

How to Measure
the Quality of
Criminal Justice:
Theory Ideas

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HOW TO MEASURE THE QUALITY OF CRIMINAL JUSTICE IN YOUR COMMUNITY: STORY IDEAS FOR JOURNALISTS



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Washington, D.C.

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INTRODUCTION

As most journalists quickly learn, the quality of criminal justice in the United States varies widely from community to community—and often from one courtroom to the next.

But how does the reporter go about telling that story? where are his or her sources and background materials? and more importantly, how can he or she suggest that things can be improved without “editorializing”?

There are no easy answers to any of these questions, but one viable approach is through the frequent reference to guidelines for excellence formulated by criminal justice professionals themselves. *Hold those professionals to their own standards of excellence, and demand to know why if they do not comply.*

Usually called “standards,” these guidelines are not “pie in the sky” theories, but rather reflections of what the very best practice is now. For the journalist, they represent an untapped “gold mine” of ideas for news stories and features about crime and criminal justice—problems which repeatedly rank among the principle concerns of the American public.

Within the past few years there has been a proliferation of standards, ranging in scope from police administration to juvenile justice. Of these perhaps the two best known are the American Bar Association Standards for the Administration of Criminal Justice and the National Advisory Commission Reports on Standards and Goals for Criminal Justice, implementation of which is being co-ordinated under the leadership of the ABA’s Section of Criminal Justice.

The ABA Standards for the Administration of Criminal Justice were formulated over a 10-year period and were adopted between 1968 and 1973. Covering every phase of the criminal law process, they represent an ambitious attempt by the organized bar to improve the quality of criminal justice. Chief Justice Warren Burger in 1974 described them as “probably the most monumental undertaking in the field of criminal justice ever attempted by the American legal profession.”

The NAC Standards and Goals were financed by the Law Enforcement Assistance Administration and were released in 1973, differing substantively from the ABA Standards in only 16 of 476 areas of common concern. Both sets of standards are constantly being studied in an effort to keep them abreast of progressive thought in criminal justice, and new volumes on other aspects of criminal justice are now being considered by both the

ABA and the National Advisory Committee, successor to the original NAC.

State and local jurisdictions have been implementing these standards, or local variants of them, through state legislation, court rules promulgating criminal procedures, appellate court opinions adopting standards therein, and individual usage of selected standards by trial judges, practicing attorneys, and law enforcement personnel. All 50 states have begun implementation, and at least 30 jurisdictions have made significant progress in a number of areas.

This brochure¹ is based upon both the ABA and NAC criminal justice standards and seeks to suggest a few story ideas and questions that might be appropriate on a number of issues of major concern to the criminal justice system. The brochure is by no means comprehensive and reporters are urged to consult the standards themselves for the detailed analysis of each of the problems for which standards have been developed.²

Copies of both the 17-volume ABA standards and the 6-volume NAC standards and goals are available in many public libraries, or copies may be purchased inexpensively by mailing in the order form printed on the last page of this brochure. It should be noted that the "black letter" ABA standards are gathered in a compendium volume, which does not include, however, the background material many reporters would find of great value.

Structurally, the brochure is divided into 17 sections, each of which is subdivided into three parts: a description of the specific standard itself, story ideas for both short and long range projects comparing existing practices with that standard, and questions to ask in preparing the story.

Take, for example, the section on the function of the trial judge. First, the section briefly describes the importance of the trial judge in the criminal justice system.

¹ Written by Sally Jacobsen of Washington, DC, a freelance reporter with wide experience in both print and broadcast media.

² This brochure, designed for use by journalists, is one of a series of eight pamphlets being printed by the ABA Section of Criminal Justice on selected aspects of criminal justice standards. Other brochures deal with pretrial release, speedy trial, corrections, standards implementation techniques, economic advantages of standards and goals planning, police-bar committees, and citizen support for criminal justice improvement. Free copies are available from the ABA Circulation Department, 1155 E. 60th St., Chicago, IL 60637.

Second, it proposes story ideas comparing existing procedures and the standards:

- Sit through trials conducted by several judges in your community. How do the judges handle the proceedings compared with the standards? How do they conduct themselves with prosecuting and defense attorneys? How do they treat the accused?
- Check the background of the trial judges in your community. What are their qualifications? How were they selected? How do local attorneys rate them? Have complaints been filed against any?
- Find out if defendants in your community receive speedy trials. Look through court records to find out how many continuances on the average each judge grants for a case. How serious or how frivolous are the reasons for granting continuances?

Third, it gives a checklist of questions to ask in researching the stories: Do trial judges reflect the dignity of the office in their personal appearance and demeanor? Do they avoid delays, continuances and extended recesses except for good cause? Are they punctual?

Before beginning a project, reporters should check on the status of the implementation process in their states. For that information, consult state or local bar associations, state administrative offices, offices of the courts or the office of the chief justice of the state supreme court, the local police chief or the state police administrator, chairmen of the state legislative judiciary committees, state, county and local government officials such as the governor, state attorney general, county executive, mayor or city manager, the council of government, and the LEAA state planning agencies.

Additionally, consult representatives of the major criminal justice organizations—both in your state and at the national level. Many of these have been active in implementation activities, and many have their own sets of professional standards which would be most relevant for your readers. The names and telephone numbers of several of the major nationwide groups are noted where appropriate in the brochure.

A final source of information is the ABA Criminal Justice Section itself. Section spokespersons may be reached by writing to them at 1800 M St., N.W., Washington, DC 20036, or by telephoning 202/331-2260.

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1. THE URBAN POLICE FUNCTION

The police are perhaps the most visible element in our efforts to achieve criminal justice. They are the ones who introduce the accused into the pattern of multi-jurisdictional procedures that has been termed the "criminal justice system." This initial police contact is particularly important in juvenile cases where the first impression is likely to be a lasting one.

Although one frequently hears the expression "never a cop when you need one," the police are also of great importance to the general public because of their "round the clock" availability. Members of the general public seldom realize that a police force on continuous duty often simply does not have the means to respond adequately to the many demands upon it.

Here are some general questions to keep in mind about the police department in your community: What duties are performed by your police department? What does your community expect of your police-service agency? (ambulance, traffic, dog-catching, report safety hazards, etc.) or criminal enforcement agency? Both? How does the department in your community set policies and priorities? By decision of chief of police, city council, or mayor? Or does your town use public meetings to discuss functions of the police department?

Story Ideas

Innovative law enforcement. Interview your police chief to find out about new techniques the police may be using. Find out if they use modern, efficient management practices, such as:

- Written administrative procedures.
- Computers to monitor crimes and to reassign police to problem areas.
- Neighborhood team policing.
- Selective patrol procedures.
- "Take home" squad cars.
- Consolidated communications between neighboring police departments.
- Mutual aid plans with neighboring police departments.
- A four-day work week.

Crime prevention. Is your department on the defensive or is it taking the offense? What is it doing to keep crime from happening, as well as apprehending the perpetrators of crime? Does the department have a crime prevention unit? Does the unit have National Crime Prevention Institute training? Does the prevention pro-

gram include property survey techniques, operation identification—and if so how effective? Is the unit really being used as an effective weapon in the fight against crime or is it “window dressing” with insufficient manpower and physical resources? Does the department assist victims and witnesses in a compassionate manner and look to speedy recovery of their property?

Training. Is there psychological testing and training?

Strike. Examine the issue of collective bargaining for public safety employees, such as the police. Look into the pros and cons of binding arbitration, cost of living escalators, work stoppages or slowdowns. Interview police officials and beat officers, city officials, state legislators and citizens.

Community action. If state laws permit, examine police records for citizen complaints. Look for the most frequent complaint and find out how the police department is trying to correct the situation. Interview community or citizen watchdog groups for their opinions of the strengths and weaknesses of the police force.

A recruit's life. If possible, enroll in the local police academy. Observe how recruits are trained. Watch for new or experimental programs, such as role playing to simulate potentially dangerous situations. Interview recent graduates to find out what they liked or disliked about training. Did the training prepare them for actual street situations?

On the beat. Spend several days with police officers in a high crime area of your city. Observe how they relate to area residents, handle routine complaints and potentially dangerous situations, and make arrests. Has the department provided officers with guidelines for common situations, or is the responsibility left to the officers' discretion?

Background Questions

Recruitment—Does the police department experiment with recruiting persons at different levels of entry? Are college graduates sought? What are the recruitment procedures?

Training programs—Does the state have mandatory training and if so what is included? Do training programs develop skills required for on-the-job work? Do courses include human behavior, social problems and the democratic process? Is training “in house” or does the department use outside resources—legal, medical, psychiatric, sociological—to supplement training? What in-service training is required of the officer after he/she is on the force?

Continuing education—Are police officers encouraged to take college courses? Will the department pay for part of the costs? Are there plans to require college credits for future applicants and for promotion?

Police methods—Do police officers have a variety of skills so they can handle a wide range of situations? Are there ways they can refer citizens to private and public services for help?

Collective bargaining and political activity—Do police have the right of collective bargaining for wages, length of work week, pension and other fringe benefits? Is there legislation prohibiting strikes? Are police officers allowed to engage in political activity?

Civilian complaints—Is there a system in your police department to handle, monitor and fairly review citizen complaints? Are investigations impartial? Is the public kept informed of administrative actions taken? What disciplinary action procedures exist?

Inducements—Does the department hand out promotions and compensation for good work? What guidelines are used to determine good work? Only number of arrests?

Warrants—How are arrest and search warrants issued? Is there careful judicial review of applications? Are officers encouraged to use the formal warrant process?

Community support—Is the community involved in developing police programs? How?

Research—Is there a research unit or department that can formulate and evaluate the effectiveness of policies and procedures? Does the department have a library?

Department organization—How flexible is the organizational structure? Are operations decentralized? Do some police officers have specialized skills they can use to solve certain citizen problems? Are civilian assistants used on the staff?

Legal advisors—Does the department have lawyers who work for the department and advise it on planning, developing and assessing policies and training programs? Do they draw up legislative programs? Do they maintain contacts with other criminal justice and municipal agencies?

Contact: International Association of Chiefs of Police, 11 Firstfield Road, Gaithersburg, MD 20760, 301/948-0922; National Sheriffs Association, 1250 Connecticut Ave, NW, Washington, DC 20036, 202/822-0422.

2. ELECTRONIC SURVEILLANCE

The interest of privacy in our society requires that all private and public use of electronic surveillance tech-

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niques to intercept private communications be carefully restricted. Only the most limited and closely supervised exceptions for law enforcement should be permitted. Such exceptions include protecting the national security, investigating certain criminal activity, and acting with the consent of one of the parties.

Story Ideas

Wired for sound. Look at your local community and find out the extent of electronic surveillance. Check to see what kind of records are kept with judges, prosecutors or police. Find out if any legitimate community groups or prominent citizens were monitored as has been the case in some cities.

Background Questions

State legislation—What laws does your state have restricting or allowing the use of electronic surveillance techniques? What are the penalties for violations?

Other prohibitions—In practice, do your courts prevent the use of illegally recorded information as evidence?

Judicial orders—Before authorizing surveillance, do judges demand the identities of the law enforcement officer in charge and the person to be overheard, and descriptions of the suspected offense under investigation and the type of communications sought?

Supervision—Are only a limited number of law enforcement agents allowed to use electronic surveillance?

3: THE PROSECUTION FUNCTION

The prosecutor, a key figure in the administration of criminal justice, decides whether to institute criminal proceedings against an individual. Because he or she is generally an elected official, the political process has played a significant part in shaping the role of the prosecutor. The powers are formidable, and if not truly independent and professional, the office can be misused for improper purposes; it is fortunate, therefore, that the prosecutor, more than any other public official, is visible to public scrutiny, particularly when spotlighted by the press. The holder has the dual—and seemingly contradictory—responsibility of leading law enforcement in the community and upholding the rights of the accused.

Story Ideas

Justice shortchanged? Check the background of the prosecutor's staff. Look at their legal training, experi-

ence and political affiliation. Compare this with the leading law firms in your community.

Who's winning. Collect statistics on the number of indictments and the disposition of the cases. Find out how many were dropped for want of prosecution. Why? Also look at the prosecution's win rate of cases that went to trial. If low, ask if more emphasis should be placed on plea bargaining or dropping cases. Interview defendants acquitted or not prosecuted. Ask them the effect of the arrest or detainment on their personal lives. Did it cause financial hardship, hurt their community reputation, or create family problems?

Conflict of interest. Find out if your prosecutor has a private law practice. If so, ask if he/she handles cases privately that may have to be prosecuted publicly, such as divorce or child support cases. Find out if this violates state or national guidelines on conflict of interest.

Antics in the courtroom. Attend an important trial. Observe your prosecutor's behavior before the judge, jury, defendant, defense counsel, and press. Check to see if cases have been overturned by higher courts because of the prosecution's behavior.

Background Questions

Staff—Is professional competence the basis for the selection of the staff? Are prosecutors fairly compensated? Are professional investigators on the staff? Are there training programs for new personnel? Does the office provide legal advice to the police or help train them in their duties in criminal matters?

Sanctions—Can the governor or another elected state official suspend a local prosecutor found incompetent? Can state officials substitute special counsel for the local prosecutor in certain cases?

Investigation—Does your prosecutor's office investigate suspected illegal activity when no other agency has done so?

Witnesses—Does the prosecution discourage or obstruct communication between prospective witnesses and defense counsel? Are experts paid excessive fees for testifying?

Grand jury—What role does the prosecutor play in grand jury proceedings? Are all communications and presentations to grand jurors on the record?

Alternatives—Does the prosecution consider alternatives to pressing charges, such as rehabilitation programs?

Counsel—Does the prosecution cooperate in obtaining counsel for defendants?

Plea discussions—Is the prosecution willing to engage in plea discussions with the defense? Are discussions held with the defense counsel rather than the accused?

Dismissing charges—Does the prosecution make a record of the reasons for dismissing felony charges?

Trial—Does the prosecution file public records stating reasons for delays in bringing a suspect to trial? Are all court records and directives complied with promptly? Are jurors or potential jurors harassed or unduly embarrassed? Is evidence misstated to mislead the jury? Do prosecuting attorneys make public comments critical of a judge or jury verdict?

Sentencing—Does the prosecution cooperate with the court in disclosing all information relevant to sentencing?

Contact: National District Attorneys Association, 211 East Chicago, Chicago, IL 60611, 312/944-2667; National College of District Attorneys, University of Houston College of Law, Houston, TX 77004, 713/749-1571.

4. THE DEFENSE FUNCTION

Grave misconceptions and uncertainties abound as to the defense lawyer's function, the limits of proper conduct and his relationship to the client. It must be understood, however, that a defendant has a constitutional right both to counsel and to a fair trial, and the primary responsibility of the defense lawyer is to protect those constitutional rights. Unfortunately, from the time of his initial contact with the criminal justice system, the defendant is under a cloud of suspicion, and the defense lawyer's greatest contribution often lies in mitigating the impact of the charge on the accused and making sure the case is fairly heard.

Story Ideas

Continuance abusers. Find out which defense lawyers ask for the most continuances and what reasons were given for the delays. Find out which judges tolerate an inordinate number of continuances. Ask why.

Assembly-line lawyers. Find out if local custom permits certain lawyers to handle defendants' cases only through pre-trial stages. Check to see if there are lawyers who handle a large number of preliminary cases only. Are defendants forced to find other lawyers when their cases move to the trial stage? Look into whether lawyers have arrangements with police or local court officials to refer cases. How do defendants choose lawyers? Check court

records to see if lawyers with a large number of defense cases take their fees out of bond money. Add up the fees.

Perry Mason-Paul Drake Investigations. Pick a case and see what kind of investigation services the defense lawyer uses. How does this coincide with the public's image of "every lead is pursued and no expense is spared"?

Background Questions

Experienced defense—Do experienced trial lawyers participate in defending accused persons, regardless of public hostility? Do law firms encourage partners and associates to take criminal cases?

Access to counsel—Does the community have a well-publicized referral service for criminal cases? How soon after arrest may a defendant talk to a lawyer? Is there a public defender system?

Lawyer-client relationship—Are there adequate facilities in jails, prisons and court houses for lawyers and clients to talk privately?

Fees—How are fees determined?

Motions—Do defense lawyers act promptly to seek pretrial release of their clients, obtain psychiatric examinations, move for a change of venue when necessary or move to suppress illegally obtained evidence?

Investigation—Do defense lawyers conduct investigations of the circumstances of the clients' cases?

Witnesses—Do they refrain from compensating witnesses, except for experts and for reasonable expenses? Do they refrain from paying experts excessive fees? Do they caution a client to avoid discussing the case with witnesses or contacting jurors or prospective jurors?

Control of litigation—Do defense lawyers advise their clients with complete candor, listing the risks, hazards or prospects of the case? Do they consult with clients on possible pleas, waiving jury trial and defense testimony?

Disposition without trial—Do lawyers look into early diversion of cases from the criminal process through community agencies? Do they engage in plea discussions with the prosecution and keep clients informed of the developments?

Trial—Do defense lawyers adhere to court rules of decorum? Do they engage in irritating or annoying behavior? Do they comply promptly with all orders and directives? Do they question prospective jurors only to obtain information for challenging their partiality? Do they refrain from communicating privately with jurors?

After the verdict—Do they present appropriate motions to protect the defendant's rights? Do they refrain from making comments about an adverse ruling?

Sentencing—Do defense lawyers explain the consequences of various sentencing alternatives? Do they verify information in presentencing reports?

After sentencing—Do they explain the meaning and consequences of the sentencing to the defendant? Do they inform him or her of the right to appeal? Do they follow a case through the appellate courts?

Contact: National Legal Aid & Defender Association, 1155 E. 60th St., Chicago, IL 60637, 312/684-4000; National Association of Criminal Defense Lawyers, First National Life Bldg., Houston, TX 77002, 713/224-6577; National College of Criminal Defense Lawyers and Public Defenders, University of Houston College of Law, Houston, TX 77004, 713/749-2283.

5. PROVIDING DEFENSE SERVICES

It is crucial that every community provide counsel at the earliest feasible stage to every person accused of a crime and eligible for such aid so that the accused will have adequate professional representation. The provision of defense services assumes that the accused is presumed innocent; guilt must be established in an adversary proceeding in which the prosecution has to prove the charges; and the two adversaries may be aided by advocates who can provide effective counsel. No one can guarantee that the lawyer representing one side will be professionally the equal of the other; what is important is that the system for providing counsel and facilities for the defense be as good as the system which society provides for the prosecution.

Story Ideas

Right to counsel. How good is it? Examine how lawyers are assigned to indigent defendants. If a list of private lawyers is used, ask how they got on the list. Are they all criminal lawyers or are some civil lawyers with little criminal experience? Are they paid or volunteer? If paid, is there a maximum fee set that discourages extra work even when needed? Do judges appoint court house regulars who they know will process cases with an eye more toward speedy resolution than determination of guilt? For a public defender system, ask how attorneys are assigned cases. Do they handle a case from start to finish or is a new lawyer assigned at each step? If public defenders are assigned to a courtroom or judge rather than to a defendant, do they become too close to the judge and prosecutor and lose their adversary role?

How To Measure

How does the public defender system measure up? Examine the background of lawyers in the public defender program. Look at their legal training, experience, and political affiliation. Compare this with the leading law firms in your community. What is the average length of time lawyers serve as public defenders? Is the turnover high?

Perry Mason-Paul Drake Investigations. Pick a case and see what kind of investigations are carried out by the public defender or other defense counsel. Find out how many investigators are on the public defender staff. Do public defenders meet their clients for the first time in the courtroom and prepare the cases at the bar? How does this coincide with the public's image that every lead in a case is pursued and no expense is spared?

Background Questions

Assigned counsel systems—If your community assigns lawyers in private practice to defend accused persons, how are they selected?

Defender systems—If your community maintains a defender office, how is the staff chosen? Is selection based on political, racial, religious or ethnic considerations?

Defense proceedings—How soon after the defendant is taken into custody is he provided with counsel? Is he provided access to a telephone and given the number of the public defender's office or the person responsible for assigning counsel?

Eligibility for assistance—Who is eligible for defense assistance? How soon after the defendant is taken into custody is eligibility determined?

Contact: National Legal Aid & Defender Association, 1155 E. 60th St., Chicago, IL 60637, 312/684-4000; National Association of Criminal Defense Lawyers, First National Life Bldg., Houston, TX 77002, 713/224-6577; National College of Criminal Defense Lawyers & Public Defenders, University of Houston, College of Law, Houston, TX 77004, 713/749-2283.

6. THE FUNCTION OF THE TRIAL JUDGE

The trial judge has the responsibility for safeguarding both the rights of the accused and the interests of the public. The standards are concerned not only with the role and conduct of the trial judge but with the roles and conduct of all participants at the trial from the perspective of the judge. The main emphasis however is on the judge's obligations and duties during and before trial.

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Story Ideas

So you want to be a judge. Check the background of the trial judges in your community. Find out what their qualifications are and how they were selected. Ask local attorneys to rate them. Check to see if complaints have been filed against any. What action was taken on the complaints?

My time is your time. Find out if judges in your community help or hinder in assuring defendants speedy trials. Look through court records to find out how many continuances each judge grants on the average for a case. How serious or how frivolous are the reasons for seeking and obtaining continuances?

How do they rate? Sit through trials conducted by several judges in your community. Observe how they handle the proceedings compared with the standards. How do they conduct themselves with prosecuting and defense attorneys? with jurors? with the defendant?

Background Questions

Facilities—Are there enough court facilities? Are they dignified and functional?

Staff—Are there enough trial judges to assure prompt and fair administration of justice? Is there adequate support staff?

Pretrial duties—Do judges observe federal and state laws in issuing arrest or search warrants? Do they periodically check the number and status of persons in jail? Do they refrain from commenting publicly on a case?

Defense lawyers—Do judges make certain the accused is represented by counsel at the earliest time?

Pleas—Do judges require plea agreements to be disclosed on the record? Before accepting guilty pleas, do they ask defendants: if they understand the charge; if it is voluntary; and if they know the mandatory minimum and maximum sentences?

Jurors—Do judges familiarize prospective jurors with the charge against the accused? Do they make certain jurors are impartial? Is the defense and prosecution counsel allowed to question them? Do judges make certain jurors are not exposed to published reports or opinions during the trial? Do they assist the jury during deliberations by responding to requests to review evidence or for additional instructions?

Lawyers' remarks—Do judges prevent unreasonable repetition, irrelevant questioning or inflammatory statements?

Judicial misfeasance—Does your state have an inde-

pendent commission to investigate complaints against judges?

Contact: National College of the State Judiciary, University of Nevada, Reno, NV 89507, 702/784-6747; Institute of Judicial Administration, 40 Washington Square South, New York, NY 10012, 212/598-2566; National Center for State Courts, 1660 Lincoln Street #200, Denver, CO 80203, 303/892-1361; Federal Judicial Center, 1520 H St., NW, Washington, DC 20005, 202/393-1640.

7. PRETRIAL RELEASE

The bail system as it now exists is generally unsatisfactory. Bail is often set in a haphazard fashion. Based on the premise that the risk of financial loss is necessary to prevent defendants from fleeing prosecution, it requires the practically impossible task of translating the risk of flight into dollars and cents. Requiring accused persons to post bail discriminates against poor defendants and imposes personal hardships on them, their families and the public which bears the cost of their detention and frequently of maintaining their families. Moreover, pretrial detention subjects persons who have not been found guilty to economic and psychological hardships. In a large number of cases defendants safely can be released without bail; this is particularly true for those defendants whose ties to the community will provide an even stronger assurance of appearance in court than would risk of financial loss.

Story Ideas

Back on the streets. Examine court records to find out if persons released before trial commit new crimes. Consider if there is justification for the public's concern about accused persons being released and returned to the community. Find out if jail conditions would be substantially improved if more defendants were permitted to remain in the community. Interview judges, jail officials, citizen groups to find out their opinions.

A Helping Hand. Find out if there are any citizen or official groups in your community that check on defendants' background prior to their first court appearance to determine if they have community ties and can be safely released. Ask what they look for and how they run checks. How many persons do they process? How successful is the program? How many persons have been safely kept out of jail because of the program? Could the work be expanded? Interview released defendants for their reactions.

It's all Greek to me. Spend several days attending bond court in your community. Observe how defendants are processed and compare this with the standards. If your city has a large foreign speaking population, are interpreters present and available when needed?

Bond after dark. Find out what happens to persons arrested after courts close for the day. Is there a night bond court? Are there other facilities for quick processing of arrestees or are they detained until courts open in the morning?

The lady is accused. Examine facilities for detaining women prisoners. Are women kept in custody longer than men because they have to be transferred to a special women's facility? How do women fare in being released before trial? Better or worse than men?

Background Questions

Release by police—Are police officers authorized to issue citations requiring the accused to appear in court at a designated time instead of arresting him?

Issuance of summons—Are judges authorized to issue summonses, requiring the accused to appear in court at a designated time, instead of arrest warrants?

First appearance—Are defendants who are detained brought before a judge promptly? Are proceedings conducted in clear and easily understandable language? Does the judge inform the defendant of the charge and advise him of his rights to remain silent, to counsel, to communicate with family or friends? Is a record made?

Release—Are defendants charged with an offense subject to no more than a year in prison released on their own recognizance? For defendants accused of offenses punishable by more than a year in prison, is an inquiry conducted into whether the defendant may be released? Does an inquiry consider the accused's employment status, financial condition, family relationship, character, reputation and criminal record?

Release conditions—If a defendant is released, are any conditions imposed, such as under the supervision of a probation office or in the care of a qualified person or organization?

Violations—If a defendant violates conditions of his release, are judges authorized to issue warrants for his arrest?

Contact: National Resource Center on Women Offenders, 1800 M St., NW, Washington, DC 20036, 202/331-2270; ABA Commission on Correctional Facilities and Services, 1800 M St., NW, Washington, DC 20036, 202/331-2280. National Pretrial Intervention Service Cen-

ter, 1800 M St., NW, Washington, DC 20036, 202/331-2255; National Association of Pretrial Services Agencies, 601 Indiana Ave., NW, Washington, DC 20004, 202/727-2911.

8. DISCOVERY AND PROCEDURE BEFORE TRIAL

Discovery is the process of finding out what the other side will introduce into evidence at trial. The standards here propose more liberal discovery practices for serious criminal cases than is provided by law in most jurisdictions in the United States. The standards grew out of a conviction that existing practices fall short of meeting contemporary needs. Broad pretrial disclosure of the prosecution's case is proposed to improve procedures in criminal cases prior to trial.

The objectives of the standards are to: increase the efficiency of the judges and lawyers, speed up the process, improve the performance of defense counsel, eliminate a substantial amount of paperwork, and make trials shorter and more to the point—all without sacrificing the interests of the government or the defendant.

Story Ideas

Cards on the table. Interview prosecuting and defense attorneys. Ask them to compare what goes on now with what is proposed in the standards. Is broad pretrial disclosure a workable situation? What are their objections? Would the defense or prosecution be hurt by it? Examine the pros and cons.

Background Questions

Disclosure to the accused—Do prosecutors make the following available to the defense: names and addresses of witnesses, relevant statements of witnesses, statements made by the accused or co-defendants, grand jury testimony of the accused and witnesses, experts' reports or statements, books and documents expected to be used? Does the prosecution disclose if any electronic surveillance was used?

Confidential information—What information is the prosecution not required to disclose?

Disclosure to the prosecution—Is the prosecution permitted to require the accused to: appear in a line-up, speak for identification, be fingerprinted, and give fingernail specimens, blood, handwriting and hair samples? Does the defense inform the prosecution of the names and addresses of witnesses?

Regulation of discovery—Do prosecution or defense lawyers ever advise persons with relevant material or information to withhold it from the opposing counsel?

Procedure—Do your courts permit an “omnibus” or all-purpose hearing before the trial? During the hearing, are motions, demurrers and other requests presented?

Pretrial conference—During pretrial conferences, are the following dealt with: identifying documents, severing defendants or offenses, determining the seating arrangement for defendants and counsel, questioning and selecting jurors, and deciding the order for presenting evidence and arguments for co-defendants and the order for cross-examining co-defendants?

Contact: Professor Daniel Gibbens, ABA Omnibus Hearing Project, University of Oklahoma School of Law, Norman, OK 73069, 405/325-3736.

9. SPEEDY TRIAL

Congestion in the trial courts, particularly in urban centers, is currently one of the major problems of judicial administration. This congestion has created serious difficulties for the administration of criminal justice. Pressures on existing resources make it extremely difficult to dispose of all criminal cases with promptness and due regard for fair procedures. What is needed is to find a means for reducing the amount of criminal conduct and to overcome society's reluctance to provide more prosecutors, judges, courtrooms and court personnel.

Story Ideas

Tardy Trial? If available, look at court records and find out the average time for a case to be brought to trial. Take a look at the case which took the longest time to come to trial. Examine why it took so long. Who was responsible? Witnesses? Continuances by the prosecution or defense? Look at the case which took the shortest time to come to trial. Why?

Speedy Trial Act. Interview the U.S. Attorney for your district and find out how his office is coping with the Federal Speedy Trial Act. Is the staff adequate? As a result of criminal time limits, do civil cases get put on the back burner? Are many defendants released because the time has run out on a case? Ask if the federal court is using a computer to keep track of each defendant's time table. Does the state have a speedy trial requirement? If so, is it being met?

Background Questions

Trial calendar—Are criminal cases given preference over civil cases? Are trials for defendants in custody given preference over other criminal cases? Are prosecuting attorneys required to file public reports stating reasons for delays in bringing defendants to trial? On what basis are continuances granted?

Time limits—Are there rules or laws stating within how many days or months a defendant must be brought to trial? When does the time begin running? Are there exceptions for defendants held in custody before they are charged? What happens if a defendant is not brought to trial within that time limit? Is the prosecution prevented from prosecuting him on that offense again?

10. JOINDER AND SEVERANCE

The joinder and severance of offenses and defendants in criminal cases is a problem area in current criminal justice administration. Interests conflict between the expeditious handling of criminal cases without excessive demands on prosecutorial and judicial resources and the protection of defendants from the risks of prejudicial and unfair treatment. The traditional rationale for joining offenses and defendants is to conserve time by not duplicating the efforts of the prosecuting attorney, witnesses, judges and court officials. On the other hand, severance is sought when combining charges or defendants would put defendants at an unfair advantage, due to confusion of law and evidence.

Story Ideas

Together or not. Pick a highly publicized case with several defendants. Were the defendants and the offenses severed or joined? Why or why not? Ask the defense attorneys, and ask them in retrospect whether the decision was good or bad. Why?

Background Questions

Joinder—On what basis can two or more offenses be joined in one charge? When can two or more defendants be joined in the same charge? If a defendant pleads guilty to one offense, can he or she be prosecuted on a related offense?

Severance—When does a motion for severance have to be made? Are there exceptions? On what grounds may a motion be denied?

11. PLEAS OF GUILTY

The guilty plea is probably the most frequent method of conviction. Conviction without trial will continue to be the most frequent means for the disposition of criminal cases, although many lawyers (and the NAC standards) advocate an end to plea negotiations. A high proportion of guilty and no contest (*nolo contendere*) pleas benefits the system because such pleas tend to limit the trial process to deciding real disputes and consequently to reduce the need for funds and personnel.

The advantages to guilty pleas are: prompt and certain application of correctional measures to defendants; acknowledgment of guilt by defendants and of a willingness to assume responsibility for their conduct; avoidance of a public trial when the publicity would be harmful; and the possibility of granting concessions to defendants who have given or offered cooperation in prosecuting other offenders.

Story Ideas

Copping a plea. Find out the magnitude of plea discussions in your community. Look at the number of arrests for a certain period of time. Find out how many were resolved through guilty pleas, how many were dropped, and how many went to trial. Interview prosecutors to find out their opinion of plea discussions. Ask if they need plea discussions because of high caseloads and because they are ill-prepared for trials. Interview defense attorneys and defendants. Investigate to see if innocent persons plead guilty to avoid lengthy jail waits for trials, or out of fear of being found guilty and receiving a stiff sentence. Do some defendants go to trial because they didn't like the plea deals offered?

Justice Denied? Interview crime victims and ask them how they feel about offenders receiving lower charges or lighter sentences for their crimes. Do victims understand plea discussions? Are they kept informed of developments by prosecutors? Do they resent the plea discussion process?

Judges' views. Interview criminal judges. Ask them their views on plea discussions. When is it legitimate? When is it not? Ask for examples where they refused plea discussions and why. Ask for examples of fair or good discussions.

Background Questions

Receiving the plea—Are defendants only allowed to plead guilty or no contest when counsel is present? Do

judges question defendants to make certain they understand the nature and consequences of the charge and that the plea is voluntary? Is a verbatim record kept of the proceedings?

Withdrawal of the plea—Under what conditions may defendants withdraw guilty pleas?

Plea discussions—Are prosecuting attorneys permitted to engage in plea discussions with defendants through their counsel? To obtain guilty pleas, are prosecuting attorneys allowed to recommend favorable sentencing or reduction of the charge? Do defense attorneys advise defendants of alternatives? Do trial judges abstain from plea discussions?

12. TRIAL BY JURY

Only about one-seventh of all felony prosecutions end in jury trials, which tend to be the more troublesome and controversial cases. The jury trial is a unique institution: a group of lay persons, usually 12, are selected for the purpose of a particular trial; they are given the power of decision; they are permitted to deliberate in secret; and they are allowed to announce their verdict without giving reasons for it.

Story Ideas

Tricks of the trade. Take a recently settled case and interview the prosecuting and defense lawyers to find out what sort of jurors they wanted. Ask them their philosophy on jury selection. What prejudices do they want or not want on a jury? Do they favor Methodists or Catholics for certain cases, young or old for others, whites or blacks, Scandinavians or Italians for others? Ask if they study social scientists' opinions on jury selection or use their own common sense.

Behind the jury door. If possible, obtain the permission and cooperation of a judge to debrief a jury after a trial. Examine what they considered in reaching a verdict. What biases or viewpoints influenced them? What stood out during the trial as important in their decision? Ask them if they ignored or followed the judge's instructions. What was their reaction to the lawyers? Find out if they fear reprisals or retaliations.

Background Questions

Selection of jury—Are prospective jurors selected at random? Do they make up a representative cross-section of the community? What are grounds for disqualification? Criminal Justice

tion? On what grounds can lawyers challenge the seating of jurors?

Orientation—Do jurors receive orientation?

Compensation—Do jurors receive a per diem allowance and reimbursement for travel and subsistence expenses? How much?

Defendants—Are defendants allowed to sit near their counsel and observe the proceedings? Are they forced to appear in prison attire? Are they restrained only when necessary?

During the trial—Are jurors permitted to take notes and keep them during deliberations? What sort of instructions are given to a jury prior to deliberations?

Deliberations—Is the jury permitted to take a copy of the charges, exhibits and writings received as evidence to deliberations? Is it permitted to review certain testimony?

Deadlock—How long must a jury deliberate without reaching an agreement before it is considered deadlocked and discharged?

After the verdict—Can the jury be polled individually at the request of either side or the judge? Does the judge limit final remarks to the jurors to thanking them for their public service?

Impeachment—On what grounds can a jury verdict be impeached?

13. SENTENCING ALTERNATIVES AND PROCEDURES

The consequences of a sentence are of the highest order. If too short or of the wrong type, the sentence can deprive the law of its effectiveness and result in the premature release of a dangerous criminal. If too severe or improperly conceived, it can reinforce the criminal tendencies of the defendant and lead to a new offense.

Story Ideas

Sentencing Harshness. Myth v. Reality. Find out the maximum sentences for major crimes in your state. Are there mandatory minimum sentences for some crimes? Examine court records to find out sentences given to burglars, robbers, murderers, etc. Find out how long they actually served. What is the average time for burglars, robbers, murderers? How does that compare with the maximums?

Just get me out of here. Examine the alternatives that your community provides convicts. Find out if there are programs, such as work release, study release, monetary restitution or furloughs from prison. What are the advantages and disadvantages to both offenders and victims?

Interview judges, corrections officials, convicts participating in the programs and their victims.

Presentence reports. Find out if presentencing reports are used in your courts. What information is included? Do qualified people conduct presentence investigations? How many judges use them in sentencing? If they aren't used, should they be?

"It's the toughest thing I do". Interview judges and ask how they decide on a sentence. What do they consider? Ask them if they have made mistakes, taken chances with a defendant's sentence. What were the outcomes? Do any use creative sentencing? What kinds?

Background Questions

Laws and judicial discretion—Does the sentencing court have a range of alternatives for sentencing, such as probation, partial confinement and total confinement? Has the legislature set mandatory sentences for crimes? How long do the maximum sentences run? Are any longer than 25 years?

Special facilities—Does your state maintain special facilities for treating certain groups of offenders, such as the young?

Fines—Are fines considered appropriate sentences for misdemeanors or for felonies in which the defendant has gained money or property?

Habitual offenders—Is there special legislation to deal with habitual offenders?

Multiple offenses—Is it left up to the judge whether to impose concurrent or consecutive sentences for multiple offenses? Is the handing out of consecutive sentences limited?

Credit—Is credit against a prison term given to a defendant for time spent in custody prior to a trial, during a trial and pending sentencing?

Reduction of conviction—Do your local courts have the authority to reduce, under unusual circumstances, a sentence for a felony to a lower category of felony or to a misdemeanor?

Presentence investigations—Do your courts make presentence investigations and reports on defendants who may be imprisoned for one year or more, are under 18 or are first offenders?

Presentence reports—Are there precautions to ensure the confidentiality of the reports? Do defendants or their attorneys have an opportunity to correct inaccurate information?

Sentencing—Is the judge who presided at the trial or accepted the guilty plea, the same one who sentences the defendant? If plea bargaining took place, are the terms revealed to the judge? Is the defense attorney aware of sentencing alternatives? Does he explain them to the defendant? Are the judge's reasons for selecting a sentence part of the record?

After sentencing—Are courts prohibited from increasing a prison term once it is imposed?

Sentencing criteria—Do judges meet from time to time to discuss sentencing problems? Do judges make regular visits to prisons and other sentencing facilities?

14. PROBATION

Sentencing is in large part concerned with avoiding future crimes by helping the defendant learn to live productively in the community where he has committed the crime. The idea of probation is that the best way to help the defendant is by orienting him or her toward the community, when it is compatible with other sentencing objectives. Banishment from society is not the way to integrate someone into society.

Advantages of probation are to: maximize the liberty of the individual while vindicating the authority of the law; promote rehabilitation by continuing normal community contacts; avoid negative effects of confinement; reduce the financial cost to the public; minimize the impact of the conviction on innocent dependents of the offender.

Story Ideas

A political handout? Look into the background of probation officers in your community. What is their experience, training, political affiliation? How were they selected? Are they patronage workers? What is their pay? Compare this with other city workers, such as police officers, inspectors.

How viable? Find out the average size of the caseloads of probation officers. How often do they meet with probationers? Do they give more than cursory supervision? Check for any unique or innovative programs. Find out how judges monitor probationers, or if they forget them after sentencing. Interview judges and probation officers for their views.

A second chance. Interview probationers and ask their opinions of the probation system. Do they feel they were given a second chance with probation? How do they feel about the conditions attached to their probation? Do they need or want more supervision?

Background Questions

Legislation—Does your legislature permit a judge to impose probation for all but very serious crimes?

Presentence Reports—Do all courts conduct presentence investigations when a defendant may be sentenced to prison for at least a year or if a first offender or under 21?

Conditions of probation—Are all conditions presented to the probationer in writing? Does the probationer have the right to ask for clarification or change of conditions?

Termination—Does the sentencing judge have the right to end probation at any time?

Revocation—What happens when a probationer violates a probation condition? Is a formal or informal warning given prior to revocation or arrest? Are open court proceedings held so that a probationer may be represented and defend himself before revocation?

15. APPELLATE REVIEW OF SENTENCES

A striking irony of the law is the comparison of the methods for determining guilt and those for determining sentence. While the guilt determination process is hedged in with rules of evidence, procedure and appeal, the protections surrounding sentencing are minuscule. And while guilt is often not disputed, the question of an appropriate punishment is.

The advantages of sentence review are to: set up a means to correct grossly excessive sentences; contribute to the development of a rational policy for sentencing; and permit defendants to air their grievances and induce respect for the system.

Story Ideas

The Hanging Judge. Using court records, compare the sentences of defendants based on sex, color, age, economic background. Which judge is the most severe? The most liberal? Interview the judges and ask why. Pick several defendants accused of the same crimes with similar circumstances and with similar criminal backgrounds: find out if they got the same sentences. Why or why not? Was there a rational reason for the disparity?

Pros and Cons. Find out if there is a movement underway in your state to set up appellate review of sentencing. Examine the pros and cons by interviewing judges, state legislatures, criminal justice experts, defense lawyers.

Background Questions

Review procedure—Which court reviews sentences? Is sentence review available on the same basis as conviction review? Is a defendant notified that he may appeal a sentence? For those wanting to appeal, are attorneys notified or appointed? Are transcripts and court records made available to attorneys?

Review court—Does the reviewing court have the power to uphold the sentence, change the sentence or remand the case for further proceedings?

16. APPEALS

Appellate review of trial court judgments should be available for every criminal conviction. The purpose of such review is to protect defendants from prejudicial legal error in the proceedings leading to their conviction, to develop and refine the procedural doctrines and principles of criminal law, and to foster and maintain uniform, consistent standards and practices in criminal processes. A number of post-conviction remedies (such as habeas corpus) also exist to protect the rights of those who are illegally held.

Story Ideas

Why and why not. Look at two defendants who were convicted of similar crimes and received similar sentences—one who appealed his conviction and one who did not. What was the result of the appeal? Find out why the one did not appeal. Was it because he lacked money, was unaware of appellate review, wanted to finish his sentence as soon as possible, or felt the system was against him?

Follow the odyssey. Examine the case of a defendant who is appealing his conviction. Find out what influenced the decision to seek review. Did he or she use prison law books or counseling services? Did he or she draw up his or her own application or petition? How much time did it take to appeal? Was there difficulty getting his case heard? What is worth it? What was the result?

Background Questions

From trial court to appellate court—Is there a definite time period during which appeals must be sought? Do judges notify defendants at the time of sentencing of their right of appeal? Are defendants induced to appeal by automatic release from jail or transfer to better facilities?

ties? Are there unnecessary procedural devices for screening appeals?

Scope of remedy—Is post-conviction review available for the following claims that: convictions or sentences violated U.S. or state constitutions; statutes used to prosecute were unconstitutional or conduct prosecuted was protected by the constitution; sentences imposed exceeded the maximums; and evidence exists that was not presented or heard before. What kind?

17. CORRECTIONS

The pressures for change in the American correctional system are building. They are coming not only from prisoners, but also from the press, the courts, the rest of the criminal justice system and even practicing correctional personnel. The failure of major prisons and jails to reduce crime is incontestable. Recidivism rates are notoriously high. Institutions succeed in punishing, but they do not deter. They make successful reintegration into the community unlikely. The worst effects of an institution are its crippling idleness, anonymous brutality and destructive impact. It is clear that a dramatic realignment of correctional methods is called for. Changes must not be made out of sympathy for the criminal or disregard of the threat of crime to society. They must be made precisely because that threat is too serious to be countered by ineffective methods.

Story Ideas

Point of order, Mr. Warden. Examine proceedings for prison inmates charged with disciplinary violations at local jails or prisons. Find out if the proceedings follow Supreme Court and local court rulings. Are prisoners permitted to have a hearing, be represented by counsel, testify and cross-examine witnesses? Ask prison officials whether disciplinary proceedings help or hinder prison administration. Is there any indication the hearings have reduced riots or other disturbances? Interview prisoners to find out their reactions.

Jailhouse lawyers. Find out if any local correctional inmates have become authorities on writing prisoner petitions to appeal convictions and seek redress of prisoner grievances. Interview them and ask how they became knowledgeable in the law. Ask if they purchased legal materials or used materials in the prison library. Have they taken any correspondence courses in the law? Did they have difficulty in obtaining materials or gaining access to the library? Do other prisoners frequently con-

sult them? Do lawyers or judges ever seek their advice? How successful have they been in their petitions? Do they have plans to attend law school after release?

Move over, buddy. Examine the extent of overcrowding in your local jails and prisons. Find out the design capacity of institutions and compare that with the current capacity. Ask correctional officials if overcrowding in prisons has caused a backup of prisoners in jails. Are any temporary facilities used, such as tents, hotels or trailers? Has overcrowding caused disturbances or murders? Are any buildings so old they need to be torn down? What is being done about overcrowding? Are there plans to construct new facilities? Are the planned facilities small and located near the prisoners' community? What is the public's sentiment about spending money for new and better prisons and jails?

Who's the boss? Examine the background of prison guards. Find out what type of educational training or corrections experience they have. Ask how they were chosen. Are the majority from similar economic, ethnic and social backgrounds as the majority of the prisoners? Compare their salaries with those of other public service workers, such as sanitation workers. Have guards staged any protests to demand educational or vocational opportunities offered prisoners?

Backsliding. Check the recidivism rates in local prisons. Using national standards (for example, those prepared by the American Correctional Association), compare recidivism rates in your state with other states. Interview prison experts to find out how high or low the rates are. What are the main causes of repeat offenders? Are those paroled earlier less likely to commit crimes than those held longer? Why? Is your state devising new programs to correct high recidivism? Interview prisoners to find out their reactions to those programs.

Background Questions

Citizen involvement—Are volunteers encouraged to participate in the corrections system? How are they screened and selected?

Community contact—Are inmates encouraged to participate in appropriate community programs and to maintain community contacts?

Juvenile detention—Do police have the discretion to divert juvenile offenders to alternative community-based programs rather than detain them? Are juveniles prohibited from being fingerprinted and photographed? Are their records kept separately?

Juvenile detention center—When are juveniles

detained? Are juveniles held in facilities separate from adults? Do they have access to education, a library, recreation and entertainment?

Juvenile personnel—Who works with juveniles? How qualified are they?

Adult facilities—Are facilities inspected and evaluated regularly?

Admissions—How long must offenders wait before being admitted to detention facilities? Are they given a thorough medical examination? Are they interviewed by a counselor or social worker as soon as possible? Are records properly maintained?

Staffing—Are all corrections personnel chosen on merit or civil service status? Are their salaries equal to those of persons with comparable qualifications? Do they have preservice and inservice training? Is at least one correctional worker on the staff for every six inmates in the average daily population? Are ex-offenders, minority group members, women and young people actively recruited? Have the use of uniforms, badges and military terms been discontinued?

Internal policies—Are the mentally ill housed separately? Are drug addicts and alcoholics diverted to separate treatment centers? Are potential suicide risks carefully supervised? Are serious and multiple offenders separated? Are inmates allowed to have visits from family and friends? Is there a formal sick call procedure? Are there dental services? Are there adequate sanitation and safety procedures? Is the use of an inmate trusty system prohibited?

Programming—Do facilities provide educational programs? Vocational training? Is there a job placement program? Counseling? Are inmates given access to recreation programs and library materials?

Release programs—Are eligible inmates permitted to have home furloughs and weekend visits with families? Are there work, educational or study release programs?

Social environment—Is there an independent ombudsman to handle inmates' complaints? Are there inmates' newspapers and magazines? Are offenders identified by name and social security number only? Are rules governing hair length and wearing beards and mustaches liberal? Where possible, are uniforms eliminated in favor of civilian dress? Do inmates have telephone privileges? Are ethnic studies and religious services provided?

Women inmates—Are women provided with vocational training programs? Are programs designed to relate to problems and needs of women?

Parole authorities—How are parole boards appointed? Is there a citizen's committee to advise the board?

Parole hearings—When are hearings scheduled for inmates? Are inmates notified directly of parole decisions and are the reasons given in detail and in writing?

Revocation hearings—Are hearings held promptly on all alleged parole violations? Is the parolee permitted to have counsel at revocation hearings, to testify and to cross-examine witnesses? Under what conditions is parole revoked?

Community services—What sort of programs are offered for parolees in the community? Do they include ones for special problems, such as drug abuse?

Parole personnel—What are parole officers' qualifications? Are minority members and ex-offenders recruited?

Work stoppages—Are correctional employees prohibited from participating in work stoppages or slowdowns? Is there a plan for continuing correctional operations in the event of a work stoppage?

Contact: American Correctional Association, 4321 Hartwick Road #208, College Park, MD 20740, 301/864-1070; ABA Commission on Correctional Facilities and Services, 1800 M St., NW, Washington, DC 20036, 202/331-2280; National Council on Crime and Delinquency, NCCD Center, Paramus, NJ 07652, 201/262-7300; National Criminal Justice Statistics Service, 633 Indiana Ave, NW, Washington, DC 20531, 202/376-3604. National Resource Center on Women Offenders, 1800 M St., NW, Washington, DC 20036, 202/331-2270

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