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Western Regional Office

A REVIEW OF THE
ADMINISTRATION AND OPERATION
OF THE TUCSON CITY COURT

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The National Center for State Courts

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I. INTRODUCTION

A. Project Initiation and Methodology

The National Center for State Courts was awarded a contract by the City of Tucson in July 1984 to conduct a general review of clerical operations of the Tucson City Court. The contract for this 90-day study was awarded following a competitive bid process and signed by the city in early August.¹ The National Center assigned a project team of staff from its Western Regional Office, its headquarters office in Virginia, and its Institute for Court Management, plus independent consultant Maureen Solomon.

During an initial orientation visit to the court in August project staff collected two years of monthly caseload data, organization charts, information about personnel and turnover, and all available written material regarding procedures. One member of the project team then spent a week interviewing a number of supervisors and line staff regarding workflow in the court. In September, all five of the project team spent four days on site observing work procedures and conducting interviews. All judges were interviewed at least once plus the following: a majority of the court staff handling clerical operations, all clerical supervisors, five representatives of city government, including a member of the City Council and the City Manager, a representative of the Tucson Police Department, officials at city jail, contract defense attorneys, representatives of the City Attorney's office,

¹ The 90-day period expired November 7, 1984. Circumstances and scheduling problems resulted in a no-cost extension for submission of this final report until January 4, 1985.

and the chair of the Merit Selection Commission. Project staff also reviewed the proposal submitted by INSLAW, Inc. describing the software to be installed in the court later in the fall of 1984.

When the entire project team visited the court in September the new court administrator had been on the job one week. Although he and the Chief Magistrate had many plans, there had been no opportunity to put them in place and to test their impact. This report is based principally on the documents provided to the National Center and the project team's observations of conditions and operations during the team's on-site visit. Whenever possible and to the extent possible, however, changes since that on-site visit are referenced.

B. The Tucson City Court

The court is served by a chief magistrate, seven other magistrates, two part-time hearing officers who handle civil traffic matters, part-time magistrates who fill in during the absence of a magistrate and when extra calendars are set, a court administrator, and 52.5 staff, 42.5 of whom are the direct responsibility of the court administrator and 10 of whom are under the direct supervisory control of the judges. The court has jurisdiction over violations of all municipal ordinances, traffic violations, state misdemeanors, and civil petitions for protective orders against domestic violence and for injunctions against harrassment. The court hears a few other civil matters, such as unpaid penalties arising from city code violations. Effective January 1984, traffic violations have been divided into civil violations and criminal; prior to January 1, 1984, all traffic

violations were deemed to be criminal. The largest and most significant criminal traffic violation remaining within the court's jurisdiction is the misdemeanor offense of driving under the influence of alcohol or drugs (DUI). The more common traffic offenses such as speeding, equipment violations, stop sign violations, and improper lane changes and turns now are civil violations.

1. Caseload

The data the court submits monthly to the Arizona Supreme Court are not as reliable as either the City Court or the Supreme Court desires. The filing numbers probably are more accurate than the disposition numbers. Even so, the filing totals from the monthly reports provided to the National Center differ from the filing totals published in the Supreme Court's Annual Report; the project team is not in a position to reconcile the differences. The caseload data in this portion of the report should be used only for general, gross indications and not regarded as precise.¹

There are five major case types in the court: civil traffic, DUI criminal cases, all other criminal traffic cases, nontraffic misdemeanor cases, and claims relating to domestic violence and harassment. In the past fiscal year, 1983-1984, the monthly reports to the Supreme Court indicate the court had almost 83,000 filings in these five case categories, of which 63,700 were civil

¹ In its proposal the National Center indicated it would seek to provide future caseload trends in this final report. In light of the uncertainty regarding the available data, the calculation of trends and future filing levels is inappropriate.

or criminal traffic violations. (See Table 1.) Misdemeanors made up almost all of the balance. There were 530 petitions for protective orders against domestic violence.

The total number of filings in 1983-1984 represented a significant drop from the previous fiscal year. In 1982-1983, total filings were about 106,900, almost 24,000 cases more than in 1983-1984. (See Table 1.) The principal component of this change was a drop of almost 50 percent in the number of misdemeanor violations filed. Total traffic violations decreased by slightly over 6,100 cases in 1983-1984 compared to 1982-1983, although the number of DUI cases increased by more than 2,000 (68.5%). DUI cases represent the heaviest demand on judicial resources. The extent to which the reduction in total filings and their associated workload is offset by the increased workload represented by the DUI cases is uncertain. The decrease in misdemeanor filings is exceptional. Misdemeanor filing totals will have to be studied for another few years to determine if this one year's reduction represents a trend or an aberration and what impact, if any, fewer filings (if they continue) have on judicial and clerical workload.

TABLE 1

Major Case Category Filings in Tucson
City Court, Fiscal 1983 and 1984.

<u>Case Category</u>	<u>FY 1983</u>	<u>FY 1984</u>	<u>% Change from 1983</u>
Traffic			
Civil	-	17,917	-
DUI	2,936	4,948	68.4%
All other criminal	66,842	40,795	-12.2%*
Misdemeanors	36,582	18,756	-48.7%
Domestic Violence	<u>542</u>	<u>530</u>	- 2.2%
Total	106,902	82,946	-22.4%

*Represents percentage change in all traffic cases other than DUI.

Source: Monthly reports of activity filed with Arizona Supreme Court.

TABLE 2

Caseload Comparison of 10 Arizona City Courts
with Highest Number of Filings, 1982-1983

	<u>Total Filings</u>	<u>Traffic Filings</u>	<u>Traffic Percentage of the Total Filings (Rank)</u>	<u>Number of Employees*</u>	<u>Filings Per Employee (Rank)</u>
Phoenix	370,736	331,688	89% (6)	167	2,220 (6)
TUCSON	111,455	77,978	70% (9)	50.5	2,207 (7)
Mesa	43,205	39,376	91% (3)	17.5	2,469 (4)
Tempe	39,051	35,890	92% (2)	21	1,860 (8)
Scottsdale	34,839	31,870	91% (3)	11	3,167 (2)
Glendale	23,440	21,817	93% (1)	5	4,688 (1)
Flagstaff	19,058	15,225	80% (8)	16	1,191 (9)
Chandler	14,660	11,828	81% (7)	15	977 (10)
Yuma	11,682	7,624	65% (10)	5	2,336 (5)
Nogales	6,129	5,487	90% (5)	2	3,065 (3)

* Employees indicated as part-time were counted as 1/2 of an FTE for all courts.

Source: 1982-1983 Annual Report, Arizona Supreme Court.

2. Comparisons to Other Arizona Municipal Courts

According to the last annual report of the Arizona Supreme Court, total filings in the Tucson City Court are the second highest in the state.² (See Table 2.) Even courts with similar jurisdiction organize their workflow differently and assign responsibilities differently, so comparing the size of staff from court to court is fraught with potential danger. Nonetheless, the dangers are somewhat less when comparing courts with similar jurisdiction in the same state. In Arizona, all municipal courts have the same jurisdiction, so comparing the number of filings per staff position is somewhat less misleading than comparing filings per staff position for courts with different jurisdictions. Nonetheless, gross staff figures do not allow for a refined analysis of the number of line staff, administrators, courtroom clerks, and bailiffs and the allocation of work among each category from court to court. Recognizing these limitations, Table 2 shows the filings per staff position in the 10 city courts with the highest number of filings. This

² Comparing total filings without referencing the mix of filings when comparing courts may be misleading. Small differences in the mix of cases normally do not reflect dramatic differences in workload; within a state the mix of cases seldom varies dramatically. This may not be true for Arizona's municipal courts. In Arizona, the 1982-1983 Annual Report of the Supreme Court indicates that traffic filings were 70 percent of all filings in Tucson. Only one of the other 10 municipal courts with the most filings had a lower percentage of traffic cases, Yuma with 65%. The percentage of traffic to all filings in the other eight courts ranged from 80% to 93%.

comparison indicates a rough correlation between filings per staff and the percentage of total filings represented by traffic cases.

The ranking of the Tucson City Court for filings-per-staff-position is higher than its ranking for traffic filings (7th versus 9th). Nontraffic matters generally require more clerical processing time than traffic cases. The fact that Tucson's staff handles more total cases per employee than three courts with fewer nontraffic cases may indicate a heavier workload per employee in Tucson than in these three courts, but again the data do not offer a clear picture. The shift from 9th to 7th in ranking is not so dramatic (contrast the Yuma change) as to suggest that the staffing level in Tucson is clearly out of line with the rest of the state.

II. MANAGEMENT OF THE COURT

A. The Location of the Court Administrator Within City Government

During interviews and discussions with judges and representatives of city government, a variety of viewpoints emerged concerning the proper location of the Tucson City Court in the city government structure and the proper or appropriate reporting pathways between court administration and city government. The issues appear to be whether or not the Tucson City Court should be regarded as a department of city government and whether the court administrator should report to and be responsible to the city manager. A response to these viewpoints and issues requires a context broader than traditional management theory provides. The locale and the performance of the tasks of government overlay the management question.

The framers of the United States Constitution struggled to conceptualize a government structure that would foreclose one person or part of government from having absolute power. As every high school civics student knows, the governmental structure that resulted vested separate and unique powers in three independent but equal branches of government, each of which was given some checks and balances on the others. "Checks and balances" is not a throw-away phrase. An examination of the roles played by our three branches of government in various times in this nation's history reveals that each, at one time or another, has checked or balanced potential excesses by another branch.

Courts perform a variety of vital functions in society. Perhaps the most familiar roles are resolving disputes between citizens and trying criminal defendants. A less recognized, but equally important role is creating a historical record of events and determining the legal status of individuals. A third function is interpreting the constitution and determining the constitutionality of legislative action. The third role, in particular, may lead to conflict with the executive branch or the legislative branch. Sometimes this natural tension among the three branches of government affects administrative relationships. Thus, because of their assigned role, courts sometimes may not enjoy a congenial relationship with the other branches. Were the city court regarded as strictly a department of city government, this situation might inhibit the proper exercise of the court's responsibility. The judiciary's status as a separate and equal branch of government is a necessary predicate for its performing the "checking" role. Since the other branches have budget and law-making responsibility to "balance" the judiciary's authority, legislators' displeasure with a court decision may be expressed through cuts in budget allotments or denial of increases in staff or equipment for the judicial branch. The National Center did not hear that these forms of "retaliation" have occurred in Tucson, but it is aware of other localities, including ones in Arizona, where this problem is manifest.

Administrative structures and reporting relationships should be fashioned with an eye to the need for independence of the judiciary, the inherent tension among the three branches, and the

recognition that the tension can impact the administration of the judicial branch.

Recommendation No. 1

The court administrator should be responsible to and report to the city court and not the city manager.

Requiring the court administrator of the Tucson City Court to report to the city manager on a day-to-day basis would undermine the concept of separate and independent branches of government. Courts at the city court level, no less than courts of general jurisdiction like the Superior Court, require independence and separation.¹

Aside from the separation of powers issue, there are some unique characteristics of management and administration in the court environment that distinguish them from similar functions in other government agencies. The pressures and requirements placed upon court management and court managers differ significantly from those in other areas of government. For one thing, the administrative structure of courts is not congruent with management structure in private business or other public agencies. Early court reformers who advocated operating courts the same way businesses are run did so out of conviction that court management ought to be more business-like, not that management in these very different types of organizations is the same. More and more, the so-called "business analogy" is being rejected in favor of a perspective that recognizes that courts

¹ See Administrative Order No. 83-11 of the Supreme Court of Arizona, In the Matter of: Standards for Municipal Courts, Standards 1, 2(b), 2(c).

(like universities, hospitals, and large professional partnerships) face the distinctive management problems that characterize professionally dominated organizations. In such organizations the professionals and managers must reach an accord concerning operations. In his 1982 article, Deputy Colorado State Court Administrator Keith Stott describes the situation as follows:

The professional organization may be 'messier' than a business organization, in the sense that it is much more complex, vague and diffuse in terms of its structure and the distribution of power. These organizational patterns, though, help professionals to perform better. These same organizational arrangements tend to institutionalize role conflict between professionals and administrators²

There are other important differences between courts and other agencies that render their management different. Unlike businesses or other government agencies, authority within courts is not centralized in a single agency head. Rather, it is diffused among a board of judges, each of whom is independently appointed or elected. The designation of one as chief or presiding judge usually does not convey as a practical matter substantial real authority over the organization as a whole or the other judges. While some court reformers, in theory, prefer a

² K. Stott, Jr., "The Judicial Executive: Toward Greater Congruence in an Emerging Profession," The Justice System Journal, vol. 7, p. 155 (Summer 1982).

system that confers considerable authority on the chief judge,³ these same reformers acknowledge that greater power or authority by anyone over individual judges could lead to abuse that would undermine the independence of the judiciary. Thus, there is continuing tension between the administrative independence of the court and independence in decisionmaking of the judges.

Robert Tobin succinctly describes other factors that distinguish trial court management from the management of other organizations in the following excerpt from pages 1 and 2 of Trial Court Management Series: Personnel Management (The American University, Washington, D.C., 1979):

There is a normal tendency to equate trial court management with the management of executive branch agencies and to assume a high level of transferability for management procedures. In fact, there are a number of factors in the trial court environment which make its management needs distinctive. . . .

Stated simply, trial courts often lack some or all of the management characteristics specified in public administrative models:

- clear focus of authority on a management executive;
- clear lines of authority;
- coherent organizational structure; and
- authority to control basic organizational functions.

³ The term "chief judge" is used in this discussion in its generic sense, representing the judge assigned principal administrative responsibility in a court. In the Tucson City Court this judge is the chief magistrate. When the reference is general and not specific to Tucson, the term "chief judge" is used. When specific reference is made to Tucson, the term "chief magistrate" is used.

There is one further element to consider. If the administrator reports to and is responsible to the city manager, he still will have to serve and accommodate the needs and interests of the chief magistrate and other judges. If there is a breakdown in implementing a policy decision or in addressing an administrative problem, the administrator responsible to the city manager or the city manager might try to blame the judges while the judges attempt to shift responsibility to the administrator or city manager. If the city court has sole responsibility for its administration, "finger pointing" will not work.

During interviews it was suggested that making the court administrator responsible to the city manager would insure that the administrator is familiar with city personnel and administrative procedures and regularly would interact with other agencies. The goals are valid but they can be achieved without a reporting relationship between the city manager and court administrator.

All of these factors, coupled with the importance of maintaining an independent judiciary, argue for maintenance of independent administration for the City Court of Tucson.

This recommendation contemplates that responsibility for hiring and firing the court administrator will rest with all the judges, not simply with the chief magistrate. A vote of a majority of the judges should be required for either action. This is appropriate because the administrator's actions represent and affect the court as a whole. Thus, hiring and firing decisions should be reached after deliberation and discussion among all judges.

B. Administration Within the City Court

The role of an administrator in a professionally-dominated organization like a court is more difficult than in other organizations. Again quoting Keith Stott:

[The respected sociologist] Etzioni stated that the principles of administrative authority and those of professional authority are incompatible Organizational roles are reversed in professional organizations. Managers do not exercise basic control over organizational policy. Rather they find themselves administering the means necessary for the professionals' core activities. Professionals, concerned that their goals can be subverted by administrators intent on carrying out activities of less concern to the professionals, expect managers to do things that are inconsistent with the managers' own perceptions of what they should do. Role strain results.

. . . the managers in professional bureaucracies lack power, especially when compared with managers in other types of organizations. This does not necessarily make them ineffective because they may have considerable indirect power resulting from their involvement in negotiating and acting as liaison with professionals outside the organization and between the organization and other organizations or clients outside

In addition, the legal profession has not considered administration a significant aspect of legal and judicial processes. All too often, judicial administration has been viewed as an unfortunate 'stepchild of the law' and unworthy of serious attention.⁴

Unlike most other organizations, management of a court cannot be conferred solely on the administrator. Over the years, in an effort to develop a meaningful and realistic job description for court administrators, a school of thought emerged that said that

⁴ See footnote 2, pp. 156-159. (Footnotes omitted.)

all administrative duties should be reserved for the administrator and judges should confine themselves to the duties that only they can do: "judging." While a tidy distinction on paper, this structure cannot be achieved in practice. Regardless of judges' willingness to relinquish administrative duties in favor of a court administrator, the public tends to hold the judges, not an administrator, accountable for delays and other aspects of court operation. Thus, self-interest dictates that the judges maintain some involvement in administrative matters. In practice, the manifestation of this self-interest takes a variety of forms, with some judges assuming substantial administrative responsibilities even though they believe firmly in the principle of delegation to an administrator. Often this is a reaction to public pressures and perceptions of which the judges are made only too aware by the press.

Recognizing this, and in an effort to create a realistic and practical distinction, a refinement to this way of thinking has evolved. Judges should play a role similar to that of a board of directors working together to establish policy, with the court administrator playing the role of chief executive officer. In practice, this distinction between policy making and policy execution becomes unclear. Thus, a court administrator often finds himself deeply involved in policy development while execution of certain policies from time to time may fall to the chief judge -- in Tucson, the chief magistrate -- because of the nature of the policy or its relationships to legal issues or matters of adjudication.

Recommendation No. 2

The court administrator and chief magistrate should function as a management team based on mutual understanding of and agreement on their respective roles in this team. Recognizing that a clear distinction sometimes cannot be made between policy decisions and policy execution, the chief magistrate should endeavor to delegate considerable administrative responsibility to the court administrator.

The emerging profile of top management in a trial court is one of a management team composed of the court administrator and the chief judge. In some courts, the chief judge may devote full time to management responsibilities, but most smaller courts cannot afford that luxury. In the Tucson City Court, because of turnover in the court administrator position in recent years, much administrative responsibility has fallen to the chief magistrate. Accordingly, she has taken a substantially reduced calendar to enable her to devote time to administrative matters. In the long run, with the services of a competent professional court administrator available, the chief magistrate should be able to assume more judicial duties. As pointed out by Professor David Saari in the National Institute of Law Enforcement and Criminal Justice monograph Modern Court Management: Trends in the Role of the Court Executive, at page 3, selective management involvement is the preferred style:

The pattern of selective management involvement by the judges in a multi-judge bench with a court executive is a good method for promoting simultaneously (1) better policy making in management; (2) better execution of policy, and (3) more time for adjudication for judges. Thus the court executive aids the judiciary and allows judges to concentrate upon their primary professional duty of judging cases, while at the same time being assured that the court is run well according to acceptable management standards.

The logical extension of this approach is a management team composed of the chief magistrate and the court administrator, jointly responsible for overall administration of the court, but with a well-defined mutual understanding of the responsibilities of each team member. This structure takes into account the reality that overall administration is composed of some responsibilities that are unique and some that overlap. According to noted management theorist Peter Drucker: "Top-management work is work for a team rather than for one man [sic]. It is quite unlikely that one man will, in his own person, unite the divergent temperaments which the job requires. Moreover, it will be found, when the top-management tasks are analyzed, that there is more work to be done than any one man can do"⁵

The respective duties of each team member cannot be prescribed by the project team. Appropriate roles are uniquely defined in each court and must be defined jointly by the chief city magistrate and the court administrator. Having reached an agreement, each must thereafter assiduously adhere to it. When tensions or conflicts arise signaling possible need for modification, the changes should be arrived at through negotiation and mutual agreement. The ability of the chief magistrate and the court administrator to function in this manner will profoundly affect the administrative health of the organization from top to bottom.

⁵ P.F. Drucker, Management: Tasks, Responsibilities, Practices (New York: Harper and Row, 1979), p. 618.

Recommendation No. 3

In developing the court's management team, emphasis should be placed on incorporating all the duties and responsibilities contained in the existing job description into the court administrator's sphere of responsibility.

The history of the court administrator's position in this court is checkered at best. Nevertheless, it is, in the eyes of everyone in the system (judges, city government, and court personnel) a key position. All expect the newly hired administrator to bring stability to the position, something which has been absent in the recent past. In the discussion which follows, it is our intent to describe a sound administrative structure and administrative roles that will facilitate the management desired by both the court and city council. If the new management team already has started to achieve this structure and role, as has been reported to the National Center, this discussion is offered as a reminder to the court and as a reference for others in city government.

The duties and responsibilities of the city court administrator are well described in the excellent position description that now exists. The court administrator is responsible for personnel and budget matters, for evaluation and recommendations concerning overall court operation and caseflow management, and for liaison with other agencies in city government, among other duties and responsibilities. As a practical matter, however, the court administrator only can carry out these duties if the professionals in the organization (the magistrates) delegate the authority to do so and resist the

temptation to intervene. Observing this condition will tax the resolve of even the most resolute judge in view of the fact that, as mentioned above, in the final analysis the public and the city council hold the chief magistrate ultimately responsible for court operations.

The willingness of the chief magistrate to delegate authority and responsibility to the court administrator sets the tone for administration throughout the organization. It profoundly affects the attitudes of the other judges toward administration. Further, and equally important, it affects the willingness of court personnel to accept the administrator and to acknowledge his authority to plan and operate the administrative aspects of the court. A number of years ago, Professor Rensis Likert developed and applied the "linking pin" concept to organization theory. It is closely related to the concept of delegation and quite relevant to the administrative structure in the Tucson City Court. The most effective administrators are those who can play a linking function among various organization members, both vertically and horizontally. Vertical linkage is particularly important in a hierarchical organization like a court. Moreover, two-way, vertical communication is essential. According to Professor Likert, "To function effectively, a supervisor must have sufficient influence with his own superiors to be able to affect their decisions. Subordinates expect their supervisors to exercise an influence upward in dealing with problems on the job⁶ The extent to which the chief magistrate is

⁶ R. Likert, New Patterns of Management (McGraw-Hill Book Company, N.Y., N.Y., 1961), p. 113.

perceived to delegate to the court administrator has a great impact on the administrator's effectiveness with staff members. If the staff perceives that the court administrator exercises little influence in top-level decision making and must clear most of his decisions with the judges, and if it is common for the judges or the chief magistrate to issue orders and requests directly to court staff, the effectiveness of the court administrator is eroded. Thus, the team relationship between the chief magistrate and the court administrator sets the tone and the course for administrative excellence throughout and at all levels of the organization.

Based on the project team's interviews with the administrative staff, it seems necessary to stress the importance of delegation throughout the organization. Delegation affects the organization's ability to function effectively. In addition to being a component of team building, delegation also builds the ability to identify and solve problems. Assuring that this capability is in place at all levels of the organization assures the most effective administration. Contrary to intuition, the best supervisors do not devote their time to devising optimum solutions to operational problems, or making sure work gets done. The most successful supervisors build the capability of each organizational unit to function effectively and to define problems and develop satisfactory solutions. This necessarily will result in the required work being completed and foster a willingness to engage in independent and creative thinking.

To achieve this goal, superiors must demonstrate their willingness to rely on the judgment of their subordinates. Admittedly, the problem solution or implementation style may not be as polished as that of the supervisor; it may not be quite as efficient, but it has one very important characteristic that overrides elegance and efficiency: the fact that it was arrived at by the subordinate(s) and not dictated from above. This promotes a healthy atmosphere and enhances the probability of successful implementation and eventual problem resolution in both the short- and long-range.

Allowing subordinates to identify problems, make decisions, and learn from the results, even though the supervisor might devise a better solution, is preferable for overall organizational strength. This cannot be emphasized too often.

The National Center is advised by a number of sources that since June the chief magistrate has delegated tasks and responsibilities to the administrator to a much greater degree than she had been able--or felt able--to do previously. The new administrator understands the values of delegation mentioned here. It appears, therefore, that the court is moving toward the degree of delegation suggested. It is encouraged to continue its progress in this area and to impart the concept and its implementation to all levels of court operations.

The chief magistrate has expressed a desire that the court administrator refer decisions and plans to her to assure no legal implications have been overlooked. In the context of developing organizational strength and facilitating and enhancing the administrator's function, such referrals should be limited to

those in which there are likely to be legal implications. It should be possible to develop guidelines in this area.

Recommendation No. 4

The court administrator should be the court's representative or spokesperson in a wider range of affairs.

The court and city manager should consider having the court administrator, not the chief magistrate, attend departmental and city council meetings. Representation of the court by the court administrator at such meetings also confirms the team-management concept both within and outside the court. Representation of the court before others clearly is an administrative function. Finally, attendance by the administrator should avoid conflict-of-interest situations for judges when new or amended ordinances are discussed and preserve the concept of judicial independence in court-city council relations.

This use of the court administrator appears to be difficult for some in city government to acknowledge and accept. There are times when the chief magistrate can and should represent the court before the city council, but these occasions should not be routine. In a number of states the legislature is able to work effectively with the judicial branch on almost all issues through the administrator's office; the chief justice appears perhaps to present the annual budget or regarding major organizational changes of the judicial branch, but otherwise is represented by the administrator. The Chief Justice of the United States almost never appears before Congress. The city council of Tucson should

review the circumstances under which it feels the chief magistrate's attendance at meetings is required.

C. Selection of the Chief Magistrate

Recommendation No. 5

The chief magistrate should be selected by the judges of the city court for a two-year renewable term.

Among courts at all levels there are a variety of methods for selecting the chief judge. Basically they fall into two categories: 1) a selection process external to the court; and 2) an internal selection process. In the first category is designation of the chief judge by the appointing authority. Examples are the United States Supreme Court, some state supreme courts, and the Tucson City Court. Also, appointment may be made by the chief justice of the state, as is true in Arizona for the superior courts.

In the second category are election of a chief judge from among the judges of the court by his or her peers and accession to the position of chief judge by seniority. Each method has advantages and disadvantages, but all have the same goal: selection of the best person for the job to assure continuity and effective leadership.

The criteria for selection are very important. The appointee should have management skills, leadership qualities, and, in addition, an interest in management. On this basis, selection based on seniority can be dismissed out of hand. Further, since a chief judge leads by example and persuasion, the appointee should have the respect of the judges. Rules, codes, and standards

aside, usually the only real authority a chief judge has is the authority of competence. For a chief judge to be a leader, the other judges must be willing to follow. On this basis, the most appropriate method of selection is election by a majority of the judges. Selection of their chief from among their number is most likely to result in their willingness to accord him or her the authority to lead and manage.

A legislative body or single elected official may select a very competent chief judge. The externally selected chief may have or be able to gain the respect needed to lead the court. Likewise, selection by the judges does not assure a competent chief magistrate even if the criteria mentioned are used. But, on balance, the independent judicial system is better served through selection by the judges of one of their own than by external designation. Internal selection also reinforces the concept that the court is responsible for its administration.⁷

Selection of the chief magistrate by the court rather than the city council would be a major change of procedure in Tucson. The city council can maintain appropriate influence by requiring, with the assistance of the Merit Selection Commission, that all appointees to the bench have some demonstrated understanding of and competence in management.

⁷ Cf. Supreme Court of Arizona, In the Matter of: Standards for Municipal Courts, Administrative Order No. 83-11, Standards 2(b), 2(c).

The tenure of the chief magistrate should be a two-year term with the possibility of one renewal. In some courts the term of the chief judge is one year. This simply is not long enough to assure continuity in planning and management. By the time a new incumbent "learns the ropes" and begins to plan and implement any new programs, the year usually is over. This undoubtedly would be the case in the dynamic Tucson City Court. In addition, short tenure would be inconsistent with the concept of the chief magistrate and court administrator as a management team. An effective team is built gradually. An annual change in the partnership would be destructive to the goals of the concept.

The incumbent should not continue indefinitely, however, as new perspectives sometimes are needed to effect needed changes. Also, the present tenure of a judge on the court is four years.

D. Setting Court Goals

Recommendation No. 6

The court should develop and pursue a series of priorities or goals.

Goal-setting serves several very important purposes. One is the activity itself. It forces the members of the court and staff to focus on how they think their court should operate and what will be benchmarks for measuring success. Secondly, it leads to procedural improvements to enable the organization to meet the goals. Thirdly, promulgation of standards and goals makes known to the bar, the city council, and to the community at large what the court expects of itself and gives all an objective way of measuring court performance. In this jurisdiction and many others, much of the evaluation of court performance is subjective

and based on anecdotal information and misinformation. The development of standards and goals would set a course for the court to follow and encourage objective evaluation.

So one priority for the court should be for the administrator, the judges, and the administrative personnel to work together to set goals and objectives for the organization as a whole. It is entirely realistic for a court of limited jurisdiction to set, for example, explicit caseflow management goals. For the consideration of the judges and administrator, an example of such standards and goals is included in Appendix B to this report. In a two-year project, the District Courts of Massachusetts were able to develop operating standards and goals, a sort of "road map for excellence" for case processing in their court. These particular standards may not be appropriate for Tucson, but they serve as an example of the concept.

A second priority, one already beginning to be recognized, would be extensive efforts at team building within the administrative staff. There is no need to chronicle further the problems which have plagued the organization for the past few years. They are long-standing and well known. The solutions will not occur overnight, but clearly a key approach to solving the problems involves restoring the self-respect and self-confidence of the staff by building a problem-solving ability in connection with delegation. The court appears to be in a position now to restore administrative excellence.

The third important priority involves building a sound working relationship with the rest of city government. This will take time; the pace with which it is built depends on the personality and ability of the administrator and the chief magistrate. The project team believes the new court team is well positioned now to build the needed relationships.

III. PERSONNEL MANAGEMENT

A healthy organization contains programs to develop its human resources to their fullest capabilities and maintain employee commitment. For many reasons, the Tucson City Court has not been able to put such programs into place.

A. Employee Participation

Employee morale at the Tucson City Court has been affected by both internal and external forces. Internally, each of the court administrators in the last four years has had his own agenda and methods of operation. This has lead to constant changes in clerical operations. When changes are implemented too frequently, they cause confusion and increase rather than solve problems, especially when these changes are not documented and the training needed to make them successful is not provided.

Many of the external factors, like the reported low esteem in which the court is held in other parts of city government, are beyond the court's direct control. Although the court cannot control these factors, one deserves mention. For several years the court has heard that its days are or may be numbered because consolidation of city court and the Pima County justice of the peace courts is "probable," "definite," or "being studied."

Several employees reported they are worried about job security as a result of possible consolidation. Consolidation of these courts might be decreed by the state legislature, but it also could be achieved de facto if the city attorney filed all criminal traffic and misdemeanor charges -- almost 60 percent of all the 1983-1984 filings -- in the justice of the peace courts, which have

concurrent jurisdiction with the city court. The fact that the National Center for State Courts has been asked by the city council to do this study suggests that consolidation is not imminent. It would assist the court's efforts if this issue were laid to rest locally, at least for a defined period of time.

Recommendation No. 7

The court's efforts to improve employee morale and increase staff involvement in planning new procedures should receive whatever support it needs from appropriate agencies of city government.

The court has a list of ideas to reduce some of the employee's negative feelings and attitudes, some of which are reported to have been put in place since September. The plan includes the following: speak-up sessions to air staff questions and problems; encouragement of staff participation in changing existing procedures and designing new procedures; exploration of using the city's cash incentive plan to stimulate suggestions for improving operations and reward employees for outstanding job performance; and establishment of regular meetings of line supervisors. The scope and direction of the plan are encouraging. Any costs associated with implementation of the plan will be recouped many times if it succeeds.

B. Training

Recommendation No. 8

A multi-faceted training program should be designed for court staff.

A substantial amount of training for both new and existing personnel is needed. A training program must be multi-faceted and continuing. In this section the components of such a program most needed in the Tucson City Court are discussed.

1. Procedures Manual

A procedures manual is a key component of the training process. A procedures manual should be developed that would describe the court's organization and operation, including all procedures and forms, with instructions on how they should be completed. The manual should explain how the court's business is conducted and how each task affects others in the chain of work. It also should give staff perspective on how the court's work fits into the city's criminal justice system.

In addition to being used for training, the manual could be used to answer some of the questions the office supervisor and other supervisors now have to address. The manual also could be used to help cross-train employees.

To remain useful and serve its assigned tasks, a procedures manual must be kept current. Many courts develop manuals but then allow them to become out of date, thus wasting the initial effort. Procedures to insure that the manual is kept current should be part of the planning effort to develop the manual.

The National Center understands that part-time assistance has been obtained by the court for the purpose of completing an outline describing the court's operation. This outline will explain how tasks are completed and show the paperflow. The court hopes to have a complete written manual in notebook form by July 1985. It estimates that \$5,000 will be necessary to complete and produce this manual.

2. Orientation for New Staff

In the past in Tucson new staff have been shown a desk and asked to master its assigned task as best they can. Assistance from someone who has worked that desk may or may not have been available. The recommended procedures manual will solve many of the problems this practice has created. But a procedures manual alone is not sufficient for new staff. In addition, they should:

- Meet each supervisor and judge;
- Meet each person in the work group;
- Be provided with an oral description of the court's role in the justice system and of workflow to supplement the written manual;
- Be advised of key people in other agencies with whom the person may have to deal;
- Be given a copy of the existing vocabulary list of key court terms;
- Receive a copy of the city's personnel policies and procedures; and
- Be under the direction of their immediate supervisor for at least two weeks of initial training.

The court recognizes the need for each of these elements and tries to achieve them. Interviews with court staff in September indicate the court's efforts have not always been complete, however. There is reason to expect that past lapses will be addressed hereafter.

3. Cross-Training Staff

Cross-training promotes personal growth and provides necessary back-up personnel when assigned staff are sick or otherwise absent or take vacations. The court frequently has used staff at a number of different assignments with little or no formal cross-training. Employees should be cross-trained in one or two

other tasks or areas of responsibility, but should not be expected to learn all possible tasks or to perform satisfactorily regardless of where assigned. Clerks should not be rotated from one area to the next without prior training. Again, the procedures manual will reduce the problems the court has had in this area in the past. Also, the court's plan to reorganize its staff (see page 35, below), to reduce staff turnover, and to reduce absenteeism all will contribute to an environment in which cross-training can be both limited and more effective.

4. Training for Those With Direct Public Contact

The front counter clerks and those who answer the telephone are in constant contact with the public, some of whom are irritated, hostile, or just confused. These staff must remain courteous, provide the assistance required, and not succumb to the stress associated with these demands. Through September those dealing with the public, both at the counter or on the telephone, had not been provided training in the special techniques needed to help them deal with the situations they face.

The court has advised the National Center that since September a volunteer psychologist has agreed to instruct staff on stress reduction techniques. This training will help court employees deal with the situations they face. It should be pursued and continued in the future.

5. Training for Line Supervisors

Training of supervisors in management concepts, delegation techniques, evaluation and training techniques, counselling, and interpersonal skills largely has been neglected, although a few

supervisors have been able to attend classes sponsored by the city. The present supervisors need substantially more training if the management goals discussed in Chapter II of this report are to be realized. The court's management team can provide some of the training needed in-house, but some outside assistance from the city or otherwise also will be needed.

6. Training for the New Administrator

The new administrator comes to the position with a strong management and personnel background. He has not worked in a court environment, however. As mentioned in Chapter II, managing in a court is different from managing in most other organizations and there are certain needs, such as caseload management, which are peculiar to courts. The administrator should have the opportunity to attend courses specifically directed to managing in a court environment.

C. Organizational Structure

A supervisor's span of control (number of subordinates that a supervisor can directly control) depends on many factors: whether tasks are routine or nonroutine; the degree to which tasks are automated; the difference between the manager's expertise and the subordinates'; the amount of interdependence among the tasks controlled by the supervisor; the personality and leadership style of the manager; and the number of written rules and regulations.

There are some span of control problems in the clerk's office. Seven people function as supervisors, with the number of people assigned to a supervisor ranging from one to eight. The assignment of one person to a supervisor raises questions about the kind of tasks that supervisor is completing. Actually, most

of the supervisors' time is devoted to clerical tasks. Therefore, an adequate amount of time is not given to planning, training needs, or monitoring tasks completed.

Several problems were identified during this project that are not organizationally sound:

- The lines of authority established by the organization are not clearly defined;
- Some divisions of responsibilities are unclear and some job tasks or assignments seem inappropriate;
- The span of control of some supervisors is too narrow;
- In several instances staff indicated they were not sure whether they should report to their immediate supervisor, the office supervisor, or both;
- The office supervisor is completing too many clerical tasks; and
- Some supervisors may not have the authority necessary to do their jobs.

Recommendation No. 9

Staff functions and assignments should be reorganized. The pending plan of reorganization should be adopted or used as the basis for the reorganization.

Since the National Center's project team visited the court plans have been developed to correct the problems the court has been experiencing. One of the major components of the plan is a proposed reorganization of staff. See Appendix A for copies of reorganization charts. Clerical operations would be assigned to four units: (1) case management, which includes two management teams and a data entry team; (2) public services; (3) documents; and (4) mail and messages. A fifth unit, fiscal, will be part of the administrative division. The teams in the case management area would be headed by a supervisor who would have direct control

over and responsibility for that group. The teams will be assigned specific functions and will become responsible for larger portions of the total workflow than the staff presently performs.

The changes proposed will address many of the problems the National Center for State Courts has observed in the court. In addition, it supports the team management concept discussed below. Changing the court's organization structure will not solve all of the court's problems, but it will address some of them and is a needed step in the court's effort to improve.

The Center believes the following benefits will be derived from this reorganization:

- Staff will be used more efficiently;
- Clearer lines of authority and reporting relationships will be established;
- The problems with some of the supervisors' span of control will be addressed;
- Clerks' and supervisors' responsibilities will be defined more clearly;
- Stricter accountability for work performed and not performed will be established;
- Supervisors will perform more management responsibilities than day-to-day clerical activities; and
- Training will more clearly be the supervisors' responsibility.

D. Staffing Levels

Recommendation No. 10

For fiscal year 1984-1985, 2.5 FTE positions should be added to provide needed clerical support. These positions should be in lieu of the three contingency positions presently in the budget.

The National Center was asked to comment on the court's staffing level. An examination of Table 2 in Chapter I suggests

that the Tucson City Court is neither clearly overstaffed nor understaffed when compared to the nine other largest city courts in Arizona. Several factors complicate an assessment of the court's staffing needs.

- Training, absenteeism, and turnover problems create a very unstable situation for analysis.
- Until the paper backlog problems are eliminated or substantially reduced the court's long-term staff needs are uncertain.
- Tasks and responsibilities are not clearly defined at this point because of the first two factors.
- Elimination of manual records that duplicate the computerized records should ease the demands on staff. Also, the computer software now being installed will impact staff assignments and needs in unknown ways (see Chapter V).
- The management problems of the court in recent years have exacerbated the workflow problems; as the new management team and structure develop, staff resource needs may change.

Despite the problems in answering the question about staff needs, the need for additional staff is apparent. The court's paper backlog problems are substantial. Even with improved organization, better computer software, and the elimination of some manual tasks, personnel are needed to attack the backlog problem. The training needed cuts across all staff levels and staff assignments. Training cannot be achieved without impacting the staff available daily to complete required tasks. The proposed reorganization can be achieved largely by reassigning existing staff, but some functions will require staff members beyond those presently available. Finally, the proposed pilot project for a night court (see Chapter VIII, below) may require one new position.

In light of these known needs, the court is proposing the addition of 2.5 FTE's for the clerical area in exchange for the three contingency positions included in the 1984-1985 budget. The National Center endorses this request.

Currently the three contingency positions include two positions in the administrative section and one in the clerk's office. The court's own plans and the new proposals in this report will place heavy demands on the court's administrative section. Although that section might welcome additional assistance in the coming year, the need presently is greater in the clerical services area. Addressing the clerical services problems now may lessen the administrative services burden later. It is appropriate, therefore, to reallocate the positions from administration to clerical support.

Because of the uncertainties cited at the beginning of this section, the National Center is not in a position to make any recommendations regarding possible staff needs beyond 1984-1985. If the level of change already achieved by the court since September continues for the balance of the present fiscal year, the difficulty of predicting future staff needs is even greater. Some of the court's efforts will lessen the need for new staff while other improvements, new programs, or added filings may require new staff. The situation will have to be reassessed again in the spring of 1986.

E. Job Classifications

Recommendation No. 11

Reclassification of positions is needed, both to reflect the proposed staff reorganization and to reflect the percentage of staff performing intermediate-level tasks.

If the proposed staff reorganization occurs, job classifications should be adjusted to reflect the changes. For example, the court operations supervisor position will require a new job classification.

In addition, the court plans to request upgrade of entry level positions in the clerk's office. Currently 51 percent of the staff in the clerk's office are entry level and 24 percent are classified as intermediate skilled. A much higher percentage of the staff appears to the National Center for State Courts to be performing intermediate-level tasks.

As the court continues the organization building efforts it has begun, its job classifications should be reviewed continuously by both the court and the city's personnel department.

F. Team Management

Recommendation No. 12

Team management should be explored for possible future implementation.

Team management is a fairly new concept for larger courts. In team management, small groups of staff (5-8) are responsible for all the steps necessary to process a case from filing to disposition rather than the present approach of assigning discrete tasks to staff successively until all tasks needed to process a case are completed. Small courts use this approach without explicitly calling it team management because they may have only 5-10 people in the clerk's office. Two appellate courts have reduced the number of staff needed to handle their workload and improved employee morale at the same time by adopting team

management. The National Center is not aware of any trial court the size of the Tucson City Court adopting this approach.

The Center believes the team management concept might improve the operations of the Tucson City Court in the following ways:

- Productivity of existing staff would improve. Under the present system some of the court's key sections are not completing their work on time. Problems in these areas have affected other sections in the court. The case-team management concept would require each member of the group to understand the entire flow of a case and they would know how to move a case through each step required to process it. Expanded job responsibilities and the other consequences of team management (below) have led to increased productivity in the private sector.
- Morale would improve. Staff would be required to understand the whole process. Morale should improve because jobs would be more interesting and staff would learn new skills. In addition, they would feel a greater sense of accomplishment because they would work on a case until it was closed.
- Training would have to improve. Line staff critically need to be trained in all court processes; this need would be addressed by changing to a team approach.
- Lost files would be reduced. The files would not have to pass through all of the channels they do now. A file would be with a team member, in a courtroom, if needed, or in the file room. The number of places to look for the files would be reduced significantly.

- The impact of caseload increases in particular casetypes and their effect on the need for staff would be easier to assess, document, and address. Currently all sections might be affected by changes in law or procedures for one case type. The affect on the court is harder to assess and document in this circumstance.
- Processing steps would not change drastically. Team management changes who performs tasks, not the tasks to be performed. Thus, although the change might be disruptive initially, it is not as disruptive as a major change in the tasks needed to process a case.

The proposed reorganization is moving the court toward team management, although the proposed case management teams do not reflect all the elements discussed above. There are three differences between the proposed case management teams and the team approach suggested here:

- 1) the case management teams deal with all case types assigned rather than one or two case types;
- 2) the case management teams do not control file folders or other documents; and
- 3) case initiation is handled outside the case management teams.

These differences do not necessarily reflect badly on the proposed case management teams. It may turn out that excluding case initiation and file folder control are preferable. When the court's workflow is more under control and the case management teams in place, it can reexamine whether to expand those teams or experiment with the other features discussed here.

IV. RECORDS MANAGEMENT

A. Introduction

The management of court records has been an ongoing concern to officials of the Tucson City Court and other city agencies. The inability to locate records quickly and easily translates into increased costs when personnel must spend considerable portions of their time looking for files and related paperwork. Additionally, interviews with the court's records personnel indicate that misfilings contribute significantly to both the morale problems among the staff and the difficulty the court has retaining its employees.

In late 1982 a study was conducted that identified problems in the court's operations.¹ The study, conducted by the city's Department of Budget and Research, offered recommendations in records and other areas to improve the overall efficiency of court operations. The study noted that steps were being implemented to address the records management issue; that is, a clerk was assigned full-time responsibility for records control and the court implemented a centralized filing system for active records and a color-coded filing system. Yet, despite these efforts the court continues to experience problems in its records section.

¹ See Department of Budget and Research, Management Research Division, "Operations Review City Courts Administration," (by Scott Ullery and Rosenna Trejo), January 1983. (Hereafter referred to as 1983 Operations Review.)

The purpose of this chapter is to describe the current situation in the records section and to offer recommendations for improving the court's management and control over its records. Findings in this chapter are based on three sources of information: review of past studies, interviews with appropriate court and related city agencies' personnel, and observation of the workflow process in the clerk's office.

B. File Maintenance

Overall, the Tucson City Court maintains two different types of files--one for "civil" traffic violations, which have been decriminalized and do not require a court appearance, and one for criminal cases (criminal traffic and misdemeanor offenses), in which a court appearance is mandatory. Civil traffic case files generally consist of the citation, either alone or stapled together with related documents. The paperwork is not put into a file folder unless there is court activity beyond the arraignment date or if a stay is granted at arraignment for payment of a fine. (It is then placed in a manila folder that is color-coded for civil traffic cases and filed with other similar cases in the moveable files located in the center of the records section.) Active civil cases are filed by arraignment date at the front counter. Closed civil cases are batched by closed date and stored temporarily in file cabinets in a small cubical area off the records section of the office. After about thirty days, these closed cases are packed in storage boxes and sent to the basement for temporary holding.

Criminal files consist of the citation and related documents housed in a manila file folder. The manila folder is identified by a color-coded case number. Active criminal cases are filed numerically in the movable files. Closed criminal cases are sent to the basement area where they remain on file for about one year.

In addition to these general filing areas for active and closed civil traffic and criminal cases, there are numerous other places where files are maintained temporarily or permanently. Two file cabinets near the front counter contain citations filed alphabetically under six headings: 1) defaulted civil traffic tickets (these have gone into automatic license suspension), 2) 1981-82 citations with active criminal warrants,² 3) small stays, 4) more small stays that are older, 5) unattached citations for January-May 1983 (warrants pending but not yet attached), and 6) citations on appeal.

Movable shelves near the front counter house at least nine other filing sections: two sections of overdue stay cases, two consisting of a variety of cases that need sorting, and five of cases waiting to be updated by data entry (e.g., cases in warrant status, dismissed cases, and new stays). Within each of these nine sections, cases are filed numerically.

One section of the moveable files in the center of the records section houses three additional groups of files: old 1981 cases, cleared citations waiting to be verified, and "brown folder files" that contain groupings of prostitution offenses by defendant.

² Early criminal citations did not have manila file folders and, thus, are filed in small drawers like the civil traffic cases.

As previously stated, inactive records are filed in the basement of the court building. Although attempts have been made in the past to systematize these closed files, many files were observed in loose piles or still in boxes.

When cases have been closed for approximately one year, they are packed in flame-retardent cardboard boxes and sent from the basement to the City Records Center. The Records Retention and Disposition Schedule for Arizona dictates the minimum time periods that certain records are to be retained before destruction. Civil traffic case files are retained for at least one year; criminal case files and docket records for at least five years; and court financial records for three years. The procedures at the City Records Center for storing and accessing documents seem to be well defined and organized. Requests can be made by court personnel either in writing or by telephone for the retrieval of necessary documents.

Recommendation No. 13

The court should consolidate existing files into a unified system for active cases. That is, all open cases regardless of status should be filed together in one area. A similar system should be designed and implemented for closed case files in the court's basement. Alternative shelving and additional filing equipment may be necessary to accommodate such systems.

Although an attempt has been made to centralize the active case files, various circumstances apparently have served to undermine these efforts. For example, some of the current filing locations exist because of data entry backlog. These cases in time will be updated and filed either with the open or closed records. While the data entry backlog continues, however, it may

be more efficient to consolidate these files, although separately from the central file area, so that staff are not required to check through numerous filing areas when looking for a particular case.

Another example is the maintenance of the "brown folder files," which contain groupings of prostitution offenses by defendants. Although this method was developed to provide judges with a full picture of the various cases pending for each defendant, it represents another place to check when a file is lost. These cases should be filed numerically along with other cases in either the active or closed files. A system of cross-referencing can be implemented through the computer or a card system to determine if defendants have other cases that are pending or that were closed out. If other cases exist, the file folders then can be retrieved.

To retrieve case files quickly and efficiently, a unified filing system is a necessity.³ As indicated above, the court has tried to establish a central records area, but it was not wholly successful. Under such a system, all cases can be filed numerically; if access by offender's last name, next due date, or otherwise is needed, the computer can be used to find the case number. Active cases with a special status, e.g., stays or warrants, could be color-coded with large stick-on dots or

³ Even if the court were to eliminate the need to access the hard-copy files frequently (e.g., if the court were to convert to a microfilm system for storing and handling records (see below, pages 49 - 53), some type of centralized system should be developed to insure ready access if review of the hard-copy file is necessary.

labels. Closed cases that are temporarily stored in the basement also should be filed numerically. Records section staff complained to the project team of the generally tedious and time-consuming task of trying to retrieve a closed file from the basement with the present system.

Putting all the active cases together in one space will require reorganization of the clerk's office (see Chapter VI for a discussion of space management), as well as, perhaps, additional filing equipment. The current moveable shelves in the clerk's office seem to be somewhat inadequate. For example, one shelving system is for letter-size files, the other is for legal-size files. Letter-size files were found to be filed on legal-size shelves, making them cumbersome to access. Legal-size files were found to be filed on letter-size shelves, serving to prohibit the full closure of the shelves. This latter problem works against the advantage of this type of shelving -- that is, its ability to consume less space. In addition, although it may consume less space overall, often only one person can access files from the shelves at a single time. For all these reasons, the moveable shelving system needs to be seriously analyzed for its efficiency.

C. Workflow Procedures

1. Handling of Hard-Copy Files

The processing of traffic and criminal citations by the court begins in the clerk supervisor's office, where they are received in batches from the Tucson Police Department. The supervisor manually completes a daily tally of citations received for each of the following offense categories: traffic, adult financial

responsibility, juvenile financial responsibility, criminal (both traffic and nontraffic), and dog violations. Following this daily count, the citations go to the data entry section, where they are entered into the computer.

Following data entry of the new citations, they are sent to the records section, where they are separated into civil traffic and criminal case types. Civil traffic citations are filed at the front counter, where they then are handled differently depending on how the offender responds to the citation. For example, if a payment is made or if an offender appears for arraignment, the citation is pulled and, following disposition or other arraignment outcome, it goes to data entry for closure or updating. The day following a scheduled appearance date, all citations in which the offender failed to pay the appropriate fine or appear for arraignment are pulled, filed in a cabinet, and labeled as defaulted traffic tickets.

Criminal cases generally involve more handling. The records section creates a file folder for each case. Cases then are separated and filed by appearance date. Two days prior to the appearance date, they are further divided by time of arraignment session. The files are sent to word processing for typing of the court dockets. The cases then are routed to one of two criminal arraignment desks to be taken into court at the appropriate time. In court a clerk makes entries on the docket (e.g., warrant ordered, pretrial conference set, time payments to be arranged). Following the arraignment session, case files are placed in the "out of court" basket. They then go to data entry again where the computerized record is updated. From data entry they are sent to

the "records table" where they may be filed with the closed cases and, after verification, sent to the basement, or filed with the active cases on the moveable file shelves.

Because of the various stages involved in the processing of cases, case files accumulate at different work stations. For example, they were found at all work desks in the records section, at the "records table," the stay cards table, on top of the cabinets housing closed civil traffic cases, at the word processing station, at each of the data entry stations, in the supervisor's office, and at a desk in the administrative area, where they are handled when cases involve restitution or attorney's fees. At one time during the Center's site visit six piles of case files were observed at the motions counter in the lobby. Case files also can be found in each of the judge's chambers.

2. Microfilm Systems

While the various case processing stages necessitate the frequent updating of information in the files, there are ways to reduce the physical handling of the hard copy. One method, which the court indicates it currently is considering, is through the use of microfilm technology.

There are a variety of microfilm systems available depending on the types of records involved and the frequency with which they are accessed. One of the most traditional systems for active cases is the film jacket system, in which new documents are filmed and the picture inserted into film jackets on a periodic basis. A simpler, less time-consuming system has since been developed by the 3M Company, called the Micropoint System. The advantage of

this system over the microfilm jackets is twofold. First, it uses a camera that speeds up the filming process. Second, this system has a computer-assisted retrieval capability. A computerized index provides the roll and frame number of the film for the case documents. When the frame cartridges are hooked to a mini-computer, the roll and frame number are entered and the computer automatically advances the film to the desired frame for reference. Computer assistance eliminates the need to sort film jackets manually.

The 3M Micropoint System is appealing to courts that handle a high volume of routine cases (like traffic) that do not involve the filing of a lot of documents. Thus, it would seem to be a good system for the Tucson court, particularly for the more simple "civil" traffic cases. While the court may still want the hard copy documents of active cases to be handy, this system would eliminate the constant physical handling of the citations.

The Seattle Municipal Court provides a good example of a court that has benefitted from a computer assisted retrieval system. Some of the advantages to the court that were noted in a recent article include (1) a significant reduction in the amount of staff time spent on sorting cases, (2) a significant reduction in the number of misfiled and lost case documents, and (3) a reduction (by 96%) in the amount of case storage space, while making case information much more accessible.⁴

⁴ See, C. R. Pederson, "C.P.A.R. Solves Seattle Parking Problems," Records Management Quarterly, July, 1983.

Despite the numerous advantages of microfilm, the system is costly. It involves new equipment and considerable amounts of time initially in the training of staff on equipment use, the filming of documents, and the processing of film, as well as continuous updating of the computerized index once the system is in place. Additionally, it is essential that prior to implementing any microfilm project, time and expertise be committed to designing the appropriate system for handling a particular court's needs.

Recommendation No. 14

The court should assess its records needs, identify its current problems, and evaluate various microfilm approaches and equipment. In the event that a microfilm system is deemed desirable, the court will need a file control system. For those cases in which a microfilm system is not feasible, the court should investigate ways to monitor the physical handling of files.

An important step prior to undertaking any major records improvement project is to first analyze the current records used by the court and identify problems in maintaining and accessing these records. For example, the court should know what proportion of filed documents come from where? Who needs what document? When are the documents needed, why, and for how long? Are some types of records unnecessary? Are certain steps in the current processing of records unnecessary? Time did not permit the National Center's project team to undertake the detailed and refined analysis required before choosing a major new system involving significant capital expenditure. To answer these questions and ultimately determine what exactly are the court's needs, the court should appoint a staff member (such as the records manager) or perhaps a group of court personnel (such as

the court administrator, the clerk supervisor, and the records manager) to make the assessment. If a decision is then made that a microfilm system is suitable for the court's needs, this person or persons then would be responsible for researching available equipment and consulting with suppliers on cost issues.⁵

Even with a microfilm system the court needs to enforce a file control system, or the disorganization and resulting chaos of the old records filing system will be transferred to the new system. Under the new system it is just as imperative that every document gets filed quickly and that the reference index is updated on a regular and punctual basis.

Although a microfilm system appears attractive for simple case types, it may not be appropriate for the more complex traffic cases (such as DUI) or criminal misdemeanors, which often involve numerous court appearances and the filing of multiple documents. Thus, a different kind of file control system, such as an out-card system, might be more appropriate for these types of cases. Although this method would not reduce the handling of the actual file, it would serve to monitor its circulation; hard-copy files that are not in either the unified filing system or in the basement closed files would be accounted for. A clerk looking for

⁵ It is the National Center's understanding that the court has in hand an analysis done by one or two records experts from the private sector looking at the feasibility of the Micropoint System. The National Center has not seen this analysis but assumes it is a thorough analysis of the feasibility of that system. That report might be a useful model for assessing other microfilm possibilities.

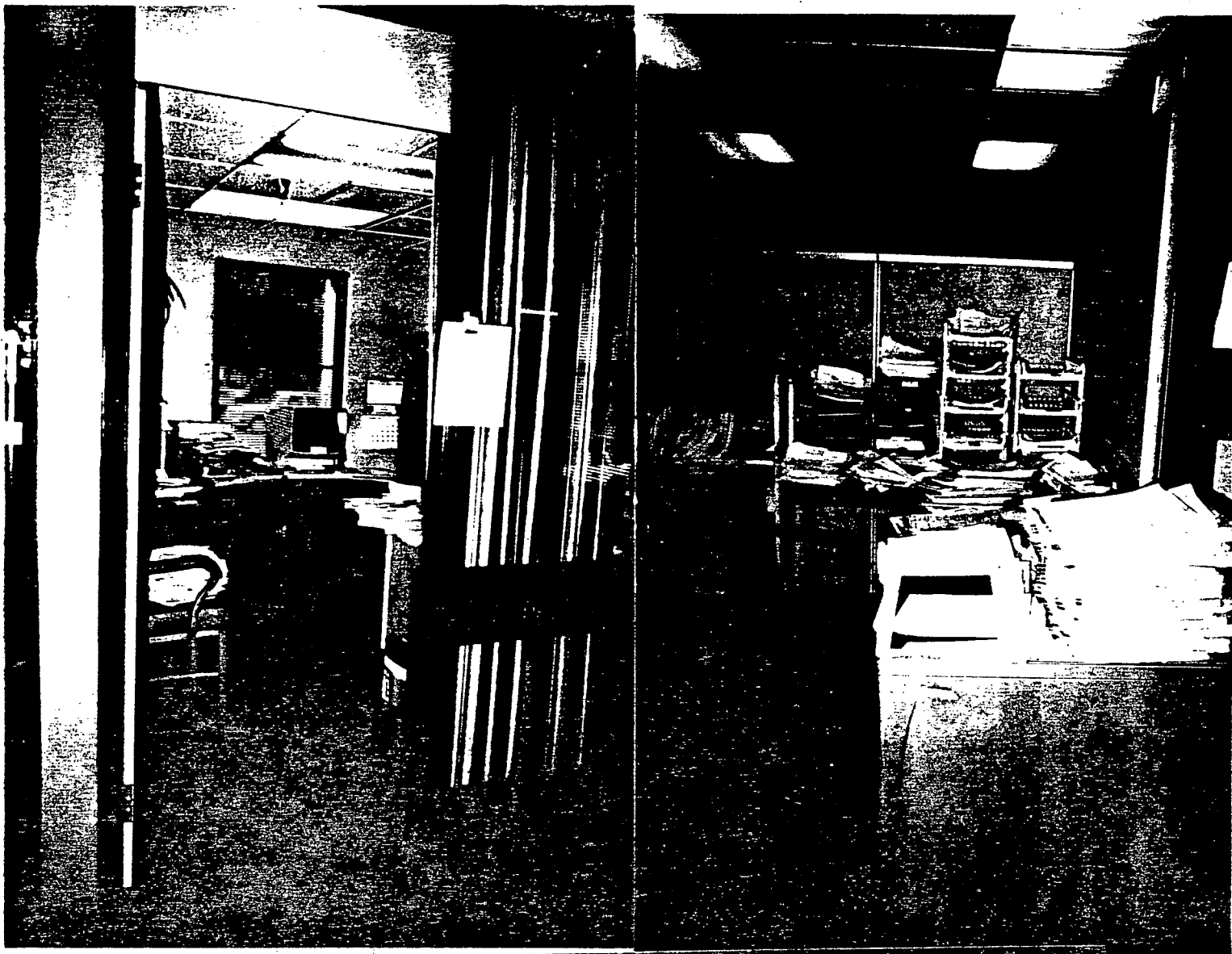
a file would be able to tell from the out-card where the file is located at any given time.

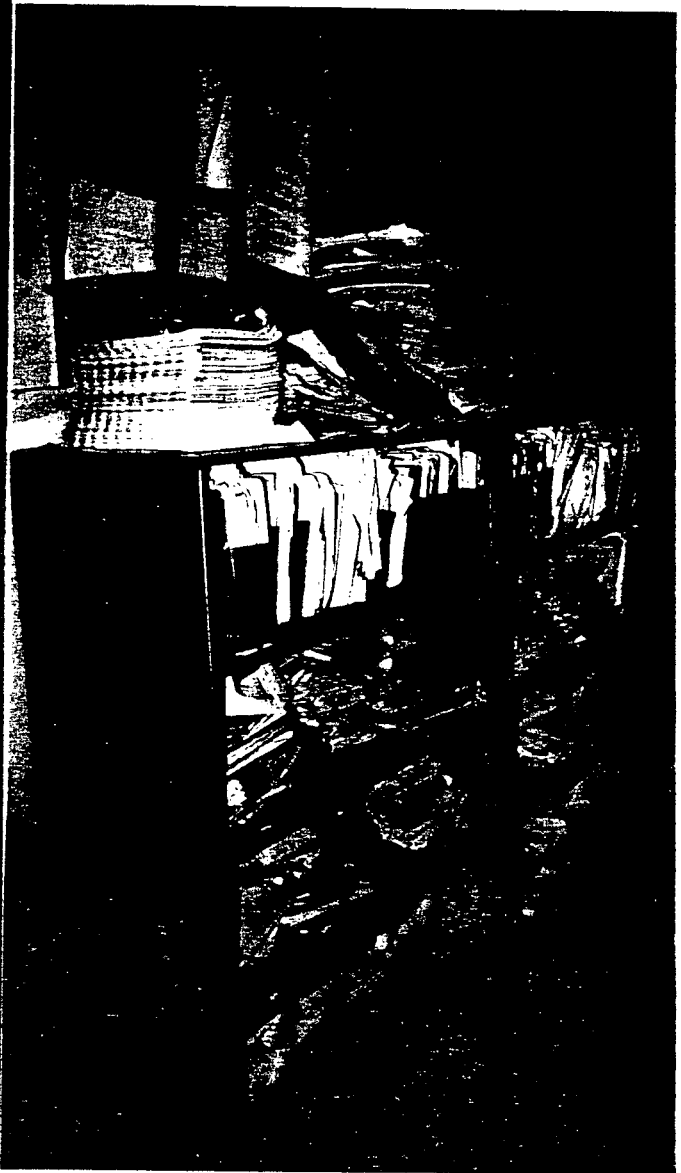
3. Backlog

A continuing issue concerning the workflow procedures in records is backlog, the backlog in filing and the backlog in attaching loose paperwork to case files.⁶ Throughout the office piles of files wait to be processed (e.g., cases to be updated by data entry, closed cases waiting for someone to verify clear dates so they can be sent to the basement for storage, and cases in which warrants need to be activated.)

Apparently, this backlog has been reduced since the project team's visit in September. Informed sources at the court say that the situation was a lot worse two years ago and was largely the result of inadequate staffing levels at the time. Despite the reported reduction in backlog, the project team found in September that the backlog level was detrimental to court operations. (See the pictures on the next two pages for examples of the paperwork awaiting attention in September 1984.) First, it causes immense frustration to the staff who spend valuable time looking for loose paperwork. Second, large amounts of revenue go uncollected because warrants may take over a year to activate or because no follow-up is done on outstanding stays. Third, cases sometimes have to be dismissed when, for example, a matter that was set for court was not calendared because the paperwork was never attached.

⁶ See 1983 Operations Review; Ernst & Ernst, "Report on Special Review of City Court" (September 1976). (Hereafter referred to as Ernst & Ernst Report.)





There seem to be three key factors responsible for the work backlog. A major cause is the inadequate filing system. Another is the lack of sufficient training of personnel in records management techniques. It is essential for good records management that staff know about the proper maintenance of records, why records are important, how the records section fits into the entire system of court operations, and that they feel a sense of commitment to the court in ensuring that case files are quickly filed and updated. The constant interruptions of the records staff to respond to telephone inquiries and to look for missing files is a third factor contributing to the backlog.

The centralization of records will greatly alleviate much of the time that is now expended by staff when looking for files. (A computer-assisted microfilm system, if implemented, will virtually eliminate having to look for the hard copy.) A reduction in time-consuming efforts here will translate into more time for staff to devote to clearing up the backlog. As mentioned earlier, a commitment from all court personnel to proper file maintenance will enhance any effort to reduce current backlog levels.

The third causal factor, constant interruptions of the records staff, may be a result of the records section being assigned either too many tasks or tasks that may be more appropriately handled in a different, or even separate, area. The reason for creating a records section should be to maintain the court's files, e.g., filing and pulling case files and attaching paperwork to the files.

Recommendation No. 15

A functional analysis within the records section should be undertaken to determine (1) the functions assigned to individual records personnel, (2) the appropriateness of these functions within the records section, and (3) if some functions are determined to be inappropriate for the records section, the area(s) to which these functions should be moved.

If records personnel were subject to fewer interruptions, more of their time could be devoted to promptly updating case files and doing their part to reduce the current backlog. Although the analysis recommended should produce a variety of options for the court to consider, there are some functions that appear on first impression to be unsuited for the records section. For example, information on offenders' prior DUI records should be retrievable on the computer, therefore eliminating the need for records staff to access that information from the hard-copy file. This function could be performed by a variety of personnel when the need arose or it could be a task assigned to a specific person away from the records area.

Setting motion hearings and accepting domestic violence and harassment petitions for filing do not appear to be records functions. Domestic violence and harassment petitions should be a separate area. Another function to be reviewed is responding to telephone inquiries. During the course of this study project, staff observed that the telephone often rang as many as thirteen times before it was answered. This is irritating to the public and annoying to staff members who consider it an interruption in performing their assigned tasks. These phone inquiries generally concern individual files and should be handled by one person with access to a terminal.

V. DATA PROCESSING

Current automated support for the courts consists of three major systems:

- CACCTIS (Computer-Aided City Court Information System).

This is an online case-management system that handles all criminal, civil and traffic cases. It provides for recording of basic case data on complaints, defendants, vehicles, and attorneys. It also provides for recording of scheduled appearances, results of appearances, dispositions, fines, receipts, posting of bonds, and issuing of warrants.

Tape-to-tape reporting of dispositions to the state Motor Vehicles Department is done weekly through CACCTIS.

- Officer Scheduling. This system is used to record the work schedules of law enforcement officers and assist the court in scheduling cases based on the availability of the arresting officer(s).

- NCR Intelligent Cash Registers. This system provides receipts, cash control tapes, and daily balances. Through batch transmission to CACCTIS it also provides the input needed for automated posting of payments to case records.

CACCTIS and Officer Scheduling run on the city's mainframe computer, an IBM 4341. The court also uses two Lanier word processing systems, primarily for the preparation of transcripts.

Tucson City Court is now in a transition period with respect to computerization. The decision has been made to replace CACCTIS and the Officer Scheduling system with software packages designed and marketed by INSLAW, Inc. The city's department of computer services will continue to provide hardware support, but all future software maintenance will be done by INSLAW or its local subcontractor, Integrated Data Corporation. In September the court had no technical staff but hired a computer systems analyst in October 1984.

Because CACCTIS and the Officer Scheduling systems have already been judged inadequate and are being replaced, this study did not focus on the particulars of these systems. Likewise, since the new INSLAW systems will be tailored or custom made, there was no way to assess properly the details of these systems as they relate to the court's specific requirements. Therefore, this study focused more on the general framework of computerized support for the court in an attempt to determine whether the new systems will provide short-term or long-term solutions.

In general terms, the new INSLAW software has the capability to provide better support for the courts. It will have more reporting and query facilities. It will be more flexible and easier to maintain. If screen dialogues are properly tailored, data entry should be less cumbersome and easier to learn. The new software is not likely to impact dramatically the major recordkeeping problems in the court, however, unless a variety of other issues are addressed along with the design and implementation of these systems. The following general

recommendations highlight these issues, along with some additional concerns raised by court personnel during the course of this study.

Recommendation No. 16

The new computer software must satisfy certain minimum requirements.

The system's requirements are generally recognized by both the court and by INSLAW; they are offered here for the sake of completeness. They are as follows:

- Case tracking. The ability to record summary information about a case, from the filing of the complaint through disposition. This includes basic information about a case and the defendant, the scheduling and outcome of court appearances, the filing of motions, the issuing of warrants, the setting of stays, and the payment of fines. It also should be able to identify cases in which there has been no action since "X," in which deadlines have been missed, and that are older than "Y" since filing.
- On-Line Inquiry. The ability to access case summary information instantly through a variety of "keys," including case number, defendant's name, defendant's number, if any, and court date.
- Cash Accounting. The ability to record and produce receipts for payments at the public counter and to keep running balances of cash and checks received by each operator, with a breakdown by type of payment and type of disbursement.
- Payment Posting. The ability to post payments directly to case summary records and maintain balances.
- Case scheduling. The ability to generate court appearance dates based on the availability of law enforcement officers and the expected duration of a hearing.
- FTA and Warrant Control. The ability to generate, record, and monitor failure to appear complaints and warrants.
- Exception Reports and Forms Generation. The ability to print exception reports, such as overdue fines and outstanding warrants, as well as collection letters, court calendars, warrants, amended complaints, notices of hearings, and failure to appear complaints.

- Management Reports. The ability to generate statistical reports that assist in resource allocation, caseflow management, and external reporting.
- MVD Reporting. The ability to communicate automatically case dispositions and modifications to the state Motor Vehicles Department.
- Officer Scheduling. The ability to record law enforcement officers' work schedules and then use this information to assist in case scheduling.

Recommendation No. 17

The court should obtain all of the INSLAW software packages and whatever custom-written programs are necessary to satisfy the requirements listed above.

INSLAW's original proposal to the court included three basic modules called DOCKETRAC, Debt Collection, and Auto Entry. INSLAW also recommended several optional modules. The court selected one of the optional modules, Court Scheduling, in order to satisfy the requirements now being served by the Officer's Scheduling system and also to provide additional automated support for the scheduling process. Because of funding constraints, the court did not purchase the General Ledger Link, MVD Tape Generation, and the Data Conversion modules. MVD Tape Generation will be needed if the court is to retain its current level of capabilities, which now includes this function. The data conversion problem has not really been addressed but it seems unlikely that the court will be able to function using both the old and the new systems. This means that the data from the old system must be transferred to the new system, either by manually rekeying the data or by writing conversion programs. The conversion programs will be less costly and more reliable. The General Ledger Link is an enhancement to the current level of support that was not investigated during the course of this project.

Recommendation No. 18

The computer record must become the primary source of case-related data, replacing many manual auxiliary records and reducing the need continuously to access hard-copy records.

Although the city court has had some form of computerized support for many years, the basic clerical workflow still relies heavily on manual hard-copy records. Calendars are prepared from information in case files. Time payments on stays are recorded on index cards and payment delinquencies are identified through manual inspection of cards. Notices are addressed by hand. Case files or other manual records routinely are retrieved to process transactions at the public counter. For many functions, the computer records are used only as an index to determine the most likely location of the case file based on current case status. In short, the computer system serves as a record of secondary importance to the business of the court even though it contains much of the information for which the paper record is checked.

There probably are valid reasons why the dual manual and automated systems have persisted and the manual systems dominate. One of the primary causes is the failure of the automated system to provide the court with all of the same functions that are being performed manually. Other reasons relate to the system's lack of ease of use, adaptability, and reliability. These causes are addressed in some of the recommendations that follow. Even if these problems are corrected, however, there must be a conscious commitment to discontinue reliance on manual records and to use the computer as the prime source of information. Until this happens, the full potential of the computer will not be realized.

This is not to suggest elimination of file folders and hard-copy legal records.¹ It does suggest, however, eliminating much of the handling of these files and the use of these files to store data better stored and retrieved in the computerized record. It also suggests the elimination of most manual records auxiliary to the case folder, such as payment cards, payment ledgers, and court calendars.

Recommendation No. 19

A thorough analysis of manual recordkeeping and information retrieval systems should accompany the systems design phase for the new INSLAW software.

It would be a mistake to think of the INSLAW systems as simply a replacement for the current computer software. The new systems should provide faster ways of getting information and handling the workflow. To accomplish this, all current practices should be challenged.

The INSLAW installation methodology provides for a design phase during which existing office operations are reviewed in detail. It is during this time that the computer records will be designed and the necessary reports, forms,

¹ The virtual elimination of hard-copy records is a goal in many courts, but it is premature to expect abandonment of the hard copy in Tucson at this point, even though study of the use of microfilm processing is urged in Chapter IV.

and screens will be identified.² It will be important that key court personnel are thoroughly involved in this process and are able to assist INSLAW in identifying the procedures which can be replaced or streamlined by a more comprehensive computer system.

Recommendation No. 20

At least one key person, someone familiar with most aspects of the court's information flow, should be assigned to monitor the computer system development project.

Although the court has just hired a computer systems analyst, it will probably be some time before this person becomes sufficiently familiar with court operations to effectively fill this role. The current office supervisor would be ideal for this task, assuming that she temporarily could be relieved of day-to-day supervisory responsibilities and could afford the time to devote to the task.

It is recognized that the office operates under a heavy workload and that removing any key person will be disruptive. The long-term benefits should offset this short-term disadvantage, however. Indeed, the advantages and needs are sufficiently great that the city should consider temporary hires to do some of the key person's work if that is what is needed to assure the availability of the key person.

² In its proposal the National Center indicated it would examine the need for redesign of the court's forms. This was not done for two reasons: 1) the INSLAW review; and 2) a choice by the project team to emphasize major system needs more than specific operational changes. The National Center's experience in other courts suggests that forms redesign would be a very useful future agenda item for the court. It may already be part of the court's plans.

Recommendation No. 21

The data entry and query process must be made quicker and easier.

The current systems are inflexible and often cumbersome to use, making it difficult and sometimes impossible for the court staff to record the proper information. In tailoring the new screens, the court will have an opportunity to correct this problem. Screens should be designed to integrate with the normal flow of information, with data elements grouped in such a way that screen-to-screen manipulation is minimized. Clerks should not have to enter and exit two different systems to schedule a case. Free-text comments should be possible so the computer record can be used more like a hard-copy record. Menu screens are good for new users but often get in the way of experienced users and slow data entry. Ways should be provided to traverse across different query and update screens without returning to menu screens after every operation. Confirmation messages are essential so that clerks do not have to waste time checking that a requested action actually took place.

The interactive dialogue with the computer via the terminal screen is a critical element of on-line systems and one that is often neglected. This is because it generally requires more complicated programming to make data entry quick and easy. Nevertheless, it is worth the extra effort and the court should insist on screen dialogues that are tailored for its operators' convenience.

Recommendation No. 22

Terminals should be located in each courtroom and data entry of in-court-generated information should be accomplished as it occurs.

Putting terminals in the courtrooms should accomplish two objectives. First, as data entry stations for recording all courtroom actions, they will insure the currency of the computer records and help to prevent data entry backlogs. Second, they will allow the court to move away from depending solely on the information in the case file, since the computerized record will be accessible in the courtroom. The court was planning to test this approach when the project team was in Tucson.

Small, inexpensive "slave" printers should accompany each terminal so that case summaries can be printed easily for the judge and notices or other documents provided for defendants. Slave printers are printers that work directly from a terminal and are not connected to the computer.

Much of the current data entry backlog is caused by courtroom-generated entries that require specialized knowledge of case processing and how that processing is reflected in the computer record. This is often a slow, interpretive process for the data entry clerks. The job of entering these data should be given to personnel familiar with the judges' style and who know court procedures. This should not be viewed as a data entry task but as an important record-keeping task, since the information thus recorded should be the primary source of data regarding court proceedings.

During the project team's site visit in September the plan being discussed was to use data entry clerks for the courtroom data entry task, possibly using one clerk to cover two courtrooms. The court's present staff reorganization proposal assigns the task to a data entry team that will be within the case management section. The National Center's project team thought the task might be assigned to the courtroom bailiffs, but the court believes the bailiffs have too many courtroom and other duties to expect them to make contemporaneous entries of data into the terminals. The National Center was provided with an extensive listing of tasks performed by bailiffs to support this position.

The issue remains clouded for the National Center. Splitting one data entry clerk between two courtrooms that are operating at the same time or on schedules that overlap seems doomed to produce unavoidable conflicts that either will slow work in one courtroom or cause the terminal entries in one courtroom to be made after the fact from manual notes, as is now the case. It is not clear from the reorganization proposal provided to the National Center if this use of clerks in the case management teams still is contemplated. Nor does the extensive listing of tasks performed by bailiffs resolve the issue for the National Center. Some of the tasks performed appear to be tasks others might do.³ Some

³ For example, preparation of driving abstracts, instructing defendants on procedures for obtaining working permit driver's license, making photocopies of court orders, posting the daily calendar around the courthouse, preparing a fine time-payment booklet, and mailing court notices.

tasks would be replaced by the contemporaneous courtroom data entry.⁴ Some might become unnecessary as the court's workflow improves.⁵ The project team is not in a position to challenge the court's perception that at this point the bailiffs cannot do courtroom data entry, but urges the court to reexamine the bailiffs' responsibilities and allocation of tasks to assure that members of the case management team should be the ones making courtroom data entries.

Recommendation No. 23

The court should postpone consideration of procuring and operating its own computer hardware until after it has had at least a year's experience with the new software.

The court has complained of frequent downtime and slow response time using the city's mainframe computer. The final solution to this may have to be the procurement of dedicated hardware to support the court systems. But for now consideration of this action should be postponed. Currently, most of the problems with the computer system relate to software and system usage rather than hardware performance. It did not appear to the project team that response time or downtime were excessive for a large multi-user mainframe; with the city's pending upgrade to a larger model the service may improve. A dedicated minicomputer would certainly provide better performance, but there are many

⁴ For example, preparing minute entries, entering case dispositions on the calendar, preparing notices, checking with others for available trial dates, and hand-carrying files to front counter for immediate payment of fine.

⁵ For example, handwriting or typing entry regarding fingerprints on the FBI disposition form.

software and usage problems that should be worked out before this is undertaken.

This is not to say that court-dedicated hardware is not necessary or not a good idea. For effective integration of computerized recordkeeping, the system must be highly reliable and provide information quickly. If it cannot, then the computer record cannot become primary and the problems discussed previously will persist. Reliance on computerized records in the courtroom and at the public counter will require a high degree of reliability or the systems will fail. Therefore, if the city's computer cannot provide this kind of reliability, the court should seek to procure its own hardware. The time to evaluate this need should be after the new systems are in operation for a reasonable period of time, however.

The goal of computerization should be increased productivity of the court staff, which in turn leads to better service to the public. So long as the computer system remains a secondary source of information for most purposes, however, it will not significantly affect productivity. The installation of new software affords the court an excellent opportunity to restructure the office workflow, moving from dependence on hard-copy sources to reliance on computerized records.

VI. CITIZENS' NEEDS

A. Front Counter and Lobby Area

The lobby and front counter area is congested and noisy.

There are at least three problems in this area: the location of the motions desk in the lobby; the difficulty citizens have obtaining information; and the length of the lines at the front counter. The first problem was addressed in the previous chapter on space management. The other two problems are addressed below.

Recommendation No. 24

The front counter and lobby area should be improved through better use of informative and directional signs, one line reserved for those who wish only to pay a fine, and a single line for all others needing front counter assistance.

There usually are three windows open at the front counter, one for removing license suspensions and handling other special problems and two for all others, divided according to the first initial of a person's name, A-L and M-Z. Paying a fine requires 2-3 minutes but checking in for arraignment can take substantially longer. First, the computer record is checked for the present and all other outstanding traffic violations and then the hard-copy case record or records are located and set aside for court. During one unscientific effort to clock counter time, project staff observed some people at a counter window for 7-15 minutes. This counter time did not include any time waiting to get to the window. The two lines seldom were similar in length.

Those paying fines should not be held up unduly by those requiring substantially more time for service. A "Pay Fines Only"

window would get these people in and out more rapidly. This would reduce the frustration level from waiting in line and provide better service.

One line for all others rather than two will not reduce the time needed at the window (greater reliance on the computer and improvements in file management are more critical for reducing window time), but it will even out the wait for all and avoid several people being held up behind one person who needs extra time at the window because a file cannot be located or because he or she has a particularly complex matter. Banks, post offices, and others serving many people who must line up have demonstrated the value of a single line with next-available-window service.

The project team observed people waiting in the wrong lines; one person was discovered to be in the wrong court. Many people seek help at the motions counter. Although the court usually has a volunteer available to respond to the public's inquiries, it is not clear to people in the lobby that someone is there to answer questions. This confusion results from the absence of signs or signs not readily visible. It can be reduced significantly by the use of signs clearly directing people to the appropriate area.

B. Telephones

A tape-recorded message has been installed on one of the telephone lines in the clerk's office in order to reduce the number of calls the clerks must handle. The phones remain a problem, however. They ring many times before they are answered. No one person seems to be responsible for answering the telephones. The constant ringing of the phones is disruptive and irritating to everyone in the office.

Recommendation No. 25

One person should be assigned to answer the telephones and the recorded message should be simplified.

The records section is responsible for answering the telephones but a large percentage of the employees in this section are new. These new clerks should not be assigned to answer the phones until they understand the court's operations. The phones should be assigned to staff qualified to answer all the most common inquiries and capable of answering most of the unusual ones or knowing who to ask for assistance.

A project team member listened to the prerecorded message during the study. The message is delivered very rapidly and covers many subjects. Thus, it is relatively long and somewhat difficult to follow.

The topics included in the message should be identified at the beginning of the tape. Then the caller will have some idea about when his or her question(s) will be addressed. Announcing the topic to follow before its discussion would alert the listener to focus in on what follows if that is his or her area of concern. Brief pauses after each section would allow the listener to digest the information and make a note of the necessary information. In order for the court to receive the full benefits of a recorded message system, the message must be easy to understand. The message should conclude with information on what to do if the caller's question has not been addressed, such as call another number or wait on the line until a clerk answers the telephone.

Since the project team's visit in September the court has developed plans to address the matters discussed in this section.

VII. SPACE MANAGEMENT

A. Introduction

The amount of space, the suitability of available space, and the way space is used are critical elements to successful court operations.¹ For example, a shortage of space may contribute to an inefficient records system, making it both time-consuming and burdensome to access case records. Likewise, an inefficient use of space, such as inconveniently located work stations, may slow the flow of paper through the clerk's office, and result in work backlog. In addition to negatively affecting the efficiency of court operations, space problems are costly to courts. The added time necessary to retrieve information from a case file means additional personnel time. Crowded work conditions lead to distractions and deny staff any sense of privacy. The misuse of space or severely constricted space also distorts the public's view of the administration of justice. The appearance of congestion and inefficiency in the clerk's area may distort the public's view of how justice is administered.

The purpose of this chapter is to review generally the amount of space and the use of space for clerical functions. Although the project team was advised that courtroom space is inadequate, this chapter does not assess that part of the building which houses the courtrooms and judicial chambers.

¹ In addition to the amount and use of space, an important issue in space management is court security. The current building configuration may contribute to security problems because of crowded conditions in the clerical and courtroom lobby areas.

It is limited to the front portion used by clerical and administrative staff and the effect of this area on clerical operations. The review is based on interviews with court personnel and observations.

B. Amount and Use of Space

The amount of space in the Tucson City Court clerk's office appears to be insufficient. In 1979-1980 the court had 31 total nonjudicial positions. In 1983-1984, it had 52.5 such positions, an increase of 21.5 people (69%) in 5 years.

Recommendation No. 26

The city should investigate either expanding the current facility or purchasing or constructing a larger facility to house the court. In the meantime, the court should improve its current use of space in accordance with the proposals of the city architect.

Because of the substantial increases in staff and changes in caseload, the current facility is simply not large enough to promote efficient operation of the court. Not only is additional storage space necessary for active and inactive files, but clerical staff members need adequate working space. Excluding the areas that are used to house files, the square footage per work area in the clerk's office is 67.5 square feet. This is less than half the area suggested for work space by the city's architect.²

In addition to the lack of space, the space that is available in the clerk's office is not used as efficiently as it could be. Reorganizing the use of existing space to maximize efficiency not

² See memorandum from Ann Bowen to Joel D. Valdez regarding space requirements for City Court, October 26, 1983, p. 5.

only may result in more appropriate use of existing space, but also may expedite the flow of paperwork from one desk to another.

Following the project team's visit in September the city architect assessed the existing space within the clerk's office and has proposed rearrangements that would improve the court's use of its space and some of the workflow. The general outlines of the city architect's proposals have been shown briefly to one member of the project team. They are consistent with the project team's perceptions of necessary changes.

1. The motions counter should be moved out of the front lobby area. The counter often is mistaken for an information booth and the personnel assigned to the counter are interrupted constantly by unrelated inquiries. In addition, the public lobby area is congested and noisy; it is an inappropriate area for personal, and often sensitive, dialogue between petitioners seeking relief in domestic violence or harrassment cases and a judge.

2. The employee lounge area should be moved out of the records section. In addition to consuming valuable space within this department, it is not a desirable location for employees to take their breaks. In fact it may even have a negative impact on employee morale. Ideally, the staff should have a lounge area that is separate from their work areas.

3. The appeals clerk desk should be isolated from the general clerical working area. This clerk, who prepares case records for the superior court following an appeal and who also types transcripts from courtroom audio tapes, presently is located in the data entry section outside the supervisor's office.

Consequently, there is a lot of foot traffic near this desk and it has no protection from general office noise, which compounds the already difficult task of transcribing audio tapes. Additionally, the functions assigned to this desk are not part of the general workflow.

Another modification that may enhance the overall environment of the office is the use of sound-deadening modular dividers. Many of the tasks in the clerk's office require high levels of concentration. The lack of privacy at each desk hinders concentration and probably contributes significantly to the inability of clerks to complete their assigned tasks.

VIII. NIGHT COURT

The term "night court" can have several meanings. Its simplest definition is any hours after normal closing hours during which a court remains open for court appearances or the payment of fines.

The greatest appeal for establishing a night court is to offer increased convenience for working citizens. An opportunity is provided for citizens to appear in court without having to take hours off from work. This saves the business community considerable money and provides a very useful service to citizens. A night court also may spread a court's workload over more hours. Moving some counter transactions and some hearings to evening hours eases the workload crush during normal court hours. Night courts also can alleviate problems associated with an insufficient number of courtrooms. Night courts have been instituted in some jurisdictions, in addition, to reduce the overtime hours of police officers who must appear in court: The court is open during two shifts rather than just one shift of the police department. In the Tucson City Court a night court might enhance collection of stayed fines from citizens unable or unwilling to leave work to pay a fine.

Opinion about a night court in Tucson, discerned during interviews, is divided but generally favorable. Most interviewees believe a night court should at least be tested if procedures and scope are well defined and cost is not prohibitive.

A number of other jurisdictions have established night courts, but many limit proceeding to arraignments and bail settings or to

civil small claims hearings that do not involve lawyers. Some of the proposals in Tucson are broader, including civil traffic trials and petitions for protective orders against domestic violence and harrassment. The Tucson City Court could not include small claims hearings, as they are not within the court's jurisdiction. Information available to the National Center about experience in other cities is not sufficient to compare Tucson's proposals to experiences in other cities. Thus, an initially limited experiment that can be expanded as conditions warrant might be useful to help Tucson assess the merits of a night court.

Recommendation No. 27

The court should establish a night court on an experimental basis for six months. Only matters that can be handled by clerical staff at the front counter should be part of the six-month experiment. The night court should operate from 5:30 p.m. to 8:00 p.m., Monday through Thursday. If the pilot project proves successful, night court should be expanded to add selected courtroom proceedings on Monday and Thursday evenings.

A. Scope of Matters in Night Court

In theory any matters heard during regular court hours (8:00 a.m. - 5:00 p.m.) could be heard in night court. Until the demand for service at night is established, the smallest adjustment and advance planning would be required if the night court's operation in Tucson were limited to clerically processed matters such as fine payments and removal of license suspensions and providing information.

One reason initially to limit the matters handled by night court is the need for time to plan for the best use of magistrates and hearing officers. The belief was expressed by several in the court that the bar would not support a night court if it included

calendars on which attorneys must appear. The National Center was not able to check that perception; if true, court proceedings requiring lawyers should not be scheduled for night court. More critically, there is need for further study of the impact of a night court on calendars presently heard during the day. It was reported during interviews that magistrates now have trouble scheduling and concluding some of their daytime calendars. One of the most obvious adjustments if a magistrate were to be available at night would be to allow that magistrate to start his or her day later than usual to compensate for the hours spent after 5:00 p.m. If a magistrate were to stay until 7:30 at night, he or she should start work that day at 10:30 a.m. If that were the case, however, the magistrate effectively would be unavailable for all of the morning calendars, some of which are very busy. Nor is it clear that the matters now heard during the morning could be transferred readily to evening hours. For example, arraignments for those in jail might pose a problem for jail personnel as well as court personnel. And attorneys are involved in arraignments. Other morning calendars involving attorney appearances also would be hard to shift. Further study is required to identify calendars that could be accommodated at night and to plan for the shift.

Further, there is a question as to how much a night court will be used. It is reported that in one previous experiment with a night court in Tucson the court was overwhelmed by the number of people who wanted to use it. It also is reported, however, that almost all central downtown Tucson businesses and government offices close at night. Even the downtown restaurants that remain open close earlier than restaurants outside the downtown area.

The court and city should have an indication of current demand before committing substantial resources to the experiment. If initial night court activities are limited to those that clerks alone can handle, a measure of demand will be obtained. This measure will not establish the demand for courtroom activities, but the absence of interest can be documented with a limited experiment. Until the level of use is better known, it seems prudent to limit the scope of activities.

B. Days and Hours

Evening hours Monday through Thursday are recommended because the present second shift of clerical staff works beyond 5:00 p.m. on Monday through Thursday; on Friday all staff work during the court's regular 8:00 - 5:00 hours. A Monday-through-Thursday schedule also eliminates having to plan for the handling of cash between Friday night and Monday morning. Beginning at 5:30 p.m. will allow for three factors: 1) those scheduled to end work at 5:00 p.m. will have time to finish last-minute tasks and vacate the building; 2) those citizens being served at 5:00 p.m. can finish their business and leave before night court starts; and 3) with staggered lunch breaks, the staff who start at 1:00 p.m. can get an early lunch hour before night court starts or be covered during a later lunch break by someone who ate early. Ending night court at 8:00 p.m. is recommended to allow staff time to conclude the work associated with the night court operation before ending their work day at 10:00 p.m. Further, since only a few people now seem to feel comfortable in the downtown area at night, it might be best not to extend night court too far into the dark evening hours.

C. Staff Needed

Eight and one-half full-time equivalents presently work the night shift: Three data-entry personnel, one cashier who enters payments received by mail, and 4.5 full-time equivalents in the records section. These people enter new citations into the computer, enter the payment of citations, set trial dates, review error reports from data processing and the Motor Vehicles Department, refile file folders, locate files for the next day's calendars, attempt to update docket sheets for cases coming out of court at the end of the day, and attempt to locate lost file folders. The night shift presently is used to train records section staff because the interruptions of the day shift are not present. In part because of the volume of work assigned to the night shift and in part because new staff are assigned to the night shift to provide greater opportunities for training, night-shift staff presently are occupied with all assigned tasks. During the six-month pilot of a night court, one cashier position to handle the front counter should be added to the night shift.

The number of people who appear at the front counter daily varies widely. Between February and August 1984, as few as 201 people appeared one day and as many as 1,605 appeared another.¹ The number of people appearing for service at the front counter usually is between 300 and 400 (30% of the time), but because of very high numbers of people some days, the average number is 515.

¹ These data come from a weekly report supplied to the National Center by court staff.

At this point the number of people who would shift from a day to a night appearance or who would appear at night court but are not appearing at all during the day, is unknown. It also is unknown how many of those appearing during the day are there only to pay a fine or seek information. (Many are there for a court appearance.) If 10 percent of those appearing during the day would use a night court, on a typical night between 30-60 would appear (56% of the time between 300 and 600 people a day appear). If as much as 20 percent of the day appearances shifted to night appearances, however, the typical night court numbers would increase to 60-120 but could go as high as 200 at least once every two weeks.²

Paying a fine usually requires about two minutes at the counter so one cashier should be able to handle 30 to 60 people without difficulty in the 150 minutes between 5:30 and 8:00. That same person would be hard-pressed to serve 120 people and could not serve 200 between 5:30 and 8:00. If fewer than 70 people appeared during night court, any free time of the cashier could be spent assisting the cashier presently assigned to the night shift to enter fine payments or assist the data entry clerks to enter new complaints into the computer. (The cashier now on the night shift could relieve the night court cashier temporarily if that were necessary.) If night court traffic regularly exceeded 75 people, a second cashier position would be needed.

² On 10% of the days between February and August more than 1,000 people came to the court's lobby.

If the six-month pilot proves successful and courtroom hearings were added to night court, a hearing officer can hear civil traffic arraignments and trials. Hearing officers are compensated on a half-day basis; night court could be deemed a full half-day. If only civil traffic matters were added to night court, a magistrate would not need to be in attendance and attorneys would not be needed. If arraignments for mandatory-appearance cases or petitions for protective orders against domestic violence or harassment were added to night court proceedings, a magistrate would be needed in addition to a hearing officer.

D. Costs

The cost of a six-month pilot project is relatively limited. A clerk-typist II earning in the middle of the range for that classification receives about \$1,073 per month plus \$215 for fringe benefits for a total of \$1,288.³ Over the six-month experiment, therefore, the additional clerk to service the night court would cost \$7,726. (See Table 3.) This position probably needs to be a new position, although perhaps one person could be shifted from the day to the night shift without adding a position. It is probable that a new position would be needed because the day shift presently uses only three front counter windows; even if some of the daytime workload shifts to the night court, those appearing at the court during the day could not be

³ The National Center used a 20% fringe rate for this calculation.

served by only two windows. At present staffing levels it is improbable that one person could shift from the day to the night shift and the court continue to be able to staff three counter positions during the day.

There should be no additional utility costs, as the building presently is being used until 10:00 p.m. The court might want to add one security officer to provide security and to staff an information desk. If this position were compensated at the same level as a bailiff, this would add \$8,957 to the cost of the pilot project.⁴ Finally, people who pay at night court on the last day they can pay their fine should not have to worry about a warrant being issued. If the new computer software is designed to issue warrants the day after a fine is due, the programming might need to be checked to assure that payments credited between 5:30 and 8:00 p.m. will preclude the issuance of a warrant.

If night court expands to include courtroom proceedings that involve both a hearing officer and a magistrate, the judicial officers will cost \$123 a day (\$63 for the magistrate based on \$200 per-day salary cost for 8-hour days and \$60 for the hearing officer). A bailiff would need to be added to the night staff at an approximate cost of \$2,328 (based on annual salary and fringe benefits for 2.5 hours on 104 days). Since the bailiff would be required only two nights a week, it might be possible to limit this cost by paying overtime or using the bailiff assigned to the

⁴ Assuming a mid-range bailiff costs \$1,244 per month per month for salary plus \$249 for fringe benefits.

magistrate who starts work at 10:30 a.m., so the bailiff would not work any additional hours. With courtroom activity, a night court might also require a data entry clerk to be in the courtroom, which would cost on an annual basis approximately \$2,200 (using the same 2.5 hours-per-day for 104 days). Again, the staff might be able to work flex hours on the two days a week that night court has courtroom hearings, but if this flex time is not possible then the extra staff support would require additional outlays.

TABLE 3

Estimated Costs of Night Court*

<u>Staff</u>	<u>Six-Month Pilot Project**</u>	<u>Annual Full Operation with Magistrate and Hearing Officer**</u>
Clerk-Typist II	\$ 7,726	\$15,451
Security Officer	\$ 8,957	\$17,914
Utilities	- 0 -	- 0 -
Magistrate		\$ 6,552
Hearing Officer		\$ 6,240
Bailiff		\$ 2,328
Court Clerk II		\$ 2,210
TOTAL	<u>\$16,683</u>	<u>\$50,695</u>

*Based on present salary costs. Flex time or the payment of overtime might reduce the city's cash expenses for a night court.

**Salary for mid-range employee plus 20% fringe benefit rate.

It is because of the possible extra cost associated with courtroom sessions at night, plus the need for more planning than the National Center could undertake for this project, that the city would be well advised to test the demand for this service and its real costs before incurring further expense.

E. Satellite (Branch Court) Locations

The National Center was asked also to comment on whether a night court plan should include satellite or branch locations. The purpose of branch court locations is to bring the court closer to scattered population centers, thereby reducing travel time and cost and increasing convenience for citizens.

The Tucson City Court presently operates in one location. The National Center is not aware of any plans to establish branch offices of the court for daytime operation. If a night court operated in satellite locations, staff would have to move to those locations, as would magistrates or hearing officers if courtroom hearings were part of night court. National Center staff were advised that there are hearing rooms in the city's regionalized office locations that are appropriate for courtroom hearings of a night court, but personal inspection of these facilities was not possible during available time on site. Existing city office space might be appropriate for clerical operations in satellite locations, but, again, time did not permit examination of the available locations.

Two approaches to satellite operations seem most likely: 1) a weekly schedule for the court with each location operating simultaneously or 2) a rotating schedule in which staff would appear at each branch location on an assigned evening, which could

be each week at one or two locations and once every two or three weeks at another location. Each option has different staffing implications.

If there are two, three, or more night court locations regularly staffed, each location would need at least one cashier and a security officer plus a remote terminal to the computer and a cash drawer or cash register. (The National Center assumes at this point that needed furniture would not have to be purchased.) On an annual basis, the \$16,683 cost of the six-month pilot project would expand to \$33,366 on an annual-cost basis for each location. Because of the need to cover staff absences due to illness or vacations, at least one "floater" clerical and security position would be needed. Thus, the minimum cost of the first option for branch operations is about \$66,000 for staff plus the cost of a terminal and lines to the main computer.

Option two would be less expensive. The same staff could serve several locations each week, perhaps two nights downtown, one night in a second location, and one night in a third location per week. There still would need to be a CRT and transmission lines at each location, however. Back-up staffing would be needed, but probably not at the level needed for the first option. Minimum cost to start this option would be \$33,600 a year for staff plus the cost of back-up personnel and the necessary equipment.

The uncertainty regarding the level of use of a night court is critical in assessing the desirability of establishing branch night court operations. If there is significant demand, the desire to improve service to the public might justify the cost of

either option. But just as it seems premature to start courtroom proceedings as part of a night court, so, too, does it seem premature to establish satellite operations at this time.

Recommendation No. 28

The need for and advisability of branch night court operations should be assessed again at the end of the pilot project. Branch operations should not be part of the pilot project.

In many jurisdictions night courts function to relieve jail overcrowding problems. But they also can serve the citizens of a community and may assist a court to handle its workload. The Tucson City Court should attempt to provide the additional service to its citizens but should do so in a phased approach that will test demand, document costs, and allow time to plan adjustments in both day and night operations to make the process work smoothly. If the 6-month experiment proves successful, night court can be expanded; if not, the data to document the costs and problems will be available to support a decision to discontinue the experiment.

IX. OTHER MATTERS REQUIRING ATTENTION

The National Center's proposal indicated the project team would examine caseflow, interface between the court and other agencies, and fines collection. The first two of these are addressed in this chapter. The collection of fines has been a problem for the court for several years, but it is attempting to correct those problems and to become more effective in collecting fines. The National Center believes that this effort will succeed if the organization-building steps discussed in this report are implemented. Therefore, rather than address specific approaches to collecting fines, in this chapter the National Center raises for the judges' consideration some questions about the court's extensive use of stays.

A. Calendar Management

The observations concerning calendar management that follow are general since insufficient time was available for detailed analysis. Nevertheless, some comments and suggestions are possible regarding case scheduling, its implications for court control of dockets, and its impact on the clerk's office.

The court continuously reviews the effectiveness of its scheduling and caseflow management. At the time of this study, for example, the judges were examining a proposal to rotate judges out of the master calendar periodically to allow them to handle matters assigned to them individually. Whether this or any modification will be beneficial depends on the extent to which certain other elements are built in. These elements are now generally accepted by judicial administrators as necessary

components of a sound caseflow management system. They are briefed here for the court's information.¹

1. The court must be committed to the philosophy that it is the responsibility of the court to control case progress.
2. Systems and procedures for doing so should be developed through an open exchange of ideas and viewpoints among all justice agencies in meetings convened by the court.
3. Continuances should be limited strictly and the numbers and reasons for them monitored statistically.
4. The progress of all cases should be controlled by the court through the use of deadlines and monitoring; all cases should have future dates set within the shortest possible time frame.
5. The court should set operating standards and goals to guide planning and operation.

Overall, it was the project team's impression that the bench is hardworking. During the week when all five of the project team were on site it was not unusual to find all or nearly all of the judges holding trials until, or after, 5:00 p.m. This is not common in many courts. Thus, the impression is one of judges with a sense of responsibility and a willingness to exert considerable effort to dispose of the caseload. Nevertheless, available statistical data, sparse and inaccurate as it may be, tend to indicate that the court is, at best, staying even and, in all likelihood, is falling behind. Judges reported delays of a year or more from filing to jury trial in cases involving DUI charges. That is an undesirable -- some might say unacceptable -- delay in a court of limited jurisdiction.

¹ M. Solomon, Caseflow Management in the Trial Courts, (American Bar Association, Chicago, IL, 1972); E. Friesen et al., Arrest to Trial in Forty-five Days, (Whittier Law School, Los Angeles, CA., 1979).

Recommendation No. 29

The court should expand its use of deadlines and case-progress monitoring to minimize delays attributable to attorney control of the docket.

Without question, some of the delay and expanding backlog have been caused by legislation and Arizona Supreme Court rulings. It is not clear that the court has done all it can to avoid delay by exercising control over case progress, however. It is the conviction of growing segments of the judicial and court administration communities that a necessary component of effective calendar management is the first item listed above, court supervision of case progress from filing to disposition. The court, which is accountable to the public for economical as well as expeditious case processing, can only achieve these ends when it, not the bar and not the prosecutor, controls scheduling and minimizes continuances and other delays.

On the positive side, the court has adopted a "fast track" system. Under the fast track approach, for cases which, nominally, are not going to enter a guilty plea, deadlines are set (particularly for motions and discovery) and compliance with these deadlines is monitored. Deadlines and monitoring have been demonstrated repeatedly to speed dispositions. This is an approach to case management, adopted in many courts of general jurisdiction within the past five years, that facilitates court control. There is very limited application of this approach in courts of limited jurisdiction; it is commendable that the Tucson City Court is adopting such an approach. A sample of cases calendared for pretrial conference during the first two weeks of September revealed that about 12% of the cases were placed on the fast track.

Recommendation No. 30

The court should monitor more closely the outcome of its scheduling system, through appropriate data collection and analysis, including the number of and reasons for continuances.

To get a general "snapshot" of docket management the National Center requested a small sample of pretrial and trial calendars for the first two weeks in September. This type of statistical tabulation of the outcome of the scheduling process should be instituted by the court on a permanent basis for continuing self-analysis. Table 4 shows what happened in the pretrial sample:

TABLE 4

Disposition of Cases on Pretrial Conference Calendars
in First Two Weeks of September 1984

	Number	Percent
Set for trial (jury or bench)	40	7%
Placed on "fast track"	68	12
Set for further hearings	74	13
Disposed of	105	19
Warrants issued	80	15
Continued	170	31
Other	<u>13</u>	<u>2</u>
Total	550	100%*

*Does not equal 100% because of rounding.

It is alarming that almost one-third (31%) of the cases set for pretrial conference are continued to a future date. An additional 13 percent of cases scheduled for pretrial conference were set for a further hearing, presumably another pretrial conference or a motions hearing. These statistics, maintained regularly, can show where problems are occurring. Further analysis will show what the problems are. If, for example, delay in receipt of police reports is shown to be the cause of high continuances, then steps can be taken to work through the problem with the police department.

Information obtained in the interviews indicates that many continuances are by stipulation. Thus attorneys, rather than the court, may be controlling case progress in a significant proportion of the cases. In spite of deadlines and monitoring, when continuances are easily obtained, control passes to the bar.

Aside from their implications concerning court control, continuances impose a substantial workload on the clerk's office. The work involved in continuing and subsequently recalendaring a case is about the same as processing a new case. Thus, a case continued three times affects the clerk's office like three new filings. In a clerk's office that is struggling to process the existing workload, continuances impose a significant additional burden.

Finally, an appropriate area for study is one raised by a judge during interviews: whether jury trials should be master-calendared in a single courtroom rather than preassigning them among various courtrooms on any given day. While the project team reached no conclusions on this question, it deserves further

attention. Presently, a full courtroom staff, including prosecutor and defender, is required in each courtroom in which a case is scheduled for trial. If these could be concentrated in one courtroom for the purpose of determining finally if a trial in fact is needed, the staff requirements might be reduced. Further, judge utilization might be enhanced because the fall-out rate indicates that only a small percentage of cases actually scheduled will, in fact, go to trial; if trials were master-calendared in one courtroom, the use of that one judge would be enhanced and overall judicial downtime would be minimized. Since this type of change would affect the prosecutor's office, it is recommended that the court administrator consult that office fully to explore ways to increase calendaring efficiency.

B. Interagency Communications and Relationships

The term "interagency" in this context does not refer to the city council or other executive-branch agencies of city government, but to the Tucson Police Department, the Pima County Sheriff's Office, which operates the jail, and the City Attorney.

As might be expected in a system as complex and disparate as the criminal justice system, each agency has matters it can cite involving another that create difficulties for it. Some of these problems are related to the backlog and paperwork problems at the court. Since the National Center anticipates that the paperwork problems will be resolved in time, little will be served by listing other agencies' concerns tied to paperwork problems at this point.

Recommendation No. 31

A coordinating committee of senior representatives of the court, police department, the sheriff's office, the city attorney, and the contract defense attorneys should be established. This group should meet regularly to address shared problems and to consider the impact of proposed changes within one agency on other agencies' workload and procedures.

It was reported that on several occasions the court has met with other agencies to improve relationships. Further, staff of the court and Prisoner Services have exchanged positions to improve communication. All of these efforts are commendable and each should reduce misunderstanding, but none has the features anticipated with the proposed coordinating committee.

Several problems were mentioned during the project team's visits to the other justice-system agencies that might be addressed by a coordinating committee. For example, the Tucson Police Department used to prepare arraignment dockets for the video arraignments of those unable to obtain release from jail prior to arraignment. This task now is performed by the Sheriff's Department jail personnel. That agency questions the need for the dockets, since the information is available on the arrest information sheet. The jail also is affected by incomplete or inaccurate entries regarding the disposition of prisoners and the disposition of charges. The court says these errors are generated by jail personnel; jail personnel think otherwise. Appropriate responses to these concerns might be readily available, but there appears to be a need for further communication on these issues.

Similarly, the Tucson Police Department has a problem transporting prisoners to the courthouse for trial and other required appearances and guarding prisoners upon arrival. The

police department does not have a group of officers assigned just to transport prisoners, so occasionally officers have to be removed from the street to move a prisoner from the jail to the courthouse. Sometimes, the police claim, there is little advance notice that a prisoner will be needed, so the police department is unable to plan and transport several prisoners at once. The police department apparently would like the sheriff's department to transport prisoners. But this might affect the very low per-day fee the county charges the city for housing its prisoners. Again, regular communication may lead to improvements in the scheduling of prisoner appearances, a better understanding within the police department of all factors affecting prisoner transportation, or the establishment of a prisoner transportation unit. Whatever specific solution emerges, the project team's interviews indicated this was an area that could be addressed profitably by a coordinating committee.

Both the court and the police department have problems involving officers' scheduling. On the officers' side, it is claimed that court appearances are scheduled during vacations or for days when the officers are not assigned to the day shift. On the court's side, it is claimed that the officers' schedules are not kept current and that even when the schedule is checked by court staff the officer may not be available. Problems of scheduling officers also affect the City Attorney's Office, which may have to dismiss matters because of the unavailability of a police officer. Dismissals also are required because of calendaring problems that cause cases to remain open past the speedy trial deadline. The new INSLAW software may do much to

alleviate these problems, but again they are cited as examples of the type of issues a coordinating committee could address.

A common element to these concerns is the absence of regular communication regarding areas of mutual interest among the court, police department, sheriff's department, and city attorney. Many jurisdictions have found that regular meetings of key personnel in these agencies are very useful in expanding understanding and reducing problems.

It is important that the coordinating committee meetings focus on matters that impact or might impact other agencies. Matters of purely internal administration should not be within the scope of concern of this committee. Obviously, some matters of internal management will impact other agencies; the committee members will have to make responsible judgments about the proper scope of their agendas.

It also is important that key supervisors be a part of and attend these meetings. If detailed knowledge is required that a particular supervisor does not possess, other members of the department or agency can be invited to attend the meeting, but the coordinating and problem-solving roles of the committee will not be served if attendance regularly is delegated to lower-level staff members. The items discussed and problems resolved during the meetings should be communicated to everyone involved, however.

C. Fines as a Sanction

In September 1976 the accounting firm of Ernst & Ernst reported that "total stays [deferred, single-payment fines and fines to be paid in installments] on file had been recorded in the

general ledger in amounts ranging from \$120,000 to \$140,000.¹

Five years later, it was reported that uncollected stay payments were in excess of \$600,000.² As of September 1984 the amount of fines that had been stayed and were overdue was over \$1,950,000; about half were deemed to be bad debts. The court indicates that a significant portion of the dollar increase is attributable to the increased size of fines imposed. Even if this is true, there appears to be a continuing and long-standing problem collecting deferred payments of fines.

Both the city and the court are well aware of the problem and are trying to address it.³ These efforts are commendable but the court's problems with stays may extend beyond dollar amounts due and deficiencies in management and monitoring of fine payments.⁴ The court also may have to consider the number of stays granted and the appropriateness of stays in most cases.

¹ Ernst & Ernst Report, p. 17.

² 1982 Operations Review.

³ The City Finance Department's service contract with a collection agency was expanded in early 1984 to include the collection of overdue court fines. Problems and differences between the court and the collection agency arose, however, so this extension of the contract now has been suspended. The court recently formulated a detailed plan with the director of the finance department for the closure of the oldest outstanding cases involving overdue fines.

⁴ The court has indicated that follow-up procedures for unpaid fines were established in 1983. The information available to the National Center suggests these procedures still may not be fully effective.

Ordinarily, the question of deferring or allowing installments of fine payments is a matter within judicial discretion. The National Center does not wish to limit the legitimate exercise of judicial discretion, but believes it may be appropriate for each judge to reevaluate the extent to which he or she chooses to exercise discretion.

It is easy to understand why judges exercise their discretion to allow deferral of a fine payment or installment payments. The size of fines has grown dramatically in recent years. In 1976 the typical DUI fine was \$45; today the fine and surcharges for a first DUI offense total \$372.50. The dramatic increase in the amount of fines and fees came about when governments, local and state, were looking for increased revenues because of the economic slowdown in the early 1980's. State legislatures also responded to public pressure to punish drunk drivers more by increasing fines. The slowing of public revenues occurred when the economy generally slowed down. People who formerly could have afforded a single payment of \$50 or \$100 now were facing substantially higher fines with, in some cases, lower income or higher living expenses.⁵ In response, some judges increased their deferral of fines and acceptance of installment payments. What might have started as an exceptional practice may have become routine.

The consequences of granting stays are several. First, many courts do not have good monitoring systems. Even when monitoring

⁵ A recent study indicates that between 1980 and 1983 real income decreased for the lower and lower-middle classes. Business Week, October 15, 1984, p. 14.

systems exist, as in Tucson, the follow through when a payment is missed may not be well managed. Second, if warrants for failure to pay are issued, local law enforcement agencies may feel deterring or solving crimes has a higher priority than serving warrants. Third, at least one jurisdiction that studied fine payments found that when probation officers were charged with collecting the payment of fines that were conditions of probation they collected 61 cents of each dollar of fine imposed, compared to 46 cents collected per dollar of fine imposed when there was no supervision.⁶ It appears that even with supervised collection, the collection of fines is not easy. Fourth, the use of stays creates significant administrative costs for a court even if it is able to provide the necessary monitoring and follow-up. The costs of monitoring and following up stays may significantly reduce a city's net revenue. Finally, if the period in which installments can be paid is too long or individual payments too small, the punishment aspect of a fine may be muted substantially. One can argue whether a traffic violation represents a "crime" and whether most of the people who come within the jurisdiction of city court are "criminals," but regardless, a legislative body (the city council or state legislature) has determined that a penalty should be imposed for violating a rule. Many regard traffic fines and

⁶ K. Lange, "Office of Traffic Safety Drinking Driver Program, Santa Clara County, A Final Evaluation Report" (Sept. 1982).

finer for misdemeanors as little more than a fee for using the highways; if the fine is deferred for too long a period or the individual payments are too small, the use-fee perspective of a fine is reinforced rather than the perspective of a fine as an expression of society's disapproval of the proscribed activity.

The National Center's Institute for Court Management and the Vera Institute have just completed a national survey of the use of fines as a sanction. One of the survey's findings is that many courts allow deferrals and installment payments but many also fail to monitor and manage this post-conviction phase of the judicial process. The project staff conclude that anything a court can do to obtain fine payments quickly should be done. These steps can include:

- insisting on at least a partial payment on the day a fine is imposed;
- one deferral for a short period of time (2 - 3 weeks rather than one month or more); and
- very rapid follow-up by telephone, card, or letter if a payment is late.⁷

To assist them in deciding whether to grant a stay the judges may wish to examine any financial disclosure statements completed by a defendant or to conduct a brief oral exam of a defendant or

⁷ S.T. Hillsman, J.L. Sichel, & B. Mahoney, Fines in Sentencing: A Study of the Use of the Fine as a Criminal Sanction (Executive Summary), pp. 20-25, 40-42 (to be published by the National Institute of Justice, 1985).

respondent in the courtroom.⁸ Courtroom questioning would extend the time required to complete a calendar, but could substantially reduce the clerical work required following court appearances and establish the court's interest in seeing that fines are paid.

As indicated, it is inappropriate to establish a firm rule or set of guidelines regarding the type of citizens for whom deferred or installment payments are appropriate; these decisions are best left to the informed judgment of judges. It is appropriate, however, for the judges to reevaluate their use of stays and to determine if the suggestions of the Institute for Court Management and the Vera Institute are appropriate in Tucson.

⁸ The judges could inquire about present monthly family (if married) take-home income; rent, food, utilities, and car payments; and total monthly credit card and other commercial installment payments. The latter could be deemed nonessential in determining a person's need for a stay, however.

APPENDIX A

**Present Organization and
Proposed Reorganization Charts
of the Tucson City Court**

	CHIEF MAGISTRATE	CITY MAGISTRATES	
135			135
134			134
133			133
132			132
131			131
130			130
129			129
128			128
127			127
126			126
125			125
124			124
123			123
122			122
121			121
120			120
119			119
118			118
117			117
116			116
115			115
114			114
113			113
112			112
111			111
110			110
109			109
108			108
107			107
106			106
105			105
104			104
103			103
102			102
101			101





APPENDIX B

Standards of Judicial Practice:

Caseflow Management

District Court Department of the

Trial Court of Massachusetts

5

DISTRICT COURT DEPARTMENT OF THE TRIAL COURT



STANDARDS OF JUDICIAL PRACTICE

CASEFLOW MANAGEMENT

Committee on Caseflow Management

Hon. Milton R. Silva (Fall River), Chairman
Hon. Robert L. Anderson (Wareham)
Attorney Clarissa Bronson, Cambridge-
Somerville Legal Services
Albert H. Burns, First Assistant Clerk (Cambridge)
George L. Cole, First Assistant Clerk (Lynn)
Anthony M. Colonna, Clerk-Magistrate (Framingham)
Hon. John P. Forte (Concord)
Hon. Albert L. Kramer (Quincy)
Hon. George A. White (Plymouth)

- - -

James A. Robbins, Administrative Attorney, 1974-78

June, 1980

Administrative Office of the District Court Department

District Court Department of the Trial Court

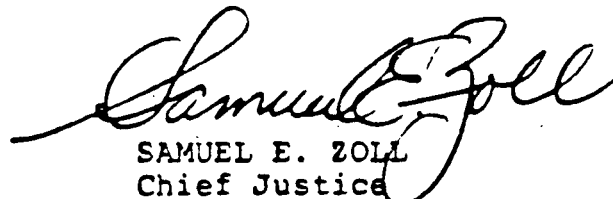
ADMINISTRATIVE REGULATION

No. 3-80

SUBJECT: PROMULGATION OF STANDARDS OF JUDICIAL PRACTICE,
CASEFLOW MANAGEMENT

Administrative Regulation No. 3-80 is hereby promulgated as follows, to be effective forthwith:

The provisions of the Standards of Judicial Practice applicable to Caseflow Management are promulgated herewith for use in the District Court Department.


SAMUEL E. ZOLL
Chief Justice
District Court Department
of the Trial Court

Promulgated: June 20, 1980

Note:

I am pleased to be able to promulgate herewith a comprehensive set of standards for caseflow management in the District Court Department. These standards represent the qualitative consensus reached by the Committee on Caseflow Management as to the various aspects of caseflow management dealt with. They represent a set of principles which should guide individual caseflow management practices in the District Courts. As such, each court should strive for compliance with the standards and should treat them as a statement of desirable practice which should be departed from only with good reason. I wish to commend the Committee for its dedication to the important goal of improved caseflow management and for the outstanding quality of its work-product in an area that is now of the greatest importance to the District Court Department.

Your special attention is directed to Standards 1:04, 5:00 and 6:00 covering time goals for the processing of cases. The

purpose of the goals is to assure the prompt and fair disposition of cases within our jurisdiction. They are designed as the maximum time period for processing cases and should assist Judges in making scheduling decisions. The sixty day (jury waived and ninety day (jury) time goals in criminal cases commence once a defendant is arrested, a citation is issued, or a show-cause hearing is held, whichever occurs first, or after receipt of an appeal in the jury court in the case of jury trials. The time period ceases at adjudication even though the defendant may still appear before the court for sentencing or probation reports. Decriminalized motor vehicle hearings by a Clerk-Magistrate do come within the sixty day time limit, and Clerk-Magistrates' hearings should be scheduled promptly enough to allow time for the entire case to be processed within that period. It probably will be necessary for the Clerk-Magistrate to collect management information concerning the flow of such cases in order to assure prompt disposition. Since the cases are not totally decriminalized, a trial by Judge may be necessary in certain cases and enough time should be allocated to allow for such trial during the sixty day period.

The time limit on civil cases does not commence until one party has requested that the case be placed on a trial list or the court has placed the case on a trial list on its own initiative. See Dist./Mun. Cts. Supp. R. Civ. P. 108 and Standard 2:00. At that point, the court has a responsibility to the parties and the public to assure that the case is tried promptly.

The standards may be amended from time to time. Your comments and suggests on how they may be improved and on particular practices which should be recommended therein should be sent to the Chairman of the Committee on Caseflow Management or to the Administrative Office of the District Court Department.

CASEFLOW MANAGEMENT

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GENERAL CASE MANAGEMENT PRINCIPLES

(Standards 1:00 through 1:05)

Caseflow Management Standards
Standard 1:00

1:00 Caseflow Management: Purpose. THE DISTRICT COURT DIVISIONS SHOULD PROCESS ALL CASES EXPEDITIOUSLY TO DISPOSITION IN A MANNER THAT ASSURES FAIRNESS TO ALL PARTIES.

COMMENTARY

In the context of these standards, caseflow management refers to the policies and procedures necessary to manage the flow of cases from filing to disposition. Caseflow management is not an end in itself, but rather a means to an end. It is concerned with the obligation of the court, as a public institution, to coordinate the flow of cases to assure that the judicial process provides all parties with the fair and effectively managed disposition of cases which they have a right to expect. Thus, proper caseflow management must address both the quality and the speed of the adjudicative process.

Caseflow management requires attention to planning, organizing, supervising, and controlling all those functions which affect the movement of cases within the court. It must, therefore, bring together many persons or agencies with diverse functions: Judges, Clerk-Magistrates, Probation Officers, prosecutors, public defenders, private attorneys, police, witnesses, etc. As the neutral party to the adjudicative process, the court must assume the responsibility for coordinating the activities of these participants in the judicial system. Judges and Clerk-Magistrates must cease viewing themselves as passive with respect to caseflow management if effective management is to prevail. Judges must begin to assume a lead role as policy makers with respect to case management, and they should adopt and enforce caseflow management guidelines that afford all parties equal and prompt access to the court.

The standards that follow are designed to assist the courts by recommending policies and procedures which get cases from the point of entry to the point of disposition promptly while witnesses are available, memories of events are sharp, and the issues before the court are still timely. These standards should minimize confusion and uncertainty about court operations and should promote public confidence in the ability of the judicial system to manage its caseload in a fair and orderly manner.

Caseflow Management Standards
Standard 1:01

1:01 Use of Available Manpower. EACH DIVISION SHOULD MAXIMIZE ITS USE OF AVAILABLE JUDICIAL AND NON-JUDICIAL MANPOWER BY SCHEDULING CASES TO EFFECTIVELY UTILIZE THE COURT DAY.

COMMENTARY

Historically, the District Court divisions scheduled most trial sessions for 9:00 a.m. The only major exception was the 10:00 a.m. civil session. In addition, policies for scheduling and continuing cases have generally been informal and lenient. While the number of Judges and Clerk-Magistrates have remained relatively stable, the caseloads in the divisions have increased dramatically. For example, in the last ten years the criminal caseload for the 69 divisions has increased from 574,400 to 788,190. The small claims caseload has increased 40 percent and the juvenile caseload has increased 110 percent.

Consequently, traditional scheduling practices which once were appropriate are no longer effective. Some divisions experience overcrowded courtrooms, unreasonable waiting periods before cases can be heard, or trial lists which are too large to complete. Others find that small trial lists, excessive trial list breakdown, and inaccurate or no predictions as to trial duration cause sessions to be completed very quickly. Thus, some divisions may have inadequate resources to handle scheduled cases while other divisions are unable to make effective use of existing resources.

Some divisions have recently begun to experiment with various scheduling practices designed to increase their use of available judicial and non-judicial resources. All divisions should concentrate their efforts in this area. A number of successful techniques are discussed in the standards that follow. Although the circumstances affecting efficient use of resources will vary from court to court, the techniques discussed in these standards should have general application to many courts. The primary goal is not a specific technique or practice, but rather an approach to the scheduling of cases which will insure that each division's resources are used efficiently throughout the day so that the judicial system and the public will receive the maximum benefit from the resources available.

Increasing caseloads and limited judicial and non-judicial resources require that the divisions carefully consider the

Caseflow Management Standards
Standard 1:01 (cont'd.)

adoption of policies and the establishment of methods for the assignment of trial dates, the scheduling of trial sessions, and the allowance of continuances. In addition, increased attention should be placed on the number of cases being scheduled for trial each day and the court's ability to accurately predict the amount of time those cases will take to be tried. Only by addressing such issues and planning for the court day can the courts maximize the use of available resources.

Caseflow Management Standards
Standard 1:02

1:02 Control of Caseflow. ULTIMATE RESPONSIBILITY FOR THE PROPER MANAGEMENT OF THE CASELOAD RESTS WITH THE PRESIDING JUSTICE AS ADMINISTRATIVE HEAD OF THE DIVISION. THE PROGRESS OF ALL CASES FROM FILING TO DISPOSITION SHOULD BE CONTROLLED BY THE PRESIDING JUSTICE OR SAID JUSTICE'S DESIGNEE.

COMMENTARY

Commitment of Judges to court control of caseflow is a necessary prerequisite to effective caseflow management. As the administrative head of the division, the Presiding Justice has ultimate responsibility for the proper management of the caseload, and the Presiding Justice or said Justice's designee should assume control of the caseflow. This control should include determining which cases to schedule for trial, the number of cases to schedule for trial, when to schedule such cases, and the conditions under which continuances should be allowed.

Court control of caseflow does not mean an arbitrary attitude by the court, but rather is intended to be a coordinating mechanism. Effective coordination of the complex issues involved in management of the caseload require policy to be established from a single central position. Neither prosecutors, defenders, police nor the trial bar are in a position to exercise such control. Their interests are partisan and concerned with individual cases, not the entire caseload. The court is the logical agency to balance the competing interests of all parties.

The wide variety of procedures involved preclude any one person from managing the entire caseload effectively. Scheduling, establishing continuance policies, monitoring case progress and coordinating available resources are just a few examples of the types of procedures involved. However, the Presiding Justice is in a position to coordinate these complex procedures by establishing the leadership and the broad policies needed to guide both court and non-court personnel.

If cases are to be managed effectively, procedures must be specific, written, and clearly understood by all parties. Sessions must be organized, efficiently operated, and monitored when resources are scarce. Although many tasks must be delegated in such a complex organization, the Presiding Justice should provide

Caseflow Management Standards
Standard 1:02 (cont'd.)

the leadership and possess the commitment to effective case management necessary to insure that the court controls the progress of cases from filing to disposition.

Finally, it should be noted that, in criminal cases in the District Court Department, Mass. R. Crim. P. 36(a)(2)(A) is clear that "[t]he court shall determine the sequence of the trial calendar."

Caseflow Management Standards
Standard 1:03

1:03. Consultation With Involved Participants. THE COURT SHOULD CONSULT WITH PROSECUTORS, PUBLIC DEFENDERS, POLICE, LOCAL BAR ASSOCIATIONS, AND OTHER INTERESTED PARTIES IN ORDER TO COORDINATE THE FLOW OF CASES THROUGH THE COURT.

COMMENTARY

Effective caseflow management requires communication with all parties regularly involved in the judicial process. If a court expects policies for improved case management to succeed it must consult with affected participants. Communication should occur at two stages. First, the court should consult with parties likely to be affected by any change in policy before such a policy is instituted. Sound case management policies often require changes on the part of participants in the judicial process, as well as the court. Although the Presiding Justice has ultimate responsibility for setting caseflow management policies, it is imperative that all interested parties be consulted in advance so that all relevant issues are given full consideration when developing such policies. Consultation helps participants feel a part of the new system and helps clarify the role each participant will be expected to play. Failure to consult with involved persons, both within and outside the court, prior to implementing new case management is one of the most common causes for the failure of such programs.

Second, the court should maintain a continuing dialogue with interested participants in order to secure their continued cooperation and to receive their assessment of the effectiveness of the court's case management policies. Affected parties should always be notified of changes affecting them in writing. To the extent that it promotes cooperation, involved participants should be given the opportunity to express their opinions and suggestions concerning the court's case management policies on a regular basis.

Caseflow Management Standards
Standard 1:04

1:04 Processing Goals. EACH COURT SHOULD COMPLY WITH THE
GOALS FOR PROCESSING CASES SET FORTH IN STANDARDS 5:00 AND 6:00.

COMMENTARY

Standards 5:00 and 6:00 establish time goals for processing cases in all District Court Divisions. The purpose of these time goals is to assure the prompt and fair disposition of matters within the jurisdiction of the District Court Department. The time goals set forth in the standards will assure that cases are disposed of within a reasonable period of time. As indicated throughout these standards, there are numerous methods for achieving management of the court's caseflow. Although the standards suggest that certain basic policies are necessary, one important measure of the effectiveness of such policies is compliance with time goals. Commitment to case management can only be sustained and improved when there is a standard against which to measure performance. Once time goals have been established, it will be possible for any division to judge the effectiveness of its caseflow management policies.

Reference to Standards 5:00 and 6:00 relating to time goals for specific types of cases will provide further information concerning the time goals established for the District Court Department.

Caseflow Management Standards
Standard 1:05

1:05 Uniform Implementation of Management Policies. ALL
JUDGES SHOULD FOLLOW THE CASEFLOW MANAGEMENT POLICIES ESTABLISHED
FOR THE DIVISION WHERE THEY ARE SITTING.

COMMENTARY

The uniform implementation of the caseflow management policies adopted by any division require that all Judges assigned to sit in that division follow the policies adopted by the division. The Presiding Justice of a District Court Division is in the best position to determine the appropriate caseflow management policies for that division. Once those policies have been developed, their success depends on the consistent implementation of such policies.

With respect to continuances, it is especially important that parties involved in cases receive consistent and uniform treatment. Policies which change from day to day depending on the Judge sitting in the session only serve to confuse and frustrate parties appearing in the court. Therefore, the Presiding Justice and the Clerk-Magistrate should make an effort to inform all Judges sitting in that division as to the case management policies in the division so that such Judges can cooperate in carrying out such policies. It is recommended that each division develop a manual setting forth these policies in writing. Naturally, caseflow management policies are not intended to include issues that impose on the sentencing prerogatives of individual Judges.

SCHEDULING CASES

(Standards 2:00 through 2:05)

2:00 Assignment of Trial Dates. ALL TRIAL DATES SHOULD BE ASSIGNED IN A MANNER CONSISTENT WITH THESE CASEFLOW MANAGEMENT STANDARDS. TRIAL DATES SHOULD ALSO BE SET IN A MANNER WHICH ASSURES THAT ALL PARTIES ARE AVAILABLE ON THE ASSIGNED TRIAL DATE IN ORDER TO AVOID CONFLICTS IN ATTORNEYS', PARTIES', OR WITNESSES' SCHEDULES.

COMMENTARY

Trial dates should be assigned according to policies established by the Presiding Justice. The selection of a specific trial date should be controlled by the court at all times. Although parties, attorneys, and police may request specific dates, the court should always maintain control of the actual selection of a trial date. It should be noted that Rule 108 of the Dist./Mun. Ct. Supp. R. Civ. P. speaks of parties filing with the court a request that the case be placed on a trial list. It does not give the parties the right to select a particular date (though they may request one) or to change a date without the approval of the court. If neither party has asked that a civil case be placed on a trial list after a reasonable period, the court should place the case on the list at its own initiative.

Court control of trial assignments neither precludes parties from requesting specific dates for trial, nor does it preclude use of trial assignment sessions where all parties are required to be present and agree on a date. However, prior to approving any trial assignment, the court should insure that the trial calendar does not contain more cases on the date in question than can be accommodated.

In addition, the court should be certain that trial dates are assigned in a manner that will dispose of cases promptly. In view of the time limits established elsewhere in these standards, it will be necessary for divisions to insure that the trial dates assigned will allow a case to be disposed of within the appropriate time limit.

Trial dates should be set in a manner which assures that all parties will be available on the assigned trial date. Trial assignment sessions are one effective method of assuring such availability, since necessary parties are present at the time a trial date is being established by the court. Any method that is used for notification should put all parties on notice of the trial date well in

Caseflow Management Standards
Standard 2:00

advance of that date and should require any party that has a conflict to notify the court immediately. Once a firm trial date has been established, a continuance should not be allowed automatically on the grounds of an engagement in another department. At present there is no requirement that cases in any one department of the Trial Court take precedence over cases in another department. Each case should be addressed in the context of its individual circumstances.

2:01 Establishing Caseload Limits. REALISTIC DAILY CALENDAR
CASELOAD LIMITS SHOULD BE ESTABLISHED, AND TECHNIQUES SHOULD BE
ADOPTED THAT ARE DESIGNED TO AID THE COURT IN PREDICTING TRIAL
TIME.

COMMENTARY

In the past, many District Court Divisions have allowed attorneys, parties, and police to select trial dates. Under such a system the court is not actually in control of the assignment of trial dates, and the number of cases scheduled for any particular trial session tends to be a combination of random factors: the number of attorneys requesting that date, the number of traffic cases returnable on that date, and the number of cases continued to that date. In the past when more Judges were available and caseloads were smaller, divisions were able to complete their business promptly and little concern was voiced over the fact that Judges were not utilized effectively throughout the court day.

As the District Court caseload steadily increased and more Judges were assigned to sit in the Superior Court, the size of daily trial calendars has also increased in most courts. Many Judges began to feel that continuance requests had to be granted because they could not reach all cases on the trial calendar. As a result of such policies, attorneys began to realize that they would not be required to proceed to trial. In response, attorneys developed a reduced propensity to be prepared for trial since their propensity to prepare for a scheduled trial is directly related to their perception of whether or not they will, in fact, be required to try their case on the scheduled trial date. A classic cycle of delay is created. Attorneys question the need to prepare for trial in view of the large size of the trial list and the lenient continuance policies; courts attempt to schedule even more cases in order to produce sufficient trials and blame attorneys for being unprepared.

Unfortunately, the approach chosen by some divisions in their attempt to deal with increasing caseloads--lenient continuance policies--further exacerbates the problem. For example, if each case is continued three times prior to disposition, the size of the trial list will expand to three times its original size even though the number of new cases entering the court and

Caseflow Management Standards
Standard 2:01 (cont'd.)

the number of dispositions by the court remain stable. Soon the court is spending much of each trial session merely arranging continuance dates. All participants in the judicial system suffer under these circumstances. Attorneys, police, and the general public become disenchanted as they return to court repeatedly without result. The Clerk-Magistrate's office and Probation Office begin to stagger under increasing workloads caused when cases must repeatedly be prepared for trial. Judges are blamed for inefficient procedures and attorneys are blamed for being unprepared while both groups are spending more time than ever in court.

The court is in the best position to correct this situation. It is difficult, if not impossible, to sanction attorneys for not being prepared when the court has scheduled more cases than it can try. Recent studies in numerous District Court Divisions confirm that this situation does exist at the present time. In most of these studies, 50-60% of the cases scheduled for trial (not including arraignments) in both criminal and civil sessions were being continued.

Thus, in many divisions realistic daily calendar caseload limits must be established, and these limits must be combined with more stringent continuance policies in order to produce trial lists of reasonable size where an expectation that cases must be tried exists. The announcement of the strict continuance policies recommended in subsequent standards will only be taken seriously when it is clear that the available Judges could try or settle most of the cases scheduled each day.

In order to develop realistic calendar caseloads, the court should combine the experience and expertise of court personnel with simple monitoring techniques. If the court indicates the disposition (or continuance) of each case on its trial list and notes the duration of each trial session, the court will quickly develop a base of information upon which to predict the approximate number of cases to be placed on the trial list each day.

Once a division has established a continuance policy which insures that most cases will be tried or settled on the scheduled trial date and has established realistic calendar caseloads, it is likely to discover that the number of cases that need to be scheduled for trial each day in order to remain current will represent a reduction in the size of the existing trial list and will provide substantial time savings to the court and to persons appearing in the court.

Caseflow Management Standards
Standard 2:02

2:02 Scheduling Cases. CASES SHOULD BE SCHEDULED IN A MANNER THAT WILL ALLEVIATE COURTROOM CONGESTION AND REDUCE EXPENDITURES OF TIME BY WITNESSES, ATTORNEYS, AND PARTIES.

COMMENTARY

Given the current volume of cases in most District Court Divisions, the traditional practice of scheduling all cases for 9:00 a.m. or 10:00 a.m. (civil) creates unnecessarily crowded conditions and confusion. For members of the public, the delay and frustration created by scheduling all cases for the same time leads to concern about the court's management capability. For attorneys or police who have come to expect this, it means wasted time or it discourages preparation of the case prior to the day of trial. In many courts, Judges and court staff tend to be overworked in the morning and underutilized in the afternoon.

Numerous scheduling techniques can be used to increase efficiency and reduce confusion and delay. Courts can utilize split sessions at 9:00 a.m. and 2:00 p.m. or can stagger sessions throughout the morning and afternoon in order to reduce congestion. Civil sessions can be scheduled in afternoons in order to speed up the processing of morning criminal sessions and keep police overtime at a minimum. In lengthy trials or where parties request a continuance for good cause, the trial can be scheduled for a special afternoon session. No single scheduling technique is necessarily the best approach for all divisions. Each division should experiment with various scheduling techniques in order to determine the approach best fitted to its scheduling problems. Efforts should be made to minimize unnecessary expenditures of time by all participants in the judicial process while maximizing the use of the limited available judicial resources.

2:03 Notification Procedures. EFFECTIVE NOTIFICATION PROCEDURES SHOULD BE ESTABLISHED IN ORDER TO INSURE THAT ATTORNEYS, WITNESSES, AND PARTIES ARE INFORMED OF TRIAL DATES AND CONTINUANCES IN ADVANCE.

COMMENTARY

Notification procedures are often ineffective, and various parties involved in trials appear in court even though cases have been rescheduled, or could have been rescheduled, in advance. Responsibility for implementing notification procedures on a daily basis varies widely among courts. At the present time responsibility may rest with the Clerk-Magistrate's office, the District Attorney's office, the police, or with the attorney handling the case.

Any notification system should develop direct accountability between the court and the person(s) responsible for carrying out the notification procedures. Responsibility for notification should be clearly defined in a court's caseflow management policies.

Naturally, any system designed to notify parties of trial dates should put all such parties on notice well in advance of the trial date. Written scheduling orders prepared by the court and distributed to the parties at the time of arraignment or at the time the case is marked for trial are used in several District Court Divisions. These orders provide all parties with detailed information concerning the trial date well in advance. Other District Court Divisions have started using assignment sessions where all parties are required to be present as the trial date is scheduled in order to avoid notification problems.

Finally, notification of continuances should be included in any system developed in order to reduce unnecessary appearances by parties, witnesses, and police.

2:04 Scheduling Coordinator. ONE PERSON SHOULD BE DESIGNATED BY THE PRESIDING JUSTICE TO COORDINATE THE SCHEDULING OF ALL CASES.

COMMENTARY

Some of the most serious scheduling problems develop because no single individual has been designated the authority to coordinate overall scheduling practices throughout the court. Trial dates are scheduled by all three departments within the court without internal coordination. Scheduling policies that have been established are not effectively enforced, and no single individual feels responsible for assuming the task of solving scheduling problems.

Appointment of a scheduling coordinator is necessary if the myriad scheduling problems faced by most District Court Divisions are to be handled effectively. This individual must clearly have the authority to work with both court and non-court personnel and must have the clear support of the Presiding Justice. The position of scheduling coordinator requires a daily time commitment if the court expects the scheduling problems addressed in these standards to be resolved in a satisfactory manner. Clearly, the person designated for such a position should have established administrative and interpersonal skills.

First consideration should be given to designating the Clerk-Magistrate or, after consultation with him or her, an Assistant Clerk, as scheduling coordinator. Whoever is designated, the scheduling coordinator must perform his scheduling responsibilities personally and not delegate them to another.

Caseflow Management Standards
Standard 2:05

2:05 Designating Date and Purpose. ALL TRIAL DATES, INCLUDING CONTINUANCES, SHOULD BE SET FOR A DATE CERTAIN AND A PURPOSE CERTAIN.

COMMENTARY

Some District Court Divisions currently continue cases "generally" or allow cases to "go off the list." In both cases, the court loses control of the management of the particular case because it is not rescheduled for a specific date. Courts will be unable to comply with the time goals for processing cases established in standards 5:00 and 6:00 unless cases are always scheduled for a specific date. Once a civil or criminal case is allowed to be continued generally or taken off the list, the court loses control of the scheduling for that case since it will normally be filed by the Clerk-Magistrate's office until one of the attorneys reactivates it. Unfortunately, it is the court and not the attorneys which normally receives the blame if such a case is allowed to languish on the court's docket.

It is also important for the court and all parties to agree on the purpose of each scheduled proceeding if unnecessary delay is to be avoided. In a number of District Court Divisions it is impossible to ascertain the specific purpose of a scheduled proceeding from the notice that is sent out by the court or by the attorneys. Courts should endeavor to insure that all parties understand the purpose of all scheduled proceedings at all times.

CONTINUANCES

(Standards 3:00 through 3:03)

Caseflow Management Standards
Standard 3:00

3:00 Requests for Continuances. ALL REQUESTS FOR A CONTINUANCE SHOULD BE MADE BY WRITTEN MOTION AS SOON AS THE NEED FOR A CONTINUANCE IS APPARENT.

COMMENTARY

Any party requesting a continuance should present a written motion to the trial Judge, Presiding Justice, or said Justice's designee, depending on the specific caseflow management policies developed by each division.

If a written motion for a continuance is impossible, an oral motion is permissible, but written documentation must be submitted as soon as possible in order to establish the motion as part of the permanent case record.

Requests for continuances should be made immediately upon discovering the need for a continuance. Some of the factors which should be taken into consideration in ruling on any motion for a continuance are (1) when the need for the continuance arose, (2) the diligence of counsel in bringing the need for a continuance to the attention of the court and opposing counsel at the earliest possible date, and (3) what attempts have been made to avoid a continuance.

Caseflow Management Standards
Standard 3:01

3:01 Form of Motion of a Continuance. ALL MOTIONS FOR CONTINUANCES SHOULD BE IN WRITING AND BE SUPPORTED BY INFORMATION EXPLAINING (1) WHEN THE NEED FOR THE CONTINUANCE AROSE, (2) WHAT THE GROUNDS FOR THE CONTINUANCE ARE, (3) THE MEASURES TAKEN TO AVOID SEEKING A CONTINUANCE AND (4) THE EARLIEST DATE ALL PARTIES WILL BE READY TO PROCEED.

COMMENTARY

In order for the court to make a ruling on a request for a continuance, the moving party must provide the information specified above. Effective caseflow management requires the court to balance the needs of all parties in a particular case and to consider the overall case processing problems of the court.

Each of the items required in the above standard will assist the court in determining whether a continuance is necessary and in determining whether the applicable time limits for the disposition of cases can be met.

Even if a party has good cause for requesting a continuance, the continuance should not be allowed if the request is not brought to the court's attention promptly or if an attempt has not been made to avoid a continuance when possible by substituting attorneys or witnesses or using depositions.

3:02 Grounds for a Continuance and Decisions Thereon.

(A) WHEN A CASE IS SCHEDULED FOR A COURTROOM EVENT, THAT EVENT SHOULD TAKE PLACE AS SCHEDULED UNLESS IT IS CONTINUED FOR REASONS PERMISSIBLE UNDER APPLICABLE RULE OF COURT. BY RULE 40(b) OF THE DIST./MUN. CTS. R. CIV. P. AND RULE 10(a) OF THE MASS. R. CRIM. P., NO CONTINUANCE SHOULD BE ALLOWED EXCEPT FOR GOOD CAUSE SHOWN. (B) CASES SHOULD BE CONTINUED ONLY WHEN EXTRAORDINARY CIRCUMSTANCES, NOT WITHIN THE CONTROL OF THE PARTIES AND NOT FORESEEABLE AT THE TIME OF SETTING THE DATE OF PROCEEDINGS, NECESSITATE A CONTINUANCE. IN RULING ON MOTIONS FOR CONTINUANCES, INQUIRY SHOULD BE MADE INTO AND DECISIONS THEREON SHOULD BE GOVERNED BY THE FOLLOWING FACTORS:

(1) THE TIME WHEN THE NEED FOR THE CONTINUANCE AROSE, AND THE DILIGENCE OF COUNSEL IN BRINGING THE NEED FOR A CONTINUANCE TO THE ATTENTION OF THE COURT AND OPPOSING COUNSEL AT THE EARLIEST POSSIBLE DATE AND IN ATTEMPTING TO AVOID A CONTINUANCE;

(2) THE PROXIMITY OF TRIAL, THE AGE OF THE CASE, THE ESTABLISHED TIME LIMITS FOR PROCESSING CASES, AND THE NATURE OF ANY PREVIOUS CONTINUANCES OR PRIOR ORDERS ENTERED IN THE CASE;

(3) THE EARLIEST POSSIBLE DATE ALL PARTIES AND THE COURT WILL BE READY TO PROCEED;

(4) WHETHER THE CONTINUANCE MAY BE AVOIDED BY SUBSTITUTION OF ATTORNEYS OR WITNESSES, BY THE USE OF DEPOSITIONS OR STIPULATIONS AS TO TESTIMONY, OR BY PRESERVATION OF THE TESTIMONY OF WITNESSES WHO ARE AVAILABLE; AND

(5) THE INJURY OR INCONVENIENCE CAUSED TO THE PARTY NOT REQUESTING THE CONTINUANCE.

Caseflow Managements Standards
Standard 3:02 (cont'd.)

(C) NO CONTINUANCE SHOULD BE GRANTED SOLELY BECAUSE ALL PARTIES AGREE THERETO. (D) FAILURE OF A CLIENT TO ADHERE TO FINANCIAL ARRANGEMENTS WITH HIS ATTORNEY SHOULD NOT BE GROUNDS FOR A CONTINUANCE. (E) THE ALLOWANCE OR DENIAL OF A MOTION FOR A CONTINUANCE IS IN THE DISCRETION OF THE COURT, BUT CONTINUANCES SHOULD BE SPARINGLY GRANTED AND ONLY IN THOSE INSTANCES WHEN THE OBSTACLES TO PROCEEDING IN THE CASE CANNOT BE PROVIDED FOR BY ANY MEANS OTHER THAN GRANTING A CONTINUANCE. (F) IF A CONTINUANCE IS GRANTED, IT SHOULD BE TO A DATE CERTAIN.

COMMENTARY

As noted in earlier standards, a strict continuance policy is a prerequisite if cases are to be processed in an expeditious manner. A necessary part of such a policy is the establishment of the limited circumstances warranting the allowance of a continuance. The circumstances set forth in Rules 40(b) and 10(a), and in this standard establish a uniform approach to requests for continuances which will enable courts to eliminate lenient continuance practices where they exist. A lenient continuance policy allows the attorneys, police, or parties to control the progress of the case. However, maintaining time limits for processing cases requires the court to control the progress of the cases.

A court's continuance policies have a significant impact on whether or not scheduled cases will actually be ready for trial. Attorney preparation is based on their understanding of how a division operates and what it requires of trial counsel. If a division is known to be lenient on continuances, attorneys will be less likely to be prepared on the date scheduled for trial. Each time a court grants a continuance due to unreadiness, it reinforces attorneys' perceptions of leniency. Attorneys who are prepared find the case progress controlled by those who are not prepared and their propensity to be prepared next time diminishes. This cycle leads to more unreadiness and more delay. On the other hand, strict continuance policies that are enforced fairly will benefit attorneys in terms of time, convenience, and more rapid case turnover.

Cases should be continued only when extraordinary circumstances, not within the control of the parties and not foreseeable at the time the date for the proceeding was set, necessitate a continuance. A case should be continued for good cause shown only by the trial Judge, the Presiding Justice or said Justice's designee. In ruling on a continuance, inquiry should be made into and, within the general bounds of Rules 40(b) and 10(a), be governed by the factors outlined in this standard. Those factors are important to the fair disposition of individual cases as well as the prompt disposition of cases in general. The allowance or denial of a request for a continuance is in the discretion of the court, but continuances should be granted sparingly and only in those instances when the obstacles to proceeding in the case cannot be provided for by any other means. For example, in certain cases the death or illness of counsel or a key witness will necessitate a continuance. Naturally, continuances should never be granted solely because all parties agree to it. Agreement by the parties is a relevant factor once good cause for the continuance has been established, but it should never be the sole basis for granting a continuance.

The Massachusetts Supreme Judicial Court has, on several occasions, stated that it will not disturb the decision by a trial Judge to deny a motion for a continuance unless there is a patent abuse of discretion. Comm. v. Funderberg, 1978 Mass. Adv. Sh. 601; Comm. v. Bettencourt, 361 Mass. 515, 281 N.E.2d 220 (1972); Comm. v. Gilchrest, 364 Mass. 272, 303 N.E.2d 336 (1973). In these cases, the Court has supported the type of case-by-case analysis called for by this standard.

Finally, there are certain circumstances that should not be grounds for a continuance. First, failure of a client to adhere to financial arrangements with his attorney should not effect the progress of a case nor be grounds for a continuance. Second, once a case has been assigned for trial in a District Court Division, that assignment order should take precedence over any subsequent trial assignment by any other trial court department, absent special circumstances. When the court establishes a hearing date, it is the duty of the parties and their counsel to inform the court of any pre-existing schedule conflict immediately. Similarly, it is the duty of the parties and their counsel to protect the hearing date from subsequent schedule conflicts once the District Court has assigned the date.

3:03 Enforcement of Continuance Policies. THE COURT SHOULD CONSIDER ASSESSING REASONABLE COSTS AGAINST A PLAINTIFF, DEFENDANT, OR ATTORNEY WHO CAUSES A CASE TO BE CONTINUED WITHOUT GOOD CAUSE OR WITHOUT ADEQUATE NOTICE.

COMMENTARY

Requests for continuances will generally fall into three broad categories. First, there will be requests for a continuance which are justified pursuant to court rules or good caseflow management practice. These continuances should be granted without the imposition of special costs, other than those normally imposed after trial. Second, there will be those requests which are plainly not authorized under applicable court rule and can be denied without any concern for the fairness of the proceeding or for the denial of constitutional due process. Third, a court may be confronted with a request which really cannot be justified but which, for reasons other than the merits of the request, as a matter of fairness, the Judge may feel must be granted. Examples might include attorneys that are unprepared without any justifiable reason or failure by a party to notify an important witness. If the Judge feels that the case must be continued in the interest of justice, this would be a case where the imposition of costs should be considered. If the delay caused by allowing a continuance in this situation causes an inconvenience to other parties, witnesses, or to the court, the imposition of costs is justified.

That a court has the inherent power to assess costs is at least suggested by O'Coins, Inc. v. Treasurer of County of Worcester, 362 Mass. 507, 287 N.E.2d 608 (1972). Although no specific case in Massachusetts has addressed the power of the court to assess costs against the party requesting a continuance, the federal courts exercise such authority and the power of the court under such circumstances has been upheld in other states. State ex. rel. Selleck v. Gordon, 254 Mo. 471, 162 S.W. 629 (1914); also see Illinois Stat. Ann c. 110A s. 231. The Dist./Mun. Court Supplemental Rules of Civil Procedure authorize costs to be "awarded and terms imposed in the discretion of the court" (Rule 103). In addition, Rule 10 of the Mass. R. Crim. P. provides for the assessment of costs against either party when a request for continuance is made without adequate notice.

Thus, the precedent for imposing court costs with regard to requests for continuances can be found in the statutes and cases of other states, and the practice is supported in rules of court prepared for this state. The question of imposing costs should normally arise only in cases where the imposition of such costs will be preferable to the denial of the request for a continuance.

The court does have the clear authority to deny any request for a continuance unless such denial would be considered a clear abuse of judicial discretion. Comm. v. Funderberg, 1978 Mass. Adv. Sh. 601; Comm. v. Bettencourt, 361 Mass. 515, 281 N.E.2d 220 (1972). Relevant to this point is a statement made by the Supreme Judicial Court. Commenting on a case where the defense had continually requested, and had been granted, continuances due primarily to the workload of defense counsel, the Court commented as follows:

Trial judges are not powerless to act when faced with such a situation. It is certainly within their power (a) to refuse to make further assignments to a lawyer who attempts to take on more clients than he reasonably and properly can represent, and (b) to refuse to permit such a lawyer to file appearances for additional clients. It is not an acceptable answer for such a lawyer or his clients to say that the clients are content to have their trials delayed until that particular lawyer is free to try them. The public too has an interest in having criminal cases tried reasonably soon after they are commenced. The trial judge is as much responsible for protecting the right of the individual defendant to a speedy trial, and he should be ever vigilant to prevent any lawyer from either serving, or permitting himself to be used as the instrument by which trials of pending cases are unreasonably delayed.

Comm. v. Dabrieo, 1976 Mass. Adv. Sh. 1957, 352 N.E.2d 186.

Similar authority exists with respect to delay by the prosecution. Normally, the only delay on the part of the prosecution which is reasonable relates to the time necessary for proper preparation or to secure the attendance of witnesses. Comm. v. Thomas, 353 Mass. 429, 233 N.E.2d 25 (1967). In the Thomas case, the Supreme Judicial Court deplored an attempt by the prosecution to force a continuance by threatening to "nol pros" the case, ruled the "nol pros" a nullity, and held that the defendant was denied his right to a speedy trial.

PROCESSING CASES

(Standards 4:00 through 4:02)

4:00 Pre-Trial. PRE-TRIAL PROCEDURES SHOULD BE CONSIDERED
IN ORDER TO PREVENT UNNECESSARY DELAY IN MOVING CASES TO
DISPOSITION.

COMMENTARY

A major obstacle to efficient processing of cases is the dilemma of how many cases to schedule for trial each day. At present, most courts assume that many cases scheduled for trial will result in last minute continuances or settlements. A typical response to this problem is to schedule more cases each day. This approach frequently results in even greater numbers of continuances. Strict continuance policies coupled with reductions in the number of cases scheduled have been recommended in previous standards. However, such an approach requires improvements in the court's ability to assure that those cases scheduled for trial are, in fact, ready for trial.

One important method for solving such problems is to adopt pre-trial procedures designed to reduce the number of cases placed on trial calendars to those in which trial is probable. Pre-trial procedures require counsel to prepare well in advance of trial and help to identify issues likely to be raised at trial. Although pre-trial procedures can encompass many different approaches and may be either mandatory or voluntary, several conditions generally must be met. First, the parties must know the strengths and weaknesses of their positions and be prepared to negotiate. Second, a specific and firm trial date should be set at the time of the pre-trial conference, if the case is not resolved. Finally, a Judge should be available to consider negotiated pleas or help settle civil cases at the time the pre-trial procedures are scheduled.

Even if pre-trial procedures do not dispose of a case, they generally will help clarify issues, eliminate delay at trial through the use of stipulations, insure better preparation for trial, and assist the attorneys and the court in estimating the length of the trial.

The passage of St. 1978, c. 478, the court reorganization bill, permits pre-trial conferences to be conducted by Clerk-Magistrates, and thus it can be expected that pre-trial conferences will be utilized to greater effect in the District Court Department in

Caseflow Managements Standards
Standard 4:00 (cont'd.)

the future. See s. 250 of c. 478, adding s. 62C of G.L. c. 221.

Rules 11(a) and 11(b) of the Mass. R. Crim. P. should be reviewed in connection with pre-trial conferences (ordinarily without a Judge present) in District Court jury and jury-waived sessions respectively. Standard 6:00 and Rule 16 of the Dist./Mun. Cts. R. Civ. P. should be reviewed with respect to discretionary pre-trial conferences in civil cases.

4:01 Management Information. INFORMATION SHOULD BE COLLECTED BY THE COURT IN ORDER TO MONITOR THE EFFECTIVENESS OF ITS CASEFLOW MANAGEMENT POLICIES.

COMMENTARY

Once new procedures and standards for caseflow management are implemented, it is necessary to develop a monitoring system in order to measure whether or not the caseflow management policies are working effectively. Caseflow management is not a static concept. Modifications are often necessary in specific policies and practices in order to reach specific goals. In addition, some management information is often necessary before certain caseflow management procedures can be implemented at all. For example, attempts to reduce continuance rates or to predict the length of trials are often not possible without information concerning current circumstances.

A simple case monitoring system is all that is necessary in most divisions. Some statistical information is already being compiled in each division at the request of the Administrative Office of the District Court Department, and this information can assist individual divisions in establishing specific caseflow management policies. However, some further regular statistical information will probably be necessary in order to measure compliance with the rules and standards on caseflow management. Some divisions already have developed devices that monitor caseflow, but most will have to develop or modify information gathering devices in order to assess whether the court is performing efficiently.

Monitoring may take many forms: statistics on cases entered or disposed of, case duration information, continuance records, reporting systems that identify old cases, statistics on backlogs, or information on pending case numbers and types. In general, a division should have readily available information concerning management of the caseload as a whole and should be able to identify the current status of individual cases quickly when necessary. Finally, each division should know the average continuance rate for each general category of cases over which it has jurisdiction since controlling continuances is so essential to proper caseflow management.

Caseflow Management Standards
Standard 4:02

4:02 Responsibility for Management Information. RESPONSIBILITY FOR MONITORING THE CASEFLOW AND THE COLLECTION OF MANAGEMENT INFORMATION SHOULD REST WITH THE CLERK-MAGISTRATE OR A PERSON DESIGNATED BY THE CLERK-MAGISTRATE. INFORMATION RELEVANT TO THE CASEFLOW MANAGEMENT POLICIES OF THE COURT SHOULD BE MADE AVAILABLE TO THE PRESIDING JUSTICE UPON REQUEST.

COMMENTARY

The involvement of one individual responsible for monitoring caseflow and collection of management information is necessary to provide the court with appropriate information to coordinate the flow of cases. This person should have the responsibility for insuring that the necessary monitoring and collection take place on a regular basis and for making information available to the Presiding Justice upon request.

CRIMINAL CASEFLOW MANAGEMENT

(Standards 5:00 through 5:03)

Caseflow Management Standards
Standard 5:00

5:00 Time Goals for Processing Criminal Cases. (A) THE TOTAL TIME FOR PROCESSING ANY JURY WAIVED CRIMINAL CASE SHOULD NOT BE GREATER THAN SIXTY DAYS FROM THE ARREST, CITATION, OR SHOW CAUSE HEARING TO THE ADJUDICATION. (B) THE TOTAL TIME FOR PROCESSING ANY JURY CASE SHOULD NOT BE GREATER THAN NINETY DAYS FROM RECEIPT OF THE CASE IN THE JURY COURT.

COMMENTARY

The purpose of the time goals established above for the processing of criminal cases is to assure the prompt and fair disposition of criminal matters within the jurisdiction of the District Court Department. The sixty day time limit applies to all criminal matters except where a defendant is participating in a diversion program.

The sixty and ninety day time limits are designed as a maximum time limit for processing criminal cases and should assist Judges in making scheduling decisions. In other words, the limit will provide a measuring rod against which a Judge can determine whether a court is meeting its goal of prompt disposition.

The establishment of specific time limits for disposing of criminal cases is widely considered an indispensable part of any caseflow management program. The National Advisory Commission on Criminal Justice Standards and Goals recommends that all courts adopt such time limits (Courts, January 1973, p. 68). The American Bar Association Commission on Standards of Judicial Administration states a similar conclusion and recommends that such time limits be maximum limits, not averages (Caseflow Management in the Trial Courts, 1973, p. 36-37). Finally, the President's Commission on Law Enforcement and the Administration of Justice urged establishment of similar time limits and succinctly stated the reasons:

Development of such a timetable can serve a number of ends. First, it can emphasize the potential of the process to deal with its business with alacrity, and it can suggest the kinds of steps necessary to dispose of cases within a reasonable time. Second, it can help to distinguish between the necessary and needless delay. Third, it can help to eliminate the commonly observed passage of time during which nothing happens. (Task Force Report: The Courts, 1967, p. 84).

Caseflow Management Standards
Standard 5:00 (cont'd.)

The time goals recommended for the District Court Department were developed within the framework of current procedures and resources available to the courts. Studies conducted by the Administrative Office of the District Court Department indicate that many courts are already in substantial compliance. Adoption of procedures described in these standards should allow any division to comply with these standards. In extreme cases where resources (available Judges, courtrooms, court support personnel, etc.) do not appear to allow achievement of the time goals, action should be taken to review management procedures and to supplement available resources. Though it is often difficult to obtain funds or personnel, requests that are part of a system-wide effort to maintain minimum performance standards in the administration of justice may be more favorably received.

It should be emphasized that the sixty day time limit commences once a defendant is arrested, a citation is issued, or after a show cause hearing, whichever occurs first. For example, the time limit for a case involving a traffic citation commences with the issuance of the citation even though a subsequent show cause hearing may be requested. Adjudication refers to the determination of the issue of guilt. The time period ceases to run after adjudication even though a defendant may still appear before the court at a subsequent time for sentencing or probation reports. Cases continued without a finding after a Judge has found sufficient facts to warrant a finding of guilty should be considered an adjudication for these purposes.

It should be noted that legislation establishes provisions for a hearing by a Clerk-Magistrate in certain moving violation cases. See s. 41 of c. 478, adding s. 20F of G.L. c. 90. Such cases do come within the sixty day time limit, and Clerk-Magistrates' hearings should be scheduled promptly enough to allow time for the entire case to be processed within the sixty day period. It would be useful for the Clerk-Magistrate to collect management information concerning the flow of such cases in order to assure prompt disposition. Since the cases are not totally decriminalized, a trial by Judge may be necessary in certain cases and enough time should be allocated to allow for such a trial during the sixty day period.

The time goals prescribed in this standard should not be confused with the time limits within which a defendant must be tried or the charges dismissed. See Mass. R. Crim. P. 36(b).

Caseflow Management Standards
Standard 5:01

5:01 Improving Management Procedures. THE CLERK-MAGISTRATE'S OFFICE SHOULD INVESTIGATE THE DEVELOPMENT OF MORE EFFICIENT PROCEDURES AND LABOR SAVING FORMS IN HIGH-VOLUME CRIMINAL AREAS IN ORDER TO COPE WITH INCREASING CASE LOADS.

COMMENTARY

Most District Court Divisions have experienced dramatic increases in their criminal caseload during the last ten years without corresponding increases in personnel. In addition, the available judicial manpower has steadily decreased in recent years. One approach available to all District Court Divisions faced with high-volume criminal caseloads is the increased use of more efficient case processing procedures and forms. While many divisions have developed some time-saving procedures, increased emphasis should be placed on the examination of traditional case processing methods, especially in the Clerk-Magistrate's office.

Development of labor-saving forms, improved management practices, and more efficient organizational structures all require critical analysis of traditional approaches to these problems. Use of multi-part no-carbon forms is common only in limited areas. Modern business equipment has yet to be tailored for use in courts except in unusual cases. Traditional organizational structures remain intact from earlier, less busy periods in most courts. Labor-saving approaches that have been developed by individual courts are not well enough known throughout the District Court Department.

Although no single management improvement may be appropriate for all District Court Divisions, each division can certainly benefit from attention given to management improvements. As a critical first step, each Clerk-Magistrate's Office should begin to identify its most serious management problems and should start to allocate significant time to the development of a management strategy aimed at developing more efficient procedures and forms. Until such an approach is given priority within the District Court Department, there will only be limited development of the professional expertise necessary to the successful management of the District Court Department.

5:02 Preparation By Attorneys. ATTORNEYS SHOULD BE REQUESTED TO HAVE THEIR CASES PREPARED AND THEIR PLEA NEGOTIATIONS COMPLETED IN ADVANCE OF THE TRIAL DATE SO THAT CASES MAY BE TRIED PROMPTLY. IF ATTORNEYS DO NOT COMPLY WITH SUCH A REQUEST, EFFECTIVE PRE-TRIAL PROCEDURES AND THE IMPOSITION OF COSTS SHOULD BE CONSIDERED BY THE COURT.

COMMENTARY

As the court strives to improve its own management of cases, it is imperative that attorneys also come to court prepared. It is pointless to determine whether lack of adequate preparation by attorneys is a cause or an effect of poor management by the court. Just as studies of the District Court Divisions identify caseflow management problems, recent studies by bar associations and others have pointed out problems with respect to the adequacy of representation of defendants in criminal cases within the District Court Department.

As a court develops its own improved caseflow management policies, it must insure that attorneys will arrive at court prepared for trial so that cases may be tried promptly. Communication with the trial bar concerning the importance of their role in any attempt to improve management of the court should be all that is necessary in many cases since the trial bar will benefit from such management improvements when they are implemented. Consultation with the trial bar in advance of the implementation of new management policies in order to gain their advice and reactions should increase the likelihood of cooperation.

If attorneys do not comply with a request to arrive at court prepared and ready to try cases promptly, the court should consider implementing pre-trial procedures. As described earlier, pre-trial procedures can provide many benefits to courts, and should be considered by any court that experiences difficulty in getting attorneys to be prepared by the day of trial. Attorneys might be required to meet at a date prior to trial to negotiate a plea. If such negotiations are successful, the case can be disposed of at the pre-trial conference if a Judge is available, avoiding the necessity of bringing witnesses and police into court.

5:03 Coordination of Criminal Trial Lists. CONTROL OF CRIMINAL TRIAL LISTS SHOULD EXTEND TO ALL CRIMINAL CASES. THE PERSON DESIGNATED SCHEDULING COORDINATOR SHOULD COORDINATE CASES, ORIGINATING FROM SUMMONSES, CONTINUANCES, ARRESTS, CLERK-MAGISTRATE'S HEARINGS AND REQUESTS BY THE PROBATION DEPARTMENT.

COMMENTARY

Criminal cases are placed on trial lists in a number of different ways. Courts should be concerned with all cases being placed on trial lists, not just those continued from one trial date to another. Courts often do not attempt to control the number of new cases involving summonses which are placed on the criminal trial list. In many courts, all cases entered with the court on a given day are given the same trial date. Failure to establish an appropriate number of such cases for each trial session creates undesirable fluctuations in the size of the trial lists.

The person designated to coordinate the scheduling of cases on the criminal trial list should consider cases originating from summonses, continuances, arrests, Clerk-Magistrate's hearings, and requests by the Probation Department. Once caseload limits are developed, it will be necessary for this individual to insure that cases scheduled by the Clerk-Magistrate's office or Probation Department conform to the caseload limits developed by the court. For example, it may be necessary to limit the number of cases given the same return date or to notify the Clerk-Magistrate's Office when to start assigning cases for a different return date. In a similar manner, continuance dates assigned in the trial session should be made after consideration of all types of cases already scheduled for each specific day.

CIVIL CASEFLOW MANAGEMENT

(Standards 6:00 through 6:03)

Caseflow Management Standards
Standard 6:00

6:00 Time Goals for Processing Civil Cases. THE TOTAL TIME FOR PROCESSING ANY REGULAR CIVIL CASE ASSIGNED FOR TRIAL SHOULD NOT BE GREATER THAN NINETY DAYS FROM THE REQUEST FOR TRIAL ASSIGNMENT TO THE COMPLETION OF THE TRIAL.

COMMENTARY

The purpose of the time goal established in this standard for the processing of civil cases is to assure the prompt and fair disposition of civil cases within the jurisdiction of the District Court Department. The ninety day time goal does not apply to cases transferred from the Superior Court Department which are generally deemed to have some priority by statute or to small claims, supplementary process, or summary process cases, which are governed by other rules or statutes.

The ninety day time goal is designed as a maximum time limit for processing civil cases and should assist Judges in making scheduling decisions. The ninety day period does not commence until one party has requested a trial assignment or until the court has assigned a trial date at its own initiative. At that point, the court has responsibility to insure that the case is tried promptly. Too often, the parties and the general public blame the court for delays in the trial of civil cases even though continuances have been requested by one of the parties or their attorneys. Lenient continuance policies and the practice of continuing cases generally or allowing cases to go off the list without a specific continuance date contribute significantly to the delay in processing civil cases. Such delays raise questions about courts' management abilities and deny some parties the prompt disposition of their case.

Adherence to the caseflow management procedures described in these standards should allow a division that assumes control of the processing of civil cases to meet the time goals set forth herein. Compliance with the time goals will insure that any party who requests a trial date can have its case disposed of within a reasonable time. It should be noted that unless one of the parties requests a trial assignment, the parties are given a substantial period of time to prepare the case and attempt to settle it.

6:01 Dismissal Lists. INACTIVE CIVIL CASES SHOULD BE REVIEWED PERIODICALLY AND PLACED ON A LIST FOR DISMISSAL IN ACCORDANCE WITH DIST./MUN. CTS. R. CIV. P. 41(b).

COMMENTARY

Under Rule 41(b), the court should place on a dismissal list all cases which have, for two years, shown no activity "other than placing upon the trial list, marking for trial, being set down for trial, the filing or withdrawal of an appearance, or the filing of any paper pertaining to discovery."

The rule allows attorneys and parties ample time to settle civil cases without court interference. However, it was the general perception of Judges and Clerk-Magistrates that cases covered by the rule are unlikely to proceed to disposition unless the court assumes the responsibility for controlling the case progress. Failure to bring such inactive cases to a disposition creates the appearance of a backlog in the civil caseload and leads to inaccurate conclusions about a court's efficiency in processing such cases.

Caseflow Management Standards
Standard 6:02

6:02 Pre-Trial Conferences. WHEN A CASE IS ASSIGNED A TRIAL DATE, EITHER PARTY OR THE JUDGE SHOULD BE ABLE TO REQUEST A PRE-TRIAL CONFERENCE.

COMMENTARY

Pre-trial conferences can be especially helpful in complex civil cases, and are provided for in Rule 16 of the Dist./Mun. Cts. R. Civ. P. Use of a pre-trial conference can assist both attorneys in preparing for the trial. Stipulations can be drawn and discovery can be hastened. In addition, attorneys can be assisted in exploring settlement possibilities. Pre-trial conferences can also be used to establish the number of witnesses that will testify and to make better predictions concerning the length of trial.

If either party requests a pre-trial conference a conference should be scheduled. Also, pre-trial conferences should be required whenever it appears that such a conference will substantially improve the court's ability to move the case to trial promptly. Some divisions have implemented mandatory pre-trial conferences, and such conferences appear to be most successful in narrowing the issues for trial if they are held well in advance of trial. On the other hand, some divisions have experienced success in scheduling conferences directly prior to trial as a method of increasing settlements. Each division will have to analyze its own scheduling problems before identifying the type of pre-trial conference, if any, that is most suitable.

The passage of St. 1978, c. 478, the court reorganization bill, permits pre-trial conferences to be conducted by Clerk-Magistrates, and thus it can be expected that pre-trial conferences will be utilized to greater effect in the District Court Department in the future. See s. 250 of c. 478, adding s. 62C of G.L. c. 221.

Caseflow Management Standards
Standard 6:03

6:03 Continuances in Civil Cases. THE COURT SHOULD AVOID LENGTHY CONTINUANCES IN A CIVIL CASE ONCE THE TRIAL HAS COMMENCED. IF A TRIAL CANNOT BE COMPLETED ON THE DAY IT IS COMMENCED, THE TRIAL SHOULD BE RESUMED AS PROMPTLY AS POSSIBLE.

COMMENTARY

In some divisions with busy civil caseloads, trials which cannot be completed on the day commenced are continued to a date two weeks or more in the future. Whenever possible, such a lengthy continuance should be avoided once the trial has commenced. If the court's schedule will permit it, the case should be continued to the next day to be completed, perhaps in an afternoon session. Such cases should never be continued for more than one week except under exigent circumstances. Lengthy continuances in such cases break the continuity of the trial, and the initial trial day becomes more difficult to reconstruct as the period of time between trial days increases. Therefore, trials which are not completed on the day commenced should be assigned priority treatment in the District Court Department. It should be noted that Standard 6:00 calls for the trial in civil cases to be completed within ninety days from the date of the request for a trial assignment or the date the court assigns the case to trial on its own initiative. When necessary, the Presiding Justice should contact the Regional Administrative Judge to insure that a visiting Judge will be assigned back into the court in order to complete the case.