Cuyahoga County, Ohio
Felony Case Processing Study
Phase I

Final Report and Recommendations

Submitted to:

The Cuyahoga County Commissioners
and
The Cuyahoga County Adult Justice Group

By
The Justice Management Institute

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Cuyahoga County, Ohio
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Summary of Recommendations

I. GOVERNANCE OF THE CRIMINAL JUSTICE SYSTEM.

Criminal Justice Supervisory Committee.

Recommendation Number 1: Cuyahoga County should form a county-wide Criminal Justice Supervisory Committee. The Committee should be drawn from key leaders at the county and municipal levels and should have top quality staff. It should be charged with planning for system-wide improvements in criminal justice system operations, monitoring progress toward achievement of goals, acting collectively to address systemic problems, and reporting at least annually to county and municipal governing bodies.

II. ARREST TO ARRAIGNMENT.

A. Case investigation processing paths should be consistent with the severity and complexity of the crime charged and the possible sentence that could be imposed.

Recommendation Number 2: A committee composed of representatives of the police agencies, municipal and county prosecutor's office, public defender, and probation department should develop a case investigation process which accelerates the law enforcement processing of cases where the charges are lower grade felonies, cases where there is no victim and few witnesses, and cases involving low-level substance abuse. The process recommended should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.

B. High quality police reports should be transmitted promptly.

Recommendation Number 3: The County Prosecutor, the Clerk of Courts, the Detention Facility, and representatives of the police agencies should develop standard forms for use by police agencies in preparing the grand jury packet. The standard forms recommended should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.

Recommendation Number 4: The County Prosecutor and representatives of the police agencies should develop time standards applicable county-wide for completion of investigations and preparation of the grand jury packets in charged and direct filed cases. The time standards recommended should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.

<u>Recommendation Number 5</u>: The County Prosecutor and representatives of the police agencies should develop systems to ensure that complete grand jury packets in the appropriate form are received by the County Prosecutor in compliance with the time standards. Monitoring systems regarding compliance with the packet form requirements that are recommended by the County Prosecutor and law enforcement agencies should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.

<u>Recommendation Number 6</u>: Secure electronic mail should be used to transfer the grand jury packets from the police agencies to the County Prosecutor. The process recommended to electronically transfer grand jury packets should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.

<u>Recommendation Number 7</u>: After the monitoring systems are in place the performance of the police agencies in meeting the time standards should be shared with the Criminal Justice Supervisory Committee on a regular basis. Recurring problems with prompt and complete preparation of grand jury packets by a police agency should be subject to review by the Criminal Justice Supervisory Committee.

C. Upgraded forensic lab capabilities.

<u>Recommendation Number 8:</u> The staffing of the Cleveland Police Department's Special Investigations Unit (SIU or Lab) should be increased to a level that will reduce lab test turn around on drug cases back to their previous standard of 48 hours.

D. Rapid collection and dissemination of information.

<u>Recommendation Number 9:</u> The law enforcement agencies and detention facilities in the county should initiate steps to cause the finger print identification systems in use by all police agencies and detention facilities in the county to be electronically interconnected so that full and complete identification occurs early and only has to occur once when a defendant is arrested. The process should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.

<u>Recommendation Number 10</u>: Full national and state finger print identification protocols should be completed when the defendant is first brought to the police station and, once positively identified, the arrest/custody status should be shared with all police agencies, detention facilities, and the department or division of the County Prosecutor's Office which is reviewing the charges.

E. Individuals who commit similar acts should be charged with similar offenses. Consistent with justice, persons who are convicted of similar offenses should receive similar punishments.

Recommendation Number 11: Initial charging decisions in all cases possibly involving a felony should be made by experienced trial prosecutors employed by or supervised by the County Prosecutor's Office. All felony charging decisions should involve early, consistent, prosecutorial screening for case severity and complexity and should reasonably reflect what is likely to transpire in the subsequent negotiation and trial phase. The process recommended for transferring the authority to review and draft felony charges from the municipal prosecutors to the County Prosecutor should be forwarded to the Criminal Justice Supervisory Committee for review, approval, and implementation. In order to assure that the same standards are applied to all felony charging decisions, the initial charging decision in all cases charging a felony that proceed through the municipal courts, by direct indictment, or by information in Cuyahoga County should be drafted or approved by the County Prosecutor's office.

Recommendation Number 12: The police agencies in the county and the County Prosecutor's office should develop procedures and systems such that, to the extent feasible, if the County Prosecutor's staff needs to meet with police officers during the charging process those meetings should take place by video conference before the end of the arresting officer's shift.. The procedures and systems recommended should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation

Recommendation Number 13: The Grand Jury Unit of the County Prosecutor's Office or such other unit as reviews and approves charging decisions in accordance with this recommendation, should operate 24 hours a day, 7 days a week.

Recommendation Number 14: Prosecutors who represent the State in any hearings in any court of the Ohio Court System related to cases where the defendant has been or will be charged with a felony will be under the supervision of the County Prosecutor's Office, as employees or contractors of that Office.

Recommendation Number 15: Cases that would be eligible for the Pre-Bind over Resolution Program should be initially charged as misdemeanors and dealt with at the initial appearance/probable cause hearing.

F. Rapid initial processing of persons charged with felonies during the indictment process.

Recommendation Number 16: **Better use should be made of electronic mail to issue grand jury subpoenas to all police agencies and officers throughout the county and to notify police agencies and officers when a scheduled hearing has been postponed or cancelled. The process recommended to electronically issue grand jury subpoenas and the process recommended to notify police agencies and officers of the postponement or cancellation of grand jury hearings should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.**

Recommendation Number 17: **As a part of the early case preparation process police agencies should obtain releases of medical records from assault victims and other victims where medical condition is an issue relevant to the resolution of the case.**

G. Early appointment of competent and effective counsel for indigent defendants.

Recommendation Number 18: **Counsel for indigent felony defendants at all levels of court throughout the county should be appointed at the initial appearance/probable cause hearing from a list or lists maintained by the Court of Common Pleas that certifies counsel's experience and ability to be assigned to specific case types. The appointment process recommended should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.** To the greatest extent possible counsel who is appointed to represent the defendant at the municipal court should continue to represent the defendant at the common pleas level.

Recommendation Number 19: **A subcommittee of the Criminal Justice Supervisory Committee composed of judges from all levels of courts and representatives of the criminal defense bar should develop a system whereby the skills, ability, and experience of counsel appointed to represent indigent defendants are periodically evaluated. The evaluation system recommended should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.**

H. Substantially increased use of deposit bail in lieu of surety bail.

Recommendation Number 20: **The system should make substantially greater use of deposit bond and substantially less use of surety bail.**

III. ARRAIGNMENT TO TRIAL

A. Early and open exchange of discovery between prosecution and defense counsel consistent with necessary protection of confidential informants and victims and privileged information

Recommendation Number 21: Through the collaboration of the Criminal Justice Supervisory Committee, procedures should be developed to require early and expeditious reciprocal discovery of the information permitted by Crim. R. 16 in all criminal cases without the need for a court hearing, consistent with the protection of victims and confidential informants and other privileged information.

B. Availability and effective use of management information throughout the criminal justice system.

Recommendation Number 22: The Criminal Justice Supervisory Committee should begin work toward development of electronic links between the separate data systems throughout the County in order to reduce duplicate data entry and ensure that each system is operating with the same information about each case.

Recommendation Number 22A: The Criminal Justice Supervisory Committee reach consensus about what management reports should be produced to allow monitoring of justice system performance and outcomes.

Recommendation Number 23: The Criminal Justice Supervisory Committee and the constituent agencies and entities should make continual training, exchange of information, and sharing of data top priorities throughout the system. The process for ensuring ongoing training should be approved and implemented by the Criminal Justice Supervisory Committee.

C. Development and attainment of case processing time standards at all levels.

Recommendation Number 24: The Criminal Justice Supervisory Committee should develop incremental time standards for the completion of each major stage in the criminal justice process.

Recommendation Number 25: The agencies responsible for completing each activity should be required to develop and implement processes to monitor their performance against these standards and to implement changes or improvements designed to resolve the reasons for failure of compliance with the standards, if any.

Recommendation Number 26: The agencies responsible for completing each activity should provide periodic information to the Criminal Justice Supervisory Committee on the status of their performance measured against the standards.

D. Streamlining the process of plea negotiation.

Recommendation Number 27: Felony charges should be drafted by experienced trial prosecutors who have knowledge and experience with the likely outcomes of the cases and have the authority to approve negotiated pleas submitted by defense counsel.

Recommendation Number 28: The County Prosecutor's Office should devise a system whereby those who are authorized to approve a plea are available to the Assistant Prosecutors from the courtrooms without requiring travel between floors on the frequently delayed and over burdened elevator system.

Recommendation Number 29: The Court of Common Pleas should develop a system whereby felony Pretrial Conferences are coordinated and held at staggered times during the day so that the time of defense counsel, floor prosecutors, those members of the Prosecutor's staff empowered to accept plea negotiations on behalf of the Prosecuting Attorney, Deputy Sheriffs, and the individual courtrooms can function more efficiently.

E. Effective calendar and trial management in the Court of Common Pleas.

Recommendation Number 30: The Court of Common Pleas should make a court wide reaffirmation to the principle of individual responsibility for prompt and just resolution of felony cases.

Recommendation Number 31: The individual judges should take early and continuous active control of all phases of the cases that have been assigned to them. Court scheduled pretrial conferences should only be scheduled when judicial involvement may be needed and always be presided over by the assigned judge or another judicial officer. Each court should schedule the minimum number of conferences or hearings needed for the active management of the case and consistent with accomplishing a just result. Court scheduled conferences or hearings should always be designed to achieve as many purposes as possible to move the case toward resolution or prepare it for trial.

Recommendation Number 32: The Court should devise and implement a regular and continuing program of training and education for the bailiffs

Recommendation Number 33: Periodic meetings of the bailiffs, functioning as a users group, should be scheduled and occur.

<u>Recommendation Number 34:</u> Extensive training and education about the concepts and techniques of effective caseflow management should be provided to the judges, bailiffs, probation officers, representatives of the sheriff's security officers, senior prosecuting attorneys, representatives of the public defender's office, and representatives of the private bar who receive significant numbers of assignments to represent indigent defendants.

<u>Recommendation Number 35:</u> The caseflow management training programs should include opportunities to develop specific policies and programs to increase the efficiency and effectiveness of the movement of cases from arraignment on the indictment or information through conclusion of the case. To the extent that different techniques and philosophies for dealing with caseflow management issues emerge from these discussions, the techniques should be pilot tested and the results evaluated and the results reported.

<u>Recommendation Number 36:</u> Every new judge, bailiff, court employee, prosecutor, public defender, and appointed lawyer should receive basic training on the priority of prompt and just resolution of cases, the justice system's expectations with respect to the achievement of prompt and just resolution of cases, the principles of effective caseflow management, and the programs in place within the court to achieve these high priority items.

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Impact of Recommendations on Staff and Computer Systems

The contract between JMI and the Commissioners specified that:

> *"JMI will structure the recommendations portion of the report to separate those actions that Cuyahoga County justice system agencies can take that will maximize efficiencies without adding systems or staff, followed by recommendations to add staff or add or upgrade computer systems as a way of better managing caseflow."*

In order not to break the continuity of the Issues and Recommendations section of this report, the following chart is designed to divide the recommendations into those which could be accomplished in whole or in significant part without the need for additional staff of computer resources and those which would require substantial investment in additional staff or equipment. It should be noted that this report does not take a position on the staff or equipment impact of the Central Booking Proposal. However, JMI does recommend that a task force or other entity be empowered to conduct an economic analysis of the proposal.

RECOMMENDATIONS THAT CAN BE ACCOMPLISHED WITHOUT ADDING SUBSTANTIAL SYSTEMS OR STAFF

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RECOMMENDATIONS THAT MIGHT REQUIRE ADDING SUBSTANTIAL SYSTEMS OR STAFF

Recommendation Number 1: Cuyahoga County should form a county-wide Criminal Justice Supervisory Committee.

Recommendation Number 5: The County Prosecutor and representatives of the police agencies should develop systems to ensure that complete grand jury packets in the appropriate form are received by the County Prosecutor in compliance with the time standards. Monitoring systems regarding compliance with the packet form requirements that are recommended by the County Prosecutor and law enforcement agencies should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.

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Recommendation Number 22A: The Criminal Justice Supervisory Committee reach consensus about what management reports should be produced to allow monitoring of justice system performance and outcomes.

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BACKGROUND

HISTORY OF THE PROJECT.

In May 2004 The Justice Management (JMI) was contacted by David Reines, the then Cuyahoga County Administrator, about the possibility of conducting an analysis of the felony case processing system in Cuyahoga County. Following a series of conversations and the exchange of information JMI proposed a two-phase project which would identify problems and issues in the processing of criminal cases in the County and propose solutions (Phase 1 of the Project) followed by which JMI would assist the County in developing and implementing plans to address the issues identified (Phase 2). A contract to conduct Phase 1 was ultimately entered into between JMI and the Cuyahoga County Commissioners with a starting date of October 5, 2004.

THE GOALS OF THE PROJECT.

As expressed in the contract, the goals of the project are (1) the identification of issues and problems in the current felony case processing system from initial contact with a law enforcement agency onward; and (2) the preparation of recommendations for changes in the system.

PROJECT ORGANIZATION AND METHODOLOGY.

As indicated in the contract, the main vehicle for developing detailed knowledge about system operations and crafting potential improvements was a series of site visits by members of the JMI's project team. The methodology used and the individuals interviewed are included in Appendix 3.

CURRENT CRIMINAL JUSTICE PROCESS IN CUYAHOGA COUNTY.

Both the analysis of the current felony case processing system and any recommendations for improvement must start from the premise that the movement of felony cases through the Cuyahoga County Justice System is a complex process composed of many inter-related and interdependent steps taken by a variety of entities, each with certain discretion and authority and multiple funding sources. It should be noted here that although some states may be less complex than Ohio's system, and some counties in Ohio may be less complicated than Cuyahoga, the structure of the system in this county is far from unique. The following is a summary of the stages in the felony process with an indication of who is involved, what discretions they have and who funds them.

Commission of the offense; Arrest; Identification; Detention; Charging.
Felony cases in Cuyahoga County begin with the commission of an act or acts that are defined by the Statutes and Ordinances as Felonies. Either the accused is apprehended at or soon after the commission of the offense, or the accused is arrested after an investigation or, in some instances, after the indictment has been handed down by the grand jury. Arrests are generally made by city law enforcement officers.

Soon after the commission of an offense, the arresting officers will prepare police reports. Depending on the jurisdiction the arresting officer(s) or some other officer will meet with the municipal prosecutor's office and charges will be drafted and filed in the municipal court with jurisdiction based on the location of the alleged offense. The form and content of the charging documents are mandated by the Ohio Rules of Criminal Procedure. The accused party goes through identification procedures (booking) at the detention facility, including prints and pictures, and if charged with a felony is usually detained in a jail or other detention facility at city expense. Depending on the jurisdiction where the accused person was apprehended, a local, state, or national identity check will be conducted to determine if there are outstanding warrants against the accused person and to determine his or her prior criminal history. The case will be assigned to the police department's detective bureau (or what ever the name of the department of the police agency that investigates offenses) for follow up investigation.

If an offense is committed but no alleged perpetrator is apprehended at the time, or in certain types of offenses such as financial cases, felony domestic violence cases, and drug cases with a confidential informant, the case may proceed directly from offense to the grand jury process, referred to as a "direct filing". The grand jury process is managed by the county prosecutor. According the County Prosecutor, in 2004 a total of 6,464 cases, or approximately 41% of the cases presented to the grand jury, began as a result of direct filing.

Initial Appearance/Probable Cause Hearing; Preliminary Hearing; Investigation; Bind over; Detention. Depending on the time of day and the day of the week when the accused was apprehended, he or she will appear before a municipal court judge to hear the charges and for the judge to make a determination of whether there is probable cause to believe that a crime has been committed and the accused committed it. The State of Oho will be represented by the municipal prosecutor (everywhere except Cleveland Municipal Court) or by the Cuyahoga County Prosecutor (Cleveland Municipal Court).

If the accused is indigent, counsel is appointed to represent him or her at this hearing. In the Cleveland Municipal Court the County Public Defender represents the accused at this hearing. In the suburban municipal courts a private counsel working under contract with the municipal court is appointed. Unless the accused waives preliminary hearing (well over half waive this hearing in Cuyahoga County), a preliminary hearing date is set.

The municipal court judge makes a release decision (type of release security and amount). Although there are numerous additional conditions that can be imposed, defendants are usually released on their own recognizance, released on 10% deposit bail, or released on the posting bail in the form of a surety bond. If the defendant is on bail, the preliminary hearing must be held within 15 days of arrest. If the defendant remains incarcerated, the preliminary hearing must be held within 10 days of arrest.

If the defendant cannot make bail and does not waive the preliminary hearing, he or she is remanded to the custody of a jail or holding facility and the municipality continues to pay the costs of incarceration. If the defendant waives the preliminary hearing and is bound over to the grand jury, then the defendant will be transferred to the County Jail immediately (Cleveland) or transferred at some point within the next few days (suburban municipal courts). In either event when the defendant is bound over, the incarceration costs become a County responsibility. In felony cases that originate in the Cleveland Municipal Court, where the County Prosecutor represents the State at the Initial Appearance and Preliminary Hearing, if the defendant does not waive the Preliminary Hearing the County Prosecutor's Office will attempt to accelerate the indictment process by direct filing with the Grand Jury in order to avoid having to disclose information to the defense at the Preliminary Hearing. According to the County Prosecutor, in 2004 a total of 8,587 felony cases originated as a result of this process.

If the defendant is incarcerated then the investigation will proceed with more dispatch due to the awareness of the police agency of the time limits imposed by statute. Any laboratory tests will be conducted. Other witnesses will be interviewed. Medical information will be obtained if there was a physical injury to the victim. If the defendant is out on bond, or if the case was assigned to the detective bureau for investigation without any apprehension of an accused party, then the detectives may or may not move as rapidly on the investigation depending on their other caseload and the type of crime that has been committed. Although there is a wide disparity based on the police agency and the nature of the offense the detective bureau completes its investigation and forwards a grand jury packet to the County Prosecutor's Office. On average it currently takes 12 days from bind over for the County Prosecutor's Office to receive the grand jury packet from the police agency.

There are instances where a defendant who is represented by private counsel will attempt to negotiate a plea while the case is still pending at the municipal court level. Because the County Prosecutor knows who will be representing the defendant throughout the case they have been willing to share information about the case at this early point to facilitate negotiations. If a plea agreement can be worked out, the defendant waives the hearing by a grand jury and the case is filed in the Court of Common Pleas as an information. The defendant then pleads guilty at the arraignment hearing and the case is assigned to an individual judge for sentencing only.

Indictment. The Grand Jury Unit of the County Prosecutor's Office reviews the information in the grand jury packet provided by the city police and drafts the charges to be considered by the grand jury. The charges may or may not be the same as those that were filed against the defendant in the municipal court. Subpoenas are issued and the grand jury proceeding takes place. The grand jury may return an indictment charging the defendant with a felony offense, or may decline to prosecute, referred to as a "no bill." As indicated above, cases come to the grand jury either from municipal courts, called *charged cases* by the County Prosecutor, or from police agencies, called *direct cases*.

During the period following the bind over and prior to the arraignment on the indictment or information, the defendant, if indigent, is not represented by counsel. If the defendant is incarcerated, the costs of incarceration in the County Jail are borne by the County.

Arraignment on the Indictment. The defendant is scheduled for an arraignment on the indictment in front of a judge of the Court of Common Pleas. In 2004 28.7% of the total new cases filed, failed to appear for their arraignment. No statistics are available to suggest what type of release conditions (RoR, 10% bail, surety bond, or something else) was the most common among those who failed to appear. If the defendant is incarcerated, either the Bond Commissioner's Office or the Pre-Trial Services department of the Probation department interviews the defendant and conducts another background investigation to provide information that the judge will consider in making a second decision on the conditions of release pending trial. If the defendant is incarcerated, the defendant appears by video from a facility within the County Jail. The Judge assigned to hear the arraignment may continue the bail set at the municipal court or may modify the type or amount of bail.

If the defendant is indigent, the Common Pleas Judge will assign counsel. If the case number ends with a 1, 3, 5, or 7 and if there are no conflicts because the Public Defender is already representing other defendants with interests that may be adverse to those of the defendant, then the Judge will assign the Public Defender's Office to represent the defendant for all proceedings in the Court of Common Pleas. If the case number ends with 2,4,6,8, or 9 or there is a conflict which makes in inappropriate to assign the Public Defender, then the Judge assigns a private counsel from a list to represent the defendant.

The Judge at arraignment will randomly assign the case to a Judge of the Court of Common Pleas, General Division, who will be responsible for the case until disposition and if convicted through the release from probation. If a defendant has pending cases, or is on probation, any new case will be assigned to the judge hearing the pending case or monitoring probation. If there are co-defendants in a case, all will be assigned to the same judge. Note that all judges hearing felony cases also hear civil cases. This requires them to juggle the scheduling of cases

Pre-trial conferences; Exchange of discovery; Plea Negotiation, Trial; Plea or Finding; Sentencing. The Common Pleas General Division Judge to whom the case has been assigned schedules an initial pre-trial conference within a week to 10 days of receipt of the assignment. All pre trial conferences are scheduled during the same hours by all of the judges of the Court of Common Pleas. The first pre-trial, and frequently the first several pre-trials, is generally spent providing to the defense counsel information about the evidence and witnesses, referred to as "discovery." The discovery process usually consists of the assistant prosecutor reading the contents of their file to the defense counsel. Most judges do not participate in these conferences unless their participation is requested by one of the parties. Some judges set a schedule for the case, including the trial date, soon after assignment. Others wait until the pre-trial conference process is

further along. Whenever the defendant's case is scheduled he or she is present for the conference. If the defendant is incarcerated this means that the County Jail must be prepared to deliver the defendant from the Jail facility to a deputy sheriff who will have custody of the defendant in the Justice Center.

In the vast majority of the cases defense counsel will ultimately offer to the assistant prosecutor a plea agreement on behalf of the defendant. The assistant prosecutor then must go from the floor where the judge's chambers are located to the 9th floor of the Justice Center where the offices of the County Prosecutor are located. A Division Chief or other senior assistant prosecutor authorized to review plea offers must review the offer and the prosecutor's file and approve or disapprove the offer. The assistant prosecutor then returns to the judge's chambers and, if the agreement has been approved, a hearing is held where the guilty plea is accepted by the judge. It is the practice throughout the court that a deputy sheriff be present when a guilty plea is taken, even if the defendant is not in custody. Depending on the situation at the time, it may take some time before a deputy sheriff is available to provide security during the plea session. The Court of Common Pleas' information system cannot provide average time data for disposition of cases. However, the data does indicate that as of December 31, 2004 4,540 cases, or 17 percent of the pending felony caseload had been pending for more than 180 days from arraignment on the indictment. Although the General Division Judges average 22.7 felony cases over 180 days from arraignment on the indictment, 15 of the 34 judges on the General Division have less than 10 cases over 180 days and 5 more had 10 to 15 cases over 180 days. Those 20 judges accounted for 120 of the cases over 180 days. The remaining 14 judges are assigned 652 of the overage cases.

Trial. In 2004 a total of 17,578 felony cases were terminated including 344 jury trials (1.95% of total terminations) and 379 were trials to a judge (2.15%). In other words, less than 5 percent of the total terminations were as a result of trial. On the other hand, 12,699 cases (72.24% of total terminations) were concluded by acceptance of a guilty plea. It should be noted that the time limit provision of R.C. 2945.71 with respect to felony cases requires the defendant to be *brought to trial* within a certain time period (90 days from arrest if incarcerated, 270 days from arrest if not incarcerated).

Sentencing. After a guilty plea has been accepted, or the defendant is found guilty as a result of a trial, a pre-sentence investigation is conducted by the Probation Department and a report prepared for consideration by the assigned judge at sentencing. The judge conducts the sentencing hearing and pronounces sentence on the defendant. Under the procedure in effect in Cuyahoga County, if the sentence includes probation the case remains assigned to the same judge during the period of probation. The consensus of the judges interviewed was that preparation of the Pre-Sentence report generally takes about 30 days.

If the defendant is incarcerated during the period between arraignment and sentencing, specifically including the time between the finding of guilt and sentencing, the costs of incarceration in the County Jail are borne by the County.

Probation Violation. If a defendant is put on probation, a probation officer is assigned to monitor the defendant's compliance with the conditions of probation. If the defendant violates probation then, consistent with the terms of probation established by the judge to whom the case is assigned, the defendant may be arrested and incarcerated in the County Jail. A hearing on the violation is generally scheduled in front of the assigned judge, usually within 1 – 2 days of the time when the judge receives notice of the violation if the violation does not involve a new felony charge. Neither the assistant prosecutor who represents the State in this hearing, nor the defense counsel who represents the defendant (if the defendant is indigent) is necessarily the same person who participated in the earlier portions of the case. The costs of incarceration of the probation violator in the County Jail are borne by the County.

OVERVIEW OF CURRENT CRIMINAL JUSTICE SYSTEM IN CUYAHOGA COUNTY.

To say that the present system is fragmented would be an understatement. A large number of distinct municipal, county, and state public agencies, part of the offices separately elected municipal, county, or state officials, and receiving general funding from a wide variety of taxing and funding sources at three separate levels of government, will be involved in processing any particular routine felony case as it passes through the system. In addition to the public agencies, there are at least two sets of individuals from the private sector who have a major role in the process. The private bar represents approximately 60 percent of the felony cases involving indigent defendants plus the cases where counsel is retained by the defendant. Assigned counsel is appointed by the municipal courts to represent the defendant during the proceedings at that level. Assigned counsel is also appointed (almost always not the same lawyer) to represent the defendant from arraignment on the indictment or information at the common pleas level. A significant share of the defendants who are released from custody pending trial post surety bonds. Thus, bail bondsmen who write these bonds, and who attempt to find the defendants if they fail to appear for a court appearance, are a part of the case in a large number of cases. At the early stages in the process the particular law enforcement and prosecution agency responsible could be any one of a very large number of governmental entities, depending on where the alleged offense took place.

The types of agencies involved include the following:

- Police Agency
  - *Duties: Detection, investigation and arrest.*
  - *Numbers: A report from the County Prosecutor's office suggests that there are 77 police agencies in Cuyahoga County who could make an arrest leading to a felony charge.*
- Municipal Detention Facility
  - *Duties: Hold accused persons from arrest until pre-trail release or transfer to County Jail*
  - *Number: There are 9 full service jails and 43 temporary municipal detention facilities in Cuyahoga County not including the County Jail or the Cleveland House of Correction.*

- Laboratory
  Duties: Perform analysis of evidence,
  Numbers: May be part of local police agency (Cleveland Police Department SIU), or may be state lab (BCII).
- State Criminal History Repository
  Duties: The Ohio Bureau of Criminal Identification and Investigation (BCII) is used to establish the identity of the defendant and as a source of criminal history information
- Municipal Prosecutor
  Duties: Draft charges and represent the state at the initial appearance/probable cause hearing and the preliminary hearing, if any.
  Numbers: There is a municipal prosecutor for each municipality. However, some prosecutors are part time and serve as prosecutor for several municipalities.
- Municipal Court Judicial Officer
  Duties: Appoint counsel; make the probable cause finding; set conditions of release.
  Numbers: There are 30 elected municipal judges serving the 13 municipal courts in Cuyahoga County.
- Municipal Court Probation Officer
  Duties: In Cleveland only - obtains information about the defendant for use in setting conditions of release
- Municipal Court Clerk
  Duties: Record keeper for proceedings that occur in the municipal court.
  Numbers: One for each of the 13 courts. The Municipal Clerk in Cleveland is elected. The rest are appointed.
- Private Assigned Counsel
  Duties: Appointed by the municipal court judge to represent indigent defendants at the municipal court level including the felony initial appearance/probable cause hearing. Appointed by Common Pleas Judge at arraignment on indictment to represent 60% of indigent defendants in the Court of Common Pleas.
- Bail Bondsman
  Duties: May write the security bond that is posted at the time a defendant is released from custody pending further proceedings.
- County Sheriff's Detention Facility
  Duties: If the accused is bound over to the grand jury and not out of detention on some form of release.
- County Clerk of Court
  Duties: Keeps the official files of all proceedings in Common Pleas Courts
- County Prosecutor
  Duties: Drafts the charges and manage the Grand Jury Process, represents the State after indictment or information. Represents the State at the initial appearance in the Cleveland Municipal Court

- County Public Defender
  Duties: *May represent the accused at the initial appearance (Cleveland Muni) and will be appointed to 40% of indigent cases arraigned in Court of Common Pleas.*
- Court of Common Pleas Judicial Officers
  Duties: *A judicial officer will conduct the arraignment on the indictment; review and establish conditions of release; appoint counsel; assign the case to an individual judge. Each case will be individually assigned to a judge of the court following arraignment.*
  Numbers: *There are 34 Common Pleas General Division Judges in Cuyahoga County who carry full dockets that include civil cases as well as felony criminal cases.*
- County Pre-Trial Services Department of County Probation
  Duties: *Reviews release status information in ½ of cases where defendant is arraigned on the indictment. Recommends conditions of release.*
- Bond Commissioner
  Duties: *Reviews release status information in ½ of cases where defendant is arraigned on the indictment. Recommends conditions of release.*
- County Probation Department
  Duties: *Prepares pre-sentence investigation report of accused is convicted. Supervises defendants released into community. Participates in Probation Violation Process.*
- State Department of Corrections

Each of these agencies, departments, or individuals has its own budget, its own constituency, its own set of managers, its own mission, and its own isolated view of what the justice system should do and how success should be measured. Because of constitutional separation of powers, historical patterns in the development of local government, the adversary process, local turf issues, and the elective process in effect in Ohio there is little, if any, overall vision for what the criminal justice system in Cuyahoga County should achieve. In fact, the various reasons for the fragmentation of the system create ample reasons for unwillingness to communicate and unwillingness to cooperate. All of the agencies are in competition for a limited amount of available dollars. Prosecution and defense are locked into an adversarial relationship with the accompanying culture of winning and loosing. Modern media philosophy thrives on pointing fingers and casting blame. There exists no recognized vehicle by which the entire system can monitor and manage itself. There is no consistent vehicle through which the organizations that share responsibility for the system can communicate, confer, discuss, or collaborate. While there have been efforts among the entities to address problems, they remain exactly that – narrowly focused on crisis management or specific problem solving and not broadly conceived to develop and maintain a unified vision of what could be or a unified plan of how to get there. In short, actors in the system tend to concentrate on negatives – avoid losing, avoid public scrutiny which is always negative, blame others rather than finding solutions.

While the system is fragmented and replete with multiple, parallel, separate, overlapping entities, the felony case process is very sequential and linear in nature. Throughout the process one step (usually the responsibility of one agency) must be completed before the next step (the responsibility of another agency at another level of government, in another branch of government) can begin. The felony case process and the philosophies that drive it have remained the same for a substantial period of time, in spite of improvements in technology, changes in leadership, and changes in the economy and demographics of the community.

Although there are many performance measures available, two easily measurable standards of the entire system's efficiency that have received attention in this community are compliance with the statutory times within which felony cases must be concluded and the cost of incarceration in the County Jail. Both of these measures reach across political structure and case processing boundaries. An unnecessary lapse of time by one agency at the beginning of the process has the same number of hours as a day of trial at the end of the process, and, once an incarcerated defendant is transferred to the County Jail, the day at the beginning costs the same for county jail costs as does an unnecessary delay by another agency later.

CHARACTERISTICS OF A WELL FUNCTIONING FELONY CASE PROCESSING SYSTEM

The Adult Justice Group Meeting of October 2004. On the last day of JMI's first site visit in October 2004, JMI convened and facilitated a meeting of the Adult Justice Group. Those in attendance included representatives of the County Prosecutor's Office, the Public Defender's Office, the Court of Common Pleas, the County Probation Department, the Clerk of Court's Office, the Sheriff's Office, the Office of Budget and Management, and the County Commissioners' Office. A representative of the Cleveland Police Department was also invited to attend, but a schedule conflict made it impossible for him to be present for the meeting. As is described elsewhere in this report, almost everyone in the room had been interviewed by JMI earlier in the visit.

While the earlier interviews had concentrated on the identification of problems and issues from the perspective of each of the individual members of the group, the meeting began by the facilitator asking participants to describe the characteristics of the early stages of a well-functioning criminal justice system. By the conclusion of the meeting the group had identified a number of fundamental characteristics of the early portion of an effective system without anyone voicing disagreement or reservations. The characteristics agreed to did not address the portion of the case process from arraignment on the indictment through the point when the defendant is released from the system through (1) acquittal, (2) conviction, sentence to probation, and completion of probation, or (3) conviction and sentence to a state penal facility.

There was a remarkable degree of collective agreement on the issues and solutions discussed, or at least the lack of voiced disagreement, among the persons who attended the meeting. The importance of this level of agreement cannot be over emphasized, because the issues identified and the solutions discussed involve multiple

agencies working together to solve common problems and produce system-wide improvements.

Additional Interviews of Criminal Justice System Participants in December 2004. At the conclusion of JMI's second site visit in December 2004, the members of the JMI team constructed summaries of the issues and solutions gleaned from the interviews completed during that visit related to the characteristics of the latter portions of a well functioning criminal justice system. All of these issues and solutions were identified by at least one person or group that was interviewed during this site visit, and many were discussed in a large number of the interviews.

The *Characteristics of a Well Functioning Felony Case Processing System for Cuyahoga County* which appears below is a combination of the agreements reached by the Adult Justice Group (reordered for clarity) and the issues and solutions identified as a result of the second site visit. It would be inaccurate to say that this list is a vision statement - it is far too specific for that. What it is instead is a recipe for a system that collaborates to reach just and efficient results.

CHARACTERISTICS OF A WELL FUNCTIONING FELONY CASE PROCESSING SYSTEM: A WISH LIST FOR COLLABORATIVE CHANGE

- A county wide Criminal Justice Supervisory Committee consisting of representatives from agencies, entities, and individuals at all levels of local government who are participants in the criminal justice system in Cuyahoga County;
- County-wide case processing time standards and priority given to achievement of them in all parts of the system;
- Availability and effective use of management information throughout the criminal justice system;
- Early, consistent prosecutorial screening for case severity and complexity by experienced prosecutors;
- Realistic charging decisions-made with consideration of potential disposition options;
- Assignment to case investigation and processing paths consistent with the complexity of the charges, facts, and likely disposition;
- High quality police reports transmitted promptly to the County Prosecutor's office;
- Upgraded forensic lab capabilities, with initial emphasis on enabling very rapid preparation of lab reports in cases involving suspected drugs;
- Rapid collection and dissemination of reliable and comprehensive information about the case and the defendant;
- Substantially increased use of deposit bail instead of surety bail;
- Early appointment of competent and effective counsel for indigent defendants;
- Early and continuing exchange of discovery information between prosecution and defense;
- Rapid initial processing of persons charged with felonies through rapid indictment processes and increased use of informations in lieu of indictments;
- Streamlining of the process for approval of negotiated pleas; and

- Effective calendar and trial management – including early resolution of discovery issues and motions; opportunity for early and efficient negotiation about disposition; future action dates scheduled, understood, and enforced; expectations clearly communicated to parties and counsel and fairly and reasonably enforced.

Caution. There is a vast difference between collective agreement in principle, as occurred in the Adult Justice Group meeting and interviews described above, and collaborative development and implementation of solutions. Development and implementation involves a number of agencies and individuals, requires a significant commitment of time and resources, may involve the reallocation of responsibilities and resources among agencies and entities that have long traditions of acting separately rather than collaboratively, and will require nurturing a culture of mutual trust, as opposed to casting blame or protecting turf.

Implementation of collaboratively developed plans and solutions will be arduous and may seem risky, but the alternative to collaboration is a continuation of the present system where individual organizational interests predominate over the public's right to efficient and effective operation of the entire criminal justice system. The potential results of system-wide collaboration promise a system that will better serve the public, the litigants, the witnesses and jurors, the individual criminal justice agency participants, and the organizations and entities involved.

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NEW PROPOSALS AND DEVELOPMENTS

Since this analytical process began in October 2004 two new or revised opportunities have come to the fore in Cuyahoga County's Criminal Justice Community that have a direct and potentially profound bearing on these recommendations and on the local system's response to the problems facing the criminal justice system. This section of the report will summarize those developments. Where the developments have an impact on the issues and recommendations that appear below, the impact will be noted as part of the discussion of the individual issue and recommendation.

CENTRAL BOOKING.

During the April 2005 site visit the JMI staff members had discussion with a number of individuals about the concept of Central Booking. Central Booking has been proposed a number of times in Cuyahoga, but appears to be feasible now because of the confluence of a number of separate events. It was clear from the discussions that at this point there is not unanimity about exactly all that would be entailed in a Central Booking process, what the procedures and assignments of responsibility might be, or how the costs would be apportioned or reapportioned. What follows is a summary of what was discussed during the site visit, and a description of how a county wide Central Booking process might look in Cuyahoga County.

Under the Central Booking concept the City of Cleveland would transfer its facility adjacent to the Justice Center to the Sheriff for use as the Central Booking and detention facility. Any accused person detained anywhere in Cuyahoga County for any criminal offense would be brought to a central location for initial processing. The initial processing could include: 1) finger printing and identification, 2) a more thorough records check through the appropriate state and national agencies, 3) screening for housing decisions, health needs, and for mental health problems, 4) the decision as to the offenses with which the accused person will be charged, 5) the drafting of those charges, and 6) the initial appearance/probable cause hearing. The Central Booking process and the housing of the accused person pending the initial appearance/probable cause hearing will be the responsibility of the County Sheriff's Jail staff. The jail facilities presently maintained by municipalities in Cuyahoga County could close, or responsibility for operating them would be transferred to the Sheriff. The transferred facility could be remodeled to allow confinement all sentenced misdemeanants. This would not only avoid the need for the county to pay board and care to other jail facilities inside or outside Cuyahoga County, it would also allow misdemeanant prisoners to be centrally housed where assistance programs of all types could be able to more efficiently and effectively provide rehabilitive and reentry services to the prisoners and their families.

There are a number of ways in which the program described above might be reduced in scope and resources. For example, it could be limited to defendants from the

City of Cleveland, which would be a potential way to pilot test the concept before going county-wide, or it could be limited to felony cases.

There are several issues that will need to be resolved on the way to implementing the Central Booking concept. While some of these will be discussed further later, many are listed in brief form here. Clearly, what follows is not an exhaustive list.

- How will Central Booking impact the 45% of cases that begin as a result of direct filing with the grand jury and do not go through the bind-over process?
- Will the Central Booking only relate to felony cases, or to all criminal matters, and if less than all, how and by whom will the decision be made whether the particular matter is a felony or a misdemeanor?
- Who will have responsibility for and bear the cost of the identification process?
- Who will have responsibility for and bear the cost of the medical, mental health, housing, and pretrial release screening processes?
- Who will draft the charges on which the defendant appears for the initial appearance/probable cause hearing and who will bear this cost?
- Where and before whom will the defendant appear for the initial appearance/probable cause hearing and who will bear this cost?
- If the defendant is incarcerated between the booking and the initial appearance/probably cause hearing, where will the defendant be housed and who will bear the cost?
- If the defendant has the initial appearance/probable cause hearing in the suburban municipal court in whose jurisdiction the alleged offense occurred, how will transportation be handled, who will have responsibility for transportation, and who will bear the cost?
- If the defendant is brought to the central location from a suburban location for booking but only charged with a misdemeanor where will the case be heard, who will have responsibility and bear the cost of transportation, and where will the defendant be incarcerated (i) between the booking and the first appearance, (ii) between first appearance and trial; or (iii) after sentence?
- What changes would be needed (if any) in state statutes, local ordinances, or state or local court rules to facilitate this process?
- What Memoranda of Understanding or Interagency Agreements would be necessary to accomplish the transfers of responsibility, revenue, and expenditure that would flow from this revised process?
- What additional facilities, equipment, program services, and personnel would be needed to accomplish this change in procedure? If personnel were transferred between county and municipal agencies as a part of this shift, are there any differences in pay or benefits or any collective bargaining agreements that would need to be considered?

COUNTY PROSECUTOR'S PROPOSALS

During the April 2005 site visit the County Prosecutor's Office offered proposals that might solve several of the issues surrounding discovery:

Resolution of simple cases early. First, they noted that it would be much more practical to offer early disclosure of evidence if the defense counsel who will represent the defendant in the Court of Common Pleas (as opposed to just representing the defendant at the initial appearance) is appointed or retained sufficiently early in the process. They agreed that in low level cases it would be possible to disclose information at the municipal court level, or soon after bind-over, to the trial counsel and raise the potential for disposing of cases early through a negotiated settlement at the municipal court level, analogous to what is now done with the PBR cases described below, or through a negotiated settlement that would result in a felony charge which would go forward as an information. It is interesting to note that according to the County Prosecutor's staff only 133 cases were arraigned on an information in 2004 as opposed to 8,587 proceeding by way of an indictment. According to the Prosecutor's Office Staff, information cases usually occur when a private retained counsel is present at the municipal court level so that negotiations can be carried out prior to bind over.

Reorganization of the Trial Department on a Community Based Model and Individual Assignment of Cases for Assistant Prosecutors. Second, they suggested the possibility of reorganizing the County Prosecutor's Trial Office to follow a community-based prosecution model. This would mean that each assistant prosecutor would be assigned cases only from a particular geographical area. Either the assistant prosecutors would appear in the courtroom of the judge to whom their cases was assigned, regardless of the floor, or, in the alternative, assistant prosecutors would remain assigned to floors, but would only be assigned cases from the geographic area to which their team was assigned. In either event, assistant prosecutors would be operating under an individual assignment system, similar to what has been in effect for the judges since 1972 except that the cases assigned would be limited to the geographic area to which the assistant prosecutor's team is assigned. An assistant prosecutor would be assigned responsibility for a case from indictment to disposition. Someone else from the same prosecution team would have responsibility for preparation of the case for presentment to the grand jury. The prosecutor assigned the individual case would be backed up by a team within the prosecutor's office all of whom were assigned to the same community area. The team would include not only the person who drafted the charges in the Grand Jury Unit, but also the person who has authority to review files and approve negotiated plea arrangements. This structure has the potential of creating serious scheduling problems when the random assignment of a case to a judge does not coincide with the assignment of the case within the prosecutor's office. The Prosecutor's Office is aware of this potential and the proposed structure is intended to ameliorate the potential problems through the community prosecution team approach, through continuation of assistant prosecutor floor assignments, and through limiting the number of transfers of assistant prosecutors between floors to a greater extent than is presently done.

Scanning Technology to solve the File Availability Problem. Third, representatives of the County Prosecutor's Office advised that their new computer case management system should be fully available in 18 to 24 months. The new system is to include scanned copies of all documents in all cases. When the system is operational,

each assistant prosecutor would have a laptop computer which would be loaded with copies of all of the information relating to the cases assigned to that assistant prosecutor, including documents. When an assistant prosecutor participates in a pretrial conference on a case, all of the information would be available on the approving deputy's laptop as well as the assistant's. It should be noted that the County Prosecutor's staff with whom we spoke decried the idea of multiple pre-trail conferences and understood that the laptops would also serve to solve the problem of missing files at the time of pre-trial conferences.

Wireless Technology to solve the Elevator Shuffle. With the new system, should the defense counsel make an offer on a case, the assistant prosecutor would be able to electronically and wirelessly notify the team member with authority to review the file and approve a plea using the wireless capability of the laptop computer without leaving the floor and engaging in the elevator shuffle that is now the norm in the Justice Center. The assistant would not need to physically travel to the floor where those with approving authority are located because all of the material in the file would be available on the computer system. The floor prosecutor and the supervisor with approval authority could converse about the case by phone or by e-mail, each having access to the same electronic file.

Assistant Prosecutor Office Hours. On an associated topic, one of the County Prosecutor's Office Staff members with whom JMI met was intrigued by the idea of setting aside a period of time when no cases would be scheduled but the Assistant Prosecutors would be available in their offices to meet with defense counsel to resolve cases. Since the Prosecutors would be in their offices on that floor, they would have relatively immediate access to supervisors for case marking purposes.

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ISSUES AND RECOMMENDATIONS

I. GOVERNANCE OF THE CRIMINAL JUSTICE SYSTEM.

A. Criminal Justice Supervisory Committee.

Issues: At present there is no unifying commonly shared vision within the criminal justice system in Cuyahoga County as to what the system can or should achieve for the defendants, victims and the public it serves. This means that the only statements about what the system should achieve come from individuals or representatives of entities, often with the biases and interests inherent in single issues and single points of view. Obviously several components of the criminal justice system are led by elected officials, each with specific, sometimes exclusive, authority and discretion. However, this does not prohibit them from collaboratively developing and following a consensus strategy for the overall criminal justice system that credibly achieves all of its goals.

Currently there are no county-wide standards or system-wide information against which to monitor activity or measure performance. The result is that occasional individual high profile failures, usually of a portion of the system, are the only consistently recognized measures of performance.

Right now no institutionalized body exists with the specific responsibility for managing or monitoring the criminal case process in Cuyahoga County. There is no staff charged with developing information about system performance or planning for improving overall system operations and cost-effectiveness. There is no collective responsibility for the system's performance; and individual responsibility for system performance is sporadic and inconsistent.

At present there is no institutionalized means for the representatives from the various entities to communicate with each other about progress or problems, or how to respond to new laws or challenges on an ongoing basis. In the absence of a regular means for discussion in an orderly and respectful fashion, the entity leaders have often resorted to sometimes shrill and strident exchanges in the media.

Some, but not all, of the problems with the current system relate to availability of funding. In addition to being in competition with every non-justice system governmental entity for funds, the criminal justice entities are also in competition with each other for funds. The separate entities that make up the system are naturally reticent to give up any funding even if the result would be to support another agency's efforts that would benefit the entire system. Recent Cleveland and Cuyahoga County economic conditions have resulted in the reduction in budgets in some critical areas such as street police officers, detective bureaus, local forensic laboratory staffing, and reduction of the pay for indigent

defense services to name a few. The forecast for the next few years does not seem to suggest that the current economic situation will improve.

Decisions made at many points in the felony case processing system can have significant economic impact on other points of the system or on other levels of government. For example, the initial decision to charge an incarcerated defendant with a felony rather than a misdemeanor shifts the costs of incarceration and the costs of indigent defense services from a municipality to the county. The decision whether to charge a misdemeanant under the state statutes or local ordinances works a similar shift in costs as well as a shift in the distribution of any fine revenue received. The reduction in staff at the police detective and forensic laboratory stages (both funded at the municipal level) may mean that an incarcerated defendant will wait longer before his or her case will be ready to be tried, thus increasing the jail costs to the county.

As described elsewhere in this report, an Adult Justice Group does currently exist. While this group has achieved progress, its membership does not include all of the relevant players, it has no defined mission, its history is one of problem solving around specific issues, not collaborating at the policy level, and its existence and role are not known by many opinion makers in the community.

The CENTRAL BOOKING opportunity discussed above is an excellent example of a program that would significantly benefit from a coordination and collaboration mechanism both during development and after implementation.

Formally chartered or informally organized system wide criminal justice coordinating groups exist in many comparable large urban jurisdictions, including Tampa, Florida, Upper Marlboro, Maryland, Minneapolis, Minnesota, and Seattle, Washington

Recommendation Number 1: Cuyahoga County should form a county-wide Criminal Justice Supervisory Committee.

The overall purposes of the Committee would be

- to develop a unifying commonly shared vision within the criminal justice system in Cuyahoga County,
- to develop county-wide standards and measures for sharing system-wide information against which to monitor activity and measure performance,
- to exercise collective responsibility for managing and monitoring the criminal case process in Cuyahoga County, and
- to regularly communicate with each other about problems, and coordinate responses to new laws or challenges.

The Committee would be chaired by the Presiding Judge of the Court of Common Pleas and would consist of heads of the agencies at both the municipal and county levels of government who are involved in processing criminal cases of all types or their policy

level designees. Every subsequent recommendation in this report depends upon cooperation among the agencies which are part of the county-wide criminal justice system. Every sub committee in our subsequent recommendations should be required to report to the Committee for approval and direction. The potential members listed below are recommended based upon their participation in the system, their funding of the system, the services they provide to defendants, or the number of cases that originate in jurisdictions that they represent.

Members of the Committee should include:

- The Presiding Judge of the Court of Common Pleas (Chair)
- The Presiding Judge of the Juvenile Division of the Court of Common Pleas
- The Court Administrator of the Court of Common Pleas
- The Head of the Probation Department of the Court of Common Pleas
- The Bond Commissioner of the Court of Common Pleas
- The head of the Pre-Trial Services Division of the Probation Department of the Court of Common Pleas
- An IT specialist with responsibility for the Court of Common Pleas Information System
- The Clerk of the Court of Common Pleas
- The County Prosecutor
- The Public Defender
- A private attorney who regularly represents felony defendants
- The County Sheriff
- The County Director of Corrections
- Two Cuyahoga County Commissioners
- The Mayor of the City of Cleveland
- Two members of the Cleveland City Counsel with budget making responsibility
- The Presiding Judge of the Cleveland Municipal Court
- The Cleveland Municipal Court Administrator
- The Clerk of the Cleveland Municipal Court
- The Cleveland City Prosecutor
- The Chief of Police of the City of Cleveland
- A suburban mayor to be selected by the Association of Mayors of Cuyahoga County for a three-year term
- A presiding judge of a suburban municipal court to be selected by the presiding judges of the suburban municipal courts for a three-year term
- A suburban city prosecutor to be selected by the suburban city prosecutors for a three year term
- A suburban contract defender to be selected by the suburban presiding judges for a three year term
- A suburban chief of police to be selected by The Cuyahoga County Police Chief's Association for a three-year term
- The director of a suburban jail to be selected by the directors of suburban jails for a three-year term.

- A representative of the State Department of Corrections
- The Director of the Cuyahoga County Alcohol and Drug Addiction Services Board
- The Director of the Cuyahoga County Board of Mental Health
- Such other individuals or entities deemed important by the committee to the functioning of the Criminal Justice System in Cuyahoga County

The membership described above is designed to reflect the fact that the vast proportion of the workload of the criminal justice system and resources that operate the system come from the City of Cleveland.

The Committee would have authority and responsibility to:

- Formulate mission and vision statements for the county-wide criminal justice system,
- Develop a county-wide criminal justice strategic plan,
- Oversee the development of, approve, and coordinate the implementation of policies and practices to improve case processing in Cuyahoga,
- Develop and approve time standards for all stages of the process and facilitate the sharing of information related to the performance of all agencies against the time standards,
- Hire a person to be the Executive Director of the Committee and such other staff as are needed to support the committee's functions,
- Enter cooperative agreements on sharing of costs between the governmental entities which are members of the Committee for the support of the operations of the Committee
- Meet regularly at such locations as may be agreed upon in order to coordinate and monitor criminal justice operations at all levels.
- Collaborate on the identification and development of specific projects and programs to improve the operation of the criminal justice system within Cuyahoga County,
- Seek funding from governmental and private grant giving bodies to cover the costs of developing programs and policies for the improvement of the administration of the criminal justice system in Cuyahoga County, and
- Recommend to county and municipal funding bodies the allocation or re-allocation of funds among criminal justice agencies.

An Executive Director and staff are critically important for the success of this idea. A strong staff of well-qualified persons knowledgeable about criminal justice and dedicated to the work of this Committee will be necessary to prepare the analysis and recommendations and to monitor and oversee implementation.

II. ARREST TO ARRAIGNMENT.

A. Case investigation processing paths should be consistent with the severity and complexity of the crime charged and the possible sentence that could be imposed.

Issues: All cases that result in bind over to the Court of Common Pleas on felony charges are investigated and processed using similar case processing steps by the police agencies regardless of the severity or complexity of the offense except that cases where the defendant is incarcerated have priority over cases where the defendant is not in custody. Felony 4th Degree and Felony 5th Degree cases with no victim and few witnesses must be reviewed by the detective bureau in the same fashion as Felony 1st or 2nd[1]. According to information received from the County Prosecutor, as of October 2004, on average the indictment packet was received from the law enforcement agency 12 days following the arrest. However, this time can be substantially extended if drugs are involved. Current estimates are that it takes from 14 to 17 days to get lab results from the Cleveland Police Department's Lab and much longer than that if the State's Bureau of Criminal Investigation and Identification's Lab (BCII) is used. Most suburban police agencies use the BCII Lab.

Information from the Sheriff's Office indicates that the majority of pre-sentence confinees are charged with Felony 4s or Felony 5s[2] who are transferred to the County Jail when they are bound-over by a municipal court for indictment. Thirty five percent of pre-sentence confinees are charged with a drug offense[3].

Financial issues caused the City of Cleveland to lay off 270 officers and 94 civilian employees from the Cleveland Police Department. Other impacts of these reductions will be dealt with in other places in this report. However, one impact was to reduce the narcotics unit (highest workload in Cleveland Police Department) to only day shifts and only 5 days a week thus reducing the capacity of the Department to deal with this substantial portion of the caseload and increasing the time it takes to process these cases through the investigative process[4].

There are programs that differentially address cases involving lower level crimes. The Court of Common Pleas and the County Prosecutor have collaboratively developed a program known by the County Prosecutor as the Pre-Bind over Resolution Program or PBR and known by the Common Plea Court as the 3D Program for the number of the courtroom in the Justice Center where it takes place. Under this program some defendants with low level drug felonies plead guilty to a misdemeanor at the arraignment on the indictment and the case is diverted to the drug court program in the Cleveland Municipal Court. Unfortunately, this program does not begin until the case reaches arraignment on the indictment. This means that 40 to 50 days have passes since the defendant was arrested. If the defendant is in jail, a substantial incarceration cost has been incurred. Each of these cases required review by the detective bureau of the police agency, preparation and presentation at the grand jury level, and preparation for the arraignment.

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[1] Interview with Cleveland Police Department Officers.
[2] Under the Ohio Revised Code a 4th Degree Felony is one for which the defendant may be sentenced to from 6 to 18 months and pay a fine of not to exceed $5,000. For conviction of a 5th Degree Felony a defendant may be sentenced to from 6 to 12 months and pay a fine of not to exceed $2,500.
[3] Interview with Sheriff's Department staff.
[4] Interview with Cleveland Police Department Officers.

The CENTRAL BOOKING opportunity would provide the vehicle for the arresting officer to move the case forward without the need for action by the Detective Bureau.

The low grade felonies that would be placed on an expedited investigation track are exactly the type of cases that would be most amenable to the early exchange of discovery information and early resolution suggested by the COUNTY PROSECUTOR'S PROPOSALS.

Recommendation Number 2: A committee composed of representatives of the police agencies, municipal and county prosecutor's office, public defender, and probation department should develop a case investigation process which accelerates the law enforcement processing of cases where the charges are lower grade felonies, cases where there is no victim and few witnesses, and cases involving low-level substance abuse. The process recommended should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.

B. High quality police reports should be transmitted promptly.

Issues: At present there are 77 police agencies in Cuyahoga County that can conduct an investigation of a case that may be charged with a felony. There is no standard format for the reports prepared by a police agency that will be used by the prosecutor in making charging decisions or in support of an indictment. The charging decision requires certain information from the police agency and the charging decision will be more accurate, more consistent, and more easily made if there is some consistency in what information is contained in the police reports, how it is presented and what supporting documentation is included.

Cases come to the grand jury in two ways. Most cases come to the grand jury after the defendant has been charged with an offense and appeared for an initial appearance/probable cause hearing in a municipal court. The County Prosecutor's Office refers to these as *charged cases*. In these cases the County Prosecutor's Office has a record of when the bind-over occurred in a municipal court, so they can monitor the preparation of the grand jury packet and contact the police agency if an inordinate lapse of time takes place. As indicated above, the grand jury packets are received in charged cases in an average of 12 days after bind over.

However, a significant proportion of the cases come directly to the Grand Jury as requests for indictment[5]. *(*The County Prosecutor's Office refers to these as *direct cases.)*

[5] Interviews with County Prosecutor's Office staff suggest that about one third of the cases originate as direct indictments. The reports submitted by the municipal courts in the county to the Ohio Supreme Court indicate that the total cases bound-over to the grand jury in 2004 were 8,432. The reports submitted to the Supreme Court by the Common Pleas General Division Judges indicate that a total of 14,896 new cases were filed. While this number includes cases assigned to the judges because defendants currently on probation committed additional offenses, the numbers support the conclusion that somewhere between 33% and 40% of the new indictments come as a result of direct filing.

The cases are most typically financial crimes, felony domestic violence cases, drug cases with a confidential informant, and cases where the defendant has not been arrested. Because there has been no appearance in a Municipal Court the County Prosecutor's Office has no event or point in time against which to measure the prompt completion of the investigation and preparation of the grand jury packet. Because the defendant is not incarcerated these cases do not have as high a priority with the police investigative agencies. The County Prosecutor indicates that as of October 2004 it may take as long as two months from the date when the facts came to the attention to the police for the grand jury packets to arrive in these cases. While there are no obvious substantial costs in these cases because the defendant is not incarcerated, there is a public cost as the passage of time leaves an alleged criminal on the street longer (during which time he or she may commit another crime) and increases the possibility that witnesses or victims will move or forget the details of what happened.

In lower grade felonies, cases where there is no victim and few witnesses, and cases involving low-level substance abuse there is generally no need to require the case to go through the same process in the detective bureau as cases of greater severity or complexity. If the lower degree felonies and other cases that are less complex can be processed in an expedited fashion as recommended elsewhere in this report, then those cases that are more complex or more severe can receive the time needed and investigations completed more promptly.

At present documents developed by the police agencies are hand delivered to the County Prosecutors Office[6]. To the extent these documents are computer generated in the first place, electronic mail could be used to facilitate the transfer of this information.

If the defendant does not waive a preliminary hearing during the initial appearance/probable cause hearing in the Cleveland Municipal Court the County Prosecutor (that office represents the State in felony cases in the Cleveland Municipal Court) direct files the case so that the defendant is indicted before a preliminary hearing can occur and possible discovery is avoided.[7] Information from the Cleveland Municipal Court indicates that preliminary hearings are routinely scheduled within 7 days of the initial appearance, and must be held within 10 days if the defendant is incarcerated and 15 days if the defendant is out on bond.[8] Thus, a process that normally takes between 30 and 40 days can occasionally be accelerated to from 7 – 15 days by the County Prosecutor's Office. It is not clear whether the time gained results from shortening the investigative time by the law enforcement agency or shortening the processing time in the grand jury unit.

CENTRAL BOOKING would facilitate the use of standard forms to initiate a felony prosecution and accelerated investigation process.

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[6] Interview with Cleveland Police Officers.
[7] Crim. R. 5 (B)(1) indicates that no preliminary hearing will be held if the defendant has been indicted.
[8] R.C. 2945.71 and Crim. R. 5.

<u>Recommendation Number 3</u>: The County Prosecutor, the Clerk of Courts, the Detention Facility, and representatives of the police agencies should develop standard forms for use by police agencies in preparing the grand jury packet. The standard forms recommended should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.

<u>Recommendation Number 4</u>: The County Prosecutor and representatives of the police agencies should develop time standards applicable county-wide for completion of investigations and preparation of the grand jury packets in charged and direct filed cases. The time standards recommended should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.

<u>Recommendation Number 5</u>: The County Prosecutor and representatives of the police agencies should develop systems to ensure that complete grand jury packets in the appropriate form are received by the County Prosecutor in compliance with the time standards. Monitoring systems regarding compliance with the packet form requirements that are recommended by the County Prosecutor and law enforcement agencies should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.

<u>Recommendation Number 6</u>: Secure electronic mail should be used to transfer the grand jury packets from the police agencies to the County Prosecutor. The process recommended to electronically transfer grand jury packets should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.

<u>Recommendation Number 7</u>: After the monitoring systems are in place the performance of the police agencies in meeting the time standards should be shared with the Criminal Justice Supervisory Committee on a regular basis. Recurring problems with prompt and complete preparation of grand jury packets by a police agency should be subject to review by the Criminal Justice Supervisory Committee.

The Criminal Justice Supervisory Committee may seek volunteers from other police agencies to provide technical assistance to the police agency that is not in compliance, or it may bring the non performance of the police agency to the attention of its funding agency for remedial action.

C. Upgraded forensic lab capabilities.

<u>Issues:</u> In a drug case no scientific verification that the substance was an illegal drug is required at the initial appearance/probable cause hearing. However, before the County Prosecutor's Office will proceed to the grand jury they require that identification of the drugs take place. Although field tests for drugs are commonly used by suburban police agencies and are accepted by the County Prosecutor for use in grand jury proceedings, the Cleveland Police Department does not do such field tests. Since there is no field testing, alleged drugs must be tested by the agency's lab. Due to economic

problems in the City of Cleveland mentioned above, the staff of the Cleveland Police Department's Special Investigation Unit (SIU) (laboratory) was reduced by 50%. Current estimates are that it takes from 14 to 17 days to get lab results from the Cleveland Police Department's Lab.[9] Prior to the reductions these tests could be completed in 48 hours. It should be noted that the test results take even longer than that if the State's Bureau of Criminal Investigation and Identification's Lab is used.

If a municipal prosecutor charges the defendant with a low level felony drug case and the defendant is incarcerated, cost savings resulting from the staff reduction in the Cleveland Police Department's special investigations unit and narcotics unit are realized by the City while additional jail costs wee incurred by the county as a result extended incarceration because of the longer investigation times and longer lab test times.

The screening process that would be part of the CENTRAL BOOKING process would identify individuals with a past history of substance abuse, and would uncover involvement in substance abuse at a point where an accused person might be able to obtain help or be diverted into a drug court program.

Recommendation Number 8: The staffing of the Cleveland Police Department's Special Investigations Unit (SIU or Lab) should be increased to a level that will reduce lab test turn around on drug cases back to their previous standard of 48 hours. If funds are not available from the City to augment the SIU Staff, then requesting funding from the county government should be considered. The reduction in jail costs paid by the county that would result from more rapid drug test results would at least partially offset the cost of lab staff sufficient to reduce the turn-around time for test. The Cleveland Police Department's SIU could also consider contracting with suburban municipalities for drug testing services to spread the costs.

D. Rapid identification of defendants.

Issues: Prompt and accurate identification of apprehended offenders is very important to the effective operation of the system. A complete records check will verify the identity of the individual who has been apprehended, will indicate whether this person has any charges or warrants pending against them in other jurisdictions, will indicate previous criminal records, if any, that might be relevant to the charging decision, and will provide information that will assist in the pre-trial release decision by the judge.

The layoffs in the Cleveland Police Department that have been mentioned previously also impacted the identification section. The fingerprint unit of the Cleveland Police was reduced to 2 shifts a day on weekdays and one shift a day on weekends. Although current equipment would allow a communications connection between the Cleveland Police Department's central office and the suburban districts, as well as between Cleveland Police and the Sheriff's AFIS systems, no connection currently exists.

[9] Interviews with both the County Prosecutor's Office staff and the Cleveland Police Department indicate these times. Both interviews indicate that before the staff reductions drug results could be processed by the SIU within 48 hours.

Currently, finger prints are only verified at the downtown location. When an incarcerated defendant is received by the County Jail a single finger print is taken by County staff in order to conduct a BCII identity check. No NCIC check is run until the defendant is about to be released from custody by the jail.

At present the grand jury information packet prepared by some police agencies does not include Prior Record Information.

CENTRAL BOOKING could be designed to facilitate prompt and complete identification.

Recommendation Number 9: The law enforcement agencies and detention facilities in the county should initiate steps to cause the finger print identification systems in use by all police agencies and detention facilities in the county to be electronically interconnected so that full and complete identification occurs early and only has to occur once when a defendant is arrested. The process should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.

Recommendation Number 10: Full national and state finger print identification protocols should be completed when the defendant is first brought to the police station and, once positively identified, the arrest/custody status should be shared with all police agencies, detention facilities, and the department or division of the County Prosecutor's Office which is reviewing the charges. No defendant being processed for charges resulting from the same offense or series of offenses should need to be fully finger printed more than once while they remain in the custody of a police agency.

E. Individuals who commit similar acts should be charged with similar offenses. Consistent with justice, persons who are convicted of similar offenses should receive similar punishments.

Issues: Whether the defendant is charged with a felony or a misdemeanor is one of the most critical decisions in the way the case is subsequently processed. Yet, there is wider disparity in the way initial charging decisions are made and the way the initial processing of felony cases are processed than at almost any other point in the felony system.

According to the statistics provided by the Supreme Court of Ohio, on average only around 19% of felony defendants do not waive their right to a preliminary hearing. However, the range of percentages go from 100 percent preliminary hearings in Euclid and 97% preliminary hearings in Lyndhurst to 100% waiver of preliminary hearings in South Euclid and 99% waiver in Garfield Heights.

The County Prosecutor's Office is currently not involved in drafting initial charges in felony cases that originate through any of Cuyahoga County's municipal

courts. Of the 3,675 defendants charged in suburban courts in 2004, the initial charging decision in some is made exclusively by the police agency without input from a local prosecutor. In others the municipal prosecutor is involved in the initial decision process. According to the Cleveland Police Department, of the 6,814 defendants where the case originated in Cleveland in 2004 the police are required to meet face-to-face with the municipal prosecutor in the downtown office during normal office hours and the municipal prosecutor drafts the charges. The Cleveland municipal prosecutor's office operates a single shift five days a week and only limited weekend hours[10]. Thus, officers are frequently required to work overtime to meet with the prosecutors at the downtown office[11].

Although not involved in the charging process in the municipal courts, the County Prosecutor's Office has a very strong voice in the nature of the cases heard in the Court of Common Pleas. First, the charges presented to the grand jury by the County Prosecutor may be either more or less serious than those on which the accused was charged in the municipal court. Thus, a second set of charging decisions are made that duplicate the process, if not the outcome, of the municipal court process.

Second, in 2004 the cases of 6,464 defendants by-passed the bind-over stage and were filed directly with the grand jury[12]. Approximately 775 more cases were direct filed with the grand jury in 2004 than were bound over from the Cleveland Municipal Court. Summarizing the comments made by County Prosecutor's Office staff, the direct file cases involve financial cases, felony domestic violence cases, drug cases with a confidential informant, cases where no arrest has been made, and cases where direct filing is used to avoid a preliminary hearing[13]. If the defendant requests a preliminary hearing during the initial appearance/probable cause hearing in the Cleveland Municipal Court the County Prosecutor (that office represents the State in felony cases in the Cleveland Municipal Court) often direct files the case so that the defendant is indicted before a preliminary hearing can occur[14] and possible early discovery is avoided[15].

Third, in 2004 133 defendants were arraigned on an information. Informations are prepared in lieu of an indictment when the defendant waives the right to a grand jury under Crim. R 7. Reportedly, these cases involve a defense lawyer retained by the defendant prior to the initial appearance/probable cause hearing and a negotiated plea has been worked out between the County Prosecutor's Office and the Defendant. In these cases the defendant will waive the right to a grand jury, an information will be filed, and the defendant will plead guilty to the information at the arraignment in the Court of Common Pleas. The case is then individually assigned to a judge of the Court of Common Pleas for sentencing.

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[10] Interview with Cleveland Police.
[11] Interview with Cleveland Police.
[12] Interview with County Prosecutor's staff estimated that approximately 2/3 of the cases came from bind-over and 1/3 from direct filing. The Supreme Court Statistics seem to indicate that approximately 40 percent of new filings were from direct cases in 2004.
[13] Interview with County Prosecutor's Office staff.
[14] Interview with County Prosecutor's Office staff.
[15] Interviews by County Prosecutor's Office staff and Public Defender staff.

In most suburban municipal courts a municipal prosecutor represents the State at the initial appearance/probable cause hearing and at any subsequent preliminary hearings[16]. As indicated earlier, in Cleveland Municipal Court a County Prosecutor represents the State at the initial appearance and any preliminary hearing in the Cleveland Municipal Court. At present, 0.8 Full Time Equivalent positions in the Cuyahoga County Prosecutor's Office are assigned to represent the State in initial appearances in Cleveland Municipal Court.

The Grand Jury Unit of the County Prosecutor's Office consists of 7 FTE attorneys and 10 additional staff members[17]. According to the County Prosecutor's staff, the attorneys who work in this department will not be the lawyers trying the cases on which they are working.

The Grand Jury Unit does not consider what the ultimate outcome of the case is likely to be, or what an acceptable negotiated plea might be, when drafting the charges that go to the grand jury. In calendar year 2004 5,755 felony cases, or 38.6% of the total cases filed, end in the Court of Common Pleas by acceptance of a guilty plea to charges that are less serious than the charges in the indictment.

CENTRAL BOOKING, if it includes central decision making on initial charges, will facilitate more consistent charging decisions. Central Booking is consistent with the recommendations below.

The team prosecution concept inherent in the COUNTY PROSECUTOR'S PROPOSALS should also facilitate consistent standards being applied to plea negotiations such that persons who have committed similar acts should receive similar sanctions.

Recommendation Number 11: Initial charging decisions in all cases possibly involving a felony should be made by experienced trial prosecutors employed by or supervised by the County Prosecutor's Office. All felony charging decisions should involve early, consistent, prosecutorial screening for case severity and complexity and should reasonably reflect what is likely to transpire in the subsequent negotiation and trial phase. The process recommended for transferring the authority to review and draft felony charges from the municipal prosecutors to the County Prosecutor should be forwarded to the Criminal Justice Supervisory Committee for review, approval, and implementation. In order to assure that the same standards are applied to all felony charging decisions, the initial charging decision in all cases charging a felony that proceed through the municipal courts, by direct indictment, or by information in Cuyahoga County should be drafted or approved by the County Prosecutor's office.

[16] Interview with County Prosecutor's Office staff.
[17] Interview with County Prosecutor's Office staff.

Recommendation Number 12: **The police agencies in the county and the County Prosecutor's office should develop procedures and systems such that, to the extent feasible, if the County Prosecutor's staff needs to meet with police officers during the charging process those meetings should take place by video conference before the end of the arresting officer's shift.. The procedures and systems recommended should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.**

Recommendation Number 13: **The Grand Jury Unit of the County Prosecutor's Office or such other unit as reviews and approves charging decisions in accordance with this recommendation, should operate 24 hours a day, 7 days a week.**

Recommendation Number 14: **Prosecutors who represent the State in any hearings in any court of the Ohio Court System related to cases where the defendant has been or will be charged with a felony will be under the supervision of the County Prosecutor's Office, as employees or contractors of that Office.**

Recommendation Number 15: **Cases that would be eligible for the Pre-Bind over Resolution Program should be initially charged as misdemeanors and dealt with at the initial appearance/probable cause hearing.**

F. Rapid initial processing of persons charged with felonies during the indictment process.

Issues: According to information provided by the County Prosecutor, in October 2004 it took an average of 40 days from bind-over to indictment in charged cases. Of the 40 day average, 12 days is taken up waiting for the complete grand jury packet, in particular the investigation reports, to arrive from the police agencies and the remainder is spent preparing and making the presentment to the grand jury.

This average figure also includes time lost because of continuances of the presentments. A continuance typically causes a delay of about a week due to the need to provide formal notice to witnesses, in particular police officers. A recent study conducted by the County Prosecutor's Office suggests that continuances of presentments may average as high as 200 per month, compared to a total of 1,306 cases presented per month. According to the County Prosecutor's Office the most common reasons for continuances in grand jury presentations are:

- Absent Witness - mostly Police Witness; (approximately 80% of continuances)
- More information or witnesses needed;
- Lab Results needed.

Only recently has the County Prosecutor begun to send subpoenas to Cleveland Police Officers in the districts via electronic mail. Many street officers in Cleveland Police Department do not have access to e-mail. E-mail subpoenas are not used for

suburban police agencies. No system presently exists to notify the law enforcement witnesses that a hearing or trial had been postponed or cancelled. In the absence of notice officers will come to court for the hearings and are entitled to overtime pay for their appearance whether or not the trial or hearing actually occurs. Note that the Cleveland Police Department paid $3.5 million in court overtime during 2003, although not all of this was for Grand Jury appearances.

The County Prosecutor will not proceed to the grand jury without complete information. Frequently the information initially received in the grand jury packets from the police agencies, particularly the Cleveland Police Department, is not complete.

An issue mentioned frequently by the judges was that cases were assigned to individual judges and during pre trial conferences it was discovered that relevant medical records from assault victims were not available. This requires a delay during the time needed to issue an order to obtain the needed medical records.

CENTRAL BOOKING will facilitate prompt initial case processing because all cases will have common basic information in the files based upon which monitoring can occur.

Recommendation Number 16: Better use should be made of electronic mail to issue grand jury subpoenas to all police agencies and officers throughout the county and to notify police agencies and officers when a scheduled hearing has been postponed or cancelled. The process recommended to electronically issue grand jury subpoenas and the process recommended to notify police agencies and officers of the postponement or cancellation of grand jury hearings should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.

Recommendation Number 17: As a part of the early case preparation process police agencies should obtain releases of medical records from assault victims and other victims where medical condition is an issue relevant to the resolution of the case.

G. Early appointment of competent and effective counsel for indigent defendants.

Issues: At present an indigent defendant is appointed counsel by the municipal court hearing officer for purposes of the initial appearance/probable cause hearing. The counsel's representation of the defendant ceases upon bind-over or dismissal of the case in the municipal court. Only in the City of Cleveland are any of the felony cases at the municipal court level handled by the Public Defender's Office. The cost of this appointed counsel is borne by the local unit of government. As indicated elsewhere in this report, a substantial period of time may elapse between bind-over and arraignment on an indictment or information. During this period the indigent defendant is not represented by an attorney. No steps are undertaken to accelerate the disposition, partly because there is no one to represent the defendant in negotiations. Some counsel currently feel that earlier appointment would not be a material benefit to the defendants because of the slow movement of the process during this period. However, the

willingness to exchange information and enter negotiations that has been expressed by the County Prosecutor obviates this concern.

The Common Please Judge handling the arraignments on indictment or information appoints counsel for indigent defendants at the arraignment. These appointments are made from a list maintained by the court. Almost invariably the counsel appointed at arraignment on the indictment is not the counsel that was appointed at the municipal court level. By rule, 40% of the cases are assigned to the Public Defender's Office.

Cuyahoga County Court of Common Pleas Rule 33 establishes lists from which private counsel are to be appointed to represent indigent persons. The rule applies to the appointment of cases at arraignment on the indictment. This rule establishes 4 lists based upon the gravity of the offense charged and assigns counsel to these lists based upon levels of experience. Nothing in the rule requires review of the lawyers by other lawyers or by judges except by the Administrative Judge. The rule does not contain any requirement for evaluations of counsel's performance.

There has been substantial media coverage of the process of appointment of indigent counsel. Many judges interviewed as a part of this study expressed concern with the appointment of counsel issue in a different way than has been expressed in the media. Judges indicate that there are lawyers on the court maintained list who do not have the skill or experience to handle more complex types of cases. Further, not all lawyers on the list reportedly represent their clients as conscientiously or vigorously as others. Judges who have handled the arraignment calendar will appoint from the list only those lawyers who they feel are competent to handle the issues in a particular case.

CENTRAL BOOKING could facilitate the early appointment of counsel because all appointments could be made from a central location from a centrally maintained counsel list, or lists. While early appointment would be problematic in the suburban jurisdictions if the current booking and initial appearance practices were maintained, it would flow automatically from a centralized booking and initial appearance system.

The early appointment of counsel who will represent the accused person throughout the process is an essential element of the early resolution of low level cases proposed by the COUNTY PROSECUTOR'S PROPOSALS.

Recommendation Number 18: Counsel for indigent felony defendants at all levels of court throughout the county should be appointed at the initial appearance/probable cause hearing from a list or lists maintained by the Court of Common Pleas that certifies counsel's experience and ability to be assigned to specific case types. The appointment process recommended should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation. To the greatest extent possible counsel who is appointed to represent the defendant at the municipal court should continue to represent the defendant at the common pleas level.

Recommendation Number 19: **A subcommittee of the Criminal Justice Supervisory Committee composed of judges from all levels of courts and representatives of the criminal defense bar should develop a system whereby the skills, ability, and experience of counsel appointed to represent indigent defendants are periodically evaluated. The evaluation system recommended should be forwarded to the Criminal Justice Supervisory Committee for approval and implementation.** Counsel who have demonstrated the ability and acquired the experience should be certified to handle more serious and complex cases. Counsel who fail to demonstrate the requisite skill, fail to maintain their skills, or who fail to represent their clients conscientiously and vigorously will be stricken from the list.

H. Substantially increased use of deposit bail in lieu of surety bail.

Issues: A person who is accused of a crime and arrested generally has a right to be released on bail under our system of justice. Conditions of release are imposed to ensure that the defendant will appear for subsequent proceedings and to protect the public. Currently conditions of release are initially set in Cuyahoga County as a part of the initial appearance/probable cause hearing in the municipal court. The release conditions are revisited at the arraignment in the Court of Common Pleas. Crim. R. 46[18] sets out three types of bail: 1) a surety bond obtained from a bondsman secured by real estate, securities or cash; 2) a bail bond secured by the deposit of ten percent of the amount of the bond in cash with the court, referred to as a deposit bail; or 3) personal recognizance. The rule also specifies factors that the court must consider when making bail decisions[19], but does not set a bail schedule.[20] There is no standard schedule as to which type of release is most appropriate in various types of situations, as indeed it would be very difficult to do. Rule 34 (B) of the Cuyahoga County General Division Rules, which apply only to the General Division of the Court of Common Pleas and not to any

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[18] Crim. R. 46 (A) reads as follows: **Types and amounts of bail**. Any person who is entitled to release shall be released upon one or more of the following types of bail in the amount set by the court: (1) the personal recognizance of the accused or an unsecured bail bond; (2) a bail bond secured by the deposit of ten percent of the amount of the bond in cash. Ninety percent of the deposit shall be returned upon compliance with all conditions of the bond; (3) A surety bond, a bond secured by real estate or securities as allowed by law, or the deposit of cash, at the option of the defendant.

[19] Crim R. 46 (C) reads as follows: **Factors**. In determining the types, amounts, and conditions of bail, the court shall consider all relevant information, including but not limited to: (1) The nature and circumstances of the crime charged; (2) The weight of the evidence against the defendant; (3) The confirmation of the defendant's identity; (4) The defendant's family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution; (5) Whether the defendant is on probation, a community control sanction, parole, post-release control, or bail.

[20] Crim. R. 46 (G) mandates a bail schedule for misdemeanor cases, but not for felonies.

of the municipal courts, provides considerable specificity about what the judge must consider when making the release decision.[21]

A defendant released on his or her personal recognizance does not pay anything to anyone. A defendant released on a surety bond (or someone else on the defendant's behalf) pays 10 percent of the value of the bond to the bondsman plus a $15 dollar fee to the court. None of the amount paid is deposited with the court and none is returned to the defendant at the conclusion of the proceedings. A defendant released on deposit bail (or someone else on the defendant's behalf) deposits 10% of the bond amount plus a fee of $45 with the court. When the case is concluded by whatever means 90 percent of the 10 percent is returned to the defendant. The rest is retained by the County. When a defendant charged with a felony is released on a deposit bond at the municipal court level and the case is bound over to the Court of Common Pleas the amount of the deposit is also transferred. In 2004 the clerk of courts collected in excess of $300,000 from the county retained portion of the deposit bonds. In instances where costs are imposed as part of the sentence those costs can be collected from the amount deposited on behalf of the defendant before the remainder is returned. If the defendant is released on a surety bond, the county receives nothing at the conclusion of the case from the bond.

According to figures provided by the Court of Common Pleas, 15,916 individuals were scheduled for arraignment on an indictment or information during 2004. The following were the conditions of release of those individuals:

- 4,305, or 27% remained in jail;
- 4,477, or 28.1% were released on personal recognizance, 2,802 of which were on supervised recognizance;
- 6,481, or 40.7% posted a surety bond;
- 282, or 1.7% deposited a 10% bond with the court,

[21] Rule 34 (B) of the Cuyahoga County General Division Rules reads, in part, as follows:
(B) CONDITIONS OF PRETRIAL RELEASE
. . .
Any person who is entitled to release under subdivision (A) may be released on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judge, unless the judge determines that such release will not assure the appearance of the person as required. Where a judge so determines he shall, either in lieu of or in addition to the preferred methods of release stated above, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial, or if no single condition gives that assurance any combination of the following conditions:
(1) Place the person in the custody of a designated person or organization agreeing to supervise him;
(2) Place restrictions on the travel, association, or place of abode of the person during the period of release;
(3) Require the execution of an appearance bond in a specified amount and the deposit with the Clerk of the Court before which the proceeding is pending a sum of money equal to ten percent of the amount of the bond, but in no event shall such deposit be less than $25.00 which deposit is to be returned upon the performance of the conditions of the appearance bond;
(4) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash or the securities allowed by law in lieu thereof, or;
(5) Impose any other constitutional condition deemed reasonably necessary to assure appearance.

- 76 posted cash in lieu of a security bond; and
- 8 posted real estate in lieu of a security bond.

Note that both the ABA PreTrial Release Standards and the National Association of PreTrial Service Agencies Standards advocate much greater use of recognizance and supervised recognizance as opposed to any type of financial bond.[22]

In 2004 28.7 percent of the defendants scheduled for arraignment on indictment fail to appear. No data is available to indicate the proportion of those who fail to appear who were released on ROR, Deposit Bail, or Surety Bail. Likewise, no statistics are kept in Cuyahoga County on the number of instances where a defendant who failed to appear is subsequently apprehended by a bondsman. Although no data is kept, interviews with Court of Common Pleas staff suggest that very few defendants against whom a warrant is issued are apprehended by bondsmen. Thus, there is no evidence available to indicate that any type of bail is more effective at guaranteeing appearance. Further, there seems little for the County to gain by the use of bondsman by defendants. On the other hand, a total of approximately $300,000 was collected by the Clerk of Courts during 2004 from the retained portion of the 10% bonds. Statutes allow fines and fees assessed against a defendant to be deducted from the portion of the 10% deposit before a portion is returned, which could result in more revenue to the County.

Prior to the arraignment on the indictment the conditions of release that had been previously set are reviewed by one of two agencies which are agencies of the Court of Common Pleas depending primarily on what time of day the defendant appears for arraignment. There is a substantially different philosophical approach to release taken by the two offices. Pretrial Services favors Recognizance or Deposit Bail. The Bail Commissioner's Office favors surety bail. Thus, the recommendation on conditions of release made to a judge handling two different but similar cases might differ substantially based on what time of day the hearing was scheduled.

The type of release also has a disproportionate impact depending on the charge. The data from the County Jail indicates that the majority of those remaining in jail are charged with Felony 4s or Felony 5s. The Jail data indicates that only 5 to 10 percent of the incarcerated defendants are charged with offenses involving violence. The remaining incarcerated defendants awaiting trial may be drug involved or have mental health problems. The County Jail data indicates that 60 percent of those confined are from the City of Cleveland[23]. According to information provided by the County Prosecutor, approximately 54.6% of cases indicted in 2004 originated in Cleveland (66% of the Charged Cases and 38.8% of the Direct Cases) while 45.4% originated in suburban Cuyahoga County (33.6% of Charged Cases and 61.1% of Direct Cases).

If CENTRAL BOOKING included a comprehensive identification of all defendants booked, it could aid the screening process by providing information relevant to the release decision to be made at the initial appearance/probable cause hearing. For example, it could identify those who failed to appear in the past, a relevant factor to the

[22] See ABA Pretrial Services Standard 10-1.4 and NAPSA Standard 1.4.
[23] Interview with Sheriff's Office staff.

release decision. Since all decisions on the form of release could be centralized, it could also be easier to facilitate the use of deposit bail in appropriate instances. The centralized process for release decisions could also mean fewer instances where an accused person is incarcerated after the initial appearance/probable cause hearing only to be released when arraigned on the indictment or information. This should cause a reduction in jail costs to the county or municipality from which the offense originates.

Recommendation Number 20: The system should make substantially greater use of deposit bond and substantially less use of surety bail. Common Pleas Court Rule 34 (B) seems to require that the 10 percent bail process be given a higher priority than surety bail, a fact that is not borne out by the statistics. Rule 34 (B) also implies that a surety bond is to be used when there is a greater need to guarantee the appearance of the defendant for trial. Although data suggests that the skip rate is high in Cuyahoga County as compared to other urban areas, no statistics are kept to indicate the type of release given to those who didn't appear.

III. ARRAIGNMENT TO TRIAL

A. Early and open exchange of discovery between prosecution and defense counsel consistent with necessary protection of confidential informants and victims and privileged information.

Issues: The current discovery practice slows down the resolution of less serious, less complicated cases. According to figures provided by the Court of Common Pleas, a total of 17,578 felony cases were terminated in 2004 including 344 jury trials (1.95% of total terminations) and 379 were trials to a judge (2.15%). In other words, less than 5 percent of the total terminations were as a result of trial. On the other hand, 12,699 cases (72.24% of total terminations) were concluded by acceptance of a guilty plea.

As can be seen from the table below, the proportion of cases tried is not dissimilar from the experience in other urban jurisdictions.

		Jury Trials		*Court Trials*		*Guilty Pleas*	
Court	*Total Cases Terminated*	*Number*	*Percentage*	*Number*	*Percentage*	*Number*	*Percentage*
Cuyahoga, OH	**17,578**	**344**	**1.95%**	**379**	**2.15%**	**12,699**	**72.24%**
Essex (Newark), NJ	7,939	174	2.1%	57	.7%	5,251	66.1%
Harris (Houston), TX	37,251	870	2.3%	53	.1%	23,276	62.5%
Hennepin (Minneapolis), MN	5,843	106	1.8%	114	1.9%	5,623	96.2%
Hillsborough (Tampa), FL	17,080	301	1.7%	44	.2%	13,968	80.1%
Santa Clara (San Jose), CA	8,979	113	1.2%	46	.5%	7,991	88.9%

Since most cases are concluded without a trial, early, expeditious, and appropriate disclosure of discoverable evidence could mean that more of these cases will be resolved sooner. The sooner the defendant and defense counsel know what the case is about, the sooner they can decide whether to plea, or go to trial. During the meeting of the Adult Justice Group described above, the attendees agreed that earlier disclosure of information to defense, obviously with due regard given to sensitive information about victims, witnesses, and informants, could result in substantially earlier resolution of a significant number of cases. Judges, prosecutors, and defense counsel will all then have more time to devote to the cases that require a greater degree of attention, and those defendants incarcerated will not spend as long in the County Jail in pretrial status.

Discovery involves the sharing, by both sides, of information about the case – the evidence and its strengths. The issue is not so much what is disclosed but when it is disclosed and what must be done in order to obtain disclosure. Ohio Criminal Rule 16 sets out the process as well as specifying items may be discovered. The rule is predicated on the filing of a motion that must certify that demand for discovery has been made and not granted. It also states that the defendant must provide discovery of specified items in exchange for receiving discovery from the prosecution. As noted the Rule contemplates an initial request for discovery by the defense prior to the filing of a motion and resulting court hearing. If the information discoverable under Rule 16 was made available very early in the process to a defense counsel who will be representing the defendant throughout the proceedings and without the need for demands and motions many cases could proceed much more quickly to disposition.

The current discovery practice in felonies in Cuyahoga County is that there is no early discovery. Such discovery as may be had does not take place until after the case has been assigned to an individual judge for trial at the arraignment on the indictment or information. At this point the defense counsel is still not permitted to *see* reports or statements or to have copies made of them. Instead, the Assistant County Prosecutor and defense counsel meet in what is scheduled as a pretrial hearing and the Prosecutor *reads* the documents to the defense counsel. On any given morning a person walking down the chambers hallways of the Cuyahoga County Court of Common Pleas would see Prosecutors reading to defense counsel in many offices. Most of the judges interviewed indicated that they did not participate in these conferences unless requested by counsel. Several of the judges interviewed also indicated that there are times when the Assistant Prosecutor is not fully prepared for these conferences, because needed information is missing from the file, or the file is incomplete, for example, witness statements or medical records are missing.

During the April 2005 site visit the County Prosecutor's Office offered proposals that might solve several of the issues surrounding discovery:

Resolution of simple cases early. First, they noted that it would be much more efficient to offer early disclosure of evidence if the defense counsel who will try the case is appointed or retained earlier in the process. They agreed that in low level cases it

would be possible to disclose information at the municipal court level, or soon after bind-over, to the trial counsel and create the opportunity for disposing of cases early through a negotiated settlement at the municipal court level (analogous to what is now done with the PBR cases described above) or through a negotiated settlement that would result in a felony charge which would go forward as an information. It is worth noting that according to the County Prosecutor's staff only 133 cases were arraigned on an information in 2004 as opposed to 8,587 proceeding by way of an indictment. According to the Prosecutor's Office Staff, information cases usually occur when a private retained counsel is present at the municipal court level so that negotiations can be carried out prior to bind over.

Individual Assignment System for Assistant Prosecutors. Second, they suggested the possibility of reorganizing the County Prosecutor's Trial Office to follow a community-based prosecution model. This would mean that each assistant prosecutor would be assigned cases only from within the geographical area where he or she is assigned. The assistant prosecutors would also operate under an individual assignment system, similar to what has been in effect for the judges since 1972, meaning the assistant prosecutor would be assigned responsibility for a case from indictment to disposition. Someone else from the same prosecution team would have responsibility for preparation of the case for presentment to the grand jury. The prosecutor assigned the individual case would be backed up by a team within the prosecutor's office all of whom were assigned to the same community area. The team would include not only the person who drafted the charges in the Grand Jury Unit, but also the person who has authority to review files and approve negotiated plea arrangements. Having the prosecutor known earlier would also facilitate the sharing of discovery and negotiating of a resolution short of trial.

Scanning Technology to solve the Missing File Problem. Third, representatives of the County Prosecutor's Office advised that when their new computer case management system becomes fully available in 18 to 24 months, each assistant prosecutor would have a laptop computer which would be loaded with copies of all of the information relating to their cases. When an assistant prosecutor participated in a pretrial conference on a case all of the file information would be available, reducing the problem of missing files and allowing sharing of discovery with the defense electronically.

Wireless Technology to solve the Elevator Shuffle. With the new system if the defense counsel makes an offer on a case, the assistant prosecutor would be able to communicate electronically with the team member having authority to review the file without leaving the floor and engaging in the elevator shuffle that is now the norm in the Justice Center. The assistant prosecutor and the supervisor with approval authority could converse about the case by phone or by e-mail, both having simultaneous access to the electronic file.

There are many ways in which more complete discovery could be provided earlier to facilitate negotiations and settlements. For example:

- If an accused person is not represented by private counsel at the initial appearance/probable cause hearing, counsel could be appointed who will be assigned to case from that point forward. (See Recommendation 19.)
- A time could be set aside each week when defense counsel could review and copy pertinent portions of the prosecutor's case file (with sensitive or confidential information about informants, victims or witnesses excluded);
- Defense counsel could review the contents of the prosecutor's file (excluding information about confidential informants, victims, or witnesses) at the time of appointment.
- The County Prosecutor could adopt a policy of open file discovery;
- The County Prosecutor could adopt a policy of making packets of copies of discoverable information and providing them to defense counsel upon being retained or appointment; or
- The Court of Common Pleas could adopt a local rule requiring open discovery.

The objective of the revised discovery process is justice, not either side "winning," particularly not on what may be perceived as a technicality. "Trial by surprise" is not a necessary condition to achieve justice.

Recommendation Number 21: Through the collaboration of the Criminal Justice Supervisory Committee, procedures should be developed to require early and expeditious reciprocal discovery of the information permitted by Crim. R. 16 in all criminal cases without the need for a court hearing, consistent with the protection of victims and confidential informants and other privileged information.

B. Availability and effective use of management information throughout the criminal justice system.

Issues: The Cuyahoga County Court of Common Pleas and the Cuyahoga County Clerk of Courts have begun using a new computerized case management system that went into effect for criminal cases on June 1, 2004. The County Jail has a functional computerized jail management system as well. The County Prosecutor is in the process of procuring its own information system. This multitude of systems creates issues in three areas. First, the lack of interconnection prevents data sharing with its associated savings and opportunities. Second, each system may have different definitions and coding, making simple counting of activities and the generation of management reports problematic. The lack of system-wide consistencies thwarts the monitoring of system performance relative to standards, thus minimizing accountability. Third, the multitude and newness of the systems has resulted in less than optimal use of the systems' functionalities.

The jail system and various court systems are not fully integrated in the sense of direct "real time" sharing of data, although there is some nightly transfer of information electronically between the jail system and the Court of Common Pleas system on a batch basis for a very limited purpose. The Prosecutor's system will be a separate system which will not be integrated with the court or jail system. There is also no integration of

information systems between the suburban municipal courts and their constituent law enforcement entities, or between the suburban courts or law enforcement systems and the county systems. The Cleveland Police Department system is not linked with the other justice agencies, or the Jail. There are no plans for a link between the Cleveland Police system and the County Prosecutor system.

The lack of integration causes significant redundancies of tasks and denies the agencies some technology opportunities. For example, the municipal courts manually prepare a form called a *Case Information Form* at the time they are preparing the papers to bind over a defendant to the Court of Common Pleas. Copies of the form go to the Clerk of Court, the County Prosecutor and the Jail and each agency then has someone enter data from the form into their system. Of course this is a small example, but three agencies are entering the same information into their system and there are three opportunities for someone to make a data entry error. If the information was entered electronically at the municipal level, it could populate the computer systems of the other agencies, saving clerical time that could be spent on some other task. Similarly the transfer of information about defendant and their criminal histories or the exchange of other information such as police reports, would both reduce costs and facilitate faster processing of cases.

There is also no commonly accepted set of definitions for similar information kept in the various computer systems. For example, each system defines a "case" differently, based on a criminal incident, a charged case, or a person/defendant.[24] Preparing reports that could be used to monitor the entire criminal justice system in Cuyahoga County across the political and agency boundaries would require synthesis of data from several systems which may use inconsistent definitions of data elements and statistical reporting. Significant programming would be required to gather data from the several systems and "convert" it to produce a coherent description of the condition of the justice system.

Another issue has to do with the type and detail of information kept by each system and the available management reports. For example the jail system has overly simple categories regarding a defendant's status in the jail. It is not possible to identify those defendants who are in pretrial custody in one case and in sentenced status on another case without examination of data from the court's system.

Even if there were consistent definitions, there is also a need to develop management reports that are relevant to managing or assessing the performance of the justice systems and its elements. Law enforcement agencies are apparently unable to determine how many cases are assigned to each detective, or how old they are. The jail system is unable to provide information about all of the basis for a defendants remaining in custody. It is was not possible to get accurate information about how many cases

[24] A common set of definitions for transactions associated with criminal justice systems is being developed under the auspices of the GLOBAL Justice Information Sharing Initiative sponsored by the U.S. Department of Justice, Office of Justice Programs. See information about the Global Justice Extensible Markup Language (XML) Data Model (Global JXDM) at http://www.it.ojp.gov/global/childTopic.jsp?topic_id=3&nav_type=main

proceed by direct filing, bindover, or filing of an information. There was no way to determine the relative impact of various release conditions on subsequent failures to appear. Although the court's new case management system probably has the ability to do so, there are currently no regularly produced reports on such things as the time cases spend in each stage of proceedings, the typical number of hearings per case, or the continuance rate for court hearings. There is a need to identify what management information would be useful and establish mechanisms to obtain this information.

Interviews with all facets of the justice system suggest that too many people don't know what the new case management system in the Court and Clerk's Offices is capable of doing for them both in terms of the management information that it could provide and in terms of the ease of performing day to day tasks. In particular many bailiffs do not know enough about how to use the system most efficiently. While training has been undertaken, more is needed. Training should be an ongoing priority, and creation of users groups and any other mechanisms to increase utilization of the new systems should be a part of the further implementation of the new systems.

CENTRAL BOOKING could provide the vehicle for the initial, single data entry of information about defendants that would feed the various information systems presently used in the County.

Recommendation Number 22: The Criminal Justice Supervisory Committee should begin work toward development of electronic links between the separate data systems throughout the County in order to reduce duplicate data entry and ensure that each system is operating with the same information about each case.

Recommendation Number 22A: The Criminal Justice Supervisory Committee reach consensus about what management reports should be produced to allow monitoring of justice system performance and outcomes.

Recommendation Number 23: The Criminal Justice Supervisory Committee and the constituent agencies and entities should make continual training, exchange of information, and sharing of data top priorities throughout the system. The process for ensuring ongoing training should be approved and implemented by the Criminal Justice Supervisory Committee.

C. Development and attainment of case processing time standards at all levels.

Issues: With the exception of the statutory time limits for disposition of felony cases in R.C. § 2945.71[25] there is no common set of time standards that are applicable throughout the system. In the absence of an agreed upon, easily understood, and easily measured set of system performance measures there is no way that the constituent parts of the system can hold each other accountable or that the public or the funding bodies can make educated policy or funding decisions.

There are some incremental time standards that govern *portions* of the system. For example, both Crim. R. 5 and R.C. 2945.71 contain limits on the time within which a preliminary hearing must be held. The Rules of Superintendence of the Courts of Ohio contain a variety of time guidelines for the processing of cases (See Rules 39 and 40 and the Report Forms). These standards exist within the court system for measuring performance. Whether by agreement or fiat, there are or could be other time goals in effect in the system for purposes of monitoring the completion of internal processing events, such as the completion of the investigation and forwarding of the grand jury packet by the police agency. However, there is no enterprise-wide priority attached to the achievement of any of these time guidelines, and individual agencies may or may not honor the priority assigned by others. Because there are no system-wide standards, no system wide sharing of performance information, and no overall entity charged with responsibility for management of the system, accountability is diffused and can be counter-productive.

While it is acknowledged that time is only one indicia of performance, it is also clear that the passage of time is an important measure. The passage of unnecessary time in the early stages of the case reduces the amount of time that those agencies in the later stages of the process (mostly the courts, prosecution, and defense functions) have to complete their tasks.

The passage of time in each individual case also has major resource impacts. According to the information from the Jail, the average time in incarceration is now 55 days, up from 41 days only a couple of years ago. The longer a case remains in the system the more resources are consumed by every agency who shares responsibility for activities that need to be done. More pretrial conferences consume prosecution, defense,

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[25] R.C. 2945.71 reads in part as follows:

. . .

(C) A person against whom a charge of felony is pending: (1) Notwithstanding any provisions to the contrary in Criminal Rule 5(B), shall be accorded a preliminary hearing within fifteen consecutive days after the person's arrest if the accused is not held in jail in lieu of bail on the pending charge or within ten consecutive days after the person's arrest if the accused is held in jail in lieu of bail on the pending charge; (2) Shall be brought to trial within two hundred seventy days after the person's arrest.

. . .

(E) For purposes of computing time under divisions (A), (B), (C)(2), and (D) of this section, each day during which the accused is held in jail in lieu of bail on the pending charge shall be counted as three days. This division does not apply for purposes of computing time under division (C)(1) of this section.

jail staff, and court time. All of the notice and record keeping activities associated with setting a hearing or trial must be repeated for each additional hearing or re-set trial or hearing date. If the defendant is incarcerated, the jail cost meter keeps running each time an additional pre trial conference is required and every time a trial date is continued. The passage of time impacts the system's ability to deliver on the fundamental purposes for which it exists.

CENTRAL BOOKING screening could provide an opportunity to identify those cases that can be resolved early in the process. Disposing of them more quickly will allow more time for everyone in the process to be devoted to the more complex matters.

The COUNTY PROSECUTOR'S PROPOSALS are also designed to resolve cases earlier, by providing early discovery in low level cases and facilitating plea negotiations in cases.

Recommendation Number 24: The Criminal Justice Supervisory Committee should develop incremental time standards for the completion of each major stage in the criminal justice process. The standards should be understandable, consistent with the time guidelines already developed by other agencies of government, and measurable from information that is presently available or can be generated from new data that is easily collectable. A common set of definitions to activities and stages should also be agreed upon for use in the standards and measures.

Recommendation Number 25: The agencies responsible for completing each activity should be required to develop and implement processes to monitor their performance against these standards and to implement changes or improvements designed to resolve the reasons for failure of compliance with the standards, if any.

Recommendation Number 26: The agencies responsible for completing each activity should provide periodic information to the Criminal Justice Supervisory Committee on the status of their performance measured against the standards.

D. Streamlining the process of plea negotiation.

Issues: A comment that recurred in many of the judicial interviews conducted as a part of this process was the time lost in the presentation of a plea offer made by the defense counsel for the Assistant Prosecutor to obtain approval form his or her superiors in the County Prosecutor's Office. Among the reasons expressed for this delay are the crowded and slow elevators in the Justice Center, the fact that those who have authority to approve pleas may be engaged in performing this function for other cases, meaning that an assistant prosecutor might have to wait a significant amount of time before they can be seen, and the fact that those authorized to approve pleas may be absent or unavailable.

At first blush this may seem to be an inconvenience rather than a problem, but it rises to the level of a problem because of its impact on the resources of all the agencies that must cooperate for the system to function. Those who must wait on this approval

process are required to remain in or near the chambers of the judge. There are a finite and fairly small number of defense lawyers who are frequently scheduled to be in a number of courtrooms in the Justice Center for Pre Trial Conferences on any given day. A delay in one courtroom creates a back-up in other courtrooms, which means that counsel and court staff all loose time waiting.

While the assistant prosecutor is waiting to obtain approval in a particular case that person looses time that could be more valuably spent on other cases. Since the most fundamental resource that each assistant prosecutor brings to the performance of his or her job is their work hours, this time should be used as efficiently and effectively as possible.

Another problem cited by many was the scheduling of pretrial conferences during the day and the week. A review of one week's worth of court calendars revealed the extent of the problem. Of all hearings scheduled or heard, 66% are set for 9:00 AM, another 21% are set in the morning, and the balance set after noon. During the week 18% of cases are set on Monday, 22 or 23% on each of Tuesday through Thursday, and 14% on Friday. Clearly there is a heavy concentration of cases at 9 AM and in the middle of the week. Note that judges must also schedule events in all of the civil cases assigned to each of them. The concentrations of criminal hearings require simultaneous attorney appearances and create an uneven workload for the jail staff who must bring in-custody defendants to court for appearances. Generally the simultaneous settings require attorneys and the court to wait for each other to finish other cases, often a poor use of everyone's time, and a burden on victims, witnesses (including police officers on overtime), and jurors.

If the plea is accepted and the case set for a plea hearing, there are substantial scheduling issues related to availability of sheriff's personnel to bring an in-custody defendant from the jail and to provide security protection while the hearing is in progress. As one judge put it, "When I have a deputy I drop what I am doing and take care of what has to be done." The delay, and the inherent lack of predictability in terms of time and result, renders it more difficult for every other agency participating in the criminal case process, as well as everyone involved in every other matter scheduled in the individual courtrooms, to manage their time and resources on any given day.

The COUNTY PROSECUTOR'S PROPOSALS are designed to streamline the plea negotiation process.

<u>Recommendation Number 27:</u> Felony charges should be drafted by experienced trial prosecutors who have knowledge and experience with the likely outcomes of the cases and have the authority to approve negotiated pleas submitted by defense counsel.

<u>Recommendation Number 28:</u> The County Prosecutor's Office should devise a system whereby those who are authorized to approve a plea are available to the Assistant Prosecutors from the courtrooms without requiring travel between floors

on the frequently delayed and over burdened elevator system. Among possible techniques for achieving this would be:

- Granting approval authority to Senior Assistant Prosecutors on each floor, at least for specified types of cases,
- Increasing the number of persons in the central office with authority to approve plea offers,
- Use of telephone or electronic means for assistant prosecutors to communicate with approving supervisors, and,
- Staggering the pretrial conference schedule to avoid lines of Assistant Prosecutors waiting their turn to talk with the few prosecutors with authority to accept a plea.

Recommendation Number 29: The Court of Common Pleas should develop a system whereby felony Pretrial Conferences are coordinated and held at staggered times during the day so that the time of defense counsel, floor prosecutors, those members of the Prosecutor's staff empowered to accept plea negotiations on behalf of the Prosecuting Attorney, Deputy Sheriffs, and the individual courtrooms can function more efficiently.

E. Effective calendar and trial management in the Court of Common Pleas.

Issues: The statistics demonstrate a wide variety of success in terms of managing a felony docket. In 2004 an average of 42.4 new felony cases are arraigned and assigned to each General Division Judge each month. Additionally, each General Division Judge is also assigned 75 new civil cases each month.

For comparison, the following table illustrates felony case filings per month in other urban jurisdictions. Note that in some jurisdictions judges hear only felony cases, whereas in others judges are assigned both civil and criminal cases as in done in Cuyahoga.

The number of cases assigned to each judge is relatively equal over time because they are assigned randomly. However, under the assignment system in effect in Cuyahoga County the judge receives the cases for all defendants arising from the same act or transaction. So, on a short term basis, it is possible for a judge to receive a single case with multiple defendants that inflates the number of defendant-cases assigned and that judge's caseload. When a new case involves a defendant that is on probation, the new case is assigned to the judge monitoring the probation. In addition a judge who is assigned a case resulting in a long trial will usually show more cases over the time guideline if the trial delays resolution of other cases. Similarly, capital cases take longer to prepare and to try. To the extent that a judge has a greater or lesser number of capital cases assigned, the number of pending cases will vary.

Comparative Felony Caseload Information For Select Urban Courts			
County Name (City)	***County Population***	***Average Felony Filings Per Judge Per Month***	***Average time from Arraignment on the Indictment of Information to Disposition***
Cuyahoga County (Cleveland), OH	**1,393,978**	**42.4**	**Not Available See individual information in table below**
Essex (Newark), NJ	793,633	37.44 (judges hear felonies only)	92 days
Harris County (Houston), TX	3,400,578	117.2 (judges hear felonies only)	on bond - 169 days; in jail - 97 days
Hennepin (Minneapolis), MN	1,116,200	11.94 (includes full and part time judges) (judges hear civil and criminal matters)	122 days
Hillsborough County (Tampa), FL	998,948	121.1 (judges hear felony cases only)	Not Available
Orange (Santa Ana), CA	2,846,289	79.28 (judges hear felony cases only)	Not Available
Prince George's County (Upper Marlboro), Maryland	801,515	33.64 (Judges hear civil and criminal matters)	Not Available

The following table, based on statistics obtained from the Supreme Court of Ohio, illustrates the range of filings, terminations, pending caseloads, and the number of cases beyond the time guideline established by the Supreme Court of Ohio (table is alphabetical by judge). As can be seen, notwithstanding the random assignment, there are significant variations in the number of filings and pending cases per judge. The average number of pending criminal cases per judge as of December 31, 2004 is 134.5. However, the range is from a low of 25 to a high of 233 (not including the Presiding Judge who handles overflow cases only and, like most presiding judges in urban areas, does not carry a full docket). Not surprisingly, judges with lower caseloads tend to have lower than average filings, lower than average terminations, lower than average number of cases over the time guideline, and fewer than average defendants in jail.

Comparison of Filings, Terminations, Pending Caseload, Cases Over Time Guideline, and Defendants Incarcerated for Common Pleas Judges - 2004					
Judge's Name	***Filings, Transfers & Reactivations in 2004***	***Total Terminations in 2004***	***Pending Felony Cases As Of December 31, 2004***	***Number Of Cases Pending Over 180 days (6 Months) From Arraignment On The Indictment Or Information***	***Number of defendants incarcerated as of 12/22/04***
Ambrose	473	464	164	22	45
Boyko	500	470	192	29	51
Boyle	503	541	108	0	41
Burnside	434	478	141	13	39
Callahan	470	503	117	10	29
B. Corrigan	578	527	207	24	55
Coyne	469	530	80	1	35
Foley-Jones	478	515	166	22	39
Friedland	504	509	145	14	40
Friedman	517	524	157	19	52
Fuerst	475	473	122	8	24
Gallagher	442	455	118	13	36
Gaul	519	560	144	12	53
Greene	559	579	218	40	66
Griffin	804	867	150	46	87
Koch	434	469	106	6	32
Mannen	648	711	233	43	70
Matia	468	485	111	4	46
McCafferty	411	420	63	0	37
McCormick	491	551	25	5	38
McDonnell	430	443	87	2	29
McGinty	439	431	83	6	42
C. McMonagle	581	560	200	30	63
R. McMonagle	175	188	2	3	
O'Donnell	495	481	132	8	53
Pokorny	742	672	195	49	50
J. Russo	504	517	225	62	62
M. Russo	541	542	161	17	47
N. Russo	394	442	59	1	15
Safford	521	587	158	1	68
J. Satula	570	583	165	28	56
K. Satula	408	440	62	4	29
Suster	449	445	96	9	32
Villanueva	548	616	148	41	69
Total	**16,974**	**17,578**	**4,540**	**772**	**1,531**
Average per judge	**499**	**517**	**134.5**	**22.7**	**46.4**
Range (not including Presiding Judge R. McMonagle)	**394 to 804**	**420 to 867**	**25 to 233**	**0 to 62**	**15 - 87**

Like the caseload size, the length of time required once a case is assigned to an individual judge at arraignment on the indictment also varies considerably among the judges. The average number of cases per judge exceeding the Ohio Supreme Court's Guideline of 6 months is 22.7. The range is between 0 cases and 62 cases exceeding the guideline. Fifteen of the 33 judges handling full dockets have 10 or less cases exceeding the time guideline, and 23 judges have fewer than the average. Thirty percent of the judges account for seventy four percent of the cases exceeding the time guideline. Clearly here is something different about the way judge's manage their caseloads, and not the mix of cases, that explains this variance.

The County Jail has encouraged each judge to keep no more than 40 defendants incarcerated at any one time as a means of achieving the goal of keeping within the facility's capacity. Regardless of the legitimacy of the specific reasons why a particular defendant may be appropriately incarcerated, the collective impact of incarcerations is increased costs to the County. As with the figures noted above, there is also a significant variation in the in-custody caseloads of individual judges. As with the other statistics reported here, there can be many reasons why a particular judge's number of incarcerated defendants may be higher or lower or may go up or down. For example, the assignment of a single case with multiple defendants who are incarcerated would skew the statistics on a temporary basis. If a defendant who is on probation to a particular judge commits an additional offense, the new case is assigned to the judge before whom they are on probation, but they are usually kept incarcerated. Thus, a judge who routinely provides longer terms of probation will likely have a higher number of defendants incarcerated. As of December 22, 2004 judges had and average of 46.4 defendants each in incarceration. The numbers range from a low of 15 to a high of 87. The forty-five percent of the judges who had more than the average number of defendants in jail accounted for fifty-nine percent of the defendants in jail. The following table also illustrates the number of defendants incarcerated per judge. Again, there are differences in the way judges are managing their cases accounting for these variations.

The judicial interviews revealed a wide variety of philosophies and styles for managing their criminal docket. There were also several areas of agreement, including:

- Almost everyone agreed that their bailiff has primary responsibility for management of the felony docket and that a competent bailiff is a key to successfully managing this docket. This central fact gives rise to several recommendations that will be discussed below.

- Every judge with whom we spoke sets an initial pretrial conference within a week to ten days of the assignment of the case.

- Some judges set dates for all of the remaining activities at this initial conference, most do not.

- Some, but not all, of the judges indicated a belief in firm trial dates. One judge indicated the setting of "fake trial dates."

- As discussed above, every judge with whom we spoke indicates that a significant number of pre trial conferences are required in order to allow time for the prosecutor to read the discovery materials to the defense counsel since the County Prosecutor's Office currently will not provide written copies of material to the defense.

- Most of the judges do not participate in these conferences unless they are requested to do so because of some issue that has arisen.

- The majority of the judges interviewed favor a more open discovery policy.

- Although many of the judges with whom we spoke indicated that another reason for conducting multiple pretrial conferences is to force counsel to meet so that plea negotiations can take place, only one judge reported taking an active role in the plea negotiation process during these sessions.

- Some, but not all, of the judges use a final pre trial conference, or a trial management conference in order to narrow issues, save trial time, and facilitate settlement.

- Some judges require counsel to strictly adhere to scheduled hearing times, in spite of the fact that most pre trial conferences are scheduled at the same time throughout the court. Other judges told us that they were "reasonable" in allowing an attorney some room given the fact that they were scheduled to be in multiple locations at the same time. It should be noted that a private counsel with whom we spoke indicated that the only way a defense lawyer could survive economically doing indigent defense work was to accept multiple appointments because even if there was the likelihood of much unproductive time in any one case, because of the multiple cases they had to be in multiple places at once, making better use of their time.

Judge William Coyne stated a series of things to do to be a successful judge that are well worth sharing, as follows:

1. Work a full week every week
2. Be organized
3. Make decisions – don't put them off
4. Treat everyone with respect – defendants, witnesses, jurors, and counsel
5. Hire a good bailiff who knows the system
6. Create expectations – Trials will happen when scheduled; hearings will happen when scheduled
7. Start on time/don't take long lunches/work a full day everyday
8. A trial continuance is unfair
    - To the Victim
    - To Counsel
    - And, it costs money from everyone's budget – police, jail, etc.

Recommendation Number 30: **The Court of Common Pleas should make a court wide reaffirmation to the principle of individual responsibility for prompt and just resolution of felony cases.** Prompt and just resolution should be a court wide priority that is discussed at every meeting and considered as a part of any changes. The new information system should be used to devise and distribute periodic reports on the status of the entire docket and the dockets of the individual judges. At present, the Court as a whole seems to have backed away from the acceptance of individual responsibility for case processing, in particular for the court's entire criminal caseload. Judges, like all public officials, are elected to serve the interests of the people. While the primary reason for the existence of courts is to do individual justice in individual cases, the unnecessary passage of time frequently works against the accomplishment of this purpose.

Recommendation Number 31: **The individual judges should take early and continuous active control of all phases of the cases that have been assigned to them. Court scheduled pretrial conferences should only be scheduled when judicial involvement may be needed and always be presided over by the assigned judge or another judicial officer. Each court should schedule the minimum number of conferences or hearings needed for the active management of the case and consistent with accomplishing a just result. Court scheduled conferences or hearings should always be designed to achieve as many purposes as possible to move the case toward resolution or prepare it for trial.** Every court scheduled conference and hearing consumes resources, including judge time, bailiff time, attorney time, defendant time, court staff time, clerk of court staff time, and deputy sheriff time. Counsel should be expected to meet for the purpose of exchanging discovery and plea negotiation without the need to schedule a pre-trail conference. Defense counsel also should be expected to meet with the client that they have been appointed to represent without having those clients brought to the courtroom if the client is in custody. Scheduling hearings in order to facilitate counsel meeting with their client misuses the jail staff, increases the number of times defendants must be brought to court, and reduces the availability of sheriff deputies for sentencing, security, or other activities.

Recommendation Number 32: **The Court should devise and implement a regular and continuing program of training and education for the bailiffs** on:

- The principles and uses of caseflow management techniques in their day-to-day work,
- The extent and possible uses of the management information that the new computer system can provide, including the direct use of the court's case management system to support their work in making a record of judicial decisions and producing minutes and orders; and
- The most effective techniques of data entry, and
- Other ways that the case management system can save time and make their jobs easier.

Individual assistance, as needed, should be provided to each bailiff following the training.

Recommendation Number 33: Periodic meetings of the bailiffs, functioning as a users group, should be scheduled and occur. The purpose of these meetings should be to provide training updates, and to provide a forum for the bailiffs to exchange issues and solutions.

Recommendation Number 34: Extensive training and education about the concepts and techniques of effective caseflow management should be provided to the judges, bailiffs, probation officers, representatives of the sheriff's security officers, senior prosecuting attorneys, representatives of the public defender's office, and representatives of the private bar who receive significant numbers of assignments to represent indigent defendants.

Recommendation Number 35: The caseflow management training programs should include opportunities to develop specific policies and programs to increase the efficiency and effectiveness of the movement of cases from arraignment on the indictment or information through conclusion of the case. To the extent that different techniques and philosophies for dealing with caseflow management issues emerge from these discussions, the techniques should be pilot tested and the results evaluated and the results reported.

Among the techniques that should be considered are:

- The nature and use of pre trial conferences
- Establishing at the outset, by rule or order, a schedule for the completion of discovery and motions
- Establishment of a policy on the granting of continuances
- A policy of requiring resolution of all motions before trial date
- Alternate methods for facilitating negotiations about disposition, including use of plea cut-off dates
- Use of trial management conferences

Recommendation Number 36: Every new judge, bailiff, court employee, prosecutor, public defender, and appointed lawyer should receive basic training on the priority of prompt and just resolution of cases, the justice system's expectations with respect to the achievement of prompt and just resolution of cases, the principles of effective caseflow management, and the programs in place within the court to achieve these high priority items.

Appendix 1

The Justice Management Institute

THE JUSTICE MANAGEMENT INSTITUTE

The Justice Management Institute is a national non-profit 501(c) (3) organization, formed in 1993, that conducts research, education and training, and technical assistance focused on the operation of state courts and other justice system institutions and agencies. JMI is headquartered in Denver, Colorado and has offices in the San Francisco and Chicago areas. The Institute is governed by a Board of Directors that includes leading court administrators, judges, judicial educators, lawyers, and others in the field of judicial administration.

JMI used four staff members and an expert consultant on urban police matters to conduct the site visits and prepare this report. We believe that the varied experience of those assigned to this project allowed us to bring substantial knowledge of current best and promising practices in felony caseflow management to bear on assisting Cuyahoga County to address its issues of concern. Those involved in the project are as follows:

Douglas K. Somerlot, Executive Vice President of JMI, is the Project Director for this project. He has led a number of major projects for JMI on a wide variety of topics. Somerlot has an undergraduate degree from Bowling Green State University and a law degree from Ohio State University. He is a Fellow of the Institute for Court Management. Somerlot's career in courts spans 32 years. He has served as a court administrator at the trial and appellate level. He has written extensively on trial and appellate caseflow management and delay reduction issues and is nationally known as a presenter, facilitator, and curriculum designer on these subjects.

Alan Carlson, JMI's President, received his undergraduate degree from the University of California at Berkley and his law degree from Hastings College of Law. His career in courts spans 27 years during which he has served as a court administrator and clerk of court at the trial level. He has written on caseflow management and delay reduction and has led JMI projects providing technical assistance to trial courts as they implement change in their felony case management systems. He is also nationally known as a presenter on a number of topics including caseflow management, electronic access to court records, and electronic filing of court documents.

Dr. Barry Mahoney, JMI's President Emeritus, has an undergraduate degree from Dartmouth College, a law degree from Harvard, and a PhD from Columbia University. Mahoney's career in the law spans 40 years during which he has led and participated in many national, state, and local projects on caseflow management and delay reduction. He is internationally known as a writer, speaker, facilitator, and technical assistance provider on caseflow management related subjects.

Aimee Baehler, a Project Manager with JMI, received her undergraduate degree from Gettysburg College, and her Masters Degree from American University. She has also completed her coursework for a PhD in Criminology from American University. Since joining the staff of JMI Ms. Baehler has been involved in a wide

variety of technical assistance and research projects related to limited and general jurisdiction trial court caseflow management and specialty courts.

Chief Robert Olson received his undergraduate degree and his Masters Degree in Criminal Justice from the University of Nebraska at Omaha. Prior to his retirement in 2004, Chief Olson was the Chief of Police for Minneapolis, Minnesota for 9 years. He has also been Chief of Police or Police Commissioner for Yonkers, New York and Corpus Christi, Texas. Chief Olson has been an adjunct professor at three universities and has taught and made presentations at numerous police seminars, workshops, and strategic planning sessions at the federal, state, and local level. He has written extensively on police issues and was President of the Police Executive Research Forum (PERF) (representing cities over 50,000 population) and was a long time member of the Major Cities Chiefs of Police.

Appendix 2

The Adult Justice Group

THE ADULT JUSTICE GROUP

The Adult Justice Group is a group of representatives of various entities and organizations in Cuyahoga County who have come together to solve budgetary problems within the county justice system. When the group was first convened by the County Administrator the membership did not include any representatives of any municipal government entities. Later a representative of the Cleveland Police Department was added to the membership.

The Group consists of:

Dennis Madden, County Administrator's Office
Lee Trotter, County Deputy Administrator
Jim Corrigan, Government Relations Officer
Steven Terry, County Office of Justice Affairs
John Nolan, Board of County Commissioners
Gary Norton, Board of County Commissioners
Patrick Smock' Board of County Commissioners
Sandy Turk, Office of Budget & Management
Candace Elliott, Office of Budget & Management
Frances McEntee, Office of Budget & Management
Pat Borokhovich, Office of Budget & Management
Judge Richard McMonagle, Common Pleas Court Presiding Judge
Judge Christine McMonagle, Common Pleas Court
William Danko, Common Pleas Court Administrator
Daniel Peterca, Probation Dept
Keith Hurley, Clerk of Courts Administration
Commander Ed Tomba, Cleveland Police Department
Robert Coury, County Prosecutor's Office
Jerome Dowling, Assistant County Prosecutor
Kristine Pesho, Prosecutor's Office
Angela Williamson, Prosecutor's Office
Bob Tobik, Public Defender's Office
Kenneth Kochevar, Director of Corrections
Patricia Kresty, Sheriff's Chief of Staff

Appendix 3

Methodology

METHODOLOGY.

As indicated in the contract between the Commissioners and JMI, "The main vehicle for developing detailed knowledge about system operations and crafting potential improvements will be to conduct a series of three site visits by members of the project team." As was planned, a total of three site visits were conducted during the course of the work. The primary activities accomplished during those visits are summarized below. A total of 77 people in 17 agencies, departments, or offices were interviewed not including the attendees at either of the two focus group sessions with the Cleveland Police Department Staff.

Among the groups with whom we spoke were:

Cleveland City Attorney's Office
Cleveland City Prosecutor's Office
Cleveland Municipal Court Administrative Staff
Cleveland Municipal Court Clerk's Office
Cleveland Police Department
City of Cleveland Public Safety Department
Cuyahoga County Administrator's Office
Cuyahoga County Clerk of Court's Office
Cuyahoga County Court of Common Pleas Administrative Office
Cuyahoga County Court of Common Pleas Bond Commissioner's Office
Cuyahoga County Court of Common Pleas General Division Judges
Cuyahoga County Court of Common Pleas Probation Department
Cuyahoga County Office of Management and Budget
Cuyahoga County Prosecutor's Office
Cuyahoga County Public Defender's Office
Cuyahoga County Sheriff
Suburban Municipal Court City Prosecutor's Office
Suburban Municipal Court Clerk's Office
Suburban Police Department
Member of the Cuyahoga County Bar who accepts appointments in the Court of Common Pleas

First Site Visit. The first site visit was conducted on October 26 – 28, 2005 by three members of JMI's staff. During this visit twelve individual or group interviews were conducted with a total of twenty-one people. Those interviewed included Judges, Court Administrators, Clerks of Court, Prosecutors, Public Defenders, Police Officers, and County Jail Correctional Managers on the staff of the

County Sheriff. Almost everyone who was interviewed during that visit was a member of the Adult Justice Group described above. The purpose of each of these interviews was to gain the perspective of the interviewee on the issues and problems of the current system and to uncover suggested solutions to the problems identified. On the last day of the first site visit JMI staff facilitated a meeting of the entire Adult Justice Group. While the earlier interviews had been for the purpose of identifying problems, this session was used to identify the characteristics of a well functioning system. The group members were asked to describe how they would know if the system was running efficiently and effectively. The results of that discussion are described above.

Second Site Visit. The second site visit by JMI took place on December 13 – 15, 2004. This visit was conducted by four JMI staff members assisted by a consultant who was experienced in police issues in urban communities. A total of thirty six individual or group interviews were held during those three days. Among those interviewed during the visit were sixteen common pleas judges, two focus groups of Cleveland Police Officers, a deputy chief of the Cleveland Police Department, chiefs of two suburban police departments, representatives of Cleveland and suburban city prosecutor's offices , representatives of the Sheriff's County Jail data processing department, staffs of the Clerk of Court, the Municipal Court Clerk, and the Court of Common Pleas who deal with information processing, a suburban municipal court clerk, representatives of the Common Pleas Pre-Trial Services Department, the Bond Commissioner's Department, the Cleveland Municipal Court Probation Department, the Cuyahoga County Court of Common Pleas Probation Department, and an attorney in private practice.

Third Site Visit. A third site visit was held on April 11 and 12, 2005 by two members of the JMI staff. During this visit the JMI staff held eight group or individual interviews with a total of 11 individuals. The original purposes of this visit were:

- To fill in any gaps in information that had been revealed as the report preparation took place following the first two visits, and
- To review the accuracy and check the feasibility of recommendations being considered by the project team.

Between the second and third visits several significant events had occurred in Cuyahoga County, including the retirement of the Cuyahoga County Court of Common Pleas Administrator and the selection of his successor, the retirement of the Cleveland Chief of Police and the selection of his successor, approval of funds for the development of a new information system for the County Prosecutor's Office, a proposed reorganization of the County Prosecutor's Office, and renewed interest in the concept of Central Booking as a means of dealing with the early phases of the criminal case process. Because of these changes, a significant additional purpose of the third site visit became review of these developments.

Data Collection. A parallel line of research that was ongoing throughout the research was the collection of data and information. Prior to the award of the contract a significant amount of background information was provided to the JMI staff. Each of the fifty six interviews produced some data, and frequently significant information was provided to the interviewers. Following the second site visit the JMI staff requested data from many of the agencies that was current through the end of 2004. To supplement this data from Cuyahoga County, JMI staff also obtained a significant amount of data from the Judicial and Court Services Division of the Ohio Administrative Office of the Courts. Finally, in order to obtain comparative information on courts throughout the county, the JMI staff constructed and distributed a survey to the 18 members of the Urban Court Mangers' Network, an organization of the court managers of major urban trial courts throughout the United States. A total of 9 of the members responded.