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BACKGROUND PAPER ON ISSUES AND DATA SOURCES RELATING TO CASE BACKLOG AND DELAY IN THE STATE COURTS

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ACQUISITIONS

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THE COURTS WORKING GROUP

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FOREWORD

This paper was prepared by the Criminal Courts Technical Assistance Project as a background report for use by the LEAA Courts Working Committee in considering research issues bearing upon criminal case backlog and delay. The observations provided are a result of the staff's intensive review of relevant literature, reports of prior efforts, both LEAA funded and of knowledge to the staff, analysis of the principal relevant data bases, and discussions with numerous individuals who have been involved in court backlog and delay reduction efforts or related research.

Although issues related to civil case process, per se have not been included, much of the comments regarding statistical and methodological issues in the criminal area could well be applied to the civil. However, if the Committee is interested in exploring civil case processing in any depth, attention should be given to the various approaches which jurisdictions have undertaken to civil litigation settlements and arbitration and the scope and impact of no-fault legislation. A 1973 research memorandum prepared by the Technical Assistance Project describing the principal approaches to civil dispute resolution implemented at that time is appended. In the four years intervening, the number of jurisdictions using such approaches has greatly increased as have the types of cases and settlement mechanisms deemed appropriate for civil pre-trial dispute resolution. Efforts should be made to analyze the impact of these practices upon civil case process and to ascertain their effect upon the handling of criminal matters.

I. OVERVIEW

A. Principal Issues

1. Causes of Delay

a. Management Related

Lack of adequate manpower and resources, internal court administrative problems and personnel imbalances within and among the component agencies in the criminal justice system have traditionally been mentioned when discussing the causes of court backlog and delay. The National Manpower Survey polled courts around the country for their views on the causes of delay and the responses identified administrative problems as the backlog cause, followed by manpower deficiencies in the courts and on the litigation staffs of prosecutors and public defenders, and a substantial number cited excessive continuance policies as another causal factor. Equally relevant, is the fact that more than half of the courts polled did not consider delay a serious problem.

Any nationwide survey with the avowed object of alleviating the severe backlog problems in the courts, must proceed with a total-systems view which necessitates that the starting point be an identification of the causes of the problems. In addition to the causes mentioned above, critical analysis should also be focused on the following potentially delay-causing aspects of the criminal justice system:

1) Prosecutorial practices and how they affect case delay and backlog. A good example of prosecution action adversely affecting a court's backlog occurred in the Superior Court of the District of Columbia, where in the last days of December 1975, the U.S. Attorney for the District of Columbia handed down a large number of grand jury indictments in an attempt to make his operations current. The effect of this eleventh hour action on the court operations was evidently not given much consideration in the prosecutor's decision. The

actual effect on the court was that suddenly it had an unanticipated backlog of cases which had to be disposed of within the statutory period and to accomplish this, judicial resources had to be diverted from the other areas of the court's operations, which had the domino effect of increasing the backlog in all divisions of the court.

2) Defense practices. One advantage that is often mentioned is that the longer a case is delayed the better the odds are that witnesses will die, leave the jurisdiction, or simply forget what happened.

3) Continuance policies - effect of strict versus lenient continuance policies. In the preliminary figures from the National Manpower Survey, 14% of the Court Administrators and judges polled felt that excess continuances were the major cause of delay.

4) Calendar control. The question of who should manage the calendar and who in fact does manage it is often mentioned in terms of case scheduling delay. This would seem to be one area where there has been some extensive research which should be consulted and analyzed.

The list of possible delay causing factors goes on and on. Prosecution of victimless crimes is often mentioned as a major backlog producing factor. This ties in to the belief of some that judicial delay is a direct result of the fact that law reform lags far behind the rapidly evolving and changing moral views of American society. Courts have become to a great degree dumping grounds for unsolved social problems with which our legislators refuse to deal. The immense amount of litigation generated by technological progress has had a profound impact on the courts. One need only look at the number of cases in our courts relating to automobile accidents for evidence of this. Much lip service, and little action, is given to the idea of transferring quasi-administrative litigation, such as traffic cases and landlord-

tenant disputes, from the courts to executive branch administrative bodies. Reform agents in our society have realized that change may be evidenced much more quickly by resort to the judicial process than through the legislative branch. Some commentators are convinced that the petit jury and grand jury systems play a substantial role in the delay problem.

All of these issues must be squarely confronted and analyzed as to their effect on delay in the courts. To be successful, studies in this area must be fully cognizant of all the factors and relationships that contribute to the problem they are attempting to solve.

b. Substantive Causes

(1) Appellate Court Action

One area in which our research has uncovered little to no concentrated study and which seems to warrant attention, concerns the effect of appellate court actions on the caseload of trial courts. An examination of the annual reports of state courts revealed only eight jurisdictions* which collect and report statistics depicting the number of cases which re-enter the trial courts as a result of state appellate court action. Efforts here could be focused on ascertaining whether appellate remands significantly contribute to trial court delay, what types of cases are most likely to be remanded, reasons for remand, etc., with a view to identifying those cases and expediting their adjudication upon re-entry into the trial court. The question of how remanded cases are classified upon re-entry, in other words, are they filed as new cases or are they classified under their original filing date and number, is also of interest. An answer to this would shed considerable light on identifying the characteristics of cases which are reported as being very

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* Arkansas, Maryland, New Jersey, New Mexico, New York, North Dakota, Oregon, Texas

old, because obviously if a case has gone through the entire trial and appellate process and is then remanded to the trial court and is reactivated under its original filing date, that would partially explain the existence in the pending caseload of a court in which cases are two or so years old.

(2) Delay Caused by Substantive Issues Designed to Protect Defendants' Rights

Another area worthy of study concerns procedural and substantive measures which have been mandated ostensibly to protect the constitutional rights of defendants but which also result in the significant prolongation of a case's progress through the system. For example, it would be useful to isolate cases which may be over a year old to identify those which have been continued indefinitely because the accused has been found incompetent to stand trial. Conceivably such cases could remain in a pending status for years depending on the degree of incompetence which, when the case shows up on a statistical chart, tends to distort the average age of all pending cases. A comprehensive review of substantive causes of delay would seem to be necessary in order to obtain a complete view of the picture.

2. Need for Uniform Definition of Terms and Standards of Measurement

Concomitant with the isolated research efforts in case delay and backlog is a lack of uniform terminology and standardized measures. To assure maximum transferability of study efforts in this area, development of widely applicable terminology and measurement should be attempted. Guidance as to definition of terms may be obtained from the Guide to Case Scheduling publication of the Institute for Law and Social Research, which contains a comprehensive glossary of definitions. This is not to suggest that these definitions should necessarily be adopted but they do provide a base for common understanding and communication. Should further definition be required, the reasons for this revision and the rationale for new definitions should be documented.

3. Additional Research Needs

Efforts should be made to identify studies dealing with actual implementation of court backlog reduction efforts and their evaluation. Additional attention should be given to identifying jurisdictions where actions in other criminal justice system components (i.e., changes in police charging practices, etc.) may effect court backlog.

B. Present Problems Confronting the Researcher

1. Lack of Comprehensive, Standard Data Base

One of the overwhelming problems which has become apparent in our brief survey of the field is the lack of a common data base by which reference and discussion of issues relating to court delay can be undertaken. There is no one category of data which has been measured uniformly to produce a national level statistic. The problem becomes all the more overwhelming when we note the diverse research efforts that have been launched, or will be launched shortly, to explore the problems of "case delay" -- each of which is being undertaken in isolation of both the findings and the data bases established by the others. The potential result of this failure to systematically build upon and refine what has come before will be a number of reports on the subject of court delay which approach the subject from a number of perspectives without any coordinated and comprehensive treatment and outcome.

For example, we have noted that a frequent response to the question: "Can we develop a common standard of measurement for pending felony cases?" is that such a task would be extremely difficult in view of the diversity of records systems presently maintained in the various jurisdictions. To admit this diversity as a given constraint upon any knowledge that can be attained in this area is to overlook one of the principal tasks of the researcher -- i.e., to synthesize the diversity into a common analytical framework which can overcome the varieties of individual practices and systems. This is not to suggest that

a uniform reporting system be imposed upon all courts before research in the area can be undertaken but, rather, to integrate the various data available into a terminology which can have meaning on a national level so that subsequent analyses of local processes can be readily transferable and meaningful.

2. Lack of Systematic Reporting and Evaluation of Prior Case Backlog Research Studies

Although extensive materials were reviewed in the course of our research, obviously there are many other research products relating to court delay which we have not touched upon. This is partially due to the fact that many may be unavailable because their presence has not been made known. It appears essential that an exhaustive literature search needs to be conducted in this area.

Our research has also lead us to the conclusion that it is necessary to intensively evaluate prior studies in this area. It seems that little evaluation has been done to date. Evaluation is necessary in order to identify the relative success of efforts to reduce delay, which in turn would provide a frame of reference as to what techniques are most successful in future studies.

C. Critical Tasks Which Should Be Performed in Any Future Research Efforts

1. Past Research Efforts Appear to Have Been Isolated Efforts

Past research efforts appear to have been conducted in isolation. No base of information has been established which is both generally available or applicable. It is evident that studies have been conducted on an ad hoc basis, without building upon what has come before or what might be occurring simultaneously.

It would seem that a primary task for any research effort in the area of court delay would be to document the problem in terms which anyone can understand. Common agreement must be made as to what we want to measure, the information elements which bear upon these measurements and the sources from which

this information will be sought. Once this agreement is reached, methodology for gathering this data should be developed in light of the varying levels of information already available and the diverse record-keeping practices in the various jurisdictions. Then, the data should be gathered with the end result of documenting the critical time and other elements relating to case processing in every court in the country. For some jurisdictions, this task will involve simply recording already available information. For others, it may involve on site construction of court activities. Admittedly, a total picture of court process will not be possible because some information elements, such as reasons for continuances, may not be recorded. However, what will emerge is an accurate picture of the information which is available and the additional data needs which must be addressed before a comprehensive picture of court process can emerge. Once that picture is developed, further analysis and improvement efforts can take place.

In every case, however, particular attention will need to be given to the sources which can most accurately and reliably provide this information. While the task of developing a common data base on a national level may appear, at this point, to detour the current initiative regarding the court backlog and delay effort, it is a prerequisite for any systemwide understanding, analysis and improvement. A logical place to begin would be with the data gathered by the National Manpower Survey, as discussed in Section IV - B below. While many note the gaps and inconsistencies of this data, a common information base has been laid which can be refined, corrected, modified and expanded. An underlying problem which should be explored in this regard is the incompatibility of some of this data when compared with that provided in the state court annual reports which we sensed in our review. (The actual NPA statistics were unavailable to us but, we were informed, have been filed regularly with LEAA.)

2. Analysis of Present Data Base

Apart from any substantive contriubtions which future research in this area can make, a comprehensive data base must be constructed which will permit a standard frame for analysis by all interested in this area. Present data bases, particularly the National Manpower Survey data, should be analyzed and refined. Gaps should be identified and filled where possible. All future data gathering efforts should be geared to building upon existing information which has already been gathered at tremendous cost. In the event that particular data may not be useful, its deficiencies should be specifically identified and subsequent data gathering methodologies should be designed to remedy these deficiencies and assure that these problems are not repeated.

II. SUMMARY OF THIS RESEARCH EFFORT

A. Sources

In undertaking this study in general, a number of diverse resources were tapped. Primary among the written documents which were reviewed were:

1. LEAA materials, most notably a GMIS listing of funded projects relating to case delay, and an NCJRS abstract on the subject

2. Annual Reports of state court systems in the United States

3. Various bibliographic documents, particularly Professor Fannie Klein's two volume collation, The Administration of Justice in the Courts

4. A study of case backlog and delay in the New Haven, Connecticut area by Dr. Malcolm Feeley of the Yale Law School

5. A Guide to Court Scheduling: A Framework for Criminal and Civil Courts, prepared by the Institute for Law and Social Research and funded by a grant from the National Science Foundation

6. Various reports of technical assistance efforts in the area of calendar management, performed under the auspices of the Criminal Courts Technical Assistance Project

7. A research design paper entitled "Analysis of Speedy Trial" prepared by the staff of the Institute for Law and Social Research

8. Reduction of Pretrial Delay - Demonstration Project, an LEAA funded study conducted by Lewis R. Katz, Director of the Center for Criminal Justice at Case Western Reserve University School of Law

9. Judicial Productivity and Court Delay: An Exploratory Analysis of the Federal District Courts, another LEAA funded study prepared by Professor Robert Gillespie of the University of Illinois

10. A National Conference of Metropolitan Courts study of case progress control technique.

11. Limited summary data generated from the National Manpower Survey

12. A paper prepared by the National Center for State Courts surveying state speedy trial statutes, which proved of limited use as a result of being severely dated

13. American Bar Association and National Advisory Commission Standards relating to the criminal justice system

Two other documents with potential utility as resources, but which were not available, are a study of plea bargaining practices being conducted by the Institute of Criminal Law and Procedure at Georgetown University and data generated by the Model Cities Reports.

In addition, a number of individuals with particular knowledge of research and operational efforts in this area were contacted. In addition to the staff of LEAA's Adjudication Division, lengthy meetings were held with Neal Miller of the American Bar Association to discuss the scope and findings of the National Manpower Survey; and Larry Greenspan of the National Planning Association, principal subcontractor for the National Manpower Survey, to discuss and review statistics compiled by the NMS. Telephone conversations were had with Herbert Miller, Deputy Director for the Institute of Criminal Law and Procedure at the Georgetown University Law Center concerning the potential relevance of the present study of plea bargaining practices to court backlog reduction research; and with Lucinda Long Winer at Montclair State University concerning the findings of her survey of misdemeanant court process during her 1970 LEAA internship. Several staff members also attended a meeting at the Institute for Law and Social Research of researchers presently involved in court processing issues.

B. General Findings

The above list is by no means exhaustive of either the source documents we have surveyed or the body of literature available in this area. It merely

represents sources which received varying degrees of concentrated scrutiny during the course of our research. The utility of these documents varies to a great degree. Some of them are dated both chronologically and statistically. The National Manpower Survey data reveals exceptional utility as a potential data base for any comprehensive study of court delay. We were able to obtain only a limited amount of summary material from the survey. However, evidently the finished survey product relating to the criminal justice area has been transmitted to the LEAA national office.

The potential utility of much of the study and literature found in this area has been further diminished as a result of the lack of cohesive research efforts, the failure to consider prior experiences, and in some cases duplicative studies. In short, the researcher will find a plethora of ad hoc studies ignoring past and contemporaneous efforts.

C. Definitions and Standards Relating to Case Backlog and Delay

1. Comparison of NAC Standards, ABA Standards and Federal Speedy Trial Act

The standards promulgated by the American Bar Association and National Advisory Commission and the requirements of the Federal Speedy Trial Act vary somewhat in scope and specificity. The ABA standards, initially approved in 1968, deal with the right to speedy trial in the most general manner of the three. The standards of the National Advisory Commission, originally released in 1973, propose quantifiable time limits for the implementation of speedy trial rights. These two sets of standards are consistent in principle with few exceptions. Both deal with the goals to be achieved in insuring speedy trial rights, but do not offer any sort of implementation scheme. The ABA, however, did publish a booklet entitled "How to Implement Criminal Justice Standards for Speedy Trial" at a later date. It is interesting to note that in several cases the NAC addresses the specifics of speedy trial in its Corrections volume, rather than in the volume devoted to Courts. The Federal

Speedy Trial Act (1974), on the other hand, prescribes precise time requirements and exceptions to them, details those to whom they apply and offers a plan for phased-in implementation of its requirements. A categorical analysis of the similarities and differences of these three documents follows.

a. Scheduling Priorities

Both the ABA and NAC standards give criminal cases priority over civil cases in scheduling and give trials of defendants who are detained or determined to be dangerous priority over other criminal trials. The Speedy Trial Act deals only with criminal cases.

b. Court Control

Case management control is placed in the hands of the court by both sets of standards. The NAC standards specify that matters of scheduling, record-keeping and data gathering should be delegated to non-judicial personnel and that the presiding judge should be responsible for case monitoring and assignment.

One of the few areas in which the NAC and ABA standards are inconsistent is the role of the prosecutor in implementation. In both cases the prosecutor is to be provided by the court with statistics and other information relevant to case processing. Only the ABA standards, however, require the prosecutor to provide the court with documentation for the reasons for excessive delay.

While the NAC standards do not touch on the issue, the ABA standards and the Speedy Trial Act direct the responsibility of insuring the speedy trial rights of imprisoned defendants to the prosecutor. Both require the prosecutor to notify the defendant of his right to speedy trial, and, if the defendant exercises that right, to take steps to obtain his presence for such trial.

c. Time Commences

All three documents agree on the points at which time commences to run:

1) from the date the charge is filed

2) if the charge has been dismissed, from the date a new charge relating to the same offense is filed

3) from the date of court order for a new trial or appeal

d. Excluded Periods

The NAC standards make a general statement permitting excluded periods relating to the complexity of the case or in the interests of fair trial. The ABA standards and the Speedy Trial Act concur in excluding periods relating to the unavailability of the defendant for reasons such as other proceedings or mental or physical inability to stand trial, continuances serving the ends of justice, delays related to proceedings regarding a co-defendant. The ABA standards would also exclude periods of delay for "good cause" and "congestion caused by exceptional circumstances."

e. Sanctions

The NAC standards establish no sanctions. Dismissal of charge upon motion of defendant if he is not brought to trial within the time limit is provided for in both the Speedy Trial Act and the ABA standards. The ABA standards stipulate, however, that failure on the part of the defendant to move for dismissal constitutes a waiver of the speedy trial right.

f. Continuances

Continuances granted for "good cause" are approved by the ABA and NAC standards. The Speedy Trial Act discourages willful attempts on the part of attorneys to delay trial by invoking the sanction of fine, suspension or report to an appropriate disciplinary body.

g. Time Limits

Three different approaches are taken to achieving a similar end. The ABA standards promulgate a general rule that time limits should be set by rule or statute commencing with a specified event, granting exclusions for

necessary delay. The NAC standards provide specific time limits to be in effect by 1978: in felony cases, the time from arrest to trial would not exceed 60 days and in misdemeanor cases, the time from arrest to trial would not exceed 30 days. The Speedy Trial Act frames a group of time limits to be phased in over a 3 year period with the ultimate goal of a period of no longer than: 30 days between indictment/information and arrest/summons; 10 days between arrest and arraignment; and 60 days between arraignment and trial.

The standards established by the NAC are more stringent than the requirements of the Speedy Trial Act and differentiate between felony and misdemeanor proceedings, which the Speedy Trial Act does not. The Speedy Trial Act outlines specific time limits for each phase of the criminal process while the NAC time limits cover the entire range of proceedings.

Although the NAC and ABA standards direct their comments solely to the goals to be achieved by a speedy trial initiative, the Speedy Trial Act provides steps to be taken for phased-in implementation and planning. Each district court is required to formulate a plan for implementation of speedy trial guidelines which, with the approval of a district reviewing panel, is forwarded to the Administrative Office of the U.S. Courts which will in turn submit periodic reports to Congress on planning and progress in the speedy trial area. Each district is required to develop two distinct plans: one to cover the 3 year interim period during which the guidelines are to be phased in and one to ensure continued compliance with the requirements once the phasing-in period has been completed.

The plans are required to contain specific information concerning time limits and methods by which each district intends to expedite case disposition. Statistics relevant to the administration of justice, e.g., caseload, disposition rates, time spans, are to be displayed, with the clerk of each court

designated as the compiler of these statistics. Recommendations for statutory and rule changes are encouraged, as well as recommendations for provision of additional resources necessary to improve conditions conducive to expeditious case processing.

The Speedy Trial Act permits suspension of time limits upon application to the circuit judicial council, if a district court is temporarily unable to comply with them. If no remedy can be found on the circuit level, application for time suspension and resource assistance can be forwarded to the U.S. Judicial Conference which, upon approval of Congress, may grant a suspension of time limits for a period not to exceed one year. This procedure is in line with the NAC recommendations that means be provided to alter time limits.

2. Causes of Case Backlog and Delay

A review of the various studies reveals varying causes of delay, some of which are generally recognized, and some of which are actually contradictory. For example, the study of the New Haven, Connecticut courts by Dr. Malcolm Feeley concluded that there was no direct relationship between caseloads and case processing techniques, an assertion greatly contrasting the conclusions in some of the annual reports which attribute heavy caseloads to inadequate and inefficient case processing methods. The National Manpower Survey listed the following as the primary causes of delay:

1)	Court administrative problems	36%
2)	Insufficient court manpower	24%
3)	Inadequate defender/prosecutor staffing	17%
4)	Excess continuances	14%
5)	Other	9%
		100%

A study conducted by the Case Western Reserve University Law School, cited as major causes inadequate prosecutor screening of cases unworthy of prosecution, lack of consolidated and controlled felony calendaring system, and excessive continuance policies.

It appears evident that step one in any study aimed at positively affecting the case processing system must carefully evaluate and critique the multiple and other contrasting factors which earlier studies have characterized as causes of delay. Precise identification of factors which in reality contribute to court backlog is essential since it is exactly these factors which must be dealt with if the delay problems are to be alleviated.

3. Results of Efforts to Reduce Backlog and Delay

a. Technical Assistance Project Experiences

Over the span of its operations, the Criminal Courts Technical Assistance Project has conducted a number of studies in the area of case delay and backlog, primarily involving calendar management issues and viewed from both the perspective of courts as well as defender and prosecutorial offices.

A review of these technical assistance assignments reveals that many of the issues which will be addressed in any case delay study have already been confronted and dealt with in varying degrees of effort and success. For example, a study of court caseflow delay in Clark County, Nevada, completed in September 1976, was initiated in response to local concerns about the length of time from arrest to preliminary hearings and from the bindover to arraignment stages. The technical assistance consultant team studied the underlying causes of these delays and found among other things that the preliminary hearing process was over formalized and, in effect, a mini-trial, that the size of the court's backlog delayed the initial processing of cases and thereby lengthened the bindover time, and that remands to the heavily overburdened Justice Court for preliminary hearings after previous waivers, all contributed substantially to the problems. Another study, conducted in the Delaware County Court of Common Pleas in Pennsylvania came about as a result of a legislative mandate to the trial courts in the state to process criminal cases within 180 days. Among the problems encountered here was the fact that there was no information system through

which cases could be continually monitored to identify those cases which were in danger of exceeding the 180 day limit.

The Criminal Courts Technical Assistance Project has also sponsored a series of studies in the state of Texas relating to court delay reduction and primarily focused upon instituting effective control by the court over calendar management. These projects were frequently concerned with defining the duties of the position of court coordinator in the Texas trial courts. The impetus for these studies came about as a result of the realization that in many Texas courts the bar was in fact controlling the court calendar which was substantially contributing to delay in case processing. Placing court coordinators in the trial courts has enabled them to regain control over the scheduling process, and while it may be too early to speculate or quantify the effect on case processing time, it is evident that court control over the calendar has resulted in improved utilization of resources, particularly judge time on the bench.

A listing of relevant technical assistance projects in the area of court delay is attached at Appendix A.

b. GMIS Printouts

A perusal of the data relating to grant awards in this area reveals a number of projects whose relevance to the study of court delay seems apparent at first glance, and which would provide a focal point for further study. This information is somewhat helpful in pinpointing jurisdictions which have experimented with techniques for reducing court delay and from the reports to LEAA which have conceivably been generated by these studies, a feeling for which techniques and approaches have proven successful may be obtained. They should also have limited utility in the site selection process since they indicate how much LEAA-funded study of court delay problems has already been undertaken in a given jurisdiction. For example, in St. Louis County, the GMIS printout

reveals three interrelated, yet separately awarded, grants made in recent years, all dealing with court delay-related projects. It would be a fairly safe assumption to suppose that out of these three projects an adequate volume of information describing the case backlog and delay situation in St. Louis has been generated.

In reviewing these materials their limitations and utility to the study of court delay are also apparent. Our review found that most of the projects designated as relating to court delay reduction efforts, were, in reality, of minimal application to the information and background needs of a study such as the NCSC/NCMC efforts. A listing of the grant projects which we feel would be of use to review are attached at Appendix B.

c. State Level Efforts

Review of the Annual Reports of the state courts reveal a limited number of programs initiated on a state level aimed at reducing backlog and delay in the trial courts. For instance, Ohio has instituted a number of innovative programs aimed at reducing delay through stricter administrative control by the court. Included among these measures are:

- Supreme Court Rule requiring judges to advise attorneys that they must be ready for trial on the day set, or else be subject to removal from the case
- Adoption of an individual docketing system and a 90 day speedy trial rule
- Requirement that trial court judges are to report case status to the Supreme Court, with the report being made available to the public and the press

Other states, in their annual reports, discuss attempts that have been made to address the delay problems. Included among these are Alabama, Alaska, Kentucky and New Jersey to name just a few. Any detailed study in this area should attempt to precisely ascertain what programs have been initiated in the various states.

Going beyond merely identifying those jurisdictions which have initiated delay reduction programs it seems essential that an effort be made to analyze the qualitative impact. Our brief research reveals that although quantitative data is available, very little qualitative analysis and critique has been undertaken. In states with recently enacted speedy trial statutes, study of the success of implementation procedures will be necessary. Also, there is a need to determine if quantitative successes, such as actual reductions in time from filing to dispositions, clouds qualitative problems; specifically to study whether the intent of such things as speedy trial rules, is being ignored in efforts to attain procedural compliance.

4. Reference Tools

a. LEAA Identified Resources

(1) NCJRS Abstract

Our review of the NCJRS document listing LEAA grant projects described as germane to court delay and backlog revealed in fact that only a very limited number of these projects would actually shed much light or be of practical utility in the study of delay issues. Listed below are the projects which we feel are relevant and should be examined in connection with any comprehensive court delay studies:

Document 192: Utah Code Revision
Document 191: Price of Perfect Justice
Document 163: Judicial Productivity and Court Delay
Document 135: Delay in Criminal Cases
Document 134: California Select Committee on Trial Court Delay
Document 129: Long Wait for a Speedy Trial
Document 114: Courts, Congrestion and Delay
Document 196: Criminal Justice Models - An Overview
Document 194: Justice Delayed, Justice Denied
Document 104: Prosecutor's Role in the Urban Court System
Document 89: Example Evaluation Component - An Automated Court Calendaring System
Document 71: Systems Study in Court Delay
Document Number Not Available: Pretrial Delay in the Criminal Courts - Annotated Bibliography

(2) Documents Listed in Discretionary Fund Guidelines

In the LEAA guidelines relating to the court delay discretionary fund program, a number of recent resource documents are listed as meriting review by applicants. All of these documents are discussed in varying detail in other portions of this paper. Our concern in this area is that this listing may be a bit misleading to applicants because of the fact that these materials are by no means comprehensive and in some cases of limited practical use. The various standards cited, for instance, are by nature idealistic and perhaps unusable in particular jurisdictions. Another example is the Case Western Reserve study which was conducted in only three jurisdictions and really does not fully discuss the current state of the art.

b. Other Sources

(1) The Administration of Justice in the Courts, Volumes I and II, by Professor Fannie Klein

Professor Fannie Klein's bibliography entitled The Administration of Justice in the Courts contains the most current and certainly most comprehensive effort to identify studies and literature relevant to the courts in general, and issues relating to court delay in particular. Attached at Appendix C is a listing of sources from this bibliography which we feel are of particular relevance to anyone studying court delay. This list is by no means exhaustive and the full bibliographic sections on delay should be reviewed also. Professor Klein's concise annotations are very useful in quickly identifying relevant studies and articles.

(2) The Effect of Heavy Caseloads by Dr. Malcolm Feeley

A recent study conducted by Dr. Malcolm Feeley of the Yale Law School studied the effects of burdensome caseloads in the courts surrounding New Haven, Connecticut. Dr. Feeley adopted some novel approaches in the study, particularly in assessing the causes and extent of backlog in urban and non-

urban areas. He concluded that there is no direct relationship between caseload and case processing techniques, and that no substantial workload burdens were created by urban and non-urban court workloads in relation to the judicial manpower available to each. The primary limitation of the study is the fact that beyond Connecticut, where judicial assignments are tightly controlled to deal with caseload variables, the study is of minimal relevance absent further study into assignment practices in other jurisdictions. It does provide, however, some interesting hypotheses which are amenable to testing in other court systems.

(3) INSLAW Case Scheduling Report

The Institute for Law and Social Research recently published a manual entitled Guide to Court Scheduling: A Framework for Criminal and Civil Courts. The study is based on the findings from site visits to thirty courts where their case scheduling techniques were scrutinized. Various techniques are discussed, such as individual and master calendars and their relative advantages and limitations are pointed out.

III. JURISDICTIONS WHICH HAVE RECENTLY IMPLEMENTED MEASURES TO REDUCE CASE BACKLOG AND DELAY

A. Speedy Trial Guidelines and their Implementation

Listed below are jurisdictions which have provisions relating to speedy trial guidelines, where they may be found, and, where available, the time frame in which criminals must be brought to trial. Also included is a list of jurisdictions which have no speedy trial rules or statutes.

Jurisdiction	Citation	Time Frame
Arkansas	Supreme Court Rule 27.1	9 months
California	California Constitution, Article I, Section 15	N/A
Delaware	Supreme Court Rule	120 days
Florida	Florida Rules of Court 3.191	60 days
Illinois	Illinois Revised Code, Article 38, Section 103.5	120 days
Iowa	Iowa Statute, Chapter 795	60 days
Kansas	Kansas Statute, Article 22, Section 3402	90-180 days
Maryland	Annotated Code of Maryland, Article 27, Section 590	180 days
Massachusetts	Annotated Laws of Massachusetts, Article 277, Section 72	180 days
Michigan	Michigan General Court Rule 789	180 days
Nebraska	Nebraska Code, Article 29-1207	180 days
New York	New York State Criminal Procedure Laws, Sec. 30-30	Varies with offense
North Carolina	Criminal Procedure Act, Article 35, Section 15A701	N/A
North Dakota	North Dakota Rules of Criminal Procedure, Rules 48(b) + 50 North Dakota Century Code, Chapter 29, Section 19-02	N/A
Ohio	Ohio Statutes, Sec. 2945.44 Municipal and County Rules of Superintendency, Rule 5	N/A

Jurisdiction	Citation	Time Frame
Pennsylvania	Pennsylvania Supreme Court Rule 1100(a)	180 days
Vermont	Supreme Court Administrative Order 17	90 days
Indiana	Indiana Court Rule 4	10 months
Virginia	Virginia Criminal Procedure Code Sec. 19.241	N/A

Jurisdictions which have no speedy trial rules or statutes:

Alabama	Rhode Island
Idaho	South Carolina
Kentucky	Utah
Louisiana*	West Virginia
Maine	Wisconsin
Oklahoma*	District of Columbia

B. Other Efforts

1. LEAA Funded Projects

Delay and backlog seem to be popular terms. Many of the grants reported in the GMIS listings purport to be designed to reduce delay, when in fact the project summaries indicate that very few actually deal with the critical issues related to case delay. Under Section II(c)(3)(b) we have listed those projects which we feel are particularly relevant. It would be beneficial to evaluate these efforts and review any previously conducted follow-up assessments.

2. Efforts Suggested by Annual Reports

Under Section II(c)(3)(c), some recent efforts to reduce delay on the state level are discussed. It would be beneficial to directly contact the various state court systems to ascertain what their most recent efforts in this area. This is necessary because the annual reports of state courts do not adequately discuss delay reduction programs in terms of methodology, level of effort, and evaluation of effectiveness.

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* Speedy trial law pending in the legislature.

3. Other Efforts

Other recent efforts to reduce case delay are discussed under Sections II(c)(3) and III(A). One other study which, when completed, should be insightful is the study of misdemeanant court process being conducted by the American Judicature Society and the Institute for Judicial Administration.

It should be noted that, generally, jurisdictions have been identified for having undertaken efforts in this area either because they have obtained LEAA funding for such efforts or because they have been the subject of prior study. Undoubtedly, a number of jurisdictions might exist which have quietly instituted measures to reduce case backlog or delay and these jurisdictions should be identified and studied. A review of historical statistics provided in Annual Reports or other data sources might be of assistance in this regard.

IV. PRESENTLY EXISTING COURT DATA SOURCES AND THEIR RELATIVE UTILITY TO RESEARCH INTO COURT BACKLOG AND DELAY

A. PROMIS

The Prosecutor's Management Information System (PROMIS) is designed to provide prosecutors, courts and related agencies with a mechanism for controlling and monitoring their respective workloads, and for identifying areas which are problem prone. Funded through LEAA grant, PROMIS was first implemented in 1971 in the Superior Court of the District of Columbia for use by the Office of the U.S. Attorney for the District of Columbia. To date, the system is operational in thirteen jurisdictions serving a total population of approximately 18,235,000. The program is in transfer in nine other jurisdictions and in the planning stage in seventeen. In addition, a non-automated version of PROMIS is operational in nine cities and counties. A group identifying these PROMIS jurisdictions is attached at Chart A.

The data base in PROMIS jurisdictions appears to be very comprehensive. Normally it contains the following elements:

- offense date
- arrest date
- papering date
- arraignment date
- grand jury action date
- grand jury continue date
- presentment date
- reindictment action date
- reindictment continue date
- breakdown date (from felony to misdemeanor)
- line up date
- final action date of the entire case

CHART A

PROGRESS OF PROMIS TRANSFERS

JURISDICTION City/County/State	POPULATION SERVED	AUTOMATED				
		OPERATIONAL	OPERATIONAL PY[illegible]77	IN TRANSFER	PLANNING	AU[illegible]
1. WA[illegible]GTON, DC	750,000					
2. MARIETTA (COBB), GA	250,000					
3. (LOS ANGELES), CA	7,000,000					
4. INDIANAPOLIS (MARION), IN	850,000					
5. DETROIT (WAYNE), MI	2,700,000					
6. STATE OF RHODE ISLAND	950,000					
7. [illegible]	[illegible]					
8. (MILWAUKEE), WI	1,050,000					
9. (SALT LAKE COUNTY), UT	500,000					
10. LAS VEGAS (CLARK), NV	350,000					
11. LITTLE ROCK (PULASKI), AR	330,000					
12. COMMONWEALTH OF PUERTO RICO	2,900,000					
13. (KALAMAZOO), MI	205,000					
14. (NEW YORK), NY	1,700,000					
15. ST. LOUIS CIRCUIT, MO	650,000					
16. (ST. LOUIS), MO	1,000,000					
17. ELIZABETH (UNION), NJ	550,000					
18. (PALM BEACH), FL	450,000					
19. LOUISVILLE (JEFFERSON), KY	700,000					
20. SAN DIEGO, CA	1,000,000					
21. (SAN DIEGO), CA	1,360,000					
22. MINEOLA (NASSAU), NY	1,500,000					
23. BROCKTON (PLYMOUTH), MA	3[illegible],000					
24. CHICAGO (COOK), IL	6,000,000					
25. (SAN FRANCISCO), CA	715,000					
26. PITTSBURGH (ALLEGHENY), PA	1,605,000					
27. TULSA, OK	401,000					
28. DES MOINES (POLK), IA	286,000					
29. PORTLAND (MULTNOMAH), OR	556,000					
30. ALBUQUERQUE (BERNALILLO), NM	350,000					
31. TALLAHASSEE (LEON), FL	104,000					
32. DOYLESTOWN (BUCKS), PA	525,000					
33. OKLAHOMA CITY, OK	367,000					
34. (OKLAHOMA COUNTY), OK	527,000					
35. GOLDEN (JEFFERSON), CO	233,000					
36. STATE OF MONTANA	694,000					
37. STATE OF ALABAMA	3,444,000					
38. KALAMAZOO, MI	86,000					
39. COLUMBIA (RICHLAND), SC	233,000					
40. HALIFAX, VA	30,000					
41. WESTMINSTER (CARROLL), MD	69,000					
42. NORMAN, OK	52,000					
43. HANCOCK (HILLSBOROUGH), NH	223,000					
44. WILMINGTON (NEWCASTLE), DE	393,000					
45. VA. COMMONWEALTH ATTY. ASSN.						
TOTAL POPULATION	44,468,000 *	14,650,000	3,685,000	7,410,000	17,237,000	1,48[illegible]

Boldface entries indicate changes or additions since the last issue of the *Newsletter*.

- final action date of each charge in the case
- dates and reasons of continuances
- next scheduled date for each continuance
- information about the defendant
  - prior criminal history
  - age
  - sex
  - race
- information about the offense
  - seriousness
  - type and number of victims
- information about the processing of the case
- information about the principals in the case
  - prosecutors
  - defense attorneys
  - police
  - judges

While not without its limitations, particularly the fact that it does not present any sort of national perspective, the relative comprehensiveness of case information in PROMIS cities provides an excellent data base should one of these sites be selected for general or intensive study of delay. Access to, and utilization of this information, should pose no logistical problem because the Institute for Law and Social Research, the LEAA contractor for the PROMIS network, has indicated a willingness to share any information and expertise they may have. Any effort to duplicate the data collection efforts in a PROMIS city would seem to be unnecessary.

Using the information within the PROMIS network, the NCSC/NCMC study would have a sufficient amount of information to test certain hypotheses which would seem to be critical to the success of the study. For example, given the PROMIS data relating to number of defendants, seriousness of charge, number of witnesses, delay between offense and arrest, and volume of evidence recovered, the widely held view that the length of time for case processing is directly related to case complexity could be examined. Another possible application could examine the assumption that the larger the case backlog, the greater the risk of delay in processing any particular case. The list goes on, with the attendant conclusion that not only may it be desirable to select one or two PROMIS jurisdictions for study, but that to ignore this large and highly refined source of information will inevitably detract from the uniform applicability and transferability of the study.

B. National Manpower Survey

The wealth of information relating to courts and related criminal justice agencies to be found in the National Manpower Survey comprises the most up to date and comprehensive data source available at present. The criminal justice section of the survey contains information from 1600 courts of general and appellate jurisdiction. The specific sorts of information available from the Survey include:

- Methods of case assignment
- Number of judicial and non-judicial personnel
- Number of judge days available for trials
- Caseload statistics, including filings, dispositions and pending cases
- Jurisdictions of the courts
- Court administrative structure and capabilities
- Extent of in-service training and continuing education of non-judicial and judicial personnel

- Identification of related agencies, such as pre-trial services organizations
- Extent of court operations
- Extent of computerization of court operations
- Total expenditures by courts and sources of funding
- Perceptions of judges and court adminstrative personnel as to the causes and seriousness of delay problems in their jurisdiction and possible solutions

As can readily be seen, the Survey results will prove invaluable in identifying jurisdictions who have serious court delay problems, and which have implemented remedial programs. The Survey is not without its limitations and is in need of a degree of refinement and correction analysis. For example, opinions were expressed to us that there were some errors in the data attribution process, resulting from the fact that some wrong questionnaires were sent to the wrong people. Also, a cursory comparison of Survey results with data contained in state court reports revealed inconsistencies. Specifically, using the Survey formula for measuring extent of pending case backlog, which is based on pending filings at year's end, we noted contrary results in using Survey summary sheets and the information contained in state court reports. The major obstacle, however, that this research effort encountered was a general reluctance to use and make available the survey results. The fact that the results are now on file with the LEAA should guarantee that this information will be accessible for use in delay-related studies.

C. Annual Reports of State Court Systems

A survey* of the annual reports of state court systems reveals, as one might expect, a wide disparity between jurisdictions as to what statistics are compiled and reported, and as to the classification and categorization of cases. Our study in this area focused on identifying those states which publish the most comprehensive statistics, particularly those including data

* Annual reports were examined. A list of these documents by state, title and date is attached at Appendix D.

on the age of pending cases, those which have initiated or plan to initiate remedial programs in the area of court delay and backlog, and those which included narrative discussions relating to delay and its causes and cures. The large majority of reports contained at a minimum, some information on the number of cases filed, disposed of, and pending at year's end. Most states experienced an increase in all of these categories. For example, of fifteen states which were identified as reporting complete criminal case load statistics for 1974 and 1975, the completeness being measured in terms of filing, dispositions and pending cases, all but three experienced increased filings ranging from 1.8% in California to 18.2% in Florida (See Appendix E). In terms of dispositions, eleven of the same fifteen states showed an increase ranging from 71.5% in Rhode Island to 2.2% in California (see Appendix F). Seventeen states reported pending caseloads at the end of both 1974 and 1975, and fourteen of these showed increases in this category also, ranging from 43.7% in Minnesota to .08% in Kentucky (see Appendix G).

Another category in these reports which was studied concerned the age of pending cases at the end of the year. Here, it was found that seven states reported statistics in this area. These figures are especially significant when discussing court delay because they provide a fairly vivid picture of how long some cases do take to get through the system and identify those jurisdictions which seem to have had the most problems in keeping their criminal docket reasonably current. For example, in Arkansas, 30.5% of all cases pending at the end of 1975 were over one year old, 19.4% being one or two years old and 11.1% over two years old. In contract, Minnesota reported that only 5.6% of their pending cases at the end of the year are over one year old, with only 1.4% being over 2 years old (see Appendix H).

Any nationwide study of court delay should examine in detail the information contained in state court reports. Although there is little or no consistency

between what is reported, an examination of what statistics have been generated will undoubtedly prove useful in pinpointing jurisdictions which seem to have acute delay problems or which seem to have initiated measures to reduce backlogs or the time span from filing to disposition. The limits of the data is apparent. It is difficult to use the reports on a comparative basis because of the varying degrees of sophistication and development in the states. Some reports also revealed internal inconsistencies in their reported statistics.

D. Misdemeanant Court Survey

Another study worthy of consultation was conducted by Ms. Lucinda Long Winer of Montclair State University in New Jersey. While an LEAA intern during the summer of 1970, Ms. Winer surveyed all courts with misdemeanor jurisdictions in areas with a population exceeding 100,000. Data was collected from 127 of 144 courts queried. Among the information compiled was the detailed descriptions of case processing procedures and time frames between stages in the process. Ms. Winer has incorporated this data into a report which she is making available to The American University.

While it is admittedly dated, this study does provide a base of comprehensive information on misdemeanor case processing which heretofore did not exist. There are a number of gaps in the information -- primarily because it was not recorded in any systematic way by the local courts involved. However, these may be remedied by follow-up inquiries.

The data also may be valuable if used in conjunction with more recent, though more limited survey efforts such as those by AJS and IJA.

It may also be worthwhile to talk with Ms. Winer since she has a number of observations regarding the relative utility of court statistics presently compiled as well as the relative merits of various procedures for obtaining these statistics. During the course of her work, she talked with numerous persons involved in compiling court statistics and has strong feelings upon the limitations of their efforts.

APPENDICES

APPENDIX A

Selected Technical Assistance Projects Relating to Case Delay

Title: Criminal Courts Calendar Management in Lake County, Indiana
Consultant: James C. McConnell and Glen Winters

Title: Recommendations for Improving Case Processing in the District Courts of Nueces County, Texas
Consultant: Ernest C. Friesen Jr.

Title: Evaluation of Case Assignment Methods in Delaware County, Pennsylvania Court of Common Pleas
Consultant: Maureen Solomon

Title: Recommendations for Improved Case Processing in the State Court of Cobb County, Georgia
Consultant: Bert M. Montague and James Chenault

Title: Calendaring and Management Study of the 30th Judicial District Court of Louisiana
Consultant: Gordon W. Allison, Michael Bignell and Dennis E. Howard

Title: Development of Research Design and Structure for Study of Court Caseflow in the 8th Judicial District of Nevada
Consultant: Joan E. Jacoby, Hon. Alfred T. Sulmonetti and R.S. Friedman

Title: Guidelines for a Court Coordination Program in the 69th Judicial District of Texas
Consultant: James C. Dunlap

Title: Guidelines for a Court Coordination Program in the 87th Judicial District of Texas
Consultant: James C. Dunlap

Title: Report on the Office of the Attorney General for the State of Alaska
Consultant: NDAA

Title: Management Study of an Indigent Defender Program: New Orleans, La.
Consultant: NLADA: Shelvin Singer, Paul Ligda, Phil Hubbart

Title: A Report and Evaluation of the Operations of Eight Public Defender Programs in the State of Georgia
Consultant: NLADA: John Young and John Delgado

APPENDIX B

Block Grant Awards

Title: Criminal Justice Trial Acceleration
Grantee: King County
Seattle, Washington
LEAA Grant No: 72453R0645

Title: State's Attorney's Comprehensive Speedy Trial Project
Grantee: Cook County Board of Commissioners
Chicago, Illinois
LEAA Grant No: 75A17R0059

Title: Criminal Prosecution Center
Grantee: Department of the Attorney General
LEAA Grant No: 75A44R0006

Non-Block Grant Awards

Title: Management Study, U.S. District Court, Washington, D.C.
Grantee: Committee on the Administration of Justice
Washington, D.C.
LEAA Grant No: 69N1990001

Title: Procedures to Reduce Docket Delay and Speed Information Exchange
Grantee: Cuyahoga County
Cleveland, Ohio
LEAA Grant No: 705F050052

Title: Pre-Trial Court Procedures and Delay
Grantee: Case Western Reserve University Law School
LEAA Grant No: 70N1990074

Title: Notre Dame Systems Study in Criminal Justice
Grantee: University of Notre Dame
LEAA Grant No: 70N1990078

Title: Criminal Justice Administration System
Grantee: Jacksonville, Fla.
LEAA Grant No: 715F040924

Title: Court Case Scheduling System
Grantee: Franklin County Courts
Columbus, Ohio
LEAA Grant No: 715F050633

Title: Court Management Study
Grantee: Twenty-Second Judicial Circuit
St. Louis, Mo.
LEAA Grant No: 71DF070664

Title: Circuit Court Improvement Project
Grantee: 22nd Judicial Circuit
St. Louis, Mo.
LEAA Grant No: 72DF07S01E

Title: Impact Special Processing Project
Grantee: City of Newark, New Jersey
LEAA Grant No: 750F020105

Title: PROMIS Research
Grantee: INSLAW
LEAA Grant No: 75N1990111

Title: Continuation of PROMIS Research
Grantee: INSLAW
LEAA Grant No: 76N1990118

APPENDIX C

SOURCES LISTED IN "THE ADMINISTRATION IN THE COURTS" RELATING TO CASE DELAY

Donvito, P.A., "An Experiment in the Use of Court Statistics", Judicature, 56:56-66 (1972).

Fleming, M., "The Laws Delay: The Dragon Slain Friday Breathes Fire Again on Monday", Public Interest, 22:13-33 (1973).

Foschio, L.G., "Empirical Research and the Problem of Court Delay, in Reducing Court Delay, National Symposium on Law Enforcement Science and Technology. 1972. U.S.G.P.O.

Institute for Court Management. "A Comparison of Disposition Times in the Felony Level Courts of Baltimore City and Montgomery County, Maryland", by G.G. Kershaw. Denver, 1972.

North Carolina Administative Office of the Courts. "Delay in the Superior Courts of North Carolina and an Assessment of its Causes", by J.O. Williams and R.J. Richardson. Raleigh, 1973.

Reed, J.C., Application of Operations Research to Court Delay. N.Y., Praeger, 1973.

"Right to a Speedy Trial: A Case Study of the St. Louis Criminal Docket." St. Louis University Law Journal, 16:84-111 (1971).

San Francisco Committee on Crime. A Report on the Criminal Courts of San Francisco. San Francisco, 1971.

U.S. Comptroller General. Federally Supported Attempts to Solve State and Local Court Problems; Report to the Congress. May 8, 1974. Washington, U.S. General Accounting Office, 1974.

American Judicature Society. Selected Readings, Court Congestion and Delay, ed. by G.R. Winters. Chicago, 1971.

France, J.G. "Order in the Court Revisted; Progress and Prospects of Controlling Delay" Akron Law Review. 7:5-48 (1973).

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Rosenberg, M. "Let's Everybody Litigate" Texas Law Review, 50:1349 (1972).

Advisory Council on Appellate Justice. "Expediting review of felony Convictions after Trial", Federal Judicial Center and Nationa Center for State Courts, August, 1973.

American Judicature Society. "Congestion and Delay in State Appellate Courts". Chicago, 1974.

"Appellate Court Reform". Mississippi Law Journal, 45:121 (1964).

Breen, F.E. "Solutions for Appellate Court Congestion". Judicature, 47:228 (1964).

Bryan, A. U. "For a Swifter Criminal Appeal", Washington and Lee Law Review, 25:175 (1968).

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Christian, W. "Delay in Criminal Appeals: A Functional Analysis of One Court's Work" Stanford Law Review, 23:676 (1971).

Edwards, G. "Exorcising the Devil of Appellate Court Delay", ABA Journal, 58:149 (1972).

Fuld, S. H. "Gordian Knot: Congestion and Delay in Our Courts", N.Y. State Bar Journal, 39:488 (1967).

Hufstedler, S.M. "Constitutional Revision and Appellate Court Decongestants", Washington Law Review, 44:577 (1969).

Lilly, G. C and Scalia, A. "Appellate Justice: A Crisis in Virginia", Virginia Law Review, 57:3 (1971).

Record, R.F., Jr. " Remedies for Backlog in the Appellate Court of Illinois", Illinois Bar Journal, 62:82 (1973).

Stuart, W. C. "Iowa Supreme Court Congestion: Can We Avert a Crisis?" Iowa Law Review, 55:594 (1970).

Tate, A. and O'Connell, R.J. "Relieving the Appellate Court Crisis", Judicature, 56:228 (1973).

Whittaker, W.L. "Differentiated Case Management in Appellate Courts", Judicature, 56:324 (1973).

Winter, G.R. "New Approaches to Appellate Court Problems" Louisiana Bar Journal, 18:29 (1970).

APPENDIX D

List of Annual Report of State Courts Surveyed

Alabama
1973,74 figures
General jurisdiction: circuit courts
source: Annual Report 1974 p. 16

Alaska
General jurisdiction: superior courts
source: Annual Report 1975
Appendix II charts 57-62
age of pending felony cases in Superior Court by average age, median, and % of cases, p. 121

Arkansas
General jurisdiction: circuit courts
source: Annual Report 1974, p. 56
Annual Report 1975, p. 56

California
General jurisdiction: superior courts
source: Annual Report, 1976, pp. 164, 168

Colorado
General jurisdiction: district courts
source: Annual Report 1976

Delaware
General jurisdiction: superior court
source: Annual Report 1975, pp.

Florida
General jurisdiction: circuit courts
source: Annual Statistical Report 1975, p. 76-79

Georgia
General jurisdiction: superior courts
source:

Hawaii
General jurisdiction: circuit courts
source: Annual Report 1975, p. 50

Illinois
General jurisdiction: circuit courts
source: Annual Report 1974
state totals for circuit court: pp. 126-127

Iowa
General jurisdiction: district courts
source: Annual Report 1974, p. 55,59

Kansas
General jurisdiction: district courts
source: Annual Report 1975, p. 11

Kentucky
General jurisdiction: circuit courts
source: Docket Report 1975, p. 16
Model Courts Project - contains information about the number of days elapsed for arrest through disposition.

Louisiana
General jurisdiction: district courts
source: Annual Report 1975, p. 40

Maryland
General jurisdiction: circuit courts
source: Annual Report 1975, p. 109

Massachusetts
General jurisdiction: superior courts
source: The Massachusetts Courts 1974-75, p. 68-70

Michigan
General jurisdiction: circuit courts
source: Annual Report 1975, p. 28

Minnesota
General jurisdiction: district courts *discrepancy in figures
source: Annual Report 1975, p. 18, 22

Missouri
General jurisdiction: circuit courts
source: Annual Report 1975, p. 35

New Hampshire
General jurisdiction: superior courts
source: Biennial Report 1974, p. 65

New Jersey
General jurisdiction: superior court
source: Annual Report 1974-75, F-3, F-7

New Mexico
General jurisdiction: district courts
source: Annual Report 1975, pp. 33-34

North Carolina
General jurisdiction: superior courts
source: Annual Report 1974, pp. 28-38
Annual Report 1975, pp. 21-30

North Dakota
General jurisdiction: district courts
source: Statistical Report and Compilation 1975

Ohio
General jurisdiction: courts of common pleas
source: Ohio Courts Summary 1975, p. 34

Oregon
General jurisdiction: circuit courts

source: Annual Report 1975, pp. 30-37

Pennsylvania
General jurisdiction: court of common pleas
source: Annual Report 1975, p. 56

Rhode Island
General jurisdiction: district court
source: Report on the Judiciary 1975, p. 33

Tennessee
General jurisdiction: circuit courts
source: Annual Report 1975, pp. 139-189

Texas
General jurisdiction: district courts
source: Annual Report 1975, p. 124

Vermont
General jurisdiction: district courts
source: Judicial Statistics 1975, pp. C-1, DC-3

Virginia
General jurisdiction: circuit courts
source: Business of the Courts of Record 1974

Washington
General jurisdiction: superior courts
source: Annual Report 1974, p. 69

Wisconsin
General jurisdiction: circuit courts
source: Judicial Statistics 1975, pp. B6, B8, B15

APPENDIX E

INCREASE IN CRIMINAL CASE FILINGS FROM 1974 TO 1975

Jurisdiction	Cases Filed 1974	Cases Filed 1975	Percent Change
Florida	74,347	90,982	+ 18.2%
Maryland	24,603	29,606	+ 16.9%
Alabama	19,264	22,948	+ 16.0%
Pennsylvania	60,638	70,895	+ 14.5%
N. Carolina	46,628	53,505	+ 12.8%
New Jersey	24,170	27,567	+ 12.3%
Louisiana	187,462	212,523	+ 11.8%
Ohio	28,742	31,554	+ 8.8%
Arkansas	11,989	12,987	+ 7.7%
Rhode Island	20,329	21,904	+ 7.2%
N. Mexico	4,483	4,771	+ 6.0%
California	54,635	55,635	+ 1.8%
Colorado	11,947	11,641	- 2.6%
Alaska	1,241	1,075	- 13.4%
Idaho	3,700	3,050	- 17.6%

APPENDIX F

INCREASE IN CRIMINAL DISPOSITIONS FROM 1974 to 1975

Jurisdiction	Dispositions 1974	Dispositions 1975	Percent Change
Rhode Island	3,947	6,774	+ 71.5
Florida	62,292	85,990	+ 38.0
Alabama	19,016	23,354	+ 22.8
N. Carolina	44,700	52,551	+ 17.5
Colorado	11,998	13,233	+ 13.7
Arkansas	10,762	12,233	+ 13.7
Ohio	28,220	31,230	+ 10.7
N. Mexico	4,156	4,588	+ 10.3
Pennsylvania	60,420	64,938	+ 7.5
Louisiana	192,432	204,945	+ 6.1
Maryland	26,567	27.552	+ 3.6
California	49,607	50,714	+ 2.2
New Jersey	24,434	23,260	- 4.0
Idaho	3,600	3,250	- 9.7
Alaska	1,035	779	- 24.7

APPENDIX G

INCREASE IN PENDING CRIMINAL CASES AT YEAR'S END FOR 1974 AND 1975

Jurisdiction	Pending 12/31/74	Pending 12/31/75	Percent Change
Minnesota	1,227	1,763	+ 43.7
Michigan	8,211	11,319	+ 37.8
Alaska	824	1,028	+ 24.7
New Jersy	21,641	26,555	+ 22.7
Missouri	8,765	10,268	+ 17.1
Vermont	3,989	4,547	+ 14.0
Arkansas	6,881	7,635	+ 10.9
N. Mexico	1,913	2,096	+ 9.6
Ohio	6,063	6,423	+ 5.9
N. Carolina	16,327	17,281	+ 5.8
Colorado	10,031	10,605	+ 5.7
California	6,582	6,915	+ 5.0
Massachusetts	37,508	38,933	+ 3.8
Kentucky	10,825	10,834	+ 0.08
Texas	63,163	62,449	- 1.1
Wisconsin	20,222	18,933	- 6.4
Idaho	900	800	- 11.1

APPENDIX II

AGE OF CRIMINAL CASES PENDING AT YEAR'S END - 1975

Jurisdiction	0 to One Year	1 To 2 Years	Over 2 Years	Total Pending
Arkansas	5305 (69.5%)	1480 (19.4%)	850(11.1%)	7635
Vermont	3601 (79.2%)	722 (15.9%)	224 (4.9%)	4547
Iowa	6621 (79.2%)	1737 (20.8%)		8358
New Jersey	1,3430 (84.7%)	1825 (11.5%)	606 (3.8%)	1,5861
Oregon	3,498 (87.5%)	385 (9.6%)	113 (2.8%)	3,996
Kansas	1,315 (89.6%)	100 (6.8%)	52 (3.5%)	1,467
Minnesota	1,590 (94.4%)	71 (4.2%)	23 (1.4%)	1,684

APPENDIX I

B A C K G R O U N D P A P E R

Recent Trends in the Settlement Process

Prepared by:

CAROLINE COOPER
Research Associate

Prepared for:

Dean Gordon A. Christenson
Washington College of Law
The American University

M E M O R A N D U M

To: Joseph Trotter
From: Caroline Cooper
Subject: Recent Trends in the Settlement Process
Date: January 26, 1973

As courts become more and more congested with the increasing volume of litigation, strenuous efforts are made to settle out of court. Various avenues have been utilized to divert cases from the judicial process -- or at least from the actual process of going to trial.

Factors Encouraging Mediation

In most cases, settlement out of court is desirable for a number of reasons. First, trials are enormously expensive. Costs are never totally recovered by all parties and agencies involved in the trial process. Second, from the viewpoint of the plaintiff, the wait for trial results in additional delay before recovering his award. Third, from the viewpoint of the defendant (usually the insurance company), a jury will not likely let a claimant go with no recovery at all for his injuries.

Some form of mediation is therefore desirable -- particularly when one of the following three conditions exist: 1) when the parties have formed a major area of agreement but are trying to push for a little more; 2) when neither party has yet discovered an area of agreement or narrowed the issues for consideration and each party is afraid to concede; or 3) when each party is motivated by settlement commitments

which are mutually incompatible. Given at least one of these prerequisites for mediation, one additional factor will influence the success of the negotiation: the personality and the perception of the negotiator.[1]

Methods of Mediation

A number of jurisdictions are utilizing methods of arbitrating disputes before trial. One such method which has received considerable attention is the Pittsburgh Plan which provides for compulsory arbitration settlement conferences for all civil cases under $10,000. This negotiation process, instituted in 1939 along the model of a system utilized by the Circuit Court of Fort Wayne County (Michigan) has recently been greatly expanded -- both in terms of the number of persons acting as mediators and of the jurisdictions utilizing this procedure.

Essentially, the plan operates as follows: in suits under $2,000, a panel of three practicing attorneys in the county involved is set up with the first member acting as chairman. The panel conducts a compulsory arbitration hearing, although the parties retain the right to appeal any resulting decision. In cases between $2,000 and $10,000, a master conciliation list is published in the Legal Journal, with IBM printed notices sent to counsel involved. Within 30 days the plaintiff must satisfy certain procedural requirements and the defendant must forward a list of witnesses, experts' reports, etc. A

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[1] Hugh Laurence Ross, Settled Out of Court: The Social Process of Insurance Claims Adjustments. 1970.

compulsory conciliation conference is held before a judge close to the date of trial -- usually about a week before. In Allegheny County, Pennsylvania, where the operation of this procedure has been specifically described,[2] these half hour conferences are held before one of twelve judges with a potential for 120 conferences to be held in one day. At the conference, the parties not only present their cases but discuss them with the judge. Most often discussions result in narrowing the issues of disagreement and reveal that dispute rests mainly over the value of the injury rather than the facts. Again, the parties have the right to appeal any resulting decision and can request a jury or non-jury trial before a judge. If settlement is not made during this conference, another calendar control conference is held the day of trial. For those cases still not settled, a "last chance" conference can be held before the calendar control judge. This procedure for mediation operates widely in Pennsylvania and is considered extremely worthwhile.[3]

The operation of the Pittsburgh Plan hinges upon certain assumptions. First, the best time for settlement is close to the trial date. Second, counsel with authority to negotiate are present at these conferences; junior counsel are discouraged from attending. Third, plaintifffs are present so that a decision to settle can be made then and there at the conference. Fourth, the essential role of the conference judge is to assist the parties in determining the underlying problems of their dispute --

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[2] Ruggero J. Aldisert, "A Metropolitan Court Conquers its Backlog: From Pure Pre-Trial to Compulsory Settlement Conferences," 51 Judicature 247 (Feb. 1968).

[3] Walter Lesniak, Chief, Arbitration Division, Court of Common Pleas for Allegheny County, in telephone conversation Jan. 18, 1973.

not merely to hear the case. Finally, the judge must be very knowledgeable about personal injury values so that his participation in the negotiating process will prove fair and beneficial.

This pattern of compulsory pre-trial conferences has also been utilized by the U.S. District Court in Nassau County (New York), and participants are notified to send only those representatives with authority to settle.[4]

The effectiveness of this arbitration method is debated. According to its proponents, it relieves the trial process of a considerable percentage of cases and enables a judge to settle in one day more cases than he could settle in one month. Critics, particularly Professors Maurice Rosenberg of Columbia University and Hans Zeisel of the University of Chicago, claim that it is a waste of time and effort. Cases that are settled through this procedure would have been settled anyway.[5]

At present, numerous other methods of arbitrating civil suits are commonly practiced. In civil liability cases, arbitration is generally considered most useful in cases under $10,000. In other civil suits the potential for arbitration settlements is vast. A recent expansion of the federal government's use of arbitration is the newly instituted "conflict resolution" program of the Department of Justice. A corps of six mediators and 13 conciliators investigate complaints of civil rights infringements in disputes ranging from discrimination in education, hiring practices, and criminal justice system inequities

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[4] "Pre-Trial Conferences: Mandatory Trial Dates Used in Nassau County, New York", 51 Judicature 358 (April 1969).

[5] Maurice Rosenberg and Michael Sovern. "Delay and Dynamics of Personal Injury Litigation", 59 Columbia Law Review at 1115 (1959).

to consumer abuses and housing problems. By October 1972, eight months' operation of the program had witnessed settlements in 49 conciliation cases and 4 mediation cases.[7]

Encouraging Arbitration Settlements

To prove beneficial to the administration of justice, arbitration provisions must expedite the judicial process rather than merely add one more stage. Conditions must exist which make it advantageous for parties to settle by negotiation rather than hold out for a trial decision.

Several factors encouraging arbitration settlements have already been noted: the costs of going to trial, even if only partially borne by one of the parties, and the delay which waiting for trial imposes on the claimant's recovery of his award. However, the all-or-nothing quality of settlement decisions which has frequently characterized these proceedings has often resulted in a reluctance of the parties to "give in." Three recent experiments to alleviate this situation have proved worthwhile.

First, the "no release and walk-away settlements."[8] This agreement essentially closes the case from an insurance viewpoint although allows it to remain open from the viewpoint of formal law until the time allowed by the statute of limitations expires. Insurance Company

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[7] "Cure for Congestion" 8 Trial at 3 (November-December, 1972).

[8] Ross, op. cit.

experience has been favorable; settlements are quick and the claimant is usually not heard from again. Even if the case were to be revived, the facts would have to warrant a settlement adjustment.

Second, a policy of advance payments. Such a policy relieves the claimant from suffering personal financial hardship in addition to his injury as well as fosters good will. Such payments are made in cases where the facts indicate that the claim will be paid and are made as costs occur and credited to the final settlement. This policy of advance payments is beneficial to the defendant as well as the claimant for, from an insurance company viewpoint, delay never eliminates a claim but, rather, results in greater difficulty in presenting evidence and more time for the claimant to make greater demands.

Third, a system of comparative negligence.. According to this system, the claimant receives a payment proportionate to the liability of the defendant. While the operation of this system has not been widely described, it has proved particularly successful in Wisconsin.[9] Payments are made to the plaintiff when the defendant is guilty of the greater negligence. The percentage of negligence determines the reward. A variation of this plan is a proposed modified no-fault advance payment insurance system by which economic relief would be provided to both parties for lesser injuries while the more costly injury claims would be submitted to arbitration.[10]

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[9] Carroll R. Heft and C. Jones Heft, "Comparative Negligence: Wisconsin's Answer," 551 Trial, at 127 (February 1969).

[10] Carroll R. Heft and C. Jones Heft, "The Two-Layer Cake: No Fault and Comparative Negligence," 58 American Bar Association Journal at 933 (September 1972).

While the arbitration process as a method of diverting cases from the judicial system is one which is undergoing tremendous expansion and experimentation, many local statutes have not been sufficiently revised to keep pace with new developments in mediation. Certain problems, therefore, arise. For example, a problem of enforcement exists where local statutes limit enforcement of arbitration agreements to the parties to the agreement, not the parties in the dispute. Attention to this problem has been noted by some state legislatures.[11] Another problem that arises concerns the arbitrating of future disputes arising from the settlement decision. Some statutes require the signature of both parties to arbitrate future disputes before an initial settlement decision takes effect; other statutes rely on voluntariness.[12]

In sum, various methods have been proposed to encourage pre-trial settlement. Essentially, they center upon providing the claimants sufficient relief so that the trial process is no longer worthwhile. Two key factors influence the success of these various diversionary schemes: accuracy in estimating the limits within which the parties will bargain and making trial sufficiently risky to the litigant that he will not stubbornly refuse his opponent's settlement simply because he has nothing to lose in holding out.[13] Data is currently being gathered to assess the value of these various diversionary schemes. While opinion may vary as to the relative merits of one method of arbitration over another,

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11 Alvin Goldman and Robert Coulson, "Texas Arbitration: Modern Machinery Standing Idle, " 25 Southwestern Law Journal at 290 (May 1971) and "Proposed Arbitration Act for Kentucky," 22 Arbitration Journal at 193 (196/

12 Ross, op cit.,

13 Hans Zeisel, "Courts for Methuselah," Judicial Reform: A Symposium, 23 University of Florida Law Review at 224 (Winter 1971).

recent literature applauds the trend toward negotiated settlement as an essential ingredient in the settlement process.

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