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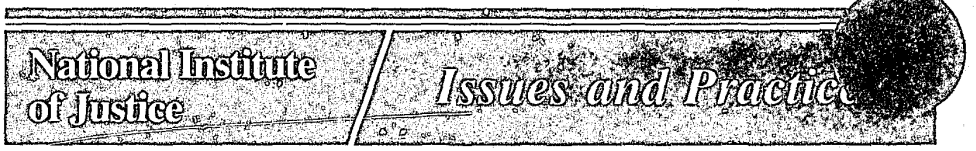

Dealing Effectively with Crowded Jails:

A Manual for Judges

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James K. Stewart
Director

U.S. Department of Justice
National Institute of Justice

Dealing Effectively with Crowded Jails:
A Manual for Judges

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Abstract

A recent study by the National Institute of Justice found that jail crowding is the most pressing problem facing local criminal justice systems today. The problem of jail crowding must be recognized as one which demands the involvement of all key criminal justice system actors. Echoing this view, James K. Stewart, director, National Institute of Justice, suggested that "while we need to focus our attention on the overcrowding problem...if we deal with it on a piecemeal basis, we will not be meeting the needs of the whole system." Judges and prosecutors have been identified as key decisionmakers, each playing a pivotal role in managing case flow and influencing jail population levels. Dealing Effectively with Crowded Jails: A Manual for Judges and its companion, The Implications of Effective Case Processing for Crowded Jails: A Manual for Prosecutors, are intended to assist judges and prosecutors, respectively, in implementing procedural changes which achieve the dual goals of effective use of detention space and improved case processing and administration of justice.

Judges' decisions concerning issuance of summonses, setting bail and release conditions, bail review, continuances and sentencing bear directly on the number of offenders in jail and/or their length of confinement. In numerous jurisdictions judges have been instrumental in instituting changes aimed at dealing with the jail crowding problem and resulting in positive improvements in case processing.

Judges have provided systemwide leadership in such jurisdictions as Brevard County, Florida; Milwaukee County, Wisconsin; Frederick County, Virginia; Mecklenburg County, North Carolina; Salt Lake County, Utah; and Lucas County, Ohio. In King County, Washington, the district court has established guidelines for pretrial services personnel to use in releasing certain defendants pretrial and in making pretrial release recommendations for others. A district court in

Campbell County, Kentucky, has instituted a policy prohibiting the detention of misdemeanor defendants, a major factor in reducing the jail population by one-half.

Increased use of nonfinancial pretrial release options by judicial officers was a key element in achieving a substantial drop in the jail population in Shawnee County, Kansas.

Judges have introduced delay reduction strategies in Bexar County, Texas; Maricopa County, Arizona; and Middlesex County, New Jersey, which have served to expedite case processing, as well as minimize the number of pretrial detainees in jail. Judges have also successfully implemented a full range of sentencing alternatives, including community service and restitution programs in Genesee County, New York, and Quincy County, Massachusetts, and treatment programs for persons convicted of alcohol-related offenses in Quincy County and Sarpy County, Nebraska.

This report provides information on specific policies and procedures which have had an impact on jail population levels without detracting from the operations of the office and, in most instances, contributing to improvements in case processing and the administration of justice.

Contents

Introduction

There is abundant evidence of the pervasiveness of the jail crowding "crisis" in the United States. In a recent National Institute of Justice study, state and local officials indicated that jail crowding is the most serious problem facing them today. 1/ Numerous studies show that no jail, whatever its location or size, is immune to the problem of crowding. 2/ The large number of jails involved in litigation or under court order to correct crowded conditions underscores the widespread nature of the problem. 3/ In some jurisdictions courts have placed limits on jail populations, resulting in the early release of detainees or a ban on new admissions. 4/

Jail crowding seems to defy easy solutions. Despite recent developments improving the cost efficiency and timing of jail construction, building new facilities may not meet the immediate demand for space. 5/ Simply releasing incarcerated persons until the population reaches an acceptable level is no more feasible, because the threat to community safety could dramatically increase. Finally, the option of continuing current practices—in effect doing nothing--virtually ensures that such jurisdictions will soon find themselves defendants in jail crowding litigation.

What should be done? In the past, the problem of crowded jails has been ascribed to those responsible for the maintenance of the facility and the care of those incarcerated--usually the county sheriff. Yet, while jail administrators may lobby city and county legislators for a larger budget to expand jail capacity, they have little or no control over the population level. Control over the number of persons sent to the facility and the length of time they are to remain incarcerated is held by others in the criminal justice system. Consequently, in recent years, as the cost (and time) associated with building new jail beds has increased, county funders have been forced to look to other solutions; specifically, re-evaluating the traditional roles played by the criminal

justice system actors, from police to probation officers, in the use of that scarce resource--jail space.

Jail population levels are influenced by the policies and practices of numerous criminal justice actors, including the police, prosecutors, defense counsel, pretrial services agents, sheriffs, correctional officials, probation and parole officers. Accordingly, while a systemwide approach is therefore warranted to resolve the crowding problem, judges play the key role in the functioning of the criminal justice system and are directly responsible for the incarceration of persons in local jails. 6/ Their decisions--in setting bail, revoking conditional release, and sentencing, among other functions--have the largest impact on the jail's population level. However, simple adjustment of judicial practices when jail populations increase to an unacceptable level is not in order, for two reasons: First, judicial decisions are, for the most part, prescribed by statutory and case law; and second, where discretion does exist, judicial decisions are guided by the precept of safeguarding the individual defendant's constitutional rights.

We acknowledge that the realities of the judicial role require that in the course of meting out individualized justice, a judge cannot be concerned with jail crowding per se. Still, judicial decisions do affect the level of jail crowding. The underlying purpose of this manual then, is to demonstrate how a judge's practices can help alleviate jail crowding without negatively affecting the individualized dispensation of justice and, concurrently, improving the administration of justice. To do this, the manual focuses on three general areas of judicial interest.

First, by virtue of their status as key decisionmakers in individual cases, judges are interested in the full range of decision options throughout the adjudication process. Such decisions involve questions of pretrial release or detention, as well as post-adjudication confinement. This manual provides examples of both traditional and innovative options that have been shown to effectively

ensure community safety and maintain the integrity of the judicial system without requiring incarceration.

Second, judges are concerned that the "judicial intent" underlying decisions in individual cases be fulfilled. For example, the decision to set "affordable" money bail usually signifies the judge's intention to grant pretrial release, while high money bail is frequently used, albeit unofficially, as a surrogate form of preventive detention. Judicial intent may be circumvented, however, when "low bail" defendants fail to secure their release. This manual presents a number of procedures which have been undertaken to ensure that the intent of judicial decisions is satisfied.

Finally, activities of judges entail more than the dispensation of justice in individual cases; the judicial role also includes an administrative dimension. This manual furnishes information about judicial actions which can enhance system efficiency and overall court administration, which in turn engender more effective use of detention space.

In each case, modification of a judge's policies and practices can produce a decrease in jail use without compromising the integrity of the administration of justice. It is this type of action which is the focus of this manual.

The manual is divided into two parts: Section I presents the case processing activities of individual judges, describing each major stage of the process, the type of practical and policy choices available to judges at each stage, and the implications of those choices on jail admissions and length of confinement. Section II describes the administrative activities of individual trial judges, collective actions taken by judges to improve case administration, as well as the leadership role of administrative or presiding judges and their impact on the jail population. Examples are furnished of jurisdictions where administrative changes have produced more efficient case management and reductions in jail populations.

Information contained in this manual was obtained from an extensive literature review and interviews with 16 judges representing different court levels and regions of the country. 7/ Individual judges were selected from lists compiled from several studies of the judicial role in criminal case processing generally, and jail crowding concerns in particular. Additional names were provided by individuals knowledgeable in this area contacted for purposes of this manual. The success of individual judges in alleviating a jail crowding problem was the primary factor in the final selection.

Section I
Case processing activities

This section of the manual describes the activities of judges at the various stages of case processing and includes: (1) the decision points in the criminal case process at which judicial actions may affect the jail population level and the options available to judges at each; (2) the implications of choosing certain options on the level of the jail population; and (3) examples of judges' personal experiences with the use of specific options.

For purposes of this section, criminal case processing is divided into four stages: PRE-INITIAL APPEARANCE; INITIAL APPEARANCE; ADJUDICATION; and SENTENCING. Judicial involvement in the PRE-INITIAL APPEARANCE stage is restricted to signing arrest warrants and issuing summonses. The INITIAL APPEARANCE, also referred to as a "preliminary arraignment," "preliminary hearing," "magistrate's hearing," or "presentment", involves the entering of a plea, bail setting, advising the defendant of his charges and rights, and appointing defense counsel. The ADJUDICATION stage includes rulings on motions, holding hearings and conferences, and conducting trials. Finally, the SENTENCING stage encompasses sentence imposition.

Stage 1: Pre-initial appearance

Summonses vs. Arrest Warrants

Judges may influence the lot of the alleged offender before there is any personal contact between them by issuing an arrest warrant or summons to bring someone into custody or require his appearance in court.

Although an arrest warrant and a summons are both court-issued writs, only the former requires that a law enforcement officer apprehend and hold the accused in custody until bail is posted or initial appearance. 1/ A summons simply orders the named accused person to appear in a designated court at a specified time to answer specific charges but, unlike an arrest warrant, does not result in incarceration. 2/

While the specific authority for issuing a warrant or summons varies by state statute or court rule, the judiciary traditionally is afforded discretion as to which to use. When the judiciary relies exclusively on warrants in lieu of summonses, the impact is felt at the jail, as measured by an increase in short-term detention.

The American Bar Association standard on issuance of summonses calls for "judicial officers to liberally utilize this authority unless a warrant is necessary to prevent flight...imminent bodily harm to the defendant or another, or subject a defendant to the jurisdiction of the court when the defendant's whereabouts are unknown." 3/ Similarly, the National Association of Pretrial Services Agencies' (NAPSA) Standards on Pretrial Release provide that summonses be issued in lieu of arrest warrants in all misdemeanor cases and suggest liberal usage in the case of felonies. 4/

Several states have statutes that reflect these standards. For example, a Wisconsin law authorizes judges to issue a summons in a felony case and makes the use mandatory in misdemeanor cases, unless the judge

believes that the defendant will not appear. 5/ Other states with such legislation include Florida, Illinois, Montana, and Texas. 6/ While no research efforts have examined the specific impact of increased usage of summonses in lieu of arrest warrants, it would logically follow that their prudent use can decrease short-term detention.

Stage 2: Initial appearance

The initial appearance represents the most important stage in the criminal process when examined in the jail population management context. At this hearing, judicial officers inform defendants of their rights, appoint counsel, and determine the appropriate conditions of release or detention pending trial. Since on a national average over half of all persons confined in jail are awaiting trial, the pretrial release decision made by the judicial officer has the most obvious impact on population levels. 7/

Information Needed at Initial Appearance

Crucial to deciding the most appropriate conditions of pretrial release is the availability of relevant information on the defendant. Consistent with most pretrial release or bail statutes, such information usually includes residence and employment history, family ties in the local community, criminal record (including the individual's history of appearance for court proceedings), drug/alcohol use, and the potential danger that the release of the individual might pose to the community.

Judges may rely on any of several sources of information, including law enforcement and corrections records; police, prosecutor and defense counsel's statements; and defendant's own testimony. In many jurisdictions, judicial officers routinely put the defendant under oath and inquire about his background in determining the appropriate conditions of release.

A common source of defendant information at the initial appearance is a pretrial screening agency. 8/ Certain functional and organizational differences notwithstanding, most pretrial release programs share common features, such as: (1) screening all detainees for possible release; (2) gathering background information;

(3) verifying that information; and (4) evaluating the information and developing appropriate recommendations.

Assessments of such programs have shown that they have become an integral part of local criminal justice systems. The National Evaluation of Pretrial Release Programs, sponsored by the National Institute of Justice (NIJ), found that pretrial release programs greatly influence judicial release decisions and that the resulting higher percentage of nonfinancial releases do not significantly affect the pretrial criminality and failure-to-appear rates. 9/

Besides the community ties information provided by pretrial agencies, judges often require appraisals of persons with mental health, drug, alcohol, and/or language problems. In several jurisdictions a pretrial services staff member screens defendants for mental illness and refers them to a counselor or psychiatrist for an evaluation or identification of an appropriate treatment program. The Cobb County (Marietta), Georgia, pretrial program makes specific treatment recommendations. In Multnomah County (Portland), Oregon, the pretrial release program facilitates third-party release under the care of qualified professionals for individuals suffering from a mental disability or substance abuse.

To assist the judge in dealing expeditiously with special defendants at the first hearing, some jurisdictions have turned to private sources. The Monroe County (Rochester, NY) Mental Health Clinic for Socio-Legal Services, working under local contract, evaluates a defendant's competency to stand trial, identifies any threat of danger or risk flight the defendant may pose, and makes recommendations related to special needs of the defendant. Also, a defendant's language handicap may unnecessarily delay or complicate a judge's bail determination. In some cities the need for qualified interpreters, fluent in the language required, is far greater than the number available. 10/

Decision Point: Pretrial Release or Detention

While most bail or pretrial release statutes indicate a clear preference for release on recognizance, 11/ judges retain a great deal of leeway in determining whether or not to release and on what conditions. Two general types of nonfinancial release exist: release on recognizance (ROR) and conditional release, including supervised release and third-party custody. In addition, there are usually a number of financial release options available to the judicial officer, including unsecured bail, nominal bail, privately secured bail, full cash bail, property bonds, deposit bail, and surety bail. 12/

Option: Release on Recognizance

According to the ABA Standards on Pretrial Release, there should be a presumption that the defendant "is entitled to be released on his or her own recognizance (ROR). The presumption may be overcome by a finding that there is a substantial risk of nonappearance or a need for additional conditions." 13/

Research findings support the appropriateness of such a presumption. The National Evaluation of Pretrial Release found that in the studied jurisdictions no relationship existed between rates of release and rates of pretrial flight and criminality. Jurisdictions with higher release rates did not experience concomitantly higher pretrial rearrest or nonappearance rates. The study concluded that "more defendants could be released pending trial and that rates of failure to appear and pretrial criminality would not increase substantially, if at all." 14/

Option: Conditional Release

In situations where the judicial officer determines that release on recognizance should be monitored to ensure appearance, conditional release can be considered. 15/ This form of release requires that the defendant agree to

specific nonfinancial conditions in order to be released. The ABA standard on conditional release states that "the mere existence of the conditions is likely to reduce the risk of recidivism and flight and provide an 'early warning system' to identify those defendants who cannot safely be allowed to remain free." 16/ Although judges can and do release defendants on unsupervised conditions, studies have shown that some form of supervision enhances the conditional release. 17/ Under the supervised form of release, the defendant is supervised by a release agency or a third-party custodian, either an individual or organization. The supervising agency or person agrees to monitor the defendant's compliance with the conditions of release and to notify the court of any violations.

In an evaluation of an NIJ-sponsored test design in Milwaukee County (Milwaukee), Wisconsin; Dade County (Miami), Florida; and Multnomah County (Portland), Oregon, supervised release of higher risk defendants (vis-a-vis those released on ROR) produced a marked decrease in jail bed-days in the three jurisdictions without increasing failure-to-appear or rearrest rates. In fact, the nonappearance and rearrest rates for defendants on supervised release were lower than for those released on ROR. Furthermore, more than three-fourths of the felony defendants supervised who were eventually convicted were sentenced to community service, typically as a condition of probation. 18/

Some judges favor releasing defendants to a third party who is responsible for assuring their appearance in court. In 1980 district judges in Fayette County (Covington/Newport), Kentucky, began releasing public inebriates and DWI offenders to the custody of a third party. The impetus for choosing this option was to free jail space used to detain defendants arrested late at night. According to the state Administrative Office of the Courts, the third-party custody program successfully attained its goal of boosting court appearances of these targeted defendants and removing them from jail overnight. 19/

The District of Columbia Superior Court has used organizational third-party custodians for many years. The court has established formal standards, monitored by the Pretrial Services Agency and enforced by the judiciary, to ensure that the custody organizations provide satisfactory services to both the court and the supervised defendants. 20/

While conditional release has proven useful to facilitate the release of some defendants pretrial, it can also be overused, with conditions being employed unnecessarily. To test this hypothesis, the National Institute of Justice sponsored an evaluation of changes in the District of Columbia Pretrial Service Agency's bail recommendation scheme. The changes involved having the agency increase its recommendations for unrestricted personal recognizance release (PR) and nonfinancial release (both unrestricted and conditional PR) and reduce the average number of conditions recommended for defendants. The changes by the Agency affected judges' decisions and defendants' subsequent release outcomes without any detrimental effect on FTA or pretrial rearrest rates. Unrestricted PR release increased, although total rates of nonfinancial release were unchanged, and judges set fewer conditions for defendants under the new system. Thus, the less restrictive release practices were attained with no increases in rates of pretrial misconduct. 21/

Option: Deposit Bail

Under this release option, the defendant posts with the court a percentage, usually 10 percent, of the total amount of bail. The deposit is returned--less an administrative fee in some jurisdictions--once the defendant appears in court. Should he fail to appear, the defendant is liable for the full amount of the bail. 22/

Based on a survey of findings from several studies of jurisdictions with 10 percent deposit bail, one study concluded that in jurisdictions with both surety bail and

percentage deposit bail as a judicial option, the latter is used very little by the judiciary. Jurisdictions which implemented a defendant-option deposit bail system, however, found that surety bail dramatically decreased. Deposit bail was not associated with an increase in the failure-to-appear rate, and in some instances, a decline in the jail population was noted. 23/

Option: Surety Bail

This option of financial bail requires the judge to decide only the dollar amount involved. It is perhaps a misnomer to discuss surety bail as a "judicial" option, since once the dollar amount is set, the crucial question of whether or not the defendant is actually released pending trial is passed on to a surety agent or bail bondsman. It is the agent or bondsman who decides whether or not to "write the bond" which effectively releases the defendant.

In practice, surety bail may result in a contradiction of judicial intent. A judicial officer's intention to release the defendant by setting a relatively low bail may be overridden by a bondsman's unwillingness to accept a low premium and the risk associated with the bail amount, thus resulting in unintended detention.

Option: Property Bond

In most states, bail statutes allow the judicial officer to accept real property in lieu of the bail amount imposed. In many cases, the statute specifically requires that the evidence of real property must be double in value the amount of the bail set. While authorized in virtually every state, the use of property bail is relatively minimal, except in western states. Judicial officers have found that such a condition of release in the western states is appropriate for persons charged with an offense who are "land poor," having little money readily available, but holding title to tracts of land.

The requirements imposed by local court rules can also affect the level of usage of property bail. In some jurisdictions, requirements that include formal title searches and verification insure that any such release will take a number of days, while other jurisdictions have developed mechanisms to speed up the verification process, and in turn, the release of defendants pretrial.

Option: Pretrial Detention

While the longstanding primary rationale for bail or other forms of pretrial conditions has been to insure appearance at future court proceedings, many states and the federal government have expanded the intent of bail to include protecting the community from potentially dangerous defendants. According to a National Institute of Justice study currently underway, in 31 states, the District of Columbia and the federal government, such "danger" laws allow judges in setting bail or pretrial release conditions to consider whether a released defendant might pose a danger to public safety. 24/ The state statutes are by no means uniform, however.

"Preventive detention" provisions constitute the most extreme form of danger laws. Such provisions authorize judicial officers to hold a defendant without bond, upon a finding that no condition or combination of conditions would reasonably assure either the safety of the community or the appearance of the person at future court proceedings. Despite the paucity of data on the frequency of enforcement of state danger laws, their potential impact on jail population levels is readily apparent. 25/

The question as to release or detention and the proper form of release are perhaps the most crucial decisions affecting an arrested individual and the most difficult facing a judicial officer. Because the initial presentment takes only minutes or even seconds, the need for complete and accurate information to assist judicial officers in their decisionmaking is even more evident. With such information, judicial officers will be able to

make prudent decisions that both protect the integrity of the justice system and the safety of the community while decreasing unnecessary pretrial detention.

Decision Point: Appointment of Defense Counsel

A second decision point during the initial appearance stage is appointment of counsel. The Supreme Court has ruled that the right to counsel extends to every critical stage of criminal proceedings, including felony arraignment and preliminary hearings. 26/ The ABA Standards Relating to Providing Defense Services urge the appointment of counsel "as soon as feasible after he [the defendant] is taken into custody, when he appears before a committing magistrate, or when he is formally charged, whichever occurs earliest." 27/

There is now evidence that earlier representation results in accelerated release decisions and release on less restrictive conditions. An NIJ-funded evaluation of the impact of early representation by defense counsel found that in the jurisdictions tested [Passaic County (Paterson), New Jersey; Shelby County (Memphis) Tennessee; and Palm Beach County (West Palm Beach), Florida], the defendants afforded early representation were released in less time than others who were provided the normally scheduled defense services. Specifically, "test clients obtained pretrial release much sooner (from two to five days) than control clients." 28/ Case processing generally was greatly improved:

> "[E]arly investigation, early plea negotiation and increased public defender involvement in cases at the lower municipal court level resulted in the early resolution of a higher proportion of test cases than control cases, and considerably reduced the average time from arrest to disposition for all test cases. The savings in case processing time and money were achieved by the test grantees without appreciable increase in the expenditure of resources." 29/

Thus it appears that judicial efforts to accelerate the appointment of counsel process can accrue benefits not just for the jail, but for the broader criminal justice system as well.

Stage 3: Adjudication

Pleas and Continuances

The adjudication stage refers to those actions that take place between the initial appearance and the disposition of the case. Of principal interest here is the way judicial officers choose to handle requests for continuances and their role in plea negotiations. Many of the judicial decisions influencing the jail population level determine not only whether or not a person will be detained in jail, but the length of confinement. How a judge rules on motions for continuances by prosecutors and defense counsel determines to a great extent the duration of the case. Such decisions usually depend on what is viewed as acceptable in the local legal culture; in some courtrooms, it may be an established rule not to ask for continuances or the reverse may be true, where continuances are routinely sought and granted. 30/ As continuances are granted, cases decay and the possibility of unnecessary detention increases.

An extensive study of the nature of case processing in 21 metropolitan courts found that in many jurisdictions scheduling of trials influenced the time of eventual case disposition. 31/ The faster courts were characterized by a shared expectation of early case settlement, be it accomplished by trial or plea. Conversely, "in the slower courts...no routine pattern exists to carry a case either to trial or nontrial disposition in a timely fashion." 32/

Where they exist, speedy trial laws and local court rules specify the time frame for case processing. How strictly judges enforce adherence to these laws can affect jail population levels. According to a Kentucky statute, for example, a preliminary hearing must be held within 10 days for those in jail and 20 days if released. If the hearing is not held within the time allocated, the case can be dismissed. This is a potent sanction which judges are not reluctant to use. As a result, in excess of 85

percent of the cases plead out before the 10- or 20-day limits, with an obvious effect on the jail population. 33/

The guilty plea is the most prevalent form of disposition of criminal cases in the United States. 34/ In many instances these pleas are a direct result of negotiation or plea bargaining. 35/ Whatever the stand on the appropriateness or propriety of plea bargaining, it contributes to expeditious case disposition, which in turn leads to reduced pretrial confinement. 36/

In Lycoming County (Williamsport), Pennsylvania, a procedure was instituted in 1982 whereby a list of criminal cases scheduled for preliminary hearing is sent to the judge, prosecutor, and defense counsel. The three then meet, together with a court stenographer and a representative of the Court Administrator's Office, within 24 hours of the preliminary hearing to review the case. Plea negotiations typically are conducted at this session. This procedure has contributed to a decrease in the pretrial jail population, according to the Court Administrator's Office. 37/

By taking an active role in expediting case processing, judges can be very influential not only in reducing pending caseloads and increasing disposition rates, but also in reducing the length of confinement of detained defendants. The judge can achieve these objectives by strictly enforcing an accelerated trial calendar for defendants in custody, not tolerating unjustified delays, and participating in such events as pretrial conferences where appropriate.

Stage 4: Sentencing

In the public mind, it is perhaps the sentencing function which most embodies the judicial role. While the judge's discretion in the area of sentencing has been curtailed somewhat in recent years by the passage of mandatory sentencing laws, habitual offender statutes and sentencing guidelines, judges still maintain a great deal of control over the fate of defendants at this stage. 38/

Judges may choose from a number of sentences, including incarceration or a non-jail penalty, such as fines, probation, community service, restitution to the victim, halfway house residency, treatment, or some combination. Finally, they may choose to suspend sentence or stay the execution of sentence.

Information Needed for Sentencing Decisions

Similar to the initial appearance, judicial decisions at sentencing require accurate and complete information to ensure that the most appropriate decision is made. The judge's sentencing decision is influenced by several factors. First, the judge bases his decision on the information received from other actors in the criminal justice system. Second, the judge's choice of sentence is proscribed by the discretion he is allowed. And third, the judge is influenced by the availability of sentencing alternatives in the community.

The most often-used source of information for judges at sentencing is the presentence investigation (PSI) report prepared by the local probation department. The timeliness of PSI reports affects the length of confinement of detained defendants awaiting sentencing. 39/ Also, prisoners destined for state facilities remain in jail unnecessarily if PSI preparation is unduly protracted.

Middlesex County, New Jersey, has adopted a procedure of "simultaneous sentencing" which does not require

conventionally generated PSI reports. Under this system, a probation case supervisor keeps abreast of the status of a case and prepares a PSI report in advance of the time when most pleas are negotiated. This allows the trial judge to accept a plea and "simultaneously" sentence the defendant. During the first month the process was examined (July 1984), of a possible 26 defendants, 25 had simultaneous sentences imposed, with an estimated five-to-seven weeks of normal PSI preparation time saved. 40/ Since its implementation in June 1984, an estimated 25 percent of all sentences have been handled simultaneously.

Sentencing options available to judges are tempered by certain constraints. In the past 15 years, for example, most states have enacted mandatory sentences for certain offenses. The most prevalent mandatory incarceration law involves driving while intoxicated (DWI). As of January 1986, 16 states had laws requiring jail or an alternative sanction for first-time DWI offenders, and 41 states had laws mandating a two-day to six-month jail term or other sanction for the second offense. 41/ Additionally, 15 states have instituted determinate sentencing, and another 13 either have passed or are considering the institution of sentencing guidelines. 42/ In some states (Oregon, Kansas, Indiana, Ohio, Virginia, Iowa, California and Minnesota), on the other hand, certain enhancements for introducing and/or expanding alternatives to incarceration have emerged, such as the state Community Corrections Acts. 43/

A recent NIJ study on the impact of mandatory incarceration for drunk driving legislation in five jurisdictions found that such laws put an additonal strain on correctional facilities as well as the courts. Minneapolis was the only site of the five examined able to effectively cope with the impact of mandatory incarceration legislation without expending additional resources. Anticipating the potential problem associated with the DWI law, the Minneapolis criminal bench developed a plan which included the requirement that offenders begin serving jail sentences within 48 hours of conviction to avoid weekend overcrowding. 44/

Besides the effect of increasing the number of admissions, mandatory incarceration legislation may extend the length of confinement of pretrial detainees. First, in the states with DWI mandatory incarceration legislation, a considerable rise in the arrest rate (due to publicity surrounding the law and its implementation) can cause a chain reaction throughout the criminal justice system, increasing the criminal court caseload and processing time--thereby the pretrial confinement--and incarceration rate. Second, by eliminating the incentive to plea bargain, pretrial detention can be also extended as a greater proportion of defendants opt to go to trial, particularly jury trials. 45/ To avoid surges in the court caseload, judges in Minneapolis devised a calendaring scheme which spreads court cases evenly throughout the week and, to offset expenditures, require convicted drunk drivers to pay the cost of their treatment and confinement. 46/

Decision Point: Sentencing Alternatives

Option: Probation

Probation is a court-ordered, community-based form of supervision requiring the offender to report to a probation agency for a designated period of time and to adhere to certain specified conditions.

For many first offenders the most prevalent form of sentence is unsupervised probation, whereby the person is ordered to remain arrest-free for a specific period of time and need not report to a probation officer on a regular basis. Should a rearrest occur, the judicial officer is notified and may revoke probation and order incarceration or increase the level of supervision for the probationary period.

Coined by the Advisory Commission on Intergovernmental Relations (ACIR) as the "63% solution" (the proportion of all offenders in correctional care), probation is clearly the most used form of correctional supervision program.

The ACIR reported that "as a mechanism for relieving or avoiding institutional overcrowding and stress, probation appears to benefit both states and localities." 47/ Numerous studies have shown that probation is substantially less costly than incarceration. 48/ Probation may also be combined with incarceration time, such as split sentences; shock probation, where an offender is first incarcerated for a short time and then resentenced to probation; intermittent incarceration, where an offender on probation serves time in jail on weekends or nights; and sentence modification, changing an incarceration sentence to probation following a certain stay in jail.

Under a recent NIJ grant, the Rand Corporation examined the use of probation for convicted felons in two California counties, Los Angeles and Alameda, over a 40-month period. The Rand study found that the increased use of probation, which had outpaced the rate of imprisonment, did not occur without a price. Almost two-thirds of those on probation were rearrested, and 25 percent of the new offenses involved violent crimes. The fact that the probation departments' budgets fell short of meeting the additional burden imposed by the burgeoning caseloads was one explanation suggested for the recidivism rate; some California probation officers supervise as many as 300 offenders. 49/

Intensive probation, a form of probation which allows for reduced caseloads and more active supervision, is being tried in a number of jurisdictions. One example, described as the "strictest form of probation for adults in the United States," the Georgia Intensive Probation Supervision (IPS) Program, is intended to save detention facility beds and dollars. The program consists of probation surveillance officers who supervise no more than 25 probationers. Along with such requirements as frequent reporting (five or more times a week) and a curfew, participation in the program typically includes community service, restitution, and fines. 50/ The probationers in Georgia defray the cost of the program by paying a fee of $10 to $50 per month as a condition of release.

Although in Georgia and Texas the intensive supervision program is restricted to the prison-bound population, other states, such as New York and New Jersey, are adopting similar programs for misdemeanants, as well. The New York Intensive Supervision Program is state funded and locally administered. In 1982, 60 percent of the ISP cases were misdemeanants. An evaluation of the program revealed that:

> "[T]hose on ISP, even though they were high risk probation cases, were more likely to succeed than regular probationers; they were less likely to be arrested for new crimes, and when they were arrested, their crimes were not as serious. About 40 percent of those on ISP for a year were transferred to regular probation, and after that 95 percent kept out of trouble." 51/

Its potential as an effective jail-reduction technique having been demonstrated, judges and probation officers alike stress the need to impose intensive probation only on persons who would otherwise be incarcerated; otherwise, it becomes an alternative to probation, rather than jail.

Option: Fine

The fine is frequently overlooked as an alternative to incarceration in the United States because its long and widespread use is generally underestimated. An endorsement by the National Advisory Commission on Criminal Justice Standards and Goals (NAC) has done little to alter this perception. 52/ Findings of a recent study document the extensive use of the fine in courts throughout the United States. 53/ Of the surveyed courts of limited jurisdiction (municipal courts and county or state courts which handle ordinance violations and/or state misdemeanors), one-fourth responded that fines are applied in all or virtually all criminal cases other than parking or routine traffic offenses. Another fifty percent of these courts indicated that fines are used for most of such cases. Of the general jurisdiction

courts, a majority reported that fines are used for most cases. 54/

Although incarceration or the threat thereof is the most typical form of inducement for payment of overdue fines, there are many alternative strategies which are currently in use, such as work programs, seizure of property, garnishment of wages, and driver's license revocation which obviate the need to incarcerate those individuals who are in arrears. Thus, in order to be an effective alternative to incarceration, increased reliance on the fine must be accompanied by nonincarcerative methods of enforcement.

Option: Community Service/Restitution

This form of sentence requires a defendant to perform uncompensated services for a specified amount of time for a public or private sponsoring organization. As of 1982, 100 community service programs were estimated to exist nationwide. 55/ Descriptions of four such programs follow:

- New York City Community Service Sentencing Project

  New York City has instituted an alternative to incarceration program which caters to offenders who ordinarily would be sentenced to between 30 and 90 days in jail. The client group is made up predominantly of unemployed, unskilled, minority members with prior records. Offenders participating in this program are sentenced to 70 hours of supervised community work in lieu of jail, subject to the condition that failing to comply with the program's requirements will result in resentencing.

  The recidivism rate for defendants participating in the community service project was no higher than for a comparable group sentenced to serve a short jail term: Approximately 50 percent of both groups were rearrested within 180 days of release. The New York Criminal Justice Agency has estimated that 70 jail

cells were saved by the project during one year, ending June 30, 1982. An additional benefit of the project was the 38,000 hours of unpaid community work performed by the offenders. 56/

- Prisoner and Community Together Community Service Restitution Program (PACT CSR)

  PACT was conceived in 1977 in Porter County, Indiana, as an alternative sanction to local jail incarceration for non-violent offenders (as of 1985, 6 counties in Northern Indiana were operating PACT programs). The judge refers an offender to PACT and in a written contract specifies the number of hours of community work to be served—6 hours per jail day. The private agency responsible for administering the program then determines which of the referred defendants it will accept.

  Notwithstanding the optimistic intentions of PACT to serve as an alternative to jail incarceration, one report suggested that "at best, 50 percent of the offenders receiving sentences would have actually served time in jail or prison. While this observation is certainly a disappointment in terms of the initial expectation of the program, it actually is rather good in terms of the 'state of the art' in this county." 57/ It appears that one of the program's goals, to take persons with more serious charges, has been achieved. An evaluation of the program revealed that over half of the participants had been convicted of either a serious misdemeanor or a felony and over a third had prior records.

- Fresno Adult Offender Work Program

  Aimed specifically at reducing weekend jail overcrowding, the Adult Offender Work Program was instituted by the Fresno County (California) Sheriff's Department in 1979 and expanded in 1982. The program offers the courts an alternative sentencing option in the form of community improvement projects for low-risk, non-violent criminal offenders. The judge

may refer to the program individuals sentenced to jail for 30 days or less. (Persons sentenced to longer terms are eligible for the county work furlough program.)

In 1984 the program accepted 2,664 offenders sentenced to jail terms resulting in an estimated savings of $550,000 in incarceration costs. Reducing jury trials, especially of DWI defendants, and accelerating case processing are added benefits ascribed to the program. 58/

- Earn-It Restitution Program

Launched in Quincy County, Massachusetts, in 1976, the "Earn-It" program was the first of its kind. Primarily targeted for youths, the program gives less serious offenders a "second chance", by allowing them to pay restitution instead of serving a jail term. Although the impact of the program on the jail population level has not been formally evaluated, the judges and community applaud other gains of the program. With the cooperation of community businessmen, there were 624 adult restitution determinations in 1980 and 150 adult placements in private or CETA jobs. Between January 1979 and January 1980, adult offenders paid over $140,000 to their victims. 59/

Option: Client Specific Planning

The court, public defender, probation officer, or other interested party may contract for the services of a private agency to develop an individualized alternative sentence plans for an offender. One such agency, the National Center on Institutions and Alternatives (NCIA), provides highly structured sentencing plans developed from a wide menu of alternatives to incarceration. During a recent 39-month period, NCIA prepared 350 plans nationally, of which two-thirds were accepted by the courts. 60/ Another private organization, the Tennessee Sentencing Support Center operates a similar program in

Nashville. As of January 1985, the Center reported that judges have accepted 46 of 62 submitted plans. In most cases these plans are used for those who are prison- or jail-bound. 61/

Option: Alcohol Treatment Programs

In the area of DWI and other alcohol-related offenses, judges have been particularly innovative in devising and implementing alternatives to incarceration. Quincy County (Quincy), Massachusetts, District Court judges have initiated a mechanism for handling offenders convicted of crimes committed while under the influence of alcohol. The strategy combines assessment and treatment of alcoholism with imposition of penalties. As a condition of a suspended sentence or as an alternative to a 48-hour mandatory jail sentence, offenders undergo a two-day assessment. If diagnosed as having an alcohol problem, the person may be required to enter a treatment program, which can entail as many as four Alcoholics Anonymous meetings a week for 30 weeks. If a family member participates, the period can be reduced to 20 weeks. An evaluation of the program indicated that during a three year period, over three-fourths of the participants (210 out of 279) sucessfully completed program requirements. The 5 percent recidivism rate for program participants was considerably lower than an estimated 15-17 percent state average for a similar group. 62/

A similar program which is reported to have had an impact on the jail population level is operating in Greene County (Springfield), Missouri, where the Circuit Court suspends the jail sentence (when less than 30 days) and orders the offender to attend a highly structured 46-hour session of counseling and treatment. The program requires that each individual pay a $200 fee, but hours of unpaid community service work may be substituted for those unable to meet this payment.

At each stage of the criminal case process, judges' decisions can influence the administration of individual

as well as systemic justice. The examples presented in this section demonstrate that in dispensing justice on a case-by-case basis, judges can concurrently and without jeopardizing the rights and fairness due each case, achieve efficient case processing and effective use of jail space.

To summarize, judges' use of summonses in lieu of arrest warrants can accomplish the dual goals of ordering the appearance in court of persons charged with violating the law and obviating the necessity to expend jail resources. In addition, judges can successfully use alternatives to pretrial detention or surety bail, such as release on recognizance, conditional release, supervised release and deposit bail without incurring an increase in the fugitivity or criminality rates. By keeping continuance abuse in check and holding pretrial hearings aimed at early case disposition, judges can facilitate expeditious case processing and thereby reduce the length of pretrial confinement. Judges can also ensure that the guilty not go unpunished by imposing alternative sentences, including probation, restitution, community service and special alcohol treatment programs, which are usually less expensive than incarceration and in some cases provide such societal benefits as voluntary labor, victim compensation and offender rehabilitation. The use of alternatives also allows jail space to be reserved for those offenders who pose a danger to the safety of the community.

The following section will present examples of other ways in which judges can affect jail population, principally through their leadership and administrative roles.

Section II
Administrative activities

> "The feeling that a judge is an all-powerful figure can only be held by someone who has never been in the court system. A good part of a judge's function is that of traffic manager, a manager who tries to see that a great number of things come together at the same time so that something can happen with the case. But even the best judge is constantly frustrated by his inability to make these things happen. Extraordinary cooperation between all sorts of people and agencies is required before anything takes place." 1/

Besides the individual case processing options available to judges and described in Section I, other judicial actions, more administrative and systemic in nature, can affect jail population levels. The above quotation demonstrates the most obvious administrative role example involving the management of ongoing courtroom activities. Judges' collective actions in promoting constructive and innovative responses to various criminal justice problems, including jail crowding, constitutes another example. These actions may take the form of changes in local court rules, such as revision of a local bail schedule, or enforcement of an already existing rule, such as the expansion of the use of summonses in lieu of arrest warrants.

In addition, judges in designated leadership roles--chief, administrative or presiding judges--can effectuate changes which will have a positive impact on jail populations. Benefitting from a comprehensive perspective of the criminal justice system, judges in leadership positions not only can identify problems, but can also focus the attention of others on those problems and marshall their collective efforts to address them. Chief judges can institute policy and rule changes,

enforce their implementation, disseminate information, and provide a forum for discussion of their colleagues' suggestions.

Finally, judges can become involved in extra-judicial activities, such as participating on task forces and commissions concerned with jail crowding. 2/ In this area, judges can ensure that the work of the group reflects the realities of the justice process and that any findings or recommendations have credence with the other members of the criminal justice system. Perhaps most important is the leadership role that judges assume in such a setting. While difficult to quantify, experiences from the LEAA Jail Overcrowding Project, National Institute of Corrections technical assistance efforts and the survey information obtained for this report indicate that a strong correlation exists between the jurisdictions that have successfully addressed jail crowding and the degree of judicial involvement and leadership present in the jurisdiction. 3/

Each of the examples provided in this section depict the fact that administrative actions by judicial officers ensue from the gathering and analysis of certain data, relevant to the particular action. In some jurisdictions, chief judges keep statistical records of various judicial activities such as disposition rates, age of cases and pending caseload, which they may use as indicators of both judicial productivity and efficiency of case processing. These reports can aid both chief and trial judges in identifying problem areas, such as unduly protracted processing of certain cases, untimely PSI preparation, and discrepancies and/or inconsistencies among judges in pretrial release, sentencing and continuance policies.

A census of the jail population is another useful tool for assessing the efficiency and effectiveness of caseload management. For the best results, a jail population census should minimally provide judges with the following information: the number of persons in jail, their length of stay and their status (i.e., pretrial, sentenced, awaiting transfer to other facility,

including INS holds, state prisons, and mental or treatment center). Equipped with this information, judges can determine whether defendants for whom low money bail was set were actually able to post bond, whether the cases of defendants in pretrial custody were placed on an accelerated calendar, and whether large portions of the jail population are comprised of persons pending trial, convicted persons awaiting sentence, or sentenced persons awaiting transfer to another facility.

The examples of particular administrative actions taken by judicial officers who have addressed jail crowding are divided into three categories: actions of chief judges; collective judicial actions; and task force participation.

Actions of chief/presiding judges

Delay Reduction Program: Maricopa County, Arizona

The Chief Circuit Court Judge of Maricopa County (Phoenix), Arizona, was particularly instrumental in the initiation in July 1981 of a one-year experiment in criminal case delay reduction and its subsequent institutionalization. The experiment confirmed that the problem of jail crowding was in large part a by-product of calendaring. Thus, the implementation of a delay reduction program accounted for the initial reduction in the jail population in Maricopa County.

The Chief Judge formed a planning group composed of local criminal justice actors to develop more stringent local rules regarding case processing that press the parties to meet deadlines and to have cases prepared earlier. Specifically, the rules call for the disposition of felony cases within 120 days of arrest, including the 30 days allowed for sentencing after a determination of guilt. Once a person is bound over from a lower court, pretrial conference and trial dates are set at the arraignment. Even if the conference is postponed, the trial date usually stands. Moreover, to promote early pleadings exchange of discovery was pushed forward to the outset of the case.

To achieve the successful implementation of the needed rule changes, it was crucial that key actors cast aside their traditional manner of proceeding with cases. It was important, the Chief Judge noted, to ingrain the sense that "these are the rules and everyone should know them." The Chief Judge related that "lawyers traditionally procrastinated, but by establishing these rules and changing the psychology of doing things, the old habits were broken. The idea was to use time more productively." 4/

Vertical Case Management Plan:
Middlesex County, New Jersey

The Presiding Judge's leadership and managerial skills have been identified as the single most important reason for the successful implementation of the Vertical Case Management Plan in Middlesex County, New Jersey. 5/ The primary aim of the plan is to improve efficiency of criminal case processing by eradicating duplication of tasks and paperwork.

To implement the vertical case management plan--a system of "100 percent accountability" 6/ whereby one caseworker works with one form and keeps one file on each defendant--it was necessary to retrain probation staff currently responsible for screening and supervising defendants. Members of the probation office's pretrial unit were cross-trained with more traditional probation officers, thus creating caseworkers capable of handling defendants from pre- to post-trial.

The vertical case management plan provides several benefits to the county. First, it allows case supervisors to screen nearly all of the cases countywide within 24 hours of arrest and filing of charges by the county prosecutor. In addition, special investigators are assigned early in the proceedings to deal with cases involving defendants held in custody. Observers of the plan suggest that "this daily review of all cases involving institutionalized defendants appears to be an effective device for helping to control the jail population and prevent overcrowding." 7/ Yet another gain to the county was the integration of the entire criminal court system through the participation in the plan. Finally, the receptivity of the local criminal justice system to successive changes also contributed to the establishment and success of the plan.

Executive Committees: Milwaukee County, Wisconsin

The Chief Judge of the Milwaukee County District Court has established executive committees which meet once a

month to promote cooperation among judges and enable them to discuss problems in their respective divisions. Jail crowding is a frequent topic of discussion among the judges assigned to the criminal court division. In this setting, the judges are given the opportunity to exchange thoughts about practices and procedures which may result in changes in case processing, bail determinations and sentencing. Often such exchanges result in decisions that alleviate jail crowding, such as development of nonfinancial release options and programs for special (e.g., mentally ill) populations.

Meetings and Directives: Wayne County, Michigan

The Administrative Judge of the Detroit Recorder's Court not only relies on judicial meetings to encourage more expeditious case processing, but exercises his authority to "initiate policies concerning the court's internal operations...". 8/ In this capacity, he has issued "docket control directives" which address such issues as: consolidation of cases, scheduling early discovery conferences, reassignment of counsel, arraignment procedures, transfer of cases, and procedures for a 90-day trial system. 9/ Since the implementation of these directives, the time interval between the arrest and trial has been reduced significantly. Furthermore, by establishing an accelerated calendar for custody cases, the length of confinement has also declined.

Collective judicial actions

Delegated Release Authority: King County, Washington

To achieve reductions in court processing time as well as jail admissions and length of confinement, local courts in some jurisdictions have opted to delegate pretrial release authority—subject to review by a judicial officer—to another agency, such as a pretrial release program. In King County (Seattle), Washington, the District Court has established guidelines for a "three-tier" release policy to be used by pretrial services personnel. The guidelines specify the types of charges for which the pretrial staff may release under its own authority, affect release only after phone consultation with a duty judge, or, for the majority of felony cases, render specific recommendations to the court.

Authorization to Deny Jail Admission to Persons Charged with Misdemeanor: Snohomish County, Washington

Another example of judicial delegation of release authority involves Snohomish County (Everett), Washington. Judges of both the lower and courts of general jurisdiction have permitted the jail administrator to refuse to detain persons charged with misdemeanors and, in all but the most serious felony charges, to release others on their own recongizance pending trial.

Expanded Bail Setting:
Mecklenburg County, North Carolina

An expanded bail-setting mechanism, such as the use of 24-hour magistrates, can accelerate the release of defendants. Bail magistrates in Mecklenburg County, North Carolina, for example, are on duty on a 24-hour basis to comply with bail laws that call for magistrate screening at an early stage. As each defendant appears before the magistrate, conditions of release are set.

Immediately following the magistrate's screening, the pretrial services personnel, also on duty around-the-clock, interview those persons for whom money bail was set to determine eligibility for "unsecured appearance bond", a form of recognizance release. Candidates for this type of release are promptly sent back to the magistrate who decides whether to let the financial bail stand or release to pretrial services supervision.

Early Disposition of Cases: Hudson County, New Jersey

The Central Judicial Processing (CJP) Court, established in Hudson County, New Jersey, in 1981 to expedite the disposition of cases, has proven to be an effective means of reducing jail crowding. One aspect of the plan to reduce delay in criminal case processing involves the institutionalization of a pre-initial appearance conference in which experienced staff from the prosecutor's and public defender's offices meet to screen all cases. Besides the more routine actions undertaken at an initial appearance hearing, such as amendment of charges, issuance of release orders, bail setting, scheduling the next court appearance, and plea acceptance, the CJP Court judge has the ability to quickly dispose of cases adjudged not likely to be indicted. By downgrading them to the status of a "disorderly person offense", cases are diverted to the lower court (municipal) for disposition. More serious offenses proceed to the Superior Court. This screening of cases at the earliest opportunity is decribed as a major factor in relieving jail crowding pressures, since persons charged with a disorderly person offense are generally released on nonfinancial bail or lower bonds, while those who plead to the charge are often fined by the CJP Court judge. In both instances, cases are expeditiously removed from the court calendar and defendants are released from jail.

Local Rule Providing Incentive for Early Pleas:
Davidson County, Tennessee

To cope with a growing criminal caseload and the pressures of maintaining a current calendar without benefit of a speedy trial law, the judges of Davidson County (Nashville), Tennessee, passed a local court rule providing for an incentive for early settlement in criminal cases. The new provision stipulates that the defendant is prohibited from pleading to any but the indictment charge subsequent to the settlement day conference. The settlement day is set at the felony arraignment and follows a motions hearing at which all pretrial motions must be made. Thus scheduled, the defendant accrues no advantages from waiting beyond the settlement day to plead guilty. Early pleadings not only expedite case disposition, but decrease pretrial jail stays.

Task force participation

Jail Population Management Plan: Shawnee County, Kansas

The Shawnee County Jail Population Management Plan, principally designed by the Administrative Judge, was developed in response to a consent judgment and order to reduce the population of the jail. The plan featured several jail population reduction measures, such as: establishing local rules regarding scheduling for case processing; instituting population control officers to monitor the jail population; expediting the transportation of state-bound prisoners; and developing emergency release procedures. According to the Administrative Judge in Shawnee County, these measures to tighten case processing have enabled Shawnee County to maintain its jail population level at or below the court-ordered limit. To achieve their objective, the Plan's Task Force systematically examined each step of the criminal case process to identify instances of delay. 10/ The Task Force's second function was to alleviate the delays and thereby eliminate the clogging experienced in the jail during each phase of the process.

Pursuant to the Task Force's recommendations, local rules were adopted to increase case processing efficiency. At 8:30 each morning, the duty judge--a designated judge who is responsible for conducting the initial appearance, appointing counsel, and monitoring the daily jail population--is informed of the circumstances of custody of every new inmate to make sure that the jailed persons are "plugged into" the calendar. This practice provides for a constant review of cases and thus enhances efficiency of case processing.

Conclusion

The research undertaken for this manual indicates that judicial involvement is the necessary force underlying successful attempts to deal with jail crowding. At each stage of the criminal case process judges decide who goes to jail and/or for how long. Their exercise of this discretion, however, is constrained by such factors as the existing legal framework, the availability of resources, and public attitudes. Even with such constraints, the manual provides numerous illustrations of practices and procedures which judges have been able to utilize to reduce jail crowding.

While the causes and solutions to jail crowding are systemic in nature, judges play a key part responding to the problem. It is hoped that the examples of successful judicial actions presented in this manual will better equip judges and other local criminal justice system actors to choose the most appropriate means of addressing jail crowding.

Appendix A
Names of judges interviewed

The Honorable Robert Broomfield
Chief Judge, Maricopa County Court
(since apointed to U.S. District Court)
Phoenix, Arizona

The Honorable Victor Manian
Chief Judge, Milwaukee County Court
Milwaukee, Wisconsin

The Honorable William Carpenter
Administrative Judge
Shawnee County Court
Topeka, Kansas

The Honorable David Simpson
General District Court
Winchester, Virginia

The Honorable Thomas Knopf
Chief Judge
Louisville, Kentucky

The Honorable Charles Edelstein
Dade County District Court
Coral Gables, Florida

The Honorable Lois Forer
Court of Common Pleas
Philadelphia, Pennsylvania

The Honorable Charles W. Fleming
Cleveland Municipal Court
Cleveland, Ohio

The Honorable Albert Kramer
Quincy District Court
Quincy, Massachusetts

The Honorable Frank Snepp
General Court of Justice
Charlotte, North Carolina

Stephen North, Esq.
Nashville, Tennessee
(formerly with the Davidson County District Court)

The Honorable Ernest Hayeck
District Court of Worcester
Worcester, Massachusetts

The Honorable Daniel Hanlin
Juvenile Court
San Francisco, California

The Honorable George Nicola
Presiding Judge, Middlesex County
New Brunswick, New Jersey

The Honorable Gilbert S. Goshorn
Brevard County Courthouse
Titusville, Florida

The Honorable Bruce Rutland
Lower Summary Court
Cayce, South Carolina 29033

Appendix B-1
Local contacts for programs and procedures cited in section I

Initial Appearance

- Mental health treatment recommendations

  Cobb County, GA: Wanda Stokes, Cobb County Pretrial Court Services Agency, P. O. Box 649, Public Safety Building, Marietta, GA 30061, (404) 424-0926

- Screening to divert mentally disabled

  Multnomah County, OR: Charles Wall, Director, Pretrial Release Office, 1120 Southwest Third Avenue, Room 301, Portland, OR 97204, (503) 248-3893

- Prompt assessment of mental health problems

  Monroe County, NY: Dr. Jim Clark, Mental Health Clinic for Socio-Legal Services, Room 20A, Hall of Justice, Rochester, NY 14614, (716) 428-4530

- Supervised pretrial release

  Dade County, FL: Tim Murray, Director, Pretrial Services, 1500 Northwest 12th Avenue, Suite 736, Miami, FL 33136, (305) 547-7987

  Milwaukee County, WI: Jill Fuller, Wisconsin Correctional Service, Court Intervention Program, 436 West Wisconsin Avenue, Milwaukee, WI 43203, (414) 271-1750

  Multnomah County, OR: Charles Wall, Director, Pretrial Release Office, 1120 Southwest Third Avenue, Room 301, Portland, OR 97204, (203) 248-3893

- Third party custody release

  District of Columbia: Jay Carver, Director, D.C. Pretrial Services Agency, 400 F Street, NW, Third Floor, Washington, DC 20001, (202) 727-2911

  Kentucky: John Hendricks, Director, Kentucky Pretrial Services, Administrative Office of the Courts, 403 Wapping Street, Frankfort, KY 40601, (502) 564-2350

- Prompt indigency screening appointment of counsel and defendant contact

  Palm Beach, Passaic and Shelby Counties--from URSA Institute evaluation: Ernest J. Fazio, J.D., The URSA Institute, Pier 1-1/2, San Francisco, CA 94111, (415) 398-2040

Adjudication

- Early plea negotiations

  Lycoming County, PA: Raymond Holland, Court Administrator, 48 West Third Street, Williamsport, PA 17701, (717) 327-2330

Sentencing

- Simultaneous sentencing

  Middlesex County, NJ: The Hon. George J. Nicola, Presiding Criminal Court Judge, One J. F. Kennedy Square, New Brunswick, NJ 08903, (201) 745-4155

- Handling DWI cases in mandatory incarceration jurisdictions

  Minneapolis, MN: Michael Cunniff, Deputy Court Administrator, Hennepin County Government Center, C 851, Minneapolis, MN 55487, (612) 348-2263 or Sig Fine, Superintendent, Adult Corrections Facility, 1145 Shenandoah Lane, Plymouth, MN 55447, (612) 475-4201

- Probation

  Alameda and Los Angeles Counties--from Rand Corp. study: Joan Petersilia, Rand Corporation, 1730 Main Street, P.O. Box 2138, Santa Monica, CA 90406, (213) 393-0411

- Intensive supervised probation

  Georgia: Vince Fallin, Deputy Commissioner, Probation Department, No. 2 Martin Luther King Drive, Room 954 East, Atlanta, GA 30334, (404) 656-4747

  New York: James Testani, Public Information Officer, New York State Office of Probation and Correctional Alternatives, 60 South Pearl Street, Albany, NY 12207, (518) 473-0684

  New Jersey: Harvey Goldstein, Director, Intensive Supervision Program, Administrative Office of the Courts, CN037, Trenton, NJ 08625, (609) 984-0076

- Community service sentencing

  New York, NY: Dick Rikkens, Community Service Sentencing Project, c/o Vera Institute of Justice, 377 Broadway, New York, NY 10013, (212) 334-1300

  Indiana: Mark Umbreit, Executive Director, PACT, Inc. (Prisoners and Community Together), 23 East Lincoln Way, Valparaiso, IN 46383, (219) 464-1400

- Community service sentencing (cont.)

  Fresno County, CA: Ronald Worley, Program Director, Adult Offender Work Program, Fresno County Probation Department, 808 South Tenth Street, Fresno, CA 93702, (209) 488-3565

- Restitution

  Quincy County, MA: The Hon. Albert Kramer, Quincy District Court, "Earn-It Program", Dennis Ryan Parkway, Quincy, MA 02169, (617) 471-1650

- Client specific sentence planning

  Alexandria, VA: Jerome Miller, Director, or Herbert J. Hoelter, Project Director, National Center on Institutions and Alternatives, 814 North Saint Asaph Street, Alexandria, VA 23314, (703) 684-0373

  Davidson County, TN: Susan Cannon, Director, Sentencing Support Center of the Opportunity House, Inc., 625 West Iris Drive, P.O. Box 40139, Nashville, TN 37204, (615) 297-7785

- Special treatment programs for DWI offenders

  Quincy County, MA: Andrew Klein, Chief Probation Officer, Quincy District Court, Quincy, MA 02169, (601) 471-1650

  Greene County, MO: Dr. Elissa Lewis, Director, Weekend Intervention Program, Southwest Missouri State University, Springfield, MO 65804, (417) 836-5802

Appendix B-2
Local contacts for programs and procedures cited in section II

Actions of Chief/Presiding Judges

- Delay reduction program

  Maricopa County, AZ: The Hon. Robert Broomfield, Chief Judge (since appointed to U. S. District Court), Maricopa County Court, 101 West Jefferson, Phoenix, AZ 85003, (602) 262-3916

- Vertical case management plan

  Middlesex County, NJ: The Hon. George Nicola, Presiding Criminal Court Judge, One J. F. Kennedy Square, New Brunswick, NJ 08903, (201) 745-4155

- Executive committees/development of nonfinancial release options and programs for special populations

  Milwaukee County, WI: The Hon. Victor Manian, Chief Judge, Milwaukee County Courthouse, 901 North Ninth Street, Milwaukee, WI 53233, (414) 278-4588

- Meetings and directives

  Wayne County, MI: The Hon. Samuel C. Gardner, Chief Judge, The Recorder's Court for the City of Detroit, 1441 St. Antoine, Detroit, MI 48226-2384, (313) 224-2474

Collective judicial actions

- Delegated release authority

  King County, WA: Frank Fleetham, Jr., Director, Court Services Section, King County Department of Corrections, E-119 King County Courthouse, Seattle, WA 98104, (206) 344-4020

- Court policy opposing detention of persons charged with misdemeanors

  Snohomish County, WA: William B. Harper, Snohomish County Department of Corrections, Fourth Floor County Courthouse, Everett, WA 98201, (206) 259-9395

- Expanded bail setting mechanisms

  Mecklenburg County, NC: Chief Distrcit Court Judge James E. Lenning, 800 East Fourth Street, Charlotte, NC 28202, (704) 373-6735

  Frederick County, VA: Judge David Simpson, General District Court, P. O. Box 526, Winchester, VA 22601, (703) 667-5770

- Early disposition of cases

  Hudson County, NJ: Robert Zucconi, Central Judicial Processing Court, 595 Newark Avenue, Jersey City, NJ 07306, (201) 795-6400

- Local rule providing incentive for early pleas

  Davidson County, TN: Diane Clark, Court Administrator, General Sessions Court, 301 Metro Courthouse, Nashville, TN 37201 (615) 742-8311

Task Force/Commission Participation

- Leadership in Systemwide Crowding Alleviation Efforts

  Brevard County, FL: The Hon. Gil Goshorn, Chief Judge of Circuit Court, P. O. Drawer T, Titusville, FL 32780-0143, (305) 269-8115

  Frederick County, VA: The Hon. David Simpson, General District Court, P. O. Box 526, Winchester, VA 22601, (703) 667-5770

- Leadership in Systemwide Crowding Alleviating Efforts (cont.)

  Mecklenburg County, NC: The Hon. Frank W. Snepp, Senior Resident Superior Court Judge, 800 East Fourth Street, Charlotte, NC 28202, (704) 373-6736

  Milwaukee County, WI: The Hon. Victor Manian, Chief Judge, Courthouse, 901 North Ninth Street, Room 500, Milwaukee, WI 53233, (414) 278-5112

  Shawnee County, KS: The Hon. William Carpenter, Administrative Judge, Shawnee County Courthouse, 214 East 7th Street, Topeka, KS 66603, (913) 295-4365

References

Introduction

1/ Abt Associates, National Assessment Program: Assessing Needs in the Criminal Justice System (Washington, DC: National Institute of Justice, January 1984), p. 9.

2/ For a discussion of jail conditions during the 1970's, see Karen Reixach and David Weimer, "American Jails: Still Cloacal After Ten Years," in Jameson W. Doig, ed., Criminal Corrections: Ideals and Realities (Lexington, Massachusetts: Heath Lexington Books, 1983), p. 95; Institute of Economic and Policy Studies, Correctional Economics Center, "Strategies for Implementing Jail Standards/ Inspection Programs" (Washington, DC: National Institute of Corrections, 1981); Albert Price et al., "Judicial Discretion and Jail Overcrowding," The Justice System Journal, Vol. 2, No. 2, (Summer 1983), p. 222.

3/ According to a 1982 National Sheriffs' Association report, 11 percent of the jails surveyed nationally were involved in law suits concerning conditions and another 20 percent were under court order. See Ken Kerle and Francis R. Ford, The State of Our Nation's Jails (Washington, DC: National Sheriffs' Association, August 1983), p. 12.

4/ See Duran et al. v. Elrod et al., CA7, No. 83-1547, 7/22/83, involving the Cook County (Illinois) jail; Badgely v. Varelas, CA2, No. 83-2345, 2/27/84, involving a New York jail; and Inmates of Allegheny County Jail v. Wecht; USDC WPa Civ. No. 76-743, 10/20/83, involving the Pittsburgh jail.

5/ Under a project sponsored by the National Institute of Justice, "New Directions in Correctional Facilities" (Grant No. 84-IJ-CX-0019), Project Director Charles B. Dewitt surveyed new construction techniques to identify

those which result in time and cost savings. For more information, contact the Construction Information Exchange/NCJRS, Box 6000, Rockville, MD 20850, (800) 851-3420 or (301) 251-5500.

6/ Earlier efforts, including the Law Enforcement Assistance Administration's Jail Overcrowding Project, have documented the need for a systemwide perspective by jurisdictions seeking to implement solutions to jail crowding. See Jerome R. Bush, Jail Crowding: Guide to Data Collection and Analysis (Washington, DC: LEAA, May 1982), and Walter Busher, Jail Overcrowding: Identifying Causes and Planning for Solutions (Washington, DC: LEAA, February 1983). Andy Hall et al., Alleviating Jail Crowding: A Systems Perspective (Washington, DC: NIJ, November 1985), provides a similar approach. Also, a companion manual has been developed for prosecutors to assist them in dealing with detention space issues while maintaining or improving community safety and the integrity of the system. See Jolanta J. Perlstein and D. Alan Henry, The Implications of Effective Case Processing for Crowded Jails: A Manual for Prosecutors (Washington, DC: National Institute of Justice, 1986).

7/ See Appendix A for a list of the 16 judges interviewed.

Section I

1/ SEARCH Group, Inc., Dictionary of Criminal Justice Data Terminology (Washington, DC: Bureau of Justice Statistics, 1981), p. 24. Other writs include bench and search warrants.

2/ Ibid, p. 200. Although both summonses and citations are used in lieu of arrest, the issuing sources differ. A judicial officer issues a summons, while a citation is issued by a law enforcement officer.

3/ American Bar Association, Standards Relating to the Administration of Criminal Justice, Second Edition, Vol.

II, Chapter 10, "Pretrial Release" (Boston: Little, Brown & Company, 1978), ABA 10-3.1.

4/ National Association of Pretrial Services Agencies, Performance Standards and Goals for Pretrial Release and Diversion: Release (Washington, DC: LEAA, 1978), NAPSA II(D).

5/ Wis. Stat. Ann. Section 968.04(1) West (1971).

6/ Fla. R. Crim. P. 3.120; Ill. Rev. Stat. Cn. 38 Section 107-11(a) (1977); Mont. Rev. Codes Ann. Sections 95-603-612(a) (1969); Tex. Crim. Pro. Code Ann. Section 15.03(b) (Vernon 1977).

7/ James J. Stephan, BJS Bulletin: The 1983 Jail Census (Washington, DC: Bureau of Justice Statistics, November 1984), p. 5.

8/ Pretrial release programs originated with the Manhattan Bail Project, established in 1961 as an experiment to identify defendants who might be released on their own recognizance. The National Association of Pretrial Services Agencies estimates that there are currently over 400 such programs in operation.

9/ Specifically, four jurisdictions--Pima County, Arizona; Baltimore City, Maryland; Lincoln, Nebraska; and Jefferson County, Texas--were selected for an experiment to test the impact of pretrial release programs. For purposes of the experiment, program operations were expanded, and less restrictive criteria were developed to extend eligibility for release on recognizance to defendants lacking sufficient "points" under existing point scales. Analysis of the experiment showed that use of less restrictive program criteria not only achieved a higher release rate, but did so without an adverse effect on the pretrial arrest or failure-to-appear rates. The report concluded that "this experiment had the strongest impact on release outcomes of any conducted: more defendants were released; more were released nonfinancially; release was secured more quickly; and release outcomes showed greater equity by ethnicity and

employment status. Despite the fact that many more defendants were released, the rates of failure to appear and pretrial arrest for the experimental group were no different than those for the control group." See Mary Toborg and Martin Sorin, "Pretrial Release Program Recommendation Practices: Should They Be Revised?," Pretrial Services Annual Journal, Vol. IV (Washington, DC: Pretrial Services Resource Center, July 1981) pp. 148-154.

Lending further support to less restrictive release criteria was the finding that judges were often likely to release more defendants on personal recognizance than the programs recommended. See Mary A. Toborg, National Evaluation Program, Phase II Report--Pretrial Release: A National Evaluation of Practices and Outcomes (Washington, DC: National Institute of Justice, October 1981), p. 59. The presiding judge in Maricopa County noted that the pretrial services agency in his jurisdiction has been identifying progressively more of the likely ROR candidates and, by providing verified information, has boosted the judges' confidence in the accuracy of their decisions. Echoing these sentiments, bail commissioners in that jurisdiction voiced the opinion that the more input they receive about the defendant, the better informed their decision. They felt that "taking away the guesswork reflects positively on the jail population."

10/ A Cambodian immigrant accused of theft remained in jail for three months in 1983 because he could not understand the Vietnamese interpreter who interviewed him. At disposition, he received a ten-day jail sentence. See Elizabeth Gaynes, ed., The Pretrial Reporter, Vol. VII, No. 4 (November 1983), p. 5. Besides the problem of interpreters' availability, there is the equally troublesome issue of insuring the accuracy of an interpreter's work. The 1978 Court Interpreters Act requires that all interpreters in the federal courts be certified as competent by the Administrative Office of the U.S. Courts. See also Beverly N. W. Lee, "Issues and Practices: Court Interpreting Services" (Washington, DC: National Institute of Justice).

11/ Release on Recognizance is the preferred option in 23 states and the District of Columbia, see John S. Goldkamp, Two Classes of Accused: A Study of Bail and Detention in American Justice (Cambridge, Massachusetts: Ballinger Publishing Company, 1979), p. 60.

12/ Not all states include all of these options in their bail statutes. Kentucky, for example, has officially banned private bail bondsmen, and only half of the states have legislation that specifically authorizes deposit bail.

13/ ABA, op. cit., Standard 10-5.1(a). NAPSA, op. cit., Standard III(E).

14/ Donald E. Pryor and Walter F. Smith, Pretrial Issues, No. 4, "Significant Research Findings Concerning Pretrial Release" (Washington, DC: Pretrial Services Resource Center, February 1982), p. 4.

15/ NAPSA, op. cit., Standard IV(B) states that the burden of rebutting the presumption of release on personal recognizance should fall on the prosecutor and that the prosecutor "must prove by clear and convincing evidence any need for restrictive conditions of release."

16/ ABA, op. cit., Standard 10-5.2.

17/ Paul Wice, Freedom For Sale (Lexington, Massachusetts: D.C. Heath and Co., 1976), pp. 77-78.

18/ James Austin, Barry Krisberg, and Paul Litsky, Supervised Pretrial Release Test Design Evaluation: Final Report (San Francisco, CA: National Council on Crime and Delinquency, June 1, 1984) 155 pp.

19/ See D. Alan Henry, ed., The Pretrial Reporter, Vol. IV, No. 3 (May 1980), pp. 9-10.

20/ Copies of the District of Columbia Standards on Third Party Custody are available from the D.C. Pretrial Services Agency, 400 F Street, NW, Third Floor, Washington, DC 20001.

21/ Mary Toborg et al., Pretrial Release Assessment of Danger and Flight: Method Makes a Difference (McLean, Virginia: Lazar Management Group, Inc., June 1984).

22/ There are two kinds of deposit bail: "defendant option," in which the defendant may choose between percentage deposit and other methods of meeting the financial bail requirement once the dollar amount is set, and "court option," in which the court decides both the amount and the method of satisfying the bond, giving the defendant no option. Sixteen states have percentage bail as a "court option", two with the administrative fee and fourteen without any fee. Six have "defendant option" deposit bail without a fee. Michigan and Ohio have defendant option in misdemeanor cases and court option for felonies. See D. Alan Henry, Ten Percent Deposit Bail (Washington, DC: Pretrial Services Resource Center, January 1980).

23/ Ibid., pp. 7-11.

24/ Barbara Gottlieb, Public Danger as a Factor in Pretrial Release (Washington, DC: Toborg Associates, January 1984), p. 1.

25/ For an excellent analysis of the various laws and the possible impact they might have on local criminal justice practices and jail population levels, see John S. Goldkamp, "Danger and Detention: A Second Generation of Bail Reform," Journal of Law and Criminology (Spring 1985). Findings of the forthcoming NIJ study by Toborg Associates cited above are expected to yield important information about the usage and impact of state danger laws. The federal government is also gathering information on the instances in which the new federal bail law has been applied.

26/ In Gideon v. Wainwright, 372 U. S. 335 (1963) the Supreme Court held that the Sixth Amendment right to counsel is applicable to the states, through the Due Process Clause, in all felony cases and extended that right to misdemeanor cases in Argersinger v. Hamilton, 407 U. S. 367 (1979), decision. The court ruled in U.S.

v. Wade, 368 U.S. 218 (1967), that a post-indictment lineup is a "critical stage" of the adversary system which warrants a defendant's right to counsel. Other critical stages of an adversary proceeding include arraignments and preliminary hearings. See Kirby v. Illinois, 406 U.S. 682 (1972).

27/ American Bar Association Project on Minimum Standards for Criminal Justice, Standards Relating to Providing Defense Services (Washington, DC: American Bar Association, 1968), Standard 5.1, pp. 43-44.

28/ Ernest J. Fazio, Jr. et al., Early Representation by Defense Counsel Field Test: Final Evaluation Report, Executive Summary (San Francisco: URSA Institute, August 1984), p. i.

29/ Ibid., p. ii.

30/ See James Eisenstein and Herbert Jacob, Felony Justice: An Organizational Analysis of Criminal Courts (Boston: Little, Brown & Company, 1977), for a discussion of the courtroom workgroup and the impact of workgroups and their environment on case dispositions in three jurisdictions: Baltimore, Chicago and Detroit.

31/ Thomas W. Church, Jr., Justice Delayed: The Pace of Litigation in Urban Trial Courts (Williamsburg, Virginia: The National Center for State Courts, 1978), 42-50.

32/ Ibid., p. 46

33/ In a recent examination of jail crowding in Rhode Island by NIC consultants, data on the jail population showed that only 4.5 percent of the persons detained pretrial during fiscal year 1983-84 were held over 90 days. But if a 90-day time limit had existed, the jail population would have decreased by almost 40 percent, from 250 to 159 inmates, during the same period, demonstrating the disproportionate effect that a small number of persons can have on jail population levels.

34/ Jeffrey L. Sedgwick et al., BJS Special Report: The Prevalence of Guilty Pleas (Washington, DC: Bureau of Justice Statistics, December 1984), p. 1.

35/ Although there is no universal definition of plea bargaining, one which is often used is "the defendant's agreement to plead guilty to a criminal charge with the reasonable expectation of receiving consideration from the state." See Herbert S. Miller et al., "Plea Bargaining in the United States" (Washington, DC: LEAA, 1978), p. 232.

36/ The ABA Standards Relating to Plea Discussions and Plea Agreements, 14.3.1, holds that plea discussions may take place when "it appears that the interest of the public in the effective administration of justice...would thereby be served." ABA Project on Standards for Criminal Justice, ABA Standards Relating to the Prosecution and the Defense Function, Approved Draft (Washington, DC: American Bar Association, 1971), p. 103. Furthermore, in Santobello v. New York, 404 U.S. 257 (1971), Chief Justice Burger noted that plea bargaining is "an essential component of the administration of justice." Taking an opposite stand, in 1973 the National Advisory Commission on Criminal Justice Standards and Goals called for the abolition of plea negotiations "as soon as possible, but in no event later than 1978." National Advisory Commission on Criminal Justice Standards and Goals, Task Force Report: Courts (Washington, DC: Government Printing Office, 1973), Standard 3.1, p. 46.

Different views are held about the proper role (if any) of the judge in plea bargaining. See Miller, op. cit., p. xxxix ff. The Federal Rules of Criminal Procedure, Rule 11(e), prohibit judges from participating in plea negotiations; the ABA standards relating to pleas of guilty recommend that the judge's role be supervisory and not participatory. ABA Project on Standards for Criminal Justice, Standards Related to Pleas of Guilty, Section 3.3(a) (Washington, DC: American Bar Association, 1968). In many states, however, judges' participating in plea negotiations is an accepted practice. See Eisenstein and

Jacob, op. cit., p. 249. A study of Chicago felony case processing found that judges actively participate in plea negotiations. Judges in favor of plea bargaining have stated that "it moves the caseload and disposes of cases which should not be tried." See Miller, op. cit., p. 232.

37/ Elizabeth Gaynes, ed., "Special Issue," The Pretrial Reporter (August 1983), pp. 4-5.

38/ See Sandra Shane-DuBow, Alice P. Brown, and Erik Olsen, Sentencing Reform in the United States: History, Content, and Effect (Washington, DC: National Institute of Justice, August 1985).

39/ In some jurisdictions PSI reports take what some judges find to be an inordinate amount of time. While some jurisdictions lament the fact that PSI preparation requires three or four weeks, others would welcome such an interval as an improvement. Some judges presented less grim scenarios. In Dade County PSI reports can be obtained at the judge's request in ten days for the incarcerated and six weeks for those released.

40/ The scheme is detailed in Section II.

41/ American Correctional Association, The Drunk Driver and Jail: Alternatives to Jail, Vol. 2 (Washington, DC: National Highway Traffic Safety Administration, 1986), p. vii.

42/ Shane-DuBow, op. cit., Table 32, pp. 290-292 and p. 280.

43/ Advisory Commission on Intergovernmental Relations (ACIR), Jails: Intergovernmental Dimensions of a Local Problem (Washington, DC: May 1984), pp. 66-74. Hereinafter "ACIR."

44/ Fred Heinzelmann et al., NIJ Research in Brief--Jailing Drunk Drivers: Impact on the Criminal Justice System (Washington, DC: National Institute of Justice, November 1984), p. 3.

45/ Ibid., p. 2.

46/ Ibid. Instead of mandatory sentences or sentencing guidelines, one judicial officer has suggested that plenary appeals of sentences be instituted. Under this system judges would retain wide discretion in the sentences they imposed, but their decisions would be subject to appeal at the instigation of both the defense and state. Judges who stray too far afield from the mainstream sentence, whether in the harsh or lenient direction would be checked by this procedure. Thus, the intended consistency of sentencing guidelines can be achieved by this procedure, while leaving what is thought to be a fundamentally judicial function, sentencing, in the hands of the judges.

47/ ACIR, op. cit., p. 68.

48/ Ibid., p. 65.

49/ See Joan Petersilia et al., Granting Felons Probation: Public Risks and Alternatives (Santa Monica, California: Rand Corporation, 1985).

50/ Stephen Gettinger, "Intensive Supervision: Can It Rehabilitate Probation?", Corrections Magizine, Vol. IX, No. 2 (April 1983), p. 7.

51/ Ibid., p. 16.

52/ The NAC stated that "properly employed, the fine is less drastic, far less costly to the public, and perhaps more effective than imprisonment or community service". National Advisory Commission on Criminal Justice Standards and Goals, Task Force Report: Corrections (Washington, DC: Government Printing Office, 1973), p. 570; see also Robert W. Gillespie, "Sentencing Traditional Crimes with Fines: A Comparative Analysis." International Journal of Comparative and Applied Criminal Justice, 5 (Winter 1981), pp. 197-204. Data from England, West Germany and Sweden indicate that fines are used extensively as a criminal sanction, including for some violent offenders. See James A. Carter and George

F. Cole, "The Use of Fines in England: Could the Idea Work Here?" Judicature 64, 4 (October 1979), pp. 154-161. Robert W. Gillespie, "Fines as an Alternative to Incarceration: The German Experience," Federal Probation, Vol. XXXXIV, No. 4 (December 1980), pp. 20-26.

53/ Although the research revealed that fines are the predominant sanction of limited jurisdiction courts, the frequency of their use as the sole sanction could not be determined. See Barry Mahoney, Fines in Sentencing: A Study of the Use of Fine as a Criminal Sanction (Washington, DC: National Institute of Justice, 1984), pp. 28-30.

54/ Ibid., p. 80

55/ Kevin Krajick, "The Work Ethic Approach to Punishment," Corrections Magazine (October 1982), p. 8. Many of these programs have come under criticism because they allegedly are typically used for first-time, middle-class, white offenders who otherwise may have received probation or suspended sentence.

56/ Vera Institute of Justice, "The New York Community Service Sentencing Project: Development of the Bronx Pilot Project" (New York: Vera Institute of Justice, 1981). See also ACIR, op. cit., pp. 69-70.

57/ Mark S. Umbreit, "Community Service Sentencing: Jail Alternative or Added Sanction?", Federal Probation, Vol. 45, No. 3 (September 1981), p. 9. In terms of financial savings, the community received a total benefit of $196,000 during one operating year based on 15,000 hours of community service work performed for a total of 56 institutions. See PACT, Inc., "Community Service Restitution: A Re-examination" (April 1, 1981), Appendix 10.

58/ Richard Worley, "Adult Offender Work Program: Work as an Alternative to Jail Confinement," Adult Probation Services Annual Report, February 1985, p. 5.

59/ Andrew Klein, "The Earn-It Story" (Massachusetts: Citizens for Community Courts, Inc., 1981), p. 65.

60/ Herbert J. Hoelter, "Make the Sentence Fit the Felon," The Judges' Journal, Vol. 21, No. 1 (Winter 1982), pp. 50-51.

61/ The figures were provided by Susan Cannon, director of the Tennessee Sentencing Support Center.

62/ Albert L. Kramer, "The Drunk Driver: Where is He Heading?", The Judges' Journal, Vol. 22, No. 4 (Fall 1983), p. 63.

Section II

1/ New York City Criminal Court Judge Harold Rothwax quoted in Loudon Wainwright, "Making Things Happen," Saturday Review, 1978, and cited by Thomas J. Cook and Ronald W. Johnson et al., Basic Issues in Court Performance (Washington, DC: National Institute of Justice, July 1982), p. 183.

2/ Another extra-judicial activity involves maintaining close working ties with the local and/or state bar association(s). Numerous judges credit the successful implementation of jail reduction and expeditious case processing strategies to the widespread acceptance by the bar, including discussions of appropriate solutions.

3/ Not all judges believe that their involvement in jail crowding task forces is appropriate, however. In Lane County (Eugene), Oregon, all ten Circuit Court judges refused to participate in a 20-member Criminal Process Coordinating Council charged with investigating crowding in the local jail, including jail population characteristics; pretrial, pre-sentencing, and sentencing alternatives; and projected jail space needs for the next 15 years. Citing the separation of powers doctrine, the judges claimed that members of the judiciary should not advise the executive branch of government. Although the judges agreed to play an integral role in executing plans

to reduce the jail population, some Council members feared that the lack of judicial input into formulating those plans would impede the Council's effectiveness. "If the judges, as a body, don't agree with whatever approach that the Criminal Process Coordinating Council would take, that approach wouldn't be nearly as effective," remarked the Council's chairman, District Attorney Doug Harceleroad. Reported in the Eugene, Oregon, Register-Guard, July 27, 1985.

4/ Telephone conversation with the Honorable Robert Broomfield, Chief Judge, Maricopa County, AZ.

5/ Paul B. Wice, "An Experiment in Responsible Case Management: How Middlesex County (New Jersey) Was Able to Cement the Cracks in its Justice System," unpublished paper, Drew University (October 1984), p. 24. As of mid-August 1985, Judge Nicola has established a plan of taking the court to the jail. Once a week, the judge attended by his courtroom staff, holds court in the visiting room of the jail. This procedure, according to Judge Nicola, allows him to dispose of more cases and expand use of release on recognizance. The sheriff is pleased because he is no longer responsible for transporting prisoners to and from the court.

6/ Paul Wice quoted in The Home News, August 26, 1984.

7/ See note 4, supra, p. 20.

8/ Michigan Criminal Rules 8.108 - Michigan Criminal Rules 8.110.

9/ February 14, 1983, Memorandum to All Recorder's Court Judges, from Chief Judge Samuel C. Gardner.

10/ Besides the Administrative Judge, other Shawnee County criminal justice system decisionmakers involved in formulating the plan included the District Attorney, the director of the County Department of Corrections, the director of the Jail and a County Counselor.

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