



# Two Years Down the Road

*...A Status Report on*

*A Roadmap to a Better DC Criminal Justice System*



The Council for Court Excellence

*December 2003*

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Dear Fellow Citizen:

Fair, effective, and efficient criminal justice processes are at the heart of the District of Columbia's capacity to provide a safe environment for its citizens, to encourage economic growth, and to develop a broadly shared sense of justice.

Over two years ago, the Council for Court Excellence published *A Roadmap to a Better DC Criminal Justice System*, which reported on a criminal justice system taking too much time, costing too much money, and wasting too many police and other resources. Today, we find that, through the leadership of the D.C. Criminal Justice Coordinating Council, the D.C. criminal justice system has made important strides down the road to better operational efficiency, but has yet to take the boldest strides necessary. The executive summary that follows is the result of a ten-month study to chart the progress of implementing the 27 recommendations of the April 2001 *Roadmap Report* to increase the efficiency of the criminal justice system in the nation's capital.

*Two Years Down the Road* indicates, recommendation-by-recommendation, where positive results have been achieved, where the progress has been mixed, where operational inefficiencies still exist, and where no action has been taken. The complete 60-plus page report includes great detail regarding the findings, recommendations, and statistical analyses of the time Metropolitan Police Department officers spend with prosecutors and in D.C. Superior Court after they arrest a criminal suspect. The full report may be accessed on the Council for Court Excellence website at <http://www.courtexcellence.org/>.

We thank the United States Congress for funding this important study, one of four major projects for which the Council for Court Excellence received a congressional appropriation in fiscal year 2003. We are also grateful to the Morris and Gwendolyn Cafritz Foundation, which has also provided generous support for this project.

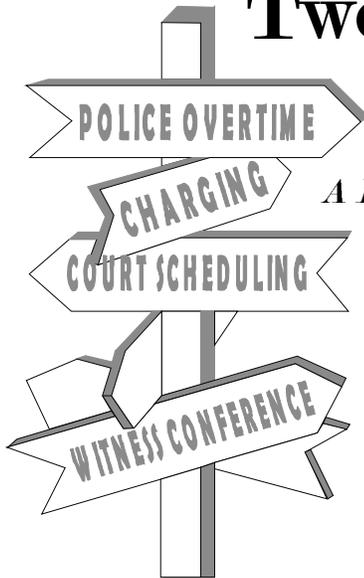
On behalf of the Council for Court Excellence we wish to thank the many District of Columbia and federal agency representatives and judges of the District of Columbia Superior Court who so generously contributed their time and support to this study. Their willingness to continue to shine a spotlight on the performance of the D.C. criminal justice system is critical to its future improvement. We commend this important study to you.

Sincerely,

Elliott S. Hall, Chairman  
Council for Court Excellence

Timothy J. May, President  
Council for Court Excellence

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## Two Years Down the Road

...A Status Report on the April 2001 Roadmap to a Better DC Criminal Justice System

### EXECUTIVE SUMMARY INTRODUCTION

More than two years ago, after an arrest was made, the criminal justice system in the District of Columbia took too much time, cost too much money, and badly misused police and other valuable resources. Public confidence was eroding and public safety was compromised.

In the spring of 2001, the Council for Court Excellence issued a 100-plus page “Final Report on the Management of District of Columbia Criminal Justice Resources.” That report, known as the April 2001 *Roadmap Report*, called for major changes in the D.C. criminal justice system “at all levels and all stages.” The 27 specific changes recommended, according to the *Report*, would bring the D.C. community “increased public safety at a lower cost to its taxpayers,” and “increased public trust and confidence in the criminal justice system.”

The *Roadmap Report* recognized that the fundamental change in direction called for could not be accomplished overnight. Two years, however, is a fair time frame for a status report to policy makers and the D.C. community at-large. This is an Executive Summary of that *Two Years Down the Road* status report.



### PROGRESS SUMMARY

As with any progress report, there is good news, bad news, just plain news, and no news. Happily, the good news considerably outweighs the bad and more good news seems just ahead.

#### ↑ Positive Results

The agencies of the D.C. criminal justice system have responded very constructively to a majority of the 27 recommended changes. Real leadership, commitment, and follow-through have been shown by the key affected agencies — the D.C. Metropolitan Police Department (“MPD”), the D.C. Office of the Corporation Counsel, the U.S. Attorney’s Office for D.C., and the D.C. Superior Court. Over 30 separate projects, task forces, and work groups have addressed, or are addressing, issues closely related to the April 2001 *Roadmap Report*.

Thanks to the combined efforts of MPD, the Corporation Counsel, and the U.S. Attorney, a fundamental sea change is occurring in the way police and prosecutors handle most misdemeanor arrests. Prosecutors can now make charging decisions in 20 D.C. and U.S. misdemeanor offenses without requiring officers to personally appear in their offices. This approach may soon be expanded to cover virtually all U.S. misdemeanor arrests. (Recommendations 1 and 6)

The D.C. Superior Court, through an *ad hoc* arraignment court committee personally headed by the incumbent chief judge, has been very engaged in reviewing and re-engineering criminal case management intake procedures. The Court has revised policies on the role of appointed counsel in one area; instituted new status hearing practices; and removed domestic violence, prostitution, and community court cases from the arraignment court altogether. (Recommendation 10)

Under a new fee guideline system for appointed counsel representing indigent criminal defendants, there is a set scale of the number of hours that may be billed for each of 11 D.C. misdemeanor offenses and five U.S. misdemeanor offenses, as well as a cap on the amount that can be charged for these cases. Counsel appointed to represent clients who meet indigency

standards in such criminal cases submit their voucher and any supporting materials and now receive prompt payment from the Court. (Recommendation 11)

The D.C. Superior Court has also devoted considerable energy to addressing many of the individual recommendations concerning criminal case management reform, especially as it concerns misdemeanor cases. At the initiative of the incumbent Criminal Division presiding judge, a broadly based Differentiated Case Management Committee (“DCM”)<sup>1</sup> was formed, and has been working for nearly two years to improve the Court’s criminal case management systems and practices. (Recommendations 12, 13, 17)

Within the past two years, the Superior Court has expanded the D.C. misdemeanor and traffic court’s emphasis on diversion from traditional court processes and has recently developed a prostitution court and first offender options for non-violent misdemeanors. (Recommendation 26)

A new community court<sup>2</sup> has been developed for certain types of criminal cases from MPD Districts Six and Seven. The majority of community court defendants processed to date have been diverted away from the formal court process, and into employment, health, and/or needed social services. While still evolving, the D.C. Superior Court’s new community court seeks to intervene positively in defendants’ cases to lessen the frequency of re-arrest and further interaction with the D.C. criminal justice system. (Recommendation 27)

### ↔ **Mixed Blessings**

Good efforts have been made on a number of recommendations, but for differing reasons there is much further work to be done in these areas.

For example, MPD has made considerable investments to train police officers and to provide upgraded computer capabilities. However, further efforts are needed to improve the quality of police arrest reports. Simply put, at present the quality and timeliness of D.C. police arrest reports are still not up to par. (Recommendation 1a)

While MPD has made major strides in the computerization area, there are two major deficiencies impeding the utility of this valuable technology for the rank-and-file police officer: a frustrating complexity and cumbersomeness of the MPD intranet computer system; and a continued redundancy in paperwork. (Recommendation 1b)

Surprisingly, there has been an unanticipated decline in the number of citation releases<sup>3</sup> issued by the police since the *Roadmap Report*’s recommended expansion of this program. In

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<sup>1</sup> “Differentiated case management” is a phrase that will be used throughout this report. It refers to the principle that because all types of cases are not alike, they ought not to be treated alike. Thus, differentiated case management retains the basic principles of case management, such as early court intervention, monitoring of case events, and judicial control. However, it adds that procedures need to be tailored to the needs of different types of cases to gain the maximum benefits of case management.

<sup>2</sup> The role and purpose of the D.C. Community Court is to handle eligible criminal cases from one geographic area of the city and to use the Court in a problem-solving role to arrange for needed mental health, drug abuse, employment counseling and assistance, and other social service intervention for appropriate defendants. Additionally, the Community Court approach provides for an array of short-term community service assignments that defendants can be placed in immediately following the court hearing. The Community Court is designed to process cases promptly, diverting many cases the same day they come to court.

<sup>3</sup> A “Citation release” is a form of pretrial release. This is an option for only certain, less serious D.C. and U.S. misdemeanor offenses. MPD and the D.C. Pretrial Services Agency determine whether a person arrested for a citation release-eligible offense meets the program criteria for release. PSA weighs considerations such as whether the person has other pending charges for the same offense, whether the person is already under court supervision and in compliance regarding that matter, and other relevant factors in deciding whether to recommend to MPD that the

response, the D.C. Pretrial Services Agency developed broadened eligibility requirements and early indication is that the number of persons recommended for citation release will increase. (Recommendation 5)

The Papering Reform Pilot Project<sup>4</sup> has expanded citywide for some 20 separate D.C. and U.S. misdemeanor offenses, but the full potential of the papering reform program has yet to be realized. (Recommendation 6)

MPD and the U.S. Attorney have tested several variations of what might be called night papering of arrests. The night papering initiatives improved the quality of the arrest work by the police, and strengthened prosecutorial cases. However, arrest booking took far too long on and individual agency costs may be higher. (Recommendation 10)

In the past two years the D.C. Superior Court and other constituent participants in the Court's Differentiated Case Management Committee have begun to show in the misdemeanor area the potential case processing and resource efficiency gains that are possible through concerted effort over time. The felony area is infinitely more complex and varied. It is also the aspect of the criminal court process where the largest expenditure of police overtime dollars occur year in and year out. Now is the time for the Court and the other D.C. criminal justice system participants to recommit to modernizing the felony case management processes. (Recommendations 12, 13)

The longstanding and serious problem of oversetting<sup>5</sup> criminal trials is viewed as central to the Court's Differentiated Case Management Committee agenda, but it has not been resolved yet. Recently revised misdemeanor scheduling practices and new training in differentiated case management principles should have a positive impact in this important area. (Recommendation 17)

The *Roadmap Report* recommended that, to conserve resources, a plea cut-off system be established. The U.S. Attorney's Office currently has an operating policy in its high volume felony case area whereby no pleas are accepted on the day of trial, but to date there is no policy movement to broaden this practice further.

In an effort to address the *Roadmap Report's* recommendation to better monitor police officers summoned for court and prosecutorial hearings, MPD engaged a software contractor to integrate police officers' overtime time and attendance records with its payroll information. While the contractor's work is complete, the MPD lacks sufficient confidence in the analytic reports generated to rely on the newly developed systems. The Police Chief needs to focus on this important issue on a priority basis. (Recommendation 25)

### ⇓ **Negative Responses**

An important recommendation was to encourage early and broad prosecutorial file disclosure to defense counsel and defendants, to permit them to realistically assess the strength of the prosecutor's case. While in misdemeanor cases disclosure is routinely given to defense

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person be granted a citation release or not. If granted, the citation informs the accused of the date that he or she must appear in court.

<sup>4</sup> "Papering reform" refers to reducing the amount of time officers spend on filling out the paperwork associated with an arrest and improving the quality of the arrest reports produced by the officers. This includes filling out arrest reports electronically, as opposed to the current system of handwritten reports, and relieving officers of personally appearing in front of the prosecutor to describe the circumstances of the arrest.

<sup>5</sup> "Oversetting," i.e., over-scheduling. This means scheduling more cases than can reasonably be heard by a judge in a single day.

counsel, in felony cases there has been very little change in the policy viewpoints of the U.S. Attorney and the D.C. Corporation Counsel on this subject since the issuance of the April 2001 *Roadmap Report*. The District of Columbia continues to have one of the most restrictive discovery rules in the U.S. (Recommendation 15)

◇ **No news**

The recommendation to use electronic delivery to transmit police reports to prosecutors has not been implemented, although the three involved agencies have discussed its feasibility and whether to test it on a pilot basis in one or several police districts. (Recommendation 3)

Nor has the recommendation of video conferencing for prosecutor/police interactions been implemented, although MPD and the U.S. Attorney both claim present capabilities. (Recommendation 7)

The recommended elimination of preliminary hearings in most felony cases has not been implemented and may not be in the future. Given the strong differences of opinion across the D.C. criminal justice system about whether this recommendation should be adopted at all, the Superior Court's Differentiated Case Management Committee is an appropriate forum to explore this matter further. (Recommendation 16)

No action has been taken to date with regard to bringing "old" cases to resolution, due principally to a lack of sufficient available resources. (Recommendation 14)

To date there has been no agreement by the Differentiated Case Management Committee as to whether or how to implement the recommendation calling for earlier resolution of motions, although the subject is on the Committee's agenda to discuss. (Recommendation 18)

There has been a similar lack of action on the recommendations that trials be scheduled only when needed and trial management conferences be mandatory for trials that will take more than a day. However, members of the Differentiated Case Management Committee report that both of these proposals will be addressed in the next phase of the committee's deliberations. (Recommendations 20 and 21)



## **TWO WEEK STUDY OF MPD OFFICERS IN COURT AND PROSECUTORIAL PROCEEDINGS ...a 2003 Snapshot**

In addition to its report on the current status of each of the 27 *Roadmap Report* recommendations, the Council for Court Excellence also analyzed a great deal of statistical data about the D.C. Criminal Justice System, with particular emphasis on the time and appearances by D.C. police officers in court and prosecutorial proceedings.

The full *Two Years Down the Road* Report contains data that describe a consecutive two-week period in June 2003 in which CCE quantitatively examined MPD officer appearances and the time the officers expended at D.C. Superior Court Criminal Division court and prosecutorial proceedings.

The District of Columbia devotes significant public dollars each year to police officer time spent after the arrest of a suspect. As the preceding recommendations suggest, there are ways to reduce these expenditures and to enhance the ability of the criminal justice system to prosecute crime while maintaining fairness and due process standards.

In addition to the person hours and associated dollars that are spent when police officers appear at prosecutorial and court proceedings, there is a significant opportunity cost from over-summoning police officers, whether they are on or off duty. Public safety is diminished when court cases are not held when scheduled, when defense counsel and prosecutors do not give adequate notice of a delay in a proceeding to avoid unnecessary officer attendance, and when prosecutors summon more officers than are necessary to effectively prosecute a criminal case.

This study of police officer time spent on court and prosecutorial proceedings is solely descriptive in nature and any conclusions drawn beyond the two-week timeframe of this study should be cautiously considered.

We believe this study provides a valuable snapshot of an important part of police work in the District of Columbia and may provide a basis for management improvements.

### **FINDINGS FROM THE TWO-WEEK CCE STUDY**

- ◆ In the two-week period between June 9 and June 20, 2003, there were approximately 4,200 MPD officer appearances related to 1,800 criminal cases in the D.C. Superior Court. MPD officers billed roughly 13,800 hours for these appearances.
- ◆ An average of 420 officers per day appeared at court and prosecutorial proceedings. Of these, about 100 officers appeared while on-duty; the remaining 320 appeared while off-duty and thus were being paid at overtime rates.
- ◆ Approximately 40% of all officers appearing were assigned to patrol duty.
- ◆ The two-week cost of these MPD officer billings was \$500,000.
- ◆ Of this total, \$380,000 was for overtime.
- ◆ If this two-week period is representative, the 2003 MPD overtime costs for officer appearances would be \$9,880,000.
- ◆ Felony matters occupied 75% of MPD officer time for D.C. Superior Court and prosecutorial proceedings.
- ◆ Six officers on average were summoned for felony trials; one of the six provided testimony, on average, for 30 minutes.

- ♦ In the two-week period, MPD officers billed almost 1,000 hours for appearances in felony trials that were “continued” (delayed) until a later date, at a cost to MPD of almost \$40,000. If this two-week period is representative, this cost would be just under \$1,000,000 annually.

The 2003 two-week period selected for study by CCE is not the same two-week period, or even the same month, as in the previous CCE study done in 2000. For this reason and others, one must be cautious about drawing conclusions or comparisons between the results from the two different study periods.

For example, the average number of MPD officers summoned for felony trial proceedings is down slightly in the two-week period in June 2003 in relation to a similar time period in September 2000. One might be tempted to conclude or suggest that this decrease is the result of the case-processing and other reforms instituted across the D.C. criminal justice system, either directly related or incidental to the recommendations of the *Roadmap Report*. Such a conclusion would be unfounded, however, because this project did not conduct a statistically valid test of the hypothesis that the ongoing reform efforts were responsible for the reduced police officer time and appearances in D.C. criminal cases.

We believe that such a statistically valid test should be contemplated now and conducted in the coming years, as the criminal justice system case-processing reforms transition from pilot studies to adopted practice.

## MODERNIZATION OF THE ARREST-TO-ARRAIGNMENT PROCESS

The first 11 *Roadmap Report* recommendations fall within the overarching goal of modernizing the arrest-to-arraignment<sup>6</sup> process in the D.C. criminal justice system.

### *Recommendation 1.*

**Improve the quality, completeness, and timeliness of police reports by:**

- a. Continuing training in arrest procedures and report preparation;**
- b. Maximizing use of computers for report preparation;**
- c. Using personnel other than the arresting officers to complete forms; and**
- d. Setting time standards for report completion.**

### **⇔** *Implementation Status*

Implementation efforts relating to this recommendation began early in 2001 and continue as of the date of this report. Principal attention has focused on improving the quality, completeness, and timeliness of police reports filed in approximately 20 separate high-volume D.C. and U.S. misdemeanor offenses. These offenses constitute the bulk of the approximately 2,000 patrol officers' daily arrest caseload and represent arrests where a police officer is frequently the primary or sole witness.

↑	Positive results
↓	Negative responses
⇔	Mixed blessings
∅	No news

The D.C. Metropolitan Police Department is to be commended for the many separate initiatives it has undertaken to augment existing officer and line supervisory personnel training in proper arrest and report preparation procedures. However, further efforts are needed to improve the quality of police arrest reports. Simply put, at present the quality and timeliness of D.C. police arrest reports are still not up to par, even for the 20 high-volume D.C. and U.S. misdemeanor and traffic offenses covered under the paperwork reform project. Arresting officers and supervisory personnel have not focused sufficient attention on the available offense-specific checklists and related available in-service training support.

While MPD has made major strides in the computerization area, there are two principal deficiencies impeding the utility of this valuable technology for the rank and file police officer within the seven police Districts. The first is that the complexity and cumbersomeness of the MPD information technology system frustrates officers every day. Virtually none use the on-line arrest forms found in the MPD intranet computer system. The second weakness of the existing state of MPD computerization is that it has yet to eliminate much of the redundant paperwork that has long been such a part of the arrest process.

Until the MPD can expand the coverage of the computerization process and solve to the officers' satisfaction the computer access issues referenced above, the real potential of the computer will not be realized.

An enormous cultural sea change is underway in the police and prosecution agencies in D.C. in connection with trying to markedly raise the quality of police arrest reports. For years many police officers have "gotten by" with preparing minimally complete arrest paperwork

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<sup>6</sup> Arraignment is when the accused is called before a judge or magistrate and formally informed of the criminal charges against him or her. Also, during this initial appearance, the judge determines whether or not to release the accused until trial. If the judge decides not to detain the accused, the defendant is released either on bail (collateral paid by the defendant to the court to insure appearance at the trial when the money or property will be returned), or on his/her own recognizance ("ROR"), or to some third party's custody. At this hearing the judge will also make sure that the defendant has legal counsel.

knowing that the prosecutors would review and catch obvious mistakes and help perfect the arrest package for subsequent presentation in court.

The District of Columbia is one of the few U.S. cities where police officers routinely present their arrest paperwork **in person** to the prosecutor. This routine practice is deeply ingrained in the police and prosecutorial psyche in the District of Columbia. It is also costly. The April 2001 *Roadmap Report* found that the prosecutorial papering stage of the initial arrest processing accounted for 12% or \$1.2 million of the \$10,000,000 in FY 2000 D.C. police overtime costs associated with court and prosecutorial proceedings. In FY 2003, this has not measurably improved: 11.3% or \$1.1 million dollars of the \$9,880,000 overtime total is still being spent by MPD in direct support of the prosecutorial papering function.

The success of the Paperwork Reform Program will depend directly on the MPD officers' routinely producing high quality and timely arrest paperwork, something that is not yet being done. As noted above, important building blocks have been fashioned; however, MPD carries a major burden to really raise the bar further in the next year — and beyond — to assure the long-term success of this policy reform.

### ***Recommendation 2.***

**Use LIVESCAN [fingerprinting] technology in all police district stations.**

#### ***↑ Implementation Status***

MPD has made a number of changes in training, equipment, and computers over the past two years and the system is now quite dependable. Few arrestees currently transported to one of the seven district station houses for processing need to be transferred to the central cellblock thereafter for fingerprint processing. Most defendants today can be positively identified at the district station house. This greater reliability of LIVESCAN today has also contributed to greater physical safety for police officers, because they are now able to verify the identity of an arrested person — together with any prior criminal history — earlier in the arrest process.

### ***Recommendation 3.***

**Use electronic delivery as normal means of transmitting police reports to prosecutors.**

#### ***◇ Implementation Status***

This recommendation has not been implemented, although the three agencies involved — MPD, the Office of the Corporation Counsel, and the U.S. Attorney's Office — have discussed the feasibility of a pilot test in one or several police districts.

MPD may currently have the capacity to implement this recommendation, but police officers who now generate arrest reports online do not use the MPD Intranet. Until the Intranet System computer environment is made more user friendly and is more generally accepted, routine electronic delivery of police reports is not possible.

It is still standard MPD practice to hand carry arrest reports each day from the seven police districts downtown to the MPD Court Liaison Unit. This step in the case processing alone takes countless police officer man-hours each year. MPD, the Office of the Corporation Counsel, and the U.S. Attorney's Office should move forward to overcome the various legitimate technical obstacles impeding the implementation of this recommendation without further delay.

***Recommendation 4.***

**Develop rapid lab test turnaround capability, especially for tests of suspected drugs.**

**⇔ *Implementation Status***

The D.C. criminal justice system relies on the federal government's Drug Enforcement Agency ("DEA") for verification tests of suspected drugs and literally thousands of tests of suspected drugs are performed each year for D.C. At present, there seems to be no appreciable concern about the length of time DEA drug tests take.

Additionally, some D.C. Superior Court Criminal Division case-flow management<sup>7</sup> changes soon to be adopted could reduce by one-half or more the high volume of drug tests now requested by the prosecutors of DEA.

In some jurisdictions the police department's field drug test is accepted as valid for court purposes unless challenged in a given case. In D.C., because of workload demands of both the MPD crime scene evidence technicians and the scout car patrol officers, officers frequently do not complete the full field drug test protocol. Officers suspecting that a substance seized is an illegal drug frequently make the arrest after completion of one or two of the series of possible drug field tests knowing that the DEA laboratory will conduct a complete battery of drug tests.

In addition, field research indicates that fewer than half of D.C. police officers have taken MPD's drug field-testing course. In fact, the MPD Training Academy has not offered the one-day in-service field drug test certification course in the past three years. Given the prevalence of drug arrests in D.C., it would seem important for the MPD's Training Academy to offer police officers the in-service field drug testing course several times each year, as opposed to once every few years.

***Recommendation 5.***

**Expand MPD's use of citation release.**

MPD issues citations for persons charged with certain less serious D.C. and U.S. misdemeanor offenses. MPD and the D.C. Pretrial Services Agency ("PSA") determine whether a person arrested for a citation eligible offense meets the program criteria for release. PSA weighs considerations such as whether that person has other pending charges for the same offense, whether the person is already under court supervision and in compliance regarding that matter, and other relevant factors in deciding whether to recommend to MPD that the person be granted a citation or not.

**⇔ *Implementation Status***

There has been an unanticipated 25% decline in the number of citations issued in 2002-2003 as compared to 2001. In response, the citation release criteria were expanded: the requirement that a person reside within 100 miles of D.C. to qualify for citation release was eliminated; persons with other unrelated nonviolent pending charges were allowed to qualify; and persons with prior convictions older than one year were permitted to be considered for citation release. Early indications are that expanding the citation release criteria in this manner has increased the number of persons recommended by Pretrial Services Agency for release.

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<sup>7</sup> "Caseflow management" refers to the coordination of court processes and resources to move cases from filing to disposition in a timely manner.

***Recommendation 6.***

**Expand the Papering Reform Pilot Project to include both misdemeanor and felony cases.**

**↔ *Implementation Status***

This recommendation to eliminate the need for arresting officers to meet in person with prosecutors has been implemented city-wide for some 20 separate D.C. and U.S. misdemeanor offenses, but the full potential of the papering reform program has yet to be realized even for misdemeanor cases. In 2003, only approximately 600 D.C. misdemeanor arrests — out of a total of over 5,000 arrests for these papering reform offenses — will have been processed under the procedures of the papering reform program.

A timetable should be developed so that by April 1, 2004, all D.C. and U.S. misdemeanor offenses are processed through the Papering Reform Program. Thereafter, the Police Chief, the U.S. Attorney and the D.C. Corporation Counsel should develop a time line for including most, if not all, felonies within the Papering Reform Program framework.

The April 2001 *Roadmap Report* documented that of approximately \$10 million spent in 2000 for police overtime for prosecutorial and court hearings about 12% or \$1.2 million supported prosecutorial papering practices. Interestingly, in 2003 each of these remains nearly constant. Almost \$10 million has been budgeted, and 11.3% or \$1.1 million of these funds are being used to support MPD officers' time at the prosecutorial papering function.

There is work yet to do, especially by MPD, before all parties will embrace the full implementation of, and realize the benefit from, the Papering Reform Program.

***Recommendation 7.***

**Develop video conferencing capabilities to enable prosecutors to confer with arresting officers and eliminate unnecessary police travel.**

**◇ *Implementation Status***

This recommendation has not been implemented yet, although both MPD and the U.S. Attorney's Office indicate that they presently have the capability to implement it, at least on a pilot basis. The Office of the Corporation Counsel lacks video conferencing technology presently.

***Recommendation 8.***

***Provide for early delivery of discovery packet<sup>8</sup> and dispositional offer<sup>9</sup> by prosecutor to defense counsel in order to facilitate early disposition of misdemeanor cases.***

**↑↑ *Implementation Status***

This recommendation has been implemented for the most part. The U.S. Attorney and the Corporation Counsel routinely provide discovery packets to defense counsel at or within three days of arraignment. For routine misdemeanor cases, the basic discovery packet materials provided by the prosecutors are usually sufficient, as noted by defense counsel interviewed for

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<sup>8</sup> Discovery refers to the right of the defense to obtain access to evidence, including witnesses, necessary to prepare its own case.

<sup>9</sup> This is a sentence offered by the prosecutor to the defendant in exchange for a guilty plea, making a trial unnecessary.

this study. They further note, however, in more serious misdemeanors the absence of full discovery can and does impede early case resolution.

***Recommendation 9.***

**Give defense counsel opportunity for meaningful consultation with the defendant prior to first appearance.**

**↔ *Implementation Status***

Both D.C. Superior Court staff and the local defense bar agree that as a practical matter the recommended renovation of the arraignment court facilities to better accommodate private defense counsel client interviews is simply not feasible. A number of defense counsel also stated that no meaningful interview takes place at this stage of the case anyway since in lock-up cases their clients' sole objective is to get released.

***Recommendation 10.***

**The Court should use arraignment as a key control point to effectively control misdemeanor case scheduling and to establish a focus on early case resolution.**

**↑↑ *Implementation Status***

The D.C. Superior Court has embraced this recommendation directly, undertaking a number of reforms to improve the effectiveness and efficiency of the arraignment court hearing.

For example, until recently one of the functions of the arraignment court judge was to set trial dates for misdemeanor cases. New procedures now provide that at arraignment the judge schedules an initial status hearing for each case within 14 to 21 days, leaving all subsequent case scheduling and case management to the judicial officer who will try the case. Also, a number of case types that previously appeared in the arraignment court will now be handled by other specialized judicial tribunals within the Superior Court. These include criminal cases before the Superior Court's new Community Court, a prostitution court, and a domestic violence court. The incumbent Chief Judge is personally leading the D.C. Superior Court's current arraignment court review committee initiatives

All other key agencies — from MPD, the U.S. Attorney's Office, the Office of the Corporation Counsel, and the Pretrial Services Agency — also have worked within their spheres to study and test new practices and protocols that impact directly on arrest workload, and/or case intake timing within the D.C. Superior Court's arraignment court.

As an example, MPD and the U.S. Attorney's Office have tested several variations of what is called "night papering" in the past two-plus years. Night papering entails assigning prosecutors or paralegals to district station houses or to MPD field command units so that arrests are screened just after they occur during the busiest evening hours while the arresting police officers are still on duty.

Night papering has several important objectives: reduce the amount of court-related overtime/compensatory time for officers; reduce officers' fatigue by relieving them from having to appear in person during the next day to paper their case at the prosecutors' office; strengthen investigations through early involvement of prosecutors in case development; present cases in court more promptly; and release defendants from the station cell blocks as appropriate.

Two aspects of the night papering program are especially significant: staff from both MPD and the US Attorney's Office involved in the pilot program concur that *the quality of arrest paperwork improved during night papering*. And, the U.S. Attorney's Office obtained

better information from the police when Assistant U.S. Attorneys were available to review cases immediately after arrest. At the same time, too few cases were referred for screening by the U.S. Attorneys each night, the arrest booking process took far too long, and some agency costs rose under the night papering project.

***Recommendation 11.***

**Establish guideline amounts for compensation of appointed defense counsel.**

**⇔ *Implementation Status***

This Recommendation was implemented by the D.C. Superior Court for 11 high volume D.C. misdemeanor offenses and five U.S. misdemeanor offenses. Under the new fee guideline system now in place for appointed criminal defense counsel, there is a set scale of the number of hours each of the listed offenses qualifies for and the presumptive maximum guideline fee that can be charged. Attorneys representing eligible clients in such cases submit their voucher and any supporting materials and receive prompt payment from the Court.

Although the new Fee Plan is currently limited in the number of offenses covered, the Court's appointed counsel guideline committee will consider expanding the number of offenses in the future; however, no timetable exists for such an expansion.

**REDESIGN OF THE POST-ARRAIGNMENT PROCESSES**

*Roadmap Report* Recommendations 12 - 25 focus on the overarching project goal of redesigning post-arraignment processes for both misdemeanor and felony offenses. The lead responsibility for addressing Recommendations 12-24 rests with the D.C. Superior Court. The Court has worked since at least 1998, if not earlier, to improve its criminal case management processes. Recommendation 25 requires a shared and active responsibility among the police, prosecutors, the D.C. Criminal Justice Coordinating Council, and the Superior Court.

For the past two years the D.C. Superior Court's Criminal Division has worked through a Differentiated Case Management Committee (DCM) that includes representatives of many other justice system agencies and the private bar. To date it has focused principally on redesigning case processing systems for misdemeanor offenses. Its work demonstrates the potential case processing and resource efficiency gains possible through concerted effort over time.

The felony area is considerably more complex and varied. It is also the aspect of the criminal court process where the largest expenditure of police overtime dollars occur year in and year out. Now is the time for the Court and the other criminal justice system participants to recommit to modernizing the felony case management processes.

***Recommendation 12.***

**Establish operational caseflow management and scheduling goals.**

**⇔ *Implementation Status***

Considerable interagency progress has been made in addressing Recommendation 12 for misdemeanors. One area of particular resource inefficiency has been the over-scheduling of the misdemeanor trial calendar. Counsel, police officers, and civilian witnesses are all typically present and prepared to proceed to trial; yet on a daily basis the Court is *not* reaching most of the misdemeanor cases set for the trial calendar. There are simply too many cases on misdemeanor judges' dockets to be processed in a single day.

As the various procedural reforms in the misdemeanor case flow area are implemented, it will be important for the D.C. Superior Court's Differentiated Case Management Committee ("DCM") to continually monitor and report how well the new misdemeanor scheduling goals and processes are working, especially in improving the integrity of the daily misdemeanor trial calendar.

While the DCM Committee has yet to formally adopt case processing time standards for misdemeanor cases, representatives of the Committee believe the American Bar Association case processing goals are attainable and may be formally embraced by the Superior Court. As for the development of case processing time standards for felony cases, to date the DCM Committee also has not adopted any standards, and is collecting extant data on felony case processing standards from other jurisdictions.

Substantive case processing reform work should commence in the felony area in the fourth quarter of 2003. Projections are that by December 2004, at the latest, the Court will adopt case processing goals for felony cases, and will have instituted a variety of specific felony case management reforms.

***Recommendation 13.***

**Institute major changes in case scheduling philosophy and practice, incorporating principles of differentiated case management and effective caseflow and trial management.**

***↑ Implementation Status***

Recommendation 13 has been implemented with the appointment and active ongoing work of the Differentiated Case Management Committee. The incumbent Criminal Division Presiding Judge is to be commended for championing the principles of a differentiated case management approach and for instituting the various processes necessary to modernize the D.C. Superior Court's case scheduling philosophy in this area.

***Recommendation 14.***

**Bring all "old" cases to resolution.**

***◇ Implementation Status***

To date, the Differentiated Case Management Committee has not focused on this recommendation, due principally to lack of sufficient available judicial resources.

However, in a related backlog reduction effort, the U.S. Attorney's Office earlier reviewed 800 "old" bench warrant cases and closed approximately 400 of these cases.

***Recommendation 15.***

**Encourage early, and broad, prosecutorial file disclosure, subject to withholding for cause shown.**

***⇓ Implementation Status***

There has been very little change in the policy viewpoints of the U.S. Attorney and the D.C. Corporation Counsel on the subject of prosecutorial file disclosure since the issuance of the April 2001 *Roadmap Report*. As a jurisdiction, the District of Columbia continues to have one of the most restrictive discovery rules in the United States.

***Recommendation 16.***

**Eliminate preliminary hearings in most or all felony cases after implementing procedures for early disclosure.**

***⇓ Implementation Status***

Recommendation 16 has not been implemented and may not be in the future.

The purpose of the preliminary hearing is to establish that the prosecutor has probable cause to present the case to the Grand Jury for indictment. In serious cases the preliminary hearing is often merged with the detention hearing if the prosecutor has moved for pretrial detention. Although the purpose of such a hearing is not discovery, the defendant obviously learns more about the evidence than is known from the public record paperwork.

Given the clear reluctance of the U.S. Attorney's Office to embrace the spirit of Recommendation 15 concerning early and broad file disclosure, many defense counsel view the existing preliminary hearing as an invaluable proceeding. The Court's Differentiated Case Management Committee is an appropriate forum to explore this matter further.

***Recommendation 17.***

**Revise case scheduling practices to focus on early resolution and to avoid over-setting of trials. Set cases for trial at arraignment only in extraordinary cases where parties are ready for a rapid trial and there is a high probability that a trial—with sworn witnesses—will be held on the scheduled date.**

***↔ Implementation Status***

Over scheduling the trial calendar, particularly for misdemeanor and "Felony 2" courts,<sup>10</sup> has been a longstanding practice in the D.C. Superior Court. Quite appropriately, the Differentiated Case Management Committee views this recommendation as central to its overall agenda.

The Court's revised misdemeanor scheduling practice, effective September 2003, of setting prompt status hearing dates in misdemeanor cases at arraignment should contribute to not oversetting trials. Also, the Court's training of 10 criminal court judges in differentiated case management principles should contribute to greater judicial capacity and sensitivity to the adverse impact on other agencies of oversetting trials.

Finally, the development of new practices through the DCM Committee in D.C. misdemeanor and traffic court cases, the new Community Court for cases emanating from one section of the city, and other procedural changes are all intended to relieve pressure on the daily trial calendars.

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<sup>10</sup> "Felony 2" refers to the least severe felony matters.

***Recommendation 18.***

**Hear and resolve motions earlier, including those that require evidentiary hearings.**

***◇ Implementation Status***

To date there is no clear agreement by the D.C. Superior Court's Differentiated Case Management Committee as to whether or how to implement this recommendation. The subject is on the Committee's agenda and will be considered further.

Historically, the Court has scheduled evidentiary hearings for the same day as trials, the reasoning apparently being to require witnesses to appear only once. As a result, a very high percentage of cases stay in court much longer than would be necessary if the motions on evidentiary matters were heard and resolved at a very early point in the life of the case.

The efficiency argument is particularly relevant in addressing this recommendation. Civilian witnesses are not required at motions hearings. Such hearings contribute directly to the plea development process that contributes to resolving many cases before trial. Simply put, judicial rulings on evidentiary motions often determine the final outcome of a case. If this can be done before the trial date, the savings may be significant.

***Recommendation 19.***

**Establish a plea cut-off system.**

***↔ Implementation Status***

The U.S. Attorney's Office currently has an operating policy for its high volume felony cases whereby no pleas are accepted on the day of trial. To date there is no movement to broaden this practice further.

The lack of a broad plea cut-off policy in the District of Columbia contributes directly to higher petit jury service costs and demands on citizen time, greater civilian witness time and inconvenience, and additional police officer overtime costs. Under a plea cut-off system, cases would not be set for trial until after discovery has been completed, a plea offer has been made, and motions have been filed and ruled upon. At this point, the issues will have been narrowed, lawyers on both sides will be more familiar with their cases, and it may be more possible to arrive at a negotiated resolution.

If a negotiated resolution were not reached, the case would be set for an early trial. Absent extraordinary circumstances, a trial will take place, or a plea will be entered, consistent with whatever specific plea cut-off policy the Differentiated Case Management Committee might develop.

***Recommendation 20.***

**Schedule trials only when needed.**

***◇ Implementation Status***

This recommendation is at the heart of the D.C. Superior Court Criminal Division's Differentiated Case Management Committee process. Committee members report that the group will be addressing how to accomplish this proposal in the next phase of its deliberations.

The Superior Court, as noted previously, has long had a practice of oversetting its trial calendars, resulting in substantial waste of resources for the police and other criminal justice

system participants, as well as civilian witnesses and victims. Presently, trial dates lack credibility, a situation the Court is appropriately concerned to rectify.

***Recommendation 21.***

**Require a trial management conference for all trials that take more than one day.**

***◇ Implementation Status***

The D.C. Superior Court Criminal Division's Differentiated Case Management Committee has not addressed this proposal. It will be part of the Committee's agenda in the next several months.

***Recommendation 22.***

**Establish trial readiness review procedures and improve procedures for managing witness appearances.**

***↑↑ Implementation Status***

A number of different actions have been taken to implement this recommendation. The Superior Court has received fiscal year 2004 funding for two new staff positions to support trial readiness issues. Additionally, the Criminal Division Presiding Judge has begun a practice in her courtroom of excusing police officers from attending the first day of trial.

***Recommendation 23.***

**Develop management information reports and caseflow management staff support for revised procedures.**

***↔ Implementation Status***

The D.C. Superior Court is addressing this recommendation on a court-wide basis. It has adopted and is phasing in implementation of a new computer data base system known as the Integrated Justice Information System (IJIS). In addition, the Court has procured new management information software called Court View. The Court has implemented the new computer system in the Family Court in 2003, and will implement it in the Probate Division in 2004 and in the Criminal Division in 2005.

The principal downside of the Court's multi-year implementation is that the Criminal Division is now in the midst of major case management reforms. It will be important for the Differentiated Case Management Committee and the Criminal Division leaders to get data and quantitative feedback when they need it, and not have to wait until 2005 or longer.

***Recommendation 24.***

**Use educational and training capabilities of the Superior Court, MPD, and other agencies to educate practitioners about the changes in caseflow processes and their new or revised duties.**

***↑↑ Implementation Status***

The respective criminal justice agencies have taken a number of steps to implement this recommendation. The Superior Court Trial Lawyers Association (SCTLA), the voluntary bar organization of counsel appointed to represent indigent criminal defendants, has been especially active in the continuing education and training areas. The Superior Court's outreach efforts have

been directed principally to soliciting the involvement of members of the defense bar on working committees like the Differentiated Case Management Committee, the arraignment court Committee, and others. The D.C. Public Defender Service also has been very active in recent years in educational outreach efforts to the bar.

***Recommendation 25.***

**Develop improved systems for monitoring the numbers of MPD officers summoned for court-related activities, and seek to reduce the numbers of officers involved.**

**⇔ *Implementation Status***

MPD, the U.S. Attorney's Office, the D.C. Superior Court, and the D.C. Office of Corporation Counsel each have developed projects and strategies to address this specific recommendation. The collective import of these respective efforts has been (1) a reduction in the number of officers summoned for court-related activities, and/or (2) better monitoring of this issue.

*Expand Court Liaison Division's oversight role.* On the negative side, however, staff reductions over the past two years within the MPD Court Liaison Division have adversely affected its capacity to expand its oversight role. Further, while the Court Liaison Division has been proactive in participating on various Superior Court case management committees and by working with the U.S. Attorney and D.C. Corporation Counsel to have police officers' scheduled witness conferences occur during regular duty tours instead of on overtime, the full potential of the Court Liaison Division is far from being realized. For example, the Court Liaison Division does not specifically monitor officers' overtime; it has no role in approving or disapproving officers' overtime; and it lacks daily case data on Superior Court or U.S. District Court cases set but not reached, cases continued, or cases delayed.

The leadership of MPD should re-examine the untapped potential of its Court Liaison Division to play a more central role in managing this aspect of police overtime costs.

*Explore adoption of key officer witness system.* A Key Police Officer Witness Program, where officers have set days each month when they are available to appear in court or at prosecutorial proceedings, has been developed and implemented to limit the number of police officers routinely notified for any proceeding. However, the program has had limited impact to date both because of complexities in its design and the need to "get the word out" better.

There are several other key officer type initiatives in D.C. that have as their objective limiting the number of officers at judicial and prosecutorial proceedings. In time, some combination of approaches should, if applied consistently, contribute to summoning fewer officers. To date, this goal has not yet been obtained.

*Institute pilot criminal case coordinator system.* As noted, the Court has obtained congressional funding for additional staff to institute a criminal case coordinator system whose function would include notifying officers of last-minute changes to the trial schedule and informing officers whether they were still needed. The newly funded Superior Court Criminal Division staff positions should be in place during the fourth quarter of 2003.

*Monitor officer time.* Neither the D.C. Criminal Justice Coordinating Council (CJCC) nor the D.C. Chief Financial Officer has developed a systematic capacity to monitor officer time expended for court and prosecutorial proceedings. In an effort to address the *Roadmap Report's* recommendation to better monitor police officers summoned for court and prosecutorial hearings, MPD engaged a software contractor to integrate police officers' time and attendance records with its payroll information. Regrettably, while the contractor's work is complete, MPD

lacks sufficient confidence in the analytic reports generated to rely on the newly developed systems. The Police Chief needs to focus on this important issue on a priority basis.

The policy issue of police overtime for judicial and prosecutorial proceedings remains an important agenda item for the CJCC (and MPD), but the group has lacked the resources to initiate and sustain the type of monitoring capability envisioned in this recommendation. The same can be said of the Chief Financial Officer's position and status on the issue.

*Other new systems and procedures to monitor or reduce the numbers of officers summoned.* There are several other initiatives relating to Recommendation 25. One completed project worked to develop an automated trial cancellation notification system for MPD; a second, with the U.S. Attorney's Office, is working on a pilot project giving prosecutors' access to MPD's time and attendance records and court and prosecutorial proceeding appearance schedules for individual officers, so that Assistant U.S. Attorneys can make the most efficient use of officers' time when scheduling witness conferences and grand jury appearances.

#### **NON-INCARCERATIVE DISPOSITIONAL ALTERNATIVES**

The final two *Roadmap Report* recommendations call for expanding the use of diversion and alternative dispositions for low-level offenders, and for developing a community court to strengthen community responsiveness. In each instance, the D.C. justice system has fully embraced the proposals: an array of new diversionary vehicles for less serious cases has been adopted and an emerging D.C. community court is in place.

#### ***Recommendation 26.***

**Expand the use of diversion and other non-incarcerative dispositional alternatives<sup>11</sup> for low-level offenders.**

#### ***↑ Implementation Status***

The D.C. Corporation Counsel and the U.S. Attorney have long been supportive of well-reasoned court diversionary programs and other alternative disposition avenues for offenders in appropriate cases.

The D.C. Superior Court also has had a long tradition of developing and "sponsoring" diversionary programs for many different types of defendants. Within the past two years, the Superior Court has expanded the D.C. misdemeanor and traffic court's emphasis on diversion. The Court also has recently developed a prostitution court and first offender diversion options for non-violent misdemeanors. A new supportive pretrial release program for mentally ill defendants was developed in 2001 in conjunction with the D.C. Public Defender Service, the Pretrial Services Agency, and the D.C. Department of Mental Health.

#### ***Recommendation 27.***

**Enhance community prosecution and use pilot program to explore community court.**

#### ***↑ Implementation Status***

The U.S. Attorney's Office has had a Community Prosecution Program citywide since mid-1999. The program's objectives include developing improved rapport and lasting partnerships with the community, improving the Office's relationship and working relations with MPD and other law enforcement agencies, and enhancing the Office's prosecutorial effectiveness.

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<sup>11</sup> I.e., alternatives to imprisonment for those convicted of a criminal offense.

*Community Court.* The Superior Court commenced its pilot community court in the 6<sup>th</sup> Police District in October 2002. In June 2003, the Community Court expanded to include arrests for eligible D.C. and U.S. Code offenses in the 7<sup>th</sup> Police District as well.

The purpose of the D.C. Community Court is to handle eligible criminal cases from one geographic area of the city and to use the Court in a problem solving role to arrange for needed mental health, drug abuse, employment counseling and assistance, and other social service intervention for appropriate defendants. Additionally, the Community Court approach provides for an array of short-term community service assignments that defendants can be placed in immediately following the court hearing. The Community Court is designed to process cases promptly, diverting many cases the same day they come to court.

While the Community Court is very much a “work in progress,” it has generated considerable enthusiasm and holds great promise.

## **TWO YEARS DOWN THE ROAD STUDY COMMITTEE**

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## **About the Council for Court Excellence**

Formed in Washington, D.C. in January 1982, the Council for Court Excellence is a nonprofit, nonpartisan, civic organization. The Council works to improve the administration of justice in the local and federal courts and related agencies in the Washington metropolitan area and in the nation. The Council accomplishes this goal by:

- ◆ Identifying and promoting court reforms,
- ◆ Improving public access to justice, and
- ◆ Increasing public understanding and support of our justice system.

The Council for Court Excellence has built a substantial record of success in the major court reform initiatives it has undertaken. The Council has been the moving force behind adoption of the one-day/one-trial jury system in the D.C. Superior Court, reform of the District of Columbia probate laws and procedures, expansion of crime victim rights, improvement in court handling of child abuse and neglect cases, and proposed methods to speed resolution of civil cases by the D.C. trial and appellate courts. To improve the public's access to justice and increase their understanding of our justice system, the Council over the years has published and disseminated over 300,000 copies of plain-language booklets and other materials explaining a wide variety of court systems.

The Council is governed by a volunteer Board of Directors composed of members of the legal, business, judicial, and civic communities. The Council is unique in bringing together all of those communities in common purpose to address court reform and access to justice needs. The Board accomplishes the work of the Council through direct participation in Council committees. The Council employs a small staff to assist the Board in meeting the objectives of the organization. Financial support comes from members of the Board, businesses, law firms, individuals, government, and foundations.

To obtain a copy of the complete version of the December 2003 *Two Years Down the Road: A Progress Report on A Roadmap to a Better DC Criminal Justice System*, or the April 2001 *Roadmap to a Better DC Criminal Justice System*, or other related documents, please visit the Council for Court Excellence website at [www.courtexcellence.org](http://www.courtexcellence.org).

The update of the 27 recommendations in this report is the product of a study by Samuel F. Harahan, Harahan Associates PLLC. Points of view in this document are those of that author and the Council for Court Excellence. In his former capacity as the Executive Director of the Council for Court Excellence, Mr. Harahan was the co-principal investigator for the *April 2001 Roadmap Report* project.

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