

## CJP—AN INNOVATIVE CONCEPT

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*and*  
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*Hudson County, New Jersey presently has a unique procedure in operation to deal with first appearances for indictable crimes—a Central Judicial Processing unit. Adopted in response to a directive of Chief Justice Wilentz of the New Jersey Supreme Court, this procedure has led to a significant improvement in the criminal justice system in Hudson County.*

Hudson County is a heavily populated urban area with a correspondingly high crime rate. Approximately nine thousand indictable matters are processed annually by its criminal justice system.<sup>1</sup> With such a large volume, it is imperative that criminal complaints be screened efficiently in order to determine which matters merit close attention. This is necessary to ensure that limited judicial resources are concentrated on the most egregious or complex matters.

Until recently, Hudson County lacked a method by which the County Prosecutor could screen all the indictable matters in a convenient and efficient manner. This contributed to delays and backlog common in criminal courts throughout New Jersey and, indeed, the entire country. In New Jersey, the problems created by excessive delay were causing public indignation. The public adamantly opposed the practice of allowing suspected felons to spend anywhere from six months to two years out on the streets on bail while awaiting trial. Jails, meanwhile, were filled beyond capacity, and prosecutors faced problems resulting from the loss of memory, witnesses, and evidence caused by excessive delays.

In recognition of the need for speedy justice, Chief Justice Robert N. Wilentz, through the Administrative Director of the Courts, ordered the assignment judges in New Jersey's twenty-one counties to implement speedy trial plans for their courts.<sup>2</sup> As part of its Speedy

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<sup>1</sup> Indictable crimes are the more serious criminal offenses. Normally, before a person is prosecuted for such a crime, the case is presented to a grand jury to ensure that the charge is not groundless. Lesser offenses, such as simple assault or theft of property valued at less than \$200.00, are labeled disorderly persons offenses. These cases are tried by a judge on the basis of a complaint—a sworn document containing the facts which constitute the crime charged.

<sup>2</sup> The sixth amendment to the United States Constitution guarantees a speedy trial for all criminal defendants. U.S. CONSR. amend. VI. There is also a growing recognition of the *public's* right to a speedy trial. See *Barker v. Wingo*, 407 U.S. 514, 519 (1972).

Trial Plan, the Delay Reduction Committee of Hudson County implemented a new form of criminal intake: Central Judicial Processing (CJP).

The Hudson County CJP unit is actually part of the municipal courts. It was created pursuant to orders of the supreme court and the Assignment Judge of Hudson County which required suspension of a number of court rules.<sup>3</sup> CJP was established to fill the generally perceived need for a method of speeding up case processing at the pre-indictment stage. It not only provides a forum for screening complaints but also exemplifies a cooperative effort by the defense bar and the State to select speedy and appropriate dispositions. CJP's main goal is elimination of the lengthy delays arising from the use of various municipal courts for a defendant's first appearance in an indictable matter. An examination of the practice followed throughout Hudson County prior to CJP illustrates the positive impact the unit has had on the criminal justice system in Hudson County.

Prior to the inception of CJP, the first appearance was held at the municipal court level. There a defendant was informed of the nature of the charge against him and of his constitutional rights; in particular, the right to assignment of counsel. This is the current practice in most other counties in New Jersey. Although a defendant was brought to a municipal court at the first opportunity following the docketing of the complaint, delays often resulted because municipal dates were set by municipalities that do not sit five days a week. Thus, a defendant might be brought before a court in as little as one day or in as many as fourteen days after his arrest. In addition, only bail could be set at this stage of the proceedings. Moreover, because of limited resources, it was not possible to have an assistant county prosecutor assigned to each municipal court. Therefore, an unnecessary delay occurred when a municipal court judge faced with a matter that called for a downgrade could not effect such downgrade at the first appearance.

Downgrading is a form of case evaluation wherein an indictable charge is reduced to a lesser offense. For example, two men get into a fight, and the police are called. One of the men, A, has been injured and is taken to the hospital. The police take B into custody and charge

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<sup>3</sup> Chief Justice Wilentz's Order dated January 2, 1981 formalized a prior directive to implement speedy trial plans, and to suspend several court rules to allow proposed plans to operate. Presently, all counties have submitted plans, and a statewide Speedy Trial Committee chaired by the Chief Justice meets frequently to oversee the progress of the plans. Telephone interview with John P. McCarthy, Jr., Ass't Director of the Administrative Office of the Courts (Feb. 29, 1984).

him with aggravated assault, an offense which addresses serious bodily injury. It later becomes apparent that A's injuries are minor and no weapon was used by B. At the time of the arrest, however, the police had no way of knowing what charges were correct and therefore charged the greater offense, aware that at a later time a prosecutor could downgrade or dismiss if appropriate. In this hypothetical, since no serious bodily injury occurred, the charge should be downgraded to simple assault, a disorderly persons offense,<sup>4</sup> rather than being referred to the grand jury. Absent the presence of a prosecutor at the first appearance, the downgrade, though clearly appropriate, must be delayed.

This is, of course, only one example among many possible fact patterns which would call for a downgrade. Downgrading is basically a matter of prosecutorial discretion and judicial supervision. In light of the prosecutor's discretion, if a matter was to be downgraded under the old system at the municipal level, it was necessary to notify either the Hudson County Prosecutor's Office (which would then send a prosecutor, arrange for an adjournment, or allow the matter to be dismissed), or adjourn the case until the arrival of a "circuit riding" prosecutor who made visits to each court to review cases. Thus, the lack of a prosecutor at first appearances created delay.

A second problem which existed under the former system was that in most municipalities in Hudson County, only municipal public defenders (who are not authorized to handle indictable matters) were present. Therefore, a defendant often went unrepresented at this initial stage of the proceedings. In Jersey City, which had a municipal court operating five days a week and had resident representatives from both the county prosecutor's and county public defender's offices, delay often occurred because the assistant deputy public defender could not handle downgraded matters. If a matter was downgraded, it was necessary to transfer it to a municipal public defender who then would need time to familiarize himself with the case. This simple act of transfer engendered delay.

A final source of delay occurred because of probable cause hearings. These are limited hearings designed to ascertain if a legal basis to arrest the defendant exists. The hearings could not be held, of course, until a defense counsel was identified.<sup>5</sup> Because discovery was not

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<sup>4</sup> N.J. STAT. ANN. § 2C:12-1 (West 1982).

<sup>5</sup> A substantial number of cases are handled by the Office of the Public Defender because of the large number of indigent defendants. Although that office provides counsel for defendants at first appearances, it usually does not assign specific case counsel until approximately one week later.

furnished until after indictment, probable cause hearings were often defense counsel's only method of obtaining an early picture of the prosecution's case. Also, because witnesses had to be called, this delayed presentation of the case to the grand jury. If probable cause hearings were always necessary to protect the defendant's rights, then the delay which ensued would also be necessary. Fortunately, the liberal discovery rules in New Jersey have all but eliminated this problem.<sup>6</sup>

The advent of CJP on January 5, 1981 brought with it significant changes. Designed to combat the problems previously discussed, CJP provides an efficient mechanism for gathering information about defendants, setting and reviewing their bails, evaluating their cases, and sometimes even disposing of the entire matter. The unit primarily acts as a giant clearing house for potentially indictable crimes—helping to assure that the grand jury receives only those cases that properly belong before the court.

The defendant makes his first appearance on an indictable crime at CJP's operating point in Jersey City. If he is in jail, he appears not later than the first working day following his arrest. If he is summoned or out on bail, the defendant appears within five days of his arrest; he is assigned a date dependent on the municipality in which he has been arrested or summoned. For instance, on Tuesdays, CJP might handle that day's arrests, defendants then in jail, and bailed and summoned defendants from West New York. A defendant freed on weekends is usually notified to appear within three or four days; otherwise, he is to come in the next day.

A municipal court judge experienced in criminal matters presides over the CJP unit.<sup>7</sup> Also present are an experienced assistant prosecutor with authority to take appropriate action, representatives from the court's bail unit, a member of the Office of the Public Defender, Hudson County, and interviewers from the Pretrial Intervention (PTI) program.<sup>8</sup>

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<sup>6</sup> See *infra* text following note 13.

<sup>7</sup> A commitment was obtained from Jersey City to provide a judge, a clerk, and one security officer. Hudson County augmented the security staff by assigning four court attendants and two more clerks. CJP was given space in one of the vacant courtrooms in the County Administration Building, after the jury room had been converted into a holding pen.

<sup>8</sup> See N.J. STAT. ANN. §§ 2C:43-12 to -14 (West 1982). The Pretrial Intervention program diverts first offenders from the traditional criminal justice system. The program provides counseling, supervision, or rehabilitative services primarily to deter future criminal behavior. Diversion requires interviews and evaluation by representatives of both the program and the Prosecutor's office. In order to conserve resources and maximize the benefits of the program, it is essential that candidates for pretrial intervention be interviewed as soon after their arrest as possible.

Once a defendant is brought to CJP, he is interviewed, if he desires, by an investigator from the Public Defender's office. The public defender then determines the defendant's eligibility for his services. The bail unit also interviews the defendant, if necessary, in order to make specific bail recommendations to the judge. In the meantime, the prosecutor evaluates the case. He or she makes the decision on whether or not to downgrade, often after consulting with the public defender. Both the prosecutor and the public defender have an incident report and a report of the defendant's prior criminal history.

In order to make certain this information is available at CJP, the municipalities are responsible for furnishing the police reports and criminal histories of the defendant to CJP.<sup>9</sup> Thus, the prosecutor is able to make an informed decision whether to downgrade, as well as to provide significant input into any bail application. Where it seems best to postpone the decision whether to downgrade, the prosecutor is free to do so.

If the defendant needs bail set, and it is one which a municipal judge may set,<sup>10</sup> the bail unit makes a recommendation to the judge. This recommendation is made by assigning the defendant a number between one and fifteen. This number is assigned on the basis of established criteria for bail. It represents the bail unit's view of the relative weight of those factors which make reappearances likely and of those which make reappearances risky.<sup>11</sup> The judge, therefore, has a solid indication of how high a bail is needed. Under this system, the prosecutor and attorneys have the duty to bring any details that should affect his final decision on bail to the attention of the judge. Thus, a short-hand guide with a protective safeguard is provided, and further inquiry by the judge often is eliminated, saving even more time.<sup>12</sup>

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<sup>9</sup> In fact, the Hudson County Jail is under court order to not accept defendants without the complaint and criminal history.

<sup>10</sup> See *infra* note 17 and accompanying text.

<sup>11</sup> Among the criteria frequently considered in a bail determination are: the nature and circumstances of the offense; the weight of the evidence; the defendant's family ties, community ties, employment, financial resources, mental and physical condition, and prior record or bail history.

<sup>12</sup> This is modeled on the system employed by the Vera Institute of Justice in organizing the Manhattan Bail Project. The Project was an early experiment to determine if it was safe to release prisoners on their own recognizance who have strong ties to the community, rather than rely solely on the amount of bail to assure the defendant's return to court. See NATIONAL CONFERENCE ON BAIL AND CRIMINAL JUSTICE, PROCEEDINGS AND INTERIM REPORT 43-45 (1965). See generally *Pretrial Release in the United States*, 66 COLUM. L. REV. 109 (1966); Botein, *The Manhattan Bail Project: Its Impact on Criminology and the Criminal Law Processes*, 43 TEX. L. REV. 319 (1965); Ares, Rankin & Sturz, *The Manhattan Bail Project: An Interim Report on the Use of Pre-trial Parole*, 38 N.Y.U. L. REV. 67 (1963).

When bail is set and the case is downgraded but not disposed of at CJP, the defendant is given a date to appear in the municipal court where the complaint was docketed. The date is assigned in accordance with guidelines given by the individual municipal courts, usually within two weeks. Nondowngraded cases must go to the grand jury to await action. A defendant who is unrepresented at CJP, for example, one who is either ineligible for the public defender or who desires private counsel, has his case evaluated and his bail set much the same as those who are represented. He is then given a copy of the complaint, annotated to indicate private counsel will represent him, and he is assigned a court date.

If the defendant is represented, plea negotiations may take place. Although county public defenders ordinarily do not handle nonindictable offenses since they are the responsibility of municipal public defenders, the Deputy Public Defender for Hudson County has agreed to handle all matters at CJP including representation after the matter is downgraded.<sup>13</sup> The attorneys are furnished with discovery at CJP so that they may adequately advise their clients and prepare their defenses. As a result, probable cause hearings have become rarities. Like any other plea negotiation, this is an adversary proceeding wherein the defendant's rights are carefully guarded. The plea may be taken at CJP, or the defendant may be returned to the municipal court for purposes of taking the plea. Any action (e.g., appeal) taken subsequent to CJP is handled by either the municipal public defender or assigned counsel. Thus, a matter may be completely disposed of within hours of commission of the crime. Formerly, because of the lack of discovery, plea bargaining was impossible at the first appearance.

An indication of the effectiveness of CJP may be demonstrated best by the following example. A middle-aged cleaning woman from Jersey City left the PATH station on Grove Street about 3:30 a.m., after working all night cleaning offices on Wall Street. Her purse was grabbed by a young man, who immediately fled. She screamed, attracting a nearby police car and within minutes, the culprit was apprehended, identified (by the victim), arrested, processed, charged with robbery,<sup>14</sup> and lodged in the Hudson County Jail. Some six hours later at 9:30 a.m. he appeared in CJP accompanied by the appropri-

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<sup>13</sup> This eliminates the delay which often results when another public defender must familiarize himself with the case.

<sup>14</sup> N.J. STAT. ANN. § 2C:15-1 (West 1982).

ate information. He already had gone through the interview process described earlier. After evaluation, the prosecutor established that no weapon was involved, no injury was sustained by the victim, and the purse and its contents were recovered. As a result of negotiations between the prosecutor and public defender, the charges were downgraded to theft under \$200.00, a disorderly persons offense.<sup>15</sup> His guilty plea was accepted and a six-month custodial sentence plus the penalty mandated by the Violent Crimes Compensation Act was imposed.<sup>16</sup> All in all, the entire process—from arrest to sentence—took only about seven and one-half hours.

Since CJP was instituted, Hudson County has been able to reduce the number of grand juries operating in the county from five to three. Of the 8,601 matters handled there between January and December of 1983, only 3,665 were waived to the grand jury; 276, or three percent, were downgraded and pled. There were 3,515 matters that simply were downgraded, and 469 defendants were given an adjournment at CJP, none of which exceeded one week.

This success does not mean CJP does not need improvement. It would be helpful, for example, if the presiding judge were able to hear all bails. Currently, a New Jersey Court Rule<sup>17</sup> limits the ability of municipal court judges to hear bails. Thus, such matters, if not downgraded, must be referred to a superior court judge.<sup>18</sup> In that event, the bail usually is set later the same day, by the criminal assignment judge or his designee, resulting in additional lost time. Both a new prosecutor and a new judge must review the file, and the defendant may spend needless time in jail. Since experienced personnel are assigned to CJP, a relaxation of New Jersey Court Rule 3:26-2 for such courts would seem appropriate.

Hudson County's geography (its compactness) has made it particularly suitable for a centralized processing unit. After three years of outstanding performance, CJP is still unique to Hudson County, yet it need not remain so. Where geography alone inhibits one centralized unit, regional processing units might be used. Geographical limitations aside, the problems CJP deals with in Hudson County are mirrored in most other jurisdictions and certainly in all urban or subur-

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<sup>15</sup> N.J. STAT. ANN. § 2C:20-2b(3) (West 1982).

<sup>16</sup> N.J. STAT. ANN. § 2C:43-3.1 (West 1982).

<sup>17</sup> N.J. CT. R. 3:26-2. Rule 3:26-2 prohibits municipal court judges from setting bail in certain indictable offenses.

<sup>18</sup> The bails are reviewed on a daily basis by the criminal assignment judge.

ban counties. Moreover, experienced and dedicated personnel willing to put in long hours and make necessary decisions also are found in other counties.

Hudson County's CJP is a success, and, as experience increases, is constantly improving. Unnecessary delay breeds contempt for the criminal justice system, and CJP has eliminated much of this delay. It has won broad acceptance from the defense bar and has been widely recognized as preserving and protecting the rights of the accused while advancing the goal of speedy disposition of cases. In Hudson County, these benefits accrue to defendants, the State and the public at large. Hopefully, in the future, they will be spread statewide.