TRIAL COURT PROGRAMS DIVISION

Office of the State Court Administrator

Oregon Judicial Department

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Lebanon Municipal Court Study

Final Report

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THE STATE OF THE COURT

When we began studying the Lebanon Municipal Court (LMC), we were unaware of the extent of the problems the court faced. One might naturally assume that the problems of a small court would be less pervasive and more easily resolved than those of a larger court; however, we discovered LMC had major systemic problems touching all aspects of court business.

The court office is staffed by two overburdened clerks struggling with an enormous backlog of work. In addition, they must use data base software which does not adequately address their needs and which they do not understand enough to take advantage of its flexibility. The filing "system" is chaotic. Collection actions appear to be sporadic and inconsistently applied. The constant addition of new work and the frequency of public interactions make it difficult to take steps to correct any of these problems.

Court work is demanding under the best of circumstances. Clerks are called upon to work with clientele who would, for the most part, prefer to be somewhere other than in court. The clerks must maintain a professional attitude and demeanor while handling frequent counter and telephone transactions, often listening to complaints and excuses, showing sympathy while firmly insisting on compliance with court orders. The current state of LMC adds to the strain of an inherently demanding situation.

The findings and recommendations presented in this document are intended to give the court data on the extent of these problems, ideas on how they might solve them, and suggestions for enhancing some existing procedures. The court may decide to reject some of these suggestions, but we urge all parties involved to consider and discuss each problem presented. Such discussions may lead to new ideas which did not occur to us, and the best ideas frequently come from those integrally involved in the procedure being discussed.

We found all the people who work with and for the court to be extremely helpful. The judge and clerks are very hard working and dedicated. We believe this attitude is one of the court's strongest assets and are confident that the court can solve its current problems.

METHODOLOGY

We did not address certain topics, as specified in the study proposal.

Some of the recommendations included in the sections of this report and the sections which will follow under separate cover are based on the assumption that the court wants to continue using JALAN software. This impression stemmed from our initial meetings with the judge and city finance director. We also proceeded under the assumption that JALAN's software could be altered to meet the court's needs.

Many of our recommendations focus on ways to make JALAN's software work for the court. Making the software fit the court's needs may require considerable time, effort, and expense. Since we cannot determine how much work will be involved to make programming changes to the software, we did not attempt to determine the cost of such recommendations.

Trial Court Programs Division (TCPD) employed various methods during the study, including the following:

- Interviewed court staff and others who interact with the court.

  We interviewed both clerks, the judge, the city finance director, a representative of the city police department, two city attorneys, and both diversion program evaluators.

- Sat at each clerk's desk and performed their duties for a day.

- Developed flowcharts of some processes to further our understanding.

- Observed the courtroom and the clerk's office when court was in session.

- Asked court clerks to keep a time log of telephone and counter activity.

  The clerks logged telephone and counter transactions for 11 days.

- Timed and observed select court activities and processes.

  We tracked the time it took clerks to find files, add old cases, and assist people on the phone or at the counter.

- Collected samples manually and from the JALAN data base.

  - Counted documents in 100 files to find the average number of documents per file.

  - Counted citations in 100 files to find the average number of citations per file.

  - Counted approximately one third of the files in each location in the clerk's office to determine:

    1) an estimate of the total number of files in the clerk's office,
    2) the status of those files, and
    3) whether the files had been added to the JALAN data base.

- Selected a random sample of 100 manual ledgers to determine:

  1) the age and profile of accounts receivable, and
  2) the amount of time between steps of the collection process.

- Developed queries to extract JALAN data regarding:

  1) the structure of the JALAN data base,
  2) time from case filing to case disposition,
  3) size of payments, assessments, and installment amounts, and
  4) amounts paid on the date of sentencing for certain disposition codes.

- Reviewed JALAN documentation and experimented with the JALAN test data base.

  This helped us to determine where certain data resided on the data base, discover information court clerks were not able to provide, and further our understanding of the software.

- Contacted and visited other municipal and state courts to learn about court processes.

  We visited several municipal courts to observe court in session. We visited Albany Municipal Court to learn more about JALAN's software. We called municipal and state courts to learn about various court processes.

- Researched current literature and statutes on select topics.

SECTION ONE: GENERAL TOPICS

This section deals with broad, systemic problems that affect most aspects of the court's work. These are generally the most critical issues because of their far-reaching effects.

FINDING 1.1: The court does not have all of its forms up and running from the JALAN programs.

Some court computer software packages, including that used in the state court system, are designed such that notices, warrants, and other sanction forms are not produced unless a clerk enters an appropriate event on a case. The JALAN software can be used this way, but it was designed to determine what sanction is appropriate for each case, based upon court-delineated rules, and produce the necessary form without clerical input. The software inserts the appropriate event record onto the case register. The software can also post associated fees to a case when a sanction notice is produced (e.g., the $10 late fee associated to show cause notices.)

In June the court dumped almost all of its JALAN data because the information did not accurately reflect the status of many of the court's cases. Warrants had been issued but not entered on the data base. Likewise, show cause orders and license suspensions had not been entered, and the system did not reflect scheduled trials or hearings other than arraignments. If the court had started to generate automated forms from the computer, many notices and other forms would have been generated erroneously. The court dumped the computer data in order to start from scratch with complete and accurate data.

Unfortunately, the court was not prepared to start generating its sanction notices and other routine forms from the computer when the data was dumped. Even though the judge drafted a memorandum to JALAN stating the court's criteria for generating sanction forms, the automated forms themselves were not designed or programmed, and the court had not significantly altered its data entry procedures. In addition, implementation was delayed further awaiting the results of TCPD's study. To date, the court is no closer to using this function of the JALAN software. The same problem which caused the court to dump the JALAN data is developing again for the same reasons. Sanction actions are taken but not entered on the data base. Hearings are scheduled but not entered.

RECOMMENDATION 1.1A: Work with JALAN to automate sanction notices, hearing notices, and warrants as soon as possible.

This should be the court's top priority. Delay will only exacerbate the problem of obsolete case data. In addition, this function of the JALAN software has the potential to save considerable clerical time

currently spent determining the need for sanctions, typing sanction forms (i.e., license suspensions, show cause orders, warrants), and posting court fees to manual ledgers.

Since decisions regarding sanctions often depend upon previous sanctions or upon the nature of a case, we recommend that the court get all sanction notices and warrants up and running at the same time, rather than attempting to bring them on-line one at a time.

RECOMMENDATION 1.1B: Discuss with JALAN how the system will create notices and post fees.

In the Albany Municipal Court, JALAN software produces separate notices and posts fees to each case which meets the court's programmed criteria. If a person has multiple cases and is overdue, the system generates separate sanctions for all of that person's cases and posts appropriate sanction fees to each. There are certain advantages to this. The cases may actually call for different kinds of actions. For example, one case may be eligible for a license suspension while another may not. Also, the Albany Municipal Court considers the entire account due in full if a payment is missed. Albany's procedures are not consistent with LMC's current operating philosophy, however. LMC sends only one notice per party and posts only one fee to the person's account. The court does not consider the entire amount due just because a person is late on a payment.

The court should discuss with JALAN whether or not JALAN can reasonably set up the notices consistent with the court's current procedures. This would mean the program would have to look at all of a person's cases and either combine those that require the same action, listing all on the notice, or pick just one case. Late fees would have to be posted to just one of the cases, presumably the oldest case with money still owing. Similarly, license suspensions would be established on the oldest traffic case with money still owing. The court will also need to determine how the system should create warrants and post associated fees.

If JALAN cannot cost-effectively program the notices to act consistent with the court's philosophy, the court should reconsider its philosophy. Continuing with the current practice, while using a sanction program which does not fit the practice, will create a lot of extra work for the clerks, likely eliminating the time-saving benefits such programs are designed to produce. The clerks would have to review all accounts closely each time the program is run because the program would be unreliable. They would also have to throw away "extra" notices, "error out" events on many cases, and reverse or suspend posted fees.

RECOMMENDATION 1.1C: Try to make all notices fit on 5-1/2 inch-wide by 8-1/2 inch-long paper.

This will facilitate filing with citations. License suspension forms are an exception since they are preprinted DMV forms.

RECOMMENDATION 1.1D: Enter the current status for all cases currently on the data base.

All cases currently on the data base must reflect currently scheduled hearings or trials and all active sanctions. Once the court is prepared to generate automated sanction forms, the clerk should always run the "FTA-FTC Listing" and review it prior to letting the program proceed with sanction actions. This report lists the case and the actions the system is planning to take. It gives the clerk the chance to correct any errors or omissions before the program prints the sanction notices and posts fees. The first few times the program is run, we recommend a thorough check of all cases on the report. This will familiarize the clerks with the report, help ensure that all current cases have been correctly updated, and verify that the program is operating properly.

FINDING 1.2: The court is drowning in a flood of backlogged work.

One of the greatest challenges the court faces is overcoming a huge work backlog. We believe it is one of the biggest roadblocks to establishing efficient paper-flow processes and an effective computer system.

Late in September, we pulled samples from boxes and file drawers, then extrapolated the data to estimate the size of the court's backlog at that time.

	Total Files	A/R Posted on data base	Percent Posted
Waiting for warrant to be prepared	693	0	0%
Waiting for payment	603	513	85%
Waiting for warrant service	612	6	1%
Waiting for arraignment/appearance	122	64	52%
Waiting for signature on warrant	74	0	0%
Waiting for FTA charging instrument	180	68	38%
TOTAL	**2,284**	**651**	**29%**

The huge backlog has various detrimental effects on court operations.

1. Collections efforts are often slow and appear to be inconsistently applied.

2. Backlog actually creates additional work and is the principal cause of the court's filing problems (discussed in greater detail in finding 1.3). There are boxes of files waiting for warrants to be typed, boxes of files returned from court waiting for various actions, boxes of files waiting for failure-to-appear charges, etc. Because the files are in many different locations throughout the office, clerks waste significant amounts of time hunting for files. In addition, the office has become a cluttered, unpleasant work environment.

3. Ironically, if the JALAN software was fully functional and appropriate to the court's needs, and if the clerks were well trained in its use, the software would help keep the clerks on top of all the paperwork the court generates. But because of the tremendous backlog of paperwork, the clerks do not have sufficient time to invest in learning the software and making it work for the court.

4. Constant backlog can be overwhelming to staff who may feel helplessly unable to cope with the work load, sensing that they will never be able to "catch up."

All of these problems reduce the quality of service the court can provide to the public and have a detrimental effect upon the clerks.

RECOMMENDATION 1.2A: Begin backloading cases where money is owed as soon as the court's forms are automated and the cases currently on the data base have been updated.

It is critical that the court get its forms up and running first so the court doesn't drop further behind and so that backloaded cases can start up as soon as they are loaded. Unfortunately, the reasons the court dumped its JALAN data in June are still present. Backloading cases before the court has its notices automated and the current status entered on each case will only compound the problem. (See finding 2.8 and recommendation 2.8A regarding coding protocols.)

Many of the recommendations in this report are intended to help eliminate the court's backlog and keep this from becoming a problem again in the future.

FINDING 1.3: The court presently groups and stores case files according to status.

As previously indicated (see finding 1.2 regarding backlog), the court has a multitude of filing locations, depending upon case status and what needs to be done next with related paperwork. The clerks rely primarily upon the location of a file, rather than on JALAN data, to tell them the status of a case and what they need to do next. They also frequently rely upon parties to tell them the status of a case to facilitate finding its file.

In addition to having files on their desks or computer workstations, there are boxes of files waiting for warrants to be typed, boxes of files returned from court waiting for various actions, boxes of

files waiting for failure-to-appear charges, drawers of files with active warrants, boxes of files waiting for scheduled hearings, drawers with files at payment status, and baskets of files waiting for the judge's review or waiting to be filed. In addition, older files are sometimes stored in a file cabinet in a separate room. If a case is particularly old, the clerk may have to go to archive storage on another floor or in another building to find it.

During our observations on Wednesday, September 14, the clerks pulled the physical file for 46 percent of all counter and phone transactions (excluding messages left on voice mail). For those 61 transactions where the file was needed, only 70 percent of the files could be found in the first place searched (one "file search"). One required looking in nine locations or boxes before the clerk found the file (nine "file searches"). Thirteen percent involved both clerks in the hunt. Ten percent could not be located.

In all, the 61 files required 103 "file searches" (1.7 on average). And this does not include file pulls for checks received in the mail, which we estimate take an average of 1.9 searches per file (see finding 2.1).

Some people believe that filing by status actually makes it easier to find files. The theory is that, since the number of files in each location is smaller, there are less files to look through to find the one you want. The basic problem with the theory is that it assumes the clerk knows the status of the case. Our data demonstrates that filing by status makes it more difficult to find files, not easier.

Hunting for files wastes valuable clerical time and reduces the quality of service to the court's clientele. We estimate that the clerks waste at least one hour each week hunting for files which could not be located immediately. During this time, there is usually someone either standing at the counter, holding on the phone, or waiting for a return call while a clerk hunts for the file.

(The one-hour estimate is combined time for both clerks and does not include time spent hunting through archives for old files.)

RECOMMENDATION 1.3A: Commit to maintaining the files in one location, returning files to the shelves within 24 hours of removal or return from court.

The court should develop a single, consistent filing system, with all active files stored in one location. Ideally, all files should be located on the first try. Since a large part of the problem with the filing "system" is created by the backlog of paperwork, it is essential to efficient filing that all backlog be eliminated and every possible action taken to ensure that backlog does not reoccur.

Once all backlog is eliminated (see recommendation 1.2A), the court should set a goal to have all papers returned to their appropriate filing locations within 24 hours of their removal from filing or return from a court session. (This is the standard for the state trial courts.)

This recommendation also depends upon the current status of all cases being entered on the data base (see recommendation 1.1D) and all routine notices and sanctions being produced by the JALAN software (see recommendation 1.1A). If the data base is not accurate and the JALAN programs do not eliminate many of the current manual portions of the notice and sanctioning processes, the court will find it difficult to meet the 24-hour goal and the new filing system will deteriorate. Conversely, if the information on the data base is up-to-date and accurate, the clerks would need the physical file less frequently; they could rely on the computer rather than the physical documents to answer questions regarding payments and case statuses.

All active files, regardless of status, should be maintained in the same location. The only possible exception to this should be cases set for arraignment or show cause hearing in order to save time on court day. Those waiting for trial or pretrial conference should be pulled the night before the scheduled date based upon the court calendar (see recommendation 2.4).

[Specific recommendations regarding the type of files and system to be used are in section seven.]

FINDING 1.4: The frequency and length of telephone and counter transactions make it difficult for the clerks to concentrate on their other work.

We had the clerks complete logs of telephone and counter transactions on 11 different days in September (see Appendix pages A-1 through A-2 for samples). The logs helped us identify the frequency, length, and nature of these transactions.

We also took timings and conducted observations on one Wednesday that month. We had four distinct reasons for conducting these observations:

1. To validate the information obtained from the clerks' log forms.

2. To gather additional data not obtained from the clerks' forms. (We attempted to make the clerks' logs as simple as possible so the clerks would not have to spend a lot of their time completing the forms.)

3. To enable us to learn firsthand the nature of the court's transactions with the public and outside agencies.

4. To add to the base of data provided by the clerks' completed logs.

The data we obtained revealed that the clerks spend about 7.7 hours per week (total for both clerks) involved in transactions at the counter and about 8.1 hours per week on the telephone. In fact, we believe that this figure is understated. The clerks indicated that on Wednesdays (court day), their peak day, it was difficult to log all transactions on the forms because there were so many and they were so busy. The data from our own observations confirms this. During our observations,

conducted on a Wednesday, we logged 139 transactions, compared to 116 logged by the clerks on the same day. (Note: Because this day was particularly hectic and we knew the clerks were unable to make a thorough log, we used our observations for the day rather than the clerks' survey forms for our data analysis.)

Of the 8.1 hours per week the clerks spent on the telephone, 5.3 hours were for incoming calls. This is an important distinction because clerks cannot plan for incoming calls, whereas they can make many outgoing calls at their convenience.

Overall, between incoming calls and counter transactions, the clerks were diverted from other duties an average of 233 times each week or 47 times a day on average. On an average Wednesday, they can expect to wait on customers 92 times. (Note: On court days, we did not count interactions with the judge; however, on other days when the judge called the court or a clerk called the judge, we included this data.)

The frequency of telephone and counter transactions makes it difficult for the clerks to concentrate on their other work. It also makes it difficult to catch up on the court's backlog (see recommendation 1.2A) and would likely hinder the clerks from staying current even if they were able to eliminate the backlog.

(Note: The times shown above only reflect the time spent on the immediate transactions. It does not include any subsequent time beyond the counter or telephone transaction. For example, if the clerk set the paperwork from a transaction aside to do something with it later in the day, the time spent dealing with it later was not included. Also, telephone and counter transactions add time to suspended work. It takes additional time to get back into what you were doing before you were diverted. We could not objectively calculate the effect of telephone and counter transactions on other work; however, we presume it is significant because of the volume of transactions.)

RECOMMENDATION 1.4A: Consider staggering the clerks' work hours.

We suggest that the court consider staggering the clerks' work schedules so each will have some time alone, uninterrupted, to process her paperwork. One possibility would be to have one clerk work from 7 a.m. to 4 p.m. and the other from 9 a.m. to 6 p.m. They might also stagger their lunch hours, with the clerk who takes the "early shift" taking her lunch break from 11:30 a.m. to 12:30 p.m. and the "late shift" clerk taking her lunch from 12:30 p.m. to 1:30 p.m. We recommend, however, that both clerks continue to work from 8:00 a.m. to 5:00 p.m. with lunch from 12:00 p.m. to 1:00 p.m. on Wednesdays. We also recommend that on days when only one clerk is working, that clerk should work a "normal" 8-to-5 schedule. If the clerks stagger their work hours in a manner similar to the one suggested, and the court office remains closed during the noon hour, they could each have up to six hours per week to work without distractions.

We considered the possibility of simply closing the court office part of each week (other than the lunch hour) but rejected this idea. The clerks have tried this in the past but indicated that, even though the office was closed, some people would still bang on the windows or door to get their attention. Of even greater significance is the shift in work load to other departments. Interviews indicated that closing the court office shifts the burden of court work to other departments such as the police department. People who come to the court office, finding it closed, will often go to another department to ask their questions or make payments. This creates an undue hardship on other departments.

FINDING 1.5: The judge is not available enough hours.

All of the people we interviewed seemed to agree that the judge's limited availability is a problem. As it is, the judge puts in more time with the court than is specified in his contract with the city; and yet, there still seems to be more work than he can handle. In addition, some of the people we interviewed indicated that having only one court day each week made scheduling very difficult.

RECOMMENDATION 1.5A: Consider ways to lighten the judge's work load.

Once the court has dealt with the automated forms and backlog issues, the clerks should be able to prepare all documents more quickly. This alone could save the judge time, since paperwork which is prepared while the issue is still fresh should take less time to review.

The following are ideas the court might also wish to consider. We are not specifically recommending that the court implement (or not implement) any of these ideas. They are submitted for your consideration only.

Hold pretrial conferences without the judge

Under this scenario, the pretrial conference provides the parties with a prescribed meeting place and time without the formality of a court proceeding. Even though the judge is not present, defendants are still under court order to appear, with the possibility of sanctions for failing to appear.

Some of the state courts do this with great success, while others firmly avow the need for having the judge present during pretrials to ensure a productive meeting. For LMC, this approach would reduce the judge's work load and reduce scheduling problems. Parties could meet any day of the week, not just Wednesday. This might also resolve matters earlier by bringing the parties to agreement or trial sooner.

Reduce the number of warrants issued

This idea is discussed in detail in section three. (Refer to recommendation 3.1A.) This would reduce the judge's paperwork.

Hire pro tem help

In addition to reducing the judge's work load, the court could schedule hearings on more than one day a week. This might also put teeth into the warrant process; defendants are more likely to be arrested and held for the judge if a judge is routinely available.

The court might consider hiring a referee to hear minor traffic cases under the judge's direction instead of a pro tem judge.

Provide the clerks with system operations training

In the past, the judge has spent a great deal of time performing system operations duties. This is not an effective use of judicial resources. During interviews, the judge indicated that the amount of time he has spent doing this recently is minimal; however, these are functions more appropriately handled by the clerks. Any judge involvement in system operations is an indication of clerk training needs.

Have the city attorney present during arraignments

This could dispose of some cases more quickly, taking care of more issues up front and potentially reducing the number of hearings needed.

If this is implemented, the court should discuss arraignment times with the police department to ensure that all misdemeanor defendants are cited to appear at the same time of day.

Use form letters to respond to defendants' letters on traffic cases

Admittedly such letters do not have a personal touch; however, they can save a lot of time. Responses to traffic letters usually fit a pattern of standard replies that could be handled with check-off boxes.

Eliminate misdemeanors

This would reduce the court's level of service to the community; however, it would also greatly reduce the court's expenses. In addition to reducing the number of cases the court handles, the court would have little need for the city attorney's services, indigent defense costs would be eliminated, and the court would no longer need jurors or diversion program evaluators. Misdemeanor cases are generally the most time-consuming and expensive to process.

SECTION TWO: JALAN SOFTWARE EVALUATION

This section focuses on the JALAN system and how well it addresses the court's needs. In addition to specific findings and recommendations, we developed a list of potential benefits of a computer system in a court environment. We then evaluated the JALAN software to see how well it achieves the benefits. Our list and overall evaluation of the system appears in the conclusion section after the findings and recommendations.

We do not profess to be JALAN software experts; however, we have a fair amount of general knowledge in computer systems and data base design. The following findings and recommendations are based upon what we were able to piece together during the limited study period regarding JALAN software operations. Whenever possible, we attempted to verify our assumptions through experimentation, queries, and discussions with Lebanon and Albany court staff.

FINDING 2.1: The JALAN software is case-oriented, not person-oriented, so the court clerks must continue to maintain person-oriented receivable information manually.

Case-Based vs. Person-Based Orientation

A primary source of problems trying to blend the software with existing court processes is the difference in system orientation. The court works on a person-based orientation, dealing with an individual's cases together, not as separate, unassociated cases. The JALAN system is basically a case-based system, with transactions handled at the case rather than the person level. Whereas the court keeps a manual ledger for each individual, the JALAN data base maintains a separate ledger for each case. If an individual has five cases at payment status, the court has one manual ledger for that person while the data base has five ledgers.

This conflict between person-based and case-based systems creates the following problems:

1. The court continues to keep manual ledger sheets and duplicates effort posting payments to both their ledgers and the data base.

2. When posting to the JALAN data base, the clerk must bring up a list of the individual's cases to decide which is the oldest that has been "closed" (disposition entered) but is not at "final" status (payments not completed). The clerk then posts the payment to that case.

3. If the payment amount is more than the amount remaining due on the oldest case, the clerk must then post separate payments to at least two cases.

4. JALAN receipts reflect the balance owing on a case, not for the individual. We presume that a person making payments on multiple cases would prefer to know the total amount still

owed to the court, rather than the amount on just one case. We saw evidence of this at the counter. Several people asked to know their balance, and the clerks frequently provide this information even without being asked because the balance on the printed receipt is misleading.

To give a customer his current balance, the clerk must either pull the manual ledger (the current practice) or bring up the JALAN screen which displays the amounts owing for an individual's cases, then add the amounts together for a total balance owing. (The screen displays a list of the balances for all of an individual's cases but does not display a total for the cases.)

5. For various reasons, some of which are discussed elsewhere in this report, clerks sometimes need to modify the next payment due date for an individual. Since individuals generally have just one payment schedule and manual ledger, but may have multiple ledgers on the data base, if a party has multiple cases at payment status, the clerk must update each case record separately.

The court may wish to consider moving to a case-based orientation; however, this is an impersonal approach which may decrease the quality of justice and will likely reduce the quality of service to the court's clientele because it focuses on processing cases rather than on people as individuals who may need to be handled differently depending upon their circumstances and the frequency and severity of their offenses. In addition, a case-based orientation would not solve some of the problems listed above and would likely create new problems. For example, when a person with multiple cases made a payment, the clerk would have to either post to the oldest case (as in the current process, with all its associated problems) or spread the payment out across all of the party's cases.

Use of Physical Files During Payment Processing

On 28 separate payment transactions, we tracked the amount of time the clerks spent working with the file. We timed 20 payments received through the mail, 1 received from the police department, and 7 t[illegible] over the counter.

The total time for all transactions was 43.3 minutes. This included time spent pulling the file, looking at file documents, making notations on the manual ledger, and refiling the file. The average time spent working with the file for all of these transactions was 92.8 seconds, just over 1.5 minutes. (This average would actually be higher if we had tracked each clerk's time separately on the three transactions where both clerks hunted for the file.)

Some of this time would be saved if all files were kept in one filing location (see recommendation 1.3A). The 28 transactions required 54 searches (average of 1.9 places searched per transaction). The clerk found the file in the first place she looked 79 percent of the time; however, seven transactions required the clerk to look in more than one place for the file. Three of these

transactions required the clerk to look in seven locations before she found the file. We estimate that it takes about 15 seconds to pull the file if it is in the location first searched. Each additional location search adds about 27 seconds to the transaction time. Therefore, in the 28 transactions tracked, the clerks wasted 11.7 minutes because files could not be located immediately. Even if all files were filed in one location, the clerks still would have spent 31.6 minutes for these transactions because it is necessary to pull the file to work with the documents and make notations on the manual ledger.

From computer data, we determined that the clerks process an average of 101 payments each week. We estimate they could save 114 minutes per week (1.9 hours) if they did not need to pull and work with the physical documents.

A summary ledger system which was reliable and met the court's needs could eliminate the need for manual ledgers and the need to pull the physical file for processing payments (see also finding 3.5).

(Note: Eliminating the court's backlog and staying current with all data entry will also be mandatory in order to eliminate the need to pull the physical file for payments.)

RECOMMENDATION 2.1A: Work with JALAN to develop a person-oriented summary ledger screen and summary receipt.

JALAN's new accounts receivable package may address the problems presented in the finding; however, we have not had the opportunity to see it in action and the description JALAN provided in a September 27, 1994, letter to Anita Allen is insufficient for determining how well the package will meet the court's needs. The court should take a close look at the new software to determine if it will satisfy their needs. If at all possible, the clerks should be given the opportunity to try and experiment with the software before any purchase is made. If the new programs do not address the needs demonstrated below, discuss with JALAN whether the new programs can be readily adapted to meet these needs or whether special programs will have to be developed for the court.

Programming Requirements

The summary ledger screen must at least do the following.

1. Allow clerk to enter the entire payment amount in one step. The program should then post the payment starting with the oldest case. If the amount paid is greater than the amount owed on the oldest case, the program should post to the next oldest case, and so on until the entire amount has been appropriately distributed.

2. When a defendant with multiple cases makes a payment, the next payment due date on all cases should advance to the same payment due date, regardless of whether or not money was

posted to each case. Posting payments to the oldest case first must not cause newer cases to appear to be overdue.

3. Display the defendant's current address. Clerks indicated that they frequently verify the address when a person makes a payment. The JALAN software should allow the clerk to move directly to the update screen to change an address without going through additional menus or reentering the person's name.

4. Display "warrant status" if applicable. The clerks need to know if there is an outstanding warrant on someone if that person is making a payment.

5. Display the party's total balance owing. This should display before payment is entered. The new balance should display after the payment has been posted.

6. Display the next payment due date and installment amount before and after payment has been entered. The screen should also allow the clerk to update this information as needed.

The summary receipt needs to include the following information:

1. The amount posted to each case where money was posted.

2. The current total balance owed to the court for all outstanding cases.

FINDING 2.2: The JALAN software accepts payments on cases with $0 balances.

It appears that the software will not accept an overpayment on a case with a balance owing; however, if the case has a $0 balance, the software will accept a payment. The clerks indicated that, when this happens, they then have a difficult time reversing the transaction. This appears to be a flaw in the program design. Unfortunately, if a party has multiple cases, the clerk entering the payment must decide which case or cases to post the payment to, making it too easy to accidentally post a payment to a case which has a $0 balance.

RECOMMENDATION 2.2A: Work with JALAN to ensure that the new summary ledger program does not contain the zero-balance "bug."

Discuss this problem with JALAN. The problem may become moot with the implementation of a summary ledger program that can apply a payment to more than one case without clerical intervention; however, the summary ledger program should be designed to ensure that the program will not post a payment to a case with a $0 balance or accept a payment larger than the total amount a person owes for all of his or her cases.

If the court is unable to get a summary ledger program, this apparent software "bug" must still be corrected.

FINDING 2.3: JALAN's software is not designed to monitor compliance with any sentencing terms other than monetary conditions to the court.

JALAN's software was not designed to track compliance with conditions such as probation, treatment, and community service. Many courts do not proactively monitor compliance with such conditions; however, LMC does attempt to ensure that parties comply with all of the terms of their sentences.

The court also allows parties to substitute community service work for monetary payments when the party's financial situation warrants such treatment. When someone does community service in lieu of payment, a clerk cannot directly apply the community service to the account balance. Instead, the clerk must suspend a part of the original fine amount equal to the dollar value of the community service (conversion factor determined by the judge). Unfortunately, there is no easy way on the data base to indicate that the amount was not actually suspended but "paid" through community service.

RECOMMENDATION 2.3A: Find out if JALAN's new accounts receivable package will track more than monetary payments.

If this is not a feature of the new package, ask JALAN what would be involved in developing programming to track compliance with other sentence terms.

If the JALAN software cannot feasibly be altered to track compliance with other conditions, the court should make extensive use of JALAN's tickler system to monitor compliance. For example, if someone is ordered to participate in a treatment program within a specific period of time, the clerk can enter a tickler event with a scheduled date to check on compliance.

Also have JALAN create a nonmonetary code to reduce an account but not add to the daily revenue for disbursement. Ideally, this should be a mode-of-payment code similar to the CA (Cash), MO (Money Order), CK (Check), and RV (Reversal) codes except that it should not affect general ledger accounts or show on daily and month-end reports as revenue collected. It might also be beneficial for the offender if the "transaction" printed a receipt showing his or her reduced balance.

If JALAN cannot accommodate this request, consider establishing an event code to indicate that such a conversion has occurred. This will allow the clerks to make a record on the data base, indicating that the party made "payment" through community service and the date when the conversion occurred.

FINDING 2.4: The court does not use JALAN's calendaring function.

This report does not include a study of calendaring in general (as agreed in the proposal). We did not evaluate how hearing and trial dates are selected, nor did we analyze the causes and effects of hearing or trial resets and cancellations. Since the production of courtroom calendars is a function of many automated court systems, however, including the JALAN system, it was necessary to look briefly at the production of the court's physical calendar documents to adequately evaluate JALAN's software.

We tested JALAN's calendar function. We also discussed the calendar function with the Albany Municipal Court. This JALAN feature appears to work perfectly for those events clerks actually enter in the data base; however, the clerks currently enter only the scheduled arraignment, and they never print automated calendars.

Currently the clerk in charge of setting pretrial conferences and trials creates a physical calendar document, using a typewriter, which includes only pretrials and trials. The clerk gives a copy to the judge. The judge makes notes to the clerks on his copy regarding individual cases.

The clerks do not generate courtroom calendars for "routine" hearings such as arraignments and show cause hearings. For defendants who fail to appear for arraignment or show cause hearings, the judge uses a checkoff box form, attached to a batch of files, to indicate what the clerks should do next with the files. For defendants who appear for these routine hearings, the judge makes appropriate notations on each citation or ledger which indicate what needs to happen next on each case.

RECOMMENDATION 2.4A: Use JALAN's calendaring function.

The clerks must enter scheduled events on the JALAN data base in order to generate automated calendars and use the automated notice/sanction program.

We recommend that the clerks begin putting all scheduled hearings and trials on the data base and routinely print court calendars. This will make case information on the data base more complete and have the following additional benefits:

1) The judge can have a copy of the calendar before court starts in the morning and will have a better idea about what proceedings are scheduled throughout the day.

2) The judge can make notes for the clerks on the calendar about how he wants each case handled. This will eliminate the need for a special form, and the judge will no longer need to sort files into batches (depending upon next action to be taken).

3) The city attorney could have a copy of the calendar on the day before court to help him prepare for arraignments (see recommendation 1.5A) and other hearings.

4) The court could post the calendar in the hall. Defendants and others could find out where and when they need to appear without asking the clerk for assistance.

5) The court could distribute the calendar to the city police department and the justice court. Both agencies might be interested in the information on the calendar. This could reduce the frequency of transactions with these outside agencies.

We suggest that the clerks print the calendar on the afternoon before court and pull files based upon the calendar. This will facilitate keeping files in one location (see recommendation 1.3A).

FINDING 2.5: The clerks lack sufficient understanding of the JALAN software.

Interviews with the clerks and other parties closely associated with the court indicated that the clerks received almost no formal training on the JALAN system. For the most part, they have been left on their own to try to make the system work; however, their level of knowledge appears insufficient for the task. We saw repeated evidence of this, as in the following examples:

1. The clerks were unable to answer many of the questions we posed in our need to assess the JALAN software. They were often unaware of the effects of their data entry decisions and were sometimes uncertain of the link between what they entered and what appeared on display screens, especially regarding the numerous date fields on the display screens. This frequently made it necessary for us to run programs, develop queries, or establish dummy cases to determine how the system worked.

2. It also appears that the clerks do not adequately understand the event code tables. Event codes are used inconsistently. For example, the clerks use the "Set for Arraignment" code (ARN) to show the scheduled arraignment date but use the "Set for Pretrial Conference" code (PTC) to indicate that they need to schedule a pretrial conference. Since the "PTC" code was originally set up to print a hearing notice, presumably it was intended to reflect a date that had already been scheduled, not the need for a scheduled date. It was not designed to be a tickler event.

3. Since the clerks do not use or fully understand some of the major functions of the JALAN program (e.g., calendaring, sanction notices, ticklers), it was necessary for us to visit Albany Municipal Court to see these functions in use.

4. The clerks seem to have difficulty with getting things to print, suggesting a lack of knowledge in system operations.

The clerks and judge all expressed dissatisfaction with JALAN's documentation. The clerks indicated the manuals were out of date; the judge indicated that the documentation does not adequately explain the relationship between fields.

RECOMMENDATION 2.5A: Contract with JALAN or an outside party for training.

The clerks need training from someone who is very knowledgeable about data entry on the JALAN system. They need someone who will actually sit at their desks and work through their data-entry procedures with them, rather than someone who will come in, set up procedures, then leave behind ambiguous notes or "documentation."

We do not recommend off-site classes, unless this is the only practical option. Off-site classes are only moderately helpful because:

1. They usually present a lot of information in a short period of time making it difficult to remember most of what is "learned."

2. They are not usually directed to the needs of the specific site.

3. They rarely provide enough faculty/student interaction.

4. Some classes lack sufficient hands-on experience.

5. The learning situation usually involves ideal test cases rather than real-life problem cases.

RECOMMENDATION 2.5B: Consider cross-training with the Albany Municipal Court.

The Albany Municipal Court also uses the JALAN system. We understand that the Albany Municipal Court has been very helpful as LMC has struggled with making the JALAN software functional. The Albany court staff was extremely helpful and courteous to us during our visit to their facility. We suggest that the judge and finance director discuss with the Albany court administration the possibility of doing some job swapping between the two courts. Each clerk from Lebanon could spend time in Albany, with Albany clerks spending a corresponding amount of time in Lebanon. The clerks involved should be trained at the other court site as if they were new employees.

If the Albany court agrees with this idea, it should be implemented with as little disruption to either court as possible. For example, we recommend that only one of the Lebanon clerks be in Albany at any one time, and at least initially, this should not be done on Lebanon's court day.

Cross-training on each other's jobs will give the Lebanon clerks a chance to work with the JALAN software in an environment where it is already running well and receive assistance from clerks who know the system. This will greatly speed up their learning curve. In addition, such cross-training will likely have additional benefits not only to the Lebanon clerks but also to those in Albany. The clerks from the two courts will be able to establish a rapport and a resource for the valuable exchange of ideas and information.

FINDING 2.6: The court clerks do not know how to use AS/400 Query.

Query training is not a necessity; however, Query is a valuable tool for developing ad hoc reports. It allows users some flexibility to develop reports without being constantly at the mercy of programmers. Reports can be created as needed, without the delays often associated with contract programming. And a report which might not be worth the expense of development if you had to hire a programmer becomes more worthwhile if it can be created in-house with existing resources.

Query reports can help the court manage its cases and collection efforts. They can also help the clerks monitor their own data entry and search for system problems which would otherwise be difficult or impossible to find. For example, one day during the study, the clerks mentioned to us a problem with the payment scheduler. Under some circumstances, the next payment due date is set too far into the future. Though they attempt to check each case when a payment is made, the clerks weren't sure they had corrected all of the cases. We were able to create a simple query and generate a list of cases where the next payment due date was more than six weeks away. The clerks then used the list to correct the small number of cases with wrong payment due dates. Without this Query report, they could not have found the errors. Had they been running the program which generates sanctions against parties who miss payments, some parties would likely have avoided being sanctioned.

In addition, due to the changing needs of any environment, users may occasionally find it necessary to modify previously developed queries to suit current needs. This requires some level of proficiency with the AS/400 Query software.

RECOMMENDATION 2.6A: Send at least one clerk to AS/400 Query training.

At least one of the clerks should receive Query training. Contact IBM and JALAN to inquire about the availability of training classes. In addition, it would be helpful if JALAN could give the clerk some additional instruction related to the specific structure of the JALAN data base so that the clerk would know which files are most likely to contain information of use to the court.

This recommendation should not be addressed until many of the other recommendations in this report have been implemented; however, once the court is running fairly smoothly with all major

JALAN software features operational and all backlog eliminated, this knowledge would be very beneficial to the court.

(Note: We have some basic information regarding the data base and the fields contained in some key files. We will give that information to the court upon completion of the study.)

FINDING 2.7: JALAN system code tables contain duplications, errors, and inconsistencies.

The court needs to review all code tables thoroughly to understand how each code performs and ensure that each code works appropriately. We found evidence that some of the codes are not set up as they should be, as in the following examples:

1. We discovered that the event code "NGP" (Pled Not Guilty--Set for Pretrial Conference) had a disposition code flag. Whenever a clerk used the "NGP" code, the case was "disposed" upon entry of the "not guilty" plea! (Note: The "NGP" code problem has been fixed.)

2. The codes "ABT" (Acquitted at Bench Trial) and "AJT" (Acquitted at Jury Trial) both set a case to "final" status, indicating that the case is disposed and no money is owed; however, the event code "ACQ" (Acquittal) puts the case at "closed" status rather than "final" status, which might lead one to the erroneous assumption that money is due on the case.

3. The event code "BWI" (Bench Warrant Issued) has a sub code of "BWI." If this event code is entered, the status of the case will indicate that there is an outstanding bench warrant. However, the event code "BWR" (Bench Warrant) does not have a sub code. If this code were entered to indicate that a bench warrant had been issued, the case status would not indicate an outstanding warrant.

4. There are duplicate general ledger account numbers in the JALAN general ledger account number table. For example, the city has only one general ledger account number for fines (10-100-43010); however, the JALAN general ledger account number table was set up with at least three general ledger account numbers labeled fines (29005, 1010043010, and 10-100-43010). At least two of the three accounts have money posted to them from various financial codes, as can be seen in the JALAN software's October month-end report entitled Lebanon Municipal Court District Court Payments For the Accounting Period of 9/30/94 to 10/31/94. In addition, many of the account numbers on JALAN's general ledger account number table are the account numbers that Albany Municipal Court uses to represent the various categories. Month-end accounting processes are needlessly complicated by duplicate general ledger categories and inaccurate general ledger account numbers. Rather than giving the city finance department the JALAN software's month-end report, the clerk must interpret and translate the information to a separate form. This duplication of effort is a waste of valuable clerical time.

RECOMMENDATION 2.7A: Review and revise JALAN system code tables.

The court needs to review each code on the "event/calendar codes," "charge/issue codes," "financial codes," and "general ledger account number" tables. The goal should be to understand how each code performs and to ensure that each functions appropriately.

The court needs to discuss the financial tables with JALAN prior to making changes. If data is stored under an inappropriate code, it may be necessary for the data to be updated to the appropriate code programmatically.

We also suggest that you consider the following:

1. Are code descriptions really descriptive? Does the description adequately indicate the purpose of the code? For example, the code "DIT" has the description "diversion terminated"; however, the sub code indicates that this is a calendar event. Does use of the code indicate that a diversion termination hearing is scheduled? Is the code to be used as a tickler to track the date when diversion is supposed to end? Or does it mean that the person's diversion has actually been terminated as the description itself implies? Some of the current descriptions are ambiguous.

2. Are the descriptions on similar codes written so they will appear in the same section of the code table? For example, most event codes related to orders appear in the same part of the list because the first word in their descriptions is "order"; however, a vacating order appears toward the end of the "event/calendar codes" table because the description is "vacation order." The description should more appropriately read "ORDER- VACATING" in a pattern similar to the descriptions for other orders. If the event codes for similar types of events appear together in the table, they are easier to find quickly.

3. Are there "duplicate" codes? Do some codes mean essentially the same thing? For example, "ABT" (Acquitted at Bench Trial) and "BTA" (Bench Trial Acquittal) appear to be identical in meaning. The "G" (Guilty Plea) and "P-G" (Pled Guilty) codes appear to be duplicates (though they were not set up to act the same way). If there are duplicate codes, the court should decide which will be used to ensure uniform coding protocol (discussed in the next finding and recommendation).

   Discuss with JALAN whether there is an easy way to "inactivate" or delete a code without negatively affecting cases where the code may have been previously used. If this is not possible, change the description of the code which the court has decided not to use to reflect this decision. For example, if the court decided not to use the "G" event code, you might change the code description to "INACTIVE SAME AS P-G".

4. Are all of the codes necessary? Since the code tables were not initially set up for Lebanon, some may not be appropriate. For example, the event code "MS" has a description "in Mary's basket."

   As of September 26, the court had used only 18 percent of the available event codes. (This percentage would be higher, however, if all major events were being entered on the JALAN system.)

5. Are additional codes needed? For example, we noticed there is no code for a speedy trial motion, though the city attorney indicated that these are filed occasionally.

6. Are some codes doing double duty? For example, the "GPL" code (Pled Guilty--Set for Sentencing) indicates not only the plea but either the need to set a sentencing date or the actual scheduled sentencing date. It might be more appropriate to enter the "P-G" (Pled Guilty) code for the plea and the "SNT" (Set for Sentencing) code for the scheduled hearing. Entering two codes will take a little more time; however, having separate codes for all of the possible combinations one might need will greatly increase the size of the event/calendar code table and have negative effects on the court's work. The more codes there are on the table, the harder it will be to remember codes. If codes are difficult to remember, clerks will have to refer to the code table more often. The larger the number of codes, the more difficult it will be to use the table. In addition, referring to a code table will take more time than entering two separate codes.

   Having codes that do double duty will also create tremendous problems for anyone trying to use Query to manage the court's work. For example, though there are only 3 types of pleas (not guilty, guilty, no contest), we found 11 different events codes on the current table which might be used to indicate a defendant's plea. Suppose you wanted to know what percentage of people pled each way. This could be useful management information because those who plead "not guilty" are going to require more of the court's resources. If you wanted to write a Query report to find how many pled each way, you would have to review the entire code table to be sure you had all the possible codes, then account for all of those codes within the query.

FINDING 2.8: Clerks perform some tasks in different ways, and the court lacks a statement of uniform procedures.

Observations revealed that the clerks often perform the same task in different ways. For example, after adding a case to the JALAN data base one clerk always stamps "posted" on the manual ledger; the other clerk sometimes stamps it on the front of the complaint. For us, this made the task of estimating the numbers of cases posted to JALAN's data base more time consuming. We had to check two places on each file to make sure we hadn't missed the "posted" stamp because it was

inconsistently placed. (This may cause the clerks the same problem when they begin posting backlogged cases.)

While working with the clerks at their desks, we sometimes observed a clerk entering data on the JALAN data base while explaining that the other clerk did not enter that kind of data or entered it differently. This lack of uniformity in procedures may not cause problems when court work is done by hand; however, it can cause major problems as the court substitutes JALAN software functions for manual processes. The quality of the product produced by the JALAN software will be a direct reflection on the quality and consistency of the data entered on the JALAN data base. Inconsistent data entry procedures will affect at least the following:

1. Automated notices and sanctions will be completely dependent upon entering (or not entering) specific codes and correct dates.

2. As with notices, calendars and ticklers are dependent upon consistent entry of calendar codes and dates.

3. AS/400 Query provides the court with the ability to produce specialized reports on a routine or ad hoc basis. Such reports can be a valuable component in case management and collection efforts. However, when data entry is inconsistent, the usefulness of the query capability is diminished because it becomes difficult to interpret the results obtained. For example, when we ran a query of all cases with a final judgment date within a four-month period, we also brought over the disposition code on each case. We discovered that some cases had a "G" disposition code (Guilty Plea) while others had a "P-G" disposition code (Pled Guilty). While these codes sound synonymous, unlike on the "P-G" code, the event code table categorizes "G" as a "major event." Also, the "subcode" for "P-G" is blank, while the sub code for "G" is "CLS". From our understanding of the system, entering the "G" disposition code will change the case status to closed, while entering the "P-G" code will not. Had we run our query to find all cases at closed status, we would have lost all of the cases where "P-G" was entered.

4. The time-to-disposition report we developed (see section ten) is entirely dependent upon date information for aging. When we ran the report for the month of October, we discovered one case which was not aged. Upon reviewing the case on the JALAN data base, we found that the case filed date had not been entered. The query could not calculate the age of the case at disposition because it had nothing to compare to the final judgment date.

RECOMMENDATION 2.8A: Develop well-documented, uniform procedures and coding protocols for entries on the JALAN data base.

The court needs to make well-documented decisions regarding the most common processes involving the JALAN software. This will help to ensure uniform data entry and allow for accurate interpretation of data retrieved from the data base.

Not all processes need to be documented immediately. We suggest the court focus first on those coding protocols which will affect the notice and sanctioning processes, then on those which will affect how old cases are to be backloaded onto the data base. This should be done before the task of entering the backlog of cases onto the data base. (See recommendation 1.2A.)

Some of the most important decisions to make are listed below:

1. Decide which documents and events must be entered to have the data base reflect the proper case status. For example, warrants must be entered for all cases at warrant status. Likewise, all cases currently at show cause status must have appropriate events so that the software does not automatically generate another notice and post an additional, erroneous late fee.

   What event code, or series of codes, should always be added so that the data base reflects the current case status? What codes should be entered when a case is at show cause status? What code or series of codes will indicate that a show cause notice was already sent or a warrant was previously issued through the manual process so that the computer does not issue new notices or warrants? Should the scheduled show cause date be entered as a calendar event?

   The court staff should all agree on which codes should be entered and in what order the codes should appear on the case.

2. Decide on a uniform method for adding old cases to the data base.

3. Pay special attention to entering the correct dates for documents and events on old cases so that programs can properly determine the status and age of cases.

In addition to using individual codes consistently, make sure that similar types of codes are used in a similar fashion. For example, all codes with a description of "set for ..." should either indicate that a hearing or trial needs to be scheduled or be used to indicate the actual scheduled hearing date.

FINDING 2.9: The JALAN software does not appear to accommodate separate dispositions of multiple charges in a single case.

It appears to us that the software was designed to handled dispositions primarily at the case level, not the charge level. Although it is possible to enter separate disposition codes for each charge, the usefulness of this information is questionable. The clerks have been unable to determine that this information is displayed anywhere, and receivables cannot be established until case disposition is entered. If charges are disposed by different methods on different dates, the clerk must either wait until all charges have been disposed before entering disposition or enter case disposition prematurely. This causes problems if a defendant is supposed to make payments on one charge which is already disposed while moving ahead toward trial on another charge. For example, if a defendant was put on diversion for a DUII charge but was proceeding to trial on a reckless driving charge, the clerk would either have to enter disposition on the case in order to establish a receivable for money owed on the diversion or track all payments manually until the entire case was disposed.

RECOMMENDATION 2.9A: Discuss the charge-disposition limitation with JALAN, and seek programming changes as needed.

We suspect that the way the software currently handles dispositions is so fundamental to its design that making a substantial programming change to "fix" this problem would be very difficult and expensive unless JALAN's new accounts receivable package resolves the problem. However, the court should discuss the problem with JALAN to determine if anything can reasonably be done about it before developing a procedural method to work around it.

If the new accounts receivable package does not solve this problem and new programming cannot reasonably and cost-effectively resolve the problem, the court might consider establishing a new, separate case for charges proceeding to trial when others have been disposed. The court may also wish to consider establishing a unique event code to be entered as the first event on such cases. The code should indicate that the charges began on another case. If the court uses this method, the clerks should ensure that the citation number, citation date, and original filing date are all entered on the new case.

This method should only be used when the court needs to establish a receivable account before all charges are disposed. The "new" cases will inflate the courts filing and disposition statistics.

FINDING 2.10: The JALAN software frequently sets the "next payment date" too far into the future.

If a party makes a payment larger than his installment payment amount, the system sometimes advances the next payment due date too far into the future. For example, if a party decided to pay $20 this month rather than the $10 installment amount due, the software will advance the next

payment due date out two months rather than one. The software also does this on overdue accounts. For example, if a party was four months overdue and came to the court to pay the entire amount which should have been paid during the previous four months, the software would advance the party's next payment due date several months into the future.

As a result of this problem, the clerks must verify the next payment due date on every account when they receive a payment. This is a waste of the clerks' time. Also, if the court was currently generating automated sanction notices and the clerks happened to miss correcting a payment due date, a party who missed a payment might not be sanctioned.

RECOMMENDATION 2.10A: Ask JALAN to modify the program so it never sets the "next payment date" beyond the next month.

People who owe money to the court should be expected to make regular monthly payments. If a party wants to pay extra one month, this should not negate his obligation to make a payment each month, unless special arrangements are made with the court. A larger payment should simply retire the debt earlier. (This is how most home and personal loans work.)

Under no circumstances should the system advance the payment due date beyond the next month's payment due date. If a party makes special arrangements with the court to skip a payment, the clerks can update the next payment due date to reflect that arrangement. Such updates should be the exception, however, not the rule. The clerks should not have to routinely double check the next payment due date.

FINDING 2.11: The JALAN software appears to produce some questionable financial data.

A financial audit was not within the scope of this study; however, the JALAN software contains questionable financial data and software functions.

The profile of month-end distributions has changed

Through interviews and observations we learned that month-end distributions have changed since the court started using the "Totals By General Ledger #" section of JALAN's "District Court Payments" report to determine amounts to be distributed. Some categories that had a history of regular distributions may now be allotted nothing or very little. For example, our review of the month-end reports for July through October showed that the DUII Diversion Fee category has had no distribution since July. This seemed odd to us and to the court clerk who processes month-end paperwork. This change may be due in part to the fact that the court switched from calculating these amounts as percentages to distributing the statutory amounts into the specific categories. Another influencing factor may be the gradual shift to unitary assessment. Additionally, when adding old DUII and marijuana conviction and diversion cases, clerks have had to combine certain assessment

categories because the software does not have enough data entry fields for all of the fines, fees, and assessments. Without performing a financial audit, we have no way of determining whether these month-end distributions are correct.

One of the JALAN software's financial files appeared to have unexplainable omissions

While reviewing data from the JALAN data base file DSPAYM, which appeared to contain a complete record of all monetary transactions, we noticed that several transaction numbers (and their associated records) were simply not in the file. This did not appear to be due to reversing transactions (reversals). This may pose an audit trail problem.

Clerks have had difficulty reversing some financial transactions

We observed two occasions where the JALAN system would not completely reverse a prior transaction. We could not tell if the system was causing the problem or if the clerks did not understand the system well enough to figure out what was going on. In both instances the clerk had to make alterations by hand to the month-end accounting reports in order for everything to balance.

The JALAN software does not appear to handle bail, trust, and restitution funds correctly

The clerks handle bail, trust, and restitution manually because the software does not seem to be able to handle them correctly. One anecdote the clerks related to us was that an amount entered as restitution had been distributed to categories as though it were a fine. Again, we could not tell if the problem reflects a lack of training on the clerks' part or if it is a software "bug." We believe it is reasonable to expect the system to handle these kinds of funds properly. The clerks should not have to track these funds in a separate manual system.

RECOMMENDATION 2.11A: Perform a financial audit of the JALAN system.

From all that we have observed it appears that the JALAN software can accommodate unitary assessment; however, we were unable to tell if it is working correctly. Its correct functioning relies on so many elements: a correct financial code table, correct usage of those codes, and proper general ledger categories for the month-end distributions.

LMC had a fairly recent financial audit; however, it occurred when the court was still tracking accounts receivable manually. Some of our findings above indicate the need for a financial audit of the accounts receivable portion of the software now that the court intends to rely on it.

FINDING 2.12: The JALAN software appears to have other miscellaneous "bugs."

In addition to the apparent problems already mentioned in this section, the software has various other problems which need to be corrected. In fact, the problems seemed too numerous for us to document them all within the study period. The following are some examples of problems we observed. This list does not encompass the scope of all the apparent "bugs." (JALAN calls them "perceived software deviations.")

1. The system does not always set cases to FNL (final) status when the last payment is made.

2. Some codes which have the FNL subcode do not, in fact, change the case to final status.

3. Sometimes clerks enter new charge codes which don't then appear on the charge code table after entry.

4. The system takes assessments out of restitution payments.

We cannot be sure to what extent apparent problems are related to training issues; however, we are convinced that the JALAN software had some definite "bugs" which need to be fixed.

It appears that JALAN does not always respond promptly to many of the court's software problems. In addition, they frequently give the court work-around procedures rather than real solutions. For example, the JALAN software does not handle backloaded cases very well. When clerks backload old receivables, they have to enter assessment amounts as charges in order to enter the correct amounts owing in each assessment category. While this make-do procedure allows them to track the money, assessments are not equivalent to charges. Entering them as charges is inaccurate. In addition, this "work around" is unpredictable. Assessment "charge" entries sometimes disappear immediately after entry and have to be reentered.

RECOMMENDATION 2.12A: Continue to work with JALAN to correct software deviations.

Since JALAN undoubtedly has proprietary rights to its software which may preclude the court from contracting with others to make direct changes to JALAN's software, the court will probably need to continue relying on JALAN to fix software problems. The court has indicated that JALAN has been very helpful and cooperative during the past year.

We recommend the court continue to work with JALAN to resolve software problems. The court should expect JALAN to respond promptly and try to obtain actual solutions rather than "work around" procedures.

FINDING 2.13: The JALAN software lacks validity checks for payment dates.

The clerks are supposed to have their day-end processing completed and their daily receipts to the finance department by 4:00 p.m. Any money received after they run the daily transaction report is supposed to be posted to the next day; however, the system assumes the current date. It is too easy to forget to change the date for those few transactions received after they have run the daily transaction report, especially on hectic days such as court day.

These errors have been the cause of many transaction "reversals." Such reversals make day-end processing more time consuming and more confusing, adding to the effort it takes to make the books balance at the end of the day. In addition, transactions posted to prior days (or prior months) may be hard to trace, because they may not appear on any report. For example, when we ran a query to look at data stored on the payment transaction file, we discovered some payments we had thought were missing because they did not appear on the court's month-end reports. Some of the "missing" transactions did not appear on the month-end reports because they were posted to a prior month but the prior month's report had not been rerun to reflect the adjustments.

RECOMMENDATION 2.13A: Contract with JALAN or an outside programmer to develop an "end-of-day" program.

Ideally, when a clerk asks for the daily transaction report, the program should ask the clerk if she wants to close the day's transactions. If she responds "yes," the receipting program should default to the next working day (automatically excluding Saturday and Sunday).

In addition, we recommend that the receipting program be modified to always ask for confirmation if the clerk is posting a record to a prior day (or the same day after "closing" for the day). This will help to guard against data entry errors.

FINDING 2.14: The JALAN software lacks a report showing the accounts receivable total.

Every year the court prepares a report for the city finance department that lists all accounts with money due to the city. The most recent list, dated June 30, 1994, consists of 46 pages and lists 1,827 accounts. This report was researched and prepared by hand. Since this list reflects only amounts owed the city, the preparer must separate the amount owed to the city from the total amount due on the ledger. This task has undoubtedly become much more difficult since the court stopped deducting payments from the appropriate categories on the manual ledger. The preparer must calculate the amount remaining due to the city for each ledger.

Preparation of this report is an incredibly arduous task when done by hand. The computer could accomplish this task much more quickly and easily.

RECOMMENDATION 2.14A: Contract with JALAN or an outside programmer to develop an annual accounts receivable report.

Find out if JALAN's new accounts receivable package provides the capability to produce this annual report to the city. If not, find out if JALAN can program it for you. As an alternative, and with the appropriate training, the court could develop its own AS/400 Query to produce this report.

FINDING 2.15: The JALAN software lacks accounts receivable aging reports.

The clerk responsible for month-end accounting and reporting indicated a need for receivable aging reports. (The need for such reports as a management tool is discussed in finding 3.10.)

RECOMMENDATION 2.15A: Contract with JALAN or an outside programmer to develop accounts receivable aging reports.

CONCLUSION

One of the greatest benefits of the JALAN system is its flexibility. It has been designed to allow users to customize code tables and forms. The court has not taken substantial advantage of the software's flexibility.

In fact, the court does not seem to be benefitting from having a computerized system. In current procedures, using the JALAN software either replaces manual process steps or adds steps to existing procedures. For example, generating a receipt from the JALAN system rather than writing a manual receipt replaces a manual process with a semiautomated process; however, it appears that this takes at least as much time as issuing a manual receipt because the clerk still has to pull the file and post the payment to the manual ledger.

Using the JALAN software has added steps to other processes without corresponding benefits. For example, when the court receives a new citation, the clerk must enter the new case and the scheduled arraignment dates on the data base. These are new steps which were unnecessary before the court started using the JALAN software; since the court relies upon the files for case information and processing and does not generate calendars from the computer, the data entry is mostly a waste of time.

The following is a list of potential benefits of having a computer system in the court environment, along with our analysis of how well JALAN's software addresses each. Our conclusions summarize information contained in the findings and recommendations of this report.

Potential Benefits of a Computerized System in a Court Environment

1. Generation of routine forms and notices with less labor

   As previously discussed (see finding number 1.1), the JALAN software appears to have the capability to generate forms and notices. The court is not making extensive use of this function. The court needs to work with JALAN to develop the appropriate forms and the criteria for form production. The court needs to establish uniform coding protocols. The clerks may need additional training on this JALAN software feature.

2. Quick, consistent response on overdue events

   The automated notice feature is designed to provide quick, consistent follow-through when a party fails to appear for a hearing or comply with the court's orders.

3. Quicker access to case and accounts receivable information

   Clerks enter very little case information on the data base. Accounts receivable information is more complete.

   The clerks rely primarily on manual systems and documents for case and accounting information. If the court implements the recommendations in this report, the clerks should be able to obtain case and accounts receivable data more quickly from the computer than from the physical files.

4. Direct public access to court information without clerical assistance

   Some systems provide this either through direct or dial-up access. The court is not currently providing this service. Once the data base is reliable for case and accounts receivable information, the court could make this service available. This might be of particular benefit to the city attorney's office and the police department.

5. Statistical reporting

   One JALAN report provides limited case filing and termination statistics. We developed a query to report time-to-disposition data (see section ten). The court needs to develop case management and collections performance measures, then develop its own queries or contract for additional report programming to help assess the court's performance.

   The clerks may need Query training. Computer data must be complete and reliable.

6. Faster daily and month-end accounting reconciliation

The JALAN system should accelerate daily and month-end processing; however, due to frequent transaction reversals, the software's inability to handle certain types of transactions, and redundant financial codes and account numbers, accounting reconciliation is complicated.

7. Unitary assessment distribution

The system appears capable of handling unitary assessment; however, we believe a financial audit of JALAN's accounting package is justified.

8. Quick access to account balances

The system does not provide this information on the person level. Clerks currently rely upon manual ledgers for account balances. The software needs summary ledger and summary receipt programs.

9. Enhanced receipt processing

a. Faster processing

The automated receipting process is no faster than the old manual process because the clerks must still rely upon the manual ledgers and because the software does not determine which case should receive the payment.

b. Quick reduction of balance due amount

The software reduces the balance for cases only, not for individuals. The clerks must still rely on the manual ledgers to calculate the balance for an individual.

c. Good audit trail

We are concerned that JALAN may not be creating a good audit trail. Receipt numbers appear to be missing.

10. Accounts receivable aging

The software does not include receivable aging reports.

11. Annual accounting information for revenue projections and budgeting

The JALAN system needs a report which shows the total paid and owed to the city.

12. Case status at a glance

The software has some capability to provide this information. Cases at warrant status are flagged on the name index. The index also shows whether a case is pending, closed, or final. Some of the disposition codes do not work properly (see findings 2.7 and 2.8), however, and warrant information seems to be incomplete.

13. Automated court calendars

The software is designed to produce calendars from scheduled events. This seems to work well. The court is not using this feature, however.

14. Track compliance with sentence conditions

The software was not designed to track compliance with any sentence conditions other than monetary obligations.

15. Automatic posting of court costs to accounts receivable balances

The JALAN software provides this ability through its automated notice/sanction process.

16. Docket judgments

Since the municipal court is not a court of record, we do not believe their "judgments" have any lien effect; therefore, the court has no need for a judgment docketing function on the JALAN system.

17. Register of actions on a case

The JALAN software appears to provide complete register-of-action capability. Since the municipal court is not a court of record, we do not believe there is any requirement for a "register of actions" for each case; however, much of the information which would be contained in a register of action would be helpful to the court if it were entered on the data base. If each document received and action taken by the court were routinely entered on the data base so that case information was reliable, the court could answer most routine questions and proceed with sanctions without pulling the physical file.

18. Tickler system

The JALAN system appears to have an adequate tickler feature.

19. Accounts payable

Some court computer software packages contain an accounts payable component. To the best of our knowledge, the JALAN software does not include such a component.

(Note: Accounts payable is handled by the city finance department and was not part of the study.)

20. Jury management

Some systems provide a jury management component which may allow for tracking juror attendance, location, assignment, payment, etc., as well as automating the summoning and random selection processes. Such systems can save valuable clerical time. To the best of our knowledge, the JALAN software does not contain a jury management package.

(Note: The study did not include an evaluation of the court's jury summoning and selection procedures.)

SECTION THREE: ACCOUNTS RECEIVABLE AND COLLECTIONS

The court allows installment payment agreements when offenders cannot pay their entire balance on the date of sentencing.

The court takes the following successive steps to ensure immediate response to nonpayment.

- Mail notification (Show Cause Order)
- License suspension and/or warrant.

A drafted memo to JALAN from Judge Wittwer, dated August 19, 1994, describes this two-stage failure to appear (FTA) and failure to comply (FTC) process in much greater detail, but for the purposes of this report, the description above should suffice. (See Appendix pages A-3 through A-8 for a copy of this memo.)

The court keeps track of payments and balances on manual ledgers and also (since July) with JALAN's payment scheduler and receipt function. Since the notices and forms necessary for action on overdue accounts are not available on the JALAN software yet, the clerks prepare these manually as time allows. The clerks have discontinued keeping a manual tickler for tracking payments in hopes of being able to rely on JALAN's overdue payment report; however, the clerks have not printed an overdue payment report from the computer since the inception of this study almost four months ago.

Since the JALAN data base contained only about two months of financial data when we started this study, we decided to gather aging, profile, and collection information from the manual ledgers. On October 7 and 10, 1994, we pulled the files of 100 people who owed money to the city as of June 30, 1994. We used the court's year-end report of receivables owed to the city, assigned each person on the list a unique number, used a random number generator to select 100 numbers from the range on the list, then pulled the files of those people. There were 1,827 people on the list; our sample of 100 (hereafter referred to as **Sample A**) represents 5.5 percent of that population, more than adequate to provide a statistically representative sample.

For each of the 100 files pulled, we photocopied the ledger page(s), noted the status of the case, and noted warrant signature and service dates. We then entered information from the ledgers into a personal computer data base for analysis. Most of the accounts receivable aging and profile information contained in this section of the report was derived from Sample A. (Note: "Payments" via community service were treated as if they were monetary payments.)

We also counted roughly one-third to one-half of the files in each of various storage areas in the clerk's office (hereafter referred to as **Sample B**). For example, there were nine file drawers of cases at "open" status. We counted the files in three of those drawers to find an average number of files per drawer, then multiplied that average by the total number of drawers to estimate the total

number of files at "open" status. We proceeded in a similar fashion for the remaining status categories: files waiting for warrant preparation, files at warrant status, files waiting for arraignment/appearance, files with warrants waiting for signature, and files waiting for failure to appear charges. We did not count the cases at final status that were waiting for filing, the files that had come out of court and were waiting for the clerks to process them, or the files in the judge's "in" box, so our estimates may be conservative.

PROFILE OF RECEIVABLES

Sample A provided the following profile of LMC's accounts receivable:

1. Of the 100 people, only 2 had paid off their balances. Thirty people have ledgers over four years old. One person has a ledger which goes back to 1980.

2. The average balance of the 98 ledgers that still had balances owing was $522.62.

3. Thirty-two people never paid anything! The age of these accounts ranged from 145 to 3,267 days (almost 9 years). The average age was 1,144 days (over 3 years).

4. Seven percent of the 100 manual ledgers had arithmetic errors amounting to $211 ($261 in the court's favor and $50 in the defendants' favor).

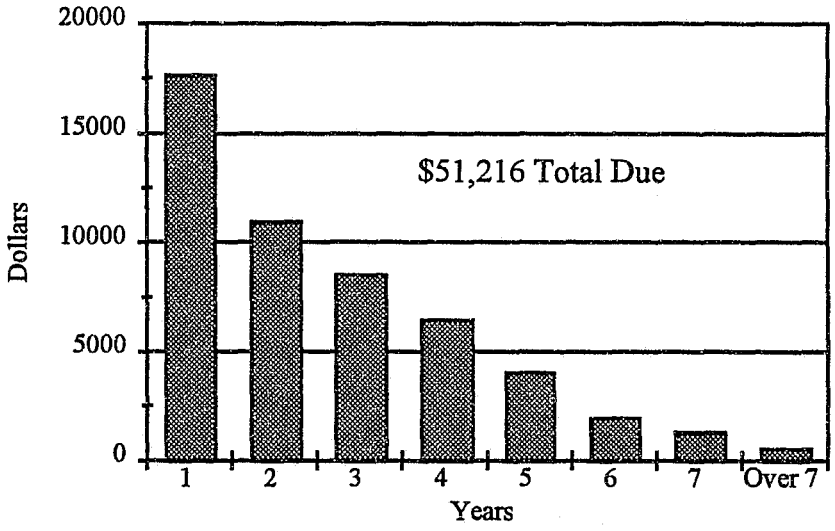
5. Accounts Receivable Aging

   To determine the age of an accounts receivable, we started with the amount and date of the first entry on the manual ledger. We then subtracted payments from that balance. If there were enough payments to pay off that initial amount, we moved to the date of the next fine or fee and began subtracting payments from that one, and so on. For example, one ledger began with a $254 fine on January 23, 1991. It took until January 10, 1992, to pay the entire fine, but back on February 20, 1991, a new fine of $369 had been imposed. The defendant made fairly regular payments up until January of 1993. The last entry on the ledger was a show cause notice issued in March of 1993. The defendant was still paying on the $369 from February of 1991 when payments stopped coming in; therefore, the amount remaining on the February 1991 fine was aged from February 1991. Subsequent fees were aged from the date they were posted to the ledger.

   The following bar graph shows the age distribution of receivables in our sample of 100 accounts. Each bar in the graph represents all receivables whose age falls during the time indicated below the bar. For example, the first bar on the left-hand side of the graph represents $17,617.00 in receivables that ranged in age from one day to one year old on October 10, 1994. The second bar represents $10,919 ranging from one year and a day to two years old, and so on.

AGE OF ACCOUNTS RECEIVABLE

Sample of 100 Accounts



The table below details the information depicted in the graph above, and also shows a quarterly breakdown for the most recent two years. It shows the annual total for accounts from 1 to 10 years old. We grouped amounts over ten years old into one category.

Age in Days	Receivable	Summary
0 to 90 days	4,229	
91 to 180 days	5,237	
181 to 270 days	2,935	
271 days to 1 year	5,216	$17,617
366 to 455 days	1,462	
456 to 545 days	2,695	
546 to 635 days	4,736	
636 days to 2 years	2,026	$10,919
3 years		8,479
4 years		6,419

5 years	4,024
6 years	1,948
7 years	1,292
8 years	211
9 years	54
10 years	0
Over 10 years	253
TOTAL	$51,216

6. Number of Past-Due Accounts (77 or 77 percent)

Only 23 accounts (23 percent) were current on the date we pulled the sample. We considered an account current if a payment was made any time in September or early October. This means that 77 percent of the accounts in the sample were past due. We also went back and looked at the same numbers for August and found that, again, only 23 out of 100 accounts were current (although not the same 23).

7. Amount of Past-Due Money ($39,844 or 77.8 percent)

The total amount owing on these 100 accounts was $51,216.00. Of this, $11,372.00 (22.2 percent) was on accounts which were current, and $39,844.00 (77.8 percent) was on past-due accounts. The State of Oregon Department of Administrative Services Accounting Division requests that executive branch agencies report past-due accounts receivable as a percentage of gross accounts receivable. They suggest a standard of 20 percent. This standard is for executive branch agencies only, and therefore without consideration for the nature of court accounts receivable, but the statistic may still be of some value in assessing the effectiveness of collections in LMC.

8. Accounts Over 90 Days Past-Due (69 or 89.6 percent)

Of the 77 accounts that were past-due, 69 (89.6 percent) were over 90 days past-due (no payments in the last 90 days).

9. Accounts Receivable Over 90 Days Past-Due as a Percentage of Total Past-Due

Of the $39,844.00 that was past-due on October 10, 1994, $31,796 (79.8 percent) was over 90 days past-due. The State of Oregon Department of Administrative Services Accounting Division requests that executive branch agencies report accounts receivable over 90 days past-due as a percentage of total past-due accounts receivable. They recommend a standard

of 15 percent. As in item seven above, this standard is for executive branch agencies only, and therefore without consideration for the special nature of court accounts receivable; however, the statistic may still be of some value in assessing the effectiveness of collections in LMC.

10. Accounts Receivable Over 90 Days Past-Due as a Percentage of Gross Accounts Receivable

Accounts receivable over 90 days past-due ($31,796.00) as a percentage of gross accounts receivable ($51,216.00) is 62.1 percent. Although the state does not recommend a standard for this measure, 62.1 percent seems unreasonably high.

It does appear that LMC has room for improvement regarding the age of past-due accounts receivable. We believe the court will achieve major improvements when it automates notices, suspensions, and warrants. Conventional wisdom states that enforcement efforts succeed more often when they are applied promptly, consistently, and with escalating coerciveness. Automation will help the court achieve promptness and consistency, with one caveat: automation will not speed up warrant processing time unless the judge can find time to sign warrants promptly and the police department has the resources available to serve warrants quickly.

There are few performance standards available for age and profile of court accounts receivable, so there is little to compare to LMC. We found a few standards in the Oregon Accounting Manual (OAM) published in July 1994 by the Oregon Department of Administrative Services State Controller's Division. Courts are not bound by the OAM , but it contains some good ideas. It is an authoritative source for citing what most of state government is doing presently with accounting, collection, and management of receivables.

The OAM suggests that when working on collecting accounts that are past due, it is useful to classify accounts by their payment behavior. The theory is that certain categories should receive more aggressive collection actions than others. Accounts that go over 90 days past-due with no promise to pay, or where promises to pay have been broken, should have more aggressive collection activity than an account that pays regularly but is always late. (In order to do this, you must have documentation of payment behavior. Categorization of accounts will be impractical until all receivables are entered on the data base and someone has the time and knowledge to query the receivable data.)

EFFECTIVENESS OF COLLECTION ACTIONS

For our analysis of the effectiveness of various collection actions, we defined a **"collection activity"** as a show cause notice, license suspension, or service of a warrant. Usually the court takes these actions to encourage a desired outcome--compliance with the payment agreement--although sometimes it is to gain compliance with some other court-ordered condition. In Sample A we found

only one instance where a sanction was imposed for noncompliance on something other than payments (i.e., treatment program), so it should not affect the validity of our analysis.

We defined a **"successful collection activity"** as one that resulted in a payment as the next entry on the ledger after the collection action. However, for show cause notices if the payment came over 60 days after the notice, we did not attribute the payment to the notice. There were 15 instances where it appeared a new fine resulted in the defendant renewing efforts to make payments on a delinquent account, but we did not consider this to be a collection action taken by the court. The following shows collection action data derived from Sample A:

1. Out of 100 accounts, 96 (96 percent) had at least one collection action.

2. A total of 454 actions were taken on the 96 accounts with collection actions. An average of 4.9 collection actions were taken per account. The minimum number of collection actions per account was 1; the maximum was 33.

3. We assumed that the reason the court initiates a show cause, license suspension or warrant action is to get the defendant to make a payment; 209 of the 454 collection actions (46 percent) appeared to result in a payment.

   A. Effectiveness of Show Cause Notices (52.4 percent)

      Of the 292 show cause notices sent, 153 (52.4 percent) appeared to result in a payment. It took 15 days on average for a payment to be received after the show cause notice was sent. The minimum time was 1 day; the maximum time was 71 days. Show cause notices bring results more quickly and more often than either license suspensions or warrants, as described below.

   B. Effectiveness of License Suspensions (28.3 percent)

      Of the 113 license suspensions issued, 32 (28.3 percent) appeared to result in a payment. It took an average of 132 days from the date of the license suspension notice to the day the next payment was received. The minimum number of days was 4; the maximum number of days was 1,761 (4.8 years). This shows that license suspensions can bring results quite a long time after issuance, although all but two of the license suspensions resulted in a payment in under a year.

      (Note: Since some of the accounts in Sample A have active license suspensions, the suspensions may yet be effective. The data above reflects the effectiveness level as of the sample date.)

C. Effectiveness of Warrants (11.3 percent)

Warrants appear to be the least effective collection method of the three. Of the 97 warrants prepared, 9 (9.3 percent) were never signed. The other 88 were signed and issued. Of those 88 only 49 (55.7 percent) had been served. Some were recalled; 26 are still outstanding. Of those 49 warrants that had been served, only 11 (22.4 percent) resulted in a payment. Of the 97 warrants initially prepared, the 11 which resulted in a payment represented only 11.3 percent.

On those warrants that did result in a payment, it took an average of 24 days to receive a payment after the date the warrant was served.

(Note: As with license suspensions, some of the accounts in Sample A still had outstanding warrants. The data above reflects the effectiveness level as of the sample date only; some of the outstanding warrants may yet be effective. In addition, we know that a license suspension may be the reason for a payment even after a warrant has been issued, but there was no way to tell from the ledger which action actually prompted payment; if a warrant was issued and served after a license suspension and then a payment was made, we assigned effectiveness to the warrant rather than the suspension. It is possible that the actual effectiveness of license suspensions is higher and the effectiveness of warrants is lower than our data shows.)

4. Collection efforts appear to be erratic and sometimes arbitrary.

A. Erratic Collection Activities

Before we began our study, the clerks had been so behind on their paperwork that they had not produced any show cause notices for some period of time. About two weeks before the study began, the clerks decided to produce a large number of show cause notices, reportedly to try to catch up on the backlog and see if they could improve revenue.

B. Arbitrary Collection Activities

It appeared that clerks completed collection actions on accounts which were pending action because attention had been drawn to the account. For example, twice we observed defendants calling about files awaiting warrant preparation; both times the clerk "flagged" the fact that the person had telephoned by noting the call on the party's file and standing the file up in the "ready for warrant" box. The clerk indicated to us that if the defendant failed to do what he said, she would prepare a warrant. The two accounts moved up on the priority list. If the clerk's attention had not been drawn to the particular accounts, they probably would have remained

pending along with the other approximately 700 files awaiting warrant preparation (file estimate from Sample B).

We believe automation will eliminate the seemingly erratic and arbitrary nature of the court's current collection efforts.

Again, we were unable to locate any court collection performance standards or find any courts that track very many aspects of collection, so it is difficult for us to make a comparative evaluation of LMC's collection efforts. We did talk to one state court collections officer who averages about a 50 percent response rate when she sends letters to nonpaying defendants. This percentage is roughly comparable to the 52 percent response to the show cause orders in your court. The state court collection officer considers a 50 percent response rate to be about average for first collection attempts; so by that standard, your show cause orders are working well.

FINDING 3.1: The process of issuing warrants on traffic infractions is more labor-intensive, contains more delays, produces more backlog, and is less effective than other collections methods.

The table below shows, along the left-hand side, each major step of the warrant process and, across the top, who is involved in the process. Each dot connects the step with the party responsible for completing that step. For those steps where we determined an average time to complete that step, you will find the time entered in the first column next to the associated step.

A note about the average time column in the chart: these times do not indicate the length of time it actually takes to type, sign, or serve a warrant. The times show the average delay while the file sits inactive in a box or drawer.

The time between several steps of the process is excessive. This indicates bottlenecks in the paper flow.

	Avg. Time	Defendant	Clerk	City Atty	Dispatcher	Lieutenant	Judge
Payment Missed		●					
Discover Missed Payment			●				
Type Show Cause			●				
Distribute Copies			●				
Receive Copies		●					
Fail to Respond		●					
Type Suspension			●				
Type Affidavit			●				
Distribute Copies			●				
Receive Copies				●			
Review/Approve Affidavit	3 days			●			
Forward Affidavit				●			
Receive Affidavit			●				
Forward Affidavit			●				
Receive Affidavit					●		
Type Complaints					●		
Forward Complaints					●		
Receive Complaints						●	
Sign Complaints						●	
Return Affidavit/Complaints						●	
Receive Aff/Complaints			●				
Add Complaint JALAN			●				
Type Warrant	100 days		●				
Sign Warrant	45 days						●
Distribute Copies			●				
Receive Copies					●		
Serve Warrant	143 days					●	

The excessive time between steps decreases the effectiveness of the warrant as a collection tool. The charts that follow show our analysis of these delays:

1. Days from Noncompliance to Typing of Warrant.

15 warrants prepared during 1994			33 awaiting warrant preparation		
Average	Minimum	Maximum	**Average**	Minimum	Maximum
100	1	671	**480**	45	977

Sample A data included 15 warrants prepared by the clerks in 1994. For those warrants, we found that the time from the date of the noncompliance to warrant preparation ranged from 1 to 671 days, with the average falling at 100 days. On October 10, 1994, the date of the sample, there were another 33 cases in noncompliance which were awaiting warrant preparation. The time from the date of noncompliance to the date we pulled the sample ranged from 45 days to 977 days (almost 3 years), with the average falling at 480 days (1 year, 4 months), and the clock is still ticking.

2. Days from Typing of Warrant to Signing of Warrant.

	Average	Minimum	Maximum
# of days	**45**	1	942

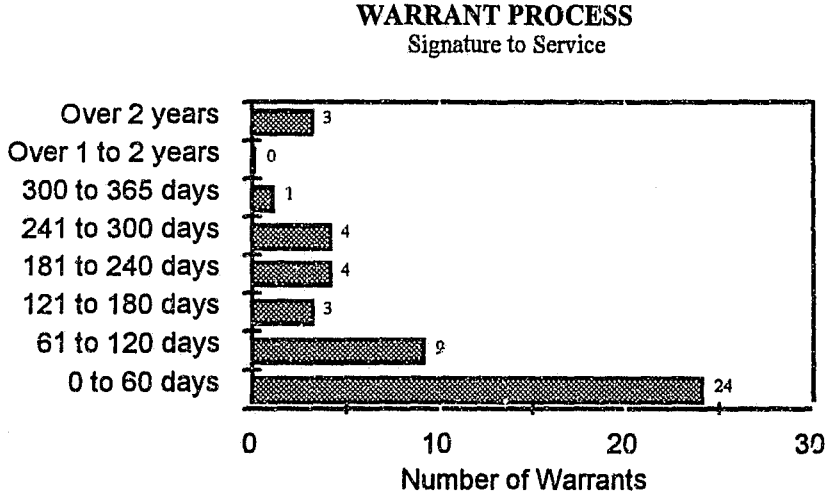
Sample A data showed that the time from the day the clerk typed the warrant to the day the judge signed the warrant averaged 45 days, although the range of time was quite variable. From those 73 warrants where we could determine a "typed date" and a "signed date," 39 were signed the same day they were typed; one warrant waited 942 days for the judge's signature.

3. Days from Signing Warrant to Service of Warrant.

	Average	Minimum	Maximum
# of days	**143**	1	903

From Sample A, we measured the time from the day the judge signed the warrant to the day the warrant was served. Warrants were served on average 143 days after the judge signed them. The minimum was 1 day; the maximum was 903 days. Of the 88 warrants that were issued, 49 (55.7 percent) had been served by the time we took our sample.

The following graph shows the number of warrants served within specific time periods after they were signed by the judge. This graph demonstrates that the chance of getting a warrant served decreases over time.



The following table summarizes data from Sample B regarding the number of cases involved in various stages of the warrant process.

Estimated Total Cases	In Warrant Process	Waiting for FTA Charge	Waiting for Warrant Prep	Waiting for Judge to Sign	Waiting for Service
2284	1559	180	693	74	612
100%	68.3%	11.5%	44.5%	4.7%	39.3%

Sample B estimates showed that of 2,284 cases, 1,559 (68.3 percent) were at some stage of the warrant process. Of those 1,559 cases, an estimated 180 (11.5 percent) were waiting for an FTA charge to be filed, 693 (44.5 percent) were waiting for a warrant to be typed, 74 (4.7 percent) were waiting for the judge's signature on the warrant, and 612 (39.3 percent) had been issued but were waiting to be served.

The following table summarizes data from Sample A regarding the number of cases involved in various stages of the warrant process.

Total Cases in Sample	In Warrant Process	Waiting for FTA Charge or Waiting for Warrant Prep	Waiting for Judge to Sign	Waiting for Service
100	63	33	4	26
100%	63.0%	52.4%	6.3%	41.3%

In Sample A, we found that 63 (63.0 percent) of accounts were at some stage of the warrant process. Of those 63 accounts, 33 were waiting for a warrant to be prepared, 4 were waiting for the judge's signature on the warrant, and 26 had warrants issued but were awaiting service.

(The percentages shown in the two charts above are very similar. This helps establish the validity of both samples.)

The following list provides additional data about warrants and presents comparisons of the effectiveness of warrants to other collection actions, based primarily on data from Sample A:

1. We discovered that warrants were less effective than other enforcement methods. As previously stated, the effectiveness of served warrants is 22.4 percent; however, the overall effectiveness is only 11.3 percent, since only half of the 97 prepared warrants had ever been served. Those that were not served were obviously ineffective as of the date of our sample.

   Other collection actions (show cause notices and license suspensions) are almost always "served" (the person receives notice of them) unless the notice is mailed to an inaccurate address. With warrants, the defendant isn't aware of the warrant until after it is personally served. Therefore, we assumed the warrant was effective only if it had been served and the next ledger entry was a payment.

2. Nine of the eleven warrants that resulted in a payment were on cases that had underlying traffic infractions. The other two warrants were both issued on the same misdemeanor case at different times. It takes significantly more effort for the court to produce a warrant on an underlying traffic infraction than it does to produce a warrant on an underlying misdemeanor because of the added steps required to prepare a failure-to-appear affidavit and misdemeanor charge.

3. When compared to show cause orders and license suspensions, the warrant process involves the most people, takes longer, and is more labor-intensive, yet is the least effective. One might expect the warrant to be less effective than the license suspension or show cause order because the person has already ignored the first two sanctions. On the other hand, a warrant should be more coercive than either of the other two sanctions and, therefore, be more effective. We did not compare warrant effectiveness to show cause order effectiveness because the two sanctions are not similar. Comparing license suspensions to warrants is more valid; suspensions and warrants both occur only if the show cause order had no effect. In addition, unlike show cause orders, suspension and warrants have potential for producing results over a long period.

   The 11.3 percent effectiveness of warrants does not compare well with the 28.3 percent for license suspensions. The effectiveness rate of license suspensions may provide a target rate for warrants.

4. Warrants appear to take more time to garner results than license suspensions on average: 167 days from date of warrant issuance compared to 132 days from date of preparation of the suspension notice. We used this comparison because those were the dates that the sanctions were effectively out of the court's hands.

Three other factors influence the effectiveness of warrants on traffic infractions. First, the police department actively tries to serve these warrants for about the first two weeks; after that it is more likely these will only be served on the next traffic stop, thereby diminishing the effectiveness with the passage of time. Second, it was reported in interviews that when these warrants are served, defendants rarely do much jail time or post bail. It appears that they are often released with a new date to appear, which they often disregard. Data from Sample A confirmed this trend. Third, we also heard in interviews that the wording of the release agreement may not be strong enough. The warrant really does not have a bite; it is just a minor inconvenience.

Our interviews with people involved in the process revealed a considerable amount of skepticism about the value of this process. Interviewees did not believe the process could possibly be effective given the extreme amounts of delay involved. Because parties involved believe the process is ineffective, they may give their tasks a lower priority than if they believed it worked well.

Backlog, labor intensiveness, and complexity are preventing the warrant process from effectively accomplishing the goal it was designed to reach: assuring compliance with court orders. Issuing traffic infraction warrants is entirely manual. All documents involved in the process are completed by hand or with typewriters.

The process involves at least five people and meanders through three offices. Two of the people must be involved more than once to complete different portions of the process. The best time-management techniques indicate that paperwork should never have to go through the same person's hands more than once.

In addition, collection actions are most effective when applied in a timely and consistent manner. Neither timeliness nor consistency are adjectives that can honestly be used to describe the current warrant process.

The spring 1992 State Court Journal article entitled "Using Civil and Administrative Remedies to Collect Fines and Fees" by George F. Cole states:

> *"The collection of money owed to both private and public organizations has been shown to be most successful when early and continuing efforts are made to remind debtors of their obligations."*

Until the court can automate this process, eliminate the complexity, and speed up the process, it will continue to be unwieldy.

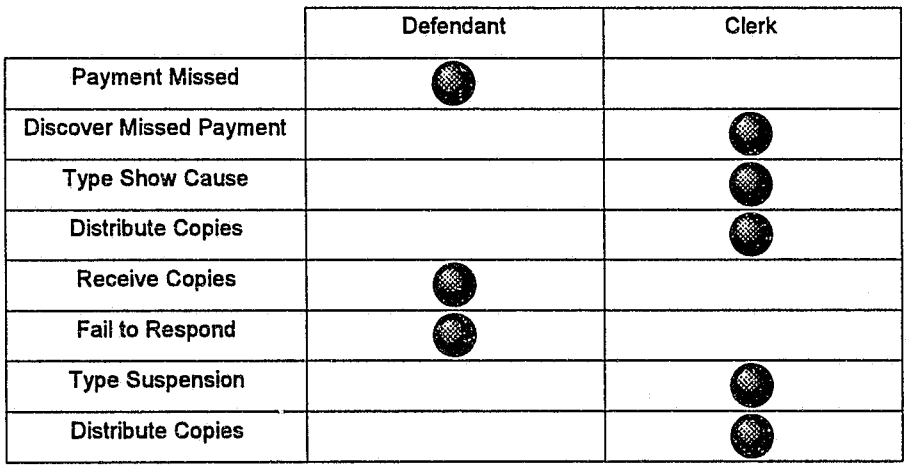
RECOMMENDATION 3.1A: Discontinue issuing warrants on traffic infractions.

Stop issuing warrants on traffic infractions. This will drastically reduce the amount of backlog (see finding 1.2). Sort out the traffic infractions from the boxes of cases awaiting warrant processing. Make sure the traffic infractions have active license suspensions.

In the future, after the collection notices have been automated (recommendation 1.1A) and the clerks are caught up on the backlog (recommendation 1.2A), the court may decide it has time to restart the practice of issuing warrants on traffic infractions. The capability to produce warrants on traffic infractions should be programmed into the JALAN system so that the court can easily activate the process later if desired.

This recommendation leaves enforcement on traffic infractions reliant upon the "Guilty by Default" (GBD)/"Did Not Appear" (DNA) letter process and the "Show Cause Citation" process, both of which result in license suspension for noncompliance. Our study shows that show causes and license suspensions are more effective than warrants.

If the court implements this finding, the process for enforcement on traffic infractions will shrink from 22 steps to 5 steps and reduce the number of people involved from six to only one as shown in the following diagram.



This will save the court clerks, city attorney, and police department a considerable amount of valuable time. It will allow the clerks to have more time to concentrate on implementing the JALAN system and reducing the growing backlog in other areas.

Regarding incoming revenues, it does not appear that temporarily discontinuing the warrant process will have an immediate impact on revenues. Clerks have not been preparing a significant number of warrants recently, and existing infraction and misdemeanor warrants will continue to be served.

FINDING 3.2: The court does not collect enough money on the day of sentencing.

We observed more than one instance where it appeared a defendant was prepared to pay a large amount of money toward a new fine but the clerk suggested a lower amount. For example, one defendant offered to pay a large portion of his fine, then related that he had just lost his job and didn't know when he would be able to pay more because he would be starting school soon. The clerk told him he didn't have to pay any money that day and proceeded to set up a payment agreement at ten dollars a month. She then told the defendant to make his first payment on the 10th of the following month and sent the defendant away without collecting any money toward the obligation.

Our observations prompted us to query the JALAN data base to obtain assessment and payment data. We wanted to compare sentence amounts to the amount collected on the day of sentencing.

We excluded cases with the following disposition codes because we only wanted to look at those people who presumably had appeared in court on the date of sentencing. However, we had no way of excluding those people who may have mailed in their plea and money, thereby seeming to have appeared on the date of sentencing.

The codes included in the search were:

AOC (Add Old Case)
G (Guilty Plea)
CGP (Convicted Guilty Plea)
DIF (Diversion Filed)
F-G (Found Guilty)
FGL (Found Guilty of Lesser Offense)
NC (No Contest Plea)
OCC (Order to Close Case)
P-G (Pled Guilty)

The codes excluded from the search were:

AOF (Add Old Fines)
CNA (Convicted, Did Not Appear)
GBD (Guilty by Default, Did Not Appear)
NGB (Bond Found Not Guilty)
NGP (Pled Not Guilty, Set for PTC)
VAC (Vacation Order)

Our search of the data base showed that no disposition codes other than those listed above have been used to date, although others are available in the JALAN event code table.

The following table summarizes JALAN data collected from July to October 1994. The table shows total fines assessed, not including fees or restitution, on cases disposed on the data base during the four-month period.

		Number of People	Amount Assessed	Average Amount Per Person
July	Sentenced	28	$9,908.00	$353.86
	Paid 1st Day	11	$945.00	$85.91
	Percentage	39.0%	9.5%	
August	Sentenced	35	$14,778.00	$422.23
	Paid 1st Day	10	$1,058.00	$105.80
	Percentage	28.6%	7.2%	
September	Sentenced	49	$19,927.00	$406.67
	Paid 1st Day	19	$1,992.00	$104.84
	Percentage	38.8%	10.0%	
October	Sentenced	52	$17,321.00	$333.10
	Paid 1st Day	21	$1,824.00	$86.86
	Percentage	40.4%	10.5%	
TOTALS	Sentenced	164	$61,934.00	$377.65
	Paid 1st Day	61	$5,819.00	$95.40
	Percentage	37.2%	9.4%	

Overall, the data appears to show that 62.8 percent of the people who were presumably present on the day of sentencing left without paying anything on their obligation. Only 37.2 percent of the people present on the day of sentencing actually pay the court any money. Remember that we were unable to exclude mail bail cases; if these were excluded, the percentage who are present and pay would be lower.

It appears that the people who are paying pay on average about 9.4 percent of their obligation on the first day. But this figure is deceiving, because those who pay their entire fine on the date of sentencing comprise almost half of this group of people and substantially more than half of what is collected on sentencing day. Of those 61 people who paid some money the first day, 28 (45.9 percent) paid off their sentence. This amounted to $4,559.00, or 78.3 percent of money paid the first day, and includes bail forfeitures and money received in the mail. The other 33 people who

paid money the first day made a partial payment that averaged about $38.18 per person. This amounted to $1,260.00 all together, or 21.7 percent of money paid the first day.

People who establish a payment agreement and do not pay in full the first day pay only about 2.2 percent of their assessments the first day.

Beyond the obvious monetary incentives for enforcing the court's orders by emphasizing prompt collection of fines and fees, the court has a higher obligation to the community. If court orders are not aggressively enforced, it will engender a lack of respect for the court and the judge. It may also leave offenders with the impression that they have permission to flout the law, nullifying the intended rehabilitative effects of fines.

In its March 1994 course, "Collecting Fines and Fees in Traffic Cases," the National Center for State Courts' Institute for Court Management had this to say:

> *Premises of Fine Use. A fine is a court order. If it is not paid, the integrity and credibility of the court is called into question. If fines are collected and enforcement is taken seriously, the resulting punishment may have rehabilitative value and deterrent effect.*

RECOMMENDATION 3.2A: Collect as much money on the day of sentencing or within the first 30 days as possible.

Clerks should never turn down money offered to the court; it may be the last chance to collect it.

The court should operate on the philosophy that fines are due on the day of sentencing. Installment agreements should be the exception, not the standard. For those who absolutely cannot pay the entire fine on the first day, the clerks should attempt to collect as much as possible when establishing a payment agreement. We suggest a minimum of at least 10 percent. Even if the person has only a little money with them, the court should collect as much of it as possible. This is the easiest money to collect and sets the tone that the court really expects to be paid. No person should be allowed to establish an installment agreement without paying some money up front.

The OAM put it best:

> *When dealing with the problem of collecting past due accounts, conventional wisdom dictates that the best policy for collecting a delinquent account is to avoid the problem in the first place.*

The Spring 1992 State Court Journal article entitled "Using Civil and Administrative Remedies to Collect Fines and Fees," by George F. Cole, states that:

> *. . . research in Europe and the United States has shown that success is highest when offenders pay a significant portion of the amount owed soon after sentencing and stagger further payments over a relatively short time.*

These quotes provide valuable advice for improving the court's collection efforts.

Trial Court Programs Division's studies of collection programs in state courts in Jackson and Yamhill Counties have upheld the above research.

In 1992 Jackson County circuit and district court judges started a new policy of telling defendants that the entire amount is due on the day of sentencing or within 30 days. The percentage of misdemeanor cases that received a payment within 7 days of sentencing doubled from 20.8 percent to 42.6 percent after implementation of that policy. Infraction and violation cases also had a greater percentage of cases with payment at time of sentencing; infractions rose from 77.8 percent to 83.7 percent, and violations rose from 88.6 percent to 91.4 percent.

Jackson County also measured payments made to the court in the same calendar month as sentencing before and after the policy change. Prior to implementation of the new policy, Jackson County collected 37.5 percent of the money assessed in the month it was assessed. Afterward, the percentage increased to 45.5 percent. Considering that the average amount assessed by judges increased during this time, this increase in percentage is even more meaningful.

RECOMMENDATION 3.2B: Consider incentives to encourage prompt payment.

The following is a list of possible "incentives" the court may wish to consider to encourage prompt payment of accounts:

- Credit card payments
- Discount for timely payments

  When defendants sign the payment agreement, tell them that the $10 set-up fee will be deducted from their last payment if all payments are made on time.

- Amnesty program to help clean up some of the aged accounts

- Publicity

  Publicize the court's rededication to timely collections and imposition of sanctions in the local media. (Should not occur until after the court has everything on the data base and is prepared to follow through.)

- "Boot" or tow cars

  Work with the police department to develop a program for "booting" or towing the cars of chronically delinquent offenders. (This might substitute for issuing warrants on traffic infraction cases.)

FINDING 3.3: The minimum payment amount is too small.

We talked to collections officers in three state courts who indicated that most of their payment agreements are set at $25 to $30. They all agreed, based on their collection experience, that $5 or $10 payments are too low. The guidelines published in the OAM support this opinion. The following is an excerpt from the OAM.

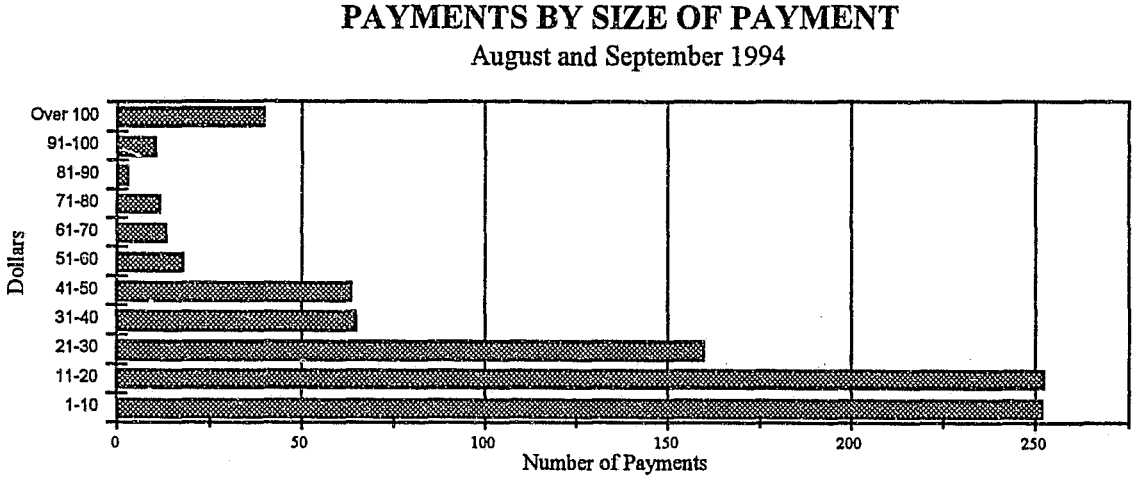
> *Normally, a minimum payment would be at least $25 per month. The Monthly Payment Schedule Guidelines listed below may also be helpful. After determining the payment amount, ask for an amount to be paid today, and then set the schedule for the remaining debt.*

MONTHLY PAYMENT SCHEDULE GUIDELINES

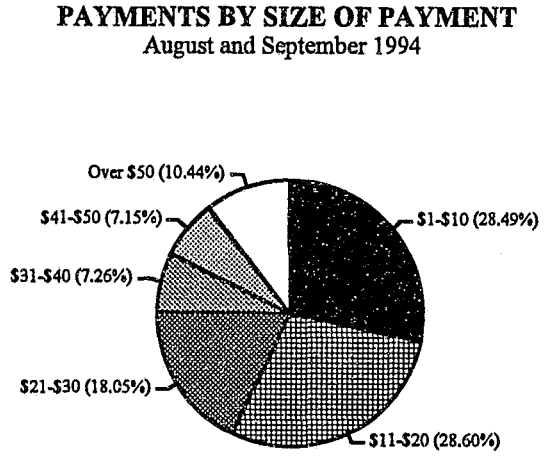
Amount Due		*Monthly Payment*	*Minimum Payment*
$0	*-$50*	*pay in full*	
51	*-500*	*$50*	*$25*
501	*-1000*	*75*	*40*
1001	*-2000*	*100*	*50*
2001	*-3000*	*200*	*75*
3001	*-plus*	*300*	*100*

We reviewed 881 payments posted on the data base during the months of August and September. Trust and bail monies were excluded from this review because the nature of these "receivables" is quite different from fines and fees.

During August and September, the average payment size was $32.11; the median payment size, however, was $20.00. The following graph shows the distribution of payments within various dollar ranges:



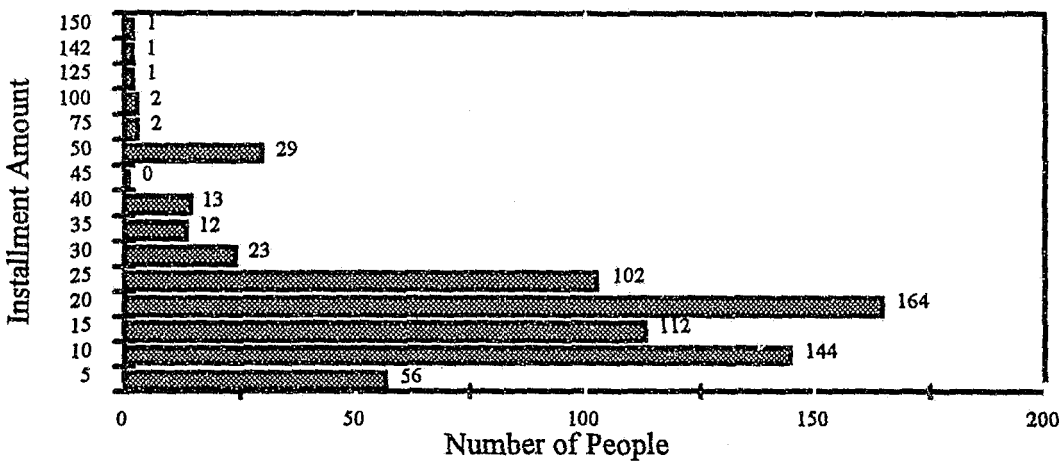
As you can see in the following pie chart, more than half of the payments received are for $20 or less, and 28 percent of the payments (251 total payments) were $10 or less.



We then looked at the actual installment amounts people are expected to pay. As of October 10, 1994, for all people entered on the system who were given installment payments, the average installment amount was $19.75. We perceived from interviews that the court considers itself to be pretty tough about collecting money and setting payment schedules. However, neither our observations nor queries of the data base support this impression. In fact, our observations and data imply the opposite. The court does not insist on having a payment on the day of sentencing (see finding 3.2), and minimum payment amounts are very low on average. We observed that even when a defendant offered to pay more, sometimes the installment agreement was set at a smaller amount.

The following graph shows the distribution of installment payment amounts:

INSTALLMENT AMOUNTS



We also analyzed the ledgers from Sample A. Our analysis held some startling revelations. Of the 100 people, only 2 had paid off their balances. Thirty people have ledgers over four years old. One person has a ledger which goes back to 1980.

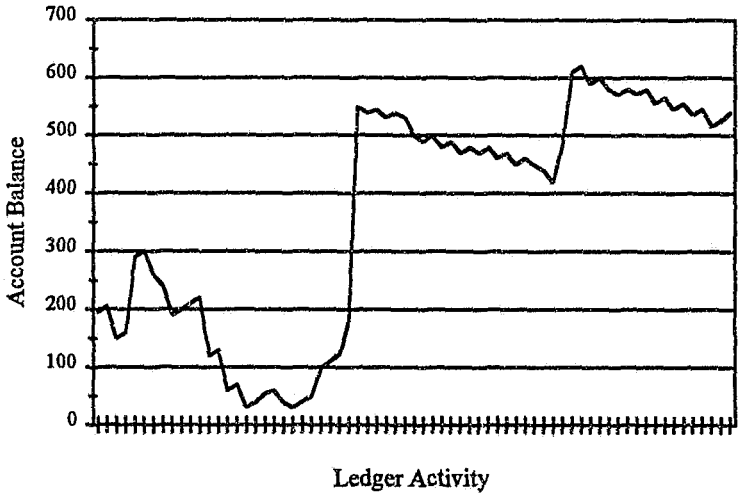
Many people reoffended and had new fines levied; however, we expected to see the total amount these people owed to the court decrease over time. We were surprised to find that, starting from day one on each person's ledger, the total amount owed to the court by these 100 people increased from $31,278 to $51,252. This indicates that the payment of fines is not having the intended effect of changing offender behavior. Since the first day of each ledger, the court has assessed new fines or restitution payments of $29,142 and court fees of $9,346 on these people. (Note: We are not sure that we have the starting ledger for all people. In a few instances older ledger sheets may have been destroyed and their balances carried forward to new sheets. All data was compiled under the assumption that the oldest ledger sheet we found was the starting ledger for the individual.)

Some people were slipping further and further behind simply because their $5 or $10 payments didn't keep them ahead of the $10 late fees the court assessed each month, let alone allow them to pay off their fines. By assessing fees which are higher than many defendant's installment payment amounts, it reduces the likelihood that the offender will ever successfully pay off his or her account.

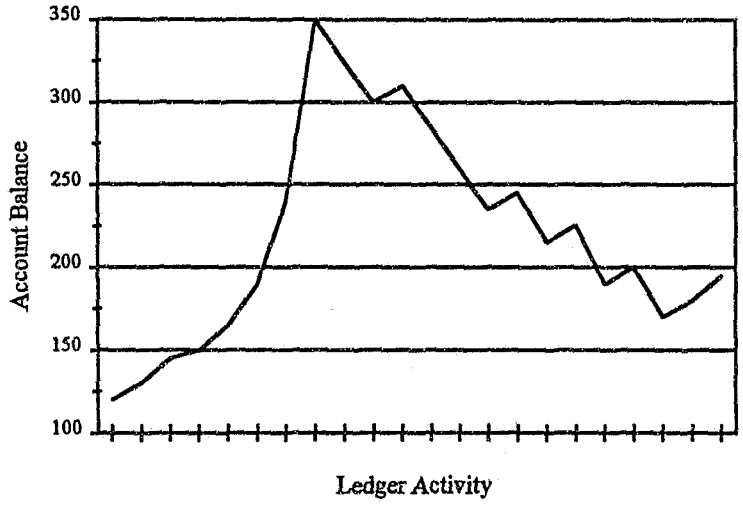
The following graphs depict the ledger activity for three different individuals in Sample A, from the start of each ledger until October 10 when we pulled the files. These are samples only but help to illustrate some of the trends we discovered.

The increments on the y-axis represent the party's accounts receivable balance. The tick marks on the x-axis represent each ledger entry, whether a payment, new fine, or other assessment (e.g., late fee and warrant fee). The first tick mark represents the day the account was first established. Each subsequent tick mark represents the sequential entries on the account ledger. The number of tick marks on the x-axis reflects the total number of entries on the ledger over the life of the account, and therefore varies from graph to graph.

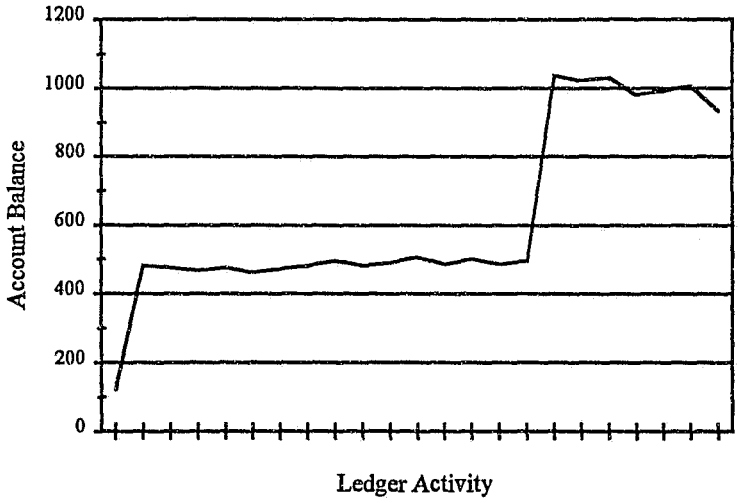
SAMPLE LEDGER #1



SAMPLE LEDGER #2



SAMPLE LEDGER #3



RECOMMENDATION 3.3A: Increase the minimum payment amount to $20 or $25.

This would bring the minimum payment amount up to the current median amount.

Payments of $5 or $10 can hardly be expected to serve as a punishment, have any rehabilitative value, or serve as a deterrent for most people, regardless of income. It should be made clear to defendants that the court expects to collect as much of the fine as possible on the date of sentencing, and if a payment agreement must be made, that payments will be at a **minimum** of $20 to $25. This does not mean the court should turn anyone away who has cash in hand, but do not set up regular installment payments of $5.

The court should not be in the credit business. Fines are not established for the convenience of a defendant. In fact, the primary purpose of a fine is to inconvenience the offender and achieve behavioral changes. Installment payment amounts should not be treated as a convenience either. Larger minimum payments will show that the court takes its own orders seriously and expects payment.

A minimum monthly payment amount of $20 or $25 will have the added benefit of reducing the number of counter transactions and payments received through the mail; there will be less transactions over the lifetime of each account. This will save valuable clerical time. It should also cause a higher percentage of the amount owing to be collected earlier in the lifetime of the debt.

An offender assessed the average fine amount of $377.65 (finding 3.2) would take 6.3 years to pay the fine at $5 a month assuming no additional fees were added to the case. The same offender could pay off the balance in 1.3 years with monthly payments of $25.

If the court determines that an offender truly cannot afford the minimum payment amount, we strongly suggest that the court impose alternative, nonmonetary conditions.

FINDING 3.4: The installment payment agreement process is inefficient.

Interviews and observations showed that the judge considers the defendant's income, assets, and monetary obligations to the court when assessing new fines. After sentencing, defendants are sent to a clerk to make payment or set up a payment agreement; however, the clerks usually do not have access to the financial information discussed in the courtroom when the defendant arrives at the window.

Our observations showed that clerks sometimes ask for the same type of information as the judge. On court days, when the defendant has already seen the judge, this is a duplication of effort. Usually, however, because of the hectic pace of court day, clerks do not seem to routinely ask such questions. The clerks usually ask defendants how much they can afford to pay, leaving it up to the defendant rather than the court to establish a payment schedule. The clerks sometimes set $10 to $20 payments if the defendant did not say how much he or she could afford.

RECOMMENDATION 3.4A: Consider having the judge establish the payment schedule from the bench.

Since the judge is already gathering financial information for sentencing purposes, we suggest that he also set the minimum payment amount and payment intervals at the same time. The judge is in the best position to make this determination because he should already have a feel for what the defendant can afford to pay. In addition, one hopes that a payment schedule imposed by the judge will carry more weight and possibly motivate a defendant to comply with the terms of the agreement.

Keep a supply of payment agreements in the courtroom and have the judge fill out the balance due and payment amount information. This will add to the judge's work load but should take a minimal amount of time because he already has most of the information needed to make these decisions. In the state courts, it is common practice for the judge to set payment terms.

After sentencing, send the agreement to the counter with the defendant. The clerk and defendant can then complete the remainder of the form.

This will simplify the clerk's job on busy court days. The clerk's process of adding a disposition, setting up a payment schedule, and accepting money on the case could move along much faster if the clerk did not need to have a redundant discussion about the defendant's financial situation. There is also a possibility that the financial information defendants share with the judge in court may not be the same information they would give to a clerk.

The judge should establish standards for the clerks to follow to enable them to continue to set up payment schedules for offenders who simply want to plead guilty and don't need to see the judge. Under no circumstances should defendants be allowed to establish their own payment terms.

FINDING 3.5: The judge needs a computer terminal on the bench.

The judge currently refers to the manual ledgers in case files during sentencing hearings and other proceedings. If the court discontinues manual ledgers (see finding 2.1), the defendant's financial history will no longer reside with the case file. Ledger information will reside only on the data base. The judge will need a terminal on the bench to access ledger and payment information. This will also be necessary if the judge begins establishing payment schedules from the bench (recommendation 3.4A).

State courts that have gone to an automated ledger without providing computers on the bench have encountered problems. Since judges in those courts rely on the financial history to make sentencing and payment scheduling decisions, they require clerks to print the payment history and clip it to the case when pulling files for court. This increases the amount of time it takes clerks to prepare for court. It also does not work well when show-caused defendants make payments after the ledgers are printed and sent to the judge. This can make the information the judge has in the courtroom obsolete, and he may order FTA sanctions erroneously; therefore, clerks have to check the computer to verify that a payment has not been received before following the judge's orders. Overall, it is better to have a computer on the bench so that the judge has up-to-date information and the clerks do not have to perform redundant tasks.

RECOMMENDATION 3.5A: Install a terminal on the bench.

Implementation of many of our recommendations will make it beneficial for the judge to have access to the data base while in court. It is our understanding that the necessary wiring is already in place.

FINDING 3.6: The payment agreement form lacks helpful information.

The installment payment agreement is a two-part, 5-1/2 inch by 8-1/2 inch, double-sided NCR form. The court copy is white, the defendant's copy is yellow. The top of the form has the court's name and address. The front side has fields for case number, defendant's name, and amount owed, followed by checkoff boxes for three payment options: pay in full by a certain date, by minimum monthly payments before a specific date each month to begin on a specific date, and "other." This section is followed by a section that lists the sanctions that may be imposed if the defendant fails to make payments when due, followed by a signature and date field for the defendant to acknowledge the agreement and sanctions. The back of the form is a manual ledger.

The payment agreement does not tell the defendant where to make or mail payments or what to do if they cannot make a payment. The court's hours of business and telephone number are not on the form. The name and case number fields are the only information about the defendant on the form.

RECOMMENDATION 3.6A: Modify the payment agreement form.

When payment agreements are allowed, the defendant should be educated about when and where to pay and the consequences of nonpayment. The wording of the court's present payment agreement establishes consequences well, but the form could be improved with the following modifications:

1. Add a section that tells the defendant where to mail or make payments.

2. Add the court's telephone number.

3. Add the court's hours of operation.

4. Remove the case number field or expand the field to show all cases that the agreement covers, since defendants often have more than one case. We suggest that each time a new fine is levied, the defendant complete a new agreement that supersedes and modifies the terms of the previous agreement.

5. Add fields for the defendant's current mailing address and telephone number. The address in the court file may no longer be correct by the time the case is disposed. Obtaining a current mailing address for the defendant at the time each payment agreement is signed may help the court with collection activities. In addition, people frequently keep the same phone number even after they have changed addresses. This could help if mail is returned undelivered.

6. Add fields for the address and phone number of the defendant's nearest relative or reference; this information is useful if the defendant absconds.

7. Add a social security number field. Above the signature field, the form should also include a statement such as, "I am providing my social security number voluntarily." Defendants have the right to not disclose social security numbers, but defendants will often supply it if the field is on the form. If the court ever decides to use a collection agency, the social security number will be vital information that the agency will need.

8. For collection purposes, the form could also contain a statement such as:

   "I understand that my records may have information that is protected by federal and state law. By signing below, I am allowing the release of my record by the court in the event

collection action becomes necessary. I understand the reason for the request and disclosure of my records."

If the court stops using manual ledgers (see finding 2.1), there should be ample space on the back of the form for the additional recommended information.

FINDING 3.7: Defendants may not understand the consequences of failing to meet the agreed-upon payment schedule.

It did not appear that defendants routinely read their payment agreement forms before signing them. An educated defendant is more likely to comply with the terms of the agreement and believe that the court is serious about collecting the fine.

RECOMMENDATION 3.7A: Make sure defendants understand the implications of failing to meet the installment agreement.

We suggest that the clerks verbally emphasize to each defendant, before the defendant signs the installment agreement, what will happen if he or she misses a payment. This should include informing them of the various fees associated with sanction actions.

FINDING 3.8: The JALAN software does not appear to have a method for designating accounts as inactive or uncollectible.

The June 30, 1994, annual listing of accounts receivable owed to the city (see finding 2.14) was extremely labor intensive to compile and shows a final total for all accounts receivable regardless of the collectability of the account.

The court currently stamps "Closed - Subject to Reopening" on files that they consider inactive. In this way, the manual procedure designates those accounts where collection of the accounts receivable is dubious. It does not appear that the JALAN software has a similar function available.

The court does not appear to have established criteria for determining that an account is inactive, nor do the clerks routinely inactivate accounts. The court apparently never considers an account uncollectible. Sample A showed a large volume of old debts. A significant number of defendants (32 percent) had never paid anything on their accounts. This number seems too high, particularly when the average age of these 32 accounts was over three years.

RECOMMENDATION 3.8A: Ask JALAN to program an inactive account status code.

Use of such a code would allow the court to produce a much more accurate management profile of its accounts receivable inventory. The JALAN software should also allow the court to reactivate the account if the offender is found and pays on the obligation.

The state court's computerized accounting system has a status of "inactive" that allows accountants to designate accounts considered uncollectible. In this way, the system can track and age active accounts more realistically.

RECOMMENDATION 3.8B: Inactivate any account on which no money has been collected in the past two years.

If no payment activity has occurred on the account within the last two years, the likelihood of collecting the money is remote. We suggest that such accounts be considered inactive and reported separately at year end. Lumping them together with all other accounts implies an unrealistic expectation that most of the money will eventually be collected and makes it more difficult for the city to make accurate revenue predictions. Inactivating the account does not erase the offender's obligation but more accurately reflects the status of the receivable. If the offender does finally pay on his account, the account can be removed from its inactive status.

We recommend that the court not backload inactive cases until such time as a payment is made or the court is prepared to pursue collection action.

The court should also consider writing off inactive accounts when nothing has been paid in the last five years. Warrants and license suspensions are not enforceable after five years. The court can renew these sanctions, but doing this routinely is not an efficient use of the resources of the court, the police department, or DMV because the chances of collecting anything on the accounts is extremely negligible.

FINDING 3.9: The court does not have established goals for processing paperwork.

The court does not appear to have established goals for processing paperwork within specific time frames. Such goals can be useful in monitoring the court's overall performance, improving processes, and warning the court when a backlog or process bottleneck is developing.

From interviews we learned that, before it became so backlogged, the court did have some processing standards. For example, the clerks used to take pride in the fact that warrants were always issued by 5:00 p.m. on the same day defendants failed to appear for show cause hearings.

RECOMMENDATION 3.9A : Establish goals for the timely processing of paperwork.

Once the court has successfully automated collection activities, set goals for timely imposition of sanctions and measure progress toward the goals. For example, set a goal to notify defendants within one week that payment is late. Set another goal to issue a license suspension within one day of failure to respond to the show cause notice, and so on. These sorts of measures help to maintain a timely, and therefore more effective, collections program.

FINDING 3.10: The court has insufficient information for managing receivables.

The computer does not contain complete and up-to-date information for reasons discussed elsewhere in the report. Even if all information was current, there are few accounts receivable management reports available. There are daily and monthly transaction reports for accounting purposes which provide some management information. But, to the best of our knowledge, the JALAN software does not produce reports that show the profile and age of receivables or show collection trends. We were able to collect this type of information for this report by querying the data base and analyzing a sample of manual ledgers; however, it was a very time consuming and labor-intensive process. The current state of the court does not allow for quick and efficient collection of this type of data.

RECOMMENDATION 3.10A: Collect and use information to improve fine collection and enforcement.

Tracking and using receivable collections information can help improve fine collection and enforcement. In its March 1994 course, "Collecting Fines and Fees in Traffic Cases," the National Center for State Courts' Institute for Court Management suggests several report formats for baseline, past-due, and aging information that your court might find useful. TCPD would be glad to share these report formats with LMC.

Implementation of this recommendation requires that complete and accurate receivable information be available on the data base. It also will require either additional programming from JALAN or independently created programs or queries. The judge, court clerks, and the court manager or city finance director should meet and review these reports on an ongoing basis. Although this recommendation provides good advice regarding the improvement of collections, we recommend that you implement measures over the long-term after the more immediate problems of the court are under control.

Ratio of Amounts Assessed to Amounts Collected

One measure that provides basic collection information is the ratio of sentence amounts to amounts collected over time. To obtain the numbers in the following table, we queried the JALAN disposition data from July through October. We excluded dispositions with the code AOF (Add Old

Fines). The amount assessed does not include restitution. The amount collected does not include restitution or bail, unless bail was redistributed to pay off a fine on the data base.

Month	Number of People Assessed	Amount Assessed	Amount Collected	Percent Collected
July	46	$26,067.00	$13,418.00	51.5%
August	54	$31,821.00	$14,259.00	44.8%
September	81	$37,249.00	$14,027.50	37.7%
October	68	$28,426.00	$13,997.17	49.2%
Total of 4 months	249	$123,563.00	$55,701.67	45.1%

The table above shows that during the four months we collected data, the money the court collected averaged at a ratio of 45.1 percent of new amounts assessed each month. The kind of information in this table can, over time, indicate trends in the court's collection program. Four months' worth of data is insufficient to indicate a true trend.

For example, the figures shown in the table are probably artificially high. Remember the data was extracted from the computer. The cases currently on the computer are new cases that have been recently disposed or old cases where payments are being made. Old delinquent cases are not part of the data base yet; when they are added, the ratio should go down.

Additionally, one needs to be aware of trends in case filings and use that information to assess changes in this ratio. For instance, through interviews we learned that case filings have decreased over the last few years. This may make the ratio higher because the court will be assessing less money on the new cases because there are fewer of them, but the court will still be collecting on a large volume of existing cases.

Other factors that could affect this ratio might be the recent rise in bail and fine amounts or issuing a large batch of show cause notices; however, if you collect this data over a long time, you should begin to see patterns emerge, and then you will have more information for managing collections activities.

Oregon Accounting Manual Measures

The Oregon Department of Administrative Services Accounting Division uses the following measures for their Accounts Receivable Summary Report. You may find that some or all of these measures would provide your court with good information for managing your receivables.

(We calculated a few of these from the information on the data base, and the outcomes are discussed in the Profile of Receivables.)

The following excerpt is from the OAM:

a. *Collectible accounts receivable as a percentage of gross accounts receivable. Illustrates the relationship between collectible and gross receivables and is an indication of what collections can be expected in the future. Collectible accounts receivable may include both current and past due accounts. Higher percentages are favorable and indicate that a greater percentage of accounts receivable are expected to be collected.*

Collectible accounts receivable/Gross accounts receivable.

Collectible accounts receivable = Gross accounts receivable minus allowance for doubtful accounts.

Standard = 95%.

b. *Days to collection. This is an approximation of the number of days it would take to collect the outstanding accounts receivable balance assuming the past success rate remains the same. This ratio also indicates the collectibility* (sic) *of accounts receivable. The longer an account receivable is outstanding (not paid) the less chance there is of collecting it. This ratio indicates how long the agency is "financing" the debt and may raise the question "Should we charge interest or late fees?" A lower number of days indicates greater collection efficiency.*

Gross accounts receivable/(Semi-annual sales/180)

Standard = 90 days.

c. *Past due accounts receivable as a percentage of gross accounts receivable. Measures the integrity of the original accounts receivable by indicating the agency's effort to prescreen and collect accounts receivable. This measure is a subset of the first measure, collectible accounts receivable as a percentage of gross accounts receivable. A lower percentage is an indication that prescreening efforts are effective and/or the agency is utilizing effective collection and billing procedures because the agency collects accounts before they become past-due. Comparing this measure with the prior period's collectible accounts receivable as a percentage of the gross accounts receivable ratio indicates if the agency is indeed collecting its expected collections. This comparison can show if collection efforts are effective and if credit granting policies are adequate.*

Past due accounts receivable/Gross accounts receivable.

Standard = 20%.

d. *Accounts receivable over 90 days past-due as a percentage of total past-due. Measures the effectiveness of agencies collecting accounts receivable that have gone significantly past-due and therefore, they require more aggressive collection procedures. This measure is a subset of the third measure, past due accounts receivable as a percentage of gross accounts receivable. A lower percentage is desirable because it indicates fewer past-due accounts receivable are 90 days old or older. The longer the account receivable is outstanding, the lower the probability of collecting.*

Accounts receivable over 90 days past-due/Total past-due accounts receivable.

Standard = 15%

e. *Write-offs of accounts receivable as a percentage of gross accounts receivable. Illustrates the relationship between receivables written-off of the accounting records as uncollectible and gross accounts receivable. Large variances from period to period would indicate poor estimating of bad debts and/or inadequate recording of provisions for future losses.*

Write-offs/Gross accounts receivable.

Standard = 2%.

By comparing measures and looking at trends, the agency will have information that will help to effectively manage its accounts receivables. For example , a large percentage of accounts receivable over 90 days past due without a corresponding low percentage of accounts receivable write-offs may indicate that an agency is not writing off the accounts receivable. The reverse may indicate that an agency is writing-off the receivables but not pursuing them when they are 90 days past-due.

SECTION FOUR: PAPER FLOW

Many of the items discussed in other sections of this report relate to paper flow. This section includes items that focus strictly on paper flow.

FINDING 4.1: The city attorney does not get misdemeanor citations early enough in the misdemeanor process.

The police department sends all citations, regardless of type, directly to the court. Since the city attorney does not routinely appear for arraignments, he has no way of knowing that he has a new case until late in the process. This may not give him sufficient time to decide how or whether he wants to proceed on the case and may also interfere with the discovery process.

ORS 153.527 states, "The district attorney having jurisdiction thereof shall review an accusatory instrument relating to any major traffic offense before it is filed in a district or circuit court." Though this statute does not appear to apply to municipal courts, nor does it apply to nontraffic offenses, it may have been enacted, in part, to eliminate the problems mentioned here.

It is common practice in the state courts to send misdemeanor citations directly to the district attorney. In addition, we spoke with the municipal court judge in Salem; the Salem Police Department sends misdemeanor citations directly to the city attorney.

RECOMMENDATION 4.1A: Ask the police department to send misdemeanor citations directly to the city attorney.

The city attorney will know from the start when he has a new case. This should provide him with adequate opportunity to prepare the case and provide discovery to the defense. Implementing this recommendation will also be critical if the court decides to have the city attorney present during arraignments (refer to recommendation number 1.5A).

The court should discuss this procedure with the city attorney. The judge, clerks, and city attorney should agree upon a time frame within which the attorney will send the citations to the court. This time frame should be fairly short so that the court clerks are not faced with questions about cases they have not yet received.

FINDING 4.2: The parking citation process seems needlessly complicated.

The police department runs a computer printout of vehicle registration information for the appropriate vehicle and sends it to the court with the citation. This gives the court the vehicle

owner's name and address; however, it is sometimes difficult to match money received in the mail with parking citations because people frequently do not make appropriate notations on their checks. The problem is compounded when the person making payment is not the owner of the vehicle. The city does not issue a high volume of parking citations, but this annoying problem wastes valuable clerical time.

RECOMMENDATION 4.2A: Consider changing to a citation which is also a return envelope.

The city of Salem uses a parking citation which has a tear-away original (the court's copy), carbon paper, and an envelope. The officer writes on the original, and the carbon copy transfers the information to the form on the backside of the envelope. The officer leaves the envelope on the vehicle. To pay a citation, the person either comes to the finance office or inserts the money in the envelope and sends it to the court.

This method virtually eliminates the problem of matching money received to the citation, saving court clerk time. It also saves time in the police department because the court does not need vehicle registration information on all citations, only on those which go unpaid. These could be requested in a batch as needed.

The court should discuss the feasibility of this idea with the city and the police department.

FINDING 4.3: The court has two different procedures for failure to appear at a traffic infraction arraignment.

LMC finds defendants guilty by default if they fail to appear for their traffic infraction arraignment and the citing officer filed a prima facie case affidavit with the court. If the court did not receive an affidavit, the court does not find the person guilty by default.

ORS 153.555 states:

(2) *The court may proceed to make a determination under any of the following circumstances:*

. . .

(c) *If the court does not direct that a hearing be held, a hearing is not required by statute and the person has not complied with ORS 153.540 or made appearance, when the time indicated in the citation passes and the court makes a finding on the citation and any other evidence the judge determines appropriate.*

The statute does not appear to require an officer's affidavit but leaves it up to the judge's discretion to decide what information is sufficient for making a determination.

We called several district and municipal courts but could find none who had separate procedures depending upon whether or not they had an affidavit from the citing officer. Some of the municipal courts we called do not find people guilty by default; others do but don't consider the officer's affidavit. In fact, all the courts we contacted indicated that they do not routinely receive affidavits from police officers.

RECOMMENDATION 4.3A: Use the same procedure for all failures-to-appear at traffic infraction arraignments.

We suggest the court establish one procedure for failure-to-appear at arraignment on a traffic infraction; find all defendants guilty by default regardless of whether or not the court has a prima facie affidavit from the citing officer. If a defendant can show good cause, the court may later exercise the option to set aside its default "judgment" and proceed with the case.

With the case at "closed" status, the clerk's office can then establish a financial record for the case, posting not only fines but suspension and warrant fees (if the court continues to issue warrants on infraction cases), thus eliminating another barrier to getting rid of the manual ledgers.

SECTION FIVE: STAFFING LEVEL

It is our opinion that the court needs to contract for additional short-term help. This assistance is needed in three areas:

1. Many of the findings in this report demonstrate the need for programming changes to JALAN's software. The court will need to contract with a programmer if suitable arrangements cannot be made with JALAN.

2. We do not believe that the court needs a long-term manager; however, the court may need short-term managerial support to help implement many of our recommendations. The manager should be prepared to help the court clerks with the following:

    a. Establish performance measures
    b. Create management reports through AS/400 Query
    c. Review and revise code tables
    d. Establish uniform coding protocols
    e. Create automated forms
    f. Establish efficient procedures
    g. Determine the nature and circumstances related to apparent software problems

3. The clerks will need additional clerical help to catch up on backlog and to review and update all cases currently on the data base. In addition, they may need help to continue with case processing while they receive appropriate training.

Once JALAN's software is fully functional and suited to the court's needs and all backlog has been eliminated, it seems likely that the court can run efficiently at its current staffing level. The current state of the court makes it difficult to objectively assess eventual staffing needs; however, we contacted a few municipal courts for comparison. We called courts that process both misdemeanor and infraction cases with somewhat comparable caseloads to LMC.

We estimate that LMC currently receives about 130 new cases each month. Canby Municipal Court has two clerks and receives about 300 new cases each month. Florence Municipal Court has one full-time and one half-time clerk and approximately the same caseload as Lebanon. Pendleton Municipal Court has two clerks and receives about 210 new filings each month. Newberg Municipal Court has one full-time and one half-time clerk and receives about 150 new filings each month.

The court should reassess the need for more staff after the major issues in this report have been satisfactorily addressed. In addition, the current state of the court and the temporary instability which will result from implementing major process changes, as recommended in this report, make it impossible to create appropriate job descriptions at this time. This issue should be addressed after the court has dealt with the major issues in this report and modified processes have stabilized.

SECTION SIX: CLERICAL INPUT ON ADMINISTRATIVE MATTERS

This section includes recommendations on how management can enhance efforts to include clerical staff in administrative decision making. We were specifically asked to address this topic because management wants to create a context through which they can tap the valuable resource of the court's clerical staff. We made no attempt to evaluate the current level of interaction between the clerical staff and management, and no "findings" are presented in this section.

The recommendations presented here are based upon our experiences and established total quality management principles. Our research indicated that none of the things recommended here are currently being done in LMC.

RECOMMENDATION 6.1A: Develop process flowcharts.

The clerks should work with court administration to develop process flowcharts. The primary focus of these charts should be the continuous improvement of processes and the development of a shared understanding of each process, rather than the production of procedures manuals. Process flowcharts should be periodically reviewed and modified as potential improvements are tried and proven efficiencies are ratified; for this reason, the flowcharts should be created in whatever manner will make them easiest to construct and modify (i.e., focus on functionality rather than eye appeal).

If the court hires a temporary court administrator (as suggested in section five of this report), that person should be responsible for working with the clerks to develop process flowcharts. If the court does not hire an administrator, someone else will have to take the responsibility to facilitate the development of the charts.

As they work through the processes, the clerks and administrator (or other facilitator) should continually question each step to ensure that the particular process is as efficient and well-defined as possible. They should look closely at any of the following warning signs of an inefficient process:

1. Steps done because "it's always been done that way." There should be better justification. Is each step really necessary?

2. Missing procedures or uncertainty about what procedure is followed. This may indicate that there is no established procedure. Is one needed?

3. Papers passed to someone who does nothing more than send them to someone else. Can the middleman be bypassed?

4. Inconsistent procedures (see finding 2.8). Do the clerks follow the same procedures for processing paperwork? Do police officers prepare paperwork for the court similarly, or are there inconsistencies which affect the process?

5. Processes that jump back and forth from person to person. Is the appropriate person doing each step?

Keep in mind that an entire process may involve noncourt people, such as the city attorney or police officers. Other parties' portions of a process should be included in any process flowchart. It is helpful for clerks to understand the entire picture, not just their piece of a process. It is also critical to understand an entire process before you attempt to improve the process so you will have some idea how changes will affect the process. Also, some improvements may need to occur outside the scope of the court.

RECOMMENDATION 6.1B: Establish goals and performance measures.

The court should establish a set of well-defined, written goals. Once goals have been established, develop written performance measures and collect data in accordance with the measures.

A performance measure tells you how well you are doing. Performance measures should be meaningful and easily understood. They can:

1. Demonstrate how well the court is meeting its goals.

2. Help the court determine the effect of procedural changes on a process or processes.

3. Act as a warning system, providing timely problem detection.

4. Keep the court focused on the most important issues and processes.

Data collected for performance measures should act as indicators of the overall health of the system or specific processes. Data variation can lead to the discovery of root causes or aid in early detection of new problems.

Since the clerks will collect most, if not all, of the data, it is important to limit the number of performance measures to the most critical goals of the court and provide measures for which data is readily available. We recommend the court start with three or four measures in the beginning. After the court has addressed the major issues in this report and affected processes have stabilized, institute more measures as time and resources allow.

The court should also determine the frequency of data collection for each measure. The frequency of data collection should be greater when a performance measure is first implemented until a sufficient amount of data has been collected to establish a baseline for future comparison.

Here is how performance measures might work in practice. Suppose the court established a goal to eliminate work backlog and, toward that end, set a standard or "subgoal" to complete any paperwork process and return the file to the shelf within 24 hours of removing it from the shelf (see recommendation 1.3A). It would be impractical to try to determine how long it actually took to return each file to the shelf after it was removed; however, a good indicator might be the number of files "out" (e.g., on a clerk's desk or in the judge's basket) at the end of the day.

Once the court has eliminated most of its current backlog (finding 1.2) and established a one-location filing system (recommendation 1.3A), the number of files "out" at the end of the day could be an effective performance measure. Suppose after collecting data on this performance measure for several weeks the court determined that one clerk averages 19 files on her desk at the end of the day, the other averages 22 files, and at the end of an average day there are 4 files in the judge's basket, with no other locations for "out" files. Then suppose the average number of files on the clerks' desks jumps one week from 41 to 65 (total for both clerks). This would indicate that something special is happening and should be cause for investigation to determine the reason for the change. Was the change due to an unusual, unplanned event, or is the increase due to a systemic change? Was the change an aberration or is it the beginning of a new trend?

Some deviations may be easy to explain. For example, if one of the clerks was out ill for part of the week, this might cause files to pile up on her desk. The data should return to its previous level after the absent clerk returns to work, *assuming she can catch up on the work which stacked up while she was gone*. Systemic causes may be more difficult to detect but are usually more critical because of their potential broad and/or long-term effects. For example, an increase in the number of files on clerks' desks might indicate an increase in case load which would have repercussions on virtually all aspects of court work. As another example, an increase in files might indicate that a recent procedural change is making it more difficult to process paperwork quickly.

When events create major variations in the results on performance measures, whether positive or negative, it is vital to the ongoing health of the system to determine the cause and take appropriate action to counteract negative effects or maintain positive effects. In the above example, ongoing monitoring via the performance measure could be the means for detecting a backlog problem before it grows out of control. Resources could then be directed toward the problem, thus keeping the court on track with its stated goal of eliminating work backlog.

Performance measures should be established to monitor the condition of the court. Performance measures should not be used to monitor or evaluate individual performance. When such measures are used to focus on individual performance rather than the relative health of the system, there may be a strong tendency to expend all energy on those items being measured to the exclusion of other important procedures. There may also be a tendency to add unnecessary monitoring steps to

procedures or establish jury-rigged systems to ensure that the data will always look good. If the focus of data collection shifts from discovering what is actually occurring to artificially making the data appealing, collecting the data will become a meaningless exercise; the data will lose all value.

(Refer to recommendations 3.9A and 3.10A for some suggested performance measures.)

RECOMMENDATION 6.1C: Establish a routine schedule of meetings.

Court administration should meet regularly with the court clerks. Initially the meetings should be used to:

1. Address the various findings and recommendations presented in this report.

2. Review code tables. (See recommendation 2.7A.)

3. Determine how manual processes will be converted to automated processes.

Once the most critical problems of the court have been addressed, at least once a month the judge (if possible), court administrator (if applicable), finance director, and municipal court clerks should meet to discuss other potential process improvements. Depending upon the topic, other parties should also be asked to attend. For example, if the court decides to address the feasibility of issuing warrants and potential improvements to the warrant process, ask representatives from the city attorney's office and the police department to participate in the meeting.

These ongoing meetings should be used to:

1. Establish goals and performance measures.

2. Discuss performance measure data collection results.

3. Discuss potential process improvements, referring to process flowcharts and performance measure results.

SECTION SEVEN: FILING

As previously discussed (see recommendation number 1.3A), the court needs a single location filing system for its active records. This section of the report presents specific recommendations regarding physical files and shelving, as well as archive procedures.

The following is a partial list of filing system vendors the court may wish to contact to discuss its filing needs. This is not an all inclusive list but will give the court a place to start.

AVR Distributors Northwest	Beaverton	646-1949
Automated Sales	Wilsonville	246-0612
Cap Systems, Inc.	Beaverton	245-1431
Oblique Northwest	Portland	284-4123
Pacific Business Systems	Portland	231-7223
Tab Products	Portland	233-4878

While we worked with two of the vendors on this list (AVR Distributors and Tab Products) to develop some of the information and recommendations presented in this section, nothing in this section of the report is to be construed as a recommendation or endorsement of any specific vendor.

(Note: Though we went into detail about the court's filing situation, we did not tell either vendor we worked with that we were doing the research on behalf of LMC.)

FINDING 7.1: The court does not use file folders.

When the court receives a citation, a clerk writes the party's name on the side of the citation (essentially the top of the file). If the party has an active file, the clerk places the new citation on top of previous documents. The court usually files all of a party's active cases together (i.e., all cases pending further party or court action). All files are then filed alphabetically by case status (see finding 1.3).

Most of the court's documents are 5-1/2 by 8-1/2 inches, the size of a half sheet of letter-size paper, or smaller. Some documents may be letter size, however.

The court does not use file folders. This makes file retrieval more time consuming because it is harder to flip through files to find the one you want. When you open a file drawer or look in a box of files, it is not apparent where one file ends and the next begins, nor are the names on files visible. This also increases the chances of misfiling a file.

The clerks generally use staples to hold documents together; however, if a file becomes large, the clerk may use a rubber band to hold the documents together. The clerk may also use rubber bands

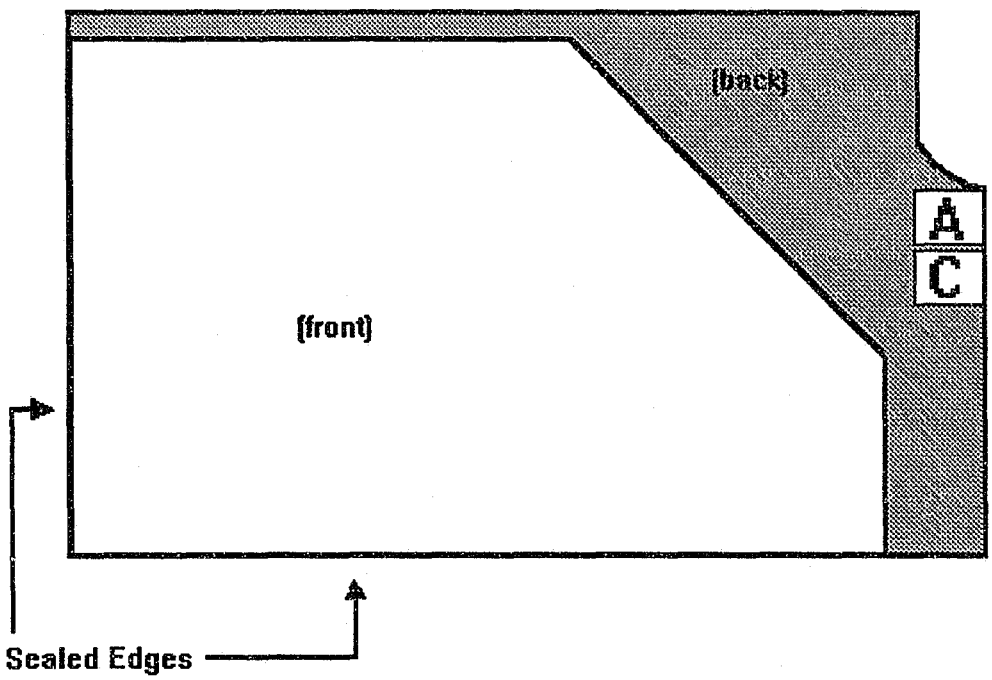
on a file to separate older cases from new cases if the judge needs to see and deal with only the newer cases.

Using rubber bands and staples is time consuming and hard on documents, creating holes, tears, and frayed edges. Staples also make it more difficult to take the file apart for review or photocopying, especially since larger documents are folded before they are stapled to the file.

RECOMMENDATION 7.1A: Order customized file folders suited to the court's special needs.

Standard, letter-size files would be less expensive than customized folders; however, it would be an inefficient use of limited office space to use file folders designed to hold documents twice the size of most of the court's documents.

We recommend that the court order files, such as pictured below, specially made to accommodate 5-1/2 by 8-1/2 inch documents:



With sealed edges at the back and bottom, this file should be able to easily accommodate the volume of documents in most if not all of the courts individual files, with little risk of documents dropping out of the file. This will eliminate the need for holding all documents together with staples or rubber bands.

We estimate the court will need 2,400 file folders for its current active files. The court should order at least 3,000 files to start.

Tab Products gave us an estimate of $197.60 per thousand for the folders. AVR Distributors gave us an actual price quote of $348.00 per thousand for a quantity of 3000 files, with the price per thousand reduced to $282.00 per thousand for a quantity of 5000 files. With such a wide price disparity between the two companies, we suggest the court contact several vendors for quotes and material samples. There may be great variation in the quality of materials and products. The files must be strong enough to withstand a lot of handling and sturdy enough to accommodate up to 80 pieces of paper.

RECOMMENDATION 7.1B: Create files only for those parties likely to have ongoing contact with the court.

We recommend that the court create file folders only for those people who, 1) don't appear for arraignment via personal appearance or mail, 2) appear but plead not guilty, 3) appear and plead guilty or no contest but do not pay the fine in full up front, or 4) require additional court monitoring or follow-through after sentencing for nonmonetary sanctions. Those who "appear" for arraignment (personally or by mail) and pay all fine amounts, if any, the same day should not require further follow-up from the court; their cases can be closed and all documents moved to archival storage.

RECOMMENDATION 7.1C: Continue filing alphabetically.

We recommend that the court continue filing alphabetically, rather than changing to a numerical, case-based filing system. (See previous discussion regarding case-based vs. person-based systems in finding 2.1.) Since many people have multiple active cases, and it is frequently necessary to deal with more than one of the party's cases at the same time, filing them separately in a case-based system would add to file retrieval time. It would also greatly increase the number of file folders needed, requiring additional space and expense.

RECOMMENDATION 7.1D: Purchase alpha file labels.

We recommend that the court invest in individual letter, color-coded file labels and label each file with the first two letters of the party's last name, as shown in the previous picture. Color-coded file labeling virtually eliminates misfilings because misfilings become easy to avoid and simple to detect.

Tab Products did not give us a price for labels. AVR Distributors quoted $141.00 for a complete set of labels, 26 rolls (500 labels per roll) in a two-tiered organizer. The court could save time and money initially by not using labels; however, we feel that, in the long run, labels will reduce the

time it takes to locate files more than making up for the time involved applying labels to the file folders.

(Note: One problem with such labels is that the frequency of need will vary from letter to letter. The court will run out of some labels quickly, while 500 for some letters may be more than the court will ever need. If the court decides to use labels, additional roles of individual letters will have to be purchased on an as-needed basis.)

RECOMMENDATION 7.1E: Write the party's name on the file's end tab.

This is similar in concept to the current practice of writing the party's name on the side of the citation. This will make it easier to pull the correct file in instances where multiple people have the same two alpha labels (if used) and will save time because it will be done only once for each file (as opposed to the current practice where newer citations are placed on top of old citations, and the party's name is written again on the side of the new citation).

The clerk should write the party's name in the space below the two alpha labels if such labels are used.

RECOMMENDATION 7.1F: Use colored card stock for file dividers.

Purchase some brightly colored paper stock, cut to half-sheet size or slightly larger, to use as dividers within files. This will eliminate the need to rubber band "old" documents to keep them separate from new documents when the judge only needs to work with the new documents. The brightly colored paper should act as a flag to the judge making it clear which documents he needs and which documents he can ignore.

FINDING 7.2: Current filing cabinets and shelving are inefficient.

Open shelving is preferable to closed shelving or filing cabinets, especially when there is limited space such as in LMC office. Shelving is generally considered to be more space efficient than filing cabinets, and open-shelving eliminates the need for additional space for door or drawer clearance. Open shelving also provides the quickest access to files.

We sampled 100 files of parties at payment status. Counting the number of citations and total documents in each file, we found that the average file contained 4 citations and 19 total documents. The minimum number of citations in any file was 1, while the maximum number was 22. The minimum number of total documents in any file was 2, while the maximum was 82. With this information, we told the two vendors to assume that the average file would be the thickness of 23

documents so that they could estimate the amount of filing space required (some documents are folded in half so count double).

(Note: The new Uniform Traffic Citation, which allows for up to three charges per citation, may have decreased the number of citations written per incident, likely having a long-term effect on the number of documents in files.)

RECOMMENDATION 7.2A: Replace all current filing cabinets and shelving with an open-shelf filing system.

The court should either purchase adjustable, prefabricated shelving or contract to have shelving built to fit its space and file-height needs. Most filing system shelving is designed for either legal- or letter-size files. Prefabricated shelving must provide adjustable shelf heights to accommodate the court's smaller files. Tab Products does not appear to have suitable shelving available and did not give us a price estimate for shelving. AVR Distributors has filing units with adjustable shelf heights which appear to be adequate for the court's needs. Based on file number and size estimates we provided, AVR Distributors estimated that the court will need 341 linear inches of shelving to accommodate 3000 files. Additional space will be needed for expansion. AVR Distributors quoted an installed price of $388.00 for 504 linear inches of shelving capacity in two shelving units. (Exact dimensions of the shelving units were not provided.)

We believe that eliminating all existing shelving and file cabinets will provide the court with sufficient space for new shelving; however, some modification to existing facilities may be necessary. This study did not include an analysis of the court's facilities; therefore, we strongly urge the court to have at least two vendors look at the current facility to be sure shelving can be reasonably accommodated.

Since the clerks work in close proximity to the files a majority of the time, shelving units should be bolted to the wall for security, ensuring that the units will not tilt or fall over. This is particularly important if the floor on which the units will rest is not level, but will also provide greater safety in the unlikely event of an earthquake. Anchoring the units to the wall will also allow the clerks to load files from top to bottom without the risks inherent in making a unit top-heavy.

RECOMMENDATION 7.2B: Purchase pressboard guides, half-high with a side tab, to divide each section of the alphabet on the shelves.

This will improve file access, making it clear where one section of the alphabet ends and the next begins. We recommend the court use separate dividers for most letters of the alphabet (some such as X, Y, and Z may be combined) but not try to separate each two-letter file label combination. For example, separate the "S" section of files from the "T" section, but do not use dividers to separate the "SM" files from the "SN" files.

AVR Distributors quoted a price of $30.00 for a set of 25 dividers. Tab Products sells dividers but did not give us a price estimate on them.

RECOMMENDATION 7.2C: File cases waiting for arraignment separately.

This is the only recommended exception to the one-location filing system rule; as previously mentioned, this will facilitate pulling files on court day. (Refer to recommendation 1.3A.) In addition, it will not be known until after arraignment whether or not these cases will require files (see recommendation 7.1B).

We recommend purchasing a box and index dividers which will allow for filing these citations lengthwise. The clerk can then easily refer to the name already written on the citation, rather than writing the party's name on the side of the citation (see recommendation 7.1E).

FINDING 7.3: It appears the court destroys some records prematurely and keeps others too long.

The clerks archive a case record after the case is disposed and all obligations are satisfied or in the rare event that the court actually gives up on the case. Currently when citations are moved to archive storage, it appears that the court destroys some of the records that accompany the citation. Those records which are saved are kept indefinitely. Even if the court routinely destroyed archived records, there is no easy way to determine what records are eligible for destruction.

According to the Oregon State Archives City Records Retention Schedule (1992):

1. Criminal case files are to be retained for five years after the case is closed, dismissed, or the date of the last action on the case. Such records may include, "citations to appear in court, complaints, warrants, police reports, subpoenas, defendant information, and related records." (Rule 10-5)

2. Traffic citation case files, other than DUII case files, are also to be retained for five years after the case is closed, dismissed, or the date of the last action on the case. Such records may include, "citations to appear in court, complaints, warrants, driving records, police reports, suspension records, disposition slips, subpoenas, and other related records." (Rule 10-13)

3. DUII case files are to be retained for ten years after the case is closed, dismissed, or the date of the last action on the case. Such records may include, "citations, complaints, chemical analyses, diversion agreements, sentencing orders, commitment orders, license suspension notices, community service referrals, alcohol program referral notices, and related records." (Rule 10-7)

4. Parking citation records are to be retained for two years after satisfied, dismissed, or deemed uncollectible. Such records may include "citations, correspondence, and related records." (Rule 10-11)

We can find no authority for destroying the records which accompany citations prior to destruction of the citation itself.

(Note: Financial records, which may accompany or be maintained separately from citations, have their own retention periods apart from the case records themselves.)

RECOMMENDATION 7.3A: Archive cases after all obligations are met or the case is declared inactive.

Declaring cases inactive and moving them to archives should reduce the number of files in the clerk's limited office space. (Refer to recommendation 3.8B regarding conditions for declaring a case inactive.)

RECOMMENDATION 7.3B: Maintain all case file documents until the retention period has expired.

The retention schedule's catchall phrase "and related records" makes the destruction of any case file documents questionable. The value of some documents may be debatable, but the court should ensure that it is saving at least all the items specifically mentioned in the retention schedule. Though saving entire case files will consume additional storage space, it should save the clerks time spent culling documents from files prior to placing them in storage.

RECOMMENDATION 7.3C: Separate records related to specific cases prior to archiving their files.

Staple all related case records together. If a party has multiple cases, separate the records which belong to each case prior to archiving the records.

RECOMMENDATION 7.3D: Stamp the destruction date on the front of the citation.

Stamp the year the case record can be destroyed on the front of the citation prior to archiving the record. We also recommend boxing records together which will be eligible for destruction in the same year. This will greatly facilitate the eventual destruction of archived records.

If further action is taken on a previously archived case, cross out the old destruction date. When the court eventually returns the case to archives, the new destruction date should be stamped on the file and the file should be boxed accordingly.

(Note: If a case includes multiple charges, use the longest applicable retention date.)

RECOMMENDATION 7.3E: Destroy eligible archived records once a year on a fixed schedule.

Most records experts seem to agree that records should not be retained beyond their retention period. As a practical matter, storing obsolete files wastes space and can also incur unnecessary liability, since the record holder can potentially be held liable to produce any record in its possession, whether or not the record *could have been* destroyed. In addition, record destruction should be a matter of routine practice so that there is no appearance of being random or arbitrary. If asked to produce a record which has been destroyed, the court should be prepared to show that such destruction is a part of normal, routine procedure, not done to avoid producing the requested record.

Destroying records on a fixed schedule should be simple if the destruction date is stamped on each file and the files are boxed according to their destruction dates (see recommendation 7.3D). We do recommend, however, that a court clerk verify that all of the case records in a box have the same date stamped on them prior to destruction.

RECOMMENDATION 7.3F: File archived records alphabetically (within destruction year) rather than by case number.

Anyone seeking information from archives is far more likely to know the party's name than a specific case number.

SECTION EIGHT: VIOLATIONS BUREAU

FINDING 8.1: The court's violations bureau is not formally constituted as prescribed by Oregon statutes.

Applicable Statutes

Chapter 153 of the 1993 Oregon Revised Statutes (ORS) allows creation of "traffic court violations bureaus" to handle infractions and certain violations:

> *ORS 153.600 Traffic Court Violations Bureau; duties and powers. (1) Any court, when it determines that the efficient disposition of its business and the convenience of persons charged so requires, may establish a Traffic Court Violations Bureau and constitute the clerk or deputy clerk of the court or any other appropriate official within the jurisdiction in which the court is held as a violations clerk for the Traffic Court Violations Bureau. The violations clerk shall serve under the direction and control of the court appointing the clerk.*
>
> *(2) In traffic offense cases the violation clerk shall accept, subject to the limitations set forth in this section and ORS 153.605:*
>
> *(a) Written appearance, waiver of trial, plea of guilty and payment of fine and costs; or*
>
> *(b) Payment of bail.*
>
> *(3) The court shall by order designate the traffic offenses for which the violations clerk has authority over fines, costs, bail and bail forfeitures under this section and ORS 153.605. Such offenses shall not include any major traffic offense.*
>
> *(4) The court shall establish schedules, within the limits prescribed by law, of the amounts of fines or bail to be imposed for first, second and subsequent offenses, designating each offense specifically. The order of the court establishing the schedules shall be prominently posted in the place where the bail and fines are paid. Bail, fines and costs shall be paid to, receipted by and accounted for by the violations clerk in the same manner as other bail, fines and costs are received by the court.*
>
> *ORS 153.605 Violation procedure; effect of previous offenses. (1) Any person charged with any traffic offense within the authority of the violations clerk may:*
>
> *(a) Upon signing an appearance, plea of guilty and waiver of trial, pay the clerk the fine established for the offense charged, and costs.*
>
> *(b) Pay the clerk the bail established for the offense. Payment of the bail under this paragraph constitutes consent to forfeiture of bail and disposition of the offense by the clerk as provided by the rules of the court. Payment of bail under this paragraph is not consent to forfeiture of bail if the bail is accompanied by:*
> *(A) A plea of not guilty;*
> *(B) A request for hearing; or*
> *(C) A written statement of matters in explanation or mitigation under ORS 153.540*
>
> *(2) A city court may by rule provide for the disposition of violations of ordinances relating to parking by the violations clerk in the manner provided in subsection (1) of this section and ORS 153.600.*
>
> *(3) A person who has been found guilty of, or who has signed a plea of guilty to, one or more previous traffic offenses in the preceding 12 months within the jurisdiction of the court shall not be permitted to appear before the violations clerk unless the court by general order applying to certain specified offenses, permits such appearance.*

Review of LMC Procedure

It appears that LMC conforms to the statute in substance but not in form . In early 1993 the judge established a fine schedule and verbally allowed the clerks to begin accepting guilty pleas and payment of fines and costs on infraction cases according to the schedule. Both clerks and the judge report that this procedure works very well. The judge is only available on Wednesdays, so this allows defendants much more flexibility to take care of their traffic tickets than would otherwise be possible.

The court's procedure does not conform to statute as follows:

1. The court does not have an order designating the traffic offenses for which the violations clerk has authority over fines, costs, bail, and bail forfeitures.

2. The fine schedule is kept only at the clerk's desk and is not posted prominently in the place where the bail and fines are to be paid.

3. The fine schedule lists specific offenses but does not distinguish between first, second and subsequent offenses. (As far as we can tell, there isn't anything wrong with having the same fine amount regardless of number of previous offenses, if the schedule so states, and you can defend the schedule with your constituency. We believe Multnomah County district court has such a schedule.)

Legal counsel for the Oregon Judicial Department (OJD) maintains that limited delegation of discretionary duties is permissible, particularly when the duties are ministerial acts or acts made ministerial by statute. OJD counsel also maintains that court staff can exercise delegated authority only when the court has delegated that authority properly. TCPD does not believe that LMC has properly delegated the authority for handling traffic tickets because the procedures are not written.

The lack of written procedures or a general order granting the clerks authority to handle traffic infractions could possibly open the judge and clerks to liability for improper delegation of judicial authority. Although judicial immunity applies to acts of a judicial or quasi-judicial nature, both clerks and judges can be found liable for ministerial or administrative acts (and perhaps to improperly delegated judicial duties.) The clerks' current traffic infraction handling duties can be interpreted as judicial or quasi-judicial. We are not legal experts, but it does appear that the court is taking some unnecessary risk here by not conforming to statute. (For the above discussion TCPD reviewed a research paper entitled Judicial Immunity prepared by the Office of the State Court Administrator in the 1980s for a judicial education session. A copy of the paper is in Appendix pages A-9 through A-37.)

The following excerpts are derived from an Oregon Judicial Department research paper on delegation of judicial authority to staff prepared by Nori Cross in 1986, then assistant legal counsel.

(The paper is entitled Research Paper for Oregon Judges 1986, and pages 3-8 through 3-14 are included in Appendix pages A-38 through A-44.)

> "The CJC, ABA Standards, and Code of Professional Responsibility all set standards of conduct that help insure the integrity and independence of the judiciary and avoid abuse of the discretion invested in attorneys and judges. The constitutions and the statutes otherwise limit that discretion, including limiting delegation of judicial discretion."
>
> "Because judicial resources are limited and efficient administration requires some delegation, judges should delegate ministerial acts where possible. However, the line is often fine between ministerial and discretionary acts and is often drawn for trial courts by appellate courts on a case-by-case basis or by the legislature in response to one case, i.e., after the fact and piecemeal.
>
> Therefore, it is advisable for trial judges to set written standards for delegation and to define where possible the limits of and guidelines for delegation. Such guidelines may or may not be upheld, but they do provide notice to all participants, ensure equal treatment of litigants, and avoid any appearance of arbitrary use of power."

RECOMMENDATION 8.1A: Conform traffic infraction procedures to statute.

Reduce the clerk's traffic infraction handling procedures to writing and/or a written order. Prominently post the schedule of fines and bail in the place where fines and bail are paid. Failure to do so may be putting the court at risk. Since statutes exist that govern delegation of traffic infractions to clerks, we can see no reason why the court should not abide by those statutes.

(Note: Violations bureau statutes may be changed during the next legislative session. During our research we discovered a draft bill that will go before the Senate at the next legislative session. The draft bill is attached for your review in Appendix pages A-45 through A-59.)

SECTION NINE: DIVERSION PROGRAM

The table below shows, along the left-hand side, each basic step of the DUII diversion process and, along the top, who is involved in the process. Each dot connects the step with the party responsible for completing that step.

				WHO			
WHAT	Police	Clerk	Defendant	Judge	City Atty	DMV	Evaluator
File citation and driving record	●						
Accept case and driving record		●					
Add case to JALAN, highlight record		●					
Appear for court			●				
Offer diversion, if appears eligible				●			
File diversion petition			●				
Type petition; collect money		●					
Request police report & CCH		●					
Prepare police report & CCH	●						
Pick up police report & CCH		●					
Send petition, driving record, police report and CCH		●					
Receive above document					●		
Review for diversion eligibility					●		
Sign petition (or not)					●		
Return documents					●		
Receive documents		●					
Type remainder of petition; add judge signature stamp		●					
Add diversion to JALAN		●					
Distribute Copies		●					
Receive Copies			●			●	●
Contact Evaluator (or not)			●				
Notify court of compliance or noncompliance							●

As you can see, the process has 22 steps and seven participants. The police, the clerk, and the city attorney route papers back and forth to each other.

FINDING 9.1: The time from filing of the diversion petition to court approval is too long.

Although statute allows the district attorney or city attorney 15 days from the date he/she receives the diversion petition to file an objection, many district attorneys make predeterminations (decide if they object before they file the citation with the court) or are prepared to agree or object on the day the petition is submitted to the court.

When a defendant files a petition for diversion in LMC, it could be one to two weeks or longer before he or she finds out if the city attorney has an objection. This is because the city attorney does not see the citations or discovery documents (police reports and CCH) prior to a defendant's petition for diversion and is not present at arraignments. Once a diversion petition is filed, the court clerk obtains discovery documents from the police department and sends them to the city attorney's office with the petition and driving record.

In many state courts, defendants can petition for diversion and have the diversion allowed on the same day the petition is filed, and have a diagnostic assessment scheduled shortly thereafter. We believe that LMC could begin to provide similar service to defendants with just a few changes to the current process.

RECOMMENDATION 9.1A: Implement previous recommendations.

Two recommendations made earlier in this report can eliminate and/or modify some steps of the DUII diversion process, thereby speeding up the process for defendants and staff.

If the court asks the police department to send misdemeanor citations directly to the city attorney (see recommendation 4.1A) and the city attorney asks that the police report, CCH, and driving record accompany each DUII citation filed, then the city attorney will have an opportunity to determine diversion eligibility prior to filing the citation with the court. Knowing that the city attorney has predetermined whether he will object to a diversion will enable the court to allow a diversion at the time a petition is filed.

It will no longer be necessary for the court clerks to obtain and route discovery documents from the police department to the city attorney's office, but the evaluators will need to obtain discovery documents from the city attorney or police department, rather than from the court.

In addition, if the city attorney is present during arraignments (see recommendation 1.5A), this could reduce the number of times the court has to route the diversion petition to the city attorney for signature, since he may often be present when petitions are filed with the court.

This following table shows how much shorter the process will be if these recommendations are implemented. The process now consists of 15 rather than 22 steps, and the defendant who used to wait one to two weeks from filing of the petition to approval or denial can now find out instantly.

				WHO			
WHAT	Police	Clerk	Defendant	Judge	City Atty	DMV	Evaluator
File citation, driving record, police report and CCH	●						
Accept citation, driving record, police report and CCH					●		
Preapprove case for diversion					●		
File case & preapproval/denial					●		
Accept filing		●					
Add case to JALAN		●					
Appear for court			●				
Offer diversion if City Attorney OK'd				●			
File diversion petition			●				
Type petition; get all signatures; collect $; add diversion to JALAN		●					
Distribute copies		●					
Receive Copies			●			●	●
Contact Evaluator (or not)			●				
Notify court of compliance or noncompliance							●
Eighteen-month tickler review of case (see recommendation below)		●					

FINDING 9.2: The court allows six weeks from the start of diversion for defendant to obtain a diagnostic assessment.

Currently, more than a month may pass between the date of the DUII citation and approval of the diversion petition (two or more weeks from citation to arraignment and two or more weeks from filing to notification of allowance of the petition). The defendant then has six weeks to obtain a diagnostic assessment. There is also a delay (we did not determine the average length of this delay) between assessment and initiation of a treatment program. This adds up to a lot of time between the date of the alleged offense and the inception of a treatment program.

Some state courts offer diagnostic assessment on the same day the petition is filed. The six weeks allowed by LMC seems an excessive amount of time for a defendant to schedule and complete a one-to-two hour diagnostic assessment.

RECOMMENDATION 9.2A: Reduce the time allowed to obtain a diagnostic assessment.

The court should work with the evaluators to reduce the time allowed for the diagnostic assessment to take place.

FINDING 9.3: The court does not have a system to track completion of diversion programs.

The court is usually ultimately responsible for moving to dismiss the DUII charge on completion of diversion since most defendants do not do so (ORS 813.250 (3)). The court currently monitors payment of diversion filing fees and relies on the evaluators to report compliance with treatment programs. The court does not have a tickler set up for the end of the diversion period, so diversion cases could potentially slip through the cracks.

RECOMMENDATION 9.3A: Set up a tickler on the JALAN database to ensure that diversion cases do not slip through the cracks.

At the time a diversion petition is entered on the JALAN database, enter a tickler event for six months after the one-year anniversary of the diversion. This is a good method for the court to monitor completion of diversion conditions. When the tickler comes up, the clerk can review the case status and, if all diversion conditions have been completed, begin the motion to dismiss process (if the defendant has not already done so). If all diversion conditions have not been completed, or if the court has not received notice of compliance/noncompliance, then the court can check on progress with the evaluator and either extend the tickler or begin show cause proceedings. This will help the court to monitor and/or prevent diversion cases from dragging out longer than agreed, bringing the cases to the court's attention.

In addition, we suggest that the court set up a performance measure to determine how well defendants are doing on completing their diversion programs within the one year allotted. If it appears that many are not finishing within a year, discover the reason and see if the court can take remedial action. Many of the courts we have studied found that diversion programs were taking two to three years. Those courts often found that reducing these times was within the court's control.

FINDING 9.4: The court does not encourage defendants to pay the entire filing fee during the one-year diversion agreement period.

The court currently tries to collect at least $25 on the date the petition is filed. If monthly payments are set up at $25 per month, it will take the defendant 22 months to pay off the standard diversion costs of $530 charged by LMC. The diversion agreement is supposed to be completed in one year. If the defendant completes all other portions of the program in the allotted year but has not paid the

diversion costs to the court, the court really has little recourse but to extend the agreement, since they have set the defendant up to fail.

RECOMMENDATION 9.4A: Increase payment amounts.

The court should collect more than $25 at the outset of the diversion program. The court should collect at least ten percent or more of the diversion filing fee before allowing the petition and, if possible, set the installment payments high enough so that the fees will be paid off during the diversion period. (see recommendation 3.2A).

We realize that some defendants are paying for multiple tickets and that the court usually applies payments to the oldest ticket. This brings up the question of whether defendants should pay diversion costs before other obligations to the court in the interest of completing the terms of the diversion agreement during the one-year period. We don't believe that this is necessary. The drawback of increasing the complexity of the court's already complicated accounts receivable system far outweigh any possible benefit. The court could increase payment amounts so that an amount equivalent to the diversion fees would have been paid on the account (but not necessarily distributed to diversion fees) during the one-year diversion period.

FINDING 9.5: It appears that the court is overcharging for diversion.

It appears that the court may be charging DUII conviction fees on diversion cases. The table below shows the statutes related to each amount charged by the court. Our research leads us to believe that the amounts in the two shaded rows, county jail assessment of $54 and law enforcement medical liability fund of $5, should not be included in the diversion fees. The court should be charging $481 rather than $530.

DUII Diversion Set-Up in LMC

CATEGORY	AMOUNT	ORS CODE
Diversion Costs	$112	813.240 (1) (a)
State Obligation	$100	813.240 (1) (b)
Unitary Assessment	$84	135.905 (see 137.290(c))
Intoxicated Driver's Fund	$75	813.240 (1) (c) (see note 813.030)
County Jail Assessment	$54	137.309

Law Enforcement Medical Liability Fund (LEMLA)	$5	137.309
Diagnostic Assessment	$90	813.240 (1) (d) Defendant to pay this directly to evaluator
Installment Payment Agreement Set-Up Fee	$10	
TOTAL	$530	

RECOMMENDATION 9.5A: Stop charging diversion petitioners the $54 county jail assessment fee and the $5 law enforcement medical liability fund fee.

TCPD did not review ledgers to see how long the court has been charging these fees to diversion petitioners, so we do not know the extent of the problem. It may be that the court owes refunds to some defendants. The court should research this or include this item in the list of those needing to be reviewed in a financial audit (see recommendation 2.11A).

SECTION TEN: TIME TO DISPOSITION

In February of 1994, we ran a query to obtain a list of all cases "disposed" during October through December 1993. We then pulled the files for all 276 cases. Since it was impossible to be certain when each case was actually filed with the court, we tracked the time from each citation's issued date until the court rendered judgment. The following shows the number and percentage of cases disposed within certain age ranges:

	Cases	Percent
0 to 30 days	227	82.2
31 to 60 days	16	5.8
61 to 90 days	9	3.3
91 to 180 days	7	2.5
181 to 270 days	7	2.5
270 days to 1 year	4	1.4
Over 1 year to 2 years	1	0.4
Over 2 years to 3 years	2	0.7
Over 3 years	3	1.1

For the three-month period, we determined that the court disposed of 91.3 percent of cases within 90 days of the issue date on the citation, while only 2.2 percent were over a year old at disposition.

More recently we developed a query to allow the court to run a time-to-disposition report on demand. A sample report is in Appendix pages A-60 through A-65. The sample report shows the time from filing to final judgment (disposition) for all cases disposed during the selected period, August through October 1994. The cases are separated by case type; i.e., criminal nontraffic, infraction traffic, etc. For each case, the report shows the case number, defendant's name, judgment date, method of disposition, and the age of the case at disposition in years, months, and days.

From data obtained from this sample report, we determined that the court disposed of 89.7 percent of cases within three months of the date the cases were "filed" with the court (the filed date as entered on JALAN). Only 4.7 percent were over one year old. This is consistent with the data from the previous sample.

The following table shows the number and percentage of cases disposed in August through October within roughly the same age categories as shown for the previous sample:

	Cases	Percent
0 to 1 month	173	81.2
Over 1 month to 2 months	11	5.2
Over 2 months to 3 months	7	3.3
Over 3 months to 6 months	11	5.2
Over 6 months to 9 months	0	0.0
Over 9 months to 1 year	1	0.5
Over 1 year to 2 years	6	2.8
Over 2 years to 3 years	3	1.4
Over 3 years	1	0.5

The court is doing a good job of bringing cases to disposition quickly. The cases which tend to take the longest time are, as expected, the criminal nontraffic cases. The American Bar Association (ABA) has set standards for the timely disposition of all misdemeanor cases. The ABA standard indicates that 90 percent of misdemeanor cases should be disposed within 90 days, 98 percent within 180 days, and 100 percent within 1 year.

When we extracted the misdemeanor cases from the August through October sample, we found that 75 percent of the misdemeanor cases were disposed within 90 days, 80 percent within 180 days, and 82 percent within 1 year. Note, however, that there is no deduction for "inactive" time when a case is out of the court's control, such as when a case is at warrant status. If we could deduct such time, the amount of time it actually took the court to dispose of some of these cases would likely be much less. Unfortunately, there is no practical way, at this time, to deduct "inactive" time from the age of a case.

If we assume that the cases which took more than a year were delayed not because of the court's inaction but because the defendants were wanted for a significant period of time, and then subtract those cases from the sample, the court reached the ABA standards exactly. We did not confirm the validity of the assumption; however, it seems logical since four of the nine cases over a year old at disposition were over two years old, and one of those was over five years old at disposition.

(One additional note: The automated reporting function is entirely reliant upon data entry for determining the age of a case at disposition. The report will only be accurate to the extent that the case filed date and disposition date are entered correctly. This statement is not intended to imply that the clerks are entering this information incorrectly. It is only intended as a statement of the importance and effect of these two dates.)

STEPS FOR RUNNING THE TIME-TO-DISPOSITION REPORT

The report is designed to print on the IBM Laser Printer E in landscape mode. A hardcopy printout of the query is in Appendix pages A-66 through A-70 for reference. Save this printout for future use in the event you wish to modify or need to reconstruct the query.

These instructions assume some level of knowledge of system operations and printer use.

1. Route printing for PRT01 to the laser printer.

2. If the "orientation" button is not already set to landscape:

   a. Press the "start/stop" button to take the printer off line. The "ready" light should go off.

   b. Press the "orientation" button. The "landscape" light should come on.

   c. Press the "start/stop" button to put the printer back on line. The "ready" light should come back on.

   The printer should now be ready to go.

3. From the "System Menu" on your terminal, select option **14** (Go to AS/400 Main Menu). Press ***Enter***.

4. On the "Selection or command" line, type **WRKQRY**, and press ***Enter***.

5. Type **2** in the "option" field, **MWMAGING** in the "query" field, and **QGPL** in the "library" field, as shown in the following screen image. Press ***Enter***:

```
                    Work with Queries
Type choices, press Enter.
  Option . . . .        2       1=Create, 2=Change, 3=Copy, 4=Delete
                      5=Display, 6=Print definition
8=Run in batch, 9=Run
  Query . . . . .       MWMAGING              Name, F4 for list          Library . .
.       QGPL__                Name, *LIBL, F4 for list
```

6. Type **1** in front of the "Select Records" option, as shown in the following screen image, and press ***Enter***.

```
                                  Define the Query
                                        Query . . . . . :  MWMAGING        Option . . .
. . :  CHANGE    Library . . . . :    QGPL   CCSID . . . . . :

Type options, press Enter.  Press F21 to select all.          1=Select

Opt      Query Definition Option
 _  > Specify file selections
 _  > Define result fields
 _  > Select and sequence fields
 1  > Select records
 _  > Select sort fields
 _    Select collating sequence
 _  > Specify report column formatting
 _    Select report summary functions
 _  > Define report breaks
 _  > Select output type and output form
 _    Specify processing options

F3=Exit              F5=Report                F12=Cancel
F13=Layout           F18=Files                F21=Select all
```

7. Change the year "value" for field FNJDYX as needed. Change the "value" for field FNJDMX to the appropriate month, and press ***Enter***. The following example would run the report for the month of August 1994:

```
                        Select Records
Type comparisons, press Enter.  Specify OR to start each group.
 Tests:  EQ, NE, LE, GE, LT, GT, RANGE, LIST, LIKE, IS, ISNOT...
AND/OR      Field   Test    Value (Field, Number, 'Characters', ..)
            CSDISX  NE      'AOF'
AND         FNJDYX  EQ      94
AND         FNJDMX  EQ      8
__  ____  __ ______________
__  ____  __ ______________
__  ____  __ ______________

                                                          Bottom
```

If you want a range of months--for example, if you wanted to run the report for the last three months of the year--change the "test" for field FNJDMX to **RANGE**, and place the first and last months for the desired period in the "value," separated by a space. Press ***Enter***. The following example would run the report for the period October through December 1994.

```
                        Select Records
Type comparisons, press Enter.  Specify OR to start each group.
 Tests:  EQ, NE, LE, GE, LT, GT, RANGE, LIST, LIKE, IS, ISNOT...
AND/OR      Field   Test    Value (Field, Number, 'Characters', ..)
            CSDISX  NE      'AOF'
AND         FNJDYX  EQ      94
AND         FNJDMX  RANGE   10 12
__  ____  __ ______________
__  ____  __ ______________
__  ____  __ ______________

                                                          Bottom
```

8. Press ***F3*** to save and run the query.

9. On the "Exit this Query" screen, make sure there is a **Y** in the "Save definition" option. For the run option, select either option **1** (run interactively) or option **2** (run in batch). Note that if you run the query interactively, you will tie up your terminal while the query is running.

   Do not change the defaults on the definition section of the screen.

```
                              Exit this Query
Type choices, press Enter.
  Save definition . . . Y              Y=Yes, N=No
  Run option . . . . . 2               1=Run interactively
                                       2=Run in batch
                                       3=Do not run
  For a saved definition:                Query . . . . . MWMAGING
       Name
    Library . . .  QGPL___          Name, F4 for list
    Text . . . . . ____________________

    Authority . . . *CHANGE_____    *LIBCRTAUT, *CHANGE, *ALL,
                        *EXCLUDE, *USE,
                        authorization list name

F4=Prompt     F5=Report     F12=Cancel     F13=Layout  F14=Define the query
```

10. It may be necessary to respond to a device message regarding the status of the printer before the report will print.

SECTION ELEVEN: JUDICIAL EVALUATION

This section was originally written as a separate memorandum to the municipal court judge and the director of finance because the information presented did not lend itself to the same format as the rest of the report. Section seven,

- is an impressionistic discussion of different components of judicial style, not a factual analysis of clerical systems;
- provides style options rather than specific findings and recommendations;
- because it is impressionistic, is written largely in the first person.

The following memorandum is incorporated here for convenience only, to provide a final product in one package.

February 8, 1995

MEMORANDUM

TO: Judy Wendland
Director of Finance
City of Lebanon

Judge John Wittwer
Municipal Court Judge
City of Lebanon

FROM: Peter C. Kiefer
Director
Trial Court Programs Division

RE: Lebanon Court Study - Phase Seven

This memo is an assessment of judicial style. Although the original proposal called for recommendations on improving judicial efficiency and effectiveness, I have concluded that "judicial style" is a very personal matter. I saw, for example, instances of three types of judicial styles during the course of my analysis. One style focused on the judicial and court process; another style centered on observing defendants' rights; a third style concentrated on counseling defendants in the hopes of having them alter their behavior.

Since each style has merit and cannot be criticized because it does not follow my individual predilections, I have decided to simply make findings and comparisons without recommendations, providing information on available options.

I attended court sessions in the following municipal courts:

Lebanon (twice)	Tigard
Dallas (twice)	Salem
Oregon City	Canby
Sherwood	

Preliminary Note

Salem, Dallas, and Canby handle both traffic and misdemeanor cases. Tigard and Sherwood do not have any appreciable criminal caseload. Oregon City handles most misdemeanors but does not handle DUIIs.

Judicial Setting

Courtroom facility and design effects the appearance of justice dispensed. Court sessions are serious business; the courtroom should look as if it were meant for the purpose it is serving. The judge's location within the courtroom also should reflect the prominent role he or she plays within the proceedings.

The National Center for State Courts' (NCSC) pamphlet Trial Court Performance Standards states in standard 1.1 that courts must conduct their proceedings and other business openly.[1] Court proceedings are public; not only should the proceedings involve the judge and defendant, the proceedings should be visible and audible to anyone attending.

The Facility

Dallas, Tigard, Canby, Oregon City, and Lebanon hold court in the city council chambers. Sherwood holds court in a senior citizen center. Salem holds court in a courtroom designed for that purpose.

Clearly, holding court in a courtroom designed for that purpose is the most preferable. Holding court in the City Council chambers appears to be adequate; however, in Lebanon photographs of honored police dogs adorned the wall behind the judge. One could construe the photos as favoring law enforcement, rather than appearing completely unbiased. Holding court in the senior citizens center was innovative, although about half way through the court session a large group of seniors assembled at the back of the room for some function that was scheduled to start after court was concluded. The noise from the seniors, and the fact that the center was definitely not designed for court use, appeared to demean the judicial function.

Judicial Presence

In Dallas, Salem, and Tigard the judge sat on a bench putting him higher than the defendant. In Lebanon, Sherwood, Oregon City, and Canby, the bench placed the judge lower than the defendant standing before him. In Lebanon and Canby, defendants stood directly in front of the judge accentuating the defendants' height over the sitting judge. In Dallas, Oregon City, Sherwood, Salem, and Tigard, defendants stood at a podium away from the judge's bench.

Being seated on an elevated bench provides a distinct psychological dignity that proves advantageous for the judicial role. Being seated away from the defendant afforded the judge added psychological authority. That advantage was lost when the judge had to look up at defendants standing over him.

The only jurisdiction where the judge did not wear a robe during session was Oregon City. The judicial robe also to gives added emotional weight to the judicial role.

Audibility

Seated in the public area, I could easily hear the proceedings for all defendants in Dallas, Sherwood, Tigard, and Oregon City. I could not hear the proceedings for all defendants in Lebanon, Canby,

and Salem. In Lebanon and Canby my difficulty stemmed from the proximity of the judge to the defendant creating a feeling of a private conversation. In Salem the difficulty stemmed from poor acoustics.

Keeping a distance between the judge and the defendant allows for a more formal and public proceeding. A physical separation requires the discussion to be heard by the rest of those attending court.

Participants

The judge must maintain the appearance of prominence and impartiality. Court proceedings should look as impartial as they, in fact, are. Defendants and the public must perceive the judge as the unbiased arbiter of their business before the court.

City Attorney

The city attorney regularly attended most court sessions in Dallas and Canby. In Salem the city attorney attended court sessions for traffic crimes only. The city attorney did not regularly attend court sessions in Oregon City, Lebanon, Sherwood, and Tigard. The city attorney's presence although a resource strain, allows the judge to rely on someone else arguing for the opposition rather than the judge being both arbiter and prosecutor (particularly in sentencings).

Courtroom Clerk

A clerk attended court sessions in Dallas, Canby, Tigard, Oregon City, and Salem. A clerk did not regularly sit in the courtroom in Lebanon and Sherwood. The clerk's attendance helped the judge in Dallas create a more formal atmosphere in his courtroom. The clerk would announce, "all rise" when the judge took the bench.

The clerk's presence seemed to have both positive and negative effects. Positively, a clerk in the courtroom could conduct business more quickly and helped to eliminate communication problems with the judge. The judge could also ask the clerk to complete most paperwork and attend to numerous ministerial matters while the judge focused on the defendant. Negatively, the clerk's presence created additional courtroom commotion, distracted from the public's focus on the judge, and prohibited the clerk from completing other tasks.

DUII Evaluator

The DUII evaluator was in court to perform evaluations immediately after the agreement was signed in Dallas. The evaluator's presence certainly accelerated defendants' evaluation and eventual treatment. On the down side, the evaluator appeared to waste considerable time waiting for referrals.

Language

The NCSC's Trial Court Performance Standards, standard 1.3, states all who appear before the court must be given the opportunity to participate effectively without undue hardship or inconvenience.[2]

Defendants must be able to understand and communicate throughout the proceedings, regardless of their native tongue, in order to participate effectively. Additionally, defendants must perceive that the form of communication is fair.

The judge spoke to defendants directly in Spanish when needed in Salem and Canby. Tigard and Canby also had a court approved Spanish interpreter who attended court to translate. The judge in Oregon City set the case over to obtain a Spanish interpreter. A friend or relative of the defendant attended court and translated into Russian in Canby and Salem. In Salem, however, the judge set the case over anyway to obtain a court approved interpreter I did not observe any defendants needing an interpreter in Dallas, Sherwood, or Lebanon.

A court approved interpreter is probably the most expensive option; however, the interpreter gives the most Impartial appearance. A judge speaking in a foreign tongue can have a positive effect for the immediate defendant, although other defendants who may speak foreign languages with which the judge is not familiar may have an additional negative impression of court.

Reading Rights

Presenting defendants their rights is a keystone to judicial proceedings. Defendants must obtain a complete and thorough understanding of their rights to effectively participate and in order for the court proceeding to achieve its ultimate purpose.

Audio and Video Taped Presentations

Arguments both pro and con can be made regarding every style of the presentation. Presenting defendants' rights by video or audio tape saves the judge considerable time and helps ensure the court has conveyed all necessary information to the defendants. Prepared tapes can also be more easily translated into other languages. Taped presentations may devalue the experience; defendants might not pay as close attention to a taped presentation as they would the judge personally reading their rights to them. The court must also find a way to replay the tape for defendants who arrive late.

Group Presentations

Some of the same arguments can be made regarding the judge personally reading defendants' rights in groups. A personal reading to a group still saves time, and it may give the presentation more weight. Translating the rights into another language becomes problematic. Additionally, the court must either reschedule defendants who come in late or deal with them in a special manner.

Individual Presentations

Reading defendants their rights individually increases the importance of the presentation, and the judge can better ensure that each defendant fully understands all the rights read. Individual readings dramatically increases judge time and increases the possibility the judge may miss a right, or not fully explain a right, as the day draws on and the reading is repeated too often or too hastily.

The judge read defendants' rights to a group (traffic, misdemeanor, etc.) in Oregon City, Tigard, Sherwood, and Salem. The judge read rights to defendants individually or in clusters in Lebanon and Canby.

Oregon City and Canby mixed their infraction and misdemeanor cases together. Mixing the two groups meant the different groups of defendants had to distinguish which rights applied to them.

Presentation Style
Each judge's presentation of rights was slightly different. I will not describe in detail each presentation; rather, I will describe some of the highlights of the presentations.

The Oregon City judge focused on the three types of pleas, the consequences of failing to appear at trial, and the meaning of "preponderance of the evidence." (I found it interesting that the level of proof the city needed to prevail was not explained at every court location I attended.) The judge also explained that a guilty plea on a traffic offense would appear on one's drivers record. Finally, the judge explained that the clerk would add on assessments to the fine imposed. Oregon City had the equipment for video taped presentation of rights as well as video arraignment of defendants in custody, although I did not see it in action the day I was there.

The Salem judge focused on the admissibility of evidence and the defendant's power to subpena witnesses. He spent a lot of time on physical evidence, for example, letters from witnesses were not allowed.

The judge in Dallas made a point of telling defendants to keep the court informed of any address changes. The judges in Oregon City and Canby particularly informed defendants not to abuse the clerk. The judge in Tigard informed all defendants about "Operation Slowdown" where police were called in from other jurisdictions to give tickets. (Seated in the back of the room, I thought the judge's explanation was inappropriate. The explanation seemed to give defendants permission to feel victimized by an "arbitrary" enforcement operation.)

<u>Fine Imposition and Accounts Receivable</u>
How fines are levied and receivable accounts established sets the tone for the court's post-conviction relationship with defendants.

The judges in Sherwood, Canby, and Salem encouraged defendants to pay their fine on the day of sentencing. The judge in Salem asked, "How do you plan to take care of this?" He never specifically addressed the question of whether or not the defendant had enough money to pay that day. The judge in Tigard did not ask defendants if they could pay any portion of their fine on the day of sentencing.

The judges in Oregon City and Sherwood had the clerks establish the deferred fine schedule.

Sentencing and Post-Conviction Monitoring

Particularly in these fiscally difficult times, the responsibility for monitoring defendants' sentences falls more and more on the courts and the courts alone. Trial Court Performance Standards, standard 3.5, states that the trial court must take appropriate responsibility for the enforcement of its orders.[3]

The judge in Dallas regularly ordered defendants back to court for monitoring. The judge in Salem did little post-conviction monitoring unless the defendant flagrantly violated one of the sentencing conditions (e.g., the defendant was re-arrested). I could not immediately determine if the judges in Canby or Oregon City routinely monitored defendants' behavior; however, I got the impression they did not. The Tigard judge was particularly interested in defendants obtaining their drivers licenses. In one instance, he wrote a special request to Motor Vehicles Division to allow a defendant to take his driving test again because the defendant had failed the test so many times previously.

The court in Tigard had a traffic school. Sherwood had a traffic school but only for juveniles. The courts in Canby and Oregon City had a seat belt school. The Oregon City and Salem courts imposed community service.

I hope the discussion in this memo provided some background on various options available that make up judicial style.

Endnotes

1. National Center for State Courts, Trial Court Performance Standards with Commentary, National Center for State Courts, Williamsburg, VA., p.25.

2. Ibid., p.8

3. Ibid., p.16.

APPENDIX

Ken. # 5-7

Lebanon Municipal Court Telephone Survey

Name Anita Allen Date 9-6-94 Day of Week Tues.

Out	Start Time	Stop Time	Public	Police	Jail	Atty	Judge	Other (Please specify)	Nature of Call
0	:25	:35						CA	re - marsh trial
0	9AM	9:01		✓					
0	:13	9:15	✓						Evendon - left msg for Mr. returned call re: SC
0	9:50	:55	✓						re court date/time
0	:5	:5	✓						re - addres change - trial dt.
0	0:1							returning call. Fin. Dept	
0	0:40	0:45	✓						unpaid fines? tickets?
0	10:47	10:50	✓						re Pmt. hearing date
0	11:20	11:21		✓					is in custody for transport
0	1:5	11:57	✓						re SC/Pmt
0	12:3C 1:05	1:08	✓						Voice mail Justice Ct cont'
0	:10	2:15	✓	(2:25 when resolved) went to PD					re - warrant Newport service
0	2:27	2:28	✓						(no answer) re - warrant service
0	2:47	2:50	✓						re late Pmt.
0	:53	2:54	✓					To Justice Ct.	

DOC\LEBSRV2
ust 31, 1994

Rec. #1-2

Lebanon Municipal Court Counter Survey

Name Bonnie Prince Date 9/6/94 Day of Week Tuesday

Who is at Counter?	Nature of Transaction: Making Payment	Check In	ODL Reinstate	Notary	Refer to Justice Ct	Other (Please specify)	Amount of Time (Estimate)
P	✓						7 min
JC						gave money they took for us	½ min
P	✓						4 min
P	✓						4 min
P	✓						4 min
P	✓						4 min
P						Make pmt agreement	3 min
Justice Court						inquire about # of papers in a case	¼ min
P	✓						4 min
P						discuss not being able to make pmt	4 min
P	✓						4 min
P	✓					find file, adjust pmt schedule	2 min
JC						to give ✓ they received for us.	¼ min
P	✓					also check on a maint. questions re: same	10 min.
P	✓						4 min

C:\WPDOC\LEBSRV1
August 31, 1994

10 payments / 47 mins.

LEBANON MUNICIPAL COURT

30 East Maple Street
Lebanon, OR 97355
tel. (503) 451-7485

August 19, 1994

M E M O

TO: JALAN

FROM: John R. Wittwer

As you know, Lebanon and Albany Municipal Courts have substantially identical versions of JALAN's Court System software. The software presently follows so-called "Failure-to-Appear" (FTA) and "Failure-to-Comply" (FTC) procedures requested by Albany Municipal Court. Albany is using the FTA and FTC procedures; Lebanon still is on its manual system. This memo explains how Lebanon Municipal Court presently deals with FTA's and FTC's and compares those procedures with those now in effect in Albany Municipal Court. It will be extremely helpful if JALAN staff will review this MEMO to determine the feasibility and advisability of incorporating Lebanon's present procedures into the version of the Court System installed for Lebanon and Albany courts. Then, the two courts will get together to reconcile differences in their respective procedures to the extent possible and then hopefully present a single request to JALAN for any needed changes in forms or programs.

NOTE: For each type of case, I explain the Lebanon procedure in detail and then note under the heading "ALBANY PROCEDURES" how Albany's procedures differ from Lebanon's...generally, if no specific difference is noted, the two courts' procedures are substantially as outlined under the heading "LEBANON MUNICIPAL COURT PROCEDURES." Forms in current use are shown ALL CAPS and a specimen of each form is attached to this MEMO, numbered according to the footnotes that appear in the text.

TYPE OF CASE	LEBANON MUNICIPAL COURT PROCEDURES	ALBANY PROCEDURES
FAIL TO APPEAR AT ARRAIGN-MENT ON TRAFFIC INFRACTION -- IN CASES WHERE THE FILE ESTABLISHES A PRIMA FACIE CASE AGAINST DEFENDANT *Ticket Entry*	An officer initiates a charge by completing a state-mandated 5-part NCR UNIFORM TRAFFIC CITATION (UTC)[1]. The officer gives the yellow SUMMONS part of the UTC to defendant which sets the time to appear. The officer files the white COMPLAINT and ABSTRACT parts of the UTC with the court and keeps the green POLICE RECORDS and pink OFFICER'S NOTES parts. When the officer is an eyewitness, the officer also completes and files with the court a PRIMA FACIE CASE AFFIDAVIT[2]. There may be up to 3 charges per COMPLAINT, all of which are docketed (ticket entry) in as a single case. However, the officer may file another COMPLAINT if he or she wishes to charge the defendant with more than three traffic infractions in the same incident and all of those charges will be filed in court as the same case. But there is no mixing of traffic *infractions*	Albany P.D. officers file the COMPLAINT, ABSTRACT and pink OFFICER'S NOTES parts of the UTC with the court. Although it is not given under oath, the Albany judge accepts the OFFICER'S NOTES as testimony in lieu of personal appearance, corresponding to Lebanon's PRIMA FACIE CASE AFFIDAVIT. Albany P.D. officers only include one charge on each CITATION, thus making it possible to use JALAN's Municipal Court Statistical Report function which counts cases not charges. The court enters a separate case for each such charge.

and traffic or other *crimes* on the same COMPLAINT nor within the same case. Because the Oregon Municipal Court Statistical Report requires information on individual charges and not cases, Lebanon currently handles the report manually.

As part of the ticket entry, the clerk enters ARN as the initial event, assigning the date stated by the officer in the COMPLAINT/CITATION as the first comply date.

1st FTA

If defendant fails to appear at the ARN date on a traffic infraction, Oregon law authorizes the judge to dispose of the case in the defendant's absence by taking into consideration such information as may be in the file (such as the citing officer's PRIMA FACIE CASE AFFIDAVIT). If the file establishes a *prima facie* case, the clerk manually enters judgment of conviction with event GBD ("guilty by default") that changes the case status from PN to CL and imposes the standard violation table fine. Then the clerk sends what we call a DNA LETTER[3] ("did not appear letter") which informs defendant of the money obligation and sets a time payment date 30 days away. The clerk enters the time payment date on the computer and adds $5 court costs to defendant's money balance.

If Defendant fails to appear at the ARN date, the court does not yet close the case by *ex parte* proceeding, but sends the OTA CARD[12], which resets the appearance date forward. The computer produces a separate OTA CARD for each charge, even multiple CARDS for a single defendant in a single incident.

2nd FTA

If defendant fails to respond by the date set in the DNA LETTER, the clerk prepares and sends to defendant and to DMV the NOTICE OF COURT ACTION AGAINST DRIVER LICENSE (hereafter called "SUSPENSION NOTICE")[4] and adds $15 court costs to the money balance due for the trouble. (The next clerk action in this stage takes a bit of time so often defendants contact the court upon receipt of the SUSPENSION NOTICE and the rest of the FTA action can be aborted.) The clerk also prepares the AFFIDAVIT IN SUPPORT OF REQUEST FOR COMPLAINT AND ARREST WARRANT[5]. Oregon law does not authorize arrest for a mere traffic infraction so, if the court wants to secure defendant's appearance, we have to go through the intermediate step of charging the defendant with a misdemeanor, Failure to Appear on a Traffic Offense (FTA Traffic). The clerk's AFFIDAVIT establishes probable cause for filing the misdemeanor FTA Traffic charge and for issuance of a WARRANT OF ARREST[6]. Presently, with our manual system, the clerk prepares and sends the clerk's AFFIDAVIT to the city prosecutor who directs the police to prepare a COMPLAINT FOR FTA TRAFFIC[7] for each person on the clerk's AFFIDAVIT. Once the COMPLAINT FOR FTA TRAFFIC is filed in court, the clerk starts a new case in ticket entry for that charge, then prepares a WARRANT OF ARREST and adds $50 court costs to defendant's money balance. Once the WARRANT OF ARREST is served, defendant is arraigned on the COMPLAINT FOR FTA TRAFFIC and the court sets up a payment agreement on the original traffic infraction fines (with accumulated court costs). The overwhelming majority of FTA Traffic charges filed in this way are resolved by plea agreement. Many Oregon traffic courts skip over the probable cause/FTA Traffic complaint step of this process. But, as stated above, we believe that arrests for traffic infractions without using the COMPLAINT FOR FTA TRAFFIC procedure are unlawful. However, there is no legal reason why the computer operator could not generate the SUSPENSION NOTICE, the AFFIDAVIT IN SUPPORT OF REQUEST FOR COMPLAINT AND ARREST WARRANT, the COMPLAINT FOR FTA TRAFFIC and the WARRANT OF ARREST all at the same time, with the computer updating money and events. The clerk could then sign the AFFIDAVIT (which would

If defendant fails to respond to the OTA CARD, the clerk enters event GBD and sets a time payment due date for 30 days for the standard violation table amount. The computer generates a LETTER[13] that informs defendant of the fine that has been imposed.

include a list of all of the applicable cases), forward the AFFIDAVIT as at present to the prosecutor with the unsigned COMPLAINT FOR FTA TRAFFIC for each of the listed cases for sign-off by the police, who then returns the signed COMPLAINT FOR FTA TRAFFIC to the court for ticket entry. Then the clerk would present the file to the judge for signature of the WARRANT OF ARREST. Bail on the WARRANT OF ARREST is typically set at the same amount for all defendants at this stage (presently $6,000).

3rd FTA

Lebanon presently has no 3rd-stage FTA procedures, completing everything it's going to do in 2 stages.

If the time payment due date comes and goes without defendant's response, the computer will generate what Albany clerks call POSTCARD[14], which sets the file ahead for 10 days. The POSTCARD program only prints the computer's system date and defendant's name/address in the place for a window envelope. The case number is also printed out of the window envelope's viewing range.

4th FTA

Lebanon presently has no 4th-stage FTA procedures, completing everything it's going to do in 2 stages.

If defendant fails to respond to the POSTCARD in timely fashion, the computer will generate the SUSPENSION NOTICE and will add $15 to defendant's money balance.

Comments

The promise that The Court System would perform this very useful function is what sold us on the system: in a single procedure, the computer could print the clerk's AFFIDAVIT and a COMPLAINT FOR FTA TRAFFIC AND WARRANT OF ARREST for each case listed on the AFFIDAVIT and update events and money, producing huge time savings for the clerk's staff, the prosecutor and police. We could probably produce a single-purpose text for the COMPLAINT and WARRANT so a single printing run would produce both documents or it could be done serially. In any event, we believe the foregoing procedure is a very effective enforcement tool.

Albany presently doesn't seek issuance of a WARRANT OF ARREST on traffic infraction cases so it does not use the AFFIDAVIT IN SUPPORT OF REQUEST FOR COMPLAINT AND ARREST WARRANT on infraction cases. Rather, once the case goes to CL status and the court has issued the SUSPENSION NOTICE, the file just sits until the defendant voluntarily appears or defendant is before the court on other business.

FAIL TO APPEAR FOR ARRAIGNMENT ON TRAFFIC INFRACTIONS WHERE THERE IS NO EX PARTE DETERMINATION OF GUILT UPON DEFENDANT'S FAILURE TO APPEAR

In some traffic infraction cases (such as accident cases where the officer issues traffic citations upon investigation of the accident but did not personally witness the infraction) the officer submits no AFFIDAVIT to establish a *prima facie* case with the COMPLAINT. If the defendant fails to appear for arraignment on the ARN date in these types of cases, the court has no facts upon which to render judgment, so case status remains PN.

1st FTA

When defendant fails to appear at ARN in these cases, the clerk by-passes the DNA LETTER stage and jumps directly to procedures described above for 2nd FTA (SUSPENSION NOTICE, AFFIDAVIT IN SUPPORT OF REQUEST FOR COMPLAINT AND ARREST WARRANT, COMPLAINT FOR FTA TRAFFIC and WARRANT OF ARREST). But, because the court has not yet entered judgment and the case is still in PN status, there is yet no money due and therefore no court costs can be added to defendant's money balance. (Under our present manual system, the clerks in fact note the

The clerk generates the OTA CARD as described above.

	additional assessment on the defendant's file for future addition to defendant's money balance if defendant is ultimately convicted.)	
2nd FTA	Lebanon has no 2nd-stage FTA procedure for these types of cases but does everything in the 1st stage.	The clerk generates the SUSPENSION NOTICE, with $15 being added to defendant's money balance. Case status stays PN until defendant actually appears and the case is resolved.
FAIL TO APPEAR FOR ARRAIGNMENT ON TRAFFIC CRIMES	With traffic crimes, the ticket entry process is identical to traffic infractions (set ARN as initial event, etc.). But with traffic crimes there can be no *ex parte* determination of guilt. So if defendant fails to appear at the ARN date, *without* changing case status from PN, the clerk moves ahead with procedures for SUSPENSION NOTICE and AFFIDAVIT IN SUPPORT OF REQUEST FOR COMPLAINT AND ARREST WARRANT. Thereafter, the procedures for failing to appear on traffic crimes and traffic infractions are identical until defendant appears for arraignment except that no money changes occur until judgment of conviction is entered.	Albany treats traffic crime non-appearers identically to traffic infraction non-appearers except that there is no GBD event and a WARRANT[15] as well as SUSPENSION NOTICE is generated (plus $15 is added to defendant's money balance) after the OTA CARD fails to produce defendant's response. Producing the WARRANT also adds another $40 to defendant's money balance, even though there has not yet been a judgment of conviction entered against defendant.
FAIL TO APPEAR FOR ARRAIGNMENT ON NON-TRAFFIC CRIMES	With non-traffic crimes, the ticket entry process is identical to traffic infractions and traffic crimes (set ARN as initial event). As with traffic crimes, there can be no *ex parte* determination of guilt on non-traffic crimes. So if defendant fails to appear at the ARN date, the clerk immediately prepares the AFFIDAVIT IN SUPPORT OF REQUEST FOR COMPLAINT AND ARREST WARRANT[9] (but the charge is Failure to Appear in the Second Degree -- "FTA II" -- not FTA Traffic) as outlined above, but there can be no SUSPENSION NOTICE, this case not being traffic-related. Otherwise, the procedure for getting the COMPLAINT FOR FTA II[9] filed and the WARRANT OF ARREST issued is the same as outlined above, again though, without addition of court costs because, as yet, defendant has not been convicted.	Albany also uses its OTA CARD if defendant fails to appear for arraignment on a non-traffic crime. Again, if defendant fails to appear in response to the OTA CARD, the clerk moves right ahead to a WARRANT. Because, no traffic matter is involved, there is no SUSPENSION NOTICE.
FAIL TO APPEAR FOR ARRAIGNMENT ON NON-TRAFFIC, NON-CRIMINAL OFFENSES	The court also handles numerous non-traffic, non-criminal charges, the most common of which are Minor in Posssesion of Liquor, Possession of Less than 1 oz. of Marijuana and various dog or trash nuisance cases. The ticket entry process for these cases follows basically as outlined above for the other classes of offenses, in response to a COMPLAINT filed by an officer or civilian complainant, a citation issued by an officer establishing the ARN date. In these cases, I don't believe the court has any arrest authority. Therefore, when defendant fails to appear (or, for that matter, fails to comply after conviction), the court can issue what is known as a "CITE-ONLY" WARRANT[10]. We can get to the Warrant stage without any probable cause affidavit but the WARRANT OF ARREST with a notation in the space for Bail, "CITE ONLY," is not really a WARRANT OF ARREST at all. When stopped, the CITE-ONLY WARRANT directs the officer to merely issue another citation to appear to the defendant. Unless the officer can hold defendant on some other basis, we simply have no legal way of securing the defendant's appearance in court in these types of cases.	Albany and Lebanon procedures for this class of offense are basically identical.

FAIL TO COMPLY AFTER CONVICTION ON ANY TRAFFIC INFRACTION OR ON ANY TRAFFIC CRIME	When defendant fails to meet a time deadline for payment or other required performance after conviction on any traffic infraction or traffic crime case (regardless of how convicted), the clerk prepares and mails to defendant a SHOW CAUSE CITATION[11] which establishes a date certain for appearance. The clerk adds $10 to the defendant's money balance. If defendant fails to appear at the time set in the SHOW CAUSE CITATION, the clerk concurrently prepares a SUSPENSION NOTICE and the clerk's AFFIDAVIT IN SUPPORT OF REQUEST FOR COMPLAINT AND ARREST WARRANT and adds $65 to the defendant's money balance. From this point on, the procedure is the same as if defendant failed to appear for arraignment (COMPLAINT FOR FTA TRAFFIC; WARRANT OF ARREST). If it would make programming easier, we could do this in one week stages as is done when defendant fails to make contact with the court to pay fines after being convicted by default (i.e., first prepare and send to defendant but not DMV the SUSPENSION NOTICE, adding $15 to defendant's money balance; wait one week; then, if defendant does not appear, send the NOTICE to DMV and only then prepare the clerk's AFFIDAVIT, etc.).	Albany's procedure for failure to comply ties into its procedures after entering a GBD event on a non-appearing offender; i.e., once defendant is convicted and incurs an obligation but fails to discharge that obligation, defendant is treated as if he or she never appeared.
FAIL TO COMPLY ON ANY NON-TRAFFIC CRIME	The procedure in response to defendant's failure to comply on a non-traffic crime case is identical to that outlined above for traffic infractions or traffic crimes, except no SUSPENSION NOTICE is used (and therefore, no $15 addition for court costs is made to defendant's money balance) and the COMPLAINT is for FTA II instead of FTA Traffic.	Albany's procedures for this type of case is basically the same as for FTC on traffic infractions and traffic crimes except there can be no SUSPENSION NOTICE, these not being traffic-related cases.
FAIL TO COMPLY ON A NON-TRAFFIC, NON-CRIMINAL OFFENSE	Whereas, before conviction, the court lacks any effective means of enforcing an obligation of defendant to appear in court in response to a citation for a non-traffic, non-criminal offense (such as Minor in Possession of Liquor, Possession of Less than 1 oz. of Marijuana, Dog or Garbage nuisance violations), once defendant is convicted, defendant's obligation to perform sentence or probation terms is enforceable by contempt of court proceedings, including actual arrest. Thus, the underlying charge which serves as the basis for arrest is not FTA Traffic or FTA II, but Criminal Contempt of Court. In these cases, if defendant fails to comply, the clerk prepares and mails to defendant the same SHOW CAUSE CITATION as described above, adding $10 to defendant's money balance. If defendant fails to appear as cited, the clerk refers the file to the city prosecutor who then prepares the appropriate initiating document for contempt of court which the clerk dockets in as a new case and which is treated as any other non-traffic criminal case.	(I'm not sure at this time what Albany does on these types of cases...this should be clarified before this MEMO goes to JALAN.)

In all of the foregoing categories, the computer operator ought to be able to mark a listed case so it would not be included in the run that follows the listing. This would enable us to by-pass the clerk's AFFIDAVIT IN SUPPORT OF REQUEST FOR COMPLAINT AND ARREST WARRANT if the clerk has already gone through that procedure for a specific case that is still not final. For example, we often have defendants whom the police arrest on our WARRANT OF ARREST, but who are released from custody and cited to appear in court before they have seen the judge on the case for which they were arrested. If defendant fails to appear as cited, we can immediately re-issue another WARRANT OF ARREST and endorse the WARRANT OF ARREST, "DO NOT RELEASE UNLESS DEFENDANT POSTS BAIL OR JUDGE APPROVES". Even then, limitations on how long a defendant may be held in various jail facilities sometimes dictate that the defendant is not held but is released from custody and again cited to appear in our court. So the court again issues a WARRANT OF ARREST and hopes for better luck the next time until finally defendant is brought before the judge to address the charges that started proceedings against defendant in the first place.

Thanks for your consideration in these matters. Much of what I identify as need is probably already in the Court System but we just don't know how to use it. Perhaps other areas will require program modifications. Our clerks came away from the User's Group Meetings much helped and certainly hopeful that we could move closer to full implementation of the the Court System in Lebanon.

JUDICIAL IMMUNITY

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HISTORY

The history of the doctrine of Judicial Immunity finds its roots in English common law, where the judge of a court of record was in essence the King's representative and therefore incontrovertible.[1] The developing judicial system of the early United States adopted this principle with certain rhetorical modifications to accommodate the rejection of sovereign infallibility.

The first major articulation of Judicial Immunity in the United States was set forth in Yates v. Lansing.[2] Yates adopted English law to American circumstances in a way that broadened significantly the scope of immunity.[3] However, it did so primarily for "higher judges" only, providing a dual system which subjected "lower court" judges to liability for extra-judicial or malicious acts. The problem with Yates' analysis was its lack of definition as to what constitutes "higher" and "lower" judges, resulting in a rule which ultimately favored liability and not immunity. Yates sparked deep controversy among Democrats who were concerned that wholesale adoption of English law, which insulated judges, might interfere with protection of the liberties of the people. The opinion caused discussion of legislative limitation of the doctrine.[4]

During the period following Yates, jurisdictions varied in their treatment of "inferior" court judges (essentially judges of limited jurisdiction) who acted in excess of their jurisdiction or from malicious motivation. Most jurisdictions

modified the harsh liability rule as applied to lower court judges by distinguishing between acting in "excess of jurisdiction" and complete "absence of jurisdiction,"[5] or phrased differently, the distinction between abuse of jurisdiction and lack of it.[6] Most of these jurisdictions, however, held a judge of limited jurisdiction liable for "malicious acts" even if done within the bounds of their power. This at one time widely-supported doctrine was based on a desire to protect a judge's exercise of independent, though erroneous judgment, which independent judgment was lacking when the motivation for the decision was malicious.[7] Indeed, the courts went so far as to hold that if the challenged act was grossly outside the norm, an inference of constructive malice was raised.[8] Tennessee and Iowa, during this period, held that malicious motivation established judicial liability, while other jurisdictions followed the broader rule that the question of jurisdiction framed the only boundaries of judicial immunity and the motivation for the act was irrelevant.

This diverse treatment continued until 1872, when the Supreme Court decided Bradley v. Fisher.[9] Bradley remains the leading statement of the law on judicial immunity and provides the broad immunity rule presently in use. Bradley blurred the distinction between superior and inferior courts and completely abnegated liability for malicious acts. The opinion referred only to judges of general jurisdiction, holding that they were immune from liability even when their actions were in excess of jurisdiction and even if they were done corruptly and

maliciously. "Excess of jurisdiction" was defined as an act outside of jurisdiction, but concerning a matter over which the judge or the court has general subject matter jurisdiction. Absence of jurisdiction was distinguished as an act for which there is clearly no jurisdiction of the subject matter, in which case, a judge would be liable.[10]

The two examples given by the Court in Bradley, to illustrate their holding, concerned courts of limited, not general, jurisdiction. Bradley, then, provided the basis for merging the two, and using the jurisdiction question as the only basis for liability for judges of both special and general jurisdiction.

Bradley also addressed another question raised by earlier case law. A judge was immune only for "judicial acts" committed within his jurisdiction. The second area of inquiry, once it is determined that jurisdiction is present, is whether the act constituted a judicial one, or conversely, if it was "ministerial" or "administrative." For these two latter categories, a judge could still be liable even if acting within his jurisdiction. First, Bradley offered a circular definition; obviously. an act in absence of jurisdiction is not a judicial act.[11] A judicial act required adherence to certain fundamental notions of judicial process[12] such as the opportunity to be heard, the right to receive notice of the grounds of the complaint and the right to present a defense. Secondly, an alternative remedy must also be available in place of the personal liability of the judge, namely appeal or other procedure

in error. These criteria mainly serve to identify when the judge is acting as part of official process as distinguished from his private or ministerial functions.

Bradley was a hallmark in its sweeping doctrine of judicial immunity and its recitations of the "parade of horribles" which would ensue should the doctrine be limited. This conservative view prevailed in nearly every jurisdiction, leaving judges immunity inviolate except for acts clearly in absence of jurisdiction or acts which otherwise could be characterized as non-judicial. In spite of Bradley, however, the jursidictions remained divided on the liability of judges of limited jurisdiction. Some continued to hold judges liable for acts in excess, though not absence, of their jurisidction.

A treatise by Thomas Cooley was particularly influential in encouraging this differing treatment.[13] Cooley noted the differences in position, learning and ability between superior judges and justices of the peace. He concluded that greater safeguards were necessary for the latter, therefore a justice of the peace would best follow the spirit of the law by deciding doubtful cases against the exercise of his jurisdiction. Failure to do so would expose the justice of the peace to liability. A judge of general jurisdiction, alternatively, would fulfill the purpose of the law more fully by exercising his jurisdiction in questionable cases, because he is empowered to act in all matters and therefore should be immune.[14] Some courts adopted the contra argument; more learned justices should not be made immune from their "blunderings" while the less learned are liable for

mistakes made carefully and honestly.[15] This latter view began to gain in popularity in the late Nineteenth and early Twentieth Centuries until by the 1920's, most jurisdictions rejected the distinction between judges of limited and general jurisdiction.[16]

One or two jurisdictions still retained the "loophole" that if a judge of limited jurisdiction acts maliciously or corruptly, he may be civilly liable for his acts, although they were within his jurisdiction.[17] In the face of Bradley, and the most recent landmark Supreme Court opinion, Stump v. Sparkman, this line of reasoning grows weaker with time.

THE MODERN MILESTONE: STUMP V. SPARKMAN

The authoritative contemporary statement of the law of judicial immunity is Stump v. Sparkman.[18] Stump, decided by the Supreme Court in 1978, is the target of much criticism by commentators. In Stump, the mother of a 15-year old, "slightly retarded" child presented a petition to an Indiana court of general jurisdiction to have her daughter sterilized, due to the daughter's alleged promiscuity. The judge approved the petition, undocketed and ex parte, without notice, hearing, or appointment of a guardian ad litem.

The Supreme Court held Judge Stump immune from liability. First, as a judge of general jurisdiction, he had subject matter jurisdiction of the action. Therefore, there was no clear absence of jurisdiction under the Bradley test. Further, the Court held that, despite the complete lack of procedural due process, the judge's action was nonetheless a "judicial act." In so deciding, the majority applied a two-prong

test to determine what constitutes a judicial act: (1) Is the act a function normally performed by a judge and (2) is the expectation of the parties that the act be a "judicial" one, i.e., did they deal with the judge in his judicial capacity?[19] In applying the facts, the majority held that entertaining and acting on petitions, including petitions involving the affairs of minors, is a function normally performed by a judge, regardless of whether the particular petition in Stump was atypical. Secondly, it was only because Stump was a judge that plaintiff's mother brought her petition to him and the expectations were therefore "judicial" in nature.[20]

The three dissenting justices in Stump provide a cogent argument for the application of the principles of Bradley which mandate different results. The policy behind judicial immunity is the protection of a judge's principled decision making. That decision making, the dissent contended, was absent in Stump. There were no litigants, no case or controversy, no weighing of the merits, and no appellate remedy.[21] The "hallmarks of judicial process" noted in Bradley, did not appear in Stump.

The dissent vigorously argued that there was no judicial act justifying immunity. First, a judge's normal function does not include affirming the kind of petition tendered to Judge Stump. A parent is authorized by law to get medical treatment for a child without judicial intervention. Indiana law further provides that institutionalized persons may be sterilized, but only after administrative review. Judge Stump's actions were, therefore, outside the purview of acts performed normally by an Indiana judge.

The majority's reasoning as to the "expectation of the parties' requirement is also attacked as unsound. The conduct of a judge cannot become a judicial act because he or she says it is. The dissent relied on a different test to determine the essence of a judicial act. They stress certain procedural formalities as hallmarks of the "principled decision making" which is at the core of a judicial act, such as the presence of a case or controversy, litigants and the possibility of appeal.

Despite the extremely sensitive nature of the subject matter in Stump, the case can be viewed as the Supreme Court's rededication to the principles of an extremely broad judicial immunity. The majority of jurisdictions now follow the holding of Stump. It is interesting to note, however, that the court in Stump was a court of general jurisdiction. Although the general rule is now Stump for courts of both special and general jurisdiction, the problem of how to treat the immunity question in courts of limited jurisdiction, therefore, has not been definitively addressed.

LEGISLATIVE ABROGATION OF JUDICIAL IMMUNITY

Legislation may limit or abrogate the doctrine of judicial immunity. A Wisconsin statute, apparently the only one of its kind in the United States, specifically imposes liability upon judges of general and limited jurisdiction for certain willful acts: "The judges of the Circuit and county courts ... shall be held personally liable to any party injured for any willful violation of the law in granting injunctions and appointing receivers, or refusing to hear motions to dissolve

injunctions and to discharge receivers."[22] Enacted in 1849, the higher courts of Wisconsin finally had occasion to interpret the statute in Cadee v. Egan.[23] The Court in Cadee noted that while a judge is ordinarily immune from civil liability for damages, even for willful acts, the doctrine of judicial immunity can be altered by legislative act.

An attempt to read the language of the Civil Rights Act, 42 U.S.C. §§ 1983 as abrogating judicial immunity failed unequivocally in Pierson v. Ray, 386 U.S. 547 (1967). The Supreme Court refused to read the words "every person who under color of law deprives a person of his civil rights" as evidence of legislative intent to hold judges liable for violations of the act. "We do not believe that this settled principle [of immunity] was abolished by § 1983 ... The legislative record gives no clear indication that Congress meant to abolish wholesale all Common Law immunities ... [w]e presume that Congress would have specifically so provided had it wished to abolish the doctrine." Id. at 555.

The holding in Pierson applies only to suits against judges for money damages. The Court has yet to settle the split decisions in the circuits as to the application of immunity in suits for equitable relief. Supreme Court of Virginia v. Consumers Union of the United States, 446 U.S. 719 (1980). Many federal district courts have not hesitated to make such a decision, however, and many hold state judges liable in suits for injunctive relief under § 1983. Inmates of Middlesex County v. Demos, 519 F. Supp. 770 (D.N.J. 1981).

MODERN OVERVIEW OF JUDICIAL IMMUNITY

Against the historic backdrop of principal cases in the area of judicial immunity, several major points emerge for modern application. Although not one-hundred percent generic, most jurisdictions afford the same broad rules of immunity to both courts of limited and general jurisdiction. A judge is not liable for suits for money damages if (1) the act complained of was "judicial" and not "ministerial" or "administrative" and (2) the judge acted with some jurisdiction, i.e., if there was not a complete absence of jurisdiction. If these two requirements are satisfied, then it is absolutely irrelevant how grievous the mistake or how malicious the motivation: there is no civil liability.

A. "JUDICIAL ACT"

The definition of "judicial act" is broad enough to encompass any action of a judge, except for certain behavior not normally expected of a judge, or not colorably within the judge's jurisdiction.[24] The "expectation of the parties" and "normal functions" test of Stump still prevails in determining what a judicial act is, and therefore, there is little maneuverability to breach the wall of immunity. Acts performed in connection with judicial functions, once more strictly defined as ministerial, are modernly viewed as "quasi-judicial" in nature and are consequently protected. Examples of "judicial acts" are: (1) Ordering a plaintiff removed from the courtroom because of angry or loud conduct.[25] (2) Ordering the judge's clerk not to accept complaints to be filed. (Despite the legal right of

the defendant judge to order his clerk to so refuse, the appellate court here condemned the judge's act, yet applied immunity).[26] (3) Releasing a juvenile from a juvenile detention center (the court here stated that if the action is technically outside the judge's judicial capacity, the act must be performed with malice of corruption to hold the judge personally liable).[27] (4) Ordering a wire tap authorized by state law, although a Federal Communications Commission Act created a civil action for wire tap as against private persons.[28] (5) Denial of a liquor license application where the judge had power to entertain and act upon such applications.[29]

Example Number five, cited above, was a decision handed down after the Supreme Court decided Stump. The Court, in that case, interpreted Stump as emphatically affirming the requirement that the judge act in complete absence of jurisdiction. At least one state court, Gravois v. Ockmond, 409 So.2d 402 (La App. 1982) adds a requirement of malice. Where a judge makes a good faith error as to jurisdiction over the person or subject, even where clearly there is none, the judge is not liable. If the action is done with malice or to further corruption, liability attaches.

Examples of quasi-judicial acts include those performed in connection with "judicial function." In a commitment proceeding where a probate judge (of general jurisdiction) committed a plaintiff to a mental institution, without notice or hearing, upon petition of his wife, Plaintiff alleged that such acts were ministerial and not judicial. The court said: "official action, the result of judgment or discretion, is a

judicial act. The duty is ministerial when the law, exacting its discharge, prescribes and defines the time mode and occasion of its performance with such certainty that nothing remains for judgment or discretion; the result of performing a certain and specific duty arising from fixed and designated facts is a ministerial act" (emphasis added).[30]

Applying this well-accepted rationale, acts performed in connection with judicial acts (quasi-judicial) are acts performed in conjunction with child custody matters,[31] disciplinary proceedings against attorneys,[32] extradition cases,[33], and probation matters.[34] In short, where a judge can cite subject matter jurisdiction, any rulings made within that official capacity are immune from suit for money damages. Herskowitz v. Nesbitt, 419 So.2d 418 (Fla. App. 1982 2 or 3). Although more reprehensible, defamatory statements by a judge in the course of performing his official duties or in any opinion or affidavit or press release are also judicial acts for purposes of immunity.[35]

When a judge acts ministerially or is required to do a ministerial or administrative act, he is responsible for error and misconduct in like manner and to the same extent as all other ministerial officers.[36] For example, a judge, while protected against defamatory statements made in the course of his duties, can be liable for a private and public campaign to vilify a city police officer "because the acts charged went well beyond the appropriate response to protect the integrity of the court and were outside the judge's duty.[37] Although these acts were not necessarily ministerial, they were not judicial in nature.

The ministerial and administrative distinction remains valid as a means of invading the immunity of judges. Other examples revolve centrally around the question of whether the act involved discretion, with the caveat that the discretion must be judicial and not dministrative. Where a judge has administrative responsibilities, he can be answerable for negligence or misconduct in the execution of them. In Santiago v. City of Philadelphia[38] and Doe v. City of Lake Indiana,[39] the judge had general jurisdiction over juvenile detention facilities and was required to appoint a board of managers, as well as handling other administrative duties. This judge was liable for inhumane conditions at these facilities. Likewise, in Noe v. County of Lake,[40] a judge was liable for his administration of the Public Defender System which afforded the plaintiff's inadequate representation.

A judge may also be liable for failing to perform administrative acts which result in violation of the constitutional rights of certain citizens.[41] In Clark v. Cambell, 514 F. Supp. 1300 (W.D. Ark. 1981), a judge could have been held civilly liable had his decision not to renew an employee's contract denied the employee's right to due process. Employee management is not a judicial function. Further, in Lynch v. Johnson,[42] a justice presiding over a fiscal court whose powers, originating in a Kentucky statute, were defined as legislative and administrative, was not afforded judicial immunity. Acts also, which are routine matters as performed by clerks, are ministerial.

Examples of ministerial or administrative acts are numerous[43] and in this one are, courts seem to rely on the policy behind judicial immunity in their decision making. "The application of the doctrine of judicial immunity is restricted to its single objective of protecting judicial freedom in the process of deciding civil and criminal cases. Where the initiative and independence of the judiciary is not effectively impaired, the doctrine of judicial immunity does not hold."[44]

B. COMPLETE ABSENCE OF JURISDICTION

The distinction between absence and excess of jurisdiction was described as follows in Stump v. Sparkman, quoting Bradley: "if a probate judge, with jurisdiction only over wills and estates should try a criminal case, he would be acting in the clear absence of jurisdiction and would not be immune from liability for his action; on the other hand if a judge of a criminal court should convict a defendant of a nonexistant crime, he would merely be acting in excess of his jurisdiction and would be immune."[45]

Acts in excess of jurisdiction leave immunity intact; only where the judge is totally without jurisdiction will he be liable. Praisner v. Stocker, 459 A.2d 1255 (Pa. 1983). It is this distinction which likely gave rise to the inferior/superior court distinction. When a judge of general jurisdiction acts outside of the scope of the particular matter before him, he remains vested with jurisdiction because he has power to hear any cause of action. A judge of limited jurisdiction however, when acting in excess, usually is also acting in absence of jurisdiction.

If a judge acts in excess but not in absence of jurisdiction, it matters not if the judge erred in his decision that he had the power to hear a particular case.[46] He is generally shielded from erroneous, illegal, irregular, or malicious rulings. Some jurisdictions have held that even if a court of limited jurisdiction acts in excess of that jurisdiction (usually meaning absence of jurisdiction) if the act is under "colorable" invocation of his jurisdiction, the judge would still be immune even if he erred in his belief that he had jurisdiction.

Acts offering examples of complete absence of jurisdiction include a mayor who acted as a magistrate to accept defendant's guilty plea in a criminal matter who then proceeded to adjudicate defendant's property rights in a car that the mayor had seized.[47] A judge who issued an arrest warrant without a sworn complaint was considered in absence of jurisdiction, principally because there was no judicial business before him.[48] A justice of the peace was not cloaked with immunity when he issued a complaint against a citizen for violation of an ordinance which the justice knew did not exist.[49]

The question of jurisdiction refers principally to the power to hear and determine a matter and is construed broadly to prevent the issue of judicial immunity from hinging on fine questions of jurisdiction.[50]

MALICIOUS MOTIVATION

The only jurisdiction which retains an exception to the immunity rule based on malice appears to be Louisiana. In Cleveland v. State,[51] a state trooper was shot by a juvenile released from a juvenile detention center. The widow sued the judge who ordered the release for negligence. Although the court held that the judge was performing a judicial act within his jurisdiction and was therefore immune, in dicta they intimated "even when the judge has technically acted outside his jurisdiction and contrary to law, he will be protected unless his actions were based on malice or corruption"[52] (emphasis added).

Therefore, it appears that in Louisiana, a judge who acts in excess, though not complete absence of jurisdiction, may yet be liable if his motivation was malicious or corrupt. This exception, however, appears to be the vestigal remainder of the older rule and is disfavored.

AN OVERVIEW

In an attempt to gain insight into the necessity of judicial immunity, a 1981 study examined all federal and state trial and appellate cases from 1966 to 1978 which were reported in West's Decennial Digest.[53] One hundred sixty-three cases where a judge claimed judicial immunity as a defense in a damages or equity action were reviewed: one hundred eighteen federal cases and forty-five state case.[54] The authors selected the twelve-year period for its length and proximity to Stump. The majority of case were filed under 42 U.S.C. § 1983 and only a few were dealt with on the merits: most of the opinions were on defense motions for summary judgment.

The study found that the majority of cases arose out of contested litigation (usually not business), and most involved emotionally charged issues such as denial of bail, mental commitments, guardianship or conservatorship, and domestic relations. Many of the judges were only nominal defendants. Further, most of the civil suits arose from pre- or post-trial proceedings, i.e., bail and plea bargaining and sentencing and revocation of probation and parole.

Out of the one hundred sixty-three cases, only sixteen plaintiffs prevailed with only four receiving monetary relief. Eight plaintiffs of the sixteen prevailed on motion, with four more receiving equitable relief. In the final analysis, it seems safe to assume that the ratio of plaintiff success in civil actions against judges is extremely small.

PEOPLE V. DUNLAP

A recent Colorado case demonstrates how one court has dealt with instances of harassment on the part of litigants, such as the voluminous suits filed by members of the Posse Comitatis.

In People v. Dunlap, 633 P.2d 408, (Colo. (1981)), the people filed a petition for injunction relief to enjoin the defendants from proceeding pro se as plaintiffs in any litigation in the State of Colorado. The defendants were responsible for about twenty-five complaints over a six-month period against judges, district attorneys and other state officials and their spouses. The defendants then attached common law liens against some of the state officials' property. Judges appointed to hear motions to dismiss, found the claims completely void of legal

grounds, and stated that the claims were "patently idle, empty and unsupportable in nature." Id. at 410.

The Colordo Supreme Court, sitting en banc, perceived the defendants in Dunlap as serious threats to the judicial process of the state. While the court acknowledged that all individuals should have ready access to the court system, the abuses associated with frivolous, groundless claims could not be tolerated. The Dunlap defendants argued that pro se access to the courts should not be denied when there were less restrictive means, such as private counterclaims, available for the victims of mass actions of the type the People sought to limit.

The Dunlap court responded that the abuse complained of was not private in nature and therefore did not lend itself to private redress. Instead, the actions of individuals like the defendants in Dunlap conflict with important public rights and interests and often those actions resist other means of control. The court found an injunction to be a proper method of dealing with the problem.

The court founded its decision on three basic ideas:

1. Access to the court system is a right that should not be abused as the purpose of the judicial process is to bring justice without delay. The actions of the defendants only served to delay any judicial procedure.

2. The court had a duty to protect courts, citizens and opposing parties from the deleterious impact of repetitive, unfounded pro se litigation.

3. The disruption and expense of groundless suits were injurious to taxpayers, and the controls normally available to discipline an attorney were unavailable in pro se litigation.

Id. at 410-11.

In this instance, the judiciary further utilized its power to insulate itself from suit by barring certain individuals from making claims. This action is easily justifiable in view of the groundless claims at issue in Dunlap. It serves to add an element of legitimacy, understandable even to those outside of the legal profession, to the protection afforded judges.

SUMMARY

The doctrine of judicial immunity remains nearly inviolate. Nothing but the grossest and most obvious lack of jurisdiction will give rise to liability. Anything "colorably" within the court jurisdiction (as with courts of limited jurisdiction) will still be construed as within its jurisdiction for the purposes of immunity.

Although the distinction between "ministerial and administrative acts" and "judicial" acts provides the largest exception to the immunity rule, only those acts which involve NO judicial discretion (as opposed to administrative discretion) will give rise to liability. Circumstances which typify a situation involving judicial discretion are the presence of a case or controversy, litigants, and rights to notice, hearing and appeal.

Those acts which may appear ministerial, yet are "connected with" judicial function, become quasi-judicial and give rise to immunity, although this area may be subject to stricter scrutiny by the court, depending upon the nature of the actions alleged in the complaint.

Unprotected are acts which may seem discretionary, but involve administrative rather than judicial discretion; that is, containing none of the hallmarks of judicial process.

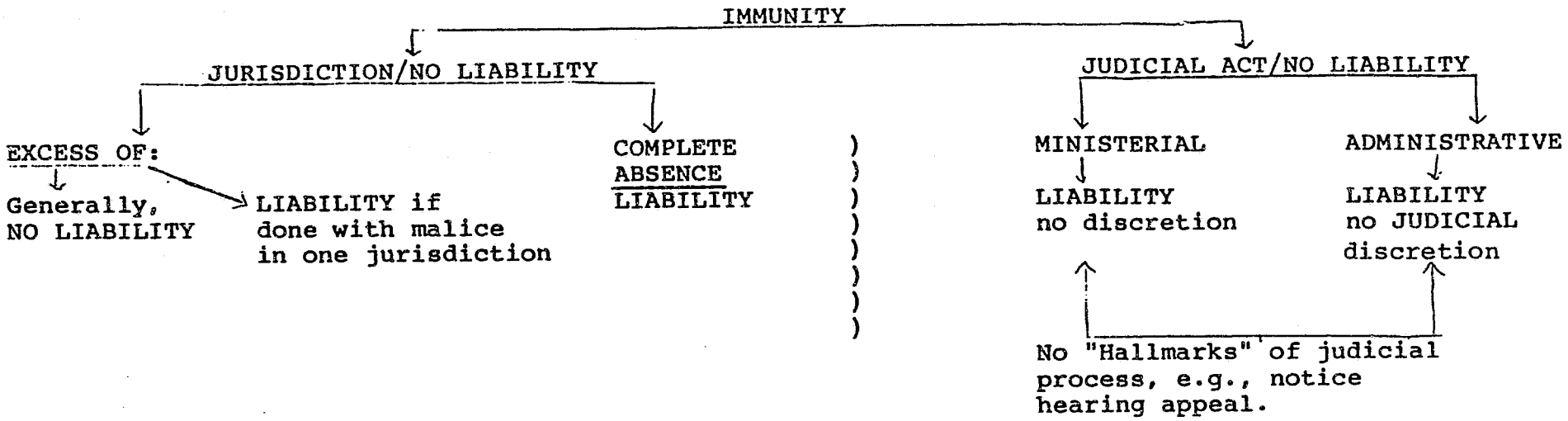
Ministerial acts are not protected by the immunity rule. These are acts which involve no discretion, judicial or otherwise on the part of the judge. Certain particular functions of judges such as taking bonds and administering estates vary in the treatment they are afforded as to whether such functions are administrative/ministerial or judicial.

Judicial immunity may be abrogated by statute as it has been in Wisconsin. Commentators have vehemently criticized the broad immunity rule of Stump. However, courts have not been influenced and continue to interpret judicial immunity in the broadest terms.

In order to determine the likelihood that judges of Oregon need to be underwritten, it would be important to consider:

1. The number of judges of general jurisdiction
   The number of judges of limited jurisdiction
2. The frequency with which judges are called on to perform ministerial or administrative functions
3. The likelihood of the Legislature abrogating the doctrine via statute, in response to any commentators in the area who are particularly influential.

STATUTORY ABROGATION/
NO IMMUNITY



FOOTNOTES

1. For an excellent overview of the English law of judicial immunity, as well as that of Colonial America, see Feinman and Cohen, Suing Judges; History and Theory, 31 S.C.L. Rev. 201-292 (1980).

2. 5 Johns 282 (N.Y. Sup. Ct. 1810), aff'd 9 Johns 395 (N.Y. 1811).

3. Feinman and Coehn, Suing Judges; History and Theory, 31 S.C.L. Rev. 201, 222 (1980).

4. Id. at 228.

5. 10 Ky. (3 A.K. Marsh) 70 (1820).

6. Lancaster v. Lane, 19 Ill. 242 (1857).

7. Feinman and Cohen, Suing Judges; History and Theory 31 S.C.L. Rev. 201, 234 (1980).

8. Young v. Herbert, 11 S.C.L. (2 Nott & McC.) 172, 173 (1819).

9. 80 U.S. (13 Wall) 335 (1872).

10. Id. at 351, 352.

11. Id. at 354.

12. Feinman and Cohen, Suing Judges; History and Theory 31 S.C.L. Rev. 201, 246 (1980).

13. T. Cooley, A Treatise on the Law of Torts (1879).

14. Feinman and Coehn, Suing Judges; History and Theory 31 S.C.L. Rev. 201, 250 (1980).

15. Henke v. McCord, 55 Iowa 378, 7 N.W. 633 (1880).

16. Brooks v. Mangan, 86 Mich. 576, 49 N.W. 633 (1891); Henke v. McCord, 55 Iowa 378 (1880); Case v. Bush, 93 Conn. 550, 106 A. 822 (1919); McDaniel v. Harrel, 81 Fla. 66, 87 So. 631 (1921); Duffin v. Sommerville, 9 Ala App. 573, 63 So. 816 (1913); Calhoun v. Little, 106 Ga. 336, 32 S.E. 86 (1898); Rush v. Buckley, 100 Me. 322, 61 A. 774 (1905); Grove v. Van Duyn, 44 N.J.L. 654 (1822); Thompson v. Jackson, 93 Iowa 376, 61 N.W. 1004 (1903); Broom v. Douglass, 175 Ala. 268, 57 So. 860 (1912); Gordon v. District Court, 36 Nev. 1, 131 P. 134 (1913); Boori v. Barnett, 144 F. 389 (7th Cir. 1906); Scott v. Fishblate, 117 N.C. 265, 23 S.E. 436

(1895); McBurnie v. Sullivan, 152 Ky. 686, 153 S.W. 945 (1913); Austin v. Vrooman, 128 N.Y. 229, 28 N.E. 477 (1891); Robertson v. Parker, 99 Wis. 652, 75 N.W. 423 (1898).

17. James v. Leviton, 327 Ill. App. 309, 64 N.E.2d 195 (1945); Kalb v. Luce, 291 N.W. 841, 234 Wis. 509 (___).

18. 435 U.S. 349 (1978).

19. Id. at 362.

20. Id.

21. Id. at 368-370.

22. 256.24 Stats. 1849, R.S. Sec. 1849, ch. 87, § 23.

23. 84 Wis. 2d 34, 267 N.W.2d 890 (1978).

24. Feinman and Coehn, Suing Judges; History and Theory, 31 S.C.L. Rev. 201, 256 (1980).

25. Burgess v. Towne, 13 Was. App. 954, 538 P.2d 559 (1975).

26. Linde v. Bentley, 482 P.2d 121 (Wyo. 1971).

27. Cleveland v. State, 380 So.2d 105 (La. App. 1979).

28. Simons v. O'Connor, 187 F. Supp. 702 (S.D.N.Y. 1960).

29. Chalk v. Elliott, 449 F. Supp. 65 (N.E. Tex. 1979).

30. Perkins v. United States Fidelity and Guarantee Co., 433 F.2d 1303 (5th Cir. 1970).

31. Potter v. La Munyon, 5879 F.2d 874 (10th Cir. 1968); Dear v. Locke, 128 Ill. App. 2d 356, 262 N.E.2d 27 (1970).

32. Niklaus v. Simmons, 196 F. Supp. 691 (D.C. Neb. 1961); Peterson v. Knutson, 305 Minn. 53, 233 N.W.2d 716 (1975).

33. Collins v. Moore, 441 F.2d 55 (5th Cir. 1971); Smith v. Dougherty, 286 F.2d 777 (7th Cir.), cert. denied, 368 U.S. 903 (1961).

34. Higgins v. Redding, 34 Or. App. 1029, 580 P.2d 580 (1978); J.A. Meyers & Co. v. L.A. County Probation Department, 144 Al. Rptr. 186, 78 C.A.3d 309 (1978); Whitcombe v. Yolo County, 141, Cal. Rptr. 189, 73 C.A.3d 698 (1977); Rivello v. Cooper City, 322 So.2d 602 (Fla. App. 1975).

35. O'Bryan v. Chandler, 496 F.2d 403 (10th Cir. 1974), cert. denied, 419 U.S. 986, reh'g denied, 420 U.S. 913 (1975);

Skolnick v. Campbell, 398 F.2d 23 (7th Cir. 1968); Robertson v. Harris, 393 F.2d 123 (8th Cir. 1968); Garfield v. Palmieri, 297 F.2d 526 (2d Cir. 1962), cert. denied, 369 U.S. 871 (1962); Lowenschuss v. West Publishing Company, 402 F. Supp. 1212 (Pa. 1975), aff'd 542 F.2d 180 (3d Cir. 1976); Fletcher v. Bryan, 175 F.2d 716 (4th Cir. 1949); Mee v. Becker, 456 F. Supp. 224 (D.C. Mo. 1978); Belveal v. Bray, 253 F. Supp. 606 (D.C. Colo. 1966); McKinley v. Simmons, 274 Ala. 355, 148 So.2d 648 (1963); Lewis v. Linn, 26 Cal. Rptr. 6, 209 C.A.2d 394 (1962); O'Connell v. Hallinan, 64 N.Y.S.2d 198, 186 Misc. 997 (1946); Brech v. Seacat, 84 S.D. 264, 170 N.W.2d 348 (1969).

36. Ex Parte Virginia, 100 U.S. 339 (1879).

37. Hams v. Harvey, 605 F.2d 330 (7th Cir. 1979), cert. denied, 445 U.S. 938 (1980).

38. 435 F. Supp. 136 (E.D. Pa. 1977).

39. 399 F. Supp. 553 (N.D. Ind. 1975).

40. Civ. No. 73 H. 157 (N.D. Ind. 1973).

41. 399 F. Supp., at 557.

42.

43. Atcherson v. Siebermann, 458 F. Supp. 526 (D.C. Iowa 1978), rev. in part on other grounds, 605 F.2d 1058 (8th Cir. 1979); Thompson v. Montemoro, 383 F. Supp. 1200 (D.C. Pa. 1974); Osbeckoff v. Mallory, 188 N.W.2d 294 (Iowa 1971); Luckie v. Goddard, 13 N.Y.S.2d 808, 171 Misc. 774 (__); Padgett v. Stein, 406 F. Supp. 287 (D.C. Pa. 1975); Huendling v. Jenson, 168 N.W.2d 745 (Iowa 1969); Logan City v. Allen, 86 Utah 375, 44 P.2d 1085 (1935).

44. Shore v. Howard, 414 F. Supp. 379, 385 (N.D. Tex. 1976).

45. Stump at 357, Bradley at 352.

46. Lewis v. Linn, supra; Rivello v. Cooper City, supra; State v. Libbert, 96 Ind. App. 84, 177 N.E. 873, reh'g denied, 56 Ind. App. 84, 180 N.E. 757 (1961); Hodge v. Sharpe, 287 S.W.2d 596 (Ky. App. 1956); Jamerson v. State, 7 A.D.2d 944, 182 N.Y.S.2d 41 (1959); Ray v. Huddleston, 212 F. Supp. 343 (D.C. Kentucky 1963), aff'd, 327 F.2d 61 (6th Cir. 1964).

47. Osbekoff v. Mallory, supra;

48. Utley v. City of Independence, 240 Or. 384, 402 P.2d 91 (1965).

49. Vickery v. Dunivan, 59 N.M. 90, 279 P.2d 853 (1955); Taliaferro v. Contra Costa County, 6 Cal. Rptr. 231, 182 Ca.2d 587 (1960).

50. Ferralvolo v. Nenchel, 21 Conn. Sup. 445, 156 A.2d 798 (1959); Aetna Insurance Co. v. Blumenthal, 129 Conn. 545, 29 A.2d 751 (1943).

51. 380 So.2d 105 (La. App. 1979).

52. Id. at 107.

53. Wray, A Call for Limits to Judicial Immunity: Must Judges Be Kings In Their Courts?, 64 Judicature, 390-399 (1981).

54. This study was necessarily contrained because the Decennial Digest records only those cases in which an opinion was written and published in the National Reporter System.

The court should disclose the contacts in revocation proceedings, even though the P.O. or another person reports or makes contact pursuant to the court's supervisory power over the probationer. The P.O. is unlike the judge's other staff. Although the P.O. is appointed by the court, the P.O. is not a court employe, ORS 137.590, and has the power of a peace officer when executing the duties of a P.O. The P.O. is likely to be a witness against the probationer, and any P.O. report is likely to relate to the merits.

Therefore, the court should treat the P.O.'s report as an authorized ex parte contact and should disclose it or have it disclosed as discussed in § 2.

III. DELEGATION OF JUDICIAL DISCRETION TO STAFF

A. General Rule Prohibits Delegating Discretion

As a general rule, the court cannot delegate discretionary duties unless authorized by statute. See, e.g., Rea v. Rea, 195 Or 252, 245 P2d 884 (1952) (cannot delegate custody decision involving judicial discretion); Maroulas v. SIAC, 117 Or 406, 408, 244 P 317, 318 (1926); State v. Smith, 1 Or 150, 251 (1859); 18 Op Atty Gen 211-13 (1937).

Even statutory authorization may not be enough to overcome constitutional requirements, unless the final decision rests with the judge. See State ex rel Robeson v. Oregon State Bar, 291 Or 505, 511, 632 P2d 1255, 1259 (1981) (statutes did not unlawfully delegate court's power to the Bar, delegated only administrative procedures with final decision by the court); State v. Dodson, 25 Or App 859, 551 P2d 484 (1976) (court can consider DA's recommendations under Dangerous Offender statute -- not violation of Or Const, Art III, § 1 because final decision rests with court). For example, a probationer is entitled to a neutral and detached decision maker under Gagnon v. Scarpelli. See § 2. The judge would violate that due process right if he assumed he was to make no independent decision but instead should accept whatever the P.O. recommends. See 2 W. LaFave & J. Israel, Criminal Procedure § 25.4, at 159-60 (1984).

B. Limited Delegation Permissible

The cases discussed below indicate that the court can delegate:

a. ministerial acts

b. acts made ministerial by statutory guidelines

c. limited discretion within statutory limits and as authorized by statute

d. perhaps limited discretion within statutory and court guidelines so long as the court supervises, controls, and ratifies the staff actions.

Further, some statutes require, some standards suggest, and due process and equal protection may require uniform guidelines, at least among judges of the same court.

1. ORCP 69B

ORS and ORCP authorize the court to delgate certain limited power to staff. Courts may delegate ministerial acts or acts where the statute or rule limits the discretion or requires the court to set guidelines to limit the discretion. For example, when a party applies for a default, ORCP 69B requires the clerk to enter a default judgment if seven requirements are met. Because the clerk must enter the default in that case, the clerk exercises no discretion.

2. Delegation of Release Decisions ORS 135.235

ORS 135.235(1) authorizes the presiding judge of the circuit court (a constitutional court) to appoint release officers, who are state court employes. ORS 135.235(3)(b) allows the presiding judge of the circuit court to delegate to the release officer the authority to make the release decision. Whoever makes the decision, court or release officer, must follow the statutory guidelines in ORS 135.245 et seq. Therefore, to the extent that the court delegates discretion, the discretion is authorized and limited by law.

Presiding judges who delegate the authority usually do so by written authorization setting out additional guidelines, particularly as to security amounts. Those guidelines are usually the same guidelines that the judges follow in making release decisions.

The delegation of release decisions goes beyond delegation of mere ministerial acts, though release

decisions often seem perfunctory. If that delegation is proper, it is so only because the statutes and the court limit the discretion and because the court retains supervisory power. Cf. State v. Gortmaker, 295 Or 505, 518-19, 668 P2d 354, cert den 104 S Ct 1416 (1984) (court staff's actions in excusing jurors pursuant to delegated authority were consistently monitored, controlled, or ratified by one or more circuit judges -- see ORS 10.330 -- even if error, not reversible error).

3. Delgation Must Be Proper and Actual

The staff can exercise delegated authority only when he court has delegated that authority properly. Cf. State v. Flamer, 54 Or App 17, 633 P2d 860 (1981) (record did not show that court delegated authority to court administrator to administer oath, who delegated to release officer who administered oath -- perjury conviction reversed).

4. No Authority to Delegate Certain Discretion

The court cannot delegate certain discretionary acts. For example, only the court can set probation conditions, although the court can delegate the authority to execute the probation order as provided by statute, which includes adjustng supervision but not imposing new conditions. See State v. Pike, 49 Or App 67, 618 P2d 1315 (1980); State v. Stephens, 47 Or App 305, 614 P2d 1180, rev den 50 Or App 595, 623 P2d 1076 (1981) (with opinion); State v. Maag, 41 Or App 133, 597 P2d 838 (1979); ABA Probation Standard 3.1.

See also ABA Trial Judge Standard 3.1 (court should not permit warrant procedures to become mechanical or perfunctory).

C. Uniform Procedure

The CJC, ABA Standards, and Code of Professional Responsibility all set standards of conduct that help insure the integrity and independence of the judiciary and avoid abuse of the discretion invested in attorneys and judges. The constitutions and the statutes otherwise limit that discretion, including limiting delegation of judicial discretion.

Where statutes and rules permit delegation, they often require uniform delegation, such as ORS 135.235, where the presiding circuit judge delegates authority to a release officer. Similarly CJC Canons and various ABA Standards suggest that judges set uniform standards of conduct and procedure, particularly where judges exercise supervisory power over staff and probation departments. See, e.g., CJC Canon 1; ABA Probation Standard 5.1(b) (appropriate to formulate standards as a guide to probation departments and courts in processing violations).

Because judicial resources are limited and efficient administration requires some delegation, judges should delegate ministerial acts where possible. However, the line is often fine between ministerial and discretionary acts and is often drawn for trial courts by appellate courts on a case-by-case basis or by the legislature in response to one case, i.e. after the fact and piecemeal.

Therefore, it is advisable for trial judges to set written standards for delegation and to define where possible the limits of and guidelines for delegation. Such guidelines may or may not be upheld, but they do provide notice to all participants, ensure equal treatment of litigants, and avoid any appearance of arbitrary use of power. Such guidelines are especially useful for new and pro-tem judges and for staff who work with more than one judge.

D. Specific Examples

See discussion in III.C. above re uniform standards. CAVEAT: If the court grants any discretion, the court should review the file and ratify the staff decision.

1. Request for Continuance in Criminal Cases

Where a party requests a continuance for good cause and the court routinely grants such requests, the court probably can delegate authority to staff to grant the continuance if the court provides guidelines and if defendant's right to speedy trial is not affected (e.g., when defendant requests continuance). The court should set guidelines as to who may request, when, on what grounds (e.g., illness, unemployment), whether ex parte requests are permitted, and how long a continuance is permitted. Cf. OSB Ethics Op 358 (1977) (DA's ex parte request for set-over improper), discussed in II, above.

See, for example, Higgins v. Redding, 34 Or App 1029, 1032, 580 P2d 217, rev den 284 Or 80 (1978), where the district judge apparently delegated authority to his secretary to grant defendant up to two set-overs for serving a short sentence. Defendant had to see the judge personally for any further request. That appears to be a permissible delegation so long as the secretary had no discretion to deny the first two set-overs.

In any case, the judge should not delegate discretion -- i.e. the guidelines should be phrased "you must" or "must not," not "you may" or "may not," grant a continuance in this case. If the delegtion involves any staff discretion, the judge probably must review every decision (and file) and ratify it. See Gortmaker, supra, 295 Or at 518-19. Quaere: what happens if the judge does not ratify a decision that a party has already relied on? Yet, if the judge automatically ratifies or follows the staff recommendation, the judge might deny the parties their due process rights. See discussion in § 2 on Gagnon v. Scarpelli and below on Revocation on P.O.'s recommendation.

2. Defendant's Request for Extension on Paying Fine

As with requests for continuance, the court probably can delegate authority to staff to grant the extension:

(1) if the court provides guidelines; and

(2) if the extension does not prejudice another party; and

(3) when defendant is on probation, the continuance serves the purpose of probation.

The court probably can delegate authority to staff to convert fines, restitution, or some costs to community service -- but only if defendant consents to the option. ORS 137.128. And it must be an option. A choice between community service or no modification at all might violate defendant's rights to petition for modification and to equal protection -- although the court probably can delegate authority to staff only to offer the option and require defendants who do not take it to talk to the judge. The court should structure

the authority carefully so that defendant has a true option and is not penalized for being indigent. See Harland, Monetary Remedies for the Victims of Crimes: Assessing the Role of the Criminal Courts, 30 UCLA L Rev 52, 108-19 (especially 117-19) (1982) (enforcement provisions for restitution, including contempt, probation revocation or extension, and community service alternative and equal protection problem for indigents).

See § 1 on inability to pay as defense to contempt; Fuller v. Oregon, 417 US 40, 94 S Ct 2116, 40 L Ed 2d 642 (1974), approving procedure to permit defendant to petition sentencing court for modification or remission of repayment obligation; ORS 161.665(4) re remission or modification of costs; ORS 161.685(5) re remission or modification of fine or restitution.

3. Revocation on P.O.'s Recommendation

The court cannot revoke probation automatically on the P.O's recommendation. See discussion above in II.A. Therefore, the court cannot delegate authority to staff to revoke automatically on the P.O.'s recommendation. Defendant is entitled to pre-revocation notice and hearing before a neutral and detached decision maker. See discussion of Gagnon v. Scarpelli in § 2.

4. Release When Jail Needs Space

See III.B. above on permissible limited delegation. ORS 135.235(2)(b) expressly allows the presiding judge of circuit court to delegate to an appointed release officer the authority to make release decisions. It is unclear whether that express statutory authority limits other judges' power to delegate release decisions. It probably does limit the power to delegate discretionary release decisions. It may express legislative intent that where the presiding circuit judge appoints a release officer, the release officer is the only "staff" to whom a judge can delegate authority.

However, some release decisions are based not on discretion under ORS ch 135, but on lack of jail space — or on federal court decisions or county ordinances (Marion County) limiting jail populations. When the jail calls needing space and requesting that some defendants be released, case-by-case and judge-by-judge

decisions are inefficient. And inconsistent policies may deny equal protection.

Therefore, where a release officer has been appointed, district and circuit judges should not further delegate release authority to other staff. The safer and more efficient procedure is to set up guidelines for the release officer and have the presiding circuit judge delegate the authority to the release officer. Such guidelines can exempt some defendants from automatic release, such as those who have failed to appear several times. In that case, the court should reserve any further exercise of discretion and should not delegate it to the release officer or other staff.

Where no release officer has been appointed, it is again advisable for the circuit and district judges to set common guidelines -- both to ensure that any acts delegated are ministerial and not discretionary and to avoid equal protection problems.

IV. JUDICIAL PARTICIPATION AT TRIAL AND IN NEGOTIATIONS

> "The trial judge's broad discretion to conduct a fair trial by controlling the clear and orderly presentation of evidence sometimes obscures the line between valid judicial supervision and invalid judicial misconduct. Thus, although a judge may question witnesses to clarify evidence * * *, he must avoid any apearance of prejudice or bias; otherwise he risks committing reversible error." Project, Thirteenth Annual Review of Criminal Procedure: United States Supreme Cout and Court of Appeals 1982-1983, 72 Geo. L. J. 249, 564 (1983) (footnotes omitted.

See id at 564-67 and accompanying footnotes for recent federal cases.

This discussion is limited to a few points and a few cases that illustrate the limits on judicial participation. For further guidance, see W. Snouffer, Criminal Justice Standards in Oregon (1975), providing text of and commentary to the ABA Criminal Justice Standards. In particular, see the text of and commentary to Trial Judge Standards, Speedy Trial Standards, Guilty Plea Standards, and Jury Trial Standards.

The limits on judicial participation avoid not only reversible

SB 173

KC

LC 802
15
12/12/94 (DH/hk)

DRAFT

SUMMARY

Creates single Violations Bureau in lieu of separate bureaus for traffic infractions, state park infractions and boating infractions. Allows use of Violations Bureau for any offense for which only penalty is fine. Requires establishment of Violations Bureau by district courts unless exempted by Chief Justice of Supreme Court. Specifies procedures of Violations Bureau.

Allows court to make determination without hearing on citation issued for violation if defendant requests hearing on offense but fails to appear at time, date and place set for hearing. Allows court to enter default judgment if person is arrested, executes release agreement and subsequently fails to appear. Allows court to impose restitution requirement as part of money judgment against defendant who fails to appear.

Takes effect January 1, 1996.

A BILL FOR AN ACT

Relating to offenses; creating new provisions; amending ORS 133.067, 153.190, 153.370, 153.555 and 153.760; repealing ORS 153.290, 153.300, 153.425, 153.430, 153.600 and 153.605; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) Any court of this state may establish a Violations Bureau and designate the clerk or deputy clerk of the court or any other appropriate person to act as a violations clerk for the Violations Bureau. A Violations Bureau shall be established by each district court unless the Chief Justice of the Supreme Court issues a written exemption to the presiding judge appointed under ORS 1.169 for the judicial district in which the district court is located. The violations clerk shall serve under the direction and control of the court appointing the clerk.

(2) A violations clerk may exercise authority over any offense, including but not limited to violations described in ORS 161.565 and in-

NOTE: Matter in boldfaced type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in boldfaced type.

fractions, for which the only penalty that may be imposed is a fine or forfeiture. In addition, offenses that may be made subject to the authority of the violations clerk include the following:

(a) Violations of ordinances or regulations adopted by a political subdivision of the state if the only penalty that may be imposed for violation of the ordinance or regulation is a fine or forfeiture.

(b) Misdemeanor charges that a district attorney elects to treat as a violation under the provisions of ORS 161.565.

(3) Subject to subsection (2) of this section, a court establishing a Violations Bureau shall by order specify the offenses that are subject to the authority of the violations clerk.

(4) Except as provided in subsection (7) of this section, the violations clerk shall accept:

(a) Written appearance, waiver of trial, plea of guilty and payment of fine, costs and assessments for offenses that are subject to the authority of the violations clerk; or

(b) Payment of bail for offenses that are subject to the authority of the violations clerk.

(5) The court shall establish schedules, within the limits prescribed by law, of the amounts of penalties to be imposed for first, second and subsequent violations, designating each offense specifically or by class. The order of the court establishing the schedules shall be prominently posted in the place where penalties established under the schedule are paid. All amounts must be paid to, receipted by and accounted for by the violations clerk in the same manner as other payments on money judgments are received by the court.

(6) Any person charged with an offense within the authority of the violations clerk may:

(a) Upon signing an appearance, plea of guilty and waiver of trial, pay the clerk the penalty established for the offense charged, including any costs and assessments authorized by law.

(b) Pay the clerk the bail established for the offense. Payment of bail under this paragraph constitutes consent to forfeiture of bail and disposition of the offense by the clerk as provided by the rules of the court. Payment of bail under this paragraph is not consent to forfeiture of bail if the bail is accompanied by a plea of not guilty or a request for hearing.

(7) A person who has been found guilty of, or who has signed a plea of guilty to, one or more previous offenses in the preceding 12 months within the jurisdiction of the court shall not be permitted to appear before the violations clerk unless the court, by general order applying to certain specified offenses, permits such appearance.

SECTION 2. ORS 133.067 is amended to read:

133.067. (1) In any case where a citation in lieu of custody under ORS 133.055 is issued for a violation as described in ORS 161.565, **or where the defendant has been arrested and released pursuant to a release agreement,** the court may proceed to make a determination without a hearing [*if*] **in the following circumstances:**

(a) The court may proceed to make a determination without a hearing if:

[*(a)*] **(A)** A complaint or information has been filed;

[*(b)*] **(B)** The court does not direct that a hearing be held;

[*(c)*] **(C)** A hearing is not required by other statute; and

[*(d)*] **(D)** The [*cited*] person fails to appear at the time, date and court specified in the citation **or release agreement.**

(b) The court may proceed to make a determination without a hearing if:

(A) A complaint or information has been filed;

(B) The person appeared at the time, date and court specified in the citation and requested a hearing, or appeared at the time, date and court specified in the release agreement and was required to appear at a subsequent hearing; and

(C) The person fails to appear at the time, date and court set for any subsequent hearing in the matter.

(2) A determination under this section shall be on the complaint or information and on any evidence that the court may, in its discretion, determine to be appropriate.

(3) Upon making a determination under this section, the court may enter judgment and, if the determination is one of conviction, may impose a sentence of a fine within the statutory limits for the offense **along with a money judgment for costs, assessments and restitution authorized by law. Notwithstanding ORS 137.106, the court need not make a determination of the defendant's ability to pay for the purposes of any restitution ordered under this section. A defendant may seek a determination by court as to the defendant's ability to pay any restitution ordered under the provisions of this section by filing a written request with the court within one year after the entry of the judgment in the matter. The court shall set a hearing on the issue of defendant's ability to pay upon receipt of the request and shall give notice to the victim of the time, date and place of the hearing. The court may reduce restitution ordered under this section if the defendant establishes at the hearing that the defendant is unable to pay the ordered restitution in full or part.**

(4) A sentence to pay a fine under this section does not prevent:

(a) Taking any other action against the [*cited*] person as permitted by law for the person's failure to comply, including, but not limited to, sentencing the person further as permitted by law after the person is brought to hearing.

(b) Following any procedures established by law when the person fails to appear.

(c) Imposition of any license suspension or revocation that is otherwise authorized or required by reason of the conviction.

(5) On motion and upon such terms as are just, the court may relieve a person from a judgment entered under this section upon a showing that the

failure of the [*cited*] person to appear was due to mistake, inadvertence, surprise or excusable neglect. The motion must be made within a reasonable time, and in no event more than one year after the person receives notice of the judgment.

(6) No judgment may be entered under this section unless the citation issued to the person **or release agreement executed by the person** contains a statement notifying the [*cited*] person that a monetary judgment may be entered against the person up to the maximum statutory limit for the offense if the [*cited*] person fails to appear at the time, date and court specified in the citation **or release agreement**.

SECTION 3. ORS 153.190 is amended to read:

153.190. (1) For infractions subject to ORS 8.665, 153.110 to 153.310 and 153.990, the court may direct that a hearing be held.

(2) The court may proceed to make a determination on the infraction under any of the following circumstances:

(a) If a hearing is held, either at the request of the cited person or at the court's own direction, when the court makes a finding on the evidence presented at the hearing.

(b) If a hearing is not required by statute, directed by the court or requested by the cited person and the cited person has complied with ORS 153.160, when the court makes a finding on the citation, any plea and any evidence or other material submitted.

(c) If the court does not direct that a hearing be held, a hearing is not required by statute and the person has not complied with ORS 153.160 or made appearance, when the time indicated in the citation passes and the court makes a finding on the [*citation*] **complaint** and any other evidence the judge determines appropriate.

(3) Upon completion of its determination under subsection (2) of this section, the court may enter the appropriate judgment and, if the determination is one of conviction, may do any of the following as part of the judgment:

(a) Impose a sentence of a fine **along with a money judgment for costs, assessments and restitution authorized by law.**

(b) Direct that the fine, **costs, assessments and restitution, if any,** be paid out of the bail deposit.

(c) Unless the court orders otherwise, remit the balance to the defendant or to any other person designated by the defendant.

(4) Notwithstanding ORS 137.106, if the court orders restitution under subsection (3) of this section, the court need not make a determination of the defendant's ability to pay for the purposes of any restitution ordered under this section. A defendant may seek a determination by the court as to the defendant's ability to pay any restitution ordered under the provisions of this section by filing a written request with the court within one year after the entry of the judgment in the matter. The court shall set a hearing on the issue of the defendant's ability to pay upon receipt of the request and shall give notice to the victim of the time, date and place of the hearing. The court may reduce restitution ordered under this section if the defendant establishes at the hearing that the defendant is unable to pay the ordered restitution in full or part.

[*(4)*] **(5)** If the person complies with ORS 153.160 and deposits the amount of bail thereunder but neither the person nor the court requests a hearing and a hearing is not required by statute, no fine may be imposed in excess of the bail deposited. If the person has not deposited bail under ORS 153.160 or has requested a hearing under ORS 153.160 without depositing bail and does not appear at the hearing, the court may impose any fine within the statutory limits for the infraction.

[*(5)*] **(6)** If a court sentences a person to pay a fine under this section when the person has not complied with ORS 153.160, the court is not precluded from:

(a) Taking any other action against the person as permitted by law for the person's failure to comply, including, but not limited to, sentencing the

person further as permitted by law after the person is brought to hearing.

(b) Following any procedures established by law when the person fails to appear.

[*(6)*] **(7)** If a judgment is entered under this section after a person has failed to comply with ORS 153.160 or make appearance, on motion and upon such terms as are just, the court may relieve a person from the judgment upon a showing that the failure of the cited person to comply with ORS 153.160 or to appear was due to mistake, inadvertence, surprise or excusable neglect. The motion must be made within a reasonable time, and in no event more than one year after the person receives notice of the judgment.

[*(7)*] **(8)** No judgment may be entered under this section by reason of a person failing to comply with ORS 153.160 or make appearance unless the citation issued to the person contains a statement notifying the cited person that a monetary judgment may be entered against the person up to the maximum statutory limit for the offense if the cited person fails to comply with ORS 153.160 or appear at the time, date and court specified in the citation.

SECTION 4. ORS 153.370 is amended to read:

153.370. (1) In any case the court may direct that a hearing be held. No sentence to jail may be imposed unless a hearing is held.

(2) The court may proceed to make a determination under any of the following circumstances:

(a) If a hearing is held, either at the request of the [*cited*] person or on the court's own direction, when the court makes a finding on the evidence presented at the hearing.

(b) If a hearing is not required by statute, directed by the court, or requested by the [*cited*] person and the [*cited*] person has complied with ORS 153.355, when the court makes a finding on the citation, on any plea and on any evidence or other material submitted.

(c) If the court does not direct that a hearing be held, a hearing is not required by statute and the person has not complied with ORS 153.355 or

made appearance, when the time indicated on the citation **or release agreement** passes and the court makes a finding on the [*citation*] **complaint** and any other evidence the judge determines appropriate.

(3) Upon completion of its determination under subsection (2) of this section, the court may enter the appropriate judgment and, if the determination is one of conviction, may do any of the following as part of the judgment:

(a) Impose a sentence of a fine **along with a money judgment for costs, assessments and restitution authorized by law.**

(b) Direct that the fine, **costs, assessments and restitution, if any,** be paid out of the bail deposit, if any.

(c) Unless the court orders otherwise, remit the balance of the bail deposit to the defendant or to any other person designated by the defendant.

(d) Conditionally suspend all or part of any penalty to be imposed on the defendant if the defendant appears personally and agrees to complete at the defendant's own expense a Safe Boating Education Course approved by the State Marine Board under ORS 830.110 (18), within time limits imposed by the court.

(4) Notwithstanding ORS 137.106, if the court orders restitution under subsection (3) of this section, the court need not make a determination of the defendant's ability to pay for the purposes of any restitution ordered under this section. A defendant may seek a determination by the court as to the defendant's ability to pay any restitution ordered under the provisions of this section by filing a written request with the court within one year after the entry of the judgment in the matter. The court shall set a hearing on the issue of the defendant's ability to pay upon receipt of the request and shall give notice to the victim of the time, date and place of the hearing. The court may reduce restitution ordered under this section if the defendant establishes at the hearing that the defendant is unable to pay the ordered restitution in full or part.

[*(4)*] **(5)** If the person complies with ORS 153.355 and deposits the amount of bail thereunder but neither the person nor the court requests a hearing and a hearing is not required by statute, no fine may be imposed in excess of the bail deposited. If a citation has been issued for a boating infraction and the person has not deposited bail under ORS 153.355 or has requested a hearing under ORS 153.355 without depositing bail and does not appear at the hearing, the court may impose any fine within the statutory limits for the infraction.

[*(5)*] **(6)** If a court sentences a person to pay a fine under this section when the person has not complied with ORS 153.355, or if the person fails to appear at any hearing set by the court, the court is not precluded from:

(a) Taking any other action against the person as permitted by law for the person's failure to comply, including, but not limited to, sentencing the person further as permitted by law after the person is brought to a hearing.

(b) Notifying the State Marine Board of the person's failure to appear or failure to comply with the order of the court.

(c) Following any procedures established by law when the person fails to appear.

[*(6)*] **(7)** If a judgment is entered under this section after a person has failed to comply with ORS 153.355 or make appearance, on motion and upon such terms as are just, the court may relieve a person from the judgment upon a showing that the failure of the [*cited*] person to comply with ORS 153.355 or to appear was due to mistake, inadvertence, surprise or excusable neglect. The motion must be made within a reasonable time, and in no event more than one year after the person receives notice of the judgment.

[*(7)*] **(8)** No judgment may be entered under this section by reason of a person failing to comply with ORS 153.355 or make appearance unless the citation issued to the person **or release agreement executed by the person** contains a statement notifying the [*cited*] person that a monetary judgment may be entered against the person up to the maximum statutory limit for the offense if the [*cited*] person fails to comply with ORS 153.355 or appear at

the time, date and court specified in the citation **or release agreement.**

SECTION 5. ORS 153.555 is amended to read:

153.555. (1) In any case the court may direct that a hearing be held.

(2) The court may proceed to make a determination under any of the following circumstances:

(a) If a hearing is held, either at the request of the [*cited*] person or on the court's own direction, when the court makes a finding on the evidence presented at the hearing.

(b) If a hearing is not required by statute, directed by the court or requested by the [*cited*] person and the [*cited*] person has complied with ORS 153.540, when the court makes a finding on the citation, any plea and any evidence or other material submitted.

(c) If the court does not direct that a hearing be held, a hearing is not required by statute and the person has not complied with ORS 153.540 or made appearance, when the time indicated in the citation **or release agreement** passes and the court makes a finding on the [*citation*] **complaint** and any other evidence the judge determines appropriate.

(3) Upon completion of its determination, the court may enter the appropriate judgment and, if the determination is one of conviction, may do any of the following as part of the judgment:

(a) Impose a sentence of a fine **along with a money judgment for costs, assessments and restitution authorized by law.**

(b) Direct that the fine, **costs, assessments and restitution, if any,** be paid out of the bail deposit.

(c) Unless the court orders otherwise, remit the balance to the defendant or to any other person designated by the defendant.

(4) Notwithstanding ORS 137.106, if the court orders restitution under subsection (3) of this section, the court need not make a determination of the defendant's ability to pay for the purposes of any restitution ordered under this section. A defendant may seek a determination by the court as to the defendant's ability to pay any

restitution ordered under the provisions of this section by filing a written request with the court within one year after the entry of the judgment in the matter. The court shall set a hearing on the issue of the defendant's ability to pay upon receipt of the request and shall give notice to the victim of the time, date and place of the hearing. The court may reduce restitution ordered under this section if the defendant establishes at the hearing that the defendant is unable to pay the ordered restitution in full or part.

[*(4)*] **(5)** If the person complies with ORS 153.540 and deposits the amount of bail thereunder but neither the person nor the court requests a hearing and a hearing is not required by statute, no fine may be imposed in excess of the bail deposited. If the person has not deposited bail under ORS 153.540 or has requested a hearing under ORS 153.540 without depositing bail and does not appear at the hearing, the court may impose any fine within the statutory limits for the offense.

[*(5)*] **(6)** The court shall not make or recommend a suspension of the defendant's driving privileges unless a hearing has been ordered, but the failure of the defendant to appear at the hearing shall not preclude such suspension or recommendation.

[*(6)*] **(7)** If a court sentences a person to pay a fine under this section when the person has not complied with ORS 153.540, the court is not precluded from:

(a) Taking any other action against the person as permitted by law for the person's failure to comply, including, but not limited to, sentencing the person further as permitted by law after the person is brought to hearing.

(b) Following any procedures established by law when the person fails to appear.

[*(7)*] **(8)** If a judgment is entered under this section after a person has failed to comply with ORS 153.540 or make appearance, on motion and upon such terms as are just, the court may relieve a person from the judgment upon a showing that the failure of the [*cited*] person to comply with ORS

153.540 or to appear was due to mistake, inadvertence, surprise or excusable neglect. The motion must be made within a reasonable time, and in no event more than one year after the person receives notice of the judgment.

[*(8)*] **(9)** No judgment may be entered under this section by reason of a person failing to comply with ORS 153.540 or make appearance unless the citation issued to the person **or release agreement executed by the person** contains a statement notifying the [*cited*] person that a monetary judgment may be entered against the person up to the maximum statutory limit for the offense if the [*cited*] person fails to comply with ORS 153.540 or appear at the time, date and court specified in the citation **or release agreement.**

SECTION 6. ORS 153.760 is amended to read:

153.760. (1) In any case on an alleged violation of the wildlife and commercial fishing laws and rules promulgated pursuant thereto, the court may direct that a hearing be held. No sentence to jail may be imposed unless a hearing is held.

(2) The court may proceed to make a determination under any of the following circumstances:

(a) If a hearing is held, either at the request of the [*cited*] person or at the court's own direction, when the court makes a finding on the evidence presented at the hearing.

(b) If a hearing is not required by statute, directed by the court or requested by the [*cited*] person and the [*cited*] person has complied with ORS 153.745, when the court makes a finding on the citation, any plea and any evidence or other material submitted.

(c) If the court does not direct that a hearing be held, a hearing is not required by statute and the person has not complied with ORS 153.745 or made appearance, when the time indicated in the citation **or release agreement** passes and the court makes a finding on the [*citation*] **complaint** and any other evidence the judge determines appropriate.

(3) Upon completion of its determination under subsection (2) of this section, the court may enter the appropriate judgment and, if the determi-

nation is one of conviction, may do any of the following as part of the judgment:

(a) Impose a sentence of a fine **along with a money judgment for costs, assessments and restitution authorized by law.**

(b) Direct that the fine, **costs, assessments and restitution, if any,** be paid out of the bail deposit.

(c) Unless the court orders otherwise, remit the balance to the defendant or to any other person designated by the defendant.

(4) Notwithstanding ORS 137.106, if the court orders restitution under subsection (3) of this section, the court need not make a determination of the defendant's ability to pay for the purposes of any restitution ordered under this section. A defendant may seek a determination by the court as to the defendant's ability to pay any restitution ordered under the provisions of this section by filing a written request with the court within one year after the entry of the judgment in the matter. The court shall set a hearing on the issue of the defendant's ability to pay upon receipt of the request and shall give notice to the victim of the time, date and place of the hearing. The court may reduce restitution ordered under this section if the defendant establishes at the hearing that the defendant is unable to pay the ordered restitution in full or part.

[*(4)*] **(5)** If the person complies with ORS 153.745 and deposits the amount of bail thereunder but neither the person nor the court requests a hearing and a hearing is not required by statute, no fine may be imposed in excess of the bail deposited. If the person has not deposited bail under ORS 153.745 or has requested a hearing under ORS 153.745 without depositing bail and does not appear at the hearing, the court may impose any fine within the statutory limits for the offense.

[*(5)*] **(6)** If a court sentences a person to pay a fine under this section when the person has not complied with ORS 153.745, the court is not precluded from:

(a) Taking any other action against the person as permitted by law for the person's failure to comply, including, but not limited to, sentencing the person further as permitted by law after the person is brought to hearing.

(b) Following any procedures established by law when the person fails to appear.

(c) Imposition of any license suspension or revocation that is otherwise authorized or required by reason of the conviction.

[*(6)*] **(7)** If a judgment is entered under this section after a person has failed to comply with ORS 153.745 or make appearance, on motion and upon such terms as are just, the court may relieve a person from the judgment upon a showing that the failure of the [*cited*] person to comply with ORS 153.745 or to appear was due to mistake, inadvertence, surprise or excusable neglect. The motion must be made within a reasonable time, and in no event more than one year after the person receives notice of the judgment.

[*(7)*] **(8)** No judgment may be entered under this section by reason of a person failing to comply with ORS 153.745 or make appearance unless the citation issued to the person **or release agreement executed by the person** contains a statement notifying the [*cited*] person that a monetary judgment may be entered against the person up to the maximum statutory limit for the offense if the [*cited*] person fails to comply with ORS 153.745 or appear at the time, date and court specified in the citation **or release agreement.**

SECTION 7. Section 1 of this Act applies only to offenses committed on or after the effective date of this Act. Notwithstanding the repeal of ORS 153.290, 153.300, 153.425, 153.430, 153.600 and 153.605 by section 8 of this Act, a violations clerk appointed under section 1 of this Act may perform the duties specified by ORS 153.290 (1993 Edition), ORS 153.300 (1993 Edition), ORS 153.425 (1993 Edition), ORS 153.430 (1993 Edition), ORS 153.600 (1993 Edition) and ORS 153.605 (1993 Edition) for any offense that was committed on or before the effective date of this Act, and any person charged with an offense that was committed before the effective date of this Act is subject to the provisions of ORS

153.290 (1993 Edition), ORS 153.300 (1993 Edition), ORS 153.425 (1993 Edition), ORS 153.430 (1993 Edition), ORS 153.600 (1993 Edition) and ORS 153.605 (1993 Edition).

SECTION 8. ORS 153.290, 153.300, 153.425, 153.430, 153.600 and 153.605 are repealed.

SECTION 9. This Act takes effect January 1, 1996.

LEBANON MUNICIPAL COURT
AGE OF CASES FROM FILING TO FINAL JUDGMENT

		CASE #	LAST NAME	FIRST NAME	JDGM DT	DISP CODE	AGEYR	AGEMTH	AGEDAY
CR NT	0	898044	DAVIS	DAVID	08/10/94	DIF	5	00	29
CR	0	9204187	OCHELTREE	ELIZABETH	09/08/94	DIF	2	08	00
CR	0	9201092	SCHLISKE	FRANK	08/24/94	G	2	06	00
CR	0	925469	BEAKLEY	VAL	09/03/94	G	2	00	15
CR	0	9208160	BEAKLEY	VAL	09/14/94	DIF	1	11	28
CR	0	9302067	MARTINEZ	FRANK	10/14/94	P-G	1	09	11
CR	0	9307065	FREEMAN	JEREMY	09/07/94	F-G	1	01	19
CR	94	193	PAPPAN	CURTIS	08/17/94	G	0	05	26
CR	94	288	CODDINGTON	ALINA	10/26/94	G	0	03	29
CR	0	9402919	COLEMAN	JAMES	08/17/94	NGP	0	03	27
CR	94	296	NEBERGALL	GARY	09/26/94	G	0	02	27
CR	94	312	HOWE	THOMAS	10/05/94	F-G	0	02	18
CR	94	364	PATEL	MAHESH	10/19/94	NGP	0	02	04
CR	94	311	HARDEN	COLLEEN	09/08/94	G	0	01	21
CR	94	361	MCDONOUGH	MARCO	09/16/94	G	0	01	01
CR	94	300	ERICKSON	WILLIAM	08/03/94	G	0	00	28
CR	94	403	YOTHER	BILLY	10/18/94	NC	0	00	28
CR	94	397	MCCRANE	JOHN	10/16/94	G	0	00	27
CR	94	330	WARNER	DEREK	08/18/94	DIF	0	00	24
CR	94	410	CALHOON	RAY	10/19/94	NC	0	00	23
CR	94	304	MORRISSETTE	BRANDON	08/09/94	G	0	00	22
CR	94	378	PEASLEE	KEVIN	09/15/94	P-G	0	00	17
CR	94	424	POINTER	DANIEL	10/27/94	NGP	0	00	17
CR	94	399	PINNER	ALLEN	10/05/94	NC	0	00	16
CR	94	413	TOMLINSON	THOMAS	10/19/94	P-G	0	00	16
CR	94	326	ERENBERGER	IRMA	08/09/94	G	0	00	15
CR	94	332	CLARNEAU	DUSTIN	08/09/94	G	0	00	15
CR	94	400	ROBINSON	DENNIS	10/03/94	P-G	0	00	14
CR	94	355	PEARSON	TERESA	08/17/94	G	0	00	09
CR	94	373	HOWSER	JULIE	08/31/94	G	0	00	09
CR	94	422	THOMPSON	FRANKLIN	10/19/94	P-G	0	00	09
CR	94	427	ROLLINS	EDWARD	10/19/94	G	0	00	09
CR	94	434	LOVATO	MANUEL	10/26/94	P-G	0	00	09
CR	94	409	CODDINGTON	ALINA	09/28/94	G	0	00	02
CR	94	402	EDWARDS	MARIA	09/20/94	DIF	0	00	00
CR TR	92	10014	CROWE	DAVID	09/07/94	G	1	10	29
CR	93	1102	GRIMM	STEVEN	09/07/94	G	1	07	16
CR	0	9400094	BOOTH	JIM	08/17/94	DIF	0	09	21

AGE OF CASES FROM FILING TO FINAL JUDGMENT

		CASE #	LAST NAME	FIRST NAME	JDGM DT	DISP CODE	AGEYR	AGEMTH	AGEDAY
CR TR	94	154	PAUL	DEANA	10/12/94	DIF	0	02	25
CR	94	165	ANDERSON	CHARLES	10/19/94	P-G	0	02	03
CR	94	156	HUTSON	JOHN	09/16/94	DIF	0	01	22
CR	94	168	GUNDRY	MONICA	10/07/94	DIF	0	01	09
CR	94	163	RAMSDELL	SCOTT	09/08/94	DIF	0	00	23
CR	94	166	COX	JESSE	09/14/94	G	0	00	23
CR	94	157	SJOLANDER	LESTER	08/10/94	DIF	0	00	16
CR	94	176	SAVAGE	SIEGFRIED	10/12/94	DIF	0	00	09
CR	94	178	CAMPBELL	ELIZABETH	10/12/94	P-G	0	00	09
CR	94	170	CORNELIUS	HOWARD	09/27/94	DIF	0	00	08
CR	94	181	TUCKER	JOHN	10/31/94	NGP	0	00	05
CR	94	173	JACKSON	PHILLIP	09/28/94	G	0	00	02
CR	94	171	POLLEY	THOMAS	09/21/94	G	0	00	01
IN NT	0	930018	SCHAFF	JERRY	10/25/94	P-G	1	01	13
IN	94	34	YOTHER	BILLY	10/18/94	NC	0	00	28
IN TR	0	9400164	JAYNE	JAMES	09/07/94	G	0	05	28
IN	0	94238	FOOSE	CHRISTOPHER	08/03/94	G	0	04	24
IN	0	9400304	TABOR	WILLIAM	09/14/94	F-G	0	04	04
IN	94	377	HERNANDEZ-MOYA	LUIS	10/07/94	P-G	0	03	23
IN	94	401	WALKER	WILLIAM	10/17/94	G	0	03	18
IN	94	374	LAWSON	DEE-DRA	09/28/94	F-G	0	03	14
IN	94	406	WILLIAMS	TINA	10/14/94	G	0	03	14
IN	94	402	HARROLD	TAMI	10/12/94	F-G	0	03	13
IN	94	438	JONES	GARY	10/18/94	GBD	0	02	24
IN	94	362	ROGERS	DARREN	08/11/94	GBD	0	02	02
IN	94	482	GOODWIN	PATRICK	10/12/94	P-G	0	01	28
IN	94	518	FULLER	ARCHIE	10/12/94	P-G	0	01	17
IN	94	396	DEIBELE	RUSSELL	08/12/94	G	0	01	15
IN	94	395	MANCUSO	WILLIAM	08/09/94	G	0	01	12
IN	94	470	CASTLEMAN	SCOTT	09/16/94	G	0	01	08
IN	94	460	WILDUNG	SILAS	09/07/94	GBD	0	01	05
IN	94	537	LINDBERG	DWAYNE	10/12/94	G	0	01	05
IN	94	476	MARSH	JEFFREY	09/15/94	GBD	0	01	00
IN	94	485	BURKS	JOSH	09/15/94	GBD	0	01	00
IN	94	473	NEWMAN	DANIEL	09/07/94	GBD	0	00	30
IN	94	493	SPARHAWK	AMBROSE	09/15/94	G	0	00	30
IN	94	527	GONZALES	RENE	09/26/94	P-G	0	00	28

AGE OF CASES FROM FILING TO FINAL JUDGMENT

	CASE #	LAST NAME	FIRST NAME	JDGM DT	DISP CODE	AGEYR	AGEMTH	AGEDAY
IN TR 94	479	NEWMAN	DANIEL	09/09/94	GBD	0	00	25
IN 94	439	OLSEN	FRANCES	08/18/94	GBD	0	00	24
IN 94	474	STOLSIG	ROY	08/31/94	VAC	0	00	23
IN 94	481	HAVEN	MARCELLA	09/07/94	GBD	0	00	23
IN 94	484	CHRISTY	MARK	09/07/94	GBD	0	00	23
IN 94	486	BRINKLEY	ROBERT	09/07/94	GBD	0	00	23
IN 94	487	GRIFFITH	VERNON	09/07/94	GBD	0	00	23
IN 94	497	MILUNE	JOSEPH	09/14/94	G	0	00	23
IN 94	417	CHRISTENSEN	DANIEL	08/09/94	G	0	00	22
IN 94	467	TENOLD	SCOTT	08/24/94	G	0	00	22
IN 94	491	STERMON	SCOTT	09/07/94	GBD	0	00	22
IN 94	535	SLACK	STACY	09/29/94	GBD	0	00	22
IN 94	538	PYATT	DEANA	09/29/94	GBD	0	00	22
IN 94	540	MACK	JEROMY	09/29/94	GBD	0	00	22
IN 94	541	MILLER	ERYK	09/29/94	GBD	0	00	22
IN 94	542	RASMUSSEN	ROBERT	09/29/94	GBD	0	00	22
IN 94	579	LEE	TIMMY	10/25/94	GBD	0	00	22
IN 94	581	OAKS	CHRISTOPHER	10/25/94	GBD	0	00	22
IN 94	508	COATS	TRACEY	09/15/94	GBD	0	00	20
IN 94	413	PAUL	DEANA	08/05/94	G	0	00	18
IN 94	495	COX	JESSE	09/09/94	GBD	0	00	18
IN 94	523	WARREN	FRANK	09/16/94	G	0	00	18
IN 94	437	WALTENBURG	BRENDA	08/11/94	GBD	0	00	17
IN 94	552	JACKSON	TERRY	10/06/94	F-G	0	00	17
IN 94	425	KINDOPP	TRACI	08/04/94	G	0	00	16
IN 94	443	SJOLANDER	LESTER	08/10/94	G	0	00	16
IN 94	454	COLLVER	DOUGLAS	08/18/94	GBD	0	00	16
IN 94	458	REED	JAMES	08/18/94	GBD	0	00	16
IN 94	459	STOLPE	DEBRA	08/18/94	GBD	0	00	16
IN 94	461	FORSYTH	DAVID	08/18/94	GBD	0	00	16
IN 94	464	RICHARD	JERRY	08/18/94	GBD	0	00	16
IN 94	465	MCELHINEY	JOHN	08/18/94	GBD	0	00	16
IN 94	472	BURKS	JOSH	08/24/94	G	0	00	16
IN 94	496	JAYNE	JAMES	09/07/94	G	0	00	16
IN 94	502	CARDWELL	MICHAEL	09/07/94	GBD	0	00	16
IN 94	577	ROZELL	KATHLEEN	10/19/94	G	0	00	16
IN 94	583	MILLS	KIRK	10/19/94	G	0	00	16
IN 94	587	DANIELS	CHAD	10/26/94	P-G	0	00	16
IN 94	589	WOLFE	STEPHEN	10/26/94	P-G	0	00	16

AGE OF CASES FROM FILING TO FINAL JUDGMENT

		CASE #	LAST NAME	FIRST NAME	JDGM DT	DISP CODE	AGEYR	AGEMTH	AGEDAY
IN TR	94	440	LAWRENCE	MELISSA	08/09/94	G	0	00	15
IN	94	462	BURKS	JOSH	08/17/94	G	0	00	15
IN	94	466	BOOTH	JIM	08/17/94	G	0	00	15
IN	94	471	PRINCE	CLYDE	08/23/94	G	0	00	15
IN	94	539	RANDKLEV	HANS	09/22/94	G	0	00	15
IN	94	591	MCARTHUR	MICHAEL	10/25/94	GBD	0	00	15
IN	94	592	SWISHER	CHRISTOPHER	10/25/94	GBD	0	00	15
IN	94	434	ALDERMAN	JASON	08/03/94	GBD	0	00	14
IN	94	509	AVERY	FREDDY	09/09/94	G	0	00	14
IN	94	530	WELLS	NEAL	09/15/94	GBD	0	00	14
IN	94	536	TAYLOR	JOY	09/21/94	F-G	0	00	14
IN	94	578	WALKER	WILLIAM	10/17/94	P-G	0	00	14
IN	94	447	KINDER	MARK	08/11/94	GBD	0	00	13
IN	94	449	YOTHER	LAURA	08/11/94	GBD	0	00	13
IN	94	451	MCCLAMMA	ROBERT	08/11/94	GBD	0	00	13
IN	94	561	DILLARD	CHRISTINA	10/06/94	GBD	0	00	13
IN	94	563	SPARKHAWK	GARY	10/06/94	GBD	0	00	13
IN	94	566	PIATT	BARRY	10/06/94	GBD	0	00	13
IN	94	448	SMITH	JOSEPH	08/10/94	G	0	00	12
IN	94	506	CARDWELL	MICHAEL	09/07/94	GBD	0	00	12
IN	94	507	KINDER	MARK	09/07/94	GBD	0	00	12
IN	94	512	KUMPE	STEPHEN	09/07/94	G	0	00	12
IN	94	513	CRAIGHEAD	KRISTINA	09/07/94	G	0	00	12
IN	94	559	MILLER	EDWARD	10/05/94	P-G	0	00	12
IN	94	571	KEITH	VICKIE	10/05/94	P-G	0	00	12
IN	94	572	BYRAM	STEVEN	10/05/94	P-G	0	00	12
IN	94	573	FAGE	JOHN	10/05/94	P-G	0	00	12
IN	94	516	DAVIS	LISA	09/06/94	G	0	00	11
IN	94	522	JAHNS	CONNIE	09/09/94	G	0	00	11
IN	94	524	SELVY	CARROLL	09/09/94	G	0	00	11
IN	94	526	MATTSON	JOHN	09/09/94	GBD	0	00	11
IN	94	560	QUIROZ-LOPEZ	JOE	10/04/94	P-G	0	00	11
IN	94	450	CERRA	ZOAL	08/08/94	G	0	00	10
IN	94	478	JAMES	SONYA	08/25/94	G	0	00	10
IN	94	551	BREWER	PATRICIA	09/29/94	GBD	0	00	10
IN	94	553	UTLEY	TRAVIS	09/29/94	GBD	0	00	10
IN	94	555	MEYERS	ROBERT	09/29/94	GBD	0	00	10
IN	94	557	BARBER	MARNIE	09/30/94	F-G	0	00	10
IN	94	568	MOSS	LYLE	10/03/94	P-G	0	00	10

AGE OF CASES FROM FILING TO FINAL JUDGMENT

	CASE #	LAST NAME	FIRST NAME	JDGM DT	DISP CODE	AGEYR	AGEMTH	AGEDAY
IN TR 94	453	COLLVER	DOUGLAS	08/11/94	GBD	0	00	09
IN 94	455	WINNEY	KIMBERLY	08/11/94	GBD	0	00	09
IN 94	456	WILLIS	STANLEY	08/11/94	GBD	0	00	09
IN 94	469	GAINES	GERALD	08/17/94	G	0	00	09
IN 94	475	SMITH	MARTIN	08/17/94	G	0	00	09
IN 94	477	JAMES	JAMIE	08/24/94	G	0	00	09
IN 94	488	DRAPER	DAVID	08/24/94	G	0	00	09
IN 94	499	ROGERS	RONALD	08/31/94	G	0	00	09
IN 94	500	BAILEY	MICHELLE	08/31/94	G	0	00	09
IN 94	504	RINGHAM	BRADLEY	08/31/94	G	0	00	09
IN 94	525	HENDERSON	DEANNA	09/07/94	GBD	0	00	09
IN 94	528	MACK	JEROMY	09/07/94	GBD	0	00	09
IN 94	529	MATTHEWS	LEONARD	09/07/94	G	0	00	09
IN 94	544	BURMESTER	VILVA	09/28/94	P-G	0	00	09
IN 94	580	MILLER	STEVEN	10/12/94	G	0	00	09
IN 94	584	ALDRICH	THOMAS	10/12/94	P-G	0	00	09
IN 94	590	MESSER	STACEY	10/19/94	P-G	0	00	09
IN 94	593	REED	JENNIFER	10/19/94	G	0	00	09
IN 94	601	JENSON	TRAVIS	10/26/94	P-G	0	00	09
IN 94	607	SULLIVAN	LILA	10/26/94	P-G	0	00	09
IN 94	608	DANIEL	JENNA	10/26/94	P-G	0	00	09
IN 94	457	LOMAX	CURTIS	08/10/94	G	0	00	08
IN 94	531	JORGENSEN	SETH	09/09/94	G	0	00	08
IN 94	533	WINNINGHAM	SUSANNE	09/15/94	GBD	0	00	08
IN 94	534	JOHNSON	CHARLES	09/15/94	GBD	0	00	08
IN 94	550	MCCAMEY	STEVEN	09/27/94	P-G	0	00	08
IN 94	594	GOODENOUGH	TRUMAN	10/18/94	P-G	0	00	08
IN 94	600	CHANG	JAEMYONG	10/25/94	GBD	0	00	08
IN 94	605	HANSEN	CARL	10/25/94	GBD	0	00	08
IN 94	609	SIVETZ	KIM	10/25/94	GBD	0	00	08
IN 94	494	PAINTER	FAYE	08/24/94	G	0	00	07
IN 94	498	DOYLE	MICHAEL	08/29/94	G	0	00	07
IN 94	549	FREITAG	MICHELLE	09/26/94	P-G	0	00	07
IN 94	556	SMITH	RANDALL	09/26/94	P-G	0	00	07
IN 94	597	GARRETT	CURTIS	10/19/94	P-G	0	00	07
IN 94	532	STOLPE	ALISON	09/07/94	GBD	0	00	06
IN 94	567	PETERSON	CARL	09/29/94	GBD	0	00	06
IN 94	514	WINNINGHAM	SUSANNE	08/31/94	G	0	00	05
IN 94	546	VANDEHEY	DOROTHY	09/14/94	G	0	00	05

AGE OF CASES FROM FILING TO FINAL JUDGMENT

		CASE #	LAST NAME	FIRST NAME	JDGM DT	DISP CODE	AGEYR	AGEMTH	AGEDAY
IN TR	94	564	STUMP	DONNA	09/28/94	P-G	0	00	05
IN	94	565	SEARCH	THOMAS	09/28/94	P-G	0	00	05
IN	94	569	MCCORKLE	DEJA	09/28/94	P-G	0	00	05
IN	94	570	MCCOLLUM	STEVEN	09/28/94	F-G	0	00	05
IN	94	610	STEWARD	JAMES	10/19/94	G	0	00	05
IN	94	554	FROEMKE	ANTHONY	09/23/94	G	0	00	04
IN	94	622	WINNINGHAM	SUSANNE	10/28/94	G	0	00	04
IN	94	582	GRAY	DANIEL	10/06/94	GBD	0	00	03
IN	94	492	FITCH	MITCHELL	08/18/94	GBD	0	00	02
IN	94	547	DAWES	GARY	09/21/94	BFC	0	00	02
IN	94	617	BRICCO	LEVI	10/26/94	P-G	0	00	02
IN	94	630	RHODES	TIMOTHY	10/26/94	P-G	0	00	02
IN	94	635	SCHNEITER	WANDA	10/26/94	G	0	00	02
IN	94	636	DUKE	DARLEA	10/26/94	P-G	0	00	02
IN	94	452	CLAICH	LAWRENCE	08/03/94	G	0	00	01
IN	94	585	DEACON	BERNARD	10/06/94	GBD	0	00	01
IN	94	614	VAN ESSEN	DAVID	10/25/94	P-G	0	00	01
IN	94	618	CARLSON	DARCY	10/25/94	P-G	0	00	01
IN	94	543	VANDEHEY	DOROTHY	09/09/94	G	0	00	00
IN	94	558	ATKIN	DONALD	09/23/94	G	0	00	00
IN	94	562	DAVIDSON	BRIAN	09/23/94	G	0	00	00
IN	0	9400552	JACKSON	TERRY	10/06/94	P-G	+	++	++

* * * E N D O F R E P O R T * * *

```
  Query . . . . . . . . . . . . . . . . . . . . MWMAGING
    Library . . . . . . . . . . . . . . . . . . QGPL
  Query text  . . . . . . . . . . . . . . . . .
  Query CCSID . . . . . . . . . . . . . . . . . 65535
  Collating sequence  . . . . . . . . . . . . . Hexadecimal

  Processing options
    Use rounding  . . . . . . . . . . . . . . . Yes (default)
    Ignore decimal data errors  . . . . . . . . No  (default)
    Ignore substitution warnings  . . . . . . . Yes

  Special conditions

    *** Query can not be run on a release prior to V2R1M1 ***

    *** . is the decimal separator character for this query ***


Selected files

  ID      File            Library       Member        Record Format

  T01     DSCASE          DSTDATA       *FIRST        DSCASER


Result fields

  Name         Expression                          Column Heading          Len  Dec

  FILEDATE     digits(dopnmx) || '/' || digits(d   File Dt
               opndx) || '/' || digits(dopnyx)
  JDGMDATE     digits(fnjdmx) || '/' || digits(f   Jgdm Dt
               njddx) || '/' || digits(fnjdyx)
  AGE          date(jdgmdate)-date(filedate)
  AGECHAR      digits(age)
  AGEYR        substr(agechar,4,1)
  AGEMTH       substr(agechar,5,2)
  AGEDAY       substr(agechar,7,2)


Select record tests

  AND/OR   Field             Test      Value (Field, Numbers, or 'Characters')

           CSDISX            NE        'AOF'
   AND     FNJDYX            EQ        94
   AND     FNJDMX            RANGE     8 10
```

Ordering of selected fields

Field Name	Sort Priority	Ascending/ Descending	Break Level	Field Text
CASTYX	10	A		CASE TYPE
CSSBTX	20	A	1	CASE SUB TYPE
CASYRX				CASE YEAR
CASNMX				CASE NUMBER
LASTNX				PERSON LAST NAME
FIRSTX				PERSON FIRST NAME
JDGMDATE				
CSDISX				CASE DISPOSITION CODE
AGEYR	30	D		
AGEMTH	40	D		
AGEDAY	50	D		

Report column formatting and summary functions
Summary functions: 1-Total, 2-Average, 3-Minimum, 4-Maximum, 5-Count

Field Name	Summary Functions	Column Spacing	Column Headings	Len	Dec Pos	Null Cap	Overrides Len	Overrides Dec Pos	Overrides Numeric Editing
CASTYX		0	*NONE	2					
CSSBTX		1	*NONE	2					
CASYRX		2	*NONE	2	0				
CASNMX		2	CASE #	7	0				
LASTNX		4	LAST NAME	18					
FIRSTX		2	FIRST NAME	12					
JDGMDATE		2	JDGM DT	8					
CSDISX		4	DISP CODE	3			3		
AGEYR		4	AGEYR	1			1		
AGEMTH		4	AGEMTH	2					
AGEDAY		4	AGEDAY	2					

Report breaks

Break Level	New Page	Suppress Summaries	Break Text
0	No	Yes	
1	No	Yes	

Selected output attributes

Output type	Printer
Form of output	Detail
Line wrapping	No

Printer Output

Printer device	*PRINT
Report size	
Length	51
Width	132
Report start line	1
Report end line	45
Report line spacing	Single space
Print definition	No

Printer Spooled Output

Spool the output	(Defaults to value in print file, QPQUPRFIL)
Form type	(Defaults to value in print file, QPQUPRFIL)
Copies	1
Hold	(Defaults to value in print file, QPQUPRFIL)

Cover Page

Print cover page . . . . . No
Cover page title

Page headings and footings

Print standard page heading . . . . . Yes

Page heading

LEBANON MUNICIPAL COURT
AGE OF CASES FROM FILING TO FINAL JUDGMENT

Page footing

Database file output

```
  File . . . . . . . . . . . . . . . . . . . . MWMTEMP
    Library . . . . . . . . . . . . . . . . . . QGPL
  Member . . . . . . . . . . . . . . . . . . . *FILE
  Data in file . . . . . . . . . . . . . . . . New file
  For a new file:
    Authority . . . . . . . . . . . . . . . . *LIBCRTAUT
    Text about
      the file . . . . . . . . . . . . . . . .
  Print definition . . . . . . . . . . . . . . No
```

Output file record format

Output record length 59

Field list:

Field	Begin	Len	Dec	Null	Data Type	Text
CASTYX	1	2			Character	CASE TYPE
CSSBTX	3	2			Character	CASE SUB TYPE
CASYRX	5	2	0		Zoned decimal	CASE YEAR
CASNMX	7	7	0		Zoned decimal	CASE NUMBER
LASTNX	14	18			Character	PERSON LAST NAME
FIRSTX	32	12			Character	PERSON FIRST NAME
JDGMDATE	44	8			Character	digits(fnjdmx) || '/' || digits(fnjddx) || '/' ||
CSDISX	52	3			Character	CASE DISPOSITION CODE
AGEYR	55	1			Character	substr(agechar,4,1)
AGEMTH	56	2			Character	substr(agechar,5,2)
AGEDAY	58	2			Character	substr(agechar,7,2)

* * * * * E N D O F Q U E R Y P R I N T * * * * *

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