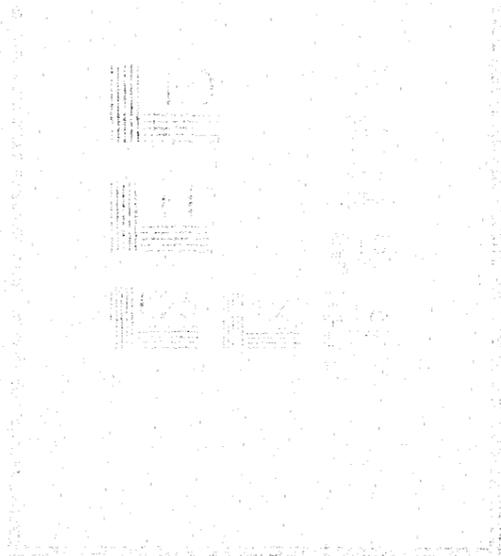


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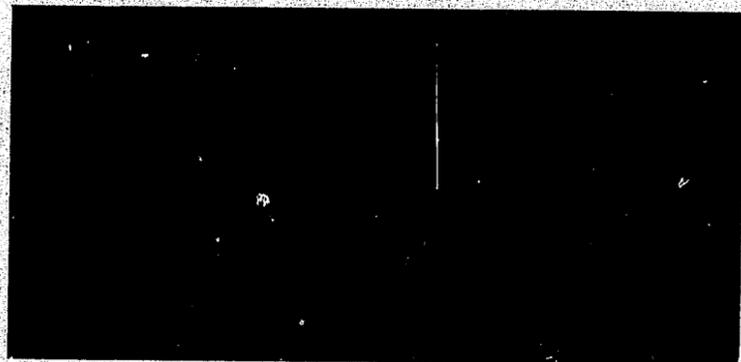
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REVIEW OF THE PROGRESS
OF THE 1974 JUDICIAL CIRCUIT REPORT
BIRMINGHAM, ALABAMA
IN IMPLEMENTING THE RECOMMENDATIONS OF
A 1973 ICM STUDY



THE AMERICAN UNIVERSITY
Criminal Courts Technical Assistance Project
Institute for Advanced Studies in Justice
The American University Law School
Washington, D.C.



REVIEW OF THE PROGRESS
OF THE 10TH JUDICIAL CIRCUIT COURT
BIRMINGHAM, ALABAMA
IN IMPLEMENTING THE RECOMMENDATIONS OF
A 1973 ICM STUDY

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I. INTRODUCTION

In October 1975 the Alabama Legislature adopted the Judicial Article Implementation Bill as enabling legislation to the new Judicial Article, an amendment to the State Constitution. The amendment and its enabling legislation call for a comprehensive modernization and reform of Alabama's court system. In December 1975, the Honorable Howell T. Heflin, Chief Justice of the Supreme Court of Alabama, requested technical assistance through the LEAA Criminal Courts Technical Assistance Project at The American University in numerous areas in which transitional problems were anticipated.

As a first phase of the assistance requested, the Project scheduled a two-day meeting in June 1976, at which five consultants met with Charles Cameron, the State Court Administrator, to discuss the practical impact of the new Judicial Article and the accompanying legislation, and especially the planning that had been done and that would be required in order to develop a comprehensive strategy for implementation. During this meeting the consultants also addressed certain specific problem areas identified in advance by Mr. Cameron and provided concrete, practical advice in as many of those areas as was possible.

Subsequent to this meeting, three other specific areas were identified in which additional assistance was required. In order to expedite planning, site work, report preparation, and transmittal in the diverse efforts required to provide this assistance, the original request was divided into four assignments: one corresponding to the general planning meeting in June and three corresponding to the three newly identified areas. One of those new areas, the subject of this assignment, was the administration of the Circuit Court of the 10th Judicial Circuit (Jefferson County), located in Birmingham. A study of the management of

that Court had been conducted by the Institute for Court Management (ICM) in 1973; this assignment was to review the actions since taken to implement the recommendations of the ICM study, and to assess the impact of those actions on court administration in the Circuit.

To provide the assistance requested, the Project designated Ellis D. Pettigrew, a management consultant with extensive experience in court administration and formerly the State Court Administrator of the South Dakota Unified Court System. Mr. Pettigrew had directed the 1973 ICM study, and had also taken part in the general planning meeting in June. Mr. Pettigrew made a five-day site visit to the Court in September, interviewed Court personnel and other concerned parties, and observed operations. His analysis of the progress made since the ICM study is presented in this report, along with recommendations for the future.

II. EXISTING SITUATION

A. Circuit Court

The Circuit Court was established by constitutional enactment in 1819. It is a general trial court, and also has appellate jurisdiction over inferior courts within the 10th Judicial Circuit, which corresponds to Jefferson County. The Circuit Court now has a total of 19 elected judges. The divisions of the Court, and the number of judges in each division, are as follows: Civil Division (includes domestic relations) - nine judges and a Presiding Judge; Criminal Division - five judges; Family Court Division - one judge and two referees; Bessamer Division (geographical) - three judges.

B. Other Courts in Jefferson County

Four lower courts of limited jurisdiction also serve the County. The Civil Court of Jefferson County has two judges and is located at the County Courthouse in Birmingham. Its jurisdiction in civil cases is concurrent with the Circuit Court in Cases in which the amount of prayer is between \$500.00 and \$3,000.00. This Court does not provide jury trials. Either party has an unqualified right to appeal a judgment of this Court to the Circuit Court for trial de novo.

The Criminal Court of Jefferson County is also located at the Birmingham County Courthouse. It has two judges. This Court hears preliminary traffic and misdemeanor cases, and conducts preliminary hearings in felony cases. There is the right to trial de novo upon appeal from a judgment of this Court, by either party, to the Circuit Court.

The Jefferson County Court of Criminal Pleas was established in 1971 and has concurrent jurisdiction for sentencing with the Circuit Court, except in capital cases. Sentences ranging from probation to life imprisonment can be imposed. The judges of the Jefferson County Criminal Court also serve as judges of this court.

The Court of General Sessions has one judge and is located in the County Courthouse. The judge adjudicates small claims of up to \$500.00.

C. Background Of This Study: ICM Study

In 1973, the Institute for Court Management (ICM) conducted a comprehensive management study of the Circuit Court. The study was conducted over a twelve month period and was completed in December, 1973. There were three phases: Phase I, documentation and fact gathering; Phase II, analysis and report preparation; and Phase III, implementation.

The ICM effort was somewhat unusual because of the action-oriented nature of the work; preliminary recommendations were presented during Phase I and were accepted by the court. In June, 1973 the ICM study team made two preliminary recommendations: (1) that two judges should be added to the Criminal Division and (2) that the Court should take over the scheduling of criminal cases from the District Attorney's office. The latter recommendation called for a central scheduling office, directed by a court administrator. As a result of these recommendations, Phase III implementation efforts actually began long before called for by the contract. Legislation creating the two judgeships was signed into law in September 1973. The position of Court Administrator was created, and filled, in the fall of 1973.

III. FINDINGS AND RECOMMENDATIONS

The progress made in the Court's Criminal Division clearly has resulted in improved processing of criminal cases. Several of the innovative programs undertaken by the judges of the Division could be implemented in other courts in Alabama. The Criminal Division judges have exercised judgment in a way that demonstrates a sense of public responsibility and that can only benefit the Alabama judiciary and the citizens of Alabama. The Court, that is, has been willing to meet administrative problems by anticipating them, and by planned action rather than disorganized reaction -- no small accomplishment in public affairs, where the rule now appears to be crisis management, dominated by the "here and now" syndrome.

It is regrettable, on the other hand, that the problems in civil case processing outlined in the 1973 ICM study have not been dealt with, as the study recommended. The Court is now at a crossroads where its actions will have a lasting impact upon its future activities. The deficiencies in the existing system will become glaringly obvious upon the implementation of the Judicial Article, because of the shared responsibility inherent in the new judicial system, and because the new system will be able to account for expenditures of all courts at all levels. Resources will have to be stretched to the limit. No other approach will be accepted by the state officials, both within and without the judiciary, who will be responsible for ensuring that the mandate for court reform is exercised. Realization of the inevitability of this process should spur judicial officials, particularly those at the trial court level, to take responsible action to correct the problems in the existing system.

Another area of general concern, which is sure to gain more attention as the transition to the unified system proceeds is the compartmentalization of activities within the various jurisdictions. These activities must be integrated. For

example, the Court's new criminal case processing system should be viewed not as a separate entity but as one component of an integrated system serving the entire court. For another example, the Criminal Justice Information System, now being developed for implementation during early 1977, should be under the direction of the Court Administrator. For such an integration of services to occur, the judiciary will have to recognize that a unified system can develop across the old jurisdictional lines. The extent of that recognition will be a major factor in determining the extent of Alabama's unification, for this is the cutting edge, where changes meet traditional practices. Of all the changes brought about by the new article, the ones most difficult will be the changes in the practices of local trial courts. The existing situation, in which overlapping and compartmentalized jurisdictions develop their own policy in a vacuum, apart from the whole judicial system, is not only costly, but would also make the impending changes even more difficult. It is doubtful that it will be allowed to continue.

In the following sections, the progress made by the Circuit Court since the ICM study, in the areas of criminal calendaring, civil case processing and jury management, is examined in more detail and recommendations for improvement in the latter two areas are presented.

A. Criminal Calendaring

The Court has made remarkable progress in developing a comprehensive, organized approach to the administration of criminal case processing. Just three years prior to this writing there was no central scheduling office. Calendaring was conducted by the District Attorney's office. There was no court administrator, and no automation of any kind. Presently, the Court Administrator, under the direction of the Presiding Judge of the Criminal Division and the Presiding Judge of the Court, administers an on-line calendar

system organized according to firm procedural rules.

More important than the functional arrangement, though, is the improvement in the court's ability to carry out its public responsibilities. The Court, its defendants and the criminal justice agencies concerned (the Sheriff, the District Attorney and the Probation Department) all benefit from comprehensive central criminal case files. Interviews conducted with representatives of each agency indicate strong approval for the current system. One agency head reflected, "I never thought such a system would be possible. I now don't know what we would do without it." Similar comments were made by virtually all other County and City of Birmingham officials. Members of the bar, who are now notified of court dates by computer print-out also deem the new system worthwhile.

Perhaps most significantly, statistics indicate that felonies are now being processed expeditiously. The 1973 ICM survey showed that, of 33 felony cases disposed by trial, only 10 cases, or less than one-third, were completed within 180 days of the indictment or information. Nine cases, or 27% of the total, were completed more than a year after the indictment. For total dispositions (by trial, guilty plea or dismissal), the record was not much better. Approximately 27% of all dispositions occurred more than 6 months after the indictment or information. Of this number, nearly 5% were in cases pending for more than a year. The ICM study identified a lax continuance policy as a prominent factor in these long delays. The data revealed that the average felony case is continued 7.6 times, with approximately 53% receiving 6 or more continuances. A significantly high percentage -- 16.3% -- of the examined cases had between 11 and 15 continuances.

Measurement of similar variables at the present time reveals a significant reversal both in case lapse times and in continuance rates. Overall criminal case filings, for all types of cases, have jumped an amazing 30.5% during calendar 1974-1975. During the same period, the Court's inventory of pending criminal cases has decreased by 48%. Obviously, more cases are now being disposed of than

filed. And the average time, in active felony cases, from indictment or information to trial is 98.8 days. A direct comparison of continuances could not be made, but the information available indicates a drastic drop in continuances as well. The consultant believes that these improvements were made possible by the adoption by the Criminal Division judges of the following recommendations made in 1973 by ICM:

The Circuit Court should adopt realistic time standards to govern the processing of cases.

A restrictive continuance policy and a realistic case setting policy should be established.

The master calendar system for processing criminal cases should be strengthened by the adoption of docket management policies and procedures.

The routine scheduling of an appointment of counsel session after indictment should be eliminated along with the prosecutor's involvement in the process.

The consent docket should be revised so that it becomes a more meaningful step in the process.

The judges of the Criminal Division should be commended for their progressive actions.

B. Civil Case Processing

1. Findings

The following were two of the major recommendations made by ICM.

The Court Administrator should develop a method for continuous monitoring of case activity and progress made in all cases once they reach the first trial date. The purpose is to ensure that cases are not continued repeatedly or allowed to avoid court action resulting in delay that is not in the best interest of the litigants.

In concern with a restrictive continuance policy the Court should establish a policy that attorneys must be prepared for trial on the scheduled trial date; continuances should be substantially curtailed and granted only upon a showing in open court of exceptional circumstances.

Neither of these important recommendations have been implemented by the Court. Although the Court Administrator has drawn up a plan which includes both recommendations, the Court is apparently reluctant to make significant changes in the

Civil Division. Civil case administration is conducted now substantially as it was during the 1973 study. The primary responsibility for that administration rests with the Circuit Presiding Judge and two clerks.

A more serious problem is that the civil calendaring system is not yet part of the Central Scheduling Office. As the 1973 report pointed out, this Office will fully benefit the Court only when all calendaring, civil and criminal, is conducted there, using computer-aided information processing. A recent description of the existing calendaring system, in the Court's "Outline of Proposed Automated Central Assignment System (Civil Division)", delineates further areas where the Court Administrator has proposed changes, as follows:

Highlights of Present System

- Currently no computer used in civil.
- Jury demands are recorded when demanded by either a plaintiff or defendant on both docket and trial sheet. Many cases start off as non-jury, but will become jury later on.
- Currently no automatic method of dismissing cases in which summons and complaint is never executed.
- Currently no method of determining inactive cases not at issue after execution of summons and complaint, or determining dilatory parties who are required by the court to answer motions or other actions set down by the court or by statute.
- Besides the chronological sequence the court has designated certain cases to be priorities before any new docket is set. Special cases denoted by a judge, unreached cases from previous docket, and appeal cases from probate, Jefferson County civil and general session courts are given priority.
- No settlement conference for any type of case is currently required.
- All cases are presently given a 1-2 month notice of trial date through publication of the bar docket, although rule 40 requires a 20 day notice.
- Attorneys often delay discovery procedures creating many unnecessary motions asking the court to compel production. Also, court rarely imposes sanctions for failing to answer in required time period as provided in rule 37, unless requested to do so by opposing counsel.

- Court is presently lenient with no-shows since there is no effective method of dealing with attorney conflicts. Also, it is often not clear who the designated attorney is.
- The court has no procedure to determine a case's readiness for trial. The present system does not encourage attorney diligence in preparing case prior to trial.
- Often, cases are continued "generally", thus placing the case off the courts calendar and out of control of the court.
- No advance contact with cases on weekly calendar so as to determine possible disposition. Since bar docket is worked up 3-5 months ahead of time, 28% of the scheduled cases are already settled or have been continued before the call of the docket.
- Formal motion procedures for continuance followed irregularly with no strict rules set down by the court.
- Often attorneys announce "ready", but when assigned out to a trial judge, they ask that judge for a continuance.
- Cases not reached are reset in next published bar docket which can be anywhere from 3-6 months in the future. This 3-6 month time interval between trial dates does not encourage settlement or further preparation.

The proposed system for processing civil cases is based on the philosophy of case processing that has been adopted by the Criminal Division judges. That philosophy holds that the Court is responsible for the expeditious processing of a case, from filing to disposition.

2. Recommendations

a. General Recommendation

The proposed civil system should be implemented by the Court with dispatch. The outline of that system drawn up by the Court Administrator would be an adequate working plan and should be formally adopted as such by the Court. The Civil Division judges should move with determination and resolve to do so. Delay now will only create additional, unnecessary hardships for the judges who will handle civil cases and adjudications in the future.

The central scheduling concept can be as effective in civil calendaring as in criminal. Not only would the Court be in a better position to manage its own

business, but attorneys working on the civil side would also benefit. Some Civil Division judges feel that attorneys with a civil practice would oppose any changes in civil case processing. But the experience of the Central Scheduling Office with criminal case calendaring has been that attorneys, although they were initially skeptical of the new system, now praise and support both the Office and the Criminal Division judges for adopting this system. Attorneys have realized that central scheduling aids them in coordinating their cases. On the other hand, practicing civil attorneys who were interviewed indicated that they were dissatisfied with the current civil case processing system. One attorney stated that the Court has what amounts to two civil docket calls: one when the case is called before the presiding judge, and another when the case goes before the assigned trial judge. To verify this situation, as well as others that indicate poor case management, an observer need only sit in the civil assignment office, observe activities and listen to the comments of attorneys and other participants. The irony is that the Court has a well developed and well thought out plan which would correct these problems.

b. Specific Proposals

The system proposed by the Court Administrator would bring about an orderly routine, allowing a maximum of court-regulated case processing, and a minimum of controllable variables such as the unrestricted continuance policy. The elements of the system that would contribute to this result include the following specific proposals:

- If the summons and the complaint were not executed within six months of the filing of a case, and the plaintiff did not diligently attempt to perfect service, the case would be dismissed with costs to plaintiff.
- If no answer were filed within 45 days, notice would be sent to the parties that the case would be defaulted against defendant after 60 days.
- Pre-trial would be conducted for cases with complex issues or other types of cases that, because of the amount of prayer or the number of parties, offer the Court sufficient reason to screen them. One of the new District judges could work with the Presiding Judge and Court Administrator in reviewing cases for pre-trial.

- If the case did not receive pre-trial it would be placed in the pending file in chronological sequence, according to the date the issue was joined.
- Dates would be assigned only after attorney scheduling files, maintained by the computer, were searched for conflicts.
- Within 6-9 months of the issue date, cases would be set for readiness-settlement conference. In cases not settled, a trial date would be set within 30 days.
- The docket would be automated and would include:
 1. Cases which indicated intent to go to trial;
 2. Cases which indicated previous settlement or intent to attempt settlement prior to trial;
 3. Motions for trial continuance or advancement in cases previously set for a particular date. (All requests would be filed by motion with supporting affidavit at least ten days in advance of the trial date. Moving party would be required to give notice to all counsel.)
- On trial week, attorneys would report to the Presiding Judge for a call of the docket. After assigning "ready" cases to trial judges, the Presiding Judge would send the remaining cases to the Central Scheduling Office, for assignment as judges became available.
- If any case were not reached for trial it would be brought forward to the top of the next docket (no more than 30 days away) and would be the first case assigned from that docket.

c. Implementation of Proposed System

(1) Personnel Requirements. To develop the civil assignment system, the Central Scheduling Office will need at least two additional assignment clerk/terminal operators. The current contingent of employees in the Central Scheduling Office would not be able to maintain both civil and criminal calendaring. Four individuals, counting the two who are presently involved in civil calendaring, would be needed. Also, there should be an office coordinator, who would work directly under the Court Administrator. This position would also be an addition to the present contingent.

(2) Timetable. All resources presently involved in projects that are not critical to the criminal calendaring function should be diverted to the development of the automated civil calendar. In developing the implementation plan the Court would be wise to outline a formal written policy, with a completion

date of March 1, 1977. This means that the necessary programming should commence immediately.

(3) Participants in Planning. The following people could be included in the development policy-making meetings: 1) all Circuit Court Judges and the Court Administrator, 2) all new District Court Judges, 3) the State Supreme Court Justices, 4) the State Court Administrative personnel, and 5) the Local Clerk of Court.

The Court Administrator, under the direction of the Presiding Judge, should notify the above participants of the proposals and should solicit suggestions and comments. In implementing the new system, the Court Administrator should work with the State Court Administrator and the three Supreme Court justices who have general supervisory duties in the 10th Judicial Circuit. Policy would thus be developed within the framework of a unified judiciary.

C. Jury Management

Of the recommendations of ICM regarding the jury system, the only ones acted on were those dealing with renovation of the juror waiting room. The reason for the inaction on the others is that legislative changes are needed before they can be implemented. The Court should pursue such legislative changes diligently as they would bring about quick cost savings. The major ICM recommendations which should be developed into a legislative package are listed below:

- The Court should immediately seek the legislation necessary to authorize use of electronic data processing equipment to select names of prospective jurors.
- Using electronic data processing equipment, names of prospective jurors should be drawn from multiple source lists.
- The Court and Jury Board should develop a system of mailing questionnaires to prospective jurors to determine, prior to the appearance date, qualifications and availability for juror service.

- The statutory exemptions from jury service should be limited by the legislature to judges, other judicial officers and attorneys.
- Juror attendance and pay records should be maintained by the computer and the computer should issue paychecks.
- The legislature should promulgate a single juror selection statute to amend and supercede the present provisions, which are now spread throughout a number of statutes.

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