases scheduled, and, thus, are considered adjudicated on the day of diversion. The Drug Offenders Work Program (DOWOP) which was

inaugurated in advance of the beginning of EDCM places selected defendants in an intensive probationary setting including drug treatment, job placement and counseling.

Impact of the program

Judge Davis is a hard worker who believed that, if the program worked as the parties envisioned, he could dispose of as many as 5,000 cases in one year. His forecast proved startlingly accurate because by December 31, 1990, 12 months later, 4,677 cases had been adjudicated.

Effect on processing times

The EDCM program reduced court processing times by one third, from 210 days in 1988 to 140 in the program year of 1990.

Compared to cases disposed in 1988 and 1989, the EDCM program produced significant reductions in processing times for all cases.

The adjudication process can be divided into stages:

- arrest to indictment;
- indictment to arraignment;
- arraignment to disposition; and,
- disposition to sentencing.

The stage has different processing times. *Arrest to indictment* activities which occur in Municipal Court are *not included* in the EDCM program. In this stage, after arrest, the defendant has an initial appearance for bail setting and appointment of counsel. A preliminary hearing is then scheduled. If the case is bound over, the prosecutor has 21 days to prepare the information (called an indictment) for filing in the Court of Common Pleas.

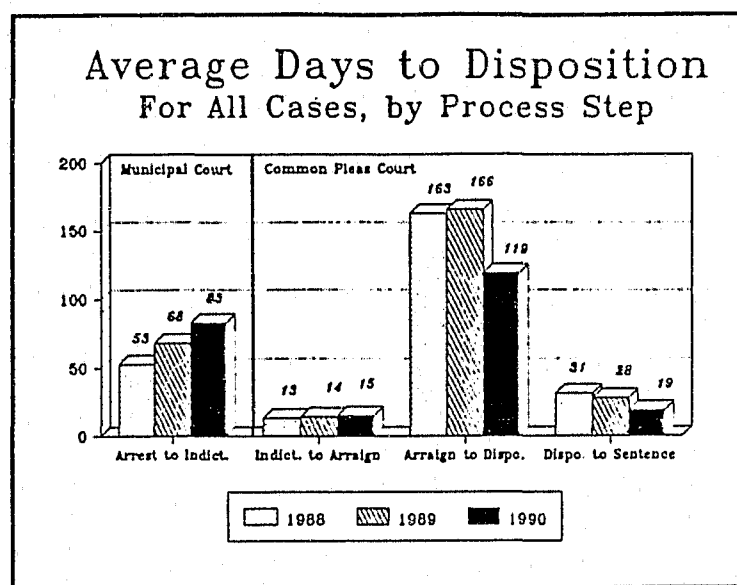
When the case is arraigned in the Court of Common Pleas, EDCM begins. As Figure 3 indicates, the processing time from arrest to indictment in Municipal Court has been steadily increasing; yet the times associated with the program show decreases.

Times to disposition are inflated by a serious bench warrant problem. It is not uncommon for defendants to abscond and not be picked up for upwards of a year. These situations are reflected in all the averages presented here. For example, court records indicate that the average number of days from arraignment to trial for felony cases that have had one or more bench warrants issued is 357 days. For those without bench warrants, the average is 119 days, or one third less.

Although the program activity concentrated on the front-end of the system (indictment to arraignment), the impact can be seen in the process steps occurring after arraignment where processing time was reduced and trial capacity increased.

Under EDCM the average number of days required from indictment to arraignment increased slightly. This may be due to the intensive effort – police, prosecution and defense – that was focused on arraignment court.

Figure 3.



The average number of days from arraignment to disposition was reduced by 26 percent, from 163 days in 1988 to 120 days in 1990; and, from disposition to sentencing, the reduction averaged 38 percent.

Types of dispositions

The dispositional pattern of the court also changed.

Jury trials and dismissals decreased.

Guilty pleas increased.

Guilty pleas increased by 18 percent, jury trials decreased by 42 percent, and dismissals and other dispositions were reduced 28 percent as compared to 1988. Although this trend was apparent in 1989, the EDCM program appears to have facilitated the rate of change.

Table 1
CASES DISPOSED BY TYPE OF DISPOSITION

Disposition Type	Number			Percent		
	1988	1989	1990	1988	1989	1990
Plea	5,249	6,761	8,404*	56.4	60.8	66.7
Bench Trial	2,017	2,318	2,212	21.0	20.8	17.6
Jury Trial	294	258	222	3.1	2.3	1.8
Other	1,878	1,782	1,761	19.5	16.0	14.0

*Reflects change in plea bargaining policy

Effect on inventory

As a direct result of the implementation of the EDCM program on January 2, 1990, the total criminal case inventory throughout the court has been reduced by approximately 32 percent. *David Lawrence, Chief Deputy Court Administrator, Philadelphia Court of Common Pleas.*

The speed up in disposition rates has had a direct impact on the court's inventory. The court has increased its disposition rate from 66 percent in 1988 to 79 percent in 1990. As a result, within the 1990 program year, Philadelphia was able to adjudicate more cases than the number filed; thereby effectively reducing the inventory.

Table 2
CASELOAD AND INVENTORY

Year case entered	1988	1989	1990
Cases Still Open	3,558	2,033	1,262
Cases Closed	9,618	11,119	12,599
Fugitives	1,289	1,761	1,808
Total	14,483	15,068	15,942
Percent Disposed after 18 months	66.4	73.7	79.0

The increase in the number of fugitives is most likely a reflection of the Federal court ruling mandating pretrial release for defendants with drug amounts less than 50 grams.

Effect on the jail

There was a 36 percent reduction in the average number of days defendants were detained pretrial from indictment to sentencing. This produced a maximum net gain of about 230,000 jail bed days over an 18 month period which translates into 420 beds per day.

This reduction occurred even as the number of pre-trial detainees increased by some 17 percent since 1988, from 5,479 to 6,432.

Table 3
DEFENDANT STATUS AT TIME OF DISPOSITION

Status	1988	1989	1990
Bail	7,697	6,977	7,429
Jail	5,479	6,175	6,432

The savings in jail beds was calculated by substituting the average number of days that defendants were detained in 1988 from arrest to sentence (265.7) for the average number of days that the 1990 jail population was detained pretrial. (See Table 4. In this case the arithmetic is as follows:

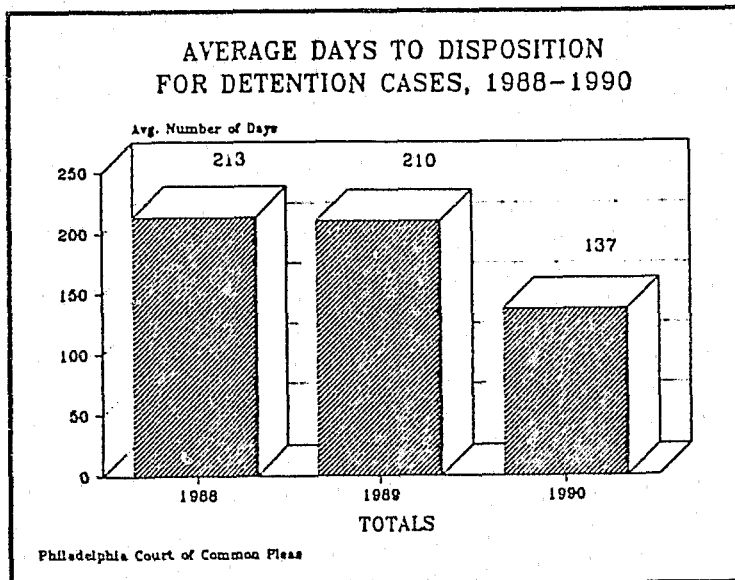
If the 1990 Pretrial Jail Population of 6,432 used 1988's average days in jail @ 265.7 days, then 1,708,982 jail days would be needed.

Instead, defendants were detained only 229.9 days resulting in the number of jail days needed in 1990, 1,478,717.

The difference between the number of jail bed days that would have been required in this 18 month period if there were no reductions in time is 230,265.

These figures should be viewed with caution. The difference represents a *maximum* net gain over the 18 months. However, they hide the number of defendants in jail at the time of disposition who may not have been in jail for the entire pretrial detention period; and the number of defendants on bail at disposition who may have spent some time in jail before making bail. These figures may or may not nullify each other. In addition, both arrest to indictment (Municipal Court) and indictment to sentencing (Court of Common Pleas) averages may be inflated by a high proportion of absconders who were not arrested on bench warrants until some time later.

Figure 4



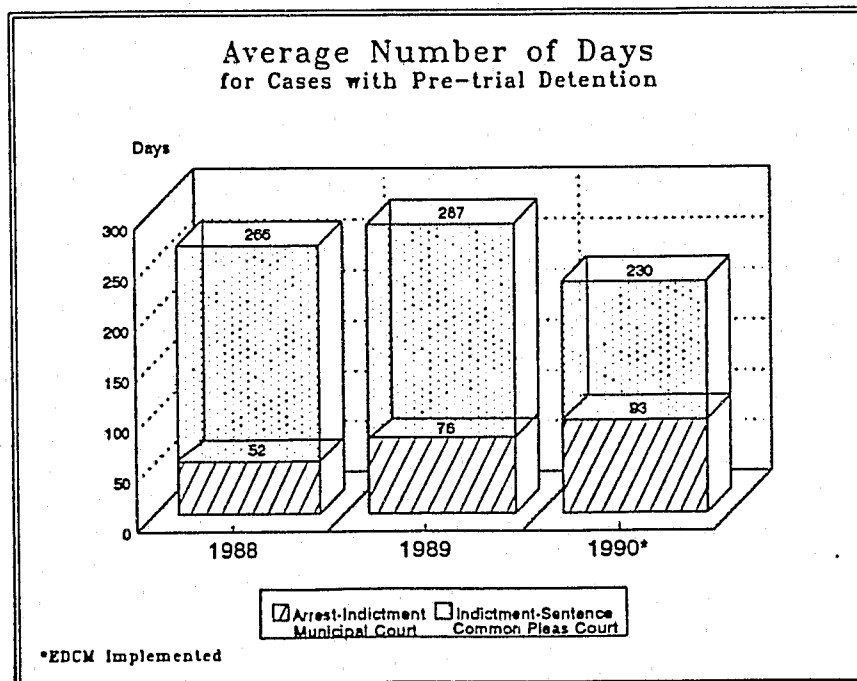
The EDCM program's impact can be seen by comparing its reductions with the increases in Municipal Court where EDCM did not operate, i.e. the arrest to indictment stage.

Process step	1988	1989	1990
Indictment to Sentence	213.7	210.6	137.1
*Arrest-Indictment	52.0	75.5	92.8
Indict. - Arraignment	14.6	14.6	18.3
Arraign. - Disposition	149.6	158.9	113.1
Dispos. - Sentence	46.2	36.4	23.6

*Municipal Court

The implications for cost savings as a result of the EDCM program are even wider if one considers the costs that would be incurred if new jail bed space had to be constructed. A less costly strategy would be to extend the EDCM case management strategy to the Municipal Court. As Figure 5 illustrates, the increasing length of pretrial detention prior to indictment is substantial.

Figure 5

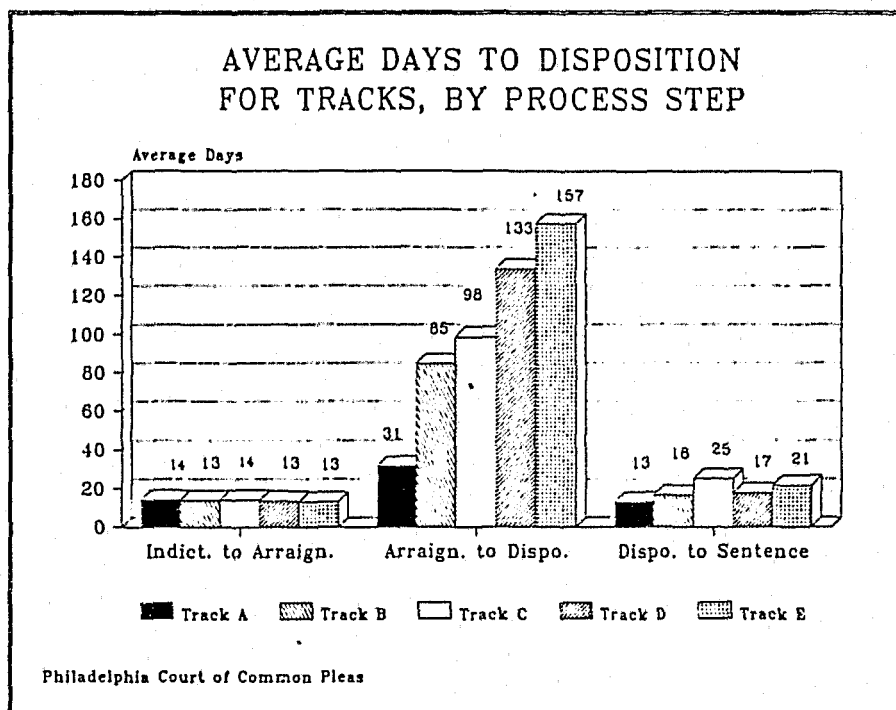


Results of Track Assignments

The criteria used to differentiate Tracks were appropriate and produced the expected responses in the program area i.e. in the arraignment to disposition stage.

The EDCM program assigns all new felony cases to one of five time tracks based upon the speed with which adjudication and disposition can be expected. These are designated as Tracks A, B, C and D and E. The E Track was added later in the program year to process more serious violent felonies.

Figure 6



As was expected, Track A cases consume substantially less time than the more procedurally complex Track D and E cases. The fact that each track differs indicates valid selection criteria. Of interest is the spillover effect that seems to be occurring in the disposition to sentence phase.

A Track - one day track, i.e., with disposition within one day of arraignment.

As of June 30, 1991 (18 months after program implementation), 2,662 cases were adjudicated which represented 21 percent of all the adjudications in the program (12,597). What is remarkable is that these results were due to the work of one judge alone, Legrome Davis. The average days to adjudication was 32 days and to sentencing, 45 days.

B Track - for all defendants in custody, not adjudicated in A Track.

Eighteen months later, 2,531 cases were adjudicated (20 percent of the total) with an average of 85 days to adjudication, well within the guidelines set by the program, and 114 days to sentencing.

C Track - multiple pending cases with the exclusion of homicides

The eighteen month results show 260 cases adjudicated (2 percent of the total) in an average of 99 days, and 138 to sentencing. C Track was initially designed as a 21 day track and subsequently adjusted to be a 14 day track. Since EDCM has provided the court with its first opportunity to consolidate multiple pending cases, it is expected that the number of cases in Track C will diminish as the consolidations are completed.

D Track - standard track for all other cases, primarily bail and custody cases.

The eighteen month results reflect the traditional, but newly improved, court processing structure. 3,767 or 30 percent of the cases were adjudicated in an average of 134 days and sentenced within 163 days.

E Track - created midway for serious violent felony and drug cases.

After eighteen months, 1,260 cases (or 10 percent of the dispositions) were adjudicated in an average of 158 days and sentenced within 189.

Table 5
RESULTS OF TRACK ASSIGNMENTS
(as of June 30, 1991)

Track	No. Adjudicated	Percent*	Average. Days	
			to Adjudication	to Sentence
Track A	2,662	21.1	31.8	45
Track B	2,531	20.1	85.0	114
Track C	260	2.1	98.8	138
Track D	3,767	29.9	133.9	163
Track E	1,260	10.0	157.8	189

*Does not total to 100 percent due to 2,116 cases without track assignments

Monitoring and identifying case status, particularly off-track cases is performed by the Deputy Court Administrator whose automated system identifies those cases where a delay has become evident. Once these cases are identified, the Deputy Court Administrator attempts to relist the case to comply with established time standards and all parties are notified that no further continuances will be granted. However, the case is not reassigned to another track. This procedure increases the average number of days to adjudication. The Track A cases, for example, show an average of 32 days to adjudication with two thirds of the cases being adjudicated between 1 day and 77 days.

Conclusions

If the program had no other effect than to demonstrate the ability of the system to work together, contrary to past performance, it would be an unqualified success. *David Lawrence, Deputy Trial Court Administrator, Philadelphia Court of Common Pleas*

These remarkable results become even more impressive when one realizes that they were produced by a combination of activities and efforts, not by the single effort of one person, or one court. It is impossible to assess the probable impact of the program in the event that *Judge Legrome D. Davis* and the administrative support provided by the Court Administrator and his staff had not been available to undertake this program. After lengthy discussions with the participants, it is apparent that the results to date would be much different without these resources.

At the same time, the success of the program is directly dependent on the willingness of the prosecutors and public defenders to engage in reasonable practices and negotiations. Without significant changes relating to the staffing of the arraignment courts by experienced prosecutors and public defenders, agreements for procedures to provide early discovery and reduce frivolous suppression motions, this program might well have floundered. The changes in policy that permitted EDCM to thrive indicate the level of commitment needed from the prosecutor and the public defender.

Similarly, the additional resources provided by probation and the early preparatory work that they performed, was an essential ingredient in speeding up case processing.

Although the initiative and leadership provided to EDCM by *Judge Davis* is impressive, obviously, the ability of one judge, however industrious, to produce such results, is dependent upon a large number of outside factors coming together to allow the system to operate as efficiently as possible. This can only be accomplished by the establishment, implementation and monitoring of procedures to support all the court activities and those related to them. Justice prevails when management is in place and cooperation is gained.

In the case of the Philadelphia program, the strategic planning of the Court Administrator's office correctly concluded that the achievement of cooperation could best be assured by the allocation of sufficient funding to the affected agencies to assure available resources. Approximately \$28,000 of the grant funds were distributed each to the District Attorney and the Public Defender, which allowed (but did not wholly subsidize) the addition of staff dedicated to the program. Although the funds bolstered the morale of the agencies, they did not cover all the expenses associated with the program.

Retrospective Analysis

Court delay is controllable; it is basically a problem of intensive management by persons committed to controlling delay, and it requires a high degree of communication between various agencies and actors involved in the processes. *Professor Ernest C. Friesen, California Western School of Law*

At the conclusion of the site visits, a discussion was undertaken with the various key participants to solicit their reflections on the implementation of the program based on "20/20 hindsight". Their observations provide insight into some of the problem areas that should be considered if a jurisdiction wants to embark on EDCM.

1. The impact on court staff was underestimated at the outset. As illustrated by the previous reference to the Clerk's Office, the accelerated pace of dispositions had a severe effect on the ability of various components to react.
2. Too little emphasis was given in the initial design of the program to the need for adequate data support. The need for on-line communication for operational purposes, and the "absolute necessity" (in the words of *Mr. Lawrence*) for data for evaluation and management purposes has become more apparent to the participants as the program continues.
3. As the planning of the system proceeded, it became apparent that the Court was going to have to take an active part in solving various problems which developed in outside agencies, such as the District Attorney's office, the Public Defender and Police and Sheriff Departments. This need to participate in the internal planning processes of these agencies in order to create what is essentially a court system requires a degree of understanding of the roles and operations of these offices on the part of the court staff which is unusual, and therefore, typically must be developed as part of the planning process.
4. Discussion of various aspects of the system which have ramifications in the area of law enforcement led to the conclusion that the police aspect of the program had been underemphasized at the outset. It became clear that the police and sheriff are a very integral part of any program seeking to increase the pace of criminal litigation, and, therefore, earlier contact and solicitation of help from law enforcement is suggested.
5. Finally, experience to date suggests that the program will depend, to a much greater extent than originally recognized, on the dedication of staff from various departments to the program. The District Attorney should provide a senior staff person to administer the EDCM program from the standpoint of that office. Both prosecution and public defender staff should be assigned to specific courtrooms, especially calendar rooms operating the program, and perhaps as the program picks up pace, to various trial rooms as necessary to follow up at the trial stage.

MIDDLESEX COUNTY, NJ EDCM PROGRAM**Middlesex County (New Brunswick) NJ**

- * Funded: \$190,000
- * Single drug court
- * Three Tracks
 - TRACK A - All cases with likelihood of significant incarceration
 - TRACK B - Minimal or no incarceration, Plea of guilty likely
 - TRACK C - Track B cases that go to trial
- * Prosecutor screens and assigns tracks
- * Linked with extensive community involvement network
- * Started in New Brunswick - Expanded to 3 additional towns, Sep., 1990.

Background

Middlesex County, a jurisdiction of some 700,000 people, is located in central New Jersey, southwest of New York City along the Raritan River. The county is a mix of urban and suburban communities. It includes 25 municipalities, most notably New Brunswick, Woodbridge, Perth Amboy and Edison. New Brunswick has a population of 40,000 and Woodbridge has a population over 100,000. Twenty five communities have their own police department.

Middlesex County, like most other jurisdictions, has suffered a substantial increase in criminal filings over recent years. Total felony cases filed have risen from 2,603 in 1986, to 3,936 in 1990, an increase of 51% over the three year period. Even more alarming is the fact that the largest single category of cases leading this increase is drug offenses or drug-related crimes such as burglary and assault; these comprise an estimated 65% of all cases. The impact of this dramatic change in the pattern of filings over such a short period of time has been to increase the backlog of cases awaiting disposition.

As a result of this increase in caseload and a growing concern about the delays in processing drug related criminal cases, the New Jersey Administrative Office of the Courts (AOC) decided in 1989 to consider a new approach to case handling in Middlesex County and initially in New Brunswick which processed 456 drug cases in 1989. Middlesex County was a lead candidate for the EDCM program because, the AOC believed that the key to handling drug cases effectively in terms of reduced recidivism was enforced treatment imposed through the use of the judiciary's sanctioning power and supported by community participation. Middlesex was the site of an earlier community involvement program that the AOC had initiated for juveniles, known as Project CARE (Community Assisted Rehabilitation Efforts). Based on a series of meetings involving the key judicial leaders, the prosecutor, probation and the regional public defender assigned to

Middlesex County, the AOC prepared the EDCM concept paper which was submitted to BJA in 1989, and upon its award, shifted its role from initiator to supporter of the Middlesex leadership.

The EDCM program that evolved is the direct result of a collaborative effort by the court, prosecutor and public defender to establish and implement an entirely new concept of case management. The New Brunswick program is largely the result of the ability of *Superior Court Judge George C. Nicola* to bring together a number of heretofore independent and largely non-cooperative elements within the criminal justice system; and to mobilize previously untapped community resources to attack the drug problem in the county.

We could not have chosen a better place than Middlesex. Judge Nicola, Prosecutor Rockoff and Public Defender Ferencz provided remarkable energy, leadership and creativity. They were able to achieve joint administrative solutions without ever compromising the integrity of their independent positions. *Robert Lipscher, Administrative Director of the Courts, New Jersey.*

Development of the EDCM Program

In early 1989, an application was filed by the AOC with the Bureau of Justice Assistance for funding a program to expedite the management of drug cases. The experimental site was Middlesex County selected by BJA as one of three demonstration sites to test the efficacy of the EDCM program.

In October, 1989 the New Brunswick (Middlesex County) team composed of Judge *George Nicola*, County Prosecutor *Alan Rockoff*, Deputy Public Defender *Bradley Ferencz*, County Trial Court Administrator *Gregory Edwards*, *Lyman O'Neill*, Chief Probation Officer and Criminal Court Case Manager *John Chacko* attended the DCM/EDCM workshop in Washington, D.C. sponsored by the American University under the BJA grant. The New Brunswick team discussed the EDCM concept, assessed ways to establish assignment tracks and developed initial criteria for time-lines for different types of cases. At the end of the workshop, agreement was reached to put together a procedure that would make arraignment the point where the initial case tracking assignment would be made and the starting point for tracking cases. Also decisions were made about tentative time-lines for the different types of cases in the program.

Until this meeting, 4 weeks after the grant was awarded, only the general outline of the program had been designed and the various key people had little input into the nature of the program. In fact, their ideas had not been solicited until the time of the Washington meeting. The value of this meeting was its ability to generate a significant amount of "fleshing out" of the original proposal. This took place not only during the meeting, but also immediately following it on the trip home.

Judge Nicola agreed to lead the effort in his court but contingent upon agreements by the prosecutor and the public defender to participate, and the resolution of the sensitive issue of the public defender's routine filing of motions to suppress. Subsequent meetings between the key officials in the criminal justice system were intensive. The results were the establishment of a tracking system, agreement on time-lines, and the preparation of the program's logistics. Because there was less than 2 months for the planning, many of the staffing decisions, procedures and the reporting and information systems were developed while the program was operational.

Tracks

Middlesex County established three tracks for the EDCM program.

Track A

This track includes cases with mandatory presumptive incarceration or a high probability of incarceration. This might be by virtue of (1) statutorily mandated incarceration such as school zone violations or the use of a juvenile in a drug distribution scheme, (2) offenses entailing presumptive incarceration such as first or second degree crimes, (3) recidivist defendants, or (4) other characteristics of the case or the defendant. It was, therefore, expected that these cases would be likely candidates for trial, and a disposition within 90 days from arrest was sought.

Track B

These cases do not have mandatory sentences and the defendants are unlikely to receive long custodial sentences. These cases might involve (1) simple possession, (2) possession with intent to distribute where either the amount of drugs involved is small and/or the defendant has no significant prior record, (3) other cases in which the charge or defendant's history are unlikely to result in substantial incarceration, (4) factually or legally weak cases that merit such treatment. A 30 day timeline from arrest was set for Track B cases

Track C

Track B cases that cannot be negotiated and would be indicted by the grand jury and set for trial are assigned to Track C. This track was given a 90 day time-line.

The AOC received \$190,000 for EDCM from the Bureau of Justice Assistance (BJA). From this amount, \$133,475 was allocated to Middlesex County. These funds provided for two probation officers and a supporting clerical position; one assistant prosecutor; and a part-time program administrator, computer equipment and contractual treatment services.

On January 2, 1990, the program became operational in New Brunswick. *Judge Nicola* presided over the "drug court" and started with a docket of zero cases in a courtroom staffed by one public defender and two assistant prosecutors. The attorneys assigned were soon increased to two public defenders and three assistant prosecutors. The attorneys selected to participate in the program are experienced trial attorneys. They know the probabilities of conviction and expected sentence if the case were to go to trial. They are skillful negotiators, and can argue the factual weaknesses of the case. They are not afraid to make reduced offers.

By emphasizing networking services, not warehousing drug offenders, the EDCM program puts Middlesex County on the cutting edge of attacking drugs in the United States. *Mayor John A. Lynch, New Brunswick, NJ*

One goal of BJA's demonstration was to integrate the adjudication process with a treatment supervision process. What distinguishes this program from the other DCM/EDCM demonstration programs is its extensive utilization of community resources that are primarily volunteers. Offenders are evaluated for their needs in four areas: employment, education, treatment and rehabilitation. The ones who are

most likely to respond to any of these services are referred to the community network. The services to be provided are incorporated into the case management system from the outset. To date, the community network is not fully developed; the employment and job training components have not been established, and there is a serious shortage of treatment facilities and services.

On September 17, 1990 the adjudicatory component of the program was expanded into the remaining experimental municipal sites of Edison, Woodbridge and Perth Amboy. Implementation of the community-treatment component was delayed pending its complete implementation and testing in New Brunswick. After a year of operation, the New Brunswick EDCM program has demonstrated its effectiveness

Objectives

Objectives
<p>1. Expedite the processing of drug cases arising out of New Brunswick and the other participating municipalities by establishing tracks to which cases are assigned for different types of processing within time standards</p> <p>2. Establish a community network to support both the court and the defendant.</p>

EDCM Drug Court

Under EDCM, all drug cases arising out of these municipalities were assigned to one judge (*Judge Nicola*) for disposition. Dispositions are pre-indictment or post-indictment. Defendants may plead guilty pre-indictment to the prosecutor's reduced plea offers, or plea offers with sentence agreements. Negotiated plea offers are made within one week after arrest. (In non-drug cases, the attorneys said it was not unusual to have the first realistic plea offer made some 6 months after arrest, indictment and several continuances). If a defendant does not plead guilty pre-indictment, the prosecutor then seeks to indict the defendant before the grand jury. If a defendant is indicted, the prosecutor normally will still offer a reduced plea following arraignment, but it will be harsher than the one offered pre-indictment.

Defendants arrested for drug offenses in New Brunswick are brought before a Municipal Court judge within hours after their arrest. A probation officer conducts an initial bail screening interview. The defendant and his case are immediately assigned to a designated prosecutor for in-house screening and possible diversion within the prosecutor's office. Those defendants screened out at this stage are placed in one of a variety of alternative programs available to the prosecutor that usually include drug counseling and treatment.

Those cases not screened out are scheduled for a pre-indictment conference within 5 working days after the initiation of the complaint in Municipal Court. Following the creation of a file by the Early Screening unit, the file is forwarded to the Drug Court where it is initially reviewed by an investigator for completeness. A rap sheet is ordered and any missing reports or documents are requested from the submitting police agency.

Prior to the pre-indictment conference, the prosecutor assigns the cases to their track in accordance with the criteria established. Before the conference, the defendant has also been scheduled for an interview either at the Correctional Center if incarcerated, or at the Probation Department, based upon a notice provided by the arresting police officer. This interview helps to determine Public Defender eligibility or a defendant's intention to obtain private counsel.

Pre-indictment conference

At the pre-indictment conference prosecutor and defense attorneys meet to negotiate using information provided by the police, probation, drug identification and other resources. An attempt is made to dispose of the case by way of plea agreement. This policy follows the Drug Court's mandate to expeditiously dispose of cases. Accordingly the plea offer made at the initial conference is as lenient as possible. A defendant who rejects this early bargain is informed that the matter will be forwarded to the Grand Jury and the earlier offer will no longer be available. The judge will be involved if the plea or some other reason requires his participation. If the defendant accepts the plea offer and the offense charged is non-violent, the case is sent to *Judge Nicola* for immediate sentencing. The judge monitors generally all proceedings, e.g. adjournments and grand jury referrals, even if he is not directly involved.

At the inception of the Drug Court it was anticipated that each case would conference again prior to trial to more formally assess positions prior to preparing for trial. In practice, there has been increased use of informal discussions among the attorneys about the defendants pleading prior to trial. This has proven to be a satisfactory method for assessing the positions of both parties regarding the likelihood of trials.

Grand Jury

Grand jury procedures have been speeded up to process Drug Court cases that have reached an impasse in plea negotiations. Cases are forwarded to the Grand Jury where an indictment or no-bill is to be returned within 21 days, and arraignment is to follow within seven days for incarcerated defendants and 14 days for non-incarcerated defendants. At or following arraignment, the file is again reviewed in the hope of obtaining a disposition without need for trial.

Other procedural changes were introduced by EDCM to expedite the case processing. They include the use of early discovery; the scheduling of hearings within a week to 10 days on the motions; the pre-indictment filing of motions to suppress; the use of conditional pleas; and, the vertical assignment of probation officers to defendants at arraignment.

Discovery

Discovery is made available to the defense by the prosecution voluntarily as soon as a conference is scheduled. If the file is not ready at the time of the pre-indictment conference the prosecutor decides if partial review of the file is sufficient, or if no information is needed from the file that has to be available to the public defenders for review. Engaging in meaningful plea bargaining requires a certain minimum amount of information as deemed necessary by the attorneys.

When difficulties are encountered in obtaining certain documents from police agencies, the result has been sometimes extensive delays.

In the past, it was not unusual for some cases to have as many as 10 adjournments of pre-indictment or post-indictment conferences while waiting for discovery to be completed. EDCM has had a substantial impact on this delay. Only 19 percent of the requests for continuances were due to incomplete files.

Motions

The Public Defender agreed to participate in the program only if no defendant was "railroaded" to get his case disposed; no motions were denied just to move cases; and trials and motions were available as needed. Once the EDCM program was implemented, a sense of trust developed between the opposing attorneys. This was due, in part, to the consistency in plea offers since the same attorneys were assigned to the Drug Court; and in part, because the experienced public defenders were willing to take the plea offer to the defendant without compromising the defendant's rights. Once the program went into effect, the first public defender assigned was replaced by others who were less resistant to the program.

Under the EDCM program, suppression motions could be filed and argued, with the consent of the prosecutor before the case went to grand jury. This change permitted defendants to have rulings on search and seizures before they had to make a decision on whether to accept the prosecutor's plea offer. Such motions could be scheduled without the necessity of filing formal pleadings.

The Public Defender agreed to forgo the filing of motions in all but the most egregious cases. In return for which, the prosecutor agreed to provide full disclosure of all police reports and other relevant documentation at the earliest possible stage of the proceedings in order to facilitate the decision of the Public Defender about which cases needed such a motion. In cases requiring a motion to suppress, the prosecutor agreed to keep any plea offerings open pending resolution of the motion by the court. To facilitate the conference, the cases and defendants are evaluated during the intervening period by a probation officer.

This pre-indictment motion to suppress procedure is limited to those matters in which the defense attorney represents that the disposition of the motion will result in the disposition of the case.

Conditional Guilty Pleas

The program also permits conditional guilty pleas which are taken subject to receipt of further information. One such circumstance is the lab analysis of the seized items. If the lab tests reveal the substance was not a controlled substance, the defendant can withdraw his plea and the charges will be amended or dismissed as appropriate. Most guilty pleas in Drug Court are entered prior to receipt of the reports from State Police Laboratory. Reports are screened upon their receipt and forwarded to defense counsel. Only a handful of negative reports have been received, and these have resulted in only one case being dismissed following sentence. The absence of lab reports early in the initial conference stage occasionally poses a problem in situations where the estimated weight of the drugs is near that which would result in a higher degree crime. In most cases, however, neither the defendant nor defense attorney is concerned about the lack of a lab report, and entering a conditional guilty plea in expectation of the report is

satisfactory. In fact the lack of a report is seldom discussed, even with attorneys handling their first case in Drug Court.

Pre-indictment conferences are held each day in an area adjacent to the EDCM courtroom. Both prosecutors and public defenders are participants in the conference, and attempt to seek disposition of the cases assigned for the day. Due to the short time between arrest and the conference, and also to some delays, not all the necessary elements may be available on a given case at a conference. In that case, a contingent plea may be arranged subject to verification of drug analysis, or criminal record, application to a diversionary program, or other essential information. Likewise, contrary to past practices, plea proposals may be made subject to motions to suppress with the availability of the plea preserved pending the outcome of the motion. In the event no plea agreement is reached at the conference, the case is prepared for presentation to the grand jury within 21 days. If it is agreed that the plea offer is subject to a motion to suppress, grand jury presentation is withheld pending a ruling on the motion and subsequent decision on the acceptance or rejection of the offer. Such motions were to be heard and decided within three weeks, thus minimizing delay and enabling cases to be either disposed of or go to the next stage within the time-goal.

The Pretrial Intervention (PTI) diversion process can result in a delayed disposition if the defendant is ultimately denied entry into PTI. Accordingly, defendants are generally encouraged to plead guilty and then apply to PTI pending sentence. If the defendant fails to gain entry into the program, sentencing needs only to be scheduled rather than further plea bargaining conferences. This arrangement has been successful because defense attorneys know their clients' cases will receive the same consideration for PTI that they would had a guilty plea not been entered. There does not appear to be any way to compel guilty pleas prior to application for PTI. However, many attorneys have been cooperative in this regard.

In like manner, a plea can be taken subject to completion of a pending diversionary investigation, and the imposition of sentencing is deferred until the pretrial intervention investigation is completed.

Vertical Case Assignment for Probation

Another change introduced by EDCM is the vertical assignment of EDCM cases within the County Probation Department. Three probation officers were assigned to the program and were responsible for their assigned defendants from the initial arrest through completion of the program. Later, a fourth probation officer was assigned when *Judge Nicola* asked that one probation officer be designated as the treatment coordinator.

Each probation officer conducts all phases of the case processing. This includes holding initial intake interviews, screening cases for diversion, making bail recommendations, and preparing a "pre-indictment" report that will serve as a "mini pre-sentence" report in the event of a disposition at the conference. Until March 1991 the same officer also supervised the defendant if placed on probation. Since then, probation supervision is assigned to a different officer. Introducing vertical assignments was not without some initial difficulty, particularly because there was little cross training of probation officers. For example, one of the EDCM probation officers had experience with pre-sentence investigations but not with supervision of probationers.

The probation officer's report contains information about the defendant, including family, employment and criminal history. It also provides an evaluation of possible alternatives to incarceration and information on bail possibilities in the case of incarcerated defendants. The probation officer also notifies the defendant of the judicial conference date and time in the event the defendant bonds out within the five days. (Very few defendants fail to appear for the conference). The police department serves non-incarcerated defendants with a notice to appear.

Defense Attorney Fees

One of the problems encountered by the program was the claim by the private defense bar that they could only collect their fees over a three to five month period. Even though the private defense bar accounts for only 15% of the representation in the drug-related criminal caseload, it objected to the quick dispositions projected by the EDCM. To resolve this issue, *Judge Nicola* met with the bar association, and an agreement was reached that if private attorneys needed time to collect fees, they would be accommodated on a case by case basis. Obviously, delays to disposition run contrary to the speedy disposition expected under EDCM. However, *Judge Nicola* feels that the degree of accommodation necessary to delay the ultimate disposition of the case to allow the defense attorney to collect his or her fee, is a small price to pay for the continued cooperation of the private bar. It should be noted that during any period of delay occasioned by this situation, the defendant is placed in a treatment program as a condition of bail; this at least satisfies some of the treatment and rehabilitation objectives of the program.

Sentencing

While the AOC reports a state-wide average of four to six weeks between plea and sentence in felony cases, in New Brunswick this gap has been significantly reduced. The Drug Court differs from the rest of the county's sentencing practice in which parties are notified of the sentencing date only upon completion of the pre-sentence report. Because the information gathering has continued throughout the life of the case, this report may also allow the judge, with the consent of counsel, to proceed to immediate sentence after the plea has been taken.

The practice of expediting sentencing, coupled with the wide range of sentencing alternatives available to *Judge Nicola*, has resulted in a program which has reaped the support of the participants and the public far beyond anything heretofore achieved in this jurisdiction.

Personnel and Assignments

Throughout most of its first year of operation three assistant prosecutors were assigned to Drug Court, one being a supervisor. They were responsible for every stage of the proceedings except for Grand Jury and any initial screening cases at the police department level. Assistant prosecutors previously assigned to the participating police departments continued their screening and Grand Jury presentation duties even though the number of cases reaching the Grand Jury stage was significantly reduced.

In practice the Drug Court's supervising assistant prosecutor did most of the plea bargaining at all stages and the other assistant prosecutors handled trials, sentences, motions and other related functions.

One investigator and one clerical person were assigned to the Court. Their duties overlap somewhat in regard to file preparation for the initial conference. The investigator reviews the newly created file, examines it for deficiencies, orders necessary rap sheets, and checks the county's computer to determine if the defendant has a prior local history or pending charges. The investigator concentrates on correcting deficiencies in the case while the clerical person is concerned with primarily locating those additional files needed for a meaningful plea bargain conference. The clerk is also primarily responsible for close communication with the Probation Department's Drug Court unit which operates a personal computer solely for the Drug Court. Drug Court cases are tracked, records maintained, and court lists generated by computer.

In addition to file preparation, the investigator is responsible for trial preparation duties similar to those of other trial team investigators. These latter obligations are not nearly as time consuming as the file preparation and follow-up duties. Both the investigator and clerical person have a strong dedication to their work thus, helping to keep the project functioning.

Community Involvement

For those people who are interested in treatment, they are more likely to obtain treatment if that decision is made early on than later down the road. *Jack Hill, Public Defender's Office, Pierce County Superior Court, Tacoma, WA.*

The EDCM program was designed with two components: one, adjudicatory; the other, community treatment. The community treatment component expanded upon the earlier Project CARE experience and provided an opportunity to test an expanded concept of a court/community partnership for drug cases. It utilizes volunteers to monitor offender compliance with court-ordered conditions, and provide assistance through treatment, jobs, education and restitution. *Judge Nicola* developed a Narcotics Intervention Project (NIP). He generated a volunteer network from an initial list of 60 names supplied by the Mayor, religious groups, corporations, commercial industries, educators, treatment personnel, and law enforcement. Depending on the volunteer's qualification and interests, the volunteer was placed in one of the several community/treatment categories (e.g., restitution, community service, urine testing monitoring, employment, etc.). The two components still under development are the education and employment functions.

A restitution subcommittee was formed to develop sites and to monitor the defendants assigned to community service. The defendants wear bright orange vests with "community service" imprinted on the backs. *Judge Nicola* was instrumental in having a bill passed to give immunity for liability to participating agencies for any injuries arising out of the defendant's participation in the community service program.

The treatment component started with no money but was able to attract \$42,000 from the New Jersey Department of Justice and subsequently \$500,000 from the Department of Health to buy urine testing equipment. Rutgers University provides

interns who staff the testing units and monitor the results. In addition to the lack of funds for treatment there are some philosophical differences regarding the type of treatment given the defendants. The effectiveness of short term and out-patient counseling, and having para-professionals involved in counseling has been questioned.

Monitoring is at the heart of this program. Volunteers are assigned to probation officers with case duties. The monitor identifies the conditions, makes up a schedule for the defendant and monitors compliance. The citizen volunteers make phone calls to the defendant's workplace to ensure that the defendant is still working; to the Sentencing Alternative Work Force program to ensure compliance with court-ordered community service; and, to various drug monitoring programs to ensure that the defendant has appeared for drug screening. (In the past, these phone calls were made by probation officers). If a defendant misses a scheduled appointment, the citizen volunteer notifies the probation officer who, in turn, prepares a violation of probation. The defendant is arrested immediately and brought before *Judge Nicola* within 24 hours for a revocation hearing.

A large part of the community aspect of the program involves continued counseling and monitoring of drug use during supervision. Apparently, the threat that a resumption of prior drug-related activity on the part of the participant in the program will result in serious sanctions is a credible one. There is a perception that there has been a significant reduction in recidivism by the participants.

It is noteworthy that the community aspects of the program are supported not only by the "hard core" "zero tolerance" law enforcement advocate, who see the program as a means to improve the enforcement effort, but also by those who are primarily concerned with the human toll connected with the incidence of substance abuse in the community. One member of the community likened the program to the "tough love" concept of dealing harshly with offenders with a compassionate eye toward rehabilitation. Others saw the program as having the potential to finally put an end to the "revolving door" of drug enforcement. Even some offenders themselves, who were made available during the visit, expressed respect for the program from their perspective, and acknowledged the ability of the program to address the numerous problems which are part of the makeup of the typical substance abuser.

Coordination and Communication

The EDCM program has produced more than just court delay reduction effects. It has also sparked two major procedural and substantive changes in this jurisdiction. One is increased coordination between police, prosecution, public defenders, the court and probation. The second is the very substantial involvement of community resources. Linked by a common goal that recognizes the ability of the system to make positive changes to deal with the epidemic of drugs in the community, and a willingness to try new approaches to deal with case handling problems, the EDCM program has been instrumental in changing traditional attitudes and methods of operations. Whether these changes are largely the result of the enthusiasm and drive of *Judge Nicola* or whether they represent a real change in the overall workings of the criminal justice system in Middlesex County will have to wait the passage of time.

One of the most significant and far-reaching changes wrought by the EDCM concept and the modifications to the system is the cross-disciplinary approach taken by the key players in organizing the program. The new spirit of cooperation demonstrated between prosecution and defense services has already been noted, however, other aspects of this same attitude deserve mention.

In September 1989, supporting the reorganization undertaken for the initiation of EDCM, a multi-jurisdictional police enforcement effort, called the "BADT Squad" was created under the leadership of, and coordinated by, the Prosecutor's office, to address the problem of drug selling on the Middlesex-Somerset Counties border - a situation in which defendants could take advantage of multi-jurisdictional competition and police coverage. This effort has provided vastly improved enforcement of drug laws in the county border areas, and has clearly enhanced the impact of the program.

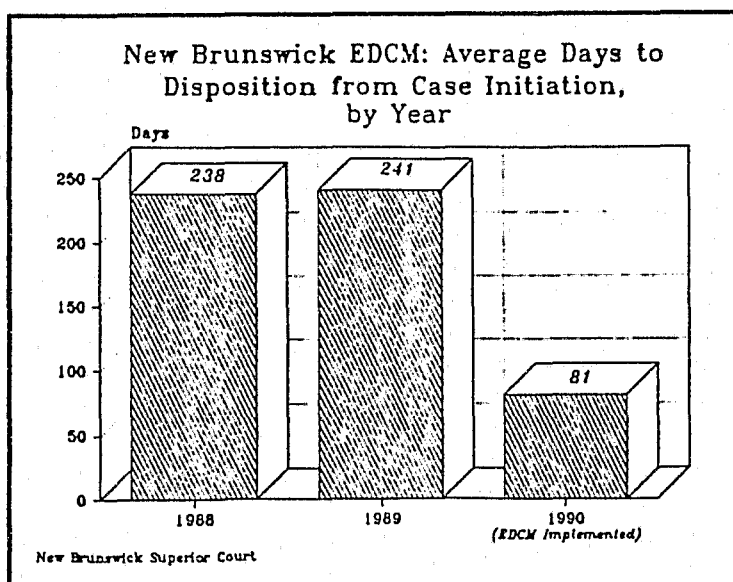
Likewise, as noted earlier, the community effort attached to the EDCM, "drug court" concept, has had a marked impact, not only on the success of the program itself, but on the community's perception of the value of the program. The community network is unique among the sites currently operating similar programs, and is a tribute to the persuasive abilities of *Judge Nicola* and the others involved in the project.

Impact of the Program

The Drug Court is 100 percent better. It is tremendous. It's no more, "Lock me up and I'll be out". Now they are going to jail in two months. *Detective Paul Schuster, New Brunswick Police Department*

In 1990, the EDCM program took in 725 cases and disposed of 685 (528 EDCM and 157 non-EDCM cases that were received by the court for plea bargaining). The total number of New Brunswick EDCM cases is 698.

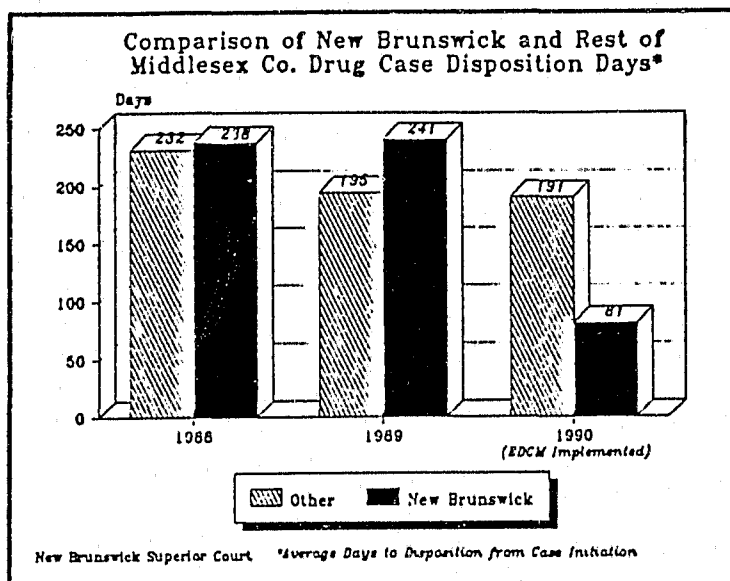
Figure 7



As a result of the EDCM program in New Brunswick, the average number of days to disposition plummeted from 238 in 1988 to 81 in the EDCM program year.

Comparing the New Brunswick drug cases with other drug cases handled in the county (excluding New Brunswick) shows the impact of the EDCM program.

Figure 8



Not only was there no similar reduction in the times to disposition for drug cases in courts without EDCM, but also there was no reduction for non-drug cases. In fact, the sample of non-drug cases disposed by New Brunswick when compared to the non-drug cases disposed in the rest of the county shows that, if anything, New Brunswick processing times were higher than the others.

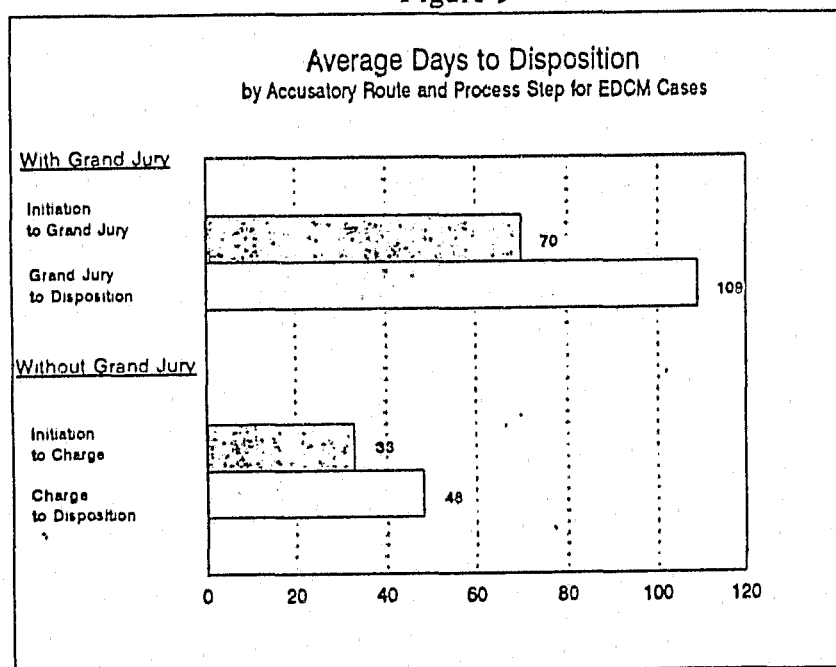
There is nothing to indicate that there were other forces or trends operating in the County or New Brunswick that could explain the significant reductions in processing time experienced by the EDCM court in New Brunswick. As a result, either the drug court or the EDCM program, or the combination of both, was the agent in effecting these charges.

Based on the findings from Philadelphia's EDCM program, it is safe to assert that the EDCM program was the significant factor in creating these reductions.

Effect on processing times

Case processing generally follows one of two routes: one using the grand jury for indictments; one waiving the grand jury for direct filing. The processing times for EDCM cases differed significantly between them.

Figure 9



The EDCM program produced significant reductions in processing times for EDCM cases that did not use the grand jury. However, the reductions were not as great when cases were brought through the grand jury.

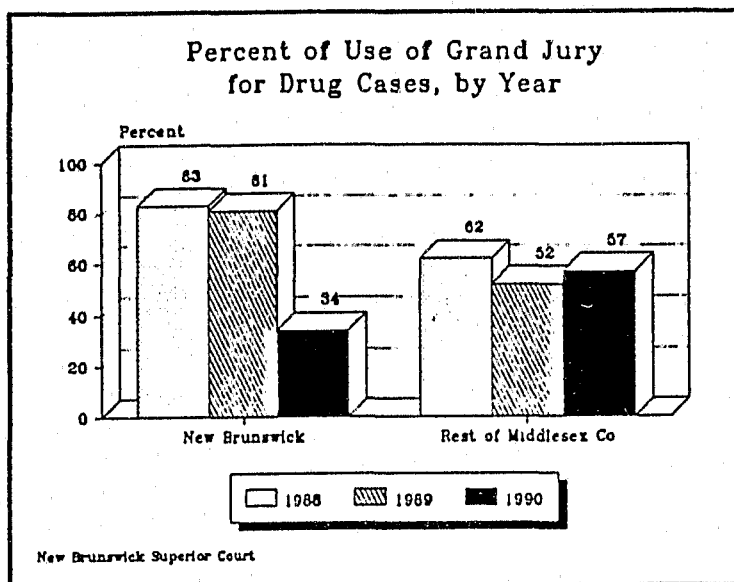
Table 6
Average Days to Disposition by Processing Stages
1988-1990
EDCM Cases - New Brunswick

	Average Days			Number of Cases		
	1988	1989	1990	1988	1989	1990
Without Grand Jury						
Case initiation to charging	86.2	102.9	33.4	294	426	564
Charging to disposition	152.7	139.2	47.9	293	423	560
With Grand Jury						
Case initiation to grand jury	86.3	115.7	70.0	245	345	193
Grand jury to disposition	164.2	150.6	108.7	245	345	192

The EDCM program reduced the use of the grand jury. In 1988 and 1989, the grand jury processed about 83 and 81 percent of the drug caseload, respectively. In 1990,

The EDCM program reduced the use of the grand jury. In 1988 and 1989, the grand jury processed about 83 and 81 percent of the drug caseload, respectively. In 1990, only 34 percent of the drug cases were processed by the grand jury. The number of cases by-passing the grand jury shows a significant increase (from 294 cases to 564). This same phenomenon was not observed for non-drug cases in New Brunswick; nor did it occur for drug cases processed in the rest of the county.

Figure 10

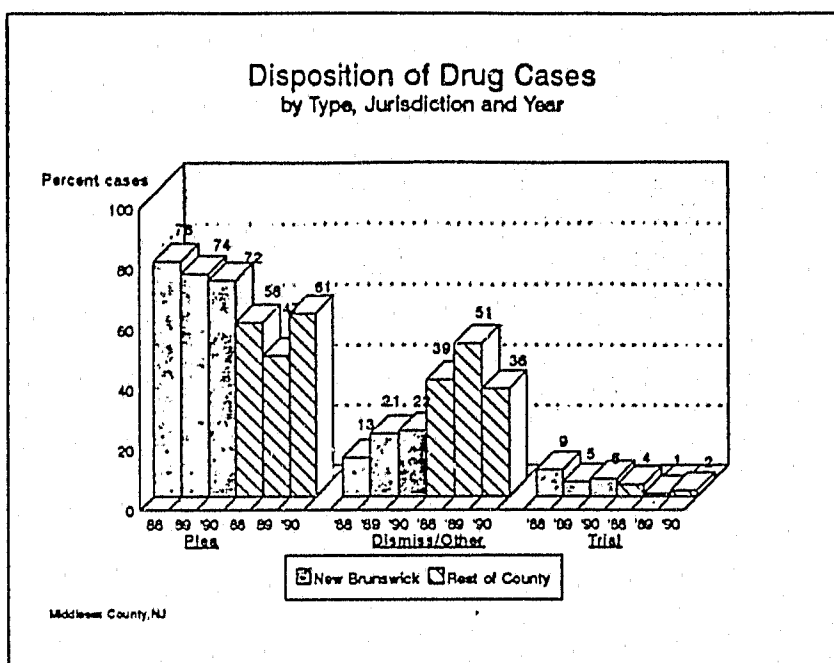


EDCM reduced the volume of cases going into grand jury because the program placed a strong emphasis on negotiated dispositions at the pre-indictment conference prior to grand jury presentation.

Types of dispositions

The EDCM program did not change the dispositional pattern of cases. Comparing dispositions occurring up to 21 months after the calendar year began from 1988 to 1990 in New Brunswick, there was little change especially from 1989 to 1990. For drug cases in the rest of the County, some changes occurred but with no discernible trends. During the EDCM program year of 1990, 5 cases were found not guilty, 59 were dismissed, 621 were convicted, and 320 were sentenced.

Figure 11



Sentencing

The distribution of sentences reflects the link between the resources provided by the community network and the policy of the court to tap into these resources. A full range of the different probation modalities was used.

Of the 514 defendants sentenced, only one third (171) received custodial sentences. If we assume that the overwhelming proportion of the custodial sentences were imposed on Track A cases which numbered 282 dispositions, then this suggests that a maximum of 40 percent of the Track A cases were negotiated to dispositions that did not involve incarceration. This proportion may decrease over time however, because not all disposed cases were sentenced by the end of the calendar year.

Table 7
Distribution of Sentences Imposed in 1990

Sentence	Number	Percent
Total	514	100.0
Probation	338	65.8
None	17	3.3
Treatment committee	108	21.0
Job Placement committee	66	12.8
Monitoring committee	88	17.1
Community service	59	11.5
Custodial	171	33.3
MCACC	60	11.7
State institution	111	21.6
Pretrial Intervention	2	0.1
Probation only	3	0.1

Effect on inventory

The results of the first year of operation indicate that the system has not yet started to reduce its inventory. This state is reached when the number of cases disposed in a year is greater than the number accepted for adjudication. Achieving this suggests a program goal for EDCM programs in general.

Effect on jail

The maximum jail population is 1,000. At the time of the evaluation, the population was approximately 900. Even though the EDCM cases impose shorter jail bed demands, this may be offset by the court's practice of setting high bonds. The combined effect of reduced time in detention and high bond setting should be determined. The present data collection system does not allow for this type of assessment.

Of the 138 defendants disposed during the program year, 57 or 41 percent were detained at the Middlesex County Adult Correctional Center (MCACC) at the time of disposition.

Continuances

Process Step	Track A	Track B	Track C	Total
Pre-indictment Conf.	166	49	2	217
Grand Jury	0	0	0	0
Arraignment	7	0	1	8
Disposition/Trial/Conf.	0	0	0	0
Total	173	49	3	225

One objective of the EDCM program was to reduce delay caused by continuances. Previous studies (Jacoby et al. 1986) have indicated that continuances can increase court, prosecution and public defender workload by 15 to 30 percent. In the drug court, most of the continuances (77 percent) were granted to Track A cases; 22 percent were for Track B cases, and one percent for Track C cases. It was not possible to determine whether this represented a reduction from drug cases processed in previous years.

Three out of four continuances occurred at the pre-indictment, judicial conference and almost 60 percent were based on the defendant's request due to scheduling problems. The second reason for continuances (19 percent) was caused by the prosecutor waiting for additional police documents. The third and fourth reasons (7 and 6 percent, respectively) were because the defendant failed to obtain an attorney or the case was postponed by the prosecutor. Interestingly, even though the issue was subject to intense discussion in the planning stages, the requests for continuances pending motions to suppress were very few.

Results of Track Assignments

Track A - Mandatory Incarceration

Sixty percent (or 416 cases) of the 1990 EDCM cases were assigned to Track A. For cases disposed in 1990, the median age at disposition for these cases was 49.9 days, well below the time-line set by the program. Furthermore, most of these cases were disposed by a plea negotiation that occurred early in the adjudication process. (65 percent of the 282 dispositions occurred at the pre-indictment conference). In the program year, only 16 cases, or 6 percent, were disposed by trial and another 8 percent were disposed at the post-indictment conference.

Table 9
Results of Track Assignments
(as of December 31, 1991)

Track	Number		Percent* Disposed	Median days to Adjudication
	Assigned	Adjudicated		
Track A	416	282	17.9	49.9
Track B	242	209	17.6	17.6
Track C	40	37	2.1	92.0
Total EDCM**	698	528	37.6	

* Percent of total caseload disposed in program year

**157 Non-drug cases were also assigned to EDCM court

The cases in Track A accounted for slightly more than 3 out of every 4 continuances (76.9 percent), but almost all of these (96 percent) occurred at the judicial conference which suggests the intensity of the plea negotiation at this point.

Not surprisingly, the largest proportion of pre-trial detainees were in this track (93 percent). The reductions in time to disposition achieved by EDCM should have a visible effect on increasing the number of jail beds available.

Track B - Non-incarcerative Cases

Almost 35 percent of the EDCM cases were assigned to Track B. The time line for these dispositions was set at 30 days from arrest. The median age in 1990 for these cases at disposition was 17.6 days.

As was planned, almost all of the 209 case dispositions occurred at the judicial conference (196 cases). The balance (13 cases) were dismissed. A few required continuances but this amounted to only 22 percent of all continuances (the bulk of continuances were used by Track A cases).

Because of the nature of these cases, few defendants were detained pretrial (only 11 percent); the remainder were either released on bail or ROR.

Track C - Grand Jury Indictments

The 40 cases assigned to Track C are the rejects from Track B, i.e. cases that could not be negotiated and would be indicted by the grand jury and set for trial. They represent 14 percent of the initial settings for Track B. This track was given a 90 day time-line; the median case age at disposition in 1990 was 92 days.

One could view the performance of these cases as reflecting a more traditional court adjudication process - where exits are spread over the full range of the adjudication. Of the 37 dispositions, 30 percent were dismissed, 27 percent went out at arraignment and 35 percent were disposed either at trial or at a post-indictment conference. Since these cases have very similar expectations as Track B cases - non-custodial or short term (up to one year) jail sentences - future analysis of these cases may be helpful in identifying the factors that caused them to change to a Track C status.

In September, 1990, the program was expanded by accepting drug cases from three additional townships, Perth Amboy, Edison and Woodbridge. The result of this event was to place great stress on the capacity of a single courtroom.

Conclusions

The success of the program is the result of a virtual 'marriage' between the defense and prosecution. *Alan Rockoff, Prosecuting Attorney, Middlesex County.*

New Brunswick's EDCM program came close to achieving the demonstration program goal of integrating the adjudicatory process with treatment. It did this by emphasizing the role the community plays in controlling drug activity and merging their resources into a judicial case management system. Like most new programs, however, this one has both strengths and weaknesses in its operations.

The close cooperation between the court, prosecution and defense services which is essential to good case management has been achieved through a combination of good will and careful planning. It was obvious during the visit that the key players are delighted with the new spirit of cooperation that has resulted from the implementation of the new program. This recognition of mutual interests and the merits of working together for a common goal appears to be a new and refreshing change in the relationship of these two offices.

In the past, these offices have not had a history of close cooperation. As is the case in many jurisdictions, the adversary nature of the criminal process had led to an unwillingness to share information to facilitate the smooth handling of cases to the mutual benefit of all the participants, and to the end of reaching a more prompt and just result. The advent of the EDCM program has done much to resolve these conflicts and to promote a willingness to respect the point of view of the other side.

Among the results of the new relationship between the attorney's offices is the practice of no longer "penalizing" the defense for the filing of numerous motions to suppress evidence in drug cases. This practise had before further backed up the system through the motions themselves and also through the resulting need for more trials and delay for failure to come to a reasonable and just disposition of

the case. The accommodations accorded to EDCM cases is a laudable start toward resolving these problems.

Interestingly despite the expectation of numerous pre-indictment motions to suppress, there have been fewer than ten requested and fewer than five heard. Possible explanations for this include high quality police work, early discovery, well-written reports, addressing search and seizure problems at plea bargaining or before, discriminating reviews of such issues by defense attorneys, and the fact that most motions to suppress have little merit.

From the police standpoint, the program appears to enjoy considerable support. Because there is a policy for high bail, and a time from arrest to disposition that ranges from 1 week for a plea to 2 months for a trial. The police see fewer "revolving door" defendants out on the streets. The police accept the program as an opportunity to make a significant impact on drug trafficking in the area without an increase in their resources. They are also impressed with the reputation that the program has achieved on the street. They believe that it provides a deterrent effect, based on *Judge Nicola's* reputation, not only on those who have already become involved in the system, but also on those who are inclined to involve themselves in drug trafficking.

Perhaps most important of all, the EDCM program is viewed as satisfying a long-standing need for a case management system that would provide a quick response to criminality, particularly drug crimes, and a certainty of serious sanctions to achieve a deterrent effect. By relying on the pre-trial or pre-indictment diversion of offenders, it has shifted the dispositional emphasis of these types of offenders to the appropriate point in the adjudication process - the front end.

Unresolved Issues

There are, however, some as yet unresolved issues that may pose problems to the future success of this program. These need to be discussed as they pertain to the planned expansion of the program to three additional towns and to the future expansion of the program to include all types of offenses.

Mandatory Minimums - School Zone Legislation

One of the major factors that supports the expedited disposition of drug cases is the fact that most of the major drug-selling areas in New Brunswick are within 1,000 feet of a school. This results in most defendants charged with distribution facing a mandatory minimum sentence of three years before becoming eligible for parole. The prosecutor is usually willing to bargain a reduced minimum parole eligibility from one to two years. Perth Amboy's school zone situation is similar to that of New Brunswick. However, absent similar school zone situations, other jurisdictions will not benefit from this bargaining chip, and alternative negotiating points might have to be utilized.

Single Courtroom

To date, the EDCM program operates in a single courtroom with a single policy supported by a single administrative unit. With the program expansion to three other towns, the policy direction and administration has become more complex. If the program is extended to include all offenses or to more than a single courtroom, even more complexity will be imposed on the program. Without the development

of written procedures and policy guidelines, any extension may be in danger of failure. This program depends so intensively on the coordination of procedures between law enforcement agencies, the courts, the prosecutor, public defender and probation that as soon as the unit is expanded beyond its present size, it will have to be given management and operational support beyond what is presently available. A preliminary planning process should be initiated to take these new complexities into consideration. Special attention has to be given to developing coordinated police reporting procedures in the communities to be added. It is important that the police understand the goals of the program so they can actively support it operationally.

Community Network and Resources

The community network supporting the program is a direct result of the efforts of *Judge Nicola*, and is largely due to his unique ability to mobilize community support because of his background and close ties to the community. This aspect of the program may be hard to duplicate in other locations where the Judge is not as well known and attitudes for community involvement not as positive. There is some concern that the expansion of the program to other municipalities within Middlesex County may find it difficult to mobilize the community support that has emerged in New Brunswick. That is not to say that this aspect of the program is not important and worth attempting elsewhere, only that its transfer may be difficult without this type of leadership and community contacts.

In the same vein, after the initial rush of volunteers, the Probation Department may have difficulty maintaining a volunteer pool for the various monitoring assignments. To maintain an adequate supply of volunteers is time consuming, and the program is still too young to determine the staying power of community volunteers, particularly after *Judge Nicola* is no longer involved.

Furthermore, there has been little progress in providing educational and vocational training for convicted defendants. At question is whether in reality these services can ever be provided to drug dependent felons who are on probation absent some incentives. No one questions the value and worth of this part of the program, what is questioned is whether it is possible to make it operational in terms of the program's present structure.

Extension of Program throughout the Court

Whether this program can be extended beyond drug cases to include all cases is questionable. The drug court operates now as a virtually "separate" court system. There is no question that the experience to date in dealing with drug cases has been successful. However, this does not ensure that this case management concept will be adopted by the rest of the court. The participants in the process expressed confidence that the program is likely to survive the departure of *Judge Nicola*. However, they were unsure of its form and its ability to be extended to other cases. Indeed, some thought there might be outright hostility on the part of the other judges and staff outside the program. Obviously, these concerns must be addressed now so that when, inevitably, the funding is terminated, a cohesive and survivable system will remain.

The police are also concerned about the inability of the system to deal with juvenile drug traffickers. Both police and prosecutors have expressed concern about the lack of male role models and positive community leaders within

minority populations in New Brunswick. Since the program depends, to a large extent, on diverting offenders to community resources for rehabilitation, this problem needs to be addressed if it is to be extended to juvenile offenders.

Aside from these issues, many of the participants believed that an expansion of the program's jurisdiction to juveniles should be considered. As a result of the crackdown on drug-related activities by adults through police and court efforts, there has been an increase in the incidence of juvenile activity as they move in to fill the void. Those interviewed expressed great concern that unless changes are made to the system to accommodate this new element, the incidence of drug traffic on the streets will likely remain constant despite the best efforts of the adult criminal justice system, and may even increase. The legislature has already attempted to address the problem by creating mandatory sentencing for those adults who solicit juveniles as participants in criminal activities. However, the problems of juvenile gangs, an issue of particular importance for this region, are not resolved by this type of legislation.

MARION COUNTY, IN. EDCM PROGRAM

Marion County (Indianapolis) IN

* Funded: \$145,000

* Three plans (tracks) for felonies

PLAN 1 - Simple cases, single defendant,
no motions, simple analysis, suspended sentence

PLAN 2 - Standard track, stop and search issues,
prior felony record, delivery less than 3 grams

PLAN 3 - Complex cases, multiple defendants,
large seizures, complex suppression issues

* Plan assignment by prosecutor and defense counsel

* July 1990, additional judge and court planned

* Expansion to misdemeanors uncertain.

Background

Indianapolis and Marion County, Indiana are a unified governmental agency by virtue of legislation passed several years ago. The combined population is 1,229,000. The court organization reflects this City/County combination, and is funded primarily by the general governmental appropriations of the combined units. Certain costs, however, are provided by the State of Indiana, notably judicial salaries and some related expenses.

The Court system is composed of the Marion County Superior and Municipal Courts. The Superior Court has original jurisdiction in all statutory violations, some appellate jurisdiction from the Municipal Court, and Civil and Probate matters. A total of 15 judges are currently sitting in Superior Court, of which 6 are assigned to criminal work on an individual calendar basis.

The Municipal Court, with a total of 16 judges, has original jurisdiction over all misdemeanors, infractions and traffic violations, all civil matters under \$20,000 and landlord/tenant disputes. It also has concurrent jurisdiction with the Superior Court in Class D felonies. The Municipal Court currently has 9 judges assigned to criminal cases on an individual calendar under the supervision of a *Presiding Judge Evan Goodman*.

One of the significant differences between the two courts is the lack of a designated leader at the Superior Court level. The title of Presiding Judge of Superior Court is an honorary one which is rotated yearly. Coupled with the fact that the Superior Court has no court administrator, there is a real void in leadership and administrative infra-structure. This has been partially offset by the creation of an outside agency, the Marion County Justice Agency which has

undertaken to provide some administrative backup to the court in the form of data processing, pre-trial services and other non-judicial responsibilities.

The prosecutor's office has a staff of 65 attorneys; 24 are assigned to Superior court, and 21 divide their time between Municipal court misdemeanors and D felony courts. Six prosecutors handle major drug cases involving large amounts or conspiracy. Six prosecutors handle sex crime cases; 4 attorneys are assigned to screening.

Indigent defense services are bifurcated between the two courts. A Public Defender's office services the Municipal Court but at Superior Court, the judges hire "their own" defense counsel for the courtroom. There are five attorneys per courtroom. There is no single administrator in charge of making policy for Superior Court public defenders. In all, approximately 80-85 percent of all criminal cases warrant indigent defense services.

Municipal Court has jurisdiction over misdemeanors and class D felonies. In 1988, there were 1570 class D felony cases of which 381 (24 percent) were drug offenses. In Superior Court in 1989, some 2,592 cases were filed, of which 395 (also 24 percent) were drug cases. It appears that the drug case problem is equally a matter of concern to both courts. The Municipal Court has divided its caseload so that of the 9 courts assigned to criminal cases, 2 are assigned to D felonies, the remainder handle misdemeanor cases from the city and suburban areas.

Felony cases are initially filed in the court in which they will be ultimately heard as opposed to the practice in many jurisdictions in which all criminal cases originate in the lower court, the serious felonies being later sent to the general jurisdiction court after probable case hearings. The independence between the two courts is derived from this jurisdictional separation. After initial appearance, the matter is set on the trial calendar. Omnibus hearing motion cut off dates are set by court rule, however they are rarely enforced by the court, and adjournments are routinely granted.

Pre-trial Services operates under the auspices of the Justice Agency. The results of interviews of arrested defendants is provided to the court at first appearance for bail decisions. The judges of the Superior Court have also provided release criteria to the pre-trial service officers so they can be applied prior to court appearance. Pretrial release services also include monitoring for drug use and reporting to the court about violations on bond conditions. The scientific lab which analyzes narcotics is able to analyze drugs "almost instantaneously".

The Marion County jail, administered by the Sheriff, is the primary penal facility for pre-trial detainees and convicted defendants serving sentences of less than one year. The county jail is operating under a Federal Court imposed consent decree of 1120 prisoners in the jail and 198 in lockup.

History of the EDCM program

In 1986, drug cases comprised only 8.6 percent of the court's criminal docket. In 1989, the number of drug cases grew to 30 percent of the docket. In response to this increase, the Superior and Municipal Courts of Marion County filed an application with BJA for funding under the EDCM program. While the grant application was

initially a cooperative effort between the two courts, the program that evolved was administered by the Justice Agency and designed for use by the Superior Court.

New projects of this nature sometimes require the project director to be aware of good marketing techniques. It is imperative to educate everyone involved and make the goals and objectives of the program very clear.
Judge Ronald J. Taylor, Chief Circuit Judge, Berrien County, MI

The program originally envisioned a tracking system which would expedite the drug caseload in both Superior and Municipal courts, but in the end a drug court for A, B, and C felonies was established and was operated by Superior Court Magistrate Judge *Jay Haggarty*.

The parties to the initial EDCM meeting at American University were County Prosecutor *Steve Goldsmith*, Municipal Court Public Defender *Eric Koeselke*, *Paul Galloway* from JUSTIS, a part of the Justice Agency, Judge *Evan Goodman*, Chief Judge of Municipal Court, and Judge *Patricia Gifford* Presiding Criminal Judge, Superior Court. The parties left Washington D.C. with the best of intentions, but the subsequent meetings in Indianapolis deteriorated as the parties bogged down on separate agendas. Nonetheless, EDCM was initiated and the court began setting dates based on the tracks.

In the EDCM program's first three months (January - March, 1990), track assignments were made by the prosecutor with agreement from the public defender and the cases were assigned to the six criminal judges in Superior court. The case assignment procedure for the court was to assign each judge a batch of 50 cases. The EDCM drug cases were included in the batches. Criminal judges were expected to honor the time limits set by the tracks in addition to handling the balance of their dockets. The dual docketing systems created numerous conflicts in establishing the priorities for case management. Clearly, both court docketing systems, the old and the EDCM, could not operate in tandem.

During this time, an attempt was made, independent of the EDCM program, to establish a drug court. In June, a Superior Court Drug Magistrate was designated by the court to handle only drug cases. However, the magistrate died three months later in September and his cases were returned to the Superior Court judges' dockets.

It was not until January, 1991, a year after the program officially started, that a new Drug Magistrate was appointed and began handling cases. He started with a clean slate. However, the new magistrate was not assigned a courtroom and was able to hold court only when a Superior Court judge's courtroom became available. The Drug Magistrate also used civil judge's courtrooms when available. Renovation of a new courtroom for the Drug Magistrate was finally approved and it was expected to be completed in 3-6 months.

The inability of the court to process two docketing systems simultaneously, and the delays and problems encountered in attempting to remedy this by creating a drug court, in addition to other factors resulted in the termination of the grant by BJA in 1991. Even though the program did not come to fruition, its development has provided valuable insight to this evaluation by identifying many of the causal and contributing factors to its demise.

Description of the Proposed EDCM Program

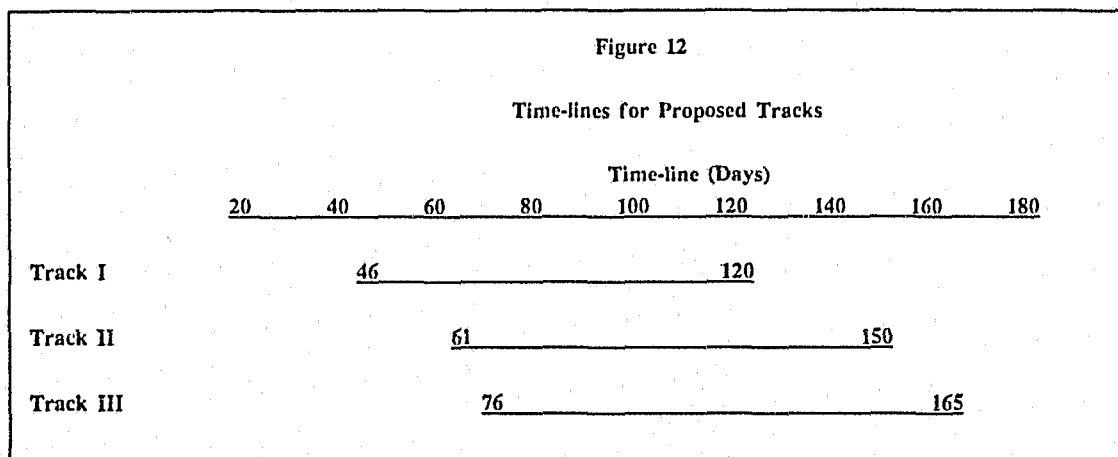
The EDCM program designated three tracks for drug cases and time frames for dispositions as follows:

I - SIMPLE: Single defendant, no motions, no record, simple drug analysis. Disposition between 46-120 days.

II - STANDARD: Search and seizure issues, prior record, non-suspended sentence, B felony non-mandatory delivery of less than three grams, or A felony Delivery of more than three grams. Disposition between 61-150 days.

III - COMPLEX: Search warrant, large seizure, multiple defendants, conspiracy, on-going investigation, confidential informants, potential prison sentence. Disposition between 76-165 days.

The dates established for the tracks are relatively meaningless since there is so much overlap between them, cases can flow from one track into another without any differentiation, e.g. Track I cases can be disposed within the same time frame (46-120 days) that Track III cases use (76-165).



The new EDCM drug docket was initially superimposed on the existing Superior Court criminal docket. As a result, the drug cases that were scheduled according to the tracks, routinely conflicted with other cases. It was not unusual for a drug case to be scheduled within track time limits, on the same date as a previously scheduled rape, robbery or murder case. On trial date, the judge and attorneys were faced with a dilemma: keep the drug case on track and adjourn the more serious case; or adjourn the drug case. In most instances, the drug case was adjourned.

With little planning, inadequate testing of the validity of the times established for each track, and confusing policy and procedures for processing cases within tracks, the court could not respond to the objectives of the program. For example, even if earlier court dates were available, judges would not schedule an earlier date if it did not fall within the appropriate range set by the track.

The prosecutor's office appeared to give lip-service to the program. Defense attorneys complained that the prosecutor did not establish a plan or a policy for dealing with drug cases other than imposing a restrictive plea policy on the attorneys. Prosecutors were not assigned to the drug court. Rather, the drug cases

were intermixed with the regular dockets of the attorneys. As a result, prosecutors gave priority to their more serious cases. Accountability in the form of adherence to the tracks' time-lines was not a problem since they were so wide as to be relatively meaningless. Many attorneys observed that there was no discernible difference between the way cases were handled before EDCM and after. Within this environment, the EDCM program fizzled.

A big mistake was to include both the Municipal Court and the Superior Court in the program since in this jurisdiction, the courts are independent of each other and derive no benefit from working together. The criminal dockets are, for the most part, exclusive to each court.

Strangely enough, the fact that the EDCM program reduced each Superior Court judge's criminal docket by almost one quarter by transferring the drug cases to the drug court appeared to provide little incentive for the judges to assist the program, either by accommodating to the track schedules or by making courtrooms available for drug trials. The independent nature of the bench was never so clear as in this area.

The sad conclusion is that where there is neither a professional court administrator in house, nor a management-oriented Presiding Judge with authority, any serious efforts to reform systems of caseload management are probably doomed to failure.

V. PROGRAM DEVELOPMENT: ISSUES AND IMPLICATIONS

RESULTS OF EDCM PROGRAMS

Results of EDCM Programs after 18 Months	
REPORT CARD	
Jurisdiction	Program Results
PHILADELPHIA	A+
NEW BRUNSWICK	B
MARION COUNTY	F

The different grades on the report card indicate that there are underlying factors that affect the success of these programs. In this section, the factors that have played an influential part in the development of these programs and have contributed to their results are identified and discussed. The lessons learned from each of the sites can be synthesized to provide cumulative knowledge for other jurisdictions.

For clarity, we have categorized the factors into three classes: those that contribute to failure; those that impede success and those that produce remarkable results. Although some of these factors merely reflect a state of being either present or absent, nevertheless, they are treated separately because of the dynamic way in which their presence or absence affects the program.

FACTORS CONTRIBUTING TO FAILURE

Factors Contributing to Failure
<p>1. No Infrastructure to Support Program</p> <ul style="list-style-type: none"> Chief Judge honorary position No court administrator No public defender organization
<p>2. Lack of Policy Direction and Control</p> <ul style="list-style-type: none"> No charismatic leader
<p>3. Program Coordination and Administration External to the Court</p> <ul style="list-style-type: none"> Program direction administered by outside agency No authority over court, public defender or prosecutor
<p>4. Court has Capacity to Process Drug Cases</p> <ul style="list-style-type: none"> Not in a crisis mode Track time-lines set too high

Infrastructure

It should be obvious... that internal court management is an absolute necessity to appropriately take advantage of new and innovative caseload techniques. *Ronald J. Taylor, Chief Judge, Second Judicial Circuit, Michigan*

The need for an infrastructure is clear in hindsight. EDCM programs are complicated in their requirements for communication and coordination. The variety of procedures and operations, resources and special equipment needs cannot be satisfied by persons who do not have the authority to make changes. Therefore, there has to be a policy maker and authority figure who can authorize the necessary changes, and an administrative structure to provide support.

Experience has shown that many times a court can make do without the help of a full-time professional administrative staff if it has in place a strong presiding judge who is concerned with effective administration and takes a hands-on approach to the management of the court's business. Where there is neither a professional court administrator in house nor a management-oriented presiding judge, any serious effort to create new systems of caseload management are probably doomed to failure.

Policy Direction and Control

All new programs produce some resistance to change which has to be recognized and overcome. This calls for a leader who has the authority and ability to set policy, move the development of the program forward, and control its operations so that it remains focused on its original objectives.

In Marion County, there was no effective judicial leadership. At the Superior Court level, the title of Presiding Judge is an honorary one that is rotated yearly. Without a leader, there is simply no way to overcome the innate resistance to change and to forge ahead with new reforms and innovations. The leader is essential in the planning and development stages. As these programs mature, the need for these charismatic leaders diminishes, being replaced by a need for administrative leaders.

Program Coordination and Administration

All parts involved in the program have to share the same goal of rationalizing the court process and adopting a system-wide cooperative effort to expedite the way cases are processed.

The EDCM program in Marion County was poorly planned, and implemented before the parties understood or agreed to changes in the system. There were no cooperative agreements among the court, prosecutor's office and defense bar. Part of this was due to the absence of a centralized court administration, another part by the independent, contractor type of system operating in Superior Court whereby the defenders work for a single judge rather than a single administrator.

Before an EDCM program can be implemented, there must be a commitment by the prosecutor and public defender to cooperate and to provide adequate staffing to any EDCM courtroom. Before implementing an EDCM program, the key parties must meet and identify the relevant issues and agree on solutions.

Since the changes required extend beyond the courts, there has to be an organizational entity that can coordinate policy with the prosecutor and the public defender in addition to the police and jail. Although the basic fundamental principles of caseflow management remain the same, DCM/EDCM demands more up-front cooperation, more attention to detail and a much finer tuning of the system. This requires strong administrative resources to negotiate agreements and retain policy control.

It is also apparent that these resources should be internal to the court or the prosecutor, and not external such as was the case with the Marion County Justice Agency if credibility and authority are to be maintained.

In transferring administrative control and program direction to an external agency, the project director's power and credibility with the courts is reduced. Perceived by all the parties as an outsider, there was little force of authority to support the program. This produced a weakened base for the project director who attempted to coordinate and administer the efforts of the various departments and solve the problems associated with implementing this program in Marion County.

Court Capacity

If the court is not "hanging by its fingertips", there is no impetus for change. *Edward C. Ratledge, University of Delaware*

DCM and EDCM programs were created in response to the courts being overwhelmed by the sheer volume of drug cases entering each day. With courts and jails moving into a crisis situation, the spark for basic reform in court docketing philosophy and systemwide coordination and cooperation was ignited into a successful program. If court capacity is not stretched beyond its limits, as it appears to be the case in Marion County, then the incentive for making these profound changes may not be enough to sustain interest and program operations.

One indicator of whether a crisis in the courts exists perhaps can be found in the types of criteria used for establishing tracks and the time-lines set for them. For example, Philadelphia's criteria were tailored to court processing steps, i.e. early dispositions, mid-range negotiated dispositions, and late, trial dispositions. New Brunswick's criteria centered on the sentencing component with the assumption being that non-incarceration cases could be disposed more quickly than those facing incarceration. Each jurisdiction set time-lines that reflected the earliest achievable times or goals for disposition. Marion County, on the other hand, created tracks based on the complexity of the case rather than dispositional routes. The time-lines set acted more as speedy trial caps, not to be violated, than goals to be achieved. The difference is subtle but important.

FACTORS IMPEDING SUCCESS

Factors Impeding Success	
1. Burn-out of Leader	
2. Insufficient Program Planning	Try too much, too soon Expand too quickly
3. Inadequate Administrative Support	No added resources: judges, court clerks, or other personnel Reliance on volunteers with no administrative support structure
4. Management and Operational Procedures Deficient	Little monitoring of inventory, time-lines, tracks Judges retain trial dockets
5. Institutional Supports not in Place	Difficult to transfer leadership

Burn-out of Leader

The irony of the EDCM program's success is that the leaders who were almost single-handedly responsible for success were susceptible to burn-out, and could have caused program failure. In both Philadelphia and New Brunswick, the leadership and energy of Judges *Davis* and *Nicola* made these programs work. But a year later, both judges were suffering and the programs were in potential jeopardy because of the intense effort associated with this major court reform.

The lesson learned is that these types of programs need intensive leadership during their developmental phases, but they also must be capable of switching to a more low-key style of leadership and management after they have become operational. This experience highlights the need for the developing institutional supports that will schedule and allow for the transfer of program direction from one judge to another.

In Philadelphia, the judge designated to replace Judge *Davis* one year later, was selected for his fairness and honesty and for his acceptability to both the prosecution and defense. Judge *James Fitzgerald* sat on the bench with Judge *Davis* for a week, learning policy, procedures, and operations. As a result, the transfer of authority and leadership was smooth. In the meantime, Judge *Davis* moved from arraignment court to the trial courts where his influence was used to extend the EDCM program principles to this part of the adjudication process.

By the end of the year, Judge *Nicola* in New Brunswick was coping with an expanded program, an increase in the number of trials (which, unlike Philadelphia, were handled in his court) and the demands of overseeing and expanding the volunteer community network. At the October, 1990 Judicial Conference meeting, a state-level Task Force on Drugs and the Courts recommended, among others, the expansion of the Middlesex project state-wide. Judge *Nicola* believed that the planned expansion was premature without more extensive planning and requested

reassignment. The judge assigned to replace Judge *Nicola* did not have the opportunity to sit on the bench with Judge *Nicola* to absorb the program's philosophy and procedures. As a result, it can be expected that the program will take on a new or modified character depending on the philosophy of the new judge, and her interpretation of the program's goals and procedures.

Insufficient Program Planning

EDCM programs require extensive and continuous planning. If this process is not given enough time so that negotiations and agreements can be obtained between agencies affected by the program, the very cornerstone of the program's success may crumble. The planning process establishes an up-front summary agreement on how a group of specified cases will be handled by all sides. To achieve a workable agreement might require a lot of effort, many meetings, commitment and persuasiveness. But establishing these agreed-upon criteria also takes away the need to go through these negotiations in every single case, thereby making more efficient use of attorney and court time and resources.

These agreed-upon classification criteria and priorities are the basis for the development of different processing tracks. Each track has to be developed along the court events involved and time-frames have to be established for each individual step. Again agreement has to be achieved for the development of a plan that indicates the work steps and time frame for the different tracks.

Planning can be insufficient at the beginning of the program if meetings and work groups are not established and maintained. It also can be insufficient after the first blush of success. In New Brunswick, where success was obvious and the excitement about the program was contagious, a decision was made by the Judicial Conference to expand the program throughout the court and to other jurisdictions without sufficient planning. The program was simply too new to be able to sustain this type of effort, particularly since the management and administrative supports were not yet firmly established.

Inadequate Administrative Support

Program administration and support was delegated by the AOC to the local court system. A case manager was assigned to the drug court and he developed a monitoring system for EDCM cases based on his own initiative. However, funds were not available to support additional full-time, administrative staff for case management and tracking. As a result, the local court administrators simply could not be as responsive to the needs of the program. Many of the small but essential responses, like providing extra clerks as needed, giving priority to the availability of copy machines or fax machines, adding file cabinets and setting up record-keeping systems could not be satisfied. Overall the support was inadequate for the complex changes that were being introduced in the court.

Similarly, the use of a volunteer community network is commendable. But in the long-run, it may prove unworkable if administrative supports and some salaried positions are not provided to maintain operations, interest and continuity in the program.

Management and Operational Procedures Deficient

There are a variety of management systems that should be in place to support these programs. They include the management of personnel, information and records, supplies and equipment. Each site experienced tremendous demands in these areas because the efficiency of the operations depended on the efficiency of the management supports. As a result, there has to be sufficient clerks, attorneys, judges, court personnel and in New Brunswick, community leaders just to process the paperwork and monitor the status of the program.

The attention given to EDCM operations in Middlesex County never reached the top priority status that it was given in the Philadelphia program. As a result, accommodations to the case load had to be made, the results of which are reflected in part by the high number of continuances granted.

The case manager assigned to the program divided the EDCM court management responsibility with the rest of the court's work. The procedures for case management in the drug court differed from the rest of the court. As a result, the case manager had to serve two masters.

In addition, Judge *Nicola* retained a trial docket. In Philadelphia, EDCM focused attention on dispositions in arraignment court. If and when cases were moved to trial status, they were sent to trial courts. The result was very clear in New Brunswick, a single drug court should not also have responsibility for conducting trials. It is simply too time-consuming for one judge.

Institutional Supports not in Place.

Finally, as we mentioned earlier, if these programs are not integrated into the court adjudication process, their philosophy and performance may change or even take on a new focus. The transfer of leadership and the education and training of others in the program's objectives and goals is an essential ingredient to success. Because the drug court was isolated from the other courts, because there were few meetings among the judges, and other court personnel about the program, it was viewed as "Judge *Nicola's* program" and its performance and ability to impact of the caseload problem was not appreciated by others who might some day be asked to take over program direction.

FACTORS PRODUCING REMARKABLE RESULTS

Ingredients for Success	
1. Strong Charismatic Leader	
2. Focus on First Part of System	First appearance and early dispositions Planned transfer to trial phase later
3. Court Administration Leadership	Education and training Daily monitoring of tracks and case status Daily problem-solving Mid-course corrections possible Dedication of resources
4. Active Commitment of Prosecutor and Public Defender	Change in plea bargaining policy Changes in open files and discovery policies
5. Well Coordinated Operations	Computerized system for tracking case status Strengthened operational interfaces: crime lab, jail, probation

Strong, Charismatic Leader

The need for this has already been discussed. In Philadelphia the adversarial parties were brought together and kept together during the life of the EDCM program by the leadership of Judge *Legrome Davis*. In New Brunswick, the program developed because of Judge *George Nicola*. In Marion County, no one was able to assume this role.

To institute court reform, there must be visionaries who can see how to do things differently. These leaders must be enthusiastic, have the ability to motivate others and cause them to join in. They also must have a reputation for fairness and objectivity in order to be able to deal with persons who have substantially different interests.

Focus on First Part of System

Successful reform strategies start small, show successes and cautiously expand. By focusing only on one court that had the potential for disposing of many cases quickly, the EDCM program required only one judge during its developmental stage. The early successes and the opportunity provided to all participants to change and correct, kept interest and motivation high. The knowledge gained from this experience could later be used to extend the program to the trial courts. The premature expansion of the program which contained all steps in the adjudication process to three townships in Middlesex County placed unnecessary strain on the program before it was ready to handle the increases.

Court Administration Leadership

Education and training provide the backbone for the institutionalization of programs. Judges, court personnel, attorney's and attorneys' staff should receive training about the purpose, goals, rules and procedures of the DCM/EDCM program. In Philadelphia, for example, the defense bar was educated about the tracking system and its procedures by published changes in legal newspapers. Additionally, court staff met with the criminal bar to explain the new program.

The position of an EDCM Case Manager in the Court Administrator's office is needed to coordinate all the steps towards case disposition. This may include pretrial release screening, indigency determination, case review and track assignment, monitoring the case process to assure compliance with the program goals, and coordinating with probation activities.

The case manager may also monitor the level of resources dedicated to the program and make adjustments as needed. For example, the higher caseload in arraignment court created a need for more clerks in that court. Similarly, the information gathering and sharing needs called for additional personnel for information processing.

Active Commitment of Prosecutor and Public Defender

EDCM programs would be impossible to operate without the active cooperation of the prosecutor and public defender agencies. The District Attorneys in both jurisdictions agreed to assign senior attorneys to screen cases immediately upon filing, to authorize plea negotiation of cases, and to provide early discovery to defense counsel, and timely grand jury indictments.

The public defenders also assigned senior attorneys to screen cases immediately upon assignment and to enter into realistic plea negotiations as soon as discovery was complete. They also agreed to limit motions to those situations in which genuine issues exist.

Well Coordinated Operations

Another reason for the success of the Philadelphia program was the fact that the court maintained continuous control over the management of the cases. The case tracks provided clearly defined and realistic time standards for the disposition of cases. Events were scheduled within short time limits. The court administrator reviewed all cases that were scheduled off-track, immediately made efforts to identify the cause of any delay, and, when appropriate, moved the cases up the docket to ensure their disposition within the allotted time.

Early dispositions require sufficient information to make sound decisions and reach early agreements. This requirement places an enormous burden on all parties in terms of information management, data entry and information exchange. Timely scheduling also requires increased data management and personnel. Additionally case information has to be monitored to assure program compliance. This requires adequate computer capability and improved computer communication between the Court, the prosecutor and the public defender service.

Although the DCM/EDCM program requires more personnel and data processing capability than the present docketing systems, much of the personnel costs can be

absorbed by reallocating resources working at the trial stage to the front-end of the system.

Implementation of the program has placed a considerable strain on staff resources. There has, however, also developed a sense of pride and camaraderie among judges and staff as a result of the process of developing the program and the accomplishments it has achieved. *Judge Legrome Davis, Philadelphia Court of Common Pleas.*

The DCM/EDCM introduces several new procedures and court events that need the cooperation of many parts of the criminal justice system. They include:

1. The court and the private bar working closely together in the planning process to overcome many problems and issues especially those stemming from fees, motions and discovery.

2. Assessing the needs of the probation office regarding additional personnel for supervision during pretrial and probation periods, especially if the program includes a treatment component or a large community network.

3. Educating law enforcement agencies with regard to their help in enforcing pretrial and probation conditions, and establishing close relationships with the probation office. Also working out ways to increase lab capacity so that tests are performed according to a priority classification system consistent with the tracks.

4. Working with the sheriff to develop plans for transporting prisoners and keeping up with the pace that the courts set. The need for equipment like fax machines and beepers become important to this part of the program.

5. Establishing expedited procedures with the pretrial release agencies and increasing the information they obtain to assist in the sentencing process.

The increased pace of activity created by EDCM brings to the forefront the essential character of this program, namely its coordinated approach to case management.

VI. KEYS TO THE SUCCESSFUL DEVELOPMENT OF EDCM PROGRAMS

The development of successful programs that extend outside a single agency or office are most likely to occur if the planners and developers pay attention to six program areas:

1. the *external environment* within which the program operates;
2. the *policy and planning* for development and implementation;
3. the *organization and structure* of the program;
4. the *management and administration* of the resources required by the program ;
5. the *operations* of the program; and,
6. its *coordination* with other agencies and offices outside the agency or court responsible for the program.

Based on the experiences of the DCM/EDCM programs, the keys to success can be found within each of these areas. They are summarized below in a checklist format.

EXTERNAL ENVIRONMENTAL CONSTRAINTS

The legislative and criminal justice system environments may have a significant impact on the development of DCM/EDCM programs. At a minimum, it is necessary to:

[] Examine the type of mandatory minimum legislation to determine whether it limits the discretion of the prosecutor to change or reduce charges and set plea negotiation procedures; or whether it can be used to effect conditional releases and treatment.

[] Review Federal court rules that may also impact the program especially as they address issues of jail overcrowding. If they dictate the release of defendants if they possess less than a specified amount of drugs (e.g. 2 grams for Philadelphia), they may play havoc with FTA's and bench warrants.

[] Look at the characteristics of the criminal justice environment to determine where to expect resistance to the program or constraints on its operation. This includes, among others:

- * The type of court structure, unified or bifurcated, to determine the scope of the program;
- * The type of indigent defense services, assigned counsel or public defender, to identify where coordination and policy agreements should be sought;
- * The number of law enforcement agencies and the quality of their arrest and investigation reports early in the adjudication process (e.g. first appearance);
- * The availability of drug testing facilities;
- * The capacity of the jail;
- * The extent of community resources, treatment and rehabilitation programs.

The external environment will color and set limits on the program, what it can achieve and how well. This report contains numerous examples of how the criminal justice environment has affected program development.

POLICY AND PLANNING

The more time and attention that can be given to defining the policy of the program and for planning for its development and implementation, the more likely is its success.

Some factors to consider are:

Have a strong administrative judge who can make assignments and use judges who are considered by defense and prosecutor to be fair and honest.

Identify the leader for the program including:

- * His or her priorities and policies
- * Reputation for fairness and honesty
- * Acceptability to defense and prosecution

Establish a working committee of representatives from the court, court administrator's office, prosecution, public defender agencies, probation, and others as necessary. Delegate the work among them.

Draw up and obtain commitments and agreements between all agencies affected by or participating in the program about:

- * Assignment of senior attorneys to courtrooms (4-5 per courtroom) and a rotation plan
- * The policies and procedures to be used for plea negotiations
- * The information available for early discovery and its use
- * Guidelines for the filing of motions

Educate the private bar and incorporate their concerns into the planning process.

Establish tracks and time-lines in collaboration with the court, prosecutor, public defender and court administrator.

- * Track criteria that are based on achieving early dispositions for cases that would normally be disposed early
- * Time-lines that are based on the earliest possible times to disposition.

Assume resistance to the program. Adopt a strategy that is based on the principle of starting small with early, visible successes. Examples might include:

- * Focus on arraignment or first appearance court
- * Start with just one court and expand later
- * Focus on the court having the potential to produce the most dispositions earliest in the adjudication process

[] Establish reasonable and measurable goals and plan for the publication of the results. Look at:

- * Volume of cases disposed
- * Average (or median) days to disposition
- * Reductions in pre-trial detention days

[] Set a timetable for activities

- * Weekly meetings of policy and planning committee
- * Agreements on policy and procedures
- * Authority to make adjustments to program once operational
- * Date for implementation.

[] Identify the resources and equipment needed by the court, clerks office, attorneys, bailiff and sheriff for transportation and security.

- * Overtime for clerks and a rotating assignment schedule
- * Copy machines and fax machines accessible to court and clerks
- * Number of attorneys and training in new procedures
- * Transportation and security requirements.

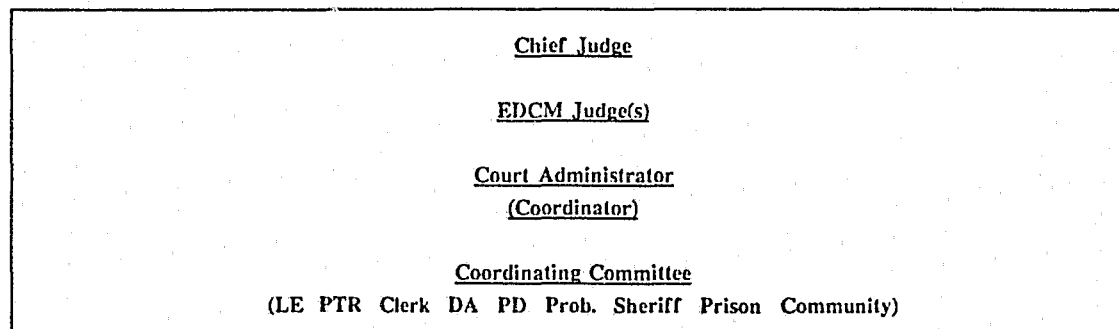
[] Start planning for the extension of the program throughout the court, civil and criminal.

ORGANIZATION AND STRUCTURE

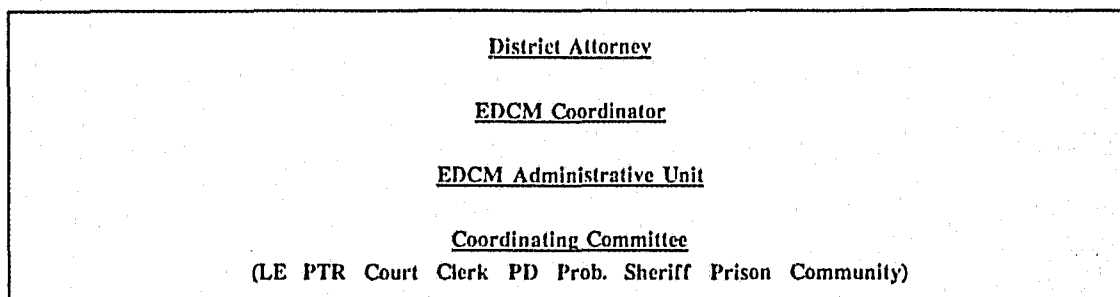
There are basically two different organizational models that could be used for this program: one is based on the assumption that the court is directing the program; the second assumes that the prosecutor has assumed policy direction and control. Although the prosecution model was not part of the EDCM program and has not been tested, it appears feasible and is presented here for consideration.

Organizational charts representing these two models follow.

1. Court Model



2. Prosecutor Model



The principles that each embody are:

Policy direction and control has to come from a credible leader, either the chief judge or the elected prosecutor.

A management administrative support structure has to be present and operate under the direction of the policy leader; either in the form of the court administrator or an administrative unit assigned to an EDCM coordinator in the prosecutor's office.

The administrative unit has to adopt a team approach for the coordination and collaboration with all participating and effected agencies or operations. This spreads assignments and delegates the tasks among many under the direction of the administrative unit.

MANAGEMENT AND ADMINISTRATION

The complexity of these programs and their dependence on cooperative and coordinated operations require professional administrative support. The following areas should be addressed:

Paperwork and Records Management

Establish an automated information and recordkeeping system that can monitor the status of cases on a daily basis and ensure that they are proceeding within established time frames. Do not assume that the present court docketing system can meet this need.

Let the computer perform as many of the clerk's duties as possible.

Design forms if necessary for use by police that contain information needed by the prosecutor and defense counsel, both offense information and criminal history. Modify the delivery and timing of the reports if necessary.

Determine the type, extent and timing of information needed from drug testing labs. For example, the first piece of information needed at first appearance may only be "Was it drugs?". Information about the amount and type may not be needed either at all or later.

Establish a priority classification system for lab tests requested and train lab in its use.

Personnel Management

[] Establish weekly, later monthly, team meetings with the participants in the courtroom to iron out difficulties and make adjustments to the program as needed. Meet with policy leaders if necessary.

[] Establish a recruitment and training program for judges.

- * through chambers meetings to educate the judges
- * through team meetings where back-up judges learn about procedures
- * through on-the-job training whereby new EDCM judges sit side by side on the bench with the retiring EDCM judge for one week.

[] Set up a personnel assignment schedule with established rotations to prevent burn out and provide for the training of other personnel in the program's policy and procedures similar to the judges' training.

[] Determine the number of clerks needed in the courtroom to complete the work (In Philadelphia, 3 clerks worked until 10 PM). Clerks should not be assigned for more than three months to EDCM courtrooms.

Supplies, Equipment and Facilities Management

[] Do not underestimate the costs of the program with respect to impact on clerks office, prisoner transportation and computer system upgrades.

[] Monitor daily, in the initial stages of operations, the needs of all the personnel (judges, clerks, bailiffs, prosecutors, defense counsel etc.) with respect to equipment, space and supplies. Give special attention to communication devices, e.g. fax machines, telephones and pagers

[] Use fax machines to overcome problems created by geographical distances and decentralized operations.

[] Examine the feasibility of using courts in the evening.

- *Involve the private bar, in addition to all the court participants.
- * Do not ignore overtime costs, union contracts or night-time differentials if they apply.

Evaluation and Performance Assessment

[] Develop an evaluation program to monitor progress on a monthly basis and the extent to which goals are being met. Submit these reports to policy leaders (Chief Judge, District Attorney, Public Defender, Sheriff, etc.) for their information. Disseminate summaries to the public and media.

[] Identify the areas for assessment. At the least, they should include:

- * reduction of the inventory with a goal of disposing more cases than are taken in.
- * earlier trial date availability created by a freeing up of trial capacity caused by earlier dispositions.

- * impact on the docket generally including more scheduling certainty, fewer continuances, and more efficient use of judicial resources.
- * decreases in jail population where the percentage of pre-trial detainees can be reduced dramatically.

Monitor the volume of bench warrants issued as a percent of cases disposed.

OPERATIONS

The operational keys involve flexibility, change and imaginative responses to problems.

Be prepared to adjust track criteria as the program matures and even to create additional tracks as the program expands.

Establish early discovery and furnish the public defender with information as soon as it is available.

Start negotiations between public defender and prosecutor at arraignment. Require the defendant to appear with the public defender at first appearance.

Establish a no continuance policy. Educate the legal culture of the court's expectations with regard to continuances, discovery and plea negotiations.

Fine-tune adjudication procedures.

- * If a preliminary hearing is not to be held, then no need to order a transcript.
- * Use deferred or conditional pleas
- * Make conditional pre-trial diversion placements

Centralize plea bargaining power in only a few experienced attorneys

Adjust court organization to reflect changes in work steps. Consider disposition panels and trial panels for case handling.

Use community service and increase alternatives to incarceration from restitution to house arrest.

Establish procedures for the immediate sanctioning of violation of parole, probation or conditional release conditions.

COORDINATION

One of the keys to success of the DCM/EDCM programs is interagency cooperation. Sharing a common goal supported by good communication and working relationships buys alot of success for EDCM.

Law Enforcement

As programs succeed, law enforcement becomes more proactive. more aggressive; therefore, plan for more filings.

Install facsimile machines to reduce the time for transmittal of police and lab reports and thereby improve discovery exchange between prosecutors and defense counsel.

Develop priority classification systems for scheduling cases needing drug testing consistent with the tracks.

Pretrial Services

View pre-trial release investigations as mini-PSI's and support the acquisition of additional information to assist in treatment and sentencing decisions.

Examine the use of laptop computers to assist in collecting information from the pre-trial investigation and making it available to the court.

Probation

Involve probation officers in all aspects of the program; from the beginning when they can make diversion and treatment recommendations to the end for pre-sentence investigations and recommendations.

Consider changes to their PSI's making them more consistent with the information needs as they change from the early disposition cases to the complex prosecutions.

Make sure that sufficient probation manpower is assigned to handle the increased volume of dispositions and activities that occur at the front of the adjudication process.

Jail/Sheriff

Develop and monitor transportation plans. If defendants have to be transported for hearings over long distances, disruption of even the best coordinated schedule can easily occur. The sheriff's office has to have enough personnel and sufficient transportation available. The breakdown of a bus used for inmate transportation causes court delay.

Install fax machines and provide pagers to handle prisoner transportation requests.

VII. FUTURE DIRECTIONS

In the past, the court was reactive, responding to the requests of attorneys and ruled accordingly. This is a system where the court takes control. *Judge Kelley Arnold, Pierce County Superior Court, Tacoma, WA.*

The successful development of EDCM programs has been accomplished primarily through the effort of a small number of dedicated individuals, whose personal leadership and administrative skills have been instrumental in the program's effectiveness. However, the next step after development is institutionalizing these programs so they can operate as a normal, routine case management system.

The demands created by institutionalization differ substantially from the requirements imposed by development.

For the *courts*, the basic needs are continuing education and training for the judges in the new philosophy and procedures; a reinforcement of the process by establishing management controls and reporting systems that monitor the operations, identify when cases fall off track, indicate the rates of disposition relative to filings, and compute the average processing times. Expansion of the program is also an important part of this process. After one case management system is established, it is time to look at others, either in municipal court, juvenile court or the civil courts. All may be suitable for this concept.

The *court administrators*, who ultimately will be responsible for the management and operations of the program, will also take on the added and often new responsibilities of coordination and communication with agencies external to the court.

The *prosecutor* plays a critical role in this process and consideration has to be given to changes in prosecutorial policy over time. If a newly elected prosecutor does not agree with the basic premises and assumptions, refuses to plea bargain or give early discovery, the program's effectiveness may be reduced. As a result, the court may have to take an active role in educating prosecutors about the credibility of the program and demonstrating that it is feasible to operate without diminishing the prosecutor's discretionary powers. Early successes in obtaining significant sentences in the initial stages of the program even with discovery should begin the institutionalization process for the prosecutor.

Public defenders are especially challenged. First, because they need commitments for sufficient staff and the flexibility to adjust to changes in volume. For example, the initial assignment of three attorneys to the EDCM courtroom were not enough in Philadelphia, so five were used. When the caseload decreased, the number of attorneys was reduced to four.

But more importantly, because they need assurances that this program will not diminish due process nor the adequacy of their representation. It is essential for the continuation of these programs that a system-wide balance between the goals of efficiency and due process be maintained. The program should not turn into a "plea mill". Care and precautions have to be built into it to sustain due process even if it means creating a hiatus between the time of the plea offer and the entering of the plea. The public defenders have a critical role in maintaining the balance between these two conflicting goals.

Furthermore, there is a continuing need for training and technical assistance as provided by American University. The DCM/EDCM concept has the potential to revolutionize court case management throughout the United States. A reform of this magnitude by means of a program this complex needs the support and advice that training and technical assistance can provide. If the full potential of this case management strategy is to be tapped, the Federal Government has to become a strong partner in this process and lend its resources to help courts take advantage of this program.

Finally, there is a growing need to make these programs, their value and impact known to a broader audience. Courts throughout the US are struggling with very much the same problems Philadelphia and New Brunswick have experienced, but at the same time do not have access to more detailed information on what these programs can do for their own jurisdiction and where to turn to for assistance. Access to printed materials discussing the issues and implications of the dynamics of these programs, to guidelines for developing and managing these types of case flow management systems, to information on computer systems designed to monitor their operations and effectiveness is essential if this court reform is to be spread.

As a start the distribution channels already in place through BJA's clearinghouse at the NCJRS can be used to promote these programs and educate the courts in their goals and objectives. But other efforts are needed that provide more indepth information, like a series of workshops at the state level, or in conjunction with conferences held by the major professional organizations. These and other similar efforts would assist other courts in developing their own programs and thereby multiply the impact of one of BJA's most successful demonstration programs.

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APPENDIX A.

Methodological Notes for New Brunswick/Middlesex County Analysis.

The analysis of Middlesex County data was drawn from the data base maintained by the Administrative Office of the Courts (AOC). Because this data base was designed for multi-county reporting for a state-wide system, the variation in court and reporting procedures made the aggregation of transaction-based records difficult, and requires the definitions of the measures used in the analysis. Although the measures may not be identical to those used by the AOC, all the aggregates used for this analyses are formed in the same way, thereby producing consistent estimates of relative differences. These notes are presented to explain the data construction which will permit a similar comparison at a later date if one is desired.

Middlesex data base.

The data base includes a twenty percent sample of all cases entering the court system in Middlesex County from January 1, 1988 through December 31, 1990. In addition, the data base also includes a 100 percent sample of all cases where the major case type is considered to be narcotics.

The data base consists of two kinds of records, charges and events. There is one charge record for each charge brought against the defendant. There were between 1 and 952 charges against individual defendants. In order for a case to be closed, each and every charge must have a disposition code. The data base was ordered in such a way that open charges were considered before closed ones in categorizing the case, and more serious dispositions were considered before less serious ones. In order for a case to be considered a drug case, the major crime must be narcotics after this reordering takes place.

An event record can be entered into the data base for a wide variety of reasons. There may be formal court events, prosecutor related events, general maintenance of the data base, etc. The data base was ordered to produce events in chronological order. In most cases the maintenance date called case initiation was the first event in the file, in others it appeared much later. For our purposes, the beginning is the first event in the file. If it is biased, it will at least be biased for the entire analysis.

The analysis required the determination of several dates. The entry date was described above. The date that charges were formally entered was the second date of interest. This date was almost always consistent across all charges. The charge record contained an entry for the charging document type and date filed. The type of filing could be an accusation, a complaint, and indictment, a direct indictment or one of several others. For all practical purposes, the activities occurring before this date were in the accusatory stage. There could be plea negotiation as well, and in many cases an agreement was reached and then formal charges would be entered and the case would be disposed at the same time. We treat this date as equivalent to an upper court arraignment.

The date of the grand jury, which only applies in the case of an indictment, was found by scanning each case's events for the appropriate code and a disposition type of "completed" action. The date associated with that event was taken as the

grand jury date. Cases with other accusatory events, e.g. accusation or complaint, would not have these dates.

The disposition date was also determined by scanning the event records. The key code was an event with a "case finding". While most cases had only one, there were several hundred that had two or three. The bulk of those were cases where a case finding also occurred at sentencing. Only the first case-finding in the sequence was considered. There were also cases without case findings. Those tended to be nolle cases, administrative dismissals, and returns to a lower court for misdemeanor prosecution.

Open cases were defined as those with charges lacking dispositions (currently open) or those that were disposed outside the 21 month time frame of interest. Closed cases thus had dispositions for all charges and had a case finding within the time period of the study.

Since the drug cases in New Brunswick are the only ones that can enter the experimental group (qualified by the September, 1990 entry of other jurisdictions), the contrasts of interest are changes in the time to disposition for: (1) drug cases in New Brunswick over time 1988, 1989, compared to 1990; (2) drug cases in New Brunswick compared to non-drug cases in New Brunswick to see if other changes were occurring in the New Brunswick system which could have affected any observed program effect in New Brunswick. To control for broader changes occurring in the overall legal system or crime production system, contrasts with time series from the rest of Middlesex County were prepared.