OBSERVATIONS REGARDING THE
ESTABLISHMENT OF AN EXPEDITED
PROGRAM FOR HANDLING
DRUG CASES IN THE
DISTRICT OF COLUMBIA
SUPERIOR COURT
OBSERVATIONS REGARDING THE
ESTABLISHMENT OF AN EXPEDITED
PROGRAM FOR HANDLING
DRUG CASES IN THE
DISTRICT OF COLUMBIA
SUPERIOR COURT

November 1992

Consultant:
George Gish

CTAP Staff:
Caroline S. Cooper
## COURTS TECHNICAL ASSISTANCE PROJECT

### ASSIGNMENT DATA SHEET

<table>
<thead>
<tr>
<th>Technical Assistance No.:</th>
<th>3-030</th>
</tr>
</thead>
<tbody>
<tr>
<td>Requesting Jurisdiction:</td>
<td>District of Columbia</td>
</tr>
<tr>
<td>Requesting Agency:</td>
<td>Superior Court of the District of Columbia</td>
</tr>
<tr>
<td>Requesting Official:</td>
<td>Hon. Fred Ugast, Chief Judge</td>
</tr>
<tr>
<td>Dates of On-Site Study:</td>
<td>May 4, 1992; May 29, 1992</td>
</tr>
<tr>
<td>Consultant Assigned:</td>
<td>George Gish</td>
</tr>
<tr>
<td>Local Coordinator:</td>
<td>Hon. Fred Weisberg</td>
</tr>
<tr>
<td>CTAP Staff Coordinator:</td>
<td>Caroline Cooper</td>
</tr>
<tr>
<td>Central Focus of Study:</td>
<td>Drug Case Management</td>
</tr>
</tbody>
</table>

---

*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 position or policies of the State Justice Institute.*
# TABLE OF CONTENTS

## I. INTRODUCTION 1

## II. OBSERVATIONS RELEVANT TO THE DRUG CASE MANAGEMENT PROCESS 3

A. Organization and Staffing 3
B. Felony Caseload and Case Processing 3
C. Pretrial Process 4
D. Motions 5
E. Defense Services 6
F. Plea Negotiations/Sentencing 6
G. Computer Resources 7
H. Case Information Available Early in the Process 7
I. Court Management Information 8
J. Justice System Agency Meetings/Coordination 8
K. The Pending Caseload 9
L. Other 9

## III. ISSUES WHICH THE NEW CASE MANAGEMENT SYSTEM SHOULD ADDRESS 10

A. Provision for Early Discovery 10
B. Treatment Resources 10
C. Availability of Intermediate Sanctions 10
D. Probation Supervision 10
E. Incentives for Defense Counsel to Negotiate Early Pleas 10
F. Scheduling Police Appearances 11
G. Utility of Sentencing Guidelines 11
H. Computer Information 11

## IV. RECOMMENDATIONS REGARDING A SYSTEM FOR MANAGING THE DRUG CASE DOCKET AND THE PENDING BACKLOG 12

A. General Recommendations 12
B. Recommendations Regarding Disposition of the Pending Cases 13
I. INTRODUCTION

In March 1992, Hon. Fred Ugast, Chief Judge of the District of Columbia Superior Court requested SJI's Courts Technical Assistance Project (CTAP) to assist the court in developing a new case management system for felony drug cases. At the time of Judge Ugast's request, two thirds of the Court's Felony II caseload consisted of drug distribution cases, with ninety-five percent of these cases being disposed of by methods other than trial, although most cases remained pending until the trial date. The Court's purpose in developing the new drug case management system was to promote earlier disposition of appropriate cases, thereby reducing the number of felony drug cases pending trial, freeing up judicial resources for other pending felony cases and, ultimately, helping the Court to more efficiently and effectively manage its burgeoning felony caseload.

Shortly before requesting CTAP assistance, the Court had submitted a concept paper to the State Justice Institute for funds to purchase and install computer terminals to support the new case management system. In conjunction with CTAP's program planning services, the Court also asked CTAP to review the adequacy with which the computer support described in the concept paper would meet the new case management system's needs so that any needed modifications could be incorporated in the Court's final proposal to SJI.

On May 4th, Caro line Cooper, CTAP Deputy Director, met with Judge Fred Weisberg, Presiding Judge of the Criminal Division, to discuss the status of the proposed new drug case management system, the issues and tasks which needed to be addressed and the most appropriate focus for CTAP services. Also attending this meeting were: Paul Roddy, Deputy Director of the Criminal Division; Joanne Pozo, Director of Research; and Ramsey Johnson of the U.S. Attorney's Office. During the course of this discussion, it became apparent that the scope of the new case management system would necessarily be determined by the administrative resources available to support it, and that the first phase of CTAP services should therefore focus upon defining the minimum resources needed to implement the expedited drug case management program. To provide this assessment, the CTAP assigned George Gish, Clerk/Administrator for the Detroit/Wayne County, Michigan Recorder's Court which had instituted a Differentiated Case Management (DCM) system several years earlier which included a system for early disposition of appropriate felony cases similar to that which the D.C. Superior Court was now establishing.
On May 29th, Mr. Gish, accompanied by Ms. Cooper, conducted a site visit to the D.C. Superior Court to meet with Judge Weisberg and other judicial system officials involved in key management and data processing functions relating to drug case processing. U.S. Attorney's Office during the past year to obtain information relevant to identifying the types of cases which might be amenable to an early disposition program. In addition, Mr. Roddy provided copies of monthly court disposition statistics for 1992, along with annual summaries for several prior years, a staff organization chart for the Court's Felony Division, and a summary of relevant court procedures.

During the course of the site visit, current policies, procedures, tasks and staff responsibilities relating to the handling of drug cases in the Superior Court, from initial filing through disposition, were reviewed with a view to developing recommendations, as appropriate, relevant to the design of the new drug case management system. Mr. Gish also reviewed the proposed computer requirements described in the Court's concept paper to SJI in terms of their adequacy in supporting the proposed drug case system.

The following sections of this report summarize Mr. Gish's observations and recommendations regarding the new drug case management program. Because of the brief nature of this technical assistance study, these comments are presented in outline form for the Court's use as a guideline in designing and implementing the new case management system. Mr. Gish's specific comments regarding the Court's computer resource needs to support the new system were communicated in a telephone conference with Ms. Pozo and Mr. Roddy during the week following his site visit and incorporated into the Court's request to SJI. The comments included in this report, therefore, address other issues relevant to designing the program which became apparent during the site visit.

This report was submitted to the Court earlier in draft form to serve as a guideline during the initial planning and implementation period for the new program, which began its first phase of operation in mid-October.
II. OBSERVATIONS RELEVANT TO THE DRUG CASE MANAGEMENT PROCESS

A. Organization and Staffing

There are four branches within the criminal division: Misdemeanor; Felony; Traffic; and Special Proceedings (handling such matters as competency issues, habeas corpus matters, warrants, and other matters outside of the scope of the other divisions). Courtroom clerks are assigned to a courtroom on a one-year assignment. Motion Clerks process motions only. The Clerk of the Court works for the Chief Judge.

There are two docket clerks assigned to Appeals. There are four calendar clerks who keep track of cases going to court each day and they also take files to the courtrooms.

There is a one-day one-trial system for jurors.

Defense and prosecution services are provided on a vertical basis for drug cases.

B. Felony Caseload and Case Processing

There are approximately 705 indictments per month. The prosecutor estimates that about 67% of all the cases are felony drug cases. There is a ten percent trial rate with a time-to-trial of about one year. Approximately five percent of the drug cases go to trial as compared with eight percent of other cases. Accelerated Felony Trial Calendar (AFTC) cases, the most serious cases, have approximately a ten-twenty percent trial rate. About 90% of all cases plea and some are dismissed. Fifty-seven percent of the pleas are described as early pleas at the status conference stage. It requires about four months to disposition in these “early pleas.” About 33% of the pleas are taken on the day of trial, which means an average disposition time in these cases of approximately 8 months. Based upon the prosecutor’s review of a sample of recent dispositions, approximately 2.4 trial dates are set for each case and approximately 2.4 status hearing dates also.

First offenders, especially non-violent non-drug offenders, generally receive probation and these cases could be identified early, but the caseload is not broken down this way. The percent of cases receiving a prison sentence is not known. There is no data available on the percent of defendants who are convicted as charged.

The prosecutor indicates that there is no management database provided with the PROMIS system. Twenty-five percent of the pending cases are estimated to be “tough,” where there are other pending cases on probation, on parole, or the offense involves a
crime of violence. In 75% of the drug cases, the prosecutors’ office could be flexible and might agree to non-prison sentences. Offers could be made in such felony drug cases that would not involve mandatory jail time.

The average time to trial in this jurisdiction is approximate 270 days from indictment. The case-age report does not deduct bench warrant time. The average time for a court trial is approximately one-half day. The prosecutor wins approximately 75% of felony jury trials although the percent of defendants convicted as charged is not known.

While the number of appearances per case is not known, it is estimated that judges spend about one-half of their time now “churning cases.” Court staff have to make entries on all of these “churned cases.” They have to find files, process paper, and defendants must appear at every event.

There is a problem getting defendants from jail to court, and this problem is exacerbated by the system itself in that many appearances result in continuances. Attorneys also manipulate and play the system. The game is to request a jury trial, wait, and then manipulate the system for a plea or dismissal in six or seven months. The percent of cases which are transferred from the originally assigned individual calendar judge is not known although the prosecutor estimates that only five percent or less of cases are transferred from the originally assigned judge.

C. Pretrial Process

The indictment, particularly in drug cases, occurs within ten days of arrest. There is no preliminary hearing if there is an indictment. If a preliminary examination is necessary, the exam will be conducted by a commissioner. Cases are consolidated after the indictment. There are very seldom any pleas taken at the pre-indictment stage.

After indictment, a case goes to one of eleven Felony II calendars. The Court is expecting to increase the number of felony calendars from eleven to twelve in the near future. The first event is a plea of not guilty. A status hearing is held within three to five weeks. Some judges set trial dates at the arraignment while others do not. There is no set policy on when trial dates are to be set.

Discovery does not appear to be a problem with drug cases but it is a problem in other types of cases. There were 600 cases pending before the Grant Jury at the time of the site study. The Grand Jury process can take up to nine months. In armed robbery and
murder cases, fingerprints are sent to the FBI for identification and, apparently, this causes delays.

Each judge has approximately 375 cases on his or her calendar. Arraignments are held at 9:00 or 9:30 a.m. There are seven - ten status hearings also scheduled in the morning. Most of the defendants are on bond. These hearings take three-five minutes each and may involve discovery issues. The first trial date is set in approximately three months from the indictment. Subsequent trial dates are normally four-five months into the future. The first trial date is not firm.

Guilty pleas take about fifteen minutes each, while trials require perhaps two days or two days and part of a third day. Because of the time required for arraignments and status hearings and other similar activities, trials are not heard until 11:30 a.m. or perhaps after lunch.

At least the vast majority of misdemeanors go right to a jury trial and many receive no time in jail. A review of these cases should be made to determine why so many of them go to jury trial and what, if anything, might be considered to reduce their jury trial rate.

The judges control the calendar, so the role of the Court Clerk does not include case scheduling. The Court Clerk records the events. When a particular courtroom is down, someone in the courtroom calls the coordinator who transfers another case to that courtroom if there is a ready case.

Judges normally try three-four cases per month. The continuance rate per judge is not known.

There are eleven judges and twenty-two to thirty different prosecutors.

D. Motions

Ninety-eight percent of the cases involve some kind of motion. Apparently many motions are filed due to fears regarding ineffective defense complaints. Motions are stamped in and the data is entered. Motions are heard on the day of trial after the various status hearings are held. Motions are actually argued in 20% of the cases with the defense winning about ten percent. Evidentiary hearings require about two hours. Approximately 50% of the cases which go past the motion hearing stage go to trial. Apparently many plea after that time also.
E. Defense Services

The Public Defender Service is responsible for about fifteen percent of the felony cases. The Public Defender Service is staffed with some excellent attorneys. The defender takes non-drug cases, such as homicides and armed robberies but, it is noteworthy, does not take a significant number of drug cases. Eighty-five percent of the felony drug cases are represented by court-appointed attorneys who vary in ability and experience. It is felt that some attorneys are incompetent and performance standards are needed. There is no formal training program and no training is provided by the Court. There are yearly criminal practice seminars. The attorneys are paid at the rate of $35 per hour and there is currently much pressure to raise this rate. There is a ceiling on how much they can be paid per case, with a maximum of $1,700. The average cost per case is about $900.

Attorneys are appointed on the day of arrest, based on who is available to accept cases. Court clerks apparently just place the attorney’s name on an available assignment list. The judges make the appointments. Appointments rotate among the judges. There are many complaints regarding the way assignments are made. Many attorneys complain that they do not receive enough cases.

There are no precise statistics available, but it is believed that the attorneys receive a maximum of $55,000 to $70,000 per year in assignments. About 200-400 attorneys are available to receive assignments, so the court feels that there are sufficient attorneys available to represent all of the indigent. There is a core group of approximately 200 lawyers who handle the bulk of the cases. There is a separate budget office in the accounting office to process vouchers which the judges approve. There are complaints about some vouchers being reduced. Some judges apparently scrutinize the vouchers very carefully while others do not. Defense attorneys can hire investigators. There is a limitation of $175 for investigator costs per case without prior approval of the court. Investigators are paid at the rate of $10 per hour. Investigators are hired in a high number of cases.

F. Plea Negotiations/Sentencing

Judges are not involved in sentence or charge bargaining. There are no sentencing guidelines, so judges have a wide range of discretion. There are reduced pleas at trial. No one in the system really wants to try the case and the defense knows that they will get some
kind of a plea offer on the day of trial.

While the prosecutor can offer a plea to a non-mandatory count, a complicating factor in regard to plea negotiations is that, for cases involving drug sales, there is a four-twelve year mandatory minimum sentence and this means the defendant must serve the four years because there is no good time credit allowed. While the prosecutor, for example, could offer a plea to a reduced charge and indicate that this plea offer is open for two weeks only, this would require a radical change in the local culture because limits have never previously been imposed on the plea negotiation process.

One very important point was made during the site visit, and that is that a negotiated settlement offer could be made within ten days of arrest and prior to the defendant's first appearance before a Superior Court Judge. This could be done in a very high percentage of cases. Ideally, at least sixty percent of the caseload could be disposed of within thirty days, with no more than sixty cases assigned to each trial calendar.

G. Computer Resources

There is a separate data-entry division within the Court comprised of six clerks who do all of the data entry. The data-entry clerks read the jacket entries. The computer is updated within twelve hours, ideally, although in actual practice the time is twelve to twenty-four hours. There is, therefore, a considerable lag between the time the event occurs and the time the information is entered into the computer system. The Court is on a batch system now but a new computer system is apparently being designed and it will be easier to generate reports. There is a six digit police department ID number for defendants. This jurisdiction does not package cases.

The Police Department is on a Criminal Justice Information computer. The prosecutor is on PROMIS. The prosecutor has two or three court terminals to determine case status. The Court has its own computer, so all three agencies have separate systems. The defender relies on the Court's computer.

H. Case Information Available Early in the Process

There is considerable case information available early in the process. A urinalysis is done at the point of arrest, along with an interview by bail staff to determine employment status, the extent and severity of any drug problems, as well as information on health and criminal history. Commissioners conduct the initial arraignment at the preliminary
examination stage, with perhaps eight-fifteen out of thirty actually held. The others are either waived or there is an indictment, dismissal, or continuance. Bail conditions are monitored and treatment is often made a condition of bail. Third party custodians are appointed and performance reports are submitted to judges.

The presentence reports are described as satisfactory, although the Department is swamped. A presentence report is prepared in every case, but by law, this is not really necessary. The Pretrial Services Agency's report is described as at least 90% accurate. So, much of this information could be used to prepare other reports. As mentioned previously, an attorney is appointed for the first appearance. The prosecution and the defense receive a copy of the Pre-trial Service Agency's report. It is not known when the prosecutor first formulates a settlement offer.

I. Court Management Information

In regard to information which is available to help manage this system, there is a monthly report on case age and dispositions. Much of the monthly case status information provided by Mr. Roddy is prepared manually. Case-age calculations begin at the point of indictment and, as noted, no allowance is made for bench warrant status.

In regard to attorney conflicts, these are usually discovered on the day of trial and these appear to be detected generally by word-of-mouth. There are no continuance reports available. The way the system is designed, one date overlaps the other in the computer so continuances are not readily detected. Although attorney bar numbers are entered, there are no calendars now available by bar number.

There appears to be little available in terms of cost/benefit data such as the cost per day in jail, the cost per courtroom per day, and other similar information that might be useful in providing fiscal justification for new programs.

J. Justice System Agency Meetings/Coordination

Those interviewed during the site visit felt that there are enough meetings now with other justice agencies. The police, court, prosecutor, defense, probation -- apparently all of these people meet on a fairly regular basis. Meetings with the bar, which appears to be loosely organized, are held periodically, with the usual practice being not to have regular meetings but to call a meeting when there is a problem in the system, or when it is felt that the Court and the bar feel they are working at cross purposes. There are, however, regular
meetings between the Court and the prosecutor's office at which they discuss whatever issues are of concern. In terms of discussing the new drug case management program with the bar, it was felt that there should be a plan readied first which could then be presented to the bar for comment.

K. The Pending Caseload

It is felt that a system is needed for disposing of old cases. Of the old pending cases, about two-thirds are set for trial and one-third are set for status or other hearings. Missing, however, is a profile of these pending cases, so that it is not known exactly what these cases are. For example:

- how many are multiple cases?
- how many have probation or parole violations pending?
- how many have pending charges?
- exactly how many are set for trial or a status conference?
- what is the date of the next scheduled event?
- how many of the defendants in these pending cases have prior records? what are those records?
- how many are first offenders?
- can the cases which will likely involve non-prison sentences be identified?
- what sentence would these defendants likely receive if they were to plea on the day of trial under the current system?

It is also not known what percent of the pending cases involve probation violations as well as a new offense. This category could form the basis of a separate track.

Since all pending caseload statistics are for defendants, not cases, there should also be a case count. In conjunction with this analysis, the prosecutor might also review the pending cases to identify additional information relevant to designing a program for expediting their disposition.

L. Other

The high volume of cases appears to be having a demoralizing affect on judges and staff, with many feeling the affects of "burn-out". There is a strong feeling that additional resources are needed, especially in terms of personnel and computers. The Judiciary Committee of the D. C. Council appears to take an active interest in the Court but may need additional information to fully understand and appreciate court operational issues and needs.
III. ISSUES WHICH THE NEW CASE MANAGEMENT SYSTEM SHOULD ADDRESS

A. Provision for Early Discovery

Regarding discovery, no defendant will take a plea until discovery is provided. Discovery is received post indictment now, except in AFTC cases. The prosecutor indicates that discovery could be provided within ten days of arrest and this is extremely significant. The prosecutor has a criminal history early. Presentence reports for certain cases could be accelerated. For the twelve criminal calendar courtrooms, terminals could be installed. The building has apparently been designed to facilitate the installation of computers in that conduits have been installed in the floors, so wiring should be easy.

B. Treatment Resources

Drug treatment programs are not adequate and there are long waiting lists. The Pre-trial Services Agency report is described as helpful and accurate in identifying treatment needs generally. A new treatment facility with 800 beds should be opened soon for persons sentenced by the Court.

C. Availability of Intermediate Sanctions

There are a few intermediate sanctions available. Fifty percent of the defendants test positive for drugs. There is a new domestic violence arrest law and this caseload is growing. There is no spouse abuse counselling program available. Approximately 90% of the defendants who appear in court are indigent. A range of intermediate sanctions for these defendants is needed.

D. Probation Supervision

It is felt that probationers do not receive adequate supervision, with 10,000 people or more on probation. This issue needs to be addressed in conjunction with the development of intermediate sanctions and treatment resources.

E. Incentives for Defense Counsel to Negotiate Early Pleas

Attorneys receive no financial inducement for early pleas and this is very much a factor in the process. They are paid hourly. For assigned attorneys, the budget is approximately $17 million per year. A review of a number of vouchers showed that misdemeanors average about 15.5 hours or $546 each. All felonies average about 23.7 hours or $830 each. For drug cases, about 29.7 hours or $1,041 each. Attorneys can submit a voucher at any time in the case process.
F. Scheduling Police Appearances

There is an appearance problem with police because of the lack of firm trial dates. If trial dates are not firm, police officers apparently feel they can schedule vacation time with no regard for the trial dates. There are overtime issues in this jurisdiction regarding police appearances. It is felt the conviction rate does get reduced because it is difficult to get officers back to trial when multiple trial dates are set.

G. Utility of Sentencing Guidelines

It was felt that sentencing guidelines are needed. Apparently there were guidelines that had been developed at one time which could be used. There is a Superior Court Criminal Rules Committee and a Board of Judges, so much of this could be done by Court Rule if the Court decides to adopt guidelines.

H. Computer Information

A $200,000 grant is available to restructure PROMIS. There is a crying need for information throughout the system, according to the prosecutor. The current court information system is highly coded. For example, indictment is coded as an "A" rather than displayed as INDMT or something easily readable. The printouts are difficult to interpret.
IV. RECOMMENDATIONS REGARDING A SYSTEM FOR MANAGING THE DRUG CASE DOCKET AND THE PENDING BACKLOG

A. General Recommendations

1. Develop separate plans for managing new cases and for disposing of the backlog.

2. Start the docket management plan for new cases filed as of a certain date and apply it to all cases filed subsequent to that date.

3. Do not mix backlog cases with new cases among the judges involved in the new plan.

4. Overall program goals and policies are needed.

   The goals should be clearly articulated and monitored. Based on discussions with court and prosecution officials during the site visit and a review of the composition of the caseload to be included in the new drug case management program, they should include the following:

   a. Firm trial dates. The trial continuance rate should not exceed fifteen percent. (The current rate is estimated at 240%.)

   b. The percent of cases set for trial, given a trial rate of approximately 10%, should not exceed 20%.

   c. Cases should not be set for trial until they are trial ready.

      All motions and other matters should be concluded before a trial date is set.

   d. Sixty percent of all dispositions should occur within 30 days of indictment.

   e. No pleas to reduced charges should be accepted after a trial date has been set.

   f. Discovery should be completed within ten days of arrest and a settlement offer made in all cases at that time.

5. Procedures for compensating attorneys handling indigent defense cases should be reviewed.

   a. A fee schedule for attorneys handling indigent defendant cases should be developed which does not financially punish attorneys for early dispositions.
Currently, an attorney would receive far less compensation for an early plea than he/she would for a plea months later on the day of trial. One option might be to pay the average fee currently paid for a plea, the disposition in 90% of the cases as opposed to trial, if the plea is made early.

b. Attorney payment vouchers should not be processed and paid until a disposition has been reached.

6. Computer terminals should be installed in the courtrooms and the courtroom clerks trained to enter data.

There is currently too much lag time between the event and the time data is entered on that event.

**B. Recommendations Regarding Disposition of the Pending Cases**

1. Determine the status of all pending cases and obtain information specifically on the following:
   
a. Are the witnesses still available and willing to prosecute? (This is particularly vital in victim-acquainted/victim-related cases.)
   
b. Has the defendant been sentenced and imprisoned on another case? Can the pending case be dismissed?
   
c. Is the defendant available to prosecute?

      An initial pretrial hearing can be called to determine if the defendant will appear. If not, a bench warrant can be issued.

   
d. Does the defendant have any probation or parole holds? Does the defendant have any other pending cases?

      All such cases should be packaged together, with the prosecutor making a settlement offer, as appropriate, and all of the cases being disposed of together.

2. For those cases remaining:

   a. Select several high-volume plea judges.

   b. Select several effective high-volume prosecutors who have the authority and the capability to formulate reasonable settlement offers.

   c. Inform the defense bar of the special backlog reduction program and let them know that the program and the settlement offers for cases in
this program will end as of a certain date.

d. Make available judges to accommodate trial demands on an on-demand basis.

Let these judges know the purpose of the program and its limited lifetime. Since 90% of the cases plea, only 10% of the backlog, or less, should remain on the docket for trial. This 10% can be placed on civil calendars or absorbed into the new program's criminal dockets. It is necessary, however, to have a trial judge available while settlement negotiations on the backlog cases are underway.