Tennessee Criminal Justice Standards and Goals Project

COURTS

Tennessee Law Enforcement Planning Commission, 1975

PREFACE

This volume is one of eight reports adopted by the Tennessee Law Enforcement Planning Commission as goals and objectives for the criminal justice system in Tennessee. The development of the goals and objectives herein resulted from the award of Law Enforcement Assistance Administration (LEAA) discretionary funds to the Tennessee Law Enforcement Planning Commission. The Commission utilized the services of Midwest Research Institute, Kansas City, Missouri, for the coordination and operation of the goals and objectives effort.

The opinions and recommendations in this report are those of criminal justice practitioners and citizens of Tennessee. As goals and objectives are implemented, experience will dictate that some be upgraded, some modified, and perhaps some discarded. Practitioners and citizens will contribute to the process as the goals and objectives are tested in the field.

It is the hope of the Tennessee Law Enforcement Planning Commission that these goals and objectives will become an integral part of criminal justice planning throughout Tennessee and be utilized as a guideline for future program implementation.

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INTRODUCTION

The courts stand at the very heart of the criminal justice system as a whole. They do so in two senses. First, only after processing by a court will a person arrested by the police be remanded to the supervision of a correctional agency. Second, the court's function is not only to process criminal cases but to protect the rights of an individual from the time he is arrested until, if found guilty, he is released from correctional supervision. Thus, the responsibilities of the courts are profound. They must:

1. Swiftly determine the guilt or innocence or accused persons and do so in a way that both is, and is perceived to be, fair and just;

2. Provide for the sentencing of guilty offenders in a way that will maximize the likelihood of their rehabilitation while also deterring others from committing similar crimes;

3. Protect the rights of both the accused individual and society as a whole.

The role of the courts in protecting individual rights has become even more important in recent years because federal court decisions have expanded the constitutional limitations on actions that may be undertaken by police and correctional agencies. These decisions have placed the courts in a general supervisory role over other elements of the criminal justice system. The consequence has been some resentment and criticism of the courts by personnel in police and correctional agencies who have sometimes felt that in attempting to protect the rights of the individual, the courts have undermined the effectiveness of other criminal justice agencies and, consequently, failed to protect the interests of society as a whole.

Courts have also been the object of criticism from the general public, and there is evidence that the public is quite skeptical and cynical about the quality of justice dispensed by American courts. A nationwide poll conducted in 1971, for instance, showed that only 35 percent of black and 53 percent of white Americans believed that juries produced correct verdicts most of the time. Eighty-four percent of the blacks and 77 percent of the whites believed that poor people were more likely to be convicted and sentenced than those who were wealthy. Many also criticized the courts for freeing lawbreakers because of technicalities, allowing defendants to plead guilty to a lesser charge, and so forth.1/

1/ National Advisory Commission on Criminal Justice Standards and Goals, A Strategy to Reduce Crime, Washington: Government Printing Office, p. 94 (1974).

Courts face other problems in addition to lack of public confidence. The National Advisory Commission on Criminal Justice Standards and Goals cited two critical areas in addition to public alienation: (1) unconscionable delays in processing criminal cases which often permit the guilty to evade justice while preventing the innocent from being promptly relieved of the burden of a criminal accusation; and (2) inconsistency and uncertainty in the processing of cases which leads to injustice to both society and the accused.[2/] The proposals of the National Advisory Commission were intended to attack these fundamental problems of the American court system.

The criminal court system in Tennessee may well be functioning more effectively than courts in many other jurisdictions in the country. Professionals working in the courts who attended a series of meetings throughout the state to discuss improvement of the court system often expressed the opinion that they did not have the overpowering problems of congestion and delay found in courts in major urban areas throughout the country. At the same time, however, they felt that there were many ways in which the judicial system in Tennessee could and should be improved.

Given the many issues dealt with in this report, no attempt will be made here to summarize the proposals for the improvement of the court system. However, those proposals are all related to 16 general goals for the court system. To indicate the extent and diversity of the issues dealt with, those goals are listed below:

1. Develop programs to divert selected offenders from the criminal justice system.

2. Safeguard the rights of the accused and of society by controlling plea bargaining.

3. Increase alternatives to physical arrest by expanding use of citations and summons.

4. Minimize pretrial confinement and improve pretrial release programs and services.

5. Obtain a significant reduction of delays in criminal proceedings.

2/ National Advisory Commission on Criminal Justice Standards and Goals, A Strategy to Reduce Crime, Washington: Government Printing Office, p. 93-94 (1974).

6. Improve procedures for the trial of criminal cases.

7. Improve procedures for sentencing convicted offenders.

8. Improve procedures for review of trial court proceedings.

9. Assure the quality of judicial personnel.

10. Improve the organization of General Sessions and Juvenile Courts.

11. Improve court administration.

12. Assure adequate facilities for court business.

13. Improve court-community relations.

14. Assure the quality of prosecutorial services.

15. Develop a statewide public defender organization.

16. Develop plans for dealing with mass disorders.

The attainment of each of these goals is sought through specific recommendations that have been adopted by the Tennessee Law Enforcement Planning Commission. The sources of these recommendations were varied. Many came from the reports of the National Advisory Commission on Criminal Justice Standards and Goals. That Commission was appointed by the Department of Justice to develop recommendations that could be reviewed and adapted to the needs of individual states. Others came from national groups of criminal justice professionals. The major group contributing to the recommendations for the court system was the American Bar Association which has developed a set of proposed standards for criminal justice agencies. The national recommendations were added to or modified by Tennesseans through a process that involved an extensive statewide survey, 23 task group meetings held throughout the state--four of them dealing specifically with the court system--and intensive review of the proposals by the members of the Tennessee Law Enforcement Planning Commission.

The proposals for improving the court system are presented in the form of a workbook designed to facilitate revision and updating of the proposals in future years. At the beginning of the report, there is an action list that serves two purposes. It is a table of contents for the main body of the report. It also shows at a glance the key proposals, the agency responsible for implementing them, and the priorities assigned to them by the Law Enforcement Planning Commission. The priorities assigned by the Commission will have important consequences in future years because, as is explained below, they will influence the funding of grant proposals made by court-related agencies in the state. Therefore, it is important for agencies using this report to understand the meaning of certain terms and of the numerical priorities assigned by the Commission.

Definition of Terms

Goal — A statement indicating a general direction or trend that is desired.

Objective — A specific program and a date by which that program is to be at least partially in effect.

Priorities:

1 Must — This is an objective that must be met by agencies seeking funds from the Commission. Each agency must meet all of the number one priorities applicable to it at any given time before it can receive funds for objectives having lower priorities. The agency is expected to achieve the objective by the year indicated. In that year, it will not receive any funds for programs with a priority of less than one unless it has met all of the number one priorities for that and previous years. Agencies will not be penalized for failing to meet a priority one objective: (1) if that failure was due to a failure by the General Assembly or the Tennessee Supreme Court to take action required to carry out the program; or (2) if the agency applied for funds to assist it in meeting the priority but did not receive a grant because the Commission was financially unable to fund the request. In the body of the report, the word "must" is used in stating each objective that was given a priority of one.

With respect to proposals for legislation or for action by agencies that do not seek Commission funding, a priority of one means "very strongly recommended."

2 Should — Strongly recommended--not a "must" but will be considered for funding ahead of objectives with lower priorities. In the body of the report, the word "should" is used in stating objectives with a priority of two. With respect to legislative proposals or actions by agencies that do not seek Commission funds, a priority of two means "strongly recommended."

3 Should consider — Recommended for consideration--included as an objective which has merit under specific circumstances. In the body of the report the term "should consider" is used in stating objectives with a priority of three.

4 May consider	For consideration--included for information purposes only. Indicated by the words "may consider" or "may wish to consider" in stating the objective.

Following the action list is the main body of the report. It is organized in the same order as the goals and objectives in the action list. Most objectives have attached to them a list of "strategies" which are various ways in which the objectives might be achieved and which should be considered by the agencies concerned. The strategies were not reviewed or prioritized by the Commission. Therefore, even when an objective has a priority of one, meaning that it must be achieved by the responsible agency if it wishes to receive LEAA funds, that does not mean that any specific strategy must be adopted. The goals, objectives and strategies are further explained and discussed through introductions to each goal and commentaries on each objective or set of objectives

Most objectives or sets of objectives also have a "source" indicated. The source is the original written proposal from which the objective was taken. The objective may be in a form identical to the original source or may have been modified to meet the needs and conditions of Tennessee. In some cases no source will be listed because the objective was developed in a task group meeting or by the Commission itself and does not have an original written source. Also included are lists of references which can be used to obtain more information about the problems and issues addressed by particular objectives. References to relevant sections of the Tennessee Code Annotated are also included.

Personnel in court-related agencies should be able to look at the checklist, see what objectives require their action by what year, and look up the more detailed statement in the body of the report. The development of these proposals has emphasized not only what was desirable but what was workable and practical. Therein lies the strength of this document.

COURTS ACTION LIST

L - Legislature
SC - Tennessee Supreme Court
Ct - Trial level or lower courts
DA - District Attorney General
DC - Defense Counsel
Df - Public Defender
JSC - Judicial Standards Commission
LE - Law enforcement
BA - Tennessee Bar Association
LG - Local government

Goal and Page Nos.	Description	Agency	'76	'77	'78	'79	'80	Beyond '80
1. (13)	GOAL: DEVELOP AND IMPLEMENT PROGRAMS TO DIVERT SELECTED OFFENDERS FROM THE CRIMINAL JUSTICE SYSTEM							
1.1 (14)	Appropriate sufficient funds to implement authorized diversion programs.	L		•1				
1.2 (15)	Implement authorized diversion programs.	DA,Ct		4				
2. (20)	GOAL: SAFEGUARD THE RIGHTS OF THE ACCUSED AND OF SOCIETY BY CONTROLLING PLEA BARGAINING							
2.1 (21)	Develop written policies and procedures governing plea negotiations.	DA	4					
2.2 (23)	Adopt and enforce ABA recommended standards for defense counsel in conducting plea negotiations.	BA	4					
3. (25)	GOAL: INCREASE ALTERNATIVES TO PHYSICAL ARREST BY EXPANDING USE OF CITATION AND SUMMONS							
3.1 (26)	Adopt legislation authorizing use of citations or summons in lieu of arrest in specified situations.	L		3				
3.2 (27)	Permit search with citation under specified conditions.	L		•1				
4. (29)	GOAL: MINIMIZE PRETRIAL CONFINEMENT AND IMPROVE PRETRIAL RELEASE SERVICES AND PROGRAMS							
4.1 (31)	Increase alternatives to release on bond but permit imposition of specific conditions during release period.	L,Ct			3			
4.2 (34)	Eliminate private bail bond agencies from the pretrial release process.	L			1			

COURTS ACTION LIST (continued)

Goal and Page Nos.	Description	Agency	'76	'77	'78	'79	'80	Beyond '80
4.3 (36)	Specify the rights of arrested persons and procedures to be followed when imposing substantial conditions on persons released before trial and when revoking pretrial release.	L,Ct			4			
4.4 (37)	Coordinate investigative services for pretrial release, diversion and referral programs.	DA,Ct,LE		2				
4.5 (39)	Review Mental Health Act for needed changes regarding treatment of accused persons alleged or adjudged incompetent to stand trial.	L	3					
4.6 (40)	Further define the procedures and conditions for pretrial release of persons alleged or adjudged incompetent to stand trial.	L			3			
5. (43)	GOAL: OBTAIN SIGNIFICANT REDUCTION OF DELAYS IN CRIMINAL PROCEEDINGS							
5.1 (45)	Specify maximum allowable delays for felony and misdemeanor trials and for retrials.	L			2			
5.2 (46)	Redistrict judicial circuits to equalize caseloads.	L	1					
5.3 (49)	Establish time limits for the holding of preliminary hearings and for the waiver by a defendant of his right to a preliminary hearing.	L			3			
5.4 (50)	Adopt rules for misdemeanor cases that would require submission of motions for a nonjury trial within a specified time before trial and would establish procedures to expedite hearings on motions.	L,SC	1					

COURTS ACTION LIST (continued)

Goal and Page Nos.	Description	Agency	'76	'77	'78	'79	'80	Beyond '80
5.5 (51)	Adopt rules for felony cases setting time limits for filing, hearing and ruling on pretrial motions.	L,SC	1					
5.6 (53)	Develop written policies and procedures to establish clear priorities for the hearing of cases.	DA,Ct	4					
5.7 (54)	In taking cases to grand jury, give priority to cases of persons held in jail pending indictment.	DA	2					
5.8 (56)	Provide through a written rule of court for continuances to be granted only when good cause is shown in a written motion.	Ct		1				
6. (58)	GOAL: IMPROVE PROCEDURES FOR TRIAL OF CRIMINAL CASES							
6.1 (59)	Amend law to limit number of peremptory challenges in multiple defendant cases and to equalize number of peremptory challenges given defense and prosecution in all cases.	L		1				
6.2 (60)	Adopt standards for jury trial relating to use of court time, judge's role in providing guidance to jury, taking of notes by jury, review of testimony and examination of evidence by jury.	SC		1				
6.3 (63)	Adopt rules forbidding appearance of defendants or witnesses in prison attire and defining conditions requiring physical restraint or removal of defendant from courtroom.	SC		2				

COURTS ACTION LIST (continued)

Goal and Page Nos.	Description	Agency	'76	'77	'78	'79	'80	Beyond '80
6.4 (64)	Study use of exclusionary rule.	SC			3			
7. (65)	GOAL: IMPROVE PROCEDURES FOR SENTENCING CONVICTED OFFENDERS							
7.1 (68)	Establish system of bifurcated trials with separate disposition hearing before same jury that found the defendant guilty.			3				
7.2 (69)	Specify that probation will end automatically at the completion of the term originally set by the judge or at any earlier time if, after a hearing, the court finds it no longer necessary.	L		1				
7.3 (70)	Review policies, procedures and practices concerning probation.	Ct		2				
8. (74)	GOAL: IMPROVE PROCEDURES FOR REVIEW OF TRIAL COURT PROCEEDINGS							
8.1 (76)	Establish time limits for filing motions for a new trial and amendments thereto and for hearing and ruling on such motions and motions as amended.	L		1				
8.2 (77)	Adopt rules and procedures to make trial transcripts available quickly and to avoid unnecessary transcribing and reproduction of trial records.	L,SC		1				
8.3 (79)	Provide Supreme Court with jurisdiction to review Court of Criminal Appeals decisions upon certification by that court that a case should be decided by the Supreme Court.	L	1					
8.4 (80)	Remove original appellate jurisdiction in workmen's compensation cases from the Supreme Court.	L	1					

COURTS ACTION LIST (continued)

Goal and Page Nos.	Description	Agency	'76	'77	'78	'79	'80	Beyond '80
9. (81)	GOAL: ASSURE QUALITY OF JUDICIAL PERSONNEL							
9.1 (84)	Provide for the nonpartisan election of judges.	L	1					
9.2 (85)	Empower the Judicial Standards Commission to recommend to the Supreme Court the transfer of a judge's caseload to another judge, pending final outcome of investigation, when serious question is raised of physical or mental disabilities of a judge.	L,JSC,SC		2				
9.3 (86)	Establish a state judicial education committee to develop standards and take other steps to assure adequate judicial training.	L		1				
10. (89)	GOAL: IMPROVE THE ORGANIZATION OF GENERAL SESSIONS AND JUVENILE COURTS							
10.1 (92)	Reorganize general sessions and juvenile courts into a circuit general sessions court that is state funded, has lawyer judges and is a court not of record.	L			3			
11. (94)	GOAL: IMPROVE COURT ADMINISTRATION							
11.1 (95)	Provide for local administrative authority in each trial jurisdiction to be vested in a presiding judge and for full-time trial court administrators in large circuits.	L,SC		3				
12. (99)	GOAL: ASSURE ADEQUATE FACILITIES FOR COURT BUSINESS							
12.1 (100)	Provide adequate physical facilities including renovation or construction where necessary.	LG	2					

COURT ACTION LIST (continued)

Goal and Page Nos.	Description	Agency	'76	'77	'78	'79	'80	Beyond '80
13. (103)	GOAL: IMPROVE COURT-COMMUNITY RELATIONS							
13.1 (104)	Assure adequate facilities and procedures for providing information about the courts to the public and for receiving complaints and suggestions from the public.	LG,Ct			3			
13.2 (107)	Adopt rules prohibiting court personnel from unauthorized disclosure of information about a pending case.	SC		4				
13.3 (108)	Develop procedures to provide witnesses with needed information and to reduce time witnesses have to spend in court.	DA,Ct,DC		1				
13.4 (111)	Provide sufficient compensation to citizen witnesses, to police witnesses for off-duty time spent in court, and to jurors.	L,SC,Ct	1					
14. (113)	GOAL: ASSURE THE QUALITY OF PROSECUTORIAL SERVICES							
14.1 (114)	Provide for all Assistant District Attorneys (DA's) to be full time and prohibited from engaging in outside law practice.	L		1				
14.2 (115)	Assure sufficient compensation, facilities for and training of District Attorneys and their assistants.	L,DA	1					
14.3 (118)	Develop a detailed statement of office practices and policies.	DA		1				
14.4 (119)	Establish active cooperation with other criminal justice agencies and with the public.	DA		2				

COURT ACTION LIST (concluded)

Goal and Page Nos.	Description	Agency	'76	'77	'78	'79	'80	Beyond '80
15. (122)	GOAL: DEVELOP A STATEWIDE PUBLIC DEFENDER ORGANIZATION							
15.1 (123)	Establish a state supported, full-time public defender organization in all judicial districts including: a. election of public defenders on a nonpartisan basis; b. provision of adequate staff, supportive services and funding; c. adequate compensation for defenders and their assistants.	L				1		
16. (126)	GOAL: DEVELOP PLANS FOR DEALING WITH MASS DISORDERS							
16.1 (127)	Develop local plans including a court processing plan, plan for defense and prosecutorial services and procedures for screening and charging arrestees.	Ct,DA,PD, BA						4

1. GOAL: DEVELOP PROGRAMS TO DIVERT SELECTED OFFENDERS FROM THE CRIMINAL JUSTICE SYSTEM

Introduction

The term "diversion," as used in this report, refers to halting or suspending formal criminal proceedings against an individual before conviction. The interruption of formal procedures occurs on the condition that the individual will do something in return. Thus, diversion uses the threat or possibility of conviction of a criminal offense to encourage an accused person to agree to do something, such as to participate in a specific rehabilitative program or to make restitution to his victim. If the offender does not comply with the requirements of the diversion program, he is subject to prosecution for his offense.

The report of the National Advisory Commission to LEAA lists diversion of selected offenders as one of its major recommendations for the improvement of the court system. The possible usefulness of a diversion program was also recognized by the Tennessee General Assembly when it authorized pretrial diversion programs in 1975.[1/] Under this authorization, the prosecution of a defendant who has not been previously convicted of a crime, and who is charged with an offense with a maximum penalty of 10 years or less and/or a fine, may be suspended for up to 2 years upon the agreement of the prosecution, the defense and the court. The defendant must comply with the agreed upon conditions or be subject to prosecution for the offense charged.

1/ Public Acts of 1975, Chapter 352.

1.1 Objective: The Tennessee Law Enforcement Planning Commission very strongly recommends that, by 1977, the Tennessee General Assembly appropriate sufficient funds so that all jurisdictions within the state wishing to do so may develop and carry out authorized diversion programs.

1.2 Objective: By 1977, each local jurisdiction may wish to consider, in cooperation with related state agencies, the development and implementation of formally organized diversion programs as authorized in Public Acts of 1975, Chapter 352. The strategies listed below are presented as examples of procedures and approaches that jurisdictions adopting diversion programs may wish to consider.

Strategies

1. Criminal justice agencies seeking to establish diversion programs should solicit and obtain cooperation and resources from other community agencies. Such cooperation is vital because agencies outside the criminal justice system can offer much needed services.

2. Agencies with the authority to select or recommend offenders for diversion should develop specific criteria to be used in selecting candidates for diversion. Listed below are positive criteria that suggest an individual would be suitable for diversion and negative criteria that suggest unsuitability.

   Positive Criteria

   a. Relative youth of the offender.

   b. Willingness of the victim to waive prosecution.

   c. Likelihood the offender suffers from mental illness, retardation, or other psychological abnormality related to his crime and for which treatment is available.

   d. Likelihood the crime was significantly related to any other situation which would be subject to change by participation in a diversion program.

   e. Likelihood that prosecution may cause undue harm to the defendant.

   f. Unavailability within the criminal justice system of services to meet the offender's needs and problems.

   g. Likelihood that the arrest has already served as a desired deterrent.

   h. Likelihood that the needs and interests of the victim and society are served better by diversion.

i. Probability that the offender does not present a substantial danger to others.

j. Acceptance of the offered alternative by the offender.

Negative Criteria

a. History of physical violence.

b. Involvement with syndicated crime.

c. History of antisocial conduct indicating such conduct has become an ingrained part of the defendant's lifestyle.

d. The need to pursue criminal prosecution to discourage others.

3. Prior to diversion, the facts of the case should sufficiently establish that the defendant committed the alleged act. If the facts do not sufficiently establish guilt, the prosecution should be required to prove his guilt in court.

4. A written statement should be made and retained specifying the fact of and reason for any diversion.

5. When a defendant who comes under a category of offenders for whom diversion is regularly considered is not diverted, a written statement of the reasons should be retained.

6. Where the diversion program involves significant deprivation of an offender's liberty, diversion should be permitted only under a court-approved agreement.*

7. Diversion programs may include:

a. Referral of individuals with health problems, who are not taken into custody, to an appropriate health agency.

* This is currently the law in Tennessee: Chapter 352 of Public Acts of 1975 provides that a written statement of understanding between the parties must be filed with the court, setting out the conditions of diversion, and it must be approved by the court before it is put into effect.

b. Provision of pretrial intervention programs incorporating a flexible continuance period of at least 90 days, during which the individual would participate in a tailored job training program. Satisfactory performance in that training program would result in job placement and dismissal of charges, with arrest records maintained only for official purposes and not for dissemination. Court personnel should be well informed about the purpose and methods of pretrial intervention.

c. c. A wide range of community services to deal with the major needs of the participant.

d. Use of local mental health facilities, if available, rather than distant state facilities.

e. Training of selected exoffenders to work with those participating in the diversion program.

Commentary

Diversion is an activity that police, prosecutors and courts have engaged in for many years. Diversion occurs because one or more officials in the criminal justice system decide that there is a more appropriate way to deal with a particular defendant than to prosecute him. A mentally disturbed person who committed a minor offense may have the charges against him dropped, for example, if he agrees to receive psychiatric treatment. A youth who destroys property through vandalism may have his case dropped if he agrees to take an after school job to earn money to pay back the losses suffered by his victim. Such exercises of discretion on the part of officials have generally been informal in nature with no systematic policies or programs to guide that discretion or to provide needed services to the offender.

Because diversion has generally taken place in an informal way, relatively little information is available on the actual costs and benefits of diversion as opposed to prosecution. Some of the obvious potential benefits, however, of even informal diversion processes are:

1. Avoiding the stigma of a criminal record in cases where such a record would cause harm to the offender out of proportion to the offense committed;

2. Permitting resources that would otherwise be used in prosecuting and, perhaps, confining the accused to be concentrated on those offenders and offenses that pose a more serious threat to society;

3. Reducing the likelihood that the accused will commit another criminal act by providing him or causing him to obtain services such as psychiatric treatment, job training or family counseling intended to help him solve those problems that caused or encouraged him to commit a crime in the first place;

4. Providing services shortly after arrest so that their effect on the offender can be evaluated as quickly as possible rather than waiting to provide services after conviction and sentencing;

5. Reducing the likelihood that he will commit another criminal act by not placing him in a penal institution where he would be exposed to other offenders who might exercise a harmful influence over him.

There are also possible costs or harmful effects that a diversion program may have such as: (1) diluting the deterrent impact of criminal punishment and thus reducing the protection provided society by that deterrent effect; and (2) failing to provide effective treatment so that the offender may be less deterred from committing future criminal acts than he might have been if convicted and sentenced and, perhaps, placed in an effective postconviction treatment program.

The advantage of a formal, as opposed to an informal, diversion program lies primarily in the fact that, if well run and sufficiently supported, such a program would be more likely to provide diverted offenders with the treatment and services they need. In addition, a formal program is more likely to involve a careful, consistent process for choosing offenders for diversion, thus both protecting society's interests and assuring greater equality of treatment for offenders. The potential advantages of a diversion program were shown in the results achieved by the Vera Institute's Manhattan Court Employment Project. The rearrest rate over a 12-month period for offenders who successfully completed the program was 15.8 percent, compared to 46.1 percent in a comparison control group.[1/] An analysis of Project Crossroads, a Washington, D.C. diversion project providing employment and counseling services for youthful first offenders, showed similar results. The benefit of providing needed services to such offenders was shown by the fact that during a 15-month period after initial contact with the court, 22.2 percent of those who successfully completed the program were rearrested while the rearrest rate of the control group, whose charges were simply dismissed, was 44 percent.[2/]

1/ Vera Institute of Justice, Programs in Criminal Justice Reform, pp. 88-90, New York: Vera Institute of Justice (1972).

2/ Leiberg, Leon, "A Final Report to the Manpower Administration," U.S. Department of Labor, Project Crossroads, Washington: National Committee for Children and Youth (1971).

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Chapter 2, Washington: Government Printing Office (1974).

References

1. Tennessee General Assembly, Public Acts of 1975, Chapter 352.
2. Consult the District Attorney's office in Shelby County, which is developing a diversion program as currently authorized by the legislature.
3. Bard, Morton, "Family Intervention Police Teams as a Community Mental Health Resource," Journal of Criminal Law, Criminology and Police Science Vol. 60, June 1969.
4. deGrazia, Edward, "Report on Pre-Trial Diversion of Accused Offenders to Community Mental Health Treatment Programs," Washington, D.C.: Georgetown University School of Medicine (undated).
5. Ditman, Keith S., George C. Crawford, Edward W. Forgy, Herbert Moskowitz, and Craig McAndrew, "A Controlled Experiment on the Use of Court Probation for Drunk Arrests," American Journal of Psychiatry, Vol. 125, August 1967.
6. Holahan, John, "A Benefit-Cost Analysis of Project Crossroads," Washington: National Committee for Children and Youth (1970).
7. Leiberg, Leon, "A Final Report to the Manpower Administration," U.S. Department of Labor, Project Crossroads, Washington: National Committee for Children and Youth (1971).
8. Parnas, Raymond, "Judicial Response to Intra-Family Violence," Minnesota Law Review, Vol. 54, January 1970.
9. Parnas, Raymond, "The Police Response to the Domestic Disturbance," Wisconsin Law Review, Fall 1967.
10. Rovner-Pieczenik, Roberta, "Project Crossroads as Pre-trial Intervention, A Program Evaluation," Washington: National Committee for Children and Youth (1970).
11. Vera Institute of Justice, Programs in Criminal Justice Reform, New York: Vera Institute of Justice (1972).
12. Matthews, Arthur, Mental Disability and the Criminal Law, Chicago: American Bar Foundation (1970).
13. Nimmer, Raymond, Two Million Unnecessary Arrests, Chicago: American Bar Foundation (1971).
14. Law Reform Commission of Canada, Studies on Diversion, Ottawa: Law Reform Commission (1975).

2. GOAL: SAFEGUARD THE RIGHTS OF THE ACCUSED AND OF SOCIETY BY CONTROLLING PLEA BARGAINING

Introduction

The term "plea bargaining" is used here to refer to negotiations between defendants or their counsel and prosecutors concerning concessions to be made in return for guilty pleas. The National Advisory Commission to LEAA recommended the complete abolition of plea bargaining. They argued that plea bargaining poses a threat both to society and to the rights of defendants. Under the pressure of a backlog of cases and inadequate resources, prosecutors are often in a position in which they must either make concessions or dismiss the case. The negative consequences for society are that a violent offender may secure his freedom immediately or receive a less than adequate prison sentence and be encouraged to continue to engage in criminal acts. On the other hand, a person accused of a crime, even if innocent, may decide to plead guilty rather than spend months in jail awaiting trial, often in conditions that are worse than those at a state prison to which he might be sentenced if found guilty. The Commission argued that the problems and abuses of plea bargaining were so great as to warrant its abolition, that a reasonable time for abolition should be set, and that states should expand the resources of their court systems sufficiently so that plea bargaining could be eliminated by that time.

Tennesseans working in the courts rejected the notion of abolishing plea bargaining because they feel it is impractical under current conditions. A frequently expressed opinion was that it would be ideal if all cases in which there are contestable issues went to trial, but the courts do not have nor expect to receive enough manpower and money to try all such cases. Therefore, it is necessary to retain plea bargaining but, at the same time, to consider controlling and monitoring the plea bargaining process so that abuses and inequality of treatment do not occur.

2.1 Objective. By 1977, each District Attorney General's office may wish to consider adopting written policies and procedures governing all staff members involved in plea bargaining and making the policy statement available to the public. The strategies listed below are presented as examples of policies and procedures that District Attorney Generals may wish to consider.

Strategies

1. An experienced prosecutor should be assigned to review negotiated pleas to assure proper application of guidelines.

2. A time should be set after which plea bargaining may no longer be conducted so that the trial docket will list only cases that will go to trial. After the specified time has elapsed, only pleas to the official charge should be allowed except in unusual circumstances and with the approval of the judge and the prosecutor.

3. A defendant should be afforded an opportunity for counsel prior to any plea negotiations.

4. Prosecutors should be prohibited from offering improper inducements to enter a plea of guilty including:

   a. Charging or threatening to charge the defendant with offenses for which the admissible evidence is insufficient to support a guilty verdict.

   b. Charging or threatening to charge the defendant more severely than others in that jurisdiction would normally be charged for the same conduct.

   c. Threatening that the defendant, if he pleads not guilty, may receive a more severe sentence than that which is ordinarily imposed in that jurisdiction in similar cases in which defendants plead not guilty. (This is not a prohibition against assuring that the defendant knows the maximum possible sentence permitted under the law.)

   d. Failing to grant full disclosure of all exculpatory evidence material to guilt or punishment before the disposition negotiations.

5. The prosecutor should notify the court when he is aware that the accused persists in denying guilt or the factual basis for the plea.

6. The prosecutor should avoid implying a greater power to influence the disposition of a case than he possesses.

7. The prosecutor should help the accused withdraw a plea if he is unable to fulfill his promises during plea negotiations.

8. The prosecutor should record reasons for nolle prosequi disposition dismissal of charges.

2.2 Objective. By 1977, if they have not already done so, the Tennessee Bar Association and local bar associations may wish to consider adopting rules recommended by the American Bar Association for the purpose of assuring that defense counsel will fully, fairly and capably represent the client's interest in the plea negotiation process.

Strategies

1. The defense attorney should be prohibited from engaging in a "trade off" of one client's interest in exchange for the compromising of another client's interests.

2. The defense attorney should be prohibited from engaging in collusion with the district attorney in overcharging.

3. Representation of multiple clients arising out of the same factual basis for criminal prosecutions should be discouraged.

4. Defense counsel should be given an affirmative duty to explore the early diversion of the case from the criminal process in jurisdictions having diversion programs.

5. The defense should be required to seek the accused's consent to engage in plea discussions with the prosecution.

Commentary

The decision to offer concessions in return for a guilty plea generally lies within the discretion of the prosecutor in charge of the case. The possibility, therefore, exists that among prosecutors in the same office, there may be a lack of uniformity in the factors considered during negotiations and thus, a disparity in the disposition of cases with similar characteristics. This may be a particularly serious problem in offices with large numbers of Assistant District Attorneys General. The development of written policies and practices governing all members of the staff in plea negotiations would encourage them to exercise their discretion in similar ways, thus, promoting the interests of justice.

It is suggested that consideration be given to making the policies developed available to the public. Increased understanding of the nature of plea negotiations may encourage greater acceptance of an administrative practice that has often been viewed with suspicion by the general public. Such acceptance might lead to greater public support for and cooperation with the District Attorney's office and the criminal justice system as a whole.

It is possible that due to the desire to expedite the settlement of a case, a defense attorney may pressure a client into entering a plea with which the client is not, in fact, satisfied. The attorney may also fail in other ways to represent his client properly in plea negotiations. The adoption of American Bar Assocation (ABA) recommendations on the role of the defense counsel during plea negotiations would tend to discourage potential abuses.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Chapter 3, Washington: Government Printing Office (1974).

References

1. Alschuler, Albert W., "The Prosecutor's Role in Plea Bargaining," University of Chicago Law Review, Vol. 36, Fall 1968.
2. Alschuler, Albert W., "Defense Attorney's Role in Plea Bargaining," Yale Law Journal, Vol. 84; No. 6, May 1975.
3. American Bar Association Project Minimum Standards for Criminal Justice, Standards Relating to Pleas of Guilty, Approved Draft, Chicago: American Bar Association (1968).
4. American Law Institute, "A Model Code of Pre-Arraignment Procedure, Tentative Draft No. 5," Philadelphia: The American Law Institute (1972).
5. Davis, Kenneth Culp, Discretionary Justice, A Preliminary Inquiry, Baton Rouge: Louisiana State University Press (1969).
6. Enker, Arnold N., "Perspective on Plea Bargaining," in President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts, Washington: Government Printing Office (1967).
7. People v. Byrd, 12 Mich. App. 186, 162 N.W. 2d 777 (1968) (Levin, J., concurring).
8. "The Unconstitutionality of Plea Bargaining," Harvard Law Review, Vol. 83, April 1970.
9. White, Welsh S., "A Proposal for Reform of the Plea Bargaining Process," University of Pennsylvania Law Review, Vol. 119, January 1971.
10. Brady v. Maryland, 373 U.S. 83 (1963).
11. Brady v. United States, 397 U.S. 742 (1970).

3. GOAL: INCREASE ALTERNATIVES TO PHYSICAL ARREST BY EXPANDING USE OF CITATION AND SUMMONS

Introduction

Each arrest involves a substantial use of the time and resources of both police agencies and the courts. The arresting officer or officers may be out of service for 1 or 2 hours following an arrest. In addition, unless it is a misdemeanor case in which the accused pleads guilty and receives an immediate fine or sentence, the time of court and prosecution personnel must be taken to establish the conditions of pretrial release and set a date for a preliminary hearing. If a judge or other person empowered to set bond or determine conditions for pretrial release is not immediately available, the arrested person must be held in jail, thus consuming additional resources. From the point of view of the individual involved, arrest means an abrupt disruption in his activities, possibly a period spent in jail while awaiting a hearing, personal embarrassment, and often the need to post bond in order to obtain his release. Physical arrest may also adversely affect persons other than the defendant. If parents are taken into custody, they may have no opportunity to arrange for the care of their children in a way that will minimize the effect of the arrest on the children. Taking a defendant from his job may inconvenience his employer and coworkers. While awaiting release, a defendant may lose his job and thus his ability to support his family.

There are clearly many situations in which arrest is a necessary and proper way in which to deal with a person suspected of a crime. However, both survey results and the task force meetings showed that criminal justice professionals in Tennessee believe that many arrests are unnecessary and consume police and court time that could be put to better use. They believe that in many cases citations and summons could replace physical arrest. The proposed Criminal Code developed by the Tennessee Law Revision Commission reflects the same conclusion. It allows an officer to issue a citation instead of arresting in misdemeanor cases (40-632) and provides for the issuing by the court of a summons rather than a warrant if requested by the District Attorney (40-701).

3.1 Objective. By 1977, the General Assembly should consider adopting legislation authorizing the use of citations and summons in lieu of arrest in specified situations.

3.2 Objective. If legislation authorizing the use of citations and summons in lieu of arrest is adopted, then the Tennessee Law Enforcement Planning Commission very strongly recommends to the legislature that, when it expands the use of citations and summons, it should also authorize searches with citations under certain conditions. Such legislation should be drawn so that, while safeguarding the rights of citizens against unreasonable search and seizure, the police officer, if he chooses to issue a citation rather than to arrest an individual, will be able to search to the same extent that would have been allowed if he were making an arrest.

Commentary

The use of citations and summons in lieu of arrest in certain cases would clearly save time and money in both police agencies and the court system. It would also avoid many undesirable effects that an arrest has on the individual concerned. Available evidence suggests that failure to appear is unlikely to be a significant problem if care is taken in issuing citations and summons. A study of the use of citations in New Haven, Connecticut, for example, showed that only 14.5 percent of the defendants in nontraffic cases failed to appear on the designated date and half of those responded to a simple follow-up letter requesting them to appear.[1/] The suggested criteria for the use of police in deciding whether to arrest or to cite, specify that physical arrest should be made in cases where the conduct of the individual suggests he might be dangerous, where the individual has no ties to the jurisdiction, where arrest is necessary to carry out additional investigation, and so forth. Thus, the proper implementation of this proposal should not lead to the failure to arrest a dangerous person or one who would be unlikely to appear for trial.

The proposal is made that search powers be extended to certain situations in which a citation is issued rather than an arrest being made. The purpose of this proposal is to prevent instances in which a search, that might produce evidence material to the case, would be allowed in the event of arrest but could not be made if a citation were issued instead. In such a situation evidence that would have been gained in a lawful search incident to arrest would be lost by the use of a citation. Care must be taken so that any statute empowering search with citation be carefully drawn to protect the citizen's constitutional

1/ Berger, Mark, "Police Field Citations in New Haven," Wisconsin Law Review. Vol. 2 (1972).

rights and that the issuance of citations not become a means for legitimizing unreasonable searches. However, a carefully drawn and properly administered measure would benefit the accused person as well as the interests of society. In the absence of such authority, a police officer would probably often choose to arrest rather than issue a citation simply in order to make a search possible. If search with a citation is permitted in a situation in which the individual would otherwise be subject to lawful arrest and search, then the suspect will be much less likely to have to suffer the serious disruption of his life caused by an arrest.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals. Courts, Standard 4.2, Washington: Government Printing Office (1974).

References

1. American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Pretrial Release, Approved Draft, Chicago: American Bar Association (1968).
2. American Bar Association Project on Standards for Criminal Justice, Standards Relating to the Urban Police Function, Tentative Draft, Chicago: American Bar Association (1972).
3. Berger, Mark, "Police Field Citations in New Haven," Wisconsin Law Review, Vol. 2 (1972).
4. Feeney, Floyd F., "Citation in Lieu of Arrest: The New California Law," Vanderbilt Law Review, Vol. 25, March 1972.
5. President's Commission on Crime in the District of Columbia, Report, Washington: Government Printing Office (1966).
6. President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts, Washington: Government Printing Office (1967).
7. President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society, Washington: Government Printing Office (1967).
8. Wice, Paul, and Rita James Simon, "Pretrial Release. A Survey of Alternative Practices," Federal Probation, Vol. 34, December 1970.

4. GOAL: MINIMIZE PRETRIAL CONFINEMENT AND IMPROVE RELEASE PROGRAMS AND SERVICES

Expansion of Forms of Pretrial Release, Abolition of Private Bail Bond Agencies, and Guaranteeing Rights of Accused

Introduction

There are two primary reasons for trying to minimize pretrial confinement of accused persons. One is to decrease the amount of public money spent on their confinement, and the other is to decrease any unnecessary hardship on the accused caused by holding him in jail. An important reason for minimizing pretrial confinement in Tennessee is the poor, often completely inadequate conditions in the county jails in which persons are held pending trial. A 1972 evaluation of conditions in Tennessee jails found that although there were "a few modern, clean, and relatively well administered [jails]... it is much easier to identify samples of unsatisfactory county jail facilities."1/ Although the activities of the jail inspection office in the Department of Correction have encouraged some improvements in conditions, the fundamental problems of old facilities, lack of money and inadequate staff remain. The jail inspection office recommended in August 1975, for instance, that the Bedford and Carroll County jails be closed and the Moore County jail be either closed or completely renovated. The jail inspection report declared that the Bedford County jail should be "condemned as unfit for human habitation."2/

Another reason for minimizing pretrial confinement is the emotional and financial burden that the present system often places on the defendant and his family and the effect of the accused's financial situation on his ability to obtain pretrial release. Under the present system, although there is no specific statutory authorization for doing so, judges do often release defendants charged with minor crimes on their own recognizance or on token bail. When the crime charged is a serious one, however, release on bond provided by a private bail bondsman is the typical procedure. If the accused is poor and a large bond is required, he may be subjected to pretrial confinement simply because he cannot pay the bondsman's fee. As a consequence, not only is he deprived of his liberty without trial and subjected to whatever the conditions in the local jail happen to be, but if he is employed he may lose his job and his ability to support himself and his family. On the other

1/ A Plan for Tennessee Regional Correction Facilities, Report submitted to Governor Winfield Dunn, p. 9, October 1972.
2/ The Tennessean, August 14, 1975.

hand, a citizen with substantial financial resources who is accused of the same crime will be able to obtain release because of his better financial condition.

4.1 Objective. By 1978, the General Assembly should consider legislation giving judges substantial discretion in releasing arrestees without posting bond but permitting the imposition of specific conditions during the release period, e.g., prohibitions against drinking intoxicating beverages or possessing weapons. Decisions concerning the nature and conditions of pretrial release should be made by a judicial officer who, in selecting the form of pretrial release, should consider the nature of the circumstances of the offense charged, the weight of the evidence against the accused, his ties to the community, his record of convictions, and his record of appearance at court proceedings or of flight to avoid prosecution and other sound reasons such as mental or physical disability, history of flight from other jurisdictions such as prisons or the military, etc.

Strategies

Alternative forms of release that should be considered by the legislature include:

1. Release on own recognizance;

2. Release on execution of unsecured appearance bond in a specified amount;

3. Release to the care of qualified persons (or organizations);

4. Release to supervision of a probation officer (or other public official);

5. Release with imposition of restrictions on activities, associations, movements, and residence reasonably related to securing appearance;

6. Release on the basis of financial security to be provided by the accused;

7. Imposition of any other restrictions, other than detention, reasonably related to securing the appearance; and

8. Detention with release during certain hours for specified purposes.

Commentary

Adoption of this objective would considerably broaden the forms of release employed in most jurisdictions in the state. Currently defendants are usually either released on bond, or, if the crime is not considered serious, released on their own recognizance, or on token bail. The proposed legislation would provide statutory authorization for ROR as well as for a variety of other forms of release as indicated above. The desirability of providing by law for varied forms of pretrial release was recognized by the Law Revision Commission and is provided for in the proposed new criminal code prepared by the Commission. The above proposal would, in addition, expand the power of the judge to impose specific conditions on the accused while he is awaiting trial. The accused could be forbidden, for instance, to possess a dangerous weapon or to use alcohol or drugs. These provisions are intended to safeguard society during the release period by forbidding activities which the judge reasonably believes might lead to criminal activity on the part of the accused, or lessen his likelihood to appear at trial.

Both Shelby and Davidson counties already have pretrial release programs which make supervised release without bond available to selected arrestees. The pretrial release programs appear to have worked well and to have benefited both the defendant and the state. Data on the Nashville program show that it has been very successful in assuring the appearance of released defendants in court. During the first 20 months of its operation, the program was unable to return to court only 1.7 percent of those released, and the total failure rate, including persons who violated the conditions of their releases or were rearrested on new charges while on release, was 5.9 percent. On the fiscal side, the program was also valuable to both the government and the individual. It has been estimated that the county saved over $17 per day for each person who was on release rather than in jail. In addition, the individuals saved an incalculable amount by not having to pay bondsmen and by being able to continue their employment.*

Sources

1. National Advisory Commission on Criminal Justice Standards and Goals. Courts, Standard 4.6, Washington: Government Printing Office (1974).
2. National Advisory Commission on Criminal Justice Standards and Goals. Corrections, Standard 4.4. Washington: Government Printing Office (1974).

* Information provided by Jenks L. Hackney, Jr., Director, Pre-Trial Release Program.

References

1. TCA 40-1201; 40-604; 40-1202.
2. Contact the Davidson County Sheriff's office and the Shelby County District Attorney General's office for information about their pretrial release programs.
3. American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Pretrial Release, Approved Draft, Chicago: American Bar Association (1968).
4. "A Study of the Administration of Bail in New York City," University of Pennsylvania Law Review, Vol. 106, March 1958.
5. Davis, Samuel M., "Bail--An Examination of Release and Recognizance," Mississippi Law Journal, Vol. 39, March 1968.
6. Katz, Lewis, Lawrence Litwin, and Richard Bamberger, "Justice is the Crime, Pretrial Delay in Felony Cases," Cleveland: The Press of Case Western Reserve University (1972).
7. Mummolo, Dante Gerard, "Pretrial Control in the United States: Assuring the Defendant's Appearance at Trial," Suffolk University Law Review, Vol. 7 (Fall 1972).
8. National Conference on Bail and Criminal Justice, Institute on the Operation of Pretrial Release Projects, Bail and Summons: 1965, New York: National Conference on Bail and Criminal Justice (1965).
9. Ralls, Williams R., "Bail in the United States," Michigan State Bar Journal, Vol. 48, January 1969.

4.2 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that by 1978 the General Assembly adopt legislation to eliminate private bail bond agencies from the pretrial release process.

Commentary

Adoption of this objective would permanently remove the abuses of the private bail bond system by completely eliminating private bail bond agencies from the pretrial release process. In taking a strong stand on this question, the Tennessee Law Enforcement Planning Commission takes a position consistent with that expressed by the American Bar Association in opposing professional bail bond agencies:

> If the surety's only interest in the defendant is financial, one of two results will occur. On the one hand, the surety will become a private jailer, a phenomenon that is plainly intolerable in this day. On the other hand, the surety may simply regard the arrangement as an insurance transaction. In that case, he will either protect himself by demanding full, or virtually full, collateral or he will simply gamble that the defendant will return. If he requires collateral, the surety has added nothing that could not be accomplished by requiring the defendant to pledge his property to the court. If the surety has gambled, he has again contributed nothing to the process. Thus, it is difficult to see what contribution the bondsman makes that justifies the money he takes from defendants. It is true that he sometimes facilitates release for people who do not have liquid assets. But if the release system is [properly reformed]...most of those defendants should be released on some other basis.1/

1/ American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Pretrial Release. Commentary to Standard 1.2 (Approved Draft 1969).

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 4.6, Washington D.C.: Government Printing Office (1974).

References

1. TCA, Title 40, Chapter 14 (regulations concerning bail bondsmen).
2. "Bail Bondsmen and the Fugitive Accused--The Need for Formal Removal Procedures," Yale Law Journal, Vol. 73, May 1964.
3. Foote, Caleb, "The Coming Constitutional Crisis in Bail: I," University of Pennsylvania Law Review, Vol. 113, May 1965.
4. Foote, Caleb, "The Coming Constitutional Crisis in Bail: II," University of Pennsylvania Law Review, Vol. 113, June 1965.

4.3 Objective. By 1978, the General Assembly may wish to consider legislation that would: (1) specify the rights of arrested persons and procedures to be followed when pretrial detention is imposed or when the conditions of release substantially infringe on the normal liberties of the individual; and (2) specify the rights of the accused and the procedures to be followed when revoking pretrial release.

Commentary

The purpose of this legislation is to safeguard the rights of the accused by having the legislature specify the procedures that are to be followed and the rights of the individual when pretrial release is not granted, when substantial restrictions on activities are imposed as a condtion of pretrial release, and when pretrial release is revoked. Comments by Tennesseans working in the courts suggest that the last matter, safeguarding the individual when pretrial release is revoked, may be a particularly significant problem in some jurisdictions in the state. The problem cited was that of private bail bondsmen abusing their authority and returning individuals to jail even when there was little, if any, reason to do so. Under the present system, the accused person who has paid a bail bondsman to obtain his release may suddenly find himself arbitrarily returned to jail, and thus, lose both his freedom and the fee he paid to the bondsman. The abuses, both real and potential, of such a system are substantial. Therefore, even if release on bond should remain the primary form of pretrial release, the rights of the accused citizen could be protected by limiting the right of bail bondsmen to return the individual to custody.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Correction, Standard 4.5, Washington: Government Printing Office (1974).

References

1. TCA, Title 40, Chapter 14 (regulations concerning bail bondsmen); TCA 40-1202, 1203 on right to bail.
2. American Bar Association, Project on Standards for Criminal Justice, Standards Relating to Pretrial Release, New York: Office of the Criminal Justice Project (1968).
3. Federal Bail Reform Act of 1968, 18 U.S.C. 3146 et seq.
4. Morrissey v. Brewer, 408 U.S. 471 (1972) (Procedural safeguards for parole revocation).
5. Wright, Charles A., Federal Practice and Procedure, Vol. 1, secs. 80-82, St. Paul: West (1969).

4.4 Objective. By 1977, where investigative services for pretrial release, diversion, and referral exist, they should be coordinated and operated through one administrative unit.

Commentary

The coordination of investigative services for pretrial release, diversion, and referral programs is aimed at improving the administration and minimizing the cost of such programs. Where a local jurisdiction has more than one program requiring investigation into the background of arrested persons, it is sensible to have one investigation and assessment rather than having the same work repeated by persons working in different programs. If a jurisdiction has, for instance, both a pretrial release program, intended to make release without bond available to qualified individuals, and a pretrial intervention program, intended to assist the accused person in obtaining counseling, employment, etc., this proposal would require the investigations of the individual to be coordinated and operated through the one administrative unit.

Pretrial Release of Mental Incompetents

Introduction

The person accused of a crime who is incompetent to stand trial is a captive of both the criminal law and public health systems, neither of which generally wants to assume full responsibility for his welfare. The criminal justice system cannot deal with him in a manner consistent with due process until he is competent to understand the trial and assist his counsel in preparing for it. On the other hand, health officials are often reluctant to allocate already scarce resources to individuals who, if treated, will be subjected to prosecution and possible punishment. The result at present is that many individuals languish for long periods either in jail or in mental institutions, uncared for and untreated, even though they have never been convicted of a crime. In many instances, individuals remain confined in these conditions for a period longer than the sentence which could have been imposed for the crime they allegedly committed.

4.5 Objective. During 1976 the General Assembly should consider reviewing the Mental Health Act (Ch. 248, Public Acts of 1975) for any changes that may be needed regarding persons accused of a crime who are alleged to be or have been found to be incompetent to stand trial.

4.6 Objective. By 1978 the General Assembly should consider the need for further legislation to define the procedures and conditions for pretrial release of accused persons alleged or found to be incompetent to stand trial. In considering such legislation a careful review should be made of whether current law and actual practices meet constitutional safeguards as determined by the U.S. Supreme Court.

Commentary

The U.S. Supreme Court has recently reviewed the procedures applicable to persons alleged to be incompetent and has found them constitutionally deficient. In Jackson v. Indiana, 406 U.S. 715 (1972), the Court invalidated Indiana's procedures as violations of equal protection and due process of law. On the issue of equal protection, the Court stated:

> ...We hold that by subjecting Jackson to a more lenient commitment standard and to a more stringent standard of release than those generally applicable to all others not charged with offenses, and by thus condemning him in effect to permanent institutionalization without the showing required for commitment or the opportunity for release afforded by [civil commitment statutes] Indiana deprived petitioner of equal protection of the laws under the fourteenth amendment.

The Court thus, suggests that persons accused of crimes cannot be treated differently than persons in the free community who suffer mental illness.

On the question of due process the Court announced:

> ...We hold...that a person charged by a State with a criminal offense who is committed solely on account of his incapacity to proceed in trial cannot be held more than the reasonable period of time necessary to determine whether there is a substantial probability that he will attain the capacity in the forseeable future. If it is determined that this is not the case, then the State must either institute the customary civil commitment proceeding that would be required to commit indefinitely any other citizen, or release the defendant. Furthermore, even if it is determined that the defendant probably soon will be able to stand trial, his continued commitment must be justified by progress toward that goal.

The court thus indicates that detention must be limited in time and justified on the basis of the state's interest in having a competent defendant to stand trial. Detention beyond the needs of this interest can be justified by other state interests reflected in civil commitment procedures, but then those procedures, not criminal procedures, should be utilized.

The Tennessee Mental Health Act adopted in 1975 seems to meet U.S. Supreme Court guidelines insofar as it provides that commitment to a mental institution of a person alleged to be incompetent must take place under the provisions for civil commitment as provided in TCA 33-604. However, the court can order that hospitalization be in a forensic treatment unit, at least raising the question of whether equal protection is thus provided. In addition, it appears that commitment may be for an indefinite period of time. After a person is adjudged incompetent, the state has an interest in attempting to treat him in order to return him to competency to answer for the alleged crime. Where treatment is likely to be unsuccessful, however, confinement based on treatment should be prohibited. It is not only wasteful of treatment resources but, as suggested in Jackson v. Indiana, unconstitutional. Thus, where incompetency is established, further inquiry should be undertaken to determine if treatment will be successful in the near future and whether such treatment requires confinement. The presumption should be against detention and in favor of less restrictive means.

With regard to the pretrial release of accused persons alleged to be incompetent, the National Advisory Commission took the position that such persons, as well as those already adjudged incompetent, should be treated in the same manner as any other person who is accused of a crime but has not been tried. Only minor modifications of the rules of criminal procedure need be made to carry out the additional state interest of attempting to return an incompetent to a state of competency.

Too often where incompetence is raised, the automatic response is to confine the person in an institution either for purposes of diagnosis or, after adjudication, treatment. Neither diagnosis nor treatment requires confinement in all cases. In many instances, a better diagnosis or treatment program can be implemented on an outpatient basis. A presumption against detention and in favor of the least restrictive measures to effectuate the state interest should be as applicable to incompetents as it is to sentenced offenders and other persons awaiting trial. Detention should be imposed only when it is required for assuring the person's presence for trial or the nature of the diagnosis or treatment program requires confinement.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Standard 4.7, Washington D.C.: Government Printing Office (1974).

References

1. Tennessee General Assembly, Public Acts of 1975, Chapter 248.
2. Comment, "Competency to Stand Trial: A Call for Reform," Journal of Criminal Law, Criminology, and Police Science, 50:569 (1968).
3. Comment, "Illinois Alternative to Indefinite Pretrial Commitment of Incompetents," University of Illinois Law Forum, 278 (1971).
4. Engelbert, Steven L., "Pretrial Criminal Commitment to Mental Institutions: The Procedure in Massachusetts and Suggested Reforms," Catholic University Law Review, 17:163 (1967).
5. Jackson v. Indiana, 406 U.S. 715 (1972). (Detention must be limited in time and justified on the basis of state's interest in having a competent defendant to stand trial).
6. Kaufman, Harold, "Evaluating Competency: Are Constitutional Deprivations Necessary?" American Criminal Law Review, 10:465 (1972).
7. Marcey v. Harris, 400 F. 2d 772 (D.C. Cir. 1968).
8. Matthews, Arthur R., Mental Disability and the Criminal Law: A Field Study, Chicago: American Bar Foundation (1970).
9. Pate v. Robinson, 383 U.S. 375 (1966) (Hearing required on issue of incompetency).

5. GOAL: OBTAIN SIGNIFICANT REDUCTION OF DELAYS IN CRIMINAL PROCEEDINGS

Establishment of Time Limits on Trials and Redistricting of Courts

Introduction

There is wide agreement among criminal justice professionals that the prompt processing of criminal cases would not only preserve the right of the defendant to a speedy trial but is very much in the interests of society as a whole. District Attorneys throughout Tennessee have complained that long delays in trying a defendant may result in a failure to convict simply because key witnesses have died or moved away or had their memory of the incident clouded by time. On the other side, an accused person, who is in fact innocent but cannot make bond, may spend long periods in jail awaiting trial. From the individual's point of view, he is subjected to punishment for a crime he did not commit. In addition, insofar as the apprehension and punishment of offenders have a deterrent effect upon the offenders themselves and on others, it is reasonable to believe that the more closely the punishment follows the crime, the greater the deterrent value of that punishment. Prompt processing also serves society's interests by more quickly confining and removing from the general public offenders who might commit another crime. The presumption of innocence requires that pretrial liberty be available to most defendants, but it creates a risk that some of those at liberty will commit additional crimes while awaiting trial. The more quickly trial follows arrest, the less that risk.

There is no recent comprehensive data on the time from arrest to trial in Tennessee. However, information collected for the year 1969 showed that the median time ranged from 13 to 31 weeks in the four metropolitan counties and from 8 to 51 weeks in the rural circuits. In all areas of the state there were trials that were delayed as long as 10 months and some for over 2 years. Among the factors cited as contributing to delay were: (1) the constitutional requirement that any fine in excess of $50 be assessed by a jury, resulting in a large number of jury trials; and (2) the legislatively fixed and widely spaced terms of court in rural areas, often resulting in a 2 or 3 month delay before a grand jury would even be in session to act on a case.1/

1/ The Judicial System of Tennessee, October 1971 (Mimeographed), pp. 45-50.

There is reason to think that delays in hearing cases may be substantially longer now than they were in 1969. At that time the median elapsed period from arrest to trial in Davidson County was 13 weeks, but in the summer of 1975 the District Attorney General for Davidson County indicated that a delay of 5 to 6 months was typical.[1] Another indication of the growing difficulty of providing a speedy trial is found in the backlog of cases filed but not yet concluded. The number of criminal cases pending in the Circuit Courts has increased steadily over the past 4 years. The number of unheard misdemeanor cases has remained at a steady level of about 4,000 in each year, but the number of pending felony cases has grown over 50 percent, from 7,166 in 1971 to 10,813 in 1974.[2]

One reason for the increasing number of pending cases is the uneven workload of judges in various circuits. In the 11 circuits in which there were specific judges hearing only criminal cases, the number of criminal cases concluded per judge in 1974 varied from a low of 260 in one circuit to a high of 1,287 in another.[3] Such an imbalance suggests an inefficient allocation of judges to the various circuits.

1/ The Tennessean, August 6, 1975.

2/ See the Annual Report of the Executive Secretary of the Supreme Court of Tennessee for the years 1971 through 1974.

3/ Executive Secretary of the Supreme Court of Tennessee, Annual Report, p. 148 (1974).

5.1 Objective. The Tennessee Law Enforcement Planning Commission strongly recommends that by 1978 the General Assembly adopt legislation specifying maximum allowable delays for felony and misdemeanor trials and for retrials. Such legislation should also define periods which would be excluded in computing time to trial.

5.2 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that during 1976 the General Assembly adopt legislation redistricting judicial circuits to equalize case loads.

Commentary

These two legislative proposals are intended to remedy the problem of delay from time of arrest to trial. By specifying a maximum allowable time to trial, while allowing certain periods such as time spent on psychiatric evaluations or periods of illness to be excluded in computing time to trial, the legislature would provide a mandate governing both the prosecution and the defense. In determining what time limits are to be established, it will be important for the legislature to take into account the resources available to the court system and to consider increasing those resources, where necessary, to make speedy trials possible. By redistricting judicial circuits to equalize caseloads, the legislature will solve one of the major barriers to speedy trials in some areas of the state.

In the absence of legislative redistricting, the Tennessee Supreme Court, in October 1975, announced plans to unify trial level courts throughout the state. Under this plan, judges can be assigned to hear any type of case even if it is one that they would not normally have heard. If there is a backlog in divorce cases, for instance, they might be assigned to a judge who usually hears criminal cases, or a chancellor might be given criminal cases to reduce an overload in that area. In addition, judges with light caseloads may be temporarily assigned to another circuit where caseloads are heavier. It seems likely that most judges and others working in the courts would prefer to solve the caseload imbalance problem through redistricting. In the absence of redistricting, it is clear that the problem will be dealt with in the manner outlined by the Supreme Court.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 4.1, Washington: Government Printing Office (1974).

References

1. TCA 40-2001, 2003 (on right to speedy trial); 17-211, 215 (on assignment and interchange of judges).
2. American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Speedy Trial, Approved Draft, Chicago: American Bar Association (1968).

3. American Law Institute, A Model Code of Pre-Arraignment Procedure, Tentative Draft No. 1, Philadelphia: The American Law Institute (1966).
4. Barret, Edward L., "Police Practices and the Law--From Arrest to Release or Charge, California Law Review, Vol. 50, March 1962.
5. Erickson, William H., "The Right to a Speedy Trial: Standards for Its Implementation," Houston Law Review, Vol. 10, January 1973.
6. Godbold, John C., "Speedy Trial--Major Surgery for a National Ill," Alabama Law Review, Vol. 24, Spring 1972.
7. LaFave, Wayne R., "Detention for Investigation by the Police: An Analysis of Current Practices," Washington University Law Quarterly, Vol. 1962, June 1962.
8. "Speedy Trial Schemes and Criminal Justice Delay," Cornell Law Review, Vol. 57, May 1972.

Preliminary Hearings and Pretrial Motions

Introduction

Delays in the holding of preliminary hearings, and delays associated with the submission, hearing and ruling on pretrial motions, all tend to contribute to the failure to provide a speedy trial. The interests of both the state and the defendant can be injured by such delays. The following objectives all deal with establishing time limits that will reduce delays associated with these procedures.

5.3 Objective. By 1978, the General Assembly should consider legislation setting time limits for the holding of preliminary hearings and for the waiver by a defendant of his right to a preliminary hearing.

5.4 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that during 1976 the Tennessee Supreme Court and the General Assembly adopt rules of procedure for misdemeanor cases that would require submission of motions for a nonjury trial within a specified time before trial and would establish procedures to expedite hearings on motions.

5.5 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that during 1976 the Tennessee Supreme Court and the General Assembly adopt rules of procedure setting time limits in felony cases for filing, hearing and ruling on pretrial motions.

Commentary

Pretrial delays would be reduced by setting a time limit for the holding of preliminary hearings. The time limit should provide sufficient time for both sides to conduct whatever investigation is necessary to determine the limited matters that should be at issue at the preliminary hearing. Extended and time consuming preliminary hearings are generally caused primarily by the desire to use those proceedings as discovery devices. If, as is anticipated, new rules of criminal procedure will specifically provide for pretrial discovery, the use of the preliminary hearing for that purpose will be superfluous. Thus, it should be possible to hold the hearing relatively quickly in order simply to determine whether there is probable cause to believe that a crime was committed and that the defendant committed it. Efficient scheduling of court time would be promoted by specifying that a defendant who intends to waive his right to a preliminary hearing give notice to that effect at least a day before the time scheduled for the hearing.

The adoption of time limits and the improvement of procedures for filing, hearing and ruling on motions, in both misdemeanor and felony cases, is intended to promote speedy trial and to minimize the inconvenience and waste of time of all those involved. It would be particularly helpful in complex felony prosecutions to take steps to facilitate the early resolution of preliminary issues and to encourage administrative settlement or a narrowing of the matters that need to be formally litigated.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standards 4.3, 4.8, 4.10, Washington: Government Printing Office (1974).

References

1. TCA 40-1103 (preliminary hearings); 40-2504 (motion for nonjury trial in felony cases; no general statute on criminal motions).
2. Katz, Lewis, Lawrence Litwin, and Richard Bamberger, Justice is the Crime, Pretrial Delay in Felony Cases, Cleveland: The Press of Case Western Reserve University (1972).
3. American Bar Association Project on Minimum Standards Relating to Discovery and Procedures Before Trial, Approved Draft, Chicago: American Bar Association (1970).

Case Scheduling and Continuances

Introduction

Given the demands on the trial courts and the consequent necessity of postponing the hearing of some cases for considerable periods, at least as the court system functions at present, the interests of justice would best be served by a rational procedure to give priority to cases in which an early hearing is of special importance. Current practices in Tennessee do provide for certain priorities. Specifically, criminal cases are generally given priority over civil cases, and cases in which a defendant is in custody are given preference over other criminal cases. The interests of both society and the defendant could be served, however, by providing for more detailed and specific priorities for placing cases on the docket.

An additional cause of delay in the hearing of cases is the frequent practice of requesting continuances. While there are sometimes valid reasons for requesting a continuance, Tennesseans working in the courts agree continuances are often sought as a tactical measure to delay the hearing of the case. Greater control over the granting of continuances would help to reduce such abuse.

5.6 Objective. During 1976, trial courts and District Attorneys may wish to consider developing written policies and procedures to establish clear priorities for the hearing of cases. The court and the prosecutor should cooperate in establishing and carrying out the policies.

Strategies

1. The prosecution should advise the court administrator, if there is one, or the judge, of those cases that should be given priority.

2. The following priorities should be considered in scheduling cases:

   a. Criminal cases where the defendant is detained awaiting trial.

   b. Criminal cases where the defendant is at liberty awaiting trial and is believed to present unusual risks to himself or the public.

   c. Criminal cases where the defendant is subject to substandard conditions or supervision awaiting trial.

   d. Criminal cases where the defendant is a recidivist.

   e. Criminal cases where the defendant is a professional criminal.

   f. Criminal cases where the defendant is a public official.

   g. All other criminal cases.

   h. Civil cases.

3. The prosecutor should consider the age of the case.

4. The prosecutor should consider whether the defendant was arrested in the act of committing a felony.

5.7 Objective. By 1976, District Attorneys General should give priority in making presentments to the grand jury to cases of persons who cannot make bond and are held in jail pending their indictment.

Commentary

The practice of automatically scheduling cases for trial on a chronological basis with no regard for the characteristics of individual cases amounts to ignoring an opportunity to serve the interests of individual defendants as well as those of the general public. In some circumstances, delay prior to trial is especially burdonsome, and those cases should be given priority as a means of minimizing the burden on the accused.

Priority case scheduling also serves the public interest by recognizing that certain offenders present a greater threat to the community than others and that rapid trial of such offenders reduces this threat. Law enforcement officials agree that most serious crime is committed by a small number of professional criminals who depend upon crime as their major source of income. Priority scheduling recognizes habitual offenders, violent offenders, and professional criminals as major contributors to the crime problem. Differential treatment of these few offenders for scheduling purposes will be a positive contribution to reducing crime and assuring safer streets.

When the defendant is a public official, the interests both of the defendant and of the community demand priority. The defendant is likely to be suspended from his job, perhaps without pay. The community must do without his services and those of a permanent replacement while awaiting the outcome of the litigation. Special attention to such cases is clearly justified.

In some cases police officers apprehend criminals in the act of committing a felony, such as burglary or robbery. The proof required at trial in such a case is minimal and can usually be supplied by the victim and the arresting officer. Conviction is often a certainty and pretrial preparation is limited. In many cases, the accused pleads guilty as soon as trial is imminent, but, without priority docketing, many months pass between arrest and this point. Consequently, such cases should be given priority.

The age of the case should also be considered in setting priorities due to the desirability of giving special attention to those cases that present the greatest threat to the community. Priority treatment is needed to maximize the deterrent effect of prosecution and conviction and to avoid extended pretrial freedom during which time other crimes may be committed or witnesses intimidated.

The question of priorities arises not only in setting a date for trial but also in the order in which cases are taken to the grand jury. Preference in the presentation of cases to the grand jury should be given to persons who cannot make bond so that they will not be held in jail any longer than necessary in the event that no true bill is returned by the grand jury.

An excellent example of priority scheduling is in the U.S. Attorney's office in Washington, D.C., where a comprehensive management information system known as PROMIS (Prosecutor's Management Information System) has been created to provide statistical reports, send notices to witnesses, and by means of a case-scoring system, assist the office in setting priorities. The cases with the highest scores are given special attention by a unit within the office.1/

Sources

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 4.11, Washington, D.C.: Government Printing Office (1974).
2. National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Standard 4.10, Washington, D.C.: Government Printing Office (1974).

References

1. "Legal Leap-Frog: In Pursuit of the Trial Calendar Preference," Southern California Law Review, Vol. 42, Fall 1968.
2. "The Right to a Speedy Criminal Trial," Columbia Law Review, Vol. 57, June 1957.
3. Work, Charles R., "A Prosecutor's Guide to Automation," The Prosecutor, Vol. 7, November-December 1971.
4. American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Speedy Trial, Approved Draft. Chicago: American Bar Association (1968).

1/ Work, Charles R., "A Prosecutor's Guide to Automation," The Prosecutor, Vol. 7, November-December 1971.

5.8 Objective. By 1977, trial courts hearing criminal cases must provide, by a written rule of court, that continuances will be granted only when good cause is shown in a written motion. Defense counsel should cooperate in avoiding continuances.

Commentary

Tennesseans working the court system have pointed to unjustified continuances as a significant source of delay in the judicial process. Judges sometimes grant continuances as a matter of routine or for inconsequential reasons. Not only does this contribute to delay, but it further complicates the coordinated performance of the adjudicative process.

Defendants, particularly those on bail, often do not desire a speedy trial. The defense counsel often welcomes delay. A survey of 18 major cities disclosed that more than 75 percent of the defense attorneys engage in pretrial delay until their fees are completely paid.1/

Prosecutors often contribute to these defense practices by acquiescing to requests for continuances. Too frequently a prosecutor's caseload does not afford him the luxury of adequately monitoring the status of his case. Consequently, his acquiescence tends to perpetuate and encourage dilatory practices.

In order to eliminate delays caused by defendants or counsel, a change in attitude on the part of the bench and bar is needed. New control mechanisms also may be required. Lawyers have a duty to assist the courts in trying to achieve the orderly administration of justice, and conduct that is inconsistent with that goal should be penalized.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 4.12, Washington, D.C.: Government Printing Office (1974).

1/ Katz, Lewis, Lawrence Litwin, and Richard Bamberger, Justice is the Crime, Pretrial Delay in Felony Cases, Cleveland: The Press of Case Western Reserve University, p. 47 (1972).

References

1. TCA 40-2503.
2. Banfield, Laura, and C. David Anderson, "Continuances in Cook County Criminal Courts," University of Chicago Law Review, Vol. 35, Winter 1968.
3. Katz, Lewis, Lawrence Litwin, and Richard Bamberger, Justice is the Crime, Pretrial Delay in Felony Cases, Cleveland: The Press of Case Western Reserve Univerity, p. 47 (1972).

6. GOAL: IMPROVE PROCEDURES FOR THE TRIAL OF CRIMINAL CASES

Introduction

Although only a relatively small proportion of all criminal cases ultimately go to trial, access to a properly conducted trial is fundamental to the American system of justice. In addition, public support for the courts requires that, both in fact and in appearance, trials be conducted in a fair, reasonable, and expeditious manner. A review of current law and practice in Tennessee suggests that improvements in the conduct of trials could be made in a number of areas, including: (1) limiting the number of peremptory challenges in multiple defendant cases and equalizing the number of peremptory challenges granted to the prosecution and to the defense in all cases; (2) providing for the more efficient use of court time; (3) providing greater assistance to juries in making their decisions; and (4) developing specific rules concerning the dress of defendants and witnesses, the use of physical restraints in the courtroom and the conditions under which a defendant may be removed from the courtroom because of disruptive behavior.

One very controversial rule affecting the trial of criminal cases that should at least be examined and reviewed is the exclusionary rule. The United States Supreme Court, in Mapp v. Ohio, established the exclusionary rule for all jurisdictions in the country. Even before that ruling, however, the exclusionary rule had been established through case law in Tennessee. This rule has been defended as the only practical way to limit the resort to unlawful search and seizure by law enforcement officers. The rule has also been criticized for permitting the acquittal of accused persons who were almost certainly guilty simply because an officer, perhaps unwittingly, did not follow proper search and seizure procedures. A review of the exclusionary rule is suggested as a first step toward the resolution of the difficult questions associated with the use of improperly obtained evidence.

6.1 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that by 1977, the General Assembly amend TCA 40-2510 so that: (1) the number of peremptory challenges will be limited in multiple defendant cases, and (2) the defense and the prosecution will have equal numbers of peremptory challenges in all cases.

Commentary

Current law provides that in capital cases the state has six peremptory challenges for each defendant while the defense has 15. In all other felonies the state receives four peremptory challenges for each defendant and the defense receives eight. In misdemeanor cases, the state and defense each receive three per defendant.

The empaneling of a jury can be made very difficult in a multiple defendant case because of the large number of peremptory challenges. In a noncapital felony case involving the joinder of four defendants, for instance, the defense would have a total of 32 peremptory challenges in an effort to seat a jury of 12. Although there might be justification for increasing the number of peremptory challenges in the multiple defendant case to more than the number allotted in a single defendant case, the number should be consistent with reasonable selection procedures. Challenges for cause would remain available to each defendant.

In any case, regardless of the number of peremptory challenges allocated to the defense, the prosecution should be allowed to exercise an equal number. Unless the prosecution is afforded this opportunity, the defense has an unjustifiable opportunity to select a jury biased in its own behalf.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 4.13, Washington: Government Printing Office (1974).

Reference

1. TCA 40-2510.

6.2 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that by 1977 the Supreme Court adopt certain standards relating to the trial of criminal cases.

Strategies

1. In every court where criminal cases are being tried:

   a. Daily sessions should commence promptly at 9:00 a.m. and continue until 5:00 p.m., unless the business before the court is concluded at an earlier time and it is too late to begin another trial.

   b. Opening statements to the jury should be limited to clear, nonargumentative statements of the evidence which should be strictly limited to that which is directly relevant and material.

   c. Summations should be limited to the issues raised by the evidence.

   d. Standardized instructions should be utilized in all criminal trials as far as practical.

2. The judge should instruct the jury panel, prior to its members sitting in any case, concerning its responsibilities, its conduct and the proceedings of criminal trial. Each juror should be given a handbook that relates to these matters.

3. Jurors should be permitted to take notes during the trial and keep such notes with them during their deliberations.

4. The court may permit the jury to take into their deliberations a copy of the charges against the defendant and any materials, except depositions, which have been received in evidence.

5. The jury may ask to review certain testimony or evidence.

6. The court may provide additional instructions to the jury upon the latter's request.

Commentary

Although much of the delay in criminal proceedings is caused by pretrial procedures, time also can be wasted during the actual trial of the case. An unnecessarily long trial is doubly destructive: it ties up the court facilities and personnel, rendering them unavailable to try other cases, and at the same time prolongs final disposition of the case on trial.

The most common problem in the trial process is the failure to utilize available resources fully. Many courtrooms sit vacant until midmorning on trial days. Long lunch recesses and early afternoon adjournments are common. Thus, trials that could be conducted in 2 full days often use 4 days. These unnecessarily long criminal trials monopolize judges and court support personnel and waste the time of jurors and attorneys. This problem could be greatly mitigated by establishing definite hours for the holding of court. The time of all concerned can also be saved by limiting opening statements and summations and using standardized instructions whenever possible.

Persons called for jury service usually know little about the criminal justice system and their individual responsibility. Thus, jurors should be carefully instructed regarding the trial process and their function in it. Both oral and written instructions are essential. The judge should explain how jurors are selected, how a criminal trial works, how a civil trial works, the difference between direct and crossexamination, and what is meant by the burden of proof. He should discuss basic rules for juror conduct, e-g., avoiding being influenced by conversations that are overheard or not making an independent investigation of any of the placed mentioned in the case.

A juror's manual also should be provided. It should restate the oral instructions. The Juror's Handbook for the Superior Court of Los Angeles County, for example, is organized into the "Six Main Steps of a Jury Trial"--Selection of a Jury, The Trial, Judge's Admonitions to Jurors During Trial, Judge's Instructions on the Law, Deliberations by Jury, and The Verdict.1/ The handbook should be as informative as possible. However, it is imperative that the information be accurate and objective so that no claim can be made that the jury was improperly informed, to the prejudice of a particular defendant.

1/ Superior Court, Los Angeles County, California, Juror's Handbook. Los Angeles: Superior Court, Los Angeles County, undated.

Although judges in Tennessee have not generally permitted jurors to take notes during a trial, it is recommended that jurors be allowed to do so and to use those notes during their deliberations. Given the complexity and length of many criminal trials, it seems reasonable to permit jurors to take notes that will enable them to recall more accurately and fully relevant testimony.

The American Bar Association believes that the court should have the discretion to permit jurors to take with them into the jury room any materials, other than depositions, that have been received in evidence so that the jury will have the opportunity to examine the evidence during the course of its deliberations. The ABA suggests that in exercising his discretion in this matter, the judge should take into account: (1) "whether the material will aid the jury in proper consideration of the case," (2) "whether any party will be unduly prejudiced by submission of the materials;" and (3) "whether the material may be subjected to improper use by the jury."1/

The jury will be aided in its deliberations if, when it so requests, the judge permits it to have certain testimony reread or to examine evidence. The judge should also provide additional instructions on any point of law which the jury does not understand. Such procedures are currently left to the discretion of the trial judge, and most judges, if a request for additional instructions is received, generally refuse to do anything more than to reread portions of the original charge to the jury. The ability of the jury to render a fair verdict would be increased if judges were given a duty to answer reasonable requests from the jury for assistance.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standards 4.15 and 10.2, Washington: Government Printing Office (1974).

References

1. American Bar Association Standards, Trial by Jury, 4.2, 5.1, 5.2, 5.3, (1968).
2. State Bar of California and Conference of California Judges, Public Affairs Manual for Bench and Bar of California, San Francisco and Los Angeles: State Bar of California and Conference of California Judges (1972).

1/ ABA Standards, Trial by Jury, 5.1 (1968).

6.3 Objective. The Tennessee Law Enforcement Planning Commission strongly recommends that by 1977 the Supreme Court issue rules that will assure that a defendant or witness: (1) will not be permitted to appear in court in the distinctive attire of a prisoner and (2) will not be subject to unnecessary physical restraint but will be removed from the courtroom if his conduct disrupts the orderly hearing of the case.

Commentary

Carrying out the rules suggested in Objective 6.3 would not involve any significant change in current practices. Civilian clothing is generally provided to incarcerated defendants or witnesses for their appearance in a trial. Physical restraint is generally used only when absolutely necessary, and judges do have disruptive persons removed from the court. The advisability of having an official rule on these matters governing the whole court system lies in assuring that defendants and witnesses will be treated in a uniform manner in all courts in the state. A rule would also serve an educational function for new judges by informing them of the proper procedures to be followed with respect to dress, physical restraint, and removal from the hearing.

Source

1. American Bar Association Standards, The Function of the Trial Judge, 5.3, 6.8 (1968).

6.4 Objective. By 1978, the Supreme Court should study, or designate a group to study, the use of the exclusionary rule.

Commentary

The Tennessee Law Enforcement Planning Commission recommends a study of the exclusionary rule as a means of attempting to compel compliance by police and others with judicially promulgated rules of conduct. The effectiveness of the exclusion of resulting evidence as a deterrent to others who might engage in the prohibited conduct is open to question, the cost of the exclusionary rule in terms of court time and case delay and confusion is not. Consideration should be given to the proposal of the American Law Institute that exclusion of resulting evidence follow only if there has been a "substantial" violation of the underlying rule.[1/]

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Recommendation 4.1, Washington: Government Printing Office, (1974).

References

1. LaFave, Wayne R., "Improving Police Performance Through the Exclusionary Rule--Part I: Current Police and Local Court Practices," Missouri Law Review, Vol. 30, Spring 1965.
2. Oaks, Dallin H., "Studying the Exclusionary Rule in Search and Seizure," University of Chicago Law Review, Vol. 37, Summer 1970.
3. Paulsen, Monrad C., "The Exclusionary Rule and Misconduct by the Police," Journal of Criminal Law, Criminology, and Police Science, Vol. 52, September-October 1961.
4. "Search and Seizure in Illinois: Enforcement of the Constitutional Right of Privacy," Northwestern University Law Review, Vol. 47, September-October 1952.
5. Waite, John Barket, "Judges and the Crime Burden," Michigan Law Review, Vol. 54, December 1955.
6. Wright, Charles Allen, "Must the Criminal Go Free if the Constable Blunders?" Texas Law Review, Vol. 50, April 1972.

1/ American Law Institute, A Model Code for Pre-Arraignment Procedure 8.02 (2) (Tent. Draft No. 4, 1971).

7. GOAL: IMPROVE PROCEDURES FOR SENTENCING CONVICTED OFFENDERS

Introduction

For a defendant convicted of a criminal offense, sentencing becomes the most crucial aspect of the court process. The options available to the sentencing authority vary substantially from leniency to application of the maximum penalty provided by law. For the defendant these alternatives may mean the difference between 5 and 15 years in prison. For society, the sentencing decision often is evaluated in terms of how long it will keep an undesirable member out of circulation.

On a mechanical level, sentencing determines whether correctional agencies will receive an individual, as well as the conditions under which these agencies will receive him. Thus, a defendant may be sentenced to imprisonment or to probation; in the latter situation, correctional authorities do not have the power to use full-time institutionalization as a means of treating the offender. Sentencing also affects the correctional process on a more subtle level. The extent to which a defendant regards his sentence as fair may influence his willingness to participate in correctional programs. Moreover, certain sentencing practices give correctional officials authority to detain an offender until his chances of successful integration into the community are at a maximum; other sentencing practices may require earlier release or detention beyond that point.

Sentencing is related to community security insofar as it affects the ability of correctional agencies to change the behavior of convicted offenders. It also may help curtail crimes by persons other than the offender being sentenced. This may occur through deterrence--the creation of a conscious fear of swift and certain punishment--or through more complex means, such as reinforcing social norms by the imposition of severe penalties.

Legitimate interests of the offender himself also are affected by sentencing. A convicted offender is entitled to equal treatment, and uneven sentencing practices can endanger that right. While criminal punishment is an appropriate way of reducing crime, a convicted offender should not be punished beyond the extent useful in reducing crime. Unnecessarily harsh sentences are to be avoided as are unjustifiably lenient ones.

Current law in Tennessee provides that the jury shall determine the sentence in felony cases that go to trial. The jury performs the same function in felony cases in which a guilty plea is entered unless the defendant waives his right to have the jury determine the sentence.1/ In practice, when a plea of guilty is entered, the defendant generally waives the jury and the judge determines the sentence after receiving a recommendation from the prosecutor. In misdemeanor cases, the judge determines the penalty unless the defendant requests that a jury do so.2/

An extensive study of sentencing practices in Tennessee suggests that the present system of jury sentencing quite often results in inequitable sentencing of offenders. A total of 2,069 sentences given between 1960 and 1969 to individuals convicted of first and second degree murder, rape, armed robbery, and third degree burglary were reviewed. A careful statistical study showed that in determining sentences, juries tended to be influenced by factors such as the race, education and residence of the defendant. Variations related to those factors in sentences set by juries were far greater than variations in cases where the judge determined the sentence.3/

The problems associated with jury sentencing are not unique to Tennessee. The National Advisory Commission made the following assessment of jury sentencing:

> ...the practice has been condemned by every serious study and analysis in the last half-century. Jury sentencing is nonprofessional and is more likely than judge sentencing to be arbitrary and based on emotions rather than the needs of the offender or society. Sentencing by juries leads to disparate sentences and leaves little opportunity for development of sentencing policies.4/

In accordance with this evaluation, the National Advisory Commission advocated the abolition of jury sentencing in all cases. The same recommendation was made by the American Bar Association.5/

1/ TCA 40-2707 and 20-2310.
2/ TCA 40-2704.
3/ Day, Bob, Sam Gillespie and Al Pearson, Discretion in Sentencing and Parole Board Decisions in Tennessee: 1960-1969, p. 194, Nashville: Vanderbilt University School of Law (1972).
4/ National Advisory Commission on Criminal Justice Standards and Goals, Courts, p. 110, Washington, D.C.: Government Printing Office (1974).
5/ American Bar Association Standards, Sentencing Alternatives and Procedures, 1.1 (1968).

Despite these criticisms of jury sentencing, Tennesseans are generally reluctant to abolish it and replace it with a system in which sentences are determined by the judge. Consequently, the Tennessee Law Enforcement Planning Commission's recommendations in this area are aimed at improving the operation of a system which retains jury sentencing.

One aspect of sentencing which is completely within the discretion of the judge is the decision whether to place the defendant on probation. It is also up to the judge to determine the conditions of probation and to revoke probation, if necessary.[1/] There do not seem to be any serious problems connected with current probation practices, but some improvements in procedures are suggested.

1/ TCA 40-2901, 2902, 2904, 2906, 2907.

7.1 Objective. By 1977, the General Assembly should consider legislation that would establish bifurcated trials in which, after a finding of guilty, there would be a separate disposition hearing before the same jury that heard the case.

Commentary

The introduction of separate disposition hearings would permit the jury to make more informed decisions. Evidence about the defendant's background that would be prejudicial if introduced during the trial could be introduced for the purposes of determining sentence. Presentence reports conducted by members of the Division of Probation and Parole in the Department of Correction, which may currently be requested by a judge in those instances when he sentences the offender, could be presented to the jury to assist them in making their decision. Based upon its own study, the Tennessee Law Revision Commission has also recommended bifurcated hearings as a means of improving sentencing procedures.

References

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Chapter 5, Washington: Government Printing Office (1974).
2. TCA 40-2707, 20-2310, 40-2704.
3. Day, Bob, Sam Gillespie, and Al Pearson, Discretion in Sentencing and Parole Board Decisions in Tennessee: 1960-1969, Nashville: Vanderbilt University School of Law (1972).
4. American Bar Association Standards, Sentencing Alternatives and Procedures, 1.1 (1968).
5. Law Reform Commission of Canada, Studies on Sentencing, Ottawa: Law Reform Commission (1974).
6. Goodman, Louis E., "Would a System Where Sentences Are Fixed by a Board of Experts be Preferable?" Federal Rules Decision, 30:319 (1961).
7. Knowlton, Robert E., "Problems of Jury Discretion in Capital Cases," University of Pennsylvania Law Review, 101:1099 (1953).
8. Mitford, Jessica, "Kind and Unusual Punishment in California," Atlantic Monthly, 227:45 (1971).
9. Note, "Jury Sentencing in Virginia," Virginia Law Review, 53:968 (1967).
10. Rubin, Sol, "Allocation of Authority in the Sentencing-Correction Decision," Texas Law Review, 45:455 (1967).

7.2 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that by 1977 the General Assembly adopt legislation authorizing the trial court to terminate probation at any time when, after a hearing, it appears that the offender no longer needs supervision or that enforced compliance with other conditions is no longer necessary. If not terminated earlier, probation should end automatically at the completion of the term set initially by the judge.

7.3 Objective. Each court empowered to grant probation to convicted offenders should, by 1977, review its policies, procedures and practices concerning probation.

Strategies

1. The court should review and consider the criteria established by the Model Penal Code for granting probation, conditions of probation, length of probation and revocation of probation.

2. Procedures and practices governing probation should include:

   a. Sentence to probation for a specific term.

   b. Imposing such conditions as necessary to provide a benefit to the offender and protection to public safety.

   c. Providing the offender with a written statement of the conditions imposed.

   d. Providing the defendant with a written statement when any changes are made in the conditions of probation.

   e. Provision that when revocation of probation on the grounds of the violation of the conditions of probation is being considered, the rights of the defendant to counsel and to introduce testimony on his behalf, as provided in TCA 40-2907, shall be assured.

3. When a person on probation is accused of committing a new crime, he should be formally charged and tried for the new crime and probation should not be revoked unless he is found guilty of a crime.1/

1/ Case law in Tennessee has held that even though a defendant was acquitted of criminal charges which were the basis for revoking his probation, the judge ordering the revocation was not bound by the disposition of the charges. The court held that acquittal in a criminal case is no bar to subsequent civil action and that a hearing on revocation is similar to a civil proceeding. Galyon v. State, 189 Tenn. 505,226 S.W. 2d 270 (1949), rehearing denied 1950.

Commentary

Current law does not specify how the term of probation will end. The judge is empowered to terminate the balance of the suspended sentence at any time not less than the minimum set forth in the statute providing punishment for the offense. The proposed legislation would provide the judge with greater flexibility. Probation is a sentence in itself and should be recognized as a major sentencing alternative. As sentences of confinement can be terminated through the parole system, the court similarly should be authorized to discharge the offender from probation at any time the court determines the supervision of the probation officer is no longer necessary. It serves no public interest for the offender to continue to be subject to probation supervision if there is no need for that supervision. The resources of the Division of Probation and Parole could be better used for those offenders still requiring supervision.

The conditions imposed are a critical factor in probation. In too many cases, courts mechanically adopt standard conditions for all probationers. Conditions should be tailored to fit the needs of the offender and society, and no condition should be imposed unless necessary for these purposes. Statutes should give the court great latitude in imposing sentence. Conditions that are unrelated to any useful purpose serve mainly to provoke the probationer and make unnecessary work for the probation officer. Courts should be empowered to modify conditions as they deem appropriate and as the offender's circumstances change.

The probationer should at all times be in a position to comply with the conditions of probation. This requires that he be provided with precise explanations of the conditions imposed and that he have the continuing opportunity to request further clarification from the sentencing court. The probationer likewise should be authorized without the permission of the probation officer to request the court to modify the conditions.

Where an offender violates the established conditions, his probation may be revoked. However, implicit in the grant of probation on conditions is the assurance that unless a violation occurs, the probation will continue. Thus, procedural safeguards to assure that an alledged violation did in fact occur are critically important. The Supreme Court has recognized in two important cases that the Constitution requires some minimal procedural safeguards. In Mempa v. Rhay, 389 U.S. 128 (1967), the Court decided that the right to counsel extended to probation revocation. In a more recent case, Morrissey v. Brewer, 408 U.S. 471 (1972), the Court outlined in detail the procedural aspects constitutionally required for parole revocation. The revocation of parole and probation are similar in nature and consideration should be given to adapting the procedures required in the one case to the other.

There are two critical decision points incident to probation revocation-the decision to arrest and the revocation hearing. The arrest disrupts the probationer's ties to the community and may determine in large measure his ability to remain on probation after further proceedings are concluded. Authority should exist to allow the probationer to continue in the community until a final determination has been made regarding whether he did in fact violate a condition and if he did, whether confinement is the appropriate disposition. Where there is a serious threat to the public safety, detention may be unavoidable. However, if the probationer is detained awaiting his revocation hearing, a preliminary hearing should be held to determine whether probable cause exists to believe he violated a condition. Where revocation is not contemplated, as in the case of violation of minor conditions, some informal procedures should be authorized to allow the judge to meet with the probationer informally and reemphasize the importance of the conditions imposed. If probation is revoked, the time spent under supervision prior to the violation should be credited against the sentence. This is consistent with the recommendation that probation be considered a sentence rather than a form of leniency. The fact that confinement remains as the enforcement technique for assuring compliance with probation conditions does not justify the imposition of state control over the defendant for a longer period of time than the legislatively imposed maximum. For example, a defendant found guilty of an offense with a 5-year maximum is placed on probation for 3 years. At the end of 2 years, he violates a probation condition and is sentenced to confinement. Without the appropriate credit, the court could sentence him to 5 full years of incarceration. Thus, the individual who is granted probation--presumably because he was the better risk-would be subjected potentially to more state control than the person sentenced immediately to confinement.

Revocation of probation for the commission of a new offense or offenses often is used in lieu of formal trial procedures. Such action may be viewed as a misuse of revocation procedure. The offender should be charged formally and tried for new criminal violations. If the offender is found guilty, the court may use the criteria and procedures governing initial sentencing decisions in determining his resentencing decision. If the offender is found not guilty, the charges should not be used as a basis for revocation.

Sources

1. National Advisory Commission on Criminal Justice Standards and Goals, Corrections, Standard 5.4, Washington, D.C.: Government Printing Office (1974).
2. American Bar Association Standards, Probation, 4.1, 4.2 (1968).

References

1. TCA 40-2901, 2902, 2904, 2906, 2907.
2. American Law Institute, Model Penal Codes: Proposed Official Draft, Philadelphia: ALI, Art. 301 (1962).

8. GOAL: IMPROVE PROCEDURES FOR REVIEW OF TRIAL COURT PROCEEDINGS

Introduction

The recommendations in this section address two problems: delays in the appellate process and improvement in the assignment of appellate jurisdiction over certain types of cases.

The review stage, like other aspects of the criminal process, has become increasingly complex and time-consuming in recent years. Several decades ago, appeals were taken only in a minority of cases and collateral attacks on convictions were relatively rare. In recent years, however, direct appeals and collateral attacks have become almost routine in major criminal cases.* Throughout the country, the increasing burden of appeals on the courts has tended to lead to long delays in the appeals process. Delays in Tennessee, where appeals currently reach the Court of Criminal Appeals in about 6 months, are not as great as in many other states, but the appeals process is nonetheless lengthy. It is not in the interests of society nor necessarily in the interests of the defendant to delay the final resolution of the case.

One source of delay in the appeals process in Tennessee is the failure of defense counsel to file motions for a new trial promptly and of judges to hear and rule on those motions quickly. TCA 27-312 does require that a motion for a new trial be made within 30 days from judgment, but there is no time limit placed on the filing of amendments to the original motion. Consequently, in practice, there is no real limits for filing, hearing and ruling on motions including amendments, is proposed as a solution. The problem of delays caused by the time consuming process of transcribing court records is also addressed.

Another area of the appellate process that could be improved is the allocation of appellate jurisdiction. TCA 50-1018 provides for the appeal of workmen's compensation claims cases directly from the Circuit Court level to the Supreme Court. Such cases constitute a fairly heavy portion of the total caseload of the Supreme Court--from a quarter to a third of all appeals in recent years. There is no pressing need to have the Supreme Court exercise direct appellate jurisdiction in these cases. The justification currently given is the worker's need for a speedy resolution of an appeal from an award granted him by the trial court. However, it should be possible to relieve the Supreme Court of the burden of these cases while protecting the interests of the injured worker.

* The number of appeals to the Tennessee Court of Criminal Appeals rose from 343 in 1970 to 570 in 1973 and then dropped to 531 in 1974.

Appellate procedures and the establishment of uniform legal doctrine in the state would also be improved by adding to the means by which a case can come before the Supreme Court. Currently, if a case that has been decided by the Court of Criminal Appeals is not appealed by one of the parties to the case, there is no way to have that decision reviewed by the Supreme Court. If the Court of Appeals decision in that case is, or appears to be, in conflict with a decision in an earlier case or with what had previously been considered accepted legal doctrine, there is at present no way to assure that the conflict will be heard and resolved by the Supreme Court. A proposal is made to remedy this situation by permitting the Court of Criminal Appeals to certify cases to the Supreme Court.

8.1 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that by 1977 the General Assembly adopt legislation that will: (1) establish time limits within which motions for a new trial and amendments thereto must be filed; and (2) establish time limits within which motions for a new trial or motions for a new trial as amended should be heard and disposed of.

Commentary

By establishing time limits not only for the filing of the original motion for a new trial but for amendments thereto, the legislature would replace an ineffective time limit with one that would work. By also limiting the time within which the court must hear and rule on such motions, the appeals process will be expedited. Clearly, however, any time limits set must be realistic for both defense counsel and the court. The purpose of the limit is not to place unreasonable burdens on either counsel or the court but to promote the expeditious filing and ruling on such motions.

Source

1. National Advisory Commission on Criminal Jsutice Standards and Goals, Courts, Chapter 6, Washington: Government Printing Office (1974).

References

1. TCA 27-312.
2. Bryan, Albert V., "For a Swifter Criminal Appeal--To Protect the Public as Well as the Accused," Washington and Lee Law Review, Vol. 25, Fall 1968.
3. Hufstedler, Shirley M., "New Blocks for Old Pyramids: Reshaping the Judicial System," Southern California Law Review, Vol. 44, Summer 1971.
4. Tamm, Edward A., "New Hinges for Old Doors," The Robert H. Jackson Memorial Lectures, University of Nevada, August 13, 1971.

8.2 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that by 1977 the legislature and the Supreme Court adopt legislation and/or court rules necessary to make trial transcripts available quickly and to avoid unnecessary transcribing and reproduction of trial records.

Strategies

1. Major efforts should be made to develop means of producing trial transcripts speedily to insure that at least necessary portions of the evidence are available within 30 days of the trial.

2. Procedures should be developed to avoid unnecessary transcribing and reproduction of trial records. To the extent that a record is required, the original trial transcript, the court files and the exhibits received or offered in evidence should constitute the record on appeal. Attention of the Court should be directed to the relevant parts of the record by stipulation of the parties or by appendices to the briefs. Appeals should be heard upon typewritten briefs. Cases should be set for oral argument immediately upon reaching readiness.

3. The record on appeal should include:

   a. Verbatim record of the entire sentencing proceeding, if applicable.

   b. Verbatim record of such parts of the trial on the issue of guilt, or the proceedings leading to the acceptance of a plea, as are relevant to the sentencing decision.

   c. Copies of the presentence report if applicable.

Commentary

The need or desire for a transcript of the proceedings in the trial court underlies much of the delay in the existing criminal appeals process. Transcribing court proceedings currently takes about 60 to 90 days in Tennessee. Many lawyers and judges think that a transcript of the entire trial proceedings is necessary for every criminal review. Others assert that a verbatim transcript is necessary for at least those portions of the trial that give rise to contested issues at the review stage. There is a reluctance to have the review process function on some other basis, as for example, a trial judge's summary of the evidence (as is used in English criminal appeals). Some of this reluctance

is justifiable; some of it rests simply upon familiarity with existing practice. But whatever the roots of these attitudes, the widespread belief in the necessity of a transcript is a factor to be reckoned with in any realistic effort to expedite and reform criminal review. Efforts to dispense with transcripts do not appear promising.

Rapid production of transcripts might be achieved through technological innovations. Methods holding some promise include computer-aided stenotyping, sound recordings, and videotaping. Perhaps creative technological experimentation can develop other devices. It is recommended that funding be devoted primarily to this purpose.

An accelerated production of transcripts might be achieved through an increase in the number of court reporters or in the clerical personnel available to type the reporters' notes. In other words, the problem may not be an inadequate number of reporters but rather an inadequate number of note typists. Where technological innovations in transcript production are not employed, it is recommended that funds be provided to employ a sufficient number of reporters and note typists to insure that a transcript of the evidence, or at least of the necessary portions of the evidence, is available in every case within 30 days of the close of the trial.

Sources

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts Recommendation 6.1, Washington: Government Printing Office (1974).
2. American Bar Association Standards, Appellate Review of Sentences, 2.3 (1968).

References

1. TCA 27-104.
2. National Bureau of Standards, A Study of Court Reporting Systems (4 Vols.) December 1971.

8.3 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that by 1976 the General Assembly adopt legislation giving the Supreme Court jurisdiction to review Court of Criminal Appeals decisions upon certification of the court that a case should be decided by the Supreme Court.

Commentary

This addition to the means by which a case may reach the Supreme Court will provide a procedure by which a Court of Criminal Appeals decision that conflicts with previous decisions can be referred immediately to the Supreme Court for a final resolution of the relevant issues. A definitive ruling by the Supreme Court will no longer have to await a decision by one of the parties to the case to appeal it to that court.

Reference

1. TCA 16-452 (regarding jurisdiction of Supreme Court of Court of Criminal Appeals decisions).

8.4 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that by 1976 the General Assembly adopt legislation removing original appellate jurisdiction in workmen's compensation cases from the Supreme Court.

Commentary

Removing workmen's compensation cases from the original appellate jurisdiction of the Supreme Court would relieve considerably the burden on the court and allow other cases requiring the attention of the state's highest tribunal to receive more prompt attention. This jurisdiction was given to the Court because of the need for a speedy resolution of an appeal from an award granted to an injured worker by the trial court. The same purpose could be served, however, by granting the compensation that was awarded during the interim period while the appeal is pending before the Court of Appeals. Another approach would be an appeal to an administrative board. The constitutionality of such a measure would have to be studied. In any event, it should not be necessary to burden the state's highest court with direct appellate jurisdiction over these cases.

References

1. Institute of Judicial Administration, The Judicial System of Tennessee, New York: Institute of Judicial Administration, pp. 26-27 (1971) (mimeographed).
2. TCA 50-1018 (regarding appeal of workmen's compensation cases).

9. GOAL: ASSURE QUALITY OF JUDICIAL PERSONNEL

Introduction

The role of the judiciary in efforts to reduce the crime rate lies in providing a system of unquestioned integrity and competence for settling legal disputes, including contested criminal prosecutions. In order for the courts to fulfill this vital role, judicial processes must be effective, efficient and current in management methods. The courts also must have an abiding concern to preserve the American heritage of freedom and to provide deliberative thoughtfulness in settling all matters before them--even to the small but important individual problems they deal with in such vast numbers. No procedures or court system can be any better than the judges who administer the procedures and render the decisions.

Many factors have a bearing upon the quality of judicial personnel: salary and retirement, benefits, prestige, nature of the judicial business, satisfactions derived from the position, opportunities to participate in creative change, independence, and security. Perhaps the most crucial factor in determining the quality of judicial personnel is the method of judicial selection.

The National Advisory Commission on Criminal Justice Standards and Goals took the position that judges should not be selected through an elective process. They had three basic criticisms of the election of judges: (1) that an elective process fails to encourage the ablest persons to seek or accept judicial posts; (2) that it creates an incentive for judges to decide cases with an eye to the electoral consequences, or, even when that does not occur, causes the public to think that judicial decisions may be influenced by such factors; and (3) that few members of the electorate are in a position to make informed decisions about judicial personnel. On the basis of these criticisms of the election of judges, the Commission recommended the Missouri Plan for judicial selection.1/

Despite criticisms of the popular selection of judges, many Tennesseans strongly support the continued election of their judges. They believe such elections are a vital part of the democratic process. The Tennessee Law Enforcement Commission believes, however, that the electoral process could be improved by providing for nonpartisan election of judges and makes that recommendation below.

1/ National Advisory Commission on Criminal Justice Standards and Goals, Courts, Washington, D.C.: Government Printing Office, pp. 145-146, (1974).

Even with the best judicial selection systems, there will be unpredictable physical and mental illnesses, changes in habits, occasional inability of a lawyer to make the transition to judicial responsibilities, and other circumstances necessitating discipline or even removal of sitting judges. Title 18, Chapter 8 of the Tennessee Code Annotated creates the Judicial Standards Commission and procedure for investigations and hearings on the need to remove judges from office. Grounds for removal include a mental or physical condition that does not allow the judge to perform his duties when such condition is, or is likely to become, permanent. Removal may also occur because of willful misconduct or failure to perform duties. The Judicial Standards Commission is only an investigatory body, however, and cannot remove a judge. Where the Commission feels the removal of a judge is justified, it may present its recommendations to the General Assembly. Removal is accomplished upon a vote of a two-thirds majority of the entire membership of each house voting separately.[1/] A judge who is accused of commiting a crime in his official capacity may also be removed by the legislature through an impeachment process.[2/]

Present procedures for removing a judge who becomes physically or mentally disabled, but does not recognize the existence of his disability, have proved to be cumbersome and difficult. The stigma attached to actually being removed from office and the personal pain that such removal may cause an individual who has served long and well make those responsible for effecting such removal somewhat reluctant to do so. Even when action is taken, the process is time-consuming and the quality of justice dispensed by the affected court suffers in the meanwhile. The Law Enforcement Planning Commission therefore recommends that procedures be adopted so that the caseload of a judge whose competency is under investigation will be assigned to another judge during the course of the investigation.

Another area of judicial competence that merits concern is the continuing education of judges. When a lawyer becomes a judge, it is more than just another step in a legal career. It is a major career change to a position involving significantly different functions and requiring different skills and knowledge than were required in the prior professional position. Orientation for new judges is a particularly important need of the judicial system. In addition, changing laws and judicial decisions require continuous updating in the education of judges.

1/ TCA 17-814 and Constitution of the State of Tennessee, Article VI, Section 6.

2/ Constitution of the State of Tennessee, Article V.

Tennessee's judges generally have a good record of attending judicial education programs. However, attendance is not compulsory, and there are no statewide standards for judicial education which can be used to evaluate the effort a judge makes to continue his judicial education. The TLEPC therefore recommends the establishment of a committee to oversee judicial education in the state.

9.1 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that in 1976 the General Assembly adopt legislation to provide for the nonpartisan election of judges.

Commentary

Tennesseans seem strongly committed to retaining election as the method of their selecting judges. Given the nature of the post, however, partisan considerations seem inappropriate. Judges are expected to be impartial administrators of the law and dispensers of justice, and forcing them to seek election on a party ticket, while not necessarily influencing their decisions on the bench, gives them the appearance of aligning themselves with one segment of the community against another. Nonpartisan elections would retain the role of the people in selecting their judges while eliminating some of the negative consequences of forcing judges to participate in partisan politics.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 7.1, Washington, D.C. Government Printing Office (1974).

References

1. TCA 17-103, 443 (governing the election of judges).
2. Constitution of the State of Tennessee, Article V and Article VI, Section 6.
3. American Bar Association Committee on Judicial Selection, Tenure and Compensation, Model By-Laws for State and Local Bar Association Respecting Appointment and Election of Judges, New York: Institute of Judicial Administration (1971).
4. Costikyan, Edward N., Behind Closed Doors: Politics in the Public Interest, New York: Harcourt, Brace and World (1966).
5. Downing, Ronald G. and Richard A. Watson, The Politics of the Bench and the Bar: Judicial Selection Under the Missouri Nonpartisan Court Plan, New York: Wiley (1969).
6. Grossman, Joel B., Lawyers and Judges: The ABA and the Politics of Judicial Selection, New York: Wiley (1969).
7. Nelson, Dorothy W., "Variations on a Theme--Selection and Tenure of Judges," Southern California Law Review 36:1(1962).
8. Schmandt, Henry J., Courts in the American Political System, Belmont (California): Dickenson Publishing Company, Inc. (1968).
9. Winters, John R. (ed.), Selected Readings on Judicial Selection and Tenure, Chicago: American Judicature Society (1967).

9.2 Objective. The Tennessee Law Enforcement Planning Commission strongly recommends that by 1977 the General Assembly amend the laws governing the functions of the Judicial Standards Commission to provide that: when a judge is physically or mentally disabled to the point of interfering with the performance of his duties, the Commission shall recommend to the Supreme Court that the judge's caseload be assigned to another judge pending the final outcome of the procedures. The Supreme Court should take such action upon the request of the Judicial Standards Commission.

Commentary

While not changing the procedures that must be followed in order to remove a judge from office, this proposal would safeguard the rights of parties appearing in the court of a physically or mentally disabled judge. Where there is a serious question of competence, but the judgment has not yet been made that the judge need be removed from the bench, the rights of those appearing in court should be protected by assuring that a competent judge will preside. The solution of temporarily transferring the judge's caseload guarantees the rights of the citizen while preserving the right of the judge to retain his office until he has been properly and legally found incompetent.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 7.4, Washington: Government Printing Office (1974).

References

1. TCA Title 18, Chapter 8 (Judicial Standards Commission).
2. Advisory Commission on Intergovernmental Relations, Court Reform, Washington: Government Printing Office (1971).
3. Advisory Commission on Intergovernmental Relations, State-Local Relations in the Criminal Justice System, Washington: Government Printing Office (1971).
4. American Bar Association Section on Judicial Administration, Model Judicial Article, Chicago: American Bar Association (1962).
5. Braithwaite, William, Who Judges the Judges? Chicago: American Bar Foundation (1971).
6. Burke, Louis H. "Good Judges Must Be Protected," in W. Swindler (ed.) Justice in the States, Addressed and Papers of the National Conference on the Judiciary, St. Paul: West Publishing Company (1971).
7. President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society, Washington: Government Printing Office (1967).

9.3 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that by 1977 the legislature establish a state judicial education committee to develop standards for the training of judges and to take other steps to assure that judges receive adequate training. Special emphasis should be placed on assuring the training of judges before they take office. Possible standards and strategies for such a committee to consider in attempting to meet this objective are indicated below.

Strategies

1. All new trial judges, within 3 years of assuming judicial office, should attend both local and national orientation programs as well as one of the national judicial education programs. The local orientation program should come immediately before the judge first takes office. It should include visits to all institutions and facilities to which criminal offenders may be sentenced.

2. Tennessee should develop its own state judicial college, which should be responsible for the orientation program for new judges and which should make available to all state judges the graduate and refresher programs of the national judicial educational organizations.

3. Tennessee should plan specialized subject matter programs as well as 2- or 3-day annual state seminars for trial and appellate judges.

4. The failure of any judge, without good cause, to pursue educational programs should be considered by the Judicial Standards Commission as grounds for discipline or removal.

5. Tennessee should prepare a bench manual on procedural laws with forms, samples, rule requirements and other information that a judge should have readily available. This should include sentencing alternatives and information concerning correctional programs and institutions.

6. Tennessee should publish periodically (quarterly) a newsletter that includes articles of interest to judges, references to new literature in the judicial and correctional fields and citations of important appellate and trial court decisions.

Commentary

Although Tennessee currently makes a substantial effort to assure the continuing education of its judges through conferences for circuit, general sessions and juvenile judges, the establishment of a committee to oversee judicial education would strengthen efforts in this area. By developing standards for judicial training the committee would provide a means by which the educational efforts of judges could be evaluated. Giving the committee the responsibility to oversee the judicial training programs in the state would probably lead to a more organized and coherent approach to judicial education and to a beneficial exchange of views and experiences with similar groups in other states. Special efforts to assure that new judges receive adequate training before occupying the bench seem particularly worthy of attention. Even a man long experienced as a lawyer in private practice will need training in the special responsibilities and decisions that must be made by a judge. Such training is especially vital for the judges of juvenile and general sessions courts who are not necessarily lawyers and may have little or no legal training.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 7.5, Washington, D.C.: Government Printing Office (1974).

References

1. California College of Trial Judges of the University of California School of Law at Berkeley, California, Court Improvement Programs: A Guidebook for Planners, National Center for State Courts, November 1972.
2. "Center for the Administration of Justice at Wayne State University Law School in Detroit, Michigan," in Court Improvement Programs: A Guidebook for Planners, Washington: National Center for State Courts (1972).
3. Felts, Sam L. "The National College--A Student Judge Reports," Trial Judges' Journal, Vol. 4, October 1965.
4. Frank, John, "Justice Tom Clark and Judicial Administration," Texas Law Review, Vol. 46, November 1967.
5. Fretz, Donald R., "California College of Trial Judges," Trial Judges' Journal, Vol. 7, April 1968.
6. Institute of Judicial Administration, Judicial Education in the United States: A Survey, New York: Institute of Judicial Administration (1965).
7. Hansen, Conner T., "The Continuing Education Program of the Wisconsin Judiciary," Marquette Law Review, Vol. 52, Fall 1968.

8. "Judicial Training Program of the Judicial Conference of Virginia at Richmond, Virginia," in Court Improvement Programs: A Guidebook for Planners, Washington: National Center for State Courts (1972).
9. "Judicial Training Seminar of West Virginia Judicial Assocation at Elkins, West Virginia," in Court Improvement Programs: A Guidebook for Planners, Washington: National Center for State Courts (1972).

10. GOAL: IMPROVE THE ORGANIZATION OF THE GENERAL SESSIONS AND JUVENILE COURTS

Introudction

Below the courts of general jurisdiction in Tennessee is a complex system of courts of limited or special jurisdiction. The court system at this level varies considerably from one county to another because of private legislation exempting particular counties from various laws governing the courts. In almost all counties, however, the most important lower court affecting adults is the General Sessions Court. In civil cases, General Sessions Courts have jurisdiction over cases involving amounts up to $3,000. In criminal cases, they have jurisdiction over misdemeanor cases where the defendant waives the right to grand jury indictment and jury trial. Sentences imposed by General Sessions Courts are limited to 11 months and 29 days in a jail or workhouse or a fine not greater than $50. Appeal from General Sessions Court is to the Circuit Court where the case is heard de novo. In addition to their jurisdiction over misdemeanor cases, General Sessions Judges are also involved in the early stages of felony cases since they issue arrest and search warrants, set bail and conduct preliminary hearings.1/

General Sessions Judges are county officials, elected for 8-year terms. Because their courts are not state courts, they are not bound by the law requiring state court judges to be lawyers. A survey of General Sessions Judges conducted in 1974 by the Tennessee Law Enforcement Planning Agency showed that 62 percent of them had law degrees. However, three of the 122 judges who replied to the survey were not high school graduates and 30 had no education beyond high school.2/

The salaries of General Sessions Judges are paid by the counties. TCA 16-1109 sets a base salary. In 1974-75 it ranged from $7,000 to $32,775 depending on the population of the county.3/ Through private legislation, however, some counties have been exempted from the salaries set by statute.

1/ TCA 40-118; 19-301; 19-425; 24-509.
2/ Data supplied by TLEPA.
3/ Data supplied by TLEPA.

Jurisdiction over juvenile cases varies considerably depending on the county. Original jurisdiction in most counties lies with the county judge. In some counties, however, jurisdiction has been transferred to the General Sessions Court. In the metropolitan areas and a few other counties there are separate juvenile courts hearing only juvenile cases or hearing domestic relations cases along with juvenile cases.

Like the General Sessions Judges, judges with juvenile jurisdiction are popularly elected county officials not subject to the state requirement that judges be lawyers. In 1974, 31 percent of the judges with juvenile jurisdiction had law degrees. Three of 98 replying to the TLEPA survey were not high school graduates and 26 others had no education beyond high school. Salaries vary considerably among the counties. In 1974, only 31 of the 98 judges had salaries over $15,000 and 21 had salaries below $10,000.1/

The problems associated with the current structure of the General Sessions and Juvenile Courts are found primarily in the rural areas of the state, especially in the counties with relatively small populations. In the metropolitan areas, and in many of the more populous counties, the judges in these courts are full-time judges with degrees in law. In the less populous counties, however, there is generally not sufficient court business to justify having a full-time lawyer judge. Even if fulltime in theory, the judge may receive a salary that reflects the lack of full-time judicial work. In many counties the salaries are far too low to attract qualified individuals trained in the law.

There are serious questions about the quality of justice dispensed in a court in which the judge is not a lawyer. One of the functions of the judge is to safeguard the legal rights of those coming before the court. This function may be even more important in lower courts hearing misdemeanor cases than in the Circuit Courts. The defendant in a misdemeanor case may not be as inclined to insist on his right to counsel and, in the absence of his own counsel, must rely on the judge to assure that his rights under the law are guaranteed. When the judge is not trained in the law, those rights may not be properly protected. In its study of Tennessee courts, for instance, the Institute for Judicial Administration found that some General Sessions Judges had been know to treat a defendant's waiver of indictment by the grand jury as a plea of guilty and to impose sentence without hearing the evidence in the case.2/

1/ Data supplied by TLEPA.

2/ Institute of Judicial Administration, The Judicial System of Tennessee, New York: Institute of Judicial Administration), 1971 (mimeographed), p. 64.

The problems associated with the lower courts in Tennessee are not unique to this state, but typical. After a nationwide review of the functioning of the lower courts, the National Advisory Commission on Criminal Justice Standards and Goals recommended a radical change in court structure. They recommended the unification of state court systems into a single unified trial court with general criminal as well as civil jurisdiction. In the criminal area, these courts would hear both felony and misdemenaor cases. The Commission argued that although courts hearing misdemeanor cases are generally referred to as "inferior" or "lower" courts, their functions are vital and affect far more people than do the "higher" courts in most states. The Commission concluded that only by unifying the court system so that all cases would be heard in one court of general jurisdiction would it be possible to "attract well-qualified personnel and supporting services and facilities to handle the less serious criminal prosecutions."1/ The Commission also took the position that although the offenses dealt with in lower courts are generally less serious than thoselheard in higher courts, they were not less worthy of attention:

> Lower courts...are important qualitatively as well as quantitatively. Typically, they deal with defendants with little or no criminal history. Often the offenders are young, and their antisocial behavior has not progressed beyond the seriousness of misdemeanors. Even when the offender is older, a first offense often is charged or later is reduced to a misdemeanor. Consequently, lower courts can intervene at what may be the beginning of a pattern of increasingly serious criminal behavior, and help prevent the development of long-term criminal careers.2/

The great crime control potential of the lower courts is underscored by the fact that 80 percent of the major crimes of violence committed in this country are committed by youths who have been convicted of a previous offense in a misdemeanor court.3/

The proposal to merge all courts hearing criminal and civil cases into one unified system is, as the National Advisory Commission recognized, a radical one. The Tennessee Law Enforcement Planning Commission does not believe that such a major change in the court system is the best way to solve the problems of the lower courts in Tennessee. It does believe, however, that those problems must be addressed and consequently makes the recommendation contained in Objective 10.1.

1/ National Advisory Commission on Criminal Justice Standards and Goals, Courts, p. 165, Washington: Government Printing Office (1974).

2/ National Advisory Commission on Criminal Justice Standards and Goals, Courts, p. 161, Washington: Government Printing Office (1974).

3/ Clark, Ramsey, "We Must Begin in the Lower Courts," Municipal Court Review, Vol. 6, April 1966.

10.1 Objective. By 1978 the General Assembly should consider reorganizing courts with general sessions and juvenile jurisdiction into a circuit General Sessions Court. The new General Sessions Court should be state funded, and judges of the court should be required to be lawyers. It should be a court not of record, and appeal should be to the circuit level court of general jurisdiction.

Commentary

By reorganizing courts with general sessions and juvenile jurisdiction on a circuit basis with state funding and requiring that the judges be lawyers, the problems of low caseload, low pay and nonlawyer judges would be resolved. Provision could be made so that metropolitan and other populous areas currently having sufficient caseloads and salaries could retain their court systems essentially as they are, with the expenses transferred to the state, and the formalization of the requirement that the judges be lawyers. The major change would, of course, come in the rural counties where, instead of each county having its own court and judge, a group of counties would be serviced by a single court and judge as is currently done at the Circuit Court level. Various support services which are available in metropolitan counties but cannot be afforded by courts in smaller counties could be provided when the courts are organized on a circuit basis and supported by the state. Such support services could be particularly important and helpful in juvenile cases. In order to assure that the goals of this reorganization will be met, it will be important to set the salaries of the judges at a level that will attract qualified lawyers to the post.

One possible disadvantage of the proposed reorganization, other than the disinclination that may be found among some citizens to give up their "own" local court, is that in the absence of a General Sessions Judge, not every county will have a resident empowered to issue search and arrest warrants, set bail, etc. If the proposal for a reorganized court is adopted, it should include provisions to appoint a magistrate or other officer in each county with the power to carry out those functions that require immediate attention from someone close at hand in the county.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Chapter 8, Washington: Government Printing Office (1974).

CONTINUED

1 OF 2

References

1. TCA 40-118; 19-301; 19-425; 24-509.
2. Institute of Judicial Administration, The Judicial System of Tennessee, New York: Institute of Judicial Administration (1971) (mimeographed).
3. Clark, Ramsey, "We Must Begin in the Lower Courts," Municipal Court Review, Vol. 6, April 1966.
4. For sources dealing with unified statewide misdemeanant court systems, see:

   a. Connecticut--Connecticut General Stat. Ann. § 51-1, et. seq. (Supp. 1972-73).
   b. Maine--Me. Rev. Stat. Ann. Title 4, § 151, et. seq. (1964).
   c. Massachusetts- Mass. Gen. Laws Ann. Ch. 218, § 36 (Supp. 1971).
   d. Maryland--Md. Ann. Code Art. 26 § 139, et. seq. (Com. Supp. 1971).
   e. Florida- Fla. Stat. Ann. Const. Art. 5 § 1, et. seq. (Supp. 1972-73).
   f. American Bar Association, Section on Judicial Administration, Model Judicial Article, Chicago: American Bar Association (1962).
   g. U.S. Advisory Commission on Intergovernmental Relations, New Proposals for 1972, A.C.I.R. State Legislative Program, Omnibus Judicial Act, Washington: Government Printing Office (1971).
   h. National Conference on the Judiciary, Justice in the States, St. Paul: West Publishing Company (1971).
   i. President's Commission on Law Enforcement and the Administration of Justice, The Challenge of Crime in a Free Society, Washington: Government Printing Office (1967).
   j. American Bar Association, "Report of Committee on Judicial Administration," Reports of American Bar Association, Vol. 63 (1938).

11. GOAL: IMPROVE COURT ADMINISTRATION

Introduction

Responsibility for local leadership of the court system historically has been diffused in multijudge trial courts acting administratively en banc. This is undesirable.

Courts should operate under policies adopted by the judges acting as a policy board. A modern court is a company of equals operating under customs developed within the legal community over a period of several hundred years. Each judge is in many respects independent. But as a member of a larger organization, he is expected to relinquish some of his autonomy to the needs of the organization. The preservation of his necessary independence within a system requiring some relinquishment of autonomy can best be accomplished through a participatory process of electing a board of judges or presiding judge.

The need for improved coordination in trial courts in Tennessee has recently been recognized by the Supreme Court which ordered that presiding judges be elected in each circuit to supervise the implementation of Rule 45 which provides, in effect, for the unification of trial level courts in the state. It is unclear whether the position of presiding judge will be retained if the legislature should redistrict judicial circuits in order to solve the caseload problems which caused the Supreme Court to take the action it did.

In both the Federal system and in many states, responsibility for the administration of the court system is not placed solely with the judges. The courts are provided with professional court administrators whose basic purpose is to relieve judges of some of the administrative chores they performed in the past and to help them to perform those they retain. The administrator for the state court system as a whole in Tennessee is the Executive Secretary of the Supreme Court. Administration of court functions at the trial court level could probably be improved by providing professional court administrators to work in the larger courts at that level as well.

11.1 Objective. By 1977 the legislature and the Supreme Court should consider: (1) providing for local administrative authority in each trial jurisdiction to be vested in a presiding judge; and (2) providing a full-time trial court administrator for each trial court with five or more judges and for courts with fewer judges where such appointment is justified by the caseloads of the court.

Strategies

1. Local administrative policy for the operation of each trial court should be set out by the judge or judges making up that court (with guidelines established by the Tennessee Supreme Court).

2. Local administrative authority in each trial jurisdiction should be vested in a presiding judge for a substantial fixed term. Functions should include:

   a. Control over personnel matters

   b. Trial court case assignments

   c. Judge assignments

   d. Information compilation

   e. Rulemaking and enforcement

   f. Liaison and public relations; and

   g. Improvement in the functioning of the court.

3. Trial courts with caseloads too small to justify a full-time court administrator should combine into administrative regions.

4. The functions of local or regional trial court administrators should include:

   a. Implementation of policies set by the Executive Secretary of the Supreme Court.

   b. Assistance to Executive Secretary of the Supreme Court in setting statewide policies.

   c. Preparation and submission of budgets.

   d. Control of personnel matters.

e. Management of courtroom equipment and facilities.

f. Procurement of supplies.

g. Preparation of reports.

h. Dissemination of information.

i. Juror management.

j. Custody and disbursement of court funds.

k. Study and improvement of caseload.

l. Determination of effective methods of court functioning.

Commentary

This proposal stresses the need for judges in a multijudge trial court to meet regularly to establish policy for the operation and administration of their court. To operate as a unit, the judges must coordinate their activities. Vacation policies must be prescribed, working hours determined, specialized functions assigned, and responsibility defined. The judges sitting in concert can reach basic policy decisions about the operations of the court that should not be imposed from the outside. Judges participating in the decisions about their operations understand the purposes behind the decisions and usually are committed to them. When the decisionmaking process is made formal and continuous, all the judges involved will tend to support these decisions.

The designation of a presiding judge should increase administrative efficiency. However, placing responsibility in a central position will not necessarily insure performance. The presiding judge must be given proper management support. One means for doing this is through a court administrator to whom a presiding judge can delegate many functions. The presiding judge and the trial judges as a unit still retain the decisionmaking power, but the court administrator provides the management support to carry out these decisions.

The role of the court administrator is a difficult one. The judges are the ultimate managers of the system. The administrator can accomplish his function only if the judges support his activity and respect him as a specialized professional whose skills in his area exceed their own.

A court administrator should be selected on the basis of special qualifications. The complex and unique environment of the courts requires the skills of a person who understands courts and their role in the general work of public administration. The court administrator will not be effective as an expeditor and coordinator of the diverse elements of the criminal justice system if he cannot understand and accept his role.

The court administrator does not deal with many persons as a supervisor. His authority to order things done is limited. The ability to persuade persons to cooperate is the basic skill required. His job is to establish a broad sphere of influence over the many agencies that have an impact on the effectiveness of the courts.

Selection of the court administrator should be based on his:

1. Knowledge of the justice system;

2. Attitude toward public service;

3. Understanding of modern management technology;

4. Demonstrated human relations skills; and

5. Appreciation of the role of the court administrator.

If professional court administrators are supplied to trial courts, it will be necessary to define and clarify their functions vis-a-vis the elected court clerks so that the most efficient use will be made of all the personnel and administrative resources available to the courts.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standards 9.2 and 9.3, Washington: Government Printing Office (1974).

References

1. Brownell, Herbert, "A Development Program for Court Administration," Judicature, Vol. 54, October 1970.
2. Burger, Warren E., "Deferred Maintenance of Judicial Machinery," Judicature, Vol. 54, May 1971.
3. Chandler, Henry P., "Direction of the Administration of Trial Courts," in Federal Rules Decisions, Vol. 21 (1957).
4. Friesen, Ernest, Edward C. Gallas, and Nesta M. Gallas, Managing the Courts, Indianapolis: Bobbs Merrill Company (1971).

5. Navarro, Joseph A. and Jean G. Taylor, "Application of Systems Analysis to Aid in the Efficient Administration of Justice," Judicature, Vol. 51, August-September 1967.
6. Chandler, Henry P., Edward B. McConnell and Leland L. Tolman (as reported by Eleanor R. Batson), "Administering Courts--Federal, State and Local," Journal of the American Judicature Society, Vol. 42, June 1958.
7. Chandler, Henry P. "The Winds of Change in Federal Judicial Administration," Journal of the American Judicature Society, Vol. 46, April 1963.
8. Tolman, Leland L., "Court Administration: Housekeeping for the Judiciary," Annals of the American Academy of Political and Social Science, Vol. 328, March 1960.

12. GOAL: ASSURE ADEQUATE FACILITIES FOR COURT BUSINESS

Introduction

The responsibility for providing the physical facilities for conducting court business lies with local governments in Tennessee. County governments supply the space for General Sessions and Circuit Courts. They must supply not only courtrooms and facilities for judges, but offices for District Attorneys, clerks, etc. It is difficult to make any overall assessment of the adequacy of facilities throughout the state. Comments from both the survey and the task group meetings suggest considerable variation in conditions with serious problems existing in some areas.

Most counties seem to provide sufficient space for court business although space is sometimes a problem in the metropolitan areas. The more serious problem seems to be the quality of the facilities which are provided. They are often in poor physical condition and without adequate heat, light, cooling, acoustics, etc. The problem can be especially severe in small counties with low tax receipts where the residents may regard the expense of providing adequate facilities as too high in relation to available county monies.

12.1 Objective. By 1976, local governments should provide adequate physical facilities for the conduct of court business. Renovation or construction of new facilities should be undertaken where necessary.

Strategies

1. Where present facilities are not adequate and cannot be made adequate during 1976, final plans should be developed for providing adequate facilities.

2. Facilities used for the conduct of court business should:

   a. Be sufficient size for population served;

   b. Have proper lighting, heating and cooling systems;

   c. Have acoustical design which facilitates proper interchange between trial participants.

3. Judges and attorneys- both defense and prosecution--should have access to a law library in the courthouse.

4. The offices of prosecutors and public defenders should be comparable in space and equipment to those offices of similar size private law firms.

5. A lawyers' workroom should be available in the courthouse for both public and private attorneys. Such a room should:

   a. Be staffed with a receptionist to take and deliver messages if justified by the volume of court business;

   b. Provide privacy for discussions with clients.

6. Provision should be made for witness waiting and assembly rooms.

7. Provision should be made for lounges and assembly rooms for jurors.

8. Pretrial detention facilities should be located near the courthourse.

Commentary

The adequacy of the physical facilities of the court system can affect both the actual quality of justice dispensed in the courts and public perceptions of and willingness to cooperate with the judicial process. The primary barrier to establishing adequate facilities in Tennessee is a financial one--inability or unwillingness of county governments to appropriate sufficient funds for such facilities. Establishing standards that should be met in all jurisdictions will not in and of itself overcome the financial problems. Where serious fiscal barriers to providing adequate court facilities do exist, means must be found to overcome them.

Court facilities should be designed to aid the adjudication of cases and the functioning of the participants in this process. This includes courtroom facilities reflecting the needs of the participants in the trial itself as well as their needs outside the courtroom. Badly designed courtrooms where judge and jury cannot adequately see and hear witnesses increase the difficulty of rendering objective decisions. Poor acoustics not only hinder the formal proceedings but also belie the purpose of public trial.

The provision of legal libraries within the court facilities is recommended. A legal library is obviously important in performing the task of processing cases according to law. But in addition, the public image of the court may suffer if it becomes apparent that the judge or other court personnel are insufficiently acquainted with the law. Thus, adequate library facilities are essential for court-community relations purposes as well as for efficient and fair adjudication.

Adequate facilities also must be provided to ease the burden of criminal litigation upon those involved. In view of the conscriptive nature of jury service, it is especially important that care be taken to minimize the unpleasantness of jury duty. The physical facilities urged by the standard can go far toward accomplishing this.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 10.1, Washington: Government Printing Office (1974).

References

1. TCA 5-901; 5-704,706,708; 5-1001; 6-2301--on county authority to build, repair, maintain and finance courthouse construction.
2. American Judicature Society, An Analysis of Courtroom Design Criteria, Chicago: American Judicature Society (1967).

3. Barnett, George H., "A Jury Assembly Room System," Judicature, 50:8 April 1967.
4. Downie, Leonard, Justice Denied, Baltimore: Praeger Publishers, Inc. (1971).
5. Fort, William S., "Facilities for the Administration of Justice," Judicature, Vol. 50, October-November 1966.
6. Meyer, Bernard S., "Our Courts and Their Public Relations: A Judge's View," New York State Bar Journal, Vol. 41, December 1969.
7. National College of the State Judiciary, "Public Education and Court Image Building," in A System Study of the Civil Court of the City of New York.
8. O'Hara, John P., and Frank G. Schemanske, "A New Recorder's Court Building for Detroit," Judicature, Vol. 51, November 1967.
9. President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts, Washington, D. C.: Government Printing Office (1967).
10. Stern, Howard, "In Pursuit of a Courthouse," Judicature, Vol. 50, October-November 1966.

13. GOAL: IMPROVE COURT-COMMUNITY RELATIONS

Introduction

Since courts must operate in a context that subjects them to public scrutiny, court-community relations inevitably exist. The quality of these relations has an important impact upon the courts' ability to perform their function effectively. A law-abiding atmosphere is fostered by public respect for the court process. Such attitudes correspondingly suffer when public scrutiny results in public dissatisfaction. The perception the community has of the court system also may have a direct impact on court processes, as when it affects the willingness of members of the community to appear as witnesses, serve as jurors, or support efforts to provide courts with adequate resources.

Many factors may affect public perceptions of the judicial system, including: the ease with which citizens involved in litigation and other members of the community can obtain information, the manner in which court personnel handle inquiries about particular cases, the degree to which witnesses are caused unnecessary inconvenience and hardship, and the amount of compensation provided to witnesses and to jurors for their contributions to the functioning of the court system.

The Tennessee Law Enforcement Planning Commission believes that improvements can be made in each of these areas and addresses them in the objectives below.

13.1 Objective. By 1978, each county and trial court should consider taking action to assure that local court facilities provide adequate means for giving information to the public and for receiving complaints and suggestions from the public.

Strategies

1. There should be information desks or directories in public areas of the courthouse to direct defendants, witnesses, jurors and spectators to their destinations. Attendants should be able to answer questions concerning the agencies of the system and the procedures to be followed by those involved in the system.

2. In metropolitan courthouses, closed circuit TV sets might be installed to identify the proceedings currently in progress in each courtroom and other proceedings scheduled that day for each courtroom.

3. Each courthouse should have an office specifically and prominently identified as the office for receiving complaints, suggestions, and reactions of members of the public concerning the court process.

4. Where the volume of court business is large, the appointment of a public information officer to provide liaison between the courts and the news media should be considered.

Commentary

The credibility of the criminal justice system depends, at least in part, upon the methods used to facilitate the participants' performance of their functions. Provision of adequate physical facilities must be accompanied by information services concerning the court's functions and participants' rights and responsibilities.

Where the volume of court business justifies it, it would be useful to have an information desk manned by personnel familiar with the courthouse and court proceedings. These persons should be able to answer questions concerning the location of particular courtrooms, types of proceedings taking place in each courtroom, judges sitting in various courtrooms, and the location of the judges' chambers. They should have the daily calendar showing courtrooms and judges' assignments. They also should have a list of telephone numbers to aid them in answering questions.

As an adjunct to the information desk in courthouses with numerous courtrooms, closed circuit TV sets could be installed showing the current status of court activity, such as cases being tried in each courtroom. These would be similar to the devices used in airline terminals to show flights, gates, and departure times.

Consideration should be given to the establishment of an office for the receipt of communications from members of the general public. It is important that courts be aware of the manner in which they are perceived by the public. This office would help foster such awareness. In addition, some of the suggestions or reactions are likely to have merit and their implementation may increase the efficiency of the court process. Finally, public confidence in the court process will be enhanced by public awareness that the courts not only are receptive to outside comments but actively solicit them. If these expectations are to be fulfilled, it is essential that communications not only be received but that they be considered and, where appropriate, acted upon. Whatever the response, it is important that persons communicating with the court are made aware that their communciations have been considered and, if found without merit, rejected.

Provision for a public information office responsible to the court would identify for news media a central source of information regarding the courts. Public information officers also could issue guidelines for news coverage of major trials. These guidelines would help prevent misunderstanding and would facilitate the transmission of news to the public. Such questions as whether cameras are allowed within the courthouse, whether a sketch artist is allowed, and the number of seats in the courtroom assigned to the news media should be answered before the trial begins.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standards 10.2 and 10.3, Washington: Government Printing Office (1974).

References

1. Ballard, Bertram J., "News From Yours Courts," California Court Commentary, 12:1, January 1972.
2. Berger, M. Marvin, "Do the Courts Communicate?" Judicature, 55:8, April 1972.
3. Berger, M. Marvin, "Public Relations and the Courts," New York State Bar Journal, Vol. 41, August 1969.

4. Conference of California Judges, Project Benchmark, Welcome to Your Courts, Berkeley: Conference of California Judges (undated).
5. Meyer, Bernard S., "Our Courts and Their Public Relations: A Judge's View," New York State Bar Journal, Vol. 41, December 1969.
6. "Court Automation/Information System Study of the Judicial Council of California of San Francisco, California," Court Improvement Programs: A Guidebook for Planners, National Center for State Courts, November 1972.

13.2 Objective. By 1977, the Supreme Court may wish to consider adopting rules prohibiting court personnel from disclosing, without court authorization, information about a pending case that is not part of the public records of the court.

Commentary

The problem posed by prejudicial publicity has received considerable attention from the courts in recent years. It is a difficult problem in which constitutional guarantees to a free press and to a fair trial are potentially in conflict. The extent of this problem is increased when court personnel reveal information that is not part of the public record. Comments on the demeanor of a defendant or of witnesses in private circumstances, reports of overheard conversations, and other such pieces of information, if made public, can be prejudicial. There do not seem to be any tendencies towards serious abuses of this kind in Tennessee, but the responsibility of court personnel not to release information that they may have acquired would be emphasized by the adoption of specific rules governing their conduct.

Source

1. American Bar Association Standards, The Function of the Trial Judge, Standard 3.7 (1968).

13.3 Objective. By 1977, each District Attorney General's office and each trial court must develop procedures to provide witnesses with needed information and to reduce the time witnesses have to spend in court. Defense attorneys should cooperate with these procedures.

Strategies

1. The prosecutor and the court should establish procedures whereby witnesses requesting information relating to cases or court appearances in which they are involved may do so by telephone; each witness should be provided with a wallet-sized card giving a phone number to be called for information and data regarding his case.

2. Procedures should be instituted to place certain witnesses on telephone alert, and special efforts should be made to avoid having police officers spend unnecessary time making court appearances.

3. Prosecution and defense witnesses should be called only when their appearances are of value to the court.

4. No more witnesses than necessary should be called.

5. A lawyer should not call a witness who he knows will claim the privilege not to testify in order to make the jury aware of that claim.

6. The interrogation of witnesses should be conducted fairly, objectively, and with regard to the dignity and privacy of the witness. A lawyer should not use the power of cross-examination to discredit a witness he knows to be testifying truthfully.

Commentary

Witnesses need help so that the inconveniences and uncertainties they experience are kept to a minimum. Witnesses who seek information concerning their court appearances should be able to do so by telephone. Currently, witnesses who misplace their notifications of court appearances or who wish to inquire about the disposition of their cases often are required to find their way to the clerk's office to get this information.

Each witness should be given information that will enable him to identify his case. Prosecutors and court officials are often hard-pressed to respond to witness inquiries when the witness is unable to supply basic identifying information concerning the case in which he is involved. A wallet-sized care containing information by which the witness can identify to court officials, the case in which he will be testifying and a phone number to call if he has a question, would greatly improve the ability of the witness to obtain needed information.

"Telephone alert" also holds promise as a means of reducing unnecessary waiting time for witnesses. Police and citizen witnesses now are placed on telephone alert or standby for their court appearances in a number of the nation's courts. Routine telephone alerts of police officers are in daily use in Denver, Colorado, Detroit, Michigan, and Bergen County, New Jersey. In many rural jurisdictions prosecutors routinely place citizen witnesses on telephone standby to avoid their making an often long and unnecessary trip to the courthouse.

One program that has reported success with an alert procedure is the Appearance Control Project conducted in the Manhattan and Brooklyn District Attorney's offices in New York City. Although the scope of telephone alert was limited to certain types of cases, the project demonstrated considerable savings in witness time during the first 20 months the procedure was tested. A total of 2,392 police and citizen witnesses who had been placed on alert were saved a trip to court because their appearance was determined on the morning of the court date not to be needed. The resulting savings in police time alone was valued at $150,000. In addition, the project has called into court over 500 police and citizen witnesses who had been placed on alert, and in 88 percent of these appearances final disposition of the case was accomplished upon the appearance of the witness. The average response time for telephone alerts- i.e., the time between the telephone notification to appear and the witness's arrival in the courtroom- was 62 minutes.1/

Cooperation by defense and prosecution attorneys in limiting the calling of witnesses to those whose appearances are truly of value will save the time of both the witnesses and the court and promote the expeditious disposition of cases. Witnesses should be treated with respect and in a way that reflects well upon the court system. This will encourage public cooperation with the courts and will minimize the common reaction of "I don't want to get involved" that hampers both the police and the courts.

1/ Vera Institute of Justice Project, Weekly Statistical Summary, May 9, 1972.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standards 10.2 and 10.6, Washington: Government Printing Office (1974).

13.4 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that in 1976 the General Assembly and Supreme Court act to assure sufficient compensation is provided to citizen witnesses for time spent in court, to police officers for off-duty time spent in court, and to jurors.

Strategies

1. Funding should be provided so that when police witnesses are forced to appear in court during off-duty time, they will be compensated at the same rate they would receive if performing other official duties. If they do not receive financial compensation, they should receive an equivalent amount of time off.

2. Existing provisions for the compensation of witnesses (TCA 40-2436) should be enforced either through a legislative mandate or through a Supreme Court rule requiring judges to assure that all witnesses are compensated at the rate provided by law.

3. Consideration should be given to raising the level of compensation provided to witnesses to a minimum rate of twice the prevailing federal minimum wage for time spent on travel and court appearances, and reimbursement for expenses other than travel such as childcare fees, etc.

4. Consideration should be given to increasing the compensation of jurors so that jury duty will not be a financial hardship. A rate similar to that provided for witnesses should be considered.

Commentary

Both witnesses and jurors play a vital role in the court system, and unless they are accused of a crime, most citizens come into direct contact with the courts only if they are summoned to jury duty or called as witnesses in a case. Reasonable compensation should be provided to witnesses and jurors both out of simple justice and to help promote a positive reaction to the court system and willingness to cooperate with the courts.

TCA 40-2436 provides for witnesses to be compensated at a rate of $0.10 per mile for travel to and from court and to receive $25 per day for travel and court appearance time. However, the prevailing practice around the state is not to compensate witnesses unless they have traveled from another county or state. The consequences are that citizen witnesses from the local community may lose wages and incur expenses that are never reimbursed. The fact that they may have to appear in

court a number of times before ever having the opportunity to testify makes the problem all the greater. It is suggested that the provisions for compensation be enforced either through legislation or through Supreme Court ruling so that this hardship will no longer be imposed on Tennessee citizens. Consideration should also be given to increasing witness fees and to providing compensation for special expenses such as providing childcare while appearing in court.

A special category of witnesses are police officers. They often find themselves summoned for court appearances during times when they are off duty. In the metropolitan areas, compensation, either financial or through equivalent time off, is generally provided to officers who must testify in off-duty time. In many small communities, that is not true. A small force may find it difficult to provide adequate services if it gives testifying officers time off, and the funds for financial compensation may not be available. Action should be taken so that officers will no longer be subject to this unjustified burden.

TCA 22-401 provides compensation for jurors at a rate of $10 a day and $0.10 a mile from home to the courthouse. Considering the compulsory nature of jury duty and the special burden that may be imposed by extended cases, this seems an inadequate rate of compensation. Consideration should be given to raising the level of juror compensation to at least the level currently provided by law to witnesses.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 10.7, Washington: Government Printing Office (1974).
2. American Bar Association Standards, Trial by Jury, Standard 3.2 (1968).

Reference

1. TCA 40-2436; 22-401.

14. GOAL: ASSURE THE QUALITY OF PROSECUTORIAL SERVICES

Introduction

The District Attorney General occupies a critical position in the criminal justice system. It is he who must focus the power of the state on those who defy its prohibitions. He must argue to the bench amd jury that the sanctions of the law need to be applied. He must meet the highest standard of proof because the right of freedom hangs in the balance.

The District Attorney must be a full-time skilled professional of high personal integrity. He must have adequate supporting staff and facilities. The office of prosecutor combines legal, administrative, and judicial functions that require experienced, professional personnel and a rational and efficient organizational structure. Efforts to deal with the problem of crime are unlikely to be successful if prosecutors' offices are poorly funded, understaffed, and ineffective.

The general consensus of Tennesseans working in the courts seems to be that District Attorneys and their assistants are capable and dedicated. Due to insufficient resources, however, they are not always able to provide the highest quality of prosecutorial service. The recommendations of the Tennessee Law Enforcement Planning Commission with respect to the prosecution focus on providing greater levels of assistance to District Attorneys and taking other steps to assist them in their duties.

The role of the District Attorney makes him a key figure in maintaining constructive, helpful relations with other criminal justice agencies and with the public. The smooth coordination of the work of the District Attorney's office with police agencies and the degree of respect and support that that office receives from the public can have important consequences for the overall efficiency and effectiveness of the criminal justice system. Therefore, some suggestions are made concerning activities that District Attorneys may wish to undertake to improve coordination with other agencies and to promote cooperation from the general public.

14.1 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that by 1977 the General Assembly adopt legislation requiring all Assistant District Attorneys General to be appointed and compensated on a full-time basis and to be prohibited from engaging in private legal practice.

14.2 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that in 1976 the General Assembly take action to assure sufficient compensation, facilities, support and training for District Attorneys General and their staffs.

Strategies

1. Consideration should be given to compensating District Attorneys General at a rate not less than that of judges of the trial court of general jurisdiction.

2. Salaries for Assistant District Attorneys General through the first 5 years of service should be no less than those of attorney associates in local private law firms.

3. District Attorneys' offices should be provided with support comparable to similarly sized law firms, including:

   a. Full-time assistants,

   b. Office managers,

   c. Paraprofessionals,

   d. Secretarial service,

   e. Facilities to ensure privacy,

   f. Access to a library.

4. All newly appointed or elected District Attorneys and assistants should be required to attend the first available prosecutor's training course.

5. All District Attorneys and assistants should be required to attend a formal prosecutor's training course each year, in addition to any in-house training, provided that course availability and court schedules permit.

6. Support should be provided to District Attorneys in metropolitan areas to develop in-house training programs for new assistants.

Commentary

The complexity of today's criminal law practice requires that all District Attorneys devote their full efforts to their roles as prosecuting attorneys. If prosecutors devote all of their professional efforts to the duties of their office, the office should offer reasonable economic rewards in order to attract competent professionals. For purposes of salary, the prosecutor should be considered to be on the same level as the chief judge of the highest trial court of the local criminal justice system. Both positions require the exercise of broad professional discretion in the discharge of the duties of the offices. It is, therefore, reasonable that the compensation for the holders of these offices have the same base.

Assistant District Attorneys should also devote their full efforts to the duties of their office. If highly qualified and competent personnel are to be attracted to careers in the administration of criminal justice, assistant prosecutors should be compensated at a level comparable to that received by their counterparts in private practice.

Lack of adequate supporting staff and facilities is an important problem for many District Attorneys in Tennessee. In the absence of adequate support, attorneys are sometimes forced to devote an unnecessarily large portion of their time to clerical and other nonlegal tasks. The result is a highly inefficient operation. Given the crucial role of the prosecutor's office in the administration of the criminal justice system, such inefficiency cannot be tolerated. The time and energy of lawyers should be reserved for legal problems and other staff work should be done by office managers, paraprofessionals and secretaries with the level of staffing corresponding to the size and caseload of the particular office.

Since the District Attorney is one of the most important officials in the criminal justice system, his office should have physical facilities in keeping with the dignity and responsibility of the position. District Attorneys and their staffs must have privacy to prepare their cases and to discuss the problems of their offices without outside interruption. Moreover, they must deal with highly personal and confidential problems brought to them by the police and citizens. Frank discussions are possible only in privacy. The office atmosphere should be one in which the police and the public are assured that the staff can give them their undivided attention. Furthermore, if members of the public observe a physical environment that is not consistent with professionalism and the dignity of the office of the District Attorney, then respect for law enforcement is bound to be lessened.

Ready access to a complete library is essential to the effective operation of the District Attorney's office. Each office should be provided with all materials that may be needed in the course of normal legal research that must be undertaken by prosecuting attorneys.

The traditional assumption that any licensed attorney is capable of handling any type of case is no longer valid, as indicated by increasing specialization within the legal profession. Newly elected or appointed prosecutors should be required to attend a formal prosecutors' training course. Training courses for prosecutors have been developed by the National District Attorneys Association, the Practicing Law Institute, the Northwestern University Law School, and the National College of District Attorneys. New District Attorneys need training in the techniques of office management, court administration, and the administration of criminal justice. New assistants, who are rarely prepared by law school experience to undertake the responsibilities of their position, also should be given a basic orientation course by their own office before beginning their duties. This program should familiarize the new assistant with office structure, procedures and policies, the local court system, and the operation of the police agencies.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standards 12.1, 12.2, 12.3, 12.5, Washington: Government Printing Office (1974).

14.3 Objective. By 1977 each District Attorney General's office must develop a detailed statement of office practices and policies for the guidance of Assistant District Attorneys.

Strategies

1. The statement should include guidelines governing screening, diversion, plea negotiations and other internal office practices.

2. These policies should be reviewed annually.

Commentary

The District Attorney's office exercises very wide discretion in making a multitude of decisions concerning screening and diversion of offenders, initiation of charges, plea negotiations, and sentencing recommendations. Decisions that affect the lives of individuals as drastically as these should not be made in a random, ad hoc, and informal manner. Such decisions should be made in accordance with policies that have been carefully developed and frequently reviewed. Although different criminal cases present different factual settings and involve defendants with varying backgrounds, efforts should be made, particularly in large offices, to see that differences in policy reflect such different circumstances and not merely different policies being followed by different staff attorneys. The development of such policy guidelines should lead the prosecutor's office to evaluate the present approaches being taken to various critical aspects of the processing of cases. The periodic review of these guidelines provides an opportunity for frequent reevaluation, as well as an occasion for ascertaining whether previously enunciated policies are in fact being follows by assistant prosecutors.

The District Attorneys' Conference is currently preparing a manual for all District Attorneys in the state. The manual will probably serve most District Attorneys as a basis for developing their own statement of office policies and procedures.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 12.7, Washington: Government Printing Office (1974).

Reference

1. Davis, Kenneth Culp, Discretionary Justice, A Preliminary Inquiry, Baton Rouge: Louisiana State University Press (1969).

14.4 Objective. By 1977, each District Attorney General should establish active cooperation with other criminal justice agencies and with the public.

Strategies

1. The District Attorney should maintain relationships that encourage interchange of views and information and that maximize coordination of the criminal justice agencies (providing legal advice to police, identifying mutual problems and developing solutions, participating in police training programs to keep police informed about current developments in law enforcement.

2. The District Attorney should develop for police use a basic report form necessary for charging, plea negotiation and trial. The completed form should be routinely forwarded to the District Attorney's office after the offender has been processed, and police officers should be informed of the reason for disposition.

3. The District Attorney should establish regular communication with correctional agencies to determine the effect of his practices on correctional programs.

4. The District Attorney should regularly inform the public about the activities of his office and other law enforcement agencies and encourage expression of public views concerning his office and its practices.

Commentary

Although the court process may be the hub of the criminal justice system, the policies and practices of the District Attorney's office are likely to have more impact on particular cases than those of other agencies. It follows that the general impact of prosecution practices and policies is of crucial importance to the entire criminal justice process. For this reason, good relationships between the District Attorney's office and other agencies of the criminal justice system and the general public are important.

The expansion of procedural due process by the courts and the application of the exclusionary rules have altered fundamentally the duties and powers of the police. Consequently, the need of the police for legal advice in the performance of their duties in criminal cases has increased greatly in recent years. District Attorneys can assist police agencies by providing needed advice and by participating in training programs for police in order to help them to understand relevant laws and legal

decisions. They can also work with police agencies by discussing and identifying mutual administrative problems and seeking solutions to those problems. Common interagency problems relate to such issues as limiting unnecessary court appearances by police officers, informing officers of the disposition of their cases and of the reasons for unfavorable dispositions, insuring that police reports are forwarded promptly to the prosecutor's office, obtaining the assistance of officers in the preparation of cases for trial, and dealing with uncooperative or ill-prepared police officers or assistant prosecutors.

Since the police report form is the basic prosecutive document, it should be designed by the District Attorney to meet his requirements and not by the police based on their interpretation of the District Attorney's requirements. A well-designed report form should require police officers to detail all of the evidence which supports each element of the offense, the relevant surrounding circumstances, and all known witnesses and their addresses. In the absence of a structured form, police reports often omit important facts or the names of useful witnesses, to the detriment of the prosecutor at the time of trial.

Prosecution policies also can have a significant impact on correctional programs. Plea negotiation and diversion practices often determine not only whether an offender will be placed in a correctional program but also the circumstances--such as length of possible confinement--under which he will participate in it. Moreover, the offender's perception of the fairness with which he was dealt by the District Attorney's office may affect significantly his attitude towards correctional programs. It is important that the District Attorney be aware of the impact of his policies and practices and of the need to ease the correctional task.

Since the public has the right to know about the activities of all public offices, the District Attorney has an obligation to keep his constituents informed about the activities of his office and of the activities of other law enforcement agencies. All of the various forums of public information, such as the press, television, radio, annual reports and public occasions, should be used by him to insure that his constituents are kept informed. However, in discussing individual criminal cases the prosecutor should be careful not to impair the right of the accused to a fair trial.

The District Attorney, as the chief law enforcement official in local jurisdictions, also has an affirmative duty to communicate his views to the public on the important issues and problems affecting the criminal justice system. Informing the public of inadequacies in the criminal justice system is one method by which the prosecutor can stimulate efforts for improvement.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Standard 12.9, Washington: Government Printing Office (1974).

15. GOAL: DEVELOP A STATEWIDE PUBLIC DEFENDER ORGANIZATION

Introduction

In most parts of Tennessee defense services for indigent defendants are currently provided by court appointed counsel. The state provides an indigent defense fund for the payment of the appointed counsel. In recent years, however, the amount appropriated for indigent defense has not been sufficinet to pay all of the lawyers appointed, and many went unpaid or did not bother to seek reimbursement because they knew there was no money available. During fiscal year 1974-75, for instance, $600,000 was appropriated for indigent defense, but the money was used before the end of the year. Over $700,000 was appropriated for 1975-76, but it is anticipated that all of that sum will be used before the year is half over because, whereas payment had previously been made only for time spent in court, it will now be made for out of court time as well.

Although indigent defendants in most parts of the state must depend on court appointed counsel, public defender programs do exist in several jurisdictions: Anderson County, Washington County, Nashville/Davidson County, and Memphis/Shelby County. In addition, the Legal Clinic at the University of Tennessee Law School in Knoxville provides similar services in that area.

There has been much discussion in Tennessee in recent years concerning the best way to provide defense services to the indigent. Some have seen a full-time, adequately staffed and supported public defender system as superior to one in which the low pay received by a court appointed attorney may lead to lower quality services being provided to the poor defendant than would be supplied to one who could afford to pay attorney fees. Others have argued that a court appointed private counsel, particularly if the level of compensation is increased, would be more likely to view the defendant as an individual and provide high quality service than would a public offender's office where the staff might develop a jaundiced and cynical orientation toward its clients.

There may be no one best system for organizing indigent defense services in the state, but the Tennessee Law Enforcement Planning Commission has concluded that the criminal justice system would benefit from the establishment of a statewide, state supported public defender's organization.

15.1 Objective. The Tennessee Law Enforcement Planning Commission very strongly recommends that by 1979 the General Assembly establish a state supported, full-time public defender organization in all judicial districts. The public defender system should include the following features:

a. Election of public defenders on a nonpartisan basis.
b. Provision of adequate staff, supportive services, funding, and training.
c. Adequate compensation for public defenders and their assistants.

Strategies

1. Administration and organization of public defenders should be provided locally, regionally, or statewide depending on the needs and resources of the local jurisdiction.

2. Public defenders should have a term of the same length as District Attorneys General.

3. Public defenders should be subject to disciplinary and removal procedures.

4. Public defender staff attorneys should be hired, retained and promoted on the basis of merit. They should be fill-time and prohibited from engaging in private practice.

5. Public defenders should be compensated at a rate comparable to that of District Attorney Generals taking into account any differences in the extent of their responsibilities.

6. Salaries for public defender staff attorneys through the first 5 years of service should be comparable to those of Assistant District Attorneys General.

7. Public defenders' offices should have adequate supportive services including secretarial, investigation and social work assistance.

8. The public defender should provide support services for appointed lawyers.

9. Written policy for the public defender's office should be established.

10. The state should establish a defender training program to instruct new defenders and assigned panel members in substantive law procedure and practice.

11. In-service training and continuing legal education programs should be established on a systematic basis at state and local level for public defenders, staff attorneys, assigned counsel panel members and other interested lawyers.

12. Law enforcement personnel, bondsmen or court personnel should be required through their licensing procedures to direct accused persons to a referral service or the local bar association-not private attorneys.

Commentary

To provide equal services to defendants throughout the state, a public defender system should be state supported in the same manner that the state supports prosecutorial services.

There are many opinions concerning the best system for choosing public defenders, but the Law Enforcement Planning Commission feels that, as in the case of judges and District Attorneys, they should be elected officials. A nonpartisan election is recommended for the same reasons that a change to a nonpartisan system was suggested for judicial elections.

One problem that public defenders in many parts of the country have is the lack of adequate staff and supportive services. Indeed, indigent defendants are often skeptical about the quality of representation they will receive from a public defender because of the lack of support and the high caseload of the staff attorneys. Public defenders' offices in Tennessee should be sufficiently staffed and receive support in the form of investigative, secretarial and other services so that the quality of the defense received by indigents will be sufficient to safeguard their rights.

An important element in assuring adequate representation will be the training and continuing education of attorneys in public defenders' offices. Training programs and seminars for public defenders similar to those organized for judges and district attorneys should be part of the public defender system.

An obviously crucial factor in the quality of services provided by the public defender's office will be its ability to attract good attorneys to its staff. While many factors might make service in a public defender's office attractive or unattractive to a particular attorney, adequate compensation is clearly a major one. Many of the participants in the task group meetings at which the proposals for a public defender system were discussed thought that the salaries of the public defender and his assistants should be the same of those of District Attorneys

and their assistants. Others thought that the responsibilities of a District Attorney are greater than those of a public defender serving the same area and felt that the difference should be reflected in a somewhat lower level of compensation for the defender. Assuming similar caseloads, there was general agreement that the assistants in both offices should receive equivalent compensation. Regardless of the exact salary levels set for the defenders and their assistants, it is crucial that they be set at a level high enough to attract and retain good attorneys to the defender's office.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Chapter 13, Washington: Government Printing Office (1974).

References

1. The National Conference of Commissioners on Uniform State Laws, Model Public Defender Act," Handbook of the National Conference of Commissioners on Uniform State Laws, Baltimore: Port City Press, Inc. (1970).
2. "The Philadelphia Defender Problem: A Unique Solution," The Legal Aid Briefcase, Vol. 28, October 1969.
3. Wald, Michael, The Use of Social Workers in A Public Defenders Office, An Evaluation of the Offender Rehabilitation Project of the Public Defender Office for Santa Clara County, Santa Clara, California: Santa Clara Public Defender's Office (1972).
4. "Public Defender Training Program of Seattle-King County, Washington," in Guidebook of Projects for Prosecution and Defense Planning, Washington: National Center for State Courts (1972).
5. San Francisco Committee on Crime, A Report on the San Francisco Public Defender's Office (1970).

16. GOAL: DEVELOP PLANS FOR DEALING WITH MASS DISORDERS

Introduction

During the 1960's and early 1970's there were many large scale mass disorders in the country, and Tennessee did not entirely escape the unrest found in other areas. Because of the difficulties of the courts in processing large numbers of accused persons during these disorders, the National Advisory Commission on Criminal Justice Standards and Goals suggested that each jurisdiction should develop comprehensive plans to deal with possible future disorders. It is unrealistic to expect the courts to function in their regular manner during a mass disorder, but advance planning can maximize the likelihood that the changes that must be made in court processing during such a period will not result in the dilution of the quality of justice dispensed.

16.1 Objective. By 1981, responsible local agencies, including courts, District Attorneys' offices, public defenders, and bar associations, may wish to consider developing local plants to deal with mass disorders.

Strategies

1. There should be a court processing plan dealing in detail with court operations and the defense and prosecution functions required to maintain the adversary process during mass disorders. The court subplan should be concerned both with judicial policy matters and court management.

2. There should be a plan for providing defense services developed initially under the auspices of the local public defender and/or bar association and including procedures for protecting the rights of arrestees.

3. There should be a prosecutorial plan developed initially by the District Attorney's office and including procedures for screening and charging arrestees and for court management.

Commentary

The local plan should be based on contributions from the court, the prosecution and the defense. Although each of these components does its own initial planning, the court must be the final arbiter with responsibility and power to insure that the three components interact effectively. The court plan should deal with policy matters and management considerations required to effect the plan.

In terms of policy, the court plan should deal with publicizing the plan, assuring pretrial release, maintaining the adversary process, informing defendants of their rights, assuring speedy initial appearances and trial, and delaying sentencing until the termination of the disorder.

The management component of the court plan should deal with activation and deactivation of the plan; possible postponement of cases docketed prior to the occurrence of the mass disorder; manpower, material and space requirements for the operation of the courts; availability of court papers and forms; flow of information; location of persons detained during a disorder; and courthouse security.

The prosecution portion of the plan should address screening and charging as policy matters, and space, manpower, and material needs to carry out the prosecution function as management considerations. The defense portion of the plan should deal with utilization of the public defender and assigned counsel, provision of counsel for persons arrested, avoidance of mass justice, and space, personnel, and material needs.

Source

1. National Advisory Commission on Criminal Justice Standards and Goals, Courts, Chapter 15, Washington: Government Printing Office (1974).

References

1. Friedman, Harvey G., "Contingency Planning for the Administration of Justice During Civil Disorder and Mass Arrest," American University Law Review, Vol. 18, December 1968.
2. National Advisory Commisssion on Civil Disorders, "The Administration of Justice Under Emergency Conditions," Report of the National Advisory Commission on Civil Disorders, Washington: Government Printing Office (1968).
3. National District Attorneys Association, Guidelines for Prosecuting Criminal Cases During Civil Disorders, Chicago: National District Attorneys Association (1968).