

IMPROVING CASEFLOW MANAGEMENT IN THE FULTON COUNTY SUPERIOR COURT

FINAL REPORT

By

Barry Mahoney

With

Suzette Brann

Alan Carlson

Madeleine Crohn

Richard B. Hoffman



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**The Justice Management Institute
1888 Sherman Street, Suite 410
Denver, Colorado 80203
Phone: 303-831-7564 Fax: 303-831-4564**

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JMI Reports Submitted to the Superior Court, 2000-2002

1. JMI Phase I Report (January 2000)
2. Phase II Report on Civil Caseflow Management (March 2002)
3. Report on the Superior Court’s ADR Program (April 2001)
4. Reports on Drug Court Operations (May 2001 and November 2001)
5. Reports on Clerk of Court’s Court Operations and Case Management Support (August 2001 and March 2002)

IMPROVING CASEFLOW MANAGEMENT IN THE FULTON COUNTY SUPERIOR COURT

FINAL REPORT

INTRODUCTION

During the period between May 1998 and December 2001, The Justice Management Institute (JMI) worked with the Fulton County Superior Court on a multi-phase technical assistance project aimed at improving criminal and civil caseflow management in the Court. This final report of the project provides an overview of JMI's work with the Court and summarizes accomplishments of the Court in the areas that have been the subject of our attention. It also identifies key issues in the main areas in which JMI has been providing technical assistance and makes recommendations for action in these areas.

JMI's work with the Superior Court during Phase I (May 1998 – February 2000) focused principally on problems of criminal caseflow management. At the outset of Phase I there was broad agreement—within the Court (judges and senior staff) and on the part of other justice system practitioners—that the most serious problems facing the Superior Court were backlogs and delays in felony case processing, and that these problems were closely linked to problems of severe overcrowding in the Fulton County Jail. The project's first priorities were to identify specific problems impeding effective criminal case processing and—in collaboration with judges, other court personnel, and other criminal justice system leaders—to develop a comprehensive approach to criminal case processing. The Phase I report, completed in January 2000, discussed all aspects of the Court's caseload and made recommendations for improvements in handling civil and family law cases as well as criminal cases. However, the primary emphasis was on improvements in criminal caseflow.

During 2000 and 2001, the JMI team continued to work with the Court on criminal case processing issues, but also provided technical assistance in several other areas identified as needing attention. This report focuses on five main areas of activity:

1. Felony case processing, including initiatives aimed at (a) improved pre-indictment case processing; (b) improved post-indictment case management of new cases; and (c) backlog reduction.
2. Civil case processing, with emphasis on the design and initial implementation of a pilot project involving experimentation with techniques of early judicial involvement and pro-active case management.
3. Alternative dispute resolution (ADR) processes, including an assessment of ADR mechanisms used in civil and family law cases.

4. The Fulton County Drug Court, with emphasis on strengthening the Drug Court's capacity to function effectively in delivering substance abuse treatment services, and thus provide an effective diversion option in appropriate cases.
5. The Office of the Clerk of the Fulton County Superior Court, with particular attention to identification of key functions related to court case processing, development of performance standards and measures, and staff resources.

Each of these topical areas is addressed in a separate section of this report, preceded by additional materials (including reports or memoranda prepared by a consultant or JMI staff member) included in a separate Appendix.

SUMMARY OF MAJOR DEVELOPMENTS IN KEY AREAS

1. Felony Case Processing and Backlog Reduction.

Considerable progress has been made in improving criminal caseload management, though much still remains to be done. As emphasized in JMI's Phase I report, significant improvement in felony case processing in Fulton County will require changes in structural arrangements and in case processing policies and practices by a number of entities over which the Superior Court has no direct control. However, the Court itself has made important strides in this area. Of particular note, the Court has reduced the number of its active pending criminal cases from over 10,600 in 1998 to less than 6,000 as of August 2002 – a decrease of about 40 percent.

Several Superior Court judges have been implementing a two track differentiated case management (DCM) process aimed at bringing newly-indicted cases to resolution expeditiously, taking into account the seriousness and complexity of the cases. Additionally, some judges (including all of the judges that have been using the new case management procedures effectively) have been able to make substantial progress in reducing the number of old pending cases on their dockets. Within the Court Administrator's office, an Office of Case Management has been established, and staff in that office have been instrumental in developing information on defendants in jail and information on cases pending for more than one year since indictment. The information is very helpful in managing caseloads, and the development of this staff capacity should be valuable as further initiatives are undertaken to reduce delays and backlogs.

Importantly, improvements are now underway with respect to the availability and use of caseload management information. Timely and accurate caseload management information—including information on pending caseloads and case processing times—is an essential component of effective caseload management. With a new ACS Banner information system becoming operational in 2002, close attention should be paid to procedures for data entry, quality control, and production of management information reports. Agreement should be reached with the Clerk's office on performance standards with respect to the timeliness and accuracy of data entry, as well as on other aspects of record keeping and file maintenance essential to the Court's caseload management

functions. During the Fall of 2001, progress was made toward developing such agreement.

The caseflow management innovations introduced by some judges during 2000-2001 are promising and should be continued. Continuing attention needs to be paid, across the court, to the issue of criminal case backlog reduction. As discussed in JMI's Phase I report, we believe that elimination of the backlog of old pending cases (defined as the number of cases pending more than an acceptable period of time [which for non-capital cases should probably be a period of no more than six months]) is critically important for effective overall management of the caseload. If the "front end" of the system is streamlined (an area in which progress is underway, including initial implementation of a complaint room run by the District Attorney's staff), it will be important for the Court to be in a position to handle newly indicted cases expeditiously.

2. Civil Case Processing.

An innovative Civil Case Management Pilot Project began operations in January 2001, after about six months of detailed planning by the two pilot judges, chambers staff, staff in the office of the Court Administrator, and members of the civil bar. A basic approach calling for early judicial and attorney attention to each case was agreed upon, procedures were specified, tracks were established (providing for varying periods of time for completion of discovery and other case events, depending on the complexity of the case), and forms and instructions were drafted.

Preliminary evaluation results, based on a survey of lawyers who have had experience with the pilot project, are very promising. By substantial margins, the survey respondents indicated that they felt the timing of the "early intervention" case management conference was appropriate; that the new proceedings speeded up the resolution of the case; that the pilot program approach helped sharpen the attorneys' focus on key issues (including settlement prospects); and that the deadlines established under the pilot program procedures result in more predictable case scheduling. The great majority of respondents (73 percent) said that they would prefer to use the new caseflow management procedures in the future. Interviews conducted with the two pilot program judges (Judge Manis and Judge Baxter) made it clear that they felt the new system works well.

Independent of the pilot project, several other Superior Court judges began using pro-active approaches to civil caseflow management during the 1999-2001 period. While the approaches are not identical, they have a core of common elements including prompt review of all cases assigned and motions filed; early case scheduling conferences; and frequent reviews of the judge's open case list with particular attention to cases that have been pending an unduly long time or that need action for other reasons. The judges using such approaches report very positive results, including more rapid case resolution and fewer cases set for trial.

3. The Superior Court's ADR Program.

During the Fall of 2000, JMI was asked to undertake a small-scale assessment of the alternative dispute resolution (ADR) activities of the Superior Court. The aim was to develop information that would be useful in planning for ways to use ADR most effectively in connection with civil and domestic relations litigation. Ms. Madeleine Crohn, a member of the staff of the National Center for State Courts and previously the Executive Director of the National Institute for Dispute Resolution, was engaged to serve as a consultant on ADR issues. Ms. Crohn reviewed a number of documents and reports, made a four-day site visit to Atlanta, and prepared a report that was provided to members of the County's ADR Board.

Ms. Crohn's report noted that the caseload handled by the Superior Court's ADR Center had remained generally constant over the preceding five years (approximately 800-1,000 cases per year heard by ADR professionals), but that the composition of the caseload has changed dramatically. Use of mandatory non-binding arbitration has decreased considerably and use of mediation has increased substantially. Attorneys appear to prefer mediation. The percentage of civil and domestic relations cases referred for mediation through the ADR Center that result in settlement is about 70 percent, which is much higher than the percentage resolved through off-site mediation conducted through the Atlanta Justice Center (approximately 45 percent). While there may be good reasons for the variance, the difference in resolution rates suggests the need for further research to learn why the ADR Center's rate is so much higher. Ms. Crohn found that the ADR Center's records are in good order, that basic information on operations is available, and that its staffing levels appear to be appropriate for its current workload.

Importantly, Ms Crohn found that most participants in the civil and domestic relations court process in Fulton County—attorneys, parties, clerks, administrative staff, and judges—appeared to have little awareness of the full range of ADR options. Early neutral case evaluation, for example, is an option that is available in Fulton County and is likely to be appropriate for some kinds of cases, but few practitioners were aware of this mechanism. Her recommendations focus on conducting research to evaluate court-annexed ADR activities, re-assessing and modifying the current procedures for mandatory non-binding arbitration in light of knowledge about attorneys' practices and attitudes, developing the capacity to use mediation more frequently and more effectively, and formulating plans to educate the bench and bar about ADR. She notes that it is desirable for practitioners (including judges and chambers staff) to be aware of the full range of ADR options and knowledgeable about the types of situations in which particular mechanisms may be especially appropriate. Ms. Crohn's report makes the point that effective use of ADR is (and should be) closely linked to the Court's overall caseflow management system, and recommends that consideration be given to possible reorganization of the ADR Center in light of the experience with the civil case management pilot project.

In addition to the previously established ADR programs, Superior Court judges handling civil cases have begun using another form of alternative dispute resolution in

some types of relatively complex civil cases: the referral of these cases to an experienced Superior Court judge (Judge Philip Etheridge) for a settlement conference aimed at avoiding resolving the case immediately and avoiding what would otherwise probably be a protracted trial. Preliminary feedback on this mechanism has been very favorable, and it appears to hold promise as an effective dispute resolution for some categories of civil cases.

4. The Fulton County Drug Court.

The Fulton County Drug Court has been in operation since 1997. In mid-2000, JMI was asked to provide technical assistance to the Drug Court program, as part of work on the Fulton County Caseflow Management Improvement Project. The technical assistance was provided by Suzette Brann, a JMI staff member who has had extensive experience working in and with substance abuse treatment programs, including drug courts. Ms. Brann's work focused principally on organizational and service delivery issues related to the provision of treatment services to participants in the Drug Court program. One of the main objectives of her initial work with the Drug Court was to assist it in increasing the client population base, which had dropped to a low of 60 and which took in only 19 new clients during the March – May period in 2000.

Ms. Brann has prepared two reports on the Drug Court--one in May 2001, the other in November 2001. As these reports make clear, a great deal has been accomplished since May 2000. The client population increased from 60 to well over 200 during the period of her work, the admissions procedure was streamlined and made more consistent, the treatment protocol was re-designed, and the case management protocol was strengthened. Additionally, needed training was provided for the Drug Court's treatment and case management staff, focusing particularly on the delivery of effective treatment services for African-American males, and a start was made on developing an internal capacity for monitoring operations and evaluating program effectiveness. Ms. Brann's May 2001 report included 25 recommendations, covering six main areas: program operations and management; re-definition of staff roles; further strengthening of the treatment and case management protocols; staff development; improved documentation of program operations and outcomes; and improved use of sanctions and incentives for drug court participants. Her November 2001 report noted significant improvement in developing a treatment protocol, strengthening the treatment program curriculum, and improving case management operations. Areas identified as needing further attention included documentation of client progress and of specific interventions, in-service training for staff, assessment of community resources, and development of program management reports.

5. Clerk's Office Operations.

The Clerk of the Superior Court is an independently elected official who has statutory responsibility for filing, file maintenance, and record keeping functions that are critically important for the effective operation of the Court. JMI's Phase I report noted that, while the Clerk's office had made progress in reducing delays in the filing of case-

related-documents during 1999, the office was not operating at full effectiveness. During Phase II, JMI was asked to provide technical assistance focused on improving the operations of the Clerk's office, to enable staff in the office to provide better service to the Court. The technical assistance was provided by Alan Carlson, then the Director of JMI's San Francisco office and now (since mid-January 2002) JMI's President. Mr. Carlson's previous experience includes seven years as the Clerk and Court Administrator of the San Francisco Superior Court.

Like Ms. Brann, Mr. Carlson has submitted two reports on the operations of the Clerk's Office. His first report, in July 2001, addressed four main sets of issues:

- The role and responsibilities of the Clerk's office;
- Performance standards for the completion of tasks for which the Clerk's office is responsible;
- Key characteristics of the office's workload and staffing; and
- Organizational structure of the office, with particular attention to the implications of the team approach for the office's needs with respect to staff skill levels and training needs.

The July 2001 report noted that there are two main categories of tasks currently performed by the Clerk's office: (1) tasks clearly associated primarily or exclusively with maintaining the official record of the Court; and (2) tasks related to case management, including entry of data needed for case management purposes and production of reports used for case management purposes. Some of the tasks in the second category may not be ones that are clearly within the Clerk's statutory duties, and it may be that some of those duties can be performed by Court staff instead of Clerk's office staff. The July 2001 report recommended that representatives of the Superior Court, the Clerk's office, and other relevant county agencies first meet and reach consensus on the complete list of clerk of court and case management tasks that must be done, including the tasks that will be needed to implement the new automated case management information system and any new case management procedures to be implemented by the Court. Once agreement is reached on the list of tasks (and on which tasks the Clerk's office will have responsibility for and which will be done by the Court's staff), the next step would be to develop performance standards covering both the substance of the tasks and the timing (promptness) of completion of the tasks. Once the performance standards have gone through a broad review process, they should be used as the basis for defining staffing needs, staffing levels, and training needs. They can also be used to assist in refining the organizational structure of the Clerk's office.

The next phase of technical assistance involved "field testing" an approach for generating business practice descriptions and performance expectations. The field focused on one area—preparation of the "sentence package"—that involves considerable interaction between staff of the Clerk's office and (a) staff and judges of the Superior Court; and (b) staff of the Sheriff's Department. Mr. Carlson met with staff of the Clerk's office and the Court Administrator to develop a set of goals, tasks, expectations, and performance measures in this area. His report, submitted in March 2002, concludes

that the approach provides a feasible technique for improving Clerk's office operations that involve interaction with the Court and with other agencies. It also highlighted the importance of involving knowledgeable representatives of each agency involved in an activity and of developing quality control mechanisms and training capabilities.

I. FELONY CASE PROCESSING AND BACKLOG REDUCTION

JMI's Phase I report noted that the problems in felony case processing in Fulton County that were apparent at the outset of this project had not developed suddenly, but rather had been taking shape for many years and were to a significant extent the product of structural arrangements that originated long ago. The report took the position that dramatic improvements could be made—and that the results of such improvements would be a much improved quality of justice and a safer Fulton County—but emphasized that lasting improvements would require a genuinely collaborative approach.¹

Felony cases in Atlanta and the rest of Fulton County move through a bifurcated system. Typically, these cases are initiated in the City of Atlanta Municipal Court or in one of the other municipal courts in Fulton County. Initial appearances and bond hearings take place in Municipal Court; cases proceed further when the Municipal Court Judge finds probable cause for bindover to the Fulton County Grand Jury. The case is not filed in Superior Court unless and until an indictment is returned by the Grand Jury—often many months after the initial arrest.

Like the courts, the systems for prosecution and defense are bifurcated. There are prosecution offices at both the municipal and county level, with the District Attorney's office not ordinarily becoming involved in a felony charge case until after the defendant has been bound over for Grand Jury action. Similarly, the Fulton County Public Defender does not ordinarily become involved in cases until the case is in Superior Court.

Reliable data on case processing times have not been available through the Tiburon automated data processing system that, until being replaced by the new ACS Banner system, had been used by the Clerk's Office and the Fulton County Jail. However, criminal justice practitioners in Fulton County acknowledge that lengthy delays are common, both prior to indictment and after indictment. During 1998-1999, consultant David M. Bennett tracked a sample of cases involving defendants arrested and booked into the Fulton County Jail in 1997. Bennett found average periods of 51 days from initial booking in the Atlanta City Jail to booking in the Fulton County Jail and 307 days from booking in the Fulton County Jail to disposition of the case in the Superior Court.² Data from other sources indicated periods of three to six months from arrest to indictment and four to six months from indictment to disposition.

Overall, the data from the 1997-99 period indicate that felony cases typically have taken approximately ten to twelve months from arrest to disposition. By contrast, the American Bar Association's time standards call for 90 percent of felony cases to be resolved within 120 days, 98 percent within 180 days, and 100 percent within one year.

¹ Barry Mahoney and Richard B. Hoffman, *Improving Caseflow Management in the Fulton County Superior Court* (Denver and Washington, D.C.: The Justice Management Institute, January 2000), p.1. This report is hereafter cited as "JMI Phase I Report."

² David M. Bennett, *Fulton County, Georgia, Criminal Justice System Analysis* (1999)

JMI's Phase I report described the problems in some detail and set forth a number of recommendations for re-design of felony case processing in Fulton County.³ Recognizing the systemic nature of the problems and the fact that the Superior Court is limited in what it can accomplish on its own, many of the recommendations focused on streamlining the "front end" of the felony case process, to enable better early case screening and a much faster pre-indictment case processing. However, the report also included recommendations focused on post-indictment case processing and on reduction of the backlog of "old" felony cases. Particular stress was placed on the importance of developing reliable information about caseloads, so that these caseloads could actually be managed. This section of the final report focuses on progress made in these areas.

A. Pre-indictment Case Processing.

The Superior Court has relatively little control over the pre-indictment stages of felony case processing, but its capacity to manage its felony caseload is affected in significant ways by what happens (or does not happen) prior to the time an indictment is filed. In a streamlined and expeditiously functioning system, cases would arrive in the Superior Court shortly after arrest and initial charging. Cases that in the judgment of experienced prosecutors did not warrant prosecution as felonies would have been screened out at an early stage, either dismissed or prosecuted as misdemeanors. Those in which indictments were filed would be ones in which the prosecution felt that there was a high likelihood of conviction. Lawyers for both the prosecution and the defense would be able to prepare their cases while witnesses are available and memories are fresh, and forensic reports would be available at an early point for review by both prosecution and defense.

In reality, cases typically arrive at the Superior Court many weeks (and sometimes a number of months) after the offense was committed and the defendant arrested. Lab reports are seldom available at the time of the indictment, and often not for many weeks thereafter. The opportunity for early investigation of the case by the defendant's assigned lawyer is often lost, because the lawyer is generally not assigned until after the case reaches the Superior Court. In the past, defendants not infrequently languished in jail, without even the opportunity to speak with a lawyer, between the time the case was bound over until the time an indictment was filed. Lengthy delays during this period were one reason for the severe jail crowding that developed in Fulton County in recent years.

The bifurcated structural arrangements that contribute to delays probably cannot be changed without legislative action. However, some progress has been made in initiating a "*Complaint Room*" process that would enable the Fulton County District Attorney to conduct early screening of cases involving newly arrested defendants charged with felonies, including conducting interviews of arresting police officers. Once the complaint room is in full operation, the next step would be to establish procedures under which, after the case has been screened in the complaint room, the assigned prosecutor

³ JMI Phase I Report, supra note 1 at pp. 51-63.

would confer with defense counsel within a few days. Optimally, the defense counsel would have received a copy of the police report and other available discovery information and would have had an opportunity to confer with the defendant and undertake initial investigation of the case by the time of the conference with the prosecutor. If the case could be resolved at this initial stage, a disposition could be negotiated and presented to the court for entry of a plea.

In the Fall of 1999 the Superior Court established an *All-Purpose Hearing* procedure designed to assure prompt attention to cases involving defendants in jail who have been bound over for action by the Grand Jury. Under this procedure, every defendant held in the Fulton County Jail is brought before a judicial officer within 14 days after being booked into the jail. In advance of the all-purpose hearing, the defendant is interviewed by one of the Court's pretrial services officers to obtain information relevant to the setting of conditions of pretrial release, and arrangements are made for counsel to be appointed for indigent defendants.

At the hearing, cases are assigned to either a *simple* or *complex* track. For simple cases, a bond is set and pretrial order entered. In these cases, the order provides that the defendant may be released on his own recognizance if not indicted within 45 days. In complex cases, a bond is set and the order will require indictment within 90 days or there will be another bond review proceeding with a presumption that (except in capital cases) the defendant will be released on his or her own bond.

The all-purpose hearing procedure is not a panacea for the problems of pre-indictment delays and jail crowding, but it has had the salutary effect of bringing cases involving defendants held in pretrial detention to the attention of the Court—and of the District Attorney and defense counsel—at a much earlier stage than in earlier years. One result has been the release on non-monetary conditions of a significant number of defendants who, unable to afford bond, would have remained in jail during the pretrial period. The combination of the all-purpose hearing and the work of the Court's Pretrial Services Unit has had a significant role in alleviating jail crowding during the 2000-2001 period.

B. Post-indictment Case Processing.

Criminal cases in the Superior Court are assigned on an individual calendar basis, following the filing of an indictment. Each judge, except for those assigned to the Family Division, carries a mixed caseload of criminal and civil cases. Judges follow different practices in how they manage these caseloads, but over the past three years several judges have instituted a structured process aimed at bringing cases involving newly-indicted defendants to resolution expeditiously. While specific calendar management practices vary somewhat even among this group of judges, the basic two-track procedure they use may be outlined as follows:

- a. **Early review.** When a case first appears on the judge's criminal list, the chambers staff sets the case for appearance on a plea and arraignment calendar within a short period of time (e.g., 14 days).
- b. **Meaningful arraignment date.** The assigned judge presides at the arraignment and—in consultation with the prosecutor and defense counsel—designates cases for either the *immediate trial track* or the *case management track* and sets dates for next events. Immediate trial track cases are relatively uncomplicated ones that are expected to reach disposition within 90 days without significant court intervention or supervision. In these cases, which constitute a substantial majority of the caseload, both a trial date and a final plea date are set at the arraignment. Cases on the case management track require court involvement and early resolution of pretrial issues. In these cases, a scheduling order will be entered at the arraignment to set dates for opting into discovery, provision of discovery by the District Attorney, and an initial case management hearing to be held within 45 days with the defendant present.
- c. **Rapid resolution of uncomplicated cases.** For cases on the immediate trial track, it is expected that the prosecutor and defense counsel will discuss possible non trial resolution, with a view to reaching an agreed upon disposition within approximately two months. Pleas may be taken at any time prior to the final plea date, but these cases do not return to the judge's plea and arraignment calendar unless a plea is entered or the District Attorney dismisses the case. The final plea date is scheduled 10-15 days prior to the trial, and after that the judge will only accept a plea to the charge as stated in the indictment. Discovery is provided by the District Attorney at least 10 days prior to trial, though informal discovery may take place before then. Dispositive motions are heard immediately prior to trial.
- d. **Case management in complex/serious cases.** Cases on the case management track generally involve especially serious charges or have some other features that make them unusually complex. At the case management hearing, the judge confirms that discovery has been exchanged and, if necessary, resolves any remaining discovery disputes, schedules a cut-off date for motions to be filed, schedules a date for motions to be heard, identifies any actions needed to prepare for trial (e.g., ordering medical records, exchanging lab reports, requesting psychological evaluations), and sets any other deadlines needed.
- e. **Motions and final plea date.** At the motions hearing, the judge hears and rules on all motions, if possible. After ruling on the motions, the judge determines whether anything else needs to be resolved in order for the parties to decide upon a plea or other non-trial disposition. A date is then set for a final hearing within 5-10 days from the date of the ruling on the motions. At the final hearing, the Court determines whether the District Attorney's final

plea offer has been made, and whether it has been accepted or rejected by the defendant. If there is no plea, the case is scheduled for trial, with the clear understanding that thereafter, if the prosecutor is not willing to try the case on the scheduled date, the District Attorney can only dead docket or nolle prosequere the case. Similarly, the defendant's alternative to trial is to enter a non-negotiated plea to the charge(s) in the indictment.

- f. Trials.** When this system works as it should (and several judges have been able to make it work effectively), the cases remaining to be tried tend to be major felonies: capital cases and other cases involving one or more of the “seven deadly sins”.

The judges who follow this general approach have adopted several key principles of sound caseload management that help shape their calendar practices:

- The initial arraignment is used as a key control point. The assigned judge presides at the arraignment and—in consultation with the assistant district attorney and defense counsel—determines the track to which the case will be assigned and sets the schedule to be followed.
- Every case always has a next scheduled date, and both the prosecutor and defense counsel know what is expected to happen before and at the next date.
- Postponements of case events are short—typically one or two weeks, and one month at the most.
- Counsel are expected to be prepared and ready to resolve cases (or take whatever other actions may be necessary to move the case toward disposition) when they are in court.

Because of the problems in obtaining reliable data, it is not currently possible to assess the relative effectiveness of these procedures by comparison with the more traditional (and less pro-active) approaches taken by other judges in the Court in terms of their impact on case processing times and pending caseloads.⁴ From anecdotal reports, however, it appears that the system is working effectively and is succeeding in achieving relatively speedy resolution of newly filed cases assigned to the judges who are following these procedures.

C. Felony Case Backlog Reduction.

JMI's Phase I report emphasized the desirability of eliminating the backlog of “old” felony cases.⁵ As that report noted, large backlogs complicate system re-

⁴ The new ACS Banner system, when fully operational, should enable production of reports that would facilitate such comparisons.

⁵ JMI Phase I Report, *supra* note 2, pp. 56-63

design. It will do little good to develop streamlined front-end case processing if the result is simply to accelerate the process of filing newly indicted cases in an already overloaded Superior Court.

The Court has recognized the importance of eliminating the backlog of old cases and during the 2000-2001 period tried three main approaches to reducing it. First, two judges—one experienced, one newly named to the Court--were assigned large groups of old cases to review and seek to resolve. Results of this approach were mixed. While a substantial number of cases were resolved (mainly by pleas and placement on the dead docket), cases in which there was any possibility of a trial could not be resolved because of the apparent lack of resources—judges, court staff, prosecutors, defense lawyers, and courtrooms—to try the cases.

Second, each individual judge was asked to reduce the number of old pending cases assigned to him or her. This effort, too, appears to have had somewhat mixed results. Working with their case managers and making use of information on the “case cards” maintained in chambers by the case managers, a number of the judges have been able to identify the old cases and make substantial progress in bringing them to disposition.

Third, to assist the judges, staff in the Case Management Office of the Office of the Trial Court Administrator began to gather somewhat detailed information on old cases for use by the judges in reviewing their caseloads. In early 2001, inventories of the cases in each judge’s caseload that had been pending for more than one year were prepared, drawing both from information on the Tiburon system and from the case cards maintained by the case managers. These inventories—lists of cases showing the case number, defendant’s name, indictment date, charges, last action, and (where known) the defendant’s custody status—were provided to the judges, for use by them in contacting counsel and making plans for disposition of the cases.

Not surprisingly, despite the staff’s efforts to “scrub” the data to make the lists as accurate as possible, there were some instances where cases shown as pending on the inventory lists had actually been closed but the data had not yet been entered into the automated system by staff in the Clerk’s office. This problem has been addressed through meetings involving the Court’s Case Management Office, the case managers, and staff in the Clerk’s office who are responsible for data entry. Distribution of the inventory lists has had the effect of heightening awareness of the backlog cases and helping to stimulate action on them.

Overall, the old case backlog reduction efforts appear to have had a positive impact. The Court’s inventory of pending cases has been significantly reduced. Reports produced by the Court Administrator’s office show an active pending caseload in August 2002 of 5,870 cases. That figure reflects a decrease of about 45 percent from the 10,638 pending cases reported for the end of December 1998.

D. Developing Accurate and Timely Management Information

JMI's Phase I report noted that, although there were deficiencies in the management information reports produced by the Tiburon automated system, it should be possible for the Court to make better use of available information about cases and caseloads. The report recommended tapping the expertise developed by the case managers for some of the judges to increase the overall case and caseload management capability of the Court.

During the 2000-2001 period, the Court has sought to draw upon this expertise, and has made important progress in developing its capacity to produce and analyze useful management information reports. The Case Management Office, headed by a Deputy Court Administrator, has taken important initiatives in two main areas: information on defendants in jail and information on cases pending for more than one year since indictment. In both areas, staff in the office—consisting mainly of persons with experience as case managers—have worked with staff in the County's Information Technology (IT) Department and in other agencies (particularly the Sheriff's office, for jail cases) as well as with the judges' case managers, to develop information reports that are accurate and current. In both areas, they have made significant progress in producing management information reports that can be useful to individual judges in managing their caseloads and also useful to the Court's leaders in managing the overall business of the Court, identifying problems, and formulating plans for addressing the problems.

The work done in developing information on cases that the Court has defined as being in "backlog" status—i.e., pending for more than a year since indictment—is illustrative of both the difficulties and the initial success of these efforts. As noted above, the inventories were prepared using information on the "case cards" maintained in judges' chambers by the case managers, coupled with information on the automated system maintained by the County's Information Technology (IT) Department. One main objective was to develop accurate information about the actual pending caseloads by purging the electronic data processing system of cases that should have been closed or otherwise removed from each judge's list of open pending cases.

The process of developing accurate information on the old cases proved to be difficult. The initial lists prepared by staff in the case management office turned out to include some cases that had in fact been closed by the judge responsible for the case, but for which data showing the closing had not been entered into the automated system by staff in the Clerk's office or (in some instances) onto the case card maintained by the case manager. The staff has persevered, however, and these efforts appear to be moving the Court much closer to having—for the first time—an inventory of pending cases that is widely regarded as reliable. As of early 2002, the inventory was reasonably accurate only for the cases over one year old, but the process of developing this list has shown that it will be possible to develop accurate

reports that show the age and status of all pending cases. Such reports are essential for effective caseload management and elimination of the backlog.

With the introduction of the ACS Banner system during 2002, the prospects for developing accurate caseload management information reports should improve markedly. The design of the new system should eliminate some of the data entry problems that have made it difficult to produce useful reports in the Tiburon system, and training programs have been undertaken for staff that will be responsible for data entry. However, for the new system to function effectively and to be really useful to judges and managers, it will be important to institute performance standards and quality control measures aimed at ensuring consistent, timely, and accurate data entry. This would require coordination with the Clerk's office, because the Clerk's office remains responsible for the data entry function.

E. Recommendations

JMI's recommendations for improving overall felony caseload management in Fulton County were set forth in considerable detail in the Phase I report.⁶ As noted above, many of those recommendations focused on improving system operations at the "front end" of the felony case process and were addressed to the entire criminal justice community in Fulton County, at both the municipal and county levels. While leaders of the Superior Court may be able to encourage the making of such changes, planning and implementation of them is basically in the hands of other organizational entities at the county and municipal levels.

Even with respect to post-indictment case processing, the Superior Court is dependant to a significant extent upon the resources and capabilities of other organizations. These include, in particular, the District Attorney's office, the Public Defender's office, the office of the Clerk of the Superior Court, the Sheriff's Department, and the County's Information Technology Department. As discussed above, it appears that significant progress has been made in some areas, but it is difficult to quantify the progress because of the lack of reliable information on case processing times and pending caseloads. For this reason and others—including the vital importance of having timely and reliable information for individual case decision-making, management of caseloads, problem identification, performance monitoring, evaluation of case management innovations, and future planning—the top priority recommendations set forth in this section are addressed to the court and involve improvements in the information systems used or relied upon by the Court. The recommendations are as follows:

1. Continue and expand the work of the Case Management Office of the Office of the Trial Court Administrator in (a) developing reliable information on pending caseloads and case processing times; (b) working collaboratively with judges, case managers, and the County IT Department to identify "problem cases" and

⁶ JMI Phase I Report, pp. 51-63.

- assist in planning for ways to resolve them; and (c) analyzing and developing recommendations for caseload management improvements.
2. As the new SCT Banner software is introduced into the Court, closely monitor the operation of the new system with particular attention to the timeliness and accuracy of the caseload management information reports produced by the system. Identify any problems involving late data entry, inaccurate reports, or untimely reports, and ensure that the problems are addressed immediately. Recognize that the new system will be only as effective as the competency and training of the persons doing data entry and operations management enable it to be.
 3. Work collaboratively with the Clerk's office and other agencies involved in felony case processing to (a) develop agreement on performance standards for timely and accurate data entry and for other tasks essential for management of cases and caseloads; and (b) establish mechanisms for monitoring performance in relation to the standards and for resolving problems that impede effective caseload management.
 4. Assuming that reliable information on case processing times and pending caseloads can be obtained, undertake an assessment of the case management innovations now being used by several of the judges, by comparison to traditional approaches used for post-indictment case processing in Fulton County. If the innovations are shown to be effective, develop plans for broad adoption of them.
 5. Continue and expand efforts to resolve indicted cases involving newly indicted defendants expeditiously, building on the innovations introduced by several judges during 2000-2001.
 6. Continue the work on reduction of old case backlogs. Refine the definition of backlog to include non-capital cases pending for over six months, and begin to plan for a comprehensive backlog elimination program as outlined in JMI's Phase I report.
 7. Continue the Court's participation in efforts to make overall system improvements, including participation in work on pre-indictment case processing (including the All Purpose Hearing and implementation of the complaint room procedures), reduction of jail crowding, backlog elimination, development of systems for early and continuous representation of defendants beginning at or before the accused's first court appearance following arrest, and the strategic planning initiative started by the Deputy County Manager for Criminal Justice.

II. CIVIL CASEFLOW MANAGEMENT IMPROVEMENT

JMI's Phase I report noted that the Superior Court's civil caseload had been relatively stable during the 1992-98 period, and that the general sense of judges and staff was that civil case processing is not unduly delayed. However, it also noted that there was a widely shared perception that civil cases could be resolved more quickly in State Court than in Superior Court, because the Superior Court judges have to devote so much time to criminal cases⁷. The report recommended that the Court consider adopting an approach to civil caseload management that would incorporate principles and techniques of differentiated case management (DCM), and outlined key components of such an approach.⁸

During the last six months of 2000, the Court engaged in an active planning effort aimed at designing an experimental pilot project that would test the feasibility of using the DCM approach for civil cases in Fulton County. A planning committee was formed consisting of judges who would participate in the pilot project, members of their staffs, and bar members active in civil litigation. JMI staff and consultants helped facilitate the planning process, beginning with an introductory conference on civil caseload management improvement led by JMI Senior Consultant Maureen Solomon that was held in July 2000.

A. Structure of the Civil Case Management Pilot Project

During the July – December, 2000 period, the core planning committee worked on design of the pilot project, shaping basic concepts of DCM⁹ to the particular circumstances of litigation in Fulton County. Judge Stephanie B. Manis chaired the working group and contributed many forms and practices that she had found helpful in managing her civil caseload. The lawyers and court staff members participating in the project contributed further suggestions, and consideration was also given to forms and procedures used in other jurisdictions.

Under a DCM approach, cases are screened at an early stage to classify them by complexity and gauge the amount of time and attention likely to be needed to reach a fair and timely disposition. On the basis of this initial screening, cases are assigned to a "track" that has specific time expectations and deadlines.

As designed, the civil pilot project has followed basic DCM concepts, setting up procedures to classify cases by complexity and gauge the amount of time and attention likely to be necessary to reach a fair and timely disposition. It employs two key DCM strategies: *early judicial and attorney attention* and *customized case management*. All newly filed civil cases assigned to one of the judges participating

⁷ JMI Phase I Report, p. 10

⁸ Ibid., pp. 63-65.

⁹ For discussion of key concepts of differentiated case management (DCM), see Holly Bakke and Maureen Solomon, "Case Differentiation: An Approach to Individualized Case Management," *Judicature*, Vol. 73, No. 1 (June-July 1989), pp. 17-21.

in the pilot project (Judge Manis and Judge Jerry Baxter) are first reviewed by a member of the judge's staff (staff attorney or judicial assistant) approximately 30 days after the complaint is filed, to determine whether service on the defendant(s) has been perfected. If service has not been perfected, the case will be placed on a No Service calendar, with the expectation that it will be dismissed unless the plaintiff shows cause for keeping the case open. When service has been made, the case is set for a *case management conference* optimally to be held approximately 45 to 60 days after the filing of the complaint.

When the date is set for the case management conference, the judge's staff sends a packet of materials to counsel for each party. The packet contains three items:

- A letter advising counsel that the case has been assigned to the pilot judge, briefly describing the pilot project, referencing the two documents enclosed with the letter (a Case Management Order and a Status Report form), and directing counsel to (a) complete the Status Report and return it to the judge's chambers at least one day before the conference date; and (b) ensure that lead counsel attend the conference in person, with authority to bind the client.
- A Case Management Order requiring the parties and counsel to appear at the judge's chambers on a date and time specified in the order, and to complete and return the Status Report form prior to the conference.
- A Status Report form, to be completed by counsel for each party, that when completed should show the nature of the case, the nature of the dispute, the main issues for trial, the damages or other relief requested, the discovery anticipated (including an indication of any discovery problems or issues that may be anticipated), motions likely to be filed, the anticipated length of a trial if one is held, type of alternative dispute resolution (ADR) procedure that would be appropriate (and suggestions of specific ADR providers), and any special circumstances that might affect the course of discovery and case scheduling. A separate page of the Status Report form—not to be filed in the record or supplied to opposing counsel—asks counsel to make a realistic evaluation of the prospects for settlement of the case, and to provide information plans for discussing settlement and ideas for ways to increase the possibility of settlement.

At the initial case management conference, the judge will get input from both counsel, and—taking account of the information provided by counsel concerning settlement prospects—may explore the possibility of prompt settlement. In any event, the judge will assign the case to one of five possible tracks, drawing on information in the status reports and provided orally by counsel at the case management conference:

Track I is for cases that require no discovery, such as administrative appeals. It is expected that cases on this track will be resolved in three to five months after the filing of the complaint.

Track II is for simple cases—typically involving few parties, few disputed issues, and a small number of documents and witnesses--that will require little or no discovery. These cases are expected to reach disposition within nine months from filing.

Track III is for “average” cases, likely to involve several disputed issues and some expert witnesses and requiring an average discovery period. The goal is to resolve cases on this track within twelve months.

Track IV is for complex cases such as class actions or medical malpractice cases. They are expected to require a longer discovery period and require a greater degree of judicial involvement to resolve discovery disputes, hear and rule on motions, and plan for a possibly lengthy trial. These cases are expected to take fifteen to twenty-four months.

Track V is reserved for custom treatment of extremely complex cases or other cases that have unique features requiring special scheduling.

The judge’s assignment of the case to one of these five tracks is incorporated into a ***Scheduling Order***. The scheduling order specifies the track to which the case is assigned, sets a deadline date for the completion of discovery and deadlines for the filing of various types of motions, and may direct the parties to participate in and ADR process with any costs to be borne equally by the parties. The scheduling order provides explicitly that there will be no extension of the discovery and motion deadlines without a showing of good cause; stipulations of counsel will not suffice. The order also sets an approximate trial date (taking account of the schedules of counsel for the parties), requires the parties to submit a proposed consolidated pre-trial order two week prior to the call of the trial calendar, and provides that additional deadlines and dates may be set following a ruling on pending motions.

Provision is made for counsel to contact the judge and request additional conferences (which can be held via telephone) if discovery disputes or other issues arise that may impede the expeditious completion of case preparation and call for judicial intervention. With this type of access available, it is hoped that motions will be filed less frequently than in civil cases where the judge is not actively involved from an early stage. For cases that appear likely to go to trial, a final conference will be held six to eight weeks prior to trial, at which time—unless the case settles at or before the conference—a firm trial date will be agreed upon. A final pretrial order will be issued at least 14 days before the trial date.

B. Pilot Project Objectives and Hoped-for Results

The structure of the pilot project clearly calls for a significant “up-front” investment of the time of the judge, the judge’s staff, and the attorneys for the parties. Planners anticipated that this early investment would pay off in several ways:

- Earlier resolution of some cases.
- Earlier identification of key issues, and thus a more focused discovery process in cases that are not resolved at or before the initial case management conference.
- Fewer motions and related hearings (and thus less judge and clerk time required for hearings, legal research, and opinion preparation)
- Less cost to litigants
- Greater predictability in case scheduling
- Fewer cases scheduled for trial
- Greater lawyer and litigant satisfaction with the process

The project differs from traditional approaches to handling civil litigation in several significant ways—perhaps most importantly in its clear acknowledgment of the Court’s responsibility for seeking to resolve disputes in an expeditious fashion that takes account of the varying complexity of cases and the differing needs for discovery and preparation. It also seeks to develop a process that is more predictable but in some ways is less formal—for example, in encouraging use of ADR and in seeking to resolve discovery disputes via telephone conferences rather than through formal (and more expensive and time consuming) motion practice. And, by requesting the parties to provide information about settlement prospects at the outset of the case and following up on this topic at the initial case management conference, it was hoped that the project might be able to help catalyze satisfactory settlements at a very early stage of the litigation.

By setting a schedule at the outset of the case but not setting an actual trial date until after discovery has been completed, the project also takes a more realistic approach to trial setting. The reality is that, in most general jurisdiction trial courts, fewer than five percent of the civil cases filed ever result in a trial. Cases are resolved short of trial for many reasons, and—given the uncertainties that exist in any court and any litigation process—it is simply not feasible to set a true “firm” trial date at the inception of a case.

The pilot project began operations on January 1, 2001. There was an inevitable lag time between initial start-up and the time that case management conferences could be held, but pilot project judges began holding these conferences in March. By December 2001, they had accumulated considerable experience with the new procedures. Reports on the initial case management conferences have been positive, and it appears from our initial assessment that the pilot project is having success in meeting its main objectives.

C. Preliminary Results from Survey of Practitioners

During 2001, an initial survey of lawyers who have had experience with the pilot project was undertaken. For cases assigned to one of the two pilot judges that reached resolution during the year, a questionnaire was sent to counsel for each of the parties. The questionnaire sought to elicit counsel's views about the operations of the pilot project as they impacted upon the just-concluded litigation. Issues addressed through the questionnaire include the following:

- Appropriateness of the timing of the initial case management conference.
- Effects of the new civil case management procedures on the resolution of the case (including speeding or slowing, simplifying or complicating the resolution of the matter).
- Extent to which the Status Report form is helpful in focusing on the important points in the case.
- Appropriateness of the assignment to a particular case track.
- Effectiveness of the Case Management Order issued at the initial case management conference.
- Extent to which the pilot program's procedures provide opportunity for appropriate use of ADR.
- Impact on motion practice.
- Counsel's perception of the extent to which his or her clients are served better (or worse) by the experimental program.

As of March 31, 2002, completed surveys had been received from a total of 78 attorneys who had been involved in cases assigned to one of the pilot judges during 2001.¹⁰ The survey responses show very favorable opinions of the pilot project on the part of the great majority of the attorneys. Key points include the following:

1. **Timing of the initial case management conference.** By an overwhelming margin, attorneys indicated that they felt the timing of the initial conference was appropriate. Sixty-five of the 75 respondents (83.3 percent) said they felt the timing was appropriate. Only 7 disagreed and 6 did not respond.
2. **Impact on the speed of case resolution.** Forty-two of the respondents (53.8 percent) felt that the new caseload management procedures speeded up the resolution of the case. Only one attorney felt that the new procedures delayed the case, four said that the impact on speed of resolution was not yet known, and 26 (33.3 percent) said that they thought the new procedures had no effect.

¹⁰ Two different versions of the evaluation form were used. There were some questions that appeared on one but not both versions of the evaluation form, and the order of the questions was not identical in the two versions. However, most of the questions were the same. This summary draws on responses to questions that were the same in both forms. For more detailed information on the pilot project evaluation questionnaire and the responses to them, see the full report on the pilot project, contained in the Appendix to this Final Report.

3. ***Sharpening the focus on key issues.*** One main purpose of the Status Report form – which the attorneys in the pilot program are expected to fill out prior to the initial case management conference – is to get the attorneys to focus on the important points in the case at an early stage. If this approach works well, it should help narrow the issues in dispute and may help catalyze an early resolution of the case. Just under half of the respondents (48.7 percent) agreed that the Status Report form, including the statement of settlement prospects, was helpful in focusing the lawyers on key points. Only 7 (9 percent) disagreed, while 33 (42.3 percent) were uncertain or did not express a view.
4. ***Assignment of cases to tracks.*** Thirty-seven of the respondents (47.4 percent) felt that the assignment of cases to specific tracks based on case complexity resulted in appropriate treatment of the case. Only seven (9 percent) disagreed, while 34 (43.6 percent) were uncertain or did not answer.
5. ***Effectiveness of the initial case management conference.*** Respondents were asked two slightly differently worded questions about their experience with the initial case management conference: (1) whether it sets out a workable plan for litigation; and (2) whether the order issued at this conference works well. As the following data show, most of the respondents felt that the initial conferences resulted in a workable plan for the litigation. Just under half felt that the case management order works well. There were a substantial number of neutral or “no answer/not applicable” responses to this question, probably reflecting the fact that many of the cases were resolved at or before the initial case management conference.

	Conference sets out a workable <u>plan for litigation</u>		Case Management Order works well	
	<u>N</u>	<u>Yes</u>	<u>N</u>	<u>Yes</u>
Agree/strongly agree	44	56.4%	38	48.7%
Neutral	16	20.5%	12	15.4%
Disagree/Strongly Disagree	3	3.8%	4	5.1%
No Answer/Not applicable	15	19.2%	24	30.8%

6. ***Opportunity for use of ADR.*** One way in which the pilot project differs from long established case management practices in the Superior Court is in providing for the issue of possible referral to an alternative dispute resolution (ADR) mechanism (e.g., mediation, arbitration, early neutral evaluation) to be addressed by the judge at the initial case management conference. Half of the respondents felt that the pilot program provided opportunity for use of ADR in appropriate cases. Only two (2.6 percent) disagreed, while 37 (47.4 percent) were neutral or did not respond. Again, the high proportion of non-responses to this question

may reflect the fact that so many cases were resolved at a very early stage, with the possibility of referral to ADR never becoming an issue.

7. **Impact on motion practices.** The pilot project planners had hoped that the early involvement of the judge, coupled with a clearly stated policy of inviting use of telephone conferences to resolve discovery disputes when necessary, would lead to a reduction in the number of motions filed. From the survey responses, it was too early to tell whether the new procedures will result in a reduction in the number of motion hearings. Twenty-four of the respondents (30.8 percent) felt that the case management conferences would result in fewer motions, while most (64.1 percent) were uncertain or did not respond to the question.
8. **General attitudes toward the experimental program.** Several questions on the survey sought to gauge respondents' overall reaction to the pilot program procedures. Perhaps the most revealing responses are the answers to a question asking the attorneys whether they would prefer to use the new caseflow management procedures in the future:

Yes – would prefer to use	57 (73.1%)
No – would prefer not to use	8 (10.3%)
No answer	13 (16.7%)

Another questions asked about the attorneys' overall level of satisfaction with the new procedures. Again, the responses were strongly positive with over 55 percent saying that they were "very satisfied" or "satisfied".

Very satisfied	13 (16.7%)
Satisfied	30 (38.5%)
Neither satisfied nor dissatisfied	17 (21.8%)
Dissatisfied	2 (2.6%)
Very dissatisfied	2 (2.6%)
No answer	14 (17.9%)

The attorneys were also asked whether they felt their clients were better served by the new procedures. Thirty-eight of them (48.7 percent) agreed that their clients were better served. Only three (3.8 percent) disagreed, while 37 (47.4 percent) took a neutral position or did not respond.

9. **Responses to open-ended questions.** In addition to the scaled and Yes/No questions, the survey also asked open-ended questions that invited respondents to comment on the differences they perceived between the procedures in the pilot project and the traditional civil caseflow procedures in the Fulton County Superior Court. The comments were for the most part very positive toward the new approach. Comments that were favorable to the new approach outnumbered the negative comments by about a 4:1 margin. The following generally favorable comments are illustrative and highlight the "hands-on" nature of the pilot project.

- “Definite schedule.”
- “Increased amount of judicial participation.”
- “Involvement of judge. ‘Hard’ deadlines for discovery, mediation. Follow-up conference calls and a specially set date for trial.”
- “Case was settled a lot faster.”
- “Early intervention by the court focuses the lawyers and helps avoid extraneous discovery.”
- “Speed of final disposition.”
- “Early involvement by the judge pushes parties to realistically evaluate their cases.”
- “I am still evaluating . . . I do believe that it can speed up cases and get them to trial faster. This may also cause positive effects on getting more cases settled.”
- “Deadlines. Settlement.”
- “Greater contact with the court resulted in focus on discovery, motions, and settlement.”
- “Scheduling deadlines and court dates in advance makes things much easier.”
- “The case has moved forward quicker and reached resolution quicker than most civil actions with which I have dealt in Fulton County.”
- “Very helpful in getting the case resolved in an expeditious manner.”
- “Judge involvement has expedited the process; preliminary hearing particularly helpful.”
- “The hands-on approach helps move the case forward and helped settle this case.”
- “It gave us a deadline to work toward so we did not expend additional attorney fees.”
- “Speeds up settlement discussion.”
- “Pushed us along.”
- “It made us speed up discovery and it also forced the claims adjuster to price the case earlier.”
- “It is my impression that a little judicial supervision combined with status conferences requires the lawyers and parties to become focused at earlier stages.”

The respondents who commented unfavorably on the new approach by comparison to traditional practices focused mainly on what they felt were additional requirements, time pressures, and added costs of the pilot program:

- “The required early meeting with the judge was pointless.”
- “Initial time required early on to comply with additional filing requirements.”
- “Having to appear before the court a week after receiving the case (i.e., after defendant served) is not productive. [But] the tighter schedule is effective.”
- “Higher costs to client.”
- “Lawyers are under more pressure, time wise.”

D. Perceptions of the Judges and Staff Members Involved in the Pilot Project.

In November 2001, interviews were conducted with the pilot project judges (Judge Manis and Judge Baxter) and with the key members of their chambers' staffs who have been involved in implementation of the pilot project (Ms. Wynn Sowersby, Staff Attorney with Judge Manis, and Susan Goger, Judicial Assistant with Judge Baxter). From the interviews, it was clear that the two judges followed somewhat different approaches in working within the pilot project framework, but that both were adhering to the basic approach. At a relatively early point in the case – though somewhat later than originally contemplated – the chambers staff sends the basic packet of materials to counsel for each party, setting the case for the initial case management conference.

Both judges, and both of the staff members interviewed, were emphatic in expressing the view that the new system works well. They felt that the new procedures (especially the Status Report form) help the lawyers focus on key issues in the case and that the system helps produce more rapid resolution of cases. Importantly, the judges and staff all felt – on the basis of informal feedback they had received – that most lawyers like the new system.

Both Judge Manis and Judge Baxter explored the possible use of alternative dispute resolution mechanisms during the initial case management conferences, and both reported positive results in some cases. Of particular note, both pilot judges reported having facilitated early resolution of difficult cases by referring them for early neutral evaluation/settlement conferences before an experienced judge of the Superior Court.

The principal impediment to smooth operation of the project, in the view of both judges, was difficulty in obtaining timely and accurate case information from the computer. Late entry of data on service of process by Sheriff's deputies was a particular problem, because chambers staff could not mail the packet of materials for the initial case management conference until they knew whether service had been made. Clearly, however, the delays caused by late data entry did not prevent the program from functioning.

Overall, the experience of the pilot judges and their staff members with the pilot project appears to have been very positive. All of them said that they would continue to use the new system, and felt that it improved the court process.

E. Other Civil Caseflow Management Initiatives

Independent of the pilot project, several judges of the Fulton County Superior Court have begun using modern techniques of civil caseflow management during the 1999-2001 period. The approaches used by these judges were not identical to each other or to the approach used by the pilot project, but the core elements are similar. The

approach taken by Judge Doris Downs is representative of the pro-active approach taken by these judges. Judge Downs' techniques include the following:

- Weekly reviews of all cases assigned and motions filed during the preceding week; when feasible, action taken to help move the case toward resolution (e.g., disposition of uncontested motions; set hearing date; set briefing schedules, etc.)
- Status/scheduling conference calendars held every 4-6 weeks for recently filed cases. At these conferences – which are similar in many respects to the initial case management conferences conducted by the pilot project judges – settlement and ADR possibilities may be explored and deadlines will be set for completion of discovery, filing of dispositive motions, and completion of ADR. In some cases a trial date and/or final pretrial conference date may be set at this conference.
- Monthly reviews of the judge's open case list, with particular attention to the following:
 - (1) Cases in which a final order has been made by the judge but not entered into the computer (where such cases are found, the judge [or the judge's case manager] is to notify the judge's team in the clerk's office so that corrections can be made).
 - (2) Cases that may have "fallen through the cracks" – e.g., pending motions that did not get calendared; settlements reached but not yet finalized (when identified, the appropriate action can be taken immediately)
 - (3) "Old" cases – cases that have been pending for an unduly long time (when these cases are identified, the judge can develop plans for resolving them, including use of status conferences and show cause hearings).
 - (4) "Complex" cases – cases that may involve a lengthy trial or protracted discovery and motion hearings. (These cases may demand substantial attention over an extended period of time; they will require a plan for resolution including deadlines and scheduled hearings and conferences).

Judge Downs, who has been using modern case management techniques since 1999, has noted that one result of her attention to cases at an early stage has been a marked reduction in the number of cases calendared for trial and the number of weeks required for civil trials. During the first ten months of 1999, Judge Downs had 140 cases on her civil trial calendar, and had set aside 18 weeks for civil trials. By comparison, during the same period in 2001, she had calendared 53 civil cases for trial and set aside 9 weeks for civil trials. By 2001, the cases were settling at an earlier stage and the trial calendars were of a much more manageable size.

F. Conclusions and Recommendations

As of the end of 2001, a number of the cases assigned to the civil pilot project judges had reached resolution. However, very few of the pilot project cases have gone through the full process of discovery, dispositive motions, final pretrial conference, and trial. Until a significant number do – which will take another 6-18 months -- it won't be possible to gauge the full extent of the project's impact. However, as of the date the preliminary assessment was completed (March 2002), there is enough evidence to say with confidence that some of the hoped for results of the pilot project have clearly been achieved:

- A significant number of cases have been resolved more rapidly than they would have been under traditional procedures.
- Both judges and lawyers feel that the pilot program procedures are helpful in enabling early identification of key issues, and thus enabling a more focused discovery process in cases that are not resolved quickly.
- The deadlines established under the pilot program procedures result in a greater degree of predictability in case scheduling.
- The great majority of lawyers who have had experience with the pilot program like the new procedures and would prefer to have future civil cases assigned to the case management program.

For some of the other hoped-for results – notably a reduction in the number of motions and the establishment of true firm trial dates – it is simply too early to ascertain the program's impact. It should, however, be possible to ascertain the extent to which these goals have been met through review of case records once a greater number of civil cases have gone through the full litigation process.

In addition to the initial success of the pilot project, it is important to emphasize that several other judges appear to have been highly successful in implementing modern caseflow management techniques. While it will be helpful to develop more empirical data on the effectiveness of alternative strategies, the experience of these two groups of judges – the pilot project judges and the other judges who are following pro-active approaches to civil case management – points to the desirability of continued efforts to strengthen civil caseflow management efforts throughout the Superior Court. Equally important, the experience to date suggests the desirability of continuing to work closely with all segments of the civil bar in undertaking further civil caseflow management improvement efforts.

The experience of the civil caseflow management efforts undertaken during the period of this project has been very positive. The following are our recommendations for continued improvement:

Recommendation 1: Continue the civil caseload management pilot project. Plan to have periodic meetings (at least once every quarter) of the judges, staff members involved in implementation, members of the bar who have participated in the planning process, and staff of the Case Management Office of the Office of the Trial Court Administrator, to exchange information about experiences in implementation, the handling of specific types of problems, and lessons learned.

Comment: The collaborative process used in planning the pilot project was extremely effective. During the implementation process, however, there were fewer meetings and communication deteriorated. It should be helpful to reconvene the committee and re-institute regular meetings. A principal item on the agenda for the next meeting should be review of this report and discussion of ways to strengthen and build upon the initial success of the pilot project.

Recommendation 2: Develop and implement procedures for systematic collection and analysis of data on civil case processing times, case resolution, and other aspects of project operation in the pilot courts.

Comment: Data on the actual operation of the pilot project has not been collected and analyzed on a systematic basis during the first 15 months of project operations. However, it should be possible for staff of the Case Management Office to review the computer records (and, if necessary, paper files) of the cases assigned to the pilot project, to prepare reports that would show the following:

- Number of cases assigned to each pilot project judge.
- Types of cases assigned, by major category (e.g., contract, personal injury, malpractice [medical or other], products liability, title to property).
- Number of initial case management conferences held.
- Distribution of cases to tracks (i.e., how many [and what percentage] of cases are assigned to Track I, Track II, etc.).
- Directions made at initial case management conference for utilization of ADR by the parties (by case track and type of ADR).
- Number of formal motions filed (by case track and type of motion).
- Number of cases resolved, by stage at which resolution occurred and type of resolution.
 - *Stage:* Before initial case management conference; at or shortly after initial case management conference; during discovery processes; at or shortly after final case management conference; immediately before trial; at or as a result of trial.
 - *Type of Resolution:* Default judgment, removal/transfer; dismissal without prejudice; settlement/dismissal with prejudice; summary judgment; verdict.
- Age of cases (in days from initial filing to date of resolution), by type of resolution.

Recommendation 3: Continue sending out questionnaire surveys to lawyers who have been involved in civil cases in the pilot project courts. Analyze the results and provide the results of the analysis to the committee overseeing the pilot project.

Comment: The questionnaire survey data summarized in this report is very helpful in getting an overall picture of lawyers' experiences with the pilot project and their attitudes toward the new procedures. However, most of the responses received as of March 2002 have involved cases that reached resolution at a very early stage of the process – often, prior to the initial case management conference. It is desirable to learn about the impact of the project's procedures on the cases that result in a trial or do not reach resolution until after the completion of discovery. The analysis can be done internally, by staff of the Case Management Office.

Recommendation 4: If possible, develop informational reports that enable comparisons between the pilot project courts and (a) the civil calendars of other judges who use early case management conferences and other techniques of proactive civil caseload management; and (b) the civil calendars of other judges who follow traditional practices in which the lawyers control the pace of litigation.

Comment: These types of comparisons should be helpful in enabling the Superior Court to move toward having consistent and effective civil caseload management policies and practices. As of now, there are several different approaches to handling civil caseloads in the Superior Court. It would be helpful to learn which approaches appear to be most effective on at least the following dimensions:

- Time from filing to case resolution.
- Size of the judge's pending civil caseload.
- Number of cases placed on the civil trial calendars, annually.
- Number of days [or weeks] devoted to civil trials, annually.
- Number of motions filed in civil cases.
- Lawyer attitudes toward the judge's civil caseload practices.

Recommendation 5: Develop a central repository of descriptive information about the civil caseload management policies followed by each Superior Court judge, with accompanying forms, instructions, and simple orders.

Comment: One of the concerns of bar members in any large metropolitan court in which judges follow differing approaches to handling their individual calendar caseloads is that they have to learn each judge's practices and idiosyncrasies. A central compilation of policies and practices, including key forms and instructions (possibly posted on a Web site) would serve at least three purposes: (1) provide essential information for bar members involved in civil litigation in the Superior Court; (2) enable judges to learn what practices their colleagues are using; and (3) encourage discussion among the judges, their staffs, and members of the bar about alternative approaches and possible "best practices" with respect to use of forms and instructions. For purposes of making comparisons among alternative approaches, it is essential to have basic descriptive information.

Recommendation 6: Use the results of the data collection and analysis described in Recommendations 2-5 as the basis for an assessment of alternative approaches.

Comment: Ultimately, it will be desirable for the Superior Court to operate within a common framework for the handling of civil cases. It should be possible to develop such a framework while still leaving judges with substantial discretion concerning the handling of individual cases. Having information about the relative effectiveness of alternative approaches should be helpful in development of the common framework.

Recommendation 7: Continue development and use of a broad range of alternative dispute resolution mechanisms, including settlement conferences conducted by experienced Superior Court judges.

Comment: An earlier JMI report, prepared by consultant Madeline Crohn, recommended, *inter alia*, that the Court develop plans to educate the bench and the bar about the full range of ADR options and about the types of situations in which particular mechanisms may be especially appropriate.¹¹ The experience of the pilot project judges – both of whom explored ADR options with the lawyers who participated in the initial case management conference – indicates that the availability of ADR options, coupled with the capacity of judges to order and encourage early referral to a specific type of ADR mechanism in light of their knowledge about the situation in a particular case, can be very helpful in catalyzing early and satisfactory case resolution. It is especially worth noting that both of the pilot judges commented favorably on their use of referrals to an experienced Superior Court Judge (Judge Etheridge) for early-stage settlement conferences. As the Superior Court develops plans for greater use of alternative dispute resolution mechanisms, the possibility of developing a program that would utilize experienced judges (including Senior Judges) for early neutral case evaluation and settlement conferences should be among the options considered.

Recommendation 8: Develop plans to provide continuing education about effective civil caseload management for judges, court staff members, and bar members.

Comment: At this stage in the development of civil caseload management in the Fulton County Superior Court it is important to maximize the opportunity for shared educational experiences. At the outset, education *within* the Court should be undertaken, with opportunity for all of the judges (together with their staff members who are involved in civil case processing) to learn in detail about the experiences of the pilot project judges and of the other judges who have been successful in using early case management conferences and other techniques of pro-active civil caseload management. As knowledge about effective practices grows, there is a good likelihood that other judges will be interested in adapting these practices in management of their own civil caseloads.

¹¹ Madeline Crohn, *The Fulton County Superior Court ADR Program* (Denver: The Justice Management Institute, April 2001), pp. 9-10.

III. THE SUPERIOR COURT'S ADR PROGRAM

A. The Crohn Report

In the Fall of 2000, JMI was asked to undertake a small-scale assessment of the alternative dispute resolution (ADR) activities of the Superior Court. The objective of the assessment was to develop information that would be useful to the Court and to the Fulton County Alternative Dispute Resolution Board in planning for ways to use ADR mechanisms most effectively in connection with civil and domestic relations litigation.

JMI engaged the services of Ms. Madeleine Crohn to serve as a Special Consultant for this assessment. Ms. Crohn, who has been the Deputy Director of International Programs for the National Center for State Courts, was for a number of years the Executive Director of the National Center for Dispute Resolution. She is widely recognized as an expert in the area of alternative dispute resolution.

Ms. Crohn reviewed a number of background documents and reports on various aspects of ADR in Fulton County, and made a four-day visit to Atlanta in January 2001. At that time she conducted a series of meetings and interviews, discussing ADR operations and issues with Superior Court judges, clerks, lawyers, and ADR professionals associated with the Court's ADR Center and with the independent Justice Center of Atlanta (JCA), which handles some types of cases (mainly mediation in civil and some domestic cases). She subsequently prepared a report on the ADR program which was provided to members of the County's ADR Board. She met with the Board on April 22, 2001, to discuss the report and her recommendations.

A copy of Ms. Crohn's report is included in the Appendix. It describes the Court's ADR Center and the programs that are conducted under the auspices of the ADR Center, and contains a number of observations and recommendations. Key points made in the report include the following:

- The caseload handled by the Superior Court's ADR Center has been generally constant over the 1995-1999 period, with 800 – 1,000 cases per year heard by ADR professionals. However, the composition of the caseload has changed dramatically: the use of mandatory non-binding arbitration has decreased sharply and the use of mediation has increased substantially. Attorneys appear to prefer mediation over arbitration as an ADR mechanism, and will often find ways to avoid mandatory non-binding arbitration or minimize its practical utility.
- The percentage of civil and domestic relations cases referred for mediation through the ADR Center that result in a settlement is relatively high (about 70 percent)—much higher than the percentage resolved through off-site mediation under the auspices of the Atlanta Justice Center (about 45 percent). While there may be differences in the types of cases, the differences suggest

the desirability of research to learn more about the reasons for what seem to be significant variations in the settlement rate between the ADR Center and the JCA.

- The records of the ADR Center are in good order, and basic information on operations is available. The ADR Center's staffing levels appear to be appropriate for its current workload. Additional tasks could not readily be absorbed by the ADR Center at its present staffing level.
- Neither judges nor attorneys appear to have much knowledge about *early neutral case evaluation*. Although this method is available to the Fulton County Superior Court, it appears to be used only rarely.
- In general, most participants in the court process in Fulton County—attorneys, parties, clerks, administrative staff, and judges—appeared to have little awareness of the full range of ADR options.

In her report, Ms. Crohn noted that research has shown that ADR functions only as well as the overall administration/management of the cases in a court, and that goals for the ADR program should be established in the context of the court's overall approach to case and caseload management. With the Superior Court now engaged in a significant civil case management pilot project in which ADR mechanisms could play a major role in conjunction with case management by the pilot judges, this may be a good time to take a fresh look at the full range of ADR mechanisms and consider how they can best be utilized in civil and family law cases in Fulton County. This is an area in which there is clearly a strong base upon which to build.

Ms. Crohn's report contains several recommendations for consideration by the Court and the ADR Board. The main recommendations, which are consistent with the views of other members of the JMI project team in this area, are the following:

1. Conduct the research needed to evaluate court-annexed ADR activities, and link these activities to the overall goals of administration of the court.
2. Re-assess the procedures for mandatory non-binding arbitration, and modify them in light of attorneys' attitudes toward these procedures and their actual practices. In this connection, develop a profile of cases successfully arbitrated pursuant to current procedures, to determine the types of cases, the types of attorneys, and the kinds of issues that are most likely to be resolved through mandatory non-binding arbitration.
3. Develop the capacity to use mediation more effectively. In this connection, (a) develop knowledge about why some cases result in settlement agreements but others do not; (b) learn the extent to which mediated settlements endure over time in different types of cases; and (c) learn what types of mediation

approaches or techniques (e.g., facilitative or directive) are most effective in what types of cases.

4. Develop plans to educate the bench and the bar about the full range of ADR options and about the types of situations in which particular mechanisms may be especially appropriate. Include Early Neutral Case Evaluation among the options to be discussed.
5. Develop plans for possible reorganization of the Superior Court's ADR Center in light of the experience of the civil case management pilot project.

B. Judge-conducted Settlement Conferences

During 2001 and 2002, some of the Superior Court judges have begun using an additional ADR mechanism for relatively complex civil cases: the referral of these cases to an experienced judge (Judge Philip Etheridge) for a conference focused on settling the case and avoiding what would often be a protracted trial. On the basis of interviews with Judge Etheridge and with the two civil caseflow pilot project judges (Judge Manis and Judge Baxter), both of whom have referred cases to Judge Etheridge, the approach seems to be working well.

Judge Etheridge, who handles all of the asbestos cases in the Superior Court, has been able to organize his calendar to accommodate the referrals. He uses an approach that incorporates elements of an ordinary status conference, with brief presentations by each side of its position in the litigation; neutral case evaluation by an experienced jurist; and mediation techniques, including "caucuses" with each side. The principals in the case, as well as the lawyers are expected to participate in the settlement conference. The conferences may take as long as a full day, but not more. The results to date have been encouraging, with a high proportion of the referred cases resulting in a settlement.

While this approach is in its infancy, it appears to hold promise as an effective dispute resolution mechanism for some categories of civil cases. The following are our recommendations for further development of court policies and practices in this area:

1. Document Judge Etheridge's experience in conducting the settlement conferences. In particular, develop information on:
 - Number of cases referred for settlement
 - Categories of cases referred
 - Stakes/key issues – dollar amounts involved, other issues
 - Timing of the conference – what stage of litigation?
 - Techniques used
 - Success rate – if possible, by case category and stage of the litigation
 - Attitudes/perceptions of the participating lawyers toward the settlement conferences

2. Develop criteria for referral of cases to a settlement judge, taking account of:
 - Case type
 - Complexity of the case
 - Stakes involved
 - Timing of the referral
 - Other criteria
3. Develop knowledge about strategies and techniques used in other courts that use a “settlement judge” approach.
4. Subject to further assessment of the feasibility of this approach, develop plans for incorporation of the settlement judge approach as an on-going part of court operations. One viable approach may be to use experienced Superior Court judges in this role after they leave active status and are serving as Senior Judges,
5. Develop an education and training program designed to enhance the value of this resource, including:
 - Training for settlement judges in the use of effective mediation and settlement techniques.
 - Education of Superior Court judges about how to make most effective use of this dispute resolution mechanism.
 - Education of the Bar about the availability and value of this resource in appropriate circumstances.

IV. THE FULTON COUNTY DRUG COURT

The Fulton County Drug Court is a treatment-oriented drug court that has been in operation since 1997. It provides substance abuse treatment, counseling, and access to a range of needed social services (e.g., health, housing, education, job training, employment referral and placement, family services) for non-violent drug-dependent persons who are charged with an offense--most often, possession of illegal drugs--over which the Superior Court has jurisdiction. Defendants who successfully complete the 12-18 month Drug Court program can avoid jail time, have the charges against them dismissed, or (if on probation) have their probation suspended.

The need for the Drug Court is widely recognized by criminal justice policymakers and practitioners in Fulton County. It is clear that a high proportion of the persons arrested for criminal conduct in the county have some involvement with drugs (U.S. Department of Justice data show that nearly 80 percent of adult males arrested in Atlanta test positive for illegal drugs), and the early results from the Drug Court have been very positive in terms of its impact on both drug use and criminal behavior.

In order to graduate from the program, a Drug Court participant must remain drug-free for several months prior to graduation. Data provided by the Drug Court indicate that, of the 117 persons who had graduated from the Drug Court program at the end of 2000, only 12 percent had been rearrested or convicted of new offenses. While that percentage may increase with the passage of time, it is a striking contrast to the much higher recidivism rates typically associated with drug offenders.

In mid-2000, it appeared that the program was having good success with a number of the participants, but it was also clear that it had fewer participants than it should have had and that a number of aspects of the overall program needed to be strengthened. During the early months of 2000, the Drug Court had made a major change in organization and operations, moving from a contractual arrangement for provision of treatment services to running its own "in-house" treatment program. During the same period, a new program director was appointed, and plans were underway for the treatment program to move into a renovated—and much larger—facility located adjacent to the Fulton County Jail.

It was against this background that, in April 2000, the Trial Court Administrator of the Superior Court asked JMI to provide technical assistance to the Drug Court program, as part of Phase II of the Fulton County Caseflow Management Improvement Project. The technical assistance has been provided by Suzette Brann, a JMI staff member who has had extensive experience working in and with substance abuse treatment programs. Ms. Brann served as a senior manager of the Washington, D.C. drug court program, and has been a consultant for several other drug court programs.

Ms. Brann's technical assistance work with the Fulton County Drug Court focused principally on organizational and service delivery issues related to the provision of treatment services. At the time she began her work in the Spring of 2000, the number of active participants had dropped to a low of 60, and in the three-month period between March and May 2000 only 19 new clients were admitted to the program. One of the main early objectives of her work was to assist the Court in increasing the client population base. At the same time, plans had to be made for strengthening the basic drug court team and the broader stakeholder group, re-designing the treatment and case management protocols to better serve a much larger client base, and developing a quality assurance system that included much better documentation of operations and provision of basic management information.

Ms. Brann has prepared two technical assistance reports for the Court, both of which are included in the Appendix. In the first report (May 2000), she reviews the situation as it existed in the Spring of 2000, discusses the progress made between then and April 2001, and sets forth a number of recommendations for further improvement. The second report (November 2001) reviews progress made during the April 2001 – October 2001 period, and contains additional recommendations for action. Reviewing these two reports, it seems clear that the Drug Courts has made major strides since the Spring of 2001. Of particular note:

- Substantial progress has been made in developing a cohesive drug court team.
- The client population has increased from 60 to well over 200, while at the same time admissions procedure has been streamlined and made more consistent.
- The treatment protocol has been re-designed to provide more time for clinical assessment, treatment planning, clinical case management, documentation of client needs and services delivered, and other essential components of a well-run drug court treatment program.
- The case management protocol has been strengthened, with much clearer expectations and compliance requirements established.
- Needed training was provided for the treatment and case management staff, focusing particularly on ways to deliver effective treatment services to African-American males.
- A start has been made on developing an internal capacity for monitoring drug court operations and evaluating the program's effectiveness.

In addition to discussing the progress made, Ms. Brann's reports also set forth a number of recommendations for further improvement. They focus on 25 recommendations, covering six main areas of Drug Court identified as needing attention:

- ***Program operations and management***, including greater involvement of the program's steering committee, re-evaluation (and possible revision of the memorandum of understanding among drug court stakeholders, and exploration of the possibility of setting up a 501(c)(3) organization to help solicit resources for the program.
- ***Re-definition of staff roles***, to enable staff professionals to provide both treatment and case management/supervision functions.
- ***Further strengthening of treatment and case management protocols***, including improved clinical assessment, greater emphasis on strength-based models of treatment and case management, better systems for referring clients to needed services, development of integrated case management and treatment benchmarks to determine client progress through phases of the program, and revision of the program's policy and procedures manuals to reflect new treatment and supervision practices.
- ***Staff development***, including development of a training curriculum suitable for cross-training treatment specialists and case management/supervision specialists, monthly clinical training meetings, development of an internal reward system for program staff (to be used in conjunction with the Fulton County merit system), opportunities for staff to visit drug courts in other jurisdictions in order to see and learn from the experiences of others, and development of opportunities to use volunteers and interns to assist staff with treatment and case management functions.
- ***Improved documentation of program operations and outcomes***, including use of a computerized version of a standard assessment instrument, development of standard documentation procedures for case management, and acquisition and use of a software system that will enable computerized tracking of client performance and overall program performance.
- ***Improved use of sanctions and incentives for drug court participants***, including development of a broader range of community resources and formulation of more consistent standards and practices by drug court judges in the use of sanctions and incentives.

V. CLERK'S OFFICE OPERATIONS, PERFORMANCE STANDARDS, AND STAFFING ISSUES

JMI's Phase I report noted that during 1999 the office of the Clerk of Superior Court had made significant progress in reducing delays in filing documents, but that the office was not operating at full effectiveness. In the Summer of 2000, JMI was asked to provide technical assistance focused on improving the operations of the Clerk's office and enabling better Clerk of Court support to the Superior Court.

The technical assistance was provided by Alan Carlson, then the Director of JMI's San Francisco office and, since January 2002, JMI's President. Mr. Carlson has had extensive experience with clerks' office operations, having served for seven years as the Clerk and Court Administrator of the San Francisco Superior Court. He has also been a senior deputy in the California Administrative Office of the Courts, where he worked with clerks and court administrators on a number of operational problems. Before joining JMI he was also the Vice President of the National Association for Court Management (NACM).

Mr. Carlson's technical assistance work focused on development of knowledge about the interrelated issues of Clerk of Court functions (especially in relation to case management functions that in some courts are performed by staff working directly with and for the judges and/or court administrator), performance standards, workload, staffing needs, and organizational structure. His first report, in August 2001, noted that there is no one way or "best practice" with respect to the organization and staffing of a clerk's office. Clearly, however, the organization and staffing of the office should be able to provide top-quality support for the operations of the Court.

Mr. Carlson's August 2001 report addressed four main sets of issues:

- The role and responsibilities of the Clerk's office, taking into account constitutional and statutory mandates, and also the relatively recent development of case management and overall caseload management responsibilities of the judges and the Court;
- Performance standards for the completion of tasks for which the Clerk's office is responsible;
- Key characteristics of the office's workload and staffing; and
- Organizational structure of the office, with particular attention to the implications of the team approach for the skill levels and training needs of the office's staff.

The report emphasized the importance of developing clarity and consensus—not only within the Clerk's office but between the Clerk's office and the Court—concerning key tasks that must be performed in two areas: (1) the "traditional" set of Clerk's office responsibilities with respect to filing documents and maintaining the official record; and (2) the more recently developed set of tasks related to case management. Once there is clear agreement about the tasks, the next step is to develop performance standards that

can be used for a number of purposes including hiring of new staff and evaluation of their performance.

The June 2001 report set forth four main recommendations, intended to be treated as sequential:

1. Representatives of the Superior Court, the Clerk, and other county agencies, as relevant, should meet and reach consensus on the complete list of clerk of court and case management tasks that must be done, including tasks necessary for effective implementation of new automated systems and for implementation of any new case management systems introduced by the Court.
2. Once agreement has been reached on the list of clerk of court and case management tasks, representatives of the Superior Court and the Clerk's office should meet and reach consensus on performance standards—including both the substantive aspects and the timing aspects—for each of the tasks that have been identified. The draft standards should then be distributed to judges and staff in the Court, Clerk's office staff, and the bar and other interest groups for their comments as to specificity and reasonableness. The final performance standards, revised in light of comments, should then be used to define staffing needs, staffing levels, and training needs, and for evaluation of the Clerk's office internal organizational structure.
3. Representatives of the Superior Court and the Clerk should agree on what organizational structure the Clerk's office should adopt, taking account of the operational needs of the Court, the performance standards, and the composition of the Clerk's office staff. Once the tasks, performance standards, and organizational structure are agreed upon, the Clerk of Court, the Court, and the County need to reach agreement on how tasks are grouped into jobs and what should be the appropriate classifications and compensation.
4. Information about the volume of work and the performance standards should then be used to project the number of staff needed in each classification to get the work done.

Following the submission of this report, Mr. Carlson was asked to work directly with senior staff of the Clerk's Office and the Court Administrator's Office to begin implementation of these recommendations. In the meantime, several significant developments increased the capacity of the Clerk's office to function more effectively. Of particular note, a large number of previously temporary positions in the Clerk's office were converted to permanent positions, the total number of positions was increased to reflect new duties related to the complaint room and the All Purpose hearings, and the

office was reorganized to incorporate the team structure recommended in the 1998 Haggerty report.¹²

The objective of the technical assistance conducted during the Fall of 2001 was to “field test” the approach recommended in the Summer 2001 report for generating business practices descriptions and performance expectations regarding clerk of court and case management system support. The intent was to produce written descriptions of procedures and business practices for a particular task or activity, accompanied by performance measures for the tasks. Mr. Carlson began by conducting an executive briefing of senior staff in the office of the Court Administrator and the Clerk’s office via telephone conference call, reviewing the key points of the report’s recommendations and outlining what was proposed to be done in this phase.

The next step was an on-site meeting of the senior staff from both offices. In preparation for this meeting staff were asked to read background materials prepared for the meeting, identify appropriate staff to participate in the meeting and invite them to participate, review the draft task and activity list for additions and modifications, and prioritize those tasks which would be the first to be examined using the new approach.

The group chose the preparation of the “sentencing package” needed to send a convicted defendant to state prison as the first example for field testing the approach. There was a strong consensus among practitioners in Fulton County that it was taking much too long to prepare the sentencing package. The adverse impacts of this delay include added costs to the county to house the defendant in the Fulton County jail pending transfer, as well as jail bed days consumed by defendants awaiting transfer that would then be unavailable for defendants in pretrial status.

The technique used at the on-site meeting of staff from the Court and the Clerk’s office was to list all of the tasks involved in this activity and to “walk the track”--that is, follow the path of the papers that need to be prepared and transferred from one office to the next, beginning in the courtroom. The discussion did not focus on the specifics of what each document should contain. Rather, it dealt with what documents needed to be prepared by the case manager in the courtroom in order for the clerk’s office to prepare the official record, enter data into the case management system, and provide documents to the Sheriff that allowed transportation of the defendant. Documentation of the paper flow not only allows identification of good business practices and performance measures but also reveals where there are problems in terms of inadequate, insufficient or incorrect information going between agencies. It also identifies bottlenecks in the processing of the record or entry of information that, once identified, can be addressed. The process also has side benefits of exposing other aspects of the agency interactions that need attention, and which, if modified, can smooth or expedite proceedings.

The experience of having knowledgeable staff from both the Court and the Clerk’s office identify the tasks involved in a key activity area and go through the

¹² Dan B. Haggerty and Associates, Inc., *Clerk of the Fulton County Superior Court – Work in Process Analysis*, October 6, 1998.

“walking the track” process was clearly beneficial. The field test enabled staff from both the Court and the Clerk’s office to gain a better understanding of each other’s responsibilities and needs, and it resulted in swift agreement on appropriate performance measures that—if adopted and used—should significantly reduce delays in the preparation of the sentencing package. Although the recommended approach was field-tested for only this one activity area, it appears to provide a feasible technique for identifying the goals, tasks, expectations and performance measures for clerk of court and case management system support activities. It also proved useful for identifying other changes in practices that will expedite and improve activities. The following observations can be made based on this exercise. They are grouped by the nature of the impact on operations and service levels.

Efficacy of Basic Approach. The approach was used to develop an initial description of the process for preparing the sentence package. The process proceeded quite quickly to identify the steps in the process and there was little disagreement about the proposed performance measures for each step.

There was some confusion about the activities of the Sheriff’s office regarding the sentence package and the transportation of the defendant to a state facility. The Sheriff was reportedly checking the sentence package delivered to the office, but it was not clear why, or what they were checking for. There was also uncertainty about what the Sheriff needed to do to prepare the affidavit of custody, and how long it takes. The Sheriff’s Department was not represented at the field test, and this experience highlights the need for representatives of each affected agency involved in an activity area to participate in the business practice description and performance standard setting process.

Quality Control Impacts. The exercise of identifying and following the paperwork revealed a number of issues that could be addressed by better quality control and further training within each office. For example, the Court Administrator’s office began developing a list of common mistakes and errors in the preparation of the sentencing order, and setting up a log of sentencing orders returned with alleged errors. This list can be used to develop a checklist for use by case managers in preparing orders, and for training new case managers. Additionally, it became evident that there is no existing process for bringing alleged errors in the record or in the automated case management information system to the attention of a supervisor who could do something about it. This appears to be true in both the Clerk of Court office and the Court Administrator’s office. Instead, there is a tendency to blame the error, once discovered, on someone else, or the other office.

Some of the reasons for mistrust and finger pointing regarding quality of work became evident through the field test. In particular, there was an issue of one agency feeling like another agency is meddling in the details of their business practices and quality control systems-- i.e., double-checking the other’s work. While it is often easy to cite a specific example where the double-checking appears to be justified, repeated instances of this practice can generate mistrust and defensiveness and can be counterproductive. Rebuilding trust and confidence in each other’s work will be a step-

by-step process. As sources and types of errors are identified in the process tested here, the errors should begin to be less frequent. Fewer errors will generate confidence in the work, lessening the tendency to double-check each other. The likely reduction of errors is an added reason for the Clerk of Court and Court Administrator to continue to use the process developed here to improve processes in other activity areas.

Impacts on Preparation Times. In addition to quality control, it became clear from this exercise that considerable time can be squeezed out of some tasks and processes as a result of the approach tested here. The performance measures agreed upon regarding how fast tasks would be completed were uniformly shorter than current experience, at least for these types of sentences. Both offices were of the opinion that the tasks reviewed should be completed in much less time than they currently take. In reviewing the steps the Court Administrator's office also established a process for faster routing of the sentencing orders from the case managers in the courtrooms to the clerk's office in order to save time. It appears that days—in some instances, perhaps weeks--could be eliminated from the process of preparing the sentence packages if the suggestions developed during this phase of technical assistance were adopted and practices modified accordingly.

Understanding and Communication. Another benefit arises when the discussion about practices exposes misinterpretations, or conflicting interpretation, of applicable law, particularly case law, governing procedures or activities. The exercise revealed that there were several different interpretations of the requirements of a federal decision about transporting defendants to state prison. The clarification of the meaning of the decision may not only shorten the time defendants are held, but also demonstrate that the delay was due to factors other than processing problems.

The process of “walking the track” for tasks or activities can also have other benefits, especially when the practices agreed upon are written down. Currently practices are characterized as existing only by “word of mouth.” Once reduced to writing it is not only easier to identify problems with performance; it also forces a certain level of communication when changes in procedures and practices are made or proposed. This higher level of communication will help make accountability more clear, as well as establishing credibility.

Based on the experience in testing the recommended approach for preparation of the sentence package, JMI's March 2002 technical assistance report made the following recommendations:

1. The Clerk of Court and Court Administrator offices should continue using the approach tested in this phase to develop descriptions of practices, standards and performance measures for other clerk of court and case management system activities.

- a) The next set of tasks or activities reviewed should be those with the greatest or most urgent impacts on criminal justice system agencies, most complaints, or highest volume of work;
 - b) The process of developing performance standards, measures and operational procedures should include all of the relevant organizations and agencies (e.g., Sheriff's Department, and District Attorney, as well as Court Administrator and Clerk of Court);
 - c) The description of the practices, the standards and performance measures should be reduced to writing and disseminated to affected agencies; and
 - d) A timetable should be developed for continuing the analysis of tasks using the process developed in this phase.
2. The Superior Court should further clarify or establish the duties and responsibilities of case managers regarding case management system maintenance and the making of the record;
 3. The Court should continue to identify what work is needed regarding the case management system to support the judges as they expand their management of cases, and who is responsible for completing the tasks; and
 4. Both offices should establish mechanisms for bringing alleged errors in the record or case management system information to the attention of the relevant supervisor to allow for corrective action and training to occur.