TECHNICAL ASSISTANCE ON CRIMINAL CASEFLOW MANAGEMENT IN THE JOSEPHINE COUNTY (OREGON) CIRCUIT AND DISTRICT COURTS
CTAP Technical Assistance Assignment No. 3-083

TECHNICAL ASSISTANCE ON CRIMINAL CASEFLOW MANAGEMENT IN THE JOSEPHINE COUNTY (OREGON) CIRCUIT AND DISTRICT COURTS

August 1995

Consultant:

Marcus W. Reinkensmeyer
Technical Assistance Project on Criminal Caseflow Management

Assignment Data Sheet

Technical Assistance No.: CTAP No. 3-083

Requesting Jurisdiction: Josephine County, Oregon

Requesting Agency: Josephine County (Oregon) Circuit and District Courts

Requesting Official: Hon. Gerald C. Neufeld, Presiding Judge

Local Coordinator: Gary Brandt, Trial Court Administrator

Date of On-Site Study: August 16-18, 1995

Consultant Assigned: Marcus W. Reinkensmeyer

CTAP Staff Coordinator: Joseph A. Trotter, Jr.

Central Focus of Study: Criminal Caseflow in the Josephine County Courts

This report was prepared in Conjunction with the Courts Technical Assistance Project, which is conducted under a grant from the State Justice Institute to The American University. The points of view expressed do not necessarily represent the official policies of the State Justice Institute.
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TECHNICAL ASSISTANCE ON CRIMINAL CASEFLOW MANAGEMENT IN THE JOSEPHINE COUNTY (OREGON) CIRCUIT AND DISTRICT COURTS

I. INTRODUCTION

In March, 1995, the Josephine County (Oregon) Circuit and District Courts requested technical assistance from the Courts Technical Assistance Project (CTAP) at The American University for consultation on criminal caseflow management. In making this request, the Hon. Gerald C. Neufeld, Presiding Judge, expressed concern over the high trial rate in criminal matters, the long period of time between a defendant's first appearance and trial, and allocation of resources in the Josephine County Courts. Given time constraints of the project, it was agreed that the technical assistance (TA) would focus on criminal caseflow management from a justice systems perspective. To the extent feasible, the project would also address staffing and processing of non-criminal case types to address resource utilization from a court-wide perspective. Central to the project were these two questions:

- Can time from filing to disposition in criminal cases be improved?
- Are the court's judicial resources being used as effectively as possible?

The CTAP project, which operates under a grant from the State Justice Institute to provide free short-term consultations to state/local courts and judicial system agencies, retained the services of Marcus W. Reinkensmeyer, Acting Director of Judicial Information Systems and Deputy Court Administrator for the Superior Court of Arizona in Maricopa County (Phoenix), to conduct this assignment.
II. METHODOLOGY

Pre-Site Visit Analysis and Orientation: In June and July, 1995, the consultant reviewed a wealth of documentation provided by the Josephine County Courts, e.g., workload and productivity statistics, case aging data, organization tables, county profile information, etc. Further information and clarification was provided through two telephone interviews with Mr. Gary Brandt, Trial Court Administrator. At the request of the consultant, court administration staff compiled supplemental information on court calendar activities, probation revocation hearings, the failure to appear in court rates, and staffing patterns.

Site Visit: During the three-day site visit, August 16 - 18, 1995, the consultant: (1) conducted interviews with the court's judges and staff, the trial bar and justice system officials; (2) facilitated a planning session with the Criminal Justice Committee; (3) observed court operations first hand; and, (4) further examined criminal caseflow utilizing a “reverse telescope” model. For further details regarding the site visit schedule and the listing of interviewees, see Appendix A.

The planning session with the Criminal Justice Committee proved highly productive, serving as the basis for the “Criminal Case Blow-out” and many of the other initiatives presented in the recommendation section of this report. The consultant gratefully acknowledges the active participation and contributions of the committee membership during the site visit.

Criminal Justice Committee Participants

<table>
<thead>
<tr>
<th>Hon. Gerald C. Neufeld</th>
<th>Presiding Judge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gary Brandt</td>
<td>Trial Court Administrator</td>
</tr>
<tr>
<td>Diane Swint</td>
<td>Court Operations Supervisor</td>
</tr>
<tr>
<td>Timothy Thompson</td>
<td>District Attorney</td>
</tr>
<tr>
<td>Marie Goodpasture</td>
<td>County Probation Department Director</td>
</tr>
<tr>
<td>Mark Dickson</td>
<td>Lt. County Sheriff's Department</td>
</tr>
<tr>
<td>Daniel Simcoe</td>
<td>President, Josephine County Defense Lawyers</td>
</tr>
<tr>
<td>Herbert Putney</td>
<td>President, Josephine County Public Defenders</td>
</tr>
</tbody>
</table>

Reverse Telescope Analysis: With the assistance of court administration staff, the consultant conducted a simplified “reverse telescope” analysis of criminal felony and misdemeanor cases in the Josephine County Courts. Graphic depictions of the existing and planned felony systems are presented in Appendices B and C, respectively. Developed by Professor Ernie Friesen, this analytical tool is intended to (1) identify procedural stages in the litigation process at which cases are resolved; (2) determine the time frames between case filing, pleas, dismissals or trial; and, (3) increase the awareness of key justice system participants and serve as a catalyst for change in operations and procedures. Although time constraints did not allow collection of discrete data and a complete reverse telescope analysis, the model developed during the site visit was referenced extensively in the committee deliberations and follow-up planning efforts.
III. KEY FINDINGS AND OBSERVATIONS

Administratively consolidated in 1989, the Josephine County Circuit and District Courts provide limited and general jurisdiction court services to a county population of 67,599. Situated in a highly scenic area of Southwest Oregon, this four-judge court serves a community facing modest, but steady, population growth (1.5% per year), a growing youth population, a relatively high unemployment rate due to loss of jobs in the timber industry, and one of the lowest per capita income levels ($15,070 in 1992) in the state. Over the last several years, the court has experienced substantial caseload growth, particularly in the areas of criminal, domestic relations and small claims. Although the courts are state funded, county justice agencies are suffering from budget cutbacks and staffing shortages due to reduced Federal revenue (from timber sales) and a failed tax referendum.

For criminal case processing, the court employs a classic master calendar system (Appendix D). The calendar structure provides three judges for criminal trials and a fourth judge position to preside over pre-trial matters (e.g., arraignment, status and docket hearings) on a rotational basis. Case scheduling and tracking is largely centralized, with these functions performed by the court administrator’s office.

**System Strengths:** Despite the growing concern and frustration around criminal caseflow issues, several positive factors were noted during the course of this technical assistance project. Not to be taken for granted, these factors can provide a strong foundation for the project initiatives and system improvements outlined in this report:

1) There is a remarkably high degree of cooperation between the court, the district attorney’s office, the defense bar, adult probation and the sheriff’s department. The lines of communication appear to be open and members of the Criminal Justice Committee seem genuinely receptive to systemic changes, irrespective of “turf” issues which plague many other jurisdictions.

2) The Presiding Judge and Court Administrator are providing leadership and a systems management perspective, both in the criminal caseflow arena and in the broader context of long-range, court-wide, planning.

3) A number of major court improvement projects are underway, each holding great promise, e.g., day reporting center, drug court, family court (combined juvenile and domestic relations calendar) and a new family court facility.

4) The court has developed an array of Alternatives to Dispute Resolution (ADR) programs (e.g., arbitration, mediation, settlement conferences) and is receptive to expanding its ADR system.
5) The court is maintaining good case inventory clearance inventory rates in some case categories, despite a growing caseload. In fact, during calendar year 1994, case terminations met or exceeded new filings in the following case categories: civil - district court, small claims, district court infractions, district court criminal and dissolutions. Although there has been some slippage in the criminal felony and misdemeanor categories, these inventories are still of manageable size and the court is cognizant of the need for a concerted effort in these areas. Five year inventory clearance rates for misdemeanor and felony cases are presented in Appendices E and F, respectively.

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Cases Initiated</th>
<th>Cases Disposed</th>
<th>% Disposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Felony</td>
<td>800</td>
<td>707</td>
<td>89%</td>
</tr>
<tr>
<td>Civil - Cir.</td>
<td>345</td>
<td>321</td>
<td>93%</td>
</tr>
<tr>
<td>Misd.</td>
<td>2078</td>
<td>1905</td>
<td>92%</td>
</tr>
<tr>
<td>Dom. Rel.</td>
<td>1568</td>
<td>1531</td>
<td>98%</td>
</tr>
<tr>
<td>Civil - Dist.</td>
<td>733</td>
<td>751</td>
<td>100%</td>
</tr>
<tr>
<td>Small Clm.</td>
<td>1517</td>
<td>1549</td>
<td>102%</td>
</tr>
<tr>
<td>Dist. Ct. Infract.</td>
<td>9307</td>
<td>12957</td>
<td>139%</td>
</tr>
<tr>
<td>Dist. Ct. Crim.</td>
<td>11808</td>
<td>15331</td>
<td>130%</td>
</tr>
<tr>
<td>Dissolutions</td>
<td>473</td>
<td>474</td>
<td>100%</td>
</tr>
<tr>
<td>Probate</td>
<td>287</td>
<td>248</td>
<td>86%</td>
</tr>
</tbody>
</table>

Note: Table does not include post-decree actions, abuse prevention or juvenile petitions.

6) The bench, as a whole, has established a strict continuance policy and is attempting to hold attorneys and litigants accountable, despite the current inability of the court to maintain firm trial dates.

7) Although the court is not meeting the time standards prescribed for the State of Oregon, the age of disposed cases has remained relatively stable over the last three years (Appendix G).

8) In court administration, there appears to be a well-established infrastructure and adequate staff support for caseflow management, public service and records management activities.
9) Extensive case information and management/statistical reports are available through the state-wide automation system, the Oregon Judicial Information Network (OJIN). These reports and ad hoc statistical analyses conducted by court administration can be made available to an expanded audience in addressing caseflow management, e.g., the Criminal Justice Committee.

System Weaknesses: Although the criminal calendar system appears to be generally well organized, the judicial leadership and justice officials are greatly concerned with the court's high trial rate, the large volume of case continuances and the long period of time from filing to case disposition. Of equal concern, the court is struggling to maintain a balance between resources dedicated to criminal versus non-criminal case processing. During the site visit, almost every individual interviewed expressed concern over case backlog and delay in the criminal justice system. There is a general sense that "there must be a better way" of conducting court business. The perceived problems and the call for change are well supported by the following findings:

1) Trial rates in Josephine County are relatively high, historically the highest in the state for many case categories. This situation holds true not only in the criminal arena, but for all case types (Table 2). As a result, the court has far more trial days than comparable sized jurisdictions in Oregon. This places an enormous burden on the judges, court scheduling staff, jury system, trial bar and almost every other component of the local justice system. Although a comprehensive analysis is beyond the scope of this report, the work associated with these "additional" trial days may well entail the equivalent of one or more full-time equivalent judicial officers. By extension, court staff and attorney resources are equally stretched as a result of the high trial rates.

<table>
<thead>
<tr>
<th>Case Type</th>
<th>Josephine County</th>
<th>State-wide Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Felony</td>
<td>7.2%</td>
<td>5.4%</td>
</tr>
<tr>
<td>Misdemeanor</td>
<td>4.1</td>
<td>3.6</td>
</tr>
<tr>
<td>Civil - Circuit Ct.</td>
<td>10.4</td>
<td>5.7</td>
</tr>
<tr>
<td>Domestic Relations</td>
<td>3.2</td>
<td>1.8</td>
</tr>
<tr>
<td>Civil - District Ct.</td>
<td>10.3</td>
<td>2.9</td>
</tr>
<tr>
<td>Small Claims</td>
<td>11.6</td>
<td>6.0</td>
</tr>
<tr>
<td>Traffic</td>
<td>5.9%</td>
<td>3.6%</td>
</tr>
</tbody>
</table>
2) Despite a concerted effort, the court is unable to ensure certainty of trial dates, particularly for out-of-custody cases. As this situation is well known by the prosecution and defense bar, a vicious cycle of continuances exists (Appendix H). There is little attorney-client contact prior to status hearings, resulting in a relatively low number of plea agreements at this stage of the case (Table 3). Similarly, at the trial stage (docket call), a substantial volume of cases reportedly are not trial ready, leading to further delay (Table 4). Next available dates for trial resets are currently 210 days from the date of continuance, a factor that is diminishing the likelihood of meaningful plea negotiations and early settlement.

<table>
<thead>
<tr>
<th>Action</th>
<th>Outcome</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pleas</td>
<td>29%</td>
</tr>
<tr>
<td>Future Pleas</td>
<td>10</td>
</tr>
<tr>
<td>Trials</td>
<td>37</td>
</tr>
<tr>
<td>Continuance</td>
<td>5</td>
</tr>
<tr>
<td>Warrants</td>
<td>19</td>
</tr>
<tr>
<td>Dismissed</td>
<td>0</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

Table 3 - Cases Set for 3:00 PM Status Hearing (Jan. - Mar., 1995)

<table>
<thead>
<tr>
<th>Action</th>
<th>Percentage of Cases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Trials canceled</td>
<td>61.7%</td>
</tr>
<tr>
<td>Set over by parties</td>
<td>7.5</td>
</tr>
<tr>
<td>Set over by court</td>
<td>8.8</td>
</tr>
<tr>
<td>Continued</td>
<td>2.6%</td>
</tr>
</tbody>
</table>

Table 4 - Requests for Trial Set-Overs (Jan. 1994 - Feb. 1995)

3) Disposition times in criminal matters greatly exceed goals (time standards) of the Oregon Judicial Branch (Tables 5 and 6).
4) In the current “local legal culture,” the prosecution and defense appear to treat the vast majority of cases as if they are trial bound, notwithstanding actual trial rates of 7.2% and 4.1% in felony and misdemeanor cases, respectively (1993 statistics). This results in a high number of court appearances and little likelihood of plea agreement until the trial stage, i.e., the court’s docket call occurring the Friday before the trial date.

5) Apart from governing rules and statutes, there are no comprehensive written policies governing criminal caseflow management. Prosecution and defense attorneys express concern over consistency of judicial policies and procedures, particularly with respect to requests for continuance.

6) The court calendars a high volume of probation revocation hearings, many which could be handled without court intervention. Little attorney-client contact occurs prior to the revocation hearings, actual in-court time is often less than that allotted, and probation officers encounter some confusion and “down-time” waiting for court hearings.
7) Although court administration generates statistical/management reports on case aging and other key indicators, this information is not widely available or routinely considered by justice system officials.

8) There is growing consternation regarding the rate of failure-to-appear in court (FTA) cases, as well as the inability to detain pre-trial defendants apprehended on bench warrants. This situation is exacerbated by the county jail overcrowding problem and substantial staff cutbacks in the Sheriff's Department. Relatedly, the staffing shortages in the Sheriff's department are requiring delivery of subpoenas via mail/phone in lieu of personal service, another factor contributing to “no shows” in court and continuances.

These problems, coupled with delays in criminal case processing, undermine the credibility of the court and the local justice system as a whole. The Criminal Justice Committee is keenly aware of this situation and is striving for ways to restore the integrity of the system. There is a concern, however, that this will not be possible given the jail overcrowding situation and staffing shortages now plaguing the court.

The “Trial Court Performance Standards” are instructive in this area, providing guidance on Responsibility for Enforcement (Standard 3.5), Public Trust and Confidence - Expeditious, Fair and Reliable Court Functions (Standard 5.2) and related principles of judicial administration (see the “References” section of this report).

9) There is a perception that there is a disparity in resources available for prosecution and indigent defense services in favor of the latter. All parties concur that the District Attorney’s office is underfunded and is currently short three or more staff. The imbalance between prosecution and defense resources is reportedly another factor adversely affecting early case evaluation, meaningful plea offers and individual attention to individual cases in the early stages of the case processing continuum.
IV. RECOMMENDATIONS

Consensus of Criminal Justice Committee: The recommendations set forth below are predicated, in large part, upon the discussion and points of agreement reached at the Criminal Justice Committee planning session facilitated by the consultant on August 17, 1995. By way of summary, following a discussion on system strengths and weaknesses, the committee members achieved consensus on the following initiatives:

- Backlog reduction and calendar clearance through a criminal case "Blow-out" program;
- Judicial facilitation of plea negotiations at the court's status hearings;
- Major revamping of the case processing continuum, mainly by reducing the elapsed time between intermediate events, e.g., arraignment, status and docket calls;
- Increased use of structured sanctions in lieu of court hearings in probation revocation cases; and,
- A concerted effort to reduce the number of cases set for trial and the overall trial rate in Josephine County.

At this same meeting, there was also considerable discussion regarding the court's calendar assignment system. The attorneys generally advocated that the court shift from its current master calendar system to an individual calendar system (this model has reportedly proven highly successful in some of Josephine County's neighboring counties).

The consultant recommends that the court seriously consider migration to an individual calendar, mainly through pilot testing and evaluation on a staged basis. This will allow time for the court to address some of the most pressing caseflow management problems in the immediate future, working within the framework of the existing master calendar system. A staged approach also will afford the court and the local justice system a period of time to evaluate the impact of the proposed changes to the current master calendar. With the leadership of the bench and the Criminal Justice Commission, it should be possible to create a new "local legal culture" and heightened awareness of caseflow management principles within the current (master) calendar framework. (For further discussion regarding calendar systems and caseflow management in general, please refer to the “References” section of this report.)
"... caseflow excellence can be achieved under both master calendar and individual calendar assignment systems, as well as a variety of "hybrids" found in courts across the country."

"... among the jurisdictions studied, the types of assignment system strongly correlates with disposition times in civil matters, but not in criminal matters." *Caseflow Management in the Trial Court*, American Bar Association (1987).

Specifically, in terms of timing, it is recommended that the court address criminal caseflow management and the broader justice system issues in the following three-phased approach:

<table>
<thead>
<tr>
<th>PHASE I</th>
<th>Criminal Case “Blow-Out”</th>
<th>9/95 - 10/95</th>
</tr>
</thead>
<tbody>
<tr>
<td>PHASE II</td>
<td>“Fast Track” System</td>
<td>10/95 - 6/96</td>
</tr>
<tr>
<td>PHASE III</td>
<td>Transition to New Calendar Assignment Systems</td>
<td>5/96 - 12/96</td>
</tr>
</tbody>
</table>

  a. Individual calendar(s) for family and drug courts
  b. Individual calendar system on court-wide basis?
  c. Expanded ADR Services
  d. Differentiated Case Management

**Specific Recommendations:** Within this general framework, the consultant offers the following recommendations for expeditious criminal case disposition, improved utilization of the court’s limited resources and enhanced coordination of the Josephine County justice system as a whole:

1. Expand and formalize the coordinating role of the Criminal Justice Committee in the planning, implementation and evaluation of justice system initiatives.

This measure will help ensure a systems approach and broad support for court initiatives (e.g., the proposed “Fast-Track” system), as well as inter-agency projects (e.g., the planned Day Reporting Center). The committee is ideally suited to identify emerging issues, develop system-wide strategies and formulate governing policies/procedures. To evaluate the efficacy of these initiatives, the committee should receive periodic departmental updates, management reports, etc.. The following suggestions will further strengthen the coordinating role of the committee:

- Establish a schedule of regular meetings, e.g., every two weeks, with a written agenda and supporting reference materials;
Add a representative of the private trial bar to the committee membership;

Consider inviting a representative of the County Board or county management to serve in a liaison role;

Create task forces to study and report back to the committee on issues of concern; and,

Review summary statistical reports to ascertain the progress of committee projects.

2. Implement a backlog reduction and calendar clearance program, culminating in a Criminal Case “Blow-out” the first week in October, 1995.

As an “early success,” the Criminal Justice Committee has agreed to embark on a criminal case “blow-out” to commence immediately following the meeting of August 17, 1995. This is an important first step in eliminating the criminal case backlog and clearing court calendars for the proposed “Fast-Track” system. The District Attorney is asking that his staff attorneys review all pending felonies and misdemeanors, working with adult probation staff to determine appropriate case dispositions. Once this process is complete, District attorney staff will make realistic plea offers in negotiations with the defense attorneys. This is to occur throughout the month of September, 1995.

The court is arranging to clear all calendars but criminal arraignments and emergency hearings for the criminal case “blow-out” the first week of October, 1995. Judges will be available for ratification of plea agreements and to facilitate plea agreements.

Projections of the potential number of case terminations range from 20% to 60%. The District Attorney is targeting a 35% - 40% case disposal rate, but is asking that staff strive to clear roughly half of the pending case inventory. As follow-up to the case “blow-out,” it will be important to:

- Compile and analyze the outcome of the “blow-out” in terms of case inventories, the court calendars (including next available dates), etc.;

- Explore the viability and potential benefits of conducting a similarly structured backlog clearance program in the future, and possibly expanding this program to other (non-criminal) case types; and,

- Ensure adequate staffing for filing and recording of sentencing orders, disposition reporting and related tasks.
3. Develop, implement and evaluate an expedited criminal caseflow management system - a “Fast Track” System - for all new criminal case filings using the court’s existing master calendar, commencing in October, 1995.

The proposed system is designed to ensure certainty of trial, early and continuous judicial control over case movement, conformance with the Oregon State case processing time goals, a marked reduction in criminal trial rates, and strong emphasis on the lapsed time between intermediate case processing events. Based on discussions with the bench, court administration and the participating attorneys, it is recommended that the court reduce the time frames between intermediate case events as follows:

<table>
<thead>
<tr>
<th>Court Hearing Stages</th>
<th>Current</th>
<th>Proposed</th>
</tr>
</thead>
<tbody>
<tr>
<td>From Dist. Ct. Arraignment to Cir. Ct. Arraignment</td>
<td>45</td>
<td>21</td>
</tr>
<tr>
<td>From Cir. Ct. Arraignment to Status Hearing</td>
<td>49</td>
<td>42</td>
</tr>
<tr>
<td>From Status to Trial</td>
<td>210</td>
<td>30 - 45 days</td>
</tr>
<tr>
<td>Trial Rescts</td>
<td>210</td>
<td>30 - 45 days</td>
</tr>
</tbody>
</table>

Essentially, in the proposed “Fast-Track” system, time frames for out-of-custody case processing have been dramatically compressed to mirror those of the in-custody case processing track. For out-of-custody cases, the proposed changes will reduce the time from case filing through trial from 310 days (Appendix B) to 99 days (Appendix C), a seven month reduction in time. The differential in case processing times is more dramatic for cases requiring a trial reset. For out-of-custody cases, the second trial date is currently 516 days from the time of filing, compared with 129 days for “Fast-track” cases.

4. Determine the legal and operational feasibility of a combined district/circuit court arraignment, perhaps serving as a pilot site for the Judicial Branch.

Although the Josephine County Courts are administratively consolidated, jurisdictional unification of the limited and general jurisdiction Oregon trial courts is not to occur until 1998. Nevertheless, with the cooperation of the trial bar and the approval of the State Supreme Court, it may be possible to conduct district and circuit court arraignments in a single, “omnibus,” hearing. Under this model, the total number of arraignment hearings would be substantially reduced (by nearly half the current number) and case processing times would be dramatically cut (reduced by 5 days for in-custody cases and by 45 days for out-of-custody cases). This model
would further expedite case movement in the “Fast-track” system, while also helping to relieve jail overcrowding.

5. Increase judicial intervention in criminal matters by having judges facilitate plea negotiations at the court’s status hearings.

In the State of Oregon, judges may participate in plea negotiations “... at the request of the both the prosecution and defense, or at the direction of the presiding judge ....” (Oregon Revised Statutes, 135.432 (1)). In the Criminal Justice Planning session and subsequent discussions, this model was embraced by the prosecution, defense and presiding judge. This system should be implemented for all new criminal matters, effective with the establishment of the “Fast-Track” system in October, 1995:

- At the outset of the status hearing, the court should hear all cases involving plea agreements ready for court ratification, bench warrant cases, etc. Upon completion of these proceedings, the court should facilitate plea negotiations in all remaining cases deemed appropriate.

- Plea negotiations should be held in a private, but business-like, setting with no official court reporter present, e.g., judge’s chambers or conference room.

- The court should allot about 10 minutes per case for plea negotiations, recognizing that actual time requirements will vary from case to case.

- The calendar time for hearing status hearings should be expanded to a half-day (3.5 to 4 hours).

6. Develop, implement and evaluate the individual calendar assignment system in conjunction with the planned family court and drug court.

With the forthcoming development of a family court, the bench has an excellent opportunity to systematically create an individual calendar. The family court is coupled with a new facility targeted for construction in the Fall of 1996. However, the court can establish the new calendar assignment system and a combined juvenile/domestic relations calendar well in advance of the physical relocation. A Spring 1996 time frame is recommended for creation of the individual family court calendar. Similarly, on a smaller scale, the planned drug court can serve as a part-time individual calendar system, as well as a first step towards Differentiated Case Management (DCM) e.g., screening and placing cases on different case processing tracks, based upon case processing requirements.

Evaluation of the new individual calendar system for family court should be conducted in conjunction with ongoing review of “Fast-track” and the court’s current master calendar system. This comparative analysis should take into account qualitative factors (litigant and attorney
satisfaction, perceived efficiency of the system, etc.), as well as key statistical indicators. On this basis, the bench can make an informed decision regarding the “best” calendar assignment system(s) for the court in the long-term. In developing the individual calendar, the court will need to address the following matters:

- Staffing patterns for calendar management, both in the court administrator’s office and in judicial support roles;
- Job specifications, classification and compensation of court staff; and,
- A back-up judge or case “overflow system” to ensure trial date certainty for individual judge calendars.

7. Make a concerted, system-wide, effort to reduce the trial rate in Josephine County to approximate that of the state-wide average.

A jurisdiction’s trial rate is governed by a number of complex dynamics, including the attitudes of the bench, bar and litigants, e.g., the “local legal culture.” Despite the best efforts of all involved, trial rates in Josephine County may well hover above state-wide averages for the foreseeable future. Within the local justice system, however, it must be understood this dynamic is placing a tremendous burden on all components of the local justice system. In short, the judges, lawyers, staff and every component of the justice system (e.g., jury system) are working harder than their counterparts in other jurisdictions as a result of the high trial rate. Any progress towards reducing the number of cases disposed by trial will provide direct relief to the Josephine County justice system as a whole. The following measures are suggested to reduce the court’s trial rate and the number of trial days:

- Establish interim goals for a progressive reduction of trial rates for each case type, targeting state-wide average trial rates as the long-range goal.
- Post and review trial rates on a regular basis, both in meetings of the bench/bar and the Criminal Justice Committee.
- Create systems for early judicial intervention and incentives for non-trial case disposition, e.g., “Fast-track” and judicial facilitation of plea negotiations.
- Examine caseflow management practices, policies and procedures in other Oregon jurisdictions having low to average trial rates.
- Expand the array of diversion and ADR programs to facilitate early case resolution without trial.
- Establish an education and information program for litigants without lawyers (see recommendation #13).

8. Consolidate and streamline probation revocation hearings, using structured pleas as opposed to court hearings in all appropriate cases.

The District Attorney and Probation Department Director have agreed to expand the use of structured pleas, which will obviate the need for court hearing in the vast majority of probation revocation cases. They are to prepare a written policy and supporting procedures to establish the new system. This will free-up considerable court time, allowing all revocation matters to be placed on a single calendar call (once per week). If feasible, the weekly revocation calendars should be coordinated with specific probation officer assignments. For example, “All probation revocation hearings under the supervision of probation officers A and B will be held on the third Friday of each month.”

9. Expand the array of Alternative Dispute Resolution Programs (ADR) offered by the court, thereby making court time available for those matters requiring judicial attention.

The court has pioneered a variety of ADR programs, which can now be expanded to further reduce the amount of required court time and improve the likelihood of lasting case resolution (the literature suggests that decisions reached through consensus of the parties will have a high probability of success over time). Expanded use of ADR is strongly advocated in “Vision 2020 - The New Oregon Trail,” the strategic plan of the Oregon Judicial Branch (Presiding Judge Neufeld is a member of the Future of the Courts Committee which developed this planning statement). Potential ADR program expansion areas for the Josephine County Courts include:

- Increased use of settlements in civil matters;
- Expanded use of mediation in dissolution cases, including mediation of property issues (mediation is currently limited to custody and visitation matters);
- Victim reconciliation and expanded use of diversion programs in criminal and juvenile matters; and,
- A pro-se mediation program in civil and/or small claims cases.

10. Develop and promulgate written policies and procedures governing the court’s caseflow management program, the bench’s criteria in considering continuance requests, commitment to case processing time goals, etc.
11. Provide periodic management and statistical reports to the bench, trial bar and the Criminal Justice Committee for ongoing evaluation of the court’s progress in meeting time standards and related objectives.*

Although the court administrator’s office is producing a number of highly informative management and statistical reports, this information is generally for internal use by the presiding judge and court management. These reports and others can be made available to a wider audience, both for general information sharing and to facilitate change. The consultant recommends periodic dissemination of a few key statistical reports, preferably in graphic form, to the bench, court staff and the Criminal Justice Committee. These reports should include a brief explanatory note on progress to date, significant trends, etc. In light of the initiatives underway in Josephine County, the following statistical reports are recommended:

- Trial rates by case category
- Case aging statistics and comparison with Oregon time goals
- Failure to appear rates
- Inventory clearance rates
- Continuances and case fall-out rates
- Trends in case filings/dispositions
- Criminal caseload profile, e.g., proportion of drug-related cases
- Probation Revocation cases and manner of disposition

*Prior to the publication of this report, the Josephine County Trial Court Administrator’s Office began implementation of this recommendation. Sample management reports are presented in Appendix I.

12. Establish a comprehensive pre-trial services program to reduce the failure to appear rate for criminal hearings, working in concert with local justice agencies and the Criminal Justice Committee.

To fully address the FTA rate and related issues in Josephine County, a comprehensive study of pre-trial operations should be undertaken. This study should take into account the county’s jail overcrowding problems, the current practice of issuing citations on FTA bench warrants, the lack of system credibility associated with lax system response to FTA’s, etc. As an interim measure, the following steps will focus attention on the FTA problem and help to contain, or perhaps reduce, the FTA rate:

- Create an FTA task force as part of the Criminal Justice Committee.
- Have court personnel contact all defendants via phone 24 hours prior to their court appearance (the defendants can be ordered to phone the court as a condition of pre-trial release and court staff need only follow-up in those cases where the defendant fails to contact the court).

- Consider resetting FTA cases for a new court date 7 days later, reserving issuance of the warrant to cases involving a second FTA. Under this model, which has proven effective in other jurisdictions, court staff would make a concerted effort to contact the defendant and advise of the new court date.

- Consider establishment of an expanded supervised pre-trial release program, including site visits and close monitoring of compliance with release conditions.

13. **Develop and implement a comprehensive program for litigants without lawyers, define staff roles in assisting the public, and provide ongoing training for all court staff.**

The court is experiencing an unprecedented volume of cases involving litigants without lawyers, particularly in the areas of family law, landlord-tenant and small claims, and guardianship/conservatorship. This is placing new demands on the court, both in terms of hearings and staffing of public service areas. During the site-visit, court administration staff expressed concern regarding their role in assisting pro se litigants. The staff are service-oriented and wish to help litigants, but they are also cautious about engaging in the unauthorized practice of law. Many other jurisdictions are facing these same issues and there are a number of program models under development across the country. For the immediate future, a task force of judges and court staff can develop a comprehensive program plan for litigants without lawyers, addressing the following areas:

- Policies and procedures, including a clear delineation of staff roles and responsibilities in assisting pro se litigants;

- Information and educational materials for litigants, including brochures, video tapes, etc.;

- “User friendly” court forms and procedures;

- Early case screening to identify and refer cases appropriate for ADR;

- Adequate facilities for pro se litigants to complete necessary court forms; and,
Rosters of attorneys, ADR providers and community programs providing litigant services.

For an insightful discussion on staff assistance to litigants without lawyers, see John Grecean’s article, “No Legal Advice From Court Personnel -- What Does That Mean?” *The Judges Journal* (1995). The consultant is providing further materials on pro se court programs and related issues to the Josephine County Courts under separate cover.
V. CONCLUSION

Collectively, the foregoing measures should greatly improve criminal caseflow management and overall operation of the Josephine County Courts. The court and local justice officials are aware of the current system problems and are now poised to embark upon sweeping system improvements. Thus, the outlook for successful implementation of “Fast-track” and other project initiatives is positive.

Building upon the strong judicial leadership and inter-agency cooperation evident in Josephine County, the court and the Criminal Justice Committee can continue the process of ongoing evaluation and system improvement underlying this technical assistance project. This, in turn, will help ensure the integrity of court processes and the credibility of the local justice system as a whole.
VI. REFERENCES AND RESOURCE MATERIALS


Solomon and Somerlot, Caseflow Management in the Trial Court, American Bar Association (1987).
APPENDICES:

A. Site Visit Schedule and List of Interviewees
B. Reverse Telescope - Existing System
C. Reverse Telescope - Proposed System
D. Current Master Calendar System
E. Felony Case Inventory Clearance
F. Misdemeanor Case Inventory Clearance
G. Case Aging Statistics - Comparison w/ Time Goals
H. Effect of Continuances and Scheduling
TENTATIVE SCHEDULE FOR MARCUS REINKENSMeyer VISIT TO JOSEPHINE COUNTY COURTS

AUGUST 16, 1995

8:30 a.m. to Noon
Meet with Judge Neufeld, Gary Brandt and Diane Swint to discuss the overall caseflow management of Josephine County Courts

Noon to 5:00 p.m.
Continue meeting with Gary Brandt and Diane Swint and other members of the Criminal Justice Committee

AUGUST 17, 1995

9:00 to 10:30 a.m.
Meet with Judge Neufeld, Gary Brandt, Diane Swint, Timothy Thompson, Marie Goodpasture, Mark Dickson, Daniel Simcoe and Herbert Putney

Noon to 1:00 p.m.
Luncheon meeting with Judge Neufeld, Judge Coon, Judge Mackay, Judge O'Neal and Gary Brandt

1:30 to 5:00 p.m.
Meet with individual members of the Criminal Justice Committee to discuss aspects of each agency within the caseflow process

AUGUST 18, 1995

8:00 a.m. to Noon
Continue meetings with individual Criminal Justice Committee members; meet with Gary Brandt and Diane Swint re. civil and domestic relations cases

1:00 to 5:00 p.m.
Conclude visit by meeting again with Judge Neufeld and Gary Brandt to discuss Marc's observations

CRIMINAL JUSTICE COMMITTEE PARTICIPANTS:

Gerald C. Neufeld
Presiding Judge

Gary Brandt
Trial Court Administrator

Diane Swint
Court Operations Supervisor

Timothy Thompson
District Attorney

Marie Goodpasture
County Probation Department Director

Lt. Mark Dickson
Josephine County Sheriff's Department, in charge of jail

Daniel Simcoe
President, Josephine County Defense Lawyers (JCDL)

Herbert Putney
President, Josephine County Public Defenders (JCPD)
REVERSE TELESCOPE
CASE FALLOUT (EXISTING)
FELONY CASES

Time Between Intermediate Case Processing Events (Days)

IN - CUSTODY

OUT OF CUSTODY

Appendix B
REVERSE TELESCOPE
CASE FALLOUT (PLANNED)
FELONY CASES

Time Between Intermediate Case Processing Events (Days)

IN - CUSTODY

OUT OF CUSTODY
CRIMINAL CASEFLOW - MASTER CALENDAR SYSTEM

CURRENT JOSEPHINE COUNTY MODEL

ARR → STATUS → MOTION → DOCKET → Judge 1
        ↓                  ↓
        Judge 2            Judge 3
1988-94 INITIATED/DISPOSED
DISTRICT/CIRCUIT MISDEMEANORS
1988-94 INITIATED/DISPOSED
CIRCUIT COURT - FELONIES
### JOSEPHINE COUNTY COURTS' DATA ON GOALS FOR TIMELY DISPOSITION
### AGE OF TERMINATED CASES

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JOSEPHINE COUNTY COURTS' DATA ON
GOALS FOR TIMELY DISPOSITION
AGE OF TERMINATED CASES

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EFFECT OF CONTINUANCE AND SCHEDULING

POLICY ON ATTORNEY READINESS

START HERE

DUE TO UNREADINESS
ATTORNEYS REQUEST CONTINUANCE

WHEN LOW ON LIST
ATTORNEYS MAY NOT
PREPARE CASE AND
HAVE WITNESSES
PRESENT

COURT ROUTINELY
GRANTS CONTINUANCE

TOO FEW READY
CASES TO KEEP
JUDGES BUSY

USUALLY CASES
LOW ON LIST ARE NOT
REACHED FOR TRIAL

COURT SCHEDULES
UNREALISTICALLY HIGH
NUMBER OF CASES